DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO 7325 South Potomac St. Centennial, Colorado 90112	DATE FILED: June 7, 2016 11:15 AM CASE NUMBER: 2014CV33328
Plaintiffs: CITY OF LITTLETON, COLORADO, a home rule municipality, v. **Defendant:** CORBIN SAKDOL, in his capacity as the Arapahoe County Assessor.	**▲COURT USE ONLY▲** Case No.: 14CV33328 Div.: 15

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

THIS MATTER having come before the Court for trial, the Parties appearing with counsel, the Court have heard and considered the evidence and testimony presented and having reviewed the briefs filed, including the briefs filed in response to the Court's April 7, 2016 order, finds, based upon the weight of the credible evidence, and orders as follows.

This case involves a challenge by the Arapahoe County Assessor ("Assessor") under C.R.S. § 31-25-107(13) of the Santa Fe Urban Renewal Plan ("Plan") enacted by the Littleton City Council ("City"). More specifically, pursuant to C.R.S. § 31-25-102(4)(a)&(b), the Assessor objected to the City's inclusion of property classified as agricultural within the Plan, contending that the City had not complied with the requirements and conditions of C.R.S. § 31-25-107(1)(c)(II) & (III). The City timely filed this case seeking "an order determining whether the inclusion of the land in the urban renewal area is consistent with one of the conditions specified in subparagraph (II) or (III) of paragraph (c) of subsection (1) of [C.R.S. § 31-25-107]."

Resolution of this matter turns upon the statutory interpretation of certain provisions, as applicable to the real property in question. There is scant statutory or case law available to guide either the parties in their initial determinations or this Court in its analysis.

The applicable statutory provisions of C.R.S. § 31-25-107(1)(c)(II)&(III) read as follows.

> (c) … (II) Notwithstanding any other provision of this part 1, no area that has been designated as an urban renewal area shall contain any agricultural land unless:
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> …
>
> (B) Not less than one-half of the urban renewal area as a whole consists of parcels of land containing urban-level development that, at the time of the designation of such area, are determined to constitute a slum or blighted area, or a combination thereof, in accordance with the requirements of paragraph (a) of subsection (1) of this section and not less than two-thirds of the perimeter of the urban renewal area as a whole is contiguous with urban-level development as determined at the time of the designation of such area . . . .

Thus, to properly include agricultural land in the Plan, the City was required to meet two conditions under C.R.S. § 31-25-107(1)(c)(II)(B); the first involving the amount of agricultural land within the urban renewal area, and second concerning the amount of agricultural land contiguous with or bordering the urban renewal area.

However, before the Court addresses those issues directly, the Court addresses the issues raised by the additional briefing.

A. Can the "urban renewal area as a whole" include public right-of-ways?

For the reasons set forth in Plaintiff City of Littleton's supplemental brief filed on April 21, 2016, Section II, 5 at pages 7 -9, the Court answers this question

in the affirmative. The "urban renewal area as a whole" can include public rights-of-way if such are properly described and properly included as being "blighted."

B. Were S. Santa Fe Dr. – US 85 and the railroad rights-of-way included within the "urban renewal area"?

Plaintiff City of Littleton has attempted to include a portion of these rights-of-way within the urban renewal plan through a subsequent amendment. However, the Court finds that such were not properly included due to an insufficient legal description of those portions of the rights-of-way so as to sufficiently identify the portions included as distinct from the portions that were not included; and in any event, if the intent was to include the right-of-ways as a whole, the description was insufficient to provide the necessary identification.

The Court also notes the lack of notice to the owners of the rights-of-way of their inclusion in the "urban renewal area" and of the City of Littleton's determination that the land within the rights-of-way is "blighted." Thus, the owners did not have the ability to examine that designation, provide input or objections thereto, and understand the effect such may have upon their use of their property and any direct or indirect financial implications such might have.

For the purposes of the Court's analysis, the Court assumes, without deciding, that the City of Littleton could include the streets and rights-of-way which it owns within the "urban renewal area" without further notice, and by a simple amended designation. However, there were insufficient descriptions provided for the Court to determine the area of such public rights-of-way owned by the City of Littleton that it sought to include, and such did not form a part of the Court's calculations.

