COLORADO COURT OF APPEALS Court Address: 2 East 14th Avenue Denver, Colorado 80203 Telephone No.: (720) 625-5150	
El Paso County District Court Trial Court Judge: The Honorable Michael P. McHenry Case No.: 2016CV032101	
Plaintiff/Appellant: SAVE CHEYENNE, a Colorado non-profit corporation; **v.** **Defendants/Appellees:** CITY OF COLORADO SPRINGS; CITY COUNCIL OF THE CITY OF COLORADO SPRINGS; JOHN W. SUTHERS, solely in his official capacity as the Mayor of the City of Colorado Springs; and RONN CARLENTINE or his successor, solely in their official capacity as Real Estate Services Manager of the City of Colorado Springs.	**▲Court Use Only▲** Case No.:
Charles E. Norton, #10633 Kristin N. Cisowski, #45781 NORTON & SMITH, P.C. 1331 17th Street, Suite 500 Denver, Colorado 80202 Phone Number: (303) 292-6400 FAX Number: (303) 292-6401 E-mail: CNorton@NortonSmithLaw.com KCisowski@NortonSmithLaw.com	

NOTICE OF APPEAL

The Appellant/Plaintiff, Save Cheyenne, a Colorado non-profit corporation, by and through its counsel, Norton & Smith, P.C., hereby submits the following Notice of Appeal:

I. NATURE OF THE CASE

A. NATURE OF THE CONTROVERSY

This case involves a land exchange between the City and the Broadmoor, including 189.5 acres in North Cheyenne Canyon Park commonly known as "Strawberry Fields." The Park is historically significant; it was acquired by a vote of the citizenry in 1885, part of a national movement to set aside places where "citizens of crowded cities" could recreate, and "breathe the pure air." Strawberry Fields is easily accessible and much used; its heart is an alpine meadow where the Broadmoor intends to build a 100-seat picnic/barbeque/entertainment center restricted to its guests. Dozens of additional acres in Strawberry Fields will be restricted for a horseback riding operation managed by the Broadmoor as an amenity for its resort. The Amended Complaint contained five claims for relief: (1) that the conveyance of Strawberry Fields violated the terms of the dedication of North Cheyenne Canon Park in 1885; (2) that the conveyance violated the terms of the Colorado Springs Charter, which provides that the right to use City parklands must be approved by the voters and for a term of no more than 25 years; (3) that the conveyance violated section 31-15-713, C.R.S., which mandates that the disposition of municipal park property must be approved at an election; (4) that the transaction violated Article XI, section 2 of the Colorado Constitution; (5) that the Resolution violated the terms of the City's zoning ordinance.

B. JUDGMENT OR ORDER APPEALED FROM AND STATEMENT OF JURISDICTION

This appeal is taken from an order of the El Paso County District Court entitled "Ruling on Defendants' Motions to Dismiss," dated December 15, 2016, which granted the City's and the Broadmoor's motions to dismiss all five of Save Cheyenne's claims for relief.

Jurisdiction lies with this Court pursuant to section 13-4-102 (1), C.R.S.

C. WHETHER THE JUDGMENT OR ORDER RESOLVED ALL ISSUES PENDING BEFORE THE TRIAL COURT

The order of December 15, 2016 dismissed all five of Save Cheyenne's claims for relief and thereby resolved all issues before the trial court.

D. WHETHER THE JUDGMENT WAS MADE FINAL FOR THE PURPOSES OF APPEAL PURSUANT TO C.R.C.P. 54 (b)

No separate certification pursuant to C.R.C.P. 54 (b) was entered in this case.

E. THE DATE THE JUDGMENT WAS ENTERED AND THE DATE IT WAS MAILED

The "Ruling on Defendants' Motion to Dismiss" was entered on December 15, 2016, and it was served on counsel for all of the parties through the Integrated Colorado Courts E-Filing System ("ICCES") on that same day.

F. WHETHER ANY EXTENSIONS WERE GRANTED TO FILE MOTIONS FOR POST-TRIAL RELIEF

No extensions of time to file motions for post-trial relief were sought or granted.

G. THE DATE ANY MOTION FOR POST-TRIAL RELIEF WAS FILED

No motions for post-trial relief were filed by any party.

H. EXTENSIONS OF TIME TO FILE THE NOTICE OF APPEAL

No extensions of time were sought or granted to file the notice of appeal.

II. ADVISORY LISTING OF THE ISSUES TO BE RAISED ON APPEAL

The following is an advisory listing of the issues to be raised on appeal by Save Cheyenne:

(A) In granting the Defendants' motions to dismiss Save Cheyenne's first claim for relief, did the District Court err in declining to apply the common law doctrine regarding the dedication of parks, as delineated in *McIntyre v. Bd. of Comm'rs*, 61 P. 237 (Colo. App. 1900), and *Friends of Denver Parks, Inc. v. City and County of Denver*, 327 P.3d 311 (Colo. App. 2013), which holds that the municipality to which land has been dedicated as a park holds it as trustee, solely for the benefit of its citizens, and mandates that it may not impose upon it any burden or servitude

inconsistent with park purposes, nor may it alienate the ground, or relieve itself of the authority and duty to regulate the park's use?

(B) Did the District Court err in holding that the City does not hold Strawberry Fields as a trustee, solely for the use and benefit of its citizens as a park, based upon a misperception that the Save Cheyenne's argument is based upon a "public trust doctrine," existing in Pennsylvania and some other states, but not Colorado, as opposed to the application of the terms of a common law dedication articulated in *McIntyre* and *Friends of Denver Parks*?

(C) Did the District Court err in concluding that, because the Colorado Springs City Council in 1885 had dedicated the lands including Strawberry Fields as a park, and stated that Council may always "direct any act or thing to be done concerning said parks, which they may deem best for the improvement of said parks," it had thereby abrogated all the terms of a common law dedication, including the restrictions on conveyance, use, and the requirement that the City retain regulatory authority over the park?

(D) Did the District Court err in concluding that the language in the 1885 ordinance regarding having the power to direct things that were best for the improvement of the parks somehow completely abrogated the dedication which Council had made and accepted in the same ordinance?

(E) Did the District Court err in concluding that there was no statutory dedication of North Cheyenne Canon (and Strawberry Fields) as a park, because Colorado Springs did not act according to a Colorado statute in effect at the time that had nothing to do with the dedication of parks?

(F) Did the District Court err in concluding that there was no statutory dedication of Strawberry Fields as a park but declining to take into account the specific 1885 statute under which Strawberry Fields was acquired and dedicated?

