COLORADO UPDATE

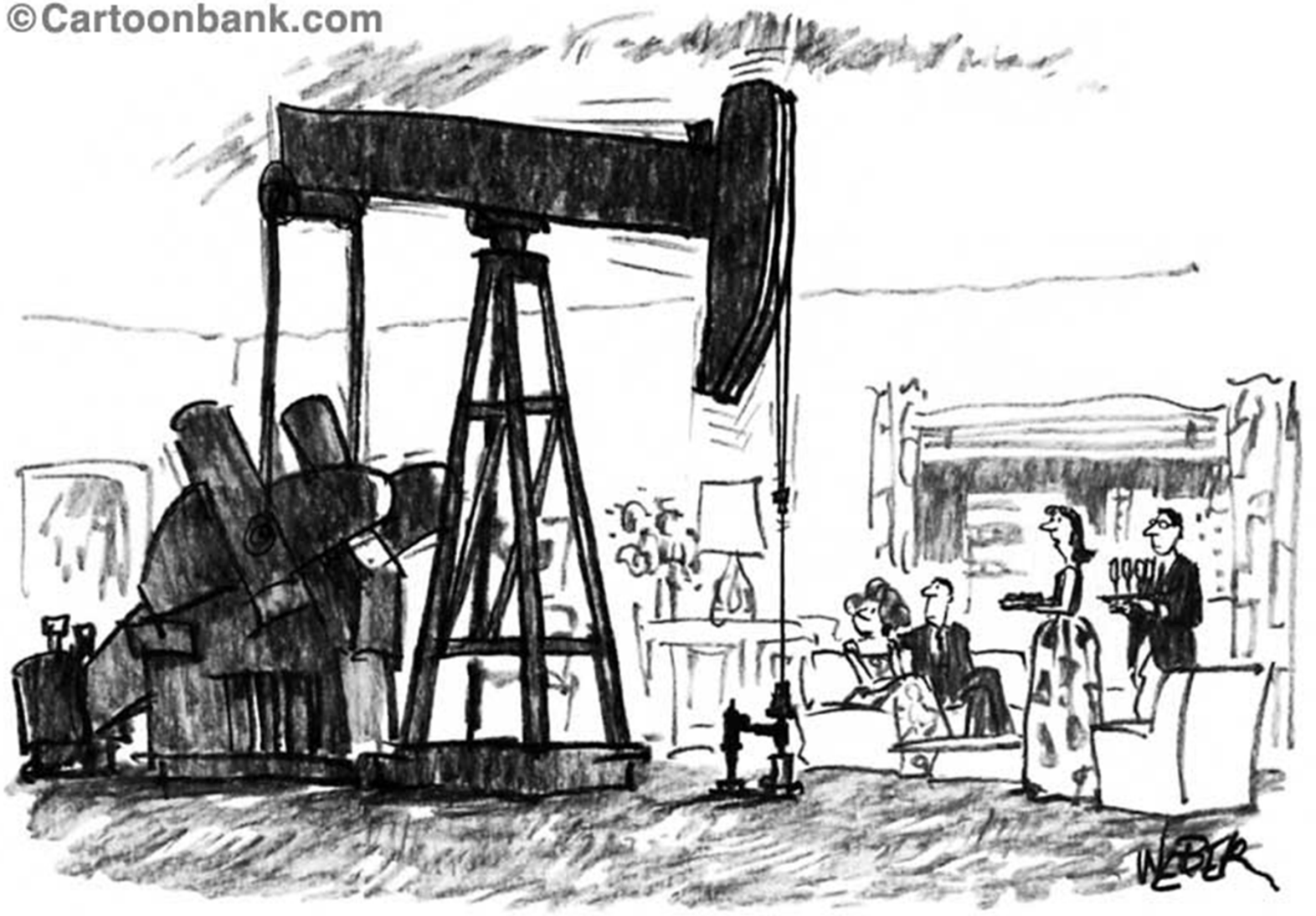
Jefferson H. Parker
Hayes, Phillips, Hoffmann & Carberry, PC
1530 Sixteenth Street, Suite 200
Denver, Colorado 80202-1468
(303) 825-6444
jhparker@hphclaw.com

CDOT Cannot Take Mineral Rights

Dep't of Transp. v. Gypsum Ranch Co., LLC, 244 P.3d 127 (Colo. 2010).

►After 2008, CDOT may only condemn those subsurface rights necessary for subsurface support, pursuant to C.R.S. § 38-1-105(4).

►Mineral rights remain with owner of mineral rights unless necessary for subsurface support for condemnations occurring after 2008.



"We got a great buy on the apartment, but, unfortunately, it didn't include the mineral rights."

TAKINGS COMPENSATION

Palizzi v. City of Brighton, 228 P.3d 957 (Colo. 2010)

►City condemned a strip of agricultural land for a right-of-way on property adjoining municipal boundaries

►If developed, strip of land would have to be annexed and dedicated to City for free

►Court of appeals held that strip of land should not be valued at "highest and best use" as commercial property due to dedication requirement

►Supreme Court took a more global view of permissible evidence at takings compensation hearing

►Evidence regarding value of strip as commercial property admissible

PALIZZI LESSONS

►Colorado courts will take expansive view of admissible evidence at valuation hearing

But. . .

