

Recreation/Senior Center & Aquatic Center Expansion Task Force

Agenda

WEDNESDAY, May 25TH, 2016

6:30 PM

**Louisville Recreation Center, Brooks Room
900 W. Via Appia**

- I. Call to Order
- II. Approve May 11th, 2016 Meeting Minutes
- III. Approval of Agenda
- IV. Public Comments on Items Not on the Agenda
- V. Chair's Update
- VI. Subcommittee updates
- VII. Fair Campaign Practices Act Memo and Trainings (training dates listed below) – Heather Balsler
 - **June 8, 2016, 9-10 a.m. at Louisville City Hall, City Council Chambers**
 - **June 13, 2016, 6-7 p.m. at Louisville City Hall, City Council Chambers**
- VIII. Marketing and Public Engagement Work Plan – Heather Balsler
- IX. Refined floor plans and Cost Estimate-SCD
- X. Task Force Comments and Identification of Future Agenda Items and meeting dates.
- XI. Adjourn

City of Louisville

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**Task Force
Meeting Minutes
Wednesday, May 11, 2016
6:30 pm
Louisville Recreation/ Senior Center, Brooks Room
900 West Via Appia**

- I. **Call to Order** –The Task Force meeting was called to order by Councilman Lipton at 6:31 pm.
- Board Members Present: Rich Bradfield, Brett Commander, Deborah Fahey, Alex Gorsevski, Linda Hodge, Kaylix McClure, Louise McClure, Michael Menaker, Lisa Norgard, Tom Tennessen, Michele Van Pelt,
- Board Members Absent: Gina Barton, Laura Denton
- Staff Members present: Kathy Martin, Joe Stevens, Julie Seydel, Allan Gill, Jesse DeGraw, Heather Balser
- City Council Present: Councilman Lipton and Councilwoman Loo
- II. **Approve April 27, 2016 Meeting Minutes** – Minutes were approved by acclamation.
- III. **Approval of Agenda** - agenda approved
- IV. **Public Comments on Items Not on the Agenda** – Ivan Jackson, Executive Director of Treble Soccer Club spoke to offer his support with the efforts of the expansion. Councilman Lipton said with no soccer specific outdoor facilities, the turf indoors would open opportunities for dry land training.
- V. **Chair's Update** – Councilman Lipton thanked the Task Force and staff for a successful open house. Over 400 people attended the 2 sessions, with additional people looking at the information throughout the day. City Council will be updated at the May 17th meeting. The telephone survey is completed and 400 residents were reached. Results will be available in a few weeks. On June 3rd at 3:00 pm the results will be shared with city council. Revenue sources in regards to O & M and capital will be discussed. Brett Commander asked if sponsorship could be utilized. It cannot be in regards to the bond, but certainly could for future expenses. Dive well was discussed and at this time BVSD remains firm that they cannot provide funding for that element. Lisa Norgard felt the open house had some support for a dive well. At this time the design is already over the anticipated amount for a successful bond, so would have to cut other areas.

Fair Campaign trainings will occur with the Task Force, in addition 2 are scheduled: June 8 from 9-10 am and June 13 6-7 pm. Both are at city hall and will be facilitated by Attorney Sam Light. July 18 will be the last Task Force official day.

The expansion cost sits at about \$30 million. Council originally envisioned \$15 to \$25 million. Current prediction may be too high, and Sink Combs Dethlefs will be asked to lower it closer to \$27 million. An estimate per household cost was given; at \$25 million dollars it would be about \$117 per year and about \$40 per year additional for O&M (based on a \$500,000 house). Must also consider business property owners, because the tax cost would amount to 3 times the cost for them.

VI. Subcommittee Updates – Tom Tennessen gave the update on the subcommittee that is meeting to review the Greenplay documents. They gave specific questions that they had for Greenplay, and the next meeting to discuss it will be May 18th at 5:00 pm at the Recreation/Senior Center.

VII. Feedback from May 4th Open House – Sink Combs Dethlefs
Open house documents will be posted as an addendum to tonight’s meeting, as details of the open house are listed there. SCD will work with staff to modify designs based on feedback received.

The surface in the MAC gym was discussed and the 3 types considered are rubber, wood, and turf. Each have an advantage with rubber being the cheapest, and turf giving the best programmable options. It was discussed whether the MAC gym should be eliminated based on the \$2.8 million cost. Kaylix McClure thought the youth would be able to utilize the turf for programs and activities and felt the gymnasium already provided a wood floor option. There was overwhelming support to keep the MAC gym. The current plans offer a little of something for everyone.

Deborah Fahey spoke of her expectations for the expansion to have high sustainability standards, and to build with future generations in mind. Councilman Lipton said net zero is difficult to impossible to achieve in recreation centers, and that comments at the open house were positive with what was presented in regards to sustainability.

VIII. Refined Floor Plans and Cost Estimate - Sink Combs Dethlefs
Most of the overrun in current cost predictions comes from site plan considerations. SCD will look to modify the parking options, with possibly moving west with the parking lot addition and relocating the tennis courts on the recreation center campus grounds. If courts were moved, consideration will be given to restrooms and water availability. It was agreed that the cost savings could occur by eliminating the new track loop and keep the current configuration. Would like to get the project closer to \$27 million, from the current \$30 million. Each Task Force member provided input on site plans and facility designs. Overall the Task Force agreed the track should remain as it currently is and the MAC gym with turf was supported. Rich Bradfield would like to have discussions

about what programs should be held in the new fitness areas and the MAC gym. Staff will create the information to be presented in June.

IX. Task Force Comments and Identification of Future Agenda Items and Meeting Dates

No specific agenda items were given. The next meeting will be held Wednesday, May 25th at 6:30 pm at the recreation center.

X. Adjourn – The meeting was adjourned at 9:16 pm.

MEMORANDUM

TO: Malcolm Fleming, City Manager
Heather A. Balsler, Deputy City Manager
City of Louisville

FROM: Samuel J. Light 

DATE: May 2, 2016

RE: Overview of the Colorado Fair Campaign Practices Act

The purpose of this memo is to provide an overview of the Colorado Fair Campaign Practices Act (“FCPA”) restrictions on local government election activities, and provide guidance regarding prohibited and allowable activities under the FCPA in regards to candidate and ballot issue elections. In this updated memo we have added more details/focus on restrictions and permissible activities related to local ballot issue elections. We have included as resource materials: (1) this memo, which summarizes the basic requirements of the FCPA; (2) a copy of Colorado Revised Statutes Section 1-45-117, which is the primary section discussed in these materials; and (3) a copy of an article entitled “Guidance for Colorado Governments in Complying with the Fair Campaign Practices Act,” written by the law firm of Sherman and Howard LLC.

The two principle rules under the FCPA are that the City cannot (1) make any contributions of any kind in campaigns involving the election of any person to public office; or (2) expend any money from any source, or make any contributions, to urge electors to vote in favor or against any local ballot issue once it has been submitted for the purpose of having its ballot title fixed.

I. PROHIBITED/ ALLOWABLE ACTIVITIES AND EXPENDITURES UNDER THE FCPA

The purpose of the FCPA is to prohibit public entities in Colorado and the employees and officials thereof from spending funds or contributing public resources to influence the outcome of campaigns for political office or ballot issues.

The FCPA states no covered entity (which includes the City) shall “make any contribution in campaigns involving the nomination, retention, or election of any person to any public office” or “make any donation to any other person for the purpose of making an independent expenditure.” Additionally, no covered entity shall “expend any moneys from any source, or make any contributions, to urge electors to vote in favor of or against any...local ballot issue” that has been

submitted for the purpose of having a ballot title fixed or that has had a ballot title fixed. C.R.S. § 1-45-117(1)(a)(I)(A) and (B).¹

FCPA restrictions apply to the use of City resources, such as the use of copiers, vehicles, computers, websites, facilities, telephones or newsletters. In addition, a City employee's time during working hours is considered a resource, and therefore working time for the City cannot be used for electioneering (except in very limited circumstances when preparing for City Council either a resolution or factual summary, discussed below).²

The following is a general summary of activities permitted by the FCPA.

Individual City employees may:

- Respond to unsolicited questions about ballot issues.
- Expend personal funds and use personal time for electioneering, subject to applicable campaign laws. Such activities should not be conducted during the employee's working time or in the offices of the City.
- Participate in any political affiliations, activities and campaigns on personal time and away from the offices of the City. Employees may not give the impression, however, that a candidate or issue is endorsed by the City.