C. The Area Calculation

"Not less than one-half of the urban renewal area as a whole consists of parcels of land containing urban-level development." Thus, to satisfy the area

calculation, 50% or more of the parcels of land within the urban renewal area must contain urban-level development. A central focus of the dispute concerns what is and what is not "urban level development." C.R.S. § 31-25-107(1)(c)(II)(B).

D. The Perimeter Calculation

Not less than two thirds of the perimeter of the urban renewal area must be contiguous with "urban–level development" as determined at the time the area was designated on November 4, 2014. C.R.S. § 31-25-107(1)(c)(II)(B).

E. Definitions and Application to the Facts

The definition and application of certain terms within the statute are necessary to resolve this case. It is not so much the facts as the application of the statutory language to the essentially undisputed facts that is required to resolve this dispute.

1. Urban–level development is defined as "an area in which there is a predominance of either permanent structures or above–ground or at–grade infrastructure." C.R.S. § 31-25-103(7.5).

2. Predominance is defined by Black's Law Dictionary (Fifth Edition) as "something greater or superior in power and influence to others with which it is connected or compared" and by Merriam-Webster as "the state of being more powerful or important than other people or things." Thus, in the context of the statute before the Court, predominance means a condition where the permanent structures or the above–ground or at–grade infrastructure, due to its nature, size, location or use is greater, superior, or more important to the overall nature or use of the parcel of land than the balance of the parcel.

3. Infrastructure is a generic or general reference to any improvement or addition to a parcel of land, which is intended to be permanent in nature

and/or supportive of or furthering the use or further development of the land.

4. Parcel of Land is not limited to a Tax Assessor's designated parcel of land, but is, as defined in *The Appraisal of Real Estate, Twelfth Edition*, "a piece of land that may be identified by a common description and is held in one ownership."

5. "Contiguous with urban level development," requires an examination of the entire adjacent and contiguous parcel of land to determine whether that parcel meets the definition of urban-level development.

F. The Disputed Parcels Within the Plan Area.

In support of their positions both the City and the Assessor directed the Court's attention to nine parcels of land[1] within the Plan area where the designation of urban–level development is in dispute.

1. AC001604: Melting Pot Restaurant Parking Lot and Adjacent Graded Right-of-Way; Parcel 2077-17-4-00-033, 2.190 Acres.

This parcel of land has portions of two business-related parking lots, with the balance appearing to be an area of graded roadside landscaped buffering between US Highway 85 – S. Santa Fe Dr. and the adjacent residential properties. The paved asphalt parking lots are at-grade infrastructure and due to their nature, size, location, and use they are superior and more important to the overall nature and use of the parcel than the remaining landscape buffer area. Using the definitions as set forth herein above the Court finds that there is a predominance of urban-level development on this parcel.

[1] Each of the nine parcels will be identified by its Bates Label number from exhibit 29, and by a more generic location or use description.

2. **AC001605: Three Parking Areas at intersection of W. Lake Ave. and Pinewood Street; Parcel 2077-20-1-05-010, 1.741 Acres.**

This parcel of land consists of three separate sections all which appear to be utilized for vehicle parking. The first section is paved, the second section is gravel with at-grade concrete or wooden infrastructure used to define parking areas, and a third area which does not appear to be gravel but not does not appear to be used other than for parking as demonstrated by the trucks parked thereon. For the purpose of this analysis the Court finds that the difference between at-grade improvements consisting of an asphalt paved parking lot and a graded gravel parking lot to be a distinction without a difference. Improvements are intended to be permanent in nature and supportive of, and furthering the use of, the property. Using the definitions as set forth herein above the Court finds that there is a predominance of urban-level development on this parcel.

3. **AC001606: the Median or Buffer between S. Santa Fe Dr. and S. Sumner St. tied to the Arapahoe Community College Site; Parcel 2077-20-1-00-000, 1.040 Acres.**

This parcel of land is a narrow strip of land between US Highway 85 – S. Santa Fe Dr. and S. Sumner St., a portion of which comprises half of S. Sumner St. and the balance consisting of the graded roadside landscaping separating the narrow area between the US highway and the city street. Using the definitions as set forth herein above the Court finds that there is a predominance of urban-level development on this parcel.

