

DISTRICT COURT, EL PASO COUNTY, COLORADO 270 South Tejon Street Colorado Springs, Colorado 80903 Phone: 719.452.5000	DATE FILED: March 26, 2024 1:33 PM FILING ID: 343C2A74D478D CASE NUMBER: 2024CV30560  <p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
Plaintiffs: James J. Nau, an individual, WESTSIDE WATCH, a nonprofit corporation, and INTEGRITY MATTERS, a nonprofit corporation  v.  Defendant: CITY OF COLORADO SPRINGS, a home rule City and Colorado municipal corporation	
Attorney for Plaintiff  Katherine Gayle, #20089 13790 Voyager Parkway Colorado Springs, CO 80921  Phone: 970-278-6884  Email: katlaw065@gmail.com	Case No:  Division:
<b>COMPLAINT FOR RELIEF UNDER C.R.C.P. 106(a)(4)</b>	

Plaintiffs, by and through their undersigned attorney, Katherine Gayle, for their Complaint, states and addresses as follows:

**I. PARTIES, JURISDICTION AND VENUE**

1. Plaintiff James Nau is a resident of the City of Colorado Springs, Colorado with a mailing address of 10735 Rhinestone Drive, Colorado Springs, CO, 80908.
2. Westside Watch is a nonprofit corporation formed to promote the proper administration of government, especially regarding public safety, with a mailing address of P.O. Box 38802 Colorado Springs, CO, 80937.
3. Integrity Matters is an unincorporated association formed to promote the proper administration of government with a mailing address of P.O. Box 60082 Colorado Springs, CO, 80960-8882.
4. Defendant City of Colorado Springs, Colorado (the "City") is a home rule city and a Colorado municipal corporation that exercises the powers granted to home rule cities under Article XX of the Colorado Constitution, including the power to enact land use regulations and to adopt policies and procedures to carry out and enforce land use regulations.
5. This Court has personal jurisdiction over the parties to this claim and subject matter jurisdiction over the claim asserted.
6. Venue is proper in this court pursuant to C.R.C.P.106(a)(4).

## II. GENERAL ALLEGATIONS

7. Plaintiffs hereby incorporate the allegations contained in Paragraphs 1 through 6 above as it relates herein.
8. On or about December 13, 2023, the City's Planning Commission recommended approval of a zone change and site plan development application concerning the Ovation Development that included a 3-part land exchange and sale and rezoning a 60+ acre parcel of land from PK (Public Park) to R-Flex Low that concerned real property described as ZONE 23-0014 and MAPN 23-0005 Colorado Springs, CO. This was a quasi-judicial decision.
9. Zone 23-0014 and MAPN 23-0005 were originally filed on or about May 17, 2023.
10. The Planning Commission recommendation of the zone change, and the Ovation Development site-plan approval was taken up by the Colorado Springs City Council that on or about February 27, 2024:
  - A. approved the rezoning of the parcel, and
  - B. City Council President Randy Helms arbitrarily and capriciously modified the site-plan from the dais without public notice/input to eliminate the second ingress/egress emergency access point, and
  - C. The City Council approved the dangerously modified Ovation site-plan as a final action in a quasi-judicial decision.
11. The rezoning of the 60+ acre parcel from PK (Public Park) to R-Flex Low residential materially deviated from the City's land use policies, procedures, and ordinances. Specifically, the decision is errant for the following reasons:
  - A. The City failed to follow Section 7.5.603 B of the Code of the City of Colorado Springs which provides:

*A proposal for the establishment or change of zone district boundaries may be approved by the City Counsel only if the following findings are made:*

    1. *The action will not be detrimental to the public interest, health, safety, convenience, or general welfare.*
12. The City Council's decision to approve the Ovation Site Plan with 290 – 360 dwelling units with one egress creates a significant public safety risk and deviates from the City's responsibility to protect public safety.
  - A. The Colorado Court of Appeals upheld the lower court's finding that safety is a valid criterion for rezoning decisions in *2424GOTG, LLC v. City of Colorado Springs, 2023 Colo. App. LEXIS 1041*.

B. The City failed to follow the 2021 International Fire Code (hereafter IFC) Sections D102.1 and Section D107.1 that was ratified by the City on or about March 14, 2023.