(G) Did the District Court err in concluding that those provisions of the Colorado Constitution which give home rule cities the power to convey their real property, abrogates the common law rule regarding the dedication of parks?

(H) Did the District Court err in concluding that various provisions of the Colorado Springs charter and real estate manual abrogated the common law doctrine regarding the dedication of parks, despite the clear precedent that municipal legislation in derogation of the common law must be strictly construed and that changes to the common law doctrine must be clearly expressed?

(I) Did the District Court err in concluding that the rule in *McIntyre* regarding the conditions of dedication does not apply because the

City was the fee owner of Strawberry Fields in 1885 and dedicated it as a park, and that the public's interest in the site (including that of the voters who approved its acquisition in 1885) is not entitled to the same protection in equity as would the interest of a private owner who had dedicated the land as a park?

(J) Did the District Court err in concluding that the Colorado Springs charter adopted in 1906 operated retroactively to abrogate any common-law trust created when Strawberry Fields was dedicated as a park in 1885?

(K) Did the District Court err in concluding that the Resolution did not violate Article II, section 11, of the Colorado Constitution, which forbids the Colorado Springs City Council from passing laws that are retrospective in their operation?

(L) Did the District Court erroneously conclude that sections 10-10 and 10-60 of the Colorado Springs home rule charter did not apply to the land exchange, despite the language of section 10-60 which says that "the term of a franchise, lease, or right to use (City-owned parklands) shall never exceed twenty-five (25) years" and the requirement in section 10-10 that a vote be conducted approving any right of use?

(M) Did the District Court erroneously conclude that section 31-35-713(1)(a), C.R.S. did not require a vote before Strawberry Fields could be conveyed, based upon its analysis that the land exchange was purely a matter of local concern, and hence the statute does not apply to home rule cities?

(N) Did the District Court err by failing to properly apply the standard set forth in *City of Longmont v. Colorado Oil and Gas Ass'n,* 369 P.3d 573, 580 (Colo. 2016) in its inquiry into whether the conveyance of public parks is a matter of statewide, mixed state and local, or local concern?

(O) Did the District Court err in treating the question of whether section 31-35-713(1)(a), C.R.S. applies to the land exchange as an inquiry into the specific facts regarding Strawberry Fields, as opposed to a "facial challenge" as required under *City of Longmont*?

(P) Did the District Court err in holding that the land exchange does not violate Article XI, section 2 of the Colorado Constitution, which prohibits any "grant to, or in aid of, any corporation or company," as long as Colorado Springs received "any consideration" in return for the conveyance of Strawberry Fields?

(Q) Did the District Court err in declining to apply the rule in *Tamblyn v. City and County of Denver*, 194 P.2d 299 (Colo. 1948), that the conveyance of land by a municipality to a private corporation violates article

XI, section 2 if the actual value of the property conveyed "greatly exceeds" its contract price, and Save Cheyenne pled facts in the complaint supporting its allegation that the value of the easily accessible Strawberry Fields greatly exceeded the $8,343.00 value per acre assigned to it in the Resolution?

(R) Did the District Court err in concluding that article XI, section 2 of the Colorado Constitution is not violated as long as the conveyance of Strawberry Fields and the land exchange as a whole "furthers a valid public purpose?"

(S) Did the District Court err in dismissing Save Cheyenne's fifth claim for relief on the basis that it constituted a zoning challenge that was not yet ripe for review?

(T) Did the District Court err in holding that the future uses for Strawberry Fields were "uncertain" for the purposes of its ripeness analysis on the fifth claim for relief, while at the same time holding that those uses constituted a valid public purpose when analyzing the claim under Article XI, section 2?

III. STATEMENT REGARDING A TRANSCRIPT

The case was decided in full based upon motions to dismiss filed by the Broadmoor and the City; no evidentiary hearings were held, and no transcript is necessary.

IV. INFORMATION REGARDING COUNSEL

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V. APPENDIX

A copy of the "Ruling on Defendants' Motion to Dismiss" is attached in the appendix to this Notice of Appeal as required by C.A.R. 3(d)(7).

Dated this 4th day of January, 2017.

NORTON & SMITH, P.C.

S/ Charles E. Norton
Charles E. Norton, #10633
Counsel for Appellant / Plaintiff Save Cheyenne

CERTIFICATE OF SERVICE

I certify that on the 5th day of January, 2017, a true and correct copy of the foregoing **NOTICE OF APPEAL** was sent electronically and/or mailed, postage prepaid, return receipt requested, to the following:

Wynetta P. Massey Anne H. Turner OFFICE OF THE CITY ATTORNEY 30 South Nevada Avenue, Suite 501 Colorado Springs, CO 80901 *Counsel for Defendants City of Colorado Springs; City Council of the City of Colorado Springs; John W. Suthers and Ronn Carlentine*	John W. Cook Erin L. Sokol Mark D. Gibson HOGAN LOVELLS US LLP Two North Cascade Avenue, Suite 1300 Colorado Springs, CO 80903 *Counsel for Proposed Intervenors Manitou and Pike's Peak Railway Company; COG Land & Development Company; PF, LLC; and Broadmoor Hotel, Inc.*
El Paso County District Court 270 South Tejon Street Colorado Springs, CO 80903	

S/ Wynter B. Wells
Wynter B. Wells, Paralegal

APPENDIX

DISTRICT COURT, EL PASO COUNTY, COLORADO 270 S. Tejon Street Colorado Springs, Colorado 80903-2209 Mailing address: P.O. Box 2980 Colorado Springs, CO 80901--2980	DATE FILED: December 15, 2016 12:42 PM CASE NUMBER: 2016CV32101
Plaintiff: SAVE CHEYENNE, a Colorado non-profit corporation; v. **Defendants:** CITY OF COLORADO SPRINGS, et. al.	▲ COURT USE ONLY ▲
	Case No. 2016CV32101 Division 21 Courtroom W450

RULING ON DEFENDANTS' MOTIONS TO DISMISS

The City and the Broadmoor have moved to dismiss all five of Plaintiff's causes of action pursuant to C.R.C.P. 12(b)(1) & (5). The court has considered the arguments made in the motions to dismiss, the responses, and the joint reply and reviewed all associated exhibits. The court hereby enters the following ruling.

Introduction

1. On May 24, 2016, City Council passed a resolution approving an exchange of park land between the City and the Broadmoor. In the transaction the City would gain 371.2 acres of property and 115.4 acres of new public trail easements in exchange for 189.5 acres.

