

DISTRICT COURT, Jefferson County,
COLORADO

Court Address:
100 Jefferson County Parkway
Golden, CO 80401
(303)271-6145

Plaintiff:

Arvada for All the People,

v.

Defendants:

City of Arvada,
Arvada City Council,
Arvada Urban Renewal Authority,
Trammell Crow Company,
TC Denver Development Inc.

▲ COURT USE ONLY ▲

Attorney for Plaintiff:

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Case Number:

Division/Courtroom:

**FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF UNDER C.R.S.
§ 13-51-101 et seq. and C.R.C.P. 57 AND REVIEW UNDER C.R.C.P. 106(a)(4)**

Plaintiff Arvada for All the People, by and through its undersigned counsel, Progressive Law LLC, submits this First Amended Complaint for relief under C.R.S. § 13-51-101 et seq., C.R.C.P. 57 and C.R.C.P. 106(a)(4).

INTRODUCTION

1. This is a complaint for review of Arvada City Council's March 19, 2018 approval of a Preliminary Development Plan for the Olde Town Residences project located at W. 56th Ave. and the Wadsworth Bypass in Arvada. A Preliminary Development Plan for the project was rejected by City Council on January 22, 2018. This lawsuit challenges the legality of Arvada City Council's March 19, 2018 approval of the project.

2. The legality of Arvada's action is called into question by city officials' interpretation of Arvada Municipal Code § 3.1.17, which states:

If the City Council denies an application, that same request or one substantially the same may not be heard by the City Council for a period of one (1) year from the date of denial, unless the City Council explicitly states that an earlier reapplication will be considered. The Applicant may submit a revised application that adequately addresses all of the Council's stated reasons for denial, however, at any time. Such revised application shall be treated as a new application for purposes of review and scheduling.

3. Arvada officials appear to interpret the statute as authorizing City Council to rehear the previously denied application at any time. Plaintiff interprets the statute to require City Council to assert at the time of denial that it will rehear the application earlier than one-year. The city's interpretation renders the one-year restriction superfluous, an interpretation that is contrary to the principles of statutory construction. The city's interpretation is also nonsensical as it essentially construes the statute to state: "City Council may not rehear an application for a period of one-year unless it chooses to do so."

4. Alternatively, City Council approved the Preliminary Development Plan as a revised application, which under A.R.M.C. § 3.1.17 must be treated as a "new" application. Yet, City Council approved the Preliminary Development Plan without treating the application as "new." Specifically, the reapplication did not undergo certain steps, including a possible neighborhood meeting and a mandatory Planning Commission hearing, as required by A.R.M.C. § 3.7.3.

5. The city's interpretation of A.R.M.C. § 3.1.17 leaves Plaintiff unclear about the statutory authorities under which the city acts, which in turn deprives Plaintiff and concerned residents of the procedural protections provided by the Arvada Municipal Code. Put more simply, Arvada's interpretation of the code, and its actions under it, are not grounded in statute or City Council Rules of Procedures. As such, these actions are arbitrary, exceed City Council's jurisdiction, and are an abuse of discretion.

PARTIES, JURISDICTION AND VENUE

6. Plaintiff Arvada for All the People is a Colorado non-profit corporation formed by Arvada residents dedicated to protecting and preserving the special quality and character of the city's neighborhoods and local businesses. The organization also seeks to enhance accountability and transparency in Arvada city government.

7. Defendant City of Arvada is a Colorado municipality with its principal place of business in the City of Arvada at 8101 Ralston Rd., Arvada, Colorado.

8. Defendant Arvada City Council is the legislative body for the City of Arvada.

9. Defendant Arvada Urban Renewal Authority is an independent body corporate and politic under Colorado law. Its principal place of business is 5601 Olde Wadsworth Boulevard, Suite 210, Arvada, Colorado.

10. Defendant Trammell Crow Company is a commercial real estate development and investment company headquartered in Dallas, Texas.

11. Defendant Trammell Crow Company has a Denver office located at 1225 17th Street, doing business as TC Denver Development, Inc.

