SUMMARY
April 1, 2021

2021COA44

No. 19CA2251, *Save Our St. Vrain Valley Inc. v. Boulder Cnty. Board Adj.* — Judicial Review — C.R.C.P. 106 — Review of Governmental Body Exercising Judicial or Quasi-Judicial Functions; Municipal Law — Boulder County Land Use Code — Zoning — Special Use Permit

A division of the court of appeals considers whether a special use permit lapses for failure to perform certain kinds of activities that might relate to the special use. Here, the division evaluates the meaning of a five-year lapse provision in article 4-604(C) of the Boulder County Land Use Code as well as an approval resolution which grants special use permission to a mining company to perform open pit gravel mining.

As an issue of first impression, the division concludes that the five-year lapse provision unambiguously requires activity directly

related to the special use itself, or any authorized accessory uses, to prevent a lapse.

COLORADO COURT OF APPEALS **2021COA44**

Court of Appeals No. 19CA2251
Boulder County District Court No. 18CV30807
Honorable Nancy W. Salomone, Judge

Save Our Saint Vrain Valley, Inc., a Colorado nonprofit corporation; Amanda Dumenigo; Richard Cargill; Barbara Cargill; and Matt Condon,

Plaintiffs-Appellants,

v.

Boulder County Board of Adjustment, the duly authorized administrative body of a political subdivision of the State of Colorado; Dale Case, in his official capacity as Director of the Boulder County Land Use Department; and Martin Marietta Materials, Inc., a North Carolina corporation,

Defendants-Appellees.

JUDGMENT REVERSED AND CASE
REMANDED WITH DIRECTIONS

Division I
Opinion by JUSTICE MARTINEZ*
Berger and Tow, JJ., concur

Announced April 1, 2021

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*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2020.

¶ 1 In this appeal, we review a determination of defendants, Boulder County Land Use Director Dale Case (Director Case) and the Boulder County Board of Adjustment (BOA), applying provisions of the Boulder County Land Use Code (Code) to Board of County Commissioners Resolution 98-32 (Boulder Cnty. Aug. 20, 1998), https://perma.cc/VB2Y-E845 (the approval resolution). The resolution allowed the predecessor in interest of defendant Martin Marietta Materials, Inc. (Marietta), to engage in open pit gravel mining as a special use.

¶ 2 Plaintiffs, Save Our St. Vrain Valley, Inc.; Amanda Dumenigo; Richard Cargill; Barbara Cargill; and Matt Condon (collectively, St. Vrain), sought administrative review of whether the permitted use had lapsed due to inactivity for longer than five years pursuant to article 4-604(C) of the Code.

¶ 3 We consider what type of activity would prevent the lapse of a permitted special use of land pursuant to the five-year lapse provision in article 4-604(C) of the Code.

¶ 4 It is St. Vrain's position that open pit gravel mining, as the sole permitted special use here, is the activity that may prevent a lapse. Marietta, on the other hand, argues the meaning is much

broader and encompasses not just open pit gravel mining, but the conditions imposed by the approval resolution as well.

¶ 5 We conclude the five-year lapse provision unambiguously requires activity directly related to the special use itself, or any authorized accessory uses, to prevent a lapse. We therefore reverse the judgment of the district court and remand the decision to Director Case for further consideration.

I. Background

A. Article 4-604 of the Code

¶ 6 Article 4 of the Code regulates zoning in Boulder County. A special use of land is permissible so long as the "use is located, designed, and operated in harmony with neighboring development and the surrounding area and does not adversely affect the public health, safety, and welfare." Article 4-600. Special uses must undergo a review process for Boulder County to consider this harmony and to require "parcel specific conditions." *Id.*

¶ 7 In 1996, the Board of County Commissioners of Boulder County (the County) passed an amendment to the Code, codified as article 4-604, which provides for the lapse of permitted special uses if certain requirements are not met. *See Sierra Club v. Billingsley*,

