

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 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 REFREM,
NICK MATTHEWS,
DENNIS BOOKSTABER,
BELL GOULD LINDER & SCOTT, P.C.
TOM HALL, and
STEVE ACKERMAN, in their individual capacities.

Defendants.

[PROPOSED] SCHEDULING ORDER

1. DATE OF CONFERENCE AND APPEARANCES OF COUNSEL AND *PRO SE* PARTIES

A scheduling and planning conference pursuant to Fed. R. Civ. P. 16(b) is scheduled for April 9, 2019, at 2:00 p.m. in Courtroom 502, Byron G. Rogers United States Courthouse, 1929 Stout Street, Denver, Colorado.

Appearing for Plaintiffs Fort Collins
Mennonite Fellowship and Steve Ramer:

Thomas MacDonald
Brian James Connolly
Andrew L.W. Peters
David A. Brewster
Otten Johnson Robinson
Neff & Ragonetti, P.C.
950 Seventeenth Street, Suite 1600
Denver, CO 80202
Telephone: 303 825 8400
E-mail: mac@ottenjohnson.com
E-mail: bconnolly@ottenjohnson.com
E-mail: apeters@ottenjohnson.com
E-mail: dbrewster@ottenjohnson.com

Appearing for Defendants The City of Fort
Collins and The City of Fort Collins City
Council:

Andrew D. Ringel
Hall & Evans, L.L.C.
1001 Seventeenth Street, Suite 300
Denver, CO 80202
Telephone: 303 628 3453
E-mail: ringela@hallevans.com

Individual Defendants Ferah Aziz, Tara McCormac, Michael Mercer, Tom Hall, and Steve Ackerman have not answered the Complaint. All other individual Defendants have either filed stipulations to be bound by the judgment or have been dismissed from this case.

2. STATEMENT OF JURISDICTION

This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1367.

3. STATEMENT OF CLAIMS AND DEFENSES

a. Plaintiffs.

The Fort Collins Mennonite Fellowship (the “**Fellowship**”) and its Lead Pastor Steve Ramer (“**Ramer**” and collectively with the Fellowship, “**Plaintiffs**”) seek declaratory and

injunctive relief: under Colo. R. Civ. P. Rule 106(a)(4) and Colo. R. Civ. P. Rule 57; under Colorado’s Regulatory Impairment of Property Rights Act (“**RIPRA**”), Colo. Rev. Stat. §§ 29-20-201, *et seq.*; under RLUIPA; and under the Fourteenth Amendment of the United States Constitution. Specifically, the City of Fort Collins (the “**City**”) and the City of Fort Collins City Council (“**City Council**” and collectively with the City, the “**City Defendants**”), exceeded their jurisdiction and treated the Fellowship on unequal terms by requiring the Fellowship to submit a Minor Amendment application, and by subsequently imposing burdensome conditions, in connection with the Fellowship’s implementation of a locker program benefitting individuals experiencing homelessness.

The Mennonite faith is founded on principles of active faith, which calls its members to serve and minister to the most vulnerable members of the community. As a natural extension of its ministry to individuals experiencing homelessness, the Fellowship intended to install a bank of roughly twenty lockers attached to the side of the Fellowship’s church building. Individuals experiencing homeless in the community would apply for the right to use one of the individual lockers to store their personal belongings (the “**Locker Program**”). Although the City initially supported and intended to partially fund the Locker Program, it reneged on that support and sent a letter purporting to require the Fellowship to submit a Minor Amendment application, and to undergo the applicable procedures to obtain approval for the Locker Project.

The Fort Collins Land Use Code (“**LUC**”) is the City’s zoning code, which contains the City’s zoning regulations, provides the applicable circumstances and procedures for the Minor Amendment process, and vests the relevant City agencies and City Council with authority over zoning matters. The Locker Program did not necessitate a Minor Amendment process under the

LUC, and the City has not required similar storage structures at other religious or non-religious facilities to undergo approval under the Minor Amendment process. Nevertheless, the City required the Fellowship to submit its Application and undergo the Minor Amendment process to gain approval for the Locker Program. To date, the City has not provided justification for why the Minor Amendment process applied to the Locker Program.

In compliance with the City's demands, the Fellowship submitted a Minor Amendment application (the "**Application**") to the City's Planning Development and Transportation Department ("**PDT**"). The PDT referred the Application to the City's Planning and Zoning Board ("**PZB**") for review and public hearing, despite the fact that the LUC gives PDT discretion to do so, and PDT rarely refers such applications to the PZB. Following a public hearing considering the Application, the PZB approved the Locker Program on the condition that the Fellowship install a security camera in the vicinity of Locker Program operation (the "**Approval**").

