



# Madison Parks Division

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Date: May 8, 2024  
To: Board of Park Commissioners  
From: Eric Knepp, Parks Superintendent  
Subject: **Future Management of Thorstrand Estate**

On March 8, 2023, the Board of Park Commissioners received an informational presentation regarding the history of the Ground Lease Agreements related to the Thorstrand Estates, challenges faced by lessees and considerations for amendment of existing lease ([Legislative File #76276](#)). The Board of Park Commissioners (BPC) requested additional information regarding alternatives to lease amendments, including the feasibility of pursuing alternative public use of the property. Attorney Robert Procter, representing the owners of the North House conducted additional research to determine the feasibility of adaptive reuse of the property for a broader public purpose, as well as options for lease amendments that would allow for successful transfer of ownership of the improvements to new buyers. On May 17, 2023, the BPC was briefed on the findings of the due diligence process ([Legislative File #77703](#)) and the responsibilities of the City to maintain a historic asset if the leases were to end. Attorney Procter's research found that adaptive reuse for public purposes is not a viable option for this location and that amendments to the lease should be considered to mitigate the financial liability of the City taking on a historic asset that is in declining condition.

## **Brief History of Thorstrand Estates**

The City of Madison purchased 15.29 acres of the Thorstrand Estate in 1978 for purposes of expanding Marshall Park. This property included two privately owned single-family residences, the North house and detached garage and Swenson house, located at 1 and 2 Thorstrand Road. Shortly after the City purchased the property, the improvements on the site, including two mansions and a garage, were designated as historic landmarks and accepted to the National Register of Historic Places. In 1981, the City sold the residences and personal property on the land to the owners through a Bill of Sale and entered into a 99-year lease agreement with both properties, with the current lease expiring on January 30, 2080. The leases have been amended and clarified over time as needed. In 2022, Common Council authorized the Parks Superintendent to approve Lease assignments in order to expedite changes in ownership of the residence, while still protecting the City's interests ([Legislative File #70639](#)). Also in 2022, the City of Madison executed a Quit Claim Deed with the owners of the residences in an effort to increase the chances of the estate owners selling the property ([Legislative File #71804](#)).

### **Limitations of Thorstrand Ground Lease Agreement**

Under these leases, the land is owned by the city and the residences remain private property which the owners are expected to maintain and preserve, and there are no rights to renew the terms of the agreement. Anecdotal information indicates that when the land was originally purchased for purposes of expanding Marshall Park, it was not expected that the homes would remain in place at the end of 99 years. However, given the historic designations awarded to the properties soon after they were acquired by the City, the current owners are obligated to maintain the properties as a historic assets in accordance with local, state and national standards. Under the current lease, after 99 years, the properties would return to City ownership. If the owners failed to maintain the assets over the remaining term of the lease, or if they chose to terminate their lease early, the City would become responsible for the preservation of the buildings. Despite modifications and clarifications to the original Lease Agreements in an attempt to ease the sale of the properties, this scenario presents challenges to the owners if and when they are looking to sell the investments on the property. Key points of concern are as follows:

- Terms of the original lease do not meet current lending standards, and prospective buyers have been unable to obtain financing for the property. Standard home loans are generally granted on a 30 year basis, the current 99-year lease is in year 56.
- Without term renewal options and lack of viable return on investment, there is little incentive for owners to make significant improvements.
- Language in the current agreement is outdated and does not align with more recent Lease agreements in similar situations that exist within the Parks system.

### **System-wide Implications**

The Parks Division has a number of agreements where properties are privately owned and managed on park land. These properties vary widely in terms of historic and future uses, as well as agreement terms.

### **Potential Options to Move Forward**

In consideration of information known regarding the property and limited public use of the space, staff have from Real Estate, Parks, and the City Attorney's Office have reviewed options for how to move forward in the best interest of the City. The three options that staff feel are most likely to have some benefit to the City are:

1. Extend the Existing Leases to reset to a new 99 year period.
2. Negotiate new leases with the homeowners to extend the term of the leases and modernize the language of the leases to more closely to conform with similar leases in the system.
3. Consider a sale of the land underlying the homes to the homeowners based on the current CSM mapping for the leases. Such a sale would incorporate all necessary deed restrictions and easements to ensure legal access and to control the long-term uses of the land for anything other than current uses.

Staff do not recommend Option #1 because it simply resets the clock while leaving unaddressed issues in the outdated lease language. This is particularly true as it relates to the transference of ownership to the City at the end of the lease term. This may have been seen as viable when the sale occurred, but as Landmark properties, this seems like a recipe the City would prefer not to have simmer.

Options #2 and #3 both have significant positives, while also having serious negatives as well. Option #2 would take significant resources to negotiate and could lead to a significant imbalance between the two properties in the lease language. The advantages of this approach is that it allows the City to retain ownership and if done well, provide the City the opportunity to buy the asset at a fair price at the end of the lease so long as specific conditions of care have been met. This would incentivize reinvestment by the owners, which is a significant positive. However, this would add two more leases that are more similar to recent leases to be managed. It is likely because of the way the properties are assessed that this could also result in lower property tax payments than in Option #3. It would almost certainly increase the long-term costs to the City in managing the relationship as pretty well all of these leases require staff time on an annual basis, often into the dozens of hours each. It is my recommendation that the Board signal that for leases such as these, it expects and desires language that establishes a cost to be borne by the lessee in pursuing lease amendments at the request of the lessee.

Option #3 offers advantages of a clean and clear transaction that establishes full ownership of the parcels and homes with the property owners. This alleviates almost all of the concerns about financing the properties and making them saleable. It also likely increases the annual property tax collection by the City on these parcels and greatly diminishes the cost outlay in staff expenses in comparison to Option #2. This type of transaction would still require significant upfront work to ensure that there are clear protections of the City's interest in and rights to the properties should something ever happen to cause the homes to be irreparably damaged. This would likely be in some form of deed restriction placed on the properties. This type of approach would also allow the City to negotiate into the agreement any terms and conditions that would make the best of this strange situation for the public park users today and into the future. It is also obviously not common for Parks to consider selling park land. In this case, however, staff feel there is significant merit to consider this alternative.

Ultimately, either Option #2 or #3 can make significant improvements to the current situation. It is my recommendation that the Board seriously consider both options and provide staff with the ability to answer any questions the Board might have on pursuit of these options. I believe it is important that a decision be made on the future of these parcels by January 2025 to allow the current owners opportunity to prepare for the coming real estate season given the interest of one of the owners in selling their property.