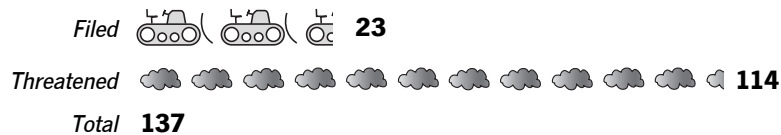




**Known Condemnations
Benefiting Private Parties***



LEGISLATIVE ACTIONS

In 1999, the Colorado state legislature amended the state Urban Renewal Law in a way that significantly strengthened the rights of property owners within areas targeted for “blight” designation. The amendment requires that a municipality determine that a property satisfies four out of 12 different blighting factors before it may declare an area subject to urban renewal and condemnation. The previous law required that only one blighting factor be met.⁹⁶ State Representative Andy McElheny first proposed the new, more restrictive blight standards after reading about a case in which a Denver suburb threatened to condemn O’Meara Ford so that it could transfer the property to another private enterprise (see below).⁹⁷

PRIVATE USE CONDEMNATIONS

Arvada

The Arvada Urban Renewal Authority designated the Water Tower area as blighted and approved a plan for upscale residential development. According to one of the citizens protesting the plan, the area contained 220 rental units and 32 homes, with approximately 500 to 600 residents. The head of the agency stated in February 2000 that it would attempt to purchase the properties, but it would condemn if anyone asked for too much money.⁹⁸ (Presumably it would also condemn if someone refused to move for any amount of money). Although news reports do not indicate how many homes Arvada actually condemned, a letter to the editor a few months later comments on the fact that houses were condemned and demolition had begun.⁹⁹

Arvada had also been conducting a land use study about the possibility for development just beyond its borders. When it asked for citizen input, the citizens of the Berkeley Village mobile home park realized their homes had been listed as a possible development area for Arvada. As the president of the Berkeley Neighborhood Association explained, residents had been watching the Water Tower project “getting ready to condemn homes by right of eminent domain – and we figured if they can do it there, they’ll do it here as well.” Anxious residents began calling Arvada, and after the calls started, Arvada issued a letter reassuring the Berkeley residents that it would not annex them.¹⁰⁰

Aurora

The City of Aurora is developing Aurora City Center, a new civic and commercial center that will rise where the Florence Gardens neighborhood once stood. The centerpiece of City Center will be a 600,000-square foot, pedestrian-oriented shopping center anchored by Super Target and Barnes & Noble. Aurora will also use some of the space for a new city hall and other municipal offices. In order to consolidate the 67 acres needed for the new development, the City created an urban renewal district encompassing all of Florence Gardens, and declared that it would use condemnation “if necessary” to force area landowners to sell to Miller Weingarten, the private developer involved in the project.¹⁰¹ This impacted 20 properties, mostly vacant lots.¹⁰² As of the last report, the owners were unhappy that the City was taking their property for

⁹⁶ Colo. Rev. Stat. § 31-25-103(2) (1999).

⁹⁷ Rob Gurwit, “Land Grab,” *Governing*, Jan. 2001, at 26; see also “Government as Land-Grabber,” *The American Enterprise*, June 2001, at 57.

⁹⁸ Gary Gerhardt, “Residents Seek More Input in Arvada Renewal Plan,” *Rocky Mountain News*, Feb. 3, 2000, at 29A.

⁹⁹ Letters Page, *Rocky Mountain News*, May 18, 2000, at 55A.

¹⁰⁰ Gary Gerhardt, “Berkeley Village Won’t be Annexed,” *Rocky Mountain News*, March 20, 2000, at 24A.

¹⁰¹ Dina Berta, “Aurora Negotiating for Retail Center; Developer Envisions Shopping, Restaurants North of Mall in Vacant Urban Renewal District,” *Rocky Mountain News*, Mar. 4, 2000, at 2B.

¹⁰² John Rebchok, “Developer a Leader of New Urbanism; Miller Weingarten Takes a Low-Profile Approach to High-Profile Projects,” *Rocky Mountain News*, Mar. 18, 2001, at 1G.



another private party and also unhappy with the offers made by the developer to purchase the property.¹⁰³ The project has now gone forward,¹⁰⁴ but news reports do not indicate whether property was condemned or the owners agreed to sell under threat of condemnation.

