SUMMARY
May 30, 2024

2024COA62

No. 23CA0686, *Foothills v. Board of County Commissioners* — Government — Special Districts — Service Area — Overlapping Special District

This is the first reported Colorado case to consider whether section 32-1-107, C.R.S. 2023, applies to a request for inclusion of property made by an existing special district. A division of the court of appeals holds that section 32-1-107 applies to an existing district's request to include property that is already located within another special district that is authorized to provide the same type of services as the district requesting the inclusion.

COLORADO COURT OF APPEALS **2024COA62**

Court of Appeals No. 23CA0686
Jefferson County District Court No. 22CV30165
Honorable Robert Lochary, Judge

Foothills Park and Recreation District, a Colorado special district and political subdivision of the State of Colorado,

Plaintiff-Appellant,

v.

Board of County Commissioners of Jefferson County, Colorado,

Defendant-Appellee,

and

Tharaldson Ethanol Plant I, LLC, a Nevada limited liability company; Red Rocks Centre Metropolitan District No. 1, a Colorado special district and political subdivision of the State of Colorado; and Red Rocks Centre Metropolitan District No. 2, a Colorado special district and political subdivision of the State of Colorado

Defendants-Intervenors-Appellees.

JUDGMENT AFFIRMED

Division VI
Opinion by JUDGE SCHUTZ
Freyre and Lipinsky, JJ., concur

Announced May 30, 2024

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¶ 1 Plaintiff, Foothills Park and Recreation District (Foothills), appeals the district court's judgment affirming the decision of defendant, the Board of County Commissioners of Jefferson County (BOCC), denying Foothills' requests to include property in its service area, dismissing its claim for declaratory judgment, and denying its request for injunctive relief. Foothills also appeals the district court's order denying its motion to supplement the record. We affirm.

I. Background

A. Special Districts

¶ 2 This dispute centers on whether certain property (the Property) located in Jefferson County can be included within Foothills' boundaries even though the Property is already included within the boundaries of defendants-intervenors Red Rocks Centre Metropolitan District No. 1 (RRC 1) and Red Rocks Centre Metropolitan District No. 2 (RRC 2). RRC 1 and 2 and Foothills are special districts organized under the Special District Act (Act). §§ 32-1-101 to -1807, C.R.S. 2023.

¶ 3 Special districts are quasi-municipal corporations and political subdivisions of the State of Colorado. § 32-1-103(20), C.R.S. 2023.

A special district may be authorized to provide services including, but not limited to, health care, water, street improvements, sanitation, parks and recreation, fire protection, or some combination of such services. § 32-1-103(10). Metropolitan districts are special districts that provide more than one such service. *Id.*

¶ 4 Foothills is a park and recreation district authorized to provide park and recreational facilities within its boundaries. § 32-1-103(14). RRC 1 and 2 are metropolitan districts authorized, as relevant here, to provide park and recreational facilities within their respective boundaries.

¶ 5 When special districts are organized, they must submit a plan that includes the physical boundaries of the proposed district, a general description of the services the district will provide, a general description of the proposed facilities and improvements, the estimated cost of the facilities, and the estimated property tax revenue for the district's first year. § 32-1-301(2)(a), (b), (d)-(e), C.R.S. 2023. The Act governs how special districts are organized, §§ 32-1-301 to -308, C.R.S. 2023; how they are expanded through the inclusion of additional property, §§ 32-1-401 to -402, C.R.S.

2023; and the limited circumstances under which their boundaries may overlap, § 32-1-107, C.R.S. 2023.

B. Foothills

¶ 6 Foothills was established in 1959. It provides park and recreation services for various suburbs located largely west of metropolitan Denver. It operates several parks and recreational facilities that are open to the public and are utilized by residents and nonresidents of Foothills.

¶ 7 While nonresidents whose properties are located outside Foothills' boundaries are permitted to use Foothills' facilities, Foothills does not generate property tax revenue from those properties. Believing this situation inequitable, particularly for new subdivisions located near its boundaries, Foothills lobbied for the adoption of section 32.F of the Jefferson County Land Development Regulation (LDR 32.F).

¶ 8 LDR 32.F begins by explaining that a special district may request that a proposed development be included in its boundaries if the proposed park and recreation services would be insufficient to support the development. LDR 32.F then explains the process for evaluating such a request: (1) Planning and Zoning staff will make a

recommendation to the Director of Planning and Zoning; (2) the Director will then grant or deny the request; and (3) the Director's decision can be appealed to the BOCC by either the developer or the special district.

