

DISTRICT COURT, CITY AND COUNTY OF DENVER,
COLORADO
1437 Bannock Street,
Denver, CO 80202

DATE FILED: November 4, 2015 8:48 AM

Plaintiffs:

ARTHUR KEITH WHITELAW, III; JOHN DERUNGS;
KATHERINE K. MCCRIMMON; LAURA PITMON;
DENISE SIGON f/k/a DENISE L. SAGER; ALAN SINGER;
and RITA SINGER

v.

Defendants:

THE DENVER CITY COUNCIL (including the individual Council members in their official capacity: Albus Brooks, Charlie Brown, Jeanne Faatz, Christopher Herndon, Robin Kniech, Peggy Lehmann, Paul Lopez, Judy H. Montero, Chris Nevitt, Debbie Ortega, Jeanne Robb, Susan Shepherd, Mary Beth Susman); THE MANAGER OF COMMUNITY PLANNING AND DEVELOPMENT (Brad Buchanan, in his official capacity); THE DENVER PLANNING BOARD (including the individual Board members in their official capacity, Andy Baldyga, Jim Bershof, Shannon Gifford, Renee Martinez-Stone, Brittney Morris Saunders, Joel Noble, Susan Pearce, Arleen Taniwaki, Julie Underdahl, Frank Schultz and Chris Smith); THE CITY AND COUNTY OF DENVER; and CEDAR METROPOLITAN LLC (the Property Owner/zoning applicant)

▲ COURT USE ONLY ▲

Case Number:
15CV32427

Courtroom: 269

ORDER

(Plaintiffs' Motion under C.R.C.P. 106(a)(4)(V) and 65 for Stay of Actions by City of Denver to Allow any New Construction on Mt. Gilead Parcel Pending this Court's Ruling on the Merits of Plaintiffs' Claims in their Complaint)

This matter is before the Court on Plaintiffs' Motion under C.R.C.P. 106(a)(4)(V) and 65 for Stay of Actions by City of Denver to Allow any New Construction on Mt. Gilead Parcel Pending this Court's Ruling on the Merits of Plaintiffs' Claims in their Complaint. The Court, having reviewed the motion, the responsive briefs, and the applicable legal authority, finds, concludes and orders as follows:

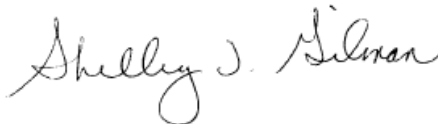
1. Rule 106(a)(4)(V) authorizes the Court to stay the proceedings before a decision of the governmental body, pursuant to C.R.C.P. 65. Under Rule 65, a party seeking issuance of a preliminary injunction must demonstrate: (1) a reasonable probability of success on the merits; (2) a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief; (3) that there is no plain, speedy, and adequate remedy at law; (4) that the granting of a preliminary injunction will not disserve the public interest; (5) that the balance of equities favors the injunction; and (6) that the injunction will preserve the status quo pending a trial on the merits. *Rathke v. MacFarlane*, 648 P.2d 648, 653-654 (Colo. 1982). A court cannot grant injunctive relief unless each criterion is met by the moving party. *Id.*

2. Here, Plaintiffs have failed to demonstrate a reasonable probability of success on the merits of their claim. In the motion, in support of this criterion, Plaintiffs simply state, in a conclusory fashion, as follows: “The facts and circumstances that Plaintiffs allege in detail in their Complaint concerning how the 195 S. Monaco Zoning Change occurred, if proven, would establish a proper basis for the Court to set aside that change under Rule 106(a)(4).” Plaintiffs’ Motion under C.R.C.P. 106(a)(4)(V) and 65 for Stay of Actions by City of Denver to Allow any New Construction on Mt. Gilead Parcel Pending this Court’s Ruling on the Merits of Plaintiffs’ Claims in their Complaint, at page 4, ¶ 9. Plaintiffs further encourage the Court to “assume Plaintiffs can prove the fact allegations pled in their Complaint.” Plaintiffs’ Reply Brief in Support of their Motion under C.R.C.P. 106(a)(4)(V) and 65 for Stay of Actions by City of Denver to Allow any New Construction on Mt. Gilead Parcel Pending this Court’s Ruling on the Merits of Plaintiffs’ Claims in their Complaint, at page 5. Plaintiffs fail, however, to provide any particular facts or evidentiary support for their conclusions or to warrant the Court to make their requested assumptions. *See, e.g. High Plains Library Dist. V. Kirkmeyer*, 2015 WL 4035117 ¶ 30 (Colo. App. July 2, 2015) (trial court did not erroneously apply the law or otherwise make a decision that was manifestly arbitrary, unreasonable or unfair when it granted a motion for preliminary injunction after opposing party failed to “provide *evidence* of any facts” supporting their position) (emphasis added).

3. “A preliminary injunction is an extraordinary remedy, and, therefore, a court may deny a motion for preliminary injunction solely on the ground that the plaintiff did not show a probability of success on the merits.” *Tesmer v. Colo. High Sch. Activities Ass’n*, 140 P.3d 249, 252 (Colo. App. 2006).¹ Accordingly, because Plaintiffs did not show a probability of success on the merits, the Court denies their motion for issuance of a stay or preliminary injunction.

DATED: November 4, 2015

BY THE COURT:



SHELLEY I. GILMAN
District Court Judge

¹ Plaintiffs’ failure to demonstrate entitlement to the issuance of a preliminary injunction does not preclude Plaintiffs from review under C.R.C. P. 106(a)(4). *See id.* Here, Plaintiffs filed their request for a preliminary injunction before the certification of the record.