**Carroll: In the Wild West of Colorado’s metropolitan districts, developers can take land by force**

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**The Colorado Supreme Court is supposed to act as a stout defender of civil liberties. But apparently all bets are off when it comes to private property. In that sphere the court seems to have embraced the Jesse James theory of property rights: If you can take it, it’s yours.**

**At least you can if you are one of those hybrid creatures so beloved by local politicians these days: a metropolitan district.**

**For many years metro districts, often created by developers with a nod from local government, have enjoyed the power to tax residents for things like streets, water, fire protection and parks with surprisingly little oversight. But life got even better for them this year.**

**Thanks to a state high court ruling, a metropolitan district now may condemn property to benefit the developer even when its board is staffed exclusively with employees and principals of the developer, and it has made little attempt to negotiate a purchase price.**

**All that the developer/district — they were utterly indistinguishable in this case — has to do, according to the state high court, is demonstrate its intention to use the property at a later date for public benefit, such as sidewalks, utilities and drainage, and it will be in the clear.**

**Surely this amounts to a dubious exercise of eminent domain — even under the generous standard proclaimed by the U.S. Supreme Court in its controversial Kelo ruling in 2005. Back then the court said the city of New London, Conn., could use its power of condemnation on behalf of private interests for purposes of economic development. Even the Institute for Justice, the libertarian law firm that represented the losing property owners in Kelo, appears flabbergasted by the Colorado ruling and recently petitioned the U.S. Supreme Court to take a look at the case.**

**Jeff Redfern, an attorney with the Institute for Justice, told me, “I can say confidently that there are no legal cases like this anywhere in the country” in which a special district exercises so much unchecked condemnation power.**

**The story involves two developers. The first, Woodcrest Homes, acquired a small two-thirds acre parcel outside the town of Parker in 2006 as well as the option to purchase two larger adjacent properties while completing an annexation agreement with the town for a subdivision. But Woodcrest’s plans foundered at the onset of the Great Recession.**

**Enter the second developer, Century Communities. As the Colorado Court of Appeals recounted in its ruling on the case, Century picked up where Woodcrest left off on the subdivision, known as Carousel Farms, and made Woodcrest an offer for its parcel. The offer was rejected, with Woodcrest telling Century the amount “must increase substantially.” But Century did not boost the offer substantially, or indeed at all. “The Developer did not make another offer,” the appeals court reported.**

**By the fall of 2014 Century had possession of the other two properties and was negotiating with Parker over an annexation agreement, contingent on obtaining the Woodcrest parcel. What to do? Why, create a metropolitan district and file a notice of condemnation.**

**As the appeals court noted, “Here, the taking was carried out by the District, acting as a sort of alter ego of the Developer, to ensure that the Developer met its contractual obligations to the Town.”**

**If you haven’t guessed, the three-judge panel of the appeals court ruled in 2017 in favor of Woodcrest and against the condemnation but was reversed by the state high court.**

**As the Institute for Justice observes, “Not a single bona fide elected official was involved in the (condemnation) process.”  Indeed, a Parker representative testified that the town preferred the two parties “work it out by themselves,” according to the appeals court.**

**Meanwhile, the only “public officials” involved, the district representatives who doubled as employees and principals of the developer, had a glaring conflict of interest. Any respectable ethical standard would expect them to recuse themselves from such a decision.**

**No one doubts that a condemnation may have both a public purpose and private benefit. But here the process was so high-handed and the immediate, primary goal so clearly to further the interests of an impatient developer that it would be a shame if it survives as a precedent.**

**Metropolitan districts have long enjoyed wide latitude in satisfying the desires of developers — especially early on when a district’s board may be little more than a proxy for company officials. Perhaps the ultimate absurdity in this regard occurred in Aurora in 2011 when, in the words of a Denver Post editorial, “an election to authorize higher tax subsidies for the Gaylord Rockies Hotel and Conference Center involved just a single voter who represented the landowner, was not a resident of the city, and who would probably never pay the taxes.”**

**Fortunately, a court struck down that laughable election and Aurora declined to appeal, but you get the idea: Carousel Farms is hardly the first district to exploit its legal status to questionable advantage. The difference is that so far it has gotten away with it.**

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