

<p>DISTRICT COURT COUNTY OF DELTA COLORADO 501 Palmer St. Room 338 Delta, CO. 81419</p>	<p>COURT USE ONLY</p>
<p>Plaintiffs: Ewelina Bajda, Jacob Dahlman, James McCain Jr. v. Defendants: Teri Stephenson, Delta County Clerk; John Baier, Delta County Attorney; Don Suppes, Wendell Koontz and Mike Lane, Delta County Commissioners</p>	
<p>Plaintiffs without Attorney, Ewelina Bajda, Jacob Dahlman, James McCain Jr. Main contact: Ewelina Bajda Address: [REDACTED] Road, Crawford, CO 81415 Phone Number: [REDACTED] E-mail [REDACTED]</p>	<p>Case Number: Division:</p>
<p>COMBINED COMPLAINT AND MOTION PURSUANT TO C.R.C.P. 106 AND C.R.C.P. 57</p>	

Plaintiffs, Ewelina Bajda, Jacob Dahlman, and James McCain Jr. move this court to issue a temporary injunction, declaratory relief, and/or a stay of the Resolution 2024-R-03 or other applicable process ordering the above-named Defendants to follow

proper statutory procedure and allow the Colorado Constitutional right of a Referendum under Article V 1(9) to take place. The plaintiffs declare the following:

1. Petitioners have standing to sue due to their status as landowners, electors and signatories and/or authors of the Petition for Referendum.
2. Jurisdiction in this matter is proper as all parties reside in or are public servants of Delta County CO.
3. Plaintiffs are representing themselves in this case and ask that the court allow some leniency in this matter, as established in the case *Baudette v. City of Hampton*, 775 F.2d 1274, 1277-1278 (4th Cir. 1985). Because "Pro se lawsuits [...] represent the work of an untutored hand requiring special judicial solicitude," this circuit detailed steps district courts may usefully take to assist pro se litigants in the presentation of their grievances and "expresse[s] the indisputable desire that those litigants with meritorious claims should not be tripped up in court on technical niceties."
4. Timeline of events:
 - A. February 22, 2024 - Resolution 2024-R-03 was recorded at the County Clerk and Recorder's Office. (Exhibit G)
 - B. February 29, 2024 - Ewelina Bajda submitted the first draft of the Referendum Petition to the County Clerk Teri Stephenson at the County Clerk and Recorder's Office. (Exhibit A)
 - C. March 5, 2024 - County Clerk Teri Stephenson responded via email. (Exhibit D)
 - D. March 10, 2024 - Ewelina Bajda submitted the 2nd draft of the Referendum Petition to the County Clerk Teri Stephenson via email. (Exhibit B)
 - E. March 15, 2024 - County Clerk Teri Stephenson responded via email. (Exhibit E)

- F. March 15, 2024 - James McCain notified County Commissioners Don Suppes, Wendell Koontz, and Mike Lane via email of this issue. (Exhibit H)
 - G. March 16, 2024 - Plaintiffs revised the Referendum Petition's language based on the County Clerk Teri Stephenson's feedback. Because of the time constraints specified in C.R.S § 31-11-105, the petition authors opted to circulate it without seeking additional review. The third and final version of the Referendum Petition was circulated. (Exhibit C)
 - H. March 25, 2024 - Plaintiffs submitted 1406 signatures on circulated petitions to County Clerk Teri Stephenson.
 - I. March 26, 2024 - County Attorney John Baier responded via email. (Exhibit F)
5. County Clerk Teri Stephenson, upon guidance from County Attorney John Baier and County Attorney John Baier himself, acting in representation of the Delta County Board of County Commissioners, erroneously denied Plaintiffs' Referendum Petition. (Exhibits D, E, F)
6. Defendant's actions in denying Plaintiffs' Referendum Petition violated C.R.S. § 30-11-103.5 which provides for county petitions and referred measures, and states: "The procedure for placing an issue or question on the ballot by a petition of the electors of a county that is pursuant to statute or the state constitution [. . .] shall, to the extent no such procedures are prescribed by statute, charter or the state constitution, follow as nearly as practicable the procedure for municipal initiatives[.]" Co. Stat. § 30-11-103.5 (2024)
7. Defendants did not permit Plaintiffs' Petition to go through the proper procedure pursuant to C.R.S. § 30-11-103.5. On two occasions, County Clerk Teri Stephenson advised Plaintiffs that she would not even accept the petition and stated that: "Modification of a land use code adopted by the Board of County Commissioners is not an allowable topic for citizen initiative." County Clerk Teri Stephenson and County Attorney John Baier erroneously conflated initiative and referendum. (Exhibits D-F)

