

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO 1437 Bannock St., Denver, CO 80202	SERVED ONLY: February 20, 2017 11:46 PM FILING ID: 66E680DB82F17 CASE NUMBER: 2016CV32126
JOHN D. MACFARLANE Plaintiff, v. THE CITY AND COUNTY OF DENVER; MICHAEL B. HANCOCK, in his official capacity as Mayor of the City of Denver, JOSE M. CORNEJO, in his official capacity as Manager of Denver Department of Public Works; ALLEGRA HAYNES, in her official capacity as Executive Director of Denver Department of Parks and Recreation, Defendants.	
<i>Attorneys for Plaintiff:</i> Aaron D. Goldhamer, #41016 KEATING WAGNER POLIDORI FREE, P.C. 1290 Broadway, Suite 600 Denver, CO 80203 Telephone: 303-534-0401 Facsimile: 303-534-8333 agoldhamer@keatingwagner.com	Case No.: 2016CV32126 Courtroom: 409
PLAINTIFF'S FIRST SET OF DISCOVERY REQUESTS	

Plaintiff, John D. MacFarlane, by and through undersigned counsel, and pursuant to C.R.C.P. 26, 33, 34, and 36, requests the following discovery from Defendants:

DEFINITIONS

1. The term "City" refers to defendant the City and County of Denver.
2. The term "CDOT" refers to the Colorado Department of Transportation.
3. The term "Golf Course" refers to City Park Golf Course.

4. The term “Intergovernmental Agreement” refers to the Intergovernmental Agreement between the Colorado Department of Transportation and the City and County of Denver, approved by Denver’s City Council on July 6, 2015.

6. The term “PTPH Project” refers to the City’s stormwater management project sometimes identified as the Two Basin Drainage Project or Early Action Project and now identified as the Platte to Park Hill Project.

7. The term “Storm/Wastewater Enterprise Funds” refers to the City and County of Denver Wastewater Management Enterprise Fund and the City and County of Denver Storm Drainage Enterprise Fund.

8. The term “Stormwater Construction Project” refers to the portion of the PTPH Project in the Golf Course at issue in this litigation (referred-to throughout this case and that Defendants admitted in paragraph 84 of their Answer would be cited in the Golf Course).

9. The term “Shortlist Bidders” refers to: Landscapes Unlimited, LLC; Robert Trent Jones II; Saunders Construction, Inc.; Icon Golf Studio; SEMA Construction, Inc.; and DYE Designs.

10. Words in **BOLDFACE CAPITALS** in the below requests are defined as follows:

a. **PERSON** includes a natural person, firm, association, organization, partnership, business, trust, corporation, or public entity.

b. **DOCUMENT** means a writing, as defined in CRE 1001 and includes the original or a copy of handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing and

form of communicating or representation, including letters, words, pictures, sounds, or symbols, or combinations of them.

c. **ADDRESS** means the street address, including the city, state, and zip code.

d. **YOU OR ANYONE ACTING ON YOUR BEHALF** includes each and every Defendant, Defendants' agents, Defendants' employees, Defendants' insurance companies, their (referring to each of the foregoing) agents, their (referring to each of the foregoing) employees, Defendants' investigators, and anyone else acting on Defendants' behalf.

INTERROGATORIES

1. (substantially conforms to pattern interrogatory 15.1) Identify each denial of a material allegation and each affirmative defense in your pleadings and for each:

- a. State all facts upon which you base the denial or affirmative defense;
- b. State the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of those facts;
- c. Identify all **DOCUMENTS**, by bates number, and other tangible things which support your denial or affirmative defense, and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

2. (substantially conforms to pattern interrogatory 17.1) Is your response to each request for admission served upon you in this case an unqualified admission? If not, for each response that is not an unqualified admission:

- a. State the number of the request;

- b. State all facts upon which you base your response;
 - c. State the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of these facts;
 - d. Identify all **DOCUMENTS**, by bates number, and other tangible things that support your response and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.
3. If you contend that the Stormwater Construction Project advances or is for a “park purpose” or advances or is for “park and recreational purposes,” as those terms are used in Denver Zoning Code at § 9.3.2.1.A or the Denver Charter at § 2.4.4(A), please state all facts supporting that contention and identify, by bates number, all **DOCUMENTS** supporting that contention.
4. Please state the projected Golf Course closure date and the projected Golf Course re-opening date in connection with the Park Stormwater Construction Project, fully explain how these dates have been determined, and identify, by bates number, all **DOCUMENTS** that evidence, reflect or pertain to determination of such dates.
5. Please identify the **PERSON** or **PERSONS** who were directly involved in making the decision on behalf of the City to site the Stormwater Construction Project in the Golf Course, as to each such person, fully explain his or her role in making the decision.
6. As to each facet of the Stormwater Construction Project, please fully explain the amounts of and the sources of funding to pay for the Stormwater Construction Project.
7. Please identify the **PERSON** or **PERSONS** who have performed any analysis or other work related to impacts of the Stormwater Construction Project upon fauna (wildlife) or

flora (vegetation, trees, plants, etc.) currently located in the Golf Course and, as to each such **PERSON**, fully explain the analyses or other work performed and identify, by bates number, all **DOCUMENTS** that evidence, reflect or pertain to such analyses or other work performed.