2. Plaintiff is a Colorado non-profit corporation governed by four citizens of Colorado Springs who use the park land at issue. Plaintiff challenges the legality of the resolution and the park land exchange it authorizes. Plaintiff seeks a declaratory judgment that the resolution is null and void. Plaintiff seeks to enjoin the City, the Mayor, and their officers and agents from taking any action to complete the exchange.

3. More specifically, Plaintiff objects to the City's transfer of the 189.5 acres known as "Strawberry Fields," alleging that City Council dedicated Strawberry Fields as park property by ordinance on October 5, 1885. Plaintiff contends that the City must own Strawberry Fields and maintain it as a public park in perpetuity or until such parkland is abandoned or vacated. Plaintiff contends that this transfer violates a public trust created in 1885 and that the City should honor the intent of the voters as expressed in 1885. Plaintiff acknowledges that the property the City will receive has been estimated to have a fair market value of $3,609,800 which exceeds the estimated value of the property the

City intends to transfer, which is $2,161,000. However, Plaintiff is skeptical of this valuation and believes the property the City is giving up is more valuable than what it is receiving.

4. Resolution of this dispute requires a wide ranging legal analysis of Colorado's common law, statutory law, Constitutional law and the City's Charter. Such law has evolved significantly in the 131 years since the voters of Colorado Springs elected to buy the land which constitutes Strawberry Fields. Thanks to excellent briefing by the attorneys on both sides, most of the heavy lifting has been done for the court.

5. No one disputes that this land is among the crown jewels of Colorado Springs' park system, such as the Garden of the Gods and Cheyenne Canon, which are world-renowned and vital to the quality of life in Colorado Springs. Conveyance of such parkland to a private entity is always a serious matter. This case raises important issues concerning the sound stewardship of our public lands.

The Legal Issues

6. Plaintiff has brought five claims for relief:
   - Plaintiff argues the City cannot convey the 189.5-acre parcel to the Broadmoor because statutory and common law prohibits a city from conveying dedicated parkland.
   - Second, Plaintiff argues that the transaction attempts to grant the right to use city-owned parkland in violation of the City Charter.
   - Third, Plaintiff argues that a state statute requires the City to submit the land exchange to a popular vote.
   - Fourth, Plaintiff argues that the City's conveyances to the Broadmoor are more valuable than the Broadmoor's conveyances to the City, thus the City's conveyances amount to an unconstitutional gift to the Broadmoor under article XI § 2 of the Colorado Constitution.
   - Fifth, Plaintiff argues the proposed uses of Strawberry Fields under the land exchange would violate the City's zoning ordinances.

7. The City and the Broadmoor ask the court to dismiss all of Plaintiff's claims for relief and to allow them to move forward with the proposed transaction:
   - First, they argue that Colorado's common law does not support Plaintiff's position, and even if it did, such law has been abrogated by other law, specifically the original 1885 ordinance, the Colorado Constitution, a Colorado statute, the City Charter, the City Code, and the City's real-estate manual.
   - Second, they argue that the resolution does not authorize the Broadmoor to use City-owned property because the resolution validly conveys the property to the Broadmoor.
   - Third, they argue the state statute requiring a popular vote before conveying parkland is unconstitutional as applied to the City because it infringes on the City's constitutional right to sell and dispose of City-owned property, and further, the City

Charter and City Code supersede the statute because the City is a home-rule city and the disposition of City-owned property is a matter of purely local concern.

- Fourth, they argue that the value of the land being swapped prevents the exchange from being a gift as a matter of law.
- Fifth, they argue that any alleged zoning violation is not ripe for review because no zoning violation has occurred and if such were to occur in the future then the appropriate remedy would be an administrative complaint – not the scrapping of the entire resolution.

8. As outlined below, the court agrees with the City and the Broadmoor that this transaction complies with the law.

Procedural History & Details of the Proposed Transaction

9. Beginning in January 2016, the land exchange underwent a public vetting process. The citizens of Colorado Springs were able to voice their opinions about this transaction by providing comments through the City's website and at a series of public meetings. The Colorado Springs Parks and Recreation Advisory Board also played a role in the vetting process. It considered the land exchange on three separate occasions. On the third and final occasion, it voted to recommend that the City Council approve the land exchange. The land exchange also won support from the Trails and Open Space Coalition (a Colorado 501(c)(3) nonprofit organization dedicated to preserving open space and parks and creating a network of trails, bikeways, and greenways for the Pike's Peak Region).

10. The process culminated in a City Council meeting held on May 24, 2016. City Council listened to presentations by City staff, asked questions, and considered the views of citizens both in favor of and opposed to the land exchange. City Council approved a resolution authorizing the land exchange by a vote of 6–3, finding that it "is in the best interest of the City." Compl. Ex. 4, at 2.

11. The resolution calls for the City to convey to the Broadmoor a .55-acre parcel near the base of the Manitou Incline. Id. at 7, ¶ 28; id. Ex. 4, Ex. C. This parcel sits at the base of Pike's Peak Cog Railway, and is needed for additional parking for the Cog Railway.

12. The resolution also calls for the City to convey to the Broadmoor a 189.5-acre parcel that encompasses parkland known as Strawberry Fields. Id. at 2, ¶ 1; id. at 5, ¶ 17; id. Ex. 4, Ex. B. The Broadmoor intends to use, 8.5 acres of this parcel for an equestrian center and a picnic area as additional amenities for its guests. Id. at 2; id. Ex. 4, Ex. G. Except for this 8.5-acre area, the resolution requires the Broadmoor to permit free and open access to the public. Id. at 6, ¶ 20; id. Ex. 4, Ex. A, at 10, ¶ 5. Consequently, 181 acres of this 189.5-acre parcel will remain open to the public (including Save Cheyenne's directors), for free.

13. In addition, though the City historically has not actively managed this parcel (e.g., it has not constructed trails), see, e.g., id. at 5, ¶ 15, the Broadmoor intends to do so, id. Ex. 4, Ex. A, at 10, ¶ 7. For example, the Broadmoor intends to promulgate rules and regulations for conserving the land's natural resources and deterring illegality. Id. Ex. 4,

Ex. A, at 10, ¶ 7(a). The Broadmoor will submit a five-year plan for erosion control. Id. Ex. 4, Ex. A, at 10, ¶ 7(b). And the Broadmoor will protect the land with a conservation easement held by a nationally accredited, state-certified land trust. Id. at 6, ¶ 22; id. Ex. 4, Ex. A, at 8, ¶ 4.

