

<p>COLORADO SUPREME COURT  101 W. Colfax, # 800  Denver, Colorado 80202</p>	<p>DATE FILED: January 12, 2023 4:04 PM</p>
<p>Original Proceeding  Pursuant to Colo. Rev. Stat. § 1-40-107(2)  Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title  and Submission Clause for Proposed  Initiative #3 - Establishment of a New  Attainable Housing Fee</p> <p><b>Petitioner:</b> Rebecca R. Sopkin,</p> <p>v.</p> <p><b>Respondents:</b> Dalton Kelley, Dee Wisor</p> <p><b>and</b></p> <p><b>Title Board:</b> Jason Gelender, Melissa Kessler and  David Powell</p>	<p>COURT USE ONLY</p>
<p>Rebecca R. Sopkin (Atty. Reg. No. 20998)  720 Kipling, #12  Lakewood, CO 80215  (303) 232-4184</p> <p>grsop@msn.com</p>	<p>Case No.:</p>
<p>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING  BOARD CONCERNING PROPOSED INITIATIVE #3 - ESTABLISHMENT OF A  NEW ATTAINABLE HOUSING FEE</p>	

On my own behalf, as a registered elector of the State of Colorado, the undersigned hereby respectfully petitions this Court to review the actions of the Ballot Title Setting Board with respect to Proposed Initiative 2023-2024 #3 - Establishment of a New Attainable Housing Fee, pursuant to Section 1-40-107, C.R.S.

## **STATEMENT OF THE CASE**

### **A. Procedural History of Proposed Initiative 2023-2024 #3.**

Dalton Kelley and Dee Wisor (hereinafter “Proponents”) proposed Initiative #3 2023-2024 #3 (the “Proposed Initiative”). Review and comment hearings were held before representatives of the Offices of Legislative Council and Legislative Legal Services. Thereafter, the Proponents submitted a final version of the Proposed Initiative to the Secretary of State for purposes of submission to the Title Board.

A Title Board hearing was held on December 21, 2022, at which time titles were set for the Proposed Initiative. On December 28, 2022, Petitioner Rebecca R. Sopkin filed a Motion for Rehearing, alleging that the Title Board lacked jurisdiction as the Proposed Initiative was in actuality proposing a tax increase which could not validly be done without amending the Colorado Constitution, that the Proposed Initiative contained multiple and distinct subjects in violation of Colo. Const. art. V sec 1(5.5) and that the Proposed Initiative neglected to include any mention of rental properties which were clearly a part of the proposed statutory changes. The rehearing was held on January 4, 2023, at which time the Title Board granted the Motion for Rehearing only to the extent that changes were made to the title to include rental property.

## **B. Jurisdiction**

Petitioner is entitled to a review before the Colorado Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioner timely filed the Motion for Rehearing with the Title Board. C.R.S. § 1-40-107(1). Additionally, Petitioner timely filed this Petition for Review within seven (7) days from the date of the hearing on the Motion for Rehearing. C.R.S. § 1-40-107(2).

As required by C.R.S. § 1-40-107(2), attached to this Petition for Review are certified copies of (1) the draft, amended, and final version of the Proposed Initiative filed by the Proponents; (2) the original ballot title set for this measure; (3) the Motion for Rehearing filed by the Petitioner; and (4) the ruling on the Motion for Rehearing as reflected by the title and ballot title and submission clause set by the Title Board. Petitioner believes that the Title Board erred in denying certain aspects of the Motion for Rehearing.

## **GROUND FOR APPEAL**

### **I. THE TITLE BOARD DOES NOT HAVE JURISDICTION TO SET A TITLE FOR INITIATIVE #3 AS A STATUTORY INITIATIVE AS INITIATIVE #3 IS IN VIOLATION OF THE SINGLE SUBJECT RULE**

Initiative 2022-2023 #3 - Establishment of a New Attainable Housing Fee uses the term “fee,” rather than “tax” in order to attempt to avoid the requirement that a tax increase be done within the terms of the Colorado Constitution, including requiring an amendment of the Constitution. As this necessary amendment of the Constitution is an implied subject

within the Proposed Initiative, it causes the Proposed Initiative to have more than one subject.

Article X, Section 20 (8a) of the Colorado Constitution states that “New or increased transfer tax rates on real property are prohibited. No new state real property tax or local district income tax shall be imposed.” The Proposed Initiative is attempted to directly violate this Constitutional provision. Such a change cannot be validly done without amending the Colorado Constitution. The use of the term “fee” does not change the nature of the new tax this Proposed Initiative attempts to impose.

**II. IF THE TITLE BOARD DOES SET A TITLE FOR THE PROPOSED INITIATIVE, IT NEEDS TO CONTAIN REFERENCE TO THE COLORADO CONSTITUTIONAL PROVISIONS WHICH THE PROPOSED INITIATIVE IS ATTEMPTING TO AMEND.**

In the alternative, if the Court finds that the Title Board does have valid jurisdiction to set a title with regard to the Proposed Initiative, that title must make it clear that this is an attempt to amend the Colorado Constitution as its provisions are in direct contradiction to existing Colorado Constitution Article X, Section 20 (8a).

**PRAYER FOR RELIEF**

Petitioner respectfully requests that, after consideration of the parties’ briefs, this Court determine that the Title Board was without jurisdiction to set a title for this Proposed Initiative as it is currently written and direct the Title Board to return the initiative to the

designated representative for lack of jurisdiction, due to violation of the constitutional single subject requirement, or. in the alternative, to correct the title to address the deficiencies outlined in Petitioner's briefs.

