

<p>IN THE DISTRICT COURT, EAGLE COUNTY, COLORADO 0855 Chambers Road P.O. Box 597 Eagle, Colorado 81631</p> <hr/> <p>PLAINTIFFS: BARBARA AND JACK BENSON</p> <p>DEFENDANT: EAGLE COUNTY, COLORADO, acting by and through the BOARD OF COUNTY COMMISSIONERS OF EAGLE COUNTY</p> <hr/> <p>Bryan Treu, Reg. No. 29577 County Attorney Beth Oliver, Reg. No. 35575 Deputy County Attorney P.O. Box 850 Eagle, Colorado 81631 970.328.8685 Fax: 970.328.8699 Bryan.Treu@eaglecounty.us Beth.Oliver@eaglecounty.us</p>	<p style="text-align: center;">•COURT USE ONLY•</p> <hr/> <p style="text-align: center;">Case Number: 16 CV 30361</p> <p style="text-align: center;">Division:</p>
ANSWER OF DEFENDANT EAGLE COUNTY, COLORADO	

The defendant Eagle County, Colorado, acting by and through the Board of County Commissioners (“County”), by and through the Eagle County Attorney’s Office, hereby submits the following Answer to Plaintiffs’ Claim for Relief Pursuant to C.R.C.P. 106 and 57 and the Colorado Uniform Declaratory Judgment Act:

ANSWER

1. County admits Cordillera is a development in Eagle County. The remainder of ¶ 1 calls for legal conclusions to which no response is required. To the extent a response is required, County denies the same for lack of knowledge regarding the residence of the Plaintiffs.

2. Paragraph 2 calls for legal conclusions to which no response is required. To the extent a response is required, County admits that Eagle County is a political subdivision of the State of Colorado but denies the County is a home rule county.
3. Admitted.
4. The Court lacks subject matter jurisdiction over those claims where Plaintiff has failed to exhaust administrative remedies and therefore the County denies ¶ 4 as it relates to such claims.
5. Admitted.
6. Paragraph 6 calls for legal conclusions to which no response is required. To the extent a response is required, County admits that on October 11, 2016, the BOCC adopted and signed Resolution No. 2016-079. County admits the Resolution speaks for itself and denies any allegations or characterizations in ¶ 6 that are inconsistent with such Resolution. County further admits the Director's letters dated June 1, 2016 and July 11, 2016 speak for themselves and denies any allegations or characterizations in ¶ 6 that are inconsistent with such letters.
7. Paragraph 7 is denied as pled. County admits that on October 11, 2016, the BOCC adopted and signed Resolution No. 2016-079.
8. Paragraph 8 calls for legal conclusions to which no response is required. To the extent a response is required, County admits the Resolution speaks for itself and denies any allegations or characterizations in ¶ 8 that are inconsistent with such Resolution. County further admits the Director's letters dated June 1, 2016 and July 11, 2016 speak for themselves and denies any allegations or characterizations in ¶ 8 that are inconsistent with such letters.

9. In response to Paragraph 9, County admits the Cordillera Subdivision Eleventh Amended and Restated Planned Unit Development Control Document applies to development and land use in Cordillera and that the Cordillera PUD speaks for itself. The County denies any allegation in ¶ 9 that this is the only controlling document for development and land use standards for properties in Cordillera. County denies the remaining allegations in ¶ 9 as pled.
10. County admits the Cordillera PUD speaks for itself and denies any allegations or characterizations in ¶ 10 that are inconsistent with the Cordillera PUD.
11. County admits the Cordillera PUD speaks for itself and denies any allegations or characterizations in ¶ 11 that are inconsistent with the Cordillera PUD. Specifically, County denies the allegations contained in ¶ 11 represent the only reason the Lodge or the Lodge Parcel were created. County lacks sufficient information as to what the Lodge contains and therefore denies the same. County denies the remaining allegations contained in ¶ 11.
12. County admits the Cordillera PUD speaks for itself and denies any allegations or characterizations in ¶ 12 that are inconsistent with the Cordillera PUD.
13. County admits the Cordillera PUD speaks for itself and denies any allegations or characterizations in ¶ 13 that are inconsistent with the Cordillera PUD.
14. County admits the Cordillera PUD speaks for itself and denies any allegations or characterizations in ¶ 14 that are inconsistent with the Cordillera PUD.
15. County admits the Cordillera PUD speaks for itself and denies any allegations or characterizations in ¶ 15 that are inconsistent with the Cordillera PUD. Specifically, County denies the allegations contained in ¶ 15 represent the sole uses of the Lodge and Village Center Parcels.

