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United States Court of Appeals
Tenth Circuit

July 18, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

ALISON BROWN,

Plaintiff - Appellant,

v.

CHAFFEE COUNTY BOARD OF COUNTY COMMISSIONERS,

Defendant - Appellee.

No. 22-1225
(D.C. No. 1:19-CV-01301-RMR-STV)
(D. Colo.)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, **EBEL**, and **BACHARACH**, Circuit Judges.

Dr. Alison Brown purchased a parcel of land in Chaffee County, Colorado, to support her foxhunting interest. Dr. Brown had big plans for her property; it would host foxhounds, horses, a barn, and a horse arena. She intended to launch hunting parties from her parcel, although her parties did not hunt foxes. Instead, they would pursue on horseback predators like coyotes that threatened livestock and other beneficial animals. In pursuit of her recreational goals, she submitted a building plan to Chaffee County. In that plan, she proposed building a structure that would, in part, house a caretaker.

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Dr. Brown's submission sparked a series of communications between her and the County that laid the groundwork for this litigation. When the County approved her building plan for the house, Dr. Brown understood the County to have also approved her other current and future uses, like housing foxhounds and building an arena. The County did not share this understanding. Dr. Brown was therefore confused when the County later notified her that her foxhunting business was operating outside the Chaffee County Land Use Code and needed to submit to a rigorous form of land use review. Dr. Brown and the County subsequently launched into litigation over the scope of Dr. Brown's property rights. In federal district court, Dr. Brown alleged that she possessed a vested right to use on her property the functional equivalent of a "kennel" and "outfitting facility" *without* submitting to the special land use review process Chaffee County typically affords those uses. She grounded her theory in Colorado common law, claiming that she detrimentally relied on affirmative representations by the County that she could use her land accordingly. The district court disagreed and granted summary judgment for the County.

We affirm the district court. Dr. Brown argues that under Colorado common law, her detrimental reliance on the County's representations about acceptable land uses vested her with the right to use her parcel in the way she initially understood her building permit to approve. But Colorado law sets a high bar for finding a right by estoppel, and Dr. Brown does not reach it. Under Colorado property law, the County had to clearly and unambiguously communicate the content of Dr. Brown's claimed rights. Otherwise, Dr. Brown could not reasonably rely on those representations.

Because the communications from the County do not meet this standard, Dr. Brown has not established vested rights to develop the kennel and outfitting facility.

I. Background

A. The Chaffee County Land Use Code

Most of the rules and procedures that gave rise to the present litigation originate in the Chaffee County Land Use Code. While our legal analysis mostly relies on Colorado common law, we detail Chaffee County's permitting and zoning practices for relevant context.

Under the Code, "[a]ny person seeking a change in land use shall obtain a Land Use Change Permit and a Certificate of Zoning Compliance," and "[n]o building permit will be issued unless the plans for the proposed erection, construction, reconstruction, alteration, or use fully conform to all applicable provisions of this Land Use Code." Chaffee County, Colo., Land Use Code ("CCLUC") § 1.1.4(A). The Code defines "Land Use Change" as "[a]ny land use or development activity that changes the basic character, configuration or use of land or buildings and structures after the enactment of this Land Use Code." CCLUC § 15. "A Certificate of Zoning Compliance is required prior to any change to the use or occupancy of any parcel of land, or prior to new construction or remodeling of any structure," subject to exemptions not relevant here. CCLUC § 2.2.1(A).

What a Chaffee County resident must do to obtain a use permit or zoning certificate depends on what he wants to do and where he wants to do it. The Code establishes different "districts," including residential, rural, recreational, industrial,

and commercial districts. CCLUC § 2.1. If a resident wants the County to sign off on a building plan or use change, the form of review the resident must undergo might vary based on the district in which the permit or certificate is sought. CCLUC Table 2.2. For example, a resident who wants to build a single-family dwelling need undergo only minimal review in most districts. But if that resident wants to build that same dwelling in an industrial zone, he or she must undergo a heightened review process. CCLUC Table 2.2.

