

brought as a class action with Mr. Heath designated as a representative plaintiff. To the extent Paragraph 1 of the First Amended Complaint contains any further allegations, the City denies the same.

2. With regard to the allegations in Paragraph 2 of the First Amended Complaint, the City admits that it is a home rule municipal corporation and that the City Council is its governing body. The City denies the remaining allegations of the Plaintiff's First Amended Complaint, as broadly stated. The City admits, however, that the City Council was responsible for conducting the hearing on Plaintiff's appeal from the Planning and Zoning Board's ["the Board"] approval of the Preliminary Development Plan for the Union on Elizabeth project ["the Project"] and making the decision to uphold said approval by the Board, leading to the Plaintiff's filing of this action.

3. With regard to the allegations of Paragraph 3 of the Plaintiff's First Amended Complaint, the City admits that Ripley Design and/or its representative(s) was listed as "Applicant" or "Applicant/Planner" in some of the documents and agenda items for the hearing held before the Board on December 14, 2017, which were part of the record in the appeal hearing held before City Council on February 13, 2018.

4. With regard to the allegations of Paragraph 4 of the Plaintiff's First Amended Complaint, the City admits that Elizabeth Street Co. Manager, LLC was listed as "Owner" in some of the documents and agenda items for the hearing held before the Board on December 14, 2017, which were part of the record in the appeal hearing held before City Council on February 13, 2018.

5. With regard to the allegations of Paragraph 5 of the First Amended Complaint, the City admits that this Court has subject matter jurisdiction over its action under Rule 106(a)(4), and that the Court has personal jurisdiction over the City defendants. The City is without sufficient information and belief as to the necessary facts to support Plaintiff's allegations regarding the Court's personal jurisdiction over the remaining defendants, and therefore must deny the same.

6. With regard to the allegations in Paragraph 6 of the First Amended Complaint, the City admits that Larimer County is the proper venue for this action.

7. The City denies the allegations of Paragraph 7 of the Plaintiff's First Amended Complaint.

8. The City is without sufficient information and belief to either admit or deny the allegations in Paragraph 8 of the First Amended Complaint as to Plaintiff's alleged activities in the vicinity of the Project, and therefore must deny the same. The City also denies the Plaintiff's statement of the legal description for the Project property, as it is not consistent with the legal description set forth in the planning documents before the Board and Council.

9. With regard to the allegations of Paragraph 9 of the First Amended Complaint, the City is without sufficient information and belief to either admit or deny the Plaintiff's allegations regarding the location of his purported residence, for the reasons stated in Paragraph 1 of this Answer above, and therefore must deny the same. The City denies the remaining allegations of Paragraph 9 of the First Amended Complaint, as stated. The City admits that the Project is in the *general* vicinity of the intersection of City Park Avenue and University Avenue, and that Westward Drive, Springfield Drive and Bennett Road are in the *general* vicinity and to the south of the Project, but the City denies that said intersection or streets will be immediately or primarily affected by the Project. Further, while the City admits that Shields Street is immediately to the south of the Project, the City denies that it is the sole access and exit route for the property. To the extent Paragraph 9 of the First Amended Complaint contains any further allegations, the City denies the same.

10. The City is without sufficient information and belief to either admit or deny the allegations in Paragraph 10 of the First Amended Complaint as to Plaintiff's alleged observations, and therefore must deny the same.

11. The City is without sufficient information and belief to either admit or deny the allegations in Paragraph 11 of the First Amended Complaint as to Plaintiff's alleged observations and experience, and therefore must deny the same.

12. The City admits the allegations of Paragraph 12 of the First Amended Complaint.

13. The City admits the allegations of Paragraph 13 of the First Amended Complaint, subject to the correction that the Plaintiff was the Appellant, not the "Appellate" as stated by the Plaintiff.

14. The City is without sufficient information and belief to either admit or deny the allegations in Paragraph 14 of the First Amended Complaint, for the reasons stated in Paragraph 1 of this Answer above, and therefore must deny the same.