16. Paragraph 16 calls for legal conclusions to which no response is required. To the extent a response is required, County lacks sufficient information regarding what BH's attorney said in proposing the amendment to the County and the Cordillera community and therefore denies the same.
17. County lacks sufficient information regarding the allegations contained in ¶ 17 and therefore denies the same. County admits the amendment process and statements made during the amendment process speak for themselves and denies any allegations or characterizations in ¶ 17 that are inconsistent with such process.
18. In response to Paragraph 18, County admits that statements which may have been made during the amendment process speak for themselves and denies any allegations or characterizations in ¶ 18 that are inconsistent with such statements. County denies the allegations contained in ¶ 18 represent the sole basis or purpose of the proposed 2009 amendment. County specifically denies that 33 standalone uses were not contemplated by the amendment process as such uses were clearly approved during the same.
19. In response to Paragraph 19, County admits County Resolution No. 2010-001 speaks for itself and denies any allegations or characterizations in ¶ 19 that are inconsistent with such Resolution.
20. In response to Paragraph 20, County admits the Cordillera PUD speaks for itself and denies any allegations or characterizations in ¶ 20 that are inconsistent with such Resolution. County lacks sufficient information regarding what BH proposed and the objections made during the amendment process and therefore denies the same.
21. Paragraph 21 calls for legal conclusions to which no response is required. To the extent a response is required, County admits the Cordillera PUD speaks for itself and denies any

allegations or characterizations in ¶ 21 that are inconsistent with the Cordillera PUD.

County further denies that the proposed amendment combined the Lodge and Village Center Parcels.

22. County lacks sufficient information to admit or deny the allegations contained in ¶ 22 and therefore denies the same.
23. Paragraph 23 calls for legal conclusions to which no response is required. To the extent a response is required, County denies ¶ 23.
24. County lacks sufficient information to admit or deny the allegations contained in ¶ 24 and therefore denies the same.
25. Paragraph 25 calls for legal conclusions to which no response is required. To the extent a response is required, County denies ¶ 25.
26. In response to Paragraph 26, County admits CCG has not filed a development application or plans with the County. County lacks sufficient information to admit or deny the remaining allegations contained in ¶ 26 and therefore denies the same.
27. County lacks sufficient information regarding the allegations contained in ¶ 27 and therefore denies the same.
28. County lacks sufficient information regarding what CCG emphasized or said in a meeting with the Homeowners Association as alleged in ¶ 28 and therefore denies the same.
29. County lacks sufficient information to admit or deny the allegations contained in ¶ 29 and therefore denies the same.
30. In response to Paragraph 30, County admits that Dominic Mauriello and Thomas J. Ragonetti were engaged by CCG. County admits Exhibit 6 to the Complaint speaks for itself and denies any allegations or characterizations in ¶ 30 that are inconsistent with Exhibit 6.

31. In response to Paragraph 31, County admits Exhibit 7 to the Complaint speaks for itself and denies any allegations or characterizations in ¶ 31 that are inconsistent with Exhibit 7. County admits it accepted a meeting with representatives for CCG and the subject matter of such meeting was not initially disclosed based on the ongoing contract negotiations between CCG and Behringer Harvard. County denies any allegation in ¶ 31 that such meeting was improper or in violation of Eagle County Land Use Regulations.
32. In response to Paragraph 32, County admits it met with representatives for CCG to discuss the proposed uses and associated zoning. County denies that a verbal request for interpretation was requested. CCG was directed to make a written request for interpretation pursuant to the Eagle County Land Use Regulations.
33. In response to Paragraph 33, County admits CCG representatives made a request for interpretation pursuant to the Eagle County Land Use Regulations. County denies any allegation in ¶ 33 that CCG representatives may have somehow improperly influenced the creation of the Director's interpretation letter. County admits Exhibit 8 to the Complaint speaks for itself and denies any allegations or characterizations in ¶ 33 that are inconsistent with Exhibit 8.
34. Paragraph 34 calls for legal conclusions to which no response is required. To the extent a response is required, County denies ¶ 34. County denies the Director received an email from CCG's Agent on May 27, 2016. County admits the Eagle County Land Use Regulations do not require the Director to contact or consult with the Cordillera Community prior to rendering a zoning interpretation. However, the Director did notify the Cordillera Metro District of his Interpretation the day it was issued allowing both the Cordillera Metro District

and the Cordillera HOA to avail themselves of the appeal process that is the subject matter of this complaint.

