SUBJECT: PUBLIC HEARING – 550 SOUTH MCCASLIN URBAN RENEWAL PLAN


2. RESOLUTION NO. 59, SERIES 2015 – A RESOLUTION APPROVING AN AMENDED AND RESTATED COOPERATION AGREEMENT BETWEEN THE CITY OF LOUISVILLE AND THE LOUISVILLE REVITALIZATION COMMISSION

DATE: SEPTEMBER 1, 2015

PRESENTED BY: AARON DEJONG, ECONOMIC DEVELOPMENT

SUMMARY
This matter is a continuation of the Public Hearing held on August 18, 2015 regarding the proposed 550 South McCaslin Urban Renewal Plan. In addition to the information contained in the Council Communication for that meeting (which is included starting on page 4 of this Communication) staff has included the following new information and/or made the following changes to the materials:

The intent of the Urban Renewal Plan adoption is not to require condemnation, but instead to make eminent domain authority available to the LRC, subject to applicable provisions of the Urban Renewal Law and the provisions of the proposed Urban Renewal Plan and Cooperation Agreement. To clarify this intent, staff has revised certain sections of the Urban Renewal Plan as follows:

Last sentence of Section 1.1 amended to say, “The administration of this project and the enforcement and execution of this Plan are activities performed by the Louisville Revitalization Commission (“LRC”).”

COUNCIL COMMUNICATION
Section 2.7.2 is amended to say, “…it is the intent of the City Council in adopting this Plan that LRC shall have the authority to exercise powers herein authorized to be exercised by LRC under the Urban Renewal Law and which are necessary, convenient or appropriate to accomplish the objectives of this Plan. It is the intent of this Plan that LRC shall have the authority to exercise all such powers as may now be possessed or hereafter granted to LRC for the elimination of qualifying conditions within the Plan Area. Any exercise of such powers shall be in accordance with the Urban Renewal Law and the provisions of this Plan and applicable Cooperation Agreements.”

Council asked for information regarding Albertsons Counsel’s statement that Albertsons has received no offers to remove the restrictive covenants. Regarding this issue, Centennial Valley Investments has told staff that they have not made offers to Albertsons to remove their restrictive covenant. However, they have made three different offers to Albertsons to purchase the property outright from Albertsons. The most recent offer was during a July 16, 2015 meeting attended by Albertsons/Safeway Senior Real Estate Manager Lynn Miller, Centennial Valley Investments representative Rick Dunn, and City staff Aaron DeJong and Malcolm Fleming. Rick Dunn has told staff that Albertsons has not responded to any of the three offers. Centennial Valley Investments and Albertsons may have further information on this topic.

Council also asked about prospective tenants for the property. Staff is aware of entities that have expressed interest in the property but are precluded from operating there because of the restrictive covenants. If Council approves the Urban Renewal Plan it would facilitate the LRC issuing a request for proposals and responses to that RFP from specific parties, which would outline the terms, conditions and timeline for occupying the property and the specific tenants involved.

Finally, Council asked about staff’s offers to the potential buyer before they purchased the property regarding actions to remove restrictive covenants. To address this issue, staff has attached a copy of the January 6, 2014 letter from City Manager Fleming to Centennial Valley Investments, as well as an August 24, 2012 letter from City Manager Fleming to Walmart Realty, which was referenced in the January 6, 2014 letter. Both letters note the negative impact of use restrictions on the property as well as other significant issues contributing to the difficulty of attracting new tenants. The August 24, 2012 letter to Walmart Realty states, “…the City is exploring all options to allow for a new owner to purchase the property without the use restrictions”. The January 6, 2014 letter to Centennial Valley Investments lists several factors, including restrictive use covenants, contributing to the difficulty of attracting new tenants or new ownership for the property and states, “City staff and I are willing to recommend to the Louisville City Council actions to alleviate these factors if it would result in appropriate new tenants for the property. Of course, any decision to approve, decline, or request changes to any proposed economic development agreement is at the discretion of City Council.”
Staff’s willingness to recommending action is clearly conditioned on exploring options and determining whether an action would likely result in appropriate new tenants. Among the options staff has been exploring is encouraging private parties to independently identify a use for the existing building that meets the zoning and private restrictive covenants, either in their current form or though covenant changes agreed on by the private owners. Centennial Valley Investments’ three different offers to Albertsons, noted above, and staff’s attending the meeting between Albertsons’ and Centennial Valley Investments’ representatives reflect this effort. Another option staff has been exploring is the work that has culminated in staff recommending for Council’s consideration the proposed Urban Renewal Plan. As noted above, adoption of the Plan does not require condemnation, and any use of that power could not occur without further actions and approvals by both the LRC and City Council, in their discretion. Further, adoption of the Plan does not preclude any economic development agreements or other City actions.

Albertsons August 27, 2015 Letter
Albertsons attorney Jonathon Bergman submitted another letter on August 27, 2015 listing the following concerns:

“Interactions Between the City Staff and Current Property Owners”
Bergman asserts that “City Staff has inappropriately aligned itself with Centennial Valley Investments, whose interests are adverse to those of longstanding members of the Louisville Community.” To support this assertion he cites the January 6, 2014 letter from City Manager Fleming to Centennial Valley Investments. As noted above regarding that letter, staff has not “aligned itself with Centennial Valley Investments”, but has helped facilitate meetings between Albertsons and Centennial Valley Investments so those parties might explore and negotiate an agreement.

Bergman also infers there is something inappropriate with Director DeJong’s assisting Centennial Valley to draft a March 17, 2014 letter to the City. Centennial Valley was unsure about the manner in which to request this action, so DeJong created a draft to assist in the request. Such assistance is commonplace in DeJong’s work and reflects his proactive approach in working with all members of the Louisville business community.

“Lack of Transparency”
Bergman asserts there has been a lack of transparency regarding the Urban Renewal Plan and suggests that emails from Michael Menaker to members of City Council support this assertion. Bergman also asserts the City failed to notice property owners in the community to commission a blight study of the Property. The notice for commissioning the blight study was given in the manner required by State law. The public information meeting (which is not required by State law) on the Conditions Survey on July 7, 2014 was publicized in the same way as all boards and commission meetings are published; 1) on the City’s website, and 2) at the public posting locations in the City.
The City Council meeting to consider a determination of blight followed State law Section 31-25-107(b)(1) requiring notice to any owner of private property located in the area that is the subject of the study. Public notice for the October 7, 2014 meeting deciding whether blighting factors exist on the property was published in the Daily Camera on September 6, 2014. The Daily Camera ran an article about the action on July 24, 2014. Public notice of the July 6, 2015 public informational meeting on the Plan (which is not required by State law) was mailed and posted at the property, as well as noticed in the same manner as all board and commission meetings. Notice of the City Council public hearing on the Plan followed State law.

“Deficiencies in the Blight Findings”

Bergman further asserts that the “City’s actions (to find blight) leave the impression that the blight determination was a pretext to eliminate the use restrictions on the Property in order to benefit one private party at the expense of others.” The Conditions Survey was performed by a third party with experience in such matters (Urban Revitalization Consulting) using an objective approach to identify blighting factors in accord with all provisions of State law.

Regarding Bergman’s other assertions, staff agrees with his stated preference to “resolve these issues in a mutually beneficial fashion without resorting to litigation.” Staff does want to continue to facilitate discussions with Albertson’s and Centennial Valley with or without an approved Urban Renewal Plan to address the community’s largest and most impactful vacancy.

**SUMMARY (From August 18th Council Packet):**

Staff is asking Council to take two actions. First, adopt a Resolution approving an Urban Renewal Plan for 550 S. McCaslin Blvd, the former Sam’s Club Property. Second, adopt a Resolution approving amendments to the Cooperation Agreement between the City and the Louisville Revitalization Commission (LRC).

The proposed Urban Renewal Plan is intended to reduce, eliminate and prevent the spread of blight within the urban renewal area at 550 S. McCaslin, the former Sam’s Club. The objectives of the Plan include the following:

- Create a retail rich environment where area businesses and residents can be successful
- Re-tenant or redevelop the property
- Increase retail activity by encouraging occupancy of the property

Approving the Plan would give the Louisville Revitalization Commission (LRC) certain abilities to address the blighting factors preventing redevelopment of the former Sam’s Club building on the property. Those abilities include:

- Develop and approve a project description
• **Issue an RFP to solicit proposals for redevelopment** Such proposals could come from any interested parties including the property owner, interested retailers and/or developers. An RFP would ask for proposals specifying:
  + Improvements planned for the site
  + Proposed uses and activities
  + Time frames for completing the proposed redevelopment actions
  + Requested City financial assistance, if any, such as sales tax rebates
  + How costs (including potential legal costs) would be financed

• **Negotiate a proposed redevelopment agreement and submit the proposed redevelopment agreement to City Council for approval**

• **Use the power to acquire property by purchase through eminent domain as authorized by the Urban Renewal Law to alleviate the qualifying conditions.**

The Plan specifies in section 4.2.1 that any proposal to acquire property under the power of eminent domain must first be approved by the affirmative vote of two-thirds of the entire Louisville City Council. These abilities would be further subject to the terms of a Cooperation Agreement (including proposed amendments to that Agreement) between the City and the LRC. Section 5.d of that Agreement requires City Council approval of any redevelopment agreement or other contract to carry out the purposes of the Plan.

**BACKGROUND:**
The property located at 550 South McCaslin Boulevard encompasses approximately 13.16 acres in the McCaslin Boulevard area of Louisville and was formerly occupied by a Sam’s Club facility, but has remained vacant since the store’s closing in early 2010. The store’s closing has caused significant declines to the retail activity in and around the area. The building is 127,000 square feet in size and cannot be divided into smaller spaces without significant expense. Private restrictive covenants placed on the property prevent many of the most viable potential reuses of the current building. The property has a lack of full maintenance creating an impression the area is deteriorating. The McCaslin Boulevard area is the main retail sales tax generating area in Louisville and the minimal use of the property is lessening the retail viability of the area.

Wal-Mart actively marketed the property for over 3 years with brokerage firms CBRE and SRS Realty. They were unsuccessful in finding a new owner for the building for a retail purpose. Centennial Valley Investment, LLC (Centennial Valley) and Seminole Land Holdings, LLC purchased the property in January 2014.

The City Council on May 6, 2014, directed staff to commission a Conditions Survey. The Conditions Survey identified 4 blighting factors on the property. They are:

1) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness:
a. Lot configuration results in former Sam’s Club building being narrow and deep with respect to the front entrance, rather than shallow and wide
b. Building orientation makes it difficult to partition effectively; resulting spaces would be too narrow and deep for adequate retail layout
c. Other non-retail uses that might be compatible with a deep, narrow layout are prohibited

2) Deterioration of site or other improvements:
   a. Facility is 127,000 square feet with a 600+ car parking lot, requiring significant upkeep expenses
   b. Currently only used during a small portion of the time by a community church, which does not generate the revenue needed for full maintenance
   c. Potholes, cracked parking curbs, and other signs of lower maintenance levels are evident

3) Defective or unusual conditions of title rendering the title nonmarketable:
   a. Restrictive covenants put in place at time of development to limit competition between tenants and sharply limit entertainment uses
   b. Most notable restriction is that no competing grocer to Albertsons is allowed
   c. More broad restrictions put in place during sale from Sam’s Club to current owners after the store closed; this includes no stores selling a range of merchandise “at a discount” allowed, which is the use the site was originally developed for, and additional restrictions on entertainment uses
   d. Viable tenants who would fully utilize the property would likely be prevented from doing so

4) The existence of health, safety, or welfare factors requiring high levels of municipal services or substantial physical underutilization or vacancy of sites, buildings, or other improvements.
   a. Underutilized property
   b. Parking lot sits mostly empty during normal business hours
   c. Community Church uses a small portion of the property during only a small portion of the week

These blighting conditions limit the ability to re-tenant or redevelop the building for retail purposes.

The City Council made a blight determination by approving Resolution No. 60, Series 2014 on October 7, 2014. Council did not give direction at that time to begin preparation of an Urban Renewal Plan to address the blighting factors. The property owner, Centennial Valley and the tenants, Low Cost Furniture and Ascent Church, consented to the blight determination.

The City Council directed staff to prepare an Urban Renewal plan for the property on January 20, 2015.
A public meeting was held on July 6, 2015 to summarize the Urban Renewal Plan and answer questions from businesses and residents. Approximately 40 people attended. Staff gave a presentation of the Urban Renewal Plan and the reasons for it. Most of the questions from the audience related to what uses are currently allowed on the property, what uses would be allowed on the property, and the processes required to change the use of the property.

One step in the adoption of an Urban Renewal Plan is that the proposed plan must be submitted the City’s Planning Commission for its review and recommendation as to its conformity to the City’s Comprehensive Plan. The Planning Commission reviewed the Plan at its July 9, 2015 and approved its Resolution 23, Series 2015 finding the Urban Renewal Plan to be in conformity to the Comprehensive Plan.

In accordance with State of Colorado Statutes, the Urban Renewal Plan has also been sent to the Boulder County Commissioners and Boulder Valley School District, notices mailed to the property owners and businesses within the Plan area, and published in the Boulder Daily Camera on July 14, 2015.

**DISCUSSION:**
The blighting factors identified on the property continue to limit potential for redevelopment or re-tenanting the building. Staff has developed the attached Urban Renewal Plan to provide tools to address the blighting factors on the property.

The Urban Renewal Plan Boundary map is included in the attached Urban Renewal Plan as Figure 1. The boundaries of the Urban Renewal Area are the property lines for 550 South McCaslin Boulevard, the vacant Sam’s Club property.

Per state law, an urban renewal plan is subject to City Council approval and must be in place for the Louisville Revitalization Commission to undertake any projects.

**Proposed 550 S. McCaslin Urban Renewal Plan**
The proposed Urban Renewal Plan is general in nature and supported by a conditions survey prepared in July 2014 (included as an attachment). Elements of the Plan include descriptions of the area, qualifying conditions of blight, redevelopment actions, and project financing.

If approved, the LRC, as an urban renewal authority whose members are approved by City Council, will implement Urban Renewal Plan.

Some specifics of this Urban Renewal Plan include the following:
1) Section 2.1, Qualifying Conditions – The Plan reiterates the 4 blighting factors found and adopted in City Council Resolution 60, Series 2014. Those factors have been described above. The property owner and tenants of 550 S. McCaslin have consented to the determination of blight on the property and to inclusion of the property in an urban renewal area and plan.

2) Section 2.3, Planning Commission Approval – The Plan has been reviewed by the Planning Commission as to its conformity with the Comprehensive Plan.

3) Section 2.4, Consultation – The Plan has been submitted to the County and the Boulder Valley School District. Such submittal was mailed by July 14, 2015.

4) Section 2.7.1 – One or more of the projects may require the use of eminent domain to acquire Property within the Plan Area as provided in this Plan. Such actions may be necessary to eliminate defective or unusual conditions of title rendering the title nonmarketable to prevent the spread of blight.

5) Section 3.1, The Plan as a Tool – The objectives for the Plan include the following:
   - Create a retail rich environment where area businesses and residents can be successful.
   - Re-tenant or redevelop the property.
   - Increase retail activity by encouraging occupancy of the property.

6) Section 3.2, Plan Conforms to the City of Louisville Comprehensive Plan - This Plan is intended to not only comply with the State statute, but also to conform to the desires of the Louisville community as embodied in the Louisville Comprehensive Plan (“Comprehensive Plan”). The Comprehensive Plan defines the area as the focal point for a regionally significant commercial activity center and shall remain the City’s primary retail center that is supported by a mix of land uses including retail, office and residential.

7) Section 4.1, Redevelopment and Rehabilitation Actions – LRC is authorized to negotiate and enter into Redevelopment Agreements and Cooperation Agreements with landowners, developers, the City of Louisville, and investors regarding appropriate projects throughout the Plan Area which will generate increased sales and property tax revenues, and to enter into any other agreements authorized or permitted under the Urban Renewal Law or other law.

8) Section 4.2, Property Acquisition – The power of eminent domain as authorized by the Urban Renewal Law may be used to alleviate the qualifying conditions. Eminent domain authority is limited only to property within the Urban Renewal Area. Prior to use of eminent domain authority, the City Council must approve such use by a two-thirds affirmative vote.
9) Section 5.1, Tax Increment Financing – This Plan does not authorize use of tax increment financing pursuant to Section 31-25-107(9), C.R.S. The use of tax increment financing within the Plan Area can only be authorized by amendment to this Plan.

The Urban Renewal Plan does not include any proposed changes to existing zoning, development standards or review procedures, density, design guidelines or other land use plans or regulations. Rather, the proposed Urban Renewal Plan provides that it will follow and seek to implement the Comprehensive Plan and small area plans developed and adopted by Planning Commission and City Council.

