

<p>DISTRICT COURT, JEFFERSON COUNTY, COLORADO</p> <p>Jefferson County Justice Center 100 Jefferson County Parkway Golden, Colorado 80401</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Case Number: 2014CV____</p> <p>Div.: _____ Ctrm.: _____</p>
<p>Plaintiffs/Appellants: SAVE ARVADA NOW, a Colorado nonprofit corporation</p> <p>Defendants/Appellees: THE CITY OF ARVADA, a home rule municipality; THE ARVADA CITY COUNCIL, a body politic; THE ARVADA URBAN RENEWAL AUTHORITY, a body corporate and politic; PARK PLACE OLD TOWN, INC. a Colorado corporation</p>	
<p>Attorneys for Plaintiffs/Appellants:</p> <p>Robert T. Hoban, Esq., Reg. No. 33151 C. Adam Foster, Esq., Reg. No. 35969 Hoban & Feola, LLC The Equitable Building 730 17th Street, Suite 900 Denver, Colorado 80202 303-674-7000 telephone bob@hobanandfeola.com adam@hobanandfeola.com</p>	
<p>COMPLAINT AND REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF</p>	

Plaintiff Save Arvada Now, by and through its counsel, Hoban & Feola, LLC, hereby submits its Complaint and Request for Declaratory Relief, and in support thereof states as follows:

Parties

1. Plaintiff Save Arvada Now is a Colorado nonprofit corporation dedicated to ensuring responsible growth within the City and community of Arvada, Colorado. Its principle office is located at 7706 Robinson Way, Arvada, CO 80004.
2. Defendant City of Arvada (“the City”) is a Colorado home rule municipality. Its governing body is the Defendant Arvada City Council, which meets at 8101 Ralston Road in Arvada, Colorado, 80001, Jefferson County.

3. Defendant Arvada Urban Renewal Authority ("AURA") is a Colorado body corporate and politic. Its principle address is at 5601 Olde Wadsworth Boulevard, Suite 210, Arvada, CO 80002, Jefferson County.
4. Defendant Park Place Olde Town, Inc. ("PPOT") is a Colorado corporation whose address is 195 West 12th Ave, Denver, CO 80123.

Jurisdiction and Venue

5. Pursuant to Article VI, § 9, of the Constitution of the State of Colorado, the District Court located in Jefferson County, Colorado, is a trial court of record with general jurisdiction. Because the actions underlying Plaintiff's claims took place in Jefferson County, this Court properly has jurisdiction over the subject matter of this *Complaint*.
6. Similarly, Venue is proper in Jefferson County, Colorado, pursuant to C.R.C.P. 98(c) in that the actions underlying Plaintiffs' claims took place in Jefferson County and the City Council meets in Jefferson County.

Factual Background

7. On January 29, 2013, AURA and PPOT entered into a Disposition and Development Agreement ("Development Agreement") for development of three parcels of land contained within the National Historic Olde Town Arvada Conservation Area.
8. The Development Agreement requires AURA to transfer to PPOT a parcel of land located between Wadsworth Boulevard and Teller Street ("the Wadsworth Parcel").
9. The Colorado Department of Transportation ("CDOT") initially acquired the Wadsworth Parcel through the power of eminent domain for the public purpose of beautifying the eastern side of the Wadsworth bypass between Grandview Avenue and Ralston Road.
10. Upon information and belief, CDOT used federal transportation funds, at least in part, to acquire the Wadsworth Parcel.
11. The City negotiated with CDOT to acquire the Wadsworth Parcel for AURA, who was then legally bound by the Development Agreement to transfer it to PPOT.
12. But PPOT intends to use the Wadsworth Parcel use for the non-public purpose of constructing a parking lot for the sole private use PPOT's tenants.
13. The City acquired the Wadsworth Parcel from CDOT for \$385,000.00. This was

significantly less than the \$585,000.00 fair market value that Irving P. Mallo, CDOT Region 6 Property Manager, presented to the City in an April 26, 2013 letter.

