

District Court of Jefferson County, Colorado 100 Jefferson County Parkway Golden, CO 80401 (720) 772-2500	DATE FILED May 12, 2025 9:03 AM FILING ID: FBA1563767357 CASE NUMBER: 2025CV30758
Plaintiff(s): SAVE BELMAR PARK, INC., a Colorado Nonprofit Corporation. v. Defendant(s): City of Lakewood, Colorado, a political subdivision of the State of Colorado; Planning Commission of the City of Lakewood, a duly authorized administrative body of a political subdivision of the State of Colorado; Belmar Owner LLC, a foreign limited liability company; Kairoi Management, LLC, a foreign limited liability company d/b/a Kairoi Residential.	▲ COURT USE ONLY ▲
<i>Attorney for Plaintiff Save Belmar Park, Inc.</i> PAT MELLEN LAW, LLC Patricia A. Mellen # 50839 3900 E. Mexico Ave., Suite 300 Denver, Colorado 80210 Telephone: 720-593-3593 Facsimile: 303-927-0809 E-mail: pat@patmellenlaw.com	Case Number: Division:
<p align="center">COMPLAINT PURSUANT TO C.R.C.P. RULE 106(a)(4)</p>	

COMES NOW the Plaintiff, Save Belmar Park, Inc., (“SBP,”) by and through its attorney Patricia A. Mellen of Pat Mellen Law, LLC, and submits this Complaint Pursuant to C.R.C.P. Rule 104(a)(4). As grounds for such it asserts the following:

NATURE OF THE ACTION

This appeal is brought by SBP pursuant to C.R.C.P. Rule 106(a)(4) seeking judicial review of the Planning Commission’s approval of the Master Site Plan SP22-0010 and Minor Waiver WI24-0003 adopted after a hearing by the Lakewood Planning Commission on May 7, 2025. Planning Cases No. SP22-0010 and WI24-0003 were submitted by Kairoi Residential for a development of a 411-unit apartment building on a property at 777 S. Yarrow Street, Lakewood,

CO, owned by Belmar Owner, LLC. SBP seeks appellate review of these approvals, which were done without passing of the draft resolution 2025-X as prepared by Lakewood City Staff.

PARTIES AND GEOGRAPHY

1. Save Belmar Park, Inc. (“SBP,”) Plaintiff, for all times material to this action, has been a non-profit corporation with a principal office address of 8230 W 8th Ave, Lakewood, CO 80214.
2. The City of Lakewood, (“the City,”) Defendant, is a home rule municipality pursuant to the Colorado Constitution, art. XX, § 6 and governed by the Charter for the City of Lakewood, first adopted on November 1, 1983 and thereafter amended on November 5, 1991, November 3, 1992, November 2, 1999 and November 2, 2004.
3. The Planning Commission of the City of Lakewood, (“the Planning Commission”), is an entity created by Section 9.1(a) of Section IX of the City of Lakewood Charter, first adopted on November 1, 1983, and thereafter amended on November 5, 1991, November 3, 1992, November 2, 1999 and November 2, 2004. Material to this action, the Planning Commission is authorized by section 17.2.7.3(B) of the Lakewood Zoning Ordinance as follows:
 - B. The Planning Commission shall have the authority to hear a referral from the Director and render a decision on a major site plan application.
4. Belmar Owner LLC, (“the Owner,”) Defendant, is a foreign limited liability company formed in the State of Delaware, registered with the Colorado Secretary of State on May 25, 2021, with a principal office street address of 711 Navarro St., Ste. 400, San Antonio, TX, 78205.
5. Kairoi Management, LLC, (“the Developer,”) Defendant, is a foreign limited liability company formed in the State of Texas, registered with the Colorado Secretary of State on December 1, 2017, with a principle office address of 711 Navarro St., Ste. 400, San Antonio, TX, 78205.
6. Kairoi Residential is a trade (d/b/a) name registered with the Colorado Secretary of State on December 1, 2017, by Kairoi Management, LLC.
7. Together Belmar Owner LLC and Kairoi Management, LLC will hereinafter be referred to as “the Kairoi Defendants.”
8. The real property (“the Property”) that gives rise to this dispute is Parcel # 49-142-03-001, in Jefferson County, Colorado, with a legal description of:

Lot 2, IRONGATE EXECUTIVE PLAZA SUBDIVISION, County of Jefferson, State of Colorado,

Excepting therefrom those portions conveyed to the City of Lakewood by Deeds recorded November 8, 2000, Under Reception No. F1142026, and November 8, 2000, Under Reception No. F1142028,

Also Known As: 777 S. Yarrow St., Lakewood, CO 80226.

JURISDICTION AND VENUE

9. This Court has jurisdiction to hear this matter pursuant to C.R.C.P. Rule 106(a) and (a)(4), which authorizes a district court to determine relief:

Where, in any civil matter, any governmental body or officer or any lower judicial body exercising judicial or quasi-judicial functions has exceeded its jurisdiction or abused its discretion, and there is no plain, speedy and adequate remedy otherwise provided by law

10. Jurisdiction also is proper pursuant to C.R.S. 13-1-124(1)(a) and (1)(c) as all of the parties have transacted business in this state, and own, use and/or possess real property in the City of Lakewood, County of Jefferson, CO, that forms the basis of this complaint.
11. Venue is proper pursuant to C.R.C.P. Rule 98 as the parties resided or conducted business in Jefferson County, the relevant contracts were entered into in Jefferson County, and the property that forms the basis of the dispute is located in Jefferson County.

STANDING

12. SBP asserts organizational standing pursuant to:

Thus we have recognized that an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

Hunt v. Washington State Apple Advert. Comm'n, 432 U.S. 333, 343 (1977).

13. SBP was formed to promote and protect the interests of its members, the citizens of Lakewood, visitors and wildlife who use and enjoy Belmar Park and any whose property values are affected by the conditions and aesthetics of Belmar Park, which is actively promoted by the City as a unique feature and benefit.
14. SBP's members include but are not limited to residents of the City of Lakewood who are also registered voters, who are regular users of Belmar Park, and who own property adjacent to or near Belmar Park and the Property in dispute.
15. SBP's members would otherwise have standing to sue in their own right:

The United States Supreme Court has held that aesthetic and ecological interests are sufficient to grant standing to a plaintiff. *Sierra Club v. Morton*, 405 U.S.

727, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972); see also *Desert Citizens Against Pollution v. Bisson*, 231 F.3d 1172 (9th Cir.2000)(finding that plaintiffs asserting environmental and aesthetic interests in public lands had standing to challenge an anticipated land exchange under the Federal Land Policy and Management Act, even before the exchange occurred). **The Colorado Supreme Court has also recognized aesthetic and ecological interests as sufficient to (sic) for standing purposes. See *Greenwood Village v. Petitioners for Proposed City of Centennial*, supra.**

Friends of the Black Forest Reg'l Park, Inc. v. Bd. of Cnty. Comm'rs of Cnty. of El Paso, 80 P.3d 871, 877 (Colo. App. 2003)(emphasis added).

16. SBP asserts that the protection of the conditions and aesthetics of Belmar Park from adverse effects from the Kairoi Defendants' proposed development are directly at issue under C.R.C.P. Rule 106(a)(4):

Further, the United States Supreme Court recently explained the "legally protected interest" prong of the standing requirement: "The proper inquiry is simply 'whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected ... by the statute.' " *National Credit Union Administration v. First National Bank & Trust Co.*, 522 U.S. 479, 492, 118 S.Ct. 927, 935, 140 L.Ed.2d 1 (1998)(quoting *Ass'n of Data Processing Service Organizations v. Camp*, 397 U.S. 150, 153, 90 S.Ct. 827, 830, 25 L.Ed.2d 184 (1970)). Unnecessary or premature decisions of constitutional questions should be avoided, and parties actually protected by a statute or constitutional provision are generally best situated to vindicate their own rights. See *Greenwood Village v. Petitioners for Proposed City of Centennial*, supra.