Respectfully submitted this 10th day of January, 2023.

/s/Rebecca R. Sopkin

Rebecca R. Sopkin  
Attorney at Law, #20998  
720 Kipling St. #12  
Lakewood, CO 80215  
303/232-4184  
grsop@msn.com

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE #3 - ESTABLISHMENT OF A NEW ATTAINABLE HOUSING FEE was served via LexisNexis File and Serve, or e-mail as noted, on this 10<sup>th</sup> day of January, 2023 upon the following:

COUNSEL FOR THE TITLE BOARD  
Office of the Attorney General  
1300 Broadway, 10th Floor  
Denver, CO 80203

PROPONENTS  
Dalton Kelley  
1801 California  
Suite 5100  
Denver, CO 80202

Dee Wisor  
1801 California  
Suite 5100  
Denver, CO 80202

---

Rebecca R. Sopkin











DATED this    th day of        2016.

Respectfully submitted,

/s/ Rebecca R. Sopkin

Rebecca R. Sopkin (Atty. Reg. No. 20998)



**CERTIFICATE OF SERVICE**

I certify that on the     day of            2016, the foregoing document was filed with the Court via the Integrated Colorado Courts E-Filing System. True and accurate copies of the same were served on the following counsel of record for Respondents via ICCES and certified U.S. mail:

James R. True, Esq.  
Deborah Quinn, Esq.  
City of Aspen  
130 S. Galena Street  
Aspen, CO 81611  
(970) 920-5055

/s/ Rebecca R. Sopkin \_\_\_\_\_  
Rebecca R. Sopkin

DATE FILED: January 12, 2023 4:04 PM



# STATE OF COLORADO

DEPARTMENT OF  
STATE

## CERTIFICATE

I, **JENA GRISWOLD**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, fiscal summary, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2023-2024 #3 'Establishment of a New Attainable Housing Fee'" .....

.....

**IN TESTIMONY WHEREOF** I have unto set my hand .....  
and affixed the Great Seal of the State of Colorado, at the  
City of Denver this 9<sup>th</sup> day of January, 2023.

*Jena Griswold*

SECRETARY OF STATE



Final Version Filed with SOS

**RECEIVED**

NOV 08 2022

*Be it Enacted by the People of the State of Colorado:*ELECTIONS  
CO SECRETARY OF STATEIn Colorado Revised Statutes, **add** part 12, to article 4 of title 29 as follows:

**ARTICLE 12**  
**COMMUNITY ATTAINABLE HOUSING FEE**

**29-4-1201. LEGISLATIVE DECLARATION.** THE PEOPLE OF THE STATE OF COLORADO HEREBY FIND AND DECLARE THAT:

(1) THERE IS AN ACUTE SHORTAGE OF ATTAINABLE HOUSING IN COLORADO THAT MAKES IT DIFFICULT FOR WORKERS SUCH AS NURSES, TEACHERS, FIREFIGHTERS, LAW ENFORCEMENT OFFICERS, AND OTHER WORKERS WHO MAKE TOO MUCH TO QUALIFY FOR GOVERNMENTAL HOUSING SUBSIDIES TO LIVE IN THE COMMUNITIES IN WHICH THEY WORK.

(2) SUCH WORKERS ARE ESSENTIAL TO THE ECONOMIC HEALTH OF LOCAL BUSINESSES AND COMMUNITIES THROUGHOUT THE STATE.

(3) LONG COMMUTES FOR WORKERS ADD TO CONGESTION, USE FOSSIL FUELS AND ADD TO GREENHOUSE GASES BEING EMITTED AND ADVERSELY IMPACT AIR QUALITY.

(4) COLORADO'S LOCAL COMMUNITIES GENERALLY DO NOT HAVE THE RESOURCES TO PROVIDE OR SUBSIDIZE THE PROVISION OF ATTAINABLE HOUSING IN SUFFICIENT QUANTITIES WITHIN THEIR COMMUNITIES.

(5) PROPERTY OWNERS IN A COMMUNITY BENEFIT FROM A WORKFORCE RESIDING IN THE COMMUNITY AND AVAILABLE TO FILL JOBS NEEDED BY LOCAL BUSINESS OWNERS. THIS BENEFITS ALL PROPERTY OWNERS AS THESE WORKERS CAN THEN MORE EASILY BE AVAILABLE WHEN NEEDED OR ON CALL.

(6) COMMUNITIES WILL BE STRONGER AND MORE RESILIENT WHERE WORKERS CAN LIVE CLOSE TO THEIR JOBS AND BE INVESTED IN THE COMMUNITY.

(7) THE CULTURE, INCLUSIVITY, AND DIVERSITY OF COMMUNITIES IS MAINTAINED BY PROVIDING OPTIONS FOR VARIETY OF HOUSING TYPES AND PRICE AND RENT LEVELS.

(8) THE ADVERSE IMPACT ON CLIMATE AND THE ENVIRONMENT IS LESSENED THROUGH A REDUCTION OF IN-COMMUTING BY PROVIDING HOUSING WHICH IS ATTAINABLE FOR WORKERS.

(9) PROPERTY OWNERS BENEFIT FROM A LEVEL OF SERVICE ACHIEVED THROUGH FULLY STAFFED BUSINESSES, SCHOOLS, HOSPITALS, HEALTHCARE

PROVIDERS, EMERGENCY SERVICE PROVIDERS, NONPROFITS, AND GOVERNMENT DEPARTMENTS.

