

MEMO

To: Lisa Powell-DeJong, County Attorney
401 Main Street, Suite 305
Walsenburg, CO 81089

Sky Tallman (via email)
Huerfano County Land Use Director

Fr: Jess L. Gries for Hummingbird Ranch, LLC

Da: March 1, 2023

Question Presented: As a matter of law, is the assembly contemplated in Hummingbird Ranch, LLC's application for a night of camping “the same” assembly as Sonic Bloom Festival, LLC's event previously approved as Temporary Assembly Permit 22-45?

Discussion: The Huerfano Board of County Commissioners continued the hearing on Hummingbird Ranch's application for a single night of camping on June 14, 2023 and asked the County Attorney to offer an opinion on whether or not that night of camping is, as a matter of law, the “same” assembly as the one approved for the 2023 Sonic Bloom Music & Arts Festival. Applicant provides this brief Memo to memorialize its position, as expressed during the February 28, 2023 BOCC hearing, that the two assemblies are not the same.

Section 1.13 of the Huerfano County Zoning Regulations defines assembly as “a company of persons gathered together at any location at any single time for any purpose.” Hummingbird Ranch does not dispute that its night of camping is an assembly and that the Sonic Bloom Music and Arts Festival is also an assembly. The two are not, however, “the same” assembly.

As the question presented is whether, *as a matter of law*, the two assemblies are “the same” assembly, the legal approach to statutory interpretation under Colorado law should be utilized.

Per the Colorado Supreme Court, “[w]ords and phrases should be given effect according to their plain and ordinary meaning and, unless it would lead to an absurd result, a court must not strain to give statutory language anything other than its plain meaning. *Farmers Group, Inc. v. Williams*, 805 P.2d 419 (Colo. 1991).” see *Barnes v. Department of Revenue*, 23 P.3d 1235, 1236 (Colo. App. 2000).

The Merriam-Webster Dictionary defines “the same” as:

- 1) someone or something that is exactly like another person or thing being discussed or referred to
- 2) exactly like each other or *very* similar to each other (*emphasis added*)
- 3) someone or something that has not changed : something that is exactly like it was at an earlier time

see Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/the%20same>. Accessed 1 Mar. 2023.

The Merriam-Webster Dictionary defines the adverb “very” as:

- 1) to a high degree : exceedingly
- 2) in actual fact : truly

see Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/very>. Accessed 1 Mar. 2023.

The record reflects that there are significant differences between the two assemblies. The Applicant stated at the February 28, 2023 hearing that at the Sonic Bloom Music Festival:

- 1) Has musical performances as its defining characteristic. There are multiple stages with dozens and dozens of bands and DJs performing live throughout the day and evening.
- 2) There are galleries displaying and selling art by various artists.
- 3) There are numerous artists painting and otherwise creating art throughout the venue area.
- 4) There are workshops on a whole host of topics being presented.
- 5) There are aerialists and dance troops performing.
- 6) There are food vendors selling a wide variety of cuisine.
- 7) There are craft vendors selling all sorts of goods.
- 8) And there are a whole bunch of other “festival” things happening.

In contrast, Applicant stated that at the night of camping there would only be camping. The venue would not be open, only a portion of the campgrounds will be open, there will be no musical performances, no art galleries will be open, craft vendors will not be open, no dance troops perform, no workshops are presented and the camp-out is simply not a festival. Compared side by side and using the ordinary and plain meaning of the words in the BOCC's question presented, the assemblies are not identical or exceedingly similar.

Hummingbird Ranch does not dispute that there are some elements common to both assemblies. The night of camping uses a portion of the same parcel of land that will be used for the Sonic Bloom Festival, some of the staff that work at the night of camping will also work the Festival and some of the infrastructure, particularly a portion of the portable toilets and a few of the free water stations, will be used at each respective assembly.

A finding that, as a matter of law, having a few common elements makes one event the same as another event would lead to an absurd result. Consider events at the Colorado State Fairgrounds in Pueblo.

The Colorado State Fair occurs at the Fairgrounds as does the Pueblo County Fair. While they are both assemblies on the same parcel of land that draw people, and likely many of the same people, for a similar purpose, they are governed by different entities and are separate and distinct events. On that same property in just the immediate future, the Harlem Globetrotters® perform at the Fairgrounds on March 9, 2023 and then Pueblo's Original Home & Garden Show happens on March 11, 2023. Though they are in proximity to each other in time and on the same property, they are different events and it would be absurd to say that, as a matter of law, they are the same assembly as one another or the same as the Colorado State Fair.

As to having some common staff monitoring the night of camping as will monitor the Sonic Bloom Festival, consider a comparison to a general contractor who is under contract to work on multiple construction projects in the County. The general contractor may have framers that work on one project in the morning and then go to the other site, and use the same tools, to frame a different building in the afternoon. While there are common workers using common materials, this fact does not unite the two projects and make one the same as the other and separate building permits would be required. It is also noteworthy that the Sonic Bloom Festival has a much larger staff and utilizes a great deal more equipment, infrastructure and area than is used for Hummingbird Ranch's night of camping. This is only natural given the significant differences between the two assemblies.

Applicant has previously conceded that there is an obvious relationship between the two assemblies; but, those commonalities do not make the assemblies the same as a matter of law. The record created at the February 28, 2023 hearing makes it clear that the two assemblies are not identical or even very similar. The Sonic Bloom Music and Arts Festival is just that, a festival. Beyond being a much larger group gathering, the Sonic Bloom Festival's defining characteristics are different from a night of camping and those differences are well beyond what would be necessary to find that the events are not one in the same.

Applicant will offer camping to the general public through a separate online app unrelated to the Sonic Bloom Festival. Applicant also notes, as it did at the hearing, that while there is common ownership between Sonic Bloom Festival, LLC and Hummingbird Ranch, LLC, they are legally separate and distinct from one another and are different persons for the purposes of the question presented. See Colo. Rev. Stat. §7-90-102. Definitions (Colorado Revised Statutes - 2023 Edition).

Conclusion: The Sonic Bloom Music and Art Festival and the Hummingbird Ranch night of camping are significantly different in character and are not the same assembly as a matter of law under the rules of interpretation applicable to Colorado statutory language.