

Confident that they would be able to obtain a CUP, Defendants bought the Venue in October 2024 for \$1.25 million, and they then began the process of obtaining a CUP. From the beginning, Defendants faced opposition to their request to obtain a CUP from neighboring property owners. *See* Attachment A (Public Comments in pages 36 – 151 of Exhibit F). The comments in opposition noted concerns about road conditions, wildlife, and among other issues how the operation of a commercial enterprise would be a substantial departure from their desire to maintain the way of life they chose when they purchased their properties because they valued the lack of town and business enterprises and it was also asserted that one property owner should not be allowed to adversely impact 50-60 other properties. Two of those in opposition noted that they had found “**no one who is NOT in opposition.**” *See* Exhibit F, page 75.

On April 17, 2025, the Mesa County Planning Commission held a public hearing on Defendant's request for a CUP. The hearing was well attended by those who opposed Defendants' request for a CUP. At the hearing, Associate Planner Hoogland presented the Project Review (Exhibit F, pages 9-35) and recommended that Defendants' requested CUP be recommended to the Mesa County Board of County Commissioners (“BOCC”) for approval. The hearing was well attended by those who opposed Defendant's request for a CUP and unfortunately the hearing was disrupted on several occasions, including due to the yelling of profanities. At the conclusion of the hearing, by vote of 4-0, the planning commission recommended that the BOCC deny Defendant's request for a CUP.

After the hearing in front of the Mesa County Planning Commission, the Plan Review was revised per Applicant Cheryl Norton's request from a maximum of 125 events being allowed per year to a maximum of 42 events per year. In consideration of this change and prior to the public hearing that was to be held in front of the BOCC on May 27, 2025, the Planning Division, finding that Defendant's request for a CUP "demonstrates compliance with the majority of criterion in Section 4.03 1-3 and Section 3.09 A-C of the Mesa County Land Development Code (2020, as amended)" recommended that the BOCC approve Defendant's request for a CUP with the following conditions:

1. Bathroom trailers with hand washing stations shall be provided for each event and shall be cleaned and maintained between events.
2. 42 events per year will be allowed (per Applicant Cheryl Norton's revised proposal)
3. Events will end no later than 10 p.m.
4. The noise limits of C.R.S. 25-12-103 shall be adhered to.
5. Parking areas will be watered down as needed to mitigate impacts of dust.
6. Amplified music will only be allowed within the 60' X 80' event venue barn.
7. All outdoor light sources mounted on poles, buildings, or trees to illuminate streets, sidewalks, parking lots, or other outdoor areas between the hours of 10 p.m. and 6 a.m. shall use full cutoff light fixtures.
8. Vegetation in the right-of-way will be trimmed or removed to meet sight distance requirements.

See Exhibit G, pages 179-189.

On May 27, 2025, a public hearing was held in front of the BOCC. The meeting was well attended by opponents of Defendants' request for a CUP and the BOCC heard from them, a traffic engineer, and others. The BOCC addressed the site plan and issues concerning trash, traffic, and other concerns. The BOCC, after each of them provided their reasons for doing so and addressing people's concerns and property rights, voted unanimously and passed Resolution No. 2025-19 (admitted as Exhibit I) granting Defendants' request for a CUP with the following conditions:

1. Bathroom trailers with hand washing stations shall be provided for each event and shall be cleaned and maintained between events.
2. 42 events per year will be allowed.
3. Events will end no later than 10 p.m.
4. The noise limits of C.R.S. 25-12-103 shall be adhered to
5. Parking areas will be watered down as needed to mitigate impacts of dust.
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7. All outdoor light sources mounted on poles, buildings, or trees to illuminate streets, sidewalks, parking lots, or other outdoor areas between the hours of 10 p.m. and 6 a.m. shall use full cutoff light fixtures.
8. Vegetation in the right-of-way will be trimmed or removed to meet sight distance requirements.

On December 15, 2025, then County Attorney Todd Starr (who recently resigned), on behalf of the County, sent a letter to Defendants Scott and Cheryl Norton (Mr. Hoge lives at a different address than the Nortons) stating that the "conditional use permit that you have sought

for the Property in Order to host commercial entertainment events is still pending due to lack of associated site plan approval." Defendant Cheryl Norton responded back to County Attorney Starr that BOCC Resolution 2025-19, approving the Venue's CUP on May 27, 2025, included eight conditions, none of which were a requirement for site plan approval.