Individual City Council Members and Appointed Officials may:

- Respond to unsolicited questions about ballot issues.
- Express a personal opinion on any issue. Anticipating that elected officials may be sought out for their views on ballots issues, the FCPA expressly states it does not prohibit an elected official from expressing a personal opinion on any issue. Though their opinion may well be ascribed to them as an elected official, the official should not present his or her opinion as that of the City, and we recommend the official specifically advise his or her audience that the opinion is a personal opinion.³

¹ Based on the definitions of "contribution" under Colorado law (C.R.S. § 1-45-103 and Article XXVIII, Section 2(5)(a) of Colorado Constitution), no funds, supplies, equipment, or "in kind" services should be used for such purpose. Further, no employee should be allowed (or required) to work for or against a ballot issue during working hours, or use any public facility or equipment for such purpose. Even the use of the City's telephone should be avoided.

² For example, in *Brown v. City of Littleton*, Agency Decision, Case No. OS 2006-0023, the City created and mailed a flier to voters urging them to vote one way on a statewide ballot issue, which was done after the ballot title was fixed. This violated the FCPA because the City used City funds and staff time to prepare and mail the flier, which was neither a permitted City Council resolution nor a factual summary. In *Colorado Ethics Watch v. City and County of Broomfield*, 203 P.3d 623 (Colo. App. 2009), a complaint was filed when city employees' research materials were later used in a candidate debate; however, the Court dismissed the complaint after it concluded employees are authorized to respond to and research unsolicited questions about ballot issues as long as they do so in an evenhanded manner.

³ However, as noted in *Colorado Cause v. Coffman*, 85 P.3d 551 (Colo. App. 2003), the FCPA does not authorize the expenditure of public funds for the expression of such personal opinions. The FCPA does provide that a member of a city council may expend not more than \$50 of public moneys in the form of letters, telephone calls, or other activities incidental to expressing his

- Same as employees, expend personal funds and use personal time for electioneering and political activities, subject to applicable campaign laws.

The City Council as a whole may:

- Adopt a resolution supporting or opposing *a ballot issue*, not individual candidates.⁴

The City as an entity can:

- Report the passage of or distribute any resolution supporting or opposing *a ballot issue* through normal distribution methods (but not through extra distribution methods).
- Expend money to dispense a factual summary regarding *a ballot issue* that will appear on the ballot of the City. This summary must include arguments both for and against the proposal, but cannot include a conclusion or opinion in favor or against any particular issue. Again, this is not allowed for candidate elections.
- Allow public groups to use its facilities, including candidates and proponents and opponents of ballot issues, for a debate, election forum or similar activity if such uses are allowed and so long as the facilities are made available on an evenhanded basis to candidates and parties on any side of the issue. Therefore, if the City allows any such uses of City facilities, care must be taken to ensure equal access and fairness.

II. ADDITIONAL CONSIDERATIONS REGARDING BALLOT ISSUE ELECTIONS

A recurring question regarding local ballot issue elections concerns when the FCPA restrictions apply. As noted above, the FCPA states the City shall not expend any moneys from any source, or make any contributions, to urge electors to vote in favor of or against a local ballot issue that has been submitted for the purpose of having a ballot title fixed or that has had a ballot title fixed. Under Subsection 1-16-045.A of the Louisville Municipal Code (LMC), “[t]he city council shall fix the ballot title for any measure referred by the city council without receipt of a petition.” Therefore, if the City Council refers to the voters at the November 2016 election a TABOR ballot issue, the FCPA restrictions apply and must be followed commencing no later than the date staff has posted the packet for the first meeting at which City Council will consider fixing the ballot title(s) for the ballot issue(s).

or her opinion on an election issue; however, this should be viewed not as an affirmative grant of power to spend on any ballot issue or candidate elections, but rather as a “safe harbor” for cases involving unintended technical violations.

⁴ Although not addressed by the FCPA, the passage of the resolution presumably contemplates staff work to research and prepare the resolution. This time should be tracked and kept to the minimum amount necessary. Additionally, it should be noted that work that is not on a resolution or factual summary, or otherwise permitted, will be deemed a prohibited “in kind” contribution. See *Coffman v. Colorado Common Cause*, 102 P.3d 999 (Colo. 2004) (staff time to prepare press releases that urged defeat of state-wide measure, which time was directed by treasurer and paid for by state, was impermissible contribution in kind).

A second question concerning ballot issue elections concerns the interplay between the FCPA prohibition and activities incident to formulating a TABOR ballot issue proposal for capital facilities. Specifically, how does the FCPA regulate the gathering or dissemination of information about a capital program being put on the ballot? On one hand the timing rule under the FCPA is fairly straight forward—no moneys may be expended after the ballot issue is submitted for fixing of the ballot title. On the other hand, specific timelines and activities present problems to be avoided. This is illustrated in *Skruch v. Highlands Ranch Metro. Districts Nos. 2 and 3*, 107 P.3d. 1140 (Colo. App. 2004).

In this case, the Districts formed a citizens panel to consider a bond election to fund community improvements. In July 2002, the Districts approved expenditures for preparing, printing and mailing of a brochure to explain the proposed improvements. The brochure was mailed on August 22. On August 27, the ballot title for the ballot issue was fixed. Thereafter, the Districts paid the bills for the brochure. The Court of Appeals held that while the brochure did not expressly advocate for a yes or no vote on the measure, it did impermissibly “urge” electors to vote for the measure, particularly because the brochure specifically mentioned the bond election measure, “did not present arguments for or against the measure...took a position exclusively in favor of the issue, presented no contrary argument, and expressly advocated the passage of the bond initiative that was titled only days after the mailing of the brochure.” 107 P.3d. at 1142-43. In addition, the Court held that even though the brochure was mailed before fixing of the ballot title, the subsequent expenditure was enough to trigger the FCPA.

In contrast to *Skruch*, there are administrative law decisions holding that various activities to disseminate information did not violate the FCPA, on grounds that they met the factual summary requirements, were outside the period when the prohibition applies, and/or did not urge a voter to vote for or against the measure within the meaning of the statute. See, e.g., *Beer v. Loveland*, Secretary of State ALJ Case No. 2001-012 (Section 117 does not regulate expenditures before a title is fixed; therefore, because City expenditures for advocacy occurred prior to then, the city did not violate Section 117).

III. ENFORCEMENT/PENALTIES

The Secretary of State has jurisdiction over a complaint of an FCPA violation. Any person believing a violation has occurred may file a complaint, and a hearing before an administrative law judge is held. Any violation of C.R.S. § 1-45-117 is “subject to the provisions of sections 9(2) and 10(1)⁵ of article XXVIII of the state constitution or any appropriate order or relief, including an order directing the person making a contribution or expenditure in violation of this section to reimburse the fund of the state or political subdivision, as applicable, from which such moneys were

⁵ Pursuant to Article XXVIII § 10(1), “any person who violates any provision of this article relating to contribution or voluntary spending limits shall be subject to a civil penalty of at least double and up to five times the amount contributed, received, or spent....”

diverted for the amount of the contribution or expenditure, injunctive relief, or a restraining order to enjoin the continuance of the violation.” CRS § 1-45-117(4)(a).

IV. ADDITIONAL LIMITATIONS TO CONSIDER

Beyond the scope of the FCPA, courts have long recognized that there are constitutional considerations respecting the use of public funds for campaign purposes. For example, in a case challenging a school district’s active campaign against a state-wide initiated measure, the Court observed that use of public funds to advocate against a citizen initiative may be improper on First Amendment or other constitutional grounds. *Mountain States Legal Foundation v. Denver School District No. 1*, 459 F. Supp. 357, 360 (D.Colo. 1978). This case was decided under a predecessor of the FCPA—then called the Campaign Reform Act—which did not include the time period restriction based on ballot title fixing that is now contained in the FCPA.

However, the constitutional cases serve to emphasize the primary point of the FCPA restriction: That public entities not expend moneys to urge electors to vote one way or the other on ballot measures being presented to the voters. Thus, to avoid both FCPA and constitutional concerns, the City should limit use of City monies strictly in compliance with the time requirements and other limitations of the FCPA. With regard to candidate elections, public funds and resources should never be contributed, directly or indirectly, to any candidate running for public office; this prohibition extends to all types of contributions and donations.

If you have any questions, please contact us.

