DISTRICT COURT, EL PASO COUNTY, COLORADO P.O. Box 2980 Colorado Springs, CO 80901 Telephone: (719) 452-5449 DATE FILED: February 21, 2024 4:52 PM CASE NUMBER: 2023CV31596	
Plaintiff: TIMOTHY C. HOILES v. Defendant: CITY OF COLORADO SPRINGS	▲ **COURT USE ONLY** ▲ Case No.: **23CV31596** Division: 8 Courtroom: W550

ORDER RE PLAINTIFF'S CLAIM FOR JUDICIAL REVIEW

Plaintiff Timothy Hoiles brings this action for judicial review pursuant to C.R.C.P. 106(a)(4), seeking reversal of a zoning change approved by the Colorado Springs City Council in conjunction with its approval of the high-density Creekwalk apartment complex in the South Nevada Avenue urban renewal area. I have reviewed the Complaint, the opening brief, the response briefs of the City and Intervenor Creekwalk North, LLC, and Hoiles' reply briefs, along with the record of the administrative proceedings below and applicable law.

PROCEEDINGS BELOW

The Creekwalk project is located in the South Nevada Avenue urban renewal area, just west of South Nevada Avenue, in the midst of new commercial development made possible by the urban renewal designation. It is flanked by East St. Elmo Avenue to the south and East Ramona Avenue to the north, and Cheyenne Creek runs along its western edge. A new Sprouts market and other newly developed eateries surround the site. The proposed seven-story apartment building, which would accommodate up to 400 units and 548 parking stalls and have a

height of up to 85 feet, would be considerably taller than anything else in the neighborhood and much denser than the residential area directly to the west, and would substantially change the character of the neighborhood.

In light of the project's high density, height, and residential nature, a change in zoning was required, along with approval of a development plan and a concept plan. The applicant, Creekwalk North, LLC (which has intervened in this action), sought to change the zoning from C5-Intermediate Business and R5 (Multi-Family Residential) with a Streamside Overlay to a PDZ/ SS zone.

Before the project was presented to the Planning Commission and City Council, postcards were mailed to two hundred property owners on two occasions – first, for an initial review and for a neighborhood meeting and, second, before the Planning Commission hearing. Notice was provided to all property owners within one thousand feet of the site and posted at the site. The neighborhood meeting was attended by approximately twenty people. Written comments were also received.

The project was presented to the Planning Commission on June 14, 2023. After the presentation of City staff and the applicant, the Commission took public comment, and voted four to two to approve the project.

The project was then presented to City Council. It first came before Council on July 11, 2023, where it was approved on consent. The second reading occurred on July 25, 2023. A City planning manager presented the project, followed by presentations by the applicant and owner. The executive director of the urban renewal authority appeared and spoke in support of the project. Six people appeared, and five spoke against the project. The City's traffic engineer

provided an overview of the traffic study and testified that the study met the review criteria. After commenting, City Council approved the request to rezone the property (Ordinance 23-32), along with the development plan and concept plan, by a vote of seven to one. This appeal followed.

APPLICABLE LAW

Review of a governmental body's quasi-judicial decision is "limited to a determination of whether the body . . . has exceeded its jurisdiction or abused its discretion based on the evidence in the record before the defendant body…" C.R.C.P. 106(a)(4)(I).

Review of a decision by City Council must be upheld unless "there is no competent evidence to support the decision." *Ross v. Fire & Police Pension Ass'n*, 713 P.2d 1304, 1308-09 (Colo. 1986). The decision "must be upheld if there is some evidence in the record to support it." *Washington v. Atherton*, 6 P.3d 346, 348 (Colo. App. 2000). *See also Bd. of Cty. Comm'rs of Routt Cty. v. O'Dell*, 920 P.2d 48, 50 (Colo. 1996) ("[i]n the case of a zoning proceeding, a court is not the fact finder and may not substitute its own judgment for that of a zoning board where competent evidence exists to support the zoning board's findings").

