

**CHAFFEE COUNTY
RESOLUTION 2019—42**

**DENYING AN APPLICATION FOR
A LIMITED IMPACT REVIEW
FOR PROPERTY LOCATED AT
11600 ANTELOPE ROAD
(KENNEL FACILITIES IN A RURAL ZONE)**

FINDINGS AND CONCLUSIONS:

- A. Pursuant to Section 4.1.3.G of Chaffee County Land Use Code (“LUC”) Applicant, Dr. Alison Brown, has appealed the Planning Commission’s Notice of Decision denying her “Kennel Facilities” on 36.7 acres. The property is located at 11600 Antelope Road, Salida, Colorado in a Rural zone.
- B. Applicant currently operates a “Riding Stable, Commercial” as defined in Article 15 of the Chaffee County Land Use Code (“LUC”). A commercial riding stable is a permitted use in the Rural Zone. Based on Applicant’s representations, Applicant does not have an “Equestrian Center” which is subject to a Limited Impact Review under LUC 7.8.12.
- C. Table 2.2 indicates that “Kennels/Animal Shelters” in a Rural zone is permitted subject to a Limited Impact Review. Sections 4.1, 4.2.3., 4.6, 7.1, 7.2, 7.4, 7.5 and 7.8.17 of the LUC govern the requirements for a Limited Impact Review of “Kennels/Animal Shelters” in a Rural zone.
- D. The intent statement for a Rural zone is to “allow agricultural uses of any kind and to promote development that enhances the agrarian and rural character of the County. These regulations are developed in a general way that encourages or produces compatibility between the numerous kinds of users in the zone.” LUC Section 2.2.3.A.
- E. The LUC states that “new non-residential uses in the Rural zone may be required to restrict operating hours, develop landscaping, increase setbacks, or similar mitigation in order to minimize potential impacts on nearby residential uses and to meet the intent and purpose of the Rural zone.” LUC Section 2.2.3.C.
- F. Section 4.6.2.E of the LUC requires an Impact Analysis when conducting a Limited Impact Review of a land use change. The “Impact Analysis shall include a complete description of how the applicant will ensure that impacts will be mitigated and standards will be satisfied. The analysis shall consider at a minimum the potential impacts to nearby properties resulting from the project, including but not limited to: safety, water pollution, noise, vibration, smoke, dust, odor, heat, glare...and propose mitigations to minimize such impacts.”
- G. Section 7.8.17.A of the LUC states that “all kennels shall prevent any sounds in excess of the maximum permissible noise levels for residential zone districts, set forth in C.R.S. 25-12-103, as amended.”
- H. Article 15 of the LUC defines “Kennel” as “any lot, parcel, tract or structure in which more than seven dogs, six months old or older, are bred, kept, raised, trained, housed or boarded for longer than two weeks.”
- I. Applicant has requested a permit for Kennel Facilities “to raise, breed, train, and keep twenty-five (25) hound dogs on her Property in five (5) fenced-in kennel areas and a fenced dog park located

adjacent to the dog kennels which is used for exercising, training and giving the dogs playtime in a controlled area.” The Applicant has a current Pet Animal Care and Facilities Act License from the State of Colorado and the proposed Kennel Facility is of a personal nature and would be maintained for Applicant’s sole use and would not be open for public use.

- J. In the past, Applicant has kept, raised, bred, and trained approximately twenty-five (25) or more dogs on her Property, using the above-mentioned facilities. The dogs were relocated from the Property pending a decision on this Kennel Facilities application.
- K. Applicant’s Property is at the end of Antelope Road. The properties on Antelope Road are greater than thirty-five (35) acres, contain restrictive covenants, and were not subdivided under the LUC. The properties are accessed by an access easement on Antelope Road, which is maintained by property owners and is currently not well maintained. Applicant is currently involved in a civil lawsuit regarding the access easement and restrictive covenants, which irrespective of the outcome of this application could prohibit the use of Kennel Facilities on Applicant’s Property.
- L. Applicant has represented that:
 - 1. Sound/noise abatement and mitigation efforts were done prior to the application by the placement of the Kennel Facilities and other structures;
 - 2. No additional sound/noise mitigation was proposed in the current application on applicant’s Property for the Kennel Facilities;
 - 3. The kennels and fencing were not constructed with any sound/noise barriers or materials;
 - 4. It is not an option to kennel the hound dogs in indoor Kennel Facilities;
 - 5. It is not an option to kennel or limit the hound dogs’ outdoor access at night;
 - 6. The hound dogs made the most noise/sound during times of feeding and exercising; and
 - 7. There are no set hours for exercising the hound dogs.
- M. Neighboring property owners have made nuisance complaints regarding noise from Applicant’s dogs and have noticed changes in wildlife behavior and patterns since Applicant’s use of her Property as a kennel.
- N. Per Section 4.2.3.B of the LUC, the Chaffee County Planning Commission is the decision-making body for Limited Impact Review applications.
- O. A public hearing was held on November 27, 2018 and continued to January 15, 2019 (deliberation was further continued to January 29, 2019 to consider a draft Notice of Decision) before the Planning Commission, following publication on November 8, 2018 in *The Mountain Mail* and *Chaffee County Times*, both newspapers of general circulation within Chaffee County, for the purpose of receiving public comments with respect to the proposed use.
- P. At its meeting held on January 15, 2019, the Planning Commission, voted 6-0, and directed the County’s legal department to prepare a Notice of Decision for consideration at its January 29, 2019 regular meeting, denying the application for the following reasons:
 - 1. The Applicant has failed to show or propose any sound/noise mitigation to minimize the impacts of the proposed Kennel Facilities to nearby properties as required by Sections 4.6.2 and 7.8.17.A of the LUC.
 - 2. The proposed Kennel Facilities is inconsistent with the historical and/or current uses of the nearby properties and would not enhance the agrarian and rural character of the County as contemplated by Section 2.2.3 of the LUC.