On December 24, 2025, the County served Defendants with a cease-and-desist letter preventing them from operating and hosting events at the Venue due to an alleged violation of Mesa County Ordinance 008(D); specifically claiming that Defendants had violated International Business Code ("IBC") Rule 111.1, entitled "Change of Occupancy," for failing to receive a certificate of occupancy ("CO") for the Venue. Defendant Cheryl and Scott Norton subsequently scheduled a meeting with County Attorney Todd Starr, Assistant County Attorney Patrick Barker and County staff to discuss the alleged violation and resuming operations.

On December 29, 2025, Mr. Starr, Mr. Barker and County staff met with the Norton Defendants to discuss the alleged violation and resuming operations. At the meeting, Mr. Starr, acting on behalf of the BOCC, permitted Defendants to host a planned New Years Eve party at the Venue, contingent upon the execution of an Agreement Regarding Limited Event and Code Compliance (the "Agreement"). Per the Agreement, the Owners could host the New Years Eve party, but after which the Owners were to perform all work necessary on the Venue to ensure the Venue's compliance with the IBC and thereafter, they would need to receive a CO from the County to continue operating the Venue. At the meeting, which was audio recorded by Defendant Cheryl Norton with the permission of Mr. Starr, Mr. Starr admitted that he had "screwed up" by not including a condition of site plan approval in the resolution that was presented to the BOCC and he then asked if the Nortons would agree to obtain site plan approval. When the Nortons responded

that they would not, Mr. Starr became angry, said that Defendants were taking advantage of the County, and he expressed his desire to “shut down” the Venue.

After the BOCC had issued the Resolution approving Defendants’ requested CUP, Defendants diligently performed all work necessary to receive a CO, the final step in the process after an inspection by the County. For example, Defendants made an existing bathroom ADA compliant and performed work on the Venue's septic system to ensure it could handle the Venue's occupancy limits. Defendants received all necessary building permits from the County to perform such work and followed all relevant codes and regulations throughout the process. To be able to complete the work the County required, Defendants obtained a \$250,000 loan from the Mesa County Business Loan Fund.

Despite having completed all the work required, when Defendant Scott Norton went to the County Building Department on April 15, 2026, to schedule a final inspection and pay for the CO, he was prevented from doing so. As explained to Mr. Norton at the time, the County had imposed a planning hold because Defendants had not received site plan approval for the Venue pursuant to Section 5.1 of the Agreement Defendants Cheryl and Scott Norton and County Attorney Todd Starr had signed but Defendant Hoge had never signed. The County now admits that the purported agreement is unenforceable because it was never signed by Defendant Hoge who was and remains a 50% owner of the Venue.

On April 23, 2026, Defendants’ attorney contacted Mr. Starr by email. In the email, Defendant’s attorney noted that Defendants had diligently complied with all the requirements of the CUP to operate the Venue and that the County had no authority to prevent the Venue from “operating under the guise of a baseless site plan approval requirement.” Defendants’ attorney

then demanded that the County remove the planning hold, accept payment for the CO, and proceed with scheduling the final inspection. That same day, Mr. Barker responded by email to Defendants' attorney and reiterated that the County was unwilling to issue a "change of occupancy permit" so the certificate of occupancy inspection could therefore not take place.

On May 13, 2026, after having initially denied Defendants' request to issue a CO, and for reasons that are unknown to the Court, the County issued a CO to Defendants (admitted as Exhibit K). According to the Mainstar entry that was admitted as Exhibit L, an inspection was completed on May 13, 2026, and under the Result Comment it is noted as follows: "CO issued per agreement with county attorneys office."

