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

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

## PARTIES AND GEOGRAPHY

1. Save Belmar Park, Inc. ("SBP,") Intervenor Plaintiff, for all times material to this action, has been a non-profit corporation with a principal office address of 8230 W 8th Ave, Lakewood, CO 80214.

2. The City of Lakewood, ("the City,") Intervenor Defendant, is a home rule municipality pursuant to the Colorado Constitution, art. XX, § 6 and governed by the Charter for the City of Lakewood, first adopted on November 1, 1983 and thereafter amended on November 5, 1991, November 3, 1992, November 2, 1999 and November 2, 2004.

3. Belmar Owner LLC, ("the Owner,") Intervenor Defendant, is a foreign limited liability company formed in the State of Delaware, registered with the Colorado Secretary of State on May 25, 2021, with a principal office street address of 711 Navarro St., Ste. 400, San Antonio, TX, 78205.

4. Kairoi Properties LLC, ("the Developer,") Intervenor Defendant, is an entity identified in the submitted plans for the disputed development but has not been registered with the Colorado Secretary of State.

5. Together Belmar Owner LLC and Kairoi Properties LLC will hereinafter be referred to as "the Kairoi Defendants."

6. Pursuant to C.R.S. § 13-51-115 the Attorney General of the State of Colorado is "entitled to be heard" on any declaratory action where the constitutionality of an ordinance is being challenged.

7. The real property ("the Property") that gives rise to this dispute is Parcel # 49-142-03-001, in Jefferson County, Colorado, with a legal description of:

Lot 2, IRONGATE EXECUTIVE PLAZA SUBDIVISION, County of Jefferson, State of Colorado,

Excepting therefrom those portions conveyed to the City of Lakewood by Deeds recorded November 8, 2000, Under Reception No. F1142026, and November 8, 2000, Under Reception No. F1142028,

Also Known As: 777 S. Yarrow St., Lakewood, CO 80226.

## JURISDICTION AND VENUE

8. This Court has proper jurisdiction to determine rights in a declaratory action pursuant to C.R.C.P. Rule 57(a).

9. Jurisdiction also is proper pursuant to C.R.S. 13-1-124(1)(a) and (1)(c) as all of the parties have transacted business in this state, and own, use and/or possess real property in the City of Lakewood, County of Jefferson, CO, that forms the basis of this complaint.

10. Venue is proper pursuant to C.R.C.P. Rule 98 as the parties resided or conducted business in Jefferson County, the relevant contracts were entered into in Jefferson County, and the property that forms the basis of the dispute is located in Jefferson County.

## STANDING

11. SBP asserts organizational standing pursuant to:

> Thus we have recognized that an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

*Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977).

12. SBP was formed to promote and protect the interests of its members, the citizens of Lakewood, visitors and wildlife who use and enjoy Belmar Park and whose property values are affected by the conditions and aesthetics of Belmar Park, which is actively promoted by the City as a unique feature and benefit.

13. SBP's members include but are not limited to residents of the City of Lakewood who are also registered voters, regular users of Belmar Park, and own property adjacent to or near Belmar Park and the Property in dispute.

14. SBP's members would otherwise have standing to sue in their own right:

> The United States Supreme Court has held that aesthetic and ecological interests are sufficient to grant standing to a plaintiff. *Sierra Club v. Morton*, 405 U.S. 727, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972); see also *Desert Citizens Against Pollution v. Bisson*, 231 F.3d 1172 (9th Cir.2000)(finding that plaintiffs asserting environmental and aesthetic interests in public lands had standing to challenge an anticipated land exchange under the Federal Land Policy and Management Act, even before the exchange occurred). **The Colorado Supreme Court has also recognized aesthetic and ecological interests as sufficient to (sic) for standing purposes. See *Greenwood Village v. Petitioners for Proposed City of Centennial*, supra.**

*Friends of the Black Forest Reg'l Park, Inc. v. Bd. of Cnty. Comm'rs of Cnty. of El Paso*, 80 P.3d 871, 877 (Colo. App. 2003)(emphasis added).

15. SBP asserts that the protection of the conditions and aesthetics of Belmar Park from adverse effects from the Kairoi Defendants' proposed development were a significant motivating factor contributing to the pursuit of this disputed ballot initiative ordinance:

> Further, the United States Supreme Court recently explained the "legally protected interest" prong of the standing requirement: "The proper inquiry is simply 'whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected ... by the statute.' " *National Credit Union Administration v. First National Bank & Trust Co.*, 522 U.S. 479, 492, 118 S.Ct. 927, 935, 140 L.Ed.2d 1 (1998)(quoting *Ass'n of Data Processing Service Organizations v. Camp*, 397 U.S. 150, 153, 90 S.Ct. 827, 830, 25 L.Ed.2d 184 (1970)). Unnecessary or premature decisions of constitutional questions should be avoided, and parties actually protected by a statute or constitutional provision are generally best situated to vindicate their own rights. See *Greenwood Village v. Petitioners for Proposed City of Centennial*, supra.

*Id.*

16. SBP asserts that if the provisions of adopted ballot initiative ordinance O-2024-28 are not upheld, particularly as they are applied to this Property, the conditions and aesthetics of Belmar Park will be adversely impacted thereby damaging the interests of its members, the City's residents and visitors who regularly use and enjoy Belmar Park, and the property values of its members and those City residents who were induced to purchase their properties in part relying on the use and enjoyment of Belmar Park in its historically stable and current state.

## MATERIAL FACTUAL BACKGROUND

### I. The Property

17. On August 31, 1972, the Irongate Executive Plaza Subdivision Final Plat was recorded with the Jefferson County Clerk and Recorder at Reception # 72514916, which depicts a subdivision with two lots that are now known as 777 S. Yarrow and 777 S. Wadsworth. (Exhibit 1)

18. Any subdivision agreement between the then property owner, LMC Community Organization, and the City that supports the recorded subdivision plat has not been recorded or disclosed by the City or the Kairoi Defendants.

19. Belmar Park ("the Park") was created in January 1974 and ownership of it was transferred to the City as the result of a court case and a lengthy dispute between the citizens and the City as the to future of what was then then commonly known as either the Belmar Estate or the Stanton Estate, left by Denver Post heiress May Bonfils Stanton's widower to the Archdiocese of Denver.

20. History Colorado reports that the elaborate Belmar Mansion was demolished on the Property now in dispute, where the Irongate Executive Plaza office buildings were then constructed. [1]

21. Certain surviving ornate fixtures from the Belmar Mansion remain on the western edge of the Property and on the eastern edge of the Belmar Park property.

22. The City of Lakewood website describes Belmar Park as[2]:

> One of the true jewels of the City of Lakewood park system, Belmar Park is a peaceful enclave in the center of town. At 132 rolling acres of natural grasslands and trees, the park offers nearly two miles of paved trails, over 17-acres of water, a creek and a wide variety of waterfowl and native plant communities.

