

DISTRICT COURT, COUNTY OF LARIMER, COLORADO Larimer County Justice Center 201 Laporte Avenue, Suite 100 Fort Collins, Colorado 80521-2762 (970) 498-6100	DATE FILED: January 26, 2021 3:01 PM FILING ID: 364DE275E72CF CASE NUMBER: 2020CV30833 <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Plaintiff: THE CITY OF FORT COLLINS, COLORADO, a Colorado home rule city and municipal corporation,</p> <p>v.</p> <p>Defendants: PLANNING ACTION TO TRANSFORM HUGHES STADIUM SUSTAINABLY CORP, a Colorado nonprofit corporation; and ELENA M. LOPEZ, MELISSA ROSAS, AND PAUL PATTERSON, each in their official capacity as a petition representative of the persons signing the petition for a citizen-initiated ordinance relating to the City of Fort Collins rezoning and acquiring certain real property</p>	Case Number: 2020CV30833 Division Courtroom 3B
PROPOSED CASE MANAGEMENT ORDER	

Pursuant to C.R.C.P. 16(b), the parties should discuss each item below. If they agree, the agreement should be stated. If they cannot agree, each party should state its position briefly. If an item does not apply, it should be identified as not applicable.

This form shall be submitted to the court in editable format. When approved by the court, it shall constitute the Case Management Order for this case unless modified by the court upon a showing of good cause.

This form must be filed with the court no later than 42 days after the case is at issue and at least 7 days before the date of the case management conference.

The case management conference is set for February 2, 2021 at 9:00 a.m.

1. The "at issue date" is: December 18, 2020.
2. Responsible attorney's name, address, phone number and email address: John R. Duval; 300 LaPorte Avenue, Fort Collins, CO 80521; 970-290-4200; jduval@fcgov.com
3. The lead counsel for each party, John R. Duval for Plaintiff and Michael Foote for Defendants, met and conferred by telephone concerning this Proposed Order and each of the issues listed in Rule 16(b)(3)(A) through (E) on January 22, 2021.
4. Brief description of the case and identification of the issues to be tried (not more than one page, double-spaced, for each side):

This is a declaratory judgment action the Plaintiff City of Fort Collins (City) has filed concerning a citizen-initiated ordinance the Defendants have submitted to the Fort Collins City Council for it to submit to the City's registered electors at the City's upcoming April 6, 2021, regular election. The initiated ordinance, if approved by the electors, would require the City Council to rezone Colorado State University's Hughes Stadium property (Property) to the City's Public Open Space District and to use best efforts in good faith to acquire the Property at fair market value. The City asks the Court to decide in this action whether the initiated ordinance's requirements that the City Council rezone and the City acquire the Property are

legislative matters properly the subject to a citizen initiative under Colorado Constitution Article V, Sections 1(2) and 1(9) and City Charter Article X, Section 1(a). The City agrees the rezoning requirement is a proper legislative matter, but the acquisition requirement is an administrative matter that is not subject to citizen initiative under the Colorado Constitution and City Charter. The Defendants contend both requirements are legislative matters properly the subject of a citizen initiative under the Constitution and Charter. The remedy the City seeks is for the Court to sever from the initiated ordinance and the ballot question for that ordinance, the administrative provisions related to the acquisition of the Property.

5. The following motion has been filed and is unresolved: Plaintiff's Motion for Summary Judgment dated January 6, 2021. The Court's January 24, 2021, Order requires the Defendants to file their response brief to the Plaintiff's Motion for Summary Judgment by January 27, 2021, and the Plaintiff to file its reply to that response brief by 5:00 pm on February 1, 2021.

6. Brief assessment of each party's position on the application of the proportionality factors, including those listed in C.R.C.P. 26(b)(1): The Plaintiff believes that due to the declaratory nature of this action and because the Court is being asked to decide an issue that is predominately a question of law, little, if any, discovery is necessary. The Defendants believe some discovery is needed and have served the Plaintiff with a request for production of documents. The Plaintiff is in the process of providing the Defendants with the documents requested. However, the volume of the documents requested is very large and it will be difficult for the Plaintiff to fully respond to this request in time for the Plaintiff's Motion for Summary Judgment to be fully briefed by the parties and leave the Court with reasonable time to consider and decide the Motion for Summary Judgment.

7. The lead counsel for each party have conferred by phone several times concerning possible settlement. The prospects for settlement are unlikely, but the parties continue to explore possible settlement.

