



Council Memorandum

To: The Honorable Mayor and City Council

From: Steve Glueck, Director of Planning and Development

Through: City Manager, Mike Bestor

Date: March 18, 2010

Re: Council Discussion of Slow/ No Progress Construction Projects

Purpose of Item: On a number of recent occasions, Council has asked for information about the ability for the City to address the undesirable impacts of certain lingering construction projects that seem to continue on indefinitely. Council is aware that the current building code structure does not appear to provide sufficient solutions to the issue. Council has asked for information on the full range of activities. This memo and the attached information from the City Attorney provide a broader perspective of potential approaches and options. These approaches and options relate to the unsightliness and community image aspects of such incomplete projects, rather than the safety and security issues which staff believes are adequately handled by current codes. If Council is interested in any of these directions, staff will proceed further.

Background: The City's regulatory structure regarding land use and buildings tends to focus on regulating what a property owner or tenant can and cannot do, and the requirements to do something. Approvals have specific "shelf" lives, but once a building project is begun, as long as enough activity occurs to keep the building permit valid, there is no current requirement to proceed at a specific rate, or to finish in a timely manner. Council has asked about approaches to address this problem as typified by a downtown building construction project that has lingered for the past few years. A number of approaches are described in the following section.

Alternative Approaches: Based upon the research and discussion to date, the range of the more likely approaches include the following:

- **Economic Disincentives** One potential option would be to amend the building and zoning codes such that a greater amount of progress must be made on a construction project each 180 day period, or enact a maximum time to construct a project, or else the permit and site plan approval automatically are voided. The implication of a voided permit and site plan would be the requirement to pay certain fees again, and to seek a new site development plan approval. The

additional fees could be for the remaining work (as is currently the case) or as a disincentive could be for the entire fee or even more than the original fee. The action to void a site plan approval could be a bigger concern to an owner since approval of a site development plan under chapter 18.40 GMC is not automatic, and codes may have changed since the original approval. One area of caution for this and other approaches is that the party affected by the revised code and fee structure for an expired building permit would much more likely be a small residential project than a noticeable commercial location. In such cases, the owner will consider the additional fees extremely unjustified and will likely object to Council.

The only other economic disincentive to such slow construction that staff identified was a potential requirement to post some sort of performance or completion bond at the time of building permit issuance. This action would add a cost to all affected projects and potentially put the City in a very awkward position if the City ever tried to cash the bond and complete a partially completed project on private property.

- Civil Nuisance Action in Municipal Court The City Attorney advises that there is a provision in the nuisance code that specifically identifies a property left in a state of partial construction or destruction as a nuisance. See below:

5.01.070(h) Property and buildings. It is unlawful and constitutes a nuisance for any person to own, lease, occupy, manage or possess any property upon which any of the following conditions exist:

(1) The premises are so defective, unsightly, or in such condition or disrepair that they impair the value of the surrounding property. Manifestation of this condition shall include, but not be limited to, the keeping on, or disposing of on, or the scattering over the premises of any of the following:

(aa) junk, garbage or trash, as defined in this title;

(bb) stagnant water or an excavation of five (5) feet or more in depth; or

(2) The premises are abandoned, boarded up, **partially destroyed**, or **left in a state of partial** construction or **destruction**.

(3) Structures on the premises have dry rot, warping, or termite infestation.

(4) The premises have broken windows or unsecured entrances which may cause hazardous conditions and/or invite trespassers and other unlawful acts.

(5) The landscaping on the premises has not been maintained such that the majority of plant material has been adequately irrigated and maintained in a living and healthy condition.

If Council directed the City Attorney to go forward with a nuisance action for such a situation, the City Attorney would ask the municipal court for a finding of a nuisance and an order for abatement, which would require the owner to abate the nuisance in a certain period of time, .e.g., 10 days, 60 days, etc. The length of the abatement period is open for negotiation between the City and the defendant, or the municipal judge can unilaterally decide how long the defendant should have to abate the nuisance. The Attorney would also ask the municipal court to give the City the right to enter the property and abate the nuisance if the defendant does not do so within the time ordered by the court. Then, the City could lien the property to collect its costs. Another characteristic of the City's nuisance code is that the City can request reimbursement from the defendant of the City's attorneys' fees and costs, if the City prevails at trial. Recently, in February 2010, the City successfully prosecuted a civil nuisance case in Golden Municipal Court, and was awarded its attorneys' fees and court costs by the court.

