

DISTRICT COURT, DOUGLAS COUNTY, STATE OF COLORADO 4000 Justice Way Castle Rock, CO 80109	DATE FILED: September 2, 2022 5:50 PM FILING ID: D6F078584BF17 CASE NUMBER: 2022CV30649
PLAINTIFFS: JAMES SANDERSON, a Colorado resident; THERESA SANDERSON, a Colorado resident; JENNIFER WAGESTER, a Colorado resident; TOM JOHANNNS, a Colorado resident; CONNIE JOHANNNS, a Colorado resident; DOUGLAS G WILSON JR., a Colorado resident; and CATHERINE WILSON, a Colorado resident, v. DEFENDANTS: BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, COLORADO; PAMELA SOLLY, a Colorado resident; and LOUIE MILLER, a Colorado resident.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<i>Attorneys for Plaintiffs:</i> Jamie N. Cotter, #40309 Lauren A. Taylor, #52452 Spencer Fane LLP 1700 Lincoln Street, Suite 2000 Denver, Colorado 80203 Phone: (303) 839-3800 Fax: (303) 839-3838 Email: jcotter@spencerfane.com ; ltaylor@spencerfane.com	Case Number: Division: Courtroom:
<p style="text-align: center;">COMPLAINT FOR JUDICIAL REVIEW PURSUANT TO C.R.C.P. 106(A)(4)</p>	

Plaintiffs James Sanderson, Theresa Sanderson, Jennifer Wagester, Tom Johanns, Connie Johanns, Douglas G Wilson Jr., and Catherine Wilson (collectively, “Plaintiffs”), through counsel, submit this Complaint for Judicial Review Pursuant to C.R.C.P. 106(a)(4) (the “Complaint”) as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff James Sanderson is an individual who resides in Douglas County, CO.
2. Plaintiff Theresa Sanderson is an individual who resides in Douglas County, CO.
3. Plaintiff Jennifer Wagester is an individual who resides in Douglas County, CO.

4. Plaintiff Tom Johanns is an individual who resides in Douglas County, CO.
5. Plaintiff Connie Johanns is an individual who resides in Douglas County, CO.
6. Plaintiff Douglas G Wilson Jr. is an individual who resides in Douglas County, CO.
7. Plaintiff Catherine Wilson is an individual who resides in Douglas County, CO.
8. Defendant Board of County Commissioners for Douglas County, CO (“Board”), is the elected body responsible for the governance of Douglas County, CO, and is the legal representative of Douglas County, CO.
9. Defendant Pamela Solly (“Solly”), upon information and belief, is a resident of Douglas County, CO and a co-owner of a parcel of real property located at 8635 South State Highway 83, Franktown, CO 80116 at the intersection of Highway 83 and Lucas Avenue (the “Property”).
10. Defendant Louie Miller (“Miller”), upon information and belief, is a resident of Douglas County, CO and a co-owner of the Property.
11. Solly and Miller (collectively, “Applicants”) are necessary and indispensable parties as they are the applicants on the use by special review application at issue in this case.
12. This Court has subject matter jurisdiction over this Complaint pursuant to Colorado Constitution, Article VI, Section 9, and Rule 106 of the Colorado Rules of Civil Procedure.
13. Plaintiffs are the proper party to bring this suit pursuant to C.R.S. § 13-51.5-101 and § 13-51.5-102, and this action is authorized by, *inter alia*, C.R.S. § 13-51-112. The Board and Applicants (collectively, “Defendants”) are properly made parties to this action pursuant to C.R.S. § 13-51-115.
14. Venue is proper in this Court pursuant to C.R.C.P. 98(c) because at least one of the Defendants is a resident of Douglas County, CO, and/or because the quasi-judicial administrative proceedings giving rise to this action took place in Douglas County, CO.

GENERAL ALLEGATIONS

A. Background.

15. The Property is located in the Cherry Valley neighborhood and features a historic white dairy barn (“Barn”) built for the Whittier family in 1911 and a smaller metal barn/apartment (“Metal Structure”).

