

District Court of Jefferson County, Colorado 100 Jefferson County Parkway Golden, CO 80401 (720) 772-2500	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Plaintiff(s): BELMAR OWNER LLC, AND KAIROI PROPERTIES, LLC v. Defendant(s): CITY OF LAKEWOOD, COLORADO	
<i>Attorney for Proposed Intervenor Save Belmar Park, Inc.</i> PAT MELLEEN LAW, LLC Patricia A. Mellen # 50839 3900 E. Mexico Ave., Suite 300 Denver, Colorado 80210 Telephone: 720-593-3593 Facsimile: 303-927-0809 E-mail: pat@patmellenlaw.com	Case Number: 2024CV31849 Division: 2
MOTION TO INTERVENE	

COMES NOW Proposed Intervenor, Save Belmar Park, Inc., by and through its attorney Patricia A. Mellen of Pat Mellen Law, LLC, and submits this Motion to Intervene. As grounds for such it asserts the following:

Certification of Conferral Pursuant to C.R.C.P. Rule 121 Sec. 1-15 (8)

Undersigned Counsel conferred by phone on January 17, 2025, with counsel for the other parties, who oppose this Motion and the relief requested herein.

A. Introduction

This matter has come before the Court based the events surrounding a ballot initiative ordinance effort spearheaded by community activist Catherine Kentner to revise the section of the

City of Lakewood’s Municipal Code governing Park and Open Space Dedication. Lakewood Municipal Code, §14.16. Ms. Kentner and her supporters succeeded in gathering more than the required number of signatures for the proposed ordinance O-2024-28 to be placed on an election ballot before the Lakewood electorate.

On November 4, 2024, the Lakewood City Council (“the Council”) took up consideration of the proposed ordinance consistent with its Municipal Code § 2.52.110. In an unanticipated development the Council adopted “without alteration the initiated ordinance by a majority vote of all members of City Council.” What was unusual was the rationale the Council offered for its adoption.

Video recordings of that Council meeting document that many members of the Council described the ordinance as “illegal.” No specific legal analysis was provided, and no source of the legal opinions repeated by various members of the Council was offered. The Council justified its adoption of the ordinance with two practical arguments. The first openly cited reason was that putting the ordinance to the otherwise required vote would cost the City approximately \$300,000. The second, less obvious reason, was that an election could take up to three months, during which any developments seeking review would have no politically defensible parkland dedication criteria to support a plan’s rejection or approval¹ and no grounds yet to sue for a different outcome.

Members of the Counsel asserted on the record that adopting the ordinance directly was the expedient outcome so that the City could be sued immediately, and the Courts could figure it out sooner rather than later. No discussion was offered, then or since, that the Council itself could amend any of ordinance’s provisions it found troubling as soon as it took effect. Media reports later repeat the Council’s perceptions about the ordinance’s illegality and that an anticipated lawsuit would allow

¹ “Under the pending ordinance doctrine, ‘a municipality may deny an application for a license or permit on the basis of a pending ordinance prohibiting the requested use.’ *City of Aspen v. Marshall*, 912 P.2d 56, 61 (Colo. 1996).

the Council to defer to a Court ruling, presumably rather than the City having to take affirmative action to address the ideological conflict between its constituents and developers. (Exhibit A)

Plaintiffs Belmar Owner LLC and Kairoi Properties, LLC (“Plaintiffs”) are the proponents for a proposed 412-unit, five story, zero lot line luxury apartment building immediately adjacent to Belmar Park. The 132-acre park is located in the heart of Lakewood, where citizens, visitors and wildlife have access to a large lake, trails and rolling wooded grasslands with views to the Rocky Mountains. Belmar Park was dedicated to the City in 1974, and it includes fixtures surviving from the days when the entire property was part of Belmar Estate, once owned by the late May Bonfils-Stanton, heiress to the Denver Post.

In April 2022 Plaintiffs began submitting plans for the 777 S. Yarrow site, and redlines and four rounds of resubmittals have followed since. The Plaintiffs’ Complaint in this matter contains admissions that the major site plans submitted to date have included only a portion of Plaintiffs’ plans for this luxury housing development. Plaintiffs also admitted to having a letter of intent to purchase the parcel immediately to the east in order to build more luxury units, though plans submitted to the City and other records available to the public provide an incomplete context for a comprehensive evaluation of the proposed development on the 777 S. Yarrow site.