166 P.3d 309, 311 (Colo. App. 2007). As relevant here, subsection (C) of article 4-604 states as follows:

> Any approved use by Special Review . . . shall lapse, and shall be of no further force and effect, if the use is inactive for any continuous five-year period or such shorter time as may be prescribed elsewhere in this Code or in a condition of a specific docket's approval. If this period of inactivity occurs, the use may not be recommenced without a new discretionary approval granted under this Code. *An approved special use shall be deemed inactive under this Subsection 4-604.C. if there has been no activity under any portion of the special use permit for a continuous period of five years or more* as a result of causes within the control of the special use permittee or agent.

(Emphasis added.)

B. Approval Resolution and Marietta's Activity

¶ 8 Marietta is currently permitted for the special use of open pit gravel mining under the approval resolution.

¶ 9 In 1998, Marietta's predecessor, Western Mobile Boulder, Inc. (Western Mobile), obtained approval from the County to begin mining in an area of approximately 881 acres south and east of Lyons, Colorado (Site), and was to take place, in several phases, over thirty years, "commencing on January 1, 2003," until 2033,

plus an additional three years to complete all post-mining reclamation work. Approval resolution at 3.

¶ 10 The title of the approval resolution is as follows:

> A RESOLUTION CONDITIONALLY APPROVING BOULDER COUNTY LAND USE DOCKET #SU-96-18, AND REPEALING DOCKETS #SU-69-476 (ALSO KNOWN AS DOCKET #476), AS AMENDED (INCLUDING DOCKET #SU-84-18), AND DOCKET #SU-80-26, AS AMENDED (INCLUDING DOCKET #SU-92-02) ("WESTERN MOBILE BOULDER, OPEN MINING SPECIAL USE REQUEST"): A SPECIAL USE REQUEST, WITH ASSOCIATED SITE SPECIFIC DEVELOPMENT PLAN, TO ALLOW OPEN MINING, AND REPEAL PREVIOUSLY APPROVED SPECIAL USE DOCKETS, AS AMENDED, RELATED TO THE PROPOSED COMPREHENSIVE MINING OPERATION AND PLAN ON APPROXIMATELY 881 ACRES OF PROPERTY LOCATED EAST OF N. FOOTHILLS HIGHWAY, SOUTH OF UTE ROAD, IN SECTIONS 20, 21, 22, 27, 28 AND 29, T3N, R70W.

Id. at 1.

¶ 11 After a series of "Whereas" clauses describing the special use request, the dockets, and other details, the approval resolution states, "NOW, THEREFORE, BE IT RESOLVED that the Docket is hereby approved, on the basis set forth in this Resolution, above, and subject to the following [thirty-five] conditions," such as:

- certain hours of operation;
- obtaining "all applicable permits," such as air and water pollution permits, where failure to comply with those permits "shall be grounds for a revocation hearing";
- storage procedures;
- approval of site and landscape plans and a "final Development Plan"; and
- mitigation of adverse impacts to local water and vegetation sources.

Id. at 3-10.

¶ 12 Between 1998 and 2006, Western Mobile worked with its successor in interest, Lafarge West, Inc. (Lafarge), to operate under the approval resolution at the Site. Lafarge eventually took over the interests at the Site from Western Mobile.

¶ 13 In early December 2010, Lafarge requested, and was granted, a "Temporary Cessation"[1] for the Site from the Colorado Division of

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[1] A division of this court has determined that temporary cessation is a factual status, not a legal status, and is defined in terms of when a mine ceases to be actively producing material. *Info. Network for Responsible Mining v. Colo. Mined Land Reclamation Bd.*, 2019 COA 114, ¶¶ 11-14.

Reclamation, Mining, and Safety, citing economic downturn as the reason. Lafarge's request also stated that "[t]he last records Lafarge has indicating when mining activity occurred on the site are from 2006" and "[d]emolition of structures," "clear[ing] the surface in preparation of mining," "[r]emoval of sand and gravel," and "actively pursuing reclamation" has occurred since 2006, "but active mining has not."