16. Upon information and belief, Applicants purchased the Property in 2019.
17. The Property consists of approximately 35.387 acres.
18. On or around March 3, 2021, Applicants submitted a use by special review application to the Douglas County Planning Services Department (“Planning Services”), a department of the Board, for review and approval of the improvement and use of the Property as a commercial event center (“Application”).
19. Per the Application, proposed improvements on the Property include renovating the Barn into a commercial venue with extensive large glass windows and doors, a large outdoor patio, and a fireplace; renovating the Metal Structure to include wedding party suites; constructing monument signs, walkways, a two-lane drive, a 34-spot parking lot, and a bus turnaround; and erecting a white party tent upon a poured concrete pad.
20. As set forth in the Application, Applicants expect to host up to 100 weddings and/or parties of 150 or more people per year on the Property.
21. In other words, if 2-3 events are held each weekend, Applicants expect to host over 15,000 people over 33-50 weekends each year on the Property.
22. Upon information and belief, between March 3, 2021 and July 18, 2022, Applicants worked with Planning Services staff on the Application through the use by special review application process.
23. On July 18, 2022, Douglas County Planning and Zoning Board (“Planning and Zoning Board”) held a public hearing on the Application (“Planning and Zoning Board Hearing”).
24. At the July 18, 2022 Planning and Zoning Board Hearing, the Planning and Zoning Board heard public comments from 2 other Douglas County residents expressing favor, and 17 other Douglas County residents expressing opposition, of the Application and the proposed improvement and use of the Property as a commercial event center.
25. The Planning and Zoning Board voted 6-0 to recommend the Board approve the Application.
26. On August 9, 2022, the Board held a public hearing on the Application (“August 9, 2022 Board Hearing”).
27. At the August 9, 2022 Board Hearing, the Board heard public comments from Plaintiffs, 2 other Douglas County residents expressing favor, and 32 other Douglas County

residents expressing opposition, of the Application and the proposed improvement and use of the Property as a commercial event center.

28. At the August 9, 2022 Board Hearing, the Board also received signatures of 182 Douglas County residents opposing the Application and the proposed improvement and use of the Property as a commercial event center.

29. On August 9, 2022, the Board voted 2-1 to approve the Application.

30. Therefore, August 9, 2022 is the date of the final action on the Application.

B. Zoning Resolution Approval Standards for Use by Special Review Applications.

31. A use by special review application must satisfy the following approval standards of Section 2102 (Approval Standards) of the Douglas County Zoning Resolution (“Zoning Resolution”) to be approved:

A use by special review shall be approved only if the Board of County Commissioners finds that the proposed use:

2102.01 Complies with the minimum zoning requirements of the zone district in which the special use is to be located, as set forth in this Resolution.

2102.02 Complies with the requirements of this Section 21.

2102.03 Complies with the Douglas County Subdivision Resolution.

2102.04 Will be in harmony and compatible with the character of the surrounding areas and neighborhood.

2102.05 Will be consistent with the Douglas County Comprehensive Master Plan, as amended.

2102.06 Will not result in an over-intensive use of land.

2102.07 Will provide roadway capacity necessary to maintain the adopted roadway level-of-service for the proposed development concurrently with the impacts of such development.

2102.08 Will provide public facilities and services necessary to accommodate the proposed development concurrently with the impacts of such development.

2102.09 Will not cause significant air, water, or noise pollution.

2102.10 Will be adequately landscaped, buffered, and screened.

2102.11 Complies with the following standards regarding water supply:

2102.11.1 If it is demonstrated that the use by special review will not generate any ongoing water demand, no proof of water supply shall be required and no other provisions of Section 18A, Water Supply - Overlay District, herein, shall be applicable. (Amended 5/26/2015)

2102.11.2 If it is demonstrated that the use by special review, when located on a conforming parcel within the A-1 or LRR zone district, will generate a water demand not to exceed three (3) acre-feet per year, and that the demand can be supplied by a groundwater well which has or is capable of receiving a permit from the Colorado Division of Water Resources for such use, this standard shall be met and no other provisions of Section 18A, Water Supply - Overlay District, herein, shall be applicable. Water demands shall be estimated in accordance with the Minimum Water Demand Standards defined in Section 18A, Water Supply – Overlay District, herein. (Amended 5/26/2015)

2102.11.3 For all other use by special review applications, the applicant shall demonstrate conformance with Section 18A, Water Supply - Overlay District, herein. (Amended 5/26/2015)

2102.12 Will not otherwise be detrimental to the health, safety, or welfare of the present or future inhabitants of the County.

A complete copy of Section 21 of the Zoning Resolution is attached hereto as ***Exhibit A***.