¶ 9 While LDR 32.F articulates the rationale and process for an existing park and recreation district to request that property be included within its boundaries, it does not address whether, and under what circumstances, a park and recreation district may request inclusion of property that is already located within a different special district that is authorized to provide park and recreation services. Moreover, LDR 32.F does not address how the requested inclusion, if approved, would be accomplished under the Act.

C. RRC 1, 2, and 3 and Red Rocks Ranch Subdivision

¶ 10 RRC 1 and 2, and a third related district — Red Rocks Centre Metropolitan District No. 3 (RRC 3) — were formed in 2016 incident to the development of property located near the intersection of Morrison Road and Colorado state highway C-470. The present dispute centers on the Property, which is described in Filing Nos. 3A and 3B of the Red Rocks Ranch Subdivision. The Filings

contemplate the creation of ninety residential lots. Defendant-intervenor Tharaldson Ethanol Plant I, LLC (Tharaldson), is the developer of the Property, which is located within a mile or two of Foothills' existing western boundary.

¶ 11 Each of the RRC districts is a metropolitan district that was organized in accordance with the provisions of the Act and approved by the BOCC. And each is governed by its own board of directors.

D. The Prior Inclusion Request and Litigation

¶ 12 In 2018, Tharaldson filed an application to develop the property located within Red Rocks Ranch Filing No. 2 (the Filing 2 subdivision), which included property within the service area of one or more of the RRC districts. That application contemplated the development of over 400 single-family homes, a park, open space, and trails. While that application was pending, Foothills requested that the Filing 2 subdivision be included in its boundaries under LDR 32.F (the 2018 inclusion request).

¶ 13 The RRC districts opposed the 2018 inclusion request and adopted resolutions stating that it was in the best interests of the RRC districts and their future property owners for the RRC districts to provide park and recreation services to the Filing 2 subdivision

and that inclusion of the Filing 2 subdivision in Foothills would result in duplicative services. The RRC districts therefore refused to consent to the 2018 inclusion request.

¶ 14 In initially evaluating the request, the Jefferson County Planning and Zoning Division stated that "it is in the best interest of future inhabitants of the [Filing 2 subdivision] for the property to be included" within Foothills "because there does not appear to be a plan to provide facilities sufficient to meet the future population needs." But the Planning and Zoning Division ultimately recommended denial of the 2018 inclusion request under section 32-1-107(2) and (3)(b)(IV) because the RRC districts had the ability to provide park and recreation services for the area and the RRC districts did not consent to the inclusion.

¶ 15 The BOCC affirmed the Planning and Zoning Division's denial of the 2018 inclusion request. After the BOCC approved the final plat for that original application, Foothills appealed the BOCC's denial to the district court, which affirmed the BOCC's decision. Foothills appealed the district court's order, and a division of this court dismissed the appeal as moot because Foothills had failed to appeal the BOCC's approval of the final plat. *Foothills Park & Rec.*

Dist. v. Bd. of Cnty. Comm'rs, (Colo. App. No. 21CA0031) (not published pursuant to C.A.R. 35(e)). Thus, the prior litigation ended without a ruling on the propriety of the BOCC's denial of the 2018 inclusion request.

E. The Current Inclusion Requests

¶ 16 In 2022, Tharaldson requested BOCC approval to develop the Property. Foothills made two requests that the BOCC require Tharaldson to include the Property within its boundaries under LDR 32.F. The Director, on the recommendation of the Planning and Zoning staff, denied Foothills' requests because (1) generally, section 32-1-107(2) does not allow special districts to overlap; and (2) the limited exception to section 32-1-107(2) — section 32-1-107(3) — allows for such an overlap only if the existing district whose property will be overlapped consents to the inclusion. § 32-1-107(3)(b)(IV).

¶ 17 Foothills appealed the Director's decision to the BOCC, which affirmed. Foothills then appealed to the district court for review of the BOCC's decision under C.R.C.P. 106(a)(4). Additionally, Foothills filed a claim for declaratory judgment, requesting the court declare that section "32-1-107 is inapplicable to the application of

LDR 32.F and requiring the inclusion of the Property into Foothills' boundaries." Foothills also sought a permanent injunction barring the BOCC from granting final approval of the plats in a manner that "would prevent the future inclusion of the property in Foothills."

