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Case No.: CV35479

Dept. No.: 1

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IN THE FIFTH JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF NYE, STATE OF NEVADA

NYE COUNTY, a political subdivision of
the State of Nevada,

Plaintiff,

vs.

KARL MITCHELL, RAYMOND V.
MIELZYNSKI, and BIG CAT
ENCOUNTERS, a Nevada nonprofit
corporation,

Defendants.

ORDER GRANTING SUMMARY
JUDGMENT

CASE SUMMARY

Plaintiff filed its Complaint for abatement of nuisance and injunctive relief on January 2, 2014. Plaintiff alleged that special conditions animals as defined by Nye County Code are located on the real property, 6061 N. Woodchips, located within the Pahrump Regional Planning District. Plaintiff alleged that the real property is zoned Rural Homestead and requires a conditional use permit for special conditions animals located on the property. Continuing, Plaintiff alleged that the property does not have a conditional use permit in violation of the Nye County zoning ordinance. Plaintiff is requesting injunctive relief.

1 Defendant, Raymond V. Mielzynski filed his Answer on June 2, 2014.
2 Defendant, Karl Mitchell filed his Answer on June 10, 2014. Defendant, Big Cat
3 Encounters filed its Amended Answer to Complaint, Counterclaim on June 26, 2014.
4 Defendants raised a claim that the use on the real property is exempt from a
5 conditional use permit because an animal sanctuary existed on the real property at the
6 time of the adoption of the zoning ordinance and therefore the use is grandfathered
7 pursuant to the Nye County Code.

8 Plaintiff filed its Motion for Summary Judgment on July 28, 2014. Defendants,
9 Raymond V. Mielzynski and Karl Mitchell filed their Opposition to Motion for Summary
10 Judgment on August 25, 2014. Defendant, Big Cat Encounters filed an Opposition to
11 Plaintiff's Motion to Dismiss Counterclaims and Motion for Summary Judgment on
12 September 8, 2014. Plaintiff filed its Reply to Defendants Raymond V. Mielzynski and
13 Karl Mitchell Opposition on August 27, 2014. Plaintiff filed its Reply to Big Cat
14 Encounters' opposition to Plaintiff's Motion to Dismiss and Motion for Summary
15 Judgment on September 15, 2014.

16 A hearing on Plaintiff's Motion to Dismiss Counterclaims and Motion for
17 Summary Judgment was held on October 16, 2014. Plaintiff, Nye County was
18 represented by counsel, Defendant Raymond V. Mielzynski appeared pro se,
19 Defendant Karl Mitchell appeared pro se, and Jonathon K. Nelson, Esq. appeared as
20 counsel for Defendant Big Cat Encounters.

21 **STANDARD FOR SUMMARY JUDGMENT**

22 Pursuant to NRCP 56(a), a party seeking to recover upon a claim or to obtain a
23 declaratory judgment may, at any time after the expiration of 20 days from the
24 commencement of the action, move with or without supporting affidavits for a summary

1 judgment in the party's favor upon all or any part thereof. Pursuant to NRCP 56(c), the
2 judgment sought shall be rendered forthwith if the pleadings and admissions on file,
3 together with the affidavits, if any, show that there is no genuine issue as to any
4 material fact and that the moving party is entitled to a judgment as a matter of law.
5 See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). A genuine issue of material
6 fact exists "where the evidence is such that a reasonable jury could return a verdict for
7 the non-moving party," Posadas v. City of Reno, 109 Nev. 448, 452, 851 P.2d 438,
8 441 (1993). "Summary judgment is proper when the moving party is entitled to
9 judgment as a matter of law, and no genuine issue remains for trial." Van Cleave v.
10 Kietz-Mill Minit Mart, 97 Nev. 414, 415, 633 P.2d 1220, 1221 (1981). The party
11 opposing a summary judgment motion must allege "specific facts showing that there is
12 a genuine issue for trial." Id. at 415. An order granting summary judgment shall set
13 forth the undisputed material facts and legal determinations on which the court granted
14 summary judgment.

15 **A. FACTS OR MATTERS ADMITTED IN PLEADINGS**

16 Upon examination of the documents and pleadings on file herein the following
17 facts or matters are admitted by Defendants.

18 1. Venue in the Fifth Judicial District Court, in and for the County of Nye,
19 State of Nevada is proper pursuant to NRS 13.010, NRS 13.030 and NRS 13.040.

