

DISTRICT COURT, EL PASO COUNTY, COLORADO 270 South Tejon Street Colorado Springs, Colorado 80903 Phone: 719.452.5000	DATE FILED: August 22, 2023 10:50 AM FILING ID: DD8F67B48C6CD CASE NUMBER: 2023CV31596
Plaintiff: TIMOTHY C. HOILES, an individual v. Defendant: CITY OF COLORADO SPRINGS, a home rule City and Colorado municipal corporation	▲ COURT USE ONLY ▲
Robert J. Bruce, Atty. Reg. No. 17742 RJB LAWYER, LLC 1543 Champa St., Suite 400 Denver, CO 80202 Phone Number: (303) 573-5498 E-mail: bobbruce@rjblawyerllc.com Attorney for Plaintiff	Case No.: Div.:
COMPLAINT FOR JUDICIAL REVIEW PURSUANT TO C.R.C.P. 106(a)(4)	

Plaintiff, by his attorney, Robert J. Bruce, for his Complaint against Defendant City of Colorado Springs states and avers as follows:

Parties

1. Plaintiff is Timothy C. Hoiles, an individual and resident of El Paso County, Colorado, whose home is located in the Broadmoor neighborhood of Colorado Springs and whose office is located at 1483 Woolsey Heights, Colorado Springs, CO 80915.

2. Defendant City of Colorado Springs (“City”) is a home rule city and Colorado municipal corporation that exercises the powers granted to home rule cities under Article XX of the Constitution of Colorado, including exercising the power, pursuant to the provisions of

C.R.S. §§ 31-23-101 *et seq.*, to enact land use regulations and to adopt policies and procedures to carry out and enforce its land use regulations.

Jurisdiction and Venue

3. This Court has jurisdiction over the parties and subject matter of this action.

4. Venue is proper in this Court pursuant to C.R.C.P. 98(c) and C.R.S. § 24-72-204(5). The City is located in El Paso County; all actions that are the subject of this Complaint occurred in El Paso County; and the property subject to the City’s rezoning decision, which is the subject of this action, is located in El Paso County.

General Allegations

5. This action concerns approximately 4.56 acres of certain real property located between E. St. Elmo Ave. and E. Ramona Ave. just west of S. Nevada Ave. in Colorado Springs (the “Subject Property”).

6. The Subject Property is more particularly described in City of Colorado Springs Ordinance No. 23-32 (the “Ordinance”), which is attached hereto as Exhibit A.

7. Prior to the enactment of the Ordinance on July 25, 2023, the Subject Property was zoned MX-M (Mixed Use Medium Scale) and R5 (Multi-Family Residential), both with SS (Streamside Overlay) zoning designation.

8. On June 14, 2023, an application to rezone the Subject Property to PDZISS (Planned Development Zone District with the Streamside Overlay Zone) for multi-family residential land use, with a maximum building height of 85 feet, and a maximum density of 87.72 Dwelling units per acre, was presented to the Colorado Springs City Planning

Commission. The Commission approved the proposal for presentation to the Colorado Springs City Council.

9. Zone changes require two readings before the City Council. The first presentation to City Council occurred on July 11, 2023. City Council approved the proposal via Consent Calendar, and the second presentation was scheduled for July 25, 2023.

10. On July 25, 2023, City Council approved the rezoning proposal, concept, and development plan, and adopted the Ordinance. By virtue of the Ordinance, the Subject Property was rezoned to PDZISS (Planned Development Zone District with the Streamside Overlay Zone) for multi-family residential land use, with a maximum building height of 85 feet, and a maximum density of 87.72 Dwelling units per acre. *See Ex. A, § 1.*

11. A 221-page traffic study (“Traffic Study”) was completed in conjunction with the proposal to rezone the Subject Property. However, and within formation and belief, the Traffic Study was not included in the presentations to the Planning Commission or City Council on June 14, July 11, or July 25, 2023.

12. The Traffic Study analyzed traffic and level of service (“LOS”) near the Subject Property in December 2022 and January 2023, and identified a number of issues which justified denial of the recurring application. In addition, the Traffic Study’s conclusions regarding the effect of a zoning change were contingent upon (i) removal of a gas station at St. Elmo Ave West and (ii) realignment of St. Elmo Ave. West and East as an intersection to allow northbound travel on Nevada Ave from St. Elmo Ave West.