23. Kountze (Belmar) Lake, ("the Lake,") and its associated pathways are located immediately on the Park's eastern lot line adjacent to the Property in dispute. (Exhibit 2)

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[1] https://www.historycolorado.org/story/articles-print/2018/10/19/may-bonfils-and-her-lost-belmar-mansion-lavish-lakewood-estate

[2] https://www.lakewood.org/Government/Departments/Community-Resources/Parks-Forestry-and-Open-Space/A-to-Z-Park-List/Belmar-Park

24. On August 25, 1988, a modification to the Irongate Executive Park ODP Site Plan was recorded with the Jefferson County Clerk and Recorder at Reception # 88083183, which depicts the office buildings as constructed on the two lots. (Exhibit 3)

25. In 2009 the Property and its adjacent parcel were still zoned PD-117, which translates to a Planned Development – Irongate Executive Plaza. (Exhibit 4)

26. On December 10, 2012, the City adopted a new comprehensive Zoning Ordinance.

27. On or about December 10, 2012, the Property and the adjacent property were rezoned to M-C-U, Mixed Use – Core – Urban district despite the continuing existence of the Irongate Executive Plaza Subdivision as a planned development and other nearby subdivisions retaining their PD zoning designations. (Exhibit 5)

28. M-C-U zoning authorizes many uses by right other than multi-family housing. (Exhibit 6)

29. M-C-U zoning requires "All single-use multifamily development must provide at least 30% open space." (*Id*., note 4)

30. On June 21, 2021, a Special Warranty Deed was recorded with the Jefferson County Clerk and Recorder where ownership of the Property was granted by Irongate Offices, LLC, to Belmar Owner, LLC. (Exhibit 7)

31. This Special Warranty Deed includes at its Exhibit B a list of thirteen (13) of "Permitted Exceptions," which are limitations on the title pursuant to C.R.S § 38-30-113(5)(a). (*Id.*)

32. Records maintained by the Tax Assessor of Jefferson County report the Property includes 5.234 acres of land.

33. Records maintained by the Tax Assessor of Jefferson County report that the consideration for this transaction was $6 million.

34. The legal description of the property purchased is:

**Exhibit A**
Legal Description

Lot 2, IRONGATE EXECUTIVE PLAZA SUBDIVISION, County of Jefferson, State of Colorado,

Excepting therefrom those portions conveyed to the City of Lakewood by Deeds recorded November 8, 2000, Under Reception No. F1142026, and November 8, 2000, Under Reception No. F1142028,

Also known by street and number as: 777 South Yarrow Street, Lakewood, CO.

35. No recorded documents can be discovered that have vacated or terminated the 1972 subdivision plat and any supporting agreement that govern the Property as part of the Irongate Executive Plaza Subdivision.

36. The Kairoi Defendants' Complaint admits that the 2021 purchase of the Property includes an option to purchase the adjacent property at 777 S. Wadsworth, which records maintained by the Tax Assessor of Jefferson County show is currently still titled to Irongate Offices, LLC.

37. The Property currently contains a two-story office building, which according to records maintained by the Tax Assessor of Jefferson County was built in 1964.

38. The 777 S. Wadsworth property contains three two-story office buildings, which according to records maintained by the Tax Assessor of Jefferson County were built in 1974.

39. The office building on the Property has been effectively abandoned for an undetermined length of time and was recently boarded up and fenced off while upon information and belief a minimum number of tenants remain active in the 777 S. Wadsworth building(s).

40. For years the public has used the parking lots on the Property and its companion property to park vehicles and access the Park, its paths, the Belmar mansion fixtures and particularly the Lake, even when the Property's office building was in active use.

41. The Property and its companion property contain a substantial number of mature and potentially old-growth trees.

42. The Property is surrounded on its other three sides by a parcel owned by the City of Lakewood, commonly referred to as Belmar Park.

43. The Property is 2.5 miles from the nearest light-rail station at Wadsworth and 13th Avenue, and 0.2 miles from the nearest RTD bus stop, which is on Wadsworth Boulevard south of W. Ohio Avenue.

## II. <u>The Development Dispute</u>

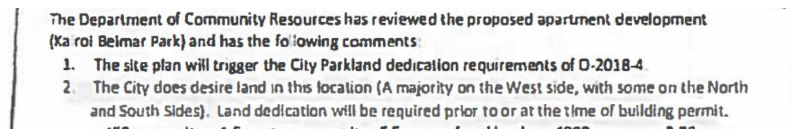
44. On February 12, 2021, before Belmar Owners LLC purchased the Property, a representative from Kimley-Horn, which holds itself out to be a firm of Engineering Planning and Design Consultants, sent the City a letter with a subject line: RE: Kairoi Belmar Park – Pre-Planning Project Summary Letter.

45. This letter states that "Kairoi aims to develop a high-quality community that will continue to enhance the Belmar and Belmar Park neighborhood while working to connect and integrate with the adjacent lake and park system."

46. The language of the letter expresses Kairoi's intent to capitalize on the benefits of Belmar Park in favor of the development's anticipated residents for its own gain:

> 6. As part of the Enhanced Development Menu requirements, what is the best method to work with the City team to work through various thoughts and ideas of how we can best connect and integrate into the Belmar Park network in efforts to further amplify the amenities and experience provided? Who administers this process? We'd like to have a "kick-off" meeting with the City agents involved in this in order to understand intent and align interests.

47. On March 1, 2021, Ross Williams, Facilities Planner for the City, sent an email to Matt Post, Project Manager for the City, including the following comments, most importantly that the City wanted the dedication of actual land from this development:


The Department of Community Resources has reviewed the proposed apartment development (Kairoi Belmar Park) and has the following comments:
1. The site plan will trigger the City Parkland dedication requirements of O-2018-4
2. The City does desire land in this location (A majority on the West side, with some on the North and South Sides). Land dedication will be required prior to or at the time of building permit.

(Exhibit 8)

48. An April 2, 2021, response letter from the Matt Post to Meaghan Turner of Kimley-Horn confirms the City would expect an actual land dedication and does **NOT** agree to accept a fee-in-lieu of the required land dedication. (Exhibit 9, ¶ #6)

49. The April 2, 2021, response letter explains that the City's Department of Community Resources administers the application of the Park Land Dedication code. (*Id.*)

50. The participants and content of the ensuing negotiations between the City and the Kairoi Defendants and/or their agent(s) remain unknown at this time, but the City's position eventually changed.

51. What benefit the City received from the Kairoi Defendants in exchange for a concession to no longer seek the dedication of actual land on the site also remains unknown at this time.

52. On June 11, 2021, the City issued a revision to the April 2, 2021, letter indicating it would **conditionally accept** "yet to be determined " "improvements in-lieu" of the parkland dedication requirements based on a calculation that would be "provided when a final unit count is determined." (Exhibit 10, ¶ #6)

53. The original and revised versions of this letter also state that the parcel's M-C-U zoning would impose a requirement of thirty (30) percent dedication of open space for the planned single-use multifamily development. (*Id.*, ¶ 13)

54. As previously stated, on June 21, 2021, Belmar Owner, LLC closed on purchase of the Property.

55. On April 27, 2022, the first plans were submitted to the City for redevelopment of the Property.

56. The cover page of the initial 52-page Major Site Plan ("MSP") asserts that the Developer/Owner of the Property is Kairoi Properties, LLC, at 711 Navarro St., Suite 400, San Antonio, TX.[3] (Exhibit 11)

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[3] The City of Lakewood uses a web-based system call eTRAKiT to provide access for the public and developers to view and manage documents for planning review. Documents related to the Belmar Park West project may be found at https://lakw-trk.aspgov.com/eTRAKiT/Search/project.aspx?activityNo=SP22-0010.