Colorado Fair Campaign Practices Act

C.R.S. Section 1-45-117. State and political subdivisions - limitations on contributions

(1) (a) (I) No agency, department, board, division, bureau, commission, or council of the state or any political subdivision of the state shall make any contribution in campaigns involving the nomination, retention, or election of any person to any public office, nor shall any such entity make any donation to any other person for the purpose of making an independent expenditure, nor shall any such entity expend any moneys from any source, or make any contributions, to urge electors to vote in favor of or against any:

(A) Statewide ballot issue that has been submitted for the purpose of having a title designated and fixed pursuant to section 1-40-106 (1) or that has had a title designated and fixed pursuant to that section;

(B) Local ballot issue that has been submitted for the purpose of having a title fixed pursuant to section 31-11-111 or that has had a title fixed pursuant to that section;

(C) Referred measure, as defined in section 1-1-104 (34.5);

(D) Measure for the recall of any officer that has been certified by the appropriate election official for submission to the electors for their approval or rejection.

(II) However, a member or employee of any such agency, department, board, division, bureau, commission, or council may respond to questions about any such issue described in subparagraph (I) of this paragraph (a) if the member, employee, or public entity has not solicited the question. A member or employee of any such agency, department, board, division, bureau, commission, or council who has policy-making responsibilities may expend not more than fifty dollars of public moneys in the form of letters, telephone calls, or other activities incidental to expressing his or her opinion on any such issue described in subparagraph (I) of this paragraph (a).

(b) (I) Nothing in this subsection (1) shall be construed as prohibiting an agency, department, board, division, bureau, commission, or council of the state, or any political subdivision thereof from expending public moneys or making contributions to dispense a factual summary, which shall include arguments both for and against the proposal, on any issue of official concern before the electorate in the jurisdiction. Such summary shall not contain a conclusion or opinion in favor of or against any particular issue. As used herein, an issue of official concern shall be limited to issues that will appear on an election ballot in the jurisdiction.

(II) Nothing in this subsection (1) shall be construed to prevent an elected official from expressing a personal opinion on any issue.

(III) Nothing in this subsection (1) shall be construed as prohibiting an agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof from:

(A) Passing a resolution or taking a position of advocacy on any issue described in subparagraph (I) of paragraph (a) of this subsection (1); or

(B) Reporting the passage of or distributing such resolution through established, customary means, other than paid advertising, by which information about other proceedings of such agency,

department, board, division, bureau, or council of the state or any political subdivision thereof is regularly provided to the public.

(C) Nothing in this subsection (1) shall be construed as prohibiting a member or an employee of an agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof from expending personal funds, making contributions, or using personal time to urge electors to vote in favor of or against any issue described in subparagraph (I) of paragraph (a) of this subsection (1).

(2) The provisions of subsection (1) of this section shall not apply to:

(a) An official residence furnished or paid for by the state or a political subdivision;

(b) Security officers who are required to accompany a candidate or the candidate's family;

(c) Publicly owned motor vehicles provided for the use of the chief executive of the state or a political subdivision;

(d) Publicly owned aircraft provided for the use of the chief executive of the state or of a political subdivision or the executive's family for security purposes; except that, if such use is, in whole or in part, for campaign purposes, the expenses relating to the campaign shall be reported and reimbursed pursuant to subsection (3) of this section.

(3) If any candidate who is also an incumbent inadvertently or unavoidably makes any expenditure which involves campaign expenses and official expenses, such expenditures shall be deemed a campaign expense only, unless the candidate, not more than ten working days after the such expenditure, files with the appropriate officer such information as the secretary of state may by rule require in order to differentiate between campaign expenses and official expenses. Such information shall be set forth on a form provided by the appropriate officer. In the event that public moneys have been expended for campaign expenses and for official expenses, the candidate shall reimburse the state or political subdivision for the amount of money spent on campaign expenses.

(4) (a) Any violation of this section shall be subject to the provisions of sections 9 (2) and 10 (1) of article XXVIII of the state constitution or any appropriate order or relief, including an order directing the person making a contribution or expenditure in violation of this section to reimburse the fund of the state or political subdivision, as applicable, from which such moneys were diverted for the amount of the contribution or expenditure, injunctive relief, or a restraining order to enjoin the continuance of the violation.

(b) If a board of county commissioners is found to have made a contribution or expenditure in violation of this section, an individual member of the board who voted in favor of or otherwise authorized the contribution or expenditure may be ordered to reimburse an amount pursuant to paragraph (a) of this subsection (4) as long as the amount does not exceed the amount ordered to be reimbursed by any other individual of the board who voted in favor or otherwise authorized the contribution or expenditure.

**GUIDANCE FOR COLORADO GOVERNMENTS
IN COMPLYING WITH THE FAIR CAMPAIGN PRACTICES ACT**

February 2010

In most situations, the use of government money or resources to influence an election in Colorado is against the law. The Fair Campaign Practices Act, Colorado Revised Statutes, Section 1-45-101, *et seq.* (the “FCPA”) and Article XXVIII of the Colorado Constitution govern, among other things, the use of public moneys in a campaign involving the election of any person to any public office or involving any election question. The purpose of this memorandum is to help explain the types of conduct that are allowed and not allowed under the FCPA. This memorandum does not address every situation that might occur, but it covers many of the questions that arise most frequently.

The FCPA’s restrictions apply to any agency, department, board, division, bureau, commission, or council of the State of Colorado. The same restrictions also apply to any political subdivision of the State, including counties, cities, towns, school districts and special districts. Throughout this memorandum, the term “Government” includes all the governments covered by the FCPA.

Prohibited Uses of Government Money and Resources

The FCPA prohibits a Government from (1) making any contribution in a campaign involving the nomination, retention, or election of any person to any public office; and (2) expending any public moneys from any source to urge electors to vote for or against any state-wide ballot issue, local ballot issue, referred measure, or measure for the recall of any officer. See Section 1-45-117(1)(a)(I). Therefore, in most cases, the employees and officials of a Government must not use any Government money or resources to support a candidate’s campaign or to attempt to convince voters to vote for or against an election question, including questions that have been placed on the ballot by the Government itself. For example, after calling for a bond election, a special district may not use district money to pay for fliers and visual aids that support the bond issue. See *Skruch v. Highlands Ranch Metropolitan Districts Nos. 3 and 4*, 107 P.3d 1140 (Colo. App. 2004). Likewise, a school district may not post information on its website advocating the passage of a bond issue that it has referred to voters. See *Wimsatt v. Jefferson County Public Schools, District R-1*, Agency Decision, Case No. OS 2004-018.

It is important to note that a Government may violate this law without specifically asking voters to “vote for” or “vote against” an election question. See *Skruch v. Highlands Ranch Metropolitan Districts Nos. 3 and 4*, 107 P.3d 1140 (Colo. App. 2004). Any communication

discussing an election subject to the FCPA that favors one position will violate the FCPA. *See Bruce v. School District 11*, Agency Decision, Case No. OS 2008-0030.

Also, the FCPA restrictions do not apply only to the use of Government money, but also to other Government resources such as the use of copiers, vehicles, computers, facilities, telephones or newsletters. In addition, the FCPA restrictions apply to Government employees' time during work hours. Therefore, if a city creates a flier that improperly urges voters to vote for or against an election question, it violates the FCPA not only by using city money to pay for postage for the flier, but also by using city letterhead and the staff time of city employees to prepare the flier. *Brown v. City of Littleton*, Agency Decision, Case No. OS 2006-0023. Likewise, if a Government allows outside groups to use its facilities, it must treat groups that support all candidates or both sides of an election question equally in all significant respects, including facility scheduling and fees.

Exceptions

The FCPA's prohibition on the use of Government money and resources described above does not apply in all cases. Some exceptions to the rule are described below.

1. Time Period

The FCPA only restricts the use of Government money and resources during a certain time period leading up to an election. The restrictions do not begin with respect to a state or local ballot issue until the issue has been submitted to have a ballot title fixed or has had a ballot title fixed, and do not begin with respect to a referred measure until the measure has been referred to the voters. Thus, a school district can spend district money on a flier speaking positively about a potential bond issue before it refers the actual bond question to the voters. *See Coan v. Weld County School District Re-3J*, Agency Decision, Case No. OS 1996-006. Likewise, a special district will not violate the FCPA by distributing materials encouraging citizens to support the construction and financing of a new recreation center if the district never actually submits a bond or tax question to the voters. *See Serra v. Montrose Recreation District*, Agency Decision, Case No. OS 2006-022. However, it is important to note that once an issue has been submitted to have a ballot title fixed or has had a title fixed or a referred measure has been referred to the voters, the FCPA restrictions apply to any expenditure of public money or resources. This includes making payments for materials or services provided before the Government took official action to submit the question. For this reason, several metropolitan districts violated the FCPA by paying for materials promoting their bond issues after the district boards had passed resolutions submitting the bond questions, even though the materials themselves had been distributed before the resolutions were passed. *See Skruch v. Highlands Ranch Metropolitan Districts Nos. 1-5*, Agency Decision, Case No. OS 2002-019, which was upheld by the Colorado Court of Appeals in *Skruch v. Highlands Ranch Metropolitan Districts Nos. 3 and 4*, 107 P.3d 1140 (Colo. App. 2004).

