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City Attorney: Graffiti is beyond our control.

For the past several weeks, a downtown property owner of both commercial and residential property and resident, has tried in vain to get the City to do something about the growing graffiti problem. He has offered, also to no avail, to pay the cost of removal of graffiti from neighboring buildings and others in the downtown. He has provided the Cheyenne Police Department with a lengthy list of property addresses that have graffiti on their walls and no action has been taken to remove it. Graffiti defacement in the hundreds!

Many of the downtown properties are owned by distant corporations or individuals and they have little concern about what Cheyenne looks like. Even to the extent of making their own properties unattractive and potentially unrentable, they just don't care. Out of sight, out of mind.

Communities that understand the correlation between graffiti and other degradation of property do something about it. In Cheyenne, there is little official concern. The city attorney doesn't see the word "graffiti" in any ordinance so he believes his hands are tied from any action pertaining to removal of offending graffiti.

When challenged by this resident to find a way to apply "private nuisance" to graffiti as it is to weeds, junk cars, piles of rotting wood, etc., he responded by providing a citation to an Indiana case.

Oftentimes, those in government think if they spew, "15-1-125," listeners will assume they know what they're talking about. Especially when said by the attorneys. They often do not know what they're talking about. Often. That's why you saw all the losing lawsuits defended by the City over the past eight and a half years. The attorney will superficially review whatever comes up on their search of Nexus or WestLaw and assume the search must have provided the right answer.

The Indiana appellant court case (Wernke v. Halas, Indiana Court of Appeals, First District, No. 32A01-9112-CV-369, pp 117-124, dated September 28, 1992) involved two neighbors who, to put it mildly, did not get along. In an effort - a successful effort, it turns out - to agitate his neighbor, Wernke did some unsightly things on his property. He used "some vinyl strips and a license plate over some of the cracks between the boards on his privacy fence and "also attached a section of 5' tall orange plastic construction fencing on his neighbor's side almost the length of the board fence." Prior to putting up the 6' fence, Wernke mounted a toilet seat and lid on a piece of plywood atop a post

"overlooking his neighbors' land." He also painted a "brown spot" within the "ring inscribed by the seat." Use your imagination. And, inscriptions were made "into the wet concrete of a support post" (actually two posts) for his fence. They were obscene, directed at both side neighbors. Wernke said "vandals had scrawled" the epithets.

It is this last action and the Appeals Court decision related to it that Cheyenne city attorney Dan White bases his inability to take action against graffiti as a private nuisance. His hands are tied, he believes.

The Halases' filed a lawsuit, alleging that the toilet and the fence "with all its accoutrements" including the graffiti, constituted nuisances. Prior to the hearing for summary judgment, on his attorneys advice, Wernke removed the license plate from the fence, the toilet and graffiti on the post.

The judge found that the toilet, the graffiti and the fence constituted a [private] nuisance and awarded \$5,600 for rental losses, \$2,400 for discomfort and annoyance, \$5,000 in punitive damages and \$3,937.50 in attorneys fees.

The Indiana Appeals Court reversed.

Without reviewing why the Appeals Court appealed on all matters, I will cover the reversal of the graffiti portion that Dan White thinks provides his inaction cover.

A "private nuisance" affects only a single person or a determinate number of people. A "public nuisance" is one which affects entire neighborhood or community.

The Appeals Court wrote that the "graffiti is unattractive and vulgar. Nonetheless, it is not a nuisance."

Has Dan White won the argument? No.

The Court went on to write about the specifics: "[the vulgarities] are engraved in areas of concrete, no more than two feet in diameter, which surround the ground level bases of two of Wernke's fenceposts. The fenceposts themselves are located at least several inches over the property line onto Wernke's property beyond the Halases' own chain link fence, and the letters comprising the inscriptions are only three to four inches tall. In short, the graffiti is almost invisible from the Halases' yard, and it is not the appearance of the graffiti, but rather knowledge of its presence, that causes annoyance."