Most County reviews of a proposed land use change will share some common procedures. Residents typically begin with a pre-application conference, where, among other things, "[t]he Director shall determine the appropriate review process for the land use change that is being sought in accordance with the provisions of [the Code] and Table 2.2." CCLUC § 4.1.3(A)(2)(d). The process diverges based on the specific level of review required for that use in that district. For example, Chaffee County residents labor under less burdensome review requirements for "permitted use" changes. In such a case, the Director can issue a Certificate of Zoning Compliance without requiring any "[p]re-application meetings, staff reports, or hearings," and the certificate "will be evaluated simultaneously with the building permit application." CCLUC § 4.2.1. But if a proposed change is instead subject to "Limited Impact Review," the applicant faces additional requirements, like public hearings, review by referral agencies, and staff review. CCLUC § 4.2.3(A).

Some residents might want to host a variety of uses on a single parcel of land. Under the Code, the County typically cannot designate a parcel "for more than one

principal use." CCLUC § 2.2.1(D). But "[a] mixing of multiple accessory compatible uses may be permitted taking into consideration the intent statement and objectives of the zone or overlay in which the uses are proposed, and as long as a principal use is defined." CCLUC § 2.2.1(E).

Under the circumstances of this case, the typical process for obtaining approval to build a single-family dwelling on a parcel that would principally see use as a home requires roughly the following steps:

- Application submission
- Director approval

See CCLUC § 4.2.1.

By contrast, the typical approval process to build or operate an outfitting facility on a parcel that would principally see use as a facility would require roughly the following:

- Pre-application conference
- Application submission
- Comment by relevant referral agencies
- Review by Planning Commission staff
- Public hearing
- Planning Commission approval

See CCLUC § 4.2.3.

B. Dr. Brown's Permitting Process

The record and parties recount a long history of litigation and conflict between Dr. Brown and the County. Because we consider only whether Colorado property law vested Dr. Brown with the claimed property rights, we recount only the facts relevant to that argument.

Dr. Brown purchased this parcel in 2014, intending to use the land to maintain horses and foxhounds to support her foxhunting hobby. App. 568. That same year, she drafted her first foxhounds and began training. She formed a foxhunting club—Headwater Hounds—and conducted three hunting seasons over the next few years. App. 568. Throughout that period, she kept around twenty-two foxhounds on her property and employed a foxhound caretaker. App. 569. Dr. Brown does not represent that she received approval for these activities.

In August 2016, Dr. Brown decided to build a new structure on the parcel. She anticipated renting the house to a caretaker.

Dr. Brown met with Chaffee County Planning Manager Jonathan Roorda on August 15 to discuss her plans. App. 569. After reviewing Dr. Brown's plans, Mr. Roorda determined that he would classify her desired land use as a "Multi-Family Dwelling." App. 570. Under the Code, a multi-family dwelling is classified alongside apartments, condominiums, and townhouses. CCLUC Table 2.2. It is no surprise that Dr. Brown's plans fell under this classification: the proposed structure "included two kitchens and the only staircase was exterior." App. 570. And because

her parcel sits in a rural division, this land use change would require an onerous "Major Impact Review." *See* CCLUC § 4.2.4.

Mr. Roorda advised Dr. Brown that she could avoid the multi-family dwelling classification. He recommended a series of changes to the floorplan, "including removing the second kitchen and moving the staircase to the interior." App. 570. Making these changes, Mr. Roorda represented, would bring Dr. Brown's plans into permitted classifications that would avoid additional review. App. 571.

The parties offer conflicting accounts of the rest of the August 15 meeting. Dr. Brown claims that Mr. Roorda reviewed her "current and intended land use," including her plans to support Headwater Hounds with the new structure and to build a future residence for herself. App. 570–71. According to Dr. Brown, only after sharing these plans did Mr. Roorda suggest modifying the proposed building to avoid additional review. App. 571; 351. But according to the County, Mr. Roorda and Dr. Brown discussed only the problems with her proposed caretaker house that would prevent *that structure* from acquiring a permit by right. Aple. Br. at 10.

When Dr. Brown and Mr. Roorda spoke again on August 19, Mr. Roorda raised the possibility that Dr. Brown's proposed land use would require Limited Impact Review. App. 571. He speculated that Dr. Brown's proposed land use would constitute an "outfitting facility," which the Code describes as "[t]he improved structures and facilities related to guiding services for outdoor expeditions, including fishing, camping, biking, motorized recreation and similar." CCLUC § 15. Mr. Roorda requested more information about Dr. Brown's land use and the relationship

between the proposed structure and that use. According to Dr. Brown, "Roorda represented to me changes I could make to my plans and Building Permit Application to meet other Permitted classifications . . . and comply with the [Code]." App. 571–72.