57. Kairoi Properties, LLC has never been registered with the Colorado Secretary of State as an entity doing business in Colorado, foreign or otherwise.

58. There have been no documents recorded granting ownership of the Property from Belmar Owner, LLC to Kairoi Properties, LLC.

59. The document listed on eTRAKiT as the Belmar Park West – Letter of Authorization from Property Owner.pdf is actually not related to this Property but is related to another controversial Lakewood development – White Fence Farm.[4] (Exhibit 12)

60. The details from the submitted MSPs relevant to this dispute include but are not limited to:

    a. The proposed structure will be 75' tall including at least five (5) stories.
    b. The building with a perimeter road is designed with a zero-lot line buffer to the Belmar Park property. (Exhibit 13)
    c. The structure will offer the following residential units:

| | MINIMUM/MAXIMUM | UNITS PROVIDED |
|---|---|---|
| NUMBER OF RESIDENTIAL UNITS: | 59/NO MAXIMUM | 412 |
| STUDIO/1 BEDROOM | NO MIN/NO MAX | 297 |
| 2 BEDROOM | NO MIN/NO MAX | 104 |
| 3 BEDROOM | NO MIN/NO MAX | 11 |

    d. The development includes 545 parking spaces.
    e. The development includes destroying sixty-five otherwise viable existing trees and the wildlife habitat that may be associated with those trees.
    f. The development includes zero public park land or open space on site.

61. Upon information and belief, the City and the Kairoi Defendants do not dispute that the proposed 412 units are not considered "affordable housing" but instead will be offered and managed as luxury apartments.

62. The Lakewood Municipal Code provides the standards by which development plans are evaluated for approval.

63. The MSP as proposed creates a Lot #3 in the existing Irongate Executive Plaza Subdivision, and will still be subject to the Irongate Executive Plaza Subdivision Plat and agreement(s):

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[4] https://lakw-trk.aspgov.com/eTRAKiT/viewAttachment.aspx?Group=PROJECT&ActivityNo=SP22-0010&key=EPR%3a2204270331127

# 777 S YARROW ST MULTIFAMILY

LAKEWOOD, CO 80226

## MAJOR SITE PLAN

LOT 3, IRONGATE EXECUTIVE PLAZA SUBDIVISION LOT LINE ADJUSTMENT NO. 1,
PARCEL LOCATED IN THE WEST QUARTER OF SECTION 14,
TOWNSHIP 4 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN,
CITY OF LAKEWOOD, COUNTY OF JEFFERSON, STATE OF COLORADO

64. The MSP as proposed will require new easements, variances to applicable Lakewood Municipal Codes, waivers and lot line adjustments, which are discretionary decisions that have historically been made by City staff behind closed doors and without public input.

65. On May 9, 2022, Ross Williams sent another email to Matt Post, both City employees, confirming that Community Resources would accept “improvements in lieu” to meet the Kairoi Belmar Park development’s parkland dedication requirement, and the improvements the City was requesting were new parking lots for public access to Belmar Park. (Exhibit 14, ¶¶ 2-3)

66. This email states that “Note on site plans and or the lot line adjustment plat needs to designate how Park Dedication requirements will be satisfied.” (*Id.*, ¶ 6)

67. On September 29, 2022 the City provided its Comment Package after review of the first plan submittal, which is silent as the parkland dedication requirement. (Exhibit 15)

68. On June 5, 2023, the City provided its Comment Package after review of the second plan submittal, which is silent as the parkland dedication requirement. (Exhibit 16)

69. On December 6, 2023, mediator Wes Wollenweber facilitated a meeting between representatives of the City, the Kairoi Defendants, and the adjacent Belmar Commons HOA.

70. Kit Newland, Director of Community Resources for the City of Lakewood, in an undated letter after the December 2023 meeting described how the City planned to “expend the fees in lieu that are due to the City from both the Park Dedication and the Tree Replacements…” (Exhibit 17)

71. The participants and content of negotiations between the City and the Kairoi Defendants that resulted in the City changing its position such that it would accept a fee-in-lieu payment for the parkland dedication and the benefit the City received in exchange for this concession are as yet unknown.

72. In December 2023 SBP was formed to advocate for its members’ and the public’s interest in preserving the character and aesthetic of Belmar Park as historically and currently enjoyed by the citizens, visitors and wildlife.

73. The Lakewood Zoning Code at Section 17.2.7.3 allows approval of the Kairoi Defendants' development by the Planning Director and other administrative staff without any public process or public input.

74. The only party permitted by the Lakewood Zoning Code Section 17.2.7.4 to appeal the Planning Director's MSP decisions to the Planning Commission is the applicant, which in this case is solely the Kairoi Defendants.

75. The Planning Director has the discretion under Lakewood Zoning Code Section 17.2.7.4(B)(5) to refer the MSP decision to the Planning Commission, whose decisions are final.

76. SBP and other members of the general public provided comments at multiple public meetings and on Lakewood Speaks, the City's online participation platform, opposing the Kairoi Defendants' plans as not in the best interest of Lakewood and its citizens, incompatible with this site and destructive to the character, habitat and aesthetic of the Park.

77. On March 12, 2024, the City announced that Travis Parker, Planning Director for the City of Lakewood, had decided that due to the controversial nature of this development the approval of the plans would be determined by the Lakewood Planning Commission's public process rather than by staff without public participation. (Exhibit 18)

78. On April 30, 2024, the City provided its Comment Package after review of the third plan submittal, which contains the first reference to the City accepting a fee-in-lieu for the parkland dedication. (Exhibit 19, ¶16)

79. On December 12, 2024, the City provided its Comment Package after review of the fourth plan submittal, which contains an update that the fee-in-lieu option was no longer available based on the adoption of ordinance O-2024-28. (Exhibit 20, ¶ 17)

80. On January 9, 2025, the City provided its Comment Package after review of the fifth plan submittal, which contains a reminder that the fee-in-lieu option was no longer available. (Exhibit 21, ¶ 16)

## III. <u>The Ballot Initiative</u>

81. The Lakewood Municipal Code ("the Code") Title 2, Chapter 2.52 governs the procedures to be followed for a ballot initiative.

82. On March 4, 2024, pursuant to the Code Section 2.52.30(A), Ms. Kentner and others submitted to the Lakewood City Clerk a petition for ballot initiative ordinance O-2024-28 for the Clerk to prepare a summary, set the title and approve the forms.

83. Ordinance O-2024-28 proposed three substantive changes to the Code relevant to this litigation:

a. Discontinuation of the fee-in-lieu option for developers to pay money to the City rather than dedicating park land or open space.
b. Removing the existing Code provision at Chapter 14.16.030 that stated a waiver of the need for five (5.0) acres of the required ten- and one-half acres (10.5) per 1,000 population for regional parks because the circumstances under which this waiver was created had substantially changed since 1983.[5]
c. Make these changes effective for all projects where building permits had not yet been issued.

84. On March 28, 2024, the Lakewood City Clerk provided the required approved documents, and circulation of the petition to the registered electors began.