14. In exchange for these City-owned parcels, the Broadmoor will convey to the City about 371 acres of property and 115 acres of public-trail easements. Id. at 8, ¶ 29. These parcels and easements will enable the City to expand both its public parks and its system of public trails. For instance, the City will get more than 8 acres to expand Bear Creek Regional Park and more than 200 acres to expand North Cheyenne Canon Park. Id. Ex. 4, Ex. A, at 5. The City will get permanent trail easements for connecting and aligning both the Barr Trail and the Chamberlain Trail. Id. Ex. 4, Ex. A, at 4–6. And the City will get property and permanent easements that will allow the City to ensure that the Manitou Incline always remains open for the public, free from long-standing concerns about trespass. Id. Ex. 4, Ex. A, at 4.

15. In this exchange the City will receive the following legal rights:

- Fee simple in 80 acres that encompass portions of the Manitou Incline and the Barr Trail.
- Fee simple in 74.6 acres that encompass portions of the Manitou Incline and the Barr Trail.
- Permanent easements for public access and use of the Manitou Incline.
- Permanent trail easement for connecting the Barr Trail.
- Fee simple in 3.26 acres near Bear Creek Regional Park.
- Fee simple in 5.35 acres near Bear Creek Regional Park.
- Fee simple in 208 acres west of Seven Falls.
- Permanent trail easement of about 4.4 acres for aligning the Chamberlain Trail.
- Permanent trail easement of about 74.1 acres for aligning the Chamberlain Trail.
- Public-access easement to and from the Hully Gully ice-climbing area.
- Utility easement for the Colorado Springs hydroelectric plant.
- Termination of the revocable license for parking.
- Free public access to the Green Settlement and Greenwood Park historic homestead sites.
- Free access to the Broadmoor's picnic area for two annual fundraising events for the parks department.
- Twenty-five percent of the Seven Falls gross tram fees to be donated to the North Cheyenne Gift Trust.

16. The Broadmoor will receive the following legal rights:

- Title to a 189.5-acre parcel, known as Strawberry Fields, subject to conditions.
- Title to a .55-acre parcel, to expand parking at the Cog Railway, subject to conditions.

17. The City's gains have a fair market value of about $3,609,800; the Broadmoor's gains have a fair market value of about $2,161,000. Id. Ex. 4, at 2.

The Standard of Review

18. A motion to dismiss can test whether the plaintiff's legal theory is sound, and it can test whether the plaintiff's factual allegations are sufficient. *Engebretson v. Mahoney*, No. CV 09-98-M-DWM-JCL, 2010 WL 2683202, at *2 (D. Mont. June 10, 2010) (stating that a cause of action may be dismissed "either when it asserts a legal theory that is not cognizable as a matter of law, or if it fails to allege sufficient facts to support an otherwise cognizable legal claim").

19. Both the City and the Broadmoor contest the soundness of Plaintiff's legal theories. Thus, the court is required to dismiss if the substantive law does not support the claims asserted. *W. Innovations, Inc. v. Sonitrol Corp.*, 187 P.3d 1155, 1158 (Colo. App. 2008). This is true regardless of Plaintiff's factual allegations. *Neitzke v. Williams*, 490 U.S. 319, 328 (1989) (holding that a court can dismiss a claim based on "a dispositive issue of law" even "on the assumption that the factual allegations in the complaint are true").

20. When ruling on a motion to dismiss, a court may consider "the facts alleged in the complaint, documents attached as exhibits or incorporated by reference in the pleadings, and matters of which the court may take judicial notice." *Walker v. Van Laningham*, 148 P.3d 391, 397 (Colo.App. 2006). "[C]ertain matters of public record may also be taken into account." *Id.*

Legal Analysis: Has a Statutory or Common Law Dedication Occurred?

The Public Trust Doctrine

21. Plaintiff's first claim for relief alleges that the City effectuated a statutory or common law dedication of Strawberry Fields. Plaintiff alleges that regardless of the legal theory the legal consequence is the same: the City must hold the park in trust solely for the use and benefit of its citizens as a park and may not convey any part of it to a private entity such as the Broadmoor. This argument is based on the public trust doctrine, which refers to a common law concept that imposes on the government the duty to preserve and protect the public lands for the public's common heritage. *Aspen Wilderness Workshop, Inc. v. Colorado Water Conserv. Bd.*, 901 P.2d 1251, 1263 (Colo. 1995).

22. However, no such doctrine exists in Colorado. *City of Longmont v. Colorado Oil & Gas Ass'n*, 369 P.3d 573, 586 (Colo. 2016). Thus, the City does not hold Strawberry Fields as a "Trustee, solely for the use and benefit of its citizens as a park."

23. In 1877, the General Assembly passed an act governing municipal corporations. Act of Apr. 4, 1877, ch. 100, 1876 Colo. Sess. Laws 874. Among other things, the act listed various powers held by cities and towns. *Id.* at 879–92. And among those powers was the power to "lay out, establish, open, alter, widen, extend, grade, pave or otherwise improve … parks and public grounds, and vacate the same." *Id.* at 880–81 (codified as amended at Colo. Rev. Stat. § 31-15-702(1)(a)(I) (2016)). That is what the City seeks to do here. The land exchange would alter North Cheyenne Canon Park by conveying one

portion of it to the Broadmoor in exchange for a 208-acre parcel that will be added to and expand the park, thereby altering, widening, and extending the park's boundaries. Compl. Ex. 4, Ex. A, at 5, 6.

24. The dedication ordinance itself also permits the land exchange. The Colorado Court of Appeals has noted that when analyzing a dedication, the court must start with the dedication's terms. See *State Dep't of Highways v. Town of Silverthorne*, 707 P.2d 1017, 1019–20 (Colo. App. 1985) (giving dispositive weight to the dedication's terms); *McIntyre v. Bd. of Comm'rs*, 61 P. 237, 240 (Colo. App. 1900) (analyzing whether the dedication's terms allowed for erecting a public building within a city park). In this case, the 1885 ordinance contains a critical proviso: "*provided always*, that the City Council may direct any act or thing to be done concerning said parks, which they may deem best for improvement of said parks." Compl. Ex. 3, at 4, § 4 (emphasis in original).

25. In 2016 the City Council explicitly found this land swap to be in the best interest of the City's park system. See Ex. 4, at 2. The land exchange thus qualifies as "any act or thing to be done concerning [the City's] parks." As a result, the 1885 ordinance itself permits the land exchange.

26. Beyond the ordinance's plain text, the land exchange is also consistent with the ordinance's plain purpose. The proviso was meant to entrust the stewardship of the City's parks to the City Council, and to assign the City Council the authority to manage and improve the City's park system consistent with the City's best interests as circumstances evolved. Plaintiff's position contradicts this purpose. According to Plaintiff, once the City dedicates land as a public park, the City is required to do so forever. That view would severely hamper the City's ability to manage its park system consistent with good stewardship. That view would needlessly compromise the City's ability to preserve the City's park system as times change and circumstances evolve.