8. Defendants, in their denial of Plaintiffs' Petition, rely upon the Colorado Appeals case *Dellinger v. Teller Co.*, 20 P.3d 1234 (Colo. App. 2001). Wherein, the court held that the initiative power is not generally granted to county voters. Unlike *Dellinger*, the Plaintiffs in this case were not requesting a Citizens' Initiative, they were requesting a referendum. Plaintiffs' right to petition for a referendum is broader than their right to petition for an initiative. "*Initiative and referendum are fundamental rights of a republican form of government which the people have reserved unto themselves and must be liberally construed in favor of the right of the people to exercise them. Conversely, limitations on the power of referendum must be strictly construed.*" *Margolis v. District Court*, 638 P.2d 297 (Colo. 1981).
9. The Plaintiffs offer three audio recordings of the phone calls with Terri Stephenson which demonstrates their attempts to follow the statutes and Constitution to the best of their ability. The plaintiffs are unclear on how to submit such exhibits into the record and ask for guidance if the court desires this evidence.
10. C.R.S. § 30-28-111 grants counties the power to develop and implement Zoning Plans which can include regulation of the use of land including the location and use of buildings. The grant of this power also reasonably extends the statutory power for constituents to pursue referendums on Zoning Plans. This is upheld by supreme court rulings of *Margolis v. District Court*, 638 P.2d 297 (Colo. 1981) which states that "*Zoning and rezoning decisions, no matter what the size of the parcel of land involved, are legislative in character and subject to the referendum and initiative provisions of the Colorado Constitution.*" And "*The power to call referendum and initiative elections is a direct check on the exercise or non exercise of legislative power by elected officials.*"
11. The proper time for a judicial review appears to be after the referendum petition process is completed. The Plaintiffs found no evidence of any precedence that this process has ever been denied in any statutory County in Colorado.

12. In the Supreme Court Case of *City of Rocky Ford v. Brown* 93 P.2d 974 (1956), the court demonstrated that the process of initiative and referendum must be allowed to happen and only after the completion it can be challenged. This appears to make sense from a separation of power perspective, but it also shifts the cost back to the county and does not require the petitioners to pay for legal fees to exercise their constitutional rights.

13. The Plaintiffs believed that the County Clerk Teri Stephenson erroneously denied the Petition. The Plaintiffs circulated the petition (Exhibit C) pursuant to C.R.S. § 31-11-106; gathered 1406 signatures before the 30-day period was closed, and submitted notarized petition packets to the County Clerk Teri Stephenson for review. The Plaintiffs ask that the court order the County Clerk Teri Stephenson to accept this Referendum Petition. The Plaintiffs ask that any small errors that may have been made in this request or in the Referendum Petition be forgiven. The Plaintiffs relied on our county government officials for assistance in this process but were denied. This official advice would have clarified the required deadlines, the number of voters in the last election, the number of required signatures, and the proper petition formatting.

Plaintiffs ask that the court provide guidance on or point to the proper procedures, if any, that ought to be followed so that the Plaintiffs may review or amend this complaint in a format that the court can accept or act upon. The Plaintiffs request that this complaint be allowed to be amended in the future to allow the opportunity to follow the proper procedures.


Therefore, the Plaintiffs pray that this court answers this written request about our treatment under the petition process. Plaintiffs ask that the court review this combined complaint under Rule 57 of the Colorado Rules of Civil Procedure (and if it is not applicable, under Rule 106 of the Colorado Rules of Civil Procedure) or any other procedural rule that Plaintiffs may be unaware of. The Plaintiffs make a motion for injunctive relief and/or a motion for declaratory relief and reversal of all county decisions in this matter, and that the county comply

with C.R.S. § 30-11-103.5 and CRS § 31-11-101 through 118. The Plaintiffs also move for a stay on the Resolution 2024-R-03 until this matter is resolved.


DATED this 18th day of April, 2024.

