

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Pkwy. Golden, CO 80401 (720) 772-2500	DATE FILED: January 9, 2024 5:15 PM FILING ID: 735F304BAB297 CASE NUMBER: 2024CV30042
<p>PLAINTIFFS: DANIELS WELCHESTER NEIGHBORHOOD ASSOCIATION, a Colorado non-profit corporation; JESSICA KENDELL, an individual; and JANE ALVARADO, an individual.</p> <p>v.</p> <p>DEFENDANTS: THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF JEFFERSON, COLORADO, a political subdivision of the State of Colorado; TAMARA L. HANNAWAY, an individual; JESSICA C. WYNN, an individual; and KEITH MICHAEL WYNN, an individual.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorneys for Plaintiffs: Carrie S. Bernstein, Atty Reg. #34966 Joshua Mangiagli, Atty Reg. #52375 ALDERMAN BERNSTEIN LLC 101 University Blvd., Suite 350 Denver, Colorado 80206 Phone: 720-460-4200 Email: csb@ablawcolorado.com; jtm@ablawcolorado.com</p>	<p>Case Number:</p> <p>Courtroom/Division:</p>
COMPLAINT PURSUANT TO C.R.C.P. 106(a)(4)	

COME NOW Plaintiffs Daniels Welchester Neighborhood Association, a Colorado non-profit corporation (“Plaintiff Association”), Jessica Kendell (“Plaintiff Kendell”), and Jane Alvarado (“Plaintiff Alvarado”) (collectively, “Plaintiffs”), by and through their attorneys, Alderman Bernstein LLC, to submit this Complaint Pursuant to C.R.C.P. 106(a)(4) against the Board of County Commissioners of the County of Jefferson, a political subdivision of the State of Colorado (the “BOCC”); Tamara L. Hannaway (“Defendant Hannaway”); Jessica C. Wynn (“Defendant Jessica Wynn”); and Keith Michael Wynn (“Defendant Keith Wynn”) (collectively “Defendants”).

NATURE OF ACTION

This appeal is a civil action filed under C.R.C.P. 106(a)(4), seeking judicial review of Resolution No. CC23-341, adopted by the BOCC on December 12, 2023 and recorded on January 4, 2024 (the “BOCC December Resolution”), approving an application to rezone 3.56 acres of property known as 14095 West 7th Avenue, Golden, Colorado 80401 and 14141 West 7th Avenue, Golden, Colorado 80401 (collectively, the “Subject Property”) from Residential-One (“R-1”) and Residential-Two (“R-2”) to Planned Development (“PD”). Plaintiffs seek appellate review of the

BOCC's adoption of the BOCC December Resolution. The BOCC December Resolution is attached as **Exhibit 1**.

PARTIES

1. Plaintiff Association is a registered neighborhood association by the State of Colorado as a nonprofit corporation, for the neighborhood adjacent to and including the Subject Property.

2. Plaintiff Association has been a registered neighborhood association since 1985.

3. Plaintiff Association represents approximately 2,000 homes in the neighborhood bordered by Colfax Avenue to the north, 6th Avenue to the south, Simms Street to the east and Indiana Street to the west.

4. Plaintiff Kendell owns the property known as 767 Ellis Street, Golden, Colorado, 80401, immediately north of and adjacent to the Subject Property ("Kendell Residence").

5. Plaintiff Kendell purchased the Kendell Residence in 2020 and has lived at the property for the past three years.

6. Plaintiff Alvarado owns the property known as 13995 West 7th Avenue, Golden, Colorado, 80401, immediately east of and adjacent to the Subject Property ("Alvarado Residence").

7. Plaintiff Alvarado purchased the Alvarado Residence in 1991 and has lived at the property for more than thirty years.

8. Defendant BOCC is a political subdivision of the State of Colorado that exercises judicial or quasi-judicial functions.

9. Defendant Hannaway owns that part of the Subject Property known as 14095 West 7th Avenue, Golden, Colorado 80401.

10. Defendants Jessica Wynn and Keith Wynn own that part of the Subject Property known as 14141 West 7th Avenue, Golden, Colorado 80401.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this matter under C.R.C.P. 106(a)(4), which authorizes courts to review judicial and quasi-judicial decisions of any governmental body or officer.