Aurora

In December 2002, the Aurora City Council approved a measure that will force almost 60 “undesirable and nonconforming” businesses in the neighborhood surrounding the Fitzsimons medical campus to redevelop their property to uses compatible with other redevelopment projects springing up around the multimillion-dollar biomedical research science park. Among the businesses impacted by the new law are hotels, gas stations, liquor stores, mobile home parks and apartment buildings. If business owners within the targeted area do not bring their properties into conformance with the City Council’s desired uses within 10 years, the City could take them without compensation. This procedure, known as “amortization,” is the City’s chosen method of redeveloping the area, because the cash-strapped local government does not have the money to condemn the properties outright and pay the owners’ fair market value and relocation expenses. Many owners are outraged that amortization will burden them with all the costs of converting their properties, with no compensation at all from the City.¹⁰⁵ For example, Cathy Lundy, who owns Luster Car Wash, just spent hundreds of thousands of dollars rebuilding and improving her business in May 1998. She says that under the City’s plan she cannot possibly recoup that investment within the 10-year time limit. Also, says Lundy, “There is no way we can become conforming; a car wash is a car wash.”¹⁰⁶

Lundy, along with the owners of nine single-family homes in the targeted area, managed to secure an exemption from the City Council that allows them to keep their properties without having to bring them into conformance with the City’s plans. Other owners, however, were not so lucky. Paul Thompson must change his apartment building and kick out the 50 low-income, disabled seniors who currently live there. An additional 450 elderly residents live in the four mobile home parks that must close with-

¹⁰³ Sean Kelly, “Property Owners Angry at Aurora; Offers Called Unfair for Town Center Land,” *Denver Post*, Aug. 1, 2001, at B2.

¹⁰⁴ Rachel Brand, “Shops and Restaurants to Be Center Attraction; Complex at the Heart of Aurora Has Been 20 Years in Making,” *Rocky Mountain News*, Sept. 19, 2002, at 2B.

¹⁰⁵ Sheba R. Wheeler, “Renewal Divides Aurora, Residents; Owners Near Fitz Get 10 Years to Conform,” *Denver Post*, Dec. 4, 2002, at B1.

¹⁰⁶ Mike Patty, “Plan: 10 Years to Shape Up; Businesses Around Fitzsimons Argue Zoning Law Is Unfair,” *Rocky Mountain News*, Jan. 7, 2003, at 14A.

Recent Colorado Court Decisions Limit the Rights of Counties and Individuals to Challenge Municipal Urban Renewal Plans

In the past few years, several actions have been brought by Colorado taxpayers seeking to overturn urban renewal plans passed by municipalities in that state. The Boards of Commissioners from both Boulder and Adams counties, along with an individual taxpayer, challenged an urban renewal plan that the City of Broomfield had approved after determining that the targeted area was blighted. They tried to sue under the Colorado Taxpayers’ Bill of Rights,¹ arguing that because the Broomfield plan involved a reallocation of property taxes, it amounted to a tax policy change and thus should have been put to a vote of the electorate.² The Boulder commissioners also alleged that the plan was invalid because Broomfield violated the state Urban Renewal Act by failing to adequately include the County in an advisory role during the process of formulating the plan.³ The Colorado Court of Appeals ruled in November 1999 that both suing parties lacked standing to challenge the Broomfield plan. The individual taxpayer had not asserted a legally compensable injury, because the plan provided for proportional adjustments of the amount paid to the renewal agency in the event of

a general reassessment of taxable property valuations, and thus did not deprive counties of their property tax revenue.⁴ The Boards of Commissioners lacked standing, according to the court, because the Taxpayers' Bill of Rights does not allow counties to sue on behalf of individual taxpayers.⁵

An individual taxpayer also brought a similar action against an urban renewal plan adopted by the City of Golden. In February 2002, the Colorado Court of Appeals denied the taxpayer's claim on the grounds that she suffered no injury to any cognizable personal legal interest. Similar to the situation in the challenge to Broomfield's plan, the tax allocation set forth in the Golden urban renewal plan does not invoke an individual's right to seek redress under the state Taxpayers' Bill of Rights, nor does Colorado law allow individual taxpayers to challenge urban renewal plans as interested parties.⁶

From these two cases, it is clear that Colorado courts will allow challenges to municipal urban renewal plans by people who own property within the area but not by individual taxpayers.

¹ Colo. Const. Art. X § 20.

