SAN JUAN DISTRICT COURT STATE OF COLORADO Court Address: 1557 Greene Street PO BOX 900 Silverton, Colorado 81433 Telephone: (970) 387-5790 Fax: (970) 387-0295	DATE FILED June 20, 2024 12:02 PM
Petitioner: RYAN RUIS and ALLISON RUIJS **v.** **Respondent(s): CITY OF SILVERTON, COLORADO**	**▲ COURT USE ONLY▲**
SAGAL LAW, L.L.C. Roger F. Sagal, Atty. Reg. #: 30350 P.O. Box 1168, Ridgway, CO 81432-1168 Phone Number: (970) 626-5891 Fax Number: (970) 512-7746 Email: roger@sagalgroup.com	Case Number: 2023CV030005 Division Courtroom
PETITIONER'S WRITTEN CLOSING ARGUMENT	

Petitioners Ryan Ruis and Allison Ruijs, through their undersigned counsel, respectfully submit the following written closing argument following the hearing held on June 14, 2024.

The issue before the Court is whether Petitioners have shown they are entitled to an injunction prohibiting the Town of Silverton, Colorado from demolishing the structure located at 220 East 12th Street in Silverton. Based on the record before the Court, the answer is yes. Pursuant to well-established factors set forth in *Rathke v. MacFarlane*, 648 P.2d 648, 653-54 (Colo. 1982), Petitioners are entitled to injunctive relief.

I. Factual Background

Petitioners submit that the following facts are either undisputed or were established at the June 14th hearing:

1. Petitioners Ryan Ruis and Allison Ruijs are siblings.

2. Petitioners purchased the subject property located at 220 E. 12th Street in Silverton, Colorado on or about April 14, 2021.

3. The subject property consists of a residential portion and a commercial portion, which includes a commercial kitchen and restaurant.

4. Petitioners moved their families into the subject property and resided there until about October 5, 2022. Ms. Ruijs has two daughters. Mr. Ruis has a wife and a daughter with special needs.

5. Petitioners operated a restaurant on the subject property. The restaurant constituted Petitioners' source of income.

6. A fire started on the property on October 5, 2022. The fire damaged the west side of the property.

7. At the time of the fire, Petitioners were constructing additional residential apartments on the west side of the property.

8. As a result of the fire, Petitioners were displaced from their homes. Petitioners' homeowners' insurance was cancelled shortly before the fire due to what Mr. Ruis testified to be miscommunication with the carrier.

9. Petitioners began to remediate the fire damage. *See* Exhibits 24-26 (depicting the "before" (fire damage) and the "after" (interior and exterior of the property following clean-up)).

10. Petitioners hired and consulted with an engineer to recommend structure repairs. In addition, Petitioners retained an electrician to run a new electrical line to the subject property.

11. Petitioners' contact with the Town of Silverton was primarily through its Building Official Bevan Harris.

12. Mr. Harris and the Petitioners communicated via email. They also met in person.

13. According to Mr. Ruis, initially, his discussions with Mr. Harris involved what remediation must be done to the subject property for his family to move safely back into the property to live. However, as time went on, Mr. Harris increased the scope of his demands.

14. Due to the disturbance to their lives resulting from the fire, Petitioners were not able to dedicate all of their time to repair the property, but they did make progress. Mr. Ruis ordered replacement trusses, although he cancelled the order when he learned Mr. Harris was expanding the scope of the remediation to include foundation repair and other items. Ms. Ruijs testified that Petitioners complied with Mr. Harris' demands, such as those he sent via email on October 13, 2022. *See* EXH 1. Petitioners put up

construction fencing around the property and also put up "No Trespass" signs. They boarded up the property to secure it from the elements.

15. Mr. Harris appears to acknowledge and thank Petitioners for their efforts. *See* EXH 6 ("Thank you for your continued cooperation in the abatement and demolition of your property. I appreciate your efforts to have a structural engineer review the site and guide you through the safe and efficient demolition process."); EXH 9 ("It looks like all the snow has been removed from the roof, thank you.")