35. In response to Paragraph 35, County admits CCG representatives were provided a courtesy copy of the Director's draft interpretation letter for review to ensure it addressed and was responsive to their inquiry. County denies any allegation in ¶ 35 that CCG representatives may have somehow improperly influenced the creation of the Director's interpretation. County admits Exhibit 9 to the Complaint speaks for itself and denies any allegations or characterizations in ¶ 35 that are inconsistent with Exhibit 9.
36. In response to Paragraph 36, County admits Exhibit 8 to the Complaint speaks for itself and denies any allegations or characterizations in ¶ 36 that are inconsistent with Exhibit 8. County admits CCG representatives reviewed the draft interpretation letter but denies that they were given the authority or opportunity to approve the same.
37. In response to Paragraph 37, County admits CCG representatives reviewed the Director's draft interpretation letter but denies that they were given the authority or opportunity to approve the same. County denies the Director collaborated with CCG's agents in the preparation of the Director's interpretation. County admits that Exhibit 2 speaks for itself and denies any allegations or characterizations in ¶ 37 that are inconsistent with Exhibit 2.
38. In response to Paragraph 38, County admits Exhibit 11 to the Complaint speaks for itself and denies any allegations or characterizations in ¶ 38 that are inconsistent with Exhibit 11. Specifically, County denies any allegations in ¶ 38 that CCG's representatives may have somehow improperly influenced the creation of the Director's interpretation.
39. In response to Paragraph 39, County admits the Homeowners Association and Cordillera Metropolitan District filed an appeal of the Director's June 1 Interpretation. County admits

the appeal speaks for itself and denies any allegations or characterizations in ¶ 39 that are inconsistent with said appeal.

40. In response to Paragraph 40, County admits Exhibit 12 to the Complaint speaks for itself and denies any allegations or characterizations in ¶ 40 that are inconsistent with Exhibit 12.

County admits that on July 8, 2016, Mr. Ragonetti filed a legal memorandum, and that such legal memorandum speaks for itself. County admits that on July 10, 2016, a Cordillera homeowner filed a complaint in this court, and that such complaint speaks for itself. County denies any remaining allegations contained in ¶ 40.

41. In response to Paragraph 41, County admits the Director rescinded his initial interpretation letter and on the same day, reissued the same interpretation. County admits Exhibit 3 to the Complaint speaks for itself and denies any allegations or characterizations in ¶ 41 that are inconsistent with Exhibit 3.

42. In response to Paragraph 42, County admits Mr. Ragonetti's July 5, 2016, letter to the lawyer for the Homeowners Association and the CMD speaks for itself and denies any allegations or characterizations in ¶ 42 that are inconsistent with such letter.

43. County denies the allegations contained in ¶ 43.

44. Admitted.

45. In response to Paragraph 45, County admits that the BOCC set September 12, 2016 as the final date for submission of evidence and memoranda by the parties. County admits Exhibit 13 to the Complaint speaks for itself and denies any allegations or characterizations in ¶ 45 that are inconsistent with Exhibit 13. The remaining allegations contained in ¶ 45 are statements or call for legal conclusions to which no response is required. To the extent a response is required, County denies the same.

46. In response to Paragraph 46, County admits a hearing before the BOCC was held on September 20, 2016, and at the conclusion of such hearing a motion was unanimously approved affirming the Director's Interpretation with a modification that CCG's proposed clinic component be operated as an outpatient facility. County denies the remaining allegations contained in ¶ 46.
47. In response to Paragraph 47, County admits that on October 11, 2016, the County Commissioners adopted County Resolution 2016-079. The remaining allegations contained in ¶ 47 are statements or call for legal conclusions to which no response is required. To the extent a response is required, County denies the same. The County admits that the Eagle County Clerk's Office corrected the scrivener's error and inserted the proper date the resolution was approved.
48. In response to Paragraph 48, County admits County Resolution 2016-079 speaks for itself and denies any allegations or characterizations in ¶ 48 that are inconsistent with such Resolution.
49. In response to Paragraph 49, County states that County Resolution 2016-079 speaks for itself and denies any allegations or characterizations in ¶ 49 that are inconsistent with such Resolution. County denies the remaining allegations in ¶ 49 regarding the Commissioners' view or role.
50. Denied.
51. Denied.
52. Denied. Additionally, Plaintiffs have failed to exhaust their administrative remedies as outlined in the Eagle County Land Use Regulations with regard to the allegations contained in ¶ 52 and the court therefore lacks subject matter jurisdiction to hear such claims.

53. In response to Paragraph 53, County states that ECLUR Chapter 2, Article 5-220(B)(1) speaks for itself and denies any allegations or characterizations that are inconsistent with such provision.
54. The allegations contained in ¶ 54 call for legal conclusions to which no response is required. To the extent a response is required, County denies the same.
55. Denied. Plaintiffs have failed to exhaust their administrative remedies as outlined in the Eagle County Land Use Regulations with regard to the allegations contained in ¶ 55 and the court therefore lacks subject matter jurisdiction to hear such claims.
56. In response to Paragraph 56, County states that ECLUR Chapter 2, Article 5-220(C)(2) speaks for itself and denies any allegations or characterizations that are inconsistent with such provision.
57. In response to Paragraph 57, County admits it met with representatives for CCG to discuss the proposed uses and associated zoning. County denies any allegation in ¶ 57 that such meeting was improper or in violation of Eagle County Land Use Regulations. County further states that Plaintiffs have failed to exhaust their administrative remedies as outlined in the Eagle County Land Use Regulations with regard to the allegations contained in ¶ 57 and the court therefore lacks subject matter jurisdiction to hear such claims.
58. The allegations contained in ¶ 58 call for legal conclusions to which no response is required. To the extent a response is required, County denies the same. County further states that Plaintiffs have failed to exhaust their administrative remedies as outlined in the Eagle County Land Use Regulations with regard to the allegations contained in ¶ 58 and the court therefore lacks subject matter jurisdiction to hear such claims.