13. City Council improperly failed to address and duly consider the LOS issues identified in the Traffic Study, and failed to require the changes—gas station removal and intersection alignment—that undergirded the Traffic Study’s conclusions.

14. In approving the zoning change and enacting the Ordinance, City Council also improperly failed to take into account a fire evacuation study completed in 2010 by the Pikes Peak Area Council of Governments ("Fire Evacuation Study"). The Fire Evacuation Study concludes that nearby Cheyenne Blvd. and Lake Ave. cannot support necessary evacuations based on traffic and population density at that time, which was 13 years ago. Traffic and density have increased since then, and the approved zoning change to the Subject Property only worsens these conditions by permitting a 400-unit apartment complex, which will make fire evacuation even slower and more dangerous for public safety purposes.

15. Finally, in approving the zoning change and enacting the Ordinance, City Council improperly failed to take into account the limitations of a Colorado Geologic Survey dated January 10, 2023 (“Geologic Survey”), which recommended an updated Geologic Hazard Study due to changing development plan in the hazard waiver letter and lack of program results and test logs for the depth of the undocumented fill. The Geologic Survey’s hazard exemption pertained to 2017 and did not address the proposed development of a 7-story, 400-unit apartment building.

16. City Council improperly limited or failed to properly receive public testimony regarding the Geologic Survey or the limitations of the survey’s analysis.

17. As a result, City Council failed to take account of important aspects of the problems created by the zoning change. The zoning change and Ordinance are not supported by

the Traffic Study, the Fire Evacuation Study, the Geologic Survey, or other evidence in the record.

18. In approving the zoning change and enacting the Ordinance, City Council violated City Code § 7.5.603.B.1, which requires that the action not be detrimental to the public interest, health, safety, convenience, or general welfare. But while the zoning change and Ordinance confer a private benefit on the Subject Property's developer, they do not serve, and indeed they undermine, the health, safety, and welfare of the general public.

First Cause of Action
(Judicial Review Pursuant to C.R.C.P. 106(a)(4) – City of Colorado Springs)

19. Plaintiff hereby incorporates all of the foregoing allegations as if fully set forth herein.

20. The City exercised quasi-judicial functions in granting the zoning change of the Subject Property and enacting the Ordinance.

21. The City has abused its discretion and acted arbitrarily by, among other things, unreasonably and erroneously approving the zoning change; ignoring the conclusions of (and limitations upon) the Traffic Study, Fire Evacuation Study, and Geologic Survey; failing to take account of important aspects of the problems created by the zoning change; and violating City Code § 7.5.603.B.1.

22. Plaintiff is directly and adversely affected by the City's action because: he is an El Paso County and Colorado Springs resident; he regularly travels the area in and around the Subject Property and its adjacent streets; in the event of wildfire, would be required to evacuate via nearby Cheyenne Blvd. or Lake Ave., yet is subject to a greater risk of injury due to added congestion near the Subject Property as a result of the zoning change; and is adversely affected

by the City's failure to follow its own City Code and to issue a reasonable decision based upon competent evidence.

23. Pursuant to C.R.C.P. 106(a)(4), Plaintiff seeks judicial review of the City's decision and actions.

24. Pursuant to C.R.C.P. 106(a)(4), Plaintiff is entitled to a ruling of this Court that the City abused its discretion in approving the zoning change and enacting the Ordinance. Plaintiff is entitled to an order vacating the City's decision and ordering the City to reconsider the requested zone change based on competent evidence, including the Traffic Study, the Fire Evacuation Study, the Geologic Survey, the conclusions of and limitations upon those studies, public testimony, and other evidence concerning the impact of the zoning change on the health, safety, and welfare of the general public.

Prayer for Relief

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in his favor and against the City as follows:

A. A determination, pursuant to C.R.C.P. 106(a)(4), that the City exceeded its jurisdiction and/or abused its discretion in granting the zoning change;

B. For an order, judgment, or decree reversing the decision of the City to grant the zoning change and requiring the City to reconsider the requested zoning change based on competent evidence and in light of City Code's mandatory concern for the health, safety, and welfare of the general public;

C. For Plaintiff's costs and attorney's fees; and

D. For such other and further relief as the Court deems just and proper.

DATED: August 22, 2023.

Respectfully submitted,

/s/ Robert J. Bruce
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