14. CDOT made it clear to the City that CDOT is obligated to sell property that it acquired through the power of eminent domain at fair market value unless the property is to be used for a public purpose, in which case CDOT can give the property to a local municipality for free or at a reduced cost.
15. The City and AURA intend to improperly transfer The Wadsworth Parcel to PPOT so that PPOT can use it for the private benefit of PPOT's tenants.
16. The Development Agreement also contemplates PPOT acquiring, and demolishing, the historic Masonic Lodge in Olde Towne Arvada.
17. The Arvada Masonic Lodge is a unique historical property. It is the only structure of its kind in Jefferson County, and its architectural form and materials are rare in the Western United States in general. City officials have frequently expressed their commitment to maintaining the historical integrity of Arvada's three National Historic Districts.
18. The City's Olde Town Arvada Design Guidelines require that a public hearing be held regarding the demolition of any historic structure.
19. In May of 2013 the City invited interested citizens to attend an informal public meeting of the Design Review Committee ("DRC"), at which waivers from the Olde Town Arvada Design Guidelines would be considered.
20. The DRC's invitation to the public specifically stated the following: "The meeting before the DRC is not a formal public hearing, as one might see before the City Council or Planning Commission, but rather an informal meeting open to the public."
21. But during the meeting, the City's Director of Community Planning announced that the meeting was a public hearing. The resulting hearing was held without proper notice to the public and did not give the public an appropriate opportunity to comment on the proposed demolition of the Masonic Lodge.
22. The City has also been in negotiations to grant PPOT a revocable permit for encroachment on McIlvoy Park to enable construction of sidewalks and related landscaping for the sole private use of the tenants and guests of PPOT.
23. PPOT's proposed private use of McIlvoy Park property is in direct conflict with the restrictive covenant of the deed from Mrs. Clemency McIlvoy, recorded on May 15,

1919 in the Jefferson County Recorder's Office, Book 216, page 114, which reads in part: "It is agreed and understood that this land is transferred to the town of Arvada for the use of the public as a park and shall be known as "The McIlvoy Park." This covenant makes it clear that the land is to be used solely by the public as a park.

24. Furthermore, the Director of Parks, Mr. Gordon Reusink, has previously stated that once land in Arvada becomes a park, it remains a public park. Only a vote by registered electors (voters) in the City can transfer park land to another use.

25. PPOT has nonetheless proposed that the City would only be able to revoke the proposed permit for encroachment under very limited circumstances—primarily if PPOT fails to carry insurance covering the subject property.

FIRST CLAIM FOR RELIEF
(CRCP 57—Declaratory Judgment)

26. Plaintiff incorporates the foregoing paragraphs and allegations as if fully set forth herein.

27. Plaintiff asks this Court to declare, pursuant to CRCP 57, that the City cannot legally transfer the Wadsworth Parcel to PPOT for PPOT's private use.

28. Plaintiff also asks this Court to declare, pursuant to CRCP 57, that the City cannot legally grant a permit to PPOT to use any portion of McIlvoy Park for any non-public, non-park use.

SECOND CLAIM FOR RELIEF
(CRCP 106(a)(4)—Judicial Review)

29. Plaintiff incorporates the foregoing paragraphs and allegations as if fully set forth herein.

30. Plaintiff asks this Court to determine, pursuant to CRCP 106(a)(4), that the City and the DRC acted beyond the scope of their authority, and abused their discretion, when they authorized demolition of the historic Masonic Lodge without a properly-noticed public hearing.

THIRD CLAIM FOR RELIEF
(CRCP 65—Temporary Injunction)

31. Plaintiff incorporates the foregoing paragraphs and allegations as if fully set forth herein.

32. Irrevocable harm will result to the historic Masonic Lodge building in particular, and

the Olde Town Arvada area in general, if PPOT is permitted to demolish the Masonic Lodge before this Court can determine whether the City exceeded its jurisdiction or abused its discretion in failing to conduct a public hearing before authorizing demolition of the Masonic Lodge. Thus, Plaintiff asks this Court to enter a temporary injunction prohibiting PPOT from demolishing the Masonic Lodge, or otherwise altering the structure, pending resolution of this case.

33. Similarly, Plaintiff asks the Court to enter a temporary injunction prohibiting PPOT-- or the City or any Person acting on behalf of PPOT--from making any alterations or changes to McIlvay Park for PPOT's benefit.

34. Plaintiff respectfully requests a forthwith hearing on its request for an injunction.

Prayer for Relief

WHEREFORE, Plaintiffs request:

- A. That this Court grant Plaintiffs requests for a preliminary injunction, entry of declaratory judgments, and a determination that the City exceeded its authority and abused its discretion, as set forth more fully above.
- B. That the Court grant Plaintiff its reasonable costs of suit.
- C. That the Court enter such other and further relief as the Court deems just and fair.

Respectfully submitted this ____ day of March, 2014.

HOBAN & FEOLA, LLC

By: /s/

Original Signature on File

CERTIFICATE OF SERVICE

I hereby certify that on this March __, 2014 a true and correct copy of the foregoing was filed with the clerk of the Court by using the Lexis Nexis File & Serve system.

Original Signature on File

/s/
Original signature on file

Plaintiff Save Arvada Now's Address:

7706 Robinson Way
Arvada, CO 80004

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