2. Factual Summary

Section 1-45-117(1)(b)(I) of the FCPA permits a Government to use Government money and resources to discuss an election if the Government is providing "a factual summary, which shall include arguments both for and against the proposal." The summary may not include a conclusion or opinion in favor of or against any particular issue, and a Government may only prepare a summary regarding an issue that will appear on the ballot within its jurisdiction.

It is important to note that a communication can fail to qualify for this exception even if it is called a “factual summary” and has an “arguments for” and “arguments against” section. A permitted factual summary must not express any opinion on an issue and its description of both sides of the issue must be balanced and even-handed. However, if a summary is balanced and even-handed, it will qualify for the exception even if the arguments against the proposal are not the most persuasive arguments or do not reflect opponents’ input. See *Bruce v. City of Colorado Springs*, Agency Decision, Case No. OS 2003-005.

3. *Personal Opinions*

Section 1-45-117 (1)(b)(II) of the FCPA permits members of the governing body of a Government, such as a city council or board of directors, and other elected Government officials to publicly voice their personal opinion about an issue. The FCPA does not limit the right of public officials and employees to speak out on a matter before the voters. However, in expressing their personal opinions, officials and employees may not use Government money or resources. Government employees and officials may urge electors to vote in favor of or against any issue and may participate in political campaigns, however they must do so during their personal time, not during work hours. Likewise, Government employees and officials may spend money on materials that discuss elections covered by the FCPA, so long as that money is their personal money, and not Government money. For example, a city council member will not violate the FCPA by publishing a newsletter discussing a local ballot issue if she pays for the newsletter using her personal funds instead of using city funds. See *Tyler v. Boigon*, Agency Decision, Case No. OS 2007-001. Any Government employee or official who uses his or her personal time or money to participate in a campaign as described in this section should be sure to keep sufficient records to show that he or she did not use any Government time or money in the effort.

4. *Answering Questions*

Section 1-45-117(1)(a)(II) of the FCPA allows a Government employees and officials to respond to questions about a ballot issue or referred measure, so long as the question was not solicited by the Government.

5. *Fifty-Dollar Exception*

If a Government employee or official has policy-making responsibilities, then he or she may use not more than \$50 of Government money in the form of letters, telephone calls or other activities related to expressing his or her opinion on a ballot question. Section 1-45-117(1)(a)(II). It is important to note that this exception only applies to ballot issues, not to contributions made to a candidate campaign. Therefore, a city mayor will violate the FCPA by spending only \$2.35 on a letter supporting a candidate. *Muller v. Burkholder*, Agency Decision, Case No. OS 2002-012. In addition, the fifty-dollar exception is an individual exception only. So five members of a city council may not combine their \$50 exceptions to jointly spend \$250 of public moneys incidental to expressing their opinions on an issue. See *Brown v. City of Littleton*, Agency Decision, Case No. OS 2006-0023.

6. *Resolutions.*

Section 1-45-117(1)(b)(III) of the FCPA authorizes the governing body of a Government to formally take a position with respect to an election question by passing a resolution

urging citizens to vote for or against the question. Passage of such a resolution may be reported or distributed through the established, customary means that the Government uses to inform the public of its proceedings. For example, if a Government regularly sends out a newsletter, the passage of the resolution may be reported in the newsletter. However, extraordinary methods of distribution, such as paid advertising or a one-time newsletter for this specific purpose, may not be used.

Enforcement

Any person who believes that a violation of the FCPA has occurred may file a written complaint with the secretary of state no later than one hundred eighty days after the date of the alleged violation. The secretary of state is required to refer the complaint to an administrative law judge within 3 days of filing. If the judge determines that a violation has occurred, the judge may issue an order or sanction as authorized by the FCPA or Article XXVII of the Colorado Constitution. The judge's decision may be reviewed by the Colorado Court of Appeals.

Penalties

Any violation of the FCPA provisions relating to Government money or resources may be subject to the penalties set forth in Sections 9(2) and 10(1) of Article XXVIII of the Colorado Constitution or any appropriate order or relief, including an order directing the person making the prohibited contribution or expenditure to reimburse the Government fund from which the moneys were diverted, injunctive relief, or a restraining order to enjoin the continuance of the violation. Currently, there is no clear standard for determining the sanction that will be imposed. Section 10(1) of Article XXVIII authorizes a penalty anywhere between double and five times the amount of the violation. In one case, an ALJ concluded that it was appropriate to impose a penalty of double the amount spent by the Government, citing this section. *See Tippett v. Town of Snowmass Village*, Agency Decision, Case No. OS 2005-032. Another ALJ imposed a fine of \$500 for a violation involving \$157.85. The judge explained that even though the amount of Government money spent in the case was relatively insignificant, the violation of the FCPA was not. *See Brown v. City of Littleton*, Agency Decision, Case No. OS 2006-0023. However, in another case, the ALJ imposed a fine of \$1,000 for a violation involving over \$11,000 because the violation was not willful and the Government was under financial stress. *See Bruce v. City of Colorado Springs*, Agency Decision, Case No. OS 2008-030.

Campaign Permitted Activities for Public Entities

Appended to this Memorandum is a list of permissible activities for Governments, their officials and their employees based on recent decisions of ALJs.

CAMPAIGN PERMITTED ACTIVITIES

A. “Can Do’s”

1. The Board may adopt a resolution taking a position of advocacy on a state-wide ballot issue that has been submitted to the secretary of state for having a title fixed, any local ballot issue that has been submitted to the legislative body of the municipality for having a title fixed, a referred measure, or a recall measure. This resolution may include a recitation of the facts and/or arguments in favor of the Board’s position. As a resolution adopted by the Board, it is available for public inspection and becomes a part of the public minutes of the meeting. Distributing the resolution or reporting on its passage may be accomplished only through established, customary means. For example, if your Government regularly sends out a newsletter, the passage of the resolution may be reported in this newsletter. However, extraordinary methods of distribution or posting, such as paid advertising or distribution of a newsletter when such was not a prior practice, may not be used.

2. The Board may authorize the expenditure of public moneys and may make contributions to disseminate a “factual summary” on such issue, which must include arguments both for and against the proposal, on any issue of “official concern” before the electorate in the jurisdiction. The summary shall not contain a conclusion or opinion in favor of or against any particular issue. An issue of official concern shall be limited to issues that appear on an election ballot in the jurisdiction.

3. A Board member or Government employee may respond to questions about election issues during working time, so long as the Government has not solicited the question. The responses should not contain partial conclusions or otherwise tend to urge a favorable or unfavorable vote on the issue. Accordingly, employees should not volunteer opinions during work time speculating about the anticipated effects of passage or defeat of the ballot question. An ALJ opinion held that a Government employee could answer questions, posed at a public meeting where he was invited to speak, about how a proposed issue would affect his department so long as that employee did not expressly urge electors to vote one way or the other.

4. A Board member or Government employee with policy-making responsibilities may spend up to \$50 of public moneys in the form of letters, telephone calls, or other activities incidental to expressing his or her opinion on the issue.

5. Elected officials may express a personal opinion on an election issue at any time and place (so long as the time and place does not indirectly constitute a contribution by the Government or a use of Government resources). This includes an elected official expressing his or her opinion at a Board meeting, even if public money is used to broadcast the meeting, so long as the meeting, and its broadcast, are regularly scheduled and are not convened primarily to express the opinion.

6. A Government employee may “endorse” an election issue on his or her personal time. A Board member or Government employee may expend personal funds, make contributions, or use personal time to urge electors to vote for or against an election issue. All employees should be asked to keep records substantiating that any time spent campaigning for the

election issue was on personal or unpaid time, time outside of working hours, compensatory time, or vacation time.

7. The Board may allow interested groups, including proponents and opponents of candidates or of issues before the electorate, to rent space in its facilities as long as the opportunity is provided on an even-handed basis. The method of communicating the invitation, the access given, and the opportunity to disseminate information must be substantially the same for all interested groups.

8. Government employees may provide information to citizens that request it, even if the employees are aware that the information may be used in a candidate or ballot issue campaign. However, this information must be given on an equal basis to all citizens who request it, regardless of which campaign they may support, and should only be provided if it is the regular practice of the Government to do so.

