

| | |
|---|---|
| <p>DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO 1437 Bannock Street Denver, Colorado 80202</p> | <p>DATE FILED: October 21, 2015 5:25 PM FILING ID: 7E5BC8CCAFAA0 CASE NUMBER: 2015CV32427</p> |
| <p>Plaintiffs: ARTHUR KEITH WHITELAW, III, JOHN DERUNGS, KATHERINE K. McCRIMMON, LAURA PITMON, DENISE SIGON f/k/a DENISE L. SAGER, and ALAN and RITA SINGER</p> <p>v.</p> <p>Defendants: THE DENVER CITY COUNCIL (including the individual Council members in their official capacity, Albus Brooks, Robin Kniech, Peggy Lehmann, Paul Lopez, Judy H. Montero, Chris Nevitt, Debbie Ortega, Jeanne Robb, Susan Shepherd, Mary Beth Susman); THE MANAGER OF COMMUNITY PLANNING AND DEVELOPMENT (Brad Buchanan, in his official capacity); THE DENVER PLANNING BOARD (including the individual board members in their official capacity, Andy Baldyga, Jim Bershof, Shannon Gifford, Renee Martinez-Stone, Brittney Morris Saunders, Joel Noble, Susan Pearch, Arleen Taniwaki, Julie Underdahl, Frank Schultz and Chris Smith); THE CITY AND COUNTY OF DENVER; and CEDAR METROPOLITAN LLC (the Property Owner/zoning Applicant).</p> | <p style="text-align: center;">▲ COURT USE ONLY ▲</p> |
| <p><i>Attorneys for Defendant, Cedar Metropolitan LLC:</i> Chip G. Schoneberger, #41922 Melanie MacWilliams-Brooks, #45322 Foster Graham Milstein & Calisher LLP 360 South Garfield Street, 6th Floor Denver, Colorado 80209 Phone: (303) 333-9810 Email: cschoneberger@fostergraham.com mbrooks@fostergraham.com</p> | <p>Case Number: 2015cv032427</p> <p>Courtroom: 269</p> |
| <p style="text-align: center;">ANSWER TO COMPLAINT FOR RELIEF UNDER C.R.C.P. 106(A)(4) AND FOR DECLARATORY JUDGMENT</p> | |

Defendant, Cedar Metropolitan LLC (“Cedar”), through its undersigned counsel, Foster Graham Milstein & Calisher, LLP, hereby submits its Answer to Plaintiffs’ Complaint for Relief Under C.R.C.P. 106(A)(4) and for Declaratory Judgment as follows:

1. Cedar admits that ¶ 1 generally characterizes the nature of Plaintiffs' claims. Cedar lacks sufficient information to admit or deny the 55 year history of the Mt. Gilead parcel. The remainder of ¶ 1 calls for legal conclusions to which no response is required.

2. Denied.

3. Cedar admits that the Mt. Gilead Parcel is located within the City and County of Denver and that its address is 195 S. Monaco Blvd. Cedar lacks sufficient information to admit or deny its legal description in the Denver Assessor's records and therefore denies same. The remainder of ¶ 3 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar denies such allegations.

4. Paragraph 4 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar denies such allegations.

5. The Denver Zoning Code speaks for itself and thus no response to Paragraph 5 is required. To the extent a response is required, Cedar denies such allegations that are inconsistent with the plain language of the Code.

6. Cedar lacks sufficient information to admit or deny the allegations in ¶ 6 and therefore denies same.

7. Denied.

8. The authority of the City Council's existence calls for legal conclusions to which no response is required. To the extent a response is required, Cedar denies such allegations. Cedar admits the identified individuals were members of the City Council as of June 8 and 9, 2015 and that Councilman Herndon did not attend the June 8-9 2015 City Council meeting. Cedar denies the remaining allegations not specifically admitted in this paragraph.

9. Cedar lacks sufficient information to admit or deny whether the identified individuals were members of the Planning Board as of January 21, 2015. The remaining allegations in paragraph 9 call for legal conclusions to which no response is required. To the extent a response is required, Cedar denies such allegations.