(10) IN BARBER V. RITTER, 196 P.3D 238, THE COLORADO SUPREME COURT SAID, "TO DETERMINE WHETHER A GOVERNMENT MANDATED FINANCIAL IMPOSITION IS A 'FEE' OR A 'TAX,' THE DISPOSITIVE CRITERIA IS THE PRIMARY OR DOMINANT PURPOSE OF SUCH IMPOSITION AT THE TIME THE ENACTMENT CALLING FOR ITS COLLECTION IS PASSED."

(11) IN TABOR FOUND. V. COLO. BRIDGE ENTER., 353 P.3D 896, THE COLORADO COURT OF APPEALS SAID "FIRST, WE REVIEW THE LANGUAGE OF THE ENABLING STATUTE... IF THE LANGUAGE STATES THAT A PRIMARY PURPOSE IS TO RAISE REVENUES FOR GENERAL GOVERNMENTAL SPENDING, IT IS A TAX; BUT IF IT INDICATES THAT THE PRIMARY PURPOSE OF THE CHARGE IS TO FINANCE A PARTICULAR SERVICE, THEN THE CHARGE IS A FEE."

(12) IN TABOR FOUND. V. COLO. BRIDGE ENTER., 353 P.3D 896, THE COURT OF APPEALS ALSO SAID "ESSENTIALLY, AS LONG AS A CHARGE IS REASONABLY RELATED TO THE OVERALL COST OF PROVIDING THE SERVICE AND IS IMPOSED ON THOSE WHO ARE REASONABLY LIKELY TO BENEFIT FROM OR USE THE SERVICE, THE CHARGE IS A FEE AND NOT A TAX...NOR DOES THE FEE NEED TO BE VOLUNTARY IN ORDER TO QUALIFY AS A FEE RATHER THAN A TAX."

(13) THE PRIMARY PURPOSE OF IMPOSING A COMMUNITY ATTAINABLE HOUSING FEE UPON THE TRANSFER OF REAL PROPERTY IS TO FINANCE ATTAINABLE HOUSING IN COLORADO COMMUNITIES AND IS SET AT AN AMOUNT THAT REFLECTS THE BENEFIT ENJOYED BY THE OWNERS OF REAL PROPERTY AS DESCRIBED IN THIS PART 12.

(14) IT IS INCUMBENT UPON THE STATE TO ADDRESS THIS SITUATION IN AN EQUITABLE AND RESPONSIBLE MANNER AND WITH CONSIDERATION OF THE IMPACTS OF ATTAINABLE HOUSING DEFICITS IN COLORADO COMMUNITIES.

**29-4-1202. DEFINITIONS.** AS USED IN THIS PART 12, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ATTAINABLE HOUSING" MEANS HOUSING THAT IS ATTAINABLE BY A HOUSEHOLD THAT MAKES BETWEEN EIGHTY PERCENT AND ONE HUNDRED AND TWENTY PERCENT OF THE AREA MEDIAN INCOME AND IS PRICED SO THAT THE HOUSEHOLD NEED NOT SPEND MORE THAN THIRTY PERCENT OF ITS INCOME ON HOUSING COSTS.

(b) "DEED" MEANS ANY DOCUMENT, INSTRUMENT, OR WRITING OTHER THAN A WILL, LEASE, OR EASEMENT, REGARDLESS OF WHERE MADE, EXECUTED, OR DELIVERED, BY WHICH ANY REAL PROPERTY IN COLORADO, OR ANY INTEREST IN SUCH PROPERTY, IS CONVEYED, VESTED, GRANTED, BARGAINED, SOLD, TRANSFERRED, OR ASSIGNED.



(d) "DIVISION" MEANS THE DIVISION OF HOUSING WITHIN THE DEPARTMENT OF LOCAL AFFAIRS CREATED IN SECTION 24-32-704 (1), COLORADO REVISED STATUTES.

(e) "FEE" MEANS THE COMMUNITY ATTAINABLE HOUSING FEE IMPOSED IN SECTION 29-4-1203(1), COLORADO REVISED STATUTES.

(f) "FUND" MEANS THE COLORADO ATTAINABLE HOUSING FUND CREATED IN SECTION 29-4-1203(1), COLORADO REVISED STATUTES, OR ANY SUCCESSOR SECTION.

(g) "VALUE" MEANS THE AMOUNT OF THE FULL ACTUAL CONSIDERATION PAID OR TO BE PAID FOR THE REAL PROPERTY, INCLUDING THE AMOUNT OF ANY LIENS ON THE PROPERTY CREATED OR IMPOSED AS A RESULT OF THE CONVEYANCE, MINUS TWO HUNDRED THOUSAND DOLLARS.

**29-4-1203. COMMUNITY ATTAINABLE HOUSING FEE.** (1) (a) ON AND AFTER JANUARY 1, 2024, EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A COMMUNITY ATTAINABLE HOUSING FEE IS HEREBY IMPOSED UPON THE RECORDING OF EACH DEED IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION AT THE RATE OF ONE-TENTH OF ONE PERCENT OF THE VALUE OF THE REAL PROPERTY AS SPECIFIED IN THE DEED. THE FEE IMPOSED MUST BE COMPUTED TO THE NEAREST WHOLE DOLLAR.

(b) THE FEE IMPOSED BY THIS SECTION SHALL NOT BE IMPOSED ON A CONVEYANCE FROM ONE SPOUSE OR OTHER MARITAL PARTNER TO ANOTHER OR IN THE CASE OF A CORRECTION DEED. THE GENERAL ASSEMBLY MAY ENACT OTHER EXEMPTIONS IN ACCORDANCE WITH SUBSECTION (8) OF SECTION 29-4-1203, COLORADO REVISED STATUTES.