¶ 18 After the initial record from the BOCC proceedings had been filed in the district court, Foothills filed a motion requesting that the court enter an order to supplement the record by including all the filings related to the 2018 inclusion request. The district court denied the motion. Thereafter, the court denied Foothills' C.R.C.P. 106(a)(4) claim and its request for injunctive relief and dismissed Foothills' declaratory judgment claim. Foothills appeals the order and judgment.

II. Foothills' Request to Correct the Record

¶ 19 Foothills contends that the district court erred by denying its request to correct the record. Foothills argues that it effectively incorporated into its 2022 inclusion requests the documents from its 2018 inclusion request by communicating to the Planning and Zoning staff that its 2018 and 2022 inclusion requests were premised on the same arguments. Foothills also notes that in a letter to the Planning and Zoning staff that addressed the 2022

inclusion requests, its counsel stated, "Please let us know if you would like any additional information that was provided to you in [the prior proceedings]." Foothills also argues that the documents should have been included as part of the record of its 2022 inclusion requests because, in that proceeding, the district court took judicial notice of the file from the 2018 inclusion request.

¶ 20 Tharaldson, RRC 1 and 2, and the BOCC (collectively, appellees) argue that the district court properly denied the request to supplement because the documents from the prior case were not before the BOCC when it denied the requests for inclusion in this case. And even if the court did err, they argue any error was harmless because none of the requested supplemental material would have changed the outcome.

A. Standard of Review and Relevant Law

¶ 21 C.R.C.P. 106(a)(4) review "shall be . . . based on the evidence in the record before the defendant body or officer." C.R.C.P. 106(a)(4)(I). The rule sets forth the process for ensuring that the evidence in the record before the governmental body is filed in the district court. C.R.C.P. 106(a)(4)(III), (IV). Once the record is filed, any party may move to supplement it. C.R.C.P. 106(a)(4)(IV).

¶ 22 The district court's decision on a motion to amend the record is a factual determination that we review for an abuse of discretion. *People v. Ray*, 2012 COA 32, ¶ 11. A court abuses its discretion if its ruling is manifestly arbitrary, unreasonable, or unfair, or is based on a misunderstanding or misapplication of law. *Bd. of Cnty. Comm'rs v. DPG Farms, LLC*, 2017 COA 83, ¶ 34.

B. Analysis

¶ 23 Neither of Foothills' contentions survives scrutiny. First, the district court did take judicial notice of the prior case and the record of that case — but that occurred after the BOCC denied Foothills' inclusion requests. Therefore, the documents from that dispute were not part of the record that the BOCC considered in resolving the 2022 inclusion requests.

¶ 24 Second, the district court did not abuse its discretion by rejecting Foothills' contention that the general reference in its September letter was sufficient to incorporate all the documents from the 2018 inclusion request proceeding into the 2022 proceedings. Foothills was obligated to submit all the documents it believed were relevant to the 2022 inclusion requests. To conclude otherwise would place an unreasonable burden on county staff to

either duplicate all records from a prior land use proceeding or attempt to discern the unspecified documents that the applicant believes are relevant to the pending dispute. Because there is no evidence that the documents from the 2018 inclusion request were part of the record for the 2022 proceedings, we cannot say that the court abused its discretion by denying Foothills' motion to supplement the record.

¶ 25 Moreover, even if we were to assume that the court erred by denying the motion, we see no resulting prejudice. Foothills emphasizes two pieces of information from the 2018 inclusion request. The first is the initial statement from Planning and Zoning staff that the park and recreation services contemplated for the Filing 2 subdivision did not include a plan to provide facilities sufficient to meet the subdivision's future needs. The second is a similar statement that one of the county commissioners made at the hearing held on the 2018 inclusion request, opining that the park and recreation amenities and services contemplated by the RRC districts for Filing 2 were not comparable to those provided by Foothills.

¶ 26 But both the document and the commissioner's opinion relate to a development request for a much larger parcel containing four times as many lots than what is contained in the Property. Thus, the information was factually irrelevant to the specific issues presented in this case. Moreover, even if this information was relevant and had been before the BOCC at the time it decided the 2022 inclusion requests, it would not affect our interpretation of section 32-1-107 and its impact on the current inclusion requests. Thus, any error was harmless. *See Poudre Valley Rural Elec. Ass'n v. City of Loveland*, 807 P.2d 547, 557 (Colo. 1991) (A judgment "entered by the trial court will not be reversed for alleged errors unless those errors are shown to prejudice the substantial rights of the complaining party.").