"Administrative proceedings are accorded a presumption of validity and regularity, and all reasonable doubts as to the correctness of administrative rulings must be resolved in favor of the agency." *Lieb v. Trimble*, 183 P.3d 702, 704 (Colo. App. 2008). "The burden is on the party challenging an administrative agency's action to overcome the presumption that the agency's acts were proper." *Id.*

ANALYSIS

Hoiles seeks an order reversing the City's decision to grant the zoning change. He contends the City Council abused its discretion by, among other things, failing to consider traffic impacts, failing to make a traffic study of the project available to Council, and failing to adhere to existing master plans (the Ivywild Comprehensive Plan and the South Nevada Urban Renewal Area Plan), thereby committing unlawful spot-zoning. The City and Intervenor Creekwalk North, LLC (the project developer) respond that (a) Hoiles lacks standing to bring this challenge and (b) the City's decision was supported by the record and was not an abuse of discretion.

I. Standing.

Whether Hoiles has standing is a threshold issue that must be addressed first. If Hoiles lacks standing, this Court lacks jurisdiction over the case.

A. Applicable Law.

To establish standing under Colorado law, a plaintiff must satisfy a two-part test: (1) the plaintiff must have "suffered injury in fact" and (2) the injury must have been to a "legally protected interest." *Barber v. Ritter*, 196 P.3d 238, 245 (Colo. 2008) (internal citations omitted). A "remote possibility of a future injury" is insufficient, as is "injury that is overly indirect and incidental to the defendant's action." *Ainscough v. Owens*, 90 P.3d 851, 856 (Colo. 2004). As to whether the injury was to a legally protected interest, an interest is legally protected "if the constitution, common law, or a statute, rule, or regulation provides the plaintiff with a claim for relief." *Reeves v. City of Fort Collins*, 170 P.3d 850, 851 (Colo. App. 2007).

In determining whether a plaintiff has alleged an injury sufficient to confer standing, an appellate court considers the allegations in the complaint, as well as testimony and other

documentary evidence in the record. *Rechberger v. Boulder Cnty. Bd. of Cnty. Commissioners,* 454 P.3d 355, 357 (Colo. App. 2019).

C.R.C.P. 106(a)(4) does not, by itself, confer a legally protected interest for purposes of establishing standing; it simply establishes the procedure for seeking review of agency action when standing otherwise independently exists. *Reeves,* 170 P.3d at 852. To establish standing for a C.R.C.P. 106(a)(4) proceeding, "there must be a provision in the constitution, common law, or a statute, regulation, or code, independent of C.R.C.P. 106(a)(4) … that confers upon a plaintiff a legally protected interest." *Id.*

Under the common law, an owner of property adjacent to rezoned land has standing to challenge rezoning which adversely affects their property. *Bd. of Cnty. Comm'rs v. City of Thornton,* 629 P.2d 605, 609 (Colo. 1981). "Implicit in [this rule] is the conclusion that a complaining property owner … has a legally protected interest in insulating its property from adverse effects caused by the legally deficient rezoning of adjacent property." *Id.*

B. Analysis.

Hoiles alleges in his Complaint that he is a "resident of El Paso County, Colorado, whose home is located in the Broadmoor neighborhood of Colorado Springs and whose office is located at 1483 Woolsey Heights, Colorado Springs, CO 80915." (He does not provide his home address.) He alleges that he has standing on the following grounds:

> Plaintiff is directly and adversely affected by the City's action because: he is an El Paso County and Colorado Springs resident; he regularly travels the area in and around the Subject Property and its adjacent streets; in the event of wildfire, would be required to evacuate via nearby Cheyenne Blvd. or Lake Ave., yet is subject to a greater risk of injury due to added congestion near the Subject Property as a result of the zoning change; and is adversely affected by the City's failure to follow

> its own City Code and to issue a reasonable decision based upon competent evidence.

Complaint, paras. 1, 22.

The Court takes judicial notice that, according to Google Maps, Hoiles' office at 1483 Woolsey Heights is approximately 11 miles away from the Creekwalk site. Because Hoiles has declined to provide his residential address, the Court is unable to determine precisely how far he lives from the site; however, according to Google Maps, the center of the Broadmoor neighborhood is a 1.8-mile drive from the Creekwalk site. At a minimum, the neighborhood is more than a mile away.