Proposed intervenor Save Belmar Park, Inc., (“SBP”) seeks intervention to defend the O-2024-28 ordinance as adopted and the requirements it imposes on the City and the Plaintiffs to protect the interests of SBP’s members in maintaining the character and aesthetic of Belmar Park from profit-driven unreasonable and unsustainable developer overreach. The City Council’s public statements and its actions so far in this litigation indicate that it cannot be relied on to protect SBP’s members’ interests.

B. Legal Foundation

SBP seeks to intervene in this matter pursuant to C.R.C.P. Rule 24, which provides two paths for intervention::

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) When a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

C.R.C.P. 24

Or in the alternative:

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) When a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

C.R.C.P. 24

The rules of intervention are to be liberally construed in the interest of judicial efficiency and consistency of judgments:

“Intervention as of right is a fact-specific determination,” *Cherokee Metro. Dist. v. Meridian Serv. Metro. Dist.*, 266 P.3d 401, 404 (Colo. 2011), and courts should liberally interpret Rule 24(a)(2) “to allow, whenever possible and compatible with efficiency and due process, issues related to the same transaction to be resolved in the same lawsuit and at the trial court level,” *id.* (quoting Feigin, 19 P.3d at 26).

Auto-Owners Ins. Co. v. Bold Factor Lofts Owners Assoc. Inc., 487 P.3d 276, 281, (Colo. 2021).

and

The court has “considerable discretion” to grant or deny a motion for permissive intervention. *In re Marriage of Paul*, 978 P.2d 136, 139 (Colo. App. 1998). “In exercising its discretion under the rule, the ... court must consider whether intervention

will delay or prejudice the rights of the original parties.” *K.L.O-V.*, 151 P.3d at 642; *see* C.R.C.P. 24(b)(2).

State ex rel. Weiser v. City of Aurora, 535 P.3d 988, 998 (Colo. App. 2023).

C. Material Facts

1. On December 24, 2023, SBP registered its Nonprofit Corporation with the Secretary of State of the State of Colorado.

2. The mission of SBP is to protect the aesthetics, character and habitat of Belmar Park for its members, the citizens of Lakewood, visitors and wildlife that currently and historically have relied on its existence and enjoyed its use.

3. On March 4, 2024, Catherine Kentner (“Ms. Kentner”) and Rhonda Peters submitted the proposed ballot initiative ordinance O-2024-28 to the City Clerk pursuant to § 2.52.030 of the Lakewood Municipal Code.

4. On March 28 2024, the City Clerk approved the ballot initiative to be circulated for signatures.

5. On September 20, 2024, the collected signatures were submitted to the City Clerk for certification pursuant to § 2.52.090 of the Lakewood Municipal Code.

6. On October 21, 2024, the City Clerk certified that the number of signatures met the requirement for the ballot initiative to proceed to the next step.

7. On November 4, 2024, the Lakewood City Counsel took up the ballot initiative ordinance for either adoption without amendments or for scheduling of a public election and voted to adopt the ballot initiative ordinance in an 8-3 vote.

8. On December 20, 2024, Plaintiffs filed their *Verified Complaint for Declaratory and Injunctive Relief* (“the Complaint.”)

9. On January 3, 2025, Plaintiffs filed their *Unopposed Motion for Preliminary Injunction* (“the PI Motion”)

10. On January 6, 2025, the City filed its *Conferral Statement Regarding Plaintiffs Motion for Preliminary Injunction* (“Conferral Statement.”)

11. On January 14, 2024, the Court granted the Preliminary Injunction.

12. On January 15, 2024, the Court granted the City’s *Unopposed Motion for an Extension of Time to Answer or Otherwise Respond to the Verified Complaint for Declaratory and Injunctive Relief* granting the City through January 28, 2025 to file its next pleading.

13. SBP also incorporates the facts as stated in its Proposed Complaint (Exhibit B, with exhibits) as if stated directly herein.

D. Arguments

1. SBP should be granted intervention by right.

a. SBP’s Members’ Interests Relate to the Same Property or Transaction.

