

<p>Fort Collins Municipal Court 215 N. Mason Fort Collins, CO 80521 (970) 221-6800</p> <hr/> <p>Plaintiffs: Erik Sutherland, J & M Distributing, DBA Fort Collins Muffler & Automotive</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>Intervenor: Next Chapter Properties, LLC, an Illinois limited liability company.</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Jeffrey B. Cullers, No. 41969 Herms & Herrera, LLC Attorneys for Next Chapter Properties, LLC 3600 S. College Ave., Suite 204 Fort Collins, CO 80525 Phone Number: 970-498-9999 Fax Number: 970-472-5365 E-Mail: jeff@hhlawoffice.com</p>	<p>Case Number: 2018civil01</p>
<p>NEXT CHAPTER PROPERTIES, LLC’s ANSWER AND AFFIRMATIVE DEFENSES TO SECOND AMENDED COMPLAINT</p>	

Comes now Next Chapter Properties, LLC, (“Next Chapter”), by and through its attorney Jeffrey Cullers of the law firm Herms & Herrera, LLC, and submits this Answer to the Second Amended Complaint Brought Under C.R.C.P. Rule 106, and Request for Declaratory Judgment (the “SAC”) filed June 15, 2018, and Affirmative Defenses, as follow:

ANSWER

Next Chapter denies each and every allegation contained in Plaintiffs' SAC that is not expressly admitted below. Any factual allegation admitted below is admitted only as to the specific admitted facts, and not as to any purported characterizations, implications, speculations, or legal conclusions that arguably follow from the facts admitted. Next Chapter denies that Plaintiffs are entitled to any relief.

In response to the first three paragraphs of the "Introduction" section of the SAC, Next Chapter states that such allegations are legal conclusions to which no response is required because the cited authorities speak for themselves. Next Chapter admits that venue for this action is proper in the Fort Collins Municipal Court.

In response to the last paragraph of the "Introduction" section of the SAC, Next Chapter states that it is simply a narrative of Plaintiffs' opinions to which no response is required, however, to the extent a response is deemed required, Next Chapter denies the allegations.

Next Chapter addresses the remainder of the SAC's content by responding to the numbered paragraphs as follows:

1. The allegations of this paragraph are legal conclusions not pertaining to Next Chapter and so no response is required.
2. The allegations of this paragraph are legal conclusions not pertaining to Next Chapter and so no response is required.
3. The allegations of this paragraph are legal conclusions not pertaining to Next Chapter and so no response is required.

4. The allegations of this paragraph are legal conclusions not pertaining to Next Chapter and so no response is required.

5. In response to the allegations of Paragraph 5, Next Chapter admits that Sutherland and another individual appealed the Planning and Zoning Board decision. Next Chapter lacks knowledge as to Sutherland's citizenship and so denies such allegation. The remaining allegations of this paragraph are legal conclusions and so response is required, but to the extent a response is deemed required, Next Chapter denies such allegations.

6. In response to the allegations of the first sentence of Paragraph 6, Next Chapter admits that J&M is a corporation; Next Chapter lacks knowledge as to the remaining allegations and so denies them. Next Chapter lacks knowledge as to the allegations of the next two sentences of this Paragraph and so denies them. The remaining allegations of this Paragraph are legal conclusions and so response is required, but to the extent a response is deemed required, Next Chapter denies such allegations.

7. In response to the allegations of Paragraph 7, Next Chapter admits that venue is proper in the Fort Collins Municipal Court. The remaining allegations of this paragraph are legal conclusions and so response is required.

8. The allegations of Paragraph 8 are legal conclusions or mere descriptions of Plaintiffs' lawsuit and so no response is required.

9. The allegations of Paragraph 9 are legal conclusions and so response is required.

10. The allegations of Paragraph 10 are legal conclusions or mere descriptions of Plaintiffs' lawsuit and so response is required.

11. Admit.

12. In response to the allegations of Paragraph 12, Next Chapter admits that a notice of appeal was filed. The remaining allegations of Paragraph 12 are legal conclusions and so response is required.

13. In response to the allegations of Paragraph 13, Next Chapter states that the appeal filed on February 1, 2018 speaks for itself and so Plaintiffs' allegations are denied to the extent they mistate the appeal.

14. In response to the allegations of Paragraph 14, Next Chapter admits that City Counsel considered the appeal on February 27, 2018. The remaining allegations are denied, except that the citation to a provision of the City Code is a legal conclusion to which no response is required and so Next Chapter does not respond such conclusion.

15. The allegations of Paragraph 15 merely characterize the City Council's Resolution 2018-023. Such document speaks for itself and so Plaintiffs' allegations are denied to the extent they mistate the Resolution.

First Claim for Relief

16. Next Chapter incorporates its previous responses as if fully set forth herein.

17. In response to the allegations of Paragraph 17, Next Chapter states that the appeal filed on February 1, 2018 speaks for itself.

17. In response to the allegations of the Second Paragraph 17, Next Chapter states that it lacks sufficient knowledge as to what was presented to the Planning and Zoning Board and so denies the allegations.

18. The allegations of Paragraph 18 legal conclusions and so no response is required.

19. The allegations of Paragraph 19 are Plaintiff's opinion and so no response is required.

20. In response to the allegations of Paragraph 20, Next Chapter states that the transcript speaks for itself.

21. In response to the allegations of Paragraph 21, Next Chapter states that the transcript speaks for itself.

22. The allegations of Paragraph 22 are legal conclusions and so response is required.

23. Denied.

24. Denied.

25. Denied.

Second Claim for Relief

26. Next Chapter incorporates its previous responses as if fully set forth herein.

27. In response to the allegations of Paragraph 27, Next Chapter states that the appeal filed on February 1, 2018 speaks for itself.