B. “Can’t Do’s”

1. Public funds, facilities, supplies, equipment or bulk mail permits may not be expended or used by the public entity to urge a vote in favor of or against the issue, even when the cost is reimbursed.

2. The Government may not allow others who are advocating a position on any issue before the electorate to use these resources. Nevertheless, groups that have organized to discuss or otherwise to promote or urge defeat of the election issue may be allowed to rent facilities pursuant to an adopted policy, but all such groups must be treated even-handedly and must be allowed similar access. Preferential treatment in scheduling and fees charged must not be given.

3. Employees or paid members of the Government cannot work on a campaign during working hours and may not use public facilities or equipment for a campaign. During work time, the information that members or employees dispense to the community must be limited to providing copies of the “factual summary” and to responding to unsolicited questions. Employees must restrict their “campaigning” to personal time.

4. The Government may not require employees or other staff members to work for an election issue (other than on the “factual summary”).

5. The Board may not contribute to other organizations and political committees that may be organized to raise any funds and make any expenses concerning advocacy of the election issue.

6. The Government should not accept cash or any other contributions from citizens for use by the government in connection with any election.

7. The Government must not release the addresses or telephone numbers of employees, or past or present users of public utilities, public facilities, or recreational or cultural services which are owned and operated by the state or a political subdivision thereof, regardless of whether the group seeking the information supports or opposes the election, unless the employee, user or person has given express consent to the release of such information for purposes of the election or as part of a directory that is otherwise available to the public.

05/25/2016

Recreation/Senior Center &
Aquatic Center Expansion

Task Force Meeting

Addendum

Recreation/Senior + Aquatic Center Study

Task Force Meeting | May 25, 2016



**SINK
COMBS
DETHLEFS**
ARCHITECTURE DESIGN

GREENPLAY LLC
The Leading Edge In Parks, Recreation
And Open Space Consulting

Recreation/Senior + Aquatic Center Study

Task Force Meeting | May 25, 2016

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Building Plan Updates and Features

Site Plan Update

Cost Analysis

O&M Analysis



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ARCHITECTURE DESIGN





Decision Points for Tonight

- Consensus Site Plan
- Floor Plan Consensus
- Diving decision
- Gymnasium surface, MAC or Turf
- Cost Reduction Consensus
- Operational and Revenue Expectations

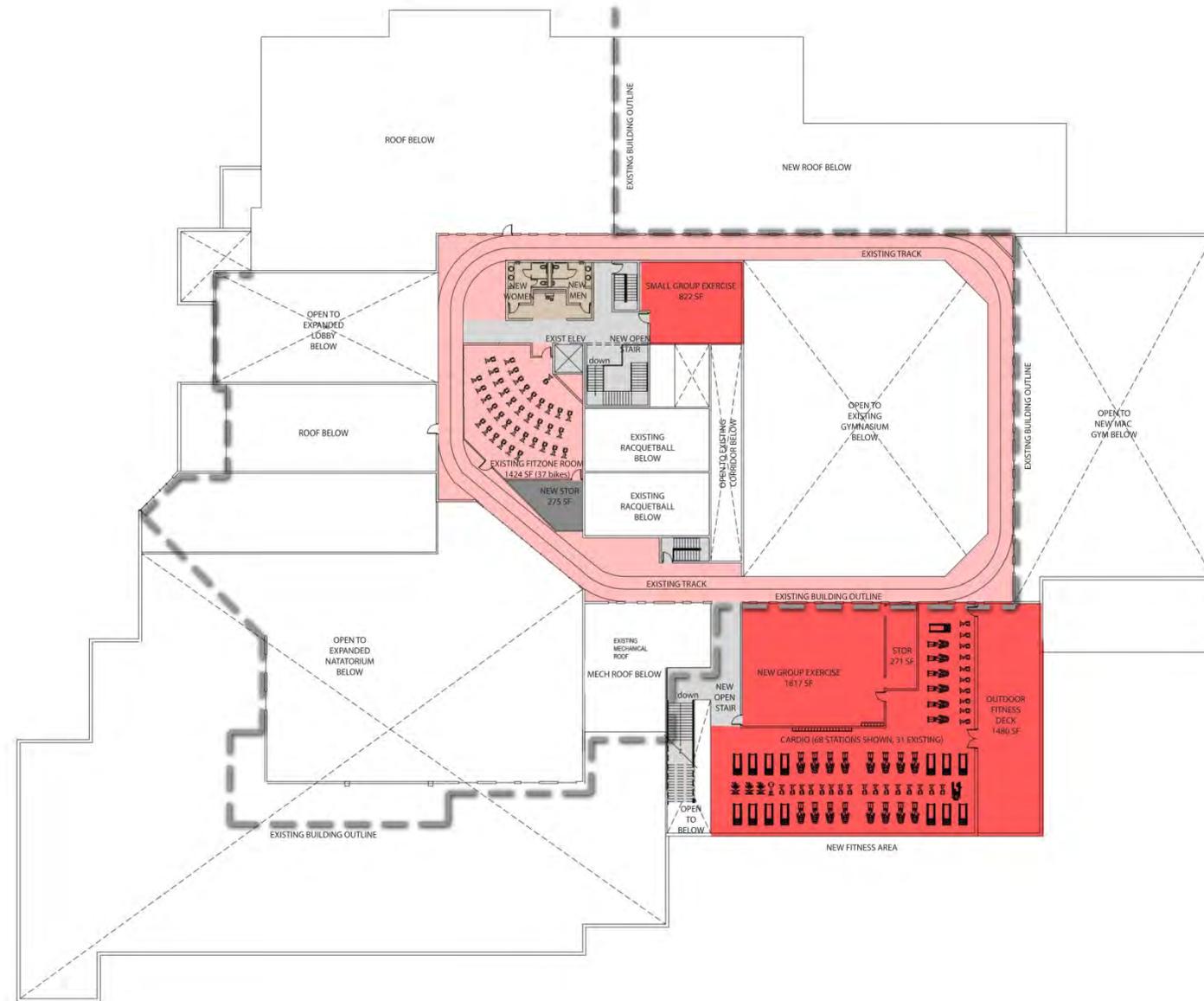


The Building



Improvements to the Plan

- Better Fitness Center layout, slightly reduced size, but added a balcony/fitness deck
- Improved function and utilization of upper level fitness areas



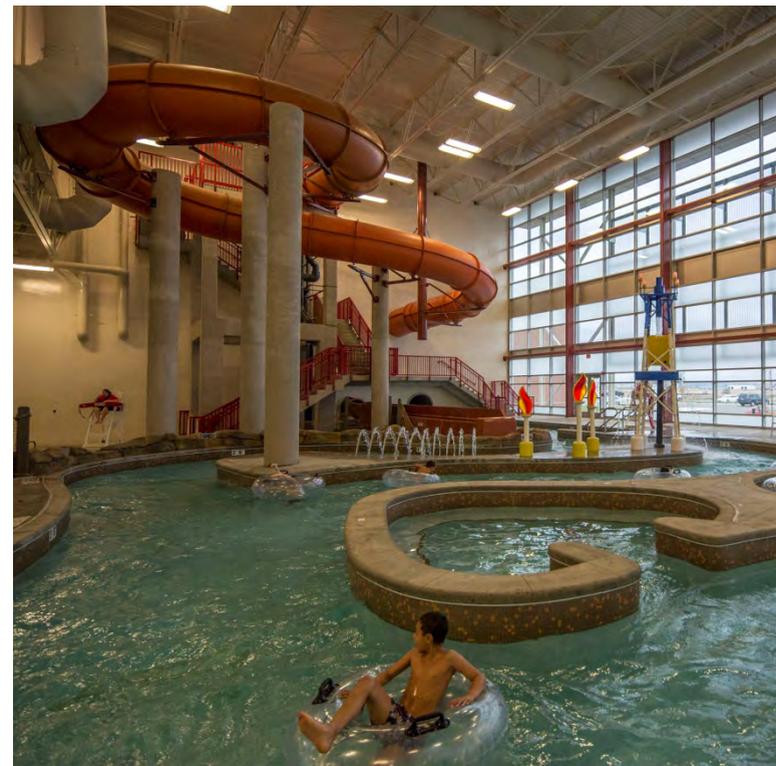
AREA SUMMARY

1ST FLOOR = 87,140 SF
2ND FLOOR = 16,346 SF

TOTAL SF = 103,486 SF



Proposed Improvements : Aquatics



Aquatics

Current Area
11,785

Proposed Area (% increase)
24,850 (111%)



Proposed Improvements : Strength Fitness



Fitness Center-Strength

Current Area
1,670

Proposed Area (% increase)
4,700 (281%)



