

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 6th Street Boulder, Colorado 80302	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Plaintiffs: LISA E. BATTAN; BRANDON T. WHITE; and VICTOR M. VARGAS</p> <p>Defendants: BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF BOULDER, COLORADO</p>	
Attorneys for Plaintiffs: Karl F. Kumli, III, Atty. Reg. #11784 K.C. Cunilio, Atty. Reg. #51378 Rachel Bolt, Atty. Reg. #51266 Dietze and Davis, P.C. 2060 Broadway, Suite 400 Boulder, Colorado 80302 Phone: (303) 447-1375 E-mail:KarlK@dietzedavis.com	Case Number: 2020CV031049 Division: 3 Courtroom:
PLAINTIFFS' FIRST AMENDMENT TO COMPLAINT	

COME NOW PLAINTIFFS, by and through undersigned Counsel, and pursuant to Rule 15(a), Colo. Rules, Civ. Pro., hereby amend their Complaint, as follows. Except as herein specified, all allegations, claims, demands, prayers for relief and every other matter, all as set forth in the original Complaint filed in this matter, are and remain, unchanged. This First Amendment to the Complaint changes one word in paragraph 227 of the Complaint, adds nineteen allegations and states a claim for relief under TABOR.

AMENDMENT OF PARAGRAPH 227 OF THE COMPLAINT

Plaintiffs hereby amend paragraph 227. of the Complaint in this matter, so that after amendment, it reads as follows:

227. If Defendant proceeds with adjudication of Docket No SU-20-0006 while this action is pending, Plaintiffs will suffer irreparable injury in having to participate in that quasi-adjudicatory hearing without a determination of the issues presented in this action.

AMENDMENT TO ADD A FIFTH CLAIM FOR RELIEF

Plaintiffs hereby amend their Complaint in this matter, so that after amendment, additional allegations and an additional Claim for Relief are added, as follows:

FIFTH CLAIM FOR RELIEF: VIOLATION OF TABOR

237. Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1 through 236 of the Complaint.
238. Article X, §20 of the Constitution of the State of Colorado (hereinafter "TABOR"), applies to the County, because the County qualifies as a "District" under TABOR. Pursuant to subsection (4)(a) of TABOR, the County must obtain voter approval in advance for "any new tax, tax rate increase, mill levy above that for the prior year, valuation for assessment ratio increase for a property class, or extension of an expiring tax, or a tax policy change directly causing a net tax revenue gain."
239. On November 2, 1993, the voters of Boulder County approved a ballot issue under TABOR authorizing a 0.25% countywide, sales and use tax for the acquisition, improvement, management and maintenance of open space lands, as described in Boulder County Resolution 93-174 (the "Open Space Tax"). Resolution 93-174 also authorized the issuance of associated revenue bonds, with the payment for such bonds to come from the Open Space Tax.
240. The revenues received by the County from the Open Space Tax were expressly restricted to use for the open space purposes set forth in Resolution 93-174.
241. On November 2, 1999, the voters of Boulder County approved a ballot issue under TABOR authorizing the extension of the Open Space Tax for an additional period of ten (10) years up to and including December 31, 2019, and issuance of additional revenue bonds, as described in Boulder County Resolution 99-111.
242. On November 2, 2016, the voters of Boulder County approved a ballot issue under TABOR authorizing the extension of one-half (0.125%) of the Open Space Tax and the issuance of capital improvement trust fund bonds, all for the purpose of continuing to fund the open space program, as described in Resolution 2016-77.
243. Resolutions 93-174, 99-111, and 2016-77 require that the net proceeds from the creation and extension of the Open Space Tax received by the County be expended by the County to acquire, improve, manage, and maintain open space and for open space functions as defined in the Resolutions.
244. On information and belief, the County purchased the Property using Open Space Tax revenue generated by Resolutions 93-174, 99-111, and 2016-77.
245. At the time the County purchased the Property with Open Space Tax revenues, the County had no intention of using the Property for any of the open space purposes authorized by Resolutions 93-174, 99-111, and 2016-77.
246. At the time the County purchased the Property, the County illegally spent Open Space Tax revenue for a purpose not authorized by Resolutions 93-174, 99-111, and 2016-77 or

the ballot issues approved by the voters.

247. The County's use of Open Space Tax revenue to purchase the Property violated Paragraph 9 of Resolution 93-174.

248. The County's use of Open Space Tax revenue to purchase the Property violated Paragraph 9 of Resolution 99-111.

249. The County's use of Open Space Tax revenue to purchase the Property violated Paragraphs 12-16 of Resolution 2016-77.

250. At the time the County purchased the Property, the voters of Boulder County had never approved the use of the Open Space Tax revenue for the purchase of land for an industrial use, including the Compost Factory.

251. The County's purchase of the Property for industrial purposes, using restricted Open Space Tax revenues, was a direct violation of § (4)(a) of TABOR.

252. Since the purchase of the Property, the County has illegally spent Open Space Tax revenues to investigate and promote the use of the Property for an industrial purpose, including hiring consultants, conducting studies and publishing notices of the proposed use.

253. Because Plaintiffs are all County taxpayers, Plaintiffs have standing to bring a claim against the County for one or more TABOR violations.

254. Pursuant to § 1 of TABOR: "Revenue collected, kept, or spent illegally since four full fiscal years before a suit is filed shall be refunded with 10% annual simple interest from the initial conduct."

255. Also pursuant to § 1 of TABOR, all provisions of TABOR are self-executing, and TABOR must be read to "restrain most the growth of government". Allowing the County to use restricted Open Space Tax revenues for purposes not authorized by the voters would unlawfully expand the growth of government, rather than restricting it.

WHEREFORE, Plaintiffs additionally pray for relief, as follows:

1. Plaintiffs respectfully pray for declaratory judgment that the County violated TABOR and that the illegal use of restricted funds voids the purchase contract for the Property.
2. Pursuant to § of TABOR, Plaintiffs demand a refund, of all Open Space Tax revenues illegally spent to purchase the Property and to investigate the use of the Property for industrial purposes, plus 10% annual simple interest, commencing on the date of the purchase of the Property.

3. Pursuant to § 1 of TABOR, Plaintiffs respectfully request an order awarding them their reasonable attorney fees and costs incurred in this action.

In all other respects, the Complaint in this matter, as originally filed, remains in full force and effect.

Respectfully submitted this 26th day of January, 2021.

DIETZE AND DAVIS, P.C.

Pursuant to Rule 121, the signed original is on file in the Office of Dietze and Davis, P.C.

By: /s/ Karl F. Kumli, III
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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of January, 2021, I caused a true and correct copy of the foregoing **PLAINTIFFS' FIRST AMENDMENT TO COMPLAINT** to be served via *CCES*, Email and/or First Class U.S. Mail, upon the following:

David E. Hughes, Esq.
Conrad R. Lattes, Esq.
Office of the County Attorney

Colorado Attorney General



Graciela Franco, Paralegal