COURT OF APPEALS, STATE OF COLORADO 2 East 14 Avenue, Denver, CO 80203	
Appeal from the District Court, Delta County, Colorado Honorable J. Steven Patrick Case No. 2012 CV 314	
Plaintiffs-Appellees: TRAVIS JARDON; CORRINE HOLDER; SUSAN RAYMOND; MARK COOL; and ANDREA ROBINSONG v. **Defendants-Appellants:** DELTA COUNTY BOARD OF COUNTY COMMISSIONERS; EDWIN HOSTETLER; EILEEN HOSTETLER; GREG HOSTETLER, CARMEN HOSTETLER, ANNA HOSTETLER; and ROLAND HOSTETLER	**▲ COURT USE ONLY ▲** Case Number: 2013CA1806
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NOTICE OF APPEAL

Appellant, the Board of County Commissioners of Delta County (the County), submits this Notice of Appeal and states as follows:

I. NATURE OF THE CASE

A. Nature of the Controversy.

Delta County is a rural, agricultural county. It does not have traditional zoning codes but instead regulates commercial activities through the Delta County Regulations for Specific Developments (hereinafter "RSD"). Agricultural activities, with the exception of feed lots and confined animal feeding operations, are exempt from the RSD.

In early 2011, Edwin, Eileen, Greg, Carmen, Anna, and Roland Hostetler (the Applicants) presented the County with two applications for confined animal feeding operations, each for a cage-free egg farm consisting of 15,000 laying hens. On August 29, 2011, the County announced its decision to conditionally approve the two applications.

Plaintiffs, five neighboring landowners, then filed for C.R.C.P. 106 relief with the district court (case # 2011 CV 282). On July 5, 2012, the court remanded the case back to the County to take further evidence with respect to four issues: (1) compatibility of the applications with the character of the neighborhood; (2) impact on property values of the surrounding property; (3) sufficiency of the

imposed conditions to address the neighbors' concerns; and (4) capability of the County staff to monitor applicants' compliance with the conditions.

On October 22, 2012, after conducting a public hearing to take further evidence, the County again announced its decision to conditionally approve the two applications. One of the two cage-free egg farms then began operations.

Plaintiffs again filed for C.R.C.P. 106 relief (case # 2012 CV 314). After a second remand, the district court, in a September 5, 2013 Order, ruled in Plaintiffs' favor. The court held that there was no competent evidence in the record to rebut Plaintiffs' claim that the operating egg farm was causing adverse health effects to certain neighbors, and therefore, the two egg operations were incompatible with the neighborhood. The court rejected the applicants' motion to amend in an order dated September 16, 2013, and entered final judgment on September 30, 2013.

B. Order Being Appealed and Basis for Appellate Court Jurisdiction.

The County appeals from the Judgment entered on September 30, 2013, which incorporated the September 5, 2013 Order. In the September 5 Order, the court held that there was no competent evidence to rebut Plaintiffs' claims that the applicants' operations were causing adverse health effects on neighbors, and therefore, the facilities were incompatible with the neighborhood.

This Court has jurisdiction under C.A.R. 1(a)(1) and C.R.S. § 13-4-102(1).

C. Resolution of All Issues Pending Before the Trial Court.

The September 30, 2013 Judgment resolved all issues pending before the trial court.

D. Applicability of Rule 54(b).

Not applicable.

E. Date of Entry of Judgment and Mailing.

September 30, 2013.

F. Extensions of Time for Filing Motions for Post-Trial Relief.

None.

G. Date of Filing of Motions for Post-Trial Relief.

None.

On September 9, 2013, Defendants Hostetlers filed a Motion to Amend Judgment, which the trial court denied on September 16, 2013. But the court had yet to enter final judgment and did so on September 30, 2013.

H. Date of Denial of Motions for Post-Trial Relief.

There were no such motions. See section G., above.

I. Requests for Extension of Time to File Notice of Appeal.

None.

