

DISTRICT COURT, DOUGLAS COUNTY, COLORADO 4000 Justice Way, Castle Rock, CO 80109	
Plaintiff: SOUTH METRO FIRE RESCUE FIRE PROTECTION DISTRICT v. Defendants: PARKER AUTHORITY FOR REINVESTMENT; LISA FRIZELL, in her capacity as the Douglas County Assessor; DIANE HOLBERT, in her capacity as the Douglas County Treasurer.	
Attorneys for Plaintiff: SPENCER FANE LLP Jamie N. Cotter, #40309 Jacob Hollars, #50352 1700 Lincoln Street, Suite 2000 Denver, Colorado 80203 Telephone: 303-839-3800 Fax: 303-839-3838 jcotter@spencerfane.com, jhollars@spencerfane.com	▲ COURT USE ONLY ▲
	Case Number: Div/Ctrm:
COMPLAINT	

COMES NOW, Plaintiff, South Metro Fire Rescue Fire Protection District, and for its Complaint alleges as follows:

INTRODUCTION

1. This lawsuit involves the improper diversion of tax revenues away from the South Metro Fire Rescue Fire Protection District (the “Fire District”) and to an urban renewal authority known as the Parker Authority for Reinvestment (the “PAR”). Since 2012, the Fire District has been wrongfully deprived of revenue that it needs to provide fire, rescue, and emergency services to its constituents. This improper deprivation of revenue has occurred because the PAR is receiving TIF revenue assessed by the Douglas County Assessor (the “Assessor”) and paid by the Douglas County Treasurer (the “Treasurer”) without complying with the requirements of the Colorado Urban Renewal Law, section 31-25-101 *et. seq.* (the “Act”). The Fire District requests that the Court declare that the PAR’s receipt of TIF revenue is improper under the Act and therefore order that the PAR repay all amounts that were improperly diverted, as well as enter an injunction against the PAR, the Assessor, and the Treasurer halting the continued flow of TIF revenue to the PAR.

PARTIES

2. The Fire District is a quasi-municipal corporation and a political subdivision of the State of Colorado, organized pursuant to § 32-1-101, C.R.S., *et. seq.*

3. Defendant Parker Authority for Reinvestment (the “PAR”) is a Colorado urban renewal authority, organized pursuant to § 31-25-101, C.R.S., *et. seq.*

4. Defendant Lisa Frizell is the Douglas County Assessor and is named in her official capacity as the Assessor.

5. Defendant Diane Holbert is the Douglas County Assessor and is named in her official capacity as the Treasurer.

JURISDICTION, VENUE AND STATUTORY AUTHORITY

6. The Constitution of the State of Colorado provides that the District Court shall be the Court of general jurisdiction for all civil, probate, and criminal cases. *See* Constitution of the State of Colorado, Article VI, Section 9.

7. Venue is proper in Douglas County pursuant to C.R.C.P. 98 because the property at issue in this case and the Defendants are located in Douglas County.

FACTUAL ALLEGATIONS

8. The Fire District is a fire protection district that provides fire, rescue and emergency services to more than 203,500 residents and countless visitors over 179 square miles in Douglas and Arapahoe counties.

9. Prior to 2008, the Parker Fire Protection District (“Parker Fire”) and the South Metro Fire Rescue District (“South Metro District”) both provided fire, rescue, and emergency services in Douglas and Arapahoe Counties. The South Metro District generally served property west of I-25, and Parker Fire generally served property east of I-25, including the Town of Parker (the “Town”).

10. By agreement on April 24, 2008, the South Metro District and Parker Fire formed the Parker-South Metro Fire Authority, a fire protection authority organized pursuant to Title 29 of the Colorado Revised Statutes.

11. In September of 2008, the Parker-South Metro Fire Authority changed its name to the South Metro Fire Rescue Authority (the “Authority”).

12. While both the South Metro District and Parker Fire remained in separate existence, all fire, rescue, and emergency services were provided by the Authority through December 31, 2015.

13. As of January 1, 2016, all property within the South Metro District was excluded from that district and simultaneously included within Parker Fire, thereby consolidating the two districts under the governance of Parker Fire..

