

DISTRICT COURT, JEFFERSON COUNTY, STATE
OF COLORADO
100 Jefferson County Parkway
Golden, CO 80401

**QUADRANT WHEAT RIDGE CORNERS, LLC, a
Missouri limited liability company,**
Plaintiffs,

vs.

**CITY OF WHEAT RIDGE, a home rule municipality,
and WHEAT RIDGE URBAN RENEWAL
AUTHORITY d/b/a RENEWAL WHEAT RIDGE,**
Defendant,

and

CITIZENS FOR AN INCLUSIVE WHEAT RIDGE,
Intervener,
and
KEEP WHEAT RIDGE LOCAL, Intervener.

PRO SE INTERVENERS:

Citizens for an Inclusive Wheat Ridge
Richard Matthews
4465 Kipling St., #103
Wheat Ridge, CO 80033
303-424-7763

FOR COURT USE ONLY

Case Number: 16CV30040

Div: 2

**INTERVENER'S THIRD AMENDED AMICUS CURIAE BRIEF IN RESPONSE TO
QUADRANT WHEAT RIDGE CORNERS, LLC'S COMPLAINT FOR
DECLARATORY JUDGMENT AND PERMANENT INJUNCTION AND REQUEST
TO ADD INTERVENER**

Interveners, Citizens for an Inclusive Wheat Ridge ("CFIWR") and Keep Wheat Ridge Local ("KWRL"), collectively known as ("Interveners"), on their behalf and the concerned citizens of Wheat Ridge's behalf, hereby files their Third Amended Amicus Curiae Brief in Response to Quadrant Wheat Ridge Corners, LLC's Complaint for Declaratory Judgment and Permanent Injunction and Request to Add Intervener and states as follows:

The Intervening parties seek the Court's permission to add the following intervening party to this action and to amend the caption accordingly:

- **Keep Wheat Ridge Local**, a local group of concerned Wheat Ridge citizens.

Additionally the Intervening parties state and alleges as follows:

BACKGROUND AND FACTS

1. This action concerns Quadrants interpretations of the application and constitutionality of Ballot Question 300 ("300").
2. CFIWR and KWRL volunteers drafted the petition and walked the streets to obtain the signatures on the petitions. CFIWR and KWRL supported 300 with volunteer time and money.
3. The electorate of Wheat Ridge approved 300 in the November/2015 election.
4. The Intervening parties represent the collective interests of the citizens that voted for the passage of 300.
5. 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.
6. 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.
7. 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.
8. 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.

9. 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.
10. 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.
11. 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.
12. The City hurried to pass the TIF agreement in an effort to avoid the process required by 300 and Colorado House Bill 15-1348. HB 15-1348 placed additional limits on the Urban Renewal Authorities. In haste the City Charter was violated.
13. Wheat Ridge is a Home Rule city.
14. 300 amended the Wheat Ridge City Charter ("Charter") to require voter approval for any sales or property tax increment financing (TIF) request that would be in excess of \$2.5 million.
15. 300's effective date would be effective as of March 1, 2015.
16. 300 meets all requirements of the Charter, ordinances, resolutions, codes, and laws of the City of Wheat Ridge ("City").
17. As required by 300, Quadrant's project, as submitted to the City, should be referred by Wheat Ridge City Council and prepared for the November 2016 General Election to be voted on by the electorate of the City.
18. Quadrant's legal action is premature. Quadrant has not completed the process, but still would like to hastily avail itself of an unripe and unjust judicial relief.

19. The Wheat Ridge City Manager has extended contractual deadlines related to the Redevelopment Agreement between Quadrant and Renewal Wheat Ridge; Quadrant remains unharmed financially or otherwise by 300.
20. The sanctioning of Quadrant's attempt to circumvent the dully passed 300 and keeping the Redevelopment Agreement from the requirements of 300 will cause the citizens of Wheat Ridge to suffer financially insecurity.