II. ADVISORY LISTING OF ISSUES TO BE RAISED ON APPEAL

1. Did the district court misapply the "competent evidence" standard in holding that the record was devoid of support for compatibility with the neighborhood due to adverse health impacts on neighbors, and that therefore, the County's approval was arbitrary and capricious?

2. Did the district court err by basing its final order on a criterium other than the four criteria set forth in its remand order from case number 2011CV282?

3. Did the district court err in substituting its own judgment for that of the County, which had determined that any health concerns could be mitigated by imposing an additional condition requiring the applicants to monitor air quality and provide a plan to the County for reducing emission?

4. Did the district court err by holding that certain provisions of the Delta County Master Plan were enforceable regulations, contrary to the test set forth in *Bd. of County Comm'rs v. Conder*, 927 P.2d 1339 (Colo. 1996)?

5. Did the court err with respect to any other ruling adverse to the County that became final and appealable upon entry of judgment?

III. TRANSCRIPTS

Because this was a C.R.C.P. 106(4) action for review, no court testimony was taken, and there is no need for a transcript in this case.

IV. PRE-ARGUMENT CONFERENCE

The County does not request a preargument conference.

V. ATTORNEY INFORMATION

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VI. APPENDIX

Attached to this Notice of Appeal is the September 5, 2013 Order and the September 30, 2013 Judgment.

Respectfully submitted this 18th day of October, 2013.

s/ Stephen G. Masciocchi
Stephen G. Masciocchi
Christine L. Knight

ATTORNEYS FOR DEFENDANT-APPELLANT BOARD OF COUNTY COMMISSIONERS OF DELTA COUNTY

CERTIFICATE OF SERVICE

I certify that on October 18, 2013, I served a copy of the foregoing document to the following by

☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Fax
☒ Electronic Service by ICCES

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s/ Stephen G. Masciocchi

APPENDIX

District Court, Delta County, State of Colorado 501 Palmer Street, Room 338 Delta, CO 81416 Telephone: (970) 874-6280	DATE FILED: September 5, 2013 ▲ COURT USE ONLY ▲
TRAVIS JARDON, et al, Plaintiff(s), v. DELTA COUNTY BOARD OF COUNTY COMMISSIONERS, et al, Defendant(s).	Case No.: 12CV314 Div.: 2
ORDER ON RULE 106 CLAIM	

This is the second proceeding with respect to a challenge to the specific development approval of two poultry operations in Delta County. These each contemplate a 15,000 chicken and egg operation with a barn and attached fenced pasture. Plaintiffs are adjoining neighbors. One facility has been constructed and is now operational, located on Powell Mesa, and the other is not yet constructed but is to be located on Redlands Mesa, both locations are near the Town of Hotchkiss in Delta County.

The first proceeding, 11CV282, resulted in the Court remanding the matter back to the Defendant Board of County Commissioners for further proceedings to determine whether or not the commitments by the Applicants and the conditions imposed by the County in its approvals are such that the proposed operations are compatible with the neighborhood, do not adversely impact property values of their neighbors and that the County has the capacity to monitor the respective conditions. The Court concluded that there was no record support for those conclusions.

The original approval was August 29, 2011, with suit filed September 23, 2011. The Court denied a preliminary injunction on March 23, 2012 and issued its Order on July 5, 2012 remanding the matter to the County for further proceedings.

The County, following the remand, conducted a hearing on September 4, 2012 and entered its resolution of approval on October 22, 2012. Suit was filed on November 16, 2012. After briefing in this case, the Court, on March 9, 2013, remanded the matter back to the Commissioners, requiring a further public hearing based on four documents considered by the Commissioners subsequent to the September, 2012 public hearing but prior to approval. The Commissioners permitted Plaintiffs and Applicants (Defendants Hostetlers) to address the issues raised in those four documents at a hearing on May 1, 2013. The County granted approval with an additional condition related to air pollution monitoring by formal resolution on June 10, 2013, Resolution 13R-026.

