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Can one Colorado city claim land belonging to another? State appeals court hears arguments in Lafayette-Erie dispute

At issue is whether Lafayette's desire for a neighborhood buffer unfairly impacts development plans in Erie



Nine Mile sign on the corner of Arapahoe Road and U.S. 287.

Paul Aiken, Boulder Daily Camera

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KEENESBURG — An unprecedented legal scuffle between a pair of Colorado communities that centers on whether one municipality can condemn and claim land belonging to its neighbor went before the Colorado Court of Appeals on Tuesday.

The arguments before the three-judge panel came after Lafayette failed in its effort last year to convince a judge that it should be allowed to condemn 22 acres at the southeast corner of U.S. 287 and Arapahoe Road — inside Erie’s borders — for the purpose of creating an open space separation between its Beacon Hill neighborhood and a planned retail development at that corner.

The district judge ruled that Lafayette had not proven that the condemnation, which the city put into motion in the summer of 2016 through a lawsuit, was for a proper public purpose — as is required by the state’s eminent domain laws. The case was dismissed, prompting Lafayette’s appeal.

“Lafayette is trying to create some space,” Stephanie Ceccato, an attorney for the city of nearly 30,000 people 11 miles east of Boulder, told the appeals court Tuesday. Ceccato said Lafayette has already amassed 1,300 acres of open space on its borders to provide a natural buffer between the city and neighboring communities — to create a “sense of separation, a sense of place.”

“All they are doing is continuing with that,” she said of Lafayette city leaders, who nearly two years ago passed an ordinance authorizing condemnation of the property owned by Erie’s urban renewal authority.

The Colorado Supreme Court a decade ago affirmed the right of a home-rule city to condemn land beyond its boundaries for the purpose of creating open space and parks — a ruling spurred by Telluride’s efforts in 2008 to conserve from development a 570-acre meadow framing the entrance to the picturesque mountain town. But an eminent domain fight in the name of creating open space involving two competing municipalities had yet to arise in Colorado.

Appellate judge Terry Fox wondered if a ruling favorable to Lafayette would set the stage for a series of never-ending “serial” cross-border land grabs by neighboring cities in the state. But the judge also questioned Erie’s objection to the eminent domain action, given that the town would still have plenty of land at the corner — more than 20 acres — to develop.

But Erie’s lawyer, Mikaela Rivera, said because of the difficult topography at the site, known as Nine Mile Corner, Lafayette’s claim to the 22 acres it wants as a buffer would make it prohibitively expensive for a developer to move forward with a project in Erie. Specifically, it would constrain the size of a King Soopers and related retail opportunities envisioned for the corner.

“This 22-acre taking absolutely prevents Erie’s development plans,” Rivera said. “It becomes nearly impossible to finance the project. Why does Beacon Hill, one little neighborhood, need 22 acres of protection?”

Erie has cast the protracted battle with its neighbor as an attempt by Lafayette to quash competition for sales tax dollars along the busy U.S. 287 corridor, where the city already has a Walmart and a King Soopers. Erie points to Lafayette’s ambitious development plans, to the tune of hundreds of thousands of square feet, all around the Nine Mile Corner intersection as evidence that it is being hypocritical in its call for open space preservation.

Rivera noted that Lafayette doesn’t require anywhere near the same kind of separation between its residential areas and commercial developments inside its municipal boundaries.

“You allow development to occur without a buffer before, so why not here?” she asked Tuesday.

Lafayette said it made a good-faith effort to arrive at a compromise with Erie that would protect its Beacon Hill neighborhood long before it resorted to condemning the land at Nine Mile Corner.

The case, *City of Lafayette v. Town of Erie Urban Renewal Authority*, was argued in front of an auditorium of students at Weld Central High School in Keenesburg as part of the judicial branch’s Courts in the Community program.

The court of appeals will likely issue a ruling in the case in the coming weeks.