

APPENDIX

Pursuant to SUP.CT.R. 33(1)(b), other than the captions which are rendered in a simplified format, the formal pronouncements of the lower courts found in this Appendix are reproduced here, verbatim, including emphasis.

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21CA0671 Bd of Cnty Comm'rs v Sweet 07-28-2022
Colorado Court of Appeals Date Filed: July 28. 2022

Court of Appeals No. 21CA0671
Douglas County District Court No. 20CV30437
Honorable Jeffrey K. Holmes, Judge

Board of County Commissioners of the County of
Douglas, Colorado,
Plaintiff-Appellee,
v.
Renee Sweet,
Defendant-Appellant.

ORDER AFFIRMED
Division III
Opinion by JUDGE J. JONES
Welling and Schutz, JJ., concur
NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced July 28, 2022

Lance Ingalls, County Attorney, Dawn L. Johnson,
Senior Assistant County
Attorney, Castle Rock, Colorado, for Plaintiff-Appellee

Renee Sweet, Pro Se

Defendant, Renee Sweet, appeals the district court's order permanently enjoining her from continuing to violate various provisions of the Douglas County Zoning Resolution (DCZR) and imposing on her a civil penalty for past violations of \$1,000. We affirm.

I. Background

Sweet owns residential property in unincorporated Douglas County. The Board filed this action seeking an injunction requiring Sweet to cease unlawful use of her property and to remove all buildings or structures on her property that, because of their location and unpermitted status, are in violation of the DCZR. More specifically, the Board alleged that (1) Sweet was using the property to store trash and junk in violation of section 208 of the DCZR; (2) an unlicensed, possibly inoperable, vehicle was visibly on the property in violation of section 711 of the DCZR; (3) multiple structures on the property were inside minimum setbacks in violation of section 712 of the DCZR; (4) Sweet hadn't obtained permits for certain structures on the property as required by section 211 of the DCZR; and (5) Sweet had constructed a fence within the public right-of-way in violation of section 715 of the DCZR.

The court entered a preliminary injunction and then, following an evidentiary hearing, a permanent injunction ordering Sweet to cure the aforementioned violations. The court also imposed a civil penalty against Sweet of \$1,000 for her past violations of the DCZR.

II. Discussion

Sweet contends that (1) the DCZR can't be

enforced against her because, since it is a “resolution” and not an “ordinance,” it doesn’t have the force of law; (2) the relevant portions of the DCZR are too vague in certain respects to be enforceable; and (3) there should be sanctions imposed (against whom she doesn’t say) because a portion of the permanent injunction hearing was, for unknown reasons, not recorded. We conclude that all of Sweet’s contentions are without merit.

A. Enforceability of the DCZR

Sweet first contends that the DCZR isn’t enforceable against her because (1) it is a resolution that, unlike an ordinance, isn’t law but only mere policy and (2) such a resolution can be enforced under sections 30-28-124 and -124.5, C.R.S. 2021, only if the landowner “is engaging in business, commerce, trade, [or] industry, or subject to contract or license.” Her contentions are inconsistent with applicable law.¹

The General Assembly has expressly authorized counties to regulate land use in unincorporated areas. See §§[2]9-20-102(1), -103(1.5), -104(1)(g), 30-28-102, C.R.S. 2021. And the General Assembly has expressly authorized counties to do so by way of a “resolution” adopting a zoning plan. §30-28-113(1)(a), C.R.S. 2021. And any such zoning plan may, without limitation on the nature of the use of the land, regulate the locations of “buildings and other structures” on the land, § 30-28-113(1)(a)(1), as well as the uses of

¹The Board argues that Sweet can’t contest the permanent injunction because she walked out of the hearing before the presentation of evidence. While Sweet may have thereby forfeited her ability to make certain kinds of arguments on appeal, she didn’t forfeit her right to raise legal arguments that she had preserved. This is one such argument.

residential land, § 30-28-113(1)(a)(IV) (“[t]he uses of buildings and structures for ...residence”); §30-28-113(1)(a)(VI) (“[t]he uses of land for ...residence”).

Sweet’s arguments essentially ignore all or parts of these controlling statutes. The cases on which she relies for distinguishing between resolutions and ordinances didn’t involve the specific statutory authority under which Douglas County adopted the DCZR. And even when she acknowledges these statutes, she erroneously characterizes them as applying only to commercial property.

Simply put, the DCZR is a lawful exercise of the county’s statutorily granted authority: it is law, not mere policy. *See, e.g., Bd. of Cnty. Comm’rs v. Thompson*, 177 Colo. 277, 283-84, 493 P.2d 1358, 1361 (1972); *Di Salle v. Giggal*, 128 Colo. 208, 212, 261 P.2d 499, 501 (1953) (“In Colorado, zoning ordinances by cities and towns, and zoning resolutions by counties, are authorized by statutes, which have been held constitutional.”) (emphasis added); see also *Theobald v. Bd. of Cnty. Comm’rs*, 644 P.2d 942, 950 (Colo. 1982) (“[T]he board of county commissioners ... is the governmental body vested with the authority to enact county zoning resolutions.”) (emphasis added); *Bd. of Cnty. Comm’rs v. City of Thornton*, 629 P.2d 605, 607-08 (Colo. 1981) (describing the statutory process for a county to adopt a zoning resolution).²

Though *General Outdoor Advertising Co. v. Goodman*, 128 Colo. 344, 262 P.2d 261 (1953), on which Sweet apparently relies, involved a zoning

²Sweet doesn’t make any claim that the Board failed to comply with statutory procedures in adopting the DCZR.

resolution, it doesn't say anything supporting Sweet's resolution/ordinance distinction. The court struck down a county resolution not because it was a resolution, but because the resolution lacked "any set of standards or limitations," thus rendering it a grant of "arbitrary discretion." *Id.* at 347-48, 262 P.2d at 262.

In sum, Sweet's position is untenable.

B. Void for Vagueness

Sweet contends that the sections of the DCZR she was found to have violated are void because certain terms therein are vague or undefined. Oddly, though, she says she isn't arguing that these sections are unconstitutional. The void for vagueness doctrine arises from the constitutional requirement of due process. *See, e.g., Sellon v. City of Manitou Springs*, 745 P.2d 229, 233 (Colo. 1987). We aren't aware of any authority recognizing the extra-constitutional void for vagueness principle asserted by Sweet. Certainly, Sweet doesn't cite any. In any event, we agree with the Board that Sweet didn't preserve this contention. Her trial brief asserted that the relevant sections of the DCZR are void for vagueness, but it didn't say why or clearly identify what words or phrases in those sections Sweet objected to. Thus, Sweet didn't adequately alert the district court to the precise nature of her argument, and therefore failed to preserve the issue for appellate review. *See, e.g., Liberty Bankers Life Ins. Co. v. First Citizens Bank & Tr. Co.*, 2014 COA 151, ¶¶25-27.

But even were we to deem this contention preserved, it would still fail.

A law "violates due process requirements when it

contains language so vague that it fails to provide fair notice of what conduct is prohibited or fails to provide law enforcement authorities with sufficiently definite standards for nonarbitrary, nondiscriminatory enforcement of the law.” *Sellon*, 745 P.2d at 233; see *High Gear & Toke Shop v. Beacom*, 689 P.2d 624, 630-31 (Colo. 1984); *People ex rel. City of Arvada v. Nissen*, 650 P.2d 547, 550 (Colo. 1982) (“The controlling principle in a void for vagueness challenge is whether the questioned law ‘either forbids or requires the doing of an act in terms so vague that men of ordinary intelligence must necessarily guess as to its meaning and differ as to its application . . .’” (quoting *Connally v. Gen. Constr. Co.*, 269 US 385, 391 (1926))). But “neither scientific nor mathematical exactitude in legislative draftsmanship” is required. *Sellon*, 745 P.2d at 233; accord *Nissen*, 650 P.2d at 550. If the enactment at issue doesn’t define a term used therein, we apply its commonly accepted meaning. *Price v. City of Lakewood*, 818 P.2d 763, 766 (Colo. 1991); *Sellon*, 745 P.2d at 233.