16. There is no evidence that Petitioners have refused to remediate the property or refused to meet Mr. Harris' demands. Nevertheless Mr. Harris was frustrated with the pace of remediation and his perception that Petitioners would not timely respond to his communications about their progress.

17. There is a factual dispute over whether and, if so, when, Mr. Harris notified Petitioners that the property would be demolished if they did not timely and fully remediate the property to his satisfaction. *See* EXH 5. Mr. Harris testified that he sent the email contained in Exhibit 5 to Petitioners, which cuts and pastes excerpts of the Silverton Town Code relating to dangerous buildings and structures. Petitioners deny receiving Exhibit 5.

18. There is no dispute that on October 4, 2023, the Town served Petitioners with a "Notice to Vacate" the property. EXH 18.

19. On October 26, 2023, the Town sent Petitioners with a letter stating that they "are hereby notified to vacate all your desired belongings from 220 E. 12th Street including the 'Fun Bus' motorcoach beside the structure by November 20, 2023. You have exceeded the time allowed to abate the dangerous structure and bring it into compliance with the town code. We are now required to demolish the structure at your expense." EXH 21. Mr. Ruis testified that this was the first time the Town had notified them of its intent to demolish the property.

20. Mr. Ruis testified that in response to that communication, he researched the Silverton Town Code online and called the Town Administrator to inquire about lodging an appeal. The Town Administrator told him that it was too late for an appeal. This testimony is unrebutted.[1]

21. Notwithstanding the written and oral communications between Mr. Harris and Petitioners about the scope and pace of remediation, the Town has never noticed or held a public hearing regarding the subject property, including without limitation a hearing to determine the property to constitute a nuisance, to order Petitioners to remediate the property, or its decision to demolish the property.

[1] The Town Administrator was present at counsel's table for the June 14 hearing but did not testify.

22. Silverton intends to demolish the entire property. Petitioners dispute that the entire property must be demolished. Petitioners are in the process of consulting with another engineer to recommend structural repairs to the property. That engineer has visited the property and met with Mr. Harris but the engineer has not yet produced structural plans.

II. Procedural Background

After the Town was on the verge of entering the property to demolish it, Petitioners petitioned the Court for a Temporary Restraining Order on November 30, 2023 to stop the demolition.

The Court granted a TRO on December 7, 2023.

Due to a series of postponements the hearing on the TRO was held on June 14, 2024.

III. Applicable Law

Pursuant to C.R.C.P. 65, "when the motion [for TRO] comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction".

A preliminary injunction preserves the status quo or protects a party's rights pending the final determination of a cause. *Anderson v. Applewood Water Ass'n, Inc.,* 409 P.3d 611, 616 (Colo. App. 2016) (citing *City of Golden v. Simpson*, 83 P.3d 87, 96 (Colo. 2004)). Its purpose is to prevent irreparable harm prior to a decision on the merits of a case. *Id.*

A trial court's preliminary injunction ruling is reviewed for abuse of discretion and only overturned if the trial court's conclusion is manifestly unreasonable, arbitrary, or unfair. *Cody Park Prop. Owners' Ass'n v. Harder*, 251 P.3d 1, 6 (Colo. App. 2009) (citing *Evans v. Romer*, 854 P.2d 1270, 1274 (Colo. 1993)).

In order to grant an injunction the court must find that the moving party has demonstrated:

(1) a reasonable probability of success on the merits;

(2) a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief;

(3) that there is no plain, speedy, and adequate remedy at law*;*

(4) that the granting of a preliminary injunction will not disserve the public interest*;*

(5) that the balance of equities favors the injunction*;* and

(6) that the injunction will preserve the status quo pending a trial on the merits.

Rathke v. MacFarlane, 648 P.2d 648, 653-54 (Colo. 1982) (citations omitted).