14. Also as of January 1, 2016, Parker Fire was renamed the South Metro Fire Rescue Fire Protection District.

15. Therefore, both Parker Fire and the South Metro District are predecessors to the current Fire District.

16. Since January 1, 2016 all services are provided by the Fire District, and with the legal consolidation of the two districts, the Authority was dissolved.

17. The Fire District, and through its predecessor Parker Fire, has provided fire, rescue, and emergency services to residents and visitors in the Town since at least 1966.

18. The Town created the PAR in June of 2006 with the stated purpose of “foster[ing] development and redevelopment” within the Town.

19. The boundaries of the PAR match the boundaries of the Town.

20. After its creation, the PAR created three separate urban renewal plans (the “Plans” or “Plan”) that were approved by the Town pursuant to the Act.

21. The Plans are as follows:

(a) Parker Central Area Reinvestment Plan – Adopted May 18, 2009 (the “Parker Central Plan”).

(b) Cottonwood Commercial Area Urban Renewal Plan – Adopted October 1, 2012, amended and restated February 18, 2014 (the “Cottonwood Plan”).

(c) Parker Road Urban Renewal Plan – Adopted October 1, 2012, amended and restated on May 5, 2014 (the “Parker Road Plan”).

22. Each of the Plans defines a specific area within the Town that has been found to be “blighted” under the criteria set forth in the Act. The purpose of the Plans is to implement “undertakings and activities that constitute a reinvestment project...to eliminate conditions of blight.” (Parker Central Area Plan, p. 3 & 4).

23. The theory behind the Plans is to incentivize development activity within the blighted Plan areas, such that additional development will subsequently occur in the Plan areas and eliminate the blight.

24. The redevelopment contemplated by the Plans is financed through Tax Increment Financing (“TIF”).

25. The assessment of TIF is authorized by the Act in accordance with specific procedures.

26. The Act requires that TIF be assessed and paid as follows:

(a) Prior to the creation of an urban renewal area, the taxable property located within the area is subject to taxes by any overlapping local taxing entities, including special districts. The property taxes received by the local taxing entities are produced by the application of their respective mill levies to the property. The higher the assessed value of the taxable property, the greater the property tax revenue that is generated for the local taxing entities.

(b) Local taxing entities, and specifically special districts, rely on the property taxes produced through the application of their respective mill levies to fund the services provided by the special districts.

(c) With respect to the Fire District, it is funded based on the application of a 9.25 mill levy to all taxable property within its boundaries. The Fire District relies on the income produced by that mill levy to increase over time as the assessed value of property increases.

(d) When an urban renewal area is created, the assessed value of the taxable property is set at the amount last certified by the Assessor in the year prior to the effective date of the urban renewal plan (the “base”) for the next twenty five years.

(e) Over the next twenty five years, while the local taxing authorities receive property taxes generated from the base, if the assessed value of the taxable property increases beyond that of the base, the taxes received above the base are payable to the urban renewal authority rather than the pre-existing taxing authorities. This tax revenue derived above the base creates the tax “increment” that is used by the urban renewal authority to pay the debt service associated with the cost of the improvements that contributed to the increase in assessed value. This resulting “increment” is referred to as TIF.

(f) Therefore, local taxing entities, such as the Fire District, only receive taxes produced from the assessed value at the base level of the year prior to the effective date of the urban renewal plan. When the assessed value of the property rises, due to development or otherwise, local taxing entities are required to continue to provide service to the property, but they receive no additional tax revenue as a result in the increase in assessed value.

(g) The Act restricts urban renewal authorities to using TIF revenue solely to pay the “bonds...or indebtedness” incurred by the urban renewal authority to fund development.

(h) Importantly, the Act states that TIF revenue “must be allocated to and, when collected, paid into a special fund of the [urban renewal authority] to pay the principal of, the interest on, and any premiums due in connection with the bonds of, loans

or advances to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, the authority for financing or refinancing, in whole or in part, an urban renewal project.” C.R.S. §31-25-107(9)(a)(II).