32. However, the Application does not satisfy the foregoing approval standards of Section 2102 of the Zoning Resolution.

C. The Application does not comply with Section 2102.01 of the Zoning Resolution.

33. The Application does not comply with the minimum zoning requirements of the zone district in which the special use is to be located, as set forth in Section 2102.01 of the Zoning Resolution.

34. Per Subsection 302.06 (Principal Uses) of Section 3 (A1 Agricultural One District) of the Zoning Resolution, commercial event centers are not a permitted use on parcels

smaller than 80 acres. A complete copy of Section 3 of the Zoning Resolution is attached hereto as ***Exhibit B***.

35. However, Subsection 304.08 (Uses Permitted by Special Review) of Section 3 (A1 Agricultural One District) of the Zoning Resolution provides that parcels greater than 35 acres and less than 80 acres may complete the use by special Review application to request approval for use as a commercial event center.

36. Per Subsection 307 (Minimum Setbacks) of Section 3 (A1 Agricultural One District) of the Zoning Resolution, for an event center on a parcel size greater than 35 acres, the following setback requirements from the street, side lot line, rear lot line, and power lines are required:

Parcel Size	SETBACK FROM:			
	Street	Side Lot Line	Rear Lot Line	115+ KV Power Line
35+ acres	100 feet	100 feet accessory: 50 feet	100 feet accessory: 50 feet	100 feet

37. Further, per Section 2107.14.3, “[s]tructures, outdoor assembly areas, and parking lots used for the event center shall be setback a minimum of 200 feet from all adjacent property lines.”

38. While the Barn satisfies the 100-foot setback for A-1 use per Section 307, it does not satisfy the 200-foot setback from all adjacent property lines per Section 2107.14.3 (*see Figure 1*, below).

39. The Metal Structure does not satisfy either the 100-foot street setback for A-1 use per Section 307, or the 200-foot setback from all adjacent property lines per Section 2107.14.3 (*see Figure 1*, below).

40. Further, the Application’s proposed landscaping, and 3-foot earth berm with a 6-foot concrete wall on top (“Barrier”), are to be located between the Metal Structure and Highway 83.

41. Such proposed landscaping and Barrier, however, do not satisfy the 100-foot setback requirement of Section 307, or the 200-foot setback of Section 2107.14.3.



Figure 1: Satellite image of Property depicting location of Barn, Metal Structure, and 200-foot setback per Section 2107.14.3.

42. Applicants must meet, or obtain variances to, Sections 307 and 2107.14.3 for the Barn and Metal Structure, and comply with all applicable conditions thereunder.

43. By approving the Application, the Board has effectively granted Applicants a variance to zoning requirements of Sections 307 and 2107.14.3, without requiring Applicants to submit new variances or otherwise comply with Sections 307 and 2107.14.3.

44. In addition, per Section 2106.01, the Board may establish lesser setbacks than those required in Section 21, and heights greater than those allowed in the underlying zone district, if the Board determines that adequate buffering is or will be provided to mitigate such concerns as noise, visual, dust, or other social or environmental impacts.

45. The burden of proof is on Applicants to demonstrate such adequate mitigation measures.

46. The Board, however, did not make any such determination as to whether Applicants had satisfied their burden or if Section 2106.01 had been met prior to approving the Application.

D. The Application does not comply with Section 2102.02 of the Zoning Resolution.

47. The Application does not comply with all requirements of Section 21, in accordance with Section 2102.02 of the Zoning Resolution.

48. First, per Section 2107.14.2, “[s]tructures used for the event center shall be of a scale and design that is compatible with the surrounding rural environment.”

49. The Application’s proposed improvements do not match the rural character of the community as they are more consistent with a commercial venue rather than rural farmsteads or agricultural structures.

50. Agricultural, rural buildings generally do not showcase large glass windows and doors or have wedding party suites, which are proposed for Barn and Metal Structure renovation in the Application.

51. No properties in the surrounding rural environment have agricultural buildings that showcase large glass windows and doors or have wedding party suites.

52. Nor do agricultural, rural properties generally feature large outdoor patios, outdoor fireplaces, monument signs, walkways, a two-lane drive, large parking lots, a bus turnaround, or white party tents.

53. No properties in the surrounding rural environment have large outdoor patios, outdoor fireplaces, monument signs, walkways, a two-lane drive, large parking lots, a bus turnaround, or use white party tents 165 or more days per year.

54. The proposed use of the Property and proposed renovations on the Property are not a preservation of a historic building or farmstead; rather, they are a change in use accompanied with repurposing existing structures.