IV. Argument

A. Petitioners Have Demonstrated a Reasonable Probability of Success on the Merits

"Municipal governing bodies, such as a city council, not only perform legislative functions but also engage in activities of a quasi-judicial nature." *Cherry Hills Resort Dev. Co. v. Cherry Hills Vill.*, 757 P.2d 622, 625 (Colo. 1988).

The actions taken by a city in determining whether to allow the alteration, removal, or demolition of buildings are quasi-judicial in nature. *Native Am. Rights Fund, Inc. v. City of Boulder*, 97 P.3d 283, 288 (Colo. App. 2004) (involving a government decision to alter, remove, or demolish a structure in a designated historic district).

"Quasi-judicial authority is conditioned upon the observance of traditional procedural safeguards against arbitrary governmental action. These safeguards basically consist of providing adequate notice to those individuals whose protected interests are likely to be adversely affected by the governmental action, and giving to such persons a fair opportunity to be heard prior to the governmental decision." *Cherry Hills Resort Dev. Co. v. Cherry Hills Vill.*, 757 P.2d 622, 625 (Colo. 1988). "Legislative facts involve empirical observations and 'need not be developed through evidentiary hearings,' but where adjudicative facts are involved, 'the parties must be afforded a hearing to allow them an opportunity to meet and to present evidence.' *City & Cty. of Denver v. Eggert*, 647 P.2d 216, 222 (Colo. 1982) (citing *Association of National Advertisers, Inc. v. Federal Trade Commission,* 627 F.2d 1151, 1162 (D.C. Cir. 1979), *cert. den.* 447 U.S. 921, (1980)). *See also Landmark Land Co. v. City & County of Denver*, 728 P.2d 1281 (Colo. 1986) (court must overturn quasi-judicial action where quasi-judicial procedures are not performed); *Tepley v. Pub. Employees Ret. Ass'n*, 955 P.2d 573, 578 (Colo. App. 1997) (when agency acts in quasi-judicial capacity, procedural due process requires that agency give notice and afford opportunity for a hearing to affected individuals).

Here, Silverton wishes to demolish Petitioners' property, which unquestionably adversely affects their protected property interests. If it had not been enjoined by this Court, Silverton would have taken that action without first providing Petitioners with *any* hearing whatsoever.

In *County of Adams v. Hibbard*, 918 P.2d 212 (Colo. 1996), Adams County demolished private property that had been damaged by a fire and contained refuse under an ordinance that permitted the county to eliminate "blighted" areas. *Id* at 213. The issue was whether individual county officials could be liable under federal civil rights laws for destroying private property. *Id*. However, *Adams* is instructive here not for the Court's holding that individual county officials could be held liable, but rather for the procedural history of the case.

The ordinance at issue provided that if it was violated, notice is given to the property owner that the property must be brought into compliance. *Id*. at 214. If the property is not brought into compliance, then a hearing is held before an administrative law judge (ALJ) to make findings whether the causes of blight exist. *Id*. In *County of Adams*, the county provided notice to the property owner and a hearing was held where an ALJ determined that blight factors existed on the property and directed that the fire damaged building be disposed of. *Id*. If the property owner did not follow the order, then the County was authorized to enter the premises, remove the blight, and charge the costs as a lien against the property. *Id*.

Contrast the process afforded the property owner in *County of Adams* with the lack of process afforded Petitioners here. Unlike in *County of Adams*, it is undisputed that Silverton afforded Petitioners no hearing and moreover, it made no findings that the property constituted a nuisance in violation of an ordinance. It made no findings that a demolition of the entire structure is necessary (which Petitioners contest).

Silverton argues that its emails to Petitioners (EXH 5, 29) constitute notice of the potential for demolition sufficient to satisfy due process. Silverton cites no case law to support its position that an email from a building inspector constitutes due process prior to a taking of private property by the government. The emails were part of a continuum of communications between Mr. Harris and the Petitioners. Even after Mr. Harris emailed Petitioners on November 14, 2022[2], there were additional emails that suggest his appreciation for Petitioners' cooperation. *See, e.g.,* EXH 6 (December 2, 2022 email from Mr. Harris stating "[t]hank you for your continued cooperation in the abatement and demolition of your property. I appreciate your efforts to have a structural engineer review the site and guide you through the safe and efficient demolition process."); EXH 9 (May 4, 2023 email from Mr. Harris stating "[i]t looks like all the snow has been removed from the roof, thank you.") After November of 2022, it was reasonable for Petitioners to assume that they and Mr. Harris were cooperating and that they were not in jeopardy of having their property taken.

