

EXHIBIT D

Larimer County District Court Larimer County, Colorado 201 La Porte Ave, Suite 100 Fort Collins, CO 80521 (970) 494-3500	DATE FILED: October 23, 2019 12:08:21 PM FILING HISTORY: 17BD01D890197964F8E CASE NUMBER: 19CV30123
<p>NO LAPORTE GRAVEL CORP, ROBERT HAVIS and PETER WAACK,</p> <p>Plaintiffs,</p> <p>v.</p> <p>BOARD OF COUNTY COMMISSIONERS OF LARIMER COUNTY (including all of the individual Commissioners in their official capacities: Chair Tom Donnelly, Steve Johnson, John Kefalas) and LOVELAND READY-MIX CONCRETE, INC.,</p> <p>Defendants.</p>	Court Use Only
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<p>ANSWER OF BOARD OF COUNTY COMMISSIONERS OF LARIMER COUNTY</p>	

Defendant Board of County Commissioners of Larimer County (including all of the individual Commissioners in their official capacities: Chair Tom Donnelly, Steve Johnson, and John Kefalas) answer Plaintiffs' First Amended Complaint as follows:

1. **Paragraph 1.** Admit.
2. **Paragraph 2.** Deny.
3. **Paragraph 3.** Deny.
4. **Paragraph 4.** Admit the Proposed Site is located along County Road 54G in unincorporated Larimer County. Deny the characterization that the Site is in the heart of Laporte.

5. **Paragraph 5.** Admit.
6. **Paragraph 6.** Admit.
7. **Paragraph 7.** Admit.
8. **Paragraph 8.** Deny
9. **Paragraph 9.** Admit venue is proper in this Court but deny this is an action affecting real property under Colo. R. Civ. P. Rule 98(a).
10. **Paragraph 10.** Admit the individually named Plaintiffs gave oral testimony during the Board of County Commissioner hearing. Deny the remainder of the allegations.
11. **Paragraph 11.** Deny.
12. **Paragraph 12.** Admit the first sentence. The second sentence is a legal conclusion to which no response is required. Deny the remainder of the allegations.
13. **Paragraph 13.** Admit.
14. **Paragraph 14.** Without knowledge and therefore deny.
15. **Paragraph 15.** Without knowledge and therefore deny.
16. **Paragraph 16.** Without knowledge as Plaintiffs' corporate status and purpose and location of Plaintiffs' members properties. Deny the remainder of the allegations.
17. **Paragraph 17.** Without knowledge and therefore deny.
18. **Paragraph 18.** Without knowledge and therefore deny.
19. **Paragraph 19.** Admit Larimer County has adopted the Larimer County Land Use Code. Deny that this Code is the sole law applicable to unincorporated Larimer County.
20. **Paragraph 20.** Deny. Section 4.1.5 lists as "[p]rincipal uses" *inter alia* Agricultural, Residential, and Industrial, including mining.
21. **Paragraph 21.** Admit the Larimer County Land Use Code lists mining listed as one of the industrial uses allowed in the O-Open by special review. Deny the remainder of the allegations.
22. **Paragraph 22.** Admit.
23. **Paragraph 23.** Admit.
24. **Paragraph 24.** Admit.

25. **Paragraph 25.** Admit.
26. **Paragraph 26.** Admit.
27. **Paragraph 27.** Admit.
28. **Paragraph 28.** Admit. Deny characterization of campaign donations as substantial.
29. **Paragraph 29.** Admit quasi-judicial actions are reviewed under Rule 106(a)(4) for an abuse of discretion. Deny the remainder of the allegations as improper legal argument, not factual allegations.
30. **Paragraph 30.** Deny.
31. **Paragraph 31.** Deny as improper legal argument, not factual allegations.
32. **Paragraph 32.** Deny as improper legal argument, not factual allegations.
33. **Paragraph 33.** Admit that LRM has applied for approval to conduct gravel mining on the subject property and the zoning of O-Open. Deny the characterization of the subject property being in downtown LaPorte.
34. **Paragraph 34.** Deny.
35. **Paragraph 35.** Admit the Proposed Site has been used for grazing and hay production. Without knowledge as to the remainder of the allegations and therefore deny.
36. **Paragraph 36.** Admit.
37. **Paragraph 37.** Admit.
38. **Paragraph 38.** Admit.
39. **Paragraph 39.** Admit.
40. **Paragraph 40.** Admit.
41. **Paragraph 41.** The LRM mining application speaks for itself. Deny any allegations inconsistent with the application. Without sufficient knowledge as to the remainder of the allegations and therefore deny same.
42. **Paragraph 42.** Admit.
43. **Paragraph 43.** Admit.
44. **Paragraph 44.** Admit.

