

District Court, Chaffee County, COLORADO Court Address: 142 Crestone P.O. Box 279 Salida, Colorado 81201 Phone Number: (719) 539-2561	DATE FILED: May 9, 2018 11:38 AM CASE NUMBER: 2017CV30035
<b>Plaintiff(s):</b> BOARD OF COUNTY COMMISSIONERS OF CHAFFEE COUNTY  v.  <b>Defendant(s):</b> ALISON K. BROWN	<b>▲ COURT USE ONLY ▲</b>  Case No.: 2017CV30035  Division: 2
Order Imposing Permanent Injunction	

This matter came before the Court for a hearing on Plaintiff’s request for a permanent injunction. Chaffee County Board of County Commissioners (the County) requests an order enjoining Defendant, Dr. Alison Brown, from operating an outfitting facility on her property located at 11600 Antelope Road in Chaffee County, Colorado, until she undergoes a Limited Impact Review (LIR) and receives a permit for such use.

#### Background

Several days before the hearing on the instant Motion seeking a permanent injunction, the County filed a Brief in Support of Motion for Permanent Injunction. In its Brief the County argued the Board of Adjustment (BOA) had already determined that Dr. Brown was operating an outfitting facility and so the issue was not subject to “collateral challenge” under the principles of claim preclusion. (Brief 1). Therefore, the County argued, the Court should issue a permanent injunction without a hearing. Defendant did not file a Response but the Court declined to issue an injunction based on the County’s Brief. This denial was based on the Court’s conclusion that it had not been shown the validity of the ordinance had been considered by the BOA. Therefore, the County had not shown that the two proceedings; the one before the BOA and the permanent injunction hearing to be held before this Court, consisted of the same claims and subject matter. Therefore, the determination made by the BOA was not entitled to preclusive effect.

## Rule of Law

The County seeks to enjoin Dr. Brown's use of her property pursuant to C.R.S. §30-28-124(2). That statute states "[i]n case any building or structure is...used...or any land is...used, in violation of any regulation or provision of any zoning resolution...enacted or adopted by any board of county commissioners under the authority granted by this part 1, the county attorney...may institute an injunction..."

"To enjoin a zoning violation, the governing entity must prove both the ordinance and a violation thereof." *Board of County Com'rs of Weld County v. Hawkins*, 690 P.2d 1299, 1300 (Colo. App. 1984). *See also: Board of County Com'rs v. Rohrbach*, 226 P.3d 1184 (Colo. App. 2009) and C.R.S. §30-28-124(2). The requirements as laid out in *Rathke v. MacFarlane*, 648 P.2d 648 (Colo. 1982) are not part of the required analysis in cases involving violations of zoning ordinances. *City and County of Denver v. Chuck Ruwart Chevrolet, Inc.*, 508 P.2d 789, 792 (Colo. App. 1973).

To be clear, the Court does not view as part of its analysis a determination of whether the Board of Adjustment abused its discretion in determining that Dr. Brown was operating an outfitting facility. Further, no argument regarding the constitutionality of the zoning regulation has been raised by Defendant.

## Validly Adopted Ordinance

Under C.R.S. §30-28-111(1), "the county planning commission may...make a zoning plan for zoning all or any part of the unincorporated territory within such county...." The county planning commission then sends the plan to the Board of Commissioners.

The county planning commission shall certify a copy of the plans for zoning...to the board of county commissioners of the county. After receiving the certification of said zoning plans from the commission and before the adoption of any zoning resolutions, the board of county commissioner shall hold a public hearing thereon, the time and place of which at least fourteen days' notice shall be given by one publication in a newspaper of general circulation in the county. Such notice shall state the place at which the text and maps so certified by the county planning commission may be examined.

C.R.S. §30-28-112.

