

DISTRICT COURT, COUNTY OF JEFFERSON, COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED: January 12, 2016 11:33 AM FILING ID: 3506529C76C92 CASE NUMBER: 2016CV30040 ▲ COURT USE ONLY ▲
Plaintiff: QUADRANT WHEAT RIDGE CORNERS, LLC, a Missouri limited liability company, v. Defendant: CITY OF WHEAT RIDGE, a home rule municipality; and WHEAT RIDGE URBAN RENEWAL AUTHORITY d/b/a RENEWAL WHEAT RIDGE	Case Number: Division:
COMPLAINT FOR DECLARATORY JUDGMENT AND PERMANENT INJUNCTION	

Plaintiff, Quadrant Wheat Ridge Corners, LLC, formerly known as TKG Wheat Ridge, LLC, by and through undersigned counsel, hereby submits the following Complaint for Declaratory Judgment and Permanent Injunction pursuant to C.R.C.P. 57, and as grounds therefore, states as follows:

PARTIES, JURISDICTION, AND VENUE

1. Quadrant Wheat Ridge Corners, LLC (“**Quadrant**”) is a Missouri limited liability company authorized to do business in the State of Colorado. Quadrant was formerly known as TKG Wheat Ridge, LLC (“**TKG**”). TKG changed its name to Quadrant on January 11, 2016.

2. The City of Wheat Ridge (“**Wheat Ridge**”) is a home rule municipality and political subdivision of the State of Colorado organized and existing under a home rule charter pursuant to Article XX of the Constitution of the State of Colorado.

3. The Wheat Ridge Urban Renewal Authority d/b/a Renewal Wheat Ridge (the “**Authority**”) is an urban renewal authority and a body corporate and politic of the State of Colorado authorized pursuant to C.R.S. § 31-25-101, *et seq.*

FACTUAL BACKGROUND

4. In October 2001, the Wheat Ridge City Council adopted a resolution approving of The Wadsworth Boulevard Corridor Redevelopment Plan (the “**Plan**”) to address blight in the vicinity of the Wadsworth Boulevard corridor between 35th Avenue and 44th Avenue in Wheat Ridge, Colorado. A true and correct copy of the Plan, as amended, is attached as **Exhibit 1**.

5. The Plan is an urban renewal plan adopted in accordance with Colorado’s Urban Renewal Law, C.R.S. § 31-25-101 *et seq.*

6. The Plan granted the Authority the power to take all actions consistent with C.R.S. § 31-25-101 *et seq.* to carry out and implement the City Council’s legislative policies as expressed in the Plan.

7. The Plan contemplated the use of tax increment financing, but did not authorize the same at the time of its adoption. Rather, the use of tax increment financing would be “considered at an appropriate time when redevelopment projects or market factors necessitate or justify same or promote the use of tax increment financing as appropriate. Modification of the Plan may then be necessary to implement tax increment financing.” [Plan, p.3, § 2.]

8. On February 9, 2015, by a vote of 7-1, the Wheat Ridge City Council approved of a modification to the Plan to allow the use of tax increment financing relating to property tax and sales tax for certain property located with the Plan’s defined territory, which includes the Property, defined *infra*. The Authority remained vested with the power to take the necessary acts to carry out and implement the Plan.

9. On June 22, 2015, as part of the implementation of the Plan, and after years of planning and negotiation and the expenditure of hundreds of thousands of dollars, Quadrant and the Authority executed a Redevelopment Agreement (the “**Agreement**”) concerning 14-acres of blighted property located at the southwest corner of West 38th Avenue and Wadsworth Boulevard (the “**Property**”). A true and correct copy of the Agreement is attached as **Exhibit 2**.

10. The Property is comprised of empty parking lot space, abandoned buildings, and vacant land. Quadrant intends to develop the Property into a high-quality, mixed use development within the urban renewal authority district with numerous shops, restaurants, and retailers at a cost in excess of \$20,000,000.

11. The Agreement provides that Quadrant will be reimbursed for the construction of certain public infrastructure improvements at the Property, up to a maximum amount of \$6,250,000. Funds for reimbursement are to come from a portion of the incremental sales tax revenue, a public improvement fee, and incremental property tax revenues generated in the future from businesses located at the redeveloped Property. The reimbursement obligations are solely the Authority's and are not an obligation of the City of Wheat Ridge.

12. Pursuant to the Agreement, on June 16, 2015, the Authority executed and delivered to Quadrant a promissory note in the maximum amount of \$6,250,000 (the "Note"), memorializing its reimbursement obligations to Quadrant. A true and correct copy of the Note is attached as **Exhibit 3**.

13. The Agreement and the Note are valid contractual obligations between Quadrant and the Authority.

14. Quadrant's rights under the Agreement and the Note are vested.

15. Following execution of the Agreement and the Note, Quadrant took additional steps in furtherance of the redevelopment of the Property, including but not limited to paying landowners money to extend Quadrant's options to purchase the land, working with and paying architects and other professionals to move forward with development plans, and entering into a lease with the anchor tenant of the future development. These and other actions were undertaken with the understanding and expectation that the Agreement would be enforceable and binding on the Authority.