Plaintiffs:

Ewelina Bajda


Crawford, CO 81415

Jacob Dahlman


Crawford, CO 81415

James McCain Jr.



Hotchkiss, CO 81419

Exhibit List:

Exhibit A is the first page of the first version of Plaintiffs' Referendum Petition.

Exhibit B is the first page of the second version of the Plaintiffs' Referendum Petition.

Exhibit C is the first page of the final version of the Plaintiffs' Referendum Petition which was circulated and submitted to the County Clerk Teri Stephenson.

All copies of Exhibits A through C are true and correct and created by the Plaintiffs.

Exhibits D-F are the responses from the County Clerk Teri Stephenson or County Attorney John Baier; all copies are true and correct and sent by email and mail by the County Clerk Teri Stephenson or County Attorney John Baier.

Exhibit G is the first page of the resolution the Plaintiffs' petitioned to put to a public vote via a referendum. This copy is true and correct and was obtained from the Delta County Clerk and Recorder's Office.

Exhibit H is James McCain's email to the County Commissioners Don Suppes, Wendell Koontz, and Mike Lane. This copy is true and correct.

WARNING: IT IS AGAINST THE LAW:
 For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR AND ELIGIBLE TO VOTE ON THIS MEASURE. TO BE A REGISTERED ELECTOR, YOU MUST BE A CITIZEN OF COLORADO AND REGISTERED TO VOTE.

Do not sign this petition unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning.

Summary of Resolution No. 2024-R-03

RESOLUTION: 1) AMENDING ZONING MAPS TO REZONE ALL PROPERTIES ZONED UGA TO RES-1; 2) ADOPTING THE 2024 LAND USE CODE UPDATE; 3) VACATING RESOLUTION 2003-R-017 (RESOLUTION REQUIRING REVIEW OF STREET PLAN IN "35-ACRE PLUS" SUBDIVISIONS); AND 4) VACATING RESOLUTION 2023-R-007 (RENEWABLE ENERGY MORATORIUM).

Referendum Petition Representatives

First Representative's Name

Ewelina Bajda

Mailin Address



City, State Zip Code

Crawford, CO 81415-9112

Second Representative's Name

Jacob Dahlman

Mailing Address



City, State Zip Code

Crawford, CO 81415-9351

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DELTA, STATE OF COLORADO

RESOLUTION NO. 2024-R-03

RESOLUTION: 1) AMENDING ZONING MAPS TO REZONE ALL PROPERTIES ZONED UGA TO RES-1; 2) ADOPTING THE 2024 LAND USE CODE UPDATE; 3) VACATING RESOLUTION 2003-R-017 (RESOLUTION REQUIRING REVIEW OF STREET PLAN IN "35-ACRE PLUS" SUBDIVISIONS); AND 4) VACATING RESOLUTION 2023-R-007 (RENEWABLE ENERGY MORATORIUM).

RECITALS

WHEREAS, Delta County Board of County Commissioners (hereinafter "Board") is authorized, pursuant to the Constitution of the State of Colorado and State legislation including, but not limited to, C.R.S. 29-20-101, et seq, and 30-28-101, et seq., to plan for and regulate the use and development of land in the unincorporated territory of the County of Delta, State of Colorado, for the purpose of promoting the health, safety, convenience, order, prosperity, and welfare of the inhabitants of the County of Delta; and

WHEREAS, the Delta County Master Plan was adopted in 2018 identifying a need to regulate land use in Delta County; and

WHEREAS, C.R.S. 30-28-111 authorizes the County Planning Commission to make a Zoning Plan for the unincorporated areas of the County; and

WHEREAS, C.R.S. 30-28-112 requires the County Planning Commission to certify a copy of the Zoning Plan to the Board of County Commissioners; and

WHEREAS, the Board of County Commissioners shall hold at least one public hearing with notification in a newspaper of general circulation at least 14 days prior to adoption, including the time, place and where the certified copy can be examined; and

WHEREAS, on January 5, 2021, the Board adopted the Delta County Land Use Code (Resolution No 2021-R-001), including zoning maps; and

WHEREAS, Resolution No 2021-R-001 also repealed certain regulations in place prior to the Land Use Code, including regulations for Subdivision, Specific Developments, and Mobile Home Parks; and

WHEREAS, between October 27, 2021 and May 25, 2022, the Delta County Board of County Commissioners held four (4) Work Sessions regarding the Land Use Code, including multiple meetings with local surveyors; and

Exhibit B

CITIZEN REFERENDUM PETITION TO PROTEST THE ENACTMENT OF RESOLUTION No. 2024-R-03

WARNING: IT IS AGAINST THE LAW:
For anyone to sign any referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR AND ELIGIBLE TO VOTE ON THIS MEASURE. TO BE A REGISTERED ELECTOR, YOU MUST BE A CITIZEN OF COLORADO AND REGISTERED TO VOTE.