Plaintiffs’ Complaint acknowledges that the purpose of this litigation is “a challenge to a citizen-led initiative recently enacted by the Lakewood City Council.” (Complaint at ¶ 5) Although the Complaint offers no express analysis of Plaintiffs’ legal or factual foundation to claim standing to bring this case, it is presumed Plaintiffs are relying on their as yet unapproved but proposed development at 777 S. Yarrow Street, Lakewood, CO and a future speculative development on the adjacent parcel at 777 S. Wadsworth Boulevard, Lakewood, CO. (Complaint, throughout)

SBP hereby submits a Proposed Complaint (“Intervenor’s Complaint”) seeking declaratory judgment directly opposing Plaintiffs’ similar claims for relief. (Exhibit B, with exhibits) Intervenor’s Complaint seeks determinations by this Court resolving any uncertainty that the disputed provisions of the enacted ballot initiative ordinance are both legally defensible and applicable to Plaintiffs’

developments, both proposed and speculative. SBP asserts in its Intervenor's Complaint that it has organizational standing based on its members' defensible rights that would be affected by Plaintiffs' requested relief and rights in defending Lakewood's Municipal Code where those same interests are not protected by the municipality. *Harmelink v. City of Arvada*, 580 P.2d 841, 842 (Colo. App. 1978).

SBP also asserts that its intervention in this litigation is supported by the statutes governing declaratory actions:

When declaratory relief is sought, **all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.** In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party and is entitled to be heard, and, if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state shall also be served with a copy of the proceeding and be entitled to be heard.

C.R.S. § 13-51-115 (emphasis added).

The permanent relief sought by Plaintiffs in this litigation would vitiate the provisions of the adopted ballot initiative ordinance O-2024-28. The preliminary injunctive relief granted to Plaintiffs is a litigation tactic sought to circumvent a robust and thorough evaluation of all parties' rights. A preliminary injunction in this matter only benefits Plaintiffs to the degree they could seek approval of their proposed plans under the old municipal code without the disputed ordinance's provisions. Once that approval is obtained and building permits are issued the provisions of O-2024-28 would no longer apply and the need for any further pursuit of this litigation would be moot. Plaintiffs' Complaint also fails to address that the relief postured by Plaintiffs to apply only to them would affect all developments city-wide, where other developers could rely on the findings of this declaratory action to avoid complying with the Lakewood Municipal Code as currently adopted. The City would then also have the political cover to attribute to the Court the need to make city-wide changes in the disputed ordinance rather than take up the issue with its electorate in an open and public debate.

b. SBP's Members' Interests are not Adequately Represented by the City

The City of Lakewood is a home rule entity, and its City Council is the body empowered to defend challenges to its ordinances. Colo. Const. art. XX, § 6 and Lakewood City Charter, Article II, Section 2.1. Citizens have a demonstrable interest in defending ordinances where the interests of a municipal government and its electorate are not aligned:

The rights of those who approve the rezoning are generally held to be protected by the governmental agency which enacted the ordinance, see *Denver Chapter Colorado Motel Ass'n, Inc. v. City & County of Denver*, 150 Colo. 524, 374 P.2d 494 (1962), but may be permitted to intervene as defendants if their rights are not otherwise protected. *Roosevelt v. Beau Monde Co.*, 152 Colo. 567, 384 P.2d 96 (1963).

Harmelink v. City of Arvada, supra, at 842 (1978).

In a declaratory action where the Court is being asked to determine conflicting rights, third parties themselves usually will be the best proponents of their own rights. The courts depend on effective advocacy, and therefore should prefer to construe legal rights only when the most effective advocates of those rights are before them. The holders of the rights may have a like preference, to the extent they will be bound by the courts' decisions under the doctrine of Stare decisis.

City of Greenwood Vill. v. Petitioners for Proposed City of Centennial, 3 P.3d 427, 439 (Colo. 2000) citing *Singleton v. Wulff*, 428 U.S. 106, 113–14, (1976) (citations omitted).

Here, there is ample evidence from the statements made by multiple members of the Lakewood City Council during its public meeting and in later media reports that calls into question whether the City will adequately represent SBP's members' interests in defending this litigation. (Exhibit A) Multiple members of the City Council openly described the ordinance as "illegal." Multiple members of the City Council discussed that they felt trapped into the adoption of ordinance O-2024-28 as the least worst option that would expedite the City being sued and receiving a Court ruling to justify striking the ordinance down.

The City's actions related to the Plaintiffs' **Unopposed** PI Motion confirm these concerns. Whatever discussions occurred during the conferral related to this motion, Plaintiffs felt they could

reasonably represent that the City was not opposed to this relief. To reiterate – the preliminary injunctive relief requested and ultimately granted allows Plaintiffs to seek approval of their proposed development under the old Municipal Code scheme as if the provisions of the ballot initiative ordinance O-2024-28 did not exist. Once Plaintiffs’ plans are approved and Plaintiffs’ development project receives building permits the provisions of O-2024-28 would no longer apply regardless of whether the material provisions of the ordinance are eventually upheld or not. A preliminary injunction in this matter could easily amount to a permanent injunction for this development.

