DISTRICT COURT, EAGLE COUNTY, COLORADO 885 Chambers Ave.; P.O. Box 597 Eagle, CO 81631	FILED IN THE COMBINED CLERK'S OFFICE DATE FILED: July 31, 2023 2:03 PM CASE NUMBER: 2022CV30163 JUL 31 2023 EAGLE COUNTY, COLORADO BY: _____ ▲COURT USE ONLY▲
Plaintiff: THE VAIL CORPORATION, a Colorado Corporation. v. **Defendants:** VAIL TOWN COUNCIL, the governing body of the Town of Vail; TOWN OF VAIL, a home rule municipality in the State of Colorado.	Case No.: 2022CV30163 Division: 4

ORDER GRANTING DEFENDANTS' MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS AND PARTIAL MOTION TO DISMISS

THIS MATTER is before the Court on two motions submitted by Defendants the Vail Town Council and the Town of Vail (collectively, the "Town"): (1) *Partial Motion to Dismiss* filed on September 30, 2022; and (2) *Motion for Partial Judgment on the Pleadings* submitted on November 23, 2022 (collectively, the "Motions"). The Motions have been fully briefed.

THE COURT, having considered the Motions, the respective Response and Reply Briefs, and being otherwise fully advised in the premises, makes the following findings and issues the following Orders:

I. INTRODUCTION

This matter concerns the Town's adoption of an emergency ordinance, Ordinance No. 16, Series 2022 (the "Ordinance" or "Ordinance 16") on August 2, 2022 pursuant to § 4.11 of the Vail Town Charter.[1] The Ordinance suspended the issuance of soil testing and other permits on

[1] Ex. A to Complaint ("Compl."), Aug. 30, 2022, Ordinance 16, at 2, Section 3. § 4.11 of the Vail Town Charter provides, in part, that "[e]mergency ordinances for the preservation of public property, health, welfare, peace, or safety, shall be approved only by the unanimous vote of councilmembers present or a vote of five (5) councilmembers, whichever is less. The facts showing such urgency and need shall be specifically stated in the

a 5.4 acre parcel of undeveloped land in East Vail, Colorado known as the "Booth Heights Property" which Plaintiff the Vail Corporation ("Vail Corp.") sought for the past several years to develop into workforce housing.[2] While at one time the Town supported the development, at the time Ordinance 16 was issued, the Town opposed the development. The Vail Town Council, in approving Ordinance 16, declared that it was "necessary for the preservation of the public health, safety and welfare, because the suspension is necessary to prevent irreparable damage to the wildlife [including the bighorn sheep herd] and natural resources on the Booth Heights Property."[3]

On August 30, 2022, Vail Corp. filed the Complaint in this action appealing the Town's adoption of the Ordinance and alleged three claims for relief.[4] The first and second claims both seek judicial review pursuant to C.R.C.P. 106(a)(4) on grounds that the Town abused its discretion and exceeded its jurisdiction in enacting Ordinance 16. The third claim seeks judicial mandamus relief under C.R.C.P. 106(a)(2). Vail Corp. requests the Court compel the Town to issue soils testing and other permits for the Booth Heights Property which the Ordinance suspended.[5] Vail Corp. states that its claim for mandamus relief is "in addition to the relief sought [] under C.R.C.P. 106(a)(4)."[6]

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measure itself... An emergency ordinance shall require passage at one (1) meeting of council. However, neither a public hearing nor a first publication as provided in section 4.10 of this charter shall be required. An emergency ordinance shall take effect upon final passage. One publication shall be required within ten (10) days after passage, or as soon thereafter as possible."

[2] The suspension applied to "grading permits, soils permits, building permits, right-of-way permits, sign permits, fence permits and any other permits, licenses or approvals that would allow disturbance of the Booth Heights Property." Ex. A to Compl., Aug. 30, 2022, Ordinance 16, at 2, Section 1.

