

RESOLUTION 2023 - _____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ARCHULETA COUNTY, COLORADO, OVERRULING THE TOWN'S PLANNING COMMISSION'S DISSAPPROVAL OF THE COUNTY'S VARIANCE APPLICATION TO WAIVE THE REQUIREMENT TO INSTALL SCREENING ON THE ROOF OF THE ARCHULETA COUNTY JUSTICE CENTER

WHEREAS, Archuleta County (the "County") is a duly organized political subdivision of the State of Colorado under the Constitution and laws of the State of Colorado pursuant to C.R.S. § 30-5-112; and,

WHEREAS, the Board of County Commissioners of Archuleta County, Colorado (the "Board") is empowered under C.R.S. § 30-11-107(e) to provide for the management of the business and concerns of the County; and,

WHEREAS, the Town of Pagosa Springs (the "Town"), is a Colorado home-rule municipality, organized under the provisions of the State Constitution of Colorado; and,

WHEREAS, the County owns land within the municipal limits of the Town; and,

WHEREAS, the County, at its own expense, must provide a suitable courthouse pursuant to C.R.S. § 30-11-104(1)(a); and,

WHEREAS, the County has constructed a new courthouse, using County funds, on land that it owns within the municipal limits of the Town; and,

WHEREAS, the authority to finance and construct the new courthouse does not fall within the province of the Town, as set forth in C.R.S. § 30-11-104(1)(a), and the Town, in fact, did not provide any funds for the construction of the new courthouse even though it benefits the Town's citizens; and,

WHEREAS, pursuant to C.R.S. § 31-23-209 and applicable Colorado case law, the County is only subject to "location and extent" review by the Town on the projects the County undertakes within the Town's municipal limits; and,

WHEREAS, the Colorado Court of Appeals in the case *Hygiene Fire Prot. Dist. v. Bd. of Cty. Comm'rs of Cty. of Boulder*, 205 P.3d 487, 490–91 (Colo. App. 2008) ruled that "Courts have long held that public entities 'have the power to overrule or disregard the restrictions of . . . municipal zoning regulations'"; and,

WHEREAS, pursuant to C.R.S. § 31-23-209, if the Town's planning commission disapproves any County application for a project that the County has the sole authority to finance and construct and does not fall within the province of the Town, the Board may overrule any such disapproval of the Town's planning commission by a vote of not less than two-thirds of its membership; and,

WHEREAS, in December 2022, the County submitted an application to the Town’s planning commission seeking a variance for the Archuleta County Justice Center from the Town’s Land Use Development Code Section 6.10.4.D that requires “rooftop appurtenances, such as mechanical equipment and antennas shall be screened from view” because the requirement to do so would cost in excess of \$100,000.00 of taxpayers’ money and the requirement is simply for aesthetics and nothing more; and,

WHEREAS, on January 10, 2023, at a public meeting, the Town’s planning commission voted to deny the County’s variance request.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ARCHULETA COUNTY, COLORADO THAT:

1. The County has the sole authority to construct and finance the Archuleta County Justice Center, pursuant to C.R.S. § 30-11-104(1)(a).
2. It is not within the Town’s province or authority to construct the Archuleta County Justice Center.
3. As a result, any application regarding the Archuleta County Justice Center by the County to the Town under the Town’s land use development code is only subject to “location and extent” review, and any disapproval of any such application by the Town’s planning commission may be overruled by the Board by a vote of not less than two-thirds of the Board’s membership, all pursuant to C.R.S. § 31-23-209.
4. Pursuant to C.R.S. § 31-23-209 and by a vote of not less than two-thirds of the Board’s membership, the Board **HEREBY OVERRULES** the decision of the Town’s planning commission to not approve the County’s variance application for a waiver from the requirements of the Town’s Land Use Development Code Section 6.10.4.D, which requires “rooftop appurtenances, such as mechanical equipment and antennas shall be screened from view.”
5. The requirements set forth in the Town’s Land Use Development Code Section 6.10.4.D is purely aesthetic and adds absolutely no functionality to the Archuleta County Justice Center. As a result, such requirements are outside the scope of a “location and extent” review as determined by the Colorado courts. In addition, spending over \$100,000.00 for something that is purely aesthetic would be a complete waste of the taxpayers’ money.
6. By overruling the Town’s planning commission’s decision in accordance with state law, the County’s variance application for a waiver from the requirements of the Town’s Land Use Development Code Section 6.10.4.D, which requires “rooftop appurtenances, such as mechanical equipment and antennas shall be screened from view,” is **HEREBY APPROVED**.
7. If the Town withholds the issuance of a permanent and/or temporary certificate of occupancy to the Archuleta County Justice Center based on the Board overruling

the Town’s planning commission and approving the County’s variance application for a waiver, as set forth herein, the Town will do so knowingly and willfully in violation of Colorado State law and precedence set by the Colorado Courts.

- 8. Furthermore, the Board hereby authorizes the Archuleta County Attorney to pursue any legal remedy available in law and in equity against the Town should the Town fail to abide by the lawful decision of the Board to overrule the Town’s planning commission decision to not approve the County’s variance application for a waiver, as set forth herein.

APPROVED AND ADOPTED THIS 17th DAY OF JANUARY, 2023.

ATTEST:

**Board of County Commissioners
Archuleta County, Colorado**

County Clerk & Recorder

Chair