

CITY OF WARRENVILLE**MEMO**

TO: Mayor, City Council, and City Administrator Coakley
FROM: Ronald Mentzer, Director of Community and Economic Development^{TRM}
SUBJECT: STATUS OF FORMER CITGO GAS STATION PROPERTY AT 28 W
244 WARRENVILLE ROAD
DATE: May 22, 2019

The goal of this memo is to support informed City Council decisions regarding the future disposition and ownership of the former Citgo gas station property at the northeast corner of the Batavia/Warrenville Road intersection (the "Property"). This memo documents the current status and condition of the Property, summarizes the City's basis and most recent efforts to acquire it, and documents staff's recommendation to schedule a closed session discussion regarding the City's potential acquisition of it.

Current Property Status and Condition Summary

Attached Exhibit A has been prepared to summarize the current status of the following important issues related to the Property:

- Current zoning/land use
- Existing "open" leaking underground storage tank incident
- Current property ownership
- Outstanding Office of State Fire Marshall violations
- Scope of 100 yr. floodplain impacts
- Outstanding City of Warrenville code enforcement violations and fines
- Delinquent property taxes
- Current auction offering

Recent City Property Acquisition Efforts

Attached Exhibit B has been prepared to provide a high level summary of the City's more recent efforts to facilitate the comprehensive environmental clean-up, City acquisition, and private redevelopment of the Property. The three key reasons for the City's attempted acquisition of the Property in 2016-2018 include:

- ***Commercial Redevelopment per the Old Town/Civic Center and TIF #3 Plans***
 - The City is planning new coordinated commercial development for the western portion of the Property along Batavia Road with the adjacent City-owned properties to the north (the former Wangerin and Johnson properties). A copy of the City illustrative subarea land use plan for this area is attached as Exhibit B-1.
 - The City was not pursuing the acquisition of the Property for a roundabout. The City is not working on the roundabout. Should that project ever be resurrected at a future time, there will be public meetings and discussion and a very transparent process.

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- ***Public Open Space and Trail Connection on the West Side of the River to Warrenville Grove***
 - The eastern/floodplain portion of the Property is planned for public open space and new trail improvements along the west side of the river.
 - New west bank river trail and public open space would interconnect with existing public open space and trails stretching from Bower School to the Illinois Prairie Path and Warrenville Grove.

- **Clean-up of the Existing Contamination From the Underground Gas Tanks**
 - Without City involvement, it is likely that the existing contamination on the property will be remediated to minimal commercial clean-up standards. This involves leaving the existing subsurface contamination in place with an asphalt or concrete “cap”.
 - With City involvement, the bulk of the existing contamination would be removed from the site and the clean-up work would be completed in a more timely manner.

Committee Action Requested: Direct staff to include a Closed Session discussion regarding the City’s potential acquisition of the former Citgo gas station property located at 28 W 244 Warrenville Road on the upcoming June 3, 2019, City Council meeting agenda AND identify what additional detailed information the Council would like staff to assemble for the recommended Closed Session discussion.

EXHIBIT A

Former Citgo Gas Station Property Status and Condition Summary

Current Zoning: The Property is zoned B-4 Motorist Service District. Gas stations are a possible Special Use in this Zoning District. The special use permit that allowed for the former gas station to be operated on the Property automatically became invalid once the gas station was closed for more than one year. A formal zoning application and public hearing process would be required in order to seek City approval of a new special use permit that would allow a gas station to be reopened and operated on the Property. Special use permits require a discretionary (not automatic “by right”) approval from the City Council.

1997 Leaking Underground Storage Tank Incident: In 1997, two leaking underground fuel storage tanks were identified on the Property. The leaking tanks were removed shortly thereafter. The bulk of the petroleum contamination was left in place and the Property was enrolled in the State of Illinois Environmental Protection Agency’s Leaking Underground Storage Tank (LUST) Program. The Property remains enrolled in that program and the 1997 incident is still classified an “open” incident. Conoco Phillips is the legally “responsible party” for the 1997 incident and continues to actively work with the IEPA to close this incident. Over the past 20 years, City staff has had extensive interactions with Conoco Phillips representatives regarding the status of this incident.

Progressive Petroleum Acquisition: Progressive Petroleum LLC (PP) is the current owner of the Property. It acquired the Property in February 2016 as part of “package” of gas station properties it purchased out of the former owner’s bankruptcy proceedings. According to the Illinois Real Estate Transfer Tax Declaration recorded with the deed for the Property when PP acquired it, it purchase the Property for \$177,281. It operated the gas station and convenience store until it was closed in July 2016 because it was not profitable. According to PP and the previous property owner, the gas station and convenience store struggled for many years due to the extension of Winfield Road to I-88, reduced traffic volumes on adjacent streets, and the competition from other the other newer gas stations and the Walgreen’s store at the Winfield Road and Warrenville Road Intersection.

Office of State Fire Marshall (OSFM) Violations: In July of 2016, the four remaining underground fuel storage tanks (UST) on the property were “red tagged” (fuel prohibition) by the OSFM. In 2018, the OSFM issued a violation notice to PP under which three of the four UST’s were “condemned” and ordered to be removed because they are single-walled and more than 30 years old. These UST’s remain in place and the outstanding OSFM violation notices for this property have been referred to the Attorney General’s office for prosecution. Over the past three years, City staff has had numerous communications with representatives of the OFSM and the Attorney General’s office regarding the status of the Property and the existing UST’s located on it.

