

DISTRICT COURT, LARIMER COUNTY, COLORADO  
201 LA PORTE AVE, SUITE 100  
FT. COLLINS, CO 80521  
970.494.3500

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CASE NUMBER: 2021CV30210

**Plaintiffs:**

RE DENVER and COLORADO FLOORING INDUSTRIES,  
Inc. as tenants in common, and OSF INVESTMENTS, LLC  
d/b/a Carpet Exchange, a Washington Limited Liability  
Company

v.

**Defendants:**

CITY OF FORT COLLINS, a home rule city, and CITY OF  
FORT COLLINS PLANNING AND ZONING BOARD,  
STAN SCOTT, and GUARDIAN STORAGE FORT  
COLLINS, LLC dba GUARDIAN SELF STORAGE

▲ COURT USE ONLY ▲

Attorneys for Defendant GUARDIAN STORAGE FORT  
COLLINS, LLC dba GUARDIAN SELF STORAGE:

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Case Number: 2021CV030210

Div.: 5B

**MOTION TO DISMISS**

Defendant, Guardian Storage Fort Collins, LLC, d/b/a Guardian Self Storage (“Guardian”), by and through its counsel, Brownstein Hyatt Farber Schreck, LLP, hereby files its Motion to Dismiss the Complaint filed by Plaintiffs in this case, and in support states as follows:

### **CERTIFICATE OF COMPLIANCE**

Pursuant to C.R.C.P. 121, § 1-15(8), undersigned counsel certifies that she has conferred with counsel for Plaintiffs and is advised that Plaintiffs oppose this motion.

### **INTRODUCTION**

Plaintiffs filed this action pursuant to C.R.C.P. 106 (a)(4) on March 24, 2021, challenging the City of Fort Collins Planning and Zoning Board decision approving Guardian’s application for approval of construction of a self-storage facility (Case No. PDP 190020).

On March 25, 2021, Plaintiffs also filed a Notice of Appeal of that ruling to the City of Fort Collins, to be heard by the City Council. For the reasons stated below, the action before this Court is not ripe for determination, and must be dismissed for lack of jurisdiction.

### **ARGUMENT**

Subsection (b) of C.R.C.P. 106 provides that an action filed under subsection (a)(4), as here, “... shall be filed in the district court not later than 28 days after the **final decision** of the body or officer.” (emphasis added). Because the Plaintiffs have filed an appeal of the decision at issue here to be heard by the Fort Collins City Council at some future date, there is no “final decision” to appeal in this forum. *See City and County of Denver v. United Airlines, Inc.*, 8 P. 3d 1206,1216 (Colo. 2000)(Court lacked jurisdiction to hear 106 action where party failed to exhaust administrative remedies); *Cadnetix Corp.v. City of Boulder*, 807 P.2d 1253, 1254 (Colo.App.1991)(C.R.C.P. 106(b) begins to run on the date the action complained of is complete,

leaving nothing further to decide). Moreover, there is nothing to stop the Plaintiffs from filing an appeal to this Court after the Fort Collins City Council renders its final decision; thus, the Plaintiffs will in no way be prejudiced by the granting of this motion.

**CONCLUSION**

WHEREFORE, Guardian respectfully requests the Court dismiss Plaintiffs' Complaint in its entirety as not ripe for adjudication.

Dated: April 14, 2021

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: s/ Martha L. Fitzgerald

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**CERTIFICATE OF SERVICE**

I hereby certify that this 14<sup>th</sup> day of April, 2021, a true and correct copy of the foregoing MOTION TO DISMISS was filed via the Colorado Courts E-Filing System and served upon Plaintiffs' counsel of record.

*/s/ Catherine Olguin*\_\_\_\_\_   
Catherine Olguin, Paralegal