To prevail, Sweet must establish that the challenged DCZR sections are unconstitutional beyond a reasonable doubt. *High Gear & Toke Shop*, 689 P.2d at 630.

Sweet appears to challenge the terms “trash,” “junk,” “stored,” and “structure(s).” We aren’t persuaded that any of those terms fail to provide fair notice of proscribed activity. All have commonly understood meanings. See, e.g., *Price*, 818 P.2d at 766 (term “to . . . store” in a municipal zoning ordinance not unconstitutionally vague); *State v. Watson*, 6 P.3d 752, 757-58 (Ariz. Ct. App. 2000) (ordinance prohibiting “accumulation of garbage, debris, . . . litter,

rubbish, [or] refuse" did not violate landowner's due process rights); *Devault v. City of Council Bluffs*, 671 N.W.2d 448, 449, 451 (Iowa 2003) (ordinance defining nuisance as maintaining "incomplete structures, abandoned or unmaintained property" not unconstitutionally vague); *Petrucelli v. City of Meriden*, 231 A.3d 231, 243-44 (Conn. App. Ct. 2020) (ordinance defining blight as property that is unmaintained in that "[g]arbage, trash, litter, rubbish, or debris are situated on the premises" not unconstitutionally vague); *State v. Dorsey*, 769 P.2d 38, 40 (Kan. Ct. App. 1989) (term "structure" in criminal statute not unconstitutionally vague). As well, as the Board points out, contrary to Sweet's assertion, the DCZR defines "structure."³ Consequently, none of these terms are impermissibly vague.

C. Incomplete Transcript

For unknown reasons, the recording system in the district court courtroom didn't record all of the permanent injunction hearing. Sweet contends that "sanctions for spoliation of evidence" should be imposed. But she doesn't say against whom they should be imposed. The court can't impose sanctions on itself (nor would doing so afford Sweet any relief). And Sweet doesn't identify any evidence showing that the Board in any way caused the gap in the recording.

To the extent Sweet argues that she is entitled to a complete record, she is correct. But there are procedures for recreating a record in circumstances like these. See C.A.R. 10(e)-(g). Sweet didn't avail

³Sweet doesn't assert that the structures at issue don't fall within that definition.

herself of those procedures, as was her burden. *See Knoll v. Allstate Fire & Cas. Ins.*, 216 P.3d 615, 617 (Colo. App. 2009); *In re Marriage of McSoud*, 131 P.3d 1208, 1211-12 (Colo. App. 2006); *Halliburton v. Pub. Serv. Co. of Colo.*, 804 P.2d 213, 217 (Colo. App. 1990).

We also observe that Sweet doesn't explain how she has been prejudiced by the lack of a complete transcript. The omitted testimony doesn't bear on any of her arguments on appeal, and she doesn't indicate any argument she has not made but would have made if the transcript were complete.

III. The Board's Request for Attorney Fees

The Board requests an award of its attorney fees incurred on appeal under C.A.R. 38, arguing that Sweet's appeal is frivolous. But the Board's request fails to acknowledge section 13-17-102(6), C.R.S. 2021, which provides that “[n]o party who is appearing without an attorney shall be assessed attorney fees unless the court finds that the party clearly knew or reasonably should have known that his action or defense, or any part thereof, was substantially frivolous, substantially groundless, or substantially vexatious.” Taking this provision into account, we conclude that, although this is a close call, an award of attorney fees isn't warranted.

On the one hand, Sweet cites many cases, but none of them truly support her arguments. And Sweet's briefs are sprinkled with insults directed at the Board, its attorneys, and the district court, see *Martin v. Essrig*, 277 P.3d 857, 860-61 (Colo. App. 2011), and irrelevant discussions about COVID-19 protocols and vaccines, amongst other things.

On the other hand, some of her arguments appear

to be good faith efforts to fit the facts into superficially applicable law. And she seems to have made a good faith effort to determine what law applies. We therefore conclude, albeit reluctantly, that Sweet neither clearly knew nor reasonably should have known that her appeal was substantially frivolous.

IV. Conclusion

The order is affirmed.

JUDGE WELLING and JUDGE SCHUTZ concur.

Colorado Supreme Court

Certiorari to the Court of Appeals, 2021CA671 District Court, Douglas County, 2020CV30437

Supreme Court Case No: 2022SC665

Petitioner:

Renee Sweet,

v.

Respondent:

Board of County Commissioners of the County of Douglas,
Colorado.

ORDER OF COURT

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, FEBRUARY 21, 2023.

District Court, Douglas County, Colorado
Case Number: 2020CV30437 Division: 5
Board of County Commissioners, Plaintiffs,
v.
Renee Sweet, Defendant.

**Order: Motion for a More Definite Statement
and an Order to Issue Forth a Legal Opinion**

The motion/proposed order attached hereto: DENIED.

The Court has reviewed the motion, the response and the reply. The Court will deny the motion for the reasons set forth) the response.

A defendant is to file her answer or other response within 21 days after service of the summons and complaint. Within the time period a Defendant may file a motion for a more definite statement of any matter that is not averred with sufficient definiteness or particularity to enable the party properly to prepare a responsive pleading. C.R.C.P. 12(e).

A Complaint must contain a short and plain statement of the claim showing that the pleader is entitled to relief. C.R.C.P. The Court finds that Plaintiffs Complaint does so. It sets forth with clarity the basis on which relief is sought and the Defendant is able to prepare a responsive pleading without the necessity of Plaintiff setting forth its case in more detail.

It is possible that the legal difference between a County Resolution and a County Ordinance may have some relevance this proceeding, but the Defendant does not provide any authority to the Court, nor can the Court find any, that suggest Plaintiff is obligated

at the Defendant's request to provide a legal opinion regarding this matter.

Defendant is to file her Answer to the Complaint within 14 days of this order.

Issue Date: 8/18/2020

/S/ JEFFREY K HOLMES
District Court Judge

District Court, Douglas County, Colorado
Case Number: 2020CV30437 Division: 5
BOARD OF COUNTY COMMISSIONERS OF THE
COUNTY OF DOUGLAS, COLORADO
v.
Renee Sweet, Defendant.

ORDER GRANTING PRELIMINARY INJUNCTION

Pursuant to C.R.S. § 30-28-124(2) and Rule 65 of the Colorado Rules of Civil Procedure, Plaintiff, the Board of County Commissioners of the County of Douglas, Colorado (the BOCC), moved the Court for entry of a Preliminary Injunction against Defendant, Renee Sweet. The Court held an evidentiary hearing on November 9, 2020. Plaintiff appeared by counsel Dawn L. Johnson, Esq., assistant county attorney. The Defendant, pro se, appeared initially, then chose to leave the courtroom after having been advised that the proceedings would continue in her absence. The hearing proceeded to its conclusion and the Court, having considered the evidence presented, and otherwise being fully informed in the premises, **FINDS** as follows:

1. This Court has jurisdiction over the parties and the claims set forth in Plaintiffs Verified Complaint.
2. Defendant, Renee Sweet, is the owner of the property located at 3630 Collins Street, Lot 6 Block 5 of Silver Heights Amended (the “Subject Property”).