(c) THE RECORDING OF A DEED SUBJECTS THE TRANSFER EVIDENCED BY SUCH DEED TO THE FEE IMPOSED BY THIS SECTION UNLESS THE TRANSFER IS SPECIFICALLY EXEMPT FROM SUCH FEE AS PROVIDED BY LAW.

(d) THERE IS HEREBY CREATED IN THE STATE TREASURY THE COLORADO ATTAINABLE HOUSING FUND.

(2)(a) AT THE TIME ANY DEED EVIDENCING A TRANSFER OF TITLE SUBJECT TO THE FEE IMPOSED UNDER THIS SECTION IS OFFERED FOR RECORDING, THE COUNTY CLERK AND RECORDER SHALL ASCERTAIN AND COMPUTE THE AMOUNT OF THE FEE DUE AND SHALL COLLECT THE SAME FROM THE PURCHASER OF THE REAL PROPERTY AS A PREREQUISITE TO ACCEPTANCE OF THE DEED FOR RECORDING.

(b) THE AMOUNT OF THE FEE IS COMPUTED ON THE BASIS OF THE VALUE OF THE TRANSFERRED PROPERTY AS SPECIFIED IN THE DEED.

(3) THE COUNTY CLERK AND RECORDER SHALL COLLECT THE AMOUNT OF THE FEE THAT IS DUE. THE COUNTY CLERK AND RECORDER SHALL RETAIN FIVE PERCENT OF THE AMOUNT COLLECTED AS HIS OR HER FEE FOR COLLECTION AND SHALL REMIT THE BALANCE ON A MONTHLY BASIS TO THE STATE TREASURER WHO SHALL DEPOSIT SAID MONEY INTO THE FUND.

(4) IN NO EVENT SHALL THE MONEY IN THE FUND BE USED TO RAISE REVENUES FOR GENERAL GOVERNMENTAL SPENDING. ALL MONEY ON DEPOSIT IN THE FUND MUST BE EXPENDED ON NEW OR EXISTING PROGRAMS THAT SUPPORT:

(a) THE CONSTRUCTION, MAINTENANCE, REHABILITATION, OR REPAIR OF ATTAINABLE HOUSING IN THE STATE FOR RENTAL PURPOSES OR HOME OWNERSHIP; OR

(b) THE PROVISION OF FINANCIAL ASSISTANCE, INCLUDING WITHOUT LIMITATION GRANTS OR LOANS, TO NATURAL PERSONS, NONPROFIT ENTITIES, AND POLITICAL SUBDIVISIONS IN THE STATE TO ENABLE PERSONS TO FINANCE THE PURCHASE, REFINANCING, REHABILITATION, OR REPAIR OF ATTAINABLE HOUSING.

(5) ANY NEW OR EXISTING PROGRAMS SUPPORTED BY THE COMMUNITY ATTAINABLE HOUSING FEE LEVIED UNDER THIS SECTION ARE TO BE ADMINISTERED BY THE DIVISION. THE DIVISION HAS SOLE ADMINISTRATIVE DISCRETION TO DETERMINE HOW BEST TO EXPEND THE MONEY IN THE FUND COLLECTED AND MAY ADOPT REGULATIONS TO IMPLEMENT THIS PART 12.

(6)(a) ANY MONEY IN THE FUND NOT EXPENDED AT THE END OF ANY FISCAL YEAR MUST REMAIN IN THE FUND AND SHALL NOT BE TRANSFERRED TO OR REVERT TO THE GENERAL FUND AT THE END OF ANY SUCH FISCAL YEAR. ANY INTEREST EARNED ON THE INVESTMENT OR DEPOSIT OF MONEY IN THE FUND MUST REMAIN IN THE FUND AND SHALL NOT BE CREDITED TO THE GENERAL FUND.

(b) MONEY HELD IN THE FUND SHALL NOT BE TRANSFERRED TO ANY OF THE OTHER FUNDS ADMINISTERED BY THE DIVISION.

(c) THE DIVISION MAY MAKE MONEY IN OTHER FUNDS THAT IT ADMINISTERS AVAILABLE TO THE FUND.

(7) THE APPROVAL OF THIS PART 12 BY THE REGISTERED ELECTORS OF THE STATE VOTING ON THE BALLOT ISSUE AT THE GENERAL ELECTION HELD IN NOVEMBER 2023 CONSTITUTES A VOTER-APPROVED REVENUE CHANGE TO ALLOW THE RETENTION AND EXPENDITURE OF STATE REVENUES IN EXCESS OF THE LIMITATION ON STATE FISCAL YEAR SPENDING.

(8) THE GENERAL ASSEMBLY MAY, BY DULY ENACTED LEGISLATION, MODIFY ANY OF THE PROVISIONS OF THIS PART 12 AS CIRCUMSTANCES

WARRANT, AND PARTICULARLY AS NECESSARY TO FACILITATE THE MORE EFFECTIVE ADMINISTRATION OF THIS PART 12.

**29-4-1204. EFFECTIVE DATE.** THIS PART 12 SHALL BE EFFECTIVE JANUARY 1, 2024; EXCEPT THAT DISBURSEMENTS FROM THE COLORADO ATTAINABLE HOUSING FUND SHALL COMMENCE NO LATER THAN JULY 1, 2024.

