

DISTRICT COURT, EL PASO COUNTY, COLORADO Court Address: 270 S. Tejon St. Colorado Springs, CO 80903		DATE FILED August 4, 2025 9:14 AM CASE NUMBER: 2024CV32336
Plaintiff: Veronica, Jack and Trevor Baker, individuals; Svetlana Nudelman, an individual; COS Reads, a nonprofit corporation; Westside Watch, a nonprofit corporation; and Integrity Matters, a nonprofit corporation v. Defendant: EL PASO COUNTY, acting through the Board of County Commissioners; CITY OF COLORADO SPRINGS, a home rule City and Colorado municipal corporation, acting through the city council of the City of Colorado Springs; Pikes Peak Library District (PPLD), acting through the PPLD Board of Trustees: Dora Gonzales, Aaron Salt, Angela Dougan, Erin Bents, Julie Smyth, Scott Taylor and Debbie English; and Teona Shainidze-Krebs, Chief Librarian and Chief Executive Officer, acting in her official capacity		▲ COURT USE ONLY ▲ Case Number: 24CV32336 Div.: 15 Ctrm: S403
ORDER GRANTING MOTION FOR SUMMARY JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE		

This matter comes before the Court pursuant to Defendants' Pikes Peak Library District, Dora Gonzales, Aaron Salt, Angela Dougan, Erin Bents, Julie Smyth, Scott Taylor, Debbie English and Teona Shainidze-Krebs motion for summary judgment. The Court has reviewed the motion. The Court has also reviewed the response. The Court notes Plaintiffs' response was not filed within the 21 day time limit for a response permitted by C.R.C.P. 121, section 1-15(1)(b) and that the format of the response does not comply with this Court's order of June 1, 2025.

BACKGROUND

1. This Court previously set forth background facts in its order of May 7, 2025 and will not rehash them here. However, when the Court issued that order, it specifically stated neither side had provided the minutes of the decisions reached by the PPLD on October 16 and December 3, 2024. Because the Court did not have that information, it could not determine whether those decisions were reviewable under C.R.C.P. 106(a)(4). The PPLD Defendants have supplied that information in connection with their motion for summary judgment.

2. The PPLD meeting minutes for October 16, 2024 reflect discussion of the Rockrimmon lease. The record reflects Trustee Aaron Salt made a motion that the Pikes Peak Library District Board of Trustees not renew the Rockrimmon Library lease. The minutes reflect discussion and comments by the Board of Trustees. At the end of the discussion, the Board voted 5-2 in favor of the motion and it passed. This means that, effective October 16, 2024, the Board had decided that it would not renew the lease for the Rockrimmon Library and, instead, allow it to expire at the end of its term on December 31, 2024. There is no indication in the minutes of the October 16, 2024 the PPLD Board was waiting on further information or some other event to occur before its decision became final.
3. There was apparently some public backlash following PPLD's decision not to renew the Rockrimmon Library lease. As such, when PPLD issued its agenda for its December 4, 2024 meeting, it placed "New Business" on the agenda requesting to rescind the October decision allowing the lease to expire. At the December 4, 2024 meeting, one of the PPLD Trustees who had voted against allowing the lease to expire made a motion to rescind that decision. The other PPLD Trustee who voted against allowing the lease to expire seconded the motion. The record reflects discussion and comments by the Trustees occurred. At the end of the discussion, the President of the PPLD called for a vote. The same five PPLD Trustees who had voted in October to allow the lease to expire voted against the motion to rescind that decision. The same two PPLD Trustees who had voted in October against allowing the lease to expire voted in favor of the motion. As such, the motion to rescind the decision that had been made on October 16, 2024 was defeated.

APPLICABLE LAW REGARDING RULE 106(a)(4)

4. C.R.C.P. 106(b) requires a complaint seeking judicial review under Rule 106(a)(4) regarding whether a governmental body has abused its discretion must be filed within 28 days after the final decision of the governmental body. The period prescribed by Rule 106(b) is a strict jurisdictional limitation. It cannot be tolled, waived or extended even when there is excusable neglect. *Brown v. Walker Com., Inc.*, 521 P.3d 1014 (Colo. 2022). Because the time period set forth in Rule 106(b) is jurisdictional, any complaint seeking review under Rule 106(a)(4) that is filed more than 28 days after the final decision is made must be dismissed for lack of subject matter jurisdiction. *Maslak v. Town of Vail*, 345 P.3d 972 (Colo. App. 2015).

ANALYSIS

5. The record in this case clearly reflects the PPLD decision not to renew the Rockrimmon Library lease was made on October 16, 2024. The fact that a request to rescind that decision was subsequently placed on the December 3, 2024 agenda does not mean a decision had not been made. Quite the contrary, the item was placed on the December 3, 2024 agenda because a decision had been made and some people wanted the PPLD Board to reconsider the decision that had already been made.