85. Ms. Kentner and other volunteers spend months gathering signatures and educating the electors about the provisions of O-2024-28.

86. On September 20, 2024, Ms. Kenter and others, pursuant to Code Section 2.5.090, submitted the gathered signatures to the Lakewood City Clerk for certification.

87. On October 21, 2024, the Lakewood City Clerk certified that the ballot initiative ordinance O-2024-28 had submitted sufficient verified signatures to proceed.

## IV. HB 24-1313

88. On February 20, 2024, HB 24-1313, Housing in Transit-Oriented Communities was first introduced into the Colorado House of Representatives.[6]

89. HB 24-1313 contains the following legislative declaration:

> 17 (c) THE AVAILABILITY OF AFFORDABLE HOUSING IS A MATTER OF
> 18 MIXED STATEWIDE AND LOCAL CONCERN. THEREFORE, IT IS THE INTENT OF
> 19 THE GENERAL ASSEMBLY IN ENACTING THIS PART 2 TO:

90. The original language of the HB 24-1313 is silent as to "fee-in-lieu" options for developers to pay money rather than dedicate park land or open space.

91. On April 18, 2024, HB 24-1313 was introduced into the Colorado Senate for consideration.

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[5] The way this code was originally written has caused a great deal of confusion. The code was always set at 10.5 acres per 1,000 people. The waiver of 5.0 acres for regional parks made the effective rate 5.5 acres per 1,000 people since 1983.
[6] The legislative history of HB 24-1313 is a matter of public record that can be reviewed at https://leg.colorado.gov/bills/hb24-1313.

92. The language of the HB 24-1313 as introduced to the Senate was silent as to a requirement that municipalities must offer a "fee-in-lieu" alterative to permit developers to pay money rather than dedicate park land or open space.

93. At 6:48 pm on April 30, 2024, Senator Faith Winter moved in the Senate Committee for Local Government and Housing for the adoption of an amendment entitled Attachment B, HB1313-L077, where the following language was proposed:

> 8 (1.5) WHEN REQUIRING AN OWNER OF PRIVATE PROPERTY TO
> 9 DEDICATE REAL PROPERTY TO THE PUBLIC, IF THE SUBJECT PROPERTY DOES
> 10 NOT MEET LOCAL GOVERNMENT STANDARDS FOR DEDICATION AS
> 11 DETERMINED BY THE LOCAL GOVERNMENT, INCLUDING DEDICATION TO
> 12 THE PARKS, TRAILS, OR OPEN SPACE SYSTEMS, A LOCAL GOVERNMENT
> 13 SHALL PROVIDE THE PRIVATE PROPERTY OWNER THE OPTION OF PAYING A
> 14 FEE IN LIEU OF DEDICATION.".

94. The legislative record documents that this motion was passed two minutes later without a debate and without single member of the Senate committee voting yay or nay, and so the language was added to the bill essentially by default.

95. On May 13, 2024, HB 24-1313 was signed into law.

## V. The City's Actions related to the Initiative

96. Lakewood Municipal Code Section 2.52.110 governs the City's options when presented with a ballot initiative ordinance where the City Clerk has certified that sufficient signatures have been gathered for it to go forward.

> Within 30 days after the petition is presented by the City Clerk, the City Council shall either adopt without alteration the initiated ordinance by a majority vote of all members of City Council, or submit the initiated ordinance to a vote of the registered electors

97. On April 15, 2024, when the ballot initiative was just getting started, the City held a Study Session where an agenda item was Item 4 - Proposed Modifications to Park Dedication.[7]

98. The Staff Memo analysis documented that the City had not required the dedication of actual land to satisfy the park and open space dedication requirement since 2013. (Exhibit 22, p. 6)

99. The Staff Memo background information skips over the details that the land dedication ordinance at that time required 10.5 acres per new 1,000 residents but that 5.0 acres of this

[7] Online comments and video of this meeting are available on Lakewood Speaks at https://lakewoodspeaks.org/items/3497

requirement were waived based on a determination made in 1983 and not reaffirmed since[8] that the regional parks were sufficient. (Exhibit 22, p. 1-2)

100. Although the issue seems to be studied periodically, the Staff Memo is silent as the City's specific actions or plans to acquire additional park or open space to serve the increased Lakewood population that has and will result from an aggressive approach to increased housing density. (Exhibit 22)

101. The Staff Memo acknowledges the City's dilemma where it has been aggressively developing housing density for years without commensurate increases in available parks and open space:

> As an infill community, the City of Lakewood faces an unusual challenge associated with virtually no room to expand typical neighborhood development. This is contrary to other comparable metro area communities that are suburban in nature, with room to expand suburban development and build new parks.

(Exh 22, p. 2)

102. On April 22, 2024, the City increased the value it used to calculate the fee-in-lieu for the parkland dedication to $432,737 per acre effective June 1, 2024, for "development projects formally submitted after this date." (Exhibit 23)

103. On November 4, 2024, during a Special Meeting, a majority (8-3) of the members of the Lakewood City Council debated and voted to adopt the ballot initiative ordinance without alteration. [9]

104. During that meeting the debate regarding the ballot initiative ordinance grew heated, and fifty-two (52) online comments were posted on Lakewood Speaks. (See footnote 9)

105. During this debate several members of the City Council described the ballot initiative as "illegal."

106. The City Attorney, Alison McKenney Brown, recused herself from comment and no source was offered as to the City Council's opinions about the legality of the ballot initiative ordinance.

107. Subsequent media reports repeat the comments by members of the City Council that the adopted ordinance is "illegal." (Exhibit 24)

108. Pursuant to Lakewood Code Article VII, Section 7.4, the adopted ordinance took effect on December 7, 2024.

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[8] In 2018 ordinance O-2018-4 was passed modifying the Parkland Dedication Ordinance and Policy but it is silent as to any affirmation about the continuing sufficiency of the regional parks.

[9] Online comments and video of this meeting are available on Lakewood Speaks at https://lakewoodspeaks.org/items/3945

109. At no time since December 7, 2024, has the Lakewood City Council taken up any public discussions to modify or repeal the adopted ordinance to address City Council members' concerns about its "illegal" nature.

## VI. Events Since Ordinance O-2024-28 was Adopted

110. On December 10, 2024, the City held a Design Review Commission meeting where during the Staff Update agenda item a document was handed out entitled " FREQUENTLY ASKED QUESTIONS ABOUT ORDINANCE O-2024-28." ("the FAQ Memo") (Exhibit 25)

111. This FAQ Memo, drafted and disseminated by the City, misstates the provisions of O-2024-28, including but not limited to the statement in paragraph #4,

> While Section 14.16.040 of Ordinance O-2024-28 mandates that its requirements "apply to all current and future developments including applications in process that do not have all building permits approved and paid for" Section 14.16.040 clarifies that "all residential developers shall provide a minimum of 10.5 acres of park area on site. . .."