28. In response to the allegations of Paragraph 28, Next Chapter states that the appeal filed on February 1, 2018 speaks for itself.

29. The allegations of Paragraph 29 are legal conclusions and so response is required.

30. In response to the allegations of the last sentence of Paragraph 30, Next Chapter states that the appeal filed on February 1, 2018 speaks for itself. The remaining allegations of Paragraph 30 are legal conclusion or authorities and so response is required, or alternatively, the legal authorities cited speak for themselves.

31. Denied.

32. In response to the allegations of Paragraph 32, Next Chapter states that the record of the City Council proceedings speaks for itself.

33. In response to the allegations of the first sentence of Paragraph 33, Next Chapter states that the appeal filed on February 1, 2018 speaks for itself. Next Chapter denies the remaining allegations.

Third Claim for Relief

34. Next Chapter incorporates its previous responses as if fully set forth herein.

35. In response to the allegations of the first sentence of Paragraph 35, Next Chapter states that the appeal filed on February 1, 2018 speaks for itself. The remaining allegations appear to be Plaintiffs' opinion or legal conclusions to which no response is required.

36. In response to the allegations of the first sentence of Paragraph 36, Next Chapter states that the PDP speaks for itself and denies Plaintiffs' contrary characterization. The remaining allegations of Paragraph 36 are legal conclusions and so response is required.

37. Next Chapter does not understand the allegations of Paragraph 37 or views them as legal conclusions, and so such allegations are denied.

38. The allegations of the first sentence of Paragraph 38 are denied. The remaining allegations appear to be legal conclusions or Plaintiffs opinion, to which no response is required.

39. Denied.

40. In response to the allegations of the first sentence of Paragraph 40, Next Chapter states that the appeal filed on February 1, 2018 speaks for itself. Next Chapter denies the remaining allegations.

41. Next Chapter denies that Plaintiffs are entitled to the relief stated.

Fourth Claim for Relief

42. Next Chapter incorporates its previous responses as if fully set forth herein.

43. Next Chapter does not understand the allegations of Paragraph 43 or views them as legal conclusions and so such allegations are denied.

44. The allegations of the first sentence of Paragraph 44 are denied. The remaining allegations appear to be legal conclusions or Plaintiffs' opinion, to which no response is required.

45. Denied.

46. In response to the allegations of the first sentence of Paragraph 46, Next Chapter states that the appeal filed on February 1, 2018 speaks for itself. Next Chapter denies the remaining allegations.

47. Next Chapter denies that Plaintiffs are entitled to the relief stated.

Fifth Claim for Relief

48. Next Chapter incorporates its previous responses as if fully set forth herein.

49. The allegations of Paragraph 49 appear to be legal conclusions or Plaintiffs' opinion, to which no response is required.

50. The allegations of Paragraph 50 appear to be legal conclusions or Plaintiffs' opinion, to which no response is required.

51. The allegations of Paragraph 51 appear to be legal conclusions or Plaintiffs' opinion, to which no response is required.

52. The allegations of Paragraph 52 appear to be legal conclusions or Plaintiffs' opinion, to which no response is required.

53. The allegations of Paragraph 53 appear to be legal conclusions or Plaintiffs' opinion, to which no response is required.

54. In response to the allegations in the first sentence of Paragraph 54, Next Chapter states that the record of the appeal proceedings speaks for itself and further states it lacks sufficient knowledge as to the proceedings and so denies the allegations. The remaining allegations of Paragraph 54 appear to be legal conclusions or Plaintiffs' opinion, to which no response is required.

55. The allegations of Paragraph 55 appear to be legal conclusions or Plaintiffs' opinion, to which no response is required.

56. In response to the allegations of the first sentence of Paragraph 56, Next Chapter states that the appeal filed on February 1, 2018 speaks for itself. Next Chapter denies the remaining allegations.

57. Next Chapter denies that Plaintiffs are entitled to the relief stated. The remaining allegations of Plaintiffs SAC are a prayer for relief, to which Next Chapter responds by denying that Plaintiffs are entitled to any relief.

AFFIRMATIVE DEFENSES

1. Plaintiffs fail to state a claim upon which relief can be granted.
2. Plaintiffs' claims lack substantial justification and so Next Chapter is entitled to recover its reasonable fees and costs incurred in this matter. C.R.S. § 13-17-102.
3. One or more Plaintiffs lack standing.

4. One or more Plaintiffs failed to exhaust administrative remedies regarding one or more of the issues raised in this action.

5. The Court has no jurisdiction over Plaintiffs' claims regarding the constitutionality of any provisions because such claims cannot be brought via an action under C.R.C.P. 106.

Next Chapter reserves the right to add additional affirmative defenses and counterclaims as they become known.

WHEREFORE, Intervenor Next Chapter Properties, LLC prays that the Court dismiss this action, that Plaintiffs take nothing, that Next Chapter be awarded its reasonable attorneys fees and costs, and that the Court grant such other and further relief to which Next Chapter shows itself justly entitled.

Respectfully submitted this 9th day of July, 2018

HERMS & HERRERA, LLC

/s/ Jeffrey B. Cullers [Signature on File]

Jeffrey B. Cullers, #41969

Attorney for Intervenors

E-Filed copy of document with original signature
maintained by the filing party

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 9th day of July, 2018 a true and correct copy of the above and foregoing was filed via email and served on all parties via email as follows:

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