

**SUPREME COURT, STATE OF COLORADO**

Court Address:

2 East 14th Avenue

Denver, Colorado 80203

**ORIGINAL PROCEEDING PURSUANT TO**

§ 1-40-107(2), C.R.S. (2006)

Appeal from the Ballot Title Setting Board

**Petitioners:**

Michael A. Bowman and Douglas B. Monger,  
Objectors,

v.

**Respondents:**

William G. Mohram, Jr. and Betty S. LaMont,  
Proponents,

and

**Title Board:**

WILLIAM A. HOBBS, JASON DUNN, and DAN  
CARTIN

Attorneys for Petitioners:

Mark G. Grueskin, #14621

Daniel C. Stiles, #35695

Isaacson Rosenbaum P.C.

633 17<sup>th</sup> Street, Suite 2200

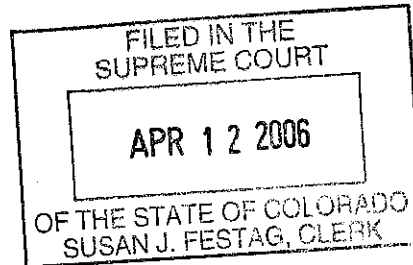
Denver, Colorado 80202

Phone Number: 303-292-5656

Fax Number: 303-292-3152

E-mail: mgrueskin@ir-law.com;

dstiles@ir-law.com



**▲ COURT USE ONLY ▲**

Case No.:

**06SA113**

**PETITION FOR REVIEW OF FINAL ACTION OF  
BALLOT TITLE SETTING BOARD  
CONCERNING PROPOSED INITIATIVE 2005-2006 #86  
("TAKING PROPERTY FOR PUBLIC USE – COMPENSATION, HOW  
ASCERTAINED")**

Michael A. Bowman and Douglas B. Monger ("Petitioners"), being registered electors of the State of Colorado, through their undersigned counsel, respectfully petition this Court pursuant to § 1-40-107(2), C.R.S. (2005), to review the actions of the Ballot Title Setting Board with respect to the setting of the title, ballot title, and submission clause for proposed Initiative 2005-2006 #86 ("Taking Property for Public Use – Compensation, How Ascertained").

### **I. Actions of the Ballot Title Setting Board**

The Title Board conducted its initial public meeting and set titles for proposed Initiative 2005-2006 #86 on March 15, 2006. The Petitioners filed a Motion for Rehearing pursuant to § 1-40-107(1), C.R.S. (2005), on March 22, 2006. The Motion for Rehearing was heard at the next regularly scheduled meeting of the Title Board on April 5, 2006. At the rehearing, the Board granted in part and denied in part Petitioners' Motion. Petitioners hereby seek review of the final action of the Title Board with regard to proposed Initiative 2005-2006 #86 pursuant to § 1-40-107(2), C.R.S. (2005).

### **II. Issues Presented**

- I. Did the Title Board err by failing to state in the ballot title that the proposed measure's standard for a "public entity" engaged in land use regulation will

include entities not presently involved in or generally understood as "public entities" engaged in land use regulation under Colorado law?

- II. Did the Title Board err by failing to state in the ballot title that the proposed measure expands the plain and common meaning of a "land use regulation" to include affirmative and negative acts by a "public entity" on matters, including, but not limited to, guidelines, enforcement actions, deed restrictions, applications, and permits?
- III. Did the Title Board err by failing to state in the ballot title that the measure applies retroactively to land use regulations that have been in effect since 1970?
- IV. Did the Title Board err by failing to state in the ballot title that the proposed initiative explicitly excludes common law nuisances, actions to protect the public health and safety, and compliance with federal law from its requirements?

### **III. Supporting Documentation**


As required by § 1-40-107(2), C.R.S. (2005), a certified copy of the Petition, with the titles and submission clause of the proposed constitutional amendment, together with a certified copy of the Motion for Rehearing and the rulings thereon, are submitted herewith.

#### **IV. Relief Requested**

Petitioners respectfully request this Court to reverse the actions of the Title Board with directions to decline to set a title and to return the proposed Initiative to the proponents.

Respectfully submitted this 12th day of April, 2006.

**ISAACSON ROSENBAUM P.C.**

By:   
Mark G. Grueskin, #14621  
Daniel C. Stiles, #35695

**ATTORNEYS FOR PETITIONERS**

Addresses of Petitioners:

Michael A. Bowman  
28455 County Road HH  
Wray, Colorado 80758

Douglas B. Monger  
12110 County Road 69  
Hayden, Colorado 81639

**CERTIFICATE OF SERVICE**

I hereby certify that on this 12th day of April, 2006, a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2005-2006 #86 ("TAKING PROPERTY FOR PUBLIC USE – COMPENSATION, HOW ASCERTAINED")** was placed in the United States mail, postage prepaid, to the following:

