

San Juan District Court, State of Colorado Address: 1557 Greene Street, PO Box 900 Silverton, CO 81433	<p style="text-align: right;">DATE FILED June 19, 2024 4:51 PM</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Plaintiff: RYAN RUIS and ALLISON RUIJS v. Defendant: TOWN OF SILVERTON, COLORADO	
Clayton M. Buchner, #50996 Clayton M. Buchner, Attorney at Law, LLC PO Box 3855, Pagosa Springs, CO 81147 (970) 507-0227 cmblawllc@gmail.com	<p>Case No.: 2023CV030005</p> <p>Div: Courtroom:</p>
RESPONSE TO THE COURT DEFENDANT'S WRITTEN CLOSING ARGUMENT	

COMES NOW, Clayton M. Buchner, on behalf of Town of Silverton, and files this Written Closing Argument in the above-captioned case.

Whereas, On April 1, 2024, the Plaintiffs filed a status report to the Court indicating significant delay in remediation of the Plaintiffs' Nuisance/Dangerous Property, which is the subject of the Plaintiffs' injunctive action.

Whereas, the Plaintiffs originally sought the unopposed and stipulated motions to continue with the indication that remediation would be undertaken by May/June of 2024.

Whereas, the Plaintiffs have made no progress in remediation of the Property and the Property continues to be a Nuisance/Dangerous Property subject to demolition in accordance with Town of Silverton's Ordinances and Colorado State Law.

Whereas, the hearing on relief for the temporary injunction was held on June 14, 2024, and the Defendant submits the following as written closing argument as ordered by the Court.

ARGUMENT

1. The Town of Silverton has the authority to declare and abate a nuisance under Colorado Statute and local enabling ordinances.

- a. C.R.S. § 31-15-101.1.a. States – *Municipalities: 1. Shall be bodies politic and corporate, under such name as they are organized; 2. All such municipalities shall have the powers, authority, and privileges granted by this title and by any other law of this state together with such implied and incidental powers, authority, and privileges as may be reasonably necessary, proper, convenient, or useful to the exercise thereof.*
 - b. C.R.S. § 31-15-103 States – *Municipalities shall have power to make and publish ordinances not inconsistent with the laws of this state, from time to time, for carrying into effect or discharging the powers and duties conferred by this title which are necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of such municipality and the inhabitants thereof not inconsistent with the laws of this state.*
 - c. C.R.S. § 31-15-401.1.c. States Municipalities have the Power to – *declare what is a nuisance and abate the same and to impose fines upon parties who may create or continue nuisances or suffer nuisances to exist...*
2. Town of Silverton Municipal Code; Chapter 7 – Health, Sanitation, Animals; ARTICLE 2 – Nuisances; Sec. 7-2-210 – Dangerous Buildings and Structures, reads as follows:
- Declaration of nuisance. Upon a determination by the Building Inspector or independently contracted structural engineer, if the Town Staff determines that such expertise is warranted under the circumstances, any building, fence or other structure in the Town which may declared by the Town to be in dangerous condition, or any incomplete building or structure left unfenced or unguarded and in such condition as to be a source of danger, is hereby declared to be a nuisance. Any interested property owner adverse to a determination that a structure is or is not potentially injurious may be entitled to an expedited administrative appeal.*
- Abatement. Whenever any building, fence or structure defined in Subsection (a) above as a nuisance is found within the Town, it shall be the duty of the Code Enforcement Officer to serve written notice upon the owner, agent or occupant of the premises upon which the same exists or upon any person creating, continuing or suffering the existence of such nuisance, to abate or remove the same within a time to be named in such notice (which time shall be not less than five days nor more than 15 days from the time of service of such*

notice, as may be deemed by the Board of Trustees to be reasonably sufficient for the abatement and removal of such nuisance); and if any such person so notified fails or refuses to abate or remove such nuisance by and within the time stated in such notice, the Sheriff, Code Enforcement Officer or Building Inspector shall have the power and authority, and it shall be the duty of such official, to immediately abate or remove the same. No person shall molest, hinder, resist or in any way interfere with any such official abating or removing or attempting to abate or remove such nuisance. Service under this Section shall be deemed sufficient upon the deposit of such notice into the United States mail, postage prepaid, mailed by certified mail, return receipt requested, to the last known address of the owner, the owner's agent and the occupant of the premises as shown on the tax rolls in the office of the County Treasurer, and any address for such person provided to the Town Clerk for water and sewer billings. A copy of such notice shall also be posted by the Sheriff in a conspicuous place on the premises to be abated. All costs and expenses incurred by any such official, or by any other official or person directed or employed by the Board of Trustees, in, about or on account of the abatement or removal of any such nuisance, after notice given as above provided, may be paid in the first instance by the Town, but shall in every such case be finally chargeable against and recoverable from such owner, agent, occupant or person creating, continuing or suffering the continuance of such nuisance, or from any and all of such persons who have been so notified. Such debt or demand may be sued for and recovered in the name of the Town in any court of competent jurisdiction. Such costs and expenses may also, by resolution of the Board of Trustees, be declared a lien against and upon the premises whereon such nuisance exists, and certified by the Town Clerk under the Town Seal to the County Treasurer as a special assessment, to be collected with general taxes and dealt with according to the law.

3. It is inarguable that the Town has the right to declare the property a nuisance and abate the same. The Court heard testimony from Mr. Bevans, Building Instructor, explaining the inspections and analysis underwent before the property was declared a dangerous building and the reasons therefore. Those reasons being fire damage to roof trusses, damage to a large portion of the property's foundation and probable damage to and/or non-conforming foundation issues throughout the entire property, damage to electrical

systems, damage to the plumbing systems, and smoke damage extending throughout much of the property including the commercial kitchen. Mr. Bevans also testified as to the future requirements of the building regarding the fire suppression system necessary throughout the entire structure, as residential aspects of the building are adjacent to and above the commercial kitchen, replacement of the non-conforming stairwell, and raising and replacement of the foundation under much if not all of the property.

4. The Plaintiff's argument against the Town's ability to demolish the property in question is one of Due Process. Specifically, that there was not a public hearing on the matter held by the Town. Colorado Constitution, Article II, Bill of Rights, Section 25. Due process of law, states, *No person shall be deprived of life, liberty or property, without due process of law.* Further, the Colorado Judiciary defines Due Process as, *A fundamental, constitutional guarantee that all legal proceedings will be fair and that one will be given notice of the proceedings and an opportunity to be heard before the government acts to take away one's life, liberty, or property.* Important here is the Plaintiffs' many and clearly noticed opportunities to contest the declaration of the Property, file for an appeal (i.e. demand a public hearing), and their total disregard of such notices and warnings. Exhibit 5 and 29 are the initial notifications given the Plaintiffs declaring the dangerous and outlining the Plaintiffs' right to an appeal. Sec 7-2-210 outlines that *Any interested property owner adverse to a determination that a structure is or is not potentially injurious may be entitled to an expedited administrative appeal.* Coincidentally, the Plaintiffs testified that among all the other emails they received, they did not however receive the email dated November 14, 2022 (Exhibits 5, 29) notifying them of the declaration of the dangerous building and outlining their right to an appeal. The Town asserts this is a disingenuous claim on part of the Plaintiffs. As the Plaintiffs testified, they received multiple emails before the notification, including on October 13th, 20th, and 24th (Exhibits 1,2, and 3) and multiple emails after the notification, including on December 2, 2022, and April 12, 2023, (Exhibits 6,7) all received at the Plaintiffs' established email silvertonsquare@gmail.com, where the November 22, 2022, notification was sent. Due Process does not require the Town to hold a public hearing as the Plaintiffs assert, only that they be given notice and the opportunity to be heard. This notice and opportunity was clearly established as evidenced by the

exhibits in this case, the Plaintiffs received Due Process and should not now be successful in asserting what is essentially a “failure to serve notice” argument. There is no requirement in statute or Town Code that Notice of Nuisance requires perfected personal or other service, and the Plaintiffs email responses and actions makes it clear they were aware of the Town’s email and its intentions on seeking demolition of the property.