Immediately after the Approval, a group of the Fellowship's neighboring residents and property owners appealed the Approval to the City Council, as authorized by the LUC. City Council conducted a public hearing on the Appeal on October 9, 2018 (the "**Appeal Hearing**"). After the Appeal Hearing, City Council affirmed the Approval, but added three conditions: (1) "Locker access shall be limited to between the hours of 6 a.m. and 8 p.m. daily"; (2) "A Fellowship representative must be present at all times during which locker access is allowed"; and (3) the Fellowship shall restrict access to the lockers outside of the times when locker access is allowed (the "**Conditions**"). The Conditions were memorialized in City Council Resolution 2018-104 (the "**Resolution**"), which the City Council approved, as amended, on October 16, 2018.

The Fellowship is a small congregation consisting of roughly sixty active members. Most of the Fellowship's administrative and outreach work is volunteer-based. Due to a lack of volunteer resources and budgetary constraints, the Fellowship was unable to comply with the Conditions and was forced to terminate the Locker Program in November 2018. What's more, the limitation on hours of operation of the Locker Program is inconsistent with the Fellowship's mission to provide homeless individuals with 24-hour access to their belongings.

The City's extra-jurisdictional application of the Minor Amendment process and imposition of the Conditions resulted from the City's intolerance to the Fellowship's ministry to individuals experiencing homelessness, treated the Fellowship on unequal terms from other property owners in the City, violated the Fellowship's rights under the United States and Colorado Constitutions, and is not justifiably related to any authority granted to the City or City Council under the LUC or other applicable laws.

Plaintiffs seek declaratory judgment and injunctive relief declaring that the City and City Council: (1) improperly applied the Minor Amendment process to the Locker Program in violation of the LUC; (2) exceeded their jurisdiction; (3) violated RLUIPA; (4) violated 42 U.S.C. § 1983 and the Colorado Constitution; and (5) violated RIPRA. In addition, Plaintiffs seek all of their attorneys' fees and associated costs in this action and related actions pursuant to, *inter alia*, 42 U.S.C. § 1988 and/or Colo. Rev. Stat. § 29-20-204(2)(f).

b. City Defendants.

Plaintiffs applied for and received the approval of the City Council to operate a locker program on the Fellowship's property to assist homeless persons. City staff discussed the program for lockers for homeless persons with representatives of the Fellowship. City staff provided

information to representatives of the Fellowship concerning how the program for lockers for homeless persons could be approved by the City if it complied with applicable City zoning regulations.

The City determined the Fellowship needed to comply with the Minor Amendment process provided by the City's Land Use Code, § 2.2.10, for the locker program. Plaintiffs submitted a Minor Amendment application. The Minor Amendment application was referred to the City's Planning and Zoning Board for consideration. A public hearing was held before the Planning and Zoning Board on July 19, 2018. The Planning and Zoning Board approved the Minor Amendment application with conditions.

A Notice of Appeal was filed on August 2, 2018, of the Planning and Zoning Board's approval of the Minor Amendment application. A public hearing was held before the City Council on the appeal of the Planning and Zoning Board's approval of the Minor Amendment application on October 9, 2018. The City Council approved the Minor Amendment application with conditions.

The conditions on the approval of the locker program adopted by both the Planning and Zoning Board and the City Council were reasonable and appropriate and do not constitute discrimination against the Plaintiffs on any improper basis under either federal or Colorado law.

City Defendants rely on the defense and affirmative defenses contained in their Answer to Plaintiffs' First Amended Complaint and Request for Declaratory and Injunctive Relief from Defendants the City of Fort Collins and the Fort Collins City Council filed with this Court on March 15, 2019. [ECF 66].

4. UNDISPUTED FACTS

The following facts are undisputed:

1. The Fellowship is a Colorado nonprofit corporation with its principal place of business in Colorado.
2. Ramer is the Lead Pastor of the Fellowship.
3. The Fellowship owns, occupies, and operates its religious ministry and outreach activities on the property located at 300 East Oak Street in the City (the “**Property**”).
4. The City is a home rule municipality existing pursuant to Article XX of the Constitution of the State of Colorado.
5. The City Council is the governing body of the City with authority pursuant to the City’s Home Rule Charter to adopt and amend the Fort Collins Municipal Code.
6. The City Council has authority to hear and decide appeals from decisions of the City’s Planning and Zoning Board pursuant to Fort Collins Municipal Code § 2-47.
7. Individual Defendants are individuals or entities who appealed the Planning and Zoning Board’s approval of the Locker Program to the City Council.
8. The Mennonite faith is a denomination of Anabaptist Christianity.
9. The LUC is the City’s zoning code, containing the City’s land use regulations.
10. On September 29, 2017, the City and the Fellowship entered into a Service Agreement related to the Fellowship’s proposed locker program for individuals experiencing homelessness.
11. On February 6, 2018, the City Council voted against providing City funds for the Service Agreement.