Plaintiffs argue that the County has failed to address the issues identified in the Court's Order of July 2012, that the proposals are not compatible with the neighborhood for a number of reasons, but perhaps most significantly, there are remaining grave health risks, that property values have been impacted, that there is no evidence to suggest that the conditions imposed by the County plus undertakings by the Applicants are sufficient to address the issues of compatibility and impact on property values, and, finally, that the County has not demonstrated any ability to meaningfully monitor or control the operations. They argue that the evidence presented in support of the proposal, if any, is not "substantial," that it is Applicants' burden to demonstrate that their proposals do not adversely impact the neighborhood, that the Master Plan requires protecting neighbors and compliance with the Master Plan and, further, that the record reflects bias by the County officials.

Defendant Delta County argues that the record reflects support that this operation is compatible with the neighborhood and does not impact property values, that there has been no showing of a causal link between the operation and neighbors' health, that the concerns with respect to trucks are minimal given the infrequency of the truck traffic to and from the facilities and that there are expert reports on each side of many of the issues and it is not up to the Court to determine which evidence is more compelling where there is a conflict in the evidence.

Defendants Hostetlers join the County position and further argue that these agricultural operations are in an agricultural area and this is an agricultural use which should be allowed to continue, is compatible, does not adversely affect property values, that the conditions and commitments of the Applicants are more than sufficient to address the concerns and that the County and related state agencies have the capacity to and have monitored the operation.

The Court has reviewed the July 5, 2012 Order, the record, including the CD labeled "The Rule 106 Record," the "Supplemental Rule 106 Record," the "Second Supplemental Record," and a series of exhibits submitted related to the May 1, 2013 hearing, including several videos of the Powell Mesa operation and Dr. Raymond's property.

As described in the previous Order in the prior case, these proposals each contemplate a 400' x 50' barn with a 335' x 90' fenced pasture adjoining the barn. This would enable the operations to be considered "cage free." Each operation houses, or would house, 15,000 chickens.

In the previous Order, the Court noted that it is not the role of the reviewing Court to second-guess decisions by the quasi-judicial body, in this instance the Board of County Commissioners, rather, the question before the Court is whether there is competent evidence to support the conclusion of the quasi-judicial body. *See generally Board of County Commissioners of Routt County v. O'Dell*, 920 P.2d 48 (Colo. 1996). The decisions are to be made solely on the record before the Board. *Lieb v. Trimble* 183 P. 3d 702 (Colo. App. 2008). If the issue based on the record is fairly debatable, it is not subject to a finding of abuse of discretion. *Sundance Hills Homeowners Association v. Board of County Commissioners of Arapahoe County,* 534 P.2d 1212 (Colo. 1975).

The record consists of more than 1,000 pages. The Court has read all of it, most more than once. At the risk of suggesting omission by not expressly referencing every document, the Court notes the following as significant in its review of the record:

The Supplemental Record includes the Air Monitoring Survey by Plateau Air Monitoring, dated August 27, 2012, the Supplemental Plateau Air Monitoring Report, dated September 28, 2012, the Nordstrom Memorandum of October 12, 2012, and the University of Georgia publication "Nuisances Myths and Poultry Farming," statements by Ms. Clark that the facilities are compatible, statements by realtor Kathy Smith that these facilities do not impact property values, statements from two medical doctors, Drs. Abuid and Knutson Record 337-342, both pulmonologists, of their concerns as to health issues of persons downwind from the facility subsequent to the startup of the hen-egg operation, petitions and general correspondence both in opposition and support of the proposal, the complaints concerning health submitted to the County Environmental Health Department, pages 495 to 543 of the Record, Dr. Lazear's three reports, Record 404 to 407, 687 to 690 and 1008 to 1010. Defendant's expert Blean Appraisal at Record 544 that there is no impact on property values, the Schmidt Appraisal, Record at pages 548 through 554 and 842 to 847 that there are no adverse effects to property values, contrasted with the Sant Appraisal 557 to 558 and Kilpatrick Appraisal, Record pages 559 to 596, the Dr. Bundy Report at pages 597 to 600 that the conditions imposed by the County are adequate, the Dr. Koelkebeck Record at 601-602 that the conditions are sufficient, Blosser Opinion Record 603-604 is the County imposed conditions are sufficient , the Hammon CSU Extension Entomologist observation that the flies are minimal Record 605-608 the Pridgen Report of September 1, 2012 Record 642- 646 that the County failed to enforce its regulations, the ERO Study at page 670- 688 that the County has failed to adequately address water quality, the professional engineer hired by Plaintiffs expressing concerns on erosion and storm water runoff and containment, lack of dust control and deviation from the plans to what was actually constructed without supplemental applications, Ms. Pridgen's comments Record 884 concerns on the air test results Ms. Galloway at ERO page 885 concerning water quality groundwater contamination storm water containment the second supplement includes complaints to the County Environmental Health Department Record 915 to 933, including aerial photos of the site