At the hearing, the County called Chaffee County Planning Manager Jon Roorda, who testified that Chaffee County adopted a Land Use Code in 1972 and that it has been amended but in continuous effect since then. He also testified the Code was prepared by the County Planning Commission and adopted by the Board of County Commissioners. The Court would also take judicial notice under C.R.E. 2019(b)(2) of Chaffee County Ordinance No. 2014-01, located on the County's website, which states the County Planning Commission constructed a new land use code and certified a copy to the Board of Commissioners. (¶B). The Ordinance also shows the BOCC held a public hearing according to the requirements laid out in Part 1 of Title 30 of the Colorado Revised Statutes. (¶¶ D, F). Further, Jon Roorda testified that Dr. Brown's property at 11600 Antelope Road is located in unincorporated Chaffee County and is zoned "rural".

The County has met its burden in showing that they have a validly adopted zoning regulation. This means the County can require Dr. Brown to submit to a Limited Impact Review so they can properly assess the uses and intended uses of 11600 Antelope Road and how these uses affect the land and other property owners.

#### Violation of the Ordinance

At the hearing Mr. Roorda testified the CCLUC defines Outfitting Facilities as "the improved structures and facilities related to guiding services for outdoor expeditions, including fishing, camping, biking, motorized recreation and similar". *See also* Exhibit 27, pg. 27-24

Where a "statute does not define a term, the word at issue is a term of common usage, and people of ordinary intelligence need not guess at its meaning, we may refer to dictionary definitions in determining the plain and ordinary meaning of the word." *Mendoza v. Pioneer General Insurance Company*, 365 P.3d 371, 376 (Colo. App. 2014). The CCLUC itself supports this. (Article 15.2, Definition of Words and Phrases ("Words not listed in this section shall be defined by a reference to a published standardized dictionary."))

According to Merriam-Webster's Online Dictionary, the definition of "improved" is defined as "the increase in the value of land or property by making it more useful for humans (as by cultivation or the erection of buildings)". The definition of "facility" is defined as "something

that makes an action, operation, or course of conduct easier...” The definition of “guide” is “a person who shows the way to others, especially one employed to show tourists around places of interest.” The definition of “service” is “the action of helping or doing work for someone.” The definition of “expedition” is “a journey undertaken by a group of people with a particular purpose, especially that of exploration, research or war.”

The County tendered Exhibits 37 and 38, letters sent to Dr. Brown which both state that as “the base of operations for Headwaters Hounds” the property is being used as an outfitting facility. *Id.* Mr. Roorda testified these letters were issued subsequent to initial conversations with Dr. Brown during which she tendered the document in Exhibit 1. This document notes the foxhounds are registered under the name “Headwaters Hounds” with the Master of Foxhounds Association (§1) and that “Headwaters Hounds does not charge any fee for riders to join Headwaters Hounds when hunting.” (*Id.*) It also notes that a “horse shed is used to house Dr. Brown’s horses and also horse boarders who are members of Headwaters Hounds.” (§2). Finally, reference is made to the future caretaker’s residence that will be used for the care of the kennels. (§4). The reference in Exhibits 37 and 38 to the property serving as a basis of operation for Headwaters Hounds is supported by the specific examples of what was discussed between Dr. Brown and Mr. Roorda and what is contained in Exhibit 1.

The County also tendered Mr. Roorda’s Staff Report, which attests there are “between 30 and 40 dogs on [11600 Antelope Road] as part of Headwaters Hounds, LLC...” (Staff Report, 4) and continues to discuss the presence of dog enclosures and stables used for Headwaters Hounds, LLC activities. (*Id.* at 6). His report concluded that a Limited Impact Review was necessary given the presence of vehicles and trailers that contribute to traffic at the property. (Staff Report, 7).

Finally, the County tendered Exhibit 34, a letter sent from Dr. Brown’s attorney to Dan Swallow, Director of Development Services. In this document Dr. Brown states she “breeds, raises and trains hounds on her property to be used, solely by herself, the Master (of the hunt)...while engag[ing] in hunting on public land.” (p. 34.1). Page 34.5 of the same exhibit notes among the equestrian activities on the property is horse boarding for members of Headwaters Hounds hunt club. Finally, on page 34.7 of Exhibit 34 is a description of the foxhunting activities taking place, which is specifically defined as “the use of foxhounds to

pursue quarry mounted on horses.” Any hunting is performed by the Huntsman, Dr. Brown, and she is in control of the hounds through the use of voice and horn commands. In addition, other individuals, termed as members will “follow the hunt as observers in what is termed ‘the field’ ....”