Hoiles did not participate in the administrative proceedings below. He did not send comments to City planning staff during the public comment period, nor did he speak at the hearings before the Planning Commission or City Council.

Because Hoiles has declined to identify his residential address – which in any event appears to be well over a mile from the Creekwalk site – he lacks the common-law standing that would be conferred on an adjacent landowner. The gist of his argument for standing comes down to his allegation that he is a resident of the area, broadly construed, and that he "regularly travels the area in and around the Subject Property and its adjacent streets" and thus would be negatively impacted by the added congestion that the Creekwalk development would bring, including increased congestion on evacuation routes in the event of wildfire.

Hoiles has failed to cite to any provision in any applicable statute, regulation, or the City's municipal code that could confer a legally protected interest on him, or any caselaw that suggests he has standing, under these circumstances. The case on which he primarily relies, *Wainscott v. Centura Health Corp.*, 351 P.3d 513 (Colo. App. 2014), is not on point. It is a

declaratory judgment action that does not involve land-use decisions and does not otherwise help his case.

Hoiles' argument for standing, ultimately, boils down to his complaint that "if a concerned citizen cannot challenge Ordinance 23-32, it is essentially a law without meaningful judicial review." (Reply to City, p. 3). While a case could certainly be made on policy grounds for "concerned citizen standing," the Colorado law that this Court is required to apply has not reached that point. That law requires some basis in the constitution, common law, or a statute, regulation, or code that confers a legally protected interest on a plaintiff, as well as a specific injury in fact. Standing is available, under this standard, for adjacent, and perhaps nearby, residents who participated in the proceedings and who can allege that they would be directly affected by the Creekwalk project. In contrast, Hoiles does not own property adjacent, or even near to, the project; he declined to participate in the administrative proceedings; and he can allege only indirect and speculative injury arising from the project. To grant him standing under these circumstances would stretch the concept of standing beyond what is permitted by governing law.

Wherefore, the Court finds that Hoiles lacks standing to challenge the City Council's action, and this Court accordingly lacks jurisdiction over this dispute.

II. Merits.

In light of my finding that Hoiles lacks standing to challenge the City Council's action, I will not address the merits of his petition at length. I will simply note that I have carefully reviewed the record and the briefs, and I find that, even if Hoiles had standing, his challenge to Ordinance 23-32 would have to be denied in light of the applicable standard of review. As

described above, this Court's review of the City's quasi-judicial actions pursuant to C.R.C.P. 106(a)(4) is strictly limited to whether City Council exceeded its jurisdiction or abused its discretion; and the Court is required to uphold Council's action unless there is no competent evidence in the record to support it. The Court may not act as a separate factfinder and may not substitute its own judgment for that of the City Council.

To deny Hoiles' challenge to the Creekwalk project is not to deny the merit of the issues he raises. His challenges to the project, as well as those raised by others who expressed their objections directly to the Planning Commission and City Council, are substantial. There is no question that the project, in addition to adding economic vibrancy to the South Nevada renewal area, will most likely add to traffic congestion in the area and may complicate wildfire evacuation plans. Weighing the pluses and minuses of the project, as with any other controversial development project, is a difficult task, and one on which reasonable minds may differ.

That difficult task is the job of the Planning Commission and City Council. City Council received input from staff, the Planning Commission, and the public. It received positive and negative input. It weighed evidence concerning the project's likely impact on traffic congestion and its compliance with the applicable master plans. Seven councilmembers ultimately voted "for," and one voted "against." This Court's assessment – or Mr. Hoiles' – of whether those pluses and minuses should have been weighed differently, is beside the point. Where there is competent evidence in the record supporting Council's decision – and there is – and where the evidence, as here, fails to show that Council misunderstood the law, acted arbitrarily, or

otherwise abused its discretion, then the remedy for those who disagree with that decision is through the political process, not the courts.

CONCLUSION

Wherefore, for the reasons set forth above, Mr. Hoiles' petition for judicial review is DENIED.

DONE and ORDERED February 21, 2024.

BY THE COURT:

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Eric Bentley
District Court Judge