

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO

7325 S. Potomac St.
Centennial, Colorado 80112

SOUTHPARK HOMEOWNERS ASSOCIATION
NUMBER 2, a Colorado nonprofit organization,

Plaintiff,

v.

CITY OF ENGLEWOOD,

Defendants.

J. Andrew Nathan, Reg. No. 3295
Timothy R. Fiene, Reg. No. 41508
Nicholas C. Poppe, Reg. No. 47507
NATHAN DUMM & MAYER P.C.
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Case Number: 2015 CV 031748
Div.: 402 Ctrm:

ANSWER TO AMENDED COMPLAINT AND JURY DEMAND

Defendant, City of Englewood (“the City”), by and through its counsel, Nathan Dumm & Mayer P.C., and Dugan Comer, hereby submits the following Answer and Jury Demand and Motion for Stay Pursuant to §24-10-108, C.R.S. and state as follows:

1. In response to the allegations contained in paragraph 1 of First Amended Plaintiff's Complaint and Jury Demand, the City is without sufficient information to either confirm or deny the allegations contained and, therefore, such allegations are denied.

2. In response to the allegations contained in paragraph 2 of Plaintiff's First Amended Complaint and Jury Demand, the City is without sufficient information to either confirm or deny the allegations contained and, therefore, such allegations are denied.

3. In response to the allegations contained in paragraph 3 First Amended Plaintiff's Complaint and Jury Demand, the City admits the allegations therein.

4. In response to the allegations contained in paragraph 4 of Plaintiff's First Amended Complaint and Jury Demand, the City is without sufficient information to either confirm or deny the allegations contained and, as such, such allegations are denied.

5. In response to the allegations contained in paragraph 5 of Plaintiff's First Amended Complaint and Jury Demand, the City admits that it acts pursuant to its duties and powers as a home rule municipality. The City denies any implication of liability, and further denies any other allegations not herein specifically admitted.

6. In response to the allegations contained in paragraph 6 of Plaintiff's First Amended Complaint and Jury Demand, the City admits that this Court has personal jurisdiction over it. To the extent that the remaining allegations in such paragraph are inconsistent with this admission, such allegations are denied.

7. The City denies the allegations contained in paragraph 7 of Plaintiff's First Amended Complaint and Jury Demand.

8. In response to the allegations contained in paragraph 8 of Plaintiff's First Amended Complaint and Jury Demand, the City admits that venue is proper in Arapahoe County. The City denies that there was any tortious or wrongful conduct and denies any other allegations other than the City's admission that venue is proper in Arapahoe County.

9. In response to the allegations contained in paragraph 9 of Plaintiff's First Amended Complaint and Jury Demand, the allegations do not prompt a response from the City. To the extent a response is prompted, the City denies such allegations. The City does not waive any defenses, or rights, jurisdictional or otherwise, it has under the Colorado Governmental Immunity Act.

10. In response to the allegations contained in paragraph 10 of Plaintiff's First Amended Complaint and Jury Demand, the City admits that some of the Association's residential lots and common property are adjacent to McLellan Reservoir property. In response to the remaining allegations contained in paragraph 10 of Plaintiff's First Amended Complaint and Jury Demand, the City is without sufficient information to either admit or deny such allegations and therefore such allegations are denied.

11. In response to the allegations contained in paragraph 11 of Plaintiff's First Amended Complaint and Jury Demand, the City is aware that Plaintiff obtained a forensic engineering report in approximately June of 2014. Such report contained certain opinions concerning matters relevant to this lawsuit. The City is without sufficient information to either confirm or deny the remaining allegations in paragraph 11 of Plaintiff's First Amended Complaint and Jury Demand and therefore such allegations are denied.

12. The City denies the allegations contained in paragraph 12 of Plaintiff's First Amended Complaint and Jury Demand.

13. The City denies the allegations contained in paragraph 13 of Plaintiff's First Amended Complaint and Jury Demand.

14. The City denies the allegations contained in paragraph 14 of Plaintiff's First Amended Complaint and Jury Demand.

15. The City admits the allegations contained in paragraph 15 of Plaintiff's First Amended Complaint and Jury Demand.

16. The City denies the allegations contained in paragraph 16 of Plaintiff's First Amended Complaint and Jury Demand.

17. The City denies the allegations contained in paragraph 17 of Plaintiff's First Amended Complaint and Jury Demand.

18. The City denies the allegations contained in paragraph 18 of Plaintiff's First Amended Complaint and Jury Demand.

19. In response to the allegations/incorporations made by Plaintiff in paragraph 19 of Plaintiff's First Amended Complaint and Jury Demand, the City incorporates its corresponding responses and admits/denies the allegations referenced in such paragraph as previously stated.

20. The City admits the allegations contained in paragraph 20 of Plaintiff's First Amended Complaint and Jury Demand.

21. The City denies the allegations contained in paragraph 21 of Plaintiff's First Amended Complaint and Jury Demand.

22. The City denies the allegations contained in paragraph 22 of Plaintiff's First Amended Complaint and Jury Demand.

23. The City denies the allegations contained in paragraph 23 of Plaintiff's First Amended Complaint and Jury Demand.

24. The City denies the allegations contained in paragraph 24 of Plaintiff's First Amended Complaint and Jury Demand.

25. The City denies the allegations contained in paragraph 25 of Plaintiff's First Amended Complaint and Jury Demand.

26. In response to the allegations/incorporations made by Plaintiff in paragraph 26 of Plaintiff's First Amended Complaint and Jury Demand, the City incorporates its corresponding responses and admits/denies the allegations referenced in such paragraph as previously stated.