Dr. Brown emailed Mr. Roorda information explaining her current and intended land uses a few days later. App. 357–62. The letter stated Dr. Brown's intention to house her foxhounds in dog kennels and use those foxhounds in recreational hunting. She described her horse shed, hay barn, and greenhouse. She explained that she also planned to build an indoor horse arena. App. 361.

Mr. Roorda claims he did not reference Dr. Brown's email in the permit review. He explains that "the building permit review stands on its own and is its own review," and "[t]he reason [he] asked her what would you do on the property is so that [he] could review the activities and the type of land use for anything that would have needed a higher level of review." App. 313. Put differently, Mr. Roorda claims to have conducted a bifurcated review of the planned structure and the current and intended land use.

One month later, Dr. Brown forwarded Mr. Roorda a report from the United States Forest Service. The USFS had decided that it did not consider Dr. Brown's activities "outfitting" under its regulations. App. 364.

On October 12, two months after the initial meeting, Mr. Roorda emailed Dr. Brown echoing concerns like the ones he voiced earlier. He explained,

> We have reviewed your revised office/guest quarters plans, site plan and communication with USFS. Although USFS does not classify your use as outfitting, the aggregate use of your property does fall under the Land Use Code as an outfitting facility. As such, the LUC does require a Limited Impact Review for the use. This would encompass the kennels, stables and the office/guest quarters instead of the Limited Impact Review that is required for either a minor motel or a resort. The application form is on our website under the Planning and Zoning Department and includes references to the applicable sections of the code.

App. 366. Dr. Brown promptly responded to the email expressing her confusion:

> If you recall, after our last discussion, you brought up that adding guest quarters would put me into this classification. As a result, I revised the submission and drawings to remove the guest quarters. The current plan you have includes living quarters, as permitted in the zoning and deed restrictions, not guest quarters. Future plans include adding a residence and an indoor arena for equestrian use. I will look at the LUC documents but am very confused as to what I would be asking for to be reviewed. *Are you perhaps looking at the old plan and not the one updated after our last discussion?* I would be happy to call if easier to discuss over the phone.

App. 366 (emphasis supplied). Mr. Roorda maintains that he *was* reviewing the revised plans. App. 316. But because Dr. Brown had removed the guest quarters in her revised plans, Mr. Roorda's description of the structure as "revised office/guest quarters plans" led her to suspect that he was looking at the old plans. Mr. Roorda never responded to Dr. Brown's email or offer to clear up the confusion over the phone. App. 574.

Dr. Brown maintains that she learned shortly after sending her email that Chaffee County *had* lost her revised plans. It is not clear how she learned this. But

she promptly emailed her engineer requesting that he submit the revised plans to the County. App. 601. She entitled the plans "Alison Brown Office and Caretaker House," and claimed that she "had also been told by the County that it now had approved these Revised Plans in concept." App. 575.

On October 24, Mr. Roorda approved Dr. Brown's "Certificate of Zoning Compliance." App. 575; 308. He designated the zone "RUR," or "rural," and specified that the proposed use was for a "workshop/office." He indicated that the use was "permitted." App. 308.

Mr. Roorda signed Dr. Brown's "Residential Permit Application" on the same day. The permit described the structure as "Accessory Residential Dwelling / Guest House," and denoted that the use of the building was for "living quarters + guest rooms." App. 306. On the line that read "Use compliance or Special Use Permit," Mr. Roorda checked "Yes." App. 306. Dr. Brown correctly notes that "[n]owhere on the building application form did Mr. Roorda indicate that my Revised Plans had been classified as an outfitting facility or would be subject to Limited Impact Review." App. 576.

The parties view Mr. Roorda's approvals differently. According to the County, "the review of the building permit . . . was exclusively to the structure that was proposed." App. 314. Dr. Brown did not see it that way:

> Based on Mr. Roorda's previous representations regarding revisions I needed to make to be classified as a Permitted Single Family Dwelling, as opposed to an outfitting facility; the resubmission of my plans making those revisions; and Mr. Roorda's subsequent representation of

> approval and Permitted use under the Certificate of Zoning Compliance and building permit application form, it was my understanding that Mr. Roorda revised his determination that my Building Permit Application would be classified as an outfitting facility—which required Limited Impact Review and approval before issuance of a certificate of zoning compliance and building permit. This understanding was consistent with my knowledge of CCLUC, which does not allow the issuance of certificates of zoning compliance for permits subject to heightened review.