Id.

STANDARD OF REVIEW

17. Parties damaged by a municipality's land use decision may seek relief from the Courts:

Review under C.R.C.P. 106(a)(4) is appropriate where any governmental body or officer has exercised "judicial or quasi-judicial functions." Review under C.R.C.P. 106(a)(4) is limited to review of the record to determine whether the governmental tribunal has abused its discretion or exceeded its jurisdiction.

Native Am. Rts. Fund, Inc. v. City of Boulder, 97 P.3d 283, 287 (Colo. App. 2004)(internal citations omitted).

18. “[A]n action is quasi-judicial when it involves the determination of rights, duties, or obligations of specific parties by applying existing legal standards to past or present facts to resolve the particular interests in question.” *Id.*
19. “An agency abuses its discretion if its decision is not reasonably supported by any competent evidence in the record, or if the agency has misconstrued or misapplied applicable law.” *Colorado Health Consultants v. City & Cnty. of Denver through Dep’t of Excise & Licenses*, 429 P.3d 115, 121 (Colo. App. 2018) (internal citations omitted.)
20. “Lack of competent evidence occurs when the administrative decision is so devoid of evidentiary support that it can only be explained as an arbitrary and capricious exercise of authority.” *Freedom Colorado Info., Inc. v. El Paso Cnty. Sheriff’s Dep’t*, 196 P.3d 892, 900 (Colo. 2008) *citing* *Ross v. Fire & Police Pension Ass’n*, 713 P.2d 1304, 1308–09 (Colo.1986).

MATERIAL FACTUAL BACKGROUND

I. The Property, Belmar Park and the Surrounding Community

21. On August 31, 1972, the Irongate Executive Plaza Subdivision Final Plat was recorded with the Jefferson County Clerk and Recorder at Reception # 72514916, which depicts a subdivision with two lots that are now known as 777 S. Yarrow and 777 S. Wadsworth.
22. Any subdivision agreement between the then property owner, LMC Community Organization, and the City that supports the recorded subdivision plat has not been recorded or disclosed by the City or the Kairoi Defendants.
23. Belmar Park (“the Park”) was created in January 1974 and ownership of it was transferred to the City as the result of a court case and a lengthy dispute between the citizens and the City as to the future of what was then then commonly known as either the Belmar Estate or the Stanton Estate, left by Denver Post heiress May Bonfils Stanton’s widow to the Archdiocese of Denver.
24. History Colorado reports that the elaborate Belmar Mansion was demolished on the Property now in dispute, where the Irongate Executive Plaza office buildings were then constructed.¹
25. Certain surviving ornate fixtures from the Belmar Mansion remain on the western edge of the Property and on the eastern edge of the Belmar Park property.
26. The City of Lakewood website describes Belmar Park as²:

¹ <https://www.historycolorado.org/story/articles-print/2018/10/19/may-bonfils-and-her-lost-belmar-mansion-lavish-lakewood-estate>

² <https://www.lakewood.org/Government/Departments/Community-Resources/Parks-Forestry-and-Open-Space/A-to-Z-Park-List/Belmar-Park>

One of the true jewels of the City of Lakewood park system, Belmar Park is a peaceful enclave in the center of town. At 132 rolling acres of natural grasslands and trees, the park offers nearly two miles of paved trails, over 17-acres of water, a creek and a wide variety of waterfowl and native plant communities.