12. On April 18, 2018, the Fellowship received a letter from the City's Planning, Development and Transportation Department related to the Fellowship's proposed locker program. The letter informed the Fellowship it needed to seek approval for locker installation via the Minor Amendment process set forth in LUC § 2.2.10.

13. In response to PDT's letter, the Fellowship completed and filed its Application.

14. The Minor Amendment process and approval criteria are set forth in LUC § 2.2.10 and otherwise under the City's Land Use Code.

15. The Director of Planning, Development and Transportation Department referred the Application to the Planning and Zoning Board for a public hearing that was initially scheduled for May 31, 2018.

16. On July 19, 2018, at a rescheduled public hearing, the Planning and Zoning Board considered the Application.

17. The Planning and Zoning Board approved the Application with a condition.

18. On August 2, 2018, a Notice of Appeal of the Planning and Zoning Board's approval of the Application was filed.

19. The City Council conducted a public hearing considering the Appeal on October 9, 2018.

20. The City Council approved the Application with conditions.

21. The approval of the Application with conditions were memorialized in City Council Resolution 2018-104, which the City Council approved, as amended, on October 16, 2018.

5. COMPUTATION OF DAMAGES

a. Plaintiffs.

Plaintiffs do not seek damages at this time, but do seek their attorneys' fees and costs pursuant to 42 U.S.C. § 1983 and RIPRA.

b. Defendants.

The City Defendants are not seeking any damages against the Plaintiffs at this time, but reserve their right to seek their attorney's fees and costs pursuant to applicable federal and Colorado law.

6. REPORT OF PRECONFERENCE DISCOVERY AND MEETING UNDER FED. R. CIV. P. 26(f)

a. Date of Rule 26(f) meeting:

The parties met to discuss settlement on December 3, 2018, and have continuously conferred regarding possible settlement and other matters identified under Fed R. Civ. P. 26(f)(2) since that time.

b. Names of each participant and party he/she represented:

For Plaintiffs:

Thomas Macdonald
Brian James Connolly
David A. Brewster
Otten Johnson Robinson Neff & Ragonetti, P.C.
950 Seventeenth Street, Suite 1600
Denver, CO 80202
Telephone: 303 825 8400
E-mail: mac@ottenjohnson.com
E-mail: bconnolly@ottenjohnson.com
E-mail: dbrewster@ottenjohnson.com

For City Defendants:

Andrew D. Ringel
Hall & Evans, L.L.C.
1001 Seventeenth Street, Suite 300
Denver, CO 80202
Telephone: 303 628 3453
E-mail: ringela@hallevans.com

c. Statement as to when Rule 26(a)(1) disclosures were made or will be made.

The parties will make Rule 26(a)(1) disclosures on or before April 12, 2019.

d. Proposed changes, if any, in timing or requirement of disclosures under Fed. R. Civ. P. 26(a)(1)

As noted above under Section 6.c, initial disclosures will be made on or before April 12, 2019.

e. Statement concerning any agreements to conduct informal discovery:

None.

f. Statement concerning any other agreements or procedures to reduce discovery and other litigation costs, including the use of a unified exhibit numbering system.

The parties have agreed to the following concerning discovery procedures to reduce costs:

i) The parties agree, to the extent possible, to use a unified numbered set of exhibits at deposition and at trial.

ii) The parties agree to use electronic service of pleadings, discovery requests, and other documents by email. No later than April 9, 2019, counsel for each party shall provide counsel for each other party with a list of email addresses to which each electronically-served document should be sent.

iii) The parties anticipate that rolling productions may be made in this matter and agree that if any documents, things, and/or information are withheld from a production based

on an assertion of privilege, the withholding party will serve a privilege log compliant with the Federal Rules of Civil Procedure, the local rules, and applicable law, on the other party within thirty (30) days of the production from which the materials were withheld.

iv) The parties agree that privileged communications between counsel of record and their respective parties related to this litigation occurring after the filing of the initial Complaint [ECF No. 1] in this matter on November 6, 2018, need not be logged on a privilege log.

g. Statement as to whether the parties anticipate that their claims or defenses will involve extensive electronically stored information, or that a substantial amount of disclosure or discovery will involve information or records maintained in electronic form.