Statutory Dedication

27. Further, the City did not dedicate North Cheyenne Canon Park by statute. The Colorado Supreme Court has long held that statutory dedication requires compliance with Colorado's dedication statute. *City of Leadville v. Coronado Mining Co.*, 86 P. 1034, 1036 (Colo. 1906). In 1885, that statute required designating the dedicated land on a city map or plat and filing the map or plat with both the county clerk and recorder and the city clerk and recorder. See Act of Apr. 4, 1877, ch. 100, § 7, 1876 Colo. Sess. Laws 874, 876. Here, Plaintiff nowhere alleges that the City designated North Cheyenne Canon Park as a public park on a city map or plat and then filed that map or plat with the El Paso County clerk and recorder and the City clerk and recorder. Thus, Plaintiff does not properly allege a statutory dedication.

Common Law Dedication

28. As for common-law dedication, the Colorado Court of Appeals has held that "[c]ommon law dedication occurs when the city's 'unambiguous actions' demonstrate its 'unequivocal intent' to set the land aside for a particular public use." *Friends of Denver*

Parks, Inc. v. City & County of Denver, 327 P.3d 311, 317 (Colo. App. 2013). Whether there has been a common law dedication is a question of fact. *City & County of Denver v. Publix Cab Co.*, 308 P.2d 1016, 1020 (Colo. 1957). Thus, this is a question that can't be resolved at the motion-to-dismiss stage unless other law operates to resolve the issue on a purely legal basis. Such law exists.

29. A legislative body—including a city council—may abrogate a common-law rule. *Friends of Denver Parks, Inc. v. City & County of Denver*, 327 P.3d 311, 317 (Colo. App. 2013). It may do so either expressly or by clear implication. Id. A legislative act implicitly abrogates a common-law rule when the act conflicts with the common-law rule. *Kane v. Town of Estes Park*, 786 P.2d 412, 415 (Colo. 1990).

30. Here, the Colorado Constitution, a Colorado statute, the City Charter, the City Code, and the City's real-estate manual all abrogate the common law because they authorize the City to convey City-owned dedicated parkland.

31. To start, the Colorado Constitution conflicts with the common-law rule. Article XX, sections 1 and 6 give home-rule cities the power to convey their real property. Colo. Const. art. XX, §§ 1, 6. Because city-owned parkland is city-owned real property, it follows that a city can convey dedicated parkland. Because the common-law rule thus conflicts with the Colorado Constitution, the Colorado Constitution abrogates the common-law rule.

32. So too does Colorado's statutory law. See *Friends of Denver Parks*, 327 P.3d at 317 (noting that a statute can abrogate the common law). C.R.S. § 31-15-713(1)(a) provides that the governing body of each municipality has the power to sell and dispose of "real property used or held for park purposes." Thus, Colorado's statutory law supersedes the common-law rule.

33. The City Charter also abrogates the common-law rule. See *Friends of Denver Parks*, 327 P.3d at 317 (noting that a city charter can abrogate the common law). Like the Colorado Constitution, the City Charter authorizes the City to sell and dispose of its real property. City of Colo. Springs, Colo., Charter art. I, § 1-20(b). Because City-owned parkland is City property, it follows that the City can convey parkland. But even beyond the City Charter's plain text, the City has interpreted the Charter as providing this authority—an interpretation that this Court must defer to. See *Friends of Denver Parks*, 327 P.3d at 317 ("[W]e defer to the interpretation of the municipal agency charged with administering the section unless that interpretation is inconsistent with the legislative intent manifested in the text of the charter."). Throughout the years, the City has specifically conveyed City owned parkland. See, e.g., Ex. 1, at 1.2 It has done so on the interpretation that the City Charter authorizes it to do so. In addition, the City Charter authorizes the City to franchise, lease, and grant others the right to use City-owned parkland for a term of up to 25 years. City of Colo. Springs, Colo. Charter art. X, § 10-60.

34. Similarly, the very 1885 ordinance that created North Cheyenne Canon Park authorizes the City Council "to lease such portions of Cheyenne park, at or near the entrance of the same, for a restaurant or hotel, as they may deem for the best interests of the city."

Compl. Ex. 3, at 4, § 6. These are yet more departures from the common-law rule and its prohibition on placing any servitude or burden on City-owned parkland inconsistent with park purposes. See *McIntyre v. Bd. of Comm'rs*, 61 P.3d 237, 239 (Colo. App. 1900).

35. Also, this land exchange falls within the 1885 ordinance's broad authorization for the City Council to "direct any act or thing to be done concerning said parks, which they may deem best for improvement of said parks." Compl. Ex. 3, at 4, § 4. Thus, both the City Charter and the City's interpretation of it authorize the City to convey City-owned dedicated parkland, something the common-law rule forbids. The City Charter therefore controls.

36. The same goes for the City Code and the City's real-estate manual. See *Friends of Denver Parks*, 327 P.3d at 317 (noting that a municipal legislative body can abrogate the common law). The City Code provides that whenever the City acquires or disposes of real-property interests, it must comply with the "Procedure Manual For The Acquisition And Disposition Of Real Property Interests." City of Colo. Springs, Colo., City Code § 7.7.1803 (2016). This provision applies broadly to all City-owned real property—including City-owned parkland. The manual recognizes this breadth by stating that it applies to "[a]ll real estate transactions." Ex. 2, at 2. Because the City Code and the manual contemplate and provide procedures for conveying City-owned parkland, they too take precedence over the common-law rule.

37. Thus, Plaintiff's first cause of action can survive only if the common-law rule against conveying city-owned dedicated parkland applies. That rule does not apply; it has been abrogated by the Colorado Constitution, by Colorado statute, by the City Charter, and by the City Code and real-estate manual.

Distinguishing *McIntyre*

38. It should be noted that Plaintiff's reliance on the common law rule derives from *McIntyre v. Bd. of Comm'rs*, 61 P. 237, 239 (Colo. App. 1900), however *McIntyre* does not support Plaintiff's position. *McIntyre* diverges from this case in a critical respect: *McIntyre* involved a private company that dedicated land to the city to be used as a public park. 61 P. at 239–40. Such is a typical fact pattern found in the case law. When Colorado courts have discussed dedication, they have typically done so in the context of a landowner dedicating property to a governmental entity for some public purpose. See, e.g., *City of Northglenn v. City of Thornton*, 569 P.2d 319, 321 (Colo. 1977) ("[F]or a common law dedication to be found there must be certain elements present including an intent on the part of the owner to dedicate and an acceptance of the dedication by the governmental authority."); *City of Denver v. Jacobson*, 30 P. 246, 246 (Colo. 1892) (private landowner dedicated land to the city to be used as a street); *State Dep't of Highways v. Town of Silverthorne*, 707 P.2d 1017, 1019 (Colo. App. 1985) (private landowner expressly donated land to the town to be used as streets and avenues); *McIntyre*, 61 P. at 239–40 (private landowner donated block to the city to be used only as a public square).