## Ballot Title Setting Board

### **Proposed Initiative 2023-2024 #3<sup>1</sup>**

The title as designated and fixed by the Board is as follows:

A change to the Colorado Revised Statutes concerning funding to increase attainable housing, and, in connection therewith, on and after January 1, 2024, imposing a community attainable housing fee, payable by the purchaser, upon the recording of deeds for real property equal to 0.1% of the amount by which the purchase price exceeds \$200,000; defining attainable housing as housing that is attainable by a household that makes between 80% and 120% of the area median income and is priced so that the household need not spend more than 30% of its income on housing costs; requiring the net fee revenue to be deposited in the Colorado attainable housing fund and used only to fund new and existing programs administered by the division of housing that support the financing, purchase, refinancing, construction, maintenance, rehabilitation, or repair of attainable housing in Colorado; and exempting the fee revenue from the limitation on state fiscal year spending.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a change to the Colorado Revised Statutes concerning funding to increase attainable housing, and, in connection therewith, on and after January 1, 2024, imposing a community attainable housing fee, payable by the purchaser, upon the recording of deeds for real property equal to 0.1% of the amount by which the purchase price exceeds \$200,000; defining attainable housing as housing that is attainable by a household that makes between 80% and 120% of the area median income and is priced so that the household need not spend more than 30% of its income on housing costs; requiring the net fee revenue to be deposited in the Colorado attainable housing fund and used only to fund new and existing programs administered by the division of housing that support the financing, purchase, refinancing, construction, maintenance, rehabilitation, or repair of attainable housing in Colorado; and exempting the fee revenue from the limitation on state fiscal year spending?

*Hearing December 21, 2022:*

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<sup>1</sup> Unofficially captioned “**Establishment of a New Attainable Housing Fee**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

*Single subject approved; staff draft amended; titles set.  
Board members: Melissa Kessler, David Powell, Jason Gelender  
Hearing adjourned 11:16 A.M.*

## **Ballot Title Setting Board**

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The ballot title and submission clause as designated and fixed by the Board is as follows:

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*Hearing December 21, 2022:*

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<sup>1</sup> Unofficially captioned “**Establishment of a New Attainable Housing Fee**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

*Single subject approved; staff draft amended; titles set.  
Board members: Melissa Kessler, David Powell, Jason Gelender  
Hearing adjourned 11:16 A.M.*

*Rehearing January 4, 2023:*

*Motion for Rehearing (Gaines and Bruce): denied.*

*Motion for Rehearing (Sopkin and Menten): granted only to the extent that the Board made changes to the title.*

*Board members: Theresa Conley, Jason Gelender, David Powell  
Hearing adjourned 10:52 A.M.*

**From:** [Cory Gaines](#)  
**To:** [Statewide Initiatives](#)  
**Subject:** [EXTERNAL] Request for rehearing on Initiative #3 (so-called "Attainable Housing Fee")  
**Date:** Tuesday, December 27, 2022 4:32:05 PM

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My name is Cory Gaines. I am registered voter and a resident of Logan County.

I would like to file an official request for a rehearing by the Title Board on Initiative #3 (the "Establishment of a New Attainable Housing Fee"), originally heard on the 21st of December.

The first reason I am calling for a rehearing is one of basic fairness. I was at the meeting on the 21st of December and wished to give my thoughts to the Title Board. I am not alleging that I was silenced, but due to inexperience or technical issues (and despite my best attempts) I was not able to speak. I wonder if I was not alone in this. If people are trying to speak up and unable, I think another hearing is the fair thing to do. Give everyone another shot if they missed the first chance due to technical problems, particularly those like myself who live far away (on the Eastern Plains in my case), and for whom a phone might be the only feasible method of joining the meeting.

As to the issues relating to the proposed initiative itself, I would like to highlight two things that I think need to be addressed in the language of the initiative. These are things I would have mentioned on the 21st.

First, as general citizen who is not a lawyer, it took me a long time to get to the bottom of what this initiative is trying to do. I read a whole lot of things on the first page. I read about firemen, teachers (of which I am one), businesses succeeding, climate change, diversity, and so on. It isn't until well down in the language that I see anything related at all to what I'm voting for. I'm voting to enable the government to tack on extra money that I'd have to pay them to help make "attainable" housing for people. Shouldn't this be higher up in the language? After all, I'm all for rooting for teachers like myself, but at the end of the day, what I'd like to know first since it will materially affect my life is whose hand is out and what they're asking for.

As for "attainable", I quibble with this word choice and would ask you to revisit it. Attainable might mean different things to different people. When I moved out to Sterling to teach at the College out here, attainable at that point meant that I could afford the house payments entirely on my income based on the fact that I wanted my wife to have the choice and freedom to stay home (or not) with our baby when we had one without selling her condo in Denver. Attainable could have also meant that we chose to stretch ourselves slightly and buy a bigger house with the thought that, baby or no, she'd either have to work or sell her condo. Therein lies the problem. For everyday people who read this initiative and/or who don't go past the title, attainable is going to inevitably carry the connotation that without this fee there will be people having to do without a home. That's a false choice, a forced dilemma. There are housing options now that are attainable by many quite comfortably that fall outside the definition in the initiative. Either you should make their definition part of the wording at the beginning or you should pick a different word than attainable which doesn't carry the same baggage with it.

Second, a fair bit of time is spent by proponents of the initiative in delineating that this is a fee and not a tax. I realize that it is not the Title Board's decision to weigh in on the constitutionality of that choice or the wisdom of it. I do think, however, that for the everyday



person who is not well versed in legalese, the language in the initiative should better reflect an everyday understanding of how our Colorado Supreme Court has distinguished the two. If a fee is defined as something with a specific purpose, that's fine, but the language here should have some consistency.