¶ 14 Later in December 2010, Lafarge sold the interests in the Site to Marietta. After the purchase, Marietta maintained and paid for permits and annual reports; inspections and maintenance for air, water, and weeds; construction of buildings that would be needed for mining; and reclamation work but never performed any gravel mining.

¶ 15 It is therefore undisputed that no "active mining" has occurred since at least 2006.

C. St. Vrain's Claim

¶ 16 In July 2017, St. Vrain asked the County to determine whether the approved special use had lapsed for inactivity pursuant to article 4-604 of the Code. St. Vrain argued that, since it was undisputed that no gravel mining had occurred since at least 2006,

the approval resolution permitting Marietta's special use had lapsed.

¶ 17 In response, Director Case requested that Marietta provide him with documentation of its activities. Marietta provided (1) a letter explaining the approved special use had not lapsed under the Code because it had complied with the conditions in the approval resolution and (2) a table of activities dated as early as 1998 along with supporting documentation.

¶ 18 Director Case also retained Eric Heil, a private land use planning attorney, to provide a legal opinion as to the validity of the approval resolution. In short, Heil opined that the approved special use had not lapsed under the five-year lapse provision of the Code because Marietta's activities constituted "activity" under the approval resolution. Heil added that equitable considerations, including reliance on indications from the County that the special use permit had not lapsed, also guided his opinion.

¶ 19 In April 2018, Director Case determined that the approved special use had not lapsed. Director Case attached Heil's letter to his decision and concurred with it.

¶ 20 In May 2018, St. Vrain, dissatisfied, appealed Director Case's determination to the BOA, asserting that the determination was an "unreasonable and incorrect" interpretation of the five-year lapse provision.

¶ 21 In July 2018, the BOA, comprised of five board members, held a hearing and received testimony, legal arguments, and public comments. Three board members voted that the approved special use had lapsed; two voted that it had not. Since four votes were required to overturn Director Case's determination, it was instead affirmed by operation of law.

¶ 22 In August 2018, St. Vrain appealed the BOA's decision to the district court under C.R.C.P. 106(a)(4).

¶ 23 In October 2019, the district court (1) affirmed the BOA's decision to not overturn Director Case's determination and (2) concluded that Director Case did not abuse his discretion in determining the approval resolution had not lapsed. Like Director Case and Heil, the district court reasoned that any activity under the approval resolution, including the required conditions, was enough to prevent the lapse of the special use permit.

¶ 24 St. Vrain appeals that conclusion.

II. Analysis

¶ 25 Article 4-604(C) of the Code provides that a special use permit lapses if it is inactive for five years. "Inactive" is defined as "no activity under any portion of the special use permit." *Id.* Our task is to determine the meaning of "activity under any portion of the special use permit." In considering the meaning of the entire phrase we will turn our attention to the meaning of "special use permit." The parties use that term without definition, sometimes referring to "the special use permit" and at other times referring to the approval resolution as if it were synonymous with the special use permit. We also understand, as the parties have informed us, that the approval resolution is commonly referred to as the "Special Use Permit" in Boulder County. However, our inquiry is whether "special use permit," as used in the Code, refers to the permission granted by the resolution, the allowed special use, or the approval resolution itself.

A. Standard of Review and Interpretation of Agency Rules

¶ 26 C.R.C.P. 106(a)(4) permits judicial review of a governmental agency action exercising a quasi-judicial role. *See Rangeview, LLC v. City of Aurora*, 2016 COA 108, ¶ 15.

¶ 27 We review an agency's decision under C.R.C.P. 106(a)(4) as if we were in the same position as the district court. *Sierra Club*, 166 P.3d at 311 (citing *Ad Two, Inc. v. City & Cnty. of Denver*, 9 P.3d 373, 376 (Colo. 2000)).