Silverton cites to Section 7-2-210 of its Town Code which provides that an affected landowner "may be entitled to an expedited administrative appeal." It ignores the unrebutted testimony from Mr. Ruis that when he attempted to appeal, he was told he was too late. Section 7-2-210 contains no language regarding the timing or process for such an appeal. In addition, the use of "may" in Section 7-2-210 is permissive in nature, suggesting that a landowner may <u>not</u> have a right to appeal. It is silent on how that determination is made. It is silent on what an "expedited administrative appeal" is, or how a landowner goes about to secure one. Indeed, the language Silverton cites in Section 7-2-210 is weak compared to other more robust provisions of the Town Code containing appellate procedures. For example, *compare* Section 7-2-210 with Section 6-1-220 relating to appeals of business license revocations:

[2] There is a dispute whether Petitioners received Exhibit 5. Regardless of whether or not Exhibit 5 was received, the email is insufficient to constitute due notice of an intent of a government to enter onto, and destroy, private property.

Sec. 6-1-220. Appeals.

An applicant may appeal any license denial by the Town Clerk or license revocation by the Town Administrator to the Board of Trustees. The appeal shall be in writing, stating the grounds for the appeal, and shall be filed, together with a review fee as set forth in the Town's Fee Schedule, with the Town Clerk within five days of the decision of the Town Clerk or Town Administrator. Upon receipt of an appeal, the Board of Trustees shall provide the appellant opportunity for a public hearing. Following a reasonable time for the appellant to appear before the Board of Trustees and show cause why his or her license should not be denied or revoked, the Board of Trustees shall decide to uphold, modify or overturn the decision of the Town Clerk or Town Administrator. If the decision of the Town Clerk or Town Administrator is overturned by the Board of Trustees, the review fee shall be refunded in its entirety to the appellant.

(Prior code, § 10-4-12; Ord. No. 2004-02, § 2, 3-8-2004; Ord. No. 2016-07, § 1, 6-13-2016).

Similarly, compare it with Section 6-2-270 relating to denial of liquor license applications:

Sec. 6-2-270. Appeal procedure.

The applicant shall have the right to appeal the denial of a permit, the imposition of a permit condition, or a fee. A notice of appeal shall be filed with the Town Administrator's office with a copy to the Coordinator, setting forth the grounds for the appeal within three business days after receipt of a notice of denial or permit condition. Such receipt of notice shall be presumed three business days after the date of submission. The Town Administrator or their designee shall administratively review the decision to deny the permit or, impose conditions no later than five business days after receipt of the appeal notice. No hearing on the matter shall be required. The applicant and the Coordinator may present written evidence to assist the Town Administrator or designee's review. The Town Administrator or their designee shall render his or her written decision no later than one business day after reviewing the decision. If the Town Administrator cannot complete such review and decision at least one full business day prior to the time and date of an event, he or she promptly shall so notify the appealing application in writing, and said applicant shall be entitled, but not required, to seek Parks, Recreation and Building Committee Review of the permit denial or permit conditions with no further administrative review. The Parks, Recreation and Building Committee Review decision shall be final.