The language in the initiative should clearly state (and close to the top) that this money will not be subject, in any way whatsoever, to TABOR limits and if it exceeds what is needed citizens will not be getting the excess back.

The language in the initiative should also clearly state in what way 5% of the fee is given back to clerks with no guidance on how this is spent is different than the taxes they're used to. When I hear that 5% of government money goes back to a clerk without it being earmarked, the first thing I ask myself is why is it that the sale of a \$400K house would require more effort to enact than the sale of a \$350K house. Should be the same amount of work by the clerk, no? Why then is a fee done on a percentage? Next I ask myself, if it is a fee and the take exceeds the effort required, what will that excess cover? Other transfers?

A fee, in the sense that our courts define it, suggests something like a car registration where my tiny 97 Geo Prism costs less because (presumably) it does less damage to the road than a giant Ford F-250 truck which pays more. Is that the same here with the 5% fee that scales with the price of the home? That needs some clarity and explanation as to how this qualifies as a fee.

Depending on the hearing date and whether or not classes have resumed, I would like a chance to be able to flesh out these ideas and/or to answer any questions that the Board has if you hold a rehearing. Please be aware that if I attend, my phone will be 303-217-6782. In the meantime, if you have questions PRIOR to setting another meeting, please feel free to email or call.

Thank you for your time,

Cory

**From:** [Jeffrey Mustin](#)  
**To:** [Statewide Initiatives](#); [Cheryl Hammack](#)  
**Subject:** FW: [EXTERNAL] BALLOT TITLE PROTEST  
**Date:** Wednesday, December 28, 2022 8:36:27 AM

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FYI

-----Original Message-----

From: Douglas Bruce <Taxcutter@msn.com>  
Sent: Tuesday, December 27, 2022 2:24 PM  
To: Jeffrey Mustin <Jeffrey.Mustin@coloradosos.gov>; Betn.Nichols@coloradosos.gov  
Subject: [EXTERNAL] BALLOT TITLE PROTEST

I see no address on your website to email this protest. Please forward this to the proper recipient in your office, to the secretary of state, and to title board members. The proper email address should be posted for protesters to use to file a protest.

As a registered elector, I protest the ballot title set December 21, 2022 on initiative #3. Among the grounds:

The title set is a tax and requires the capitalized ballot wording in TABOR.

The tax is prohibited by TABOR section (8)(a); it is unconstitutional as a new or increased transfer tax rate.

A constitutional amendment requires the senate district signature quota in Article V section 1 (2.5) and that such be disclosed to proponents and the public.

The fiscal note is inadequate. It does not include the dollar amount of the first fiscal year tax increase.

I wish to appear by telephone. The telephone was invented in 1876.

No hearing should be before 10:30 a.m. on the right Wednesday.

Another registered elector may appear at the protest hearing.

Douglas Bruce

taxcutter@msn.com

Colorado Springs CO

(719) 550-0010

**Cheryl Hammack**

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**From:** Greg and Rebecca Sopkin <grsop@msn.com>  
**Sent:** Wednesday, December 28, 2022 2:21 PM  
**To:** Statewide Initiatives  
**Subject:** [EXTERNAL] Motion for Rehearing

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**COLORADO TITLE SETTING BOARD**

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IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE FOR INITIATIVE  
2022-2023 #3

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**MOTION FOR REHEARING**

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On my own behalf, as a registered elector of the State of Colorado, the undersigned hereby submits this Motion for Rehearing for Initiative 2022-2023 #3 - Establishment of a New Attainable Housing Fee, pursuant to Section 1-40-107, C.R.S., and as grounds therefore states as follows:

**I. THE TITLE BOARD DOES NOT HAVE JURISDICTION TO SET A TITLE FOR INITIATIVE #3 AS A STATUTORY INITIATIVE AS INITIATIVE #3 ATTEMPT TO RAISE TAXES CANNOT BE VALIDLY DONE WITHOUT AMENDING THE COLORADO CONSTITUTION**

Initiative 2022-2023 #3 - Establishment of a New Attainable Housing Fee uses the term “fee,” rather than “tax” in order to attempt to avoid the requirement that a tax increase be done within the terms of the Colorado Constitution, including requiring an amendment of the Constitution.

It is well establishing in caselaw, including the cases cited by the Initiative’s proponents, that a fee is required to “defray the expenses of the particular service for which the fee is imposed.” TABOR v. Colo. Bridge Enterprise 353 P.3d 896 (quoting Bloom 784 P.2d 304, 308). The particular service for which the fee is imposed under Initiative #3 is “the recording of each deed” (proposed C.R.S. 29-4-1203(1)(a)). There is no rational basis for tying the expense of recording a deed to the value of the property at issue. There is also no valid way to claim that the 95% of the revenue obtained from the percentage charge which is to be put into a newly created “Colorado Attainable Housing Fund” is in any way “defraying the expenses of the particular service for which the fee is imposed.”

**II. INITIATIVE #3 IMPERMISSIBLY CONTAINS MULTIPLE SEPARATE AND DISTINCT SUBJECTS IN VIOLATION OF THE SINGLE-SUBJECT REQUIREMENT.**

This Initiative impermissibly contains multiple subjects, thus depriving the Title Board of jurisdiction to set a title. The Initiative contains a number of terms so broad as to leave any possible number of unrelated subjects to be brought into its purview in the future. The revenue raised can be used for “any new or existing programs that support” a large range of different activities including “the construction, maintenance, rehabilitation or

repair” of housing, and the “provision of financial assistance” for the same. (proposed C.R.S. 29-4-1203(4)(b)).