3. The Subject Property is located in unincorporated Douglas County, Colorado, and is thus subject to the provisions of the Douglas County Zoning Resolution, adopted by the BOCC pursuant to C.R.S. § 30-28-111.
4. The Subject Property is zoned as a Suburban Residential District (“SR District”).
5. Plaintiff, BOCC, has met the applicable criterion set forth in C.R.S. § 30-28-124(2), Rule 65, and applicable case law,⁴ and demonstrated that issuance of a preliminary injunction is appropriate. The Court has considered the factors set forth in *Rathke v. MacFarlane* and has determined that: (i) Plaintiff has demonstrated a reasonable probability of success on the merits; (ii) Plaintiff is not required to demonstrate irreparable harm under applicable case law because of its statutory right to enforce, but the Court further finds that there is a basis for such a finding, including, specifically, that the zoning violations pose a threat to the health, safety and welfare of Douglas County residents and others and that the County has made extraordinary efforts to bring the violations to the attention of the Defendant but the Defendant has not corrected the violations; (iii) the public interest will not be disserved by the granting of injunctive relief; (iv) Defendant has had the opportunity to appear and to present evidence in support of her position, but she has elected not to present any such evidence; (v) the balance of

⁴See *Rathke v. MacFarlane*, 648 P.2d 648 (Colo. 1982); *Lloyd A. Fry Roofing Co. v. State Dept of Health Air Pollution Variance Bd.*, 553 P.2d 800 (Colo. 1976).

equities favors the injunction. Merely restraining further violations will not effectuate the relief to which the plaintiff is statutorily entitled, therefore, the court orders that mandatory injunctive relief be entered.

6. Defendant, Renee Sweet, is using, and allowing the use of, the Subject Property as an outside storage area for junk, trash, rubbish, refuse, remnants of wood, metal and plastic, and discarded materials in violation of the Douglas County Zoning Resolution.
7. Defendant, Renee Sweet, is using, and allowing the use of, the Subject Property to store inoperative or unconcealed unlicensed vehicles.
8. Defendant, Renee Sweet, is using, and allowing the use of, the Subject Property to locate structures within the minimum setbacks applicable to lots zoned as a SR District pursuant to Section 712 of the Douglas County Zoning Resolution.
9. Defendant, Renee Sweet, is using, and allowing the use of, the Subject Property to construct, erect and use structures on the premises for which required building permits have not been obtained from Douglas County's Building Division.
10. Defendant, Renee Sweet, is using, and allowing the use of, the Subject Property to construct, erect and use a fence or wall that is located within the public right-of-way.
11. Specifically, the foregoing uses are in violation of Sections 113, 208, 211, 711, 712 and 715 of the

Douglas County Zoning Resolution, and those violations pose a threat to the health, safety and welfare of Douglas County residents.

In accordance with the findings set forth above, and pursuant to C.R.S. § 30-28-124(2), Colorado Rule of Civil Procedure 65, and applicable case law, the Court hereby ORDERS as follows:

1. Defendant is enjoined from using the Subject Property, or allowing any other person to use the Subject Property, as an outside storage area for junk, trash, rubbish, refuse, remnants of wood, metal and plastic, and discarded materials. Defendant is ordered to remove all junk, trash, rubbish, refuse, remnants of wood, metal, plastic and discarded materials currently stored outside on the Subject Property within fourteen (14) calendar days after entry of this Order.
2. Defendant is enjoined from using the Subject Property, or allowing any other person to use the Subject Property, to store inoperable vehicles or unconcealed, operable vehicles whose license plates have expired. Defendant is ordered to remove any inoperable vehicle from the Subject Property and to remove or conceal, in accordance with Sections 208 and 711 of the Douglas County Zoning Resolution, any operable vehicle whose license plates have expired, including, specifically, the black Volvo displaying expired license plate 082PTM, from the Subject Property within fourteen (14) calendar days after entry of this Order.
3. Defendant is enjoined from using the Subject Property, or allowing any other person to use the

Subject Property, to locate structures within the minimum setbacks applicable to lots zoned as a SR District pursuant to Section 712 of the Douglas County Zoning Resolution. Defendant is ordered to remove all structures, including, specifically, the two green shipping containers currently located in the northeast corner of the Subject Property and the greenhouse-type structure located in the southwest corner of the Subject Property, from the minimum setbacks on the Subject Property within fourteen (14) calendar days after entry of this Order.

4. Defendant is enjoined from constructing, erecting or using any structures on the Subject Property, or allowing any other person to construct, erect or use structures on the Subject Property, for which any required building permits have not been obtained from Douglas County's Building Division. Defendant is ordered to remove all such unpermitted structures, including, specifically, the greenhouse-type structure located in the southeast corner of the Subject Property, the structure located immediately to the south or attached to the south side of the residence on the Subject Property and the hoop house type structure located in the southeast corner of the Subject Property, from the Subject Property within fourteen (14) calendar days after entry of this Order.
5. Defendant is enjoined from constructing, erecting or using any fence or wall within the public right-of-way of Collins Street or allowing any other person to construct, erect or use any

fence or wall located within the public right-of-way of Collins Street. Defendant is ordered to remove all fencing and walls located within the public right-of-way of Collins Street within fourteen (14) calendar days after entry of this Order. Any new fencing constructed on the Subject Property must be constructed in accordance with the Douglas County Zoning Resolution.

6. Plaintiff shall serve a copy of this Order on the Defendant and may serve copies on any other resident of the Subject Property.
7. Any violation(s) of this Order may, in the Court's discretion, be punishable through the imposition of sanctions set forth in Colorado Rule of Civil Procedure 107, including fines, imprisonment, or both.

DONE AND SIGNED this 10th day of November, 2020.

/S/ JEFFREY K HOLMES
District Court Judge

District Court, Douglas County, Colorado
Case Number: 2020CV30437 Division: 5
BOARD OF COUNTY COMMISSIONERS OF THE
COUNTY OF DOUGLAS, COLORADO, Plaintiffs,
v.
Renee Sweet, Defendant.

ORDER GRANTING PERMANENT INJUNCTION

Plaintiff, the Board of County Commissioners of the County of Douglas, Colorado (the “County”), filed a Verified Complaint on June 4, 2020, setting forth a number of claims for relief, including but not limited to, claims pursuant to C.R.S. § 30-28-124(2) and Rule 65 of the Colorado Rules of Civil Procedure, seeking entry of preliminary and permanent injunctive relief against Defendant, Renee Sweet. On November 9, 2020, the Court held an evidentiary hearing on the County’s request for preliminary injunctive relief and issued a Preliminary Injunction Order on November 10, 2020. On March 19, 2021, the case came before the Court for trial on the various claims set forth in the County’s Verified Complaint. Plaintiff appeared by counsel, Dawn L. Johnson and Megan L. Taggart, from the Douglas County Attorney’s Office. The Defendant, pro se, appeared initially, then chose to leave the courtroom after having been advised that the trial would continue in her absence. The trial proceeded to its conclusion, continuing for approximately three hours, but Defendant did not return and has chosen not to participate other than her initial appearance. The Court, having considered

the testimony of the witnesses and having reviewed and considered the exhibits introduced into evidence, and otherwise being fully informed on the premises, hereby **FINDS** as follows:

1. This Court has jurisdiction over the parties and the claims set forth in Plaintiff's Verified Complaint.
2. The Court makes its findings under the clear and convincing standard of proof and concludes that Plaintiff has presented sufficient evidence to meet that standard.
3. Defendant, Renee Sweet, is the owner of the property located at 3630 Collins Street, Lot 6 Block 5 of Silver Heights Amended (the "Subject Property").
4. The Subject Property is located in unincorporated Douglas County, Colorado, and is thus subject to the provisions of the duly enacted Douglas County Zoning Resolution, adopted by the Board of County Commissioners of the County of Douglas pursuant to C.R.S. § 30-28-111.
5. The Subject Property is zoned as a Suburban Residential District ("SR District").
6. At the time of the preliminary injunction hearing, the Court made findings, set forth in its Order Granting Preliminary Injunction dated November 10, 2020, which are adopted herein by reference.
7. Plaintiff has made extraordinary efforts to attempt to remedy the violations of the Douglas County Zoning Resolution at the Subject

Property, but the Defendant has failed to take steps in accordance with those requirements to remedy the issues at her property.

