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## OTTEN JOHNSON ALERT

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# Colorado Supreme Court Affirms Special Districts' Eminent Domain Authority

September 2019 • [Cory Rutz](#) and [Brian Connolly](#)

In a recent decision, the Colorado Supreme Court confirmed that the exercise of condemnation authority by a developer-formed metropolitan district constitutes public use, so long as the purpose of the taking is for some public benefit. Under the Colorado and U.S. constitutions, private parties generally cannot exercise the power of eminent domain. For years, using metropolitan districts, real estate developers effectively exercised the power to condemn private property for public uses such as streets, parks, and utilities in connection with new development projects. In late 2017, however, in the case of *Carousel Farms Metropolitan District v. Woodcrest Homes, Inc.*, a division of the Colorado Court of Appeals invalidated a developer-formed metropolitan district's exercise of condemnation authority, finding that metropolitan districts could not condemn private property when the immediate purpose served only to satisfy the developer's contractual obligation to the local government. The uncertainty created by the Colorado Court of Appeals' decision proved detrimental to many developers' public improvement plans. This alert reviews the Colorado Supreme Court's reversal of that decision, the facts of the dispute, and possible impacts for private developers and special districts.

## Factual Background and Procedural History

The case involved a 0.65-acre parcel located in the Carousel Farms development in the Town of Parker. In 2006, Woodcrest Homes acquired the small parcel for the

purpose of constructing public right of ways, storm drainage and sewer improvements in connection with the development of two adjacent, larger parcels, and annexing it into Parker. Woodcrest's plans eventually stalled as the Great Recession hit, and Woodcrest eventually sold the two adjacent parcels to Century Communities, while retaining ownership of the 0.65-acre parcel. By 2012, the town agreed it would annex the residential development and approve the plat, but only if Century owned the entire land area for the development. When Woodcrest refused to sell the small parcel to Century, Century disclosed its intent to create a metropolitan district to condemn the land. Shortly thereafter, Century created the Carousel Farms Metropolitan District and appointed Century employees and officers to the board. The district initiated eminent domain proceedings and Woodcrest filed suit, arguing that the district was condemning the land for private benefit. The district court disagreed, finding the taking was for a public use. The Colorado Court of Appeals reversed, setting up the Colorado Supreme Court's decision.

## Colorado Supreme Court Opinion

The Colorado Supreme Court's opinion, reversing that of the Colorado Court of Appeals, concerned the public use requirement in takings cases. For a taking to satisfy the public use requirement it must be "essentially for public benefit" and necessary for the intended public use. In essence, the Supreme Court has interpreted this to mean that "the fundamental and intrinsic nature of the taking must be for public benefit." So long as this threshold is met, it is immaterial whether a private party also benefits from the taking. The Colorado Supreme Court found that the District's condemnation of the small parcel was for public benefit because the essential benefit was *ultimately* public, as the parcel will eventually provide critical public infrastructure in the way of public right of ways, storm drainage and sewer improvements.

The Colorado Supreme Court also considered whether the taking was necessary for the public use. Generally, this requirement is satisfied so long as the property taken is used for the intended public use. Absent a showing of fraud or bad faith, the condemning authority's determination of necessity is final. The Colorado Supreme Court found the "taking was necessary for the purpose intended" because the district needed the small parcel to develop the project and it would provide critical public infrastructure. While it acknowledged that the eminent domain authority "was partly designed to overcome the 'holdout' problem that occurred here," the Court found it irrelevant that Century employees and officers managed the district.

## Impact

The Colorado Supreme Court's decision reverses a Colorado Court of Appeals decision that had stymied many metropolitan districts' efforts to condemn public right of ways, utility easements, and parks and trails in connection with new development projects. The uncertainty arising from the Colorado Court of Appeals' decision in this

case left districts unable to exercise this important authority, and resulted in critical public infrastructure being delayed as holdout landowners leveraged their position to demand purchase prices so high as to threaten the economic feasibility of the proposed development. The most significant impact of the Colorado Supreme Court's opinion is its clarification that a metropolitan district's use of eminent domain authority to acquire private property from the holdout landowner does not upend the public use requirement merely because the condemnation satisfies a private developer's existing contractual obligation. Regardless of whether a district is developer-controlled, so long as the taking is "essentially for public benefit" in the long term, the taking will pass constitutional muster.

\*This alert was co-authored with Lindsay Lyda, a law clerk at Otten Johnson.\*

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