

**MUNICIPAL COURT, FORT COLLINS, COLORADO**

Case No.: 2017CIVIL01

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**FINAL ORDER**

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**Plaintiffs:**

COLLEEN HOFFMAN,  
RICK HOFFMAN, and  
ANN HUNT

v.

**Defendants:**

THE CITY COUNCIL OF THE CITY OF FORT COLLINS, the governing body of a Colorado municipal corporations: and THE ADMINISTRATION BRANCH OF THE CITY OF FORT COLLINS, by and through its City Manager, Darin Atteberry, and

**Defendant-Intervenor:**

SUMMITT MANAGEMENT SERVICES, INC.

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THIS MATTER comes before the Court on Plaintiffs' Complaint filed pursuant to Colorado Rules of Civil Procedure 106. Having reviewed the pleadings and all applicable ordinances, substantive law and procedural law, the Court makes the following findings and order:

1. On March 7, 2017, Plaintiffs, Colleen Hoffman, Rick Hoffman, and Ann Hunt filed a Complaint and Request for Injunctive Relief under C.R.C.P. 106 against the City Council of Fort Collins and the Administrative Branch of the City of Fort Collins. Plaintiffs allege the City Council abused its discretion by affirming the Planning and Zoning Board's approval of the Landmark Apartments Expansion Project Development Plan PDP #160013.

Colorado Rule of Civil Procedure 106(4) provides:

(4) Where any governmental body or officer or any lower judicial body exercising judicial or quasi-judicial functions has exceeded its jurisdiction or abused its discretion, and there is no plain, speedy and adequate remedy otherwise provided by law:

(I) Review shall be limited to a determination of whether the body or officer has exceeded its jurisdiction or abused its discretion, based on the evidence in the record before the body or officer.

(II) Review pursuant to this subsection (4) shall be commenced by the filing of a complaint. An answer or other responsive pleading shall then be filed in accordance with the Colorado Rules of Civil Procedure.

(III) If the complaint is accompanied by a motion and proposed order requiring certification of the record, the court shall order the defendant body or officer to file with the clerk on a specified date, the record or such portion of the transcript thereof as is identified in the order, together with a certificate of authenticity. The date for filing the record shall be after the date upon which an answer to the complaint must be filed.

(IV) Within 21 days after the date of receipt of an order requiring certification of a record, a defendant may file with the clerk a statement designating portions of the record not set forth in the order which it desires to place before the court. The cost of preparing the record shall be advanced by the plaintiff, except that the court may, on objection by the plaintiff, order a defendant to advance payment for the costs of preparing such portion of the record designated by the defendant as the court shall determine is unessential to a complete understanding of the controversy; and upon a failure to comply with such order, the portions for which the defendant has been ordered to advance payment shall be omitted from the record. Any party may move to correct the record at any time.

(V) The proceedings before or decision of the officer may be stayed pursuant to Rule 65 of the Colorado Rules of Civil Procedure.

(VI) Where claims other than claims under this Rule are properly joined in the action, the court shall determine the manner and timing of proceeding with respect to all claims.

(VII) A defendant required to certify a record shall give written notice to all parties, simultaneously with filing, of the date of filing the record with the clerk. The plaintiff shall file, and serve on all parties, an opening brief within 42 days after the date on which the record was filed. If no record is requested by the plaintiff, the plaintiff shall file an opening brief within 42 days after the defendant has served its answer upon the plaintiff. The defendant may file and serve an answer brief within 35 days after the service of the plaintiff's brief and the plaintiff may file and serve a reply brief to the defendant's answer brief within 14 days after service of the answer brief.

(VIII) – The court may accelerate or continue any action which, in the discretion of the court, requires acceleration or continuance.

(IX) In the event the court determines that the governmental body, officer or judicial body has failed to make findings of fact or conclusions of law necessary for a review of its action, the court may remand for the making of such findings of fact or conclusions of law.

2. Plaintiffs' complaint was not accompanied by a motion and proposed order requiring certification of the record and therefore, pursuant to section III, the Court did not order Defendants to file with the clerk by a specified date, the record and a certificate of authenticity.

3. On May 29, 2017, the Court ordered Plaintiffs to file a motion and proposed order requiring certification of the record by no later than June 5, 2017. Plaintiffs did not file a motion and proposed order by June 5, 2017.

4. Because Plaintiffs did not to file a motion and proposed order with their complaint or file a motion and order by June 5, 2017 as ordered by the Court, the timeline for filing supporting briefs set forth in C.R.C.P. 106 (a)(4)(VII) is determined by the date Defendants served its answers on Plaintiffs.

5. Defendant, City of Fort Collins, served its answer on May 12, 2017 and Defendant, Summit Management Services, served its answer on May 18, 2017. Applying the latest date of May 18, 2017, Plaintiffs' opening brief was due by June 29, 2017. Defendants' answer briefs would have been due by July 31, 2017, and Plaintiffs' reply brief would have been due by August 14, 2017.

6. The deadlines for filing supporting briefs under C.R.C.P. 106(a)(4)(VII) have expired.

7. The Court's review under section (a)(4) is limited to a determination of whether the governmental body or officer has exceeded its jurisdiction or abused its discretion, based on the evidence in the record before the defendant body or officer. *Covered Bridge, Inc. v. Town of Vail*, 197 P.3d 281 (Colo. App. 2008).

8. This Court does not have a certified record or a supporting brief from Plaintiffs for it to conduct a meaningful review. "Meaningful review requires that there be a record that accurately and fully reflects the evidence relied upon and the findings of fact and conclusions of law from the agency's proceedings, so that the reviewing court is able to determine, upon the state of the record before it, whether the agency's actions were arbitrary and capricious." *Martinez v. Bd. of Comm'rs of the Housing Auth. of the City of Pueblo*, 992 P.2d 692 (Colo. App. 1999).

9. Plaintiffs filed their complaint over five months ago and with the exception of several miscellaneous motions, Plaintiffs have failed to comply with C.R.C.P. 106(4) and properly pursue their case.

IT IS HEREBY ORDERED that this matter be DISMISSED with prejudice.

DATED this 5<sup>th</sup> day of September, 2017.

BY THE COURT

By: Geri R. Joneson  
Geri R. Joneson, Municipal Court Judge

**CERTIFICATE OF SERVICE**

I certify that on 9/5/2017, I served the above and forgoing FINAL ORDER to the following persons via electronic mail as follows:

**Plaintiffs:**

Colleen Hoffman  
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Rick Hoffman  
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Ann Hunt  
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**Defendants:**

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**Intervenors:**

Martha Fitzgerald  
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Carolynne C. White  
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Gina L Tincher  
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Patty Netherton, Court Administrator