ARGUMENT

COUNT 1

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

21. Quadrant seeks to evade, circumvent, and escape their obligations and duties to the citizens of Wheat Ridge as to the application of 300 to the Redevelopment Agreement between Quadrant and Renewal Wheat Ridge by filing this action.
22. Quadrant's insinuation that the citizens of Wheat Ridge do not have the right to pass 300 as the Urban Renewal process is an administrative and the citizens only have the right to exercise legislative process is incorrect as the determination of blight is a legislative process and thus the remediation of blight a legislative process as well.
23. Quadrant has tried to obscure who is developing the land by changing the name of developer multiple times through to process to date. This action was and is meant to deceive the citizens of Wheat Ridge and Quadrant should not benefit from their actions.
24. 300 meets all requirements of the Charter, ordinances, resolutions, codes, and laws of the City of Wheat Ridge ("City").
25. As required by 300, Quadrant's project, as submitted to the City, should be referred by Wheat Ridge City Council and prepared for the November 2016 General Election to be voted on by the electorate of the City.
26. Quadrant's legal action is premature. Quadrant has not completed the process, but still would like to hastily avail itself of an unripe an unjust judicial relief.
27. Quadrant's timing and actions demand that Count 1 should be dismissed.

COUNT 2

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

28. Quadrant seeks to have the 300 determined to be unconstitutional because of the retrospective language and to enjoin "any party" from questioning the Redevelopment Agreement.

29. City Council and Renewal Wheat Ridge are unwilling to defend the Count 2 because it would require admitting that the process was profoundly flawed.
30. The citizens were shut out of the process and have not had their voices heard, this has diminished value of their city.
31. Neither the City nor Quadrant was surprised by 300. The complete text of 300 was included in the Renewal Wheat Ridge 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.
32. It was not reasonable or prudent for Quadrant to rely on the reckless and irresponsible action taken by City Council June 22, 2015.
33. Quadrant's (Complainant) lawsuit, Count 2, purports that the retroactive wording, or ex post facto, of Ballot Question 300 (Tax Increment Financing (TIF) Reform) is unconstitutional.
34. Count 2 of the Quadrant's lawsuit is unfounded and incorrect. The Clause refers to governmental bodies (Congress, State Legislatures, City Councils, etc...) passing retroactive, or ex post facto, criminal or civil laws. The Clause does not refer to the electorate (voters) anywhere in the Clause. The voters of Wheat Ridge have superior rights to amend the Wheat Ridge City Charter as a Home Rule City.
35. Additionally, the passage of TIF Reform has NOT criminally or civilly punished or denied the Complainant. The voters did not say "NO" to the Complainant with regards to their development project. The voters, with the passage of TIF Reform, added another milestone to the TIF process which requires a vote of the people on TIFs over \$2.M.
36. As generally understood, a law that is ex post facto—literally, after the fact—is one that criminally punishes conduct that was lawful when it was done. It is an aspect of the fundamental maxim, nulla poena sine lege: there can be no punishment without law—in this case, without preexisting law. Despite the fact that the prohibition against such laws had worked its way into English law (as celebrated by Sir William Blackstone), Parliament had, nonetheless, claimed the right to enact ex post facto laws in the form of bills of attainder against unpopular groups and persons. In addition, prior to the Constitutional Convention, some states themselves had passed ex post facto laws. (The prohibition of ex post facto state laws is found in Article I, Section 10, Clause 1.) Source: <http://www.heritage.org/constitution/#!/articles/1/essays/63/ex-post-facto>
37. Justice Samuel Chase defined ex post facto laws as: 1st. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal; and punishes such action. 2d. Every law that aggravates a crime, or makes it greater than it was, when committed. 3d. Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed. 4th. Every law that alters the legal rules of evidence, and receives less, or different testimony, than the law

required at the time of the commission of the offence, in order to convict the offender. All these, and similar laws, are manifestly unjust and oppressive. Source:
<http://www.heritage.org/constitution/#!/articles/1/essays/63/ex-post-facto>

