

DISTRICT COURT, WELD COUNTY, COLORADO 901 9 <sup>th</sup> Avenue, P.O. Box 2038, Greeley, CO 80632 (970) 475-2400	DATE FILED: June 4, 2018 9:00 AM CASE NUMBER: 2015CV30776
<p><b>Plaintiffs: Motherlove Herbal Company; Indianhead West Homeowners Association, Inc.; Rockin S Ranch LLC; John Cummings; David Kisker; Gary Oplinger; Wolfgang Dirks; and James Piraino</b></p> <p><i>v.</i></p> <p><b>Defendants: The Board of County Commissioners of Weld County, Colorado; Martin Marietta Materials, Inc.; Gerrard Investments, LLC; Weld LV LLC; and Weld LV II, LLC</b></p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p>Case No. 2015 CV 30776</p> <p>Division 4</p>
<b>Order Granting Defendant Martin Marietta Materials, Inc.’s Motion to Amend Judgment</b>	

Defendant Martin Marietta moves to amend the judgment entered May 1 under C.R.C.P. 59(a)(4). Martin Marietta’s motion is joined in by Defendant Gerrard Investments, and the Board of County Commissioners of Weld County also supports the relief sought. The plaintiffs are opposed. Because I agree that is improper for the court to direct the Board to deny the special use permit—rather than remanding for further proceedings consistent with the Colorado Court of Appeals’ opinion—I grant the motion.

The authority cited by Martin Marietta is clear: “Once a court finds that an administrative body has abused its discretion, how to address that deficiency on remand is within the discretion of the administrative body.” *Wolf Creek Ski Corp. v. Bd. of County Com’rs of Mineral County*, 170 P.3d 821, 831 (Colo. App. 2007). The plaintiffs’ attempt to distinguish *Wolf Creek* is not persuasive. I therefore erred in directing the Board to deny the special use permit, rather

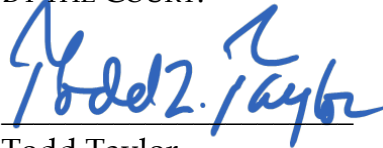
than remanding the case for the Board to decide how to address the deficiency identified by the Court of Appeals.

Accordingly, Martin Marietta's motion to amend the judgment is GRANTED. An amended judgment hereby enters in favor of the plaintiffs and against the defendants. Based on the determination that the Board of County Commissioners of Weld County abused its discretion in approving the special use permit, USR 15-0027, that approval is reversed and this case is remanded to the Board for further proceedings consistent with the opinion of the Court of Appeals.

The plaintiffs are the prevailing parties and are entitled to costs.

*So Ordered:*  
June 4, 2018

BY THE COURT:



Todd Taylor  
District Court Judge