Proposed Improvements : Cardio Fitness



Current Area

Proposed Area (% increase)

Fitness Center-Cardio/Plyometric 1,680

5,195 (209%)



Proposed Improvements : Group Exercise



Group Exercise

Current Area
1,600

Proposed Area (% increase)
4,500 (181%)



Proposed Improvements : Gymnasium



Gymnasium

Current Area

9,230

Proposed Area (% increase)

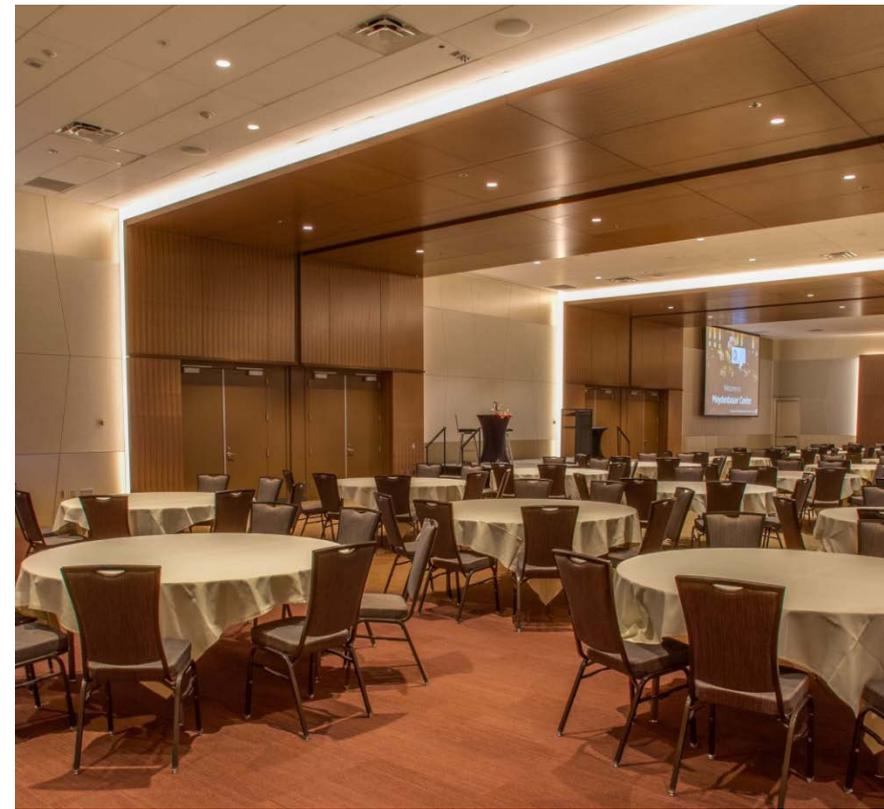
15,245 (65%)



Proposed Improvements : Senior Areas



Senior Areas



Current Area
7,050



Proposed Area (% increase)
10,783 (53%)



Proposed Improvements : Youth Areas



Current Area

1,920

Proposed Area (% increase)

4,975 (159%)

Youth Areas



Proposed Improvements : Administration

	Current Area	Proposed Area (% increase)
Administration	1,391	2,890 (108%)



Comparable Program Area of the Proposed Plan

Program	Current Area	Proposed Area (% increase)
Fitness Center-Strength	1,670	4,700 (181%)
Fitness Center-Cardio/Plyometric	1,680	5,195 (209%)
Group Exercise	1,600	4,500 (181%)
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Recreation/Senior + Aquatic Center Study





Recreation/Senior + Aquatic Center Study





The Site



Recreation/Senior + Aquatic Center Study



Site Alternate 1

Pros:

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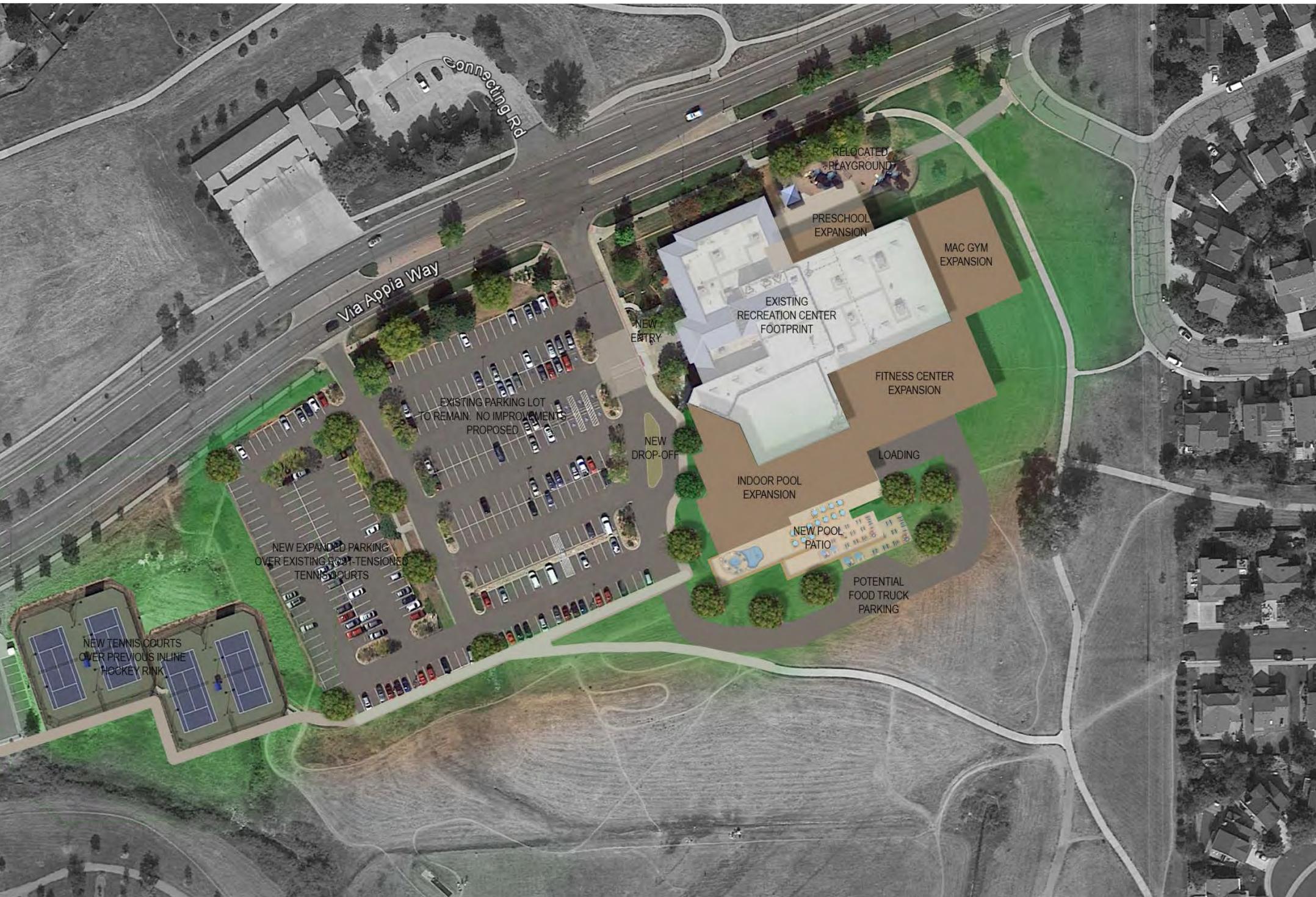
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- Requires a significant amount of grading and retaining to accommodate new parking
- Locates the parking in a negative location near the outdoor pool deck
- Not ideal vehicular or pedestrian flow in and around new lot.