On June 11, 2026, County Attorney Todd Starr, whom the parties have stipulated did not need authorization from the BOCC to do so, inexplicably filed this action on behalf of the BOCC requesting declaratory and injunctive relief and he also filed a motion seeking a temporary restraining order and preliminary injunction claiming exigent circumstances and an "immediate disposition request" seeking an order requiring Defendants to:

1. Immediately cancel the all entertainment events scheduled for the Property;
2. Notify all persons with whom Defendants have contracted or communicated regarding future events that the venue is not lawfully operational and all events are canceled;
3. Remove all advertising, marketing materials, website content, social media postings, booking platform listings, and other public-facing content promoting the Property as an entertainment event venue; and
4. Provide to the Board, within seven (7) days of the date of this Court's order, a complete list of all events scheduled or contracted for the Property, showing as to each event: the date, the

contracting party, contact information, and whether the event has been canceled and notice provided.

On June 15, 2026, the Court issued an order denying the BOCC's motion for an *ex parte* temporary restraining order and directed the BOCC to serve its motion on Defendants and to contact the Court to schedule a hearing date.

The Court subsequently held evidentiary hearings on October 12, 2026, and October 14, 2026.

II. STANDARD OF REVIEW AND CONCLUSION THAT THE BOCC HAS FAILED TO MEET ITS BURDEN IN SUPPORT OF THE RELIEF REQUESTED

A. Standard of Review for Preliminary Injunction.

The Court finds that the BOCC is not entitled to injunctive relief under either C.R.C.P. 65 or *Rathke v. MacFarlane*, 648 P.2d 648 (Colo. 1982). “Preliminary injunctive relief is an extraordinary remedy designed to protect a party from sustaining irreparable injury and to preserve the power of the district court to render a meaningful decision following a trial on the merits.” *Rathke*, 648 P.2d at 651. A preliminary injunction should not be “indiscriminately granted” but, rather, the power to preemptively award relief prior to a trial on the merits should be “exercised sparingly and cautiously and with a full conviction on the part of the trial court of its urgent necessity.” *Id.* at 653. Consequently, an injunction is granted as an exception to the rule, rather than as a matter of course when a dispute arises between parties. *GTE Corp. v. Williams*, 731 F.2d

676, 678 (10th Cir. 1984).¹ “Because it ‘is an extraordinary remedy,’ a preliminary injunction will not issue unless the right to relief is ‘clear and unequivocal.’” *Libertarian Party of Colo. v. Buckley*, 938 F.Supp. 687, 690 (D. Colo. 1996) (citing *SCFCILC, Inc. v. Visa USA, Inc.*, 936 F.2d 1096, 1098 (10th Cir. 1991)). The trial court must be satisfied that injunctive relief is an “urgent necessity” to prevent irreparable harm to the movant. *Rathke*, 648 P.2d at 653.

To issue a preliminary injunction, the Court must find that the BOCC has demonstrated—with admissible evidence, not just conclusory allegations—all of the following:

1. a reasonable probability of success on the merits;
2. a danger of real, immediate, and irreparable injury, which may only be prevented by injunctive relief;
3. no plain, speedy, or adequate remedy at law exists;
4. the granting of a preliminary injunction will not disserve the public interest;
5. the balance of the equities favors the injunction sought; and
6. the injunction sought will preserve the *status quo* pending a trial on the merits.

Rathke, 648 P.2d at 653-54. Moreover, the BOCC must show that the *Rathke* elements weigh heavily and compellingly in its favor, because the preliminary injunction that it seeks disturbs the *status quo* or would afford the BOCC the relief it would be entitled to recover after a trial only if it were to prevail on the merits. *See Libertarian Party*, 938 F.Supp. at 690 (finding preliminary injunctions that disturb the *status quo* or afford the movant substantially all relief he may recover after a full trial on the merits “are so disfavored that the movant must satisfy an even heavier burden before they may be issued”). Because the BOCC cannot establish all six *Rathke* criteria, it is not entitled to injunctive relief. *Keller Corp. v. Kelley*, 187 P.3d 1133 (Colo. App. 2008).

¹ C.R.C.P. 65 is virtually identical to its federal counterpart, F.R.C.P. 65. Thus, federal authority is persuasive. *See State v. Buckley Powder Co.*, 945 P.2d 841, 844 (Colo. 1997) (“[W]e often look to a similar federal rule for guidance in interpreting our own.”).