**II. THE TITLE SET FOR INITIATIVE #3 NEGLECTS TO INCLUDE ANY MENTION OF RENTAL PROPERTY WHICH THE PROPOSED STATUTORY CHANGE CLEARLY INCLUDES**

The proposed statutory change includes “for rental purposes “(proposed C.R.S. 29-4-1203(4)(a)) but the proposed title does not references rental property in any way.

**CONCLUSION**

Accordingly, the Objector respectfully requests that this Motion for Rehearing be granted and a rehearing set pursuant to Section 1-40-107(1), C.R.S.

Respectfully submitted this 28th day of December, 2022.

/s/Rebecca R. Sopkin

Rebecca R. Sopkin  
Attorney at Law, #20998  
720 Kipling St. #12  
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## BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

**INITIATIVE 2023-2024 #3****MOTION FOR REHEARING**

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From: Natalie Menten, Colorado registered elector

**Initiative 2023-2024 #3** title was set by the Title Board on December 21, 2022.

Ballot Title and Submission initially set by the board:

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a change to the Colorado Revised Statutes concerning funding to increase attainable housing, and, in connection therewith, on and after January 1, 2024, imposing a community attainable housing fee, payable by the purchaser, upon the recording of deeds for real property equal to 0.1% of the amount by which the purchase price exceeds \$200,000; defining attainable housing as housing that is attainable by a household that makes between 80% and 120% of the area median income and is priced so that the household need not spend more than 30% of its income on housing costs; requiring the net fee revenue to be deposited in the Colorado attainable housing fund and used only to fund new and existing programs administered by the division of housing that support the financing, purchase, refinancing, construction, maintenance, rehabilitation, or repair of attainable housing in Colorado; and exempting the fee revenue from the limitation on state fiscal year spending?

Hearing December 21, 2022

Single subject approved; staff draft amended; titles set.  
Board members: Melissa Kessler, David Powell, Jason Gelender  
Hearing adjourned 11:16 AM.

*\* Unofficially captioned "Establishment of a New Attainable Housing Fee" by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.*

**I am requesting a rehearing for the following reasons.**

**SINGLE SUBJECT ISSUES**

**1. Proposed Initiative #3 contains more than one subject pertaining to what is actually taxed or feed.**

The ambiguous provisions listed in 29-4-1202 (Definitions) and 29-4-1203 (Community Attainable Housing Fee) regarding property valuation contain multiple subjects.

**Proponents' primary purpose and "fee" (tax) calculation**

29-4-1202(13), "The primary purpose of imposing a community attainable house fee upon the transfer of **real property** is to finance attainable housing."

29-4-1202(g) defines value, "the amount of the full actual consideration paid or to be paid for the **real property**, including the amount of any liens on the property created or imposed as a result of the conveyance, minus two hundred thousand dollars."

29-4-1203(b) states that "the **amount of the fee is computed** on the basis of the value of the transferred property **as specified in the deed.**"

It's not uncommon for the purchase amount listed in the deed to include business and personal property and those items may not be listed by separate value. Such items could include: appliances, equipment, tools, artwork, or vehicles.

e.g. JJ Ranch is selling 400 acres with home and barns. The purchase also includes a combine harvester, seeders, balers, ATVs, snowplows, diesel trucks, semi-trucks, dump truck, livestock, plus other business and personal property. The value for all items is wrapped into one price of \$3 million but only \$1.5 million is for the land, home and barns. The remaining \$1.5 million is business or personal property.

**As written, Initiative #3 has expanded its primary purpose by including non-real property in calculating the fee to be determined by a county clerk and recorder. This constitutes a fee on personal property which is a separate subject.**

**2. The Board lacks jurisdiction over Initiative #3, as it violates the Constitution's single-subject requirement.**

Proposed initiative #3 inappropriately attempts to skirt Article X, Section 20 (8a) of the Colorado Constitution by labeling the funding mechanism as a "fee".

The Taxpayer's Bill of Rights prohibits real property transfer taxes.

(8) (a) Revenue limits. New or increased transfer tax rates on real property are prohibited. No new state real property tax or local district income tax shall be imposed. Neither an income tax rate increase nor a new state definition of taxable income shall apply before the next tax year.

Initiative #3 doesn't comply with the single-subject requirement because at this moment in time, it seeks to add a "fee" disguised as a property transfer tax which is and has been, prohibited by Colorado Constitution since December 31, 1992. The proponents are trying to amend our constitution without using the proper legal process. See historical reference below.

### Current Proposed Initiative #3 vs 2007-2008 - #86

Initiative #3 is not the first time that a property transfer tax has been presented to the Title Board.

See [2007-2008 - #86](#) Colorado Housing Investment Fund

#86 is a worthy reference for previous title board actions. The #86 initiative proponents attempted to create a housing fund to be funded by a property transfer **tax** but they realized they needed to amend the constitution. **#86 was denied title setting.**

### Ballot Title and Submission Clause

1. The buyer is paying this “fee” or more accurately a property transfer tax. A tax increase or additional fee doesn’t make housing more attainable for the buyer, it’s not more attainable for them when it costs more. The word “attainable” is inaccurate and should be struck out, also a catch phrase as the buyer pays the fee which makes the housing less affordable or attainable.