III. Section 32-1-107

¶ 27 Foothills contends that the BOCC erred by relying on section 32-1-107 to deny the inclusion requests. It argues that section 32-1-107 does not apply to existing special districts. Rather, Foothills argues, section 32-1-107 applies only to the initial formation of a special district or when an existing district seeks to expand the types of services it provides. Alternatively, Foothills

contends that, even if section 32-1-107 does apply to the present situation, only Foothills' consent — not that of RRC 1 and 2 — was required to approve the inclusions.

¶ 28 The appellees argue the BOCC correctly concluded that section 32-1-107 applies to an effort to include property in a second district when that property is already included within an existing special district authorized to provide the same services. In such circumstances, they contend, the inclusions cannot move forward absent the consent of the existing special district that is already authorized to provide the same services. Because the boards of directors of RRC 1 and 2 declined to consent to the inclusions, appellees' argument continues, the BOCC properly denied the requests.

¶ 29 The district court affirmed the BOCC's decision, concluding that the language of section 32-1-107 was intended to cover new and existing districts and that, for purposes of applying the statute, section 32-1-103(10) defines a special district by the service it provides without the need to consider the specific amenities and facilities provided by the existing district in comparison to those provided by the district seeking inclusion. The district court also

rejected Foothills' argument that it would not be the overlapping district and could therefore consent to its own inclusion requests. Like the district court, we discern no error in the BOCC's decision.

A. Standard of Review

¶ 30 Review of a governmental body's decision under C.R.C.P. 106(a)(4) calls into question the decision of the body itself, and not the district court's determination on review. *Bd. of Cnty. Comm'rs v. O'Dell*, 920 P.2d 48, 50 (Colo. 1996). We review the governing board's decision to determine whether it "has exceeded its jurisdiction or abused its discretion, based on the evidence in the record before [it]." C.R.C.P. 106(a)(4)(I). "The decision of the governmental body is entitled to deference absent a finding that it exceeded its jurisdiction or abused its discretion, including by application of an erroneous legal standard." *Covered Bridge, Inc. v. Town of Vail*, 197 P.3d 281, 283 (Colo. App. 2008).

¶ 31 A court may reverse an administrative body's decision if the agency misconstrued or misapplied the law. *Van Sickle v. Boyes*, 797 P.2d 1267, 1274 (Colo. 1990). "The court may defer to the agency's construction of a code, ordinance, or statutory provisions that govern its actions, but is not bound by the agency's

construction because the court's review of the applicable law is de novo." *City of Commerce City v. Enclave W., Inc.*, 185 P.3d 174, 178 (Colo. 2008).

¶ 32 In reviewing the board's decision, "we rely on the basic rules of statutory construction, affording the language of the provisions at issue their ordinary and common sense meaning." *Id.* We avoid interpretations that lead to absurd results. *City & Cnty. of Denver Sch. Dist. No. 1 v. Denver Classroom Tchrs. Ass'n*, 2017 CO 30, ¶ 12. We read a statute as a whole, "giving consistent, harmonious, and sensible effect to all of its parts," to effectuate the purpose for which the statute was enacted. *Id.* (quoting *Young v. Brighton Sch. Dist. 27J*, 2014 CO 32, ¶ 11).

¶ 33 Section 32-1-107 provides, in relevant part,

> (2) Except as provided in subsection (3) of this section, no special district may be organized wholly or partly within an existing special district providing the same service. . . .
>
> (3)(a) For purposes of this subsection (3), "overlapping special district" means a new or existing special or metropolitan district located wholly or partly within an existing special or metropolitan district.
>
> (b) An overlapping special district may be authorized to provide the same service as the

> existing special or metropolitan district that the overlapping special district overlaps or will overlap if:
>
> . . . .
>
> (IV) The board of directors of any special district or metropolitan district authorized to provide a service within the boundaries of the overlapping area consents to the overlapping special district providing the same service.

B. Analysis

1. The Operative Statutory Language

¶ 34 Foothills argues that section 32-1-107 only applies when a special district is being organized or when a special district expands its services into an existing special district that already provides the same services. In support of this argument, Foothills notes that subsection (2) of the statute uses the term "organized" in each of the subsection's three sentences. But Foothills' argument ignores the fact that the first sentence of subsection (2) begins by stating, "Except as specified in subsection (3)." Thus, subsection (2) cannot be read in isolation from subsection (3). And the language of subsection (3) belies the argument that subsection (2) applies only to overlapping boundaries created at the time a district is initially organized.

