

District Court, Larimer County, Colorado 201 La Porte Avenue Suite 100 Ft. Collins, CO 80521	DATE FILED: September 6, 2018 1:50 PM FILING ID: DF8487B4AC9D9 CASE NUMBER: 2018CV125
<p>Plaintiff, Pro Se: RORY HEATH as an individual plaintiff and on behalf of other concerned residents and parties.</p> <p>v.</p> <p>Defendant: CITY OF FORT COLLINS CITY COUNCIL, a municipal governing body and the CITY OF FORT COLLINS; RIPLEY DESIGN, Applicant; and ELIZABETH STREET CO. MANAGER LLC, Owner.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p>Case Number: 2018CV125</p> <p>Div.:</p>
<p>Attorney for Elizabeth Street Co. Manager LLC:</p>	
<p>Names: Sean M. Hanlon, #39686 Jessica J. Smith, #46435</p> <p>Address: HOLLAND & HART LLP 555 17th Street, Suite 3200 Denver, Colorado 80201-8749</p> <p>Telephone: 303-295-8000</p> <p>Facsimile: 303-295-8261</p> <p>E-Mail: smhanlon@hollandhart.com jjsmith@hollandhart.com</p>	
<p style="text-align: center;">ANSWER TO FIRST AMENDED COMPLAINT</p>	

Defendant Elizabeth Street Co. Manager LLC (“Defendant”) files this answer to Plaintiff’s First Amended Complaint (“Complaint”) as follows.

PARTIES

1. Defendant lacks sufficient information to either admit or deny the allegations in Paragraph 1 of the Complaint, and therefore denies them. In response to the allegation that Plaintiff resides within the City of Fort Collins, Defendant states that the caption of the Complaint lists a Colorado Springs address for the Plaintiff. Further, and even if Plaintiff has standing to prosecute the Complaint, Defendant specifically denies that Plaintiff has standing to

prosecute the Complaint “on behalf of other concerned residents and parties.”

2. Defendant lacks sufficient information to either admit or deny the allegations in Paragraph 2 of the Complaint, and therefore denies them.

3. In response to Paragraph 3 of the Complaint, Defendant states affirmatively that the terms of the relevant application speak for themselves, and Defendant denies any allegations inconsistent therewith.

4. In response to Paragraph 4 of the Complaint, Defendant states affirmatively that the terms of the relevant application speak for themselves, and Defendant denies any allegations inconsistent therewith.

JURISDICTION AND VENUE

5. Defendant admits that the Court has subject matter jurisdiction. The remaining allegations contained in Paragraph 5 of the Complaint contain legal conclusions for which no response is required. To the extent a response is required, Defendant denies the remaining allegations contained in Paragraph 5.

6. Defendant admits that venue is proper pursuant to C.R.C.P. 98.

FACTUAL ALLEGATIONS

7. Defendant lacks sufficient information to either admit or deny the allegations in Paragraph 7 of the Complaint, and therefore denies them.

8. Defendant lacks sufficient information to either admit or deny the allegations in Paragraph 8 of the Complaint, and therefore denies them.

9. Defendant lacks sufficient information to either admit or deny the allegations in Paragraph 9 of the Complaint, and therefore denies them.

10. Defendant lacks sufficient information to either admit or deny the allegations in Paragraph 10 of the Complaint, and therefore denies them.

11. Defendant lacks sufficient information to either admit or deny the allegations in Paragraph 11 of the Complaint, and therefore denies them.

12. Defendant lacks sufficient information to either admit or deny the allegations in Paragraph 12 of the Complaint, and therefore denies them.

13. Defendant lacks sufficient information to either admit or deny the allegations in Paragraph 13 of the Complaint, and therefore denies them.

14. In response to Paragraph 14 of the Complaint, Defendant fully incorporates its response to Paragraph 1 by this reference.

15. In response to Paragraph 15 of the Complaint, Defendant states affirmatively that the terms of the Fort Collins Land Use Code and Fort Collins Municipal Code speak for themselves, and Defendant denies any allegations inconsistent therewith.

16. In response to Paragraph 16 of the Complaint, Defendant states affirmatively that the terms of the referenced decision made by the Fort Collins City Council speak for themselves, and Defendant denies any allegations inconsistent therewith.

REQUEST

17. The allegations contained in Paragraph 17 of the Complaint contain Plaintiff's request to the Court to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 17.

18. Defendant denies the allegations contained in Paragraph 18 of the Complaint.

DESIGNATION OF RECORD

19. The unnumbered paragraph immediately below the “Designation of Record” contained in Plaintiff’s Complaint, along with the subsequent paragraphs numbered 1 through 6, appear to be Plaintiff’s designation of record for this C.R.C.P. 106(a)(4) case. As a result, there is no response required. To the extent a response to these paragraphs are required, Defendant denies that Plaintiff has complied with the procedure contained in C.R.C.P. 106(a)(4)(III) and (IV). Further, and pursuant to C.R.C.P. 106(a)(4)(I), this Court’s review is “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 defendant body or officer.” Therefore, Defendant denies any request by Plaintiff to designate information or documents that are not part of the record before the defendant body or officer when it made its quasi-judicial determination at issue in this case. Defendant also denies that Plaintiff is entitled to any discovery under this C.R.C.P. 106(a)(4) case.

ADDITIONAL DEFENSES

1. Defendant denies any allegations contained in the Complaint not expressly admitted above.
2. Plaintiff has failed to state a claim upon which relief can be granted.
3. Plaintiffs claims against Defendant may be barred or limited by the doctrines of waiver, release, unclean hands, and/or equitable estoppel.
4. The actions of the City of Fort Collins City Counsel and/or the City of Fort Collins (collectively, the “City”) are supported by substantial evidence in the record.
5. The actions of the City are supported by the laws of Colorado and City’s land use

code and municipal code.

6. The actions of the City are neither arbitrary nor capricious.
7. The actions of the City do not amount to an abuse of discretion.
8. The City did not exceed its jurisdiction.
9. Defendant reserves the right to raise and assert any and all additional affirmative

defenses, other defenses, and/or third-party actions as additional inforamt

Dated September 6, 2018

Respectfully submitted,

s/ Sean M. Hanlon

Sean M. Hanlon, #39686

Jessica J. Smith, #46435

HOLLAND & HART LLP

**ATTORNEYS FOR DEFENDANT ELIZABETH STREET
CO. MANAGER, LLC**

CERTIFICATE OF SERVICE

I certify that on September 6, 2018, I served a copy of the foregoing document to the following by e-mail to:

Rory Heath
RoryHeath1@gmail.com
Plaintiff

I certify that on September 6, 2018, I served a copy of the foregoing document to the following via Colorado Courts E-Filing System to:

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s/Susie Curtis

SUSIE CURTIS