The current zoning for 550 S. McCaslin Blvd. is PCZD – Commercial/Residential under the Centennial Valley Zoning. The Commercial component to the zoning applies to this property. The uses outlined in City Code for PCZD-Commercial are:

1. Any retail trade or service business;
2. Professional, business and administrative offices;
3. Motels and hotels;
4. Cultural facilities, such as museums, theaters, art galleries and churches;
5. Pedestrian plazas and pedestrian ways, including such amenities as outdoor art exhibit facilities, statuary, fountains and landscaping features;
6. Outdoor specialty uses, including sidewalk cafes and outdoor marketplaces to provide unique congregating places for sales and shopper interests;
7. Recreational facilities, both indoors and outdoors, such as ice skating and roller skating rinks which may be designed as integral parts of a center;
8. Restaurants, both indoor and drive-in types, food-to-go facilities, sidewalk cafes;
9. Hospitals and medical clinics;
10. Transportation terminals, parking lots and parking buildings;
11. Animal hospitals and clinics;
12. Automobile service stations, subject to prescribed performance and development standards;
13. Nursing and rest homes;
14. Small and large child care centers;
15. Financial offices, including banks and savings and loans;
16. Accessory structures and uses necessary and customarily incidental to the uses listed in this section;
17. Governmental and public facilities;
18. Research/office and corporate uses, and facilities for the manufacturing, fabrication, processing, or assembly of scientific or technical products, or other
products, if such uses are compatible with surrounding areas. In addition, such facilities shall be completely enclosed and any noise, smoke, dust, odor, or other environmental contamination produced by such facilities, confined to the lot upon which such facilities are located and controlled in accordance with all applicable city, state, or federal regulations;

19. Other uses as established by the city council as found to be specifically compatible for commercial and office planning areas.

20. Limited wholesale sales as defined in section 17.08.262 of this title are allowed as a special review use.

21. Retail marijuana stores and retail marijuana testing facilities.

22. Mobile retail food establishments, mobile food vehicles and mobile vending carts subject to prescribed performance and development standards outlined in section 17.16.310.

While the above describes the general menu of PCZD – Commercial uses under the zoning code, uses are further limited by the PCZD General Development Plan, which provides for a Commercial / Retail designation for the property. The uses on the property are also limited by private restrictive covenants among the commercial property owners bounded by McCaslin, Dillon, Cherry, and Dahlia streets. Those restrictions include:

- No general merchandise discount department store other than on Lot 2 (Sam’s Club)
- No supermarkets other than on Lot 1.
  - Other lots can have less than 5,000 sf devoted to retail sale of food for off-premise consumption
- Only Lot 2 may have an optical center
- Pharmacy only on Lots 1 and 2
- No more than 2 banks, unless banking is incidental to the primary use
- Only one fuel station
- Only one drive-thru restaurant selling hamburgers or ground beef products
- Limited entertainment uses

At the time Centennial Valley purchased the property, the previous owner, Walmart, required an additional restriction limiting uses further to no stores selling a range of merchandise “at a discount” allowed, which is the use the site was originally developed.

Steps for Plan Implementation
Under the Urban Renewal Law, the City Council decides whether to approve an urban renewal plan for a proposed urban renewal area. If a plan is approved, the Urban Renewal Authority is then authorized to undertake projects to carry out the plan consistent with the Urban Renewal Law, the plan and any related agreement, including
in this case the City-LRC Cooperation Agreement. For a redevelopment project, the Authority, as an initial step, will develop and approve a project description.

Within the redevelopment context, among the powers authorized to the LRC are the powers to negotiate and enter into redevelopment agreements, acquire and dispose of property, provide for improvements to carry out the plan, and undertake other activities. Redevelopment agreements may include contractual provisions intended to carry out the community’s objectives in adopting the plan. For example, a redevelopment agreement can establish land use restrictions and covenants; set timelines and deadlines for the commencement or completion of a project or project improvements; establish operating requirements for uses; establish arrangements for acquisition and disposition of property in the area, and detail financial agreements for project costs.

If the LRC decides to acquire and then dispose of property, either through eminent domain or voluntary agreement, City Council approval would be needed under the terms of the Urban Renewal Plan.

Under the Urban Renewal Law, an urban renewal authority is authorized to dispose of real property in an area to private persons only under reasonable competitive bidding procedures determined by the authority. Under these provisions, a request for proposals (RFP), for which public notice by publication is required, is used to solicit proposals for redevelopment from interested persons. The urban renewal authority then considers the redevelopment proposals received and may negotiate with any person for a redevelopment agreement that includes provisions for acquisition and transfer of property. Under these and related provisions, urban renewal authorities have the power to condemn property to remove blighting title conditions and then transfer the property subject to covenants, conditions and restrictions as are in the public interest or necessary to carry out the plan. As noted above, any redevelopment agreement of the LRC is subject to City Council approval.

In sum, if the LRC chooses to pursue a project under which it would acquire and then re-convey the property, typical steps would include development and approval of a project description, issuance of an RFP to solicit proposals for redevelopment, negotiations for a redevelopment agreement, submission of the proposed redevelopment agreement to City Council, and thereafter steps to carry out the redevelopment agreement. Any exercise of eminent domain would require City Council consent; if the LRC is to acquire property and then transfer it to a private party, it must have the fee owner’s consent or follow other detailed requirements.

City / LRC Cooperation Agreement
The City and LRC are parties to a Cooperation Agreement which provides for City Council oversight and cooperation among the parties concerning activities of the LRC. The City and LRC first entered into a Cooperation Agreement in 2006. A copy of the current Cooperation Agreement is attached. The Cooperation Agreement applies to
activities of the LRC generally, but was first entered into in conjunction with the adoption of the Highway 42 Urban Renewal Plan and some provisions are tied to provisions of that plan. Therefore, staff proposes amendments to the current Cooperation Agreement, as follows:

1) Section 5.c and 5.d would be revised to confirm City Council approval is required for any redevelopment agreement or for any sales tax TIF under any urban renewal plan. The current language is tied to the Highway 42 Plan.

2) Section 10 would be revised to clarify that provisions of the section—regarding continuing cooperation—apply to any urban renewal plan approved by City Council.

3) Section 16 would be amended to reflect that organizational documents (LRC Bylaws) have been revised; the Mayor is a member of the LRC.

4) Section 4.a would be revised to update the Costs and Expenses balance.

Attached is a revised Cooperation Agreement proposed for Council approval. The attachment shows changes to the current Cooperation Agreement in redline format.

Options
The following are options/actions/routes that City Council has available to address the continued vacancy at 550 S. McCaslin.

1) Encourage a retail use by addressing the blighting factors present on the property through the Urban Renewal Plan.

2) Consider a rezoning of the property to allow for a wider range of uses beyond what is currently allowed. Under the City Code, rezonings can be initiated by the owner or the Planning Commission or City Council. While a rezoning is identified here as an option for the site, rezonings are subject to separate public hearing procedures and City Council should not discuss the substance or merits of a rezoning as part of this urban renewal plan agenda item.

3) Continue to encourage private parties to independently identify a use for the existing building that meets the zoning and private restrictive covenants, either in their current form or though covenant changes agreed on by the private owners.

RECOMMENDATION:
City Council conduct a public hearing on the proposed 550 South McCaslin Urban Renewal Plan. Staff recommends Resolution No. 58, Series 2015, approving the Urban Renewal Plan. Staff recommends Resolution No. 59, Series 2015 approving an Amended and Restated City-LRC Cooperation Agreement.
ATTACHMENT(S):
1. Presentation
2. Planning Commission Resolution
3. Resolution Approving 550 South McCaslin Urban Renewal Plan
4. 550 South McCaslin Urban Renewal Plan
5. 550 South McCaslin Conditions Survey
6. Resolution Approving Amended and Restated Cooperation Agreement
7. Amended and Restated Cooperation Agreement between City and LRC
10. August 24, 2012 Letter to Walmart Realty
11. August 27, 2015 Letter from Jon Bergman to Sam Light
550 S. McCaslin
Urban Renewal Plan
and
Cooperation Agreement
Amendment

Aaron DeJong
September 1, 2015

Two Action Items

• Resolution approving an Urban Renewal Plan
  for 550 S. McCaslin Blvd, the former Sam’s
  Club Property

• Resolution approving amendments to the
  Cooperation Agreement between the City and
  the Louisville Revitalization Commission (LRC)
Supplemental Information

Council Questions from August 18, 2015

- Changes made to UR Plan to clarify intent of the Plan
  - Changes to Section 1.1 and 2.7.2
- Centennial Valley has not asked Albertson’s to remove their restriction
  - Offers have been made for the property
  - Latest offer has not received a response

Supplemental Information

- January 6, 2014 to Centennial Valley Inv.
  - States worked with Walmart to set a realistic price and reconsider restrictions.
  - Highlights the issues upon the property, including restrictive covenants
  - Staff willing to recommend actions to alleviate the issues on the property
  - States “any decision to approve, decline, or request changes to any proposed economic development agreement is at the discretion of City Council.”
**Actions To Date**

- Council directed a Conditions Survey in May 2014
- Conditions Survey completed in July 2014
- Council determined the property blighted October 2014
  – Resolution 60 Series 2014
- Council directed UR Plan preparation January 2015

**Actions To Date**

- LRC reviewed draft UR Plan June 2015
- Public Q & A meeting July 6, 2015
- Planning Commission reviewed draft UR Plan July 9, 2015
  – Approved Resolution 23, Series 2015 finding the UR Plan in conformity to the Comp. Plan
- Notices sent to Property Owner and businesses, County, BVSD and posted in Daily Camera July 14, 2015
UR Plan Objectives

The objectives for the Plan include:
• Create a retail rich environment where area businesses and residents can be successful
• Re-tenant or redevelop the Property
• Increase retail activity by encouraging occupancy of the Property

UR Plan: Conformity with Comp Plan

The Comprehensive Plan states the McCaslin Urban Center shall:
• Serve as the focal point for a regionally significant commercial activity center
• Remain the City’s primary retailing center that is supported by a mix of land uses including retail, office and residential

Planning Commission reviewed UR Plan and found it to be in conformity with the Comp Plan
550 S. McCaslin UR Plan

- Sam’s Club closed January 2010
  - 13 acre property
  - 128,000 sf building sitting mostly vacant
- New owner as of January 2014
- Several concerns arise from the vacancy:
  - Reduces the viability of adjacent properties
  - Could contribute to neighborhood decline
  - Weakens the McCaslin Corridor

Plan Area
Blight Factors

• Blight finding identified the following factors present:
  1. The existence of health, safety, or welfare factors requiring high levels of municipal services or substantial physical underutilization or vacancy of sites, buildings, or other improvements
  2. Defective or unusual conditions of title rendering the title non-marketable
  3. Faulty Lot Layout
  4. Deterioration of site or other improvements

Blight Factors

1. Substantial Physical Underutilization or Vacancy of Buildings or Sites
   – Underutilized property
   – Parking lot sits mostly empty during normal business hours
   – Community Church uses property during only a small portion of the week
   – High profile location at gateway into Louisville from US 36
   – One of the main anchor retail properties in shopping area
Blight Factors

2. Defective or unusual conditions of title rendering the title non-marketable
   - Developed in 1990s as part of a retail center
   - Restrictive covenants put in place at time of development to limit competition between tenants and sharply limit entertainment uses
   - Limits several uses

Blight Factors

• Restrictive Covenants
  - No general merchandise discount department store other than on Lot 2
  - No supermarkets other than on Lot 1.
    - Other lots can have less than 5,000 sf devoted to retail sale of food for off-premise consumption
  - Only Lot 2 may have an optical center
  - Pharmacy only on Lots 1 and 2
  - No more than 2 banks, unless banking is incidental to the primary use
  - Only one fuel station
  - Only one drive-thru restaurant selling hamburgers or ground beef products
Blight Factors

• Restrictive Covenants
  – More broad restrictions put in place during sale from Sam’s Club to current owners after the store closed (owner can buy out restriction)
  – No stores selling a range of merchandise “at a discount” allowed, the use for which the site was originally developed
  – Viable tenants who would fully utilize the property would likely be prevented from doing so

3. Faulty Lot Layout
  – Lot configuration results in former Sam’s Club building being narrow and deep with respect to the front entrance, rather than shallow and wide
  – Building orientation makes it difficult to partition effectively; resulting spaces would be too narrow and deep for adequate retail layout
  – Other non-retail uses that might be compatible with a deep, narrow layout are prohibited
4. Deterioration of Site and Other Improvements
   – Facility is 127,000 square feet with a 600+ car parking lot, requiring significant upkeep expenses
   – Currently only used during a small portion of the time by a community church, which does not generate the revenue needed for full maintenance
   – Potholes, cracked parking curbs, and other signs of lower maintenance levels are evident
Blight Factors

• Blighting factors continue to limit potential for redevelopment or re-tenanting the building
• The Urban Renewal Plan outlines the tools available to address the blighting factors
• Approving a plan must follow rules in State Statute
  – Planning Commission review as to its conformity with the Comp Plan

Power of Eminent Domain

Plan Authorizes LRC to use eminent domain...
  – Only as authorized by the Urban Renewal Law to alleviate qualifying conditions
  – Only for property within the Urban Renewal Area
  – Only after affirmative 2/3rds vote by City Council
Redevelopment Agreements

• LRC is authorized to negotiate and enter into Redevelopment Agreements and Cooperation Agreements
  – LRC to develop a process to evaluate Redevelopment Agreements

UR Plan Tools for LRC

• Develop and approve a project description
• Issue RFP to solicit proposals for redevelopment
  Such proposals could come from any interested parties including the property owner, interested retailers and/or developers
• Negotiate a proposed redevelopment agreement and submit the proposed redevelopment agreement to City Council for approval
• If approved by City Council, execute the redevelopment agreement
Elements of an RFP

An RFP would ask for proposals specifying:

• Improvements planned for the site
• Proposed uses and activities
• Time frames for completing the proposed redevelopment actions
• Requested City financial assistance, if any, such as sales tax rebates
• How costs (including potential legal costs) would be financed

UR Plan Does Not...

• This Plan does not authorize use of tax increment financing pursuant to Section 31-25-107(9), C.R.S.
  – The use of tax increment financing within the Plan Area can only be authorized by amendment to this Plan.
• This Plan does not change the allowed uses of the property or approve any redevelopment plans.
  – Change of use and redevelopments must go through the City’s approval processes.
Options to address continued vacancy at 550 S. McCaslin

1. **Continue to encourage property owners to resolve issues**
   - Expect private parties to identify a use for the existing building that:
     - Complies with existing zoning
     - Satisfies the private restrictive covenants, either in their current form or though covenant changes agreed on by the private owners

2. **Consider rezoning the property to allow for a wider range of uses beyond what is currently allowed**
   - Rezonings may be initiated by the Owner, Planning Commission, or City Council
   - Rezonings are subject to separate public hearing procedures and would be a quasi-judicial action; Council should not discuss the substance or merits of a rezoning as part of this agenda item

Options to address continued vacancy at 550 S. McCaslin

3. **Encourage a retail use by addressing the blighting factors through an Urban Renewal Plan**
   - LRC would develop and approve a project description
   - Issue RFP to solicit proposals for redevelopment Such proposals could come from any interested parties including the property owner, interested retailers and/or developers
   - Negotiate a proposed redevelopment agreement. Submit the proposed redevelopment agreement to City Council for approval
   - If approved by City Council, execute the redevelopment agreement
Cooperation Agreement

• City and LRC have an agreement first approved in 2006.  
  — Amended in 2011
• Proposed changes to reflect multiple UR Plan areas in the City
  1. Section 5.c and 5.d to confirm City Council approval of redevelopment agreements
  2. Section 10 to clarify any UR Plan Area is covered by the Agreement
  3. Section 16 to reflect LRC’s bylaws have been revised
  4. Section 4.a revised to update Costs and Expenses balance
     • Small amount of expenses not paid at end of 2014. Paid in early 2015.

550 S. McCaslin UR Plan

Actions Requested

RESOLUTION Approving the 550 S. McCaslin Urban Renewal Area
AND
RESOLUTION Approving an Amended And Restated Cooperation Agreement between the City and LRC
RESOLUTION NO. 26
SERIES 2015

A RESOLUTION FINDING THE 550 S. MCCASLIN URBAN RENEWAL PLAN TO BE IN CONFORMITY WITH THE COMPREHENSIVE PLAN AND RECOMMENDING APPROVAL OF SAID URBAN RENEWAL PLAN

WHEREAS, pursuant to Colorado Revised Statutes Section 31-25-107(2), there has been submitted to the Louisville Planning Commission the proposed 550 S. McCaslin Urban Renewal Plan, dated August 2015 (the Plan), for the Commission’s review and recommendations as to the Plan’s conformity with the City Comprehensive Plan; and

WHEREAS, the Louisville Planning Commission has held a public meeting to discuss the conformity of the Plan with the City Comprehensive Plan, has provided public notice of such meeting by posting and publication, and has received public comment on the Plan; and

WHEREAS, based on its review of the Plan and the other documents and comments presented to it at said meeting, the Louisville Planning Commission hereby finds:

(a) That the Plan is in conformity with the City of Louisville Comprehensive Plan;

(b) That, in particular, the Plan does not seek to amend or alter the Comprehensive Plan, but rather supports, implements, and will further the Comprehensive Plan; and

(c) That, in particular, the Plan is in conformance with the goals, principles and policies of the Comprehensive Plan;

NOW THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Louisville, Colorado, that based on the foregoing findings, and pursuant to C.R.S. Section 31-25-107(2), the Planning Commission of the City of Louisville, Colorado does hereby find that the proposed 550 S. McCaslin Urban Renewal Plan, dated August 2006 (the Plan), is in conformity with the City of Louisville Comprehensive Plan and does hereby recommend City Council approve such Plan.