112. As previously stated, on December 12, 2024, the City issued a letter containing its comments on the Kairoi Defendants' fourth submittal of plans, which includes the following statement regarding the impending Planning Commission's public review and approval process:

> 4. Pursuant to Section 17.2.7.3 and 17.2.6.5 of the zoning ordinance, the Planning Director is referring the Site Plan and Minor Waiver Application to the Planning Commission for a decision. Please work to address all redlines and comments with the next resubmittal.
>
> There are several zoning regulations that are not being satisfied and/or staff was unable to verify compliance upon completion of the 4th MSP review. Please note that the site plan must satisfy all applicable zoning regulations before a public hearing can be scheduled. Revisions based on the following comments and attached redlines shall be completed and returned by December 20, 2024, for the project to be scheduled for a public hearing with the Lakewood Planning commission on January 29, 2025.

(Exhibit 20)

113. At some unknown point shortly thereafter, it became public knowledge that the Planning Commission review of this project was tentatively scheduled for January 29, 2025.

114. The Kairoi Defendants failed to meet the December 20, 2024, deadline to submit revisions to hold the scheduled date.

115. Instead, on December 20, 2024, the Kairoi Defendants filed suit against the City.

116. The Complaint filed by the Kairoi Defendants includes their first admissions that the Belmar West plans are substantially incomplete because the complete plans include an even larger development on the adjacent property still owned by Irongate Offices, LLC.

117. On January 3, 2025, the Kairoi Defendants filed their "Unopposed Motion for Preliminary Injunction."

118. Whatever conferral took place between the parties, the Kairoi Defendants felt confident they could represent that the City did not oppose their request for a Preliminary Injunction ("PI.")

119. The requested PI would allow the Kairoi Defendants to seek the City's approval of its project under the prior Municipal Code section 14.16 while that litigation is pending.

120. On January 6, 2025, the City filed its "Conferral Statement Regarding Plaintiffs Motion for Preliminary Injunction" stating that it was not really "unopposed" to the PI.

121. The City's Conferral Statement attempts to impose what sounds like a material limitation that really isn't:

> Defendant does not oppose the entry of a preliminary injunction so long Plaintiffs' developments are subject to the provisions of the ordinance if Defendant wins this lawsuit.

122. The practical effect of the PI will not be preliminary or temporary, because once the Kairoi Defendants' development is approved and building permits are obtained the express language of when ordinance O-2024-28 is applicable means it would no longer apply to the development whether the ordinance's material provisions are eventually upheld by this Court or not.

123. It is also likely that once the Kairoi Defendants obtain approval of their proposed development under the prior provisions and the related building permits they will seek dismissal of the case as moot.

124. As previously stated, on January 9, 2025, the City issued a letter containing its comments on the Kairoi Defendants' fifth submittal of plans, which confirmed the **CANCELLATION** of the previously proposed January 29, 2025, Planning Commission public review and consideration of the proposed MSP.

> 4. The Site Plan and Minor Waiver Application are being referred to the Planning Commission for a decision. Please continue to address all redlines and comments. A new hearing date will be selected once all comments have been addressed and all required documents have been received by City Staff.

(Exhibit 21)

125. This letter confirms that the Planning Department hearing date has been indefinitely postponed until the Kairoi Defendants submit plans that resolve the City's redlines and comments. (Exhibit 21)

126. On January 14, 2025, this Court granted the Preliminary Injunction.

**FIRST CLAIM FOR RELIEF**
**DECLARATORY RELIEF – THE FEE-IN-LIEU REQUIREMENT IN HB 24-1313 CONSTITUTES IMPROPER INTERFERECE WITH HOME RULE POLICE POWER**

127. The allegations contained in paragraphs 1 through 126 above are incorporated herein by reference as if fully set forth herein.

128. The doctrine of preemption exists to reconcile differences between laws enacted to address state and local interests because both levels of government exercise the power to legislate:

> Home rule cities are granted plenary authority by the constitution to regulate issues of local concern. *See* Colo. Const. art. XX, § 6. If a home rule city takes action on a matter of local concern, and that ordinance conflicts with a state statute, the home rule provision takes precedence over the state statute. *See id.; see also City & County of Denver v. State,* 788 P.2d 764, 767 (Colo.1990) (finding a state statute unconstitutional because it conflicted with a local initiative on a matter of local concern). If the matter is one of statewide concern, however, home rule cities may legislate in that area only if the constitution or a statute authorizes the legislation. *See City & County of Denver,* 788 P.2d at 767. Otherwise, state statutes take precedence over home rule actions. *See id.* **If the matter is one of mixed local and statewide concern, a home rule provision and a state statute may coexist, as long as the measures can be harmonized.** If the home rule action conflicts with the state legislature's action, however, the state statute supersedes the home rule authority. *See id*

.
*Town of Telluride v. Lot Thirty-Four Venture, L.L.C.*, 3 P.3d 30, 37 (Colo. 2000), *as modified on denial of reh'g* (Feb. 26, 2000)(emphasis added).

129. The State Legislature is not vested with the power to unilaterally declare a matter as one where state-wide interests take precedence, and this determination is reserved for the judiciary:

> While the statutory declaration is relevant, it is not binding. If the constitutional provisions establishing the right of home rule municipalities to legislate as to their local affairs are to have any meaning, we must look beyond the mere declaration of a state interest and determine whether in fact the interest is present.

*City & Cnty. of Denver v. State*, 788 P.2d 764, 768 (Colo. 1990).

130. The Colorado Courts have established a test to guide the analysis of the competing interests:

> In determining whether the state interest is sufficient to justify preemption of home rule authority, this Court has articulated various factors that drive the analysis. These include: (1) the need for statewide uniformity of regulation; (2) the impact of the measure on individuals living outside the municipality; (3) historical considerations concerning whether the subject matter is one traditionally governed by state or local government; and (4) whether the

> Colorado Constitution specifically commits the particular matter to state or local regulation. *See Winslow Constr. Co. v. City & County of Denver,* 960 P.2d 685, 693 (Colo.1998); *Fraternal Order of Police v. City & County of Denver,* 926 P.2d 582, 589 (Colo.1996); *Voss v. Lundvall Bros., Inc.,* 830 P.2d 1061, 1067 (Colo.1992); *City & County of Denver,* 788 P.2d at 768. All of these factors are intended to assist the court in measuring the importance of the state interests against the importance of the local interests in order to make the ad hoc decision as to which law should prevail.

*Town of Telluride v. Lot Thirty-Four Venture, L.L*.C., supra at 37.

131. Here, the state-wide interest espoused by the State Legislature relates to a general increase in the availability of housing. C.R.S. § 29-35-204(1)(c).

132. The statute calls for state-wide "cooperation" in increasing the availability of housing. *Id*.

133. These legislative declarations do not gift the Legislature with the power to usurp the constitutional police power each home rule municipality has historically exercised or for the Legislature to dictate and overrule the specific zoning codes each municipality enacts to protect unique local interests while simultaneously serving the undisputed state-wide need to increase the availability of quality housing.

> A dominant state interest alone, however, does not necessarily evince a legislative intent to exclude any local regulation.

*City of Longmont v. Colorado Oil & Gas Ass'n*, 369 P.3d 573, 584 (Colo. 2016).

134. The Courts have the jurisdiction to determine whether the local interests should prevail:

> To ensure home-rule cities this constitutionally-guaranteed independence from state control in their internal affairs, we have consistently said that in matters of local concern, a home-rule ordinance supersedes a conflicting state statute.

*Id.* at 579.

135. "Zoning is a matter of local concern." *City of Greeley v. Ells*, 527 P.2d 538, 541 (1974).