The parties do not anticipate that their claims and defenses will involve an extensive amount of ESI. The parties continue to confer regarding ways to limit ESI and mechanisms to facilitate the preservation and disclosure of ESI in a cost effective and timely manner, including the identification of custodians, search terms, and timeframes, as well as the format of any ESI productions.

h. Statement summarizing the parties' discussions regarding the possibilities for promptly settling or resolving the case.

The parties engaged in, and continue to engage in, extensive settlement discussions following the filing of the initial Complaint in this matter. Numerous draft settlement proposals have been exchanged. The parties remain open to resolving this matter via settlement and are continuing to explore a negotiated resolution of this matter.

7. CONSENT

The parties **do not** consent to the exercise of jurisdiction of a Magistrate Judge.

8. DISCOVERY LIMITATIONS

The parties will adhere to the presumptive discovery limitations set forth in the Federal Rules of Civil Procedure, including the limitations on the number of depositions and interrogatories.

a. Modifications which the parties propose to the presumptive numbers of depositions or interrogatories contained in the Federal Rules.

None.

b. Limitations which the parties propose on the length of depositions.

None.

c. Limitations which the parties propose on the number of requests for production and/or requests for admission.

None.

d. Other Planning or Discovery Orders.

None.

9. CASE PLAN AND SCHEDULE

Event	Date
a. Deadline for Joinder of Parties and Amendment of Pleadings:	May 24, 2019
b. Deadline for Interrogatories, Requests for Production and/or Requests for Admissions related to fact discovery:	August 15, 2019
c. Fact discovery cut-off:	September 30, 2019
d. Deadline to provide opposing counsel with all information specified in Fed. R. Civ. P. 26(a)(2) for affirmative experts on any claim, defense, or issue upon which a party bears the burden of proof:	October 15, 2019

e. Deadline to provide opposing counsel with all information specified in Fed. R. Civ. P. 26(a)(2) for rebuttal experts:	November 15, 2019
f. Expert discovery cut-off:	December 31, 2019
g. Dispositive Motion Deadline:	January 31, 2019
h. Final Pretrial Conference:	To be set by the Court.
i. Trial:	To be set by the Court.

Other dates: The Parties will agree upon the contents of the certified record on or before April 19, 2019, and the City will prepare and file the certified record on or before May 24, 2019, with Rule 106(a)(4) briefing to take place in accordance with the deadlines set by the Rule.

10. DATES FOR FURTHER CONFERENCES

- a.** Status conferences will be held in this case at the following dates and times:

_____.

b. A final pretrial conference will be held in this case on _____ at _____ o'clock ____m. A Final Pretrial Order shall be prepared by the parties and submitted to the court no later than seven (7) days before the final pretrial conference.

11. OTHER SCHEDULING MATTERS

- a.** The parties anticipate requiring three (3) days for trial in this matter.
- b.** Pretrial proceedings that the parties believe may be more efficiently or economically conducted at the Court's facilities other than Denver: None.

12. NOTICE TO COUNSEL AND PRO SE PARTIES

The parties filing motions for extension of time or continuances must comply with D.C.Colo.LCivR 6.1(c) by submitting proof that a copy of the motion has been served upon the moving attorney's, all attorneys of record, and all *pro se* parties.

Counsel will be expected to be familiar and comply with the Pretrial and Trial Procedures or Practice Standards established by the judicial officer presiding over the trial of this case.

With respect to discovery disputes, the parties must comply with D.C.Colo.LCivR 7.1(a).

Counsel and unrepresented parties are reminded that any change of contact information must be reported and filed with the Court pursuant to the applicable local rule.

13. AMENDMENTS TO SCHEDULING ORDER

The Scheduling Order may be altered or amended only upon a showing of good cause.

DATED at Denver, Colorado, this _____ day of _____, 2019.

BY THE COURT:

Nina Y. Wang
United States Magistrate Judge

APPROVED:

/s/ Brian J. Connolly
Attorneys for Plaintiffs

Thomas Macdonald
Brian James Connolly
Andrew L.W. Peters
David A. Brewster
Otten Johnson Robinson
Neff & Ragonetti, P.C.
950 Seventeenth Street, Suite 1600
Denver, CO 80202
Telephone: 303 825 8400
E-mail: mac@ottenjohnson.com
E-mail: bconnolly@ottenjohnson.com
E-mail: apeters@ottenjohnson.com
E-mail: dbrewster@ottenjohnson.com

/s/ Andrew D. Ringel
Attorney for City Defendants

Andrew D. Ringel
Hall & Evans, L.L.C.
1001 Seventeenth Street, Suite 300
Denver, CO 80202
Telephone: 303 628 3453
E-mail: ringela@hallevans.com