(i) To the extent that an urban renewal authority does not incur “bonds...or indebtedness” as contemplated by the Act, all excess tax revenue not allocated for the repayment of those “bonds...or indebtedness” must be paid to the local taxing entities rather than the urban renewal authority. *Id.*

(j) Last, when the “bonds...and indebtedness” are retired by the urban renewal authority, all taxes must be paid to the local taxing entities rather than the urban renewal authority. *Id.*

(k) Therefore, an urban renewal authority can collect TIF revenue to repay “bonds...or indebtedness,” but if an urban renewal authority has no such debt or repays all such debt, all taxes collected must be paid to the local taxing entities rather than being paid to the urban renewal authority.

27. This process was confirmed by David Faestel, who represented that he was affiliated with the PAR, in 2008 during discussions with the Downtown Development Committee of Parker regarding the PAR. Specifically, Mr. Faestel explained that the PAR planned to “take TIF (Tax Increment Financing) and float a bond which would be reinvested into the community.” (Minutes from September 9, 2008 DDC Meeting).

28. Despite this clear language of the Act and the representations of Mr. Faestel, the PAR has never issued any bonds or incurred any indebtedness as contemplated by the Act.

29. Instead of issuing bonds, the PAR essentially cash-funds small projects by entering into “Redevelopment Agreements” with private developers whereby the PAR agrees to pay those developers a certain percentage of TIF revenue it receives.

30. The PAR describes these obligations as a “share back” in its 2017 budget.

31. Therefore, when the PAR finds a developer willing to redevelop a specific project, the PAR enters into a new Redevelopment Agreement with that developer for the construction of the new project within the Plan area.

32. The pending Redevelopment Agreements related to each Plan are as follows:

(a) Parker Central Plan:

(i) Parker Flats at Old Town Agreement –This development project contemplates the construction of a multi-family residential building.

(ii) MSSL-Mainstreet, LLC Agreement –This development project contemplates the construction of an assisted-living and memory care facility.

(iii) Parker IL, LLC Agreement – This development project contemplates the construction of a senior living facility.

(b) Cottonwood Plan:

(i) RIG Cottonwood LLC Agreement –This development project contemplates the construction of retail space.

(c) Parker Road Plan:

(i) None.

33. This scheme of incentivizing development within the Plan areas through the use of Redevelopment Agreements with private developers has violated the Act in at least two principal ways.

FAILURE TO INCUR INDEBTEDNESS PRIOR TO RETAINING TIF FUNDS

34. The PAR started receiving TIF revenue in 2011 from property taxes assessed for the 2010 tax year.

35. In 2011, the PAR received a total of \$251,173 in TIF revenue. This revenue was not attributable to a specific Plan in the Assessor's Abstract of Assessment and Summary of Tax Levies.

36. In 2011, The Fire District, through its predecessor Parker Fire,¹ was deprived of \$35,625 in tax revenue.

37. In 2012, the PAR received a total of \$356,359 in TIF revenue. This revenue was not attributable to a specific Plan in the Assessor's Abstract of Assessment and Summary of Tax Levies.

38. In 2012 the Fire District was deprived of \$50,595 in tax revenue.

39. In 2013, the PAR received a total of \$429,971 in TIF revenue. This revenue was not attributable to a specific Plan in the Assessor's Abstract of Assessment and Summary of Tax Levies.

40. In 2013 the Fire District was deprived of \$57,157 in tax revenue.

41. In 2014, the PAR received a total of \$345,960 in TIF Revenue. \$234 was attributed to the Parker Road Plan and \$345,726 was attributed to the Parker Central Plan.

42. In 2014, the Fire District was deprived of a total of \$45,796 in tax revenue, \$45,765 attributable to the Parker Central Plan and \$31 attributable to the Parker Road Plan.

¹¹ All references to the Fire District include Parker Fire for the reasons set forth in paragraphs 9 through 16 above.

43. In 2015, the PAR received a total of \$390,994 in TIF Revenue. \$21,259 was attributed to the Parker Road Plan and \$369,735 was attributed to the Parker Central Plan.

44. In 2015, the Fire District was deprived of a total of \$47,310 in tax revenue, \$45,022 attributable to the Parker Central Plan and \$2,288 attributable to the Parker Road Plan.

45. In 2016, the PAR received a total of \$829,094 in TIF Revenue. \$185,839 was attributed to the Cottonwood Plan and \$643,255 was attributed to the Parker Central Plan.

