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editorial

Wrong course on eminent domain

By The Denver Post

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The Colorado Supreme Court's recent decision in a Telluride eminent domain case is a troubling expansion of the condemnation power of home-rule cities.

The court found that home-rule cities can use their eminent domain powers to reach outside their borders and condemn land for open-space purposes.

We think the court went too far. Open-space preservation isn't among the purposes the state constitution lists as examples of proper eminent domain use. If a city goes beyond its legal borders to take land, it should be restricted to the purposes listed in the constitution.

The Telluride case began when the city sought to condemn 572 acres outside city limits for open space. The land, a beautiful area known as the Valley Floor, belonged to a developer who bought it in 1983.

The land is breathtaking, and it's easy to understand why the city would want to preserve it. But there are other ways to do it and we worry about the precedent this sets for other cities. And let's not forget about the owner's right to decide whether he wants to sell the land to the city or build on it.

The city filed a lawsuit to forcibly take the land in 2004. The developer, San Miguel Valley Corporation, managed to convince state legislators to pass a law to block Telluride's proposal. The legislation made it illegal for a home-rule city to reach beyond its borders and condemn land for open space.

The lawsuit proceeded, and a jury set the sales price for the land at \$50 million, significantly more than what the city contended the land was worth and equal to the owner's appraisal.

We were glad to see that, because it's not unusual for condemning authorities to push around landowners and convince courts to set low purchase prices.

The case ended up at the Colorado Supreme Court on the question of whether the city had the authority to condemn the property. The majority struck down the state law prohibiting extra-territorial condemnations and said the city acted within its powers to take the land.

We think Justice Allison Eid got it right in her dissenting opinion. She wrote that the Constitution gives condemnation powers for specific purposes, such as water works and light

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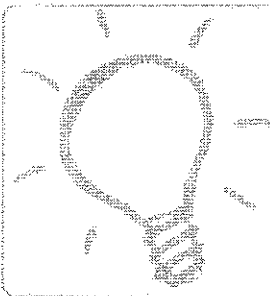
and power plants. Historically, Eid wrote, the court has been quite cautious about condemnations outside municipal borders.

"Unlike the majority, I would continue our cautious stance towards extra-territorial condemnations in the case before us today," she wrote.

A restrained approach in condemning land outside municipal borders is best. At this point, it may take a change in the state constitution to get there.

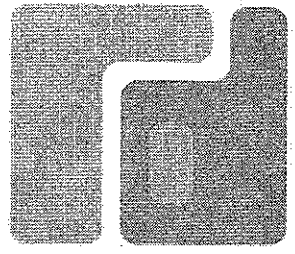
Open-space protection is important to Colorado. But home-rule cities should not have carte blanche to condemn private property outside their borders to accomplish that laudable goal.

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