►Municipalities have a long memory

►Annexations are discretionary and can be costly for landowners

"Someday, all this will be infrastructure."

Government Exempt from Own Sign Regulation

Mountain States Media, LLC v. Adams County, Colo., 389 Fed. Appx. 829 (10th Cir. 2010)

- ►County interpreted its own sign regulation to exempt County signs under “civic events” exemption
- ►County treating itself differently than private actors permissible
- ►Not an Equal Protection violation, because government and private actor not similarly situated
- ►A citizen and the government are not in an equivalent position with respect to announcing road closures, election logistics, county meetings and the like

RLUIPA – WHAT NOT TO DO

Rocky Mountain Christian Church v. Board Of County Comm'rs Of Boulder County, 613 F.3d 1229 (10th Cir. 2010).

- Special use application for church expansion from 116,000 to 240,800 square feet
- Mostly denied by Boulder County
- Jury verdict in favor of church
- Attorney fees $1,252,327
- Appeal attorney fees $207,630

RLUIPA – WHAT TO DO . . . SORT OF

Grace Church of Roaring Fork Valley v. Bd. of Comm'rs of Pitkin County, No. 05-cv-01673-RPM, 2010 WL 3777286 (D. Colo. Sept. 20, 2010)

►County initially denied church's special use application to construct new church

►On eve of trial county settled church's claims, approved permit, and paid church's attorney fees

►Church sought damages for two-year delay in approving permit

►County sought safe harbor under RLUIPA

►"A government may avoid the preemptive force of any provision of this chapter by changing the policy or practice that results in a substantial burden on religious exercise. . ."

►As a fix, the County did more than just approve the permit

DE FACTO TAKING – WHAT TO DO

City of Colorado Springs v. Andersen Mahon Enterprises, LLP, No. 09CA1087, 2010 WL 1238873 (Colo. App. April 1, 2010)

De facto taking: "a physical entry by the condemnor, a physical ouster of the owner, a legal interference with the physical use, possession or enjoyment of the property or a legal interference with the owner's power of disposition of the property."

►The intent to condemn and a protracted delay alone are not sufficient to constitute a *de facto taking* even if they hinder a landowner's ability to lease its property

►Acts must be equivalent to exercising dominion and control over property

►City of Colorado Springs engaged purely in "plotting and planning" and delay in acquiring property was typical

DE FACTO TAKING – WHAT NOT TO DO

G & A Land, LLC v. City of Brighton, 233 P.3d 701 (Colo. App. 2010).

Brighton went beyond mere plotting and planning:

1. Represented that Brighton “already owns” property; and
2. Brighton posted a sign stating that the new water treatment facility would be built on property.

SUBSTANTIAL COMPLIANCE FOR ANNEXATION

Town of Erie v. Town of Frederick, No. 09CA1066, 2010 WL 2306702 (Colo. App. June 10, 2010)

- Frederick annexed property via a serial flagpole annexation
- Erie sought to void the annexation
- Erie lost on all claims.
- Court very deferential to Frederick:

1. Inadvertent failure to provide proper notice excused
2. Erie lacked standing to assert claims of third parties
3. Frederick not required to obtain consent of underlying property owners to use county roadway for pole in flagpole annexation
4. General comprehensive plan can be three-mile plan
5. Technical defects excused under substantial compliance standard
6. Attorney fees granted to Frederick for appellate work

QUIET TITLE VERSUS ANNEXATION WHO HAS AUTHORITY?

Sensible Housing Co., Inc. v. Town of Minturn, No. 09CA1824, 2010 WL 3259829 (Colo. App. August 19, 2010)

►Quiet title dispute between two parties regarding ownership of property one of the parties sought to annex into Minturn

►Minturn made its own determination of ownership during pendency of quiet title action

►Then Minturn annexed property

►Court held that pending quiet title action stayed annexation, because it was filed first

►Indicates that if annexation filed first, municipality will have superior authority over court to determine ownership . . . at least for annexation purposes

"....: and we can save 700 lira by not taking any soil tests."

House Bill 11-1092
LOCAL REGULATION OF BICYCLE TRAFFIC

►C.R.S. § 42-4-109(11) – Local government may ban bicycles if alternative parallel route within 450 feet

►C.R.S. §§ 42-4-110(1)(a) and (c) allow local governments to adopt roadway regulations inconsistent with state traffic laws if not a state highway

►City of Black Hawk banned bicycles on certain roadways due to safety and traffic concerns

►House Bill 11-1092 seeks to prevent any local government from banning bicycles on any roadway

►Notably, the State would still retain power to ban bicycles on state highways

House Bill 10-1107
Urban Renewal on Agricultural Land

Alters Colorado's Urban Renewal Law, C.R.S. 31-25-101, *et seq.*

Addition of agricultural land to urban renewal area prohibited unless:

1. The agricultural land is a brownfield;
2. At least ½ of the urban renewal area is developed and 2/3 of the perimeter of the urban renewal area is adjacent to developed land;
3. The agricultural land is an enclave within the municipality and has been entirely surrounded by developed land for at least three years;
4. All taxing entities agree to the inclusion of the agricultural land; or
5. The agricultural land was included before the effective date of the statute

House Bill 10-1107
“Agricultural Land”

►Agricultural land is defined as land classified by assessor as agricultural land

►Zoning of land irrelevant