[3] Ex. A to Compl., Aug. 30, 2022, Ordinance 16, at 1; *see also id.* at 2, Section 3.

[4] *See* Compl., Aug. 30, 2022.

[5] Compl., Aug. 30, 2022, at 15.

[6] *Id.* ¶ 100.

The Complaint seeks an entry of judgment: (1) overturning the Town's action on August 2, 2022 in passing Ordinance 16; (2) invalidating the Ordinance as a matter of law; (3) requiring the Town to process any and all permits relating to the Booth Heights Property for Vail Corp.; and (4) allowing Vail Corp.'s development project on the Booth Heights Property to proceed.[7]

Pertinent here, on October 14, 2022, the Town initiated condemnation proceedings to possess and take ownership of the Booth Heights Property in a related case, *Town of Vail v. The Vail Corp., et al.,* Eagle County District Court Case No. 22CV30193 (the "Condemnation Case"). On January 25, 2023, the parties in this matter requested, and the Court granted, an order staying this case because the parties were involved in mediation relating to the Condemnation Case, the resolution of which might resolve some, if not all, disputes between the parties. On April 12, 2023, because the parties had not reached resolution, they gave notice that the stay could be lifted, and the Court lifted the stay the same day. From May 8-10, 2023, the Court held a three-day immediate possession hearing in the Condemnation Case. On June 30, 2023, the Court issued its *Findings of Fact, Conclusions of Law and Orders* granting the Town the right to take immediate possession and condemn the Booth Heights Property.

In the interest of fully and finally resolving this matter, the Court now addresses the Motions presented by the Town requesting dismissal of the three claims asserted against it by Vail Corp. relating to Ordinance 16.

Pursuant to C.R.C.P. 12(c), the Town requests partial judgment on the pleadings and dismissal of Vail Corp.'s first and second claims for relief for judicial review under C.R.C.P. 106(a)(4). The Town asserts that the claims are moot because Ordinance 16 expired by its own terms on November 1, 2022, and there are no exceptions to the doctrine of mootness which

[7] Compl., Aug. 30, 2022, at 15.

apply. It also argues that there are no collateral consequences that would permit the Court to review the basis for adopting the Ordinance after it terminated, such as another case a judicial review would impact.

Pursuant to C.R.C.P. 12(b)(5), the Town further seeks dismissal of Vail Corp.'s third claim for mandamus relief under C.R.C.P. 106(a)(2). It argues in support that the three-part test set forth in *Graminger v. Crowley*, 770 P.2d 1279 (Colo. 1983) that must be satisfied for the Court to issue mandamus relief has not been met.

II. STANDARDS OF REVIEW

A. Motion for Judgment on the Pleadings pursuant to C.R.C.P. 12(c).

"In considering a motion for judgment on the pleadings pursuant to C.R.C.P. 12(c), the trial court must construe the allegations in the pleadings strictly against the movant, must consider the allegations of the opposing parties' pleadings as true, and should not grant the motion unless the pleadings themselves show that the matter can be determined on the pleadings." *Redd Iron, Inc. v. Int'l Sales & Servs. Corp.*, 200 P.3d 1133, 1135 (Colo. App. 2008). "Judgment on the pleadings is appropriate if, after the trial court construes the allegations of the pleadings strictly against the movant, the movant is entitled to judgment as a matter of law." *Tripp v. Parga*, 847 P.2d 165, 167 (Colo. App. 1992) (citing *Abts v. Board of Education,* 622 P.2d 518 (Colo. 1980)).

B. Motion to Dismiss pursuant to C.R.C.P. 12(b)(5).

Under C.R.C.P. 12(b)(5), a party may move to dismiss the other party's claims for "failure to state a claim upon which relief can be granted." *See* C.R.C.P. 12(b)(5). "[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss." *Abu-Nantambu-El v. State*, 433 P.3d 101, 103 (Colo. App. 2018) (quoting *Warne v. Hall*, 373 P.3d 588 (Colo.