4. **AC001607: the Gravel Parking Lot between US Highway 85 S. Santa Fe Dr. and S. Pinewood St. near Hudson Gardens; Parcel 2077-20-1-19-018, 1.474 Acres.**

The majority of this parcel consists of a gravel or graded dirt parking lot serviced by two curb-cut concrete entrances providing access to and defining the parking area. As with the parcel examined above, a graded gravel parking lot does constitute at-grade infrastructure intended to be permanent in nature and supportive of and furthering the use of the property. Using the definitions as set forth herein

above the Court finds that there is a predominance of urban-level development on this parcel.

5. **AC001608: South Suburban Parks and Recreation District Trailhead and asphalt paved driveway and parking lot with an aboveground structure in the northwest corner, with grass and trees between US Highway S. Santa Fe Dr. and the parking lot. Parcel 2077-20-4-13-002, 0.813 Acres.**

This parcel of land consists of an asphalt paved driveway and parking lot painted with designated parking stalls and an aboveground structure in the northwest corner. The balance of the property which appears to constitute a majority of the square footage of the parcel appears to be grass and trees. However, the at-grade asphalt driveway and parking area is intended to be permanent in nature and supportive of and furthering the use of the property. Also that infrastructure, due to its nature, size, location, and use, is more important to the overall nature and use of the parcel then the balance of the parcel. Using the definitions as set forth herein above the Court finds that there is a predominance of urban-level development on this parcel.

6. **AC001609: a parcel between S. Santa Fe Dr. and the South Platte River and bike path; Parcel 2077-20-4-00-050, 4.00 Acres.**

This parcel is between S. Santa Fe Dr. and the South Platte River access and bike path, and consists of a small single-family home, a larger building which may also be a home or a large barn with the balance of the area being dirt drives and grass or fallow ground. It appears that at one point in time this parcel was part of a larger primarily agricultural operation which would, of course, have been predominant. However, as the surrounding property was developed the predominance of the remaining structures and infrastructure has changed. A strong argument can be made that such changes to the surrounding parcel, independent of any changes to this particular parcel, resulted in its predominant use becoming urban-level development as defined hereinabove as opposed to a agricultural land enclave within the Plan Area. Whether such a change in designation can occur based upon changes in the surrounding property was not significantly briefed by

the parties or argued. However, the Court determines that it need not reach that issue in order to resolve the case before it. For the purposes of the Court's analysis it will assume, without deciding, that the property remained predominantly agricultural in nature.

7. AC001610; the Sand and Gravel Company: Parcel 2077-20-4-00-52, 5.500 Acres.

This parcel consists almost entirely of buildings, concrete pads, parking areas, gravel roads and drives, and concrete product dividers. All constitute aboveground or at-grade infrastructure and permanent structures. Further, due to their nature, size, location and use such is far greater, superior and more important to the overall nature and use of the parcel than the small remaining balance of the parcel. Using the definitions as set forth herein above the Court finds that there is a predominance of urban-level development on this parcel.

8. AC001611; Portion of a Former Home or Farm Site along US Highway 85 S. Santa Fe Dr.: Parcel 2077-29-1-00-010, 4.650 Acres.

This parcel consists of what appears to be a former home or farm site along US Highway 85 - S. Santa Fe Dr. which is otherwise surrounded by business operations on the north and west and what appears to be a residential development on the south. Unlike number six above, with the exception of what appear to be some barely improved roads and what is perhaps a former building site, there are no at- or above-grade infrastructure or permanent structures or improvements. The Court has the same concerns with regard to whether changes in the surrounding property independent of any change to a particular parcel can result in its predominant use becoming urban-level development. However, for the same reasons, which are even stronger here, for the purpose of the Court's analysis the Court will assume, without deciding, that this property remains predominantly agricultural in nature.

9. AC001612; the Sod Farm: Parcel 2077-32-3-00-018, 31.850 Acres.

This parcel fronting along US Highway 85 S. Santa Fe Dr. consists of certain buildings and at- or above-grade infrastructure apparently used in conjunction with the cultivation of sod on the balance of the property as well as the surrounding property to the north and west. Here, even though there is a significant amount of at- or above-grade infrastructure, improvements and buildings, the amount and use of the property for agricultural purposes—the cultivation of sod—is predominant. The Court finds that this parcel is predominantly agricultural in nature.