The City has openly admitted it is ceding its role in managing the disputed ordinance to the Court. The City’s statements on the record support that a majority of the City Council believes the provisions of the ballot initiative ordinance O-2024-28 to be “illegal.” In those circumstances SBP has no reasonable expectation that its interests in defending the ballot initiative ordinance O-2024-28 as adopted will be protected by the City.

c. **This Request to Intervene is Timely.**

This application for intervention is timely. The Complaint was filed on December 20, 2024. The City has not filed its answer or other responsive pleading. The matter is not at issue. There would be no prejudice from delay based on a timely granting of this intervention.

d. **Intervention by Right is Appropriate in these Circumstances**

Based on the law and the facts of this matter SBP should be granted intervention by right pursuant to C.R.C.P. Rule 24(a).

2. **In the alternative, SBP should be granted permissive intervention.**

C.R.C.P. 24(b)(2) provides that a trial court may permit intervention “when an applicant’s claim or defense and the main action have a question of law or fact in common.” *In re K.L.O-V.*, 151

P.3d 637, 642 (Colo. App. 2006). The facts and arguments stated above are incorporated herein.

Intervenor's Complaint states that the anticipated damages to SBP's members' interests flow from facts in common with the current litigation. (Exhibit B) The declaratory nature of this dispute influences how the Court should evaluate the "question of law or fact in common":

The question of whether a justiciable controversy exists in the context of a declaratory judgment action concerns "whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 61 S.Ct. 510, 85 L.Ed. 826 (1941). It is not necessary that the controversy have ripened into litigation before the declaratory judgment action is filed, but only that there be an existing state of facts concerning the legal rights of the parties that indicates threatened litigation in the immediate future. *Simmonds Aerocessories, Ltd. v. Elastic Stop Nut Corp.*, 257 F.2d 485 (3rd Cir.1958); *Ainsworth v. Oil City Brass Works*, 271 S.W.2d 754 (Tex.Civ.App.1954).

...

The declaratory judgment procedure was established primarily "to provide a ready and speedy remedy, in cases of actual controversy, for determining issues and adjudicating the legal rights, duties, or status of the respective parties, before controversies with regard thereto lead to the repudiation of obligations, the invasion of rights, and the commission of wrongs." *People ex rel. Inter-Church Temperance Movement v. Baker*, 133 Colo. 398, 297 P.2d 273 (1956). It provides an early relief from uncertainty as to the future obligations for one who would normally be a defendant and who otherwise would not have his questions adjudicated until his adversary takes the initiative. *King Kup Candies v. H.B. Reese Candy Co.*, 134 F.Supp. 463 (D.Pa.1955). It is a procedural, not a substantive, remedy. *Aetna Life Insurance Co. v. Haworth*, *supra*.

Am. Fam. Mut. Ins. Co. v. Bowser, 779 P.2d 1376, 1380 (Colo. App. 1989).

Here, Plaintiffs are seeking a judicial determination that the ballot initiative ordinance is facially legally invalid and also should not apply to their interests, substantially because the City Council has declined to take the matter up and has deferred to the Court. SBP seeks the same adjudicative review declaring the parties' relative rights but with a request for the opposite relief. The overlap in the questions of law raised by the ballot initiative ordinance O-2024-28 and the ordinance's application to the Plaintiffs' developments, is fundamental.

In the alternative SBP should be granted permissive intervention should the Court not find that its members' interests merit intervention by right.

E. Relief Requested

For the reasons cited above, Proposed Intervenor Save Belmar Park, Inc. respectfully requests this Court grant its request to intervene in this matter.

Respectfully submitted this 18th day of January, 2025.

PAT MELLEEN LAW LLC.

/s/ Patricia A. Mellen
Patricia A. Mellen
Attorney for Proposed Intervenor

CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2025, I submitted a true and accurate copy of the foregoing and all attachments via ICCES or email service upon all attorneys of record as of that date and by USPS First Class mail to any unrepresented parties.

PAT MELLEN LAW LLC.

/s/ Patricia A. Mellen
Patricia A. Mellen, #50839
Attorney for Proposed Intervenor