55. The actual expenditures of repurposing current structures on the Property will be much greater than the fair market value of the structures on the Property.

56. Second, per Section 2107.14.4, “[n]oise generated by the event center use shall not result in noise levels which exceed 40 dB(A) between 7:00 a.m. and 7:00 p.m., and 35 dB(A) between 7:00 p.m. and 7:00 a.m., measured in accordance with Section 1705A.

57. Plaintiffs’ retained noise expert concluded noise generated by the proposed event center will not be in compliance 25 feet from north, south, and east property lines, and noise levels will exceed the 35 dB(A) maximum between 7 pm and 7 am at least at five of the seven nearby residences.

58. Plaintiffs' retained noise expert also concluded Applicants' retained noise expert significantly underestimated the actual noise levels inside the Barn, and did not account for outdoor noise such as noise from vehicles, charter buses, guests, outdoor activities, outdoor music, and party tent use.

E. The Application does not comply with Section 2102.04 of the Zoning Resolution.

59. The Application is not in harmony and compatible with the character of the surrounding areas and neighborhood for several reasons, as is required under Section 2102.04 of the Zoning Resolution.

60. First, the Application is not in harmony and compatible with the character of the surrounding areas and neighborhood for all reasons set forth in *subsections C–D* and *F–I* of this Complaint.

61. Second, the transportation, traffic, and parking issues presented by the proposed commercial event center uses of the Property are not compatible or harmonious with the surrounding production agriculture and rural bedroom community of the Cherry Valley neighborhood.

62. Applicants are proposing a commercial-like 34-space parking lot and bus turnaround on the property.

63. These features are not typically found on neighboring Cherry Valley properties and are inconsistent with the historic use of the property and rural properties in general.

64. No property in the Cherry Valley neighborhood requires a commercial level of maintenance and services that the proposed event center on the Property would need.

65. Traffic would be generated by guests, potential clients and customers, trash pick-up, cleaning staff, grounds and landscaping crews, vendors, maintenance services, event staff, etc.

66. The daily, constant flow of traffic in and out of the proposed event center would be inconsistent with property use of neighboring Cherry Valley properties.

67. It is likely that 34 cars of guests, potential clients and customers, trash pick-up, cleaning staff, grounds and landscaping crews, vendors, maintenance services, event staff, etc. would enter the proposed event center at a similar time (such as right before an event starts or ends) and create more than usual traffic at the intersection of Lucas Avenue and Highway 83.

68. High use of the Lucas Avenue–Highway 83 intersection could also create traffic backups in both northbound and southbound directions, especially if guests, potential clients and

customers, trash pick-up, cleaning staff, grounds and landscaping crews, vendors, maintenance services, event staff, etc. enter the proposed event center by turning left from the northbound lane.

69. This increase in traffic would be inconsistent with current traffic patterns and a burden to local residents and throughway drivers who use Cherry Valley roadways.

70. Currently, charter buses do not stop or turn on Highway 83 between Russellville and Gillian.

71. The only bus traffic in the neighborhood is a school bus.

72. Adding charter buses to the neighborhood would generate traffic that is uncharacteristic of the Cherry Valley neighborhood.

73. Applicants are recommending northbound traffic use the gravel lot at the intersection of Lake Gulch and Highway 83 to turn around and enter the proposed event center from the southbound direction.

74. This lot is regularly used by families on weekends for custody transfers, and children often play in the lot while waiting for their guardian(s) to arrive.

75. Recommending that vehicles turnaround in the gravel lot would disrupt these families and put their children at risk of injury or death.

76. The proposed commercial event center would also invite drivers onto Cherry Valley local roadways each year who are unfamiliar with the Cherry Valley neighborhood.

77. Residents know the hazards and conditions associated with Cherry Valley local roadways, including the presence of bicyclists, wildlife, escaped livestock, and gravel road conditions.

78. Further, Highway 83 drivers tend to drive 10 or more miles over posted speed limits, pass in no passing zones, use the shoulder to pass a turning vehicle, and pass multiple cars at once.

79. Hosting a substantial number of drivers who are unfamiliar with local driving hazards and conditions every weekend, especially after consuming alcohol, would be out of character for the Cherry Valley neighborhood and increase the risk of traffic accidents.

80. Further, event center guests who are unfamiliar with local roadways may drive by the event center and need to turn around.