¶ 35 Section 32-1-107(3)(a) unequivocally defines an "overlapping special district" as "a new or existing special or metropolitan district located wholly or partly within an existing special or metropolitan district." This definition applies to the present situation because if Foothills' requests for inclusion were granted, the boundaries of Foothills — an existing special district — would extend into the boundaries of RRC 1 and 2 — existing special districts.

¶ 36 Foothills attempts to avoid this conclusion by arguing that, because subsection (3) is an exception to subsection (2), the definition of "overlapping special district" is limited to those situations where an existing district currently overlaps another district and attempts to obtain authorization to provide the same services to the overlapping area. But Foothills' limited interpretation is contradicted by the terms of the statute: "An overlapping special district may be authorized to provide the same service as the existing special or metropolitan district that the overlapping special district overlaps *or will overlap* . . . ." § 32-1-107(3)(b) (emphasis added).

¶ 37 Foothills is not currently authorized to provide park and recreation services to the Property because the Property is not

within its territory. Thus, Foothills' requests for inclusion are also requests for authorization to provide the same services as RRC 1 and 2 in an area that would overlap RRC 1 and 2's boundaries if the inclusions were authorized. Therefore, Foothills meets the definition of an "overlapping special district" and section 32-1-107(3) applies.

¶ 38 The logical extension of Foothills' argument also dictates this conclusion. If, as Foothills contends, section 32-1-107 does not apply to its inclusion requests, then the only potential provision of the Act that would authorize the inclusions is section 32-1-401, which generally governs how special districts may be expanded through the inclusion of additional land. But section 32-1-401(2)(f) provides,

> Nothing in this part 4 shall permit the inclusion in a district of any property which could not be included in the district at the time of its organization without the written consent of the owners thereof, unless the owners of such property shall consent in writing to the inclusion of such property in the district . . . .

Under the statute, any attempt to include the Property in Foothills would require the consent of the Property owners. Like RRC 1 and

2, Tharaldson — the owner of the Property — opposes Foothills' inclusion request. Thus, the requested inclusions are not viable under section 32-1-107 or section 32-1-401. Aside from contending that section 32-1-107 does not prohibit the inclusions, Foothills points to no provision of the Act that would authorize its inclusion requests.

2. The Definition of "Organize"

¶ 39 Moreover, Foothills' effort to limit the application of section 32-1-107 is based on an overly narrow interpretation of the term "organize." The definition of "organize" includes (1) "to form into a coherent unity or functioning whole"; (2) "to set up an administrative structure for"; and (3) "to form an organization." Merriam-Webster Dictionary, https://perma.cc/MPQ7-W2UQ. Thus, "organize" can refer to the initial formation of an organization, but it can also refer to the integration of multiple distinct parts into a single organization. This broader definition arguably encompasses the present situation. And to the extent the varying definitions of the word "organize" inject ambiguity into the statute, we resolve that ambiguity by interpreting the statute as a whole and in harmony with the Act. *See Denver Sch. Dist. No. 1*, ¶ 12.

3. Construction in Harmony with the Act

¶ 40 Section 32-1-107 is entitled "Service area of special districts." The title of a statute may be used as an aid to interpret that statute. *People v. Laeke*, 2012 CO 13M, ¶ 16 (although not dispositive, the title of a statute may be relevant to its interpretation). This title does not support limiting the section to newly formed special districts. In fact, it cuts against Foothills' interpretation by omitting the words "organize" and "new," and any other indicator that the statute applies only to the initial organization of a special district. And section 32-1-107 appears in title 32, article 1, part 1, which is titled "General Provisions." In contrast, part 3 is titled "Organization."

¶ 41 Moreover, the legislature explicitly tied the procedures of part 2 to the formation of new special districts. § 32-1-102(2), C.R.S. 2023 ("The general assembly further declares that the procedures contained in part 2 of this article are necessary for the coordinated and orderly creation of special districts . . . ."). If the legislature had intended for section 32-1-107 to be applied only to the initial organization of new districts, it could have expressed that intent in

the statute's title, or by including section 32-1-107 within the Act's part that explicitly deals with creating new districts.

¶ 42 Thus, both the express language of section 32-1-107 and its location within the Act counsel against Foothills' efforts to avoid its application to the requested inclusions.