App. 576–77.

Chaffee County issued the permit one month later, and Dr. Brown promptly began construction on the new structure. App. 577.

Three months after Dr. Brown began construction, Chaffee County received a letter from the Master of Foxhounds Association of America identifying Dr. Brown's "hunt" as a registered small-scale breeder. App. 372. The letter identified Dr. Brown's operation as a business with "subscribing members," leading the County to believe that Dr. Brown operated a commercial enterprise constituting outfitting facilities. App. 375–76. Mr. Roorda notified Dr. Brown that she needed to apply for Limited Impact Review, as required by the Code when a rural district resident operates a kennel or outfitting facility. App. 375. Dr. Brown, however, thought that her uses had been approved by the County's permit and certificate. The parties began a protracted legal battle across state and federal court to define the scope of Dr. Brown's property rights.

C. The Litigation Below

Dr. Brown sued Chaffee County under 42 U.S.C. § 1983 for due process violations. She alleged that Chaffee County had deprived her of her right to use land in a manner consistent with operating a kennel or outfitting facility while maintaining the "single-family dwelling" land-use classification.

The district court disagreed. At summary judgment, it determined that Dr. Brown obtained no such property right under Colorado common law. The court therefore did not determine whether the County had deprived Dr. Brown of any right without due process. Dr. Brown appeals that judgment.

II. Analysis

Dr. Brown contends that the district court erred in granting summary judgment. "Summary judgment is proper if the movant demonstrates that there is no genuine issue as to any material fact and that it is entitled to a judgment as a matter of law. In applying this standard, we view the factual record and draw all reasonable inferences therefrom most favorably to the nonmovant," here Dr. Brown. *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 670 (10th Cir. 1998) (internal citations and quotation marks omitted). "An issue is genuine if there is sufficient evidence on each side so that a rational trier of fact could resolve the issue either way. An issue of fact is material if under the substantive law it is essential to the proper disposition of the claim." *Id.* (internal citations and quotation marks omitted). "[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not

significantly probative, summary judgment may be granted." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249–50 (1986) (internal citations and quotation marks omitted).[1]

A. Colorado Property Law

Dr. Brown argues that Chaffee County violated her § 1983 due process rights by denying her the ability to use her vested property rights. Dr. Brown claims that she obtained property rights to operate her land in a particular way—to support her

[1] Both parties contend that three previous Chaffee County District Court decisions require a ruling in their favor. *First*, Dr. Brown points to a Chaffee County District Court's preliminary injunction order. In earlier litigation, Dr. Brown challenged the County's enforcement of an amended version of the Code's kennel definition. App. 710. The County, Dr. Brown alleged, did not provide adequate notice to Dr. Brown of her violation. The court observed that the County's enforcement of the new kennel definition was *likely* unlawful, as it apparently deprived Dr. Brown of proper notice. App. 713. Dr. Brown argues the court's conclusion prevents the County from arguing it provided sufficient process now. Aplt. Br. at 44. We disagree. On a motion for a preliminary injunction, "[a]ll that has been decided is whether preliminary relief is warranted in light of educated guesses as to the outcome on the merits and the balance of hardships." *Wright & Miller*, § 4445 "On the Merits"—Discretionary or Limited Remedies, 18A Fed. Prac. & Proc. Juris. But even if we agreed, it would not change the case's outcome, because we find that Dr. Brown did not enjoy vested rights in the first place.

Second, Dr. Brown argues that a Chaffee County District Court judgment finding that the Board abused its discretion by denying her camping and special use permits creates some preclusive effect beneficial to her. Supp. Aplt. Br. at 2. We disagree; that opinion concerned the Board's application and interpretation of the Land Use Code, not the County's representations or vested property rights under Colorado common law. *See generally* Supp. Aplt. Br. Ex. 1.

Third, Chaffee County argues that, under Colorado law, Dr. Brown's § 1983 claim is subject to claim preclusion because she failed to raise it earlier in state court litigation. While we find the County's theory colorable, we need not decide the issue because we conclude that Dr. Brown does not enjoy the claimed property rights anyway.

foxhunting operation. If Dr. Brown did not obtain the claimed rights under Colorado law, her § 1983 claim fails.

