

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

DATE FILED: March 24, 2016 3:46 PM  
CASE NUMBER: 2015CV32427

**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' Renewed 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' Renewed 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. In its Order of November 4, 2015, the Court recognized that Rule 106(a)(4)(V) authorizes the Court to stay, pursuant to C.R.C.P. 65, the proceedings before a decision of the governmental body. Nevertheless, the Court denied the motion to stay any actions by the City and County of Denver, finding that Plaintiffs failed to demonstrate a reasonable probability of success on the merits of their claim.

2. On December 3, 2015, upon receipt of the administrative record, the Court issued a Briefing Schedule.

3. Plaintiffs filed their Opening Brief on January 14, 2016, and the instant motion on February 8, 2016. In their motion, Plaintiffs invite the Court to rely on the arguments set forth in their Opening Brief to determine whether they have demonstrated a reasonable probability of success on the merits. The Court declines that invitation. Upon review of the administrative record and the briefs and entertainment of oral argument, the Court will issue, in due course, its decision in this matter. The Court will not be able to issue a ruling on “reasonable probability of success on the merits” in relation to this motion at a significantly earlier date.

4. Moreover, Plaintiffs have failed to demonstrate the danger of real, immediate and irreparable harm. At the time of the briefing of the instant motion, a Site Development Plan had not been approved and thus, the City has not yet issued zoning or building permits. Plaintiffs have failed to establish the imminent or immediate threat of construction.

5. Accordingly, the Court denies Plaintiffs’ renewed motion for issuance of a stay or preliminary injunction.

DATED: March 24, 2016

BY THE COURT:



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SHELLEY I. GILMAN  
District Court Judge