3. The Applicant has failed to show or propose any sound/noise mitigation and/or buffering to mitigate impacts the Kennel Facilities would have on wildlife habitat areas, such as several nearby properties that have perpetual wildlife conservation easements, as contemplated by Section 7.1.6. of the LUC.
- Q. At the January 29, 2019 meeting the Planning Commission approved the Notice of Decision denying the Applicant's Kennel Facilities.
- R. Pursuant to LUC Section 4.2.3.B.2, Applicant has appealed the Planning Commission's decision through a letter submitted on January 31, 2019. In the letter, Applicant requested that the Board of County Commissioner's ("Board") review the Planning Commission's Decision denying the Kennel Facilities based on "inaccurate facts", which were further delineated in the January 31, 2019 letter.
- S. Per Section 4.1.3.G. the Board is the decision-making body for reviewing an appeal of the Planning Commission's decision on a Limited Impact Review application.
- T. A public hearing with the Board was held on Applicant's appeal on March 27, 2019 (continued with Applicant's consent to April 16, 2019) following publication on February 27, 2019 in The Mountain Mail and Chaffee County Times, both newspapers of general circulation within Chaffee County. At the request of Applicant, the public hearing was held outside the timelines required in Section 4.1.3.G.2 of the LUC. Pursuant to Section 1.3.5.B.3 and at the discretion of the Chair, the order of the public hearings was modified given the nature of the hearings and to accommodate the Applicant and public participation.
- U. Notices of the public hearings were sent by certified mail to each adjoining property owner.
- V. The people of Chaffee County have had an opportunity to review the proposed use and have had an opportunity to make public comment for or against approval of the proposed use.
- W. Claims of potential or perceived conflicts of interests have been raised by the Applicant and the public concerning staff and Planning Commissioner Bruce Cogan, which were reviewed by the County Attorney's Office. Based on the information received the County Attorney's Office found that neither staff nor Planning Commissioner Cogan had a conflict of interest. (Planning Commissioner Joe Stone had previously recused himself and did not participate in the hearing or deliberations.)
- X. The Board received additional testimony from the Applicant, including but not limited to:
1. Sound/noise abatement efforts done by the Applicant for the Kennel Facilities;
 2. The noise levels of the Kennel Facilities and a previous sound measurement report;
 3. The impact of the Kennel Facilities on wildlife and the surrounding properties with conservation easements;
 4. The credibility and/or veracity of noise complaints;
 5. Issues concerning deed restrictions are being litigated and the outcome would not prohibit use of property as Kennel Facilities;
 6. The impact of Kennel Facilities to neighboring properties; and
 7. Kennel Facilities are consistent with the uses of a Rural zone.
- Y. The Board received and reviewed a comment letter from Colorado Parks and Wildlife finding no "issues pertaining to the permitting of a kennel" on the Property. The letter from Colorado Parks and

Wildlife was not received by staff until March 18, 2019 and was not reviewed by the Planning Commission.

Z. The Board received testimony regarding the impact(s) of the Kennel Facilities, which include but are not limited to:

1. Noise and nuisance complaints from the neighbors concerning the dogs and Kennel Facilities;
2. Lack of sound and noise barriers on Kennel Facilities;
3. Sound measurements and veracity of Applicant's sound report;
4. Impact of noise from the Kennel Facilities on wildlife;
5. Impact of noise from the Kennel Facilities on land values;
6. Issues concerning deed restrictions are being litigated and the outcome would prohibit use of property as Kennel Facilities; and
7. Kennel Facilities are not consistent with the historical use of the neighborhood.

AA. At its meeting held on April 16, 2019, the Board, voted 3-0, and directed the County's legal department to prepare a Notice of Decision for consideration at its May 7, 2019 regular meeting, denying the application for the following reasons:

1. The Applicant has failed to address, show or propose adequate sound/noise mitigation to minimize the impacts of the proposed Kennel Facilities to nearby properties as required by Sections 2.2.3.C, 4.6.2 and 7.8.17.A of the LUC.
2. The proposed Kennel Facilities is not compatible with the historical and/or current uses of the nearby properties and would not enhance or promote the agrarian and rural character of the County as contemplated by Section 2.2.3 of the LUC.

BB. The record before the Board includes the Development Services Department case file, which includes the appeal, the application, all additional submittals, the Planning Commission decision, the recommendation of County's land planning staff and testimony at the hearing for the purpose of receiving public comments with respect to the proposed use.

RESOLUTION:

The Board resolves as follows:

1. Denial of Application. Based upon the findings and reasons set forth above, the foregoing application for a permit subject to a Limited Impact Review is denied.
2. Effective Date. This Notice of Decision shall be in full force and effect immediately upon approval.

ADOPTED AND APPROVED by the Chaffee County Board of County Commissioners on May 7, 2019.

BOARD OF COUNTY COMMISSIONERS

[Acting] Chairman

The vote on the above Resolution was as follows:

Commissioner Greg Felt _____

Commissioner Keith Baker _____

Commissioner Rusty Granzella _____

STATE OF COLORADO, CHAFFEE COUNTY
ATTEST:

The above is a true and correct record of Resolution 2019—42 duly adopted by the Chaffee County Board of County Commissioners by a ____ vote at a regular meeting, properly noticed and held on May 7, 2019.

Chaffee County Clerk

DRAFT