100 Yr. Floodplain: As illustrated on the aerial photo based exhibit attached as Exhibit A-1, the

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approximately eastern 2/3rds of the Property is located within the 100 year floodplain for the West Branch of the DuPage River. The floodplain depth on the Property ranges from 0.5' (west and south) to 3.5' (northeast corner). The average depth is about 1'.

Any placement of fill or structures above grade in the floodplain requires compensatory storage equal to at least 1.5 times the volume of floodplain storage displaced. New construction and "substantial improvements" to the existing buildings in the floodplain require either (i) the lowest floor to be elevated to at least the flood protection elevation (FPE) OR (ii) be designed so that below the FPE, the building and all utility improvements be flood proofed in accordance with local building codes. Substantial improvements include all improvements to a building, the cost of which cumulatively equals or exceeds 50 percent of the fair market value of the building.

City of Warrenville Code Enforcement Violations and Fines: In the fall of 2018, the City issued violation notices to PP for a variety of Property Maintenance Code violations and for failing to properly register the Property in the City's Vacant Building Registration Program (VBR). These violation notices went unaddressed and were ultimately referred to the City's Administrative Adjudication program where PP was found guilty and fined. While PP subsequently addressed many of these violations, the following are still outstanding and unresolved:

- Schedule required vacant building inspection
- Prepare, submit, and implement City approved "Vacant Building Plan"
- Repair/replace decorative site/parking lot lighting
- Repair settlement crack on the "supervisor hub" building
- Protect/paint canopy support columns from further corrosion

As of the preparation of this memo, PP has not paid the outstanding code enforcement fines that have been levied against the Property. As a result, City staff recorded a lien against the property for the unpaid fine amount of \$21,450.

Delinquent Property Taxes: According to the DuPage County Treasure's website, \$19,923.66 in back property taxes, plus applicable penalties, are due on the Property for 2017. The 2018 property taxes have been reduced to \$5,890.82. The first installment of the 2018 property taxes is due on June 3, 2019.

Current Auction Offering: PP has engaged Rick Levin & Associates (RLA) to assist in the sale of the Property through a sealed bid auction scheduled to conclude on June 26, 2019. Active marketing of the Property commenced on Thursday, May 16, 2019. The Property is being auctioned in "as is" condition and subject to an unpublicized reserve amount. PP retains the right to withdraw the property before or during the auction, and to sell the Property prior to the auction without notice. Additional details on the auction of this property can be found at: <https://www.ricklevin.com/auctions/361>.

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Community and Economic Development Director (CEDD) Mentzer has had numerous detailed communications with RLA representatives to (i) make them aware of the unique site conditions and constraints associated with the Property, the outstanding City and OFSM violations and liens, the City's Old Town/Civic Center Subarea Land Use Plan and TIF #3 Redevelopment Plan for area, and (ii) discuss the possible sale of the Property in advance of the June 26, 2019, auction date.

EXHIBIT A-1 AERIAL PHOTO EXHIBIT OF FLOODPLAIN AREA ON FORMER CITGO GAS STATION PROPERTY AND ADJACENT CITY OWNED REDEVELOPMENT SITES



Floodplain

EXHIBIT B

Summary of Recent City Efforts to Acquire Former Citgo Gas Station Property

December of 2016

City and current property owner, Progressive Petroleum, LLC (PP) execute a memorandum of understanding (MOU) to document the following key terms of a potential sale of the Property to the City:

- PP removes all existing underground storage tanks (UST's), gasoline pump islands, the pump island canopy, and all related underground piping system improvements.
- PP remediates LUST incidents and obtains Illinois Environmental Protection Agency (IEPA) no-further remediation letter (NFR) for residential use.
- City purchases Property for \$320,000 once above conditions satisfied.

March of 2017

- City and PP jointly fund additional environmental investigation/testing work on the site.
- Additional site investigation work confirms heavy metal contamination on the site.

June of 2017

City and PP execute a revised MOU that documents the following updated key terms of a potential sale of the property to the City:

- PP removes existing kiosk and conv. store buildings, all existing UST's, gasoline pump islands, pump island canopy, and all related underground piping system improvements.
- PP remediates LUST incidents and obtains IEPA NFR for residential use.
- PP remediates heavy metals and obtains IEPA NFR from for residential use.
- City purchases Property for \$530,000 once above conditions satisfied.

December 2017

- City finalizes and submits draft detailed real estate sale/purchase contract to PP consistent with the terms of the June 2017 MOU.

March 2018

PP rejects the City's December 2017 contract and proposes the following new key terms:

- PP removes all existing UST's, gasoline pump islands, pump island canopy, and all related underground piping system improvements.
- City purchases Property for \$250,000 once above demolition work completed.

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- City responsible for cleaning up contamination and obtaining NFR letters for its intended use

City staff informed PP that:

- The City Council was not receptive with moving forward with the acquisition of the Property under PP's proposed new terms.
- The City would reevaluate potential alternate terms after PP completes the removal of the existing UST's on the Property.