12. Venue is proper in this court under C.R.C.P. 98 because the defendants, or any of them, are located in this county.

FACTUAL ALLEGATIONS

Trammell Crow Project Background

13. The Trammell Crow project, known as Olde Town Residences, is a six-story, multifamily housing complex located on a site adjacent to the Olde Town Arvada National Historic District. (Hereinafter “Olde Town Arvada”)

14. The Olde Town Residences project as voted upon on January 22, 2018 consisted of 256 units and 350 parking spaces.

15. The project as approved by City Council on March 19, 2018 consisted of 252 units and 365 parking spaces.

16. The proposed building height exceeds the height restrictions in A.R.M.C. § 6.3.1.

17. Trammell Crow sought and obtained from City Council on March 19, 2018 an exception to the height restriction.

18. In its current iteration, the project’s roof slab exceeds Arvada’s 35 feet height restriction by between 19 and 29 feet, depending upon how the height is measured.

19. The Olde Town Residences project abuts Grandview Avenue and the historic structures that are located along the avenue and are part of the National Historic District.

20. Protection of the Historic District is embodied in Arvada's Comprehensive Plan. The plan includes a goal to "[p]reserve historic resources and expand preservation education and awareness in Arvada and Olde Town."

21. Similarly, A.R.M.C. 4.12.1. states that the Olde Town Zoning District is "intended to preserve the historical, cultural and aesthetic heritage of the area surrounding the Arvada Downtown Historic District as an important transition between the Historic District and outlying area of more modern development and, by doing so, to preserve, maintain and enhance the Historic District and the unique characteristics of the Historic District. . ."

22. Compatibility with the Olde Town Zoning District is among the criteria that must be considered by City Council in approving development plans.

23. The land on which the Trammell Crow project is to be built has been deemed blighted by the Arvada Urban Renewal Authority (AURA).

24. AURA entered into a Disposition and Development Agreement dated December 2, 2015 with Trammell Crow to develop the land.

25. Upon information and belief, AURA hired a communications firm to sell the project to the public, including the creation of "talking points."

26. Arvada's Mayor is a member of the AURA Board.

27. On January 22, 2018, City Council voted 4-3 to deny Trammell Crow's Preliminary Development Plan, which rendered moot consideration of the height exception.

28. On March 19, 2018, City Council voted 6-1 to approve the Preliminary Development Plan and the height exception.

Plaintiff Arvada for All the People

29. Plaintiff Arvada for All the People (AAP) was formed by Arvada residents concerned about the negative effects of the multistory, largely modern residential complex on the adjacent historic district and the expansive views (a key aesthetic characteristic of Olde Town Arvada) from Grandview Avenue.

30. AAP members Cindi Kreutzer and Harriet Hall live on Grandview Avenue. The Olde Town Residences project is within view of Ms. Hall's home.

31. AAP members also objected to the fact that land upon which the development would be built would, upon information and belief, be conveyed by the Regional Transportation District to the city of Arvada, then to the Arvada Urban Renewal Authority, and finally to Trammell Crow for a sum of \$30, though the land is estimated by Arvada to be valued at approximately \$4.3 million.

32. AAP members Nancy Young, Dave Chandler, Susan Shirley and Cindi Kreutzer attended all three neighborhood meetings regarding the Trammell Crow project.

33. AAP member Dave Chandler serves as the group's spokesman. To bring greater awareness of the project, Chandler was interviewed on Fox31 News and did several other television and radio interviews.

34. AAP members Nancy Young and Cindi Kreutzer met with individual council members over the course of nearly a year regarding the negative impact of the Trammell Crow project on the National Historic District.

35. Nearly all members of the AAP steering committee testified against the project at the Planning Commission and later at City Council public hearings on January 22 and March 19.

36. AAP's members have regularly posted information concerning various aspects of the Trammell Crow project on Let's Talk Arvada, the Facebook page of Arvada for All the People.

37. Collectively, AAP's members have spent many hours researching the legal requirements for the Trammell Crow project.

38. AAP's members, as engaged citizens, have a legal interest in ensuring that municipal decisions comply with applicable municipal, state and federal law.

39. AAP's members, as engaged citizens, have a legal interest in ensuring transparency in City Council decisions so that they understand how to advocate for their interests and provide citizen input to elected and unelected officials via formal mechanisms such as public hearings, and via informal mechanisms such as individual communications with city officials.

40. Arvada's actions regarding the Trammell Crow project leave AAP's members in the dark about what legal authority Arvada relied upon to approve the Trammell Crow project on March 19.

41. Consequently, Plaintiff AAP's members are unclear about the effect of future City Council denials of planning projects, making it difficult, if not impossible, to

understand how to communicate effectively in the future with city officials and members of the public about that process or the projects that are reviewed under it.

