

<p>FORT COLLINS MUNICIPAL COURT  214 N. Mason  Fort Collins, CO 80521  Phone: (970) 221-6800</p> <hr/> <p><b>Plaintiffs: COLLEEN HOFFMAN, RICK HOFFMAN,  and ANN HUNT,</b></p> <p>v.</p> <p><b>Defendants: THE CITY COUNCIL OF THE CITY OF  FORT COLLINS, the governing body of a Colorado  municipal corporation; and THE ADMINISTRATION  BRANCH OF THE CITY OF FORT COLLINS, by and  through its City Manager, Darin Atteberry.</b></p>	<p>COURT USE ONLY</p>
<p>Kimberly B. Schutt, #25947  WICK &amp; TRAUTWEIN, LLC  323 South College Avenue, Suite 3  P.O. Box 2166, Fort Collins, CO 80522  Phone Number: (970) 482-4011  E-mail: <a href="mailto:kschutt@wicklaw.com">kschutt@wicklaw.com</a>  FAX Number: (970) 482-8929</p> <p>John R. Duval, #10185  FORT COLLINS CITY ATTORNEY'S OFFICE  P.O. Box 580  Fort Collins, CO 80522  Phone: (970) 221-6520  Email: <a href="mailto:jduval@fcgov.com">jduval@fcgov.com</a></p>	<p>Case Number:  2017-CIVIL01</p>
<p><b>ANSWER</b></p>	

COMES NOW the City of Fort Collins (“the City”), by and through its counsel, Kimberly B. Schutt of Wick & Trautwein, LLC, and John R. Duval of the Fort Collins City Attorney’s Office, and on behalf of the above-named defendants and in Answer to the Plaintiffs’ Complaint and Request for Injunctive Relief, states to the Court as follows:

1. The first part of the Plaintiffs’ Complaint, entitled “Introduction,” does not appear to make factual allegations that require a response in the way of an admission or denial. Rather, it appears to be a statement of Plaintiffs’ position regarding the lack of procedural rules at that time for an action seeking review pursuant to Article VII, Section 1, of the City Charter. However, on April 18, 2017, the City Council adopted on second reading Ordinance 052, 2017, amending Chapter 19 of the City Code to adopt the Colorado Rules of Civil Procedure to apply to all actions filed in municipal court. That ordinance went into effect on April 28, 2017. Therefore, it is the City’s position that, pursuant to this ordinance, the Colorado Rules of Civil Procedure, including C.R.C.P. 106 and C.R.C.P. 65, apply to this action, and that a clear and

adequate process exists for review of the alleged abused of discretion which the Plaintiffs have raised in their Complaint, and which the City generally denies. To the extent the “Introduction” is deemed to contain any substantive allegations which are not contained within the body of the Plaintiffs’ Complaint and thereby addressed in the admissions and denials below, the City generally denies said allegations.

2. With regard to Paragraph 1 of the Plaintiffs’ Complaint, the City admits that it is a home rule municipality located in Larimer County, Colorado and organized by a City Charter adopted in accordance with Article XX, Section 6 of the Colorado Constitution. The City also admits that, pursuant to Chapter 2, Article III, Section 1, the City Manager, who is currently Darin Atteberry, is the chief executive officer and head of the administrative branch of the city government. The powers and duties of the City Manager and the administrative branch of government, particularly as they relate to planning and zoning issues, are set forth in numerous provisions of the City Charter, City Code and Land Use Code [“LUC”], which provisions speak for themselves. However, the City denies that the “Administrative Branch of the City of Fort Collins” is a properly named defendant, as the administrative branch of the City is not a legal entity capable of being sued separate and apart from the City of Fort Collins itself. All departments and branches of its government are part of the municipal corporation, such that the City itself is the only proper defendant under the circumstances alleged. *See*, City Charter IV, § 2 and City Code Chapter 2, Article V. It thus answers this Complaint on behalf of the improperly named defendant.

3. The City admits the allegations of Paragraph 2 of the Plaintiffs’ Complaint.

4. With regard to the allegations of Paragraph 3 of the Plaintiffs’ Complaint, the City admits on information and belief that the Plaintiffs reside in the City of Fort Collins in the vicinity of the Landmark Apartments development, and thus are interested parties. The City further admits that Plaintiffs Ann Hunt and Colleen Hoffman were appellants before the City Council in the proceedings held on January 31, 2017.

5. With regard to the allegations of Paragraph 4 of the Plaintiffs’ Complaint, the City admits that Article VII, Section 1 of the City Charter confers original jurisdiction on the municipal court to hear all matters arising under the City’s Code and Charter. The City further admits that the issues raised in this action arise under the City’s Code and Charter, such that that this Court has original jurisdiction and is the proper venue for this action, though the Plaintiffs also had an available remedy in state district court under C.R.C.P. 106 and 65.