Do not sign this petition unless you have read or have had read to you the proposed referred measure or the summary in its entirety and understand its meaning.

This is a citizen referendum petition to protest the enactment of Resolution No. 2024-R-03

Summary of Resolution No. 2024-R-03

RESOLUTION: 1) AMENDING ZONING MAPS TO REZONE ALL PROPERTIES ZONED UGA TO RES-1; 2) ADOPTING THE 2024 LAND USE CODE UPDATE; 3) VACATING RESOLUTION 2003-R-017 (RESOLUTION REQUIRING REVIEW OF STREET PLAN IN "35-ACRE PLUS" SUBDIVISIONS); AND 4) VACATING RESOLUTION 2023-R-007 (RENEWABLE ENERGY MORATORIUM).

Referendum Petition Representatives

First Representative's Name

Ewelina Bajda

Mailing Address

City, State Zip Code

Crawford, CO 81415-9112

Second Representative's Name

Jacob Dalhman

Mailing Address

City, State

Crawford, CO 81415-9351

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DELTA, STATE OF COLORADO

RESOLUTION NO. 2024-R-03

RESOLUTION: 1) AMENDING ZONING MAPS TO REZONE ALL PROPERTIES ZONED UGA TO RES-1; 2) ADOPTING THE 2024 LAND USE CODE UPDATE; 3) VACATING RESOLUTION 2003-R-017 (RESOLUTION REQUIRING REVIEW OF STREET PLAN IN "35-ACRE PLUS" SUBDIVISIONS); AND 4) VACATING RESOLUTION 2023-R-007 (RENEWABLE ENERGY MORATORIUM).

RECITALS

WHEREAS, Delta County Board of County Commissioners (hereinafter "Board") is authorized, pursuant to the Constitution of the State of Colorado and State legislation including, but not limited to, C.R.S. 29-20-101, et seq, and 30-28-101, et seq., to plan for and regulate the use and development of land in the unincorporated territory of the County of Delta, State of Colorado, for the purpose of promoting the health, safety, convenience, order, prosperity, and welfare of the inhabitants of the County of Delta; and

WHEREAS, the Delta County Master Plan was adopted in 2018 identifying a need to regulate land use in Delta County; and

WHEREAS, C.R.S. 30-28-111 authorizes the County Planning Commission to make a Zoning Plan for the unincorporated areas of the County; and

WHEREAS, C.R.S. 30-28-112 requires the County Planning Commission to certify a copy of the Zoning Plan to the Board of County Commissioners; and

WHEREAS, the Board of County Commissioners shall hold at least one public hearing with notification in a newspaper of general circulation at least 14 days prior to adoption, including the time, place and where the certified copy can be examined; and

WHEREAS, on January 5, 2021, the Board adopted the Delta County Land Use Code (Resolution No 2021-R-001), including zoning maps; and

WHEREAS, Resolution No 2021-R-001 also repealed certain regulations in place prior to the Land Use Code, including regulations for Subdivision, Specific Developments, and Mobile Home Parks; and

WHEREAS, between October 27, 2021 and May 25, 2022, the Delta County Board of County Commissioners held four (4) Work Sessions regarding the Land Use Code, including multiple meetings with local surveyors; and

Exhibit C

CITIZEN REFERENDUM PETITION TO REPEAL RESOLUTION No. 2024-R-03

WARNING: IT IS AGAINST THE LAW:
For anyone to sign any referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR AND ELIGIBLE TO VOTE ON THIS MEASURE. TO BE A REGISTERED ELECTOR, YOU MUST BE A CITIZEN OF COLORADO AND REGISTERED TO VOTE.