15. With regard to the allegations of Paragraph 15 of the Plaintiff's First Amended Complaint, the City admits that Plaintiff was a "Party-in-Interest" pursuant to Section 2-46 of the Fort Collins Municipal Code, by virtue of having been a person who appeared before the Board at its hearing on the Project on December 14, 2017. He thus had standing under said Code provision to appeal the Board's decision to City Council. Said Code section, and other relevant provisions of the City's Land Use Code, speak for themselves. The City also admits that the Plaintiff filed an appeal and presented his position at the City Council appeal hearing on February 13, 2018, and that City Council was acting in a quasi-judicial capacity in said hearing. To the extent Paragraph 15 of the Plaintiff's First Amended Complaint contains any further allegations, the City denies the same.

16. The City admits the allegation in Paragraph 16 of the Plaintiff's First Amended Complaint that the City Council issued a decision in a quasi-judicial capacity at the conclusion of the appeal hearing held February 13, 2018. The City denies the remaining allegations of Paragraph 16.

17. With regard to Paragraphs 17 and 18 of the Plaintiff's First Amended Complaint, said paragraphs appears to be Plaintiff's statement of the relief he is requesting, and thus are not factual allegations that necessarily call for an admission or denial on the part of the City. While the City generally admits it is proper for this Court to grant review of the City Council's decision under C.R.C.P. 106(a)(4), the City denies that Plaintiff is entitled to reversal of the City Council's decision upholding the Board's approval of the Project under said Rule. The City further denies that Plaintiff is entitled to any review or relief under C.R.C.P. 106(a)(2), C.R.C.P. 57 and C.R.S. §24-4-106, and specifically denies that said rules of procedure and statute apply here. The City denies all remaining allegations of Paragraphs 17 and 18 of the First Amended Complaint.

18. The remaining provisions of the First Amended Complaint appear to be the Plaintiff's designation of record, and not any factual allegations, and thus do not require any admissions or denials on the part of the City. However, the City does deny that the Plaintiff has followed the proper procedure set forth in C.R.C.P. 106(a)(4)(III) for certification of a record. The City further states that, pursuant to C.R.C.P. 106(a)(4)(I), this Court's review shall be limited to the evidence in the record before the City Council. Therefore, to the extent Plaintiff has designated for the record "any additional and related documents, and correspondence communications between the defendants and those operating as their agents," said designation is improper as being beyond the scope of review set forth in C.R.C.P. 106(a)(4)(I) and potentially seeking attorney-client privileged information. The City also denies that Plaintiff is entitled to any discovery under these Rule 106(a)(4) proceedings, or that he is entitled to later designate additional items for the record under the procedure set forth in Rule 106(a)(4).

AFFIRMATIVE DEFENSES

1. The First Amended Complaint states one or more claims upon which relief cannot be granted as a matter of law, requiring dismissal.
2. The City Council's Resolution upholding the Board's approval of the Project and denying the Plaintiff's appeal is supported by controlling provisions of the Fort Collins Municipal Code and Land Use Code, and competent evidence in the record and, therefore, the City Council has not exceeded its jurisdiction or abused its discretion.
3. Governmental proceedings, such as the City Council's resolution of the subject appeal, are accorded a presumption of validity and regularity, and all reasonable doubts as to the correctness of the governmental body's ruling must be resolved in its favor.

4. One or more of the Plaintiffs' claims may be barred by the doctrine of waiver and/or estoppel.
5. The City reserves the right to add or delete affirmative defenses based on information gathered in the further investigation of this case.

WHEREFORE, the City respectfully prays that the Court enter judgment in its favor and against the Plaintiff, upholding all of the actions of the City Council, and further award the City its reasonable attorney's fees and costs, and for such further relief as the Court shall deem just and proper.

DATED this 12th day of July, 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
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 ELECTRONIC FILING

The undersigned hereby certifies that a true and correct copy of the foregoing City Defendants' Answer to Plaintiff's First Amended Complaint was filed via Colorado Courts E-Filing System and served this 12th day of July, 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.]*