27. Kountze (Belmar) Lake, (“the Lake,”) and its associated pathways are located immediately on the Park’s eastern lot line adjacent to the Property in dispute.
28. On August 25, 1988, a modification to the Irongate Executive Park ODP Site Plan was recorded with the Jefferson County Clerk and Recorder at Reception # 88083183, which depicts the office buildings as constructed on the two lots.
29. In 2009 the Property and its adjacent parcel were still zoned PD-117, which translates to a Planned Development – Irongate Executive Plaza.
30. On December 10, 2012, the City adopted a new comprehensive Zoning Ordinance.
31. On or about December 10, 2012, the Property and the adjacent property at 777 S. Wadsworth were rezoned to M-C-U, Mixed Use – Core – Urban district despite the continuing existence of the Irongate Executive Plaza Subdivision as a planned development and other nearby subdivisions retaining their PD zoning designations.
32. M-C-U zoning authorizes many uses by right other than multi-family housing.
33. M-C-U zoning requires “All single-use multifamily development must provide at least 30% open space.”
34. On June 21, 2021, a Special Warranty Deed was recorded with the Jefferson County Clerk and Recorder where ownership of the Property was granted by Irongate Offices, LLC, to Belmar Owner, LLC.
35. This Special Warranty Deed includes at its Exhibit B a list of thirteen (13) of “Permitted Exceptions,” which are limitations on the title pursuant to C.R.S § 38-30-113(5)(a).
36. Records maintained by the Tax Assessor of Jefferson County report the Property includes 5.234 acres of land.
37. Records maintained by the Tax Assessor of Jefferson County report that the consideration for this transaction was \$6 million.
38. The legal description of the property purchased is:

Exhibit A
Legal Description

Lot 2, IRONGATE EXECUTIVE PLAZA SUBDIVISION, County of Jefferson, State of Colorado,

Excepting therefrom those portions conveyed to the City of Lakewood by Deeds recorded November 8, 2000, Under Reception No. F1142026, and November 8, 2000, Under Reception No. F1142028,

Also known by street and number as: 777 South Yarrow Street, Lakewood, CO.

39. No recorded documents can be discovered that have vacated or terminated the 1972 subdivision plat and any supporting agreement that govern the Property as part of the Irongate Executive Plaza Subdivision.
40. The Kairoi Defendants have admitted in other litigation that the 2021 purchase of the Property includes an option to purchase the adjacent property at 777 S. Wadsworth, which records maintained by the Tax Assessor of Jefferson County show is currently still titled to Irongate Offices, LLC.
41. Until recently the Property contained a two-story office building, which according to records maintained by the Tax Assessor of Jefferson County was built in 1964 and recently demolished.
42. The 777 S. Wadsworth property contains three two-story office buildings, which according to records maintained by the Tax Assessor of Jefferson County were built in 1974.
43. The office building on the Property had been effectively abandoned for an undetermined length of time and before its demolition was boarded up and fenced off while upon information and belief a minimum number of tenants remain active in the 777 S. Wadsworth building(s).
44. For years the public has used the parking lots on the Property and the adjacent property to park vehicles and access the Park, its paths, the Belmar mansion fixtures and particularly the Lake, even when the Property's office building was in active use.
45. The Property and its companion property contain a substantial number of mature and potentially old-growth trees.
46. The Property is surrounded on its other three sides by a parcel owned by the City of Lakewood, commonly referred to as Belmar Park.
47. The only other developed residential property nearby is a subdivision of townhomes called Belmar Commons, all of which are no more than two stories in height, which is located directly northeast of the Property across S. Yarrow Street, which is the only street offering ingress or egress to this subdivision.

48. South Yarrow street is a two lane street that extends for approximately three blocks between W. Virginia and W. Ohio Avenues and contains a very limited number of approved on-street parking spots.
49. Also nearby is the Jefferson County Public Library, which is also approximately two stories in height.
50. The Property is 2.5 miles from the nearest light-rail station at Wadsworth and 13th Avenue, and 0.2 miles from the nearest RTD bus stop, which is on Wadsworth Boulevard south of W. Ohio Avenue.