and health complaints of neighbors, Record 933, Record page 954 Ms. Pridgen expresses her concerns as to the flawed methodology of the air testing, similarly the report of Air Resource Specialists Record 988 to 997 and the opinions of and Dr.Thu 1021 to 1062. Finally, the medical records of the Cools and Dr. Raymond Record 1063-1071.

SUMMARY OF ARGUMENTS

Plaintiffs argue that there is a lack of record support to demonstrate that this operation is compatible with the neighborhood, that there is a lack of evidentiary support that there is no impact on property values, that there is a lack of evidentiary support that the conditions are sufficient to address the foregoing and lack of evidentiary support that the County officials have the capability and capacity to meaningfully monitor and enforce the conditions imposed. They reiterate that the Master Plan is regulatory not advisory. They argue that the County regulations do not distinguish such kinds of contained animal feeding operations as between animal feeding operations (such as this operation) and confined animal feeding operations (larger operations). They argue that the record is replete with evidence of the harm to the surrounding property owners at the Powell Mesa facility, which has been operational for more than a year at this point. Further, that property values have been impacted, health of persons and animals has been affected such that these developments are not compatible with the neighborhood; that the increased road traffic of semi-trucks on a narrow county road is not compatible with the neighborhood; that the credible evidence suggests that there has been a profound impact on property values; that the conditions imposed by the County have not adequately addressed the concerns, have not been meaningfully enforced and are not sufficiently specific; and that the County staff have not demonstrated that they have the capacity to monitor or enforce the conditions. Finally, they submit that the County officials have demonstrated a bias against the Plaintiffs and for the Applicants.

The County, for its response, argues that the question before the Court is whether there is competent evidence that would support a reasonable conclusion; that simply because there is

conflicting evidence does not make its decision arbitrary; that much of the expert opinions provided by Plaintiffs related to swine or animals other than chickens; that much of the material presented by Plaintiffs and their experts relates to CAFO's, which by definition are much larger confined animal feeding operations; in contrast, that this operation is a relatively small animal feeding operation which would not even be classified as a "medium" AFO unless it housed 25,000 or more chickens; that the Plateau Air Monitoring Report and Nordstrom Memorandum note that there has been no causal link between the hens and the neighbors' health; that the semi-trucks delivering and removing birds only occur once every 14 months, which is also the frequency of the manure removal; that the feed and egg trucks are at the facility once per week such that there is minimal increase in truck activity for these operations; that there are substantial expert opinions in response to each of the experts presented by Plaintiffs, specifically as to property values, the appraiser Blean, realtors Schmidt and Smith; that the Mesa Engineering reports are contrary to the opinions of the engineer hired by Applicant, Ms. Martin; that Koelkebeck and Bundy's expert opinions are that the conditions are sufficient to address the neighbors' concerns, in contrast to Pridgen, Martin, and Dr. Thu; that the fact that the County has had at least 10 inspections, has sent notices of non-compliance where warranted and has sought input from other agencies where their areas of expertise are exceeded and solicited assistance from State agencies demonstrates their competency and ability to monitor these operations.