46. In 2016, the Fire District was deprived of a total of \$85,208 in tax revenue, \$68,443 attributable to the Parker Central Plan and \$16,765 attributable to the Cottonwood Plan.

47. Therefore, as of 2016 the PAR has received a total of \$607,532 in TIF revenue (which was not allocated to a specific Plan or Plan area); the Parker Central Plan has received a total of \$1,788,687 in TIF revenue; the Cottonwood Plan has received a total of \$185,839 in TIF revenue; and the Parker Road Plan has received a total of \$21,493 in TIF revenue.

48. Also as of 2016, the Fire District has been deprived of a total of \$321,691.

49. The Fire District estimates that if the PAR continues to divert tax revenue from the Fire District as it has done so far, the Fire District will be deprived of more than sixteen million dollars in revenue over the life of the PAR.

50. The PAR has been diverting TIF revenue from the Fire District but has not issued bonds or incurred any indebtedness as required by the Act.

51. First, the Redevelopment Agreements do not constitute “bonds...or indebtedness” as contemplated by the Act.

52. Indeed, in its 2012 Urban Renewal Authority Annual Report, the PAR does not list any amounts attributable to “debt service,” and instead simply quantifies its “participation” in the “Public/Private Investment” for each of the Redevelopment Agreements.

53. The 2012 Urban Renewal Authority Annual Report does list a “Loan Repayment to Town of Parker.” However, no information is given with respect to the amount of the loan or the details of its requirements.

54. The PAR’s 2017 budget similarly lists no “bonds” or “indebtedness” being repaid with TIF revenue. Instead, the PAR’s 2017 budget lists anticipated payments for “Tax Increment Reimbursements,” and lists a positive General Fund balance for 2016 and a budgeted General Fund balance of \$417,047 for 2017.

55. The 2017 budget lists a continued payment to the Town as a “Loan Repayment.” However, and again, there is no information regarding the amount of the loan or the amount outstanding on the alleged loan.

56. To the extent that the loan is a valid incurrence of “indebtedness,” the PAR has spent hundreds of thousands of dollars on expenditures other than the repayment of its “indebtedness” in violation of the Act.

57. Therefore, and upon information and belief, the PAR is receiving TIF revenue without incurring the requisite indebtedness required by the Act, and is carrying a large general fund balance of unallocated revenue.

58. Because the PAR has incurred no “indebtedness” as required by the Act, it should not be receiving any TIF revenue from the County Treasurer.

59. Even if the Redevelopment Agreements or the loan from the Town constitute “bonds...or indebtedness” under the Act, the PAR has been collecting TIF revenue in the Parker Road Plan area without entering into any Redevelopment Agreement that could even arguably be considered “indebtedness” under the Act.

60. The retention of TIF revenue by the PAR without incurring the requisite debt as required by the Act violates the Act.

61. The allocation of TIF revenue to the PAR by the Assessor is improper under the Act.

62. The payment of TIF revenue to the PAR by the Treasurer is improper under the Act.

63. Even if the PAR had incurred some “bonds or indebtedness” as defined under the Act, once those amounts were retired, “all taxes upon the taxable property or the total municipal sales tax collections, or both, in such urban renewal area must be paid into the funds of the respective public bodies...” C.R.S. §31-25-107(9)(a)(III).

64. No TIF revenue has been paid into the Fire District’s fund despite the fact that all PAR “indebtedness,” in at least the Parker Road Plan area and arguably in the other Plan areas as well, has been retired.

65. The PAR is taking the position that any TIF revenue derived from development within its urban renewal area is subject to the PAR’s control, even after the costs of development are paid and regardless of whether any “indebtedness” exists for that area.

66. Such position is directly contrary to the Act and the Court should order the PAR to pay any TIF revenue inappropriately received by the PAR to the Fire District, order that the Assessor cease allocating TIF revenue to the PAR, and order that the Treasurer cease paying TIF revenue to the PAR unless and until the PAR incurs “bonds...or other indebtedness” as required by the Act.

**REIMBURSING EXPENSES WITH TIF FUNDS THAT ARE NOT ALLOWABLE
UNDER THE ACT**

67. The Act limits urban renewal authorities' use of TIF revenue to a specific list of "undertakings and activities." C.R.S. § 31-25-103(10).