81. It is unusual and unsafe to have drivers pull into a driveway on Highway 83 to switch their direction.

82. Third, the proposed landscaping, monuments, and signage on the Property are not compatible or harmonious with the surrounding production agriculture and rural bedroom community of the Cherry Valley neighborhood.

83. The proposed Barrier is uncharacteristic of the neighborhood—no properties in the Cherry Valley neighborhood use a barrier that is 9 feet tall to separate it from the neighborhood.

84. No property in the Cherry Valley neighborhood has multiple large, lighted monument signs that advertise a commercial place of business.

85. These signs are included in the Application's landscape plan and are uncharacteristic of, and incongruent with, the neighboring Cherry Valley properties.

86. Fourth, the high probability that guests, potential clients and customers, trash pick-up, cleaning staff, grounds and landscaping crews, vendors, maintenance services, event staff, etc. will not be aware of, or follow, rules which result in uses which are not compatible or harmonious with the surrounding production agriculture and rural bedroom community of the Cherry Valley neighborhood.

87. While Applicants have submitted a logistical plan with the Application, that plan only works when guests, potential clients and customers, trash pick-up, cleaning staff, grounds and landscaping crews, vendors, maintenance services, event staff, etc. closely follow such plan.

88. When guests, potential clients and customers, trash pick-up, cleaning staff, grounds and landscaping crews, vendors, maintenance services, event staff, etc. fail to follow rules, the Cherry Valley neighborhood will be ever more negatively impacted.

89. For example, if more guests, potential clients and customers, trash pick-up, cleaning staff, grounds and landscaping crews, vendors, maintenance services, event staff, etc. need to park than the 34-car parking lot allows, they may park along Lucas Avenue and cross Highway 83 to enter the event center.

90. The parking of cars along Lucas Avenue and crossing of Highway 83 by foot would be inharmonious and incompatible with the Cherry Valley neighborhood and would create a safety hazard.

91. Further, if more guests, potential clients and customers, trash pick-up, cleaning staff, grounds and landscaping crews, vendors, maintenance services, event staff, etc. need to park than the 34-car parking lot allows, overflow parking in a nearby pasture/grass lot may result.

92. Overflow parking in a nearby pasture/grass is incompatible with the surrounding areas and Cherry Valley neighborhood and could put neighboring Cherry Valley residents at an increased risk of grass/pasture fires.

93. Further, incidents that can occur when large numbers of people, who are unfamiliar, enter a rural community such as the Cherry Valley neighborhood include:

- a. Trespassing on private property.
- b. Not understanding that wildlife and production animals are dangerous and not pets.
- c. Unintended litter entering pasture fields, posing a health risk to animals.
- d. Sightseeing or pulling off to the side of the road to view animals or ranching activities.
- e. Fire hazards resulting from the smoking of cigars or cigarettes, or the igniting of sparklers or fireworks in celebration.

94. Guests, potential clients and customers, trash pick-up, cleaning staff, grounds and landscaping crews, vendors, maintenance services, event staff, etc. and neighboring Cherry Valley residents are at an increased risk of the negative consequences that result from the impaired judgement and poor behavior choices of intoxicated individuals likely to be on or near the Property.

F. The Application does not comply with Section 2102.05 of the Zoning Resolution.

95. The proposed Application is not consistent with the Douglas County's 2040 Comprehensive Master Plan, as amended ("Master Plan"), as required by Section 2102.05 of the Zoning Resolution.

96. According to its Introduction, the Master Plan was set forth to enhance the quality of life for Douglas County residents by protecting the natural landscape, rural areas, and historic sites of Douglas County. A copy of the Master Plan Introduction is attached hereto as ***Exhibit C***.

97. Douglas County residents, according to their public comments at the August 9, 2022 Board Hearing, do not believe that introducing 15,000 people per year to their rural community enhances their quality of life or protects their rural area.

98. Adding extensive commercial improvements to the Property, such as large glass windows and doors, wedding party suites, a two-lane drive, large parking lot, bus turnaround, and a white party tent, will detract from the Cherry Valley neighborhood's natural landscape and rural character.

99. Douglas County residents, according to their public comments at the August 9, 2022 Board Hearing, do not consider reconstructing the over-century-old Barn from its original state to one that is commercially trendy to be protection or preservation.