PASSED AND ADOPTED this 9th day of July 2015.

By: Chris Pritchard, Chair
Planning Commission

ATTEST:

Ann O'Connell, Secretary
Planning Commission
RESOLUTION NO. 58
SERIES 2015

A RESOLUTION APPROVING THE 550 SOUTH MCCASLIN URBAN RENEWAL PLAN, DESIGNATING SUCH AREA AS APPROPRIATE FOR URBAN RENEWAL PROJECTS PURSUANT TO THE 550 SOUTH MCCASLIN URBAN RENEWAL PLAN, AND FINDING THAT THE ACQUISITION, CLEARANCE, REHABILITATION, CONSERVATION, DEVELOPMENT, REDEVELOPMENT OR A COMBINATION THEREOF OF SUCH AREA IS NECESSARY IN THE INTEREST OF THE PUBLIC HEALTH, SAFETY, MORALS, AND WELFARE OF THE CITIZENS OF THE CITY OF LOUISVILLE

WHEREAS, the Louisville Revitalization Commission (the “LRC”) is a public body corporate and politic, and has been duly created, organized, established and authorized by the City of Louisville, Colorado (the “City”) to transact business and exercise its powers as an urban renewal authority, all under and pursuant to the Colorado Urban Renewal Law, constituting part 1 of article 25 of title 31, Colorado Revised Statutes, as amended (the “Law”); and

WHEREAS, the City of Louisville (the “City”) previously contracted with Urban Revitalization Consulting to survey and document whether conditions that constitute a blighted area, as defined in the Law, exist in the City of Louisville; and

WHEREAS, said consultants prepared a Conditions Survey, entitled 550 South McCaslin Boulevard Conditions Survey (the “Conditions Survey”) dated July 2014 consisting of 31 pages, a map of the area provided on page 15, and including a description of existing conditions and photographs; and

WHEREAS, the City Council on October 7, 2014 held a public hearing for the purpose of review and consideration of the Conditions Survey, at which time the Conditions Survey and other evidence and testimony were presented to City Council; and

WHEREAS, upon consideration of the Conditions Survey and the other evidence and testimony presented to City Council, the City Council on October 7, 2014 adopted its Resolution No. 60, Series 2014 finding that the following area qualifies as a blighted area as defined in the Law: Lot 2, Centennial Valley Parcel 0, Filing No. 7, County of Boulder, State of Colorado, with an address of 550 South McCaslin Boulevard, Louisville, Colorado; and

WHEREAS, by its Resolution No. 60, Series 2015, the City Council found such described area to be a blighted area as defined in the Law and appropriate for inclusion in an urban renewal project pursuant to the Law; and

WHEREAS, there has been prepared for such area a proposed 550 South McCaslin Urban Renewal Plan; and

WHEREAS, a legal description of the 550 South McCaslin Urban Renewal Plan Area which is subject to the 550 South McCaslin Urban Renewal Plan is attached as Exhibit A to this Resolution and as Exhibit A to the proposed 550 South McCaslin Urban Renewal Plan; and
WHEREAS, the City Council of the City of Louisville has adopted the 2013 Louisville Comprehensive Plan, which is the general plan for the development of the City of Louisville; and

WHEREAS, the 550 South McCaslin Urban Renewal Plan has previously been submitted to the Louisville Planning Commission for its review and recommendations as to conformity with the 2013 Louisville Comprehensive Plan pursuant to C.R.S. §31-25-107(2); and

WHEREAS, the Louisville Planning Commission has determined that the 550 South McCaslin Urban Renewal Plan does conform to the 2013 Louisville Comprehensive Plan and recommended approval of the 550 South McCaslin Urban Renewal Plan by adoption of its Resolution No. 23, Series 2015; and

WHEREAS, no property in the 550 South McCaslin Urban Renewal Plan has been included in an urban renewal plan previously submitted to the City Council of the City of Louisville; and

WHEREAS, the City Clerk of the City of Louisville has published the notice of the time, place, and purpose of the public hearing to consider the adopting of the 550 South McCaslin Urban Renewal Plan in the Daily Camera in conformance with C.R.S. §31-25-107(3); and

WHEREAS, the City of Louisville has provided written notice of the public hearing to consider the adoption of this 550 South McCaslin Urban Renewal Plan to all property owners, residents, and business owners within the 550 South McCaslin Urban Renewal Plan Area at their last known addresses in conformance with C.R.S. §31-25-107(4)(c); and

WHEREAS, the Boulder County Commissioners were provided notification of and a copy of the 550 South McCaslin Urban Renewal Plan as required by C.R.S. §31-25-107(3.5)(a); and

WHEREAS, the Boulder Valley School District was provided notification of and a copy of the 550 South McCaslin Urban Renewal Plan, notwithstanding that the 550 South McCaslin Urban Renewal Plan Area includes no single- or multi-family residences; and

WHEREAS, the City Council of the City of Louisville has conducted a public hearing and considered the public testimony received.

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

1. The foregoing recitals are incorporated in and made a part of this Resolution.

2. As found and declared by City Council Resolution No. 60, Series 2014, blight, as defined by C.R.S. §31-25-103(2), is present in the 550 South McCaslin Urban Renewal Plan Area. The following blight factors are present said Area: Faulty lot layout in relation to size, adequacy, accessibility, or usefulness; deterioration of site or other improvements; defective or unusual conditions of title rendering the title nonmarketable; and the existence of health, safety, or welfare factors requiring high levels of municipal services or substantial physical underutilization or vacancy of sites, buildings, or other improvements.
3. As found and declared by City Council Resolution No. 60, Series 2014, the 550 South McCaslin Urban Renewal Plan Area is a blighted area and is appropriate for an urban renewal project pursuant to Part 1 of Article 25 of Title 31, C.R.S.

4. The 550 South McCaslin Urban Renewal Plan satisfies applicable requirements of C.R.S. §31-25-105.5.

5. The principal purpose for the adoption of the 550 South McCaslin Urban Renewal Plan is to facilitate redevelopment in order to eliminate or prevent the spread of blight.

6. The boundaries of the 550 South McCaslin Urban Renewal Plan Area have been drawn as narrowly as feasible to accomplish the planning and development objectives for the 550 South McCaslin Urban Renewal Plan.

7. To the extent that the 550 South McCaslin Urban Renewal Area includes open land within the meaning of Section 31-25-107(6) of the Act, and to the extent such Section is otherwise applicable, it is found and determined that the nonresidential uses under the 550 South McCaslin Urban Renewal Plan are necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound planning standards and local community objectives and to carry out the 550 South McCaslin Urban Renewal Plan. The acquisition of property within the 550 South McCaslin Urban Renewal Area may require the exercise of governmental action, as provided in the Act, because of the presence of conditions of blight.

8. The 550 South McCaslin Urban Renewal Plan conforms to the 2013 Louisville Comprehensive Plan, which is the general plan for the development of the City of Louisville.

9. Written notice of the public hearing to consider the adoption of this 550 South McCaslin Urban Renewal Plan has been provided to all property owners, residents, and business owners within the 550 South McCaslin Urban Renewal Plan Area at their last known addresses in conformance with C.R.S. §31-25-107(4)(c).

10. The public hearing to consider the approval of the 550 South McCaslin Urban Renewal Plan was commenced on August 18, 2015. No more than one hundred twenty days have passed since the commencement of the public hearing on the Plan.

11. The 550 South McCaslin Urban Renewal Plan does not include any area previously considered for inclusion in an urban renewal area in the previous twenty-four months.

12. There exist feasible methods for the relocation of individuals, families and business concerns in accommodations or areas suitable for their relocation as provided by C.R.S. §31-25-107(4)(a) & (b).

13. The 550 South McCaslin Urban Renewal Plan will afford maximum opportunity, consistent with the sound needs of the City of Louisville as a whole for the rehabilitation or redevelopment of the 550 South McCaslin Urban Renewal Plan Area by private enterprise.
14. The acquisition, clearance, rehabilitation, conservation, development or redevelopment of a combination thereof of the 550 South McCaslin Urban Renewal Plan Area pursuant to the 550 South McCaslin Urban Renewal Plan is necessary in the best interests of the public health, safety, morals, and welfare of the citizens of the City of Louisville.

15. The acquisition of any property by the exercise of the power of eminent domain shall be subject to approval of the City Council pursuant to the provision of the Plan.

16. The Plan does not contain any agricultural land.

17. The 500 South McCaslin Urban Renewal Plan satisfies applicable requirement of the Law.

18. The 550 South McCaslin Urban Renewal Plan is hereby approved.

PASSED AND ADOPTED this ____ day of ____________, 2015.

________________________________
Robert P. Muckle, Mayor

ATTEST:

___________________________________
Nancy Varra
City Clerk
EXHIBIT A

LEGAL DESCRIPTION
550 SOUTH MCCASLIN URBAN RENEWAL PLAN AREA

Lot 2, Centennial Valley Parcel O, Filing No. 7, County of Boulder, State of Colorado with an address of 550 South McCaslin Boulevard, Louisville, Colorado.
# TABLE OF CONTENTS

I. INTRODUCTION .............................................................................................................................................. 1
   1.1 Preface.................................................................................................................................................. 1
   1.2 Background ........................................................................................................................................ 1
   1.3 Definitions .......................................................................................................................................... 2

2. LEGISLATIVE FINDINGS .................................................................................................................................. 2
   2.1 Qualifying Conditions .......................................................................................................................... 2
   2.2 Projects ............................................................................................................................................... 3
   2.3 Planning Approval .............................................................................................................................. 3
   2.4 Consultation ....................................................................................................................................... 3
   2.5 Public Hearing .................................................................................................................................... 3
   2.6 Boundaries of the Plan Area .............................................................................................................. 3
   2.7 Other Findings ................................................................................................................................... 3

3. DESCRIPTION OF PLAN OBJECTIVES ......................................................................................................... 4
   3.1 The Plan as a Tool .............................................................................................................................. 4
   3.2 Plan Conforms with the City of Louisville Comprehensive Plan ...................................................... 4
   3.3 Plan to Encourage Private Investment through Construction of Public Infrastructure. Error! Bookmark not defined.

4. PLAN IMPLEMENTATION ............................................................................................................................... 5
   4.1 Redevelopment and Rehabilitation Actions ....................................................................................... 5
   4.2 Property Acquisition .......................................................................................................................... 5
   4.3 Relocation Assistance and Payments ............................................................................................... 6
   4.4 Public Improvements and Facilities ................................................................................................. 6
   4.5 Redevelopment Agreements ............................................................................................................. 6
   4.6 Interagency Cooperation ................................................................................................................... 6

5. PROJECT FINANCING ...................................................................................................................................... 6
   5.1 No Tax Increment Financing ............................................................................................................ 6
   5.2 Participating Interest in Projects ....................................................................................................... 7

6. MODIFICATIONS TO THIS PLAN ................................................................................................................ 7
   6.1 Plan May Be Amended or Modified .................................................................................................. 7
I. INTRODUCTION

1.1 Preface

This 550 South McCaslin Urban Renewal Plan ("Plan") has been prepared for adoption by the City Council of the City of Louisville pursuant to provisions of the Urban Renewal Law of the State of Colorado, Article 25 of Title 31, Colorado Revised Statutes ("Urban Renewal Law"). This Plan is prepared and adopted to satisfy the requirements of § 31-25-107(1), C.R.S. that an urban renewal plan must be adopted by the governing body of the municipality before an urban renewal authority undertakes an urban renewal project. The administration of this project and the enforcement and execution of this Plan are activities performed by the Louisville Revitalization Commission ("LRC").

1.2 Background

The property located at 550 South McCaslin Boulevard ("Property") encompasses approximately 13.16 acres in the McCaslin Boulevard area of Louisville and was formerly occupied by a Sam’s Club facility, but has remained vacant since the store’s closing in early 2010. The closing has caused significant declines to the retail activity in and around the area. The building is 127,000 square feet in size and cannot be divided into smaller spaces without significant expense. Private restrictive covenants placed on the Property prevent many of the most viable potential reuses of the current building. The Property has a lack of full maintenance creating an impression the area is deteriorating. The McCaslin Boulevard area is the main retail sales tax generating area within Louisville and the minimal use of the Property is lessening the retail viability of the area.

The City of Louisville Comprehensive Plan ("Comprehensive Plan"), adopted by the City Council on May 7, 2013, specifically describes the goals and policies for development within the City. The Comprehensive Plan defines the area as the focal point for a regionally significant commercial activity center and shall remain the City’s primary retail center that is supported by a mix of land uses including office and residential.

The City is undertaking a small area planning process that will identify desired uses and development objectives which will encourage new private redevelopment. This Urban Renewal Plan is intended to provide additional tools to support the re-tenanting or redevelopment of the Property and advance the goals for the McCaslin Boulevard area in the Comprehensive Plan and small area plan.
1.3 Definitions

Cooperation Agreement: Any agreement between LRC and the City of Louisville or any other public body regarding action taken pursuant to any of the powers set forth in the Urban Renewal Law, or in any other provision of Colorado law, for the purpose of facilitating public undertakings deemed necessary or appropriate by LRC under this Plan.

Plan: This Urban Renewal Plan as it may be modified from time to time.

Plan Area: The area described in Section 2.6 of this Plan, and depicted on Figure 1, which has been found to be blighted by the Louisville City Council by Resolution No. 60, Series 2014 and for which the undertaking of urban renewal projects is declared to be necessary.

Redevelopment Agreement: An agreement between LRC and a developer or developers regarding the re-tenanting, redevelopment or rehabilitation of property within the Plan Area.

2. LEGISLATIVE FINDINGS

2.1 Qualifying Conditions

Based on the 550 South McCaslin Boulevard Conditions Survey prepared by Urban Revitalization Consulting, dated July, 2014, and evidence presented at the public hearing, the City Council on October 7, 2014 adopted its Resolution No. 60, Series 2014 finding that there exists blight, as defined by § 31-25-103(2), C.R.S., in the Plan Area.

The 550 South McCaslin Boulevard Conditions Survey found blight conditions are prevalent throughout the area. The conditions found to exist include:

a) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

b) Deterioration of site or other improvements;

c) Defective or unusual conditions of title rendering the title nonmarketable;

d) The existence of health, safety, or welfare factors requiring high levels of municipal services or substantial physical underutilization or vacancy of sites, buildings, or other improvements.

By letters dated September 24, 2014, the property owner and tenants of such owner have stated that they do not object to the inclusion of the Property in an urban renewal area or adesignation of blight.

The City Council finds that the presence of these factors substantially impairs or arrests the sound growth of the City of Louisville, constitutes an economic and social liability, and is a menace to the public health, safety, morals and welfare of the City of Louisville.
2.2 Projects

The Plan Area is appropriate for one or more urban renewal projects and other undertakings of the LRC as authorized by the Urban Renewal Law.

2.3 Planning Approval

A general plan for the City of Louisville, known as the City of Louisville Comprehensive Plan (“Comprehensive Plan”), has been adopted by the City Council. This Urban Renewal Plan has been submitted to the Planning Commission of the City of Louisville for review and recommendations as to its conformity with the Comprehensive Plan. The City Planning Commission met on July 9, 2015, and has submitted its written recommendations regarding the conformity of this Plan to the City of Louisville Comprehensive Plan to the City Council.

2.4 Consultation

As required by C.R.S. 31-25-107(3.5), this Plan has been submitted to the Board of County Commissioners of Boulder County. The Boulder Valley School District RE-2 has been advised of this Plan and has been given an opportunity to provide comments.

2.5 Public Hearing

The City Council of the City of Louisville has held a public hearing to consider this Plan after public notice thereof published in compliance with the Urban Renewal Law in the Daily Camera, describing the time, date, and purpose of the public hearing, identifying the Plan Area and outlining the general scope of the projects being considered for implementation pursuant to this Plan. Notice of the public hearing was provided to owners, residents, and business owners in the Plan Area at their last known address at least 30 days before the date of the public hearing.

2.6 Boundaries of the Plan Area

The boundaries of the Plan Area shall be as set forth in Figure 1 attached hereto, with a legal description as follows:

Lot 2, Centennial Valley Parcel O, Filing No. 7, County of Boulder, State of Colorado with an address of 550 South McCaslin Boulevard, Louisville, Colorado.

The City Council finds that the boundaries of the Plan Area have been drawn as narrowly as feasible to accomplish the planning and development objectives of this Plan.

2.7 Other Findings

2.7.1 One or more of the projects may require the use of eminent domain to acquire Property within the Plan Area as provided in this Plan. Such actions may be necessary to eliminate defective or unusual conditions of title rendering the title nonmarketable to prevent the spread of deterioration.
2.7.2 In order to eliminate or reduce the qualifying conditions currently existing within the Plan Area, as well as those qualifying conditions which may be reasonably anticipated to develop within the Plan Area in the absence of public action, it is the intent of the City Council in adopting this Plan that LRC shall have the authority to exercise powers herein authorized to be exercised by LRC under the Urban Renewal Law and which are necessary, convenient or appropriate to accomplish the objectives of this Plan. It is the intent of this Plan that LRC shall have the authority to exercise all such powers as may now be possessed or hereafter granted to LRC for the elimination of qualifying conditions within the Plan Area. Any exercise of such powers shall be in accordance with the Urban Renewal Law and the provisions of this Plan and applicable Cooperation Agreements.