12. Venue is proper in this Court under C.R.C.P. 98(a) because this case involves real property located in Jefferson County, Colorado.

FACTUAL ALLEGATIONS

I. THE PROPOSED DEVELOPMENT

13. Upon information and belief, in the spring of 2023, Applicant/Representative Joshua Botts of redT Homes (“Applicant”), on behalf of the property owners Defendants Hannaway, Jessica Wynn and Keith Wynn, submitted an application to the Jefferson County Planning and Zoning Division.

14. The Applicant sought to rezone the 3.56 acre Subject Property from R-1 and R-2 zone districts to PD (the “Application”) to allow for the development of up to seventy-five (75) townhomes. The proposed townhome development in the Application and the corresponding GreenVista Official Development Plan (“ODP”) is hereinafter referred to as “Townhome Development.” The ODP is attached as **Exhibit 2**.

15. The ODP includes the only information on the Townhome Development, stating the Townhome Development will have:

- a. a maximum of 75 dwelling units;
- b. a minimum lot size of 560 square feet;
- c. no more than thirteen (13) townhomes in each building;
- d. a maximum building height of 35 feet, or up to 40 feet for an accessory structure on the roof;
- e. setbacks of 10 feet to the south, 20 feet to the west, 30 feet to the north and 40 feet to the east;
- f. twenty (20) visitor parking spaces;
- g. three-bedroom units will be required to provide 2-offstreet parking spaces; and
- h. five (5) feet separation between buildings

See Exhibit 2.

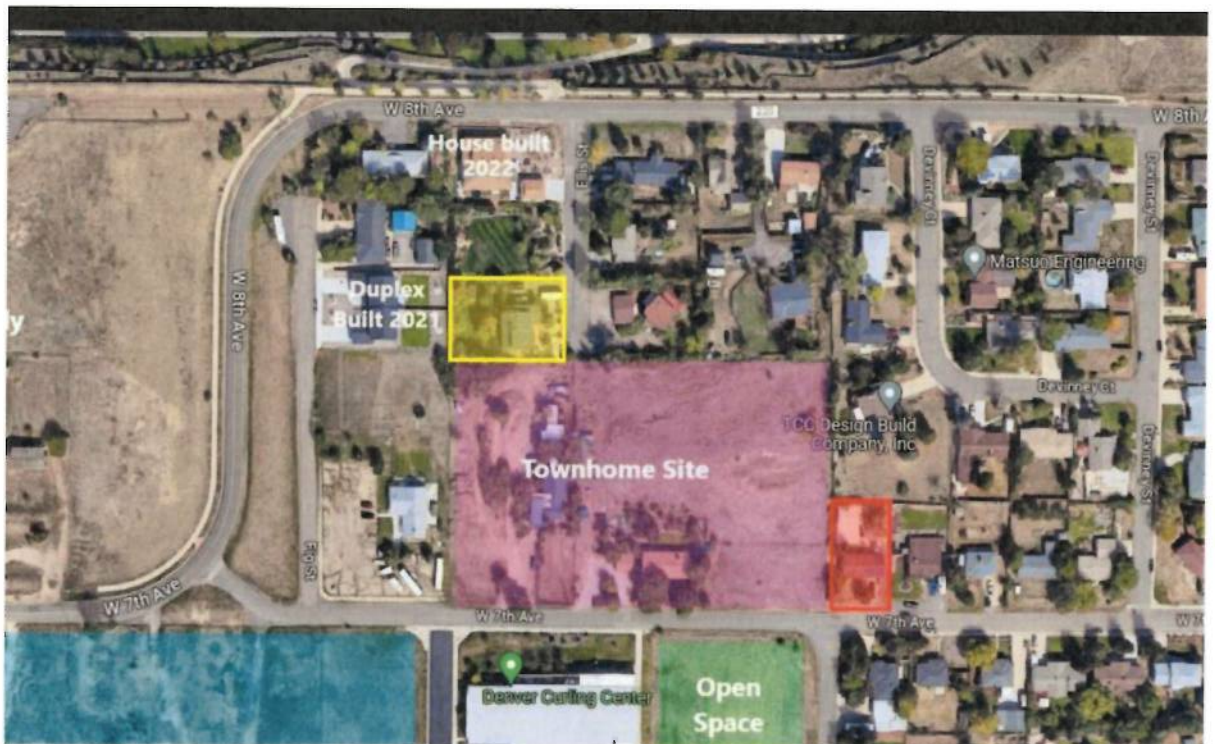
16. The ODP does not provide (1) images or details of the townhomes or buildings; (2) information on the size of the townhomes or number of bedrooms; (3) the number of parking spaces or parking configuration; (4) a sketch or drawing of the Townhome Development; or (5) information about access to and from the Townhome Development. See Exhibit 2.