Counsel for the Applicants Hostetler's argues that the record has ample support for the compatibility of these barns in this agricultural area; that the expert opinions, the petitions, and the photographs show that these operation are compatible with the neighborhood; that there has been no sufficient linkage of causation with respect to the health concerns; that experts indicated that the conditions are more than sufficient; that for every expert identified by Plaintiffs there is a counter expert, including Koelebeck, Bundy, Hammon, Blosser, Hendricks and Kropf.

For the Reply, Plaintiffs argue that the record is replete with record support that this hen laying operation adversely impacts the neighborhood and that it is Applicants' burden to establish that the proposed development does not do so. Further that the master plan requires the County to protect property rights of existing neighbors and that the RSD requires compliance with the Master Plan. Finally, they argue the record reflects bias of County officials.

ORDER AND JUDGMENT

1. The Court is not charged with "second guessing" the Board of County Commissioners. *O'Dell, supra*.
2. The Court's role is solely to review the record. *Lieb, supra*.
3. The Court is not charged with weighing conflicting evidence. *Sundance Hills*, *supra*.
4. The Court previously ruled that the Delta County Regulations for Specific Development apply. Article II Section 4 (A) 2. Conclusion of Law ¶ 1 in the prior Order.
5. The statutory right to farm does not directly apply to the issue before the Court. Similarly, the Delta County Resolution on the right to farm does not apply. *See* prior Order Conclusion of Law ¶ 7.
6. While this is an agricultural use, these animal feed operations must comply with both the master plan and Regulations for Specific Development.
7. The Court previously ruled that the Master Plan is controlling, not advisory but is mandatory. Conclusion of Law ¶ 2 in the prior Order.
8. Accordingly, the Court concludes that Plaintiffs have failed to meet their burden of proof that the approval of the Board of County Commissioners as to impact on property values, sufficiency of the conditions and undertakings of the Applicant must be denied.

9. Despite the opinions of numerous citizens, realtors and expert appraisers, Kilpatrick and Sant, there is record support that property values have not been impacted. *See* reports or communications from Blean, Schmidt, Bittel, and Smith.

10. Despite the opinions of Ms. Martin P.E., Ms. Pridgen, Ms. Galloway, and Dr. Thu, there are reports and opinions of Dr. Bundy and Dr. Koelkebeck, Mr. Blosser, Mr. Hammon, Mr. Kropf and Mr. Hendricks P.E. from Mesa Engineering to support the adequacy of the conditions and undertakings of the Hostetlers.

11. There is record support that the County Engineer, Attorney, Planning Director and Environmental Health Director are monitoring this operation and soliciting assistance from state agencies.

12. The Court cannot find that Plaintiffs have established a case demonstrating bias. Both sides have argued *Churchill v. University of Colorado at Boulder*, 285 P. 3d 986. That court references "institutional bias" or "personal grudge." That case cites *Venard v. Department of Corrections*, 72 P. 3d 446 (Colo. App.2003) which states at p. 449:

> *"Absent a personal, financial, or official stake in the outcome evidencing a conflict of interest on the part of the decisionmaker, an adjudicatory hearing is presumed to be impartial. However, this presumption is rebuttable. Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n, 763 P. 2d 1020 (Colo. 1988); Soon Yee Scott v. City of Englewood, 672 P. 2d 225 (Colo. App. 1983). Moreover, the decisionmaker must be neutral and detached. See deKoevend v. Bd. Of Educ., supra.*

When, as here, an administrative proceeding is quasi-judicial in character, board members should be treated as the equivalent of judges. *See Wells v. Del Norte Sch. Dist*. C-7, 753 P. 2d 770 (Colo. App. 1987).