Efforts to Revive the Trammell Crow Project

42. From January 24 to January 28, 2018, in a series of emails in which AURA executive director Maureen Phair was a recipient or cc'd, former Arvada city council members Steve Urban and Lorraine Anderson, former mayor Ken Fellman, and former AURA board member Page Bolin, expressed their unhappiness with the denial of the project.

43. Steve Urban wrote in a message cc'd to AURA's Phair: "The bastards will win if that site remains vacant. Again, this city council does not have any sort of vision. It is disheartening to watch these people in action destroy the vision their predecessors had to get us to the other night."

44. Page Bolin wrote: "I am totally depressed and saddened by what I am hearing about how the majority of this Council approached this application. The total lack of regard and respect for a decade long, CITY process is appalling. . . [w]hat Council has done is put a black mark on the reputation of the City with quality innovative developers. . ."

45. Steve Urban wrote on January 28 that he had "a great talk" with (councilman) John Marriott, who voted against the Trammell Crow project on January 22. Urban suggested a 15-bedroom reduction in the project could result in council approval. "This is too great a project to just shelve," he wrote, adding that he had "no dog in the fight other than we all worked toward this end and care about Olde Town and Arvada. The completion of this project is a very exciting thing to think about."

46. Lorraine Anderson in an email dated January 24, 2018 stated that she had a "long meeting" with council member Nancy Ford, who voted against the Trammell Crow project. "Gave her the info about how long and how many people have been involved in this process. I sent her a scathing email."

47. Former Arvada mayor Ken Fellman indicated on January 28 that he believed the project could win council approval if changes were made to the project.

AURA's Communications with Trammell Crow on Rehearing

48. On January 24, 2018, just two days after City Council's denial, AURA executive director Maureen Phair apparently told Trammell Crow to anticipate a possible March 19, 2018 rehearing of the Olde Town Residences project. Phair apparently indicated that council member John Marriott would propose "reconsideration" on February 5.

49. On January 26, 2018, four days after City Council’s denial, Phair communicated with Bill Mosher, Senior Managing Director of Trammell Crow, about possible routes by which City Council could “reconsider” its denial.

50. On January 29, 2018 City Manager Mark Deven and Mayor Marc Williams, at a regularly scheduled meeting, discussed the Trammell Crow project, with an agenda notation of “[g]oing [f]orward? Anyone else to engage?”

51. On January 30, 2018, AURA executive director Phair wrote to Arvada officials, including Mayor Marc Williams, that Trammell Crow’s Bill Mosher “prefers going the reconsideration route,” as he is “afraid of the resubmittal process and the expense and time delays associated with it.”

52. On January 31, 2018, in an email from Bill Mosher to Maureen Phair, Phair states: “[j]ust spoke to Daly and yes it is okay to meet with council as there is no application filed.” Mosher replied: “And for sure ok for me to meet with Council right? Ok with Daly? Just want to make sure. Talked with Mayor last night.” Phair and Mosher are presumably referring to City Attorney Chris Daly.

53. On February 5, Deven and Williams discussed a timeline for “reconsideration” of the Olde Town Residences project.

54. On February 8, 2018, City Manager Deven queried members of City Council about their willingness to rehear the application and requested responses by email or phone.

55. Upon information and belief, four members of City Council replied to that request via email.

March 19 Hearing

56. The Arvada City Charter authorizes official City Council action only by motion, resolution, or ordinance.

57. An email or phone poll outside City Council meetings is not among the Charter’s approved mechanisms for official action.

58. City Council had not officially voted to rehear the Olde Town Residences project on March 7 when Arvada issued a “Notice of Public Hearing.”

59. That notice stated that a hearing would be held on March 19 before City Council regarding the Olde Town Residences project.

60. On March 19, City Council member Mark McGoff moved to waive the one-year restriction in A.R.M.C. § 3.1.17 on rehearing an application that was previously denied.

61. Council member McGoff voted with the losing side in the January 22 vote at which City Council rejected the Olde Town Residences PDP.

62. City Council Rules of Procedures state that “[a]n action may be reconsidered only if a motion for reconsideration is made at the same meeting as the action sought to be reconsidered was originally voted upon. *The councilmember making such motion shall state that they were on the prevailing side of the motion.*” [Emphasis added.]

63. At the foregoing March 19 meeting, City Council voted 7-0 to waive the one-year restriction on rehearing contained in A.R.M.C. § 3.1.17.