¶ 28 Such review is "limited to a determination of whether the body or officer has exceeded its jurisdiction or abused its discretion, based on the evidence in the record" before the agency. *Id.* at 312 (citations omitted); C.R.C.P. 106(a)(4)(I). The agency abuses its discretion when its decision is (1) not supported by any competent evidence in the record — that is, "so devoid of evidentiary support" that the decision is arbitrary and capricious — or (2) based upon misconstruing or misapplying the law. *See Rangeview*, ¶ 16 (citation omitted).

¶ 29 Zoning ordinances "are subject to the general canons of statutory interpretation." *Sierra Club*, 166 P.3d at 312 (citation omitted). "If the language of an administrative rule is ambiguous or unclear, we give great deference to an agency's interpretation of a rule it is charged with enforcing." *Id.* The interpretation of an agency is most helpful "when the subject involved calls for the exercise of technical expertise . . . ." *Id.* However, if we find the

ordinance's plain meaning unambiguous, we construe the ordinance as written. *Id.*

B. Meaning of "under any portion of the special use permit"

¶ 30 On appeal, St. Vrain contends the district court erred in affirming Director Case's determinations that the approval resolution had not lapsed.[2] St. Vrain asserts that any activity other than actual open pit gravel mining is unambiguously beyond the scope of what is contemplated by the Code because engaging in "any" act as prescribed under "any portion of the special use permit" — that is, open pit gravel mining, complying with the conditions of approval, or anything else — is too broad, overly literal, and would allow Marietta to perpetuate its special use forever by complying with relatively simple conditions and never mining.

¶ 31 Marietta, Director Case, and the BOA, however, insist the Code is unambiguously the opposite: that the activities prescribed as "conditions" are inextricably linked to mining because there

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[2] While St. Vrain also disagrees with the BOA for not overturning Director Case's determinations, St. Vrain does not assert any impropriety in the methods used by the BOA in its voting or review.

would be no purpose in performing the conditions if mining were never to happen. "Under any portion," they argue, necessarily includes any activity mentioned within the four corners of the approval resolution. Therefore, the activities performed by Marietta and summarized at the behest of Director Case qualify as activity under the Code and the special use has not lapsed.

¶ 32 We agree with St. Vrain because we ultimately conclude that "activity under any portion of the special use permit" refers to activities under any part of the special use that was permitted rather than to anything within the four corners of the approval resolution.

1. Special Uses and Conditions Generally

¶ 33 As a preliminary matter, we begin with a brief overview of some of the few Colorado cases in this arena. In *Sheep Mountain Alliance v. Board of County Commissioners*, 271 P.3d 597, 606 (Colo. App. 2011), a division of this court concluded it was not improper for a review board to add conditions to the special use permit "after it has closed the public hearing," drawing a sharp distinction between conditions and the permitted use. *See also Hillside Cmty. Church v. Olson*, 58 P.3d 1021, 1028 (Colo. 2002) (in

interpreting the procedure for approving special uses, the commission would "make a determination of approval, approval with limitations or conditions, or denial of the special use permit" upon conclusion of the public hearing) (citation omitted); *cf. C & M Sand & Gravel v. Bd. of Cnty. Comm'rs*, 673 P.2d 1013, 1018 (Colo. App. 1983) (noting that "if a special use is granted, the commissioners may impose conditions and safeguards").

¶ 34 We also note that generally, conditions of approval are not requested by the applicant for the special use and permitted by the County. Rather, they are imposed by the County "to tailor a proposed use to the conditions of the district so as to protect the health, safety, and welfare." *W. Paving Constr. Co. v. Bd. of Cnty. Comm'rs*, 181 Colo. 77, 79, 81, 506 P.2d 1230, 1231-32 (1973) (interpreting Boulder County's zoning regulations as they applied to a gravel mining permit "adjacent to the St. Vrain Creek approximately 1.5 miles east of Lyons, Colorado"); *see* article 4-600 (The County may regulate the special use so that it does not, in part, "adversely affect the public health, safety, and welfare."). And, there are methods for the applicant to contest the imposed conditions. *See, e.g.*, *Town of Frederick v. N. Am. Res. Co.*, 60 P.3d

758, 766 (Colo. App. 2002) (noting that procedures exist to "challenge any condition" in certain circumstances).