59. The allegations contained in ¶ 59 call for legal conclusions to which no response is required. To the extent a response is required, County denies the same. County further states that Plaintiffs have failed to exhaust their administrative remedies as outlined in the Eagle County Land Use Regulations with regard to the allegations contained in ¶ 59 and the court therefore lacks subject matter jurisdiction to hear such claims.
60. The allegations contained in ¶ 60 call for legal conclusions to which no response is required. To the extent a response is required, County denies the same. County further states that Plaintiffs have failed to exhaust their administrative remedies as outlined in the Eagle County Land Use Regulations with regard to the allegations contained in ¶ 60 and the court therefore lacks subject matter jurisdiction to hear such claims.
61. The allegations contained in ¶ 61 call for legal conclusions to which no response is required. To the extent a response is required, County denies the same. County further states that Plaintiffs have failed to exhaust their administrative remedies as outlined in the Eagle County Land Use Regulations with regard to the allegations contained in ¶ 61 and the court therefore lacks subject matter jurisdiction to hear such claims.
62. Denied. County states that Exhibit 7 to the Complaint speaks for itself and denies any allegations or characterizations that are inconsistent with Exhibit 7. County further states that Plaintiffs have failed to exhaust their administrative remedies as outlined in the Eagle County Land Use Regulations with regard to the allegations contained in ¶ 62 and the court therefore lacks subject matter jurisdiction to hear such claims.
63. Paragraph 63 does not call for an answer.
64. Denied.
65. Denied

66. Paragraph 66 does not call for an answer.

67. In response to Paragraph 67, County admits that under C.R.C.P. 57(a) and the Colorado Uniform Declaratory Judgement Act, C.R.S. 13-51-101, et seq., this Court has the power to declare the rights, status and other legal relations of parties. County denies that the Plaintiffs in this matter have the right to avail themselves of C.R.C.P. 57(a) and the Colorado Uniform Declaratory Judgement Act because C.R.C.P. 106(a)(4) is the exclusive remedy to challenge the BOCC's zoning determination, which was quasi-judicial in nature.

68. The County denies the allegations contained in Paragraphs 68 – 70. The County additionally denies that the Plaintiffs in this matter have the right to avail themselves of C.R.C.P. 57(a) and the Colorado Uniform Declaratory Judgement Act because C.R.C.P. 106(a)(4) is the exclusive remedy to challenge the BOCC's zoning determination, which was quasi-judicial in nature.

General Denial

1. All allegations not expressly admitted or otherwise discussed are hereby denied.
2. County denies Plaintiffs have been damaged to the extent alleged or in any amount whatsoever.
3. County denies Plaintiffs are entitled to the relief requested.

Affirmative Defenses

1. Plaintiffs' complaint fails to state a claim upon which relief can be granted.
2. Plaintiffs have failed to exhaust requisite administrative remedies and the court therefore lacks subject matter jurisdiction to hear Plaintiffs' claims. Plaintiffs' claims pursuant to C.R.C.P. 106 should therefore be dismissed.

3. C.R.C.P. 106(a)(4) is the exclusive remedy to challenge the BOCC's zoning determination, which was quasi-judicial in nature. Plaintiffs seek to accomplish by a declaratory judgment what they should have pursued via C.R.C.P. 106, where a review of the record would have been an adequate remedy. Plaintiffs' claims pursuant to C.R.C.P. 57(a) and the Colorado Uniform Declaratory Judgement Act should therefore be dismissed.
4. County reserves the right to supplement its affirmative defenses if investigation reveals facts that would support additional defenses.

WHEREFORE, Defendant respectfully requests that this Court dismiss Plaintiffs' claims with prejudice and award Defendant its costs, attorneys' fees and any other relief that this Court may deem proper.

Dated this 18th day of January, 2017.

EAGLE COUNTY ATTORNEY'S OFFICE

By: /s/Bryan Treu

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CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2017, a true and correct copy of the foregoing ANSWER OF DEFENDANT EAGLE COUNTY, COLORADO was served via ICCES on the following:

Terence P. Boyle
Mark Apelman
VIA ICCES

/s/ Andrew Owen
Eagle County Government