

DISTRICT COURT, EAGLE COUNTY, COLORADO 885 Chambers Avenue, P.O. Box 597, Eagle, CO 81631	
Petitioner: TOWN OF VAIL, a Colorado home rule municipality, v. Respondents: THE VAIL CORPORATION, a Colorado corporation; PETER E. KATSOS, in his individual capacity; HOLY CROSS ELECTRIC ASSOCIATION, INC., a Colorado corporation; and TEAK J. SIMONTON, in her official capacity as the COUNTY TREASURER OF EAGLE COUNTY.	▲ COURT USE ONLY ▲
Attorneys for Petitioner: Attorney: M. Patrick Wilson, No. 26303 Katharine J. Vera, No. 53995 Hoffmann, Parker, Wilson & Carberry, P.C. 511 16 th Street, Suite 610 Denver, Colorado 80202 Phone: 303-825-6444 E-mail: pwilson@hpwclaw.com ; kjv@hpwclaw.com	Case Number: Division:
MOTION FOR IMMEDIATE POSSESSION	

Petitioner Town of Vail (the "Town"), by and through its attorneys, Hoffmann, Parker, Wilson, & Carberry, P.C., hereby moves this Court, pursuant to C.R.S. § 38-1-105(6), for an Order granting the Town immediate possession of the property interests described in the Petition in Condemnation filed in this matter (the "Subject Property"), and requests that this Court conduct a hearing to determine the reasonable amount of a monetary deposit to be tendered with the Court Registry in order for the Town to be granted immediate possession of the Subject Property. As grounds for this Motion, the Town states as follows:

1. This is an action in eminent domain brought pursuant to Article II, § 15, of the Colorado Constitution. The Town is a Colorado home rule municipality, possessing the statutory powers and authority of eminent domain pursuant to Sections 1.2 and 13.11 of its Home Rule Charter and Article XX, §§ 1, and 6, of the Colorado Constitution, and as authorized pursuant to Resolution No. 22, Series 2022, approving and specifically authorizing the use of eminent domain to acquire certain real property interests for open space (the "Subject Property").

2. The Town Council determined that there is a necessity for the Town to acquire fee title to the Subject Property for open space in order to preserve the Town's open spaces, wildlife and natural resources for the public welfare.

3. The fee simple acquisition of the Subject Property also serves a public purpose, as it will protect, preserve, and promote the health, safety, welfare, and convenience of the public.

4. The Town has negotiated in good faith with the Vail Corporation (the "Respondent-Landowner") named herein who has an interest in the underlying fee simple estate of the Subject Property, but the parties have been unable to reach an agreement on the voluntary acquisition of the Subject Property prior to the filing of this condemnation action.

5. Pursuant to C.R.S. § 38-1-105(6)(a), upon the payment of a deposit into the Court's registry, the Town is entitled to obtain an order authorizing it to take possession of and use the Subject Property as follows:

At any stage of such new proceedings . . . the court, by rule in that behalf made, may authorize the petitioner . . . to take possession of and use, said premises during the pendency and until the final conclusion of such proceedings . . . if such petitioner pays a sufficient sum into court, or to the clerk thereof, to pay the compensation in that behalf when ascertained.

6. Prior to entering an Order for Immediate Possession, the Court must determine the amount of the deposit required and may hold a hearing for that purpose or may rule on the basis of affidavits that provide evidence of the probable amount of the compensation that will be awarded to the landowner. *See Swift v. Smith*, 201 P.2d 609, 614-15 (Colo. 1948). Following a determination of the deposit, the Order for Immediate Possession may authorize the petitioner to take possession of the Subject Property effective 30 days after service or acceptance of service of the Petition in Condemnation or earlier upon consent of the Respondent-Landowner. C.R.S. § 38-1-105(6)(c).

7. In addition, all objections and challenges to the taking of the Subject Property, except for the final amount of compensation owing, shall be raised, heard, and ruled upon in connection with the hearing on immediate possession. C.R.S. §§ 38-1-105(1); 38-1-109. Here, the Town has the legal authority to acquire the Subject Property by condemnation, needs to acquire the Subject Property for a public use and purpose, and has been unable to acquire the Subject Property by voluntary acquisition, despite good faith negotiations with the Respondent-Landowner.

8. The Town needs to acquire immediate possession of the Subject Property for the Open Space in a timely manner for the preservation of the health, safety, welfare, and convenience of the public.

WHEREFORE, Petitioner Town of Vail respectfully requests by way of this Motion, that this Court conduct a hearing at its earliest convenience in order to hear and determine the Town's Motion for Immediate Possession of the Subject Property and to determine the amount of deposit for taking possession of the Subject Property.

Respectfully submitted this 14th day of October, 2022.

**HOFFMANN, PARKER, WILSON &
CARBERRY, P.C.**

By: /s/ M. Patrick Wilson
M. Patrick Wilson
Katharine J. Vera

ATTORNEYS FOR TOWN OF VAIL