

<p>DISTRICT COURT, JEFFERSON COUNTY COLORADO 100 Jefferson County Parkway Golden, CO 80401</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Case Number: 03-CV-3045</p> <p>Div: 6 Ctrm.: 5-B</p> <hr/> <p>Case Number: 05-CV-3627</p> <p>Division 2</p> <p><i>Consolidated with Case No. 03-CV-3045 by Nov. 7, 2005 Order in Case No. 03-CV-3045</i></p>
<p>Plaintiff: CITY OF GOLDEN, et al.</p> <p>Defendants: JEFFERSON COUNTY, BOARD OF COUNTY COMMISSIONERS OF JEFFERSON COUNTY, and LAKE CEDAR GROUP, L.L.C.</p> <hr/> <p>Plaintiff LAKE CEDAR GROUP, LLC</p> <p>Defendant(s): JEFFERSON COUNTY, COLORADO and acting by and through the BOARD OF COUNTY COMMISSIONERS OF JEFFERSON COUNTY</p> <p>v. CITY OF GOLDEN</p>	
<p>Attorneys for Defendants Jefferson County and Board of County Commissioners of Jefferson County</p> <p>Frank J. Hutfless, #16718 JEFFERSON COUNTY ATTORNEY Writer Mott, #33148 Assistant County Attorney Jefferson County Attorney's Office 100 Jefferson County Parkway, #5500 Golden, CO 80419-5500 Phone: (303) 271-8932 Fax: (303) 271-8901</p>	
<p style="text-align: center;">JEFFERSON COUNTY’S ANSWER TO LAKE CEDAR GROUP, LLC’S COMPLAINT PURSUANT TO C.R.C.P. 106(a)(4)</p>	

Defendant Board of County Commissioners of the County of Jefferson, Colorado (the “County”), by and through the Jefferson County Attorney and Assistant County Attorney Writer Mott, for its Answer to the Complaint pursuant to C.R.C.P. 106(a)(4) filed by Lake Cedar Group, LLC (“Lake Cedar”), states and alleges as follows:

Parties

1. The County is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 1 of the Complaint and, therefore, the County denies those allegations.

2. The County is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 2 of the Complaint and, therefore, the County denies those allegations.

3. The County admits the allegations contained in paragraph 3 of the Complaint.

Jurisdiction and Venue

4. The County admits that this Court has jurisdiction over this matter pursuant to C.R.C.P. 106(a)(4) as alleged in paragraph 4 of the Complaint.

5. The County admits that venue is proper as alleged in paragraph 5 of the Complaint.

General Allegations

6. The County admits as alleged in paragraph 6 of the Complaint that Lake Cedar is the owner of real property located at 21119 Cedar Lake Road, Golden, Colorado (the "Property"). The County is without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 6 of the Complaint and, therefore, the County denies those additional allegations.

7. The County admits the allegations contained in paragraph 7 of the Complaint.

8. The County is unsure what the current zoning status is for the Property after the remands and, therefore, the County denies the allegations contained in paragraph 8 of the Complaint. The County affirmatively alleges that the Property was zoned Mountain Residential-One (MR-1) and Agricultural-Two (A-2) when the Lake Cedar rezoning process began.

9. The County admits the allegations contained in paragraph 9 of the Complaint.

10. The County is without information or knowledge sufficient to form a belief as to the truth or falsity of exactly how many towers and buildings Lake Cedar was planning to remove and therefore, denies those specific allegations contained in paragraph 10 of the Complaint. The County admits the remaining allegations contained in paragraph 10 of the Complaint.

11. The County admits the allegations contained in paragraph 11 of the Complaint.

12. The County admits the allegations contained in paragraph 12 of the Complaint.

13. The County admits the allegations contained in paragraph 13 of the Complaint.

14. The County admits the allegations contained in paragraph 14 of the Complaint.

15. The County admits the allegations contained in paragraph 15 of the Complaint.

16. The County admits the allegations contained in paragraph 16 of the Complaint.

17. The County admits the allegations contained in paragraph 17 of the Complaint.

18. The County admits the allegations contained in paragraph 18 of the Complaint.

19. In response to paragraph 19 of the Complaint, the County states that the Court's May 4, 2005 Order is a public document that speaks for itself. To the extent the allegations contained in paragraph 19 of the Complaint are contrary to the Court's May 4, 2005 Order, the County denies those allegations.

20. In response to paragraph 20 of the Complaint, the County states that the Court's May 4, 2005 Order is a public document that speaks for itself. To the extent the allegations contained in paragraph 20 of the Complaint are contrary to the Court's May 4, 2005 Order, the County denies those allegations.