20 2. Plaintiff, County of Nye, is and at all times pertinent hereto, a political
21 subdivision of the State of Nevada.

22 3. At all times relevant herein, Defendant, Karl Mitchell, is an individual and
23 resident of Nye County, Nevada.

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1 4. At all times relevant herein, Defendant, Big Cat Encounters, is a Nevada
2 domestic nonprofit corporation and its principal place of business is located at 6061 N.
3 Woodchips, Pahrump, Nye County, Nevada.

4 5. At all times relevant herein, Defendant, Karl Mitchell, is an officer of Big
5 Cat Encounters.

6 6. At all times relevant herein, Defendant Raymond V. Mielzynski, is the
7 owner of real property located in Pahrump, Nye County, Nevada, known as 6061 N.
8 Woodchips, APN 27-241-26 and described as "A portion of the West Half (W ½) of the
9 Southeast Quarter (SE ¼) of Section 7, Township 19 South, Range 53 East
10 M.D.B.&M. More particularly described as Parcel Four (4) of Parcel Map recorded
11 January 14, 1982 as file #56470 of Official Records, Nye County, Nevada."

12 7. At all times relevant herein, Raymond V. Mielzynski is an individual and
13 resident of Nye County, Nevada.

14 8. On or about May 3, 1994, Plaintiff, Nye County, adopted the Nye County
15 Comprehensive Plan as the Plaintiff's Master Plan pursuant to NRS 278.150.

16 9. On or about June 20, 2007, Plaintiff, Nye County, adopted the
17 Comprehensive Rezoning Map for all the properties located within the Pahrump
18 Regional Planning District in conformance with the Nye County Comprehensive Plan.

19 10. At all times relevant herein, since June 20, 2007, the property known as
20 6061 N. Woodchips, Nye County, Nevada, is zoned Rural Homestead (RH-4.5)
21 pursuant to Nye County Code 17.04.215.

22 11. At all times relevant herein, prior to June 20, 2007, no special conditions
23 animals, as defined by Nye County Code 17.04.110, were located upon or on the
24 property known as 6061 N. Woodchips, Nye County, Nevada.

1 12. At all times relevant herein, from approximately October 2011 through
2 the filing of this Complaint, Defendants, and each of them, have permitted, allowed,
3 directed, managed, harbored, housed or possessed special conditions animals as
4 defined by Nye County Code 17.04.110 on the property known as 6061 N. Woodchips,
5 Nye County, Nevada.

6 13. At all times relevant herein, and on or about or between September 2011
7 through July 2013, Defendants received by letter a courtesy notice, a notice of
8 violation, a second notice of violation, and a cease and desist letter from Nye County
9 Code Enforcement for a violation of Nye County Code 17.04.215 concerning the
10 presence of animals designated as special conditions animals on the property that is
11 the subject of this matter.

12 **B. FACTS AND MATTERS ADMITTED AT HEARING ON**
13 **SUMMARY JUDGMENT**

14 Upon examination of the documents, pleadings and affidavits and exhibits
15 attached to Plaintiff's Motion for Summary Judgment on file herein, the following facts
16 or matters are admitted at hearing on Plaintiff's Motion for Summary Judgment.

17 1. At all times relevant herein, Big Cat Encounters, is doing business on the
18 real property known as 6061 N. Woodchips, Pahrump, Nye County, Nevada.

19 2. At all times relevant herein, the property known as 6061 N. Woodchips is
20 located within the boundaries of the Pahrump Regional Planning District.

21 3. At all times relevant herein, the Defendants, and each of them, do not
22 have a conditional use permit for the use of the property for the operation of an animal
23 rescue or animal sanctuary or for the possession, harboring or housing of special
24 conditions animals.

1 4. At all times relevant herein, Defendants, and each of them, had
2 knowledge of the requirements to obtain a conditional use permit and failed to comply
3 with the requests to voluntarily abate the nuisance.

4 **LEGAL DETERMINATION AND CONCLUSIONS**

5 This Court has subject matter jurisdiction pursuant to the Nevada Constitution,
6 Article 6, Section 6 and Nevada Revised Statutes 33.010. This Court has subject
7 matter jurisdiction over this matter pursuant to NRS 278.260, NRS 278.315 and Nye
8 County Code 17.04.070. Venue is proper in this Court pursuant to Nevada Revised
9 Statutes 13.040 as the Defendants, Karl Mitchell and Raymond V. Mielzynski are
10 individuals and reside in Nye County, Nevada and Defendant, Big Cat Encounters, a
11 nonprofit corporation, has its principal place of business at 6061 N. Woodchips,
12 Pahrump, Nye County, Nevada. Plaintiff, County of Nye is a political subdivision of the
13 State of Nevada.