6. With regard to the allegations in Paragraph 5 of the Plaintiffs’ Complaint, the City admits the Plaintiffs’ Complaint alleges an abuse of discretion on the part of the City Council. The City also admits that the Plaintiffs allege in their Complaint that they were caused certain damages or deprived of certain rights by the purported abuse of discretion. However, the City denies that any such abuse of discretion or deprivation/damage occurred here. The City admits the Municipal Court has subject matter jurisdiction over the matter based on what has been alleged in the Plaintiffs’ Complaint.

7. The City denies the allegations of Paragraph 6 of the Plaintiffs' Complaint, as stated. Article III, Section 2 of the City Charter sets forth the powers and duties of the City Manager, in the proper administration of the affairs of the City, including the power to enforce the laws and ordinances of the City. Those provisions speak for themselves. Further, as stated in Paragraph 2 above, the City denies that "the Administrative Branch of the City of Fort Collins" is a properly named defendant, because it is not a separate legal entity, such that the Municipal Court does not have jurisdiction over it as an individual branch of government. The City admits, however that the Municipal Court does have jurisdiction over the City of Fort Collins, which is answering this Complaint on behalf of the improperly named defendant. To the extent that the remaining allegations of Paragraph 6 of the Complaint assert that the City, through its City Manager, failed to enforce the laws and ordinances of the City, the City hereby denies the same.

8. With regard to the allegations of Paragraph 7 of the Plaintiffs' Complaint, the City admits that the decisions of the City Council, when acting in a quasi-judicial capacity, are subject to further review by a superior court, and that the Municipal Court has jurisdiction to conduct such review under Article VII, Section 1, of the City Charter. To the extent Paragraph 7 of the Plaintiffs' Complaint contains any further allegations, the City denies the same.

9. With regard to the allegations of Paragraph 8 of the Plaintiffs' Complaint, the City admits that, on November 10, 2016, the Board reviewed and approved the Landmark Apartments Expansion Project Development Plan PDP#160013 ("the PDP" or "Project"). To the extent Paragraph 8 of the Plaintiffs' Complaint contains any further allegations, the City denies the same.

10. The City admits the allegations of Paragraph 9 of the Plaintiffs' Complaint.

11. With regard to the allegations in Paragraph 10 of the Plaintiffs' Complaint, the City admits that the appeals generally alleged that the Board failed to conduct a fair hearing and also failed to properly interpret and apply relevant sections of the LUC. The appeals, which were attached to the Plaintiffs' Complaint as exhibits 1 and 2, speak for themselves.

12. With regard to the allegations in Paragraph 11 of the Plaintiffs' Complaint, the City admits that the City Council consolidated and heard both appeals in a hearing held on January 31, 2017, after giving proper notice pursuant to Chapter 2, Article II, Division 3 of the City Code. The City also admits that the City Council reviewed the record on appeal and the applicable provisions of the LUC, and heard presentations from the interested parties, and that the City planning staff also presented information at the appeal hearing. The City denies the remaining allegations of Paragraph 11 of the Plaintiffs' Complaint.

13. The City denies the allegations of Paragraph 12 of the Plaintiffs' Complaint.

14. With regard to the allegations of Paragraph 13 of the Plaintiffs' Complaint, the City admits that the Notice of Appeal of Per Hogestad, the co-appellant whose appeal was consolidated with the appeal of the Plaintiffs, averred that the requirements of LUC 3.4.1 were not satisfied. The City denies the remaining allegations of Paragraph 13 of the Plaintiffs' Complaint.

15. With regard to the allegations of Paragraph 14 of the Plaintiffs' Complaint, the City admits that the two notices of appeal filed by the Plaintiffs and by co-appellant Per Hogestad, consolidated for hearing by the City Council, averred that the compatibility requirements of LUC 3.5 were not satisfied. The City denies the remaining allegations of Paragraph 14 of the Plaintiffs' Complaint.

16. The City denies Paragraph 15 of the Plaintiffs' Complaint, as stated, with regard to the allegations that the Project was treated by City planning staff as an expansion of the existing Landmark Apartments development. The Project was treated as an extension for purposes of integration compatibility and shared facilities. However, because it is on a separate parcel and could be sold independently of the existing apartment complex, the LUC standards were applied as if it was an independent project. The City denies the remaining allegations of Paragraph 15 of the Plaintiffs' Complaint.