8. Sections 2 and 7 of the Douglas County Zoning Resolution are applicable to the Subject Property, Section 7 being specific to properties zoned Suburban Residential and Section 2 containing regulations of general applicability.
9. Defendant, Renee Sweet, is using, and allowing the use of, the Subject Property as an outside storage area for junk, trash, rubbish, refuse, remnants of wood, metal and plastic, and discarded materials in violation of Section 208 of the Douglas County Zoning Resolution.
10. Defendant, Renee Sweet, has used, and allowed the use of, the Subject Property to store inoperative or visible unlicensed vehicles in violation of Sections 208 and 711 of the Douglas County Zoning Resolution. Defendant has taken steps to remediate this violation by registering the black Volvo displaying Colorado license plate 082PTM, but those steps were not taken until earlier this year, and well after the Court entered its Order Granting Preliminary Injunction. Additionally, the foregoing black Volvo was unlicensed for numerous years and was the subject of a prior Petty Offense penalty assessment issued to the Defendant in 2015. Future violations of this provision will not be permitted to continue.
11. Defendant, Renee Sweet, is using, and allowing the use of, the Subject Property to locate structures within the minimum setbacks

applicable to lots zoned Suburban Residential in violation of Section 712 of the Douglas County Zoning Resolution. Specifically, Defendant is using, and allowing the use of, her property to locate two green large shipping containers and a greenhouse-type structure in the applicable minimum setbacks.

12. Defendant, Renee Sweet, is using, and allowing the use of, the Subject Property to construct, erect, and use structures on the premises for which required building permits have not been obtained from Douglas County's Building Division in violation of Section 211 of the Douglas County Zoning Resolution. Specifically, Defendant is using, and allowing the use of, her property to construct, erect, and use a greenhouse-type structure and a hoop house-type structure on the Subject Property without obtaining the required building permits for the structures from Douglas County's Building Division. There was another structure on the Subject Property, attached or immediately to the south of the residence, for which a required building permit also was not obtained, but that structure has now apparently been removed.
13. Defendant, Renee Sweet, is using, and allowing the use of, the Subject Property to construct, erect, and use a fence or wall that is located within the public right-of-way on the Subject Property in violation of Section 715 of the Douglas County Zoning Resolution.
14. The foregoing uses are and have been in violation of the referenced provisions in the

Douglas County Zoning Resolution, and those violations pose a threat to the health, safety, and welfare of Douglas County residents.

15. Plaintiff, the Board of County Commissioners of Douglas County, Colorado, has met the applicable criterion set forth in C.R.S. § 30-28-124(2), Rule 65, and applicable case law,¹ demonstrating that issuance of a permanent injunction is appropriate. The Court has considered the criterion set forth in *Langlois* and has determined: (i) Plaintiff has proven its claims by clear and convincing evidence; (ii) Plaintiff is not required to demonstrate irreparable harm under applicable case law because of its statutory right to enforce, but the Court further finds that there is a basis for such a finding, including, specifically, that the zoning violations pose a threat to the health, safety, and welfare of Douglas County residents and others and that the County has made extraordinary efforts to bring the violations to the attention of the Defendant but the Defendant has not corrected the violations; (iii) the public interest will not be adversely affected by the granting of injunctive relief; (iv) Defendant has had the opportunity to appear and to present evidence in support of her position but she has elected not to present any such evidence; and (v) the threatened injury outweighs the harm that the

¹See *Langlois v. Bd. of Cty. Comm'r's of Cty. of El Paso*, 78 P.3d 1154, 1157-58 (Colo. App. 2003); *K9Shrink, LLC v. Ridgewood Meadows Water and Homeowners Ass'n*, 278 P.3d 372, 378-79 (Colo. App. 2011); see also *Lloyd A. Fry Roofing Co. v. State Dep't of Health Air Pollution Variance Bd.*, 553 P.2d 800 (Colo. 1976).

injunction may cause Defendant in that merely restraining further violations will not provide Plaintiff with the relief to which it is statutorily entitled and, accordingly, mandatory injunctive relief will be entered.

In accordance with the findings set forth above, and pursuant to C.R.S. § 30-28-124(2), Colorado Rule of Civil Procedure 65, and applicable case law, the Court hereby **ORDERS** as follows:

1. Defendant is enjoined from using the Subject Property, or allowing any other person to use the Subject Property, as an outside storage area for plumbing and electrical fixtures and appliances, junk, trash, rubbish, refuse, remnants of wood, metal and plastic, and discarded materials. Defendant is ordered to remove all junk, trash, rubbish, refuse, remnants of wood, metal and plastic, discarded materials, plumbing and electrical fixtures and appliances currently stored outside on the Subject Property.
2. Defendant is enjoined from using the Subject Property, or allowing any other person to use the Subject Property, to store inoperative vehicles or unconcealed, operable vehicles whose license plates have expired. Because it appears Defendant has registered the black Volvo, the Court finds there is no evidence of a vehicle at the Subject Property that is currently in violation of Sections 208 and 711 of the Douglas County Zoning Resolution, but the Subject Property shall not be used to store inoperative vehicles or unconcealed, operable vehicles whose license plates have expired in the future.

3. Defendant is enjoined from using the Subject Property, or allowing any other person to use the Subject Property, to locate structures within the minimum setbacks applicable to lots zoned as a SR District pursuant to Section 712 of the Douglas County Zoning Resolution. Defendant is ordered to remove all structures, including, specifically, the two green shipping containers currently located in the northeast corner of the Subject Property and the greenhouse-type structure located in the southwest corner of the Subject Property, from the minimum setbacks on the Subject Property.
4. Defendant is enjoined from constructing, erecting, or using any structures on the Subject Property, or allowing any other person to construct, erect, or use structures on the Subject Property, for which any required building permits have not been obtained from Douglas County's Building Division. Defendant is ordered to remove all such unpermitted structures, including, specifically, the greenhouse-type structure located in the southwest corner of the Subject Property and the hoop house type structure located in the southeast corner of the Subject Property, from the Subject Property.
5. Defendant is enjoined from constructing, erecting, or using any fence or wall located within the public right-of-way of Collins Street or allowing any other person to construct, erect, or use any fence or wall located within the public right-of-way of Collins Street. Defendant is ordered to remove all fencing and walls located within the public right-of-way of Collins Street.

Any new fencing constructed on the Subject Property must be constructed in accordance with the Douglas County Zoning Resolution.

6. This injunction, including each and every paragraph 1 through 5 above, will be a **permanent** injunction.
7. Once a written order has been submitted to the Court and signed by the Court, Plaintiff shall serve a copy of the Order on Defendant, Renee Sweet.
8. As set out in the Court's earlier findings, the evidence presented is quite persuasive that the County made extraordinary efforts to obtain Defendant's compliance; numerous notices were provided to Defendant identifying the nature of the violations, what Defendant needed to do to remedy those violations, and the potential consequences if the violations were not remedied. Additionally, the Court issued its Order Granting Preliminary Injunction in November, but the violations continued and, in some ways, were exacerbated.
9. Pursuant to C.R.S. § 30-28-124.5, civil penalties may be imposed for violations of a zoning resolution. Considering the length of time in which the forgoing violations have been ongoing, the Court concludes that a civil penalty in the amount of \$1,000 is appropriate and hereby orders Defendant to pay a civil penalty in the total amount of \$1,000.
10. For each day after the issuance of this Order in which an unlawful activity enjoined by this Order continues, it shall be considered a

separate violation and the Court will impose a continuing aggregate penalty in the amount of \$50 per day for each violation. Each separate violation identified in this Order, namely, outside storage of trash and junk, structures located in the minimum setbacks, structures without required building permits, and the fence located in the public right-of-way, shall be separately assessed in the amount of \$12.50 per day, such that the aggregate penalty may be reduced by the amount of \$12.50 per day when any one violation is fully cured.