14 Defendant, Raymond V. Mielzynski is the owner of real property known as 6061
15 N. Woodchips in Pahrump, Nye County. Karl Mitchell is an officer of Big Cat
16 Encounters. In May 1994, Nye County adopted the Nye County Comprehensive Plan
17 pursuant to Nevada Revised Statutes 278.150. In June 2007, Nye County adopted
18 the Comprehensive Rezoning Map for all the properties located within the Pahrump
19 Regional Planning District. The property known as 6061 N. Woodchips is located
20 within the boundaries of the Pahrump Regional Planning District. Since June 2007,
21 the real property known as 6061 N. Woodchips has been zoned Rural Homestead
22 (RH-4.5) pursuant to Nye County Code 17.04.215. Property zoned RH-4.5 requires a
23 conditional use permit pursuant to NCC 17.04.215(E) for the use of special conditions
24 animals as defined by NCC 17.04.110, animal sanctuary as defined in NCC 17.04.110

1 or animal rescue as defined in NCC 17.04.110. Special conditions animals did not
2 exist on the real property at any time in 2007 or prior to 2007. Special conditions
3 animals existed on the real property since sometime in 2010 up to and including the
4 present time. The real property known as 6061 N. Woodchips does not have a
5 conditional use permit.

6 Defendants claim that the use on the real property is exempt from a conditional
7 use permit because an animal sanctuary existed on the real property at the time of the
8 adoption of the zoning ordinance and therefore the use is grandfathered pursuant to the
9 Nye County Code.

10 The issue for this Court is whether or not an animal sanctuary as defined by
11 Nye County Code 17.04.110 existed on the real property in 2007 or prior to 2007 and if
12 so whether the property is grandfathered pursuant to Nye County Code 17.04.905 and
13 exempt from the requirement of a conditional use permit.

14 Nye County Code 17.04.215(E) states that uses subject to a conditional use
15 permit on property zoned Rural Homestead (RH-4.5) include animal sanctuary and
16 animals, special conditions. The real property known as 6061 N. Woodchips requires
17 a conditional use permit for the use of special conditions animals and an animal
18 sanctuary. Moreover, Nye County Code 17.04.905 (A) states that "[a] lawful use of
19 land or buildings not in conformance with the regulations prescribed in NCC Chapter
20 17.04 existing at the time of the adoption of the original ordinance may be continued
21 as follows in this section." The original ordinance known as the Zoning Ordinance of
22 the Pahrump Regional Planning District was adopted in 2004 and the real property
23 known as 6061 N. Woodchips was zoned RH-4.5 in 2007.

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1 Pursuant to Nye County Code 17.04.110, animal sanctuary is defined as:

2 An establishment owned or operated by a licensed profit or
3 nonprofit organization whose primary function is to provide
4 lifetime care and comfort to animals. Animal sanctuaries
5 existing prior to the adoption hereof, shall not be required
6 to obtain a conditional use permit, under the following
7 conditions:”

8 The pleadings and admissions on file, the affidavits submitted with Plaintiff's
9 Motion for Summary Judgment and the matters admitted at hearing clearly supports the
10 fact that no "establishment owned or operated by a licensed profit or nonprofit
11 organization" existed on or at the property known as 6061 N. Woodchips prior to the
12 adoption by Nye County of the Comprehensive Rezoning Map in June 2007 or prior to
13 the adoption by Nye County of the Zoning Ordinance of the Pahrump Regional Planning
14 District in 2004. Since no establishment owned or operated by a licensed profit or
15 nonprofit organization existed on or at the property known as 6061 N. Woodchips prior
16 to the adoption by Nye County of the Comprehensive Rezoning Map in June 2007 or
17 prior to the adoption by Nye County of the Zoning Ordinance of the Pahrump Regional
18 Planning District in 2004, this Court finds as a matter of law that no animal sanctuary as
19 defined in Nye County Code 17.04.110 existed. This Court finds as a matter of law that
20 no animal sanctuary as defined by Nye County Code 17.04.110 existed on or at the
21 property in 2007 or prior to 2007. This Court finds that there are no facts that show any
22 exemption applies as stated above and this Court finds as a matter of law that the
23 grandfather provision of Nye County Code 17.04.905 is not applicable.