2.7.3 If it becomes necessary for individuals, families or businesses to relocate as a result of the implementation of this Plan, a feasible method exists for the relocation of individuals, families, and business concerns that may be displaced, insureing that decent, safe and sanitary dwelling accommodations and business locations can be made.

2.7.4 The powers conferred by the Urban Renewal Law are for public uses and purposes for which public money may be expended and the police powers exercised, and this Plan is in the public interest and necessity, such finding being a matter of legislative determination by the City Council.

The owner and tenants within the Property have consented to the inclusion of the Property within this Plan.

3. DESCRIPTION OF PLAN OBJECTIVES

3.1 The Plan as a Tool.

This Plan is an important tool to address the problems confronting the Property. The objectives for the Plan include the following:

- Create a retail rich environment where area businesses and residents can be successful.
- Re-tenant or redevelop the Property.
- Increase retail activity by encouraging occupancy of the Property.

3.2 Plan Conforms to the City of Louisville Comprehensive Plan.

This Plan is intended to not only comply with the state statute, but also to conform to the desires of the citizens of the Louisville community as embodied in the City of Louisville Comprehensive Plan (“Comprehensive Plan”). The Comprehensive Plan defines the area as the focal point for a regionally significant commercial activity center and shall remain
the City’s primary retail center that is supported by a mix of land uses including office and residential.

3.3 **Plan to Alleviate Conditions of Blight Through Private Redevelopment.**

The objective of this Plan is to alleviate the conditions of blight by encouraging private redevelopment that will in turn encourage the development and redevelopment and avoid underutilization of other properties in the vicinity.

4. **PLAN IMPLEMENTATION**

In order to accomplish the objectives of this Plan and to fully implement this Plan, LRC shall be authorized to undertake the following activities:

4.1 **Redevelopment and Rehabilitation Actions**

Redevelopment and rehabilitation actions within the Plan Area may include such undertakings and activities as are in accordance with this Plan and the Urban Renewal Law, including without limitation: demolition and removal of buildings and improvements as set forth herein; installation, construction and reconstruction of public improvements as set forth herein; elimination of unhealthful, unsanitary or unsafe conditions; taking actions to remove restrictive covenants that might otherwise contribute to the property remaining vacant and/or underutilized; elimination of obsolete or other uses detrimental to the public welfare; and other actions to remove or to prevent the spread of deterioration. LRC is authorized to negotiate and enter into Redevelopment Agreements and Cooperation Agreements with landowners, developers, the City of Louisville, and investors regarding appropriate projects throughout the Plan Area which will generate increased sales and property tax revenues, and to enter into any other agreements authorized or permitted under the Urban Renewal Law or other law. Notwithstanding any language that could be construed to the contrary in § 31-25-107(8), all development in the Plan Area shall be processed in accordance with the ordinances and rules and regulations in place at the time of the application for said project, including, without limitation, the provisions of the Louisville Municipal Code.

4.2 **Property Acquisition**

The principal purpose of this Plan is the re-tenanting or redevelopment of the Property within the Plan Area. The power of eminent domain as authorized by the Urban Renewal Law may be utilized to alleviate the qualifying conditions specified in Section 2 of this Plan as provided in the Urban Renewal Law.

4.2.1 The LRC through purchase or eminent domain or by any method authorized by the Act and the Urban Renewal Plan may acquire property. Any proposal to acquire property under the power of eminent domain must first be approved by the affirmative vote of two-thirds of the entire Louisville City Council. The LRC may temporarily operate, manage and maintain property acquired in the Urban Renewal Area. Any such property acquired shall be
under the management and control of the LRC and may be rented or leased pending its disposition for redevelopment.

4.3 Relocation Assistance and Payments

In the event it is necessary to relocate or displace any business or other commercial establishments as a result of any property acquisition, LRC may adopt relocation policies for payment of relocation expenses. Such expenses may include moving expenses, actual direct losses of property for business concerns, and goodwill and lost profits that are reasonably related to relocation of the business, resulting from its displacement for which reimbursement or compensation is not otherwise made.

4.4 Public Improvements and Facilities

LRC may undertake certain actions which would make the Plan Area more attractive for private investment by providing public improvements consistent with the Comprehensive Plan or McCaslin small area plan. These improvements could include, without limitation, street and traffic improvements, streetscape improvements, a transportation center, landscaping, park and recreation facilities, utility improvements, open space acquisition, stormwater improvements, public art projects, and other similar improvements necessary to carry out the objectives of the Comprehensive Plan or McCaslin small area plan.

4.5 Redevelopment Agreements

LRC is authorized to enter into one or more Redevelopment Agreements with developer(s) and such other entities as are determined by LRC to be necessary or desirable by LRC to carry out the purposes of this Plan. Such Redevelopment Agreements may contain such terms and provisions as shall be deemed necessary or appropriate by LRC for the purpose of undertaking the activities contemplated by this Plan or the Urban Renewal Law, and may further provide for such undertakings by LRC, as may be necessary for the achievement of the objectives of this Plan or as may otherwise be authorized by the Urban Renewal Law.

4.6 Interagency Cooperation

LRC may enter into one or more Cooperation Agreements with the City of Louisville or other public bodies pursuant to the Urban Renewal Law. Cooperation Agreements may provide, without limitation, for financing, for construction of public improvements, for administration, for technical assistance and for other purposes.

5. PROJECT FINANCING

5.1 No Tax Increment Financing

This Plan does not authorize use of tax increment financing pursuant to Section 31-25-107(9), C.R.S. The use of tax increment financing within the Plan Area can only be authorized by amendment to this Plan.
5.2 Participating Interest in Projects

In the event a project derives particular and unique benefits from public improvements financed by the LRC, the public should share in the success of the project. The terms of the participating interest will be specified in the Redevelopment Agreement at a level and on terms appropriate for each project.

6. MODIFICATIONS TO THIS PLAN

6.1 Plan May Be Amended or Modified

This Plan may be amended or modified pursuant to provision of the Urban Renewal Law as provided in § 31-25-107, C.R.S. Major modifications to this Plan will require appropriate notification in accordance with the Urban Renewal Law, including submission to the Board of County Commissioners of Boulder County and written notice provided to all property owners, residents, and owners of businesses in the Plan Area not less than 30 days prior to the consideration of an substantial modification.
FIGURE 1
MAP OF PLAN AREA
Table of Contents

Section 1: Study Overview ..................................................... 1
Section 2: Colorado Urban Renewal Statutes and Blighted Areas ............. 3
Section 3: Conditions Indicative of the Presence of Blight ..................... 7
Section 4: Study Area Location, Definition, and Description .................. 13
Section 5: Study Findings ...................................................... 17
Section 6: Study Summary and Recommendation ............................ 31

Exhibit 1: Study Area Context ................................................. 14
Exhibit 2: Study Area Map ..................................................... 15
Section 1: Survey Overview

Purpose
In order to maximize the potential for remedying conditions of blight and encourage reinvestment, the City of Louisville, Colorado has commissioned an independent conditions survey for a large commercial property located at 550 S McCaslin Boulevard, Louisville, Colorado, 80027.

This property was formerly occupied by a Sam's Club facility, but has remained vacant since the store's closing early in 2010, despite ongoing efforts to market the property to another tenant.

This survey will determine if the geographic area chosen for this project qualifies as “blighted” within the meaning of the Colorado Urban Renewal Law, and consequently, if there is a sufficient basis to adopt a new urban renewal plan that can more effectively stimulate focused redevelopment in this area.

Methodology
The defined geographic area (“Survey Area”) examined in this conditions inventory was determined by the City of Louisville, and lies entirely within Louisville's municipal boundaries. A map depicting the boundaries of the Survey Area is presented in Section 4 of this report as Exhibit 2: Survey Area Map.

Data collection for conditions of blight (see Sections 2 and 3 for what constitutes conditions of blight) was accomplished through several means. For those blight conditions that could be identified by visual observation and by the use of maps and aerial photography, the consultant conducted a field survey in June 2014. For those blight conditions that are not observable in the field (such as traffic data, crime statistics, etc.), blight condition data was obtained from specific City of Louisville departments during the same time period.
Section 2: Colorado Urban Renewal Statutes and Blighted Areas

In the Colorado Urban Renewal Law, Colo. Rev. Stat. § 31-25-101 et seq. (the "Urban Renewal Law"), the legislature has declared that an area of blight "constitutes a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of the state in general and municipalities thereof; that the existence of such areas contributes substantially to the spread of disease and crime, constitutes an economic and social liability, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems and impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of slums and blight is a matter of public policy and statewide concern...."

Under the Urban Renewal Law, the term "blighted area" describes an area with an array of urban problems, including health and social deficiencies, and physical deterioration. See Colo. Rev. Stat. § 31-25-103(2). Before remedial action can be taken, however, the Urban Renewal Law requires a finding by the appropriate governing body that an area such as the Survey Area constitutes a blighted area. Colo. Rev. Stat. §31-25-107(1).

The blight finding is a legislative determination by the municipality’s governing body that, as a result of the presence of factors enumerated in the definition of “blighted area,” the area is a detriment to the health and vitality of the community requiring the use of the municipality’s urban renewal powers to correct those conditions or prevent their spread. In some cases, the factors enumerated in the definition are symptoms of decay, and in some instances, these factors are the cause of the problems. The definition requires the governing body to examine the factors and determine whether these factors indicate a deterioration that threatens the community as a whole.

For purposes of the Survey, the definition of a blighted area is articulated in the Colorado Urban Renewal statute as follows:
“Blighted area” means an area that, in its present condition and use and, by reason of the presence of at least four of the following factors, substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations, or constitutes an economic or social liability, and is a menace to the public health, safety, morals, or welfare:

a. Slum, deteriorated, or deteriorating structures;
b. Predominance of defective or inadequate street layout;
c. Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
d. Unsanitary or unsafe conditions;
e. Deterioration of site or other improvements;
f. Unusual topography or inadequate public improvements or utilities;
g. Defective or unusual conditions of title rendering the title non-marketable;
h. The existence of conditions that endanger life or property by fire or other causes;
i. Buildings that are unsafe or unhealthy for persons to live or work in because of building code violations, dilapidation, deterioration, defective design, physical construction, or faulty or inadequate facilities;
j. Environmental contamination of buildings or property; or
k.5. The existence of health, safety, or welfare factors requiring high levels of municipal services or substantial physical underutilization or vacancy of sites, buildings, or other improvements.

In addition, paragraph (l.) states, “if there is no objection by the property owner or owners and the tenant or tenants of such owner or owners, if any, to the inclusion of such property in an urban renewal area, ‘blighted area’ also means an area that, in its present condition and use and, by reason of the presence of any one of the factors specified in paragraphs (a) to (k.5) of this subsection….”

The statute also states a separate requirement for the number of blight factors that must be present if private property is to be acquired by eminent domain. At § 31-25-105.5(5), paragraph (a.) states, “Blighted area shall have the same meaning as set forth in section 31-25-103 (2); except that, for purposes of this section only, ‘blighted area’ means an area that, in its present condition and use and, by reason of the presence of at least five of the factors specified in section 31-25-103 (2)(a) to (2)(l)…”
Thus, the state statutes require, depending on the circumstances, that a minimum of either one, four, or five blight factors be present for an area to be considered a “blighted area.”

A couple principles have been developed by Colorado courts to guide the determination of whether an area constitutes a blighted area under the Urban Renewal Law. First, the absence of widespread violation of building and health codes does not, by itself, preclude a finding of blight. According to the courts, “the definition of ‘blighted area’ contained in [the Urban Renewal Law] is broad and encompasses not only those areas containing properties so dilapidated as to justify condemnation as nuisances, but also envisions the prevention of deterioration.”

Second, the presence of one well-maintained building does not defeat a determination that an area constitutes a blighted area. Normally, a determination of blight is based upon an area “taken as a whole,” and not on a building-by-building, parcel-by-parcel, or block-by-block basis.

Based upon the conditions identified in the Survey Area, this report makes a recommendation as to whether the Survey Area still qualifies as a blighted area, given the time that has passed since such a determination was first made. The actual determination itself remains the responsibility of the Louisville City Council.
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Section 3: Conditions Indicative of the Presence of Blight

As discussed in Section 2, the Colorado Urban Renewal statute provides a list of 11 factors that, through their presence, may allow an area to be declared as blighted. This section elaborates on those 11 factors by describing some of the conditions that might be found within a Survey Area that would indicate the presence of those factors.

Slum, Deteriorated, or Deteriorating Structures:
During the field reconnaissance of the Survey Area, the general condition and level of deterioration of a building is evaluated. This examination is limited to a visual inspection of the building's exterior condition and is not a detailed engineering or architectural analysis, nor does it include the building's interior. The intent is to document obvious indications of disrepair and deterioration to the exterior of a structure found within the Survey Area. Some of the exterior elements observed for signs of deterioration include:

- Primary elements (exterior walls, visible foundation, roof)
- Secondary elements (fascia/soffits, gutters/downspouts, windows/doors, façade finishes, loading docks, etc.)
- Ancillary structures (detached garages, storage buildings, etc.)

Predominance of Defective or Inadequate Street Layout:
The presence of this factor is determined through a combination of both field observation as well as an analysis of the existing transportation network and vehicular and pedestrian circulation patterns in the Survey Area by persons with expertise in transportation planning and/or traffic engineering. These conditions include:

- Inadequate street or alley widths, cross-sections, or geometries
- Poor provisions or unsafe conditions for the flow of vehicular traffic
- Poor provisions or unsafe conditions for the flow of pedestrians
- Insufficient roadway capacity leading to unusual congestion of traffic
- Inadequate emergency vehicle access
- Poor vehicular/pedestrian access to buildings or sites
550 S McCaslin Boulevard Conditions Survey

- Poor internal vehicular/pedestrian circulation
- Excessive curb cuts/driveways in commercial areas

These conditions can affect the adequacy or performance of the transportation system within the Survey Area, creating a street layout that is defective or inadequate.

Faulty Lot Layout in Relation to Size, Adequacy, Accessibility, or Usefulness:
This factor requires an analysis of the parcels within the Survey Area as to their potential and usefulness as developable sites. Conditions indicative of the presence of this factor include:

- Lots that are long, narrow, or irregularly shaped
- Lots that are inadequate in size
- Lots with configurations that result in stagnant, misused, or unused land
- Lots with billboards that have active leases, making redevelopment more difficult

This analysis considers the shape, orientation, and size of undeveloped parcels within the Survey Area and if these attributes would negatively impact the potential for development of the parcel. This evaluation is performed both through observation in the field and through an analysis of parcel boundary maps of the Survey Area.

Unsanitary or Unsafe Conditions:
Conditions observed within the Survey Area that qualify under this blight factor include:

- Floodplains or flood prone areas
- Inadequate storm drainage systems/evidence of standing water
- Poor fire protection facilities
- Above average incidences of public safety responses
- Inadequate sanitation or water systems
• Existence of contaminants or hazardous conditions or materials
• High or unusual crime statistics
• Open trash dumpsters
• Severely cracked, sloped, or uneven surfaces for pedestrians
• Illegal dumping
• Vagrants/vandalism/graffiti/gang activity
• Open ditches, holes, or trenches in pedestrian areas

These represent situations in which the safety of individuals, especially pedestrians and children, may be compromised due to environmental and physical conditions considered to be unsanitary or unsafe.

**Deterioration of Site or Other Improvements:**
The conditions that apply to this blight factor reflect the deterioration of various improvements made on a site other than building structures. These conditions may represent a lack of general maintenance at a site, the physical degradation of specific improvements, or an improvement that was poorly planned or constructed. Overall, the presence of these conditions can reduce a site's usefulness and desirability and negatively affect nearby properties.

• Neglected properties or evidence of general site maintenance problems
• Deteriorated signage or lighting
• Deteriorated fences, walls, or gates
• Deterioration of on-site parking surfaces, curb & gutter, or sidewalks
• Poorly maintained landscaping or overgrown vegetation
• Poor parking lot/driveway layout
• Unpaved parking lot on commercial properties

**Unusual Topography or Inadequate Public Improvements or Utilities:**
The focus of this factor is on the presence of unusual topographical conditions that could make development prohibitive, such as steep slopes or poor load-bearing soils, as well as deficiencies in the public infrastructure system within the Survey Area that could include:
• Steep slopes / rock outcroppings / poor load-bearing soils
• Deteriorated public infrastructure (street/alley pavement, curb, gutter, sidewalks, street lighting, storm drainage systems)
• Lack of public infrastructure (same as above)
• Presence of overhead utilities or billboards
• Inadequate fire protection facilities/hydrants
• Inadequate sanitation or water systems

**Defective or Unusual Conditions of Title Rendering the Title Non-Marketable:**
Certain properties can be difficult to market or redevelop if they have overly restrictive or prohibitive clauses in their deeds or titles, or if they involve an unusually complex or highly divided ownership arrangement. Examples include:

• Properties with covenants or other limiting clauses that significantly impair their ability to redevelop
• Properties with disputed or defective title
• Multiplicity of ownership making assemblages of land difficult or impossible

**Existence of Conditions that Endanger Life or Property by Fire and Other Causes:**
A finding of blight within this factor can result from the presence of the following conditions, which include both the deterioration of physical improvements that can lead to dangerous situations as well as the inability for emergency personnel or equipment to provide services to a site:

• Buildings or sites inaccessible to fire and emergency vehicles
• Blocked/poorly maintained fire and emergency access routes/frontages
• Insufficient fire and emergency vehicle turning radii
• Buildings or properties not in compliance with fire codes, building codes, or environmental regulations
Buildings that are Unsafe or Unhealthy for Persons to Live or Work In:
Some of the conditions that can contribute to this blight factor include:

- Buildings or properties not in compliance with fire codes, building codes, or environmental regulations
- Buildings with deteriorated elements that create unsafe conditions
- Buildings with inadequate or improperly installed utility components

Environmental Contamination of Buildings or Property:
This factor represents the presence of contamination in the soils, structures, water sources, or other locations within the Survey Area.