10. Paragraph 10 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar denies such allegations.

11. Paragraph 11 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar denies such allegations.

12. Cedar admits that it is a Colorado limited liability company organized on October 3, 2014; that Peter Kudla is its registered agent; and that its office location is 10111 Inverness Main Street, Suite T, Englewood, Colorado. The referenced application for a zone map

amendment speaks for itself and Cedar denies any allegation or characterization inconsistent with it. Cedar denies the remaining allegations of ¶ 12.

13. Cedar lacks sufficient information to admit or deny the allegations in ¶ 13 and therefore denies same.

14. Denied.

15. Cedar lacks sufficient information to admit or deny the allegations in ¶ 15 and therefore denies same.

16. Denied.

17. Cedar lacks sufficient information to admit or deny the allegations in ¶ 17 and therefore denies same.

18. Cedar lacks sufficient information to admit or deny the allegations in ¶ 18 and therefore denies same.

19. Cedar lacks sufficient information to admit or deny the allegations in ¶ 19 and therefore denies same.

20. Paragraph 20 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar denies such allegations.

21. Cedar admits it knew the property was subject to zoning under the Denver Zoning Code. The remaining allegations of ¶ 21 call for legal conclusions to which no response is required.

22. Cedar admits that the referenced zoning application speaks for itself and denies any allegations or characterizations that are inconsistent with the application.

23. Cedar admits that the referenced zoning application speaks for itself and denies any allegations or characterizations that are inconsistent with the application.

24. Cedar admits that the referenced zoning application speaks for itself and denies any allegations or characterizations that are inconsistent with the application. Cedar denies that the application contained any “false” statements.

25. Denied.

26. Denied.

27. Cedar admits that the referenced amended zoning application speaks for itself and denies any allegations or characterizations that are inconsistent with the application.

28. Denied.

29. Cedar admits the amended zoning application was presented to the Planning Board at a public hearing on or about January 21, 2015. Cedar denies the remaining allegations in ¶ 29.

30. Denied.

31. Cedar denies that the Planning Board Meeting Record relevant to this action because the Planning Board is not the final decision maker for purposes of Plaintiffs' C.R.C.P. 106(a)(4) Complaint. To the extent the Planning Board Meeting Record is relevant, the record speaks for itself and Cedar denies any allegations inconsistent with that record.

32. Cedar admits only that the Planning Board "record" speaks for itself and Cedar denies any allegations or characterizations that are inconsistent with the record.

33. Denied.

34. Cedar admits the originally scheduled hearing was postponed. Cedar lacks sufficient information to admit or deny allegations regarding Councilperson Sussman's "contentions." Cedar denies all remaining allegations not expressly admitted..

35. Cedar lacks sufficient information to admit or deny the allegations in ¶ 35 and therefore denies same.

36. Denied.

37. The City Charter speaks for itself and Cedar denies any allegations inconsistent with it.

38. Cedar lacks sufficient information to admit or deny the allegations in ¶ 38 and therefore denies same.

39. Cedar lacks sufficient information to admit or deny the allegations in ¶ 39 and therefore denies same.

40. Cedar lacks sufficient information to admit or deny the allegations in ¶ 40 and therefore denies same.

41. Cedar lacks sufficient information to admit or deny the allegations in ¶ 41 and therefore denies same.

42. Cedar lacks sufficient information to admit or deny the allegations in ¶ 42 and therefore denies same.

43. Cedar lacks sufficient information to admit or deny the allegations in ¶ 43 and therefore denies same.

44. Denied.

45. Paragraph 45 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar denies such allegations.

46. Cedar affirmatively states that Colorado District Courts lack authority to reconsider or overrule binding precedent of Colorado's appellate courts.

47. Denied.

48. The transcript of the public hearing speaks for itself and Cedar denies any allegations or characterizations inconsistent with it.

49. The transcript and television record of the public hearing speaks for itself and Cedar denies any allegations or characterizations inconsistent with it.

50. The City's "SIRE" website speaks for itself and Cedar denies any allegations or characterizations inconsistent with it.