13. The Record demonstrates that the Board of County Commissioners has devoted hours to public hearings. The fact that it elected to not impose a cease and desist order during the pendency of this lengthy proceeding does not compel a different conclusion. The fact that extensive inspections have occurred on this relatively small poultry operation with notice of issues of non-compliance being sent by County

officials fails to demonstrate bias. The fact that a report had been received by one staff person but unknown to counsel does not demonstrate bias. A comment after recitation of the convoluted history of the proceeding "I need a drink" is obviously an attempt at humor in what has been indeed a long and complex process with strong opinions and emotions on each side, and, as such, does not demonstrate bias. Finally, the fact that approval has now twice been granted does not demonstrate bias.

14. The Court has previously ruled that the Master plan is Regulatory, not advisory.
15. The Master Plan at page 11, Record 769 provides:

    B. the right to develop and improve private property does not constitute the right to physically damage or adversely impact the property or property value or neighboring landowners. (Bold in the original).

16. In cases where there is incompatibility between an existing and a proposed land use, the property right of the existing use should be given priority.
17. While generally in these type of proceedings the burden of proof to establish an abuse of discretion is on the Plaintiffs, here, however, after substantial medical evidence as to numerous health concerns in the area developing only after the Powell Mesa hen-egg operation commenced, with no evidence presented to contest that, only statements that causation is a quite high burden and that causation has not been demonstrated, is not sufficient or substantial conflicting evidence in the record.
18. The health concerns raised in the Record, particularly by Dr. Abuid and Dr. Knutson, Dr. Merlin, Dr. Lazear and the Department of Health complaints at pages 495 through 543 of the Record demonstrate health issues occurring after commencement of the operations. Further, from the Record it seems undisputed that the County Department of Environmental Health has not pursued any of the health complaints by contacting the Complainants, only the Applicants. There is a lack of any record to suggest the

health concerns which arose subsequent to commencement of operations on Powell Mesa are not a result of the operation.

The Court notes the following:

a. The transcript of the preliminary injunction hearing, Record at 47, testimony of Mr. Nordstrom: “With respect to neighbors’ concerns. If a neighbor has a complaint we would respond to that complaint and we would address the complaint.”

b. The Plateau Report of Air Monitoring states;

    i. Record 115, “bio aerosols are common in the natural environment” especially rural;

    ii. Record 116, “given the complexities of the situation analysis of health effects should be approached with caution and with the input of a qualified medical practitioner.” (underlined in the original);

    iii. In discussing why the testing was done with only general ventilation rather than “tunnel” ventilation, Record at 120, “better analysis of disseminated particles by not discharging them forcefully and too widely in the vicinity.”’

    iv. Record 122 the air is “highly dynamic” and “potentially, some of the components may be hazardous to certain persons.”

    v. Record at 122, “Further evaluation of the human health impacts of this facility should be conducted in concert with medical specialists.”

    vi. Air Resources Specialists opinions that the Plateau monitoring was flawed methodology.

    vii. The Record at 142 Nordstrom’s October 12,2012 suggesting that it is the Complainants burden of proof, which is “quite high,” to

confirm an actual causal link between henhouse emissions and a person's illness or pulmonary difficulties.

viii. That same memo recommends, and the Board adopted a condition that a professional air pollution engineer evaluate the air pollution emissions and provide a plan for reducing air emissions from the facilities. Record at 143.

ix. The e-mails from Drs. Abuid and Knutson starting at 342 of the Record, "We both have patients who have had exacerbations, deteriorations of previous lung disease or new onset of asthma in this same area. We believe the timeline of symptoms confirms in some cases and strongly suggests in others the role of this chicken operation in their illness."

x. The series of complaints on health Record at pp. 915 to 933.

xi. Dr. Lazear, DVM, discussing public health threats from these operations noting at 687, "high density poultry operation can create significant public health threats through transmission of a variety of organisms." At Record 688, "Emissions from the facility via vent fans have covered the neighborhood resulting in closest neighbors suffering a severe asthma like reaction. All of the concerns mentioned in both the earlier letter and this letter are valid and now that the facility is in operation it is apparent the problems speculated before the operation opened are now a reality."

xii. The letter from Dr. Heidi Merlin, M.D. at Record 516, "without air filtration system and monitoring will continue to be increase of allergic rhinitis, conjunctivitis, asthma and chronic obstructive pulmonary disease exacerbating other viral related illnesses."

xiii. Record at 933 depicting the location of health complaints in the vicinity of the operation since it commenced.

xiv. The medical records of the two nearest neighbors, Cool and Raymond, Record at 1063 to 1071.