Do not sign this petition unless you have read or have had read to you the proposed referred measure or the summary in its entirety and understand its meaning.

This is a citizen referendum petition to repeal Resolution No. 2024-R-03

Summary of Resolution No. 2024-R-03

RESOLUTION: 1) AMENDING ZONING MAPS TO REZONE ALL PROPERTIES ZONED UGA TO RES-1; 2) ADOPTING THE 2024 LAND USE CODE UPDATE; 3) VACATING RESOLUTION 2003-R-017 (RESOLUTION REQUIRING REVIEW OF STREET PLAN IN "35-ACRE PLUS" SUBDIVISIONS); AND 4) VACATING RESOLUTION 2023-R-007 (RENEWABLE ENERGY MORATORIUM).

Referendum Petition Representatives

First Representative's Name

Ewelina Bajda

Mailing Address

[Redacted]
City, State Zip
Crawford, CO 81415-9112

Second Representative's Name

Jacob Dahlman

Mailing Address

[Redacted]
City, State Zip Code
Crawford, CO 81415-9351

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DELTA, STATE OF COLORADO

RESOLUTION NO. 2024-R-03

RESOLUTION: 1) AMENDING ZONING MAPS TO REZONE ALL PROPERTIES ZONED UGA TO RES-1; 2) ADOPTING THE 2024 LAND USE CODE UPDATE; 3) VACATING RESOLUTION 2003-R-017 (RESOLUTION REQUIRING REVIEW OF STREET PLAN IN "35-ACRE PLUS" SUBDIVISIONS); AND 4) VACATING RESOLUTION 2023-R-007 (RENEWABLE ENERGY MORATORIUM).

RECITALS

WHEREAS, Delta County Board of County Commissioners (hereinafter "Board") is authorized, pursuant to the Constitution of the State of Colorado and State legislation including, but not limited to, C.R.S. 29-20-101, et seq, and 30-28-101, et seq., to plan for and regulate the use and development of land in the unincorporated territory of the County of Delta, State of Colorado, for the purpose of promoting the health, safety, convenience, order, prosperity, and welfare of the inhabitants of the County of Delta; and

WHEREAS, the Delta County Master Plan was adopted in 2018 identifying a need to regulate land use in Delta County; and

WHEREAS, C.R.S. 30-28-111 authorizes the County Planning Commission to make a Zoning Plan for the unincorporated areas of the County; and

WHEREAS, C.R.S. 30-28-112 requires the County Planning Commission to certify a copy of the Zoning Plan to the Board of County Commissioners; and

WHEREAS, the Board of County Commissioners shall hold at least one public hearing with notification in a newspaper of general circulation at least 14 days prior to adoption, including the time, place and where the certified copy can be examined; and

WHEREAS, on January 5, 2021, the Board adopted the Delta County Land Use Code (Resolution No 2021-R-001), including zoning maps; and

WHEREAS, Resolution No 2021-R-001 also repealed certain regulations in place prior to the Land Use Code, including regulations for Subdivision, Specific Developments, and Mobile Home Parks; and

WHEREAS, between October 27, 2021 and May 25, 2022, the Delta County Board of County Commissioners held four (4) Work Sessions regarding the Land Use Code, including multiple meetings with local surveyors; and



Teri Stephenson
County Clerk
501 Palmer Street #211
Delta, Colorado 81416
Phone: 970.874.2150
Fax: 970.874.2161
www.deltacounty.com

March 5, 2024

Ewelina Bajda
[REDACTED]

Jacob Dalhman
[REDACTED]

Dear Ewelina and Jacob:

The Delta County Clerk and Recorder received your petition on Thursday, February 29, 2024. While it is unclear exactly the subject of your proposed initiated measure it does appear that it concerns Delta County Board of County Commissioner's Resolution 2024-R-03 regarding the Delta County Land Use Code. Modification of a land use code adopted by the Board of County Commissioners is not an allowable topic for citizen initiative. In contrast to the municipal level, "there is no constitutional right of initiative for electors at the county level." *Dellinger V. Bd. Of Cty. Comm'rs.* 20 P.3d 1234, 1238 (Colo. App 2000). On the contrary, county ballot measures by citizen petition are permitted only in those particular instances where they are expressly authorized by law. "By statute...electors of counties have been granted rights of initiative on a county wide basis in certain limited contexts" *Dellinger P.3d. 1237.* Modification of a county land use code is not one of those contexts in which a statutory right of citizen initiative has been granted.