51. Denied.

52. Paragraph 52 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar denies such allegations.

53. Paragraph 53 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar denies such allegations.

54. Paragraph 54 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the cited case speaks for itself.

55. Paragraph 55 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the Denver Zoning Code speaks for itself.

56. Paragraph 56 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the Denver Zoning Code speaks for itself.

57. Paragraph 57 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the Denver Zoning Code speaks for itself.

58. Paragraph 58 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the Denver Zoning Code speaks for itself.

59. Paragraph 59 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the Denver Zoning Code speaks for itself.

60. Denied.

61. Paragraph 61 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the Denver Zoning Code speaks for itself.

62. Denied.

63. Paragraph 54 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the cited case and Denver Zoning Code speak for themselves.

64. Paragraph 64 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the cited case speaks for itself.

65. Paragraph 54 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the cited cases speak for themselves.

66. Paragraph 66 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the cited cases speak for themselves.

67. Paragraph 67 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the Colorado Judicial Code of Conduct speaks for itself.

68. Paragraph 68 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the cited case speaks for itself.

69. Paragraph 69 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the cited case speaks for itself.

70. Paragraph 70 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the Denver Revised Municipal Code speaks for itself.

71. Paragraph 71 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the Denver Revised Municipal Code speaks for itself.

72. Paragraph 72 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the Zoning Code speaks for itself.

73. Paragraph 73 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the Zoning Code speaks for itself.

74. Plaintiffs' exhibit speaks for itself and Cedar denies any allegation or characterization inconsistent with it.

75. Paragraph 75 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the Denver Revised Municipal Code speaks for itself.

76. Paragraph 76 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the Colorado Constitution speaks for itself.

77. The Colorado Ethics Handbook speaks for itself and Cedar denies any allegation or characterization inconsistent with it.

78. Paragraph 78 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the Colorado Revised Statutes speaks for itself.

79. Paragraph 79 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the Colorado Revised Statutes speaks for itself.

80. Paragraph 80 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the Colorado Revised Statutes speaks for itself.

81. Paragraph 81 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the Denver Revised Municipal Code speaks for itself.

82. Denied.

83. Cedar hereby incorporates Paragraphs 1-82 above.

84. Paragraph 84 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the Colorado Rules of Civil Procedure speaks for itself.

85. Paragraph 85 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the Colorado Rules of Civil Procedure and cited case speak for themselves.

86. Paragraph 86 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the Zoning Code speaks for itself.

87. Paragraph 87 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the Zoning Code speaks for itself.

88. Admitted.

89. Denied.

90. Denied.

91. Denied.

92. Denied.

93. Cedar hereby incorporates Paragraphs 1-92 above.

94. Paragraph 94 calls for legal conclusions to which no response is required. To the extent a response is required, Cedar states that the Colorado Rules of Civil Procedure and cited case speak for themselves.

95. Denied.

General Denial

96. All allegations not expressly admitted or otherwise discussed are denied.

Affirmative Defenses

1. Plaintiffs' complaint fails to state a claim upon which relief can be granted.

2. Cedar reserves the right to supplement its affirmative defenses if investigation and/or discovery reveal facts that would support additional defenses.

WHEREFORE, Cedar Metropolitan, LLC respectfully requests the Court find in its favor and deny Plaintiffs the relief requested in their Complaint, and award it reasonable attorney fees and costs of this litigation. Cedar requests any further relief this Court deems just and proper.

Dated this 21st day of October, 2015.

FOSTER GRAHAM MILSTEIN
& CALISHER, LLP

By: /s/ Chip G. Schoneberger

Chip G. Schoneberger

Attorneys for Defendant, Cedar Metropolitan LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21st day of October, 2015, a true and correct copy of the foregoing **ANSWER TO COMPLAINT FOR RELIEF UNDER C.R.C.P. 106(A)(4) AND FOR DECLARATORY JUDGMENT** was served via ICCES upon the following:

Gregory J. Kerwin
Gibson Dunn & Crutcher LLP
1801 California Street, Suite 4200
Denver, Colorado 80202
Attorneys for Plaintiffs

Nathan Lucero
Tracy Davis
Denver City Attorney's office
Municipal Operations Section
201 W. Colfax Avenue, Dept. 1207
Denver, Colorado 80202
Attorneys for The City Defendants

/s/ Tiffany A. Noel

Paralegal

Original signatures on file at the offices of Foster Graham Milstein & Calisher, LLP pursuant to C.R.C.P. 121 §1-26(7).