1. The IC requires 2 ingress/egress roads in developments with over 40 dwelling units (Ovation is projected to be 290 – 360 dwelling units).
2. La Plata Communities, the developer of the “Ovation” community on the parcel, accepted and endorsed this requirement by attempting to create a road linking the development to Colorado Highway 83 for emergency evacuations. Said road was a dirt road ending at a fence prior to crossing a CDOT drainage ditch.
3. Such roads have certain sufficiency requirements in order to support emergency vehicles. These requirements include grade, composition materials, and on-going maintenance.
4. When it became apparent that the second road linking the development to Colorado Highway 83 failed to meet any of these requirements, City Council President Randy Helms:

a. Stated Ovation’s site plan meets all the criteria required by the City Code EXCEPT UDC Section 7.5.603(B)(1), the public safety provision.

1. “We make this decision based upon the criteria And there's a there's a list of criteria and what I what I have heard this evening Tells me that the criteria has been uh fulfilled with maybe the exception of the one about a detriment to the safety health And a convenience of the community and that always for most things that we have to vote on It typically boils down to that. So we have to make it we have to make a decision about whether we support Uh this the applicant and this project or we don't” (Colorado Springs City Council 2/27/2024 Hearing Transcript President Council Member Randy Helms (2:33:27 - 2:35:42)

b. President Helms unilaterally, in an arbitrary and capricious manner, from the dais, requested the REMOVAL of the second (insufficient/non-compliant with the IFC) emergency road from the Ovation Development Plan.

c. President Helms dismissed public safety as a criterion for rezoning and land use planning in an arbitrary and capricious manner. As above, City Council President publicly stated that the decision is about whether the

City supports the applicant and the project rather than adherence to the City Code and other applicable laws and ordinances.

13. The City failed to follow their own precedent set on an adjacent parcel of land. This demonstrates bias against the citizens of Colorado Springs, and in particular nearby residents, in favor of La Plata Communities.
  - A. On or about July 25, 2023, the City denied the Kettle Creek North Development project (also known as North Fork) finding that one access/egress point was insufficient for public safety standards in case of an emergency.
  - B. Kettle Creek North was a proposed development in direct proximity to the Ovation Development.
14. Rezoning the parcel and approving the Ovation Development plan is a violation of The Endangered Species Act of 1973.
  - A. The Preble's meadow jumping mouse is listed as threatened by the U.S. Fish and Wildlife Service (USFWS 1998).
  - B. In Colorado, the Preble's meadow jumping mouse is listed as a threatened, Tier 1, Species of Greatest Conservation Need (CPW 2015).
  - C. The Colorado Natural Heritage Program considers the subspecies to be globally-imperiled (G5 T2) and critically imperiled within the state (S1).
  - D. The parcel of land is adjacent to Kettle Creek which is a significant part of the Monument Creek watershed and is critical habitat of the threatened Preble's Meadow Jumping Mouse.
  - E. Cody Humphrey, Director of Planning, La Plata Communities, the developer of the Ovation project, explicitly stated that there are no existing trails on the adjacent property and that none were planned due to the endangered [sic] mouse habitat.
  - F. No Environmental Impact Study was completed despite the parcel's proximity to Kettle Creek and the parcel's location within the Monument Creek watershed.
  - G. No capture study was conducted by the developer to determine whether the Preble's Jumping Meadow Mouse was present.
  - H. The Army Corps of Engineers was not consulted nor was a permit issued despite the parcel's location in the Monument Creek watershed.
15. The rezoning followed by the Ovation Development approval by the City ignored and/or misstated the relevant geographic/geologic evidence which given the topography of the Property leads to safety risks to the public and to the habitat of the Preble's Meadow Jumping Mouse.

III. CLAIM FOR RELIEF  
[C.R.C.P. 106(a)(4)]

16. Plaintiffs hereby incorporate their allegations contained in Paragraphs 1 through 15 above as is recited herein.
17. The City, in approving these applications, admittedly violated UDC 7.5.603(B)(1).
18. The City's action in approving the rezone from PK (Public Park) to R-Flex Low and the subsequent approval of the Ovation Development Application exceeded its jurisdiction and/or constitutes an abuse of discretion.
19. The City's actions provided unequal treatment to nearby residents and the people of Colorado Springs, showing bias in favor of the Ovation Development project, and misapplying both statute and common law by wholly disregarding the project's impact on the health, safety, and welfare of the community.
20. The Plaintiffs are entitled to an order pursuant to C.R.C.P.106(a)(4) vacating the rezoning of the parcel and the Ovation site-plan Development approval.

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

- A. An order and judgement vacating the Ovation Development Approval pursuant to C.R.C.P.106(a)(4);
- B. Plaintiff's attorneys' fees and costs, and
- C. Such other and further relief as this court deems just and proper.

DATED: March 25, 2024.

By: */s/ Katherine Gayle*  
Katherine Gayle, Atty. No. 20089

Attorney for Plaintiffs