21. In response to paragraph 21 of the Complaint, the County states that the Setback Provision is a public document that speaks for itself. To the extent the allegations contained in paragraph 21 of the Complaint are contrary to the Setback Provision, the County denies those allegations.

22. In response to paragraph 22 of the Complaint, the County states that the Court's May 4, 2005 Order is a public document that speaks for itself. To the extent the allegations contained in paragraph 22 of the Complaint are contrary to the Court's May 4, 2005 Order, the County denies those allegations.

23. In response to paragraph 23 of the Complaint, the County states that the Court's May 4, 2005 Order is a public document that speaks for itself. To the extent the allegations contained in paragraph 23 are contrary to the Court's May 4, 2005 Order, the County denies those allegations.

24. It is unclear to the County what the term "at all relevant times" means in paragraph 24 of the Complaint and, therefore, the County denies the allegations contained in paragraph 24 of the Complaint. The County affirmatively alleges that its Planning and Zoning Department made an interpretation of the Setback Provision on July 13, 2004, which was later clarified on August 9, 2004. This interpretation was made during the course of the litigation. The County admits that the interpretation of the Setback Provision is a public document that speaks for itself. To the extent the allegations contained in paragraph 24 of the Complaint are contrary to the County's interpretation of the Setback Provision, the County denies those allegations.

25. In response to paragraph 25 of the Complaint, the County states that the Court's May 4, 2005 Order is a public document that speaks for itself. To the extent the allegations contained in paragraph 25 of the Complaint are contrary to the Court's May 4, 2005 Order, the County denies those allegations.

26. In response to paragraph 26 of the Complaint, the County states that the Court's May 4, 2005 Order is a public document that speaks for itself. To the extent the allegations contained in paragraph 26 of the Complaint are contrary to the Court's May 4, 2005 Order, the County denies those allegations.

27. The County admits the allegations contained in paragraph 27 of the Complaint.

28. In response to paragraph 28 of the Complaint, the County states its July 27, 2005 Notice of Hearing (the "Notice of Hearing") is a public document that speaks for itself. To the extent the allegations contained in paragraph 28 of the Complaint are contrary to the Notice of Hearing, the County denies those allegations.

29. The County is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 29 of the Complaint and, therefore, the County denies those allegations.

30. In response to paragraph 30 of the Complaint, the County admits that on or before August 9, 2005, Lake Cedar, the City of Golden and CARE submitted written materials to the Board of County Commissioners (the "Board") for consideration at the August 30, 2005 hearing.

31. The County admits that Lake Cedar submitted an expert report prepared by Mark Malouf, P.E., of Malouf Engineering, International, Inc. (the "Malouf Report") as alleged in paragraph 31 of the Complaint. The County denies all the remaining allegations as to the contents of the Malouf Report contained in paragraph 31 of the Complaint.

32. The County admits that City of Golden submitted an expert report form Exponent Analysis Associates (the "Exponent Analysis Report") as alleged in paragraph 32 of the Complaint. The County denies all the remaining allegations in paragraph 32 of the Complaint as to the contents of the Exponent Analysis Report.

33. The County denies the allegations contained in paragraph 33 of the Complaint.

34. The County admits that all the parties to the Second Remand submitted extraneous evidence and presented extraneous testimony beyond the scope of the issue of multiple tower failures. The County affirmatively alleges that its decision on remand was based solely on the relevant testimony and evidence presented on the issue of multiple tower failures. The County, therefore, denies the allegations contained in paragraph 34 of the Complaint.

35. The County admits that it issued its first Case Summary on August 15, 2005 as alleged in paragraph 35 of the Complaint. The County affirmatively alleges that the Case Summary was subsequently modified and amended after that date.

36. The County admits that its staff submitted a Case Summary as alleged in paragraph 36 of the Complaint. The County affirmatively alleges that the Case Summary is a public document, which speaks for itself. To the extent the allegations contained in paragraph 36 are contrary to the Case Summary, the County denies those allegations.

37. The County admits the allegations contained in paragraph 37 of the Complaint.

38. The County admits that Mr. Malouf and a representative of Lake Cedar presented evidence at the Second Remand Hearing as alleged in paragraph 38 of the Complaint. The County denies all the remaining allegations contained in paragraph 38 of the Complaint.

39. The County denies the allegations contained in paragraph 39 of the Complaint.

40. The County admits that all the parties to the Second Remand submitted extraneous evidence and presented extraneous testimony beyond the scope of the issue of multiple tower failures. The County affirmatively alleges that its decision on remand was based solely on the relevant testimony and evidence presented on the issue of multiple tower failures. The County, therefore, denies the allegations contained in paragraph 40 of the Complaint.