17. With regard to the allegations of Paragraph 16 of the Plaintiffs' Complaint, the City admits that City Council considered an Ecological Characterization Study (ECS) as part of its review of the issues raised in the two appeals. The City denies the remaining allegations of Paragraph 15 of the Plaintiffs' Complaint, and states that Section 3.4.1(D) of the LUC speaks for itself.

18. With regard to the allegations of Paragraph 17 of the Plaintiffs' Complaint, the City admits that, at the City Council hearing on January 31, 2017, Councilman Gino Campana made a motion, seconded by Councilmember Ray Martinez, to uphold the decision of the Board subject to the addition of certain conditions, and that the City Council voted unanimously in favor of said motion. The City further admits that the City Council at its next regular meeting adopted Resolution 2017-0111, attached to the Plaintiff's Complaint as Exhibit 3, which speaks for itself.

19. In answer to paragraph 18 of the Plaintiffs' Complaint, the City incorporates herein by reference the answers set forth above in paragraphs 1 through 18 of this Answer.

20. In response to the allegations of Paragraphs 19 and 20 of the Plaintiffs' Complaint, the City admits that Resolution 2017-011, contains statements to the effect alleged in those paragraphs, in pertinent part, in its findings of fact and conclusion. The subject Resolution attached to the Plaintiffs' Complaint as exhibit 3 speaks for itself.

21. The City denies the allegations of Paragraph 21 of the Plaintiffs' Complaint.

22. In answer to paragraph 22 of the Plaintiffs' Complaint, the City incorporates herein by reference the answers set forth above in paragraphs 1 through 21 of this Answer.

23. The City denies the allegations of Paragraph 23 of the Plaintiffs' Complaint.

24. The City denies the allegations of Paragraph 24 of the Plaintiffs' Complaint. Section 3.4.1(E)(2)(c) of the LUC speaks for itself.

25. In answer to paragraph 25 of the Plaintiffs' Complaint, the City incorporates herein by reference the answers set forth above in paragraphs 1 through 24 of this Answer.

26. The City denies the allegations of Paragraphs 26 and 27 of the Plaintiffs' Complaint.

27. In answer to paragraph 28 of the Plaintiffs' Complaint, the City incorporates herein by reference the answers set forth above in paragraphs 1 through 27 of this Answer.

28. The City denies the allegations of Paragraphs 29 and 30 of the Plaintiffs' Complaint.

29. In answer to paragraph 31 of the Plaintiffs' Complaint, the City incorporates herein by reference the answers set forth above in paragraphs 1 through 28 of this Answer.

30. The City denies the allegations of Paragraphs 32 and 33 of the Plaintiffs' Complaint. The ECS speaks for itself.

31. In answer to paragraph 34 of the Plaintiffs' Complaint, the City incorporates herein by reference the answers set forth above in paragraphs 1 through 30 of this Answer.

32. The City denies the allegations of Paragraphs 35 and 36 of the Plaintiffs' Complaint.

33. The City hereby denies each and every allegation of the Plaintiff's Complaint not expressly admitted hereinabove.

**AFFIRMATIVE DEFENSES**

1. The Plaintiffs' Complaint fails to state a claim upon which relief can be granted.
2. The City Council's Resolution is supported by controlling provisions of the City Charter Fort Collins Municipal Code and Land Use Code, as well as competent evidence in the record, such that the City Council has not abused its discretion.
3. One or more of the Plaintiffs' claims are barred by the doctrine of waiver and/or estoppel.
4. Plaintiffs' allegations consist largely of legal conclusions and interpretations of City Code provisions and other documents, all of which speak for themselves.
5. Plaintiffs have failed to allege sufficient grounds to support imposition of injunctive relief under C.R.C.P. 65, and have also failed to post required security to obtain said relief, and thus any claim for injunctive relief is without merit and must be dismissed as a matter of law.
6. Plaintiffs have failed to join an indispensable party to this action.
7. Defendants reserve the right to add or delete affirmative defenses based on information gathered in the investigation or discovery of this case.

WHEREFORE, Defendant City of Fort Collins respectfully prays that the Court enter judgment in its favor and against the Plaintiffs, upholding all of the actions of the City Council, and award the City its reasonable attorney's fees, expert witness fees, costs and such further relief as the Court shall deem just and proper.

DATED this 12<sup>th</sup> day of May, 2017.

Respectfully submitted,

WICK & TRAUTWEIN, LLC

By:   
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Kimberly B. Schutt, #25947  
Attorneys for the City of Fort Collins

And

John R. Duval, #10185  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing ANSWER was SERVED via U.S. Mail and email this 12<sup>th</sup> day of May, 2017, on the following:

Colleen Hoffman  
1804 Wallenberg Drive  
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A handwritten signature in black ink, appearing to read "John R. Duval", written over a horizontal line.