11. This Order shall be effective immediately upon issuance.

DONE AND SIGNED THIS 29th DAY OF MARCH, 2021.

BY THE COURT:

/S/ JEFFREY K HOLMES
District Court Judge

20-cv-03318-CMA-SKC Sweet v. Bd of Cnty Comm'r's
US District Court Date Filed: August 3, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Christine M. Arguello

Civil Action No. 20-cv-03318-CMA-SKC

RENEE SWEET,
Plaintiff,
v.
DOUGLAS COUNTY, STATE OF COLORADO, and
DOUGLAS COUNTY BOARD OF COUNTY
COMMISSIONERS,
Defendant.

ORDER

This matter is before the Court on the following:

- (1) Recommendation of United States Magistrate Judge S. Kato Crew (Doc. # 25);
- (2) Nonparty Jeff Buske's Motion to Intervene (Doc. # 26);
- (3) Plaintiff Renee Sweet's Motion to Substitute or Join as Plaintiff (Doc. # 27); and
- (4) Jeff Buske's Motion to Substitute or Join as Plaintiff (Doc. # 28). For the following reasons, the Court affirms and adopts Magistrate Judge Crews's Recommendation that the case be

dismissed. The Court denies the motions filed by Sweet and Buske.

For the following reasons, the Court affirms and adopts Magistrate Judge Crews's Recommendation that the case be dismissed. The Court denies the motions filed by Sweet and Buske.

I. BACKGROUND

This case arises from a zoning enforcement action. Plaintiff, Renee Sweet, owns property in Douglas County. (Doc. # 5, ¶8). Douglas County initiated a zoning enforcement action against Sweet, which is currently being litigated in Colorado state court. (Doc. # 5, ¶¶8-12). Sweet then filed a lawsuit in this Court asking the Court to explain to her "the legal difference between an Ordinance and a Resolution ... so that [she] may make a proper defense to the State Case." (Doc. # 5, ¶¶2, 12). Douglas County moved to dismiss the action, arguing, among other things, that Plaintiffs federal claim is barred by the *Younger* abstention doctrine. (Doc. # 16; *Younger v. Harris*, 401 US 37 (1971)). This Court referred the motion to Judge Crews, who agreed with the County. (Doc. # 25). Judge Crews issued a written Recommendation that the case be dismissed under *Younger*. (Doc. # 25). Neither party objected to Judge Crews's recommendation.¹

Plaintiff now seeks to avoid dismissal by "transferring" her interest in this case to nonparty

¹Judge Crews advised the parties that specific written objections were due within 14 days after being served with a copy of the Recommendation. (Doc. #25, p. 8). Neither party filed a timely objection to the Magistrate Judge's Recommendation.

Jeff Buske. Both Buske and Sweet have filed motions “to substitute or join [Buske] as Plaintiff . . . so as to moot the *Younger* abstention as a bar to prosecuting this case.” (Docs. ## 26, 27).² Buske has also filed a motion to intervene, arguing that “Buske and everyone else in the State of Colorado . . . have a substantial legal interest in the subject matter of [Sweet’s] case,” and therefore have a right to intervene. (Doc. # 26, ¶5).

II. LEGAL STANDARD

Because Plaintiff and Buske are litigating pro se, the Court will construe their pleadings liberally. *Hall v. Bellmon*, 935 F. 2d 1106, 1110 (10th Cir. 1991); see also *Haines v. Kerner*, 404 US 519, 520-21 (1972). In other words, “if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff’s failure to cite proper legal authority, his confusion of various legal theories . . . or his unfamiliarity with the pleading requirements.” *Hall*, 935 F. 2d at 1110. However, the Court should not act as a pro-se litigant’s advocate, and it may not “supply additional factual allegations to round out a plaintiff’s complaint or construct a legal theory on a plaintiff’s behalf.” *Whitney v. New Mexico*, 113 F.3d 1170, 1173-74 (10th Cir. 1997). Pro se plaintiffs must “follow the same rules of procedure that govern other litigants.” *Nielsen v. Price*, 17 F.3d 1276, 1277 (10th Cir. 1994).

III. ANALYSIS

A. MAGISTRATE JUDGE RECOMMENDATION

Judge Crews recommends dismissing Plaintiff's claims under the *Younger* abstention doctrine. *Younger* "prevents the federal district court from interfering in an ongoing state proceeding." *Hennelly v. Flor de Maria Oliva*, 237 Fed.Appx. 318, 319 (10th Cir. 2007). *Younger* applies when:

- (1) there is an ongoing state criminal, civil, or administrative proceeding, (2) the state court provides an adequate forum to hear the claims raised in the federal complaint, and (3) the state proceedings involve important state interests, matters which traditionally look to state law for their resolution or implicate separately articulated state policies.

Chapman v. Oklahoma, 472 F.3d 747, 749 (10th Cir. 2006) (quoting *Crown Point I, LLC v. Intermountain Rural Elec. Ass'n*, 319 F.3d 1211, 1215 (10th Cir. 2003)). If those three conditions exist, "Younger abstention is non-discretionary and, absent extraordinary circumstances, a district court is required to abstain." Id. (quoting *Crown Point I, LLC*, 319 F.3d at 1215). Judge Crews found that all three *Younger* conditions exist in this case, and that Sweet's case is therefore barred by the *Younger* abstention doctrine. Neither party objected to Judge Crews's Recommendation.

"In the absence of timely objection, the district court may review a magistrate [judge's] report under any standard it deems appropriate." *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991); see also *Thomas v. Am*, 474 US 140, 150 (1985) ("It does not appear that Congress intended to require district court review of a magistrate's factual or legal

conclusions, under a de novo or any other standard, when neither party objects to those findings"). Applying this standard, the Court is satisfied that Judge Crews's Recommendation is sound and well-reasoned, and the Court finds no clear error on the face of the record. See Fed.R.Civ.P. 72(a). Therefore, the Court affirms Judge Crews's Recommendation and dismisses Sweet's claims.

B. MOTIONS TO INTERVENE, SUBSTITUTE, OR JOIN AS PLAINTIFF

Sweet now seeks to avoid dismissal by substituting Jeff Buske as the plaintiff in this case. Sweet and Buske apparently believe that they can avoid application of *Younger* by simply having Buske stand in for Sweet. This belief is incorrect.

No matter whose name appears on the pleadings, there is no dispute that the claims at issue in this case are currently being litigated in state court. (Doc. # 5, ¶¶8-12). *Younger* "prevents the federal district court from interfering in an ongoing state proceeding." *Hennelly v. Flor de Maria Oliva*, 237 Fed.Appx. 318, 319 (10th Cir.2007). Because the operative Complaint asks this Court to interfere in an ongoing state proceeding (Doc. # 5, ¶¶8-12, 38-39), the case is barred by *Younger*, and it must be dismissed. Substituting Buske for Sweet would not save this case from dismissal.

Further, Buske's motion to intervene must be denied because Buske has failed to establish that he is entitled to sue in his own right. Under F.R.C.P. 24(a), a person must be allowed to intervene if (1) that person "claims an interest relating to the property or transaction that is the subject of that

action"; (2) disposing of the action without that person's involvement "may as a practical matter impair or impede the movant's ability to protect its interest," and (3) the existing parties do not adequately represent that interest. F.R.C.P. 24(a)(2). Further, under Rule 24(b), a person may be allowed to intervene if they are given a conditional right to intervene by federal statute or if they have a claim or defense that shares a common question of law or fact with the main action. Buske has failed to show that he is entitled to intervene under either Rule 24(a) or Rule 24(b).

First, Buske has failed to demonstrate any legal interest in "the property or transaction that is the subject of [this] action." F.R.C.P. 24(a). The property at issue in this case is Sweet's property in Douglas County. (Doc. # 5, ¶¶8-12). Buske does not claim to have any legal interest in that property, and he has failed to show that he has any legal interest in any transaction affecting that property. (See generally, Doc. # 26). Further, Buske fails to explain how his interests would be harmed if the Court disposes of of [sic] Sweet's case without his involvement would impair his interests. Thus, Buske has failed to establish a right to intervene under Rule 24(a).