It is well settled for purposes of § 1983 that property rights "are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972). In Colorado "property rights vest in a particular land use after a building permit has been issued and the landowner acts in reliance on it." *Jordan-Arapahoe, LLC v. Bd. of Cnty. Comm'rs of Arapahoe*, 633 F.3d 1022, 1029 (10th Cir. 2011); *see Cline v. Boulder*, 450 P.2d 335, 338 (Colo. 1969). Property owners typically invoke the doctrine when they want to continue to use their land in a way once permitted by the government that has since come under scrutiny. But if the property owner did not "take substantial steps to exercise those rights in reliance on the permit before the effective date of any new legislation that may affect those rights," his property right did not vest, and "the adoption of legislation modifying the rights granted by the permit causes the permit to be revoked." *Gramiger v. Cnty. of Pitkin*, 794 P.2d 1045, 1048 (Colo. App. 1989).

The doctrine mostly concerns fairness. *City and Cnty. of Denver v. Stackhouse*, 310 P.2d 296, 298 (Colo. 1957) (describing the vesting of property rights by estoppel as functioning to "prevent manifest injustice"). If the government tells a landowner he can use his property in a certain way, and he invests in that use to his detriment, the government cannot then pull the rug out from under him. *See Miller v. Bd. of Trustees of Palmer Lake*, 534 P.2d 1232, 1234 (Colo. App. 1975) ("[T]he

doctrine is founded upon principles of fair dealing and is designed to aid the law in the administration of justice where, without its aid, injustice might result.") (internal quotation marks omitted).

Two important cases have developed this approach. The first is *Eason v. Board of County Commissioners of Boulder*, 70 P.3d 600 (Colo. App. 2003). Eason planned to operate a self-storage business for semi-trailers. Boulder County approved the land use proposal, explaining that his use was permitted under the zoning code and that his trailers were exempt from the building code. Eason spent over $1,000 obtaining a building permit that doubled as a zoning permit. He moved the trailers onto his property. Four years later, the county revoked his permit, and added that Eason could no longer use the trailers following a change in county zoning and building policies.

The *Eason* Court decided that under Colorado property law, Eason enjoyed a vested property right in his trailer use. It reasoned that "[t]he [Colorado] supreme court has held that '[a] city permit can provide the foundation for a vested right, and thus be constitutionally protected from impairment by subsequent legislation, if the permit holder takes steps in reliance upon the permit.'" *Id.* at 605 (quoting *P–W Investments, Inc. v. City of Westminster*, 655 P.2d 1365, 1371 (Colo. 1982)). The *Eason* court extended that logic to zoning classifications. It held that "Colorado law recognizes a protected property interest in a zoning classification when a specifically permitted use becomes securely vested by the landowner's substantial actions taken in reliance, to his or her detriment, on representations and affirmative actions by the

government." *Id.* at 605–06. Under this logic, when the county told Eason that his trailer usage was permitted, and Eason responded by purchasing the permit and moving the trailers to his property, he obtained a vested right "to that interpretation granting a use-by-right to so employ his property." *Id.* at 606.

We relied on *Eason* in *Jordan-Arapahoe, LLC v. Board of County Commissioners of Arapahoe*, 633 F.3d 1022 (10th Cir. 2011). In that case, Jordan-Arapahoe and another corporation purchased land on which they intended to develop a car dealership. Arapahoe County had recently approved a preliminary development plan to rezone that land to permit such sales. After pouring over $2 million into developing the land to sell to buyers interested in dealerships, the corporations entered a tentative deal to sell the land to a separate entity. But the contract was contingent on confirmation that the entity could build a car dealership on the land under Arapahoe County's zoning laws. Arapahoe County subsequently rezoned the land such that car dealerships would not be permitted. Jordan-Arapahoe argued that the County had deprived it of a vested property right without due process.

Eason helped us resolve *Jordan-Arapahoe*. We interpreted *Eason* to "stand for the principle that once a planned development in a zoning classification is backed by affirmative actions or representations by county officials—such as active acquiescence by word or deed or through some other unequivocal confirmation—then parties who rely on those affirmations will have vested property rights under the common law." *Id.* at 1031. But such reliance must be "reasonabl[e]." *Id.* at 1030.