24 There is no genuine issue of material fact regarding the existence of an animal
sanctuary as defined in Nye County Code 17.04.110 or special conditions animals
existing on or at the real property prior in 2007 or prior to 2007.

1 Continuing, Nye County Code 17.04.215(E) states that uses subject to a
2 conditional use permit on property zoned Rural Homestead (RH-4.5) include animal
3 sanctuary and animals, special conditions. From sometime in 2010 up to and
4 including the present time, Defendants, and each of them, have permitted, allowed,
5 directed, managed, harbored, housed or possessed special conditions animals as
6 defined by Nye County Code 17.04.110 on or at the property known as 6061 N.
7 Woodchips, Nye County, Nevada. Since February 14, 2013, up to and including the
8 present time, the property known as 6061 N. Woodchips has not had a conditional use
9 permit for the operation of an animal sanctuary or for the possession, harboring or
10 housing of special conditions animals. No grandfather provisions for an animal
11 sanctuary or special conditions animals are applicable as stated above. Therefore,
12 pursuant to Nye County Code 17.04.215(E), the property known as 6061 N.
13 Woodchips requires a conditional use permit.

14 Based upon the undisputed material facts and legal determinations as stated
15 above, there are no genuine issues remaining for trial and Plaintiff is entitled to
16 judgment as a matter of law. Van Cleave v. Kietz-Mill Minit Mart, 97 Nev. 414, 415,
17 633 P.2d 1220, 1221 (1981).

18 Nye County Code 17.04.070(D) states that "any use of property hereafter
19 contrary to the provisions of this chapter shall be, and the same is declared to be,
20 unlawful and a public nuisance." The use of special conditions animals on the real
21 property known as 6061 N. Woodchips without a conditional use permit as required
22 pursuant to Nye County Code Title 17, Chapter 17.04 is contrary to the provisions of
23 Chapter 17.04 as stated above and therefore is declared to be unlawful and a public
24 nuisance pursuant to Nye County Code 17.04.070(D). An injunction is the proper

1 remedy where there is a zoning violation. Smith v. City of Las Vegas, 80 Nev. 220,
2 223-224; 391 P.2d 505, 507 (1964).

3 Plaintiff, Nye County is bringing forth a statutory enforcement action pursuant to
4 Nevada Revised Statutes 33.010 and Nye County Code, 17.04.070(D). There is no
5 adequate remedy at law and Plaintiff, Nye County cannot be compensated in
6 damages. Plaintiff, Nye County is not required to plead or prove irreparable injury or
7 an inadequate remedy at law when it brings a statutory enforcement action. State ex.
8 State ex.re. Office of the AG v. NOS Communs., Inc., 120 Nev. 65, 68; 84 P.3d 1052,
9 1054 (2004). Plaintiff, Nye County may enjoy a violation of zoning ordinance by
10 injunction. Smith v. City of Las Vegas, 80 Nev. 220, 223-224; 391 P.2d 505, 507
11 (1964). Continued violation of the Nye County Code is unlawful and interferes with the
12 power and authority of Nye County to regulate the long range financial impact of the
13 application of particular land to particular kinds of development, to preserve the
14 relative suitability of the land for appropriate development, to ensure the protection of
15 existing neighborhoods and communities, and to promote the health and the general
16 welfare of all residents of Nye County. The public has an interest in the uniform
17 application of the law and the uniform application of the Nye County Code and its
18 zoning laws to property located within the Pahrump Regional Planning District.

19 **ORDER**

20 **IT IS HEREBY ORDERED** that Summary Judgment on Plaintiff's Complaint is
21 **GRANTED.**

22 **IT IS HEREBY ORDERED** that Defendants, and each of them, immediately
23 remove all the animals designated as special conditions animals from the real property
24 known as 6061 Woodchips, Pahrump, Nye County, Nevada.

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IT IS HEREBY ORDERED that Defendants, and each of them, are permanently enjoined from having special conditions animals on the real property known as 6061 N. Woodchips, in violation of Nye County Code Chapter 17.04 without an appropriate conditional use permit.

DATED this 18th day of November 2014.


DISTRICT COURT JUDGE