2. Section 29-4-1203(4)(a) states the property transfer “fee” will fund – “The construction, maintenance, rehabilitation, or repair of attainable housing in the state for **rental** purposes or home ownership;”

The title and submission clause do not include reference to “rental” and it should be included. Going back to fee on a home buyer – they are now paying to increase rental units. Initiative #3 is not a legit fee.

3. The proponents have said that the funds may not be used for general government purposes. Per 29-4-103(3), the county clerk may retain 5% to cover administration costs. It takes no more time to process a \$400,000 property than a \$4 million dollar property. The money retained by the county clerk in excess of the actual labor cost goes where? Into the clerk’s general fund or special fund? How would we know and it’s likely a different answer from the 64 county clerks. Noting the 5% retention fee would be helpful.

4. The last clause, exempting the fee revenue from the limitation on state fiscal year spending, would be improved by adding “Section 20, Article X of the Colorado Constitution”.

5. The title and submission should all be capitalized and include the estimated first full-year of revenue as required by Section 20, Article X of the Colorado Constitution.

example: SHALL STATE TAXES BE INCREASED by \$70 MILLION IN 2024 AND IN EACH YEAR THEREAFTER FROM A PROPERTY TRANSFER TAX IMPOSED ON BUYERS OF REAL PROPERTY AT A RATE OF 0.1% OF THE AMOUNT BY WHICH THE SALE VALUE OF THE PROPERTY, AS SPECIFIED IN THE RECORDED DEED, EXCEEDS \$200,000; AND SUCH TAXES BE DEPOSITED INTO A NEW STATE HOUSING FUND ADMINISTERED BY THE DIVISION OF HOUSING WITHIN THE DEPARTMENT OF LOCAL AFFAIRS TO BE SPENT ON ATTAINABLE HOUSING FOR HOUSEHOLDS MAKING EIGHTY PERCENT TO 120 PERCENT OF THE AREA MEDIAN INCOME AND PRICED SO THAT HOUSEHOLD NEED NOT SPEND MORE

THAN THIRTY PERCENT OF ITS INCOME ON HOUSING COSTS; REQUIRING THE NET FEE REVENUE TO BE DEPOSITED IN THE COLORADO ATTAINABLE HOUSING FUND AND USED ONLY TO FUND NEW AND EXISTING PROGRAMS ADMINISTERED BY THE DIVISION OF HOUSING THAT SUPPORT THE FINANCING, PURCHASE, REFINANCING, CONSTRUCTION, MAINTENANCE, REHABILITATION, OR REPAIR OF ATTAINABLE HOUSING FOR RENT OR HOME OWNERSHIP IN COLORADO; AND SUCH TAX REVENUE SHALL BE EXEMPT FROM REVENUE THAT THE STATE IS OTHERWISE REQUIRED TO REFUND TO TAXPAYERS IN YEARS IN WHICH A REFUND IS DUE?

Natalie Menten  
registered Colorado elector





Legislative  
Council Staff

*Nonpartisan Services for Colorado's Legislature*

## Initiative 3

### Fiscal Summary

<b>Date:</b>	December 5, 2022	<b>Fiscal Analyst:</b>	Josh Abram (303-866-3561)
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#### LCS TITLE: ESTABLISHMENT OF A NEW ATTAINABLE HOUSING FEE

#### Fiscal Summary of Initiative 3

This fiscal summary, prepared by the nonpartisan Director of Research of the Legislative Council, contains a preliminary assessment of the measure's fiscal impact. A full fiscal impact statement for this initiative is or will be available at [www.colorado.gov/bluebook](http://www.colorado.gov/bluebook). This fiscal summary identifies the following impact.

**State government revenue and expenditures.** Beginning January 2024, Initiative 3 increases state government revenue and expenditures by an estimated \$70 million annually. New state revenue is from a fee imposed on the sale of real property when the sale is recorded with the county clerk. The fee is imposed at a rate of one-tenth of one percent (0.1%) of the amount by which the sale value of the property, as specified in the recorded deed, exceeds \$200,000. State revenue from the new fee is estimated based on an analysis of residential and nonresidential property values and transactions in 2021, inflated for assumed market conditions in 2024. The estimate incorporates fees on sales of residential, commercial, industrial, and agricultural real property, and vacant land. If the fee also applies to other property, such as oil and gas mineral rights, the amount of fee revenue will be greater than estimated and depend significantly on energy market conditions. Revenue from the fee is exempt from the state TABOR limit as a voter-approved revenue change.

County clerks will remit the majority of the fee to a dedicated fund in the state treasury. The bulk of the revenue is then available for allocation to local, community-based attainable housing programs by the Division of Housing in the Department of Local Affairs (DOLA). The DOLA will have increased expenses for new personnel and operating costs to administer new and expanded attainable housing programs. A portion of the new state revenue from the fee will be used for the department's administrative and operating expenses.

**Local government revenue and expenditures.** Beginning January 2024, Initiative 3 is estimated to increase local revenue to county governments by \$3.5 million annually. This amount is five percent of the total estimated fee revenue, which is retained by county clerks for their administrative expense to calculate, collect and remit the fee. Local governments, including municipalities and counties, in addition to other local community-based public and private entities, are eligible to receive funding from the state for the construction and maintenance of attainable housing.

**Economic impacts.** Imposing a fee on real estate transactions will make acquisition of real estate more expensive, which may slow the pace of transactions and lower the pre-fee price of real estate. Purchasers who pay the fee will have less money available to spend, save, or invest elsewhere in the economy. The measure will increase revenue available for local governments and community-based attainable housing programs to subsidize the purchase or rental of attainable housing for individuals meeting income and eligibility requirements.