2016) (other internal citations omitted)). "[A] party must plead sufficient facts that, if taken as true, suggest plausible grounds to support a claim for relief." *Abu-Nantambu-El*, 433 P.3d at 103 (citing *Warne*, 373 P.3d at 595). "When reviewing a motion to dismiss under C.R.C.P. 12(b)(5). a court must accept all averments of material fact as true and view all allegations in the light most favorable to the plaintiff." *Allen v. Steele*, 252 P.3d 476, 481 (Colo. 2011) (citing *Pub. Serv. Co. of Colo. v. Van Wyk*, 27 P.3d 377, 385 (Colo. 2001)). Further, "the court may consider only the facts alleged in the pleadings, documents attached as exhibits or incorporated by reference in the pleadings, and matters of which the court may take judicial notice." *Walker v. Van Laningham*, 148 P.3d 391, 397 (Colo. App. 2006) (internal citations omitted).

III. ANALYSIS

A. Whether dismissal of Vail Corp.'s First and Second Claims for Judicial Review Under C.R.C.P. 106(a)(4) warrant dismissal under C.R.C.P. 12(c).

The Court first addresses the Town's request for dismissal of Vail Corp.'s first and second claims for relief brought pursuant to C.R.C.P. 106(a)(4).

C.R.C.P. 106(a)(4) allows for a district court action "[w]here any governmental body or officer or any lower judicial body exercising judicial or quasi-judicial functions has exceeded its jurisdiction or abused its discretion, and there is no plain, speedy and adequate remedy otherwise provided by law." C.R.C.P. 106(a)(4). It provides the exclusive remedy for reviewing a quasi-judicial decision made by a government entity. *Bd. of County Com'rs of Douglas County v. Sundheim*, 926 P.2d 545, 548 (Colo. 1996); *See also Colorado State Bd. of Land Com'rs v. Colorado Mined Land Reclamation Bd.*, 809 P.2d 974, 981 (Colo. 1991).

Rule 106(a)(4) contemplates that the district court will review the record of the proceedings and determine whether the acting entity abused its discretion or exceeded its jurisdiction. *Widder v. Durango School Dist. No. 9-R*, 85 P.3d 518, 526 (Colo. 2004). Review

of findings of fact is limited to whether the governmental body had competent evidence on which to base its decision. *Save Park County v. Board of County Com'rs of County of Park*, 969 P.2d 711, 714 (Colo. App. 1998).

The first and second claims seek judicial review of the Town's approval of Ordinance 16. In support of its request for dismissal, the Town asserts that the claims are moot because Ordinance 16 expired by its own terms on November 1, 2022, and there are no exceptions to the doctrine of mootness which apply. It also argues that there are no collateral consequences that would permit the Court to review the Town's approval of the temporary Ordinance terminated, such as impact on a related case.

"Generally, courts will decline to consider the merits of a case that is moot. *Gresh v. Balink*, 148 P.3d 419, 422 (Colo. App. 2006) (internal citations omitted). A case is moot if the relief sought, if granted, would have no practical legal effect on the existing controversy. *State Bd. of Chiropractic Examiners v. Stjernholm*, 935 P.2d 959, 967 (Colo. 1997).[8] Also, there must be no significant collateral consequences that would result from a judgment on the merits. *Oberne v. Bd. of Cnty. Com'rs of Douglas Cnty.*, 764 P.2d 397, 402 (Colo. App. 1988). There are two exceptions to the mootness doctrine. "[C]ourts may consider the merits when the matter involves a question of great public importance, or the issue is capable of repetition, yet evades review." *Gresh v. Balink*, 148 P.3d at 422 (citing *Simpson v. Bijou Irrigation Co.*, 69 P.3d 50 (Colo.2003) (other internal citations omitted)). Lastly, "[m]ootness is a jurisdictional prerequisite that can be addressed at any stage during the proceedings." *Diehl v. Weiser*, 444 P.3d 313, 316 (Colo. 2019) (citing *People v. Shank*, 420 P.3d 240, 243 (Colo. 2018)).