(Ord. No. 2022-01, § 8, 7-25-2022)

Compared to other provisions of the Town Code, the appeal language contained in Section 7-2-210 is inadequate. At any rate, "[i]f a statute or ordinance authorizes the exercise of quasi-judicial authority but does not provide for notice and hearing, these basic requirements may properly be implied as a matter of fundamental fairness to those persons whose protected interests are likely to be affected by the governmental decision." *Cherry Hills Resort Dev. Co. v. Cherry Hills Vill.*, 757 P.2d 622, 625-26 (Colo. 1988) (citing *Juzek v. Hackensack Water Co.,* 48 N.J. 302, 225 A.2d 335, 342 (N.J. 1966)). It "is incumbent upon the governmental body to provide adequate notice and an opportunity to be heard to those persons whose protected interests are likely to be affected by the governmental decision." *Cherry Hills Resort Dev. Co.*, 757 P.2d at 627-28 (Colo. 1988).

The failure by Silverton to hold a hearing further prejudices Petitioners' rights by eliminating their right to seek full judicial review of its decision-making. In addition to affording them no hearing at the municipal level, Silverton also effectively deprived Petitioners of an

opportunity to appeal to the courts through the mechanism of C.R.C.P. 104. There is essentially no decision of the Town, and no record on which that decision is based, for Petitioners to meaningfully appeal. The only remedy available to Petitioners in December of 2023 was the remedy they sought and obtained: a TRO.

Petitioners do not dispute the general proposition that a municipal government has the authority to act to abate nuisances to protect the general safety, health and welfare. But that is not the issue here. When asked at the June 14 hearing why Silverton never held a single public hearing about the subject property, Mr. Harris testified to the effect that it was a "private" matter between the Town and Petitioners. This answer highlights the importance of due process protections and why they must be enforced.

B. There is no plain, speedy, and adequate remedy at law.

Silverton seeks to demolish the entire structure. That would deprive Petitioners of not only their business, but also their homes. It would deprive them of the right to rehabilitate the property as they wish, to salvage portions of the structure that are salvageable, and it would constitute an unconstitutional taking. "[I]t is clear that a de facto taking requires a physical entry by the condemnor, a physical ouster of the owner, a legal interference with the physical use, possession or enjoyment of the property or a legal interference with the owner's power of disposition of the property." *Lipson v. Colo. State Dep't of Highways*, 41 Colo. App. 568, 569, 588 P.2d 390, 391 (1978)

While an award of damages eventually may be available to Petitioners if Silverton demolishes the property, that remedy is neither "speedy" nor "adequate" to protect their homes and livelihoods now.

C. There is a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief.

It is clear that if the Court were to dissolve the TRO and not enter an injunction, Silverton would immediately act to demolish the property. The only remedy available to Petitioners at this stage and on this record is injunctive relief.

D. That the granting of a preliminary injunction will not disserve the public interest.

The public interest is served by preserving constitutional due process and protecting the rights of private property owners. While the public interest is served by abating a real nuisance to others, the Town overstates its case. The structure is partially burned and needs repair, but it has survived two winters in its current condition. It is boarded up and locked. Electricity is shut off. It does not attract pests or trespassers. There is no evidence that it poses an immediate danger to the community.

E. *The balance of equities favors the injunction.*

To the extent the Court balances Silverton's right to protect public safety against Petitioners' property rights, the balancing weighs in favor of Petitioners. Silverton has not shown that public safety is at any immediate risk. Petitioners are making efforts to repair the property, albeit not on the timeline unilaterally demanded by Mr. Harris.

F. An injunction will preserve the status quo.

An injunction will do more than preserve the status quo. It will allow Petitioners the opportunity to continue to consult with engineers, hire contractors, and ultimately submit a building permit application to the Town to authorize the repair of the property pursuant to standard practice.

For the foregoing reasons, Petitioners have met their burden to show entitlement to continued relief. The Court should enter a preliminary injunction against the Town of Silverton from entering onto and demolishing the subject property.

Further, because Silverton has prohibited Petitioners from entering onto the subject property, Petitioners further request that the Court specifically authorize Petitioners to enter onto the property to maintain and repair it.

Respectfully Submitted this 20th day of June, 2024.

/s/ Roger F. Sagal
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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of June, 2024, a true and correct copy of the foregoing WRITTEN CLOSING ARGUMENT was served via CCEF to the following:

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/s/Roger F. Sagal
Roger F. Sagal