68. An urban renewal authority can only use TIF revenue for items delineated in the Act.

69. The PAR's website confirms this where it states "By statute TIF can only be used to pay for certain costs associated with a public purpose."

70. The Act provides that acquisition of property, demolition of buildings, installation of utilities, and disposition of property are within the scope of an urban renewal project.

71. Anything not listed in the Act is not within the scope of an urban renewal project and cannot be reimbursed with TIF revenue.

72. The Redevelopment Agreements list some of the costs that are being paid with TIF revenue, some of which are impermissible under the Act, and some of which do not provide enough information to determine whether the expenditures are permissible under the Act or not.

73. The Parker IL, LLC Agreement permits the PAR to spend TIF revenue for "Developer's improvements to the Property which PAR finds and determines will assist in remedying blight and preventing future blight in the area."

74. The Fire District cannot find any additional information with respect to what specific "Eligible Improvements" have been reimbursed using TIF revenue.

75. The PAR cannot simply "determine" that it will spend TIF revenue to remedy blight unless those expenditures are specifically permitted by the Act.

76. The Parker Flats at Old Town Agreement provides that TIF revenue will be used to reimburse the developer for (1) building permit fees imposed by the Town, (2) plan review fees imposed by the Town, (3) use tax imposed by the Town, and (4) excise tax imposed by the Town.

77. Nothing in the Act allows the PAR to use TIF revenue to reimburse a private developer for taxes imposed by a municipality.

78. The PAR proposed in its 2017 budget to spend \$77,000 for "Tax Increment Reimbursement" in the Parker Central Plan. This is expressly not allowed under the Act unless such spending is tied to approved development activity, which is not the case in the Parker Central Plan.

79. Both the Parker IL, LLC Agreement and the Parker Flats at Old Town Agreement propose development in the Parker Central Plan area.

80. Upon information and belief, the Fire District's taxes are being used to fund items not allowable under the Act as recently as this year.

81. Using TIF revenue to reimburse developers for costs not listed in the Act constitutes a violation of the Act.

82. The Court should declare that the PAR is inappropriately using TIF revenue to pay for expenses not allowable under the Act, and enjoin the PAR from continuing to do so with tax revenue produced by the Fire District's mill levy.

FIRST CLAIM FOR RELIEF

Declaratory Judgment against all Defendants

83. The Fire District incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

84. Since 2011 the PAR has received TIF revenue assessed by the Assessor and paid by the Treasurer as a result of its representation that it is entitled to TIF revenue under the Act.

85. The PAR has incurred no "bonds...or indebtedness" under the Act that would entitle it to receive TIF revenue.

86. At the very least, the PAR has incurred no "bonds...or indebtedness" in the Parker Road Plan area that would entitle it to receive TIF revenue.

87. The PAR has used TIF revenue, improperly diverted from the Fire District's tax revenue as recently as this year, to fund undertakings not allowed by the Act.

88. The PAR's use of TIF revenue to fund Redevelopment Agreements with private developers for random projects within the various Plan areas is not permissible under the Act.

89. The Fire District has been damaged by the PAR's improper use of TIF revenue in the amount of at least \$321,691 through 2017, and said damage will ultimately result in over sixteen million dollars in tax revenue being improperly diverted from the Fire District over the life of the PAR.

90. The Fire District is entitled to a declaration by this Court as follows:

(a) The PAR has not incurred any "bonds...or indebtedness" as required by the Act to entitle it to receive any TIF revenue;

(b) All amounts previous received by the PAR and attributable to the Fire District's mill levy must be repaid to the Fire District;

(c) The Assessor should not assess any further amounts as TIF related to the PAR's Plans until such time as the PAR establishes that it is entitled to TIF revenue through the incurrence of "bonds...or indebtedness"; and

(d) The Treasurer should not pay any additional TIF revenue amounts to the PAR until such time as the Assessor assesses TIF in accordance with the Act.

SECOND CLAIM FOR RELIEF

Permanent Injunction against the PAR

91. The Fire District incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

92. Since 2011, the PAR has received TIF revenue assessed by the Assessor and paid by the Treasurer as a result of its representation that it is entitled to TIF funds under the Act.

