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Nine Mile Corner clash returns to stage with Erie, Lafayette appeal arguments

Arguments were held in front of students at Weld Central High School

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The coming soon sign at Nine Mile Corner at U.S. 287 and Arapahoe Road. (Cliff Grassmick / Staff Photographer)

Erie and Lafayette met on stage at the Weld Central High School's auditorium in Keenesburg on Tuesday morning for opening appeal arguments in the latter's condemnation lawsuit aimed at the land beneath the planned multimillion-dollar Nine Mile Corner development.

That the meeting held shades of a high school drama was appropriate for a yearlong clash between the two estranged neighboring towns. Litigation, if allowed to move forward, could set new precedent for how Colorado's judiciary oversees the use of eminent domain.

The arguments were made in front of about 100 students as part of the Colorado Judicial Branch's ["Courts in the Community"](#) program, and who were treated to a question-and-answer session afterward with the towns' respective attorneys.

The crux of Lafayette's appeal argument follows that Erie, even if forced to abandon the roughly 22 acres of land in question, would still be able to usher in a King Soopers or a similar big-box store — and that the land's renewed use as open space would certainly serve for "public purpose."

"(Lafayette) found that 'acquisition of such property is necessary for the public purpose of open space and benefits associated with open space, as well as preservation of Lafayette's local and unique character, and buffering of Lafayette from development activities in neighboring communities,'" they wrote in their briefs.

"Absent a showing of bad faith, this finding cannot be disturbed."

Lafayette's original suit to condemn the acreage at the southeast corner of the U.S. 287 and Arapahoe Road intersection was [tossed by a Boulder County judge in early 2017](#) — Judge Norma Sierra ruled that Lafayette had no "public purpose" in its condemnation lawsuit, but saw the city's motives as an effort to squash competition along the vital corridor.

"(Lafayette) is only taking the southern-most parcel," Lafayette's special counsel, Stephanie Ceccato, said Tuesday. "There are no factual findings that this will stop King Soopers (from developing)."

However, the litigation has certainly delayed Erie's flagship development — trustees have approved several contract extensions with Evergreen Devco, the developer driving the mixed-use project, over the last two years while work stalled.

Records indicate the project is slated to host a 130,000-square-foot superstore, a 130,000-square-foot home improvement store, an 18-fuel pump gas station and at least 35,800 square feet of retail and restaurant space.

Ceccato also cited a 2008 Colorado Supreme Court ruling in the Town of Telluride v. San Miguel Valley Corporation condemning open space outside of a home rule municipality's territory.

"With respect to the Telluride case," Erie's attorney, Mikaela Rivera, offered, "they didn't have to address the issue of Lafayette's own development opportunities that are being pursued without any buffer.

"The standard of review is an abuse of discretion," she added. "The trial courts findings are factual findings, the lack of public purpose is a factual finding, the lack of bad faith is a factual finding. The 22 acres appear perfectly calculated to prevent Erie's development."

Lafayette itself has moved forward with large-scale development plans across the street in the form of the [SILO subdivision](#) — hundreds of residential units are planned for the parcel — as well as the [Lafayette Promenade](#) commercial development.

"The use of (condemnation) cannot be used to allow Lafayette to force its agenda over Erie," Rivera said, "or used to prioritize its economic health over the health of another."

It's unclear when a verdict will be given, though they typically come in a matter of weeks.

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