² *Board of Commissioners of Boulder County v. City of Broomfield*, 7 P.3d 1033, 1035 (Colo. App. 1999).

³ *Id.* at 1036-37.

⁴ *Id.* at 1036.

⁵ *Id.* at 1037.

⁶ *Olson v. City of Golden*, 53 P.3d 747 (Colo. App.), cert. denied (Ill. Sept 3, 2002).

in 10 years. Some of these unfortunate owners have organized an effort to gather the 4,000 signatures needed to force the City Council to either repeal the amortization measure or refer it to a public vote in a special election. Others have retained lawyers and are looking into possible lawsuits against the City.¹⁰⁷

Denver

On June 25, 2001, the Denver City Council voted 8-3 to condemn a parcel of land to make way for a public-private parking garage, retail and condominium project near the city's art museum. The parcel's owner had built a low-rise restaurant structure on the parcel in 1997, which was then leased to Ilios Foods for 10 years with a 10-year renewal option. D. Diamond, the owner of Ilios Foods, says she would never have moved in or developed her restaurant had she known of the City's plan to condemn the property. Also, she says she signed the lease on the property without realizing that it contained a clause providing for cancellation of the lease upon condemnation. In the meantime, Ilios Foods has spent \$650,000 on fixtures and other improvements to the property.¹⁰⁸

The City offered to let the restaurant stay where it is for two years, rent-free, and then relocate. However, Diamond turned down the offer and instead filed suit against both the City and her landlord. The damages lawsuit was still pending in June 2002. In the meantime, Ilios Foods closed its doors in December 2001.¹⁰⁹

Lakewood

The City of Lakewood is working with Continuum Lakewood Development Co., a private developer, to transform the old Villa Italia Mall into a massive retail/office/housing complex that, when completed, will supposedly serve as Lakewood's new downtown. Continuum acquired the land in 1999 and the mall buildings in 2000, but several stores, including a profitable Foley's department store, still had leases in the buildings. In 2001, the City condemned Foley's lease of the land under the building Foley's owned and the leases of the 20 other remaining stores.¹¹⁰

However, May Department Stores Co., the parent company of Foley's, has been locked in a bitter fight with the Lakewood Reinvestment Authority over the manner in which Foley's was evicted. In negotiations over a lease that would have allowed Foley's to remain a part of the Villa Italia redevelopment, the developer asked Foley's to accept a colossal

¹⁰⁷ Sheba R. Wheeler, "Fitzsimons-Area Businesses Eye City Vote on Rezoning; Firms Say Aurora Decision Unfair," *Denver Post*, Jan. 12, 2003, at B3.

¹⁰⁸ "City Hall 1, Ilios 0," *Denver Post*, June 29, 2001, at B6.

¹⁰⁹ Kyle Wagner, "The Bite; Closed Call," *Denver Westword*, Jan. 10, 2002.

¹¹⁰ John Rebchook, "Lakewood Evicts Foley's from Old Villa Italia Mall," *Rocky Mountain News*, Feb. 1, 2002, at 5B.



rent hike. Foley's agreed to double its rent and pay a percentage of sales, but balked at the idea of paying 600 percent more to use a building it already owns.¹¹¹

The situation has spawned multiple lawsuits. May and another tenant sued Continuum in federal court, alleging that Continuum had breached its lease and also was improperly directing the condemnation process as a private party.¹¹² Foley's lost in the trial court and the case is currently on appeal to the U.S. Court of Appeals for the Tenth Circuit. Meanwhile, in the condemnation action filed by the City, the City sought immediate possession of the property, so it would not have to wait until the end of the litigation. Foley's and other stores challenged the condemnation but lost in the trial court.¹¹³ The Colorado Supreme Court refused to review the case.¹¹⁴ The condemned stores will no doubt be replaced by other stores.

Colorado's oldest car dealership, O'Meara Ford in the Denver suburb of Northglenn, narrowly escaped the threat of condemnation after the Northglenn Urban Renewal Authority decided in 1998 that it wanted to take the dealership as part of a private developer's big-box ambitions.