- Presence of hazardous substances, liquids, or gasses

Existence of Factors Requiring High Levels of Municipal Services or Substantial Physical Underutilization or Vacancy of Sites, Buildings, or Other Improvements:
The physical conditions that would contribute to this blight factor include:

- Sites with a high incidence of fire, police, or emergency responses
- Sites adjacent to streets/alleys with a high incidence of traffic accidents
- Sites with a high incidence of code enforcement responses
- An undeveloped parcel in a generally urbanized area
- A parcel with a disproportionately small percentage of its total land area developed
- Vacant structures or vacant units in multi-unit structures
Section 4: Survey Area Location, Definition, and Description

The 550 S McCaslin Boulevard Conditions Survey focuses on a single large parcel located in a retail center that is primarily accessed from McCaslin Boulevard, a major arterial street that links the City of Louisville with the Denver-Boulder Turnpike. This focused area is 13.16 acres and is defined by a single real property parcel comprising a largely vacant retail building as well as its associated parking lot. The building is 127,000 square feet, making it one of the largest retail structures in the area.

Exhibit 1: Survey Area Context, shows the location of the Survey Area within the context of the City of Louisville and the surrounding area.

Exhibit 2: Survey Area Map visually depicts the physical boundaries of the Survey Area.
Survey Area Location, Definition, and Description

Exhibit 1: Survey Area Context

Louisville Municipal Area

1 Mile
Survey Area Location, Definition, and Description

550 S McCaslin Boulevard

Survey Area Boundary

200 ft

Exhibit 2: Survey Area Map

S McCaslin Boulevard

W Dahlia Street
Section 5: Survey Findings

The overall findings of the 550 S McCaslin Boulevard Conditions Survey are presented below in a format that mirrors the list of factors and conditions of blight discussed in Section 3.

Slum, Deteriorated, or Deteriorating Structures

The retail structure, developed in the mid 1990s, was examined during the field survey, and remains in good condition. A few minor problems were visible on the facade of the building, such as cracked brick and mortar due to soil settling in select places, but these issues did not rise to the level necessary to make a finding of deteriorated structures.

This blight factor is therefore considered not to be present in the Survey Area.


**Predominance of Defective or Inadequate Street Layout**

The parcel comprising the Survey Area is large—over 13 acres according to the Boulder County Assessor—and relies on internal private roads for adequate access and service, as do the surrounding retail parcels and pad sites.

Traffic count data from the Louisville Engineering Division covering the surrounding public rights of way revealed no major issues with daily traffic volumes given the design capacity of the roads.

Emergency vehicle access is well provided for: there are no portions of the building that cannot be accessed using the internal streets, and the streets are configured correctly to allow for sufficient vehicle turning radii.

**No** finding of *Inadequate Street Layout* has been made.
Faulty Lot Layout in Relation to Size, Adequacy, Accessibility, or Usefulness

The real property parcel covering the Survey Area is the result of an initial subdivision that precisely corresponds to the parcel's originally intended use containing a large discount membership warehouse and associated internal roads and parking facilities. The size of the retail structure—127,000 square feet—is considerable, even for large format retail. A typical supermarket is less than half that size; even a modern, full-featured home improvement store is usually 20% smaller.

This severely shortens the list of possible tenants for property that could fully utilize it. Adaptive reuse options including subdividing the retail building in order to create a more appropriately-sized retail spaces for potential future tenants are not feasible due to the orientation of the building. As the building stands, it is narrow and deep with respect to the front entrance, rather than shallow and wide, so any resulting spaces after partitioning the building are too narrow and deep to be suitable for efficient store layout. The cost of dividing and partitioning the building is also considerable, and would require higher rents to future tenants to offset these costs.

Finally, it is important to note that the property carries restrictive covenants that prevent many of the most viable potential reuses as it is currently configured (see the defective title section for more details).

Because the current layout of the property is suited to a very narrow range of uses which are either prohibited or infeasible, there is a finding of Faulty Lot Layout in the Survey Area.
Unsanitary or Unsafe Conditions

Floodplain maps from the Federal Emergency Management Agency (FEMA) indicate that the Survey Area is outside any areas that have a >.02% annual chance of flooding. For the purposes of this Survey, there is considered to be no physical danger to visitors from flooding.

Fire protection facilities are adequate; hydrants serve the property, the road system adequately serves emergency vehicle access to the retail structure in the event of a fire.

Finally, crime levels in the area do not rise to the levels necessary to be considered unsafe.

No finding of Unsanitary or Unsafe Conditions has been made.
Deterioration of Site or Other Improvements

The 550 S McCaslin property is designed for heavy-volume retail: it is a 127,000 square foot retail facility with over 600 parking spaces, located on a major arterial near a highway interchange. It is currently used only sporadically for tenants far smaller than it was designed for; consequently, it is not currently generating revenue proportional to necessary maintenance expenses. This has been the case since the property was abandoned over 4 years ago.

A lack of full maintenance of the property was evident during the field survey; the parking lot had a few potholes, including one very large one at its primary entrance with McCaslin Boulevard, and the curb and gutter in some places was cracked and deteriorated. The striping on the parking lot was found to be badly worn. The building itself was cracked in a few places in its facade, and needs minor work such as mortar repair in certain areas.

This is not to say that maintenance is completely lacking, but only that it gives the impression of being minimal. While the property is not badly deteriorated by virtue of being largely vacant for only 4 years and receiving landscaping maintenance, it is clear that it is indeed slowly deteriorating. Combined with its general underutilization (see the underutilization or vacancy of sites section), this is causing a general blight that affects the surrounding area.

A finding of Deterioration of Site or Other Improvements has been made in the Survey Area.
Study Findings

The parking had cracks and potholes in places.

Various portions of damaged curb and gutter were found.
Unusual Topography or Inadequate Public Improvements or Utilities

The 550 S McCaslin property was developed in conjunction with many surrounding commercial properties less than 2 decades ago, along with adequate utility systems to serve the properties.

Additionally, curb and gutter are present along all roadways except loading areas within the Survey Area, including private roads.

This factor is not considered present in the Survey Area.
Defective or Unusual Conditions of Title Rendering the Title Non-marketable

The property at 550 S McCaslin Boulevard is subject to numerous restrictions that have the combined effect of rendering the parcel non-marketable to prospective buyers and tenants. This issue is expressed by the current co-owners, Centennial Valley Investment, LLC, and Seminole Land Holdings, LLC in a letter dated March 17, 2014 to the City of Louisville, and is confirmed by an examination of the original covenants put in place during the initial development of the property in the 1990s as well as additional restrictions applied to the property during the sale of the property from Sam's Real Estate Business Trust to its current owners in January 2014.

The original covenants dating from the 1990s, (including multiple amendments made during subsequent years), generally prohibit new uses at 550 S McCaslin Blvd that would compete with existing retailers in the same commercial center, the most notable of which is the prohibition of a grocer on the property as long as the nearby Albertsons remains in business. Other uses that do not directly compete with other tenants in the commercial center but could otherwise provide opportunities for adaptive reuse are also prohibited, including bowling alleys, billiard parlors, night clubs, recreational facilities, theaters, skating rinks, health spas, gyms, and video game parlors.

The warranty deed made between the current property owners and Sam's Real Estate Business Trust on January 30, 2014 was obtained from Boulder County Public Records, and places additional restrictions on the property over the next 25 years. These restrictions explicitly prohibit any wholesale clubs and discount department stores, which are precisely the type of use that formerly existed on the property. Pharmacies, liquor stores, bars, and grocery stores are also prohibited.

The combined effect of the various restrictions in place on the property is that the most viable uses for the property are not allowed. Any prospective tenant that could potentially utilize the 127,000 square foot facility on the property would almost certainly be prevented from doing so; the restrictions are broad enough to mandate a commercial retail use, but simultaneously prohibit the sale of almost anything “at a discount in a retail operation” and also any
entertainment venue. Even a large home improvement store or electronics could easily be interpreted as being prohibited under the broad language of the warranty deed.

Because of the lack of marketability of the 550 S McCaslin property, this factor is considered present.
Study Findings

550 S McCaslin Boulevard Conditions Survey

Existence of Conditions that Endanger Life or Property by Fire or Other Causes

Access to the building, emergency vehicle turning radii, and fire protection facilities such as hydrants were found to be adequate.

This blight factor is considered not to be present in the Survey Area.

Buildings that are unsafe or unhealthy for persons to live or work in because of building code violations, dilapidation, deterioration, defective design, physical construction, or faulty or inadequate facilities

No structural analysis was performed on the retail structure, and there was no evidence to suggest it was deteriorated enough to present a danger to occupants.

Therefore, this factor is not present in the Survey Area.
Environmental Contamination of Buildings or Property

A Phase I Environmental Site Analysis (ESA) conducted in March 2010 by Environmental Restoration, LLC found no evidence of material environmental contamination in the Survey Area, and no additional testing or research was performed for the purposes of this Conditions Survey.

Therefore, there is no finding of environmental contamination of buildings or property.
The existence of health, safety, or welfare factors requiring high levels of municipal services or substantial physical underutilization or vacancy of sites, buildings, or other improvements

The Survey Area is 13 acres, located in an urbanized area, surrounded by commercial and residential development, on a busy arterial street near a highway interchange, but is currently vastly underutilized.

Since early 2010, the site has been largely vacant, excepting a few transitional uses that do not approach the full potential of the property. Currently, the signage on the 127,000 square foot retail facility reveals that it is being used for a community church, leaving the property unused except for half a day per week.

During the field survey, conducted during regular business hours in June 2014, over four years since the closing of the former Sam’s Club, the over 600 parking spaces on the property were empty, except for a few miscellaneous vehicles parked along the periphery.

This represents a substantial underutilization of the property, which contributes to a general blight in the area and a reduction in retail traffic for the surrounding area that an anchor tenant of the sort the property was designed for would provide.

This blight factor is considered present in the Survey Area.
The vast parking area and the building lie largely vacant
Section 6: Survey Summary and Recommendation

Within the entire Survey Area, 4 of the 11 blight factors were identified as being present. The blight factors identified within the Survey Area are:

- Faulty Lot Layout
- Deterioration of Site or Other Improvements
- Defective or Unusual Conditions of Title Rendering the Title Non-marketable
- High Levels of Municipal Services or Underutilization or Vacancy of Sites, Buildings, or Other Improvements

Blight Survey Recommendation

As discussed in Section 2, in order for an area to be declared blighted, a certain number of the 11 blight factors must be found within the Survey Area. **Four** of the 11 factors is the required minimum, unless none of the property owners or tenants object to being included within an urban renewal area; then, the required minimum is only **one** of the 11 factors. In the event, however, that eminent domain is to be used to acquire property within the urban renewal area, the required minimum is **five** of the 11 factors. Since **four** blight factors were identified within the Survey Area, a sufficient number of blight factors exist for the area to be declared blighted; however, the Louisville Revitalization Commission may not exercise eminent domain to acquire any property in the Survey Area without the written consent of the property owners.

It is the recommendation of this blight Survey report to the City of Louisville, the Louisville Revitalization Commission, and the Louisville City Council that the Survey Area, in its present condition, exhibits a sufficient level of blight to be considered a “blighted area” under the standards set forth in State Statute. Whether the blighted area “substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations, or constitutes an economic or social liability, and is a menace to the public health, safety, morals, or welfare” is a determination that must be made by the Louisville City Council.
RESOLUTION NO. 59
SERIES 2015

A RESOLUTION APPROVING AN AMENDED AND RESTATED COOPERATION AGREEMENT BETWEEN THE CITY OF LOUISVILLE AND THE LOUISVILLE REVITALIZATION COMMISSION

WHEREAS, the City of Louisville (the “City”) is a home-rule city and municipal corporation duly organized and existing under and pursuant to Article XX of the Colorado Constitution and Charter of the City; and

WHEREAS, the Louisville Revitalization Commission (the “LRC”) is a public body corporate and politic authorized to transact business and exercise its powers as an urban renewal authority under and pursuant to the Colorado Urban Renewal Law, Part 1 of Article 25 of Title 31, C.R.S. (the Act); and

WHEREAS, the Act and Section 18, Article XIV of the Colorado Constitution authorize the City and the LRC to enter into cooperation agreements, and the Act specifically authorizes the City and the LRC to enter into agreements respecting action to be taken pursuant to any of the powers set forth in the Act; and

WHEREAS, in 2006, the City and the LRC entered into a Cooperation Agreement respecting operating funds, support services, general oversight of the LRC to be provided by the City to the LRC, and related matters, which such Agreement was approved by Resolution No. 49, Series 2006; and

WHEREAS, on April 5, 2011, the City and the LRC entered into an Amended and Restated Cooperation Agreement respecting the same matters; and

WHEREAS, the City desires to update and revise certain provisions of the Agreement and for such purpose there is proposed another Amended and Restated Cooperation Agreement between the City and the LRC;

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

Section 1. The proposed Amended and Restated Cooperation Agreement between the City of Louisville and the Louisville Revitalization Commission (the “Agreement”), a copy of which is attached hereto and incorporated herein by this reference, is hereby approved.

Section 2. The Mayor is authorized to execute the Agreement on behalf of the City, except that the Mayor is hereby further granted authority to negotiate and approve such revisions to said Agreement as the Mayor determines are necessary or desirable for the protection of the City, so long as the essential terms and conditions of the Agreement are not altered.
Section 3. The Mayor, City Manager and City Staff are further authorized to do all things necessary on behalf of the City to perform the obligations of the City under the Agreement, and are further authorized to execute and deliver any and all documents necessary to accomplish the terms, conditions and provisions of the Agreement.

PASSED AND ADOPTED this _____ day of _____________, 2015.

______________________________
Robert P. Muckle, Mayor

ATTEST:

______________________________
Nancy Varra, City Clerk
AMENDED AND RESTATED COOPERATION AGREEMENT

This Amended and Restated Cooperation Agreement (the Cooperation Agreement) is made as of ___________, 20142015, by and between the CITY OF LOUISVILLE, COLORADO (the City) and the LOUISVILLE REVITALIZATION COMMISSION (the LRC). The City and the LRC are sometimes referred to herein individually as a Party and collectively as the Parties.

RECITALS

A. The City is a home-rule city and municipal corporation duly organized and existing under and pursuant to Article XX of the Colorado Constitution and Charter of the City (the Charter).

B. The LRC is a public body corporate and politic authorized to transact business and exercise its powers as an urban renewal authority under and pursuant to the Colorado Urban Renewal Law, Part 1 of Article 25 of Title 31, C.R.S. (the Act).

C. The Act and Section 18, Article XIV of the Colorado Constitution authorize the Parties to enter into cooperation agreements, and the Parties desire to enter into this Cooperation Agreement respecting operating funds, support services, and general oversight of the LRC to be provided by the City to the LRC and related matters.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing and the following terms and conditions, the Parties agree as follows:

1. Advance of Operating Funds by the City. The City may annually advance to the LRC an amount of operating funds (Operating Funds) to be determined by appropriation by the City Council of the City. Operating Funds shall be used by the LRC for operating, administrative, consulting and other costs incurred by the LRC in accordance with the Act, including, without limitation, the costs and expenses of Support Services described in Section 2, below. Operating Funds shall be paid directly to the LRC to be used in accordance with the Act, this Cooperation Agreement and the City-approved LRC budget.

2. Support Services. The City agrees to provide administrative and legal support services (Support Services) to the LRC in connection with its operations. The City Manager shall serve as Director of the LRC as provided in the Act and shall have discretion to employ those City staff members as may be required to carry out the duties and operations of the LRC. Support Services may include, without limitation, planning, financing and accounting, engineering, legal, and administrative and outside consulting services.
3. **LRC Budget.** By December 31 of each year, the LRC shall adopt a budget (the LRC Budget) for the ensuing fiscal year (which shall be the calendar year), which LRC Budget shall be submitted to the City for review and approval prior to LRC adoption. The LRC Budget shall contain a statement of sources and uses of all funds that are available or that the LRC reasonably expects to become available to LRC to finance its activities, undertakings, and obligations for each budget year. It is the intention of the Parties that the LRC shall use its reasonable best efforts to use other sources of revenue available under the Act as the primary source of its Operating Funds and payment for Support Services as such revenue becomes available to the LRC. Such revenue shall include, without limitation, tax allocation or tax increment revenues that may become available pursuant to any urban renewal plan approved by the City Council of the City.