In footnotes, the Appeals Court wrote: "We are not confronted with, and therefore leave for another day, the question

of whether some language may be presented so invasively to the privacy of the home that it could constitute an abatable nuisance within the confines of the First Amendment to the United States Constitution." ... *could constitute an abatable nuisance ...*

And, "If the graffiti were a nuisance, however, the question whether Wernke created or merely maintained that nuisance would go to the punitive damages the trial court awarded." *If the graffiti were a nuisance ...*

The Indiana Appeals Court did not rule that graffiti could not constitute a private nuisance. They ruled that this particular graffiti, which could not be seen from the neighbor's property, was not a private nuisance.

Cheyenne City Code may lack the specificity that Dan White feels he needs to bring pressure or persuasion on property owners to get them to remove offending graffiti from their exterior, visible walls.

Casper also has no ordinance that specifically gives the City authority to take corrective action. But they get the job done. Casper has undertaken an goal, not through ordinance but from concern, called "Keep Casper Beautiful." It is too late for that in Cheyenne but a similar effort could be undertaken to make Cheyenne beautiful *again*. Casper considers painting graffiti on someone else's property vandalism. A crime. Here our city officials turn away. Casper's policy is to remove any graffiti placed on city property within 24-48 hours after it is reported and they "strive" to remove graffiti placed on private property within the same time frame. The City will remove the graffiti if an owner agrees or offer a coupon for one gallon of paint and supplies necessary for the owner to remove the graffiti.

Cooperation in Casper has been nearly total. Graffiti placement is a crime and will be prosecuted. here, Dan White could not tell me that any person had been prosecuted or pled guilty and made restitution for putting graffiti on anyone's building or city signs, etc. Casper has received restitution. The spokeswoman said that graffiti comes in "sprees." Without enforcement and/or removal, Cheyenne's "sprees" are pretty constant.

Vacant and abandoned downtown buildings are bad enough. To tolerate graffiti on those and other downtown properties or to allow it to remain after applied, is unacceptable. Perhaps we need vigilantes to deal with the problem. Google "[Portland, Oregon Graffiti](#)" to read how to handle graffiti. They take it seriously.

DDA Director Ousted!

When the creation of a Downtown Development Authority was approved, it could never have been imagined the DDA acronym would one day become, more appropriately, Downtown Destruction A.... or Downtown Devastation Authority.

Since turning over control of the future of downtown to a Denver interloper with no real experience to perform this unique job, the downtown has been on a terrible downhill slide for the past several years.

During the mayoral campaign of 2000, there was only one boarded-up downtown property. That was the Hynds Building. It remains vacant and abandoned.

Tragically, many, many other properties have joined that grouping - empty and abandoned. Entire blocks are vacant and major downtown businesses are gone.

For years, the DDA board of directors have sat silently on their hands - allowing the devastation to continue and flourish.

Anyone with sight can see that, except for public investment, almost nothing has been accomplished in terms of tenants, remodeling or growth. The DDA's only real effort was to attempt to impose design standards on private property owners - ONLY IN THE DOWNTOWN!

The director held onto her job for about six years too long. By 2003, it was obvious that she could not handle her responsibilities, regardless of her salary or work schedule. It has been downhill every since. The disintegration is disgraceful. But it took until now for the board to muster up the courage to finally try to raise the downtown out of its descent.

The Cheyenne Herald has learned that the current director of the DDA, a contract employee, not an employee as is required under Wyo statute [§15-9-202(a)(vi)] will not have her contract renewed December 31, 2009. That is much too far in the future but it is the most courage a DDA board has shown for years.

The DDA board, after an executive session and vote, made this public announcement: "**The Board unanimously approved the motion to notify Cherek Group that their contract will expire December 31st and will not be renewed.**" The vote was taken in public.

Rick Kaysen suggested that this individual should reapply. She should not. It would be folly to consider her as an employee. Let us move on. Let us try to resurrect the downtown. Enough damage, already. Salvage the downtown!