

FILED IN COMBINED COURTS
LARIMER COUNTY COLORADO

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DATE FILED: June 22, 2018
CASE NUMBER: 2018CV125

District Court, Larimer County, Colorado
Court Address: 201 La Porte Ave
Suite 100
Fort Collins, CO 80521

**Rory Heath as an individual plaintiff and on behalf of
other concerned residents and parties**

Plaintiffs, Pro Se

v.

**City of Fort Collins City Council, a municipal
governing body; and the City of Fort Collins,**

Defendants

Ripley Design, Applicant

Defendants

Elizabeth Street Co. Manager LLC, Owner

Defendants

▲ COURT USE ONLY ▲

Plaintiff Rory Heath
2831 Ridgeglen Way
Colorado Springs, CO 80918
Phone: 719-216-4319
Email: RoryHeath1@gmail.com

Case Number: 2018CV125
Division:
Courtroom:

FIRST AMENDED COMPLAINT

A Plaintiff, Rory Heath ("Mr. Heath"), for his First Amended Complaint, states as follows:

THE PARTIES

1. Mr. Heath is a City of Fort Collins resident. He resides within the City of Fort Collins, in a property that is in close proximity to the Union on Elizabeth proposed project

("Proposed Project") and is affected by the governmental decisions at-issue in this action before the court. He appears before the court as an individual plaintiff, and on behalf of other concerned residents and parties.

2. The City of Fort Collins City Council, a municipal governing body; ("City Council") and the City of Fort Collins, a municipality, are the defendants in this action and are the entities responsible for processing, evaluating, and adopting the decisions at-issue herein.
3. Ripley Design is listed as "Applicant" in regards to the *Proposed Project*, and is listed as such in city documents and hearing agenda items for the meetings referenced herein.
4. Elizabeth Street Co. Manager LLC is listed as "Owner" in regards to the *Proposed Project*, and is listed as such in city documents and hearing agenda items for the meetings referenced herein.

JURISDICTION AND VENUE

5. By virtue of the facts alleged herein, and because the claims alleged in this lawsuit arise under Colorado law, this Court has subject matter jurisdiction over the claims in this action and personal jurisdiction over the parties.
6. Venue is appropriate in Larimer County, Colorado because the project and immediate geographical area surrounding the project are within said county, and the claims in this action stem from actions taken by the Defendants which affect property in Larimer County.

FACTUAL ALLEGATIONS

7. This action stems primarily from the City of Fort Collins continued and repeated refusal to listen to its' constituents' emails, public comment, appeals of board decisions and general pleadings of care and safety.
8. On a daily basis, as part of his residency in the immediate surrounding area of the proposed site, the plaintiff walks, drives, and enjoys the aesthetic makeup and beautiful views of said surrounding area, encompassed within the PLSS legal description of:

Township 6 North Range 69 West, 6th P.M.
Township 6 North Range 70 West, 6th P.M.
Township 7 North Range 69 West, 6th P.M

Township 7 North Range 70 West, 6th P.M.

9. The Plaintiff's residence is geographically closest to the intersection of the Fort Collins Streets City Park Avenue and University Avenue, also located within the immediate surrounding area of the *Proposed Project*. Said intersection is immediately affected by any closures, detours or re-routing relating to the streets of it's own interconnected immediate vicinity. Among that immediate vicinity are the Fort Collins streets of South Shields Street, Westward Drive, Springfield Drive, Bennett Road, and West Elizabeth Street (the facing street of the *Proposed Project* and said project's sole access and exit route to the property).
10. In the Plaintiff's first-hand observation and experience living at the City Park Avenue and University Avenue intersection, he has observed it to be especially wrought with low visibility, drivers of high speed and near-jerk acceleration from the surrounding businesses, traffic of all forms (pedestrian, bike and vehicular) from the Colorado State University Campus and through traffic of all forms from the connecting corridors and high occupancy housing in the surrounding areas.
11. In the Plaintiff's first-hand observation and experience living at the City Park Avenue and University Avenue intersection, he has observed the parking to be it's own overflow parking of the same factors as listed immediately above: the neighboring business centers, high occupancy residences, residential houses, restrictive stadium events and permit parking zones, stadium events themselves (at both the basketball arena and the football stadium) and student/staff-related Colorado State University parking, in addition to the parking for the residents and visitors of the domiciles closest to the intersection.
12. The Plaintiff spoke at the Fort Collins Planning and Zoning Board meeting held on Dec 14th, 2017 regarding the *Proposed Project*.
13. The Plaintiff filed an appeal and presented, as the appellate, at the appeal hearing held before City Council (in a quasi-judicial role) held at Fort Collins City Hall on Feb 13th, 2018, regarding the Fort Collins Planning and Zoning board's approval of the Proposed Project.
14. The Plaintiff resides within the immediate surrounding area of the proposed site.
15. As per the Fort Collins Land Use Code and Fort Collins Municipal Code, Plaintiff Rory Heath is designated as a "party in interest" due in nature to the fact that he both spoke during public comment at the Fort Collins Planning and Zoning Board meeting held on Dec 14th, 2017 regarding the *Proposed Project* and filed an appeal and presented, as the appellate, at the appeal hearing held before City Council (in a quasi-judicial role) held at Fort Collins City Hall on Feb 13th, 2018 regarding the same *Proposed Project* and the Planning and Zoning Board's decision.