Total Cost For Site Option 1
\$2,797,770



Recreation/Senior + Aquatic Center Study



Site Alternate 2

Pros:

- Better functional flow from parking to the building, and internal to the new lot
- More closely works with the existing grade and paving
- More visually appealing to site neighbors

Cons:

- Requires costly demolition of some existing site uses including the inline rink
- Requires costly replacement of the current (4) tennis courts

Total Cost For Site Option 2
\$3,015,400



Cost Analysis



Cost Estimate Update

<u>Category</u>	<u>Direct Const (\$)</u>	<u>*Total Project (\$)</u>
Site Construction	\$ 2,088,983	\$ 2,797,770
New Additions	\$15,380,177	\$20,619,877
Existing Area Renovation	\$ 2,576,787	\$ 3,458,642
Memory Square Improvements	\$ 918,000	\$ 1,240,515
Project Management (2.5%)		\$ 530,685
Project Total Cost		\$28,116,804

Soft Costs Include:

20% Escalation and Design Contingency

7% Design and Engineering Fee

6% Fixtures, Furnishings and Equipment

2% Permits, Surveys, Reports, Testing & Inspection



Diving Accommodation

<u>Diving Options</u>	<u>*Approximate Construction Cost (\$)</u>
1) Deepen Existing Lap Pool	\$ 1,200,000
2) Deepen the proposed Lesson/Exercise Pool	\$ 350,000
3) Extend and Deepen the proposed Lesson/Exercise Pool	\$ 900,000



Deep Water Opportunity



Plunge Slide
Depth reqd: 8-10'
Approx cost: \$80-100,000



Climbing Wall
Depth reqd: 1' per 1' of wall
Approx cost: \$20-35,000



Climbing Wall
Depth reqd: 10'
Approx cost: \$1,500



Design Reductions Reflected in Cost Analysis

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- Relocate existing playground equipment, no new features

Recreation & Senior Center

- Running track will remain as is, add new flooring
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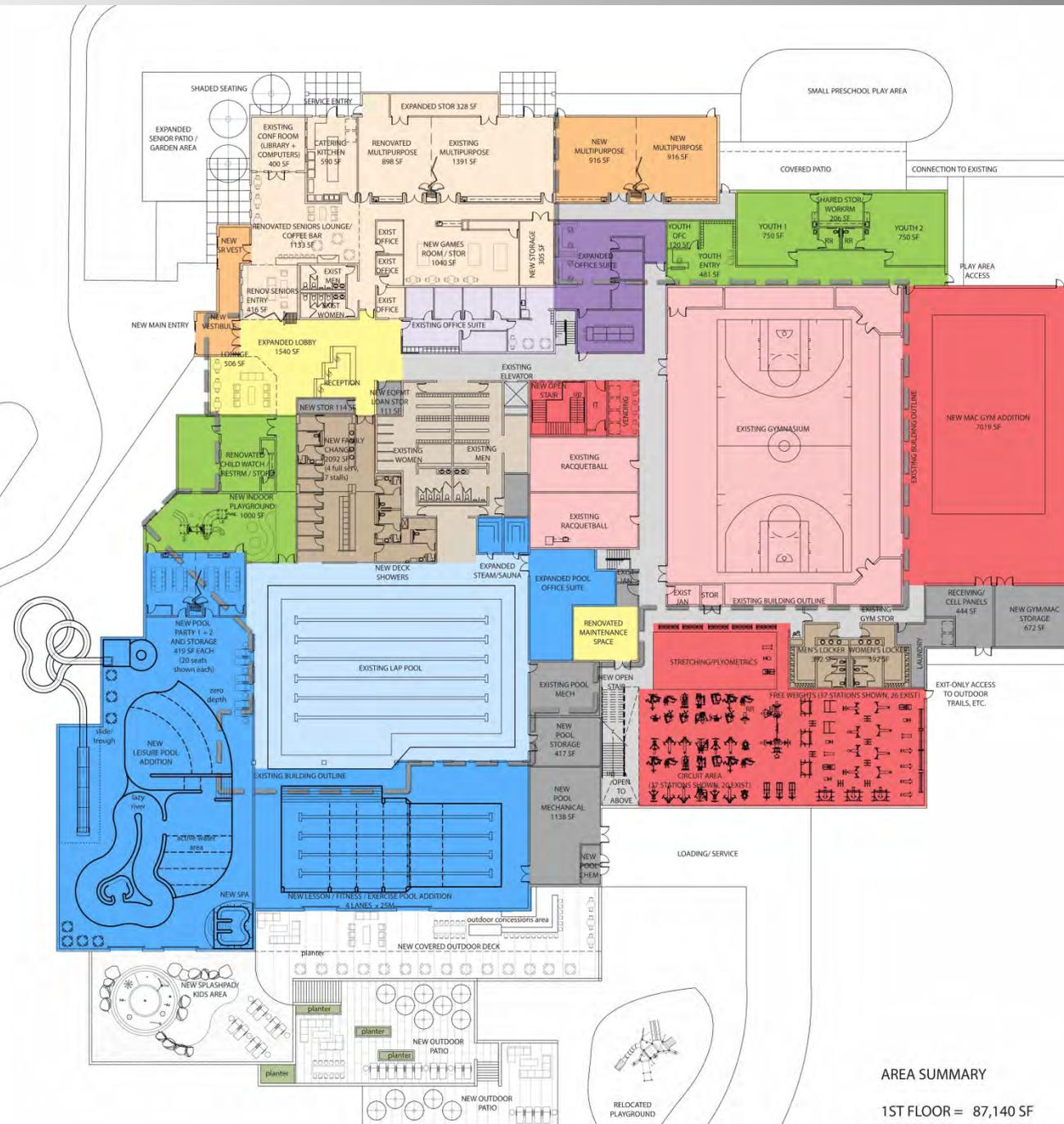


The Building



Improvements to the Plan

- Reorganized Senior Center, more openness and more centralized services
- New Layout of pools for efficiency and function
- MAC gymnasium size matches current Gym
- Reorganized Upper level and additional fitness spaces
- Design of outdoor deck area