19. The Record indicates that other than visiting the operation following the health complaints, no other action has been taken by the County notwithstanding the representation under oath of Mr. Nordstrom quoted in the previous paragraph.

20. The Court notes the added condition for a professional air pollution expert added to the 2013 resolution as recommended by Mr. Nordstrom in his October 12, 2012 memorandum.

21. The only medical evidence in the record is from three medical doctors and one veterinarian (not including information from one of the Plaintiffs, also a veterinarian), that the health of neighbors is and will continue to be adversely impacted. The County's air monitoring specialist advocated for consultation with a medical professional. For the reasons set forth in the previous paragraph, as well as this paragraph, the approval must be found to be devoid of record support as to compatibility with the public health in the vicinity such that the approval, even with the recent added condition, is arbitrary and capricious. The proposed condition does not require medical input and sets no specific limits on air quality or other reasons for the health consequences of pre-existing uses in the neighborhood.

22. The Court concludes that the resolution approving these two 15,000 hand-egg operations must be reversed and vacated based on the evidence of adverse health impacts in the surrounding area such that the proposed development is incompatible with the neighborhood.

23. Defendant County shall issue a cease and desist order no later than upon the finality of this Order.

Dated this, the 5th day of September, 2013.

BY THE COURT:

J. Steven Patrick
District Judge

cc: Knight, Tolin, Rhodes

DISTRICT COURT, DELTA COUNTY, COLORADO Court Address: 7th Judicial District Court 501 Palmer Street, Room 338 Delta, CO 81416 Phone: (970) 874-6280	DATE FILED: September 30, 2013 ▲ COURT USE ONLY ▲
Plaintiffs: TRAVIS JARDON, CORRINE HOLDER, SUSAN RAYMOND, MARK COOL, and ANDREA ROBINSONG, v. Defendants: DELTA COUNTY BOARD OF COUNTY COMMISSIONERS, EDWIN HOSTETLER, EILEEN HOSTETLER, GREG HOSTETLER, CARMEN HOSTETLER, ANNA HOSTETLER, and ROLAND HOSTETLER.	Case No.: 12CV314 Div.: 2
ENTRY OF FINAL JUDGMENT ON ALL CLAIMS	

This matter came before this Court on *Hostetlers' Motion for Entry of Final Judgment on All Claims*. The Court finds good cause to grant it.

Plaintiffs' *Complaint for Certiorari and Declaratory Relief* as to Public Hearing on September 4, 2012 included two claims for relief: the first claim for judicial review under Rule 106(a)(4) and the second claim for declaratory judgment under Rule 57. On June 11, 2013, this Court ruled in favor of Defendants on Plaintiffs' claim for declaratory judgment in its *Order on Defendants Hostetlers' Motion for Partial Summary Judgment*. On September 5, 2013, this Court ruled in favor of Defendants on multiple arguments in Plaintiffs' claim for judicial review, but it ruled in favor of Plaintiffs on one of its arguments in their claim for judicial review in its *Order on Rule 106 Claim*. Neither of the Court's orders on the two claims included a certification of finality for purposes of appeal under Rule 54(b).

Now, therefore, this Court hereby ORDERS, ADJUDGES, and DECREES that final judgment enter in favor of Plaintiffs and against Defendants as to Plaintiffs' first claim for relief pursuant to Rule 106(a)(4). A request for costs is pending on that claim. Judgment in favor of Defendants and against Plaintiffs as to Plaintiffs' second claim for relief pursuant to Rule 57, with the parties to pay their own costs and attorney's fees.

Dated this, the 30th day of September, 2013.

BY THE COURT:

J. Steven Patrick
District Judge

cc: Knight, Tolin, Rhodes