17. The surrounding properties, including the Kendell Residence and the Alvarado Residence, are mostly single-family detached one-story homes, averaging approximately fourteen (14) feet in height.

18. The area to the north, including the Kendell Residence, is zoned R-2 and is comprised of mostly single-family detached homes and a few duplexes; the area to the south is zoned PD and is an indoor sports facility; the area to the east, including the Alvarado Residence, is zoned R-1 and is comprised of single-family detached homes; and the area to the west is zoned R-2 and is comprised of single-family detached homes and a few duplexes.

19. The density of the surrounding neighborhood is around 4 dwelling units per acre.

20. The image below shows the Subject Property in purple and a portion of the surrounding neighborhood. The Kendell Residence home is shown in yellow; the Alvarado Residence is shown in red.



II. JEFFERSON COUNTY'S ZONING RESOLUTION AND REQUIREMENTS

21. The Administration Provisions of the Jefferson County Zoning Resolution ("Zoning Resolution") state that in "interpreting and applying the provisions of this Zoning Resolution, they shall be held to be the minimum requirements for the promotion of the health, safety and welfare." Section 1, F.1.

22. Section 9 of the Zoning Resolution requires the Applicant submit an ODP with its rezoning Application.

23. An ODP must comply with the requirements set forth in Section 9.C.9 of the Zoning Resolution.

24. R-1 and R-2 Zone Districts “are intended to provide areas for residential developments,” limited to “single-family dwelling[s]” and “two-family dwelling[s].” Zoning Resolution, at §§ 30.A.1 and 30.B.

25. R-1 and R-2 Zone Districts do not allow “townhome[s].” See id., at § 30.B.

26. The R-1 minimum lot size is 12,500 square feet for one single-family dwelling. See id., at § 30.G (lot size chart).

27. The R-2 minimum lot size is a minimum of 9,000 square feet for one single-family house, or 12,500 square feet for a two-family dwelling or duplex. See id.

28. Under the R-1 and R-2 zoning, the Subject Property is permitted to have approximately five dwelling units per acre. See id., at § 33.A-E.

29. A PD Zone District “is a versatile zoning mechanism allowing for land development of any nature (residential, commercial, conservation, mining, industrial, public, or quasi-public, etc.)” See id., at § 29.A.

30. The Application requests rezoning to PD to allow 75 three-bedroom townhomes within approximately ten buildings on the Subject Property. The Application proposed density of 21 dwelling units per acre is 320% greater than the highest density allowed in the current R-1 and R-2 zoning for the Subject Property.

31. The Zoning Resolution states: “All PD District Rezoning shall be filed in accordance with the procedures and limitations contained in the Administrative Provisions Section of this Zoning Resolution.” Id., §29. C.

32. The Zoning Resolution states the “Criteria for Decisions for Rezoning” Applications: “In reviewing proposed Rezoning . . . Applications, the Planning Commission and the Board of County Commissioners may consider the following criteria:

- a. The compatibility with existing and allowable land uses in the surrounding area.
- b. The degree of conformance with applicable land use plans.
- c. The ability to mitigate negative impacts upon the surrounding area.
- d. The availability of infrastructure and services.
- e. The effect upon the health, safety, and welfare of the residents and landowners in the surrounding area.

Id., § 6. D. These criteria are hereinafter referred to as “Rezoning Criteria.”