Jordan-Arapahoe could not point to sufficient actions and representations to establish a vested property right. We observed that under Colorado law, "no preliminary proceedings to the obtaining of a [building] permit give rise to any vested right to pursue a use in a zoned district. Thus, no vested right to a particular use in a zoned district is acquired by approval of [a] plan for it." *Id.* at 1029 (quoting *City of Aspen v. Marshall*, 912 P.2d 56, 60–61 (Colo. 1996)). So "Jordan-Arapahoe could not have *reasonably relied* on the [preliminary development plan] approval as creating a vested right absent the second-step final approval." *Id.* at 1030. And because Jordan-Arapahoe could point *only* to the preliminary designation as an "affirmative action or representation," it could not establish an entitlement to a vested property right. *Id.* at 1031.

Eason and *Jordan-Arapahoe* together set out the applicable rule. A landowner obtains a vested property right in a zoning use when he reasonably and detrimentally relies on clear government communications that establish his entitlement to that use. In line with *Jordan-Arapahoe*, those communications must amount to functional approval; they must amount to "active acquiescence by word or deed" or "unequivocal confirmation." *Id.* at 1029. "Whether the circumstances in a given case reveal a representation and reasonable reliance so as to give rise to equitable estoppel is a question of fact." *City of Westminster*, 655 P.2d at 1372.

B. Application

Applying this framework, the district court did not err in granting summary judgment.

It is helpful to contrast *Eason* and *Jordan-Arapahoe* with the undisputed facts of this case. The *Eason* Court documented unambiguous communications by the government as forming the basis for Eason's reasonable and actual reliance. There, the County explicitly told Eason that under its interpretation of the zoning ordinance, he could use semitrailers on his land without following regulations particular to other structures. And Eason enjoyed this use uninterrupted and without doubt for four years. In contrast, the *Jordan-Arapahoe* Court documented no such unequivocal communications or acquiescence. Jordan-Arapahoe could point only to preliminary development plans that, as a matter of law, did not vest anyone with any property right. We saw "no affirmative representation or other action by the County of the specificity required by *Eason*." *Jordan-Arapahoe*, 633 F.3d at 1031.

Those principles apply here. A reasonable jury could not help but find that, viewed in the light most favorable to Dr. Brown, the interactions between the parties were rife with obvious misunderstandings and poor communication. The undisputed material facts recited above confirm Dr. Brown could not *reasonably* rely on such representations in a way that gave rise to vested property rights under Colorado law.

Resisting this conclusion, Dr. Brown points to a series of communications that she says form the basis of affirmative representations amounting to "active acquiescence by word or deed" or "unequivocal confirmation." *Id.* at 1031. Again, we construe these communications in a light most favorable to Dr. Brown.

At their first meeting, Mr. Roorda told Dr. Brown that her structure would constitute a multi-family dwelling, but that she could change her floorplans to avoid

this designation. App. 569–71. Mr. Roorda and Dr. Brown also discussed Dr. Brown's current and planned uses, which concerned activities that implicated the kennel and outfitting ordinances. As a result, Dr. Brown understood Mr. Roorda to have communicated that making changes to the structure would allay any concerns Chaffee County had with her other present and intended future uses. If Dr. Brown moved the structure's stairs to the interior and scrapped the second kitchen, Chaffee County would designate her principal land use as a permitted single-family home that would not require heightened review. App. 571.

If this were the end of the story, it would be a closer call. To be sure, we would have questions about whether Dr. Brown could reasonably think that the suggested structural modifications had anything to do with, for example, the propriety of later building a horse arena. *See* App. 361. But on the other hand, each parcel can only take on one principal use, and "[a] mixing of multiple accessory compatible uses may be permitted taking into consideration the intent statement and objectives of the zone or overlay in which the uses are proposed, and as long as a principal use is defined." CCLUC § 2.2.1(D)–(E). It was not implausible for Dr. Brown to imagine that Mr. Roorda was offering a sweetheart deal: change your structure, and the County will sweep the requirements for the other intended uses under the rug by labeling the principal use a "single-family dwelling."

But the story continued. A few days later, Mr. Roorda again expressed concerns that Dr. Brown's proposed land use would constitute an "outfitting facility" requiring Limited Impact Review. App. 571. And—generously construed—Mr.

Roorda again reassured her that she just needed to make his recommended changes to comply with the Code. App. 571–72. But still, he wanted more information, and Dr. Brown supplied it, describing her intention to house foxhounds in dog kennels, launch recreational hunting parties, and build a horse arena. App. 357–62. For over a month, Dr. Brown heard nothing.