16. The Fort Collins City Council issued a quasi-judicial decision at the conclusion of the appeal hearing held before it on Feb 13th, 2018. This decision is severely questioned, and asked for review herein.

REQUEST

17. Request to review and reverse Fort Collins City Council decision dated Feb 13th, 2017 regarding the Appeal of the Union on Elizabeth proposed project ("Proposed Project"), and it's decision to uphold the decision of the Fort Collins Planning and Zoning Board. Plaintiff seeks review and reversal of the decision by Fort Collins City Council on the stated date, pursuant to C.R.C.P. 106 (a)4, C.R.C.P. 106 (a)2, C.R.C.P. 57 and § 24-4-106, C.R.S.
18. The Plaintiff requests a Judicial review of Fort Collins City Council actions on Feb 13th, 2018 at 6:00 PM. Within that meeting, Fort Collins City Council did not follow within it's own established procedures as outlined in the Fort Collins Municipal code, and in doing so, exceeded its jurisdiction and abused its discretion. Additionally, Fort Collins City Council did not adhere to the Fort Collins Land Use Code in it's decision. As a related consequence of their actions that day, Fort Collins City Council acted arbitrarily and capriciously, without consideration for the circumstances, at times placing it's constituents safety and well-being in question.

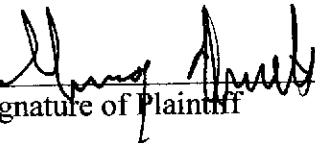
DESIGNATION OF RECORD

The Plaintiff requests that the following non-exhaustive list be designated as relevant parts of the record, with the intent and understanding that further relevant documents could be added later, as discovery provides, within the rules of the court.

1. The original or certified copies of all pleadings, applications, evidence, exhibits, and other papers presented to or considered by Fort Collins City Council on Feb 13th, 2018, and the Fort Collins Planning and Zoning Board on Dec 14th, 2017.
2. A complete transcript of the hearing held on Feb 13th, 2018 at 6:00PM by the City Council of Fort Collins, as identified in this action.
3. The City Administered Video Recording of the hearing held before the City Council of Fort Collins on Feb 13th, 2018 at 6:00 PM and City Administered Video Recording of the hearing held before the Planning and Zoning Board of Fort Collins regarding The Union on Elizabeth project on Dec 14th, 2017 at 6:00 PM.

4. A complete transcript of the Planning and Zoning Board meeting held on Dec 14th, 2017 at 6:00 PM.
5. The written order issued by the Fort Collins City Council, as identified in this action.
6. Any additional and related documents, and correspondence communications between the defendants and those operating as their agents.

I, hereby request that this Court find that the Fort Collins City Council decision on Feb 13th, 2018 be reversed.

 6/22/20
Signature of Plaintiff Date

Mary Heath
Printed Name of Plaintiff

2031 Bridgeman Way
Address

Colorado Springs, CO 80901
City, State, Zip Code

7
(Area Code) Telephone Number

CERTIFICATE OF SERVICE

I certify that on June 22, 2018 a true and accurate copy of the foregoing document was served in-person and/or emailed to:

City of Fort Collins
John Duval
Attorney for City of Fort Collins

Kimberly B. Schutt, of Wick and Trautwein, LLC
Outside Council for City of Fort Collins

I certify that on June 22, 2018 a true and accurate copy of the foregoing document was served in-person and/or emailed to:

Ripley Design, Applicant

Elizabeth Street Co. Manager LLC, Owner