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Court Rejects Rule 106 Challenge to Sterling Ranch Rezoning Approval

Important Ruling for Colorado's Development Community

On February 19, a Colorado state court judge rejected a lawsuit challenging a Douglas County rezoning decision that will now allow for the continued permitting and construction of Sterling Ranch, a planned 3,400-acre, mixed-use development in Douglas County south of Chatfield State Park. This ruling is critical for Brownstein Hyatt Farber Schreck client Sterling Ranch, and more generally for Colorado's landowners and for local governments, because the ruling confirms that a 2013 statute, Senate Bill 13-258, provides local governments with sole discretion to determine when during the permitting process a developer must demonstrate the existence of an adequate water supply for a proposed development.

Sterling Ranch originally received land use approval from the Douglas County Board of County Commissioners in 2011 to rezone the Sterling Ranch property to accommodate the proposed development. However, shortly after the Board's 2011 decision, several neighbors appealed to the district court, arguing that the Board did not receive proof of an adequate water supply for the development as required by the relevant statute, C.R.S. § 29-20-301. In late 2012, the district court sided with the plaintiffs and interpreted the statute as requiring Sterling Ranch to have provided proof of an adequate water supply before the Board rezoned the property.

The court's ruling would have virtually halted development of master-planned communities by requiring landowner/developers to incur the daunting financial, legal and logistical burdens associated with acquiring in advance all water rights necessary for projected build-out, which usually occurs over many years, if not decades. However, in May 2013, the Colorado legislature adopted Senate Bill 13-258, which clarified that local governments could indeed determine at what stage in the permit approval process a developer must prove an adequate water supply. Following the passage of that statutory amendment, the Board of County Commissioners again approved Sterling Ranch's rezoning.

The same plaintiffs appealed the County's decision under Rule 106, claiming, among other things, that the amended statute did not relieve Sterling Ranch from having to prove water adequacy at the time of rezoning. On February 19, 2013, District Court Judge Richard Caschette rejected the plaintiffs' claims and upheld the Board's rezoning approval. Key to the court's ruling was the language of Senate Bill 13-258, which the court confirmed gave the Board "sole discretion to determine at which stage in the development permit approval process the determination will be made as to adequate water supply." The court went on to clarify that "stages in the development approval process" may include rezonings, planned unit developments, conditional or special use permits, subdivisions, development or site plans, or other applications for new construction. The court also emphasized that a local government only needs to make this water adequacy determination at one point during the entire permit approval process, and that the timing of that determination rests entirely within the government's sole discretion.

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Hopefully, other Colorado courts will follow Judge Caschette's lead in finding that the law is now clear that local governments have discretion to determine when a landowner must provide proof of an adequate water supply for a proposed development.

For assistance with the local government permitting process, challenges under Rule 106 or questions raised by Colorado's water adequacy requirements, please contact Brownstein attorneys Wayne Forman, Caitlin Quander or Geoff Williamson, who successfully represented Sterling Ranch in defending this action.

This document is intended to provide you with general information regarding Rule 106 challenges. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.

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