2. Meaning of "special use permit"

¶ 35 We now turn to the meaning of "special use permit" under the Code. Ultimately, we conclude it is not a reference to the document that is the approval resolution but rather to the permission given by the approval resolution.

¶ 36 There is no document in the record entitled "special use permit." Further, the approval resolution does not directly and explicitly grant a special use permit.

¶ 37 However, the approval resolution does grant a special use, albeit indirectly, by approving "DOCKET #SU 96-18." Approval resolution at 1. We note that "docket" is not in the record either, so we cannot determine what constitutes the "docket" with any precision. We can only infer from references in the record that the "docket" may be the original application or letter requesting the special use, together with attached exhibits. It seems the "docket" also includes responses, comments, legal opinions, and anything else that was filed regarding the request for a special use as such materials are submitted and requested to be made part of the

"docket." Thus, if "special use permit," as used in the Code, were to refer to the approval resolution, it would be difficult to limit it to the four corners of the approval resolution itself since the approval resolution approves and references many other materials.

¶ 38 The term "special use permit," as used in the Code, could also refer to the authorization or permission granted by the County, which the approval resolution evidences. For example, drivers carry a state-issued identification card, which we refer to as a "driver's license." Indeed, the card may even be titled or captioned "driver's license." However, the card also evidences a license to drive that exists apart from the card. Thus, if one's license is revoked but somehow a person manages to retain the card, that card, the "driver's license," is no longer a license to drive. The license that was revoked is a concept, a permission, not the card in one's possession. Whether "driver's license" refers to the card or the permission depends on the context in which the term is used. Similarly, we look to the context to determine whether "special use permit" in the lapse provision refers to a document, the approval resolution, or instead to the authorization evidenced by that document.

3. Context

¶ 39 The term "special use permit" is used in defining when a special use is inactive. If there is no activity under any portion of the permit, the special use is inactive. If activity is defined very broadly, to include activities not directly related to the special use, then the special use would not be inactive, within the meaning of the Code, even when the special use itself is inactive but there is activity not directly related to the special use. This interpretation of the definition expands the meaning of inactive special use well beyond the words it defines.

¶ 40 Marietta attempts to confine the otherwise expansive meaning of the type of activities that would qualify as special use by asserting that only "conditions" listed in the approval resolution are approved "uses," in addition to mining, under the "special use permit." By focusing only on listed conditions, Marietta disregards the basis of the approval resolution contained in the "Whereas" clauses and the arguably much broader inclusion of other materials that may have been filed and become part of the docket. Despite this attempt to contain the argument, the logical extension of Marietta's position is that activity related to anything in the

approval resolution would prevent lapse. Yet Marietta would limit activity even further, as illustrated in the following interaction.

¶ 41 When Marietta was presenting its argument to the BOA, one BOA member noted concern that perhaps compliance with the conditions could not be grounds for maintaining the special use because "the distinction is probably that whatever you're doing out there has to be something that you needed a Permit to do." The board member noted that one of the conditions in the approval resolution required that "any exterior lighting or signs associated with this use must be in compliance with [the Code]," even though Marietta didn't need a permit to put up the sign.[3] The board member asked Marietta's counsel whether the special use would be sustained had Marietta "posted and maintained a small sign saying this is a gravel pit on this property for the past [twenty] years."