4. **Reimbursement for Operating Funds and Support Services.** The Parties shall establish a procedure for documenting the reasonable costs and expenses (the Costs and Expenses) related to the Operating Funds and Support Services provided by the City. The Costs and Expenses shall constitute an indebtedness of the LRC to be repaid to the City from sources of revenue available under the Act as such revenue becomes available to the LRC. Such revenue shall include, without limitation, tax allocation or tax increment revenues that may become available pursuant to an urban renewal plan approved by the City Council of the City.

   a. It is agreed that the Costs and Expenses incurred by the City up to and including expenses on December 31, 2014 total $9,894,0077,849. At the election of the City, such amount may be evidenced by a note approved by the Parties and executed by LRC.

   b. Upon request of the LRC, the City agrees to give reasonable consideration to subordinating its right to repayment of Costs and Expenses to any bonds, loans, advances, indebtedness, or other obligation of the LRC.

5. **Approval of Certain Contracts; Bonds and Other Obligations of the LRC.** The Parties agree that the City Council of the City shall provide direction to LRC and oversight of LRC activities as follows:

   a. Any proposed expenditure by the LRC which has not been previously approved as part of the LRC budget shall be subject to the prior review and approval of the City Council.

   b. Prior to issuing bonds or any other capital financial obligations or financial obligations extending beyond the end of the current fiscal year of the LRC, the LRC shall notify the City Council in writing of its intention to do so, and shall promptly furnish to the City Council such information and documents relating to such bonds or other capital or long-term financial obligations as the City Council may request. The LRC shall not commit to or proceed with any such bonds or other capital or long-term financial obligations unless a majority of the
City Council has adopted a resolution determining that the City’s interests in connection with such bonds or other obligations are adequately protected.

c. **As provided in the urban renewal plan**, the allocation of any municipal sales tax increment shall occur only upon City Council approval. For any such requested approval, the LRC shall submit a financing plan outlining the proposed amounts and purpose for which the municipal sales tax increments are proposed to be used. City Council may approve or deny such request in its discretion.

d. **As provided in the urban renewal plan**, the LRC shall provide to the City Council for review and approval any redevelopment agreement or other contract contemplated under Section 5.6 of the plan to carry out the purposes of any urban renewal plan or to apply to property in any urban renewal area, prior to the LRC’s final approval thereof. Any such approval shall be by City Council resolution.

e. The LRC shall comply with applicable City codes, rules, and regulations related to any other urban renewal activities of the LRC. The City Council shall be informed of the activities, functions, operations, and financial condition of the LRC in the form of reports to the City Council not less than quarterly, and at any other time as requested by the City Council.

f. The City agrees that it will make reasonable efforts to act within thirty days of a request for review of any document, agreement, obligation, or action required by this Cooperation Agreement. Unless otherwise required by law or provided herein, any approval or other action of the City Council shall be by motion or resolution.

6. **Continuing Cooperation; Additional Agreements.** The Parties shall cooperate to carry out and complete the urban renewal plans approved by the City Council. It is contemplated that additional agreements may be required to plan and carry out urban renewal projects in accordance with the provisions of any such urban renewal plan and the Act. The Parties agree to cooperate and give timely consideration to any additional agreements or amendments to this Cooperation Agreement that may be necessary or convenient in connection with such activities and undertakings; provided, however, nothing in this Cooperation Agreement shall preclude or require the commitment of additional revenue, financing, or services by either Party in connection with such activities and undertakings.

7. **Obligations Subject to Act, Charter, and Constitution.** The covenants, duties and actions required of the Parties under this Cooperation Agreement shall be subject to and performed in accordance with the provisions and procedures required and permitted by the Charter, the Act, any other applicable provision of law, and the Colorado Constitution.

8. **Enforced Delay.** Neither Party shall be considered in breach of, or in default in, its obligations with respect to this Cooperation Agreement in the event of delay in the
performance of such obligations due to causes beyond its control and without its fault, it being the purpose and intent of this provision that if such delay occurs, the time or times for performance by either Party affected by such delay shall be extended for the period of the delay.

9. **No Third Party Beneficiaries.** Neither the City nor the LRC shall be obligated or liable under the terms of this Cooperation Agreement to any person or entity not a party hereto.

10. **Severability.** In case any one or more of the provisions contained in this Cooperation Agreement or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Cooperation Agreement, or any other application thereof, shall not in any way be affected or impaired thereby.

11. **Binding Effect.** Subject to compliance with Section 13, below, this Cooperation Agreement shall be binding upon and inure to the benefit of the Parties, their successors, legal representatives, and assigns.

12. **City and LRC Commission Separate.** Nothing in this Cooperation Agreement shall be interpreted in any manner as constituting the City or its officials, representatives, consultants, or employees as the agents of the LRC, or the LRC or its officials, representatives, consultants, or employees as the agents of the City. Each entity shall remain a separate legal entity pursuant to applicable law. Neither of the Parties hereto shall be deemed to hereby assume the debts, obligations, or liabilities of the other. The LRC shall be responsible for carrying out its duties and functions in accordance with the Act and other applicable laws and regulations, and nothing herein shall be construed to compel either Party to take any action in violation of law.

13. **Assignment.** This Cooperation Agreement shall not be assigned in whole or in part by either Party without the prior written approval of the other Party.

14. **Governing Law.** This Cooperation Agreement shall be governed by, and construed in accordance with, the laws of the State of Colorado.

15. **Headings.** Section headings in this Cooperation Agreement are for convenience of reference only and shall not constitute a part of this Cooperation Agreement for any other purpose.

16. **Additional or Supplemental Agreements; Organizational Matters.** The Parties mutually covenant and agree that they will execute, deliver and furnish such other instruments, documents, materials, and information as may be reasonably required to carry out the Cooperation Agreement. The LRC’s City and Commission shall cooperate in effecting amendments to the Commission’s organizational documents shall provide, as permitted by C.R.S. § 31-25-104, that one City Councilmember shall be a member of the LRC Commission.
The LRC Commission as an entity will not formally or legally oppose or object to any measure that may be proposed pursuant to C.R.S. § 31-25-115 to transfer the existing authority to the City Council.

17. **Entire Agreement; Amendment.** This Cooperation Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof. No addition to or modification of the Cooperation Agreement shall be effective, except by written agreement authorized and executed by the Parties.

IN WITNESS WHEREOF, the Parties have caused this Cooperation Agreement to be duly executed and delivered by their respective officers as of the date first above written.

THE CITY OF LOUISVILLE,
a Colorado municipal corporation

Attest:

___________________________
Mayor

___________________________
City Clerk

LOUISVILLE REVITALIZATION COMMISSION

Attest:

___________________________
Chairman

___________________________
Secretary
Pursuant to C.R.S. 31-25-107(3)(a), notice is hereby given that the City Council of the City of Louisville will hold a public hearing commencing at 7:00 p.m., Tuesday, August 18, 2015, at the Louisville City Hall, 749 Main Street, Louisville, Colorado 80027. The purpose of the public hearing will be to consider the proposed 550 South McCaslin Boulevard Urban Renewal Plan pursuant to the provisions of the Colorado Urban Renewal Law. At the public hearing, the City Council will receive evidence and testimony on the proposed Urban Renewal Plan. Based on the evidence presented at the hearing, the City Council may adopt the proposed 550 South McCaslin Boulevard Urban Renewal Plan as an urban renewal plan for the property. The proposed urban renewal area covered by the proposed 550 South McCaslin Boulevard Urban Renewal Plan is legally described in Exhibit A and is generally described as the property addressed as 550 South McCaslin Blvd., Louisville, Colorado, which property is the site of the former Sam’s Club in Louisville.

The City Council has previously determined, by the adoption of Resolution No. 60, Series 2014 after a public hearing held October 7, 2014, that the proposed urban renewal area is a blighted area as defined by the Colorado Urban Renewal Law, appropriate for an urban renewal plan. Qualifying blighting conditions found to exist for the area include faulty lot layout in relation to size, adequacy, accessibility, or usefulness; deterioration of site or other improvements; defective or unusual conditions of title rendering the title nonmarketable; and the existence of health, safety, or welfare factors requiring high levels of municipal services or substantial physical underutilization or vacancy of sites, buildings, or other improvements.

The purpose of the 550 South McCaslin Boulevard Urban Renewal Plan is to reduce, eliminate and prevent the spread of blight within the urban renewal area. The Plan provides that the power of eminent domain as authorized by the Urban Renewal Law may be utilized by the Louisville Revitalization Commission (LRC) to alleviate the qualifying conditions of blight as provided in the Urban Renewal Law. The Plan further provides that the LRC may exercise all powers authorized by the Urban Renewal Law including undertaking actions which would make the Plan area more attractive for private investment by providing public improvements consistent with the Louisville Comprehensive Plan. These improvements could include, without limitation, street and traffic improvements, streetscape improvements, a transportation center, landscaping, park and recreation facilities, utility improvements, open space acquisition, stormwater improvements, public art projects, and other similar improvements necessary to carry out the objectives of the Comprehensive Plan.

Any interested person may appear at the public hearing and provide testimony or other evidence regarding the proposed 550 South McCaslin Urban Renewal Plan, the use of eminent domain under the Plan, and related matters under consideration. Copies of the 550 South McCaslin Boulevard Conditions Survey, Resolution 60, Series 2014, the proposed 550 South McCaslin Boulevard Urban Renewal Plan and related material are available for inspection at the Office of the City Manager, 749 Main Street, Louisville, Colorado, 80027. Questions regarding the public hearing
may be directed to the Offices of the Planning Department, (303) 335-4592 and the City Manager (303) 335-4533.

Dated the 10th day of July, 2015.

CITY OF LOUISVILLE

Nancy Varra, City Clerk

Published July 14, 2015 in the Daily Camera.

EXHIBIT A
DESCRIPTION OF PLAN AREA –
550 SOUTH MCCASLIN BOULEVARD URBAN RENEWAL PLAN

Lot 2, Centennial Valley Parcel O, Filing No. 7, County of Boulder, State of Colorado; having an address of 550 South McCaslin Boulevard, Louisville, Colorado.
AFFIDAVIT OF PUBLICATION

CAMERA

STATE OF COLORADO
COUNTY OF BOULDER

I, the undersigned agent, do solemnly swear that the CAMERA is a daily newspaper printed, in whole or in part, and published in the City of Boulder, County of Boulder, State of Colorado, and which has general circulation therein and in parts of Boulder and Broomfield counties; that said newspaper has been continuously and uninterruptedly published for a period of more than six months next prior to the first publication of the annexed legal notice of advertisement, that said newspaper has been admitted to the United States mails as second-class matter under the provisions of the Act of March 3, 1879, or any amendments thereof, that said newspaper has been continuously and uninterruptedly published for a period of more than six months next prior to the first publication of the annexed legal notice of advertisement, that said newspaper has been admitted to the United States mails as second-class matter under the provisions of the Act of March 3, 1879, or any amendments thereof, and that a copy of each number of said newspaper, in which said notice of advertisement was published, was transmitted by mail or carrier to each of the subscribers of said newspaper, according to the accustomed mode of business in this office.

The annexed legal notice or advertisement was published in the regular and entire edition of said daily newspaper once; and that one publication of said notice was in the issue of said newspaper dated July 14, 2015.

Subscribed and sworn to before me this 14th day of July, 2015 in the County of Boulder, State of Colorado.

Melissa L Najera
Notary Public

ACCOUNT #: 101121
AD #5650970
FEE: $114.84

MELISSA L NAJERA
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20064049296
MY COMMISSION EXPIRES DEC. 11, 2018

CITY OF LOUISVILLE CITY COUNCIL NOTICE OF PUBLIC HEARING 550 SOUTH MCCASLIN BOULEVARD URBAN RENEWAL PLAN

Pursuant to C.R.S. 31-25-107(3)(a), notice is hereby given that the City Council of the City of the City of Louisville will hold a public hearing commencing at 7:00 p.m., Tuesday, August 18, 2015, at the Louisville City Hall, 749 Main Street, Louisville, Colorado 80027. The purpose of the public hearing will be to consider the proposed 550 South McCaslin Boulevard Urban Renewal Plan pursuant to the provisions of the Colorado Urban Renewal Law. At the public hearing, the City Council will receive evidence and testimony on the proposed Urban Renewal Plan. Based on the evidence presented at the hearing, the City Council may adopt the proposed 550 South McCaslin Boulevard Urban Renewal Plan as an urban renewal plan for the property. The proposed urban renewal area covered by the proposed 550 South McCaslin Boulevard Urban Renewal Plan is legally described in Exhibit A and is generally described as the property addressed as 550 South McCaslin Blvd., Louisville, Colorado, which property is the site of the former Sam’s Club in Louisville.

The City Council has previously determined, by the adoption of Resolution No. 60, Series 2014 after a public hearing held October 7, 2014, that the proposed urban renewal area is a blighted area as defined by the Colorado Urban Renewal Law, appropriate for an urban renewal plan. Qualifying blighting conditions found to exist for the area include faulty lot layout in relation to size, adequacy, accessibility, or usefulness; deterioration of site or other improvements; defective or unusual conditions of title rendering the title unmarketable; and the existence of health, safety, or welfare factors requiring high levels of municipal services or substantial physical underutilization or vacancy of sites, buildings, or other improvements.

The purpose of the 550 South McCaslin Boulevard Urban Renewal Plan is to reduce, eliminate and prevent the spread of blight within the urban renewal area. The Plan provides that the power of eminent domain as authorized by the Urban Renewal Law may be utilized by the Louisville Redevelopment Commission (LRC) to abate the qualifying conditions of blight as provided in the Urban Renewal Law. The Plan further provides that the LRC may exercise all powers authorized by the Urban Renewal Law including undertaking actions which would make the Plan area more attractive for private investment by providing public improvements consistent with the Louisville Comprehensive Plan. These improvements could include, without limitation, street and traffic improvements, streetscape improvements, a transportation center, landscaping, park and recreation facilities, utility improvements, open space acquisition, stormwater improvements, public art projects, and other similar improvements necessary to carry out the objectives of the Comprehensive Plan.

Any interested person may appear at the public hearing and provide testimony or other evidence regarding the proposed 550 South McCaslin Urban Renewal Plan, the use of eminent domain under the Plan, and related matters under consideration. Copies of the 550 South McCaslin Boulevard Urban Renewal Plan and related material are available for inspection at the Office of the City Manager, 749 Main Street, Louisville, Colorado 80027.

Questions regarding the public hearing may be directed to the Office of the Planning Department, (303) 355-4592 and the City Manager (303) 335-4533.

Dated the 10th day of July, 2015.

CITY OF LOUISVILLE
Nancy Varra, City Clerk

Published: July 14, 2015 in the Daily Camera. - 5650970

EXHIBIT A DESCRIPTION OF PLAN AREA - 550 SOUTH MCCASLIN BOULEVARD URBAN RENEWAL PLAN

Lot 2, Centennial Valley Parcel O, Filing No. 7, County of Boulder, State of Colorado; having an address of 550 South McCaslin Boulevard, Louisville, Colorado.

Published: Daily Camera July 14, 2015 - 5650970
July 13, 2015

Board of County Commissioners
County of Boulder
Boulder County Courthouse
Third Floor
1325 Pearl Street
Boulder, CO 80302

Re: Transmittal Letter for Proposed 550 S. McCaslin Urban Renewal Plan in Louisville

Dear Commissioners:

In accordance with State Statutes, I am transmitting the draft 550 S. McCaslin Boulevard Urban Renewal Plan. The Louisville City Council will be considering this Plan at 7:00 p.m., Tuesday, August 18, 2015, at the Louisville City Hall, 749 Main Street, Louisville, Colorado 80027. Also enclosed is a copy of the public notice for the City Council hearing on the Plan.

The purpose of the Plan is to reduce, eliminate and prevent the spread of blight within the urban renewal area. The objectives for the Plan include the following:

- Create a retail rich environment where area businesses and residents can be successful.
- Re-tenant or redevelop the Property.
- Increase retail activity by encouraging occupancy of the Property.

The Plan authorizes the Louisville Revitalization Commission (LRC) to negotiate and enter into Redevelopment Agreements and Cooperation Agreements with landowners, developers, the City of Louisville, and investors regarding appropriate projects throughout the Plan Area.

The power of eminent domain as authorized by the Urban Renewal Law may be utilized to alleviate the qualifying conditions of blight. Eminent domain authority is limited only to property within the Urban Renewal Area.

This Plan does not authorize use of tax increment financing pursuant to Section 31-25-107(9), C.R.S. The use of tax increment financing within the Plan Area can only be authorized by amendment to this Plan.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Aaron M. De Jong
Economic Development Director

749 Main Street | Louisville CO 80027
303-335-4533 (phone) | 303-335-4550 (fax)
www.LouisvilleCO.gov
July 13, 2015

Boulder Valley School District
Attn: Bruce Messinger
6500 East Arapahoe Road
Boulder, CO 80303

Re: Transmittal Letter for Proposed 550 S. McCaslin Urban Renewal Plan in Louisville

Dear Board Members:

In accordance with State Statutes, I am transmitting the draft 550 S. McCaslin Boulevard Urban Renewal Plan. The Louisville City Council will be considering this Plan at 7:00 p.m., Tuesday, August 18, 2015, at the Louisville City Hall, 749 Main Street, Louisville, Colorado 80027. Also enclosed is a copy of the public notice for the City Council hearing on the Plan.