G. The Area Calculation – Re-calculated

As stated above, the area calculation requirement of C.R.S. § 31-25-107(1)(c)(II)(B) requires that "not less than one-half of the urban renewal area as a whole consists of parcels of land containing urban-level development." Thus, to satisfy the area calculation, 50% or more of the parcels of land within the urban renewal area must contain urban-level development.

The Assessor contends that all nine of the above contested parcels were not urban level development and thus calculated (Exhibit F) that the entire Plan Area was 248.536 Acres, of which 104.526 Acres (42.1%) consisted of urban-level development, and 144.010 Acres (57.9%) was not Urban Level Development, and remained predominately agricultural in nature. Of the nine parcels discussed above, the Court determines that six, comprising 7.258 Acres, have predominately urban-level development, and three, comprising 40.50 Acres, do not[2].

[2] Of the 40.50 acres which the Court determined did not contain predominately urban level development, 31.850 Acres were within the sod farm at the southerly end of the urban renewal district. If the sod farm were excluded from the urban renewal area, the area calculation numbers would be as follows: 111.784 Acres of urban level development, which is 51.59% of the 216.688 Acres in plan area, and 104.902 Acres of non-urban level development, which is 48.41% of the 216.688 Acres.

Thus, assuming that the uncontested parcels were properly designated, the parcels with urban level development comprise 111.784 Acres which is 44.977% of the 248.536 Acres in the Plan Area, and the parcels without predominant urban level development comprise 136.752 Acres which is 55.023% of the 248.536 Acres in the Plan Area.

Thus, the Assessor is correct that the Plan Area does not meet the area calculation requirement of C.R.S. § 31-25-107(1)(c)(II)(B) as less than fifty percent of the parcels of land within the urban renewal area contain predominately urban-level development.

H. The Perimeter Calculation

As stated above, not less than two thirds of the perimeter of the urban renewal area must be contiguous with "urban–level development" as determined at the time of designation on November 4, 2014. C.R.S. § 31-25-107(1)(c)(II)(B). The South Santa Fe – US 85 rights-of way and the Burlington Northern and Union Pacific rights-of-way each contain predominately urban level development. Because they are not within the "urban renewal area", such form the eastern boundary of almost all of the "urban renewal area" with certain very limited exceptions which also appear to be comprised of parcels of land containing predominantly urban-level development[3].

Given the elongated nature of the "urban renewal area", the resolution of the perimeter calculation appears to turn on whether the South Platte recreational hiking, biking, and river access corridor contains predominantly urban-level development. The Court answers that question in the affirmative. The corridor has been developed through grading and the installation of a continuous at-grade hard surface bicycle and walking path as well as river access points, which are at-grade

[3] The Court declines to look beyond the four to six lane divided highway and beyond a railroad right-of-way containing three to four sets of tracks and which is segregated by high security fences, to look at the nature of the property on the east side of the railroad rights-of-way for the purpose of the perimeter calculation. Such is not supported by the letter or the intent of the statutes.

infrastructure which meets the above definition and is consistent with urban-level development.

Although the foregoing determination appears to resolve the question of whether two thirds of the perimeter of the urban renewal area is contiguous with urban–level development, the Court declines at this point to make that final determination because the Court is unable from the evidence presented to calculate the length of the western boundary of the urban renewal area which is contiguous with the South Platte recreational corridor and what portion may be contiguous with parcels of land which are not part of the South Platte recreational corridor, and do not appear to have predominately urban-level development. However, because of the Court's above finding that the urban renewal area does not meet the area calculation, the perimeter calculation is not determinative.

However, the Court's determination that the South Platte corridor contains predominantly urban level development is, however, intended to be dispositive of that issue. Such is to be borne in mind by the parties should the City of Littleton seek to amend its urban renewal plan, or should this matter be brought for review before the Colorado Court of Appeals.

SO ORDERED THIS DAY June 7, 2016

BY THE COURT:

Charles M. Pratt
District Court Judge