5. The Plaintiffs also argue that this Court should look into the future and consider the probability of success of a 42 U.S. Code § 1983 action or other Inverse Condemnation claim against the Town. While those are future possible civil actions the Plaintiffs may seek, they have no bearing on the issue at hand. The Town has the statutory right to declare and abate a nuisance. The Building Inspector declared the nuisance as allowed by Town Code Sec. 7-2-210, worked with the Plaintiffs for nearly 18 months to assist in remediation of the dangerous building, the Plaintiffs failed to remediate, and now the Town is exercising their authority to abate the nuisance of the dangerous building.
6. The Plaintiffs testimony indicated they have not understood the change in status of their property due to their long inaction regarding remediation of the same. Town Code Sec. 16-8-30. - *Mandatory demolition, states, In the event a structure, building, unit or improvement, either permanent or mobile, is substantially damaged, destroyed or deteriorated by any means, the owner of the property upon which said structure or facility is located shall obtain a building permit for either the repair or the demolition of said facility no later than 15 days after said damage occurs. If the permit is for demolition, said demolition shall be completed and the land cleared and leveled to the satisfaction of the Building Official no later than 90 days after said damage occurs. Sec. 16-8-40. - Nonconforming uses, states, Any use of property or premises existing on May 14, 1984, which does not conform to the regulations prescribed herein, shall be deemed a nonconforming use. Such use may be continued indefinitely, as long as there is no interruption of active use. If there is a discontinuation of the nonconforming use, the owner of the property or premises shall have one year from the date of interruption of the nonconforming use to reinstitute the nonconforming use. One factor in determining the reinstitution of a nonconforming business use shall be the issuance of a business license within a one-year time limit. Failure to reinstitute the nonconforming use within the one-*

year time limit shall require that the nonconforming property or premises be brought into full compliance with all provisions of this Chapter and the district within which the property or premises are located. Sec. 16-8-50. - Nonconforming buildings or structures, states,

(a) Any building or structure existing on May 14, 1984, which does not conform to the regulations prescribed herein, shall be deemed a nonconforming building or structure. Such building or structure may remain indefinitely until such time that it is moved or substantially damaged or destroyed. Any nonconforming building or structure moved to a new location shall be brought into compliance with the standards of the district in which it is relocated. Reconstruction on the vacated lot shall meet all requirements of the district in which it is located. **The owner of such damaged or destroyed structure shall have one year from the date of damage or destruction to reconstruct the building.** Reconstruction of the nonconforming structure may take place and the nonconforming status retained if all the following conditions are met: (1) No less than the total square footage of the original nonconforming structure or the minimum requirements of said district shall be included in the new building. (2) Setback distances of the new building are no less than those of the original structure. (3) Substantial completion of the new structure takes place within one year of the removal, damage or destruction of the original building. (4) Compliance with all applicable building and fire codes adopted by the Town. (b) **Failure to meet the above conditions for reconstruction shall require that the nonconforming building or structure be brought into full compliance with all the provisions of this Chapter and the district within which the building or structure is located, including this Section.** Any addition built onto a nonconforming building or structure must comply with all the provisions of this Code and the district in which it is located. The use of a building or structure is separate and distinct from the actual building or structure itself and shall comply with all the provisions of this Chapter and the district in which it is located or, if applicable, with Section 16-8-40 above. The requirement to bring the building up to Code, as the evidence shows the Building Inspector has relayed to the Plaintiffs on multiple occasions, renders the property substantially damaged, if not completely destroyed, as repairs are not technically and/or economically feasible, as determined by the Town.

7. The facts remain that the Plaintiffs were noticed of the dangerous building nuisance, given far more time to remedy than that required statutorily or by the Town Code, and failed to appeal the decision or act in a timely manner to remediate the nuisance. The Plaintiffs are aware of their obligation to remediate the nuisance, and the Town's ability to abate the nuisance due to Plaintiffs' failure to meet that obligation. The property exists as a dangerous structure with no remediation plan in place nor would such plan be economically feasible given the extensive fire damage done to the property and the reality that the property will have to be brought up to present Town Code.

WHEREFORE, the Defendant, Town of Silverton, respectfully requests the Court deny the continued application of the Temporary Restraining Order and Injunction against the Defendant's demolition action.

DATED this 20th day of June, 2024.

Respectfully submitted,

/s/ Clayton M. Buchner

Attorney License #: 50996

Clayton M. Buchner, Attorney at Law, LLC

Town of Silverton

CERTIFICATE OF SERVICE

I certify that on June 20, 2024, I sent an exact copy of this document to all parties of record via ICCES.

/s/ Clayton M. Buchner