II. The Development Dispute

51. As previously stated, on June 21, 2021, Belmar Owner, LLC closed on purchase of the Property.
52. On April 27, 2022, the first plans were submitted to the City for redevelopment of the Property.
53. Multiple iterations of amended plans, supporting documentation, responsive comments by the Planning Department and further revisions ensued.
54. In December 2023 SBP was formed to advocate for its members' and the public's interest in preserving the character and aesthetics of Belmar Park as historically and currently enjoyed by the citizens, visitors and wildlife.
55. The Lakewood Zoning Code at Section 17.2.7.3 allows approval of the Kairoi Defendants' development by the Planning Director and other administrative staff without any public process or public input.
56. The only party permitted by the Lakewood Zoning Code Section 17.2.7.4 to appeal the Planning Director's MSP decisions to the Planning Commission is the applicant, which in this case is solely the Kairoi Defendants.
57. The Planning Director has the discretion under Lakewood Zoning Code Section 17.2.7.4(B)(5) to refer the MSP decision to the Planning Commission, whose decisions are final.
58. SBP, along with other members of the general public, provided comments at multiple public meetings and on Lakewood Speaks, the City's online participation platform, opposing the Kairoi Defendants' plans as not in the best interest of Lakewood and its citizens, incompatible with the site and destructive to the character, habitat and aesthetics of the Park.
59. On March 12, 2024, the City announced that Travis Parker, Planning Director for the City of Lakewood, had decided that due to the controversial nature of this development the approval of the plans would be determined by the Lakewood Planning Commission's public process rather than by staff without public participation.

60. Continued applicant submittals, responsive comments by staff and revisions ensued.
61. The City of Lakewood provided notice that the Planning Commission would take up consideration of the MSP at its regular meeting schedule for May 7, 2025.
62. Members of the public were invited to post their comments on the online forum Lakewood Speaks, which is the communication medium endorsed by the City for this purpose.
63. On May 7, 2025, the Planning Commission held a public hearing where evidence was offered in support for and against approval of the Kairoi Major Site Plan, SP22-0010, and Minor Waiver, WI24-0003
 - a. The applicant made a short oral presentation including general information about the leadership's history, the applicant's business model and its goals for this development.
 - b. Brea Pafford, Case Planner for the City of Lakewood, presented a Powerpoint® slide deck summarizing the Planning Commission Staff Report.
 - c. Members of the public appeared in person to offer comments about the two cases.
64. Dozens of citizens offered public comments in person opposing the development on a variety of grounds, including but not limited to:
 - a. Failure by the City and the MSP to address safety concerns related to the substantial additional traffic and parking capacity on S. Yarrow Street.
 - b. The size and design of the development as submitted in the MSP being inconsistent with and damaging to the surrounding community.
 - c. The permanent negative impact the MSP would have on the ecology and character of adjacent Belmar Park and its wildlife.
 - d. Inconsistencies between the MSP and the Lakewood Zoning Code and the Lakewood Comprehensive Plan.
65. Multiple procedural irregularities arose during the hearing:
 - a. Commissioner(s) stated that the only discretion they had was whether to approve the Minor Waiver case and they had no discretion to vote against approving the Major Site Plan case.
 - b. Commissioner(s) stated they only had received the relevant project information on the day of the hearing.
 - c. Commissioner(s) considered factual information not provided in the record.
 - d. While under oath City Staff provided factually incorrect information, easily verified with public records, about the actions taken by the Kairoi defendants to proceed with demolition without the proper permits and site safeguards in place.
66. The Lakewood Zoning Code provides the following review criteria for the approval of a major site plan:

17.2.7.2: Review Criteria

Recommendations and decisions regarding site plan applications shall be based on the following criteria:

- A. Major site plans shall comply with standards outlined in Articles 3, 4, 5, 6, 7, 8, and 10 of this Zoning Ordinance.
- B. The Director shall evaluate how well the proposed modifications contribute to the overall performance of the site and how well the proposed changes meet the standards in Articles 3, 4, 5, 6, 7, 8, and 10 of this Zoning Ordinance.