[8] The Town relies on *People v. Fritz*, 356 P.3d 927 (Colo. App. 2014) for the proposition that a court must consider both the direct and collateral consequences that can result from the judgment. However, *Fritz* is inapposite. In that case, the Court of Appeals reasoned that one must consider direct and collateral consequences when evaluating whether a judgment or conviction in a criminal matter is moot.

Here, the parties do not dispute that by its own terms, Ordinance 16 expired on November 1, 2022.[9] The relief sought by Vail Corp. relating to its claims brought pursuant to C.R.C.P. 106(a)(4) is "overturning the Town's action on August 2, 2022 in passing Ordinance 16" and "invalidating the Ordinance as a matter of law."[10] The Court agrees with the Town that giving that the Ordinance expired, it is now of no force or effect. Therefore, judicial review would have no practical legal effect.

Second, the Town argues, and again the Court agrees, that there are no significant collateral consequences, such as impact to a related case, that would result from judgment of the claims on their merits. The only related matter is the Condemnation Case in which the Court granted the Town the right to take immediate possession and condemn the Booth Heights Property. Therefore, judicial review of Ordinance 16, which suspended soils testing and other permits Vail Corp. wanted issued in furtherance of development on the Booth Heights Property, would have no impact on the Condemnation Case.

Third, the Town asserts that the two exceptions to mootness are not invoked here. Addressing the first exception, an issue of great public importance, the Town argues that its quasi-judicial decision does not rise to the level of importance that satisfies the exception. Vail Corp. argues that eminent domain is a matter of great public importance. The Court agrees. However, the issue before it is not eminent domain; it is the Town's approval of an emergency measure which suspended the issuance of permits for a period of three months. The Court finds that this is not sufficient grounds to apply the exception and consider these claims on their merits, especially given that the Ordinance at issue expired by its own terms on November 2, 2022.

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[9] Compl., Aug. 30, 2022, Ex. A, Ordinance 16, at 2, Section 1.
[10] *Id.* at 15.

The Town also contends that the second exception, that the issue is capable of repetition, yet evades review, is not met. As noted by Vail Corp., this exception contemplates that the mootness doctrine cannot be used by a party to thwart meaningful review of otherwise wrongful action. *See Zoning Bd. of Adjustment of Garfield Cnty. v. DeVilbiss*, 729 P.2d 353, 357 (Colo. 1986) ("Implicit in [the court's mootness decision] is the determination that the defendant's conduct...was legally permissible at the time it was undertaken and was done in good faith"). Here, the circumstances do no demonstrate wrongful action by the Town. It has the authority by the Town Code to approve an emergency ordinance. Further, the Court in granting the Town's request for immediate possession found that the Town was acting in good faith. This is a factually distinct issue. The enactment of an emergency ordinance to protect wildlife is not a scenario that is likely to be repeated.

Moreover, the Court notes that while Vail Corp. timely filed its Complaint, it did not seek immediate relief related to Ordinance 16, such as an expedited review or stay to preserve the status quo. Not only did Vail Corp. not seek any form of immediate relief, but it also agreed to stay this proceeding with the representation that resolution of the Condemnation Case may resolve this case.[11]

For the foregoing reasons, the Court finds that the Town has established that these claims are moot and grants its request for judgment on the pleadings and dismissal pursuant to C.R.C.P. 12(c). Accordingly, Vail Corp.'s First Claim for Relief (Judicial Review Under C.R.C.P. 106(a)(4): Abuse of Discretion) and Second Claim for Relief (Judicial Review Under C.R.C.P. 106(a)(4): Exceeded Jurisdiction) are moot and dismissed with prejudice.

[11] It was appropriate to stay these proceedings as the Condemnation Case clearly had the possibility of impacting this case and, in fact, has impacted this case.

B. Whether dismissal of Vail Corp.'s Third Claim for Judicial Mandamus Relief Under C.R.C.P. 106(a)(4) warrants dismissal under C.R.C.P. 12(b)(5).