Next, Buske has failed to demonstrate that he has a claim that shares a common question with the main action. (F.R.C.P. 24(b)). Indeed, Buske fails to articulate any claim at all. Buske's motion to intervene merely states that "the claims offered by Buske share substantial questions of law and fact with the main action." (Doc. # 26, ¶8). But Buske fails to explain what those claims are. And, although Buske contends that he has some "interests" that

“commingle with the exact same fact-pattern and legal interests” as Sweet’s action, he fails to actually define those interests. (Doc. # 26, p. 2). Nothing in Buske’s motion establishes how Buske is connected to this case; what claims he intends to pursue; or why he has standing to pursue those claims. Therefore, Buske has failed to establish a right to intervene in this case, and his motion to do so is denied.

IV. CONCLUSION

For the foregoing reasons, the Recommendation of Magistrate Judge Crews (Doc. # 25) is **AFFIRMED** and **ADOPTED** as an order of this Court, and Plaintiff’s claims are **DISMISSED**. It is

FURTHER ORDERED that nonparty Jeff Buske’s Motion to Intervene (Doc. # 26) is **DENIED**; Plaintiff’s Motion to Substitute or Join as Plaintiff (Doc. # 27) is **DENIED**; and nonparty Jeff Buske’s Motion to Substitute or Join as Plaintiff (Doc. # 28) is **DENIED**.

The Clerk is directed to close this case.

DATED: August 3, 2021

BY THE COURT:

/S/ CHRISTINE M. ARGUELLO
United States District Judge

2021CA671 Bd of Cnty Comm'rs v. Sweet 2-7-2022
Colorado Court of Appeals
Date Filed: February 7, 2022

Colorado Court of Appeals
Court of Appeals Case Number: 2021CA671
Douglas County
2020CV30437

Plaintiff-Appellee:

Board of County Commissioners of the County of
Douglas,
Colorado,

v.

Defendant-Appellant:

Renee Sweet.

ORDER OF THE COURT

To: The Parties

Upon consideration of the motion to compel, the
Court DENIES the motion.

Briefing having concluded, the case will now be put
at issue and an opinion will enter in due course.

BY THE COURT

Roman, C.J.

2021CA671 Bd of Cnty Comm'rs v.Seeet 4-1-2022
Colorado Court of Appeals Date Filed: April 1, 2022

Colorado Court of Appeals
Court of Appeals Case Number: 2021CA671
Douglas County
2020CV30437

Plaintiff-Appellee:

Board of County Commissioners of the County of
Douglas,
Colorado,

v.

Defendant-Appellant:

Renee Sweet.

ORDER OF THE COURT

To: The Parties

Construing the motion filed on March 28, 2022, as a motion to reconsider this Court's February 7, 2022, order denying appellant's motion to compel, the Court DENIES the motion to reconsider.

The case remains at issue and an opinion will enter in due course.

BY THE COURT

Fox, J.

Berger, J.

Schutz, J.

Colorado Supreme Court
Original Proceeding
Colorado Court of Appeals, 2021CA671

Supreme Court Case No: 2022SA90

In Re:

Plaintiff-Appellee:

Board of County Commissioners of the County of
Douglas,

v.

Defendant-Appellant:

Renee Sweet.

ORDER OF THE COURT

Upon consideration of the Petition to Show Cause
Pursuant to C.A.R. 21 filed in the above cause, and
now being sufficiently advised in the premises,

IT IS ORDERED that said Petition to Show Cause
Pursuant to C.A.R. 21 shall be, and the same hereby
is, DENIED.

BY THE COURT, EN BANC, APRIL 25, 2022.

Colorado Revised Statutes.

§ 29-20-102 (2019) - Legislative declaration.

(1) The general assembly hereby finds and declares that in order to provide for planned and orderly development within Colorado and a balancing of basic human needs of a changing population with legitimate environmental concerns, the policy of this state is to clarify and provide broad authority to local governments to plan for and regulate the use of land within their respective jurisdictions. Nothing in this article shall serve to diminish the planning functions of the state or the duties of the division of planning.

§ 29-20-103 (2019) - Definitions.

(1.5) "Local government" means a county, home rule or statutory city, town, territorial charter city, or city and county.

§ 29-20-104 (2019) - Powers of local governments - definition.

(1) Except as expressly provided in section 29-20-104.5, the power and authority granted by this section does not limit any power or authority presently exercised or previously granted. Each local government within its respective jurisdiction has the authority to plan for and regulate the use of land by:

...

(g)

(I) Regulating the use of land on the basis of the impact of the use on the community or surrounding areas;

(II)(A) The general assembly finds and declares that access to outpatient clinical facilities providing reproductive health care, as defined in section 25-6-402 (4), is a matter of statewide concern and that, for purposes of zoning and other land use

planning, such facilities fall within the meaning of a medical office use, a medical clinic use, a health-care use, and other facilities that provide outpatient health-care services.

(B) For the purposes of zoning and other land use planning, every local government that has adopted or adopts a zoning ordinance shall recognize the provision of outpatient reproductive health care, as defined in section 25-6-402 (4), as a permitted use in any zone in which the provision of general outpatient health care is recognized as a permitted use.

(C) Nothing in this subsection (1)(g)(II) restricts or supersedes the authority of a local government to enact uniform zoning ordinances and other land use regulations that comply with this subsection (1)(g)(II).

§ 30-28-102 (2019) - Unincorporated territory.

The boards of county commissioners of the respective counties within this state are authorized to provide for the physical development of the unincorporated territory within the county and for the zoning of all or any part of such unincorporated territory in the manner provided in this part 1.

§ 30-28-111 (2019) Zoning Plan.

(1) The county planning commission of any county may, and upon order by the board of county commissioners in any county having a county planning commission shall, make a zoning plan for zoning all or any part of the unincorporated territory within such county, including both the full text of the zoning resolution and the maps, and representing the recommendations of the commission for the regulation by districts or zones of the location, height, bulk, and size of buildings and other structures, percentage of lot which may be occupied, the size of

lots, courts, and other open spaces, the density and distribution of population, the location and use of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes, access to sunlight for solar energy devices, and the uses of land for trade, industry, recreation, or other purposes. To the end that adequate safety may be secured, the county planning commission may include in said zoning plan provisions establishing, regulating, and limiting such uses on or along any storm or floodwater runoff channel or basin as such storm or floodwater runoff channel or basin has been designated and approved by the Colorado water conservation board in order to lessen or avoid the hazards to persons and damage to property resulting from the accumulation of storm or floodwaters.

(2) The county planning commission or the board of adjustment of any county, in the exercise of powers pursuant to this article, may condition any portion of a zoning resolution, any amendment thereto, or any exception to the terms thereof upon the preservation, improvement, or construction of any storm or floodwater runoff channel designated and approved by the Colorado water conservation board.

§ 30-28-113 (2019) Regulation of size and use - districts - repeal.

(1)(a) Except as otherwise provided in section 34-1-305, C.R.S., when the county planning commission of any county makes, adopts, and certifies to the board of county commissioners plans for zoning the unincorporated territory within any county, or any part thereof, including both the full text of a zoning resolution and the maps, after public hearing thereon, the board of county commissioners, by resolution, may regulate, in any portions of such

county that lie outside of cities and towns:

- I. The location, height, bulk, and size of buildings and other structures;
- II. The percentage of lots that may be occupied;
- III. The size of yards, courts, and other open spaces;
- IV. The uses of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes;
- V. Access to sunlight for solar energy devices; and
- VI. The uses of land for trade, industry, residence, recreation, or other purposes and for flood control.