93. The PAR has incurred no “bonds...or indebtedness” under the Act that would entitle it to receive TIF revenue.

94. At the very least, the PAR has incurred no “bonds...or indebtedness” in the Parker Road Plan area that would entitle it to receive TIF revenue.

95. The PAR has used TIF revenue, improperly diverted from the Fire District’s tax revenue as recently as this year, to fund undertakings not allowed by the Act.

96. According to the PAR’s 2017 budget, the PAR estimates that it will have an ending fund balance of \$417,047 in its General Fund for 2017.

97. The Fire District is entitled to a permanent injunction against the PAR preventing it from further dispersing TIF revenue that belongs to the Fire District.

98. If the PAR continues to divert revenue away from the Fire District and spend that money in contravention of the Act, the Fire District will be irreparably damaged because it may not be able to recover the revenue from the third parties to which the PAR transfers the money.

99. In order to prevent further irreparable harm and preserve the status quo, the Fire District requests an order from this Court enjoining the PAR from further dispersing of TIF revenue.

100. The Court’s granting of this injunction will serve the public interest.

101. Injunctive relief is therefore appropriate.

102. The Fire District reserves the right to seek a preliminary injunction during the pendency of this case should such relief be appropriate.

THIRD CLAIM FOR RELIEF

Permanent Injunction against the Treasurer and Assessor

103. The Fire District incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

104. Since 2011, the PAR has received TIF revenue assessed by the Assessor and paid by the Treasurer as a result of its representation that it is entitled to TIF funds under the Act.

105. The PAR has incurred no “bonds...or indebtedness” under the Act that would entitle it to receive TIF revenue.

106. At the very least, the PAR has incurred no “bonds...or indebtedness” in the Parker Road Plan area that would entitle it to receive TIF revenue.

107. Therefore, the Assessor should not have assessed any TIF to the PAR, and the Treasurer should not have paid any TIF revenue to the PAR.

108. The Fire District is entitled to a permanent injunction against the Assessor enjoining her from assessing any further TIF to the PAR unless and until the PAR incurs “bonds...or indebtedness” as required by the Act.

109. The Fire District is entitled to a permanent injunction against the Treasurer enjoining her from paying any further TIF revenue to the PAR unless and until the PAR incurs “bonds...or indebtedness” as required by the Act.

110. If the PAR continues to divert revenue away from the Fire District and spend that money in contravention of the Act, the Fire District will be irreparably damaged because it may not be able to recover the revenue from the third parties to which the PAR transfers the money.

111. In order to prevent further irreparable harm and preserve the status quo, the Fire District requests an order from this Court enjoining the Assessor from assessing any further TIF to the PAR, and enjoining the Treasurer from paying any further TIF to the PAR.

112. The Court’s granting of this injunction will serve the public interest.

113. Injunctive relief is therefore appropriate.

114. The Fire District reserves the right to seek a preliminary injunction during the pendency of this case should such relief be appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the South Metro Fire Rescue Fire Protection District, respectfully requests that judgment enter in its favor, and against Defendants, as follows:

a. Declaring that the PAR has not incurred any “bonds...or indebtedness” as required by the Act to entitle it to receive any TIF revenue;

b. Ordering that the PAR must remit to the Fire District all amounts of TIF revenue it received from the Fire District’s mill levy in contravention of the Act;

b. Declaring that the Assessor should not assess TIF revenue to the PAR unless and until the PAR incurs “bonds...or indebtedness” as required by the Act;

- c. Declaring that the Treasurer should not pay TIF revenue to the PAR unless and until the PAR incurs “bonds...or indebtedness” as required by the Act;
- d. Enjoining the PAR from making any further expenditures with TIF revenue;
- e. Enjoining the Assessor from assessing any further TIF revenue to the PAR unless and until it complies with the Act so as to entitle it to receive TIF revenue;
- f. Enjoining the Treasurer from paying any further TIF revenue to the PAR unless and until it complies with the Act so as to entitle it to receive TIF revenue; and
- g. For all such further relief the Court deems appropriate.

Respectfully submitted this 5th day of June 2017.

SPENCER FANE LLP

/s/ Jamie N. Cotter
Jamie N. Cotter

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