64. On March 19, City Council held a hearing on the Trammell Crow project.

65. After the hearing, City Council voted 6-1 to approve it.

Failure to Follow City Council Rules of Procedures

66. City Council, in approving the rehearing on March 19, did not follow City Council Rules of Procedures.

67. City Council Rules of Procedures were adopted via City Council Resolution on February 6, 2012.

68. The one-year restriction contained in A.R.M.C. § 3.1.17, when read in conjunction with City Council Rules of Procedures, does not authorize City Council to rehear an action at *any time*.

69. Under City Council Rules of Procedures, reconsideration must occur at the same meeting as the original action.

70. Reconsideration of an action in *future* meetings requires a vote by a supermajority to suspend the rules.

71. A document labeled “City Council Minutes of January 22, 2018” indicates that the project was voted down and that no motion for reconsideration was made.

Resubmittal versus Reconsideration under § 3.1.17

72. Although it appears that City Council acted March 19 under the one-year waiver provisions of § 3.1.17, City Attorney Chris Daly stated during the March 19 City Council meeting that City Council's action was not a reconsideration but instead was review of a reapplication.

73. Daly's statement, in conjunction with prior email statements by Mark Deven, raises the question of whether City Council proceeded under the second sentence of § 3.1.17, which authorizes a developer to resubmit a revised application at any time, but requires such an application to be treated as a new application.

74. New applications for Preliminary Development Plans may involve a neighborhood meeting but must include review and hearing by the Planning Commission. A.R.M.C. § 3.7.3F.

75. A document titled "Quasi-Judicial Matters: Resubmittal versus Reconsideration" that was obtained by Plaintiff through a Colorado Open Records Act request, identifies two paths that would allegedly allow City Council to revisit the Trammell Crow project.

76. Path one, titled "resubmittal," cites A.R.M.C § 3.1.17 and involves submittal of a revised Preliminary Development Plan. The document cites the Candelas Townhomes project approval as "precedent," under which "modest revisions allowed for abbreviated staff review and no additional planning commission role."

77. Per the "Quasi-Judicial Matters: Resubmittal versus Reconsideration" document, under the "resubmittal" option, city council could "informally consent to entertain the resubmittal" if four council members agreed to do so, though there is no legal authority cited for this proposition.

78. The document identifies "reconsideration" as a second route, citing City Council Rule 4L. The document notes a "negative appearance due to the necessity to suspend Rules and focus on one council member (making the motion.)"

79. The document states that "[r]econsideration rules speak of reconsideration of an 'action' based upon new information or new evidence" and questions whether reconsideration could occur if the plan is revised. The document notes that reconsideration requires a super-majority to suspend the rules.

80. Email statements by City Manager Mark Deven on February 8 indicate that on at least one occasion, the Candelas Townhomes project, a revised application was not treated as "new," and the required hearings and review were not undertaken.

81. The Arvada Municipal Code does not authorize expedited review of a revised project submitted under the second sentence of § 3.1.17.

82. The first sentence of § 3.1.17 with its one-year restriction and waiver provisions does not identify review requirements, presumably because it applies only to projects that are the same or substantially the same as the project that was declined.

83. In a February 9 email, City Manager Mark Deven, however, deemed the changes to Trammell Crow's revised application to be "substantive."

84. In an effort to understand the legal bases for City Council's second review of the Trammell Crow project, Plaintiff's counsel wrote a letter dated March 14 to City Attorney Chris Daly outlining questions and concerns about the process by which Arvada scheduled the March 19 hearing and vote on the Trammell Crow project. That letter indicated that Plaintiff "would welcome" the city's view of the issues raised therein.

85. That letter was received but never acknowledged.

86. AAP member Cindi Kreutzer requested from the city clerk a legislative history pertaining to § 3.1.17.

87. Ms. Kreutzer was told no legislative history was available for § 3.1.17.

88. Upon information and belief, City Council reheard the Trammell Crow project on March 19 based on the belief that § 3.1.17 authorizes a waiver of the one-year requirement at any time, that city council rules of procedure do not apply to rehearing/reconsideration of a project under § 3.1.17, and that rules of procedure provide a separate and distinct route to rehearing/reconsideration.

89. The city's interpretation, however, is inconsistent with the existence of City Council Rules of Procedures L8, which specifically contains provisions for reconsideration of quasi-judicial matters.

90. City Council's review of the Trammell Crow project was a quasi-judicial action subject to the City Council Rules of Procedures.

91. Upon information and belief, Arvada's interpretation of § 3.1.17 was spurred by the pressure placed upon city officials by proponents of the project to resurrect the project and by Trammell Crow's desire for a speedy rehearing.