III. JEFFERSON COUNTY COMPREHENSIVE MASTER PLAN

33. Pursuant to C.R.S. § 30-28-106, in 2012, the Jefferson County Planning Commission adopted the Jefferson County Comprehensive Master Plan (“CMP”).

34. The CMP explains how it is to be used:

The CMP . . . is used to evaluate proposals for a change in land use, such as rezonings . . . Proposed changes in land use should generally conform to the Plan’s Goals, Policies and maps. (Rezoning . . . cases are also evaluated against the Zoning Resolution.)

CMP, p. 8.

35. Specific to rezoning applications, the CMP states:

When using this Plan to evaluate rezoning requests, staff reviews the Goals and Policies and the appropriate maps. (See more information in the Area Plans section regarding how maps are used.) If a proposal does not meet the land use recommendations in the Plan, then staff determines if the proposal would require a Plan Exception or if it’s simply an Area of Non-Conformance.

Id.

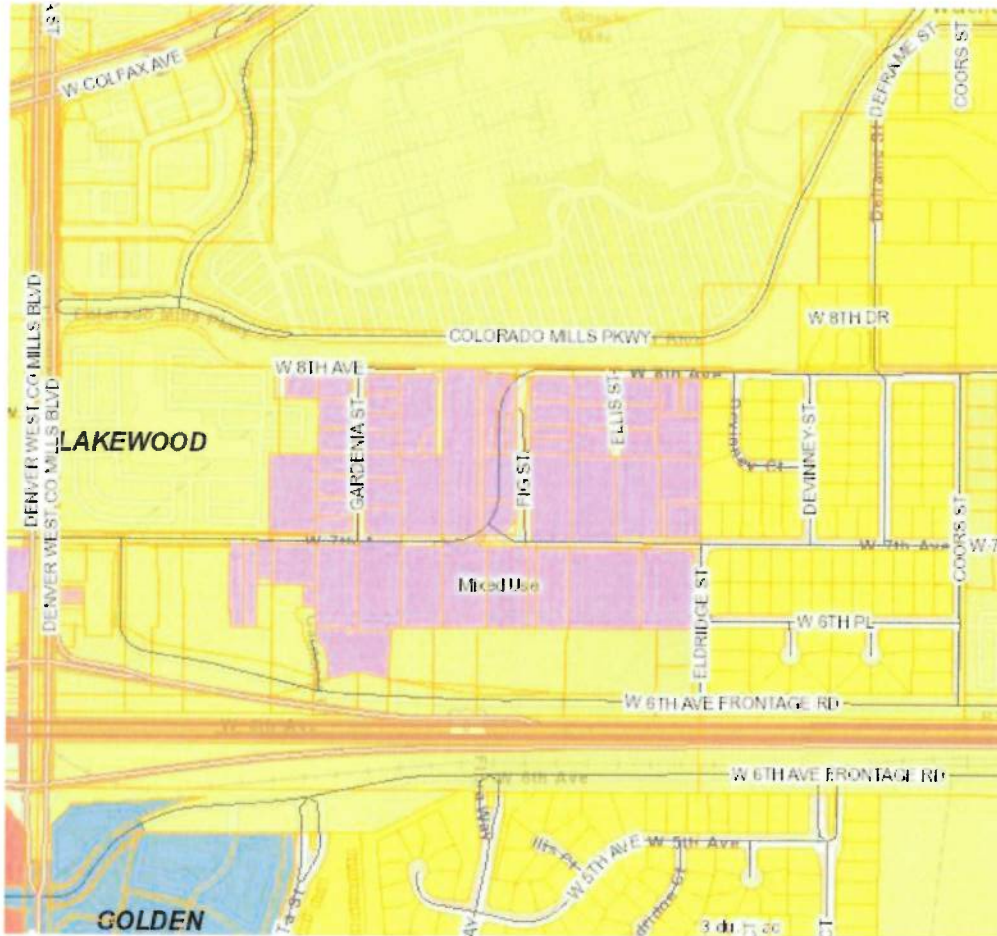
36. Procedurally, “[a]fter reviewing the case for compliance with the Plan, compatibility and health, safety and welfare, the staff makes a recommendation to the Planning Commission and the Planning Commission makes a recommendation to the [BOCC]. The [BOCC] makes the final decision on rezoning.” Id.