100. Additionally, the proposal does not meet criteria for the Cherry Valley Subarea of Section 3 the Master Plan, including Objective 3-3B, Policy 3-3B.1, and Policy 3-3B.6. A copy of Section 3 the Master Plan, including Objective 3-3B, Policy 3-3B.1, and Policy 3-3B.6, is attached hereto as *Exhibit D*.

101. Objective 3-3B aims to “[m]aintain the agricultural lifestyle and rural character of the Cherry Valley Subarea.”

102. Hosting 100 gatherings of 150 people annually for profit at an event center does not maintain the agricultural lifestyle and rural character of the Cherry Valley Subarea.

103. Policy 3-3B.1 provides that “[l]ow-intensity rural development is supported in the Cherry Valley Subarea.”

104. In contradiction to Policy 3-3B.1, the Property is going to be used as a commercial event center to annually host upwards of 15,000 guests—not a low-intensity rural use.

105. Commonly accepted indicators of intensive property use include commercial infrastructure and improvements such as walkways, gravel drives, a parking lot, area lighting, signs, etc.

106. The proposed improvements to the Property including walkways, driveways, a parking lot, lighting, and signs which are indicative of intensive property use—not low-intensity rural use.

107. Policy 3-3B.6 provides “[d]evelopment in the Cherry Valley Subarea should minimize visual impacts within major viewsheds.”

108. A viewshed is the natural environment that is visible from one or more viewing points.

109. The Cherry Valley Subarea neighborhood, and all who visit it, will see commercial infrastructure and improvements, which are inconsistent with the natural environment of surrounding rural properties.

110. While passersby on Highway 83 may not see the impact, a majority of the Cherry Valley Subarea neighborhood sits above the site and can view the proposed commercial infrastructure and improvements, which negatively impacts the major pastoral viewshed associated with the Greenland Ranch and adjacent ranch pastures.

G. The Application does not comply with Section 2102.06 of the Zoning Resolution.

111. The proposed Application will result in an over-intensive use of land, not in accordance with Section 2102.06 of the Zoning Resolution.

112. Hosting 15,000 people per year for commercial use in the Cherry Valley neighborhood is high-intensity use of the Property and surrounding land.

113. The Application will effectively create a commercial business operating with extended hours (until midnight) that features noise, people, traffic, and charter buses well beyond the typical day for a rural bedroom community.

114. No property in the Cherry Valley neighborhood currently hosts 150 people, including people who could have consumed alcohol, each Friday, Saturday, and Sunday evening.

115. Few gatherings are held in the Cherry Valley neighborhood, with the most prominent gathering being the hosting of friends, family, and neighbors in the residence to celebrate a holiday or graduation.

116. The Property's proposed improvements of walkways, driveways, a parking lot, lighting, and signs are similar to those featured in intensely used properties.

117. The Property's proposed improvements are inconsistent with neighboring low-use properties and indicate that the number of people, and the frequency by which they access the proposed Property, will place stress upon the Property, and surrounding land, through over-intensive use.

118. Further, there is the possibility of overflow parking on a nearby pasture/grass lot.

119. Regularly parking upon pasture in Colorado's dry climate will result in over-intensive use of such land that will kill the existing grass and expose bare earth.

H. The Application does not comply with Section 2102.09 of the Zoning Resolution.

120. The proposed Application will cause significant noise and light pollution, not in accordance with Section 2102.09 of the Zoning Resolution.

121. First, the proposed use of the Property will generate significant noise pollution in the Cherry Valley neighborhood.

122. Plaintiffs' noise expert predicts significant noise pollution will extend above applicable levels and well beyond the Property's site boundaries.

123. Applicants' noise expert significantly underestimates the actual noise levels inside the Barn and it does not address the noise of vehicles, charter buses, guests, outdoor activities, outdoor music, and party tent use outside of the Barn.

124. In a valley, sound waves are "funneled," and therefore concentrated and intensified before deflecting upwards when they encounter the valley slopes.

125. Noise can also be heard much more clearly at night over longer distances due to temperature inversion.

126. Thus, the evening events proposed by Applicants are much more likely to cause noise pollution than the typical daytime activities of Cherry Valley neighborhood residents.

127. Applicants' noise expert, however, does not assess the noise pollution that will result from funneled valley sound waves and temperature inversion.

128. Purportedly, Applicants' proposed Barrier is intended to reduce traffic noise from Highway 83 for the Property.

129. Applicants' noise expert also does not assess the noise pollution that will result from the proposed Barrier.

130. The Barrier has the potential of creating significant noise pollution for surrounding elevated properties and for properties behind the noise barrier.

