

FORT COLLINS MUNICIPAL COURT 215 N. Mason Fort Collins, CO 80521 Phone (970) 221 6800	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Plaintiffs: Colleen Hoffman, Rick Hoffman, Ann Hunt v. Defendant: 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.	
<hr/> Parties without attorney Colleen Hoffman, pro se 1804 Wallenberg Drive Fort Collins, CO 80526 (970) 484 8723 cohoff@comcast.net Rick Hoffman, pro se 1804 Wallenberg Fort Collins, CO 80526 (970) 484 5154 rick-hoffman@comcast.net Ann Hunt, pro se 1800 Wallenberg Drive Fort Collins, CO 80526 (970) 484 5242 ARH4@COMCAST.NET	Case Number: 2017 CIVIL 01
PLAINTIFF'S MOTION TO RECONSIDER ORDER TO SUBMIT MOTION FOR CERTIFICATION OF RECORD	

Pursuant to under C.R.C.P. Rule 121 section 1-15 (11), Plaintiffs, Colleen Hoffman, Rick Hoffman and Ann Hunt submit this Motion for Reconsideration of a recent Order that was improvidently made by this court.

As *pro se* litigants in this matter, the Plaintiffs herein use the plural pronouns (we, us, our) to refer to themselves. Unless otherwise noted, all references to the Plaintiffs in this pleading where a statement of position on any matter is made or inferred indicate a jointly adopted position agreed to by all 3 individual plaintiffs.

INTRODUCTION

On Memorial Day, May 29, 2017, this court issued an Order deciding our Motion for Entry of Default. We were served with the order by email from the municipal court clerk on May 30th. This Order was a surprise in many ways. First, the issue before the court was not yet ripe for a decision. We were working over the Memorial Day weekend to submit a Reply Brief that was due on May 31st, which we did submit. Thus, this court decided our Motion without the benefit of a pleading allowed to us under the Colorado Rules of Civil Procedure. See Rule 121 section 1-15 (1) (c). Second, in addition to issuing an order deciding our Motion for Entry of Default, this court issued an ORDER directing us to file a Motion for certification of the record of the court below citing C.R.C.P. Rule 106 (a) (4) (III).

ORDER TO FILE MOTION IS IMPROPERLY MADE

It appears that the Order to file a motion was made on this court's own motion while ruling on an unrelated matter. This is improper. Rather than flirt with contempt, we respond with this Motion to Reconsider.

The circumstances in which a court may act *sua sponte* are limited. Ordering us to provide evidence at this stage of the proceeding without good cause shown or a Motion from opposing council to which we have had a chance to respond is simply an action in excess of this court's authority.

We are aware that opposing counsel, Kim Schutt, did request that this court "direct us" to file a Motion in the Defendants' Response to our Motion for Entry of Judgment. See the *WHEREFOR* paragraph at conclusion of Defendants' responsive pleading. This request, however, was not properly before the court in that it was not made in the form of a Motion consistent with the C.R.C.P. presumably adopted by this court with the Defendants' own amendments thereto. Furthermore, as already mentioned, we had no opportunity to respond to this request of the court before an ORDER was issued.

Of equal importance, there is no requirement in rule or in law that might possibly be construed such that this court would be justified in ordering us to file a motion as it has done. C.R.C.P. Rule 106 (a) (4) simply does not require a motion to have the record of the court below certified. Rather 106 (a) (4) (III) was authored as a convenience and a protection of the Plaintiff for the purposes of ensuring that a Rule 106 proceeding was not deprived of essential evidence. It is an option...not a mandate. Indeed, sub-section VII clearly contemplates the possibility that such a motion is not filed.

By way of information, we have carefully examined what evidence we would like to present to the Court. We continue to do so. However, to date, we have only identified one or perhaps two pieces of the hearing that we believe might

be useful if transcribed. Otherwise, we plan to submit a DVD of the appeal hearing along with other materials that are in the public record. We do not suspect that the authenticity of any evidence we expect to submit would be challenged or that a challenge to the authenticity of the evidence, if made, would be sustained. We have, consequently, found no cause to motion the court for certification of the record.

STANDARD OF REVIEW FOR MOTION TO RECONSIDER

C.R.C.P Rule 121 section 1-15 (11) states:

A party moving to reconsider must show more than a disagreement with the court's decision. Such a motion must allege a manifest error of fact or law that clearly mandates a different result or other circumstance resulting in manifest injustice.

We herein allege a manifest error of fact and law clearly mandates a different result than what has transpired. Manifest injustice has been par for the course since we started on this process in a Planning and Zoning Board hearing many months ago. We are eager for it to stop.

OPPOSING COUNSEL'S OPPOSITION TO MOTION TO RECONSIDER

We have been in conference with opposing counsel on another motion yet to be filed with this court. The circumstances leading to this Motion to Reconsider have been discussed in this conference. We believe it is accurate to say that the Defendants have taken a position in opposition to this Motion. Opposing Counsel, Kim Schutt, having stated by email (June 2, 2017):

Suffice it to say that I disagree with your statement that designating a record for review is optional here. You have filed an action which asserts that the City Council abused its discretion in deciding your appeal of the approval of the Landmark project, based upon the record before Council at the time of the appeal. Logically, a consideration of the record reviewed by Council is necessary to the determination by the court as to whether there was such an abuse of discretion. If you choose not to designate a record, I think you do so to your own detriment, but that is the plaintiff's decision to make.

As can easily be seen in this statement, it appears that opposing counsel is, at a minimum, prepared to agree that the filing of a motion as allowed by Rule 106 (a) (4) (III) is an option, not a mandate. Nevertheless, we believe it is accurate to state that this Motion is opposed.

WHEREFOR, we respectfully request that this court vacate its ORDER directing us to file a Motion for Certification of the Record as issued in an Order deciding an unrelated matter on May 29th, 2017.

Respectfully submitted this 5th day of June, 2017.

Colleen Hoffman

Colleen Hoffman

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Address of Lead Plaintiff

Rick Hoffman

Rick Hoffman

Ann Hunt

Ann Hunt