

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
**Chief Judge Wiley Y. Daniel**

Civil Action No. 09-cv-02413-WYD-KMT

CROSS CONTINENT DEVELOPMENT, LLC, a Colorado limited liability corporation

Plaintiff,

v.

TOWN OF AKRON, Colorado, a Colorado municipal corporation;  
THE AKRON TOWN COUNCIL;  
CARL S. McGUIRE II, Esq., in his official capacity as Attorney for the Town of Akron;  
THE BOARD OF TRUSTEES OF THE TOWN OF AKRON; and  
THE COLORADO PLAINS REGIONAL AIRPORT DEVELOPMENT COMMITTEE,

Defendants.

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**ORDER**

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THIS MATTER is before the Court on a review of Defendants' Motion to Strike Under Federal Rule of Civil Procedure 12(f) and to Dismiss Under Federal Rule of Civil Procedure (12)(b)(6) (ECF No. 99). Plaintiff's response to Defendants' motion (ECF No. 100) contains matters outside the pleadings in the form of deposition testimony that are relevant to the motion to dismiss. Pursuant to the Federal Rules, if a court does not exclude the matters presented that are outside the pleadings, a motion to dismiss pursuant to Rule 12(b)(6) shall be treated as a motion for summary judgment. Fed. R. Civ. P. 12(b); *Lucero v. Gunter*, 52 F.3d 874, 877 (10th Cir. 1995).

I find that it is appropriate to consider the evidence Plaintiff attaches to its response in resolving Defendants' motion to dismiss under Rule 12(b)(6). Accordingly,

notice is hereby given that the portion of Defendants' motion that seeks dismissal under Rule 12(b)(6) shall be treated as a motion for summary judgment and the evidence attached to the response shall be considered. Any party who wishes to submit additional materials for the Court to consider in connection with the motion for summary judgment may do so by Monday, June 25, 2012.

In conclusion, it is

ORDERED that the portion of Defendants' motion filed April 16, 2012, that seeks dismissal under Federal Rule of Civil Procedure (12)(b)(6) is converted to a motion for summary judgment. It is

FURTHER ORDERED that if any party wishes to submit additional material to be considered in connection with the motion for summary judgment, they shall do so by **Monday, June 25, 2012.**

Dated: June 13, 2012

BY THE COURT:

s/ Wiley Y. Daniel  
Wiley Y. Daniel  
Chief United States District Judge