39. Given this context—not to mention the facts of *McIntyre* itself—*McIntyre* does not hold that when a city buys land from a private party, for valuable consideration, and then

dedicates the land as a public park, the city cannot convey the land to a third party. Instead, the common-law rule that emerges from *McIntyre* is far narrower: when a landowner donates land to a city for sole use as a public park, the city cannot then convey the land to a third party. *McIntyre*, 61 P. at 239. That rule makes sense in light of the rule's equitable roots. The Colorado Supreme Court has noted that "common-law dedications operate by way of estoppel *in pais*," a/k/a equitable estoppel. *Jacobson*, 30 P. at 247. Equitable estoppel prevents "one party from taking unfair advantage of another when, through false language or conduct, the person to be estopped has induced another person to act in a certain way, with the result that the other person has been injured in some way." Equitable Estoppel, Black's Law Dictionary (10th ed. 2014).

40. So the rationale behind the *McIntyre* rule is that when a landowner donates land to a city on the condition that the city use the land only as a public park, equity will not allow the city to contravene the donor's wishes. See *Warren v. Mayor of Lyons City*, 22 Iowa 351, 355 (1867). That would be unfair to the landowner, which is why "in cases of dedication of ground for specific use, in case of abandonment or failure to utilize the property for the specified use[,] the property reverts to him who dedicated, or attempted to do so." *McIntyre*, 61 P. at 240.

41. This reason for the *McIntyre* rule does not apply here. When the City bought North Cheyenne Canon Park from First National Bank of Colorado, the bank did not convey the land to the City on the condition that the City use the land as a park. Thus, there is no unfairness to the original landowner in allowing the City to convey a portion of the park to the Broadmoor. The *McIntyre* rule does not apply here because the equitable justification for the rule does not apply here.

Do the Laws Which Abrogate the Common Law Operate Retroactively?

42. Plaintiff argues that under article II, section 11 of the Colorado Constitution and C.R.S. 31-2-217, those laws cannot apply retrospectively to negate City residents' alleged vested property right in having North Cheyenne Canon Park remain a public park forever. This court disagrees and hereby rules that such law is both retroactive and constitutional.

43. First, the Court need not resolve whether the post-1885 laws abrogating the common-law rule apply retrospectively, because the 1885 ordinance itself abrogated the common-law rule. Second, to decide whether legislation violates article II, section 11, a court must go through a multistep analysis. *In re Estate of DeWitt*, 54 P.3d 849, 854–55 (Colo. 2002).

44. Under *DeWitt*, the court must first decide whether the legislation was intended to apply retroactively, and if so, then the court must decide whether the legislation is retrospective.

45. The Colorado Constitution Article XX, sections 1 and 6 gives home-rule cities the power to convey their real property. Colo. Const. art. XX, §§ 1, 6. In 1909, the City Charter gave the City the same power to sell and dispose of its real property. City's Mot. Ex. 1, at 1, § 1-20(b). In 1931, the General Assembly authorized towns and cities to sell and dispose of real property "used or held for park purposes." Act of May 21, 1931, ch. 168, § 1, 1931 Colo. Sess. Laws 791, 792 (codified as amended at Colo. Rev. Stat. § 31-15-

713(1)(a) (2016)). And in 2007, the City Council adopted a City Code provision and the City's real-estate manual, both of which contemplate and provide procedures for conveying City-owned real property—including City-owned parkland. Broadmoor's Mot. 13–14.

46. The City has construed the City Charter, the City Code, and the City real estate manual as applying retroactively. The City bought North Cheyenne Canon Park in 1885, before the City adopted the City Charter in 1909. Relying on its power under the City Charter to convey City-owned parkland, the City conveyed a 15.5-acre portion of North Cheyenne Canon Park to a private company in 2000. Ex. 1, at 4. Thus, the City exercised its power to convey parkland under the 1909 City Charter retroactively to parkland that the City had acquired in 1885. This embodies the City's interpretation that the City Charter, the City Code, and the City real-estate manual apply retroactively—an interpretation that deserves deference. See *Friends of Denver Parks, Inc. v. City & County of Denver*, 327 P.3d 311, 317 (Colo. App. 2013) ("[W]e defer to the interpretation of the municipal agency charged with administering the section unless that interpretation is inconsistent with the legislative intent manifested in the text of the charter.").

Do the Laws Which Abrogate the Common Law Impair a Vested Right?

47. The next step in the analysis is whether the legislation is *retrospective*, a term of art in the law to be distinguished from being merely *retroactive*. *In re Estate of DeWitt*, 54 P.3d at 854. Legislation is retrospective when it impairs a vested right, or when it creates a new obligation, imposes a new duty, or attaches a new disability. Id. at 855. A vested right is "more than a mere expectation based upon an anticipated continuance of the existing law." *Ficarra v. Dep't of Regulatory Agencies*, 849 P.2d 6, 16 (Colo. 1993). Rather, whether a right has vested depends on "(1) whether the public interest is advanced or retarded, (2) whether the retroactive provision gives effect to or defeats the bona fide intentions or reasonable expectations of affected persons, and (3) whether the statute surprises persons who have long relied on a contrary state of the law." Id.

48. Here, all three factors weigh in Defendants' favor. First, allowing the Colorado Constitution, the City Code, and the City's real-estate manual to apply to the land exchange would advance the public's interest in ensuring that the City can both steward the City's park system as circumstances change and seize future opportunities to improve that system. Also, applying these laws to the land exchange would not harm the public's interest in using North Cheyenne Canon Park as a park. This transaction provides that 181 acres of the 189.5-acre parcel conveyed to the Broadmoor will remain open to the public, for free. And unlike the City, the Broadmoor will actively manage and improve this parcel for the public's greater enjoyment. For example, the Broadmoor intends to promulgate rules and regulations for conserving the land's natural resources and deterring illegality. Compl. Ex. 4, Ex. A, at 10, ¶ 7(a). The Broadmoor will submit a five-year plan for erosion control. Id. Ex. 4, Ex. A, at 10, ¶ 7(b). And the Broadmoor will protect the land with a conservation easement held by a nationally accredited, state-certified land trust. Id. Ex. 4, Ex. A, at 8, ¶ 4.