4. Same Service

¶ 43 Next, Foothills argues that section 32-1-107 does not apply because Foothills does not seek authorization to provide the "same service" to the Property as do RRC 1 and 2. This is so, Foothills argues, because it provides different and more complete park and recreation services than those provided or contemplated by RRC 1 and 2. In other words, Foothills argues that the "same service" language of section 32-1-107 does not refer to the category of services provided, but rather requires a qualitative and quantitative analysis of the particular types of facilities and amenities provided by the two districts. We disagree.

¶ 44 The term "service" has a specific meaning under the Act. At the time of formation, special districts are required to articulate the "type of service" they will provide. § 32-1-301(2)(a). The statute goes on to list those specific types of services, including "[p]ark and

recreation" services. § 32-1-301(2)(a)(IV). The statute then separately references "the facilities and improvements, if any, to be constructed, installed, or purchased for the special district." § 32-1-301(2)(b). Thus, contrary to Foothills' urged construction, the Act distinguishes between the services provided by a district and the particular improvements and amenities the district may provide within a particular service category.

¶ 45 Foothills' effort to permit overlapping districts whenever the amenities and improvements provided by one district are different than those provided by the existing district would also frustrate essential purposes of the Act. Given that special districts will necessarily differ in size, population, tax revenues, and priorities, the park and recreation facilities and amenities will also vary from district to district. This inevitable variation in the quality and quantity of services under Foothills' definition of "same service" would justify the very overlapping of services and excessive taxation that the Act seeks to prevent. *See* § 32-1-102(4) (It is the policy of Colorado "to prevent or reduce duplication, overlapping, and fragmentation of the functions and facilities of special districts."); § 32-1-102(2) ("It is the purpose of part 2 of this article to prevent

unnecessary proliferation and fragmentation of local government and to avoid excessive diffusion of local tax sources.").

¶ 46 For these reasons, variation in the quality or sufficiency of the amenities a district provides cannot be the basis for interpreting the "same service" requirement of section 32-1-107(3)(b).

5. Consent to Inclusion

¶ 47 Foothills next argues that, even if section 32-1-107 applies to its requests, inclusion is appropriate because RRC 1 and 2 would overlap its territory. Thus, Foothills argues, its board's consent to the inclusions is all that is required under section 32-1-107(3)(b)(IV). We reject the argument.

¶ 48 Foothills' argument ignores the plain language of the statute: "An overlapping special district may be authorized" if "[t]he board of directors of any special district or metropolitan district authorized to provide a service within the boundaries of the overlapping area consents." § 32-1-107(3)(b)(IV). Under the statute's plain language, the district that is currently authorized to provide a service to the overlapping area — not the district requesting the creation of the overlap through inclusions — must consent to the inclusions. Foothills has never been authorized to provide services to the

Property and therefore could not be the consenting district under the statute.

¶ 49 Moreover, Foothills' interpretation of the consent requirement would lead to absurd results. First, it would require the original district to be defined as the overlapping district. In addition, it would permit an existing district, at its will, to incorporate the property of another district, thereby creating the duplication of service and excess taxation that the Act is designated to preclude. § 32-1-102(4). We cannot interpret the statute in a manner that would authorize such an absurd result.

6. Conclusion

¶ 50 The BOCC did not abuse its discretion by concluding that section 32-1-107 applied to Foothills' inclusion requests. Nor did the BOCC abuse its discretion by concluding that the statute does not permit a special district to unilaterally approve its own requests to include within its boundaries property already located within a special district providing the same services. We therefore affirm the district court's judgment affirming the BOCC's denial of Foothills' 2022 inclusion request.

IV. Declaratory Judgment Claim

¶ 51 In the district court, the appellees moved to dismiss Foothills' declaratory judgment claim. Foothills opposed the appellees' motions, arguing that at least some aspect of its declaratory judgment claim related to legislative action taken by the BOCC. More specifically, Foothills claimed that its request for a declaration that section 32-1-107 does not apply to the interpretation of LDR 32.F implicated a BOCC legislative determination that was properly reviewable on a claim for declaratory relief.

¶ 52 The appellees countered that all aspects of Foothills' declaratory judgment claim were predicated on challenges to the BOCC's quasi-judicial action that is only reviewable under C.R.C.P. 106(a)(4). To the extent that any aspects of the declaratory judgment claim involved legislative challenges, the appellees argued that the order entered on the C.R.C.P. 106(a)(4) claim was adequate to resolve all aspects of the declaratory judgment claim.