Accordingly, pursuant to Colorado Revised Statutes §§ 30-11-103.5 and 31-11-106, your petition is deemed invalid and is rejected. Thank you for your attention to this matter.

Sincerely,

Teri A. Stephenson
Delta County Clerk and Recorder



Teri Stephenson
County Clerk
501 Palmer Street #211
Delta, Colorado 81416
Phone: 970.874.2150
Fax: 970.874.2161
www.deltacounty.com

March 15, 2023

Ewelina Bajda


Dear Ewelina:

The Delta County Clerk and Recorder received your amended Citizen Referendum Petition on Monday, March 11, 2024 (received by email on Sunday, March 10, 2024, a non-business day).

Your stated purpose of the citizen referendum is "to protest the enactment of Resolution No. 2024-R-03." Changing the form (or title) of your petition does not in itself change the analysis of whether it is an appropriate topic to be placed on a county ballot. "Measures by citizen petition...originate with a petition signed by a set percentage of voters. These measures by petition include both initiated measures, which propose new legislation, and referenda, which seek to repeal existing legislation." Wolny, Gavin, Ballot Measures, The Scope and Authority in Statutory Counties Colorado Lawyer, pg. 22, (May 2023). A petition to "protest" the previous enactment of legislation is not an appropriate topic for either an initiative or referendum at the county level.

You reference Colorado Constitution Article V, Section 1(3) and correctly state the right to referendum is reserved for state legislative decisions. Your petition does not address a state legislative decision.

You also reference Colorado Constitution Article V, Section 1(9) and again correctly indicate that the right to referendum is reserved for those electors in every city, town, and municipality as to all local, special and municipal legislation. Your petition does not address local, special or municipal legislation in regard to electors of a municipality.

In any case, and as stated in an earlier response, "there is no constitutional right of initiative for electors at the county level." *Dellinger V. Bd. Of Cty. Comm'rs*. 20 P.3d 1234, 1238 (Colo. App 2000). On the contrary, county ballot measures by citizen petition are permitted only in those particular instances where they are expressly authorized by law. "By statute...electors of counties have been granted rights of initiative on a county wide basis in certain limited contexts" *Dellinger* P.3d. 1237. Also, "[t]he rights of initiative and referendum are not generally reserved to the electors as to county governments." *Dellinger* P.3d. 1237. Modification of a county land use code is not one of those contexts in which a statutory right of citizen initiative (or referendum) has been granted.

Accordingly, pursuant to Colorado Revised Statutes §§ 30-11-103.5 and 31-11-106, your petition is deemed invalid and is rejected. Thank you for your attention to this matter.

Sincerely,

Teri A. Stephenson
Delta County Clerk and Recorder



DELTA COUNTY
ATTORNEY'S OFFICE

John F. Baier, County Attorney
Adriana Hartley, Assistant County Attorney
Jodie L. Behrmann, Assistant County Attorney
Jason Wilson, Assistant County Attorney

Ewelina Bajda

March 26, 2024



Jacob Dahlman



Dear Ewelina and Jacob:

The Delta County Clerk and Recorder received copies of your signed Citizen Referendum Petition To Repeal Resolution No. 2023-R-03 on Monday, March 25, 2024. She asked me to review and reply.

As you were previously informed by the Clerk on March 5, 2024 and March 15, 2024, prior to circulating this petition for signatures, modification of a county land use code is not one of those contexts in which a right, either constitutional or statutory, of citizen initiative or referendum has been granted. The County is without authority to grant a right to petition that is contradictory to the Colorado Constitution or Statutes.

Also, as stated earlier, your petition does not address local, special or municipal legislation in regard to electors of a municipality. In contrast to the municipal level, "there is no constitutional right of initiative for electors at the county level." *Dellinger V. Bd. Of Cty. Comm'rs.* 20 P.3d 1234, 1238 (Colo. App 2000). Again, "the Colorado Constitution" does "not authorize the electors of statutory counties to initiate legislation." *Save Palisade Fruitland v. Todd*, 279 F.3d 1204, 1209 (10th Cir. 2002), summarizing *Dellinger* P.3d. 1237-1238. On the contrary, county ballot measures by citizen petition are permitted only in those particular instances where they are expressly authorized by law. "By statute...electors of counties have been granted rights of initiative on a county wide basis in certain limited contexts." *Dellinger* P.3d. 1237. Also, "[t]he rights of initiative and referendum are not generally reserved to the electors as to county governments." *Dellinger* P.3d. 1237. Whether electors, or county officials for that matter,

believe that is appropriate, the fact remains that citizens of municipalities and statutory counties are treated differently under Colorado law.