49. Second, applying these laws retroactively accords with the City's reasonable expectation, based on historical practice, that it will be able to convey City-owned parkland in the future to further the City's best interests and to enhance the City's park system. And again, the land exchange will not defeat the expectation that this land will remain open for the public as a park.

50. Third, the land exchange will not substantially adversely affect reliance interests. For these reasons neither Plaintiff's members, nor City residents generally, have a vested property right in keeping North Cheyenne Canon Park as a City-owned park in perpetuity.

Legal Analysis – City Charter Prohibition on Franchises Longer Than 25 Years

51. In its second cause of action, Plaintiff contends that the land exchange violates the City Charter because it gives the Broadmoor the "right to use" "city-owned parkland" for more than 25 years without a popular vote. Resp. to City's Mot. 13. However, the City Charter provisions that Save Cheyenne relies on—sections 10-10 and 10-60—apply only to City-owned land. Section 10-10 states that a franchise "permanently occupies and obstructs the *public* streets, rights-of-way, alleys, or *properties*." City's Mot. Ex. 1, at 3 (emphases added). Section 10-60 restricts the City's ability to franchise, lease, or grant the right to use "the property of the City." Ex. 2, at 1.

52. In this case, however, the resolution does not authorize the Broadmoor to occupy and obstruct City-owned property, it authorizes the City to convey real property to the Broadmoor.

Legal Analysis – Does C.R.S. 31-15-713(1)(a) Prohibit This Transaction?

53. To determine whether a home-rule provision supersedes a conflicting statute, a court "must first ask whether the regulated matter is one of local, state, or mixed local and state concern." *Ryals v. City of Englewood*, 364 P.3d 900, 905 (Colo. 2016). When a home-rule provision conflicts with a statute on a matter of purely local concern, the home-rule provision prevails. *City & County of Denver v. State*, 788 P.2d 764, 767 (Colo. 1990).

54. Here, the City Code conflicts with the statute. It states that the City must follow the City's real-estate manual when it conveys City-owned property. City of Colo. Springs, Colo., City Code § 7.7.1803 (2016). The manual provides that land exchanges "must be reviewed by City Council and approved by resolution" and "must comply with the provisions of this Manual pertaining to the acquisition and disposition of property." Ex. 2, at 17. Contrary to the statute, there is no popular-vote requirement. The issue is therefore decided by whether conveying city-owned parkland is a matter of purely local concern.

55. *City & County of Denver*, 788 P.2d at 768, provides that four factors guide the decision on whether an issue is a matter of purely local concern:

(i) Does the matter need uniform regulation to further a sufficiently important state interest?
(ii) How, and how significantly, will the home-rule provision affect people living outside the municipal limits?
(iii) Has the state or local government historically regulated the matter?
(iv) Does the Colorado Constitution specifically commit the matter to state or local regulation?

56. No sufficiently important state interest justifies requiring every municipality to submit every land sale involving city-owned parkland to a popular vote. The General Assembly apparently agrees, because it did not designate the matter of conveying city-owned parkland as one of statewide concern. See Colo. Rev. Stat. § 31-15-713(1)(a) (2016). Though not dispositive, this absence implies that this is a matter of purely local concern. *Cf. City of Commerce City v. State*, 40 P.3d 1273, 1280 (Colo. 2002) (putting weight on the "legislative declaration that the enforcement of traffic laws through the use of [automated vehicle identification systems] is a matter of statewide concern"); *City & County of Denver v. Bd. of Cty. Comm'rs*, 782 P.2d 753, 762 (Colo. 1989) (putting weight on the General Assembly's determination that regulating large water projects was a matter of statewide concern).

57. The land exchange will have no significant impact on nonresidents. Nothing suggests that a substantial number of nonresidents frequently visit Strawberry Fields. In fact, such is unlikely given that the City has not even built trails in the area. Compl. at 5, ¶ 15. But even if substantial numbers of nonresidents might visit Strawberry Fields often, the land exchange will not significantly impair their ability to do so. More than 95% of Strawberry Fields will remain open to the public, for free, and the land will actually be improved by active management, trail construction, and a conservation easement protecting the land's natural resources in perpetuity. Id. at 6, ¶ 20; id. Ex. 4, Ex. A, at 10, ¶ 5.

58. The Colorado Supreme Court has recognized that land-use planning, which includes land acquisition and disposition, "traditionally has been a local government function in this state." *Town of Telluride v. San Miguel Valley Corp.*, 185 P.3d 161, 168 (Colo. 2008). "[M]unicipalities, neighboring counties, and the state have traditionally acted on the presumption that land planning for open space and parks is a local government function." Id. at 169.

59. In *Winslow Construction Co. v. City and County of Denver*, the Colorado Supreme Court concluded that a city tax ordinance superseded a conflicting statute because the ordinance dealt with a matter of local concern. 960 P.2d 685, 692 (Colo. 1998). The Court reached that conclusion, in part, because the "Colorado Constitution specifically commits the imposition of municipal taxes to home rule cities." Id. at 694 (citing Colo. Const. art. XX, § 6). The same reasoning applies here. The Colorado Constitution specifically commits the sale and disposition of city-owned real property to home-rule cities. Colo. Const. art. XX, §§ 1, 6.

60. The court hereby rules that C.R.S. 31-15-713(1)(a) does not prohibit this transaction because it does not apply. It does not apply because it conflicts with the City Code on a matter of purely local concern.

Legal Analysis – Is This Transaction an Unconstitutional Gift to the Broadmoor?

61. Article XI, section 2 of the Colorado Constitution prohibits a city from making a donation or grant to a private corporation or company. Colo. Const. art. XI, § 2. As the Colorado Supreme Court explained in its 1990 decision in *City of Aurora v. Public Utilities Commission*, "The purpose of this provision is to prohibit a municipality from transferring public funds to a private company or corporation without receiving any consideration in return." 785 P.2d 1280, 1288 (Colo. 1990). Consistent with that purpose and section 2's plain text, the Court held that a city violates section 2 only if the city voluntarily transfers city property to a private entity without consideration. Id.

