

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:18-cv-02867-MSK-NYW

FORT COLLINS MENNONITE FELLOWSHIP, a Colorado nonprofit corporation, and  
STEVE RAMER,

Plaintiffs,

v.

THE CITY OF FORT COLLINS, a home rule municipality,  
THE CITY OF FORT COLLINS CITY COUNCIL, and  
LAURIE DAVIS,  
ROBERT DAVIS,  
MARY RAY,  
H. STUART MACMILLAN,  
HOLLY JOHNSON,  
LAURA PETRICK,  
DAVE PETRICK,  
KATHERINE ACOTT,  
WALTER HICKMAN,  
PATRICIA DIEHL,  
LISA EATON,  
FERAH AZIZ,  
TARA MCCORMAC,  
JENNIFER PETRIK,  
PAMELA REFVEM,  
MICHAEL MERCER,  
DENNIS BOOKSTABER,  
TOM HALL, and  
STEVE ACKERMAN, in their individual capacities.

Defendants.

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**STIPULATION OF DEFENDANT H. STUART MACMILLAN TO BE BOUND BY  
JUDGMENT ON PLAINTIFFS' CLAIM UNDER COLO. R. CIV. P. RULE 106(A)(4)**

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Plaintiffs Fort Collins Mennonite Fellowship, a Colorado nonprofit corporation (the  
“**Fellowship**”), and Steve Ramer (“**Ramer**” and collectively with the Fellowship, “**Plaintiffs**”),  
by and through their undersigned counsel, and Defendant H. Stuart MacMillan (“**Defendant**”),

hereby submit this Stipulation of Defendant to be Bound by this Court's Judgment on Plaintiffs' Claim Under C.R.C.P. Rule 106(a)(4) (this "**Stipulation**"), as follows:

1. Plaintiffs filed their Complaint and Request for Declaratory Judgment and Injunctive Relief in this case on November 6, 2018 (the "**Complaint**"). Plaintiffs filed their First Amended Complaint and Request for Declaratory Judgment and Injunctive Relief on February 1, 2019 (the "**Amended Complaint**"). The Amended Complaint seeks, among other things, certiorari review pursuant to Colo. R. Civ. P. Rule 106(a)(4) ("**Rule 106(a)(4)**").

2. Defendant is an individual who owns real property located in the vicinity of the Fellowship's property at issue in this case.

3. Following the Fort Collins Planning and Zoning Board's (the "**PZB**") approval of the Fellowship's Minor Amendment Application at issue in this case, Defendants joined in an Appeal of that approval (the "**Appeal**") to the Fort Collins City Council ("**City Council**").

4. City Council conducted a public hearing considering the Appeal on October 9, 2018. Defendant appeared in person at the October 9, 2018 City Council hearing in support of the Appeal, and was deemed by City Council to be a "party-in-interest" for the Appeal.

5. An applicant for a land use decision, the issuance of which is challenged under Rule 106(a)(4), is an indispensable party to such an action. *See Bd. of Cnty. Comm'rs v. Carter*, 564 P.2d 421, 422 (Colo. 1977).

6. Because Defendant joined in the Appeal, appeared before City Council on October 9, 2018, and was deemed to be a "party-in-interest" by City Council, the Fellowship joined Defendant as indispensable parties in its Second Claim for Relief under Rule 106(a)(4).

7. Defendant is not a party to any other claims in this action.

8. Defendant understands that the City of Fort Collins and City Council are defending against Plaintiffs' 106(a)(4) claim, and Defendant does not wish to actively participate in this action. Defendant agrees to be bound by any decision made by this Court related to that claim.

9. Plaintiffs acknowledge and agree that their Second Claim for Relief under Rule 106(a)(4) does not entitle Plaintiffs to seek any monetary damages against Defendant, including pecuniary damages or attorneys' fees, or costs.

10. Plaintiffs acknowledge and agree that this Stipulation, and any similar stipulation entered into by other defendants, does not affect, hinder, or limit: (a) any party's ability, including Defendant, to appear and speak at any public hearing before City Council; or (b) Defendant's ability or right to participate at any public hearing before City Council as may be afforded by the Municipal Code of the City of Fort Collins, or other applicable authority, based upon Defendant's status as a party-in-interest for the Appeal and/or a party to Plaintiffs' Second Claim for Relief in this action.

WHEREFORE, Plaintiffs and Defendant respectfully request that this Court enter an Order making this Stipulation an Order of the Court.


Respectfully submitted this 20<sup>th</sup> day of February, 2019.

/s/ David A. Brewster

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/s/

  
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2-14-19

Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of February, 2019, a true and correct copy of the foregoing **STIPULATION OF DEFENDANT H. STUART MACMILLAN TO BE BOUND BY JUDGMENT ON PLAINTIFFS' CLAIM UNDER COLO. R. CIV. P. RULE 106(A)(4)** was electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following email addresses:

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*Attorney for Defendants The City of Fort  
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*/s/ Stefanie Trujillo*  
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Stefanie Trujillo