37. In addition, pursuant to section 24-67-104, C.R.S., of the Planned Unit Development Act, section 24-67-101, et seq., C.R.S., before approving a rezoning to PD, the BOCC “must find the PUD is in general conformity with any master plan or comprehensive plan for the county.” *Canyon Area Residents for the Env’t v. Bd. of Cnty. Comm’rs of Jefferson Cnty.*, 172 P.3d 905, 910 (Colo. App. 2006).

38. The Subject Property falls within the CMP’s Central Plains Area Plan (“CPAP”).

39. The CPAP is divided into 30 “Areas,” with each Area providing specific “land use recommendations.” CPAP, p. 4.

40. The Subject Property is within Area 19 of the CPAP. The area shaded in purple below is Area 19:



Jefferson County jMap designation of Area 19.

41. Approximately 50 properties lie within Area 19, including the Kendell Residence.
42. The CPAP identifies Area 19 as “Mixed Use,” stating that this area:

[H]as been impacted by The Colorado Mills and the redevelopment of businesses along Indiana Street. Recognition of these impacts underlies the recommendation that this area transition from residential to mixed use development, including retail, office, and research and development uses. Senior Housing may be appropriate in this area.

1. Transition from residential uses to mixed use development should start on the west side or when all property owners in the area agree with the change.
2. Existing residential uses should be allowed to continue until they agree to transition.

3. The residential area east of Eldridge Street should be buffered by a residential component of the mixed use development. This residential component should extend from Fig Street north of West 7th Avenue and should be east of the ridge identified on the map, south of West 7th Avenue. Single-family residential should be located adjacent to the eastern boundary. Single family residential or multi-family may be allowed further west.

CPAP, p. 8.

43. The Zoning Resolution defines “Mixed Use” as: “A project or single building which includes both primary non-residential and primary residential uses, where the different types of land uses are in close proximity, planned as a unified complementary whole, and functionally integrated for the use of shared vehicular and pedestrian access and parking areas.” Zoning Resolution, Definitions, p. 19.

44. The Application does not comply with the Area 19 land use recommendation, for several reasons, including but not limited to:

- a. The Application does not call for “Mixed Use.”
- b. The Application does not comply with #1 for Area 19 because that provision mandates either (1) that the transition from residential to mixed use for all of Area 19 starts on the west side of Area 19 or (2) “all the property owners” in Area 19 must agree for the transition to mixed use to occur, and neither condition has been met. None of the existing residential uses in Area 19 have transitioned to office, retail or research and development uses as the CPAP recommends, and no such transition is proposed or anticipated, so there has been no transition on the west side as required, and it's clear from the evidence that all property owners have not agreed to the change to mixed use.
- c. The Application does not comply with #3 for Area 19 because only single-family residential should be located adjacent to the eastern boundary and townhomes are not single-family residential.

45. The CMP states that for applications that are “not consistent with the Land Use Recommendations” of the CPAP, the following factors should be considered:

- a. How the impacts associated with the proposed land uses(s) will be mitigated compared with the recommended Land Uses;
- b. How the proposed land uses are compatible with the surrounding Land Use Recommendations and community character; and
- c. What change of circumstance has occurred in the local area since the Land Use Recommendation was adopted.

CMP, p. 19. These factors are hereinafter referred to as “CMP Factors.”

IV. THE PLANNING COMMISSION HEARING

46. On November 8, 2023, the Planning Commission conducted a public hearing to determine whether it would recommend to the BOCC to approve or deny the Application (“PC Hearing”).

47. In advance of the PC Hearing, Jefferson County Planning & Zoning staff (“Staff”) prepared a Staff Report, stating that the Application complied with all the criteria for rezoning in Section 6.D of the Zoning Resolution (“November 8 Staff Report”).