(b) (I) In order to accomplish such regulation, the board of county commissioners:

- A. May divide the territory of the county that lies outside of cities and towns into districts or zones of such number, shape, or area as it may determine, and, within such districts or any of them, may regulate the erection, construction, reconstruction, alteration, and uses of buildings and structures and the uses of land; and
- B. May require and provide for the issuance of building permits as a condition precedent to the right to erect, construct, reconstruct, or alter any building or structure within any district covered by such zoning resolution.

(2) The county planning commission may make and certify a single plan for the entire unincorporated portion of the county or separate and successive plans for those parts which it deems to be urbanized or suitable for urban development and those parts

which, by reason of distance from existing urban communities or for other causes, it deems suitable for nonurban development. Any resolution adopted by the board of county commissioners may cover and include the unincorporated territory covered and included in any such single plan or in any of such separate and successive plans. No resolution covering more or less than the territory covered by any such certified plan shall be adopted or put into effect until and unless it is first submitted to the county planning commission which certified the plan to the board of county commissioners and is approved by said commission or, if disapproved, receives the favorable vote of not less than a majority of the entire membership of such board. All such regulations shall be uniform for each class or kind of building or structure throughout any district, but the regulations in any one district may differ from those in other districts.

§ 30-28-124 (2019) - Penalties.

(1)(a) It is unlawful to erect, construct, reconstruct, or alter any building or structure in violation of any regulation in, or of any provisions of, any zoning resolution, or any amendment thereof, enacted or adopted by the board of county commissioners under the authority of this part 1. Any person, firm, or corporation violating any such regulation, provision, or amendment thereof, or any provision of this part 1 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than ten days, or by both such fine and imprisonment. Each day during which such illegal erection, construction,

reconstruction, or alteration continues shall be deemed a separate offense.

(b)(I) It is unlawful to use any building, structure, or land in violation of any regulation in, or of any provision of, any zoning resolution, or any amendment thereto, enacted or adopted by any board of county commissioners under the authority of this part 1. Any person, firm, or corporation violating any such regulation, provision, or amendment thereof is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than ten days, or by both such fine and imprisonment. Each day during which such illegal use of any building, structure, or land continues shall be deemed a separate offense.

(II) Whenever a county zoning official authorized pursuant to section 30-28-114 has personal knowledge of any violation of this paragraph (b), he or she shall give written notice to the violator to correct the violation within ten days after the date of the notice. Should the violator fail to correct the violation within the ten-day period, the zoning official may request that the sheriff of the county issue a summons and complaint to the violator, stating the nature of the violation with sufficient particularity to give notice of the charge to the violator. The summons and complaint shall require that the violator appear in county court at a definite time and place stated therein to answer and defend the charge.

(III) One copy of said summons and complaint shall be served upon the violator by the sheriff of the county in the manner provided by law for the service of a criminal summons. One copy each

shall be retained by the sheriff and the county zoning official, and one copy shall be transmitted by the sheriff to the clerk of the county court.

(c) It is the responsibility of the county attorney to enforce the provisions of this subsection (1). In the event that there is no county attorney or in the event that the board of county commissioners deems it appropriate, the board of county commissioners may appoint the district attorney of the judicial district to perform such enforcement duties in lieu of the county attorney.

(2) In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, or used, or any land is or is proposed to be used, in violation of any regulation or provision of any zoning resolution, or amendment thereto, enacted or adopted by any board of county commissioners under the authority granted by this part 1, the county attorney of the county in which such building, structure, or land is situated, in addition to other remedies provided by law, may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful erection, construction, reconstruction, alteration, or use. In the event that there is no county attorney or in the event that the board of county commissioners deems it appropriate, the board of county commissioners may appoint the district attorney of the judicial district to perform such enforcement duties in lieu of the county attorney.

§ 30-28-124.5. County court actions for civil penalties for zoning violations.

(1) It is unlawful to erect, construct, reconstruct,

alter, or use any building, structure, or land in violation of any regulation in, or of any provisions of, any zoning resolution or any amendment thereof, enacted or adopted by the board of county commissioners under the authority of this part 1. In addition to any penalties imposed pursuant to section 30-28-124, any person, firm, or corporation violating any such regulation, provision, or amendment thereof or any provision of this part 1 may be subject to the imposition, by order of the county court, of a civil penalty in an amount of not less than five hundred dollars nor more than one thousand dollars. It is within the discretion of the county attorney to determine whether to pursue the civil penalties set forth in this section, the remedies set forth in section 30-28-124, or both. Each day after the issuance of the order of the county court during which such unlawful activity continues shall be deemed a separate violation and shall, in accordance with the subsequent provisions of this section, be the subject of a continuing penalty in an amount not to exceed one hundred dollars for each such day. Until paid, any civil penalty ordered by the county court and assessed under this subsection

1. shall, as of recording, be a lien against the property on which the violation has been found to exist. In case the assessment is not paid within thirty days, it may be certified by the county attorney to the county treasurer, who shall collect the assessment, together with a ten percent penalty for the cost of collection, in the same manner as other taxes are collected. The laws of this state for assessment and collection of general taxes, including the laws for the sale and redemption of property for taxes, shall apply to the collection of assessments pursuant to this

subsection (1). Any lien placed against the property pursuant to this subsection (1) shall be recorded with the clerk and recorder of the county in which the property is located.

2(a) In the event any building or structure is erected, constructed, reconstructed, altered, or used or any land is used in violation of any regulation or provision of any zoning resolution, or amendment thereto, enacted or adopted by any board of county commissioners under the authority granted by this part 1, the county attorney of the county in which such building, structure, or land is situated, in addition to other remedies provided by law, may commence a civil action in county court for the county in which such building, structure, or land is situated, seeking the imposition of a civil penalty in accordance with the provisions of this section.

(b) A county zoning official designated by resolution of the board of county commissioners shall, upon personal information and belief that a violation of any regulation or provision of any zoning resolution enacted under the authority of this part 1 has occurred, give written notice to the violator to correct the violation within ten days after the date of the notice. If the violator fails to correct the violation within the ten-day period or within any extension period granted by the zoning official, the zoning official, the sheriff of the county, or the county attorney may issue a summons and complaint to the violator, stating the nature of the violation with sufficient particularity to give notice of the charge to the violator.

(c) One copy of the summons and complaint issued pursuant to paragraph (b) of this subsection (2) shall be served upon the violator in the manner

provided by law for the service of a county court civil summons and complaint in accordance with the Colorado rules of county court civil procedure. The summons and complaint shall also be filed with the clerk of the county court and thereafter the action shall proceed in accordance with the Colorado rules of county court civil procedure.

(d) If the county court finds, by a preponderance of the evidence, that a violation of any regulation or provision of a zoning resolution, or amendment thereto, as enacted and adopted by the board of county commissioners, has occurred, the court shall order the violator to pay a civil penalty in an amount allowed pursuant to subsection (1) of this section. The penalty shall be payable immediately by the violator to the county treasurer. In the event that the alleged violation has been cured or otherwise removed and the violator has notified the county zoning official of the cure or removal at least five business days prior to the appearance date in the summons, then the county attorney shall so inform the court and request that the action be dismissed without fine or appearance of the defendant.

Douglas County Zoning Resolutions.

§ 101 Intent.

A resolution of the Board of County Commissioners of Douglas County, Colorado which establishes land use classifications, divides the County into districts, imposes regulations, prohibitions, procedures and restrictions for the promotion of the health, safety, convenience, aesthetics, and welfare of the present and future residents of Douglas County. This resolution shall govern the use of land for residential and nonresidential purposes, regulate and limit the height

and bulk of buildings and other structures, limit lot occupancy, determine the setbacks and provide for open spaces, by establishing standards of performance and design, adopting an official zone district map, creating boards/commissions and defining their powers and duties, prescribing procedures for changes and modifications of districts, uses by special review, variances, and other permits, allowing for nonconforming uses and buildings, providing regulations for accessory uses and buildings, providing for the amendment and enforcement thereof, defining certain terms, providing a means of appeal, and prescribing penalties for violation of its provisions, and repealing existing County Zoning Resolutions, as amended.