41. The County admits that all the parties to the Second Remand submitted extraneous evidence and presented extraneous testimony beyond the scope of the issue of multiple tower failures. The County affirmatively alleges that its decision on remand was based solely on the relevant testimony and evidence presented on the issue of multiple tower failures. The County, therefore, denies the allegations contained in paragraph 41 of the Complaint.

42. The County is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 42 of the Complaint since the transcript of the hearing has not been prepared or certified and, therefore, the County denies those allegations.

43. The County denies the allegations contained in paragraph 43 of the Complaint on grounds that there is no Commissioner Thomas McCasky. The County affirmatively alleges that Commissioner J. Kevin McCasky (“Commissioner McCasky”) made the motion discussed in paragraph 43 of the Complaint.

44. The County admits that the Board denied Commissioner McCasky’s Motion by a vote of two to one as alleged in paragraph 44 of the Complaint. The County denies all the remaining allegations contained in paragraph 44 of the Complaint.

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

45. The County incorporates by reference its responses to the allegations contained in paragraphs 1 through 44 of the Complaint as if set forth in full herein for its response to the allegations contained in paragraph 45 of the Complaint.

46. The County admits the allegations contained in paragraph 46 of the Complaint.

47. The County admits the allegations contained in paragraph 47 of the Complaint.

48. The County denies the allegations contained in paragraph 48 of the Complaint.

49. The County admits that all the parties to the Second Remand submitted extraneous evidence and presented extraneous testimony beyond the scope of the issue of multiple tower failures. The County affirmatively alleges that its decision on remand was based

solely on the relevant testimony and evidence presented on the issue of multiple tower failures. The County, therefore, denies the allegations contained in paragraph 49 of the Complaint.

50. The County admits that County's Planning and Zoning Department's interpretation of the Setback Provision is a public document that speaks for itself. To the extent the allegations contained in paragraph 50 of the Complaint are contrary to the County's interpretation of the Setback Provision, the County denies those allegations.

51. The County admits that County's Planning and Zoning Department's interpretation of the Setback Provision is a public document that speaks for itself. To the extent the allegations contained in paragraph 51 of the Complaint are contrary to the County's interpretation of the Setback Provision, the County denies those allegations.

52. The County denies the allegations contained in paragraph 52 of the Complaint.

53. The County is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 53 of the Complaint since the transcript of the hearing has not been prepared or certified and, therefore, the County denies those allegations.

54. The County denies the allegations contained in paragraph 54 of the Complaint.

55. The County is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 55 of the Complaint and, therefore, the County denies those allegations.

56. The County denies each and every allegation contained in the WHEREFORE paragraph (including paragraphs A-G) of the Complaint. The County affirmatively alleges that the Board's decision was valid and appropriate and complies with the Court's direction on the Second Remand.

GENERAL DENIAL

57. The County denies each and every other allegation contained in the Complaint, except to the extent expressly and specifically admitted herein.

AFFIRMATIVE DEFENSES

First Defense

The Complaint fails to state a claim upon which relief can be granted.

Second Defense

The County is entitled to judgment on Plaintiff's First Claim for Relief because the Board did not abuse its discretion or exceed its jurisdiction.

Third Defense

The County is entitled to judgment on Plaintiff's First Claim for Relief because there is competent evidence in the record that supports the Board's determination.

Fourth Defense

The County is entitled to judgment on Plaintiff's First Claim for Relief because the County complied in good faith with all applicable regulations and procedural requirements.

Fifth Defense

Lake Cedar is not entitled an award of attorney's fees under C.R.C.P. 106(a)(4).

Sixth Defense

The County is currently without knowledge of facts, which would form the basis for further affirmative defenses regarding Lake Cedar's claim. The County reserves the right to assert any such defenses should factual bases become known during discovery or otherwise.

Dated this 20th day of December, 2005.

FRANK J. HUTFLESS, #16718
JEFFERSON COUNTY ATTORNEY

/s/ Writer Mott

By _____

Original signature on File

Writer Mott, #33148
Assistant County Attorney
100 Jefferson County Parkway
Golden, CO 80419-5500
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CERTIFICATE OF MAILING

I hereby certify that on this 20th day of December, 2005, a true and correct copy of the foregoing **JEFFERSON COUNTY'S ANSWER TO LAKE CEDAR GROUP, LLC'S COMPLAINT PURSUANT TO C.R.C.P. 106(a)(4)** was electronically filed via Lexis-Nexis File and Serve, and a duly signed original kept on file at the offices of the Jefferson County Attorney's Office; and on the 20th day of December, 2005 a copy was electronically served via Lexis-Nexis to the following:

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s/ Deborah Hokanson
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