8. Please identify the **PERSON** or **PERSONS** who have performed any analysis or other work related to impacts of weather incidents upon the playability of the Golf Course after completion of the Stormwater Construction Project and, as to each **PERSON**, fully explain the analyses or other work performed and identify, by bates number, all **DOCUMENTS** that evidence, reflect or pertain to such analyses or other work performed.

9. Please identify the **PERSON** or **PERSONS** who have performed any analysis or other work related to maintenance that will be required in connection with the Stormwater Construction Project after it is completed and, as to each such person, fully explain the analysis or other work performed and identify, by bates number, all **DOCUMENTS** that evidence, reflect or pertain to such analyses or other work performed.

10. Please identify the trees that will be removed in connection with the Stormwater Construction Project.

11. Please identify the **PERSONS** who are or have been members of the City Park Redesign Group, and describe their affiliations and areas of expertise.

12. With regard to the City Park Golf Course Executive Technical Team, please (a) identify the date when the team was formed, (b) identify the **PERSONS** who are or have been members, and (c) describe each member's position and dates of membership.

13. Please identify all **PERSONS** who serve as officers, directors, managers, agents, or employees of the Storm/Wastewater Enterprise Funds.

14. Please describe all presently-known problems with drainage that deleteriously impact the Golf Course's playability and identify, by bates number, all **DOCUMENTS** evidencing same.

15. Please describe what, if any, consultation **YOU OR ANYONE ACTING ON YOUR BEHALF** undertook with the Parks and Recreation Advisory Board in connection with the Stormwater Construction Project, why that consultation occurred, and identify, by bates number, all **DOCUMENTS** evidencing same.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Please produce all **DOCUMENTS** that you either identified in response to any interrogatory served upon you in this case or upon which you relied in responding to any interrogatory served upon you in this case.

2. Please produce all **DOCUMENTS** evidencing reports or complaints of flooding that Defendants contend the Stormwater Construction Project would alleviate.

3. Please produce all **DOCUMENTS** (including resolutions, ordinances, memoranda, agreements, or correspondence) that pertain, reflect, or relate to the City's use of Storm/Wastewater Enterprise Funds' monies in connection with the Stormwater Construction Project.

4. Please produce all **DOCUMENTS** (including resolutions, ordinances, memoranda, agreements, or correspondence) that pertain, reflect, or relate to the establishment of the Storm/Wastewater Enterprise Funds and their management.

5. Please produce all **DOCUMENTS** that pertain to agreements, contracts, leases, franchises, or special privileges between the Storm/Wastewater Enterprise Funds and any department of the City of Denver.

6. Please produce all **DOCUMENTS** evidencing, reflecting or pertaining to the City Park Redesign Workgroup and its work, including, but not limited to, (a) **DOCUMENTS** created in preparation for meetings including drafts, (b) **DOCUMENTS** distributed at meetings, (c) **DOCUMENTS** related to communications between and among the Defendants and/or their employees, agents, contractors, or other participants involved in the City Park Redesign Workgroup related to the City Park Redesign Workgroup, and (d) **DOCUMENTS** related to records of meetings including, but not limited to, minutes, notes and memoranda.

7. Please produce all **DOCUMENTS** prepared at any time between (a) January 1, 2007, and (b) the date when the City first considered locating the Stormwater Construction Project in the Golf Course that evidence, reflect, or pertain to analyses or other work performed by any **PERSON** related to the possibility of making any significant modification to the Golf Course. The term “significant modification” in this request means a modification that would cost in excess of \$25,000.

8. Please produce all **DOCUMENTS** (including, but not limited to, analyses by and/or communications between and among the defendants and/or their employees or agents) evidencing, reflecting or pertaining to the City’s decision to proceed with the Stormwater Construction Project in the Golf Course.

9. Please produce all **DOCUMENTS** (including correspondence between Defendants and their employees or agents) evidencing, reflecting, or pertaining to analyses or other work performed by the UDFCD related to the Stormwater Construction Project.

10. Please produce all **DOCUMENTS** exchanged between Defendants and the individuals disclosed at § I, ¶¶ 15-21, of Defendants' C.R.C.P. 26(a)(1) Initial Disclosures (filed on January 9, 2017), related to the Stormwater Construction Project.

