DISTRICT COURT, SAN JUAN COUNTY, COLORADO Court Address: 1557 Greene Street PO Box 900 Silverton, Colordo 81433 (970) 387-5671 **Plaintiff: Ryan Ruis and Allison Ruis** **Defendant: Town of Silverton**	DATE FILED June 24, 2024 1:16 PM **COURT USE ONLY** Case Number: **23CV30005** Division: 1 Courtroom:

Order Granting Temporary Restraining Order

This case comes before the Court upon a motion for a temporary restraining order seeking this Court order that the Town of Silverton be temporarily enjoined from demolishing the fire damaged building belonging to the plaintiffs. In order to grant the temporary restraining order, the plaintiff must demonstrate:

1. a reasonable probability of success on the merits, Combined Communications Corp. v. Denver, 186 Colo. 443, 528 P.2d 249 (1974); O'Connell v. Colorado State Bank, 633 P.2d 511 (Colo.App.1981);

2. a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief, American Investors Life Insurance Co. v. Green Shield Plan, Inc., 145 Colo. 188, 358 P.2d 473 (1960);

3. that there is no plain, speedy, and adequate remedy at law, American Investors Life Insurance Co. v. Green Shield Plan, Inc., supra;

4. that the granting of a preliminary injunction will not disserve the public interest, American Television and Communications Corp. v. Manning, supra;

5. that the balance of equities favors the injunction, Combined Communications Corp. v. Denver, supra; and

6. that the injunction will preserve the status quo pending a trial on the merits, Combined Communications Corp. v. Denver, supra; Graham v. Hoyl, 157

Colo. 338, 402 P.2d 604 (1965); Rivera v. Civil Service Commission, 34 Colo. App. 152, 529 P.2d 1347 (1974).

Rathke v. MacFarlane, 648 P.2d 648, 653–54 (Colo. 1982).

The building in question contained two living units that served as the homes of the plaintiffs and a restaurant that was owned by the plaintiffs and provided them with their livelihood. The Court finds that the loss of the homes and business of the plaintiffs constitutes a real immediate and irreparable injury, that there is no plain, speedy and adequate remedy at law and that the temporary restraining order will preserve the status quo pending trial. Thus, elements two, three and six have been satisfied.

The decision by the Town to condemn and destroy the building is clearly a governmental taking of the plaintiffs' property which is a violation of the Colorado Constitution, Art. II, Sec. 25 and the Fourteenth Amendment to the United State Constitution unless the plaintiffs received due process prior to the taking. "'The essence of procedural due process is fundamental fairness. This embodies adequate advance notice and an opportunity to be heard prior to state action resulting in deprivation of a significant property interest.'" *City & Cnty. of Denver v. Eggert*, 647 P.2d 216, 224 (Colo. 1982), citing *Mountain States Telephone and Telegraph Company v. Department of Labor and Employment, 184 Colo. 334, 338, 520 P.2d 586, 588 (1974).* The decision by the Town of Silverton to condemn the building and demolish it is a quasi-judicial decision[1] that requires the Town to afford "'the parties . . . a hearing to allow them an opportunity to meet and to present evidence." *Eggert*, p., 222, citing *Association of National Advertisers, Inc. v. Federal Trade Commission*, 627 F.2d 1151, 1162 (D.C.Cir.1979), cert. den.

[1] "'If the governmental decision is likely to affect the legal interests of specific individuals, and if the governmental decision is reached through the application of preexisting legal standards or policy considerations to present or past facts developed at a hearing, then "one can say with reasonable certainty that the governmental body is acting in a quasi-judicial capacity in making its determination.'" *Eggert*, p. 222, citing *Cherry Hills Resort Development Co. v. City of Cherry Hills Village,* 757 P.2d 622, 627 (Colo.1988).

447 U.S. 921, 100 S.Ct. 3011, 65 L.Ed.2d 1113 (1980). In this case, the Town, after running out of patience with the plaintiffs to remediate what it considered to be a public nuisance simply informed the plaintiffs that they were out of time to abate the nuisance and that the Town was going to demolish the building. The Town did not hold a hearing prior to making the decision nor provide the plaintiffs with any opportunity to request such a hearing. Section 7-2-210(a) of the Silverton Town Code states that after a nuisance is declared that "Any interested property owner adverse to . . . [the] determination . . . **may** be entitled to an expedited administrative appeal." (Emphasis added). The Court cannot find any provision in the Silverton Municipal Code nor has it been informed of any procedure to request a hearing or to appeal the declaration of a public nuisance. When the plaintiffs informed the Town that they wished to appeal the decision that their property was a public nuisance and would be demolished by the Town, they were simply told the time within which to appeal had expired.

The Town's actions toward the plaintiffs were clearly a violation of due process. Thus, the granting of the temporary restraining order will serve the public interest and the balance of the equities clearly favor the plaintiffs satisfying elements four and five of *Rathke*. Finally, the Town's position at the temporary restraining order hearing was that the Town had provided the plaintiff's sufficient notice and due process by notifying them that their building was a nuisance and needed to be remediated and that the failure to remediate the nuisance within a year's period of time was all the due process the Town needed to provide the plaintiffs. The Town is clearly wrong in their due process analysis. The Court will not allow the demolition of the plaintiffs' building unless an appropriate hearing is first held where the plaintiffs are properly noticed and given the opportunity to present evidence and argument prior to any decision to demolish the

building is made. Thus, in the current posture of this case, the plaintiffs have satisfied the first prong of *Rathke*, that they have a reasonable probability of prevailing upon the merits.

For the foregoing reasons, the Court orders that the temporary restraining order is granted, and that the Town is temporarily restrained from demolishing the plaintiffs' building located on Lots 22, 23, and 24 of Block 30, in Silverton, Colorado with a street address of 220 E. 12th Street. This order will expire if the Town persists in its determination that the plaintiffs' building is a public nuisance requiring demolition after a proper hearing discussed above.[2]

Done and signed this 24th day of June 2024.

Jeffrey R. Wilson
Chief Judge
Sixth Judicial District of Colorado

[2] Should the Town provide an appropriate hearing and decide to demolish the plaintiffs' building this order will continue until after the time period to appeal the Town's decision to this Court has expired or if the plaintiffs appeal the Town's decision, after this C ourt has decided the appeal.