¶ 53 The district court agreed with the appellees, concluding that the dispute primarily involved quasi-judicial action and "specifically finding review under C.R.C.P. 106(a)(4) to be adequate." The court therefore dismissed the declaratory judgment claim.

A. Standard of Review and Relevant Case Law

¶ 54 Generally, "[w]e review a trial court's ruling on a motion to dismiss de novo." *Sch. Dist. No. 1 v. Masters*, 2018 CO 18, ¶ 13. When a claim for declaratory relief under C.R.C.P. 57 is coupled with a claim for the review of a quasi-judicial action under C.R.C.P. 106(a)(4), however, this general standard is nuanced because district courts have the discretion to decline to hear a claim for declaratory relief when review under C.R.C.P. 106(a)(4) is deemed adequate. *See, e.g.*, *Carney v. Civ. Serv. Comm'n*, 30 P.3d 861, 867 (Colo. App. 2001) ("A district court acts within its discretion in dismissing a claim for declaratory relief under C.R.C.P. 57 when the review provided under C.R.C.P. 106(a)(4) is complete.").

¶ 55 Governmental bodies act legislatively or quasi-judicially. "Legislative action is usually reflective of some public policy relating to matters of a permanent or general character, is not normally restricted to identifiable persons or groups, and is usually prospective in nature." *Cherry Hills Resort Dev. Co. v. City of Cherry Hills Village*, 757 P.2d 622, 625 (Colo. 1988).

> Quasi-judicial action, on the other hand, generally involves a determination of the rights, duties, or obligations of specific

> individuals on the basis of the application of presently existing legal standards or policy considerations to past or present facts developed at a hearing conducted for the purpose of resolving the particular interests in question.

Id.

B. Analysis

¶ 56 Foothills does not contest that some aspects of its claim for declaratory relief are predicated on the BOCC's quasi-judicial action. But Foothills argues that its request for a declaration that section 32-1-107 does not apply to the application of LDR 32.F implicates legislative rather than quasi-judicial action. This argument is tenuous because, as this case illustrates, the BOCC applies section 32-1-107 to the interpretation of section LDR 32.F solely in the context of a quasi-judicial action. Nevertheless, even if we assume that this aspect of Foothills' request implicates legislative action, we agree with the district court that the relief provided under C.R.C.P. 106(a)(4) was adequate.

¶ 57 The court concluded that the BOCC did not err by applying section 32-1-107 to Foothills' inclusion requests under LDR 32.F. We have affirmed that decision. Thus, the resolution of the

C.R.C.P. 106(a)(4) claim necessarily resolves any dispute regarding whether section 32-1-107 applies to an inclusion request under LDR 32.F. Because the requested declaratory relief would have been duplicative of the order entered on the C.R.C.P. 106(a)(4) claim, we discern no error in the court's dismissal of the declaratory judgment claim. *See Carney*, 30 P.3d at 867.

V. Permanent Injunction Issue

¶ 58 Finally, Foothills argues that the district court erred by dismissing its request for permanent injunctive relief. We reject the contention.

¶ 59 Though pleaded as a claim for relief, a request for a permanent injunction is not a substantive claim for relief, but rather a remedy that is available in limited circumstances when a party has prevailed on a substantive claim. *See, e.g.*, *Coomer v. Donald J. Trump for President, Inc.*, 2024 COA 35, ¶ 217 ("[A]n injunction, even if pleaded as a claim for relief, is a remedy, not an independent cause of action."); *Wibby v. Boulder Cnty. Bd. of Cnty. Comm'rs*, 2016 COA 104, ¶ 4 n.2. The district court correctly denied Foothills' first claim and dismissed its second claim. No substantive claim remains that would afford the remedy of a

permanent injunction, and the claim therefore fails as a matter of law.

¶ 60 In the same vein, to obtain a permanent injunction, the moving party must succeed on the merits of a claim. *City of Golden v. Simpson*, 83 P.3d 87, 96 (Colo. 2004). Because Foothills' substantive claims failed, its request for permanent injunctive relief necessarily failed, as well. *Id.* Therefore, the district court did not err by dismissing Foothills' request for a permanent injunction.

VI. Disposition

¶ 61 The judgment of the district court is affirmed.

JUDGE FREYRE and JUDGE LIPINSKY concur.