11. Please produce all **DOCUMENTS YOU OR ANYONE ACTING ON YOUR BEHALF** exchanged with the Shortlist Bidders which relate to the Stormwater Construction Project, including but not limited to (a) reference documents; (b) criteria for preserving trees, historic views and historic defining features; (c) storm drainage improvement drawings; (d) planning studies; (e) drainage reports; (f) engineering reports; (g) hydrological reports; (h) geotechnical reports; (i) project schedule information; (j) sample contract documents; and (k) any correspondence.

12. Please produce the document identified as the "Montclair Creek Drainage Feasibility Evaluation, Denver 2014" referenced in the document entitled the "Preliminary Montclair Drainage Report, City Park Golf Course" dated November 21, 2016 and with a starting Bates Number CCD001893.

13. Please produce all **DOCUMENTS** (including agreements, memoranda of understanding, and correspondence) exchanged between and among any City entity or department (including the Storm/Wastewater Enterprise Funds) related to the Stormwater Construction Project (including maintenance of the Golf Course and all stormwater management features thereon following completion of the Stormwater Construction Project).

14. Please produce all **DOCUMENTS** (including, but not limited to, (a) documents created in preparation for meetings including drafts, (b) documents distributed at meetings, (c) documents related to communications between and among the defendants and/or their employees, agents, and/or contractors and/or other participants involved in the City Park Golf Course Executive Technical Team related to their work, and (d) documents related to records of meetings including, but not limited to, minutes, notes and memoranda) evidencing, reflecting or pertaining to the work of the City Park Golf Course Executive Technical Team.

15. Please produce all **DOCUMENTS** prepared since January 1, 2013 evidencing, reflecting or pertaining to fauna (wildlife) and flora (trees, plants, vegetation, etc.) inventories related to the Golf Course.

16. Please produce all **DOCUMENTS** in the possession of the North Denver Cornerstone Collaborative related to the Stormwater Construction Project.

17. Please produce all **DOCUMENTS YOU OR ANYONE ACTING ON YOUR BEHALF** provided to or exchanged with Denver's City Council related to the recent increase in storm and sewer fees and the Stormwater Construction Project.

REQUESTS FOR ADMISSIONS

1. Please admit that the Stormwater Construction Project is for the purpose of addressing stormwater drainage issues impacting real estate and areas outside the Golf Course boundaries.

2. Please admit that the Stormwater Construction Project is not for the purpose of benefiting or improving the Golf Course.

3. Please admit that the Stormwater Construction Project is being pursued to meet the City's obligations under the Intergovernmental Agreement and/or any Memorandum of Understanding between CDOT, the Regional Transportation District, and the City (signed in October of 2013).

4. Please admit that but for its plan to build the Stormwater Construction Project, the City would not now be planning to make significant modifications to the Golf Course. The term "significant modification" in this request means a modification that would cost in excess of \$25,000.

5. Please admit that the Stormwater Construction Project will require the removal of at least 100 trees from the Golf Course.

6. Please admit that but for its plan to build the Stormwater Construction Project, the City would not now be planning to remove a significant number of trees from the Golf Course.

7. Please admit that the Stormwater Construction Project will require the closure of the Golf Course for at least 18 months beginning in or about the fall of 2017, during which time members of the general public will not be permitted to use the Golf Course and a non-transparent fence at least 72 inches high will be in place surrounding the entire Golf Course behind the back of the existing curb.

8. Please admit that, during the Stormwater Construction Project, Denver's Department of Public Works and/or its agents building the Stormwater Construction Project will have the exclusive use of the Golf Course.

9. Please admit that but for its plan to build the Stormwater Construction Project, the City would not now be planning to close the Golf Course for at least 18 months beginning in or about the fall of 2017.

10. Please admit that the Stormwater Construction Project will benefit the planned redevelopment of the National Western Complex.

11. Please admit that the Stormwater Construction Project will reduce private developers' burden to construct their own stormwater management solutions in any private development around 38th and Blake Streets.

12. Please admit that the City of Denver's Golf Enterprise Fund will have to be repaid for its lost revenues during the pendency of the construction of the Stormwater Construction Project.

13. Please admit that any change to the Golf Course contemplated by the Stormwater Construction Project is to mitigate the impacts to the Golf Course resulting from constructing a stormwater management feature therein.

14. Please admit that the Golf Course is outside of any existing Federal Emergency Management Agency ("FEMA") regulatory floodplain.

15. Please admit that the Golf Course is currently designated and/or certified under the Audubon Cooperative Sanctuary Program for Golf.

Dated: February 20, 2017.

Respectfully submitted,

KEATING WAGNER POLIDORI FREE, P.C.

/s/ Aaron D. Goldhamer
Aaron D. Goldhamer, #41016
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2017, a true and correct copy of the foregoing was e-filed through CO COURTS E-FILING SYSTEM and served electronically on the following:

Reneé A. Carmody
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s/ Aaron D. Goldhamer _____
Aaron D. Goldhamer