

DISTRICT COURT, WELD COUNTY, COLORADO 901 9 th Avenue, P.O. Box 2038, Greeley, CO 80632 (970) 475-2400	DATE FILED: August 9, 2016 5:36 PM CASE NUMBER: 2015CV30776 ▲ COURT USE ONLY ▲
<p><i>Plaintiffs:</i> Motherlove Herbal Company; Indianhead West Homeowners Association, Inc.; Rockin S Ranch LLC; John Cummings; David Kisker; Gary Oplinger; Wolfgang Dirks; and James Piraino</p> <p><i>v.</i></p> <p><i>Defendants:</i> The Board of County Commissioners of Weld County, Colorado; Martin Marietta Materials, Inc.; Garrard Investments, LLC; Weld LV LLC; and Weld LV II, LLC</p>	
Order of Remand	

Under C.R.C.P. 106(a)(4), the plaintiffs appeal the Weld County Board of County Commissioner's (BOCC) decision to approve an *Application for an Amendment to a Site Specific Development Plan and for a Use by Special Review (USR) Permit* submitted by Defendant Martin Marietta. The standard of review under C.R.C.P. 106(a)(4) is whether, on the basis of the whole record, the ultimate findings of the BOCC are supported by any competent evidence.

W.C.C. § 23-2-230.D provides:

Upon the Board of County Commissioners making its final decision, a resolution setting forth that decision will be drafted and signed. A record of such action and a copy of the resolution will be kept in the files of the Clerk to the Board.

Although there is no requirement that the findings be exhaustive, the BOCC is required to include findings and conclusions to support its decision on the material issues. *See Colorado State Bd. of Medical Examiners v. Ogin*, 56 P.3d 1233, 1238 (Colo. App. 2002). Where a board fails to make adequate findings in

the record, it is appropriate for the trial court to remand the case to the board with directions to make findings of fact or conclusions of law necessary for the subsequent review of its action. C.R.C.P. 106(a)(4)(IX); *Bd. of County Comm'rs of Larimer County v. Conder*, 927 P.2d 1339, 1350 (Colo. 1996).

The BOCC's *Resolution* here merely restates the criteria required under W.C.C. § 23-2-230.B, which are conclusions of law. But it does not include any findings of fact or rationale as to why the application meets the stated criteria. Based on my review of the record, I conclude that the BOCC failed to set forth specific findings of fact in the *Resolution*. I therefore cannot determine whether the BOCC's ultimate findings are supported by competent evidence.

Our Supreme Court has held that, while not making factual findings is obviously not good administrative practice, in the absence of express findings of fact, there are implicit findings "when the state of the evidence is such as would warrant the making of such finding[s] by the board." *Sundance Hills Homeowners Ass'n v. Bd. of County Comm'rs*, 534 P.2d 1212, 1216 (1975) (quoting *Cugini v. Chiaradio*, 189 A.2d 798, 802 (R.I. 1963)). Consequently, the lack of factual findings is not necessarily fatal to the BOCC's decision so long as there is sufficient evidence in the record to support the Board's decision. It is not necessary that the BOCC make explicit and technical findings; it may, instead, make only findings of ultimate facts. *Id.*

But the BOCC did not make *any* findings of fact here. And the state of the evidence does not warrant automatic approval of the USR at issue without express findings of fact. For instance, both the Department of Planning Services Staff and the Planning Commission recommended denial of the application. In their *Resolution of Recommendation*, they cited to several specific criteria in support of denial, including that the proposed use is not consistent with the

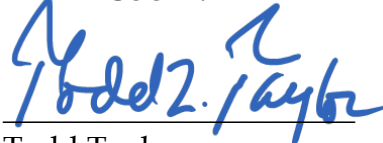
Weld County Comprehensive Plan¹ and that the proposed use is not compatible with existing surrounding land uses. Specifically, they found that the noise, odors, and traffic from the proposed use will cause disruption to the nearby residential properties² as well as health and safety concerns. Furthermore, at the public hearing, the BOCC heard extensive testimony that the proposed use is incompatible with existing residential uses; that it would negatively impact surrounding property values; and that several of the studies submitted by Martin Marietta were deeply flawed.

Ultimately, the BOCC is required to provide at least some basis for its conclusions of law, and it failed to do so in its *Resolution*.

Accordingly, this case is remanded to the BOCC to make the requisite findings of fact necessary for judicial review of its decision to approve the application. The BOCC has 63 days from today to make its findings of fact and to certify those finding as part of the record.

So Ordered:
August 9, 2016

BY THE COURT:



Todd Taylor
District Court Judge



¹ Both the Department of Planning Services Staff and the Planning Commission concluded that the proposed use is not consistent with the Weld County Comprehensive Code for the following reasons: (1) the proposed use is not directly related to, or dependent upon, agriculture and it will be removing about 90 acres of Prime (Irrigated) Farmland from production (W.C.C. § 22-2-20.G.1); (2) the area cannot support such development and is not compatible with the region, as demonstrated by the five surrounding jurisdictions' referral comments (W.C.C. § 22-2-20.G.2); and (3) the roadway facilities are not adequate to support this industrial development (W.C.C. § 22-2-80.C.2).

² There are 14 single-family homes/lots within 500 feet of the site and the Indianhead Subdivision (approximately 100 lots) is located northeast of the site.