16. On Tuesday, November 3, 2015, Wheat Ridge voters were presented with Ballot Question 300, which asked:

Shall the Wheat Ridge City Charter be amended as follows? Any action by an agency, agent, authority, commission, committee, City Council, department, employee or official of the City of Wheat Ridge, approving or changing a sales or property tax increment financing (TIF), revenue sharing or cost sharing arrangement pursuant to Part 1 of the Colorado Urban Renewal Law, must be ratified by the Wheat Ridge City Council via a vote on a formal agenda item, at a regularly scheduled business meeting, that is advertised as a public hearing. If the value of the said sales or property tax increment financing (TIF), revenue sharing or cost sharing exceeds \$2.5 million, the City Council action of approval must be ratified by the registered electors of the City of Wheat Ridge at a special or regular election. The base amount for voter approval of any sales or property tax increment financing (TIF) will be any financing exceeding \$2.5 million. To account for inflation and/or increased construction costs, every third year after March 1, 2015, the base amount will be increased by 5%. Effective Date: This amendment will take effect and apply to all actions undertaken by an agency, agent, authority,

commission, committee, City Council, department, employee or Official of the City of Wheat Ridge subsequent to March 1, 2015 and thereafter?

17. Ballot Question 300 passed by a narrow 51.8% to 48.1% margin—a mere 358 votes.

COUNT 1

(Declaratory Judgment – C.R.C.P. 57 – Applicability of Ballot Question 300)

18. Quadrant incorporates by reference the preceding allegations as if fully set forth herein.

19. Ballot Question 300 purports to require voter approval of any tax increment financing, revenue sharing, or cost sharing in excess of \$2.5 million, retroactive to any such tax increment financing agreed to after March 1, 2015.

20. Under Colorado law, the powers of voter referenda and initiatives do not extend to the electorate the right to petition for elections on administrative matters. Rather, voter initiative must be a valid exercise of *legislative* power.

21. The adoption of the Plan occurred prior to March 1, 2015.

22. Similarly, the adoption of the modification of the Plan to allow for tax increment financing occurred prior to March 1, 2015.

23. The adoption of the Plan and the modification thereof were legislative acts. But Ballot Question 300 on its face does not apply to actions taken prior to March 1, 2015.

24. The execution of the Agreement and the Note are not legislative acts, but are instead administrative acts performed for the purpose of carrying out and implementing the Plan. Accordingly, Ballot Question 300 cannot modify, invalidate, or otherwise impact the Agreement, the Note, and all rights and obligations arising thereunder.

25. Accordingly, Quadrant seeks a declaration that Ballot Question 300 has no impact on the Agreement, the Note, and all rights and obligations arising thereunder and/or entered into to facilitate and implement the transactions contemplated by the Agreement.

COUNT 2

(Declaratory Judgment – C.R.C.P. 57 – Unconstitutionality of Ballot Question 300)

26. Quadrant incorporates by reference the preceding allegations as if fully set forth herein.

27. The Colorado Constitution, Article II, Section 11 provides: “No ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any

irrevocable grant of special privileges, franchises or immunities, shall be passed by the general assembly.”

28. This constitutional prohibition against retrospective laws at the state level applies equally to local governments, including home-rule municipalities, and to voter-passed initiatives.

29. Ballot Question 300 by its express terms was intended to operate retroactively.

30. To the extent Ballot Question 300 does modify, invalidate, or otherwise impact the Agreement and the Note, then Ballot Question 300 impairs Quadrant’s vested rights in the Agreement and the Note by retarding the public interest, defeating Quadrant’s bona fide intentions and reasonable expectations, and surprising Quadrant, which had relied on the Authority’s legal right to enter into the Agreement.

31. Accordingly, to the extent Ballot Question 300 does modify, invalidate, or otherwise impact the Agreement and the Note, Quadrant seeks a declaration from this Court that Ballot Question 300 is unconstitutionally retrospective as applied to the Agreement, the Note, and all rights and obligations arising thereunder and/or entered into to facilitate and implement the transactions contemplated by the Agreement.

32. Furthermore, Ballot Question 300 substantially and unconstitutionally impairs the contractual relationships between Quadrant and the Authority.

33. Therefore, Quadrant also seeks a declaration that that Ballot Question 300 is an unconstitutional impairment of the contractual relationship between Quadrant and the Authority.

PRAYER FOR RELIEF

WHEREFORE, Quadrant respectfully requests that the Court issue orders:

(a) declaring Ballot Question 300 inapplicable to the Agreement, the Note, and all rights and obligations arising thereunder and/or entered into to facilitate and implement the transactions contemplated by the Agreement;

(b) declaring Ballot Question 300 to be unconstitutionally retrospective and to be an unconstitutional impairment of contractual obligations and permanently enjoining its application with respect to the Agreement, the Note, and all rights and obligations arising thereunder and/or entered into to facilitate and implement the transactions contemplated by the Agreement;

(c) permanently enjoining any party from asserting the invalidity of the Agreement, the Note, and all rights and obligations arising thereunder and/or entered into to facilitate and implement the transactions contemplated by the Agreement on the basis of Ballot Question 300;

(d) awarding Quadrant its costs and attorney fees as allowed by contract or law; and

(e) for such other relief as the Court deems just and proper.

Respectfully submitted this 12th day of January, 2016.

HUSCH BLACKWELL LLP

By: s/ Jeffrey D. Whitney
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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of January 2015, a true and correct copy of the foregoing **COMPLAINT FOR DECLARATORY JUDGMENT AND PERMANENT INJUNCTION** was served via certified mail, return receipt requested, on the following:

Cynthia Coffman
Colorado Attorney General
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver, Colorado 80203

s/ Michelle Mayer _____
Legal Support Team Specialist

This document has been served via ICCES in accordance with C.R.C.P. 121 § 1-26(7); the original document and signature are maintained on file.