



North Fork Valley without proper notice. Citizen and citizens' groups have been denied input and participation in the decision-making process. Lobbyists and other representatives of special interests have been given time to speak at Board meetings without their presence or the contents of their presentations being noticed to the public.

The Board's failure to respect public participation and transparency includes the Board's 2018 budget approval process. The Board has undertaken multiple unnoticed or improperly noticed meetings and work sessions. Their noticing of the proposed budget has lacked the full statutorily required disclosures. Ultimately, citizen participation and involvement has been minimized in priority and effect.

Over the past several months, Plaintiff has repeatedly appealed to the Board to improve their notice practices, increase transparency, and protect public access and participation in local government. To date, Plaintiff's requests have been rejected or ignored.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over the claims asserted herein under Article VI, § 9(1) of the Colorado Constitution, and under § 24-6-402(9), C.R.S., of the COML.

2. Venue for this civil action is proper in this Court under Rules 98(b)(2) and (c)(1) of the Colorado Rules of Civil Procedure and under § 24-6-402(9), C.R.S. of the COML

3. Plaintiff Delta County Citizen Report, Inc is a Colorado Non-Profit Corporation producing an electronic publication of general circulation, in Delta County, covering matters of public interest for readers in Delta County and beyond.

4. Defendant Delta County Board of County Commissioners is the governing body of a political subdivision of the State of Colorado. As such, its meetings are subject to requirements of advance notice and public access, *see* §§24-6-402(1)(a), (2)(b) and (2)(c), C.R.S.

### **PARTIES**

5. Plaintiff Delta County Citizen Report, Inc is a citizen group committed to transparency and public involvement in local government. Plaintiff is a "citizen" under the COML §26-6-402(9), C.R.S., and, as such, has standing to bring a claim for access to public meetings under the COML.

6. Defendant Delta County Board of County Commissioners is the governing body of a political subdivision of the State of Colorado, County of Delta.

### **APPLICABLE LAW**

**The Colorado Open Meetings Law (§§ 24-6-401, *et seq.*, C.R.S.)**

7. “The purpose of the [C]OML as declared in § 24-6-401, C.R.S. 2006, is to afford the public access to a broad range of meetings at which public business is considered; to give citizens an expanded opportunity to become fully informed on issues of public importance, and to allow citizens to participate in the legislative decision-making process that affects their personal interests.” *Walsenburg Sand and Gravel Co. v City Council*, 160 P.3d 297, 299 (Colo.App.2007)(emphasis and citation omitted).

8. The “underlying intent” of the COML is to ensure that the public is not “deprived of the discussions, the motivations, the policy arguments and other considerations which led to the discretion exercised by the [public body].” *VanAlstyne v. Housing Auth.*, 985 P.2d 97, 101 (Colo.App.1998).

9. Under the COML, all exceptions from the default rule that a public body’s meetings must be open to the public must be narrowly construed, ensuring as much public access as possible. *See Board of County Commissioners v. Costilla County*, 88 P.3d 1188 (Colo.2004)(“a local public body such as the Board is required to give public notice of any meeting attended or expected to be attended by a quorum of the public body when the meeting is part of the policy making process.”). *See Zubeck v. El Paso Cnty.Ret.Plan*, 961 P.2d 597,600 (Colo.App.1998)(construing COML and CORA in harmony and requiring narrow construction of any exemption limiting public access); *accord Cole v. State*, 673 P.2d 345, 349 (Colo.1983)(“As a rule, [the COML] should be interpreted most favorably to protect the ultimate beneficiary, the public.”

10. In any suit in which the court finds a violation of the COML, “the courts of record of this state shall have jurisdiction to issue injunctions to enforce the purposes of [the statute].” §24-6-402(9)(b), C.R.S.. Regardless of the public body’s scienter or good intentions, the court is required to award the reasonable attorney’s fees of the citizen who sought the finding of a violation of the statute. §24-6-402(9), C.R.S.; *Van Alstyne*, 985 P.2d at 99-100 (finding reversible error in the failure to award attorney’s fees to a citizen who prevailed in establishing a violation of the COML because, “the trial court overlooked the General Assembly’s establishment of *mandatory* consequences for a violation of the statute” (emphasis added)).

### **FACTUAL BACKGROUND**

11. The Board’s regular adopted practice is to post notice of meetings in the bulletin board outside of the County Administrator’s Office located at Room 227 of the Delta County Combined Courthouse, 501 Palmer Street, Delta, Colorado, 81416. Notice is generally posted on Friday before noon for a meeting beginning the following Monday at 8:30am. The building is locked at 5pm on Friday afternoon and closed for the weekend.

12. The Board’s newly adopted practice is to not notice working sessions of the Board. The Board is broadly interpreting the meaning of working sessions and the notice provision of the COML. Two or more Board members are present, and the working sessions often constitute “part of the policy making process,” including budget meetings and presentations from professionals. Exceptions to the public notice requirement are to be narrowly construed.

13. The content of the Board's standard notice is insufficient to meet the standards of the law. The Board fails to provide a sufficiently detailed description of Board business. The Board regularly changes the agenda for the meetings within the 24-hour notice period. According to information and belief, 55% of the Board's meetings in 2017 have been amended at the time they were called to order.

14. On January 30, 2017, the Board held the kick-off meeting for the County Master Plan. The three Commissioners, consultants from RPI, the Delta County Planning Commission and all area planning committees met at 5:30pm. This meeting was not properly noticed.

15. On March 20, 2017, the Board held a "work meeting." At this meeting, the Board approved a comment letter to the Bureau of Land Management regarding Gunnison Energy's oil and gas development plan. This meeting was unnoticed and there was no public involvement in the decision-making process.

