

<p>DISTRICT COURT, LARIMER COUNTY, COLORADO Larimer County Justice Center 201 Laporte Avenue, Suite 100 Fort Collins, CO 80521-2761</p>	<p>DATE FILED: April 2, 2018 2:13 PM FILING ID: 8AFBDBA5AAAC7 CASE NUMBER: 2018CV125</p>
<p>Plaintiff: RORY HEATH, as an individual plaintiff and on behalf of other concerned residents and parties,</p> <p>v.</p> <p>Defendants: CITY OF FORT COLLINS CITY COUNCIL, a municipal governing body; and the CITY OF FORT COLLINS.</p>	<p>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: 18CV125</p> <p>Courtroom: 5A</p>
<p align="center">DEFENDANTS' UNOPPOSED MOTION FOR ENLARGEMENT OF TIME TO FILE RESPONSIVE PLEADING</p>	

Defendants, City of Fort Collins City Council and the City of Fort Collins [“the City”], by and through their counsel, WICK & TRAUTWEIN, LLC and the Fort Collins City Attorney’s Office, respectfully submits the following unopposed motion for enlargement of time to file a responsive pleading in this Rule 106 action initiated by the Plaintiff, Rory Heath. In support hereof, the City states as follows:

1. **RULE 121 CERTIFICATION:** Undersigned counsel for the City hereby advises the Court that she has conferred extensively with the Plaintiff regarding the issues discussed below and the requested enlargement of time. Undersigned counsel is authorized to state that Plaintiff consents to the relief requested.

2. The Plaintiff has filed a Complaint requesting this Court to review and reverse the City Council's decision from February 13, 2018, in which it upheld the City's Planning and Zoning Board approval of a housing project known as Union on Elizabeth. The Complaint was served on the City on March 13, 2018. Therefore, under C.R.C.P. 106(a)(4)(II) and C.R.C.P. 12(a)(1), the City's Answer to the Amended Complaint would ordinarily be due this coming Tuesday, April 3, 2018, which is 21 days after service.

3. The City believes the Plaintiff has failed to join an indispensable party to this action, namely the applicant owner for the Union on Elizabeth project. The Colorado appellate courts have repeatedly held that a zoning applicant is an indispensable party to a Rule 106(a)(4) action challenging that particular zoning decision made by a governmental body. *Black Canyon Citizens Coalition, Inc.*, 80 P.3d 932, 933 (Colo. App. 2003); *Thorne v. Bd. Of County Com'rs of Fremont County*, 638 P.2d 69, 71 (Colo. 1981); *Norby v. City of Boulder*, 577 P.2d 277, 280 (Colo. 1978); *Hidden Lake Development Co. v. District Court*, 515 P.2d 632, 635 (Colo. 1973); *Hennigh v. County Com'rs*, 450 P.2d 73 (Colo. 1969).¹

4. As noted above, undersigned counsel has conferred with the Plaintiff regarding this issue, to determine whether the Plaintiff will voluntarily amend his Complaint to name the applicant as an additional defendant, or whether the City needs to file a motion to dismiss his Complaint for failure to join an indispensable party. Plaintiff has indicated he needs more time to research the case law that defense counsel provided to him last week (namely that set forth above) and to do additional research. The parties have thus agreed to a brief enlargement of the responsible pleading deadline, subject to this Court's approval, in order to resolve this critical issue.

5. Accordingly, the City seeks a brief one-week enlargement of the deadline to respond to the Complaint, extending it to Tuesday, April 10, 2018. Of course, if the Plaintiff elects to voluntarily amend his Complaint to join the applicant owner for the Union on Elizabeth project, it will have the effect of creating a new deadline 21-days after the City is served with the amended complaint.

6. This motion is made in good faith and in cooperation with the pro se Plaintiff in this case. No prejudice should be incurred to any party, as reflected by the consent and agreements described above.

¹ In fact, as reflected in these cited cases, it used to be that the applicant had to be named as a defendant within the former 30-day time period for filing a Rule 106(a)(4) challenge to a zoning decision, otherwise the action was subject to dismissal with prejudice for having been untimely perfected. However, Rule 106(b) has since been modified to avoid this trap, expressly authorizing amendments to add, dismiss or substitute parties, with such amendment relating back to the date of the filing of the original complaint. *Black Canyon Citizens Coalition, Inc.*, 80 P.3d at 933. The applicant is nevertheless considered an indispensable party, and failure to name it as a defendant or to take appropriate steps to add it as a party warrants dismissal.

WHEREFORE, the City respectfully requests the Court enter an order enlarging its deadline to respond to the Plaintiff's Complaint to Tuesday, April 10, 2018, with the understanding that if Plaintiff voluntarily amends his Complaint to join the applicant as a defendant, the deadline for a responsive pleading will then be 21 days after an Amended Complaint is filed and served on the City.

RESPECTFULLY SUBMITTED this 2nd day of April, 2018.

WICK & TRAUTWEIN, LLC

This document was served electronically pursuant to C.R.C.P. 121 §1-26. The original pleading signed by Kimberly B. Schutt is on file at the offices of Wick & Trautwein, LLC

By: s/Kimberly B. Schutt
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And

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CERTIFICATE OF ELECTRONIC FILING

The undersigned hereby certifies that a true and correct copy of the foregoing **DEFENDANTS' UNOPPOSED MOTION FOR ENLARGEMENT OF TIME TO FILE RESPONSIVE PLEADING** was filed via Colorado Courts E-Filing System and served this 2nd day of April, 2018, on the following:

Rory Heath
2831 Ridgelen Way
Colorado Springs, CO 80918
Via email to roryheath1@gmail.com

/s/ Jody L. Minch

*[The original certificate of electronic filing signed by Jody L. Minch
is on file with the law offices of Wick & Trautwein, LLC.]*