27. In response to the allegations contained in paragraph 27 of Plaintiff's Complaint and Jury Demand, the City is without sufficient information to either admit or deny these allegations and therefore such allegations are denied.

28. The City denies the allegations contained in paragraph 28 of Plaintiff's First Amended Complaint and Jury Demand.

29. The City denies the allegations contained in paragraph 29 of Plaintiff's First Amended Complaint and Jury Demand.

30. The City denies the allegations contained in paragraph 30 of Plaintiff's First Amended Complaint and Jury Demand.

31. In response to the allegations/incorporations made by Plaintiff in paragraph 31 of Plaintiff's First Amended Complaint and Jury Demand, the City incorporates its corresponding responses and admits/denies the allegations referenced in such paragraph as previously stated.

32. The City denies the allegations contained in paragraph 32 of Plaintiff's First Amended Complaint and Jury Demand.

33. The City denies the allegations contained in paragraph 33 of Plaintiff's First Amended Complaint and Jury Demand.

34. The City denies the allegations contained in paragraph 30 of Plaintiff's First Amended Complaint and Jury Demand.

35. The City denies the allegations contained in paragraph 30 of Plaintiff's First Amended Complaint and Jury Demand.

ANY OTHER ALLEGATIONS NOT EXPRESSLY OR SPECIFICALLY ADMITTED HEREIN ARE DENIED.

AFFIRMATIVE DEFENSES

1. All or a portion of Plaintiff's claims do not state a cause of action upon which relief can be granted against Defendant.

2. The proximate cause of Plaintiff's claimed damages and/or injuries, if any, was Plaintiff's comparative negligence or negligence imputed to Plaintiff as a matter of law, which

conduct either bars or reduces Plaintiff's recovery, if any, in accord with the Colorado comparative negligence law.

3. The proximate cause of Plaintiff's claimed damages and/or injuries, if any, was Plaintiff's volitional assumption of a known and appreciated risk or which is imputed to the plaintiff, which conduct either bars or reduces Plaintiff's recovery, if any, in accord with the Colorado comparative negligence law.

4. Plaintiff has failed to join necessary and indispensable parties in whose absence complete relief cannot be accorded amongst those presently parties to this civil action.

5. The proximate cause of Plaintiff's claimed damages and/or injuries, if any, was the acts or omissions of a third party or parties over whom this Defendant had no control, and for whom this Defendant is not legally responsible.

6. Plaintiff has failed to mitigate Plaintiff's damages, if any, as required by law.

7. The proximate cause of all Plaintiff's claimed damages and/or injuries, if any, is conditions and/or problems which predated the claimed damages in question which were not aggravated by this Defendant.

8. Plaintiff's claims and/or injuries, if any, were the result of unforeseen circumstances which could not have been reasonably anticipated by this Defendant and thus, this Defendant is not legally responsible for Plaintiff's claims.

9. In the event that the Defendant is determined to have any causal fault concerning the damages described in Plaintiff's Complaint, which allegations are expressly denied, then Defendant shall not be held liable for any greater amount of damages than is represented by Defendant's degree or percentage of causal fault, which determination shall be made in accord with Section 13-21-111.5, C.R.S.

10. Plaintiff's claims are barred by applicable statutes of limitations.

11. Some or all of Plaintiff's claims are barred by the doctrine of *laches*.

12. Plaintiff's claims are barred and/or governed by the provisions of Section 24-10-101, *et. seq.* C.R.S, more commonly known as the "Colorado Governmental Immunity Act".

13. Some or all of Plaintiff's claims may be barred by the doctrine of unclean hands.

14. Some or all of Plaintiff's claims may be barred by the doctrine of waiver.

15. Some or all of Plaintiff's claims may be barred by the doctrine of estoppel.

16. The City reserves the right to add additional affirmative defenses as they may become known through discovery and disclosure.

WHEREFOER, having fully answered the Plaintiff's Amended complaint, the City prays that the same be dismissed and denied and that Defendants have judgment against Plaintiff for all costs herein expended, for reasonable attorney's fees, and for such other and further relief as to the Court may seem proper.

DEFENDANT, CITY OF ENGLEWOOD, HEREBY REQUESTS THAT THIS CASE BE TRIED BEFORE A JURY.

NATHAN DUMM & MAYER P.C.

Original signed document on file at the offices of Nathan Dumm & Mayer P.C

/s/ **Timothy R. Fiene**

J. Andrew Nathan, #3295

Timothy R. Fiene, #41508

Nicholas C. Poppe, Reg. No. 47507

Attorneys for Defendant City of Englewood

Dugan Comer

City Attorney

City of Englewood

Defendant's Address:

City of Englewood

Englewood Civic Center

1000 Englewood Parkway

Englewood, CO 8011

CERTIFICATE OF SERVICE

I hereby certify that on this 29th of July, 2016, a true and correct copy of the foregoing **ANSWER AND JURY DEMAND** was served via the State of Colorado's ICCES e-filing system upon each of the following:

Craig S. Nuss, Esq.
Leslie A. Tuft, Esq.
Burg Simpson Eldredge Hersh Jardine PC
40 Inverness Drive East
Englewood, CO 80112

/s/ Nancy McIlvenna

Nancy McIlvenna

*Original signed document on file at the offices of Nathan
Dumm & Mayer P.C.*