B. The BOCC Did Not Meet Its Burden under *Rathke*.

1. The BOCC Cannot Demonstrate a Reasonable Probability of Success on the Merits.

In the Complaint, the BOCC seeks a declaratory judgment that the LDC requires site plan approval in connection with the issued conditional use permit for the operation of the Venue at the Property. (Compl., ¶ 59.) The BOCC further seeks injunctive relief to enjoin Defendants, and any successors in interest to the Property, from (1) violating the LDC by operating under the conditional use permit where a condition (that does not exist) requiring site plan approval has not been satisfied, (2) violating the conditional use permit if and when it becomes valid, and (3) violating orders of the County. (Compl., ¶ 60.) Because the LDC and the Resolution approving the conditional use permit do not require site plan approval, the BOCC cannot demonstrate a reasonable probability of success on the merits.

After Defendants submitted their application for a conditional use permit in October of 2024, Defendants obtained the conditional use permit on May 27, 2025, and nowhere in the LDC or the Resolution does it state that Defendants were required to go through the site plan approval process.

Notably missing from the conditional use permit approval criteria in the LDC, outlined in Section 4.03(c), is a requirement of site plan approval. In the Motion, the BOCC relies on Section 4.16.A of the LDC for its proposition that site plan approval is required. (Mot., ¶ 19.) Section 4.16.A of the LDC states, in pertinent part, "Site Plan approval, in accordance with the procedures of this section, shall be required *before issuance of a building permit* for ... any non-residential development." (emphasis added). Defendants obtained a building permit on February 25, 2026, for the septic system required to operate the Venue as a commercial business. First, County staff

never discussed Section 4.16.A of the LDC with Defendants as part of the conditional use permit prior to issuance of the building permit. Second, and more importantly, despite not having an approved site plan, the County issued a building permit anyway. After compliance with the eight conditions listed in the Resolution, the County subsequently issued a CO. The County thus waived its right to require site plan approval for a building permit. *See McGill v. DIA Airport Parking, LLC*, 2016 COA 165, ¶ 12 (defining waiver); C.R.S. § 24-68-103 (explaining vested property rights).

Although not required, Defendants submitted a site plan with their conditional use permit application. That site plan was part of County staff's report for the BOCC's public hearing on May 27, 2025. The conditional use permit application was approved and memorialized in the Resolution, and thus the site plan that Defendants submitted was approved, as well. Nevertheless, the BOCC, without legal support, has argued that this site plan approval does not count and Defendants must go through a separate site plan review process.

The County initially argued that the Compliance Agreement mandated that Defendants obtain site plan approval. Given that Mr. Hoge, a 50% owner of the Property, never signed the purported agreement, the BOCC, while in court, withdrew their specious argument.

The BOCC argues that it is not required to satisfy the remaining *Rathke* elements. (Mot., ¶¶ 23-24.) Even assuming, *arguendo*, the County were correct, it cannot demonstrate a likelihood of success on the merits, which alone warrants a denial of the Motion. *See DeJean v. Grosz*, 2015 COA 74, ¶ 16 n.3 (“[B]ecause we conclude that the [plaintiffs] cannot demonstrate the first *Rathke* factor—a reasonable probability of success on the merits—we need not address them all here.”) (citing *Gitlitz v. Bellock*, 171 P.3d 1274, 1278 (Colo. App. 2007)).

2. There Is No Immediate, Irreparable Harm.

Generally, “irreparable harm has been defined as ‘certain and imminent harm for which a monetary award does not adequately compensate.’” *Gitlitz v. Bellock*, 171 P.3d 1274, 1279 (Colo. App. 2007) (internal citations omitted). The “key word” is “irreparable,” and “[m]ere injuries, however substantial, ... are not enough.” *Sampson v. Murray*, 415 U.S. 61, 90 (1974) (internal citations omitted). The “possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.” *Id.* Even assuming, *arguendo*, that the BOCC does not need to show irreparable harm (Mot., ¶¶ 23-24), the BOCC must still show immediate harm and cannot make such a showing.

In the Court’s June 15, 2026, Order denying the BOCC’s request for an *ex parte* temporary restraining order, the Court found that no immediate harm existed:

The Board's motion fails to identify any immediate and irreparable injury, loss, or damage that would result in the relatively short time period necessary for appropriate notice and a hearing. ... Indeed, given the amount of time that the alleged noncompliance has been permitted to occur without a request for injunction, the Court discerns no such exigency.