Northglenn

Colorado's oldest car dealership, O'Meara Ford in the Denver suburb of Northglenn, narrowly escaped the threat of condemnation after the Northglenn Urban Renewal Authority decided in 1998 that it wanted to take the dealership as part of a private developer's big-box ambitions for redeveloping the former Northglenn Mall into a new retail center. The dealership, part of an auto row that includes 10 other new-car dealerships on West 104th Avenue, was not a failing or dilapidated business. In fact, O'Meara Ford was highly successful, and at the time Brian O'Meara learned of the City's plan to oust the business his grandfather founded in 1913, the dealership was in the middle of planning a \$3-million expansion project that was to include a new showroom, state-of-the-art furnishings, 50 service bays, a children's play area and special kiosks where customers could browse different options before making a purchase. However, the City wanted O'Meara Ford out of the way because, unlike other merchandise and services, auto sales generate no tax revenue for the City in which the dealership is located; all auto sales taxes are collected by the county in which the buyer lives.¹¹⁵

Over the next two years, O'Meara Ford managed to stave off condemnation, in part by threatening a prolonged legal challenge. The situation attracted the attention of State Representative Andy McElheny (R-Colorado Springs), who in response drafted a bill that significantly limits Colorado cities' power to use eminent domain for redevelopment purposes (see above).¹¹⁶

¹¹¹ Aldo Svaldi, "Lakewood Eviction Draws Foley's Protest," *Denver Post*, Feb. 21, 2002, at E3.

¹¹² John Rebchook, "May Files Lawsuit Against Villa Italia Developers," *Rocky Mountain News*, July 28, 2001, at 5C.

¹¹³ *Lakewood Reinvestment Authority v. Continuum Lakewood Investment Co.*, No. 01CV1482 (Jefferson County Dist. Ct. Sept. 7, 2001).

¹¹⁴ *Lakewood Reinvestment Authority v. Continuum Lakewood Investment Co.*, No. 01 SA 291 (Colo. Sept. 19, 2001).

¹¹⁵ Richard Williamson, "O'Meara Facing Fight on 104th; City, Car Dealer at Odds on Redevelopment Plan," *Rocky Mountain News*, Dec. 8, 1998, at 1B.

¹¹⁶ John Rebchook, "Power of Eminent Domain 'Designed to Be Abused'," *Rocky Mountain News*, Nov. 12, 2000, at 7G.

In the end, O'Meara Ford was able to avoid being condemned. Under the new, more restrictive blight law, Northglenn officials knew they could not get away with taking the dealership. Additionally, the slowing economy made the O'Meara property too expensive for the Northglenn Mall developer's budget. In August 2001, the dealership began a renovation that was even larger than the one it had been planning at the time it came under threat of condemnation. The \$12.5-million expansion tripled the size of the showroom and adds 50 percent more employees to the dealership's payroll¹¹⁷—just what anyone would call urban blight.

Pitkin County

As part of a project to widen State Highway 82, Pitkin County and the Colorado Department of Transportation (DOT) jointly petitioned for condemnation of 23.38 acres of land adjacent to the highway and Buttermilk Ski Area, a private, for-profit development. The parcel consists of vacant land, 13 acres of which had been leased by owner Craig Stapleton to Aspen Skiing Co. for use as Buttermilk's overflow parking lot. Although the land is not zoned for this use, the County had granted Stapleton permission to use it for parking because of the ski area's inadequate parking facilities. The County and DOT agreed that the DOT would pay for the land, then turn over to the County all excess property not directly associated with the highway expansion. A draft of this agreement stipulated that the County would lease the portion previously used as a parking lot back to Aspen Skiing, but this provision has been removed.

Stapleton challenged the taking, alleging that the County failed to negotiate in good faith as a prerequisite to condemnation, and that the County's primary purpose was to serve the private parking and transportation needs of Buttermilk Ski Area. The County, on the other hand, claimed that its primary purpose was for a public intercept lot to serve general commuters and to preserve open space and wetlands, so that the highway expansion project would meet the requirements of the federal Clean Air Act. In June 2001, the Pitkin County District Court held that no alternate way existed for the County to comply with the law other than through the condemnation of Stapleton's land. Therefore, the alleged private use was subservient to the public purpose associated with the taking. The court turned Stapleton's land over to the County.¹¹⁸ The case is now on appeal.

¹¹⁷ Rachel Brand, "O'Meara Ford Renovation Tripling Size of Dealership; Company's Sales Strong Amid Nationwide Slump," *Rocky Mountain News*, Aug. 21, 2001, at 2B.

¹¹⁸ See *Department of Transportation v. Stapleton*, No. 00CV218 (Pitkin County Dist. Ct. June 18, 2001).