131. Moreover, the types of noise that will be generated by the proposed uses of the Property are not typically heard in the Cherry Valley neighborhood.

132. To wit, no property in the Cherry Valley neighborhood generates the types of noise that would be typical of a commercial event center.

133. Cherry Valley neighborhood residents often hear a coyote howl or cow call to her calf across the valley.

134. If those sounds are replaced by outdoor guests laughing, party tent mingling, starting vehicles, or accelerating/decelerating charter buses, residents lose the sounds of Cherry Valley neighborhood.

135. The noise pollution generated by the proposed use of the Property would also burden neighboring Cherry Valley residents who are trying to peacefully enjoy the afternoon or evening or sleep.

136. Causing such noise disturbances 100 times (33-50 weekends) annually would be out of character for the Cherry Valley neighborhood.

137. Second, the proposed use of the Property will generate significant light pollution in the Cherry Valley neighborhood.

138. A defining characteristic of the Cherry Valley neighborhood, and most rural areas, is a dark night sky.

139. By 10 pm, there is little human activity or light shed in the Cherry Valley neighborhood.

140. At night, light pollution will be present as the extensive glass windows and doors of the Barn will allow light to shine outside.

141. Further, outdoor features such as the large outdoor patio, fireplace, signs, and white party tent will generate more light outside.

142. Walkways, the driveway, bus turnaround, and parking lot will also be lit when buses and cars exit at the close of an event.

I. The Application does not comply with Section 2102.10 of the Zoning Resolution.

143. The proposed Application will not be adequately landscaped, buffered, and screened, as is required under Section 2102.10 of the Zoning Resolution.

144. The Property is in a valley, in full view of neighboring properties at higher elevation.

145. The close proximity of the Property's commercial event center operations to Highway 83 (within the 200-foot setback), and lack of buffer on the eastern property line, further exposes event center activities to view.

146. The proposed landscaping plan and Barrier do not prevent view of the commercial features that are inconsistent with the rural landscape from the neighboring properties that sit at a higher elevation.

147. An expert, to assure that the objective of visually screening the event center is satisfied, has not reviewed the Application's landscaping plan.

148. There is no evidence, nor have Applicants provided any evidence, that the proposed Barrier is designed to be a vegetative barrier or screen.

149. Further, Applicants have provided no study to show proposed landscaping or Barrier will adequately block sources of light pollution.

150. Given the Property's location at the bottom of a valley, it is not possible to screen the light pollution from affecting the dark night sky, even if light use is within Douglas County standards.

151. Light will inevitably extend well beyond Property boundaries.

FIRST CLAIM FOR RELIEF
(C.R.C.P. 106(a)(4))

152. Plaintiffs incorporate the previous allegations of the Complaint as if fully set forth herein.

153. The Board exercised a quasi-judicial function by holding a public hearing on and ultimately approving the Application.

154. In approving the Application, without requiring Applicants abidance with, or satisfaction of, the approval standards of Section 2102 of the Zoning Resolution, the Board exceeded its jurisdiction, abused its discretion, and otherwise acted contrary to law.

155. In approving the Application, thereby creating a new interpretation of the Zoning Resolution that does not align with the Zoning Resolution, as written, or the historical interpretation of the Zoning Resolution, the Board exceeded its jurisdiction, abused its discretion, and otherwise acted contrary to law.

156. In approving the Application, thereby creating a precedent regarding interpretation of the Zoning Resolution that will be extremely difficult to execute in a fair and unbiased way moving forward, the Board exceeded its jurisdiction, abused its discretion, and otherwise acted contrary to law.

WHEREFORE, Plaintiffs respectfully requests that judgment enter in their favor, and against Defendants, as follows:

- a. Declaring that when the Board approved the Application it was performing a quasi-judicial function;

- b. Determining that, in approving the Application, the Board exceeded its jurisdiction, abused its discretion, and/or otherwise acted contrary to law;
- c. Vacating and/or otherwise overturning the Board's approval of the Application;
- d. Restraining the Board from approving or considering any further use by special review or other applications for the Property without the requisite satisfaction of the approval standards of Section 2102 of the Zoning Resolution; and
- e. For all such further relief the Court deems appropriate.

Respectfully submitted this 2nd day of September, 2022.

/s/ Lauren A. Taylor

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Plaintiff Catherine Wilson's Address:

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