67. The Lakewood Zoning Code provides the following review criteria for a minor waiver:

17.2.6.3: Review Criteria

Recommendations and decisions regarding waiver applications shall be based on the following review criteria. Applications for waivers shall be approved if it is demonstrated that:

- A. The waiver will result in a superior development or design than if the strict application of this Zoning Ordinance is applied; and
- B. The waiver will better serve the intent of the zone district in which the property is located; and
- C. The waiver will not substantially impair the appropriate use or development of adjacent property; and
- D. The waiver will not alter the character of the neighborhood or area where the project is proposed; and
- E. The waiver is consistent with the development patterns of the existing neighborhood; and
- F. The proposed project with a waiver will conform with the policies of the Comprehensive Plan; and
- G. The proposed project with a waiver will meet the intent of the applicable zone district

- 68. At the end of the hearing, members of the Planning Commission asked questions and offered sometimes protracted opinions as to their point(s) of view regarding the characteristics of the two cases.
- 69. One Commissioner went so far as to state she was intentionally offering her opinions on the record in light of her understanding that the Planning Commission's decision would be challenged and her actions would defend the decision from being considered "arbitrary and capricious."
- 70. These opinions, when considered in light of at least two Commissioners' statements that their understanding was that the only thing they were there to consider was whether to approve the Minor Waiver case, suggest that the approval decision for the MSP was a predetermined outcome that did not consider the evidence presented.

71. Although a draft resolution 2025-X was posted on the Planning Commission's site as part of the anticipated meeting materials, at the end of the hearing no motion was offered for the Commissioners to vote on this resolution.
72. Instead, at the end of the hearing the Planning Commission hearing a commissioner offered a motion, modified by City Attorney Lauren Stanek, to approve Major Site Plan case SP22-0010 and Minor Waiver case WI24-0003, which was seconded.
73. The Planning Commission voted 5-0 in favor of this motion.
74. Findings of the May 7, 2025, Planning Commission hearing were published on the City of Lakewood's website.³
75. After the hearing the City made the following representations about the Planning Commission's findings and decision on the City's website dedicated to the Kairoi Major Site Plan:

The commission found that the site plan complied with the zoning requirements, including in the following ways:

- It met the use standards because this use is allowed within the downtown Lakewood district.
- It met the dimensional and development standards for the zone district in downtown Lakewood.
- It met the parking standards, which require parking to be in a structure, but not on the street or in a parking lot between the building and the street.
- All other zoning standards including conformance with the Comprehensive Plan were found to have been met.

The approval by the Planning Commission is the final approval needed for this development to proceed. The commission's approval does not involve a recommendation to City Council, and it does not require any City Council action. Site plans are not subject to political review because of the property owner's property right entitled by law. It is anticipated that building permits will be issued, and construction on the site will commence later this year.

FIRST CLAIM FOR RELIEF

(Review of the City of Lakewood Planning Commission's approval of Major Site Plan case SP22-0010 and Minor Waiver case WI24-0003 pursuant to C.R.C.P. Rule 106(a)(4))

76. The allegations contained in paragraphs 1 through 75 above are incorporated herein by reference as if fully set forth herein.
77. In approving the Major Site Plan case SP22-0010 and Minor Waiver case WI24-0003 the Planning Commission was exercising a quasi-judicial function.
78. The Planning Commission exceeded their jurisdiction or abused their discretion by approving Major Site Plan case SP22-0010 and Minor Waiver case WI24-0003 because:
 - a. The Major Site Plan does not meet the requirements of the following sections of the Lakewood Zoning Code:

³ <https://www.lakewood.org/Government/Departments/Sustainability-and-Community-Development/Upcoming-Projects/Private-Development-777-S-Yarrow-St>