§ 102 Authority.

The Douglas County Zoning Resolution is authorized by Article 28, Title 30 of the Colorado Revised Statutes, 1973, as amended, and is hereby declared to be in accordance with all provisions of these statutes.

§ 113 Violations.

No land in Douglas County shall be used, nor any building or structure erected, constructed, enlarged, altered, maintained, moved or used in violation of this Resolution, as amended.

§ 208 Trash, Junk, Inoperative Vehicles.

No land may be used as an outside storage area for the purpose of collecting, dismantling, storing, or selling of junk, trash, rubbish, refuse of any kind, remnants of wood, metal, or plastic, discarded materials, inoperative vehicles or dismantled machinery, whether or not the same could be put to any reasonable use, unless approved as a use by

special review in the GI [General Industrial] zoning district.

§ 211 Building Restrictions.

211.01 Building Permit

It shall be unlawful to erect, construct, reconstruct, alter, or change the use of any building or other structure, including surface and subsurface structures, or to move a structure from one property to another within the unincorporated area of Douglas County without first obtaining a building permit from the County Building Division. The plans, submitted with the building permit application, for the proposed erection, construction, reconstruction, alteration, or use shall conform to all applicable provisions of this Resolution and shall be constructed in accordance with the Douglas County Building Code as adopted.

§ 711 Parking Standards.

The minimum off-street parking spaces required: 2 spaces per dwelling. Unlicensed, operable vehicles parked outside shall be concealed by a solid fence, berm, vegetative barrier, or a combination thereof. Inoperable vehicles are prohibited.

§ 715 Fencing Standards.

715.01 Fences, walls, or hedges shall not be erected in the public right-of-way, but shall be allowed within the setbacks, on private land. A building permit is required for any retaining wall greater than 4 feet in height or any fence or wall greater than 6 feet in height, or as required by the Building Code, as amended and adopted by Douglas County.

**Excerpts taken from the Record found in
Petitioner's BRIEF IN SUPPORT (R.438-441)**

12. The Due Process Clause of the 14th Amendment prohibits the state from depriving any person “of life, liberty, or property, without the due process of law.” US Const. amend. XIV, § 1; *Golicov v. Lynch*, 837 F3d 1065, 1068 (10th Cir. 2016). “Procedural due process ensures the state will not deprive a party of property without engaging fair procedures to reach a decision, while substantive due process ensures the state will not deprive a party of property for an arbitrary reason regardless of the procedures used to reach that decision.” *Hyde Park Co. v. Santa Fe City Council*, 226 F3d 1207, 1210 (10th Cir. 2000)
13. Normally, *void for vagueness* challenges are applied to criminal statutes; however, when there is a penalty, such as a forfeiture of a fundamental right – in this case an individual property interest – the Courts have examined the application of the doctrine to civil matters. *Jordan v. De George*, 341 US 223 (1951); *Fong Haw Tan v. Phelan*, 333 US 6 (1948). With specific language, “It is true that this Court has held the ‘void for vagueness’ doctrine applicable to civil as well as criminal actions. *Small Co. v. American Sugar Ref. Co.*, 267 US 233, 239 (1925) Here, the doctrine is appropriate as the exaction of obedience to the rules or standards outlined in the Douglas County Zoning Resolutions (“DCZR”) are so vague and indefinite as really to be no rule or standard at all.
14. “[A] statute may not Constitutionally be enforced if it indiscriminately sweeps within its ambit

conduct that may not be the subject of criminal sanctions as well as conduct that may.” *Baggett v. Bullitt*, 377 US 360 (1964). [I]f arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. *Grayned v. City of Rockford*, 408 US 104, 108 (1972).

15. Courts are required to address the existence of a protected property interest when considering a due process claim. *Federal Lands Legal Consortium v. US*, 195 F3d 1190, 1195 (10th Cir 1999) suggesting that *American Manufacturers Mutual Insurance Co. v. Sullivan*, 526 US 40, 59 (1999) controls. The use of *US v. Killion*, 7 F3d, 927, 930 (10th Cir. 1993) *in re, City of Cuyahoga Falls v. Buckeye Cnty. Hope Found.*, 538 US 188, 198 (2003), citing Federal Lands, has not reversed on point.
16. A statute, in this case a Resolution, “[can] be void for vagueness not only on its face, but as applied, as a result of ‘an unforeseeable and retroactive judicial expansion of narrow and precise statutory language.’” *US v. Protex Indus., Inc.*, 874 F2d 740, 743 (10th Cir. 1989) (quoting *Bouie v. City of Columbia*, 378 US 347, 352 (1964)); *US v. Agnew*, 931 F2d 1397, 1403 (10th Cir. 1991); while making timely objection, see *Maynard v. Cartwright*, 486 US 356, 361, and *Dias v. City and Cnty. of Denver*, 567 F3d 1169, 1179-80 (10th Cir. 2009).
17. It is understood, however, that the Constitution does not impose “[i]mpossible standards of specificity, *supra Jordan*. With this in mind, the DCZR are impermissibly vague in all of its

applications. A determination as to any violation of the DCZR is left to the arbitrary, capricious and subjective pronouncements of an employee of the County – as if there were no conflict of interest there – having not been entered as an expert witness, having no training as to what constitutes a violation under the DCZR, and having no definitions at law upon which to rest their lay opinion. As such, the County and the Court are free to react to nothing more than their own preferences. In other words, the County and the Courts fabricate your standards, find a County employee to testify to those standards, and then deprive people of the use of their property and possibly their liberty based on delusional whim.

18. Prohibitions of a criminal statute¹ must be “set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest,” *Dodger’s Bar & Grill, Inc. v. Johnson County Bd. of County Comm’rs*, 32 F3d 1436, 1443 (10th Cir. 1994), and be written in a manner that does not encourage arbitrary ... enforcement, *Kolender v. Lawson*, 461 US 352, 357 (1983), and *US v. Graham*, 305 F3d 1094, 1105 (10th Cir. 2002)
19. “[T]he void for vagueness doctrine requires that a penal statute define the criminal offense with

¹In this instant case, a county Resolution, enforced by a civil statute, that carries the potential for a “ram-it-up-the-backdoor” criminal sanction for contempt because of the insidious application of a Preliminary Injunction, where otherwise that remedy would be foreclosed.

sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.” *Graham*, supra

20. Using an ordinary person, ordinary common sense approach, the wording of the various Resolutions do not clearly enunciate what the policies are, and therefore what they prohibit. Your trash, is not my trash. A plain reading of the Resolutions require a *mercantile* interpretation, and if used in that sense, in that businesses or those licensed or permitted are enjoined from some such behavior, then the meaning of the Resolutions becomes apparent.
21. “[I]t is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.” *Grayned*, supra.
22. SCOTUS has clarified that a void for vagueness challenge can be sustained if the challenged provision is “so vague that it fails to give ordinary people fair notice; . . .” as the first prong, but a second prong addresses “arbitrary enforcement by judges.” An example of arbitrary enforcement would be the admission of lay testimony that is purely subjective. Seriously, why doesn’t the County just call a homeless man off the street to testify for his opinion? The defining principle of a STAR CHAMBER is arbitrary enforcement.
23. The County has failed to craft a principled and objective standard upon which a Court, let alone the common person, can rely for the enforcement

of a the DCZR regardless as against whom the action is brought, properly as under a contract breach, or improperly, as is found here. It should not be left to the population to speculate as to the meaning of the DCZR, its terms, and who falls under its Scope of Authority, and under what circumstances.

24. Plain error occurs “when there is (1) error, (2) that is plain, which (3) affects substantial rights, and which (4) seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *US v. Frost*, 684 F3d 963, 971 (10th Cir. 2012)