

Court: Property owners may access evidence before decisions

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The Colorado Supreme Court ruled on Tuesday that a Douglas County judge incorrectly believed he lacked the authority to allow a property owner to pursue evidence challenging a government entity's legal right to take its property through eminent domain. In a June 23 opinion, Justice Susan Blanco wrote that the law does not explicitly provide for the discovery of evidence, but the procedural rules clearly allow judges to grant such a request before property changes hands.



“Applying these Rules and definitions, a trial court may limit or otherwise manage the parties' participation in pretrial discovery based on its own finding of good cause,” she wrote.

The principle of eminent domain empowers governments to take possession of private property for public use, so long as they provide proper compensation. There are two phases to such proceedings in Colorado: a ruling on the government entity's ability to possess the property, and a trial to determine the amount of compensation.

Last year, the Arrowhead Colorado Metropolitan District filed a petition to condemn property owned by the Roxborough Park Foundation, which controls and maintains common areas within Roxborough Park. A private company that owns a 35-acre parcel formed the metropolitan district to create infrastructure for a proposed “Nordic spa.”

The foundation quickly sought to obtain evidence before the decision on the land's possession. The request encompassed design documents, studies, and communications between the metropolitan district and the private company. The foundation sought to determine if the condemnation was for a legally authorized purpose.

In December, District Court Judge Ben Leutwyler blocked the request for evidence. He concluded the law and the rules governing civil cases “make no provision for discovery in a condemnation action prior to the immediate possession hearing or otherwise.”

The Roxborough Park Foundation turned to the Supreme Court. Without the justices' intervention, the foundation argued, the metropolitan district could take possession of the property and alter it immediately, and the foundation could only appeal that decision after the eventual trial for compensation.

Moreover, no prior court case addressed whether a landowner has the right to the discovery of evidence before a possession decision.

During oral arguments, multiple justices pointed out that Leutwyler's belief that he could not allow discovery was incorrect. Justice Richard L. Gabriel quoted from the order and said that, while Leutwyler

was a “very, very fine trial judge,” the rules do permit the discovery of evidence in certain circumstances.

“There is a mechanism as a matter of law. No question,” added Justice Maria E. Berkenkotter. “This is just, for whatever reason, the court misunderstood the law.”

At the same time, the justices puzzled over the Roxborough Park Foundation’s position that the Supreme Court should recognize a general right to discovery in eminent domain cases. Gabriel noted that Leutwyler’s misunderstanding of the law could be addressed straightforwardly with instructions to revisit his decision.

“Why are you arguing more than that?” Gabriel wondered. “I would have a lot of trouble adopting a rule that says the landowner gets discovery in any case. Period, hard stop.”

Ultimately, the Supreme Court agreed that Leutwyler failed to recognize his own ability to authorize the Roxborough Park Foundation’s request to obtain more information in advance of the land-possession decision. Blanco wrote that the standard for granting the evidentiary motion is “good cause.”

“Here, the trial court should exercise that discretion in deciding whether to grant or deny the Foundation’s request for discovery,” she added.

The case is Arrowhead Colorado Metropolitan District v. Roxborough Park Foundation et al.