The Court next addresses the Town's request for dismissal of Vail Corp.'s third claim for judicial mandamus relief brought pursuant to C.R.C.P. 106(a)(2).

C.R.C.P. 106(a)(2) allows mandamus relief "[w]here the relief sought is to compel a lower judicial body, governmental body, corporation, board, officer or person to perform an act which the law specially enjoins as a duty resulting from an office, trust, or station."

"Mandamus lies to compel the performance of a purely ministerial duty involving no discretionary right and not requiring the exercise of judgment," *Bd. of County Comm'rs v. County Road Users Ass'n,* 11 P.3d 432, 437 (Colo. 2000). "[It] is an extraordinary remedy which may be used to compel performance by public officials of a plain legal duty devolving upon them by virtue of their office or which the law enjoins as a duty resulting from the office." *Sherman v. City of Colorado Springs Planning Comm'n*, 763 P.2d 292, 295 (Colo. 1988) (citing *Potter v. Anderson,* 392 P.2d 650 (Colo. 1964)). "Although mandamus is classed as a legal remedy, it is an extraordinary remedial process which is awarded not as a matter of legal right, but in the exercise of sound judicial discretion." *Sherman*, 392 P.2d at 295 (citing *People v. Buckland,* 269 P. 15 (1928)).

A three-part test must be satisfied before a court will issue mandamus: (1) the plaintiff must have a clear right to the relief sought; (2) the defendant must have a clear duty to perform the act requested; and (3) there must be no other available remedy. *Sherman,* at 295 (citing *Graminger v. Crowley*, 770 P.2d 1279, 1281 (Colo. 1983)).

In support of its request for dismissal, the Town argues that Vail Corp. cannot satisfy the third element of the three-part test for mandamus relief because there is an available remedy under C.R.C.P. 106(a)(4). Relying on *Sherman v. City of Colorado Springs Planning Comm'n,*

763 P.2d 292 (Colo. 1988), the Town asserts that because Vail Corp. elected to pursue judicial review of the Ordinance as a remedy under Rule 106(a)(4), relief in the nature of mandamus is inappropriate, and the Court should dismiss the third claim for relief.

Vail Corp. acknowledges that C.R.C.P 106(a)(4) is generally the exclusive remedy to challenge a quasi-judicial act. However, it argues that its claim for mandamus is not precluded because its averment that the Town's refusal to process Vail Corp.'s soils permit application constitutes a failure to perform a ministerial duty, rather than a quasi-judicial act, and is therefore properly brought pursuant to C.R.C.P. 106(a)(2). That is, its first two claims brought pursuant to C.R.C.P. 106(a)(4) request the Court to invalidate Ordinance 16, while its claim under C.R.C.P. 106(a)(2) asks the Court to require the Town to process permits which "may be or already have been submitted relating to the Booth Heights Property."[12] Vail Corp. maintains that its third claim "merely seeks relief from any further delays if Ordinance 16 is deemed improper and therefore asks that the Court require the Town to process any permits as required by its own Code."[13] This is consistent with its averment in its third claim for relief that "in addition to the relief sough[t] under C.R.C.P. 10[6](a)(4), [Vail Corp.] is entitled to mandamus relief."[14]

The Colorado Supreme Court "has consistently held that mandamus is available only when no other adequate remedy is available." *Sherman v. City of Colorado Springs Planning*

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[12] Vail Corp. alleges in its Complaint that at the August 2, 2022 hearing wherein the Town enacted Ordinance 16, the Town's attorney, Matt Mire, stated, in pertinent part, "Any permitting for the site that we are talking about has been...all activity has been on hold while the [Design Review Board] appeal was pending. Now that the appeal is over [Vail Corp. is] is allowed to receive permits...for the site in question." Compl., Aug. 30, 2022, ¶ 44. Mr. Mire continued, "Any work on the [Booth Heights Property] pursuant to any permit before the Town acquires possession of the [Booth Heights Property] would you know, first of all thwart the objective of the habitat preservation and secondly be a waste of resources since the [T]own is going to acquire the site and any testing would be not be necessary because the site is not going to be developed." *Id.*