As such, modification of a land use code duly adopted by the Board of County Commissioners of a statutory county is not an allowable topic for citizen petition. Delta County is a statutory county. The Clerk and Recorder has authorized me to inform you that, pursuant to Colorado Revised Statutes §§ 30-11-103.5 and 31-11-106, your petition is legally insufficient, deemed invalid and is rejected. Also, that this is a final agency decision by her office.

Thank you for your attention to this matter.

A handwritten signature in blue ink that reads "J.F. Baier". The signature is written in a cursive style and is positioned above a horizontal line.

John F. Baier
County Attorney

RECEPTION#: 751439, 02/22/2024 at 03:56:46 PM, 1 OF 234, R \$0.00
TERI A. STEPHENSON, DELTA COUNTY, CO CLERK AND RECORDER

RESOLUTION
OF THE
BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DELTA,
STATE OF COLORADO

RESOLUTION NO. 2024-R-03

RESOLUTION: 1) AMENDING ZONING MAPS TO REZONE ALL PROPERTIES ZONED UGA TO RES-1; 2) ADOPTING THE 2024 LAND USE CODE UPDATE; 3) VACATING RESOLUTION 2003-R-017 (*RESOLUTION REQUIRING REVIEW OF STREET PLAN IN "35-ACRE PLUS" SUBDIVISIONS*); AND 4) VACATING RESOLUTION 2023-R-007 (*RENEWABLE ENERGY MORATORIUM*).

RECITALS

WHEREAS, Delta County Board of County Commissioners (hereinafter "Board") is authorized, pursuant to the Constitution of the State of Colorado and State legislation including, but not limited to, C.R.S. 29-20-101, et seq. and 30-28-101, et seq., to plan for and regulate the use and development of land in the unincorporated territory of the County of Delta, State of Colorado, for the purpose of promoting the health, safety, convenience, order, prosperity, and welfare of the inhabitants of the County of Delta; and

WHEREAS, the Delta County Master Plan was adopted in 2018 identifying a need to regulate land use in Delta County; and

WHEREAS, C.R.S. 30-28-111 authorizes the County Planning Commission to make a Zoning Plan for the unincorporated areas of the County; and

WHEREAS, C.R.S. 30-28-112 requires the County Planning Commission to certify a copy of the Zoning Plan to the Board of County Commissioners; and

WHEREAS, the Board of County Commissioners shall hold at least one public hearing with notification in a newspaper of general circulation at least 14 days prior to adoption, including the time, place and where the certified copy can be examined; and

WHEREAS, on January 5, 2021, the Board adopted the Delta County Land Use Code (Resolution No 2021-R-001), including zoning maps; and

WHEREAS, Resolution No 2021-R-001 also repealed certain regulations in place prior to the Land Use Code, including regulations for Subdivision, Specific Developments, and Mobile Home Parks; and

4/17/24, 9:36 PM

Yahoo Mail - Referendum

Referendum

From: James McCain Jr [REDACTED]
To: tstephenson@deltacountyco.gov; mlane@deltacountyco.gov; dsupes@deltacountyco.gov; wkoontz@deltacountyco.gov
Bcc: [REDACTED]
Date: Friday, March 15, 2024 at 02:39 PM MDT

To whom it may concern,

I am just hearing that the county is choosing to violate the State Constitution and our fundamental right to petition the government?

Perhaps you are being misinformed or do not understand the gravity of what you are now doing, which is denying our rights and due process.

Here is some information for you so that you may be able to remedy this mistake.

Colorado Referendum Rights and Procedures at the Municipal and Local Government Level
In contrast to referendum rights at the state level, referendum rights at the municipal and local government level are much more frequently exercised as, often times, local government referendum rights are more inclusive than at the state level.

