

February 8, 2016

To: 1st Judicial District Judge Christie Bachmeyer  
Jefferson County District Court, Colorado  
Division 2  
100 Jefferson County Parkway  
Golden, CO 80401

From: Citizens for an Inclusive Wheat Ridge (CFIWR)  
Richard Matthews, Agent  
4465 Kipling St., #103  
Wheat Ridge, CO 80033  
303-424-7763

RE: Case # 2016CV30040

***Amicus curiae's* brief for case # 2016CV30040**

**I**

**The Wheat Ridge electorate has not been represented in this case. City Council took an oath to uphold and defend the Wheat Ridge City Charter, but they are not willing to defend all provisions of the City Charter changes from Ballot Question 300 (Tax Increment Financing (TIF) Reform). We, the Citizens for an Inclusive Wheat Ridge (CFIWR), believe that we have standing to intervene in this case because we are the taxpayers of the City. CFIWR volunteers drafted the petition and walked the streets to obtain the signatures on the petitions. CFIWR supported the Ballot Question 300 (TIF Reform) with volunteer time and money. The electorate of Wheat Ridge approved Ballot Question 300 (TIF Reform) in the November/2015 election.**

**II**

**Quadrant (Complainant) has not been told NO. Complainant has received the legal equivalent of "ask your mother/father" by the electorate. Ballot Question 300 (TIF Reform) changed the process to obtain TIF from the City effective March 1, 2015. Currently the application is incomplete because the project has not been referred to a vote of the people. There are many remedies available that do not require voiding a citizen initiative in whole or part:**

1. Complainant's project should be voted on by the electorate as required by Ballot Question 300 (TIF Reform).
2. Complainant's project could be referred by Wheat Ridge City Council to the November 2016 General Election. The Presidential election would guarantee maximum voter participation. The TIF resolution was approved by 75 percent of City Council on June 22, 2015, thus a 51 percent vote of the citizens would be relatively easier.
3. Complainant's project could be referred by Wheat Ridge City Council to a Special Election in 2016. This would provide an answer for the developer quickly and at no cost to Complainant.
4. Complainant's project could be divided into separate pieces that each would require less than two and a half million dollars of TIF.
5. The City could buy the right of way and construct the infrastructure needed to develop the Complainant property. This would allow the City to apply for state and federal assistance to widen Wadsworth Boulevard.

6. Complainant's legal action is premature. Complainant has not completed the process, but still would like judicial relief.

### III

**City Council action June 22, 2015 was reckless and irresponsible. The Ballot Question 300 (TIF Reform) vote should not be voided by City Council's bad faith behavior.**

1. The vote on Complainant's project should have been postponed until after receiving a legal opinion on the result if Ballot Question 300 (TIF Reform) passed.
2. The vote on Complainant's project could have been postponed until after the time limit for submitting the petition had expired.
3. The vote on Complainant's project could have been postponed until after the November/2015 election.
4. CFIWR ask, begs, implores, beseeches the court to consider the video of June 22, 2015 Council meeting before ruling on this case. The video can be found on the Wheat Ridge web site.

### IV

**The process to approve the TIF on June 22, 2015 was troubled from the start:**

1. Early in the process one of the members of the Wheat Ridge Urban Renewal Authority, a.k.a. Renewal Wheat Ridge, requested a copy of the application. The member was told the application contained proprietary information and could not be provided. The member made a Colorado Open Records Act (CORA) request for the application. The process lacked transparency from the start to the end.
2. During the process it was estimated that 20 percent of the sales inside the TIF area would be sales relocated (cannibalized) from other merchants inside Wheat Ridge, but outside the TIF area. No studies or any other type of documentation was presented to verify that estimate. Late in the process sales tax cannibalization was disregarded. Relocating sales from an area where the City collects 3% sale tax to an area where the City collects 2% has significant impact on the financial benefits to the City from the project. The failure to obtain reliable estimates of the sales cannibalization rate demonstrate lack of due diligence by the City.
3. TIFs should be used to diversify the sales tax base for the City. There was never any evidence presented that the Complainant project would diversify the sales tax base. The lack of transparency blocked this very important goal. Again an indication of lack of due diligence by the City.
4. The process never made an attempt to estimate the cost of the city services that would be provided inside the TIF area. The number of police service calls to our existing grocery stores is significant. Lakeside ran into cash flow issues because they did not retain enough tax revenue to pay for the required city services. Again an indication of lack of due diligence by the City.
5. The process should have provided detailed cash flow projections of the sales and property tax increments. The projections should have included:
  - a. Estimate of sales tax cannibalization
  - b. Tax increment from sales tax
  - c. Tax increment from property tax
  - d. Cost of city services provided
  - e. TIF applied to principal and interest on the \$6,250,000 note
  - f. Net benefits to the City



6. Failure to accurately compute the net benefits to the City again indicates lack of due diligence. The equivalent is buying whole life insurance without a policy illustration. This is financial mismanagement.
7. The City Charter in Chapter XII requires all long term borrowing to be approved by ordinance. The original 2001 plan, the February 9, 2015 modification and final June 22, 2015 Plan were all passed by Resolution rather than an Ordinance. The note signed as a part of the agreement with Complainant is not valid because it violates the City Charter.
8. The City hurried to pass the TIF agreement in an effort to avoid the process required by Ballot Question 300 (TIF Reform) and Colorado House Bill 15-1348. HB 15-1348 placed additional limits on the Urban Renewal Authorities. In haste the City Charter was violated.
9. The March 1, 2015 effective date was meant to prevent this type of flawed process from being rushed to a vote of City council. It should have been treated as a moratorium on TIF until after a more open and transparent process was in place.

City Council is unwilling to defend the effective date of Ballot Question 300 (TIF Reform) because it would require admitting that the process was profoundly flawed.

## V

**The argument that Ballot Question 300 (TIF Reform) is retrospective is not relevant to the Complaint. We agree that legislative bodies at all levels are not allowed to pass *ex post facto*, or retrospective legislation. However, the citizens (electorate) have superior rights.**

1. The First Amendment of the U.S. Constitution guarantees the right to petition the Government.
2. The Colorado Constitution in Article V, Section 1(a) provides that referendums can void legislative action. Colorado referendum process grants ninety days after the general assembly is adjourned for the petition to be filed.
3. The Wheat Ridge City Charter in Chapter VI provides the citizens only 45 days after final passage of an ordinance for the referendum to be submitted that would void the legislative action.
4. Neither the City nor Complainant was surprised by Ballot Question 300 (TIF Reform). The complete text of Ballot Question 300 (TIF Reform) was included in the Urban Renewal Authority packet for the meeting it was passed, June 15, 2015. The public testimony on the TIF public hearing on June 22, 2015 had many people testify that the petition would be filed.
5. It was not reasonable or prudent for Complainant to rely on the reckless and irresponsible action taken by City Council June 22, 2015.

## VI

**The City of Wheat Ridge is already suffering from elected officials that are ignoring their oath to uphold the City Charter of the City of Wheat Ridge. Please do not impair the City sales tax base for a generation without a vote of the electorate.**