If the Venue’s operations were causing immediate, irreparable harm, the BOCC would not have waited until June 11, 2026, to file its Motion when the County alleges in the Complaint that Defendants have been violating the LDC for more than one year. (*See, e.g.*, Compl., ¶ 57.) The County’s delay in bringing this action demonstrates the lack of urgency and thus cannot satisfy this factor.

3. An Adequate Remedy at Law Exists.

In determining whether an adequate remedy at law exists, relevant factors “include whether damages can be proven with reasonable certainty, whether the defendant is solvent and capable of

responding to a money judgment, whether the harm alleged is continuing or will require plaintiff to resort to multiple litigation to effect the legal remedy, and the difficulty of obtaining, by the use of money, a suitable substitute for the promised performance.” *Benson v. Nelson*, 725 P.2d 71, 72 (Colo. App. 1986).

The County has adequate remedies under the LDC to issue fines and penalties in the event that Defendants are in fact violating the LDC. Thus, this factor weighs against issuance of a preliminary injunction.

4. The Requested Injunction Will Disserve the Public Interest.

The Resolution did not require site plan approval. The LDC did not otherwise require site plan approval. This issue affects more than just Defendants but the public at large, and it would disserve the public interest to allow the BOCC to impose, via litigation, requirements that do not exist in its code or in the BOCC's Resolution approving Defendants' conditional use permit for the Property.

5. The Balance of Equities Disfavors Mandatory Injunctive Relief.

In weighing whether the balance of equities favors injunctive relief, the trial court considers “whether the threatened injury to the plaintiff outweighs the threatened harm the preliminary injunction may inflict on the defendant.” *Rathke*, 648 P.2d at 654.

The BOCC does not address this factor in its Motion. The Resolution is not the only resolution approving a conditional use permit without a requirement for site plan approval. The alleged harm to the County is far outweighed by the great financial harm to Defendants, who would be unable to operate the Venue as a commercial business if the Motion were granted—despite the

fact that Defendants have a CUP and a CO, which were issued by the BOCC as well as the County, allowing them to do so.

According to the Motion, the alleged harm to the County is the violation of the LDC. (*See generally* Mot.) Assuming, *arguendo*, site plan approval was required (which the Court finds it was not), the BOCC does not explain the harm to it by Defendants' continued operation of the Venue. The BOCC merely makes the conclusory allegation that the failure to obtain site plan approval poses "immediate risks to the public health, safety, and welfare" (Mot., ¶ 26.) even though in Resolution No. 2025-19 the BOCC specifically found in approving Defendant's CUP that Defendants' request was "in accordance with the health, safety and welfare the residents of Mesa County." Thus, the BOCC cannot satisfy this factor.

6. Issuance of an Injunction Would Alter the Status Quo.

The *status quo* is the last uncontested status "before the dispute developed." *Boe v. Children's Hosp. Colorado*, 2026 CO 32, ¶ 45.

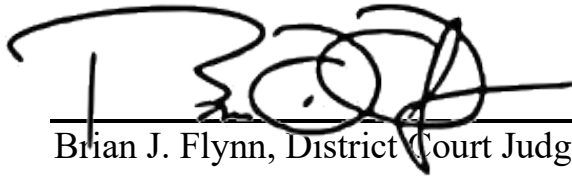
The present dispute developed after the BOCC unanimously approved the Resolution issuing the CUP and the Mesa County Building Department issued a CO. Thus, the *status quo* is the Venue operating under the CUP with a CO. If the Court were to grant the relief requested, it would alter the *status quo*, and this factor thus weighs against issuance of a preliminary injunction.

C. Conclusion

For the reasons stated above, the Court finds that the BOCC has not met its burden and is therefore not entitled to the relief sought. Therefore, the Motion for Temporary Restraining Order and Preliminary Injunction is hereby ordered denied. Furthermore, Defendants' request for

attorneys' fees and costs pursuant to C.R.C.P. 41 is at this time denied without prejudice as the hearings that were held were limited to Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction and were not a full trial on the merits of the matter.

So ORDERED this 20th of October 2026.

A handwritten signature in black ink, appearing to read "B. J. Flynn", is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke extending to the right.

Brian J. Flynn, District Court Judge