[13] Pl.'s Resp., Oct. 21, 2022, at 4; Compl., Aug. 30, 2022, ¶¶ 97-98; *see also Sheeley v. Bd. of Cnty. Comm'rs*, 325 P.2d 275, 277 (Colo. 1958) ("Under Rule 106(a)(2) when a board or person charged with performing an official duty fails or refuses to act, mandamus will lie to compel performance").

[14] Compl., Aug. 30, 2022, ¶ 100.

Comm'n, 763 P.2d 292, 295 (Colo. 1988) (citing *Peoples Natural Gas Div. of Northern Natural Gas Co. v. Public Utilities Comm'n,* 626 P.2d 159 (Colo. 1981); *Julesberg School Dist. RE–1 v. Ebke,* 562 P.2d 419 (Colo. 1977); *Potter v. Anderson,* 392 P.2d 650 (Colo. 1964); *Hall v. Denver,* 190 P.2d 122 (Colo. 1948)). Further, it has reasoned that "if certiorari review under C.R.C.P. 106(a)(4) is available, a mandamus action would not be appropriate." *Sherman*, at 295 (citing *Potter v. Anderson,* 392 P.2d 650 (Colo. 1964); *Hall v. Denver,* 190 P.2d 122 (Colo. 1948)).

In determining whether a governmental action is quasi-judicial or ministerial, the inquiry must focus on the nature of the governmental decision, the process by which that decision was reached, and whether it involved an exercise of discretion. *Sherman v. City of Colorado Springs Planning Comm'n*, 763 P.2d 292, 295-96 (Colo. 1988) (citing *Cherry Hills Resort Dev. Co. v. Cherry Hills Village,* 757 P.2d 622 (Colo. 1988); *Englewood v. Daily*, 407 P.2d 325 (Colo. 1965)).

"Where a governmental decision is likely to affect the rights and duties of specific individuals, and the decision is to be reached through the application of preexisting legal standards or policy considerations to present or past facts developed at a hearing, the governmental body is generally acting in a quasi-judicial capacity." *Sherman*, 763 P.2d at 296 (citing *Cherry Hills Resort Dev. Co. v. Cherry Hills Village,* 757 P.2d 622 (Colo. 1988)). A ministerial act is "devoid of any meaningful official discretion" and "performed solely to carry out [a] prior administrative decision." *See Prairie Dog Advocates v. City of Lakewood*, 20 P.3d 1203, 1209 (Colo. App. 2000).

The Town relies on *Sherman v. City of Colorado Springs Planning Comm'n*, 763 P.2d 292 (Colo. 1988) in support its request for dismissal of Vail Corp.'s claim for mandamus relief.

In *Sherman*, upon denial by the city planning commission and city council of plaintiffs' development plan submission, plaintiffs filed an action in district court pursuant to C.R.C.P. 106(a)(2) to compel the city's approval of the plan, or, in the alternative, under C.R.C.P. 106(a)(4) to reverse the city's rejection of the plan as arbitrary and capricious. *Sherman*, 763 P.2d at 294.

The district court found that mandamus was not appropriate because the city was vested with discretion to approve or reject development plans, and the city's actions should be upheld under C.R.C.P. 106(a)(4) because they were not arbitrary or capricious. *Sherman v. City of Colorado Springs Planning Comm'n*, 763 P.2d 292, 294 (Colo. 1988). On appeal, the Colorado Court of Appeals reversed, concluding that mandamus relief under C.R.C.P. 106(a)(2) should have been granted to plaintiffs because their development plan complied with certain zoning requirements and therefore approval was not within the city council's discretion, and remanded with directions to enter an order directing the city council to approve the plaintiffs' plan. *Id.* After the trial court granted summary judgment in favor of the city on damages, on appeal again, the court of appeals affirmed the trial court's ruling. *Id.* at 295.