The purpose of the Plan is to reduce, eliminate and prevent the spread of blight within the urban renewal area. The objectives for the Plan include the following:

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Should you have any questions, please do not hesitate to contact me.

Sincerely,

Aaron M. De Jong
Economic Development Director

749 Main Street | Louisville CO 80027
303-335-4533 (phone) | 303-335-4550 (fax)
www.LouisvilleCO.gov
September 24, 2014

City of Louisville
Attn: Malcolm Fleming
749 Main Street
Louisville, CO 80027

Re: 550 S. McCaslin Blvd, Former Sam's Club Building

Dear Mr. Fleming:

The City is considering making a blight determination on the property located at 550 S. McCaslin Boulevard in Louisville at their October 7, 2014 meeting.

Section 31-25-103(2)(l) of the Colorado Revised Statutes states;

“If there is no objection by the property owner or owners and the tenant or tenants of such owner or owners, if any, to the inclusion of such property in an urban renewal area, "blighted area" also means an area that, in its present condition and use and, by reason of the presence of any one of the factors specified in paragraphs (a) to (k.5) of this subsection (2), substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations, or constitutes an economic or social liability, and is a menace to the public health, safety, morals, or welfare. For purposes of this paragraph (l), the fact that an owner of an interest in such property does not object to the inclusion of such property in the urban renewal area does not mean that the owner has waived any rights of such owner in connection with laws governing condemnation.”

As the managing partner and authorized representative of Centennial Valley Investment, LLC and Seminole Land Holdings, LLC, this is to advise you that these property owners do not object to the City including 550 S. McCaslin Blvd. in an urban renewal area or determining the property is within a blighted area.

Sincerely,

[Signature]

Tom Garvin
Managing Member
Centennial Valley Investment, LLC
Seminole Land Holdings, LLC
September 24, 2014

City of Louisville
Attn: Malcolm Fleming
749 Main Street
Louisville, CO 80027

Re: 550 S. McCaslin Blvd, Former Sam’s Club Building

Dear Mr. Fleming:

The City is considering making a blight determination on the property located at 550 S. McCaslin Boulevard in Louisville at their October 7, 2014 meeting.

Section 31-25-103(2)(I) of the Colorado Revised Statutes states;

“If there is no objection by the property owner or owners and the tenant or tenants of such owner or owners, if any, to the inclusion of such property in an urban renewal area, "blighted area" also means an area that, in its present condition and use and, by reason of the presence of any one of the factors specified in paragraphs (a) to (k.5) of this subsection (2), substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations, or constitutes an economic or social liability, and is a menace to the public health, safety, morals, or welfare. For purposes of this paragraph (I), the fact that an owner of an interest in such property does not object to the inclusion of such property in the urban renewal area does not mean that the owner has waived any rights of such owner in connection with laws governing condemnation."

As the authorized representative of Low Cost Office Furniture, Inc. and tenant on the property, this is to advise you the business does not object to the City including 550 S. McCaslin Blvd. in an urban renewal area or determining the property is within a blighted area.

Sincerely,

Travis Garvin
Low Cost Office Furniture, LLC.
September 24, 2014

City of Louisville
Attn: Malcolm Fleming
749 Main Street
Louisville, CO 80027

Re: 550 S. McCaslin Blvd, Former Sam's Club Building

Dear Mr. Fleming:

The City is considering making a blight determination on the property located at 550 S. McCaslin Boulevard in Louisville at their October 7, 2014 meeting.

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As the authorized representative of Ascent Community Church and tenant on the property, this is to advise you the Church does not object to the City including 550 S. McCaslin Blvd. in an urban renewal area or determining the property is within a blighted area.

Sincerely,

[Signature]

Jim Candy
Ascent Community Church
VIA OVERNIGHT MAIL

August 10, 2015

City of Louisville
City Hall Building
749 Main Street
Louisville CO 80027
Attn: Aaron DeJong, Director of Economic Development

RE: Letter of Objection regarding 550 S. McCaslin Urban Renewal Plan
L/C: 005-0294

Dear Mr. DeJong,

In advance of the Public Hearing scheduled August 18, 2015 regarding the above-referenced renewal plan, McDonald’s desires to express its objection to the potential removal or buyout of certain restrictive covenants.

While McDonald’s shares the Planning Commission’s concerns over the declines to the retail activity around the area since the Sam’s Club facility closed its doors in 2010, and does not desire for the lot to remain vacant and underutilized, McDonald’s invested in its restaurant operations in reliance on the restrictive covenants in place, specifically, the restriction in Section 3(g) of the Declaration dated December 16, 1993, by HD Delaware Properties, Inc., stating that:

“there shall be no more than one Lot at any time used for a drive-in or drive-through restaurant whose primary business is the sale of hamburgers or other type of ground beef products served in sandwich form;...” (the “hamburger restriction”).

McDonald’s objects to Section 2.7.1 and Section 4.2 of the Urban Renewal Plan, which states the project may require the use of eminent domain to address the restrictive covenants upon the Property and authorizes the use of eminent domain. In particular, McDonald’s does not believe the hamburger restriction renders the title nonmarketable and that with this hamburger restriction in place, the Planning Commission can still create a successful and desirable retail environment.
Please contact me at the number listed above with any questions.

Thank you for your cooperation.

Very Truly Yours,
McDONALD'S CORPORATION

Michael VanPoucke
Senior Counsel
U.S. Legal Department

cc: Victoria Seward (via email)
    Aaron DeJong (via email at aaronD@louisvilleco.gov)
August 13, 2015

Via Email: slight@lightkelly.com

Samuel J. Light
Light Kelly, P.C.
101 University Blvd., Suite 210
Denver, Colorado 80206

Re: The Proposed Urban Renewal Plan for 550 South McCaslin Boulevard, Louisville, Colorado 80027

Dear Mr. Light:

This law firm represents Albertson’s LLC (“Albertson’s”), which owns and operates a grocery store at 910 West Cherry Avenue, Louisville, CO 80027 (the “Albertson’s Site”), and has served as a vital corporate citizen of the City of Louisville for many years. The Louisville City Council (“Council”) is considering empowering the Louisville Revitalization Commission (“Commission”) to take certain actions regarding the property located at 550 S. McCaslin Blvd. (the “Property”), which is directly adjacent to the Albertson’s Site. The Albertson’s Site and the Property are subject to a recorded agreement which provides for certain rights and obligations concerning easements, covenants, conditions, and restrictions. In their current form, the Council’s proposed actions, which include seeking to eliminate certain use restrictions, would constitute an unlawful taking of Albertson’s property rights. Such actions would have a harsh impact on both Albertson’s and the broader Louisville community. We hope the Council will earnestly consider Albertson’s objections before reaching a final decision regarding the Proposed Urban Renewal Plan (“Proposed Plan”).

I. Factual Background

A. The Declaration

Since 1993, the Property and the surrounding area have been subject to an agreement which provides for certain rights and obligations concerning easements, covenants, conditions, and restrictions. That agreement includes the following: the Declaration of Covenants, Conditions and Restrictions and Grant of Easements, recorded December 23, 1993 under Reception No. 1376228, as amended by the Amended and Restated First Amendment to Declaration of Covenants, Conditions and Restrictions and Grant of Easements, recorded April 5, 1994 under Reception No. 1412746; Albertson’s Consent to Second Amendment under Declaration of Covenants, recorded December 6, 1996 under Reception No. 1666256; and the
CC&R Agreement, recorded August 27, 1998 under Reception No. 1841017 (collectively, the “Declaration”).

Collectively, the Declaration, which was voluntarily agreed to by the various property owners in the McCaslin Boulevard community, provides for, *inter alia*, cross-easements, and governs maintenance of the properties, signage, and architectural building improvements. The Declaration will expire in just over 30 years, in 2058.

The Declaration also governs the permissible uses of the various properties (the “Restrictions”). Some of the restrictions address what sometimes is referred to as noxious uses, such as strip clubs and other adult-themed businesses. Other restrictions ensure that the subject properties are occupied by retail establishments rather than service operators. And other restrictions provide protection to the property owners by placing restrictions on competing businesses. One of these restrictions provides that a supermarket or pharmacy may not be developed on the Property (with certain exceptions). This use limitation is a critical property interest of Albertson’s.

The Declaration, including the Restrictions, has been instrumental to the success of the McCaslin Boulevard community for over twenty years. The Restrictions have allowed Albertson’s to make informed investment decisions concerning its presence in Louisville and the greater-Colorado area based upon the reasonable expectation that the property interest represented by the Restrictions would remain in force. Albertson’s is not unique in this regard, considering that such use limitations are regularly utilized to obtain optimal development of retail projects nationwide.

Albertson’s has long been a proponent of sensible, beneficial real estate development in the McCaslin Boulevard community. Moreover, it has not historically taken an unyielding approach to the Restrictions. In 1998, for example, to further the interests of the McCaslin Boulevard community, Albertson’s and the surrounding property owners reached an agreement to amend the Restrictions to allow for the operation of a Sam’s Club store on the Property.

The Restrictions are not the only use limitations that apply to the Property. On January 30, 2014, when Sam’s Real Estate Business Trust sold the Property for $3,650,000, the current owners, Centennial Valley Investment, LLC and Seminole Land Holding, Inc. (together, the “Property Owners”), voluntarily agreed to take title to the Property subject to the additional use restrictions set forth in that certain Special Warranty Deed recorded February 3, 2014 under Reception No. 3364534 (the “Sam’s Club Restrictions”). The Sam’s Club Restrictions generally provide that the Property may not be developed as a discount store. As part of this transaction, the Property Owners negotiated for the right to remove the Sam’s Club Restrictions in exchange for a one-time payment of $500,000 to the seller. The Property Owners decided not to make this one-time payment, and the Sam’s Club Restrictions remain in force.
Please note that the Property Owners, despite claiming that the Property is nonmarketable on account of the Restrictions, have never once asked Albertson’s to waive any of the Restrictions.

B. The Conditions Survey and Proposed Plan

On March 17, 2014, only a month and a half after they acquired the Property for $3,650,000, the Property Owners asked for Louisville’s assistance in eliminating the Restrictions and the Sam’s Club Restrictions. Despite the incredibly short amount of time the Property Owners had owned the Property, and notwithstanding the fact that the Property Owners had acquired the Property with full knowledge of the Restrictions and the Sam’s Club Restrictions (which they could have removed by simply paying the one-time fee), the Council acted upon their request.

On May 6, 2014, the Council directed the commissioning of a Conditions Survey concerning the Property. The purpose of the Conditions Survey was to determine if the Property could be deemed to be “blighted” under Colorado’s Urban Renewal Law, C.R.S. §§ 31-25-101, et seq. Absent the required finding of “blight,” the Commission and Council would be powerless to remove the Restrictions and the Sam’s Club Restrictions.

The Conditions Survey, issued in July 2014, concluded that the Property qualified as “blighted” within the meaning of the Colorado Urban Renewal Law, identifying four blight factors:

1. Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
2. Deterioration of site or other improvements;
3. Defective or unusual conditions of title rendering the title nonmarketable; and
4. The existence of health, safety, or welfare factors requiring high levels of municipal services or substantial physical underutilization or vacancy of sites, buildings, or other improvements.

On January 20, 2015, the Council directed the Commission’s staff to prepare a draft Urban Renewal Plan for the Property. On June 8, 2015, the Commission’s staff, along with attorney Malcolm Murray, issued the draft 550 South McCaslin Urban Renewal Plan, which is currently under consideration by the Commission and the Council. The Proposed Plan includes the exercise of eminent domain by Louisville to remove the Restrictions and the Sam’s Club Restrictions from the Property. A summary of the Proposed Plan issued by the Commission’s Staff states that the “[m]ost notable restriction on the use of the Property ‘is that no competing grocer to Albertson’s is allowed.’” The same summary describes the Sam’s Club Restrictions to include a prohibition of “stores selling a range of merchandise ‘at a discount’ and additional restrictions on entertainment uses.”
Before purchasing the Property, the Property Owners had the opportunity to seek the removal of any or all of the Restrictions through negotiations with the prior owner and other members of the McCaslin Boulevard community, including Albertson’s, or to choose not to purchase the Property due to the existence of the Restrictions. Instead, the Property Owners chose to proceed with the transaction (1) with full knowledge and understanding of the Restrictions and (2) to further burden the Property with the additional Sam’s Club Restrictions.

After acquiring the Property, the Property Owners had options for development other than seeking a blight determination from Louisville. For example, the Property Owners could have contacted Albertson’s to discuss the possibility of waiving certain of the Restrictions (as was done in 1998 with respect to the Sam’s Club development of the Property), or removed the Sam’s Club Restrictions by making the one-time payment to the sellers. Instead, the Property Owners contacted Louisville less than two months after acquiring the Property for assistance in eliminating the Restrictions and the Sam’s Club Restrictions via eminent domain.

II. Solutions Other Than the Exercise of Eminent Domain Power Exist

Although Albertson’s strongly opposes the attempt to remove the Restrictions as currently contemplated by the Proposed Plan—an action which could possibly void the Declaration—Albertson’s recognizes the need for, and is in favor of, redevelopment of the Property. As has occurred in the past, Albertson’s is willing to discuss redevelopment plans for the Property with the Commission, the Council, the Property Owners, and other interested stakeholders. The previous collaboration between Albertson’s and Sam’s Club in its development of the Property, through the revision of the Declaration and Restrictions, demonstrates the good faith and willingness of Albertson’s to find viable redevelopment options that will benefit the community as a whole. There are a myriad of available options that do not require the exercise of eminent domain powers.

For example, the Property Owners could pay money to remove the Sam’s Club Restrictions. Doing so would permit a discount retail or entertainment project to move forward. Considering that the Property Owners agreed to the Sam’s Club Restrictions in an arm’s-length transaction only two months before seeking the blight determination, it is unclear why the Council would exercise its eminent domain powers to relieve the Property Owners from these restrictions when the Property Owners could easily eliminate them themselves by paying the agreed-upon price. With regard to the Restrictions, the Property certainly could be used for a purpose other than a supermarket or pharmacy. Doing so would increase the diversity of the retail options in an area already crowded with grocers including Albertson’s, Whole Foods, and Costco—all of which are adjacent to or nearby the Property.

It should be noted that the concerted effort by Louisville and the Property Owners in seeking to eliminate the supermarket restriction can have no purpose other than to support the Property Owner’s development of the Property for a supermarket that would be located immediately adjacent to the Albertson’s supermarket. An exercise of eminent domain powers in
this way would benefit one private party over another in direct violation of the Colorado Constitution. Moreover, it is unrealistic to expect that the McCaslin location could support both a new supermarket and the existing Albertson's supermarket next door. Therefore, if the Council approves the Proposed Plan, it would essentially be seeking to put the Albertson’s supermarket on McCaslin Boulevard out of business.

If an alternative solution cannot be reached and the Proposed Plan is adopted, the Council should consider the broader ramifications of exercising its eminent domain powers in addition to the likely closure of the Albertson’s store, such as creating uncertainty for developers, investors, and businesses within Louisville. If use restrictions that are voluntarily entered into are arbitrarily eliminated by the Council, future private development within Louisville will become uncertain, and development may be chilled. When property owners cannot rely on such restrictions being enforced, they may simply choose to take their business to other communities.

III. The Proposed Plan Is Unlawful

Although Albertson's greatly prefers a negotiated resolution, it is prepared to litigate to defend its property interest with the Declaration.

In order for a municipality to find “blight” under Colorado law, it must determine that the property contains at least four of a list of factors set forth in C.R.S. § 31-25-103(2). Those factors must not merely be present, but must exist to such a degree that they “substantially impair[] or arrest[] the sound growth of the municipality, retard[] the provision of housing accommodations, or constitute[] an economic or social liability, and [are] a menace to the public health, safety, morals, or welfare . . . .” Id. (emphasis added). The Conditions Survey relies exclusively on the four factors listed above, and expressly notes that none of the other blight factors set forth in the Urban Renewal Law exist with respect to the Property. However, there are serious flaws with the findings made in the Conditions Survey with regard to those four factors.

First, the finding that the title to the Property is nonmarketable is fundamentally implausible considering that the Property was marketed and sold in January 2014 to purchasers possessing full knowledge and understanding of the Restrictions. See Seeger’s Estate v. Puckett, 171 P.2d 415, 416-17 (Colo. 1946) (a purchaser of real property who purchases with knowledge of restrictive covenants in place on the property is bound by them). The purchase price was $3,650,000. It strains credulity to assert that a property is not marketable when, just a few months earlier, it was purchased for $3,650,000 by a developer with full knowledge of the applicable title restrictions in an arm’s-length transaction. The sale of the Property to the Property Owners conclusively refutes any argument that the Property is nonmarketable.