In particular, many local governments broadly grant their citizens the right to refer all legislative decisions of their local governing body and, along these same lines, do not incorporate the public health and safety exception that exists at the state level. See *Burks v. City of Lafayette*, 349 P.2d 692 (Colo. 1960).

Furthermore, local governments tend to make far more routine decisions that qualify as referable subject matter than what occurs at the state level. Examples of these types of decisions include adoption of resolutions by a city council, adoption of ordinances by a city council, zoning decisions, and approval of vested property rights by a local governing body. Notably, most local governments make these types of decisions on a weekly basis generating significant amount of potentially referable subject matter. See C.R.S. § 24-68-103.

One particular nuance with the right to referendum at the local government level is that, while the Colorado Constitution provides referendum rights are generally only applicable to legislative decisions, it can sometimes be difficult to ascertain whether a particular local government decision is legislative. This is because many local governments vest all of their powers into one type of governing body, such as a city council. Accordingly, even though a decision comes from a particular body, it may not necessarily be legislative in nature.

Factors courts turn to in determining whether or not a particular decision is legislative in nature include whether the decision is of a permanent and broadly applicable character and whether the decision involves weighing of competing policy consideration rather than specific facts of individual cases. See *Vagneur v. City of Aspen*, 295 P.3d 493 (Colo. 2013); *City of Colo. Springs v. Bull*, 143 P.3d 1127 (Colo. App. 2006).

With respect to specific referendum procedures at the local government level, while Colorado state statutes and Colorado Constitution govern the exercise of referendum rights at the state level, the Colorado Constitution effectively leaves local governments free to adopt their own requirements and processes for exercising local referendum rights. See Colo. Const. art. V, § 1(9); *Leach Arnold Homes, Inc. v. City of Boulder*, 507 P.2d 476 (Colo. App. 1973).

In particular, the only limitation found in the Colorado Constitution at the local level is that the maximum number of signatures cities, towns, and municipalities can require for referenda petitions is 10 percent of registered voters in the applicable area. That is, local governments cannot require that referenda petitions be signed by more than 10 percent of their registered voters in order for the referred measure to be placed on the ballot. See Colo. Const. art. V, § 1(9).

While the Colorado Constitution generally leaves local governments the ability to prescribe and adopt their own referendum procedures, there are default state statutes that govern if a local government does not adopt its own procedures. Specifically, C.R.S. §§ 31-11-101, et seq. are those default referendum procedures.

At a high level, the state statute default procedure for referenda at the local government level is analogous to the referendum process at the state level discussed above. More specifically, both the state level and default local government procedures require referendum petitions to be submitted by a certain deadline after the legislative decision, the petition must contain sufficient signatures of locally registered voters, and interested citizens may challenge petition sufficiency or insufficiency findings through a protest process.

In particular, under the default procedures, a referendum petition must be filed with the local government clerk within 30 days after final publication of the legislative decision sought to be referred. Further, the petition must be signed within that 30 day period by at least five percent of the registered voters in the local municipality. See C.R.S. § 31-11-105

Additionally, the petition form must conform to state form requirements, contain specific warnings indicating that it is against the law for somebody to fraudulently sign a petition, and be approved by the local clerk before being circulated for signatures. See C.R.S. § 31-11-106.

Once the signed petition is officially submitted to the clerk, the clerk must timely inspect the signatures and render a statement of sufficiency or insufficiency within 30 days of the petition's filing. During this same time period, any locally registered voter may file a protest with the clerk within 40 days after the petition's filing contesting its validity. If a protest is filed, the clerk will hold a hearing on the matter and render a decision on the protest. See C.R.S. § 31-11-109 to -110.

If a petition is certified as sufficient; that is, it is timely, contains the requisite number of signatures, and makes it past any protest; then the local legislative body must promptly reconsider the ordinance and, if the ordinance is not rescinded, then it must be put to a vote of the people not less than 60 days and not more than 150 days from the date the petition was deemed sufficient. See C.R.S. § 31-11-105.

While these statutes generally represent the default procedure, many cities and municipalities actually do provide for alternative procedures. However, even those alternative procedures tend to generally track or are similar to the statutory process. Regardless, citizens should make sure they research their local laws to determine whether local procedures or Colorado's default referendum procedures apply.

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Please respond immediately.

Thanks,

James McCain