¶ 42 Marietta's counsel responded it was "a gray area" because "[i]t's not the situation we have today." Instead, counsel argued, the special use had not lapsed because "you undertake activity that is

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[3] Based on this language, we are not sure Marietta would technically even be required to put up lighting or signs at all.

required by the [approval resolution] itself." It appears that it was counsel's argument that the approval resolution did not require Marietta to post a sign exactly like that, and thus doing so would not constitute compliance. But, counsel argued, Marietta had maintained the special use "because they've undertaken annual testing [and reclamation] as necessary," things that are specific conditions under and required by the approval resolution.

¶ 43 In our view, Marietta's construction, that any *required* activity within the four corners of the approval resolution prevents lapse, is not supported by the context in which "special use permit" is used in the lapse provision. Moreover, this construction improperly elevates the conditions required by the approval resolution to permissible special uses even though they do not require permits. Such a construction derogates the purpose of special use zoning rules since special uses must be specifically permitted.

¶ 44 Rather, we conclude the "special use permit" is a concept, which was requested (and approved) by the approval resolution: the permission for the special use, here, to mine gravel.

¶ 45 Our plain meaning conclusion is consistent with the broader context in which the term is used. The Code itself only mentions

the special use will lapse, not the conditions. The five-year lapse statute states that "[a]ny approved *use* by Special Review . . . shall lapse . . . if *the use* is inactive" for five years. Article 4-604(C) (emphasis added). The Code also grammatically distinguishes a special use from a condition (and from a docket) when it states, "if *the use* is inactive for any continuous five-year period *or such shorter time as may be prescribed elsewhere in this Code or in a condition of a specific docket's approval*." *Id.* (emphasis added). The Code's distinction is strengthened by a lack in the record before us of any explicit list of approved "uses" beyond that of open pit gravel mining.

¶ 46 Significantly, the Code (and the approval resolution) contemplate "accessory uses." Article 4-516. These accessory uses are both similar to the special uses and different than the conditions upon which the special uses are granted. Accessory uses, grounded in the Code, are (1) uses permitted "by implication"; (2) "clearly incidental, subordinate, customary to, and commonly associated with operation of a primary use"; and (3) "so necessary or commonly to be expected in conjunction with the primary use that no ordinance could be interpreted in a way to prevent it." *Colo.*

Health Consultants v. City & Cnty. of Denver, 2018 COA 135, ¶ 23 (citation omitted). Therefore, any permitted "accessory use" must comply with the same conditions for approval as the "main use," here, the special use of open pit gravel mining.

¶ 47 The approval resolution itself references Marietta's predecessors seeking approval for, and withdrawing, certain accessory uses. For example, the approval resolution notes that, "Whereas, while the original application also requested approval of concrete and asphalt batch plants on the [Site] as accessory uses, the Applicants withdrew this part of their mining proposal . . . ." Approval resolution at 2. Further, condition number 10 states that "[o]utside storage, and the storage of fuel, oil, and grease, as well as the repair of equipment and machinery, and portable offices shall all be considered as accessory uses to this approval, provided that all applicable regulations of section 4-516 of the Land Use Code, as amended, are met."[4] *Id.* at 5. Lastly, condition number 14 permits

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[4] An "Accessory Concrete or Asphalt Batch Plant" is listed as a specific kind of accessory use under article 4-516(F) of the Boulder County Land Use Code and is defined as "[a] facility for mixing concrete or asphalt," article 4-516(F)(1). And, "Accessory Outside

a list of other accessory uses, such as use of a portable crusher or a gravel scale. *Id.* at 6.

¶ 48 Even though the approval resolution notes that the accessory uses are allowed, "provided that" all regulations are met, it does not make an accessory use a condition (nor, as Marietta would argue, would a condition become an accessory use). Rather, the language conditions the accessory use upon meeting the regulations established by the County.