Second, while the Restrictions and the Sam’s Club Restrictions limit certain uses of the Property, they are not “unusual” as required by the statute, and they do not significantly impair the ability of the Property Owners to redevelop the Property. Use restrictions such as those at
issue here are commonplace in commercial retail developments and do not, by and large, impede use of commercial real estate to the point of it becoming “nonmarketable.” The fact that Sam’s Club was originally developed with the Restrictions in place (though modified by agreement with Albertson’s) establishes that the Restrictions do not render the Property nonmarketable.

Third, as to the alleged deterioration of the Property, the Conditions Survey notes only that the Property requires maintenance, that its current tenant uses it only at specified times (unsurprising, given that the current tenant is a church), and that the parking lot contains “potholes [and] cracked parking curbs.” While these may be true, they are hardly indicative of conditions that “substantially impair” Louisville’s economic development or constitute “a menace to the public health, safety, morals, or welfare,” as required by C.R.S. § 31-25-103(2). The Conditions Survey essentially concedes this point by stating:

- The Property lacks only “full maintenance”;
- The parking lot had a “few potholes . . .”;  
- The “curb and gutter in some places was cracked and deteriorated”;
- “The building itself was cracked in a few places in its façade, and needs minor work such as mortar repair in certain areas”;
- “This is not to say that maintenance is completely lacking, but only that it gives the impression of being minimal”; and
- The Property “is not badly deteriorated . . . .”

(Emphasis added.) If the Council opts to exercise eminent domain power based upon these so-called findings of “deterioration,” then vast numbers of businesses and property owners in Louisville face the risk that the City will seek to take their property rights. In fact, many parking lots in Louisville have pot holes and cracked curbs, and many buildings have mortar in the façade in need of repair. Will the Council consider all such properties to be blighted as well?

For these and other reasons, the Conditions Survey does not sufficiently establish that the blight factors of C.R.S. § 13-25-103 are met, and Louisville is thus not permitted under Colorado law to exercise eminent domain power to remove the Restrictions and the Sam’s Club Restrictions from the Property. Albertson’s is prepared to institute a civil action pursuant to C.R.C.P. 106(a)(4) to challenge the legality of the Proposed Plan should it be adopted, and will vigorously oppose the unconstitutional exercise of eminent domain powers to transfer property from one private owner to another at the cost of Albertson’s property interest in the Restrictions. See City & Cnty. of Denver v. Block 173 Assocs., 814 P.2d 824, 830 (Colo. 1991) (“[U]nder the plain wording of the Urban Renewal Law, if the actual purpose behind a particular urban renewal plan is not the elimination or prevention of blight or slums, the urban renewal authority does not
August 13, 2015
Page 7

have the power to condemn land in furtherance of that plan because the determination of
necessity is not supported by the record.”); see also Kelo v. City of New London, Conn., 545 U.S.
469, 486-87 (2005) (a transfer of “citizen A’s property to citizen B for the sole reason that citizen
B will put the property to a more productive use and thus pay more taxes . . . would certainly
raise a suspicion that a private purpose was afoot.”); Denver West Metro. Dist. v. Geudner,
786 P.2d 434, 436 (Colo. App. 1989) (“If the primary purpose underlying a condemnation
decision is to advance private interests, the existence of an incidental public benefit does not
prevent a court from finding ‘bad faith.’”).

Albertson’s looks forward to working with the Property Owners, Louisville, and the
Commission to find a workable alternative for the Property that encourages redevelopment and
re-tenanting in a manner that preserves existing private property rights, and that does not have a
deleterious effect on the business and real estate development community.

If you have any questions concerning the above, please feel free to contact me.

Best regards,

Jonathon D. Bergman
DAVIS GRAHAM & STUBBS LLP

cc: Michael M. Dingel, Senior Attorney, Albertson’s
January 6, 2014

Centennial Valley Investments
Attn: Tom Garvin
8758 W Phillips Road
Boulder, CO 80301

Re: 550 S. McCaslin Blvd

Dear Mr. Garvin:

I appreciate your interest in acquiring and revitalizing the vacant Sam's Club property in Louisville. As you know, Walmart closed the Louisville Sam's Club on January 20, 2010. This event was a significant loss to the community because it closed a primary shopping outlet for residents, eliminated at least 125 jobs for area residents, reduced the positive traffic that benefited other retailers in the vicinity of the store, and had a large negative impact on the City's sales tax revenue.

As my enclosed August 24, 2012 letter to Nick Goodner from Walmart indicates, we have been pushing Walmart for more than a year to set a realistic asking price for the property and to lift Walmart's use restrictions on this property. As noted in the letter, the City is exploring all options to allow a new owner to purchase the property without the use restrictions. We are very encouraged that you have a purchase contract with Walmart for the property. Closing on that contract would allow new opportunities to re-tenant and/or redevelop the property.

In City staff's opinion, there are several factors contributing to the difficulty of attracting new tenants or new ownership for the property. These factors include:

- Walmart's asking price and purchase terms for the property
- Restrictive use covenants in favor of neighboring properties
- The building being deeper than it is wide, which reduces the feasibility of redeveloping it for multiple retail tenants
- The general trend in large scale retail away from spaces larger than 100,000 square feet
- Poor visibility of the site from McCaslin caused by the development surrounding the building.
City staff and I are willing to recommend to the Louisville City Council actions to alleviate these factors if it would result in appropriate new tenants for the property. Of course, any decision of whether to approve, decline or request changes to any proposed economic development agreement is at the discretion of City Council.

Again, thank you for your interest in investing in the Louisville community. If you have questions, please contact our Economic Development Director, Aaron DeJong, at 303.335.4531 or email at aarond@louisvilleco.gov.

Sincerely,

Malcolm Fleming
City Manager

Enclosure
August 24, 2012

Walmart Realty
Attn: Nick Goodner
2001 SE 10th Street
Bentonville, AR 72716-5535

Re: Vacant Louisville Sam’s Club

Dear Mr. Goodner,

The former Sam’s Club property at 550 South McCaslin in Louisville has been vacant for over two years. Louisville citizens frequently inquire why the property has not been put back in to productive use. The vacant building and poorly maintained site has a serious blighting influence on the adjacent businesses and surrounding neighborhood. We understand this is a strategic asset for Walmart, and divesting of it needs to work best for your organization. However, your inability to sell the property for more than two years makes it clear a change in approach is needed.

As you know, there are few entities that can viably use a large big box building like this. We believe the use restrictions Walmart imposes on the property severely limit the pool of potential buyers, benefit no Walmart property in Louisville or the trade area, and are simply anticompetitive. Also, the asking price for the property does not reflect comparable real estate in the area, compounding the difficulty of finding a buyer and returning the property to productive use.

We ask you to revise the asking price to reflect current market realities and consider not imposing use restrictions on this property prior to new ownership. These restrictions ultimately prevent this major retail corridor from being a viable place to do business and contributing to the vitality of our community. Because of this, we would like to discuss with you options for the site, including whether Walmart has any plans other than sale.

We would be happy to discuss this matter in a conference call, or if better, a visit to Bentonville. This property is very important to the economic and fiscal health of the City of Louisville and consequently the City is exploring all options to allow for a new owner to purchase the property without the use restrictions.

Sincerely,

Malcolm Fleming
Louisville City Manager
August 27, 2015

Via Email: slight@lightkelly.com

Samuel J. Light
Light Kelly, P.C.
101 University Blvd., Suite 210
Denver, Colorado 80206

Re: Follow-Up to August 18, 2015 Louisville City Council Meeting Concerning the Proposed
Urban Renewal Plan for 550 South McCaslin Boulevard

Dear Mr. Light:

I write on behalf of Albertson’s LLC (“Albertson’s”), which owns and operates a grocery
store at 910 West Cherry Avenue in Louisville, Colorado. This letter supplements my August
13, 2015 letter concerning the proposed Urban Renewal Plan (the “Proposed Plan”) relating to
the former Sam’s Club property located at 550 South McCaslin Boulevard (the “Property”),
which was purchased by Centennial Valley Investments and SEMINOLE (together,
“Centennial”) for nearly four million dollars in 2014. During the August 18, 2015 meeting
before the Louisville City Council (“Council”), some questions were raised regarding
Albertson’s objections to the Proposed Plan. This letter provides additional information about
Albertson’s position concerning the Proposed Plan.

I. Issues Raised During the August 18, 2015 Council Meeting

As previously explained, Albertson’s has a number of concerns relating to the Proposed
Plan and the urban renewal process in general. A few of these concerns are addressed in more
detail below.

A. Interactions Between the City Staff and Current Property Owners

Albertson’s issued a Colorado Open Records Act request to the City of Louisville on July
22, 2015, requesting documents relating to the Property and the Proposed Plan. The City
responded on August 7, 2015. Certain of the documents provided demonstrate that the City staff
has been in communication with the current owners of the Property about eliminating the
restrictive use covenants that benefit Albertson’s and other neighboring property owners. Some
of these communications took place before the property was even purchased. For example, in a
January 6, 2014 letter from City Manager Malcolm Fleming to Tom Garvin of Centennial, Mr.
Fleming stated that “there are several factors contributing to the difficulty of attracting new
tenants or new ownership for the property ... include[ing] ... r[e]strictive use covenants in favor
of neighboring properties.” He added that “City staff and I are willing to recommend to the
Louisville City Council actions to alleviate these factors if it would result in appropriate new tenants for the property.”

In addition, just two months after Centennial purchased the Property, Aaron DeJong, the City’s Economic Development Director, drafted a letter for Centennial to send to the Council complaining about the use restrictions and requesting the Council’s assistance in taking “any actions” necessary to remove them.

The documents provided by the City also indicate that, for over a year, the City staff and Centennial have been communicating and working together to recruit one of Albertson’s chief competitors as their “1st priority” for the Property, despite the fact that this would expressly violate Albertson’s use restriction.

In short, the City staff has inappropriately aligned itself with Centennial, whose interests are adverse to those of longstanding members of the Louisville community.

B. Lack of Transparency

Albertson’s has voiced concerns about the lack of transparency regarding the Proposed Plan and the process to date. Again, documents produced by the City confirm these concerns. For example, Michael Menaker, a member of the Louisville Revitalization Commission, has repeatedly expressed reservations about the City’s lack of transparency. In a January 21, 2015 email to Councilmember Ashley Stolzmann, Mr. Menaker stated, “I think [Councilmember Lipton] was mistaken in his conclusion that no opposition from neighboring property owners means no objections. I don’t believe most of the property owners have any idea what we are contemplating.” (Emphasis added.) He went on to explain, “I don’t feel that the public process so far has been offered much transparency into the real discussions that have taken place so far in executive session.”

In a separate email to Councilmember Christopher Leh on May 2, 2015, Mr. Menaker expressed similar sentiments: “There is zero transparency on the state of the ‘negotiations’ and staff is still charged with creating an urban renewal plan .... All of this, for the most part, has taken place behind closed doors. Time for sunshine, brother.”

A prime example of this lack of transparency was the City’s failure to provide notice to property owners in the community regarding its decision to commission a blight study of the Property. Albertson’s was not informed about the “Conditions Survey”—or of the City’s ultimate blight determination based on that survey—until long after the fact. Given the potential impact of the blight determination on Albertson’s property interests, this oversight can only be viewed as deliberate.

According to the documents produced by the City, only four individuals from the community attended the public meeting on July 7, 2014 where the findings of the Conditions
Survey were presented—and several individuals expressed their “concern[s] [that] the restrictive covenants placed on the property did not constitute a condition of blight.” The day after this meeting, Councilmember Susan Loo sent an email to Councilmember Ashley Stolzmann stating:

Did you go to the “blight” meeting last night? ... Evidently, “stakeholders” were not personally notified; a situation I took issue with. I think it lays us open to accusations of being “sneaky” about this whole process.

More importantly than the appearance of impropriety cited by Councilmember Loo, the lack of notification deprived Albertson’s and other interested members of the community of the opportunity to be involved with the decision-making process and to verbalize their concerns and objections before a decision was made.

**C. Deficiencies in the Blight Findings**

As previously stated, even a cursory review of the “blight factors” identified in the Conditions Survey reveals that they cannot be supported. Others hold this same view. Criticism of the Conditions Survey has come from concerned citizens, members of the Louisville Revitalization Committee, and City councilmembers, undoubtedly because many of the purported “blight factors” are clearly indefensible. For example, the Conditions Survey relies heavily on the fact that the Property has been (mostly) vacant for some time. But vacancy is not blight. And given the communications and efforts between Centennial and the City staff to remove the use restrictions encumbering the Property, there is no current incentive for Centennial to utilize the Property in a productive manner that is consistent with the use restrictions.

Ultimately, the City’s actions leave the impression that the blight determination was a pretext to eliminate the use restrictions on the Property in order to benefit one private party at the expense of others. This is not a legitimate use of the City’s urban renewal powers. Moreover, the City’s actions appear particularly troublesome given that Centennial purchased the Property with full knowledge of all of the relevant covenants and restrictions, could have negotiated for the removal of those restrictions on their own, and currently have the ability to eliminate many of those restrictions by simply paying a fee. As Councilmember Hank Dalton has explained,

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1 See July 15, 2014 City Council Communication.
2 See, e.g., July 15, 2014 email from unidentified concerned citizen to Hank Dalton (“While the blighting conditions found are subject to interpretation, they are not convincing.”).
3 See, e.g., June 30, 2014 Louisville Revitalization Commission Meeting Minutes (“Commissioner Lathrop said he feels some of the blight factors found are a stretch ....”).
4 See, e.g., January 6, 2015 City Council Meeting Minutes (“Mayor Pro Tem Dalton stated despite the Council’s finding of blight, there is no blight on this property.”).
"[c]ondemnation of property for civic improvements is a proper use of the process. Condemnation to benefit a commercial development is just plain wrong."

II. The Proposed Plan Faces a Difficult Path Forward

Of course, Albertson’s prefers to resolve these issues in a mutually beneficial fashion without resorting to litigation. However, if the City follows through with its threatened taking of Albertson’s use restriction, Albertson’s must defend its property rights. Even if the City believes that any lawsuit that Albertson’s may file to challenge the Proposed Plan would be infirm (which it would not be), a reasoned review of the forward path for the Proposed Plan strongly weighs against approving it. Malcolm Murray, the attorney for the Louisville Revitalization Commission, has explained the substantial legal challenges a municipality faces in eminent domain actions as follows:

[T]he General Assembly has afforded a landowner at least three opportunities to challenge a taking for urban renewal purposes. First, the landowner can challenge the blight determination by filing a C.R.C.P. 106(a)(4) action .... [l]f condemnation is proposed, the landowner can appear at the governing body’s public hearing and the governing body can approve the condemnation only if the condemnation is for the eradication of blight and not because of the economic performance of the property. Finally, when a condemnation action is filed, the urban renewal authority must establish that the taking is necessary for the eradication of blight and not for the purpose of economic development or enhancement of tax revenues.

In regard to this final challenge, “the burden of proof is on the [City] to demonstrate, by clear and convincing evidence, that the taking of the property is necessary for the eradication of blight.” C.R.S. § 38-1-101(2)(b) (emphasis added). The fact that the City made a blight determination, by itself, does not satisfy this burden. See Colo. Const. art II § 15 (“[W]henever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.” (emphasis added)); City & Cnty. of Denver v. Block 173 Assocs., 814 P.2d 824, 830 (Colo. 1991) (“[T]he fact that [blight] conditions were found to exist is not dispositive if the purpose in designating a large study area and in targeting [the property] as part of that area was, as alleged, to acquire [the property] for private purposes. The claims of the landowner may be supported by evidence demonstrating that ... the project was undertaken in bad faith or fraud as a subterfuge to achieve an improper purpose rather than the authorized purpose of urban renewal.”).

5 January 22, 2015 email to unidentified constituent.

From Albertson’s perspective, it is clear that the primary purpose of the Proposed Plan is to promote economic development and increased tax revenue for the City rather than to eliminate actual blight. The documents provided to Albertson’s by the City support this position. While promoting economic development and increasing tax revenue are laudable goals—and are shared by Albertson’s—the City’s Proposed Plan is defective as it will not substantially increase tax revenue as it so claims in justification for approval of the plan. As I stated in my August 13 letter, it is unrealistic to expect the McCaslin location to be able to support a new supermarket and the existing Albertson’s supermarket next door. Thus, any tax gain with the new supermarket will be substantially offset by the tax loss from the closure of the Albertson’s supermarket. If the City desires true economic development and incremental tax revenue at this location, the City needs to support complimentary uses of the Property.

If the City ultimately decides to bring an eminent domain action in order to remove the use restrictions on the Property and is successful in court, it will still have to compensate Albertson’s for the taking—something that could have been avoided through good faith and transparent negotiations without incurring the unnecessary burden and expense of litigation. If the City brings an eminent domain action against Albertson’s and is not successful, the City will be liable for Albertson’s costs and attorneys’ fees incurred in protecting its property rights, and will be no closer to redeveloping the Property than it is now. Neither situation is a true “win” for the City or the community or Louisville. With this in mind, Albertson’s implores the City to set aside the heavy-handed tactics described in the Proposed Plan, and to work with, not against, neighboring property owners and longstanding citizens of the community to develop a plan of action that will include a use of the Property that benefits the City and community without unfairly depriving neighboring property owners of their rights.

If you have any questions concerning the above, please feel free to contact me.

Best regards,

Jonathon D. Bergman
DAVIS GRAHAM & STUBBS LLP

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