48. Staff concluded in its November 8 Staff Report that the Application was in general conformance with the CMP and the land use recommendations within Area 19 of the CPAP, incorrectly stating that “[s]ingle-family attached housing or townhomes meets the recommendations of the CMP for the area,” despite the plain language of the CPAP Area 19 land use recommendations.

49. Plaintiff Association, Plaintiff Kendell and Plaintiff Alvarado attended the PC Hearing and presented comments and objections to the Townhome Development.

50. The primary objections to the Townhome Development were that the density was too high; there were significant impacts created by the Townhome Development, including traffic, parking, building height, and rooftop decks and associated noise, none of which were mitigated; the Townhome Development was not compatible with the surrounding neighborhood; the Townhome Development did not conform to the CMP and CPAP Area 19 land use recommendations; there was limited community engagement; and the ODP lacked the detail necessary to consider the Zoning Resolution’s five Criteria for Decisions for Rezoning.

51. The Planning Commission, in a 6-1 decision, recommended that the BOCC deny the Application because the proposed rezoning to allow townhomes on the Subject Property: (1) was not compatible with the existing and allowable single-family detached land uses in the surrounding area; (2) was not in general conformance with the CMP and CPAP Area 19; (3) did not adequately mitigate the impacts caused by the Townhome Development; and (4) will result in significant impacts to the health, safety, and welfare of the residents and landowners in the surrounding area. See Planning Commission Resolution, dated November 8, 2023, attached as **Exhibit 3**.

52. The Planning Commission repeatedly berated the Applicant for the ODP’s lack of information and detail, finding it difficult to apply the Jeffco Zoning Resolution’s rezoning factors with so little information about the Townhome Development in the ODP.

V. THE BOCC HEARING

53. After the Planning Commission’s recommendation of denial of the Application, the Application was placed on the BOCC’s Agenda for its December 5, 2023, hearing (“December 5 Hearing”).

54. In advance of the December 5 Hearing, Plaintiffs submitted written comments objecting to the Application.

55. In advance of the BOCC December 5 Hearing, Jefferson County Planning & Zoning staff (“Staff”) prepared a revised Staff Report, stating that the Application complied with all the criteria for rezoning in Section 6.D of the Jeffco Zoning Resolution (“December 5 Staff Report”).

56. In its December 5 Staff Report, Staff changed its reasoning of how the Application complied with the CPAP Area 19 land use recommendations, concluding that the Application met all three of the requirements for land uses within Area 19, despite plain language to the contrary.

57. Staff’s interpretation of the Area 19 land use recommendation compliance is incorrect and arbitrary and capricious.

58. Staff’s conclusion that the Application complies with the Area 19 land use recommendation is incorrect and arbitrary and capricious.

59. Staff’s failure to consider the CMP Factors, even though the Application was not consistent with the Area 19 land use recommendations, is incorrect and arbitrary and capricious.

60. Plaintiffs and many other interested parties attended the December 5 Hearing, prepared to participate and object to the Application.

61. At the start of December 5 Hearing, the BOCC postponed the hearing on the Application until December 12, 2023.

62. At the December 12, 2023, BOCC Hearing (“December 12 Hearing”), Plaintiffs and some of the same interested parties attended the December 12 Hearing; however, many were unable to attend, due to the limited advance notice.

63. At the December 12 Hearing, the BOCC heard public testimony regarding whether to approve or deny the Application and ODP, including testimony from Plaintiffs.

64. Plaintiffs and the other objectors’ primary objections at the December 12 Hearing to the Townhome Development were that the density was too high; there were significant impacts created by the Townhome Development, including traffic, parking, building height, and rooftop decks and associated noise, that were not mitigated; the Townhome Development was not compatible with the surrounding neighborhood; the Townhome Development did not conform to the CMP and CPAP Area 19 land use recommendations; there was limited community engagement; and the ODP lacked enough detail to determine if it complied with the Zoning Resolution’s five Criteria for Decisions for Rezoning.

65. Despite the Planning Commission's recommendation to deny the Application and nearly unanimous objections at the December 12 Hearing, the BOCC approved the Application in the BOCC December Resolution. See Exhibit 1.