92. When advised of the process by which City Council would rehear the project, even Trammell Crow's Bill Mosher seemed surprised by the process.

93. Mosher stated in a March 19 email to Maureen Phair: “Mo, this is the first I had seen or heard of this process. Thought going forward tonight was a bit more straightforward. I assume City Attorney feels City is on solid ground to proceed on this basis and waiving the year?”

94. The city’s interpretation of § 3.1.17, unmoored from City Council Rules of Procedures and principles of statutory construction, allowed influential project proponents, including former city council members, to influence a legislative outcome that was inconceivable to Plaintiff, whose members believed that City Council could not revisit the Trammell Crow denial for at least one year.

95. Had Plaintiff understood that the project was still in play despite the January 22 denial, they, like project proponents, could also have been seeking to influence council members and city officials from the date of denial. Instead, only project proponents were aware that city officials were contemplating rehearing the project.

First Claim for Relief

C.R.S. § 13-51-101 et seq. and C.R.C.P. 57 Declaratory Judgment

96. Plaintiff incorporates by reference the foregoing paragraphs.

97. Upon information and belief, all necessary parties to this action pursuant to C.R.C.P. 57(j) have been named in this action.

98. Arvada City Council’s approval of the Olde Town Residences PDP is a violation of the municipal code because it was based on an inaccurate interpretation of A.R.M.C. § 3.1.17, namely that City Council may rehear/reconsider a previously denied application *at any time*.

99. WHEREFORE, Plaintiff respectfully requests the Court to declare that the Arvada City Council violated the Arvada Municipal Code by approving the Preliminary Development Plan on March 19, 2018 and to declare that approval null and void.

Second Claim for Relief

C.R.S. § 13-51-101 et seq. and C.R.C.P. 57 Declaratory Judgment

100. Plaintiff incorporates by reference the foregoing paragraphs.

101. Upon information and belief, all necessary parties to this action pursuant to C.R.C.P. 57(j) have been named in this action.

102. A.R.M.C. § 3.1.17 states: *If the City Council denies an application, that same request or one substantially the same may not be heard by the City Council for a period of one (1) year from the date of denial, unless the City Council **explicitly states** that an earlier reapplication will be considered.* [Emphasis added.]

103. Arvada City Council's use of an informal email or phone poll to agree to rehear the Olde Town Residences PDP does not meet the requirements of A.R.M.C. § 3.1.17 because the City Charter does not authorize official action through those means.

104. Arvada officials treated the telephone and email poll as official action, rather than merely a means of setting agenda items, because the poll was the basis for the March 7 announcement that City Council *would* rehear the Olde Town Residences PDP.

105. In fact, the decision to rehear the Olde Town Residences PDP was not made via a motion at a City Council meeting until March 19, 2018, 12 days *after* the city announced the hearing would occur.

106. WHEREFORE, Plaintiff respectfully requests the Court to declare that the March 7 hearing notice and the March 19 hearing did not comply with the municipal code notice and hearing requirements and to therefore declare null and void City Council's approval of the Olde Town Residences Project.

Third Claim for Relief

C.R.C.P. § 106(a)(4)

107. Plaintiff incorporates by reference the foregoing paragraphs.

108. Arvada's approval of the Olde Town Residences PDP on March 19, 2018 was a quasi-judicial action.

109. Arvada's approval of the Olde Town Residences PDP on March 19, 2018 was an abuse of discretion because it was based on an erroneous interpretation of the authorities contained in the City Charter and A.R.M.C. § 3.1.17.

110. Arvada's approval of the Olde Town Residences PDP on March 19, 2018 exceeded its jurisdiction because the approval was based on an erroneous interpretation of statutory authorities contained in the City Charter and A.R.M.C. § 3.1.17.

111. In acting outside the boundaries of its Municipal Code, Arvada deprived Plaintiff of the procedural protections inherent in the Municipal Code.

112. There is no plain, speedy and adequate remedy at law for Plaintiff's injuries.

WHEREFORE, Plaintiff respectfully requests the Court to declare Arvada's March 19 approval of the Preliminary Development Plan null and void because Arvada exceeded its jurisdiction and/or abused its discretion, and there is no plain, speedy and adequate remedy at law. Plaintiff requests such other relief as the Court deems proper.

Respectfully Submitted,

S/ Karen R. Breslin

Karen R. Breslin

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via ICCES to the following:

S/Karen R. Breslin