8. Deadlines for:

a. Amending or supplementing pleadings: Depending on how the Court rules on the Defendants' Motion to Dismiss, neither party currently expects the need to amend or supplement their pleadings.

b. Joinder of additional parties: Any joinder of an additional party will depend on the Court's decision on the Defendant's Motion to Dismiss.

c. Identifying non-parties at fault: The parties agree there are not any non-parties at fault in this action.

9. Dates of initial disclosures: Due to the nature of this declaratory action, neither party has provided their initial disclosures.

Objections, if any, about their adequacy: Not applicable.

10. If full disclosure of information under C.R.C.P. 26(a)(1)(C) was not made because of a party's inability to provide it, provide a brief statement of reasons for that party's inability and the expected timing of full disclosures and completion of discovery on damages: Neither party has provided to the other party the disclosure information under C.R.C.P. 26(a)(1)(C) and the parties agree such disclosure is not needed this action due to the nature of the legal issue the Court is asked to address in this action and the fact that no damages are being sought by the Plaintiff.

11. Proposed limitations on and modifications to the scope and types of discovery, consistent with the proportionality factors in C.R.C.P. 26(b)(1): As indicated in the responses below, the parties believe minimal discovery is needed in this action.

Number of depositions per party (C.R.C.P. 26(b)(2)(A) limit 1 of adverse party + 2 others + experts per C.R.C.P. 26(b)(4)(A)): The parties do not believe any depositions will be needed.

Number of interrogatories per party (C.R.C.P. 26(b)(2)(B) limit of 30): The parties do not believe any interrogatories will be needed.

Number of requests for production of documents per party (C.R.C.P. 26(b)(2)(D) limit of 20): The Defendants have presented to the Plaintiff its first request for production of documents, consisting of 5 separate requests, to which the Plaintiff has been in the process of responding to as quickly as it can given the short timeline for the Court to issue a decision in this action.

Number of requests for admission per party (C.R.C.P. 26(b)(2)(E) limit of 20): The parties agree no requests for admission will be needed.

Any physical or mental examination per C.R.C.P. 35: The parties agree no physical or mental examinations will be needed.

Any limitations on awardable costs: The Plaintiff is not seeking any award of costs. The Defendants have not filed an Answer, so it has not yet requested costs.

State the justifications for any modifications in the foregoing C.R.C.P. 26(b)(2) limitations: The justification for the modifications is the declaratory nature of this action in which the Court is being asked to decide basically a legal issue that involves few disputed facts.

12. Number of experts, subjects for anticipated expert testimony, and whether experts will be under C.R.C.P. 26(a)(2)(B)(I) or (B)(II): The parties agree there will be no need for expert testimony.

If more than one expert in any subject per side is anticipated, state the reasons why such expert is appropriate consistent with proportionality factors in C.R.C.P. 26(b)(1) and any differences among the positions of multiple parties on the same side: Not applicable.

13. Proposed deadlines for expert witness disclosure if other than those in C.R.C.P. 26(a)(2): Not applicable.

a. production of expert reports: Not applicable.

i. Plaintiff/claimant: Not applicable.

ii. Defendant/opposing party: Not applicable.

b. production of rebuttal expert reports: Not applicable.

c. production of expert witness files: Not applicable.

State the reasons for any different dates from those in C.R.C.P. 26(a)(2)(C): Not applicable.

14. Oral Discovery Motions. The court does not require discovery motions to be presented orally, without written motions or briefs.

15. Electronically Stored Information. The parties do not anticipate needing to discover a significant amount of electronically stored information. The following is a brief report concerning their agreements or positions on search terms to be used, if any, and relating to the production, continued preservation, and restoration of electronically stored information, including the form in which it is to be produced and an estimate of the attendant costs.

16. Parties' best estimate as to when discovery can be completed: As indicated previously, the parties anticipate limited discovery to be conducted. The Plaintiff is working on responding to Defendants' recently served request for production of documents.

Parties' best estimate of the length of the trial: 2-3 days, if applicable.

Trial will commence on (or will be set by the court later): To be determined, depending on the Court's summary judgment ruling.

17. Other appropriate matters for consideration: The only other matter for the Court's consideration is the City Council's deadline of February 16, 2021, to submit the final version of the initiated ordinance and its ballot questions in time to be on the ballot of the City's April 6, 2021, election.

By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

By checking this box, I am acknowledging that I have made a change to the original content of this form.

DATED THIS 26th day of January, 2021.

/s/ John R. Duval

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CASE MANAGEMENT ORDER

IT IS HEREBY ORDERED that the foregoing, including any modifications made by the court, is and shall be the Case Management Order in this case.

Dated this _____ day of _____, 20__.

BY THE COURT:

District Court Judge