- Acquisition As noted in the City Attorney's memo, even a successful nuisance abatement action may not result in a completed project or a desirable vacant parcel. In the end, the City (or in this case GURA) could attempt to acquire the property either through negotiation or condemnation. Staff proposed a purchase of the parcel at 13th and Washington several times during the period from 2004 through 2008, with no interest from the owner. If Council felt it was urgent enough, the City or GURA could move to condemn the property. If the City were to acquire it under condemnation it would need to be for a valid public purpose (such as a City plaza or open space). Under a GURA acquisition, a portion or all of it could be conveyed for redevelopment purposes. This appears to be a rather extreme route, but may be something Council wishes to discuss.

Fiscal Impact: The fiscal impact of the above actions ranges from relatively small for the code change and Municipal Court abatement action to very high for acquisition, demolition and re-use.

Recommendations: Staff recommends that City Council consider the above information. In determining what action to take about the specific project that has spurred some of the discussion, Council may wish to note the following:

- The property owner has not been willing to consider a voluntary sale of the property.
- The property owner claims that he will meet the schedule he indicated to the City Manager about a month ago, of having the exterior completed, by the end of summer.
- The institution of court action to abate a nuisance is as likely to delay any significant progress in completing the project (during the course of court action and appeals) as it would be to encourage such progress.

Since Council has specifically directed that options be presented for Council discussion, staff and City Attorney seek Council direction regarding this matter.


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MEMORANDUM

TO: Steve Glueck

FROM:  Dave Williamson

DATE: March 17, 2010

RE: **Unfinished Construction / 13th and Washington**

This will follow-up our discussion of March 16, 2009, regarding utilization of a “nuisance” ordinance as a means to address private construction projects that have failed to progress over a significant period of time.

Golden Nuisance Code. The City’s nuisance abatement provisions of the Municipal Code are found at Chapter 5.01. The code provisions are broad as it relates to the definition of a nuisance. It appears that section 5.01.070 (h) may include within the “specific nuisance” definitions the condition that we are addressing. That provision of the Code defines property and buildings that are “so defective, unsightly, or in such condition or disrepair that they impair the value of surrounding property” as a specific nuisance. The subsection then specifically refers to premises that are “left in a state of partial construction”

The City has successfully utilized the nuisance abatement ordinance in the municipal court in other areas. We recently prevailed in a nuisance abatement trial before Judge Miller. The ordinance allows the City to impose a lien upon the property to recover the costs associated with abating the nuisance. Although the ordinance does allow for a summary abatement of nuisances by the City, I would suspect that, absent other factors, an incomplete construction project would likely not qualify for the summary abatement procedures and that the abatement procedures through the municipal court would be more appropriate.

Westminster’s Experience. I mentioned that the City of Westminster ran into a similar problem several years ago regarding an unfinished construction project on Federal Blvd., north of 92nd Avenue. That case involved a condominium project where two structures were completed and occupied, but an additional half dozen or so structures remained in various stages of incomplete construction for several years. The City had diligently attempted to work with the developer to no avail. Eventually the City cited the developer for maintaining dangerous buildings under the City’s municipal code. The Westminster Municipal Court eventually found the developer guilty of the dangerous building violation and sentenced the developer to jail time. That did not result

in the correction of the problem, however. While the City of Westminster (which has a nuisance code substantially identical to Golden) did consider using its nuisance code, it elected not to do so. I believe after talking to their attorney that they are now second-guessing that decision as use of the dangerous building code did not result in remedying the situation.

Placing the developer in jail did not correct the adverse condition in Westminster, and the City through its Urban Renewal Authority, eventually condemned the project and removed the partially constructed buildings. About the time that the City acquired title to the property, the economy went south and the City has not yet been able to find a developer. The property is now vacant, which is an improvement over the partially constructed buildings.

Conclusion. Golden could utilize its nuisance abatement ordinance to address incomplete construction projects. The threat of invoking the nuisance abatement ordinance may be sufficient to prompt the property owner to take action.

Copy: Mary Lynn Benham