- 17.3.1.1(E) - Encourage protect (sic) of the City’s existing residences, businesses, and infrastructure in a manner that is consistent with the **Comprehensive Plan**. (emphasis added)
- 17.3.4.1(C) Maintain the integrity and viability of the adjacent residential neighborhoods.
- 17.3.4.1(E) – Provide development flexibility, while ensuring that new development and redevelopment interacts appropriately with adjoining land uses.
- 17.3.4.3(C) - Establish maximum building heights to reflect the existing or proposed characteristics of the surrounding development.
- 17.7.1.1 - The purpose of these design standards is to ensure that development implements the principles and goals articulated in the **Comprehensive Plan** for quality and sustainable development that interacts and functions well with the surrounding community. (emphasis added)
- 17.7.1.1 - The manner in which a particular land use functions and interacts with adjacent and surrounding land uses is integral in creating a successful development.
- 17.7.7.7 – Protection of existing trees with greater than 8-inch caliper.
- 17.13.1.1 – Standards for sustainable development “to ensure that development implements the goals articulated in the community’s adopted plans for resilient and efficient development that is adaptable to infrastructure changes in the face of climate change, minimizes its impact on limited resources, contributes to communitywide greenhouse gas emissions targets, and becomes a positive asset within the community.”

b. The Major Site Plan does not meet the requirements of the following sections of the Lakewood Comprehensive Plan:

- Lakewood Sustains: Guiding Principal: Lakewood will be a leader in sustainability principles, practices, and education.
 - Lakewood will be a steward in the metropolitan area for environmental health, economic prosperity, and social well-being and will continue to work toward providing a high quality of life for its current residents and for future generations.
 - It is the goal of sustainability to achieve balance between the economy, the natural environment, and social values; however, human society depends on the environment first and foremost in order to achieve social and economic sustainability. In other words, without a healthy environment, a community would be unable to achieve economic success and social well-being.
- Goal S-BN1: Preserve and restore local ecosystems and ecosystem services and protect biodiversity.
- Goal S-BN1: Implement the Department of Community Resources *Natural Areas Plan* in order to maintain the integrity of ecosystems in the City’s public parks and open spaces.
- Goal S-BN2 - Provide and protect green infrastructure, including parks, greenways, wetlands, riparian corridors, and the urban tree canopy.
- Goal S-BN2 - Natural area restoration means developing mitigation criteria for development on private or public property which alters natural areas so that these alterations may be offset by on-site or off-site restoration efforts.

- Goal S-BN2(c): Evaluate the effectiveness of the existing tree preservation program and identify ways to strengthen its enforcement, penalties, and mitigation strategies for removal or destruction of healthy, mature shade trees.
- c. The Planning Commission's approval of the Major Site Plan is a violation of the legislature's intent for zoning ordinances, which:

shall be made in accordance with a comprehensive plan and **designed to lessen congestion in the streets; to secure safety from fire, panic, floodwaters, and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to promote energy conservation; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks,** and other public requirements.

C.R.S. § 31-23-303(1)(emphasis added).

- The Major Site Plan relies on a Traffic Study performed in July 2021, during the height of the nationwide pandemic, and requests for an updated Traffic Study were rejected.
 - City staff admitted that the 2021 Traffic Study was evaluated only for the projected impact on wait time at two signalized intersections with no analysis of the impact of additional congestion on Yarrow Street, lack of visitor parking capacity, emergency access or evacuation safety for the Property or the approximately households in Belmar Commons who have no other ingress/egress to their properties.
 - The Major Site Plan makes no effort to mitigate negative effects on the wildlife and ecosystem of immediately adjacent Belmar Park.
 - The Major Site Plan includes clearcutting approximately 65 mature trees, which are habitat for birds, insects and other wildlife.
79. Under C.R.C.P. Rule 106(4)(a), Plaintiff is entitled to this Court's review of the Planning Commission's approval of Major Site Plan case SP22-0010 and Minor Waiver case WI24-0003 and reversal of that decision.
80. Plaintiff has suffered and will continue to suffer harm as a result of the Planning Commission's actions.
81. Pursuant to section 17.2.7.3(D) of the Lakewood Zoning Ordinance, "The decision of the Planning Commission on a major site plan application shall be final."
82. Plaintiff has no other plain, speedy or adequate remedy provided by law.