The Colorado Supreme Court ultimately found that the plaintiffs' action could only be brought under certiorari review pursuant to C.R.C.P. 106(a)(4). *Sherman*, 763 P.2d at 295. Addressing the third element of the *Gramiger* three-part test, the determinative issue before the court in *Sherman* was whether in reviewing the plaintiffs' development plan, the city was performing a quasi-judicial or ministerial function. *Id.* at 295-96. The supreme court found that because the city was required to exercise discretion under the city's code in reviewing development plans, it was not simply performing a ministerial function and plaintiffs were entitled to relief pursuant to C.R.C.P. 106(a)(4). *Id.* at 296.

Here, the parties agree that the Town's issuance of permits is ministerial in nature.[15] However, they acknowledge that the Town's enactment of Ordinance 16 was a quasi-judicial act and C.R.C.P. 106(a)(4) generally provides the exclusive remedy for judicial review of that decision.

The Court finds that dismissal of Vail Corp.'s claim is appropriate because the three elements of the *Gramiger* test have not been satisfied. First, consistent with the reasoning in *Sherman*, the third element of the *Gramiger* test is not satisfied because the Town exercised a quasi-judicial function in approving the Ordinance as an emergency measure. Therefore, C.R.C.P. 106(a)(4) provides the exclusive remedy for judicial review of the decision rendering mandamus unavailable to Vail Corp. Second, though not presented by the Town in support of dismissal, the first and second elements of the *Gramiger* test, that Vail Corp. has a clear right to the relief sought and the Town has a clear duty to perform the act requested, cannot be established because of the outcome of the Condemnation Case. In the Condemnation Case, the Court granted the Town the right to take immediate possession and condemn the Booth Heights Property. Therefore, Vail Corp. has no right to receive permits to develop the Booth Heights Property, and the Town has no duty to issue them.

Vail Corp. does not have a plausible claim for mandamus relief under C.R.C.P. 106(a)(2). Accordingly, pursuant to C.R.C.P. 12(b)(5), the Court grants the Town's request and dismisses Vail Corp.'s Third Claim for Relief (Judicial Mandamus Relief Under C.R.C.P. 106(a)(2)) with prejudice.[16]

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[15] Mot., Sept. 30, 2022, at 5 ("Moreover, [Vail Corp.] must demonstrate the Ordinance was unlawful before this Court may compel the Town to issue permits – assuming such an act is ministerial in nature").

[16] Vail Corp. asserts that C.R.C.P. 18(a) and (b) provide additional grounds for permitting it to simultaneously pursue its claims pursuant to C.R.C.P. 106(a)(4) and (a)(2). C.R.C.P. 18(a) provides that a plaintiff may join "as many claims, legal or equitable, as he has against an opposing party." C.R.C.P. 18(b) provides in relevant part, " "Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the

IV. ORDER

IT IS SO ORDERED AS FOLLOWS:

The Court hereby **GRANTS** *Defendants' Motion for Judgment on the Pleadings* and **GRANTS** the *Town of Vail's Partial Motion to Dismiss*. Vail Corp.'s First Claim for Relief (Judicial Review Under C.R.C.P. 106(a)(4): Abuse of Discretion), Second Claim for Relief (Judicial Review Under C.R.C.P. 106(a)(4): Exceeded Jurisdiction); and Third Claim for Relief (Claim for Judicial Mandamus Relief Under C.R.C.P. 106(a)(2)) are hereby **DISMISSED WITH PREJUDICE**.

SO ORDERED this 31st day of July, 2023.

BY THE COURT:

Paul R. Dunkelman
District Court Judge

relative substantive rights of the parties." Having granted the Town's request for dismissal of Vail Corp.'s third claim for relief on other grounds, and not finding C.R.C.P. 18 determinative of the issue presented, the Court does not further address this argument.