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Case brings up decade-old municipality land-grab debate

A commercial development planned in Boulder County is facing serious legal challenges thanks to a previous Colorado Supreme Court case that paved the way for home-rule municipalities to condemn property outside their boundaries for open space. This recent use of a decade-old case highlights a vulnerability municipalities, developers and land owners face as Colorado grapples with the struggle to preserve open space yet raise tax revenue, provide infrastructure and maintain its communities.

In *The Town of Telluride v. San Miguel Valley Corporation LLC*, decided in 2008, the Supreme Court struck an earlier law and gave home-rule



Mikaela Rivera
Attorney, Waas
Campbell Rivera
Johnson Velasquez
LLP, Denver

to engage in a literal land grab. The city of Lafayette recently took advantage of this opening by attempting to seize land from the town of Erie that would preclude Erie from developing one of its most valuable commercial corners. We represented the defendants in both *The Town of Telluride v. San Miguel Valley Corporation LLC* and *The City of Lafayette v. Town of Erie Urban Renewal Authority*. The town of Erie has been



Darrell Waas
Attorney, Waas
Campbell Rivera
Johnson Velasquez
LLP, Denver

be a mixed-use community to include retail stores, residences and restaurants. The town indicates the plans are mindful of historical preservation and residents' needs, and will provide sales tax revenue for the town.

However, in 2016, the neighboring community of Lafayette sought to prevent development of Nine Mile Corner. In *The City of Lafayette v. Town of Erie Urban Renewal Authority*, Lafayette attempted to use the powers granted in the *Telluride* decision to seize the land and condemn the area for preservation as open space.

Relying on Lafayette's own lengthy history of development in the area, a Boulder judge dismissed Lafayette's suit in February, finding that Lafayette did not act in good faith or demonstrate a public purpose for the condemnation. Lafayette has filed an appeal. Not only is this case not over, it is just the beginning for what home-rule cities can attempt if they seek to acquire land anywhere in the state.

Preserving land for open space is a worthy cause, but municipalities and special districts know that meeting infrastructure and lifestyle needs of our growing Colorado population is essential.

"Open-space preservation isn't among the purposes the state constitution lists as examples of proper eminent domain use," stated a 2008 Denver Post opinion piece. "If a city goes beyond its legal borders to take



Town of Erie

A map of the disputed area in the town of Erie

land, it should be restricted to the purposes listed in the constitution. Open-space protection is important to Colorado. But home-rule cities should not have carte blanche to condemn private property outside their borders to accomplish that laudable goal."

Unfortunately, the Colorado Supreme Court was not swayed. Thus, communities will continue to face scrutiny from outside their boundaries as they grow and develop.

The Erie case has been

making headlines in Boulder County since 2016, but every commercial developer in the state should take heed of these cases and the possibilities they have created. The best defense against having your borders breached and your land seized is good planning: a thoughtful approach, clear zoning, comprehensive plans and, wherever possible, with the cooperation of adjoining communities. ▲

cities the authority to reach outside their borders and seize land using the eminent-domain power of condemnation. Essentially, the ruling is an open door for towns and municipalities

sharing information with residents and neighbors for years about its plans to develop Nine Mile Corner with its selected developer, Evergreen Devco. Nine Mile Corner is slated to

Timeline of important court-related dates

2004. Town of Telluride seeks to purchase approximately 600 acres known as the Valley Floor from private landowner San Miguel Valley Corp., by using the eminent domain power of condemnation to assert its vital public purpose as open space. Colorado law commonly known as "the Telluride Amendment" is passed that prevents home-rule cities from reaching beyond its borders to condemn land for open space.

2007. Telluride commemorates "Valley Floor Day" on May 9 after submitting a \$50 million deposit to the court to obtain the land.

2008. Colorado Supreme Court strikes down the 2004 law prohibiting extraterrestrial condemnation, allowing Telluride to proceed with the purchase at the price equal to the owner's appraisal.

2016. The city of Lafayette attempts to use its powers of eminent domain to condemn an area planned for development in the town of Erie known as Nine Mile Corner.

2017. A judge dismisses Lafayette's suit, ruling that Lafayette did not act in good faith and did not demonstrate a public purpose for condemning the land. Lafayette files appeal.