SECOND CLAIM FOR RELIEF

(Preliminary Injunction Pursuant to C.R.C.P. Rule 106(a)(4)(V) and C.R.C.P. Rule 65(a))

83. The allegations contained in paragraphs 1 through 82 above are incorporated herein by reference as if fully set forth herein.
84. The party moving for a preliminary injunction must meet the burden of proof for all of the following elements:

Before granting relief, the trial court must find that the moving party has shown:

- (1) a reasonable probability of success on the merits;
- (2) a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief;
- (3) that there is no plain, speedy, and adequate remedy at law;
- (4) that the granting of a preliminary injunction will not disserve the public interest;
- (5) that the balance of equities favors the injunction; and
- (6) that the injunction will preserve the status quo pending a trial on the merits.

Id. at 653-54 (citations omitted).

Bill Barrett Corp. v. Lembke, 488 P.3d 390, 394, (Colo. App. 2018) *aff'd on other grounds*, 474 P.3d 46 (Colo. 2020); *citing Rathke v. MacFarlane*, 648 P.2d 648, 651 (Colo. 1982).

85. Plaintiff's action has a reasonable probability of success on the merits because the Planning Commission's decision was not based on competent evidence in the record, as noted above and particularly related to the Lakewood Comprehensive Plan, and therefore the decision was an abuse of discretion.
86. Plaintiffs will be irreparably harmed if the construction on this Property is not enjoined pending resolution of this case because the Major Site Plan as approved includes clearcutting approximately 65 mature trees and grading/stormwater management actions that pose a risk to the ecology of Kountze Lake, where both actions cannot be undone or remedied by money after they have been completed.
87. Plaintiff has no other plain, speedy, and adequate remedy at law.
88. The granting of a preliminary injunction will promote not disserve the public interest. The overwhelming majority of 126 public comments in the record on Lakewood Speaks, the dozens of public speakers at the Planning Commission hearing, and silent feedback from the large assembly of citizens who attended the Planning Commission meeting was in favor of rejecting this Major Site Plan. This development is a privately owned, for-profit six-story, 411-unit, zero-lot-line luxury apartment building.
89. The balance of equities favors the injunction based on the Planning Commission's cursory review of the public's challenges to this development, the obvious bias in favor of the staff report and the developer, and the refusal of the staff and Commissioners to consider or challenge the major site plan's lack of consistency with the qualitative requirements of the Comprehensive Plan and the Zoning Ordinance.

90. The injunction will preserve the status quo where no further demolition, site preparation including but not limited to clearcutting trees and grading, and no construction will permanently alter the site until the Court is able to make a determination on these claims.
91. Plaintiff therefore requests this Court grant a preliminary injunction barring the City from issuing any further permits or allowing any further demolition or construction activities at the site, which are now anticipated to begin without further notice or review based on the Planning Commission's decision.

PRAYER FOR RELIEF

Wherefore, for the reasons stated above, Plaintiff respectfully requests the Court enter orders:

- (a) Determining that the Planning Commission's decision to approve Major Site Plan SP22-0010 and Minor Waiver WI24-0003 exceeded its jurisdiction and abused its discretion.
- (b) Reversing the Planning Commission's decision to approve Major Site Plan SP22-0010 and Minor Waiver WI24-0003.
- (c) Requiring the Planning Commission to apply in an unbiased manner all of the evaluation criteria, whether qualitative or quantitative, as stated in the Comprehensive Plan and Master Parks Plan as well as the Zoning Ordinance.
- (d) Staying further action by the City as to issuing permits and the Kairoi Defendants from taking any demolition or construction actions at the Property based on the decision to approve Major Site Plan SP22-0010 and Minor Waiver WI24-0003.
- (e) Awarding Plaintiff their reasonable costs and attorneys' fees in bringing this action for review of the Defendant's actions.
- (f) Granting Plaintiff such other and further relief as the Court deems just and proper under the circumstances.

Respectfully submitted this 12th day of May, 2025.

PAT MELLEN LAW LLC.

/s/ Patricia A. Mellen

Patricia A. Mellen
Attorney for Plaintiff Save Belmar Park, Inc.