66. The BOCC December Resolution is a final agency action that can be appealed to district court.

67. Upon information and belief, the BOCC December Resolution was neither written nor executed on or about December 12, 2023, but rather the BOCC December Resolution was written and executed on or about January 5, 2024, three weeks after the December 12 Hearing. See Exhibit 1.

68. The BOCC's interpretation of the Area 19 land use recommendation compliance is incorrect and arbitrary and capricious.

69. The BOCC's conclusion that the Application complies with the Area 19 land use recommendation is incorrect and arbitrary and capricious.

70. The BOCC's failure to consider the CMP Factors, even though the Application was not consistent with the Area 19 land use recommendations, is incorrect and arbitrary and capricious.

71. The BOCC December Resolution incorrectly states that "each of the factors set forth above is adequate independently to support this resolution," referring to the Rezoning Criteria. See Exhibit 1, at para. 9.

72. The BOCC December Resolution's finding that "each of the factors set forth above is adequate independently to support this resolution," is contrary to section 24-67-104, and *Canyon Area Residents for the Env't v. Bd. of Cnty. Comm'rs of Jefferson Cnty.*, 172 P.3d 905 (Colo. App. 2006).

FIRST CLAIM FOR RELIEF

(Review of the BOCC's approval of the BOCC's December Resolution pursuant to C.R.C.P. 106(a)(4))

73. Plaintiffs incorporate the allegations contained in paragraphs 1 - 72 above as if fully incorporated herein.

74. In approving the BOCC December Resolution, the BOCC exercised a quasi-judicial function.

75. The BOCC exceeded its jurisdiction or abused its discretion by approving the BOCC December Resolution because:

- (i) The Townhome Development does not conform with the CMP and the CPAP Area 19 land use recommendations;
- (ii) The BOCC's interpretation of the CPAP Area 19 land use recommendations is incorrect and contrary to the plain language of the CPAP;
- (iii) The Townhome Development does not comply with section 24-67-104, C.R.S., of the Planned Unit Development Act, section 24-67-101, et seq., C.R.S., and *Canyon Area Residents for the Env't v. Bd. of Cnty. Comm'rs of Jefferson Cnty.*, 172 P.3d 905 (Colo. App. 2006), because the proposal is not in "general conformance" with the CMP;
- (iv) The BOCC did not consider the CMP Factors even though the Townhomes Development is not consistent with the CPAP land use recommendation;
- (v) The negative impacts to the surrounding area as a result of the Townhome Development and rezoning of the Subject Property have not been mitigated;
- (vi) The Townhome Development and rezoning of the Subject Property are not compatible with existing and allowable land uses in the surrounding area;
- (vii) The Townhome Development and rezoning of the Subject Property will result in significant impacts to the health, safety, and welfare of the residents and landowners in the surrounding area;
- (viii) The ODP does not provide enough information or details to consider the Rezoning Criteria; and
- (ix) The Townhome Development constitutes illegal upzoning of the Subject Property.

76. Under C.R.C.P. 106(a)(4), Plaintiffs are entitled to this Court's review of the BOCC's approval of the BOCC December Resolution and reversal of that decision.

77. Plaintiffs have suffered and will continue to suffer harm as a result of Defendants BOCC's actions.

78. Plaintiffs have no other plain, speedy, or adequate remedy provided by law.

WHEREFORE, Plaintiffs respectfully request this Court enter an Order:

- (a) Determining that the BOCC exceeded their jurisdiction and abused their discretion by adopting the BOCC December Resolution, and, therefore, that Plaintiffs are entitled to entry of an order reversing that decision;

- (b) Staying further action by Defendants related to the Application;
- (c) Awarding Plaintiffs their reasonable costs and attorney fees in bringing this action for review of Defendants' unlawful actions; and
- (d) Granting Plaintiffs such other and further relief as the Court deems just and proper under the circumstances.

Respectfully submitted this 9th day of January 2024, by

ALDERMAN BERNSTEIN LLC

This document is e-filed per C.R.C.P. 121, section 1-26. A duly signed copy is on file at the offices of Alderman Bernstein LLC.

/S/ Carrie S. Bernstein

ADDRESSES OF PLAINTIFFS:

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