45. **Paragraph 45.** The Second Submittal speaks for itself. Deny any allegations inconsistent with the Second Submittal. Deny the remainder of the allegations.
46. **Paragraph 46.** Admit.
47. **Paragraph 47.** Admit.
48. **Paragraph 48.** Without sufficient knowledge of the allegation and therefore deny same.
49. **Paragraph 49.** Deny.
50. **Paragraph 50.** Admit.
51. **Paragraph 51.** Deny.
52. **Paragraph 52.** Deny.
53. **Paragraph 53.** Admit.
54. **Paragraph 54.** Admit.
55. **Paragraph 55.** Admit.
56. **Paragraph 56.** Admit.
57. **Paragraph 57.** Admit.
58. **Paragraph 58.** Deny.
59. **Paragraph 59.** Admit.
60. **Paragraph 60.** Admit.
61. **Paragraph 61.** Deny.
62. **Paragraph 62.** Admit the third sentence of this allegation. Without knowledge as to the other allegations and therefore deny same.
63. **Paragraph 63.** Admit Commissioner Donnelly was elected in 2016 and received campaign contributions in the amounts listed. Deny characterization of contributions as significant. Without knowledge as to contributions of other employees and/or individuals and therefore deny same.
64. **Paragraph 64.** Admit.
65. **Paragraph 65.** Admit.
66. **Paragraph 66.** Admit that Commissioner Donnelly participated in the Special Review Hearing. Deny the remainder of the allegations.

67. **Paragraph 67.** Admit two Commissioners voted to approve the Application and one Commissioner voted to deny the Application. Deny Commissioner Donnelly cast the decisive vote.
68. **Paragraph 68.** This Paragraph does not require an answer.
69. **Paragraph 69.** Deny this allegation as improper legal argument.
70. **Paragraph 70.** Deny.
71. **Paragraph 71.** Deny.
72. **Paragraph 72.** Deny.
73. **Paragraph 73.** Deny.
74. **Paragraph 74.** Deny.
75. **Paragraph 75.** Deny.
76. **Paragraph 76.** Deny.
77. **Paragraph 77.** Deny.
78. **Paragraph 78.** Paragraph 78 does not require an answer.
79. **Paragraph 79.** Deny.
80. **Paragraph 80.** Deny.
81. **Paragraph 81.** Deny.
82. **Paragraph 82.** Deny.
83. **Paragraph 83.** Deny.
84. **Paragraph 84.** Deny.
85. **Paragraph 85.** Deny.
86. **Paragraph 86.** Deny.
87. **Paragraph 87.** Deny as improper legal argument and not factual allegations.
88. **Paragraph 88.** Deny.
89. **Paragraph 89.** Deny.

90. **Paragraph 90.** Deny.

AFFIRMATIVE DEFENSES

- A. Plaintiffs have failed to state a claim on which relief may be granted.
- B. Plaintiffs' claim that the County Code §§2-67(10) and 2-71 are facially unconstitutional is baseless.
- C. Plaintiffs' claim that County Code §§2-67(10) and 2-71 are unconstitutional as applied is only properly brought under C.R.C.P. 106(a)(4) and not under C.R.C.P. 57.
- D. Campaign contributions are not a conflict of interest requiring recusal as a matter of law.
- E. The Board of County Commissioners decision was supported by competent evidence and was not arbitrary or capricious or an abuse of discretion.
- F. Plaintiffs' claims for abuse of discretion based on Commissioner Donnelly's participation in the Special Review hearing were waived by their failure to request recusal at the outset of the hearing.

Respectfully Submitted this 1st day of July, 2019.

LARIMER COUNTY ATTORNEY'S OFFICE

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CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing Answer was served using the Colorado Courts E-Filing system this 1st day of July, 2019, which will send notification to the following:

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