### Analysis & Conclusion

The definition of Outfitting Facilities requires not only the presence of improved structures and facilities on the property in question but also the use of these structures and facilities in conjunction with the offering of guiding services for outdoor expeditions.

The evidence shows that Dr. Brown’s riding activities on federal lands involve her riding a horse while her foxhounds are present and under her command. The hounds are cast in the direction she chooses and they pursue scents she approves of. During this time there are other individuals allowed and welcomed by Dr. Brown who are following her and her hounds. This activity, regardless of where it is carried out, constitutes guiding services for outdoor expeditions. This is regardless of whether there is financial gain because “guiding service” does not require a financial component. It is also regardless of whether Dr. Brown is bringing gear, horses or other supplies to the trailhead (although these activities on their own would also constitute a “guiding service”). Further, because Dr. Brown has dog enclosures and stables that house these animals and vehicles and trailers used to transport them to the area in which she engages in her hunts, the element regarding the presence of improved structures and facilities on the property has been satisfied as well.

Dr. Brown maintains that she has changed the nature of her operations and noted the County had not inspected her property recently. However, when the violation occurred is irrelevant. If there is a violation, the County is entitled to injunctive relief for that violation. If Dr. Brown has already ceased the activity in question then she will be in compliance with the injunction.

Dr. Brown argues that the County is attempting to regulate conduct, including conduct that is a permitted use under the CCLUC, such as the operation of an equestrian center. These arguments are not persuasive. What the County must show to enjoin Dr. Brown’s use of her property is a violation of the CCLUC. That violation is Dr. Brown’s engaging in guiding services

which rely on the use of improved structures and facilities located on her property. This has little to do with the operation of an equestrian center. Her use of 11600 Antelope Road potentially affects the land and neighboring property owners and the County seeks to regulate this by requiring a review and permitting process.

The Court does acknowledge the County's definition of outfitting facilities may sweep in conduct that is as benign as a grandfather taking his grandson out for a horseback ride but, again, the constitutionality of the regulation has not been raised by Defendant. Therefore, arguments that go to the County's failure to follow its procedures as laid out in the CCLUC or arguments that attack the regulation's wording are not before this Court. Further, the County is still bound by its allegiance to the principals espoused in Section 1.1.3 of the CCLUC and landowners are protected by the procedure enshrined in C.R.C.P. 106(a)(4) which protects against a "governmental body...exceed[ing] its jurisdiction or abus[ing] its discretion."

The County has met its burden in seeking injunctive relief. The Court has considered Plaintiff's Proposed Order Imposing a Permanent Injunction and Penalties and declines to adopt it. The Court has also reviewed Defendant's Response to this Proposed Order as well as Plaintiff's Reply. The Court will note that Dr. Brown's compliance with the County's kennel regulations has nothing to do with whether or not she is in compliance with the County's regulation surrounding outfitting facilities.

The Court also declines to award civil penalties. If Dr. Brown does not bring her property within compliance or submit her application for a Limited Impact Review within thirty days from the date of this Order, the Court will consider imposition of a daily penalty from that point forward.

WHEREFORE, it is ordered that Dr. Alison Brown be enjoined from using any improved structures or facilities at 11600 Antelope Road to provide service, housing or safekeeping to any animal or equipment that is used in conjunction with guiding services, specifically such guiding services that involve Dr. Brown's riding out or hunting with foxhounds on public lands with any other individuals who are not effecting substantial control over the foxhounds. This injunction shall be in full force and effect from the date of its issuance until such time as Dr. Brown has received a permit from Chaffee County to operate her outfitting facility at 11600 Antelope Road unless otherwise modified or removed by further court action.

By the court, this 9th day of May, 2018,

*/s/ Amanda Hunter, District Court Magistrate*

This Order was issued with the consent of the parties and any appeal must be taken pursuant to C.R.M. Rule 7(b).