¶ 49 Therefore, the conditions upon which the special use of open pit gravel mining is approved are not special or accessory uses because, had the drafters wanted to designate them as such, they "knew how to do so." *See, e.g.*, *Berumen v. Dep't of Hum. Servs.*, 2012 COA 73, ¶ 26 (noting that "drafters of the rule knew how" to write certain requirements). Similarly, the drafters could have designated the approval resolution in place of the special use if that was intended. *Cf. id.*

Storage" is specifically listed as an "accessory use" in article 4-516(J).

4. Reclamation

¶ 50 We also reject Marietta's argument that reclamation necessarily constitutes special use because reclamation is described as a condition in the approval resolution and it is distinct from mining by statute. The Colorado Mined Land Reclamation Act, sections 34-32-101 to -127, C.R.S. 2020, defines a "[m]ining operation" as "the development or extraction of a mineral from its natural occurrences," § 34-32-103(8), C.R.S. 2020, but "reclamation" activity, while designed to "minimize . . . disruption from the mining operation," is for the purpose of "plant cover, stabilization of soil, the protection of water resources, or other measures appropriate to the subsequent beneficial use of such affected lands," § 34-32-103(13).

¶ 51 Not only are mining and reclamation therefore diametrically opposed, reclamation is, again, not for the benefit of Marietta to specially use its land. It instead "requir[es] those persons involved in mining operations to reclaim land affected by such operations so that the affected land may be put to a use beneficial to the people of this state." § 34-32-102(1), C.R.S. 2020. Thus, reclamation can only be but an additional condition — not a use — imposed by

statute, compatible with, and in addition to, "local regulation by permit of all aspects of land use for mining" for the benefit of Coloradans after mining has been completed — like St. Vrain. *See C & M Sand & Gravel*, 673 P.2d at 1017-18.

¶ 52 It is therefore unreasonable to conclude that the "special use permit" includes random activities that may be mentioned by approval resolutions, dockets, or conditions. The only reasonable, unambiguous meaning is that "special use permit" refers only to the special use for which the permit is granted. Here, that special use is open pit gravel mining.

5. Conclusion

¶ 53 Because we conclude the "special use permit" means the permitted special use, rather than the approval resolution, "activity under any portion of the special use permit" must mean the activity that would prevent a lapse must be directly related to the permitted use.

¶ 54 The phrase "under any portion" is inclusive of a special use that is multifaceted, with more than one approved use or, as explained above, accessory uses.[5]

¶ 55 Director Case did not form his determinations upon the correct definition of "special use permit." Because he misconstrued the law, his decision was an abuse of discretion. However, the legal opinion with which Director Case concurred and attached to his decisions was, to some extent, also based on the equitable consideration of Marietta's "understanding of, and reliance upon, the County's interpretations that [the approval resolution] had not lapsed."

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[5] As articulated by St. Vrain by way of example, Eldora Ski Resort was permitted to specially use its land to construct several buildings for the resort and each of the buildings was in itself a special use. Eldora therefore did not lose its permission to construct all of the buildings by only constructing some of them. Even if we were to instead conclude the Code is ambiguous, when the County amended the Code in 1996 to include the five-year lapse provision, the County's position that "it was never staff's intention in drafting to capture a permit like Eldora's" is a clear statement of legislative intent, and we would properly consider it. *See, e.g.*, *Peabody Sage Creek Mining, LLC v. Colo. Dep't of Pub. Health & Env't*, 2020 COA 127, ¶ 11 (noting we may turn to "other tools of statutory construction" including legislative history).

¶ 56 We therefore cannot discern with any confidence whether Director Case would have reached a different conclusion with the understanding that a "special use permit" under the Code is not the approval resolution but is instead the permitted special use and any accessory uses that may have been authorized. Thus, we reverse the district court's order with directions to remand to the BOA and return to Director Case to revisit his decision given the correct understanding of "special use permit."

III. Disposition

¶ 57 The district court's judgment is reversed and the case is remanded for further proceedings.

JUDGE BERGER and JUDGE TOW concur.