38. 300 meets all requirements of the Charter, ordinances, resolutions, codes, and laws of the City of Wheat Ridge (“City”).
39. As required by 300, Quadrant’s project, as submitted to the City, should be referred by Wheat Ridge City Council and prepared for the November 2016 General Election to be voted on by the electorate of the City.
40. 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.
41. Quadrant’s project could be divided into separate pieces that each would require less than two and a half million dollars of TIF.
42. 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.
43. 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.
44. As required by 300, Quadrant’s project, as submitted to the City, should be referred by Wheat Ridge City Council and prepared for the November 2016 General Election to be voted on by the electorate of the City.
45. Quadrant’s legal action is premature. Quadrant has not completed the process, but still would like to hastily avail itself of an unripe an unjust judicial relief.
46. Quadrant’s timing and actions demand that 2 should be dismissed.

PRAYER FOR RELIEF

WHEREFORE, the Interveners, on behalf of the citizens of Wheat Ridge, respectfully requests the Court grant the citizens of Wheat Ridge the following relief:

- An order adding the newly listed Interveners to this action and amending the caption accordingly;

- An order dismissing, in its entirety, Plaintiff Quadrant's Complaint for Declaratory Judgment and Permanent Injunction;
- An order stating that all portions of Ballot Question 300 are confirmed to be enforceable;
- An order specifically directing that the Redevelopment Agreement between Quadrant and Renewal Wheat Ridge is subject to all provisions of Ballot Question 300;
- And any such other and further relief as the Court deems just and proper under the circumstances.

Respectfully submitted this 17th day of March, 2016.

Citizens for an Inclusive Wheat Ridge

s/ Richard Matthews _____

Richard Matthews

4465 Kipling St., #103

Wheat Ridge, CO 80033

303-424-7763

PRO SE INTERVENORS

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of March, 2016, a true and correct copy of **INTERVENER-DEFENDANTS' THIRD AMENDED AMICUS CURIAE BRIEF IN RESPONSE TO QUADRANT WHEAT RIDGE CORNERS, LLC's COMPLAINT FOR DECLARATORY JUDGMENT AND PERMANENT AND REQUEST TO ADD INTERVENER** was filed with the Court and sent by email or U.S. Mail, postage prepaid, to the following:

<p>Hoffman, Parker, Wilson & Carberry, P.C. Corey Y. Hoffman, Esq. Elizabeth R. Cross, Esq. 511 16th Street, Suite 610 Denver, CO 80202-4260 cyhoffmann@hpwclaw.com ercross@hpwclaw.com</p> <p><i>Attorneys for Defendant Wheat Ridge Urban Renewal Authority d/b/a Renewal Wheat Ridge</i></p>	<p>Murray Dahl, Kuechenmeister & Renaud, LLP Gerald E. Dahl, Esq. 710 Kipling Street, Suite 300 Lakewood, CO 80215 Tel.: (303) 493-6686 E-mail: gdahl@mdkrlaw.com</p> <p>and</p> <p>The Law Office of Steven J. Dawes, LLC Steven J. Dawes, Esq. 100 Fillmore Street, Suite 500 Denver, Colorado 80206 Tel.: 303-720-7541 E-mail: steve@sdaweslaw.com</p> <p><i>Attorneys for Defendant City of Wheat Ridge</i></p>
<p>HUSCH BLACKWELL LLP Jeffrey D. Whitney, #35938 Jonathan M. Allen, #41415 1700 Lincoln, Suite 4700 Denver, CO 80203 Phone: 303-749-7200 Fax: 303-749-7272 jeff.whitney@huschblackwell.com jonathan.allen@huschblackwell.com</p> <p><i>Attorneys for Plaintiff Quadrant Wheat Ridge Corners, LLC</i></p>	

*A duly signed original remains on file at the
office of Citizens for an Inclusive Wheat
Ridge*

s/ Richard Matthews _____

Richard Matthews