62. Here, Plaintiff does not argue that the City will receive no consideration for the property it conveys to the Broadmoor. In fact the transaction contemplates the City receiving about 371 acres of property and 115 acres of public-trail easements. Compl. at 8, ¶ 29. The City will get more than 8 acres to expand Bear Creek Regional Park and more than 200 acres to expand North Cheyenne Canon Park. Id. Ex. 4, Ex. A, at 5. The City will get permanent trail easements for connecting and aligning both the Barr Trail and the Chamberlain Trail. Id. Ex. 4, Ex. A, at 4–6. And the City will get property and permanent easements that will allow the City to ensure that the Manitou Incline always remains open to the public. Id. Ex. 4, Ex. A, at 4. In total, according to the resolution, the City will receive consideration with a fair market value of about $3.6 million. Id. Ex. 4, at 2. Thus, because the City will receive consideration from the Broadmoor in exchange for conveying City-owned property to the Broadmoor, the land exchange does not violate Article XI, section 2.

63. This court is aware that in *Tamblyn v. City and County of Denver*, 194 P.2d 299 (Colo. 1948), the Court held that a city violates section 2 if it conveys property to a private corporation and the property's actual value *"greatly exceeds"* the contract price. Id. at 301. However, *City of Aurora* controls. "[W]here decisions are conflicting, the latest governs." *Parker v. Plympton*, 273 P. 1030, 1034 (Colo. 1928) (superseded on other grounds by rule). The court hereby rules that the consideration contemplated here is adequate as a matter of law to prevent this transaction from being a gift.

64. Further, the Colorado Supreme Court has noted that "[n]otwithstanding the apparent absolute prohibition of article XI, section 2, a 'public purpose' exception has evolved." *In re Interrogatory Propounded by Governor Roy Romer*, 814 P.2d 875, 882 (Colo. 1991). Under this exception, a city may transfer property to a private corporation so long as the transfer "furthers a valid public purpose." Id. Here, the land exchange furthers the public purpose of allowing the City to expand both its public parks and its trail system for its residents. Therefore, the land exchange does not violate article XI, section 2 for this reason as well.

Legal Analysis – Does This Transaction Authorize a Zoning Violation?

65. Plaintiff alleges that the proposed uses of Strawberry Fields violate the "City Zoning Ordinances" because the "uses proposed by the Broadmoor and permitted by the Terms and Conditions violate" the "PK" (public park) zoning that applies to Strawberry Fields. (Compl. at 11, ¶¶ 54-55).

66. The doctrine of ripeness ensures that an issue is 'real, immediate, and fit for adjudication.' *Developmental Pathways v. Ritter*, 178 P.3d 524, 530 (Colo. 2008). "With this requirement in mind, [the Court] must 'refuse to consider uncertain or contingent future matters that suppose speculative injury that may never occur.'" Id. at 534. A court lacks subject matter jurisdiction to decide an issue that is not ripe for adjudication. *DiCocco v. National Gen. Ins. Co.*, 140 P.3d 314, 316 (Colo. App. 2006).

67. For a claim based on a zoning or land use regulation to be ripe, the relevant governmental entity must have reached a final decision determining the permitted use of the property at issue. *Quaker Court Ltd. Liab. Co. v. Bd. of Cty. Comm'rs of Cty. of Jefferson*, 109 P.3d 1027, 1034 (Colo. App. 2004). A final decision is reached, and a claim based on a zoning or land use regulation ripens, when the government has had the opportunity to exercise its full discretion and has made a final decision on the permitted use of the property. Id., at 1034-35. The Colorado Court of Appeals explained why the Court must refrain from adjudicating such claims, as follows:

> The requirement of ripeness in [cases involving zoning and land use] ensures that a reviewing court will not interfere with the [government] authority's process until it has made a final decision that is adverse to a property owner. The final zoning and land use regulations may not adversely affect a landowner, or the impact may be mild because a waiver or variance is granted or changes favorable to the landowner are made during the adoption process. Therefore, in the zoning and land use context, it is appropriate for a court to defer review until a final decision is made.

G & A Land, LLC v. City of Brighton, 233 P.3d 701, 711-12 (Colo. App. 2010).

68. Plaintiff's claim that the proposed use of Strawberry Fields violates the City's Zoning Code is unripe because the government authority has not made a final decision on the permitted uses of Strawberry Fields. Plaintiff nowhere alleges that a zoning violation currently exists on the Strawberry Fields property. As Plaintiff alleges in the Complaint, The Broadmoor's uses of the property merely are "*proposed*" at this time. (Compl. at 11, ¶ 55)(emphasis added). In addition, the Resolution specifies—and Plaintiff concedes—that in order for The Broadmoor to make any changes to Strawberry Fields, it will have to comply with "the City's Park Development Review process." (Compl. at 7, ¶ 26; id., Ex. 4 at 7, ¶ 2). According to that process, the Broadmoor will have to obtain approval for any development of the property from the Parks and Recreation Advisory Board. (Ex. 2 at 2, City Code § 7.3.402(B) The public will have the opportunity to be heard on the Broadmoor's proposed development at a public hearing. (Id.) An aggrieved party that disagrees with the Board's decision on the permitted use of the property may appeal the

decision to City Council. (Id.) City Council's decision—"final agency action"—is then subject to judicial review in a C.R.C.P. 106(a)(4) action. (Id. at 9, § 7.5.906(B)(6))

69. As of now, the permissible uses of the area are not fully known. The Broadmoor may revise or abandon its proposed plans for Strawberry Fields once it owns the property; the Parks and Recreation Advisory Board and/or City Council may reject the Broadmoor's plans or approve land uses that Plaintiff does not find objectionable. In any event, the Court "must 'refuse to consider [such] uncertain or contingent future matters that suppose speculative injury that may never occur.'" *Developmental Pathways*, 178 P.3d 524 at 534.

70. In addition, a zoning violation on the property does not justify the court invalidating the land exchange. If in the future, the Broadmoor makes use of Strawberry Fields in a way that violates the City's Zoning Code, the remedy is not to divest the Broadmoor of its property. The remedy is to abate the zoning violation in accordance with the City's Zoning Code enforcement process. A declaration that the land exchange is null and void is not a remedy for a proposed use that might in the future violate the Code. For any existing zoning violation, Plaintiff's remedy is to complain to the Manager of the Planning and Community Development Department and pursue available administrative remedies.

Conclusion

71. This court has accepted all matters of material fact in the complaint as true and viewed the allegations in the light most favorable to the plaintiff. However, the outcome of this dispute turns on purely legal questions. Therefore it is appropriate for the court to enter legal rulings on those issues at this stage in the proceeding. For the reasons stated above, the court hereby rules that all five of Plaintiff's claims for relief fail on legal grounds.

WHEREFORE, Defendants' Motions to Dismiss are hereby GRANTED.

Done this 15th day of December, 2016.

Michael P. McHenry
District Court Judge