And *again*, Mr. Roorda emailed Dr. Brown explicitly claiming that "the *aggregate* use of your property does fall under the Land Use Code as an outfitting facility. As such, the LUC does require a Limited Impact Review for the use. This would encompass the kennels, stables and the office/guest quarters instead of the Limited Impact Review that is required for either a minor motel or resort." App. 366 (emphasis supplied). This would be a serious setback for Dr. Brown; Limited Impact Review calls for more than just Mr. Roorda's approval, demanding further evaluation by the Planning Commission. CCLUC § 4.2.3(B). Dr. Brown figured that Mr. Roorda was just looking at the wrong plans and offered to help clear matters up, but she was *again* met with silence. App. 574.

Months after the preliminary meeting, Mr. Roorda signed off on the zoning certificate and permit application. The materials described the permitted use as for a "workshop/office" or, alternatively, as an "Accessory Residential Dwelling / Guest House" to be used for "living quarters + guest rooms." App. 306–08. The materials did not discuss or make *any* reference to kennels, outfitting facilities, heightened review, or outstanding applications. But Dr. Brown reasoned that because the Code "does not allow the issuance of certificates of zoning compliance for permits subject

to heightened review," the County had simply reclassified her use, as she claims Mr. Roorda promised. App. 576–77. So she began to build. App. 577.

Even construed in a light most favorable to Dr. Brown, the facts are stitched with confusion. In one breath, the County suggested that physical alterations to a guest house would free Dr. Brown from Limited Impact Review for a kennel. In the next, the County changed course—and then changed course again, and then fell silent. And when Dr. Brown finally obtained her permit and certificate, they contained no mention of the current and intended uses now at issue. But under *Eason* and *Jordan-Arapahoe*, Colorado law demands representations marked by certainty before finding a vested property right. The communications between the parties here were marred with uncertainty such that no rational jury could find that *reasonable* reliance arose from the circumstances.[2]

Our holding does not amount to judgment that Chaffee County officials hewed to Code procedures at each step. To be sure, the extent to which the County's practices comported with the Code, and the extent to which the outcome was plainly lawful (or not), bears on whether Dr. Brown's reliance was reasonable. *See Eason*, 70 P.3d at 606 (considering not the validity of Eason's building permit but the effect of the zoning interpretation letter on Eason's behavior). But even granting that the

[2] Dr. Brown repeatedly points to the United States Forest Service's determination that she was not operating an outfitting facility, App. 364, and Mr. Roorda's email to a neighbor that Dr. Brown's building permit application was for a caretaker's residence and not commercial use, App. 598. But representations from an entity other than the County and to an individual other than Dr. Brown have no place in an analysis about the County's representations to Dr. Brown. And the County expressly disavowed that it agreed with the Forest Service interpretation.

permit and certificate's joint effect as understood by Dr. Brown could lawfully and logically follow from the Code's strictures, we are faced with only the narrow question of whether, under Colorado law, the County made such unequivocal representations as to render Dr. Brown's reliance reasonable.[3] Under the stringent Colorado standard, no jury could find the representations clear, and no jury could find the reliance reasonable. Thus, Dr. Brown did not obtain the vested property rights she claims.

[3] Dr. Brown also argues that she has a general vested property right arising from her ownership of property in Chaffee County. She describes this as "each property owner [having] a vested right in the County lawfully establishing and administering its notice, hearing, and enforcement procedures." Aplt. Br. at 40. Dr. Brown points to no case law establishing that one can obtain a vested property right in the consistent application of the law. But even if she had, she did not raise this argument below, and did not argue plain error in her opening brief. She waived the argument entirely. *Richison v. Ernest Group, Inc.*, 634 F.3d 1123, 1131 (10th Cir. 2011).

Dr. Brown also argues that she obtained a vested property right to maintain an unlimited number of foxhounds on her land so long as she did not breed them. She traces this right to the County's attempt to require her to obtain a permit to operate a kennel in early 2017, where the County had argued that she was operating an unpermitted kennel because she was breeding foxhounds. In response, Dr. Brown disclaimed any intent to breed foxhounds in the future. But Dr. Brown does not identify any unequivocal confirmation by the County that would have entitled her to reasonably believe that her cure was sufficient. *See Jordan-Arapahoe*, 633 F.3d at 1029. So this argument also fails.

III. Conclusion

We affirm the district court's grant of summary judgment.

Entered for the Court

Timothy M. Tymkovich
Circuit Judge