16. On July 17, 2017, the Board made a substantial change in the agenda and posted notice of the change on Saturday, July 19. In its regular place inside the courthouse, notice remained behind locked doors until Monday morning, effectively denying the public notice of the meeting. Multiple citizens' groups were affected by the unnoticed changes.

In the agenda for this meeting posted on Friday, July 14<sup>th</sup> at 10:00, Citizens for a Healthy Community, a Colorado non-profit corporation, was presentation time. There was one citizen listed under constituent time. In the revised agenda, posted on Monday at 8:15, fifteen minutes after the meeting started, Citizens for a Healthy Community was relegated to constituent time.

Furthermore, additional speakers were included at the meeting that were not noticed in either agenda. These speakers included David Ludlam, Executive Director for the Colorado Oil and Gas Association/Western Slope, Bruce Bertrum, identified as an "oil and gas liaison," Debbie Griffith, County Assessor, and SG Interests' Eric Stanford. The unnoticed contributors were well prepared and delivered rebuttal arguments to Citizens for a Healthy Community. The Citizens for a Healthy Community presentation would have been significantly modified had there been notice of a discussion or a rebuttal.

17. Executive session of Monday, June 26, 2017, was in violation of the Open Meetings Law. The Board failed to sufficiently describe the purpose for the executive session, including "b. right to farm." Furthermore, the agenda introducing an execution session for "a. Raymond/Hostetler trial and what it means for the County," did not adequately describe the purpose of the executive session or the specific legal advice or legal question to be addressed.

18. August 21<sup>st</sup>, 2017, the Board used unnoticed "working session" to discuss topics relevant to the motivations, policy arguments and other considerations which lead to the discretion exercised by the public body. At this meeting, the Board endorsed the FRAM Whitewater oil and gas development project in a prepared letter without public input. The meeting where the Board discussed this action was not noticed and agreement was made without public involvement.

19. The September 14, 2017 budget meeting by the Board was conducted without proper public notice. The Board failed to notice the public of this meeting. This unnoticed working session

included all department heads and County Commissioners to launch the 2018 Budget. The meeting lasted only 30 minutes.

20. On October 23, 2017, the Board noticed the proposed 2018 budget. The Board's notice was over one week late and did not satisfy the requirements of C.R.S. §29-1-106.

21. On November 15, 2017, the Board published a budget online without including the statutorily mandated statements to the public.

22. On December 4, 2017, the Board posted a final budget less-than four hours prior to the final hearing.

**First Claim for Relief – Injunctive Relief Under C.R.S. §24-6-402(9)(b)**  
**Violation of Colorado Open Meetings Law**

23. Plaintiff incorporates by reference the foregoing allegations as though each were set forth fully herein.

24. The Board's routine practice of posting public notice for Board meetings on Friday, to be locked behind closed doors for the weekend prior to Monday morning's meeting, violates the COML; and

25. The Board's failure to provide notice for work sessions, budget meetings and professional presentations violates the COML; and

26. The Board's public notice for the 2018 budget hearings has been insufficient under the COML; and

27. The Board's annual budget notification and corollary presentation, including the format of the published budget, violates the standards of the Local Government Budget Law and COML; and

28. The Board's use of executive session violates the COML; when

a. The Board fails to provide full and timely notice.

b. The Board deprives the public of the discussions, the motivations, the policy arguments and other considerations which lead to the discretion exercised by the [public body]."

c. The Board denies citizens the opportunity to become fully informed on issues of public importance, and to allow citizens to participate in the legislative decision-making process that affects their personal interests.

d. The Board fails to justify its policy, and its policy cannot be construed as a favorable interpretation of the COML intended to most favorably benefit the ultimate beneficiary, the public.

e. The Board does not provide public notice for any meeting attended or expected to be attended by a quorum of the public body when the meeting is part of the policy making process.

29. Plaintiff is entitled to injunctive relief directing the Board to follow the letter and spirit of the COML.

**Second Claim for Relief – Declaratory Judgment under C.R.C.P. Rule 57**  
**Violations of Colorado Open Meetings Law**

30. Plaintiff incorporates by reference each and every allegation contained in the previous paragraphs of this complaint.

31. Plaintiff is entitled to a declaratory judgment finding that the Board’s regular practices violate the COML.

**Prayer for Relief**

WHEREFORE, the Plaintiff prays for judgment in its favor and against the Delta County Board of County Commissioners as follows:

**A.** The Court immediately should enter an order for injunctive relief directing the Board to provide full and timely statutory notice by posting in a public area that is not locked for the duration of the notice period.

**B.** The Court immediately should invalidate any decisions of the Board made in violation of the Colorado Open Meetings Law.

**C.** The Court immediately should enter and order for injunctive relief directing the Board to provide sufficient detail in their notice to satisfy both the letter and the spirit of the Colorado Open Meetings Law.

**D.** The Court should enter an Order finding and declaring that the routine practices of the Board are in violation of the COML and that:

i. Plaintiffs are entitled to an award of their reasonable attorney’s fees and costs under the Colorado Open Meetings Law; and

ii. Plaintiffs are entitled to such other and further relief as the Court deems proper and just.

**E.** The Court should enter an Order finding and declaring that the Board’s 2018 budget process was deficient by the standards of the Colorado law.

Respectfully Submitted this \_\_\_\_\_ day of December, 2017.

By:

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Attorney for Plaintiff  
Delta County Citizen Report, Inc, a  
Colorado Non-Profit Corporation