

<p>FORT COLLINS MUNICIPAL COURT 214 N. Mason Fort Collins, CO 80521 Phone: (970) 221-6800</p> <hr/> <p>Plaintiffs: COLLEEN HOFFMAN, RICK HOFFMAN, and ANN HUNT,</p> <p>v.</p> <p>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.</p>	<p style="text-align: center;">COURT USE ONLY</p>
<p>Kimberly B. Schutt, #25947 WICK & TRAUTWEIN, LLC 323 South College Avenue, Suite 3 P.O. Box 2166, Fort Collins, CO 80522 Phone Number: (970) 482-4011 E-mail: kschutt@wicklaw.com 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: jduval@fcgov.com</p>	<p>Case Number: 2017-CIVIL01</p>
<p style="text-align: center;">DEFENDANT CITY'S SUPPLEMENT TO RESPONSE TO PLAINTIFFS' MOTION TO RECONSIDER</p>	

COMES NOW the above-named City of Fort Collins Defendants (jointly, "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 City, respectfully submits the following supplement to its response to the Plaintiffs' Motion to Reconsider Order to Submit Motion for Certification of Record:

1. Last week the City filed its response to the Plaintiffs' Motion to Reconsider the Court's order directing them to get a certified record before this Court so that the matter can proceed to a review of the merits of Plaintiffs' allegations that City Council abused its discretion in approving the Landmark Apartments Expansion Project. That Reply brief noted that "motions to reconsider" are disfavored under Colorado law, citing extensive legal authority, and then discussed the inconsistency of Plaintiffs' resistance to providing a record with the review process contemplated by C.R.C.P. 106.

2. This past Friday afternoon, defense counsel received the attached email from plaintiff Colleen Hoffman, accusing defense counsel of making misrepresentations to the Court as to the precedential value of one of the cases cited in the City's response, namely *Stone v. People*, 895 P.2d 1154, 1155-56 (Colo. App. 1995). While Plaintiffs' assertions are better addressed through filing a Reply brief arguing their points of distinction and any countering legal authority, to the extent it exists, the City is submitting this supplemental response to address the Plaintiffs' accusations.

3. First, defense counsel wants to make clear that there has been no misrepresentation to the Court. While it is true the *Stone* case arose in a post-trial context, as opposed to addressing an interlocutory "motion for reconsideration," the point of that case and the other legal authority cited is to emphasize that motions for reconsideration are highly discouraged by our appellate courts in Colorado. This is true at any stage of the proceedings.

4. In fact, the same principles espoused in *Stone* and the other legal authority cited in the City's response is now embodied in the 2014 addition to Rule 121, Section 1-15(11), and made applicable to interlocutory orders. That section expressly states in pertinent part as follows:

"Motions to Reconsider. Motions to reconsider interlocutory orders of the court, meaning motions to reconsider other than those governed by C.R.C.P. 59 or 60, are disfavored. A party moving to reconsider must show more than a disagreement with the court's decision. 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."

5. Since the City's response did not specifically cite to this rule, the City is providing this additional legal authority for the Court's consideration in addressing the Plaintiffs' motion. Notably, the standard set forth in the rule, namely the need to show a manifest error of fact or law to modify an interlocutory order of the court, is akin to the high standard required for deciding a post-judgment motion under C.R.C.P. 59 and 60.

6. The bottom line is that the Plaintiffs' "motion to reconsider" fails to meet this high standard, and asserts a position which is illogical and inconsistent with the type of review which they seek in this case. Accordingly, for the multiple reasons set forth in the City's response and supplemented herein, the Court must deny their "motion to reconsider."

DATED this 19th day of June, 2017.

Respectfully submitted,

WICK & TRAUTWEIN, LLC

By:



Kimberly B. Schutt, #25947
Attorneys for Defendant

And

John R. Duval, #10185

FORT COLLINS CITY ATTORNEY'S OFFICE
P.O. Box 580
Fort Collins, CO 80522
(970) 221-6520

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing SUPPLMENT TO RESPONSE TO PLAINTIFFS' MOTION TO RECONSIDER was SERVED via email this 19th day of June, 2017, on the following:

Colleen Hoffman
1804 Wallenberg Drive
Fort Collins, CO 80526
cohoff@comcast.net

Rick Hoffman
1804 Wallenberg
Fort Collins, CO 80526
Rick-hoffman@comcast.net

Ann Hunt
1800 Wallenberg Drive
Fort Collins, CO 80526
ARH4@comcast.net

Martha L. Fitzgerald
Carolynne C. White
Gina L. Tincher
Brownstein Hyatt Farver Schreck, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202-4432
mfitzgerald@bhfs.com; cwhite@bhfs.com, gtincher@bhfs.com