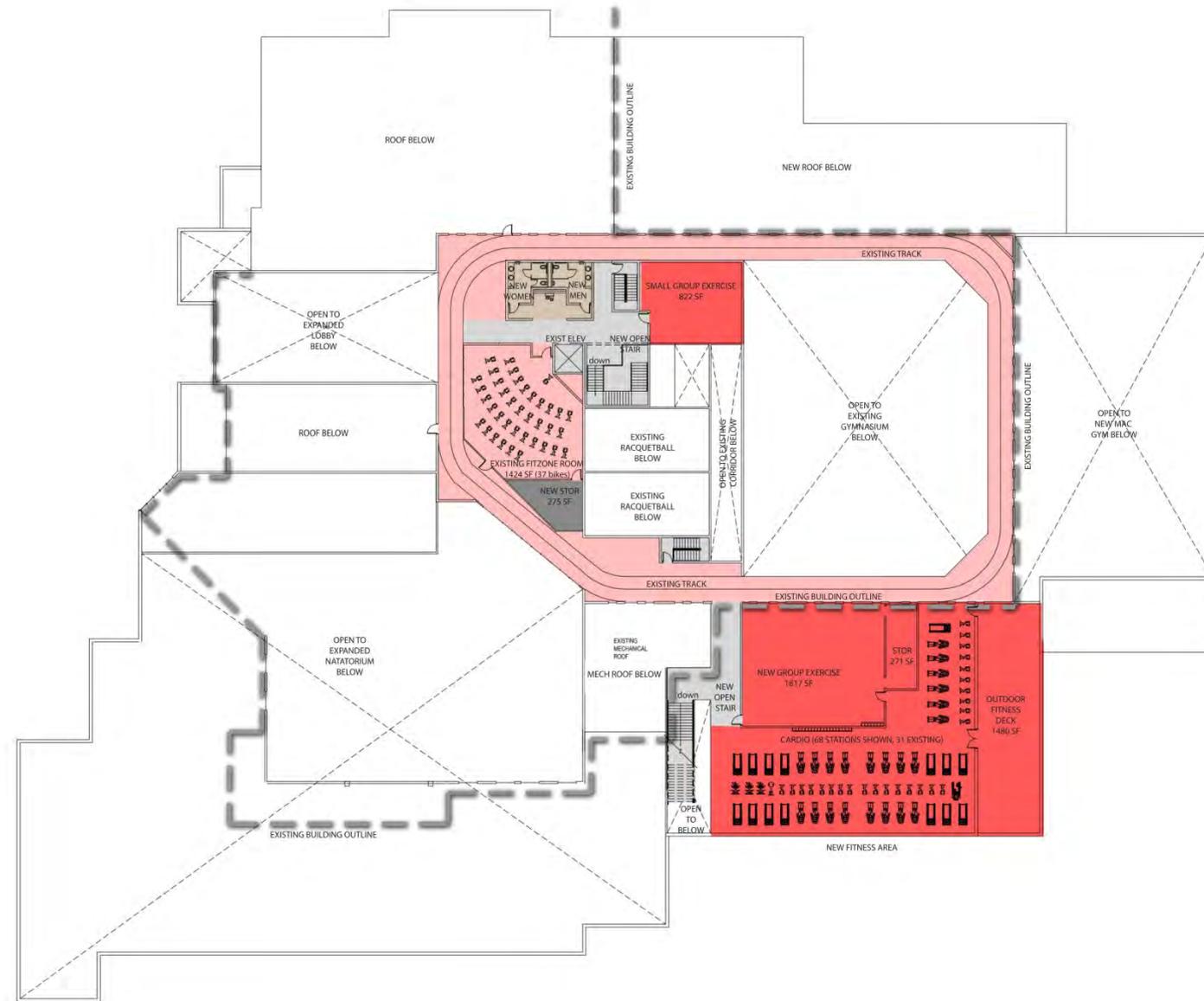


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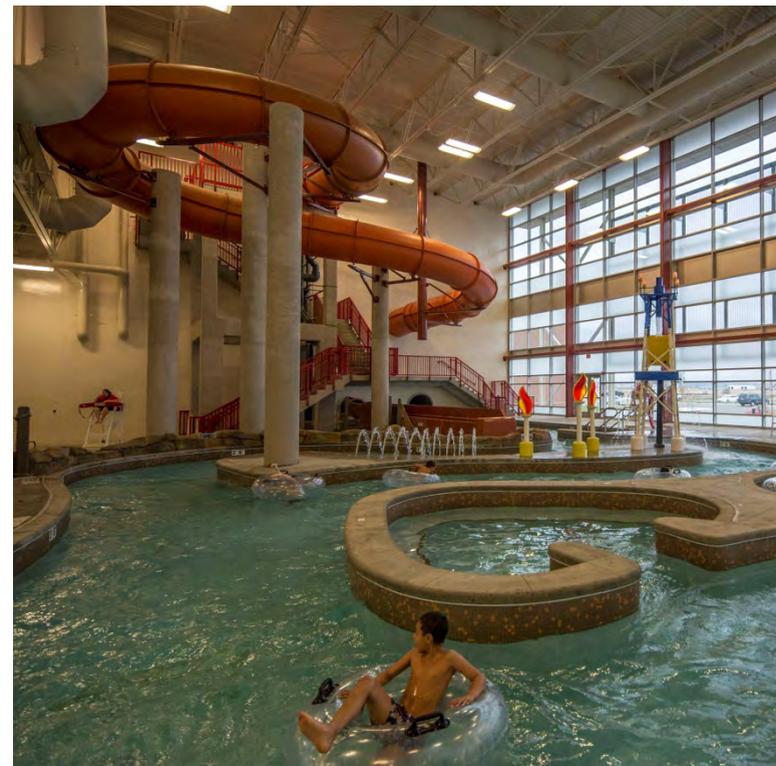
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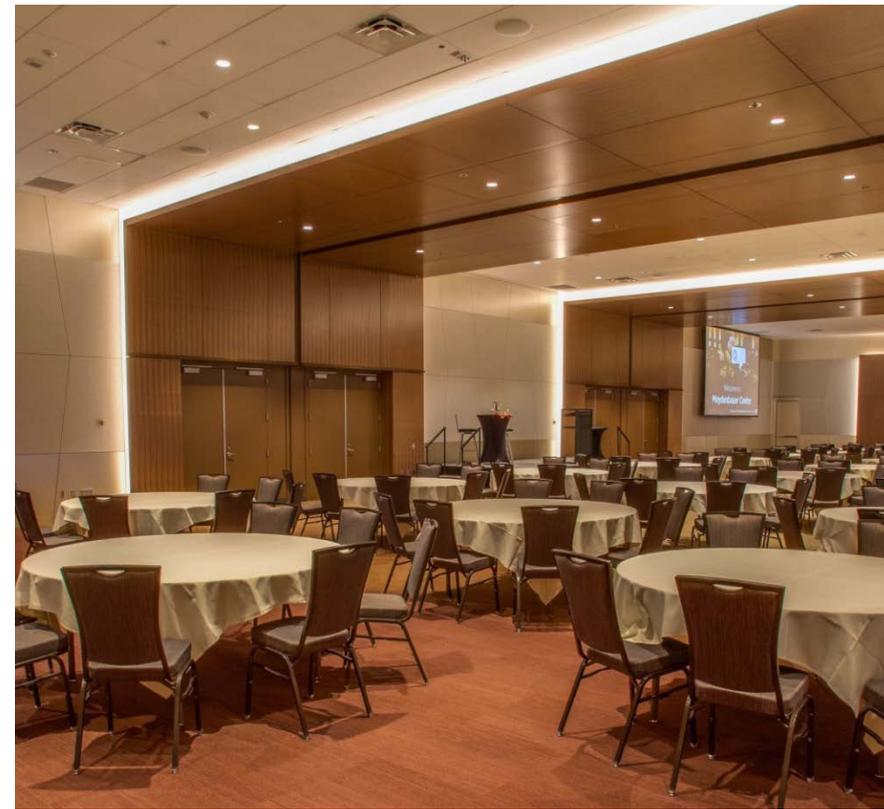
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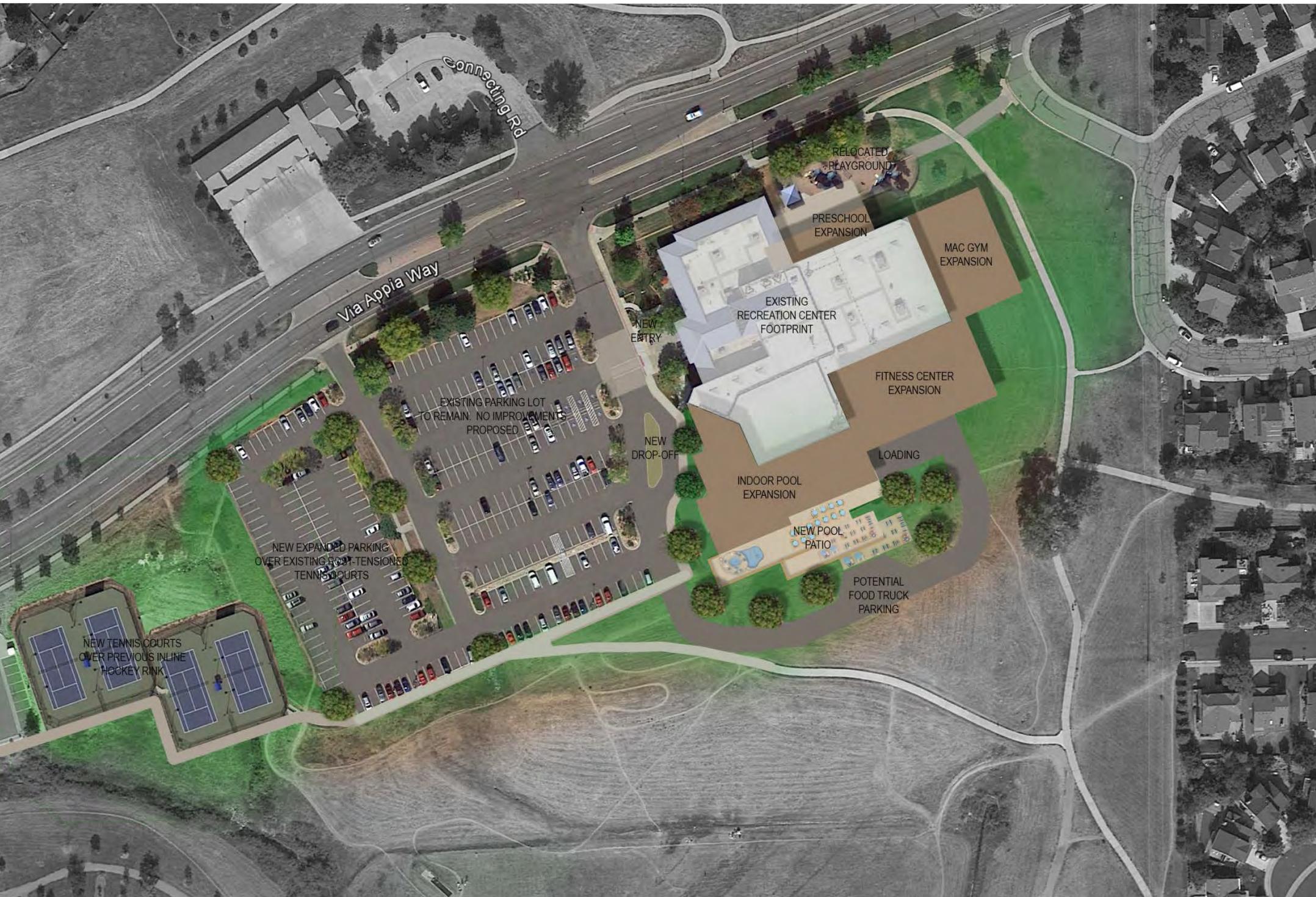
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