6. Plaintiffs did not file their initial complaint in this case until December 6, 2024. That complaint only contained claims for declaratory and injunctive relief. It did not assert a claim for review under Rule 106(a)(4). Even if it had contained a claim for review under Rule 106(a)(4), the Court would have been denied subject matter jurisdiction under Rule 106(b) because the request was not made in a timely manner. Plaintiffs did not actually file a claim for relief requesting review under Rule 106(a)(4) until January 16, 2025. This is nearly 92 days from when the October 16, 2024 decision not to renew the lease was made and well beyond the 28 day time limit. In addition, the request to review under Rule 106(a)(4) made on January 16, 2025 does not relate back to the filing date of the original complaint, *Auxier v. McDonald*, 363 P.3d 747 (Colo. App. 2015), but, even it did, it was still filed too late.

APPLICABLE LAW REGARDING OPEN MEETINGS

7. Pursuant to C.R.S. §24-6-402(2)(b), all “meetings of a quorum ... at which any public business is discusses or at which any formal action may be taken are declared to be public meetings open to the public at all times.” C.R.S. §24-6-402(2)(c) provides that timely notice to the public must be given for any meeting “at which the adoption of any proposed policy, position, resolution, rule, regulation or formal action occurs or at which a majority or quorum of the body is in attendance or is expected to be in attendance.” That section of the statute also requires notice of the meeting to be posted in a designated public place no less than 24 hours prior to the meeting and must include specific agenda information where possible. Finally, C.R.S. §24-6-402(2)(d)(II) requires that minutes must be taken, promptly recorded and made available for public inspection.

ANALYSIS

8. It is undisputed PPLD posted the agenda for the October meeting online more than 24 hours in advance of the October meeting. It is also clear the public was advised in section VII(C)(3) that the Rockrimmon lease would be a topic or discussion at the October 16, 2024 meeting. There is no allegation that the public was not allowed to attend. The record also reflects PPLD did compile minutes of the discussions regarding the Rockrimmon lease.
9. In response to this, Plaintiffs argue PPLD has been violating the Colorado Open Meeting Laws for decades and “these violations undermine the legitimacy of the Board’s composition and therefore its October/December actions.” In support of this argument, Plaintiffs refer this Court to a request for judicial notice and intent to amend complaint to update conferral filed with the Court on March 6, 2025. First of all, the document filed is not in the form of an affidavit as required by C.R.C.P. 56(e). In addition, even though filed with the Court, this is not the type of information a Court may take judicial notice of based on *Doyle v. People*, 343 P.3d 961 (Colo. 2015) and its progeny. Finally, even a cursory review of Councilmember Henjum’s statement reveals it is based on hearsay as it references “guidance from the county and city attorneys.” The Court would also point out that, if Plaintiffs are correct that PPLD was not properly constituted and, therefore, did not have the authority to make the decision to not renew the Rockrimmon lease, it probably also means PPLD never had the authority to enter into the lease to begin with.

10. Given the facts that the Court can consider, the Court FINDS PPLD did not violate Colorado's Open Meeting Law.

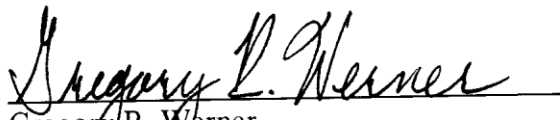
CLAIMS AGAINST INDIVIDUAL DEFENDANTS

11. Plaintiffs have named Dora Gonzales, Aaron Salt, Angela Dougan, Erin Bents, Julie Smyth, Scott Taylor, Debbie English and Teona Shainidze-Krebs as individual defendants in this case. Defendants' motion for summary judgment seeks dismissal of any claims against those individual defendants as all of them were acting in their capacity as government representatives with respect to the decisions being challenged in this case. Plaintiffs have not responded to the individual defendants' arguments requesting dismissal. The Court agrees the individuals referenced above should not be named as defendants in this case. *Will v. Michigan Dep't of State Police*, 491 U.S. 58 (1989)(a suit against a state official in his or her official capacity is not a suit against the official but rather a suit against the official's office).

CONCLUSION

12. For the reasons stated above, the Court GRANTS Defendants' motion for summary judgment and ORDERS:
13. Plaintiffs' complaint seeking review under Rule 106(a)(4) is DISMISSED WITH PREJUDICE as the Court does not have subject matter jurisdiction to review the matter due to its late filing.
14. There is no factual dispute regarding whether PPLD violated the Colorado Open Meeting Law and, based on that undisputed evidence, Plaintiffs' claim that PPLD violated the Colorado Open Meeting Law is DISMISSED WITH PREJUDICE.
15. The claims against Defendants Dora Gonzales, Aaron Salt, Angela Dougan, Erin Bents, Julie Smyth, Scott Taylor and Debbie English; and Teona Shainidze-Krebs are DISMISSED WITH PREJUDICE.

Done this 4th day of August, 2025.


Gregory R. Werner
District Court Judge