136. It also is well-settled law that local and state-wide legislation on the same subject matter can co-exist, particularly where "the city's ordinances appear to be complementary in that they provide mechanisms to deal with" the state-wide concern. *Boulder Cnty. Apartment Ass'n v. City of Boulder*, 97 P.3d 332, 337 (Colo. App. 2004).

137. The mandatory "fee-in-lieu" provision, adopted as a last-minute amendment to HB 24-1313, improperly dictates to all municipalities, home rule and otherwise, a "one-size-fits-all" mechanism that improperly interferes with the municipalities' powers to legislate mechanisms that respect local interests while still delivering the state-wide interest, which is an increased availability of housing.

138. The City of Lakewood's adopted ordinance O-2024-28 is a proper exercise of local police powers to legislate matters of local interest.

139. HB 24-1313's language mandating that municipalities must provide a fee-in-lieu option improperly usurps local police powers and should be preempted.

**SECOND CLAIM FOR RELIEF**
**DECLARATORY RELIEF – AMENDMENT OF PARK STANDARDS DOES NOT CONSTITUTE AN UNCONSTITUTIONAL TAKING**

140. The allegations contained in paragraphs 1 through 139 above are incorporated herein by reference as if fully set forth herein.

141. The takings doctrine "balances the competing goals of compensating landowners on whom a significant burden of regulation falls and avoiding prohibitory costs to needed government regulation." *Animas Valley Sand & Gravel, Inc. v. Bd. of Cnty. Comm'rs of Cnty. of La Plata,* 38 P.3d 59, 63 (Colo. 2001).

142. Takings law is fundamental constitutional protection for property owners' rights:

> The Colorado takings clause provides, in relevant part, "[p]rivate property shall not be taken or damaged, for public or private use, without just compensation." Colo. Const. art. II, § 15.

*Id.*

143. However, the concept of a taking has limits, because "a landowner is not entitled to the most beneficial use of his or her land." *Id.*

144. Asserting a decrease in a property's value is not enough to support a finding of a taking:

> First, we point to Justice Holmes's famous dictum that permits regulation without compensation unless the regulation goes "too far." *Mahon,* 260 U.S. at 415, 43 S.Ct. 158. Second, we note that the likely purpose of the fact-specific test is to provide an avenue of redress for a landowner whose property retains value that is slightly greater than de minimis. *See Lucas,* 505 U.S. at 1019 n. 8, 112 S.Ct. 2886 (in which the Court references the *Penn Central* factors in response to the dissent's criticism that under the economic viability test " '[the] landowner whose property is diminished in value 95% recovers nothing,' while the landowner who suffers a complete elimination of value 'recovers the land's full value.' " (alterations in original)). Third, we look to a number of cases in which the Court determined that even a significant reduction in the value of land did not amount to a taking. *See, e.g., Agins,* 447 U.S. 255, 100 S.Ct. 2138 (no taking with an eighty-five percent reduction in value); *Vill. of Euclid v. Ambler Realty Co.,* 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926) (no taking

> with a seventy-five percent reduction in value); *Hadacheck v. Sebastian,* 239 U.S. 394, 36 S.Ct. 143, 60 L.Ed. 348 (1915)(no taking with a 92.5% diminution in value). Finally, we note that in *Palazzolo,* the Court ordered a fact-specific inquiry when the regulation diminished the value of the petitioner's land by over ninety-three percent. 121 S.Ct. at 2456, 2457.

*Id*. at 65-66.

145. Here, the pre-ballot initiative Lakewood Municipal Code already expressly stated the standard of 10.5 acres of parkland to be dedicated for each 1,000 additional headcount (“heads in beds”) estimated for a particular residential development. Lakewood Municipal Code § 14.16.020.

> **14.16.020 - Park standards.**
>
> For purposes of this title, the city's park standards shall be a minimum of 10.5 acres of park area per 1,000 anticipated population within the proposed development. This standard of 10.5 acres per 1,000 population is composed of the following elements:
> A. Five acres per 1,000 population for regional parks;
> B. Three acres per 1,000 population for community parks;
> C. 2.5 acres per 1,000 population for neighborhood parks.
>
> (Ord. O-2018-4 § 1, 2018; Ord. O-83-137 § 1 (part), 1983).

146. The Lakewood Municipal Code also included at §14.16.030 (emphasis added) a waiver of a portion of this requirement based on the circumstances at the time the code was adopted, which was 1983.

> **14.16.030 - Regional parks provided.**
>
> The City Council determines, **as of the time of adoption of the ordinance codified in this chapter**, that the regional park needs of the residents of the City of Lakewood are satisfied by Bear Creek Lake Park, William Frederick Hayden Park, the Bear Creek Greenbelt, Jefferson County Parks, and State of Colorado parks to the west and south of the City of Lakewood. Therefore, a residential development shall not be obligated to *dedicate* land for regional park purposes in the City of Lakewood. Consequently, that the operating standard for *dedication* of *parkland* shall be 5.5 acres of *parkland* per 1,000 population for community parks and neighborhood parks.
>
> (Ord. O-2019-24 § 4, 2019; Ord. O-2018-4 § 1, 2018; Ord. O-2004-30 § 1, 2004; Ord. O-83-137 § 1 (part), 1983).

147. As a threshold matter, the Courts have found that article XX, section 1 of the Colorado Constitution provides that a municipality may "condemn" property for open space and parks:

> [W]e find that the General Assembly has on multiple occasions conferred authority to statutory towns and cities to condemn land for parks, recreation, or open space. *See, e.g.,* § 29–7–104, –107, C.R.S. (2007) (granting municipal corporations the authority to condemn property for "park or recreational purposes or for the preservation or conservation of sites, scenes, open space and vistas"); § 32–1–1005(1)(c), C.R.S. (2007) (granting parks and recreational districts the power to condemn for access to "park and recreational facilities."). Two statutes specify that a condemnation for open space or parks can be extraterritorial. Section 31–25–201(1), C.R.S. (2007), grants cities the authority to condemn extraterritorially "as in the judgment of the governing body of such city may be necessary" for "park or recreational purposes," "parkways," and "open space" within five miles of a city's boundaries. Section 38–6–110, C.R.S. (2007), grants cities the authority to condemn for "park purposes" outside city boundaries, subject to section 31–25–201(1). In sum, the General Assembly's ability to confer upon municipalities the power to condemn for parks and open space is evidenced by the numerous statutes which in fact confer that power, thus confirming that parks and open space are lawful, public, local, and municipal purposes within the scope of article XX.
>
> Second, we recognize that land use policy traditionally has been a local government function in the state, *see Town of Telluride,* 3 P.3d at 39 n. 9 (noting that land use is "traditionally regulated by local government"), and that Colorado municipalities are active in incorporating open space, parks, and recreation into their land planning. In addition to the statutory towns and cities that have acted to preserve open space pursuant to the statutes described above, many Colorado home rule municipalities of all sizes and geographies manage extensive open space programs. More pertinent to the case at hand, a number of these home rule municipalities have seen fit to acquire open space outside their municipal boundaries. Local planning for open space and park land acquisition and development is a particularly important tool in the state's mountain resort communities, where unprecedented growth places pressure on the environmental qualities and recreational assets upon which these communities depend. We conclude that municipalities, neighboring counties, and the state have traditionally acted on the presumption that land planning for open space and parks is a local government function

*Town of Telluride v. San Miguel Valley Corp.,* 185 P.3d 161, 168–69 (Colo. 2008)(footnotes omitted).

148. It is undisputed that Colorado's population has increased exponentially since 1974 and shows every indication of continuing to expand in the coming years, and that efforts must be made to develop housing accordingly. C.R.S. § 29-35-102.

149. The Colorado legislature has also stated that open space and parks are necessary for public health. C.R.S. § 24-67-102.

150. There is no statutory or case law legal foundation to support that the legislature, the Governor or the Courts endorse that unlimited increases in housing density should be pursued without regard for commensurate increases in availability of parks and open space.

151. Protecting public health is a fundamental responsibility of local governments.

> Police power "is an inherent attribute of sovereignty with which the state is endowed for the protection and general welfare of its citizens." *In re Interrogatories of the Governor on Chapter 118, Sess. Laws 1935,* 97 Colo. 587, 595, 52 P.2d 663, 667 (1935). Like the state, municipalities have broad police powers, including the power to establish laws that promote the health, safety, and welfare of citizens. *U.S. Disposal Sys. v. City of Northglenn*, 193 Colo. 277, 280, 567 P.2d 365, 367 (1977); *see also City of Colorado Springs v. Grueskin*, 161 Colo. 281, 288, 422 P.2d 384, 387 (1966) ("The City has inherent power to establish reasonable regulations which tend to promote the public health, welfare and safety."). Section 31–15–103, C.R.S. (2013), gives municipalities[4] "power to make and publish ordinances ... which are necessary and proper to provide for the safety, preserve the health, promote prosperity, and improve the morals, order, comfort, and convenience of such municipality and the inhabitants thereof not inconsistent with the laws of this state."

*Town of Dillon v. Yacht Club Condominiums Home Owners Ass'n*, 325 P.3d 1032, 1038–39 (Colo. 2014) (footnotes omitted).

152. The Courts have jurisdiction to assess the reasonability of municipal ordinances.

> In evaluating an ordinance promulgated for the health, safety, and welfare of the public, a reviewing court applies a presumption of reasonableness. An ordinance is reasonable when it fairly relates to the protection of the health, safety, and welfare of the public.

*Risen v. Cucharas San. & Water Dist.*, 32 P.3d 596, 601 (Colo. App. 2001)(internal citations omitted).

153. The Kairoi Defendants assert that the City's adoption of the ballot initiative ordinance should not apply to its development because it would constitute an unconstitutional taking.

154. This is a misrepresentation of the math plainly stated in ordinance O-2024-28, which simply limits the density of people a development can plan to house based on the amount of acreage a particular site can dedicate to open space.

155. The ordinance is based on the principle that the same undisputed circumstances of explosive population growth since 1983 also apply to the need to protect and promote a reasonably related growth in availability of open space to protect the health of the increased population.

156. There is no legal or factual basis to assert that large swaths of land are available for the City to purchase with fee-in-lieu funds to create new parks or open space to keep pace with the increased demands of the exponentially growing population that has and will result from aggressive increases in housing density the City openly supports.

157. There is no legal or factual basis to support that giving the City money, no matter how much, is an adequate alternative to protecting public health by making parks and open space actually available for use.

158. Elimination of the regional parks waiver stated in 14.16.030 is reasonable for several reasons, including but not limited: the Army Corps of Engineer's pending analysis of reallocation of Bear Creek State Park for water retention[10], lack of reasonable access to State and County parks outside the City's boundaries, and the undisputed exponential increase in population since this provision was adopted in 1983.

159. The Kairoi Defendants' Complaint rightly states that based on its current design, the development plan for a five-story 412-unit luxury apartment building with zero lot lines and zero open space cannot meet the newly adopted ordinance.

160. Their takings argument is flawed because the economic value of the property has only been at most decreased and not completely eliminated.

161. The remedy for this issue is to redesign the development to decrease the number of people who can be housed on the 5.23 acres of land to comply with the newly adopted ordinance.

162. Who should bear the costs of this redesign is also disputed because the length of time this plan has been sitting in development waiting for approval is unreasonable, and if it had been completed in a reasonable time from its inception in 2020/2021 this entire issue would have been resolved differently.

163. The law and these factual circumstances do not support a finding that the City's adoption of O-2024-28 constituted a taking from the Kairoi Defendants.

## THIRD CLAIM FOR RELIEF
## DECLARATORY RELIEF – TIMING OF THE APPLICATION OF THE REVISED CODE IS NOT UNCONSTITUTIONALLY RETROSPECTIVE

164. The allegations contained in paragraphs 1 through 163 above are incorporated herein by reference as if fully set forth herein.

165. The doctrine of retrospectivity, as distinguished from retroactivity, seeks to ensure that legislation at any level of government does not unfairly impede already existing rights.

[10] https://www.nwo.usace.army.mil/Missions/Civil-Works/Planning/Planning-Projects/Bear-Creek-Lake-Reallocation-Feasibility-Study/

> Retroactive application of a law, although disfavored, is not necessarily unconstitutional and may be permitted if the law at issue effects a change that is procedural or remedial. In order to distinguish legislation that is merely retroactive, we use the term "retrospective" only in regard to legislation that "impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past."

*City of Golden v. Parker*, 138 P.3d 285, 289–90 (Colo. 2006)(internal citations omitted).

166. The Courts have established a test to determine if a law is impermissibly retrospective:

> We use a two-step inquiry to determine whether or not a law is retrospective in its operation. *DeWitt,* 54 P.3d at 854. First, we look to the legislative intent to determine whether the law is intended to operate retroactively. *Id.* We require a clear legislative intent that the law apply retroactively to overcome the presumption of prospectivity. *Ficarra,* 849 P.2d at 14. However, express language of retroactive application is not necessary to find that a law is intended to apply retroactively. *Id.*
>
> If we find intent of retroactive application, the second step of the inquiry is to determine whether the retroactively applied law operates retrospectively. A law is retrospective if it either "(1) impairs a vested right, or (2) creates a new obligation, imposes a new duty, or attaches a new disability ...." *DeWitt,* 54 P.3d at 855.

*Id*. at 290.

167. The Courts have established tests to determine if a right is vested:

> [W]e have found that **a right is vested only when it has an "independent existence.**" *People v. D.K.B.,* 843 P.2d 1326, 1331 (Colo.1993). A vested right may be derived from a statute or the common law, but "once it vests it is no longer dependent for its assertion upon the common law or statute under which it may have been acquired." *Ficarra,* 849 P.2d at 15.
>
> We do not employ a fixed formula or a bright-line test for determining whether a right is vested. *Id.* at 17. Rather, we look to three factors: "(1) whether the public interest is advanced or retarded; (2) whether the statute gives effect to or defeats the bona fide intentions or reasonable expectations of the affected individuals; and (3) whether the statute surprises individuals who have relied on a contrary law." *DeWitt,* 54 P.3d at 855.

*Id.* (emphasis added).

168. The analysis of impermissible retrospectivity is not black and white, and public health and safety concerns may be more important:

> A determination that retroactive application of a law impairs a vested right is not dispositive of the retrospectivity inquiry because such a finding "may be balanced against public health and safety concerns, the state's police powers to regulate certain practices, as well as other public policy considerations." *Id.* **Retroactive application of a law that implicates a vested right is only permissible, however, if the law bears a rational relationship to a legitimate government interest.** *Id.* In past cases, we have "appl[ied] a balancing test that weighs public interest and statutory objectives against reasonable expectations and substantial reliance." *Kuhn,* 924 P.2d at 1059–60 (quoting *Ficarra,* 849 P.2d at 17).

*Id*. (emphasis added).

169. The timing of vesting of property rights related to new developments is a matter of statute:

> A vested property right shall be deemed established with respect to any property upon the approval, or conditional approval, of a site specific development plan, following notice and public hearing, by the local government in which the property is situated.

C.R.S. § 24-68-103(1)(b).

170. The contours of vested property rights based on a site specific plan are also a matter of statute:

> A vested property right shall attach to and run with the applicable property and shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site specific development plan including any amendments thereto. **A local government may approve a site specific development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare.** Such conditional approval shall result in a vested property right, although failure to abide by such terms and conditions will result in a forfeiture of vested property rights. **A site specific development plan shall be deemed approved upon the effective date of the local government legal action, resolution, or ordinance relating thereto**. Such approval shall be subject to all rights of referendum and judicial review; except that the period of time permitted by law for the exercise of such rights shall not begin to run until the date of publication, in a newspaper of general circulation within the jurisdiction of the local government granting the approval, of a notice advising the general public of the site specific development plan approval and creation of a vested property right pursuant to this article. Such publication shall occur no later than fourteen days following approval.

C.R.S. § 24-68-103(1)(c)(emphasis added).

171. What constitutes a site specific development plan is also a matter of statute:

> (4)(a) "Site specific development plan" means a plan that has been submitted to a local government by a landowner or such landowner's representative **describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property**. Such plan may be in the form of, but need not be limited to, any of the following plans or approvals: A planned unit development plan, a subdivision plat, a specially planned area, a planned building group, a general submission plan, a preliminary or general development plan, a conditional or special use plan, a development agreement, or any other land use approval designation as may be utilized by a local government. What constitutes a site specific development plan under this article that would trigger a vested property right shall be finally determined by the local government either pursuant to ordinance or regulation or upon an agreement entered into by the local government and the landowner, and the document that triggers such vesting shall be so identified at the time of its approval.

C.R.S. § 24-68-102(4)(a)(emphasis added).

172. Because of the notice the Kairoi Defendants had about the ballot initiative ordinance and its proposed changes to the parkland dedication requirements, the pending ordinance doctrine may apply:

> The pending ordinance doctrine allows local governments to apply ordinances that have yet to be officially enacted, but that are legally "pending" on the date of a permit application. *See National Advertising Co. v. City & County of Denver,* 912 F.2d 405 (10th Cir.1990). For an ordinance to be "pending," the proposed change need not be before the governing body, but the appropriate department of the city must be actively pursuing it. *See* 8 E. McQuillin, *Municipal Corporations* § 25.155 (3d ed.1983). The doctrine may only be applied if the municipality has not unreasonably or arbitrarily refused or delayed issuance of a permit. *See Crittenden v. Hasser,* 41 Colo.App. 235, 585 P.2d 928 (1978).

*Villa at Greeley, Inc. v. Hopper*, 917 P.2d 350, 357 (Colo. App. 1996).

173. The MSP submitted by the Kairoi Defendants was not and remains not substantially complete because it falsely depicts only a portion of the total development planned for the Irongate Executive Plaza Subdivision site, which they openly acknowledge is part of their long-term strategy.

174. This partial plan submission intentionally creates a false set of facts and circumstances upon which the City and its citizens would rely to evaluate the impact on the site as a whole, including but not limited to traffic impact, emergency response services and other infrastructure requirements, and the MSP's conformance to the applicable municipal codes.

175. Even if the MSP were substantially complete, the City has not approved the MSP, and therefore the unapproved MSP conveys no vested property rights.

176. The correspondence from the City to the Kairoi Defendants has evolved multiple times, as reflected by its express language about the parkland dedication, and is not binding because it was never memorialized into a contract or memorandum of understanding ("MOU") between the parties. *James H. Moore & Assocs. Realty, Inc. v. Arrowhead at Vail*, 892 P.2d 367, 372 (Colo. App. 1994).

177. It is internally inconsistent to argue that the City's most recent position on discretionary decisions and deferred calculations on the park land dedication is binding based on correspondence between the parties reacting to the evolving development plans and at the same time acknowledge the reality that the Kairoi Defendants are free to resubmit even substantially altered plans at any time before approval or abandon the development altogether.

178. A finding that the Kairoi Defendants can benefit from the protracted four-year delay since the initial discussions as early as March 2021 in its development approval process would support a claim for unjust enrichment.

179. The Kairoi Defendants had months of notice about the pending ballot initiative ordinance to either obtain approval of its MSP or to enter into an MOU or contract with the City memorializing how the parkland dedication requirements would be applied to the development.

180. Before O-2024-28 was adopted section 14.16.070 of the Lakewood Municipal Code already included the following language as to the timing of the calculation of the parkland dedication:

> All land *dedications*, and/or fee requirements in lieu of land *dedications*, for subdivisions and other residential development shall be met at the time of platting or, if platting is not required, at time of site plan approval. The Director may delay the collection of fees to the time of building permit issuance. The amount of the fee to be paid shall be the fee in effect at the time payment is made.

L.M.C. 14.16.070(A).

181. The timing included in adopted ordinance O-2024-28 reflects similar timing in two provisions:

**14.16.010 - Scope and application.**

Each development containing residential land uses shall dedicate to the city park sites and open space areas in accordance with the provisions of this title. These requirements apply to all current and future developments including applications in process that do not have all building permits approved and paid for.

and

**14.16.070 - Procedure.**

A. All land dedications, subdivisions and other residential development shall be met at the time of platting or, if platting is not required, at time of site plan approval.

182. The Kairoi Defendants had actual notice from the prior code that the parkland dedication provisions would be finalized at the time of site plan approval based on the applicable codes in place at the time of approval.

183. The adopted ordinance O-2024-28 is a valid exercise of the City's police powers to protect the health and safety of the citizens of Lakewood.

184. The unapproved MSP does not establish or convey any vested property rights to the Kairoi Defendants.

185. The City's application of the revised parkland dedication ordinance O-2024-28 to the development does not make the ordinance unconstitutionally retrospective.

**PRAYER FOR RELIEF**

(a) For a finding that the provisions of ballot initiative ordinance O-2024-28 as adopted are lawful and consistent with existing Colorado law.

(b) For a finding that ordinance O-2024-28 preempts the language in HB 24-1313 mandating that municipalities offer a fee-in-lieu option to avoid land dedications.

(c) For any other and further relief as the Court may deem just.

Respectfully submitted this 18th day of January, 2025.

PAT MELLEN LAW LLC.

*/s/ Patricia A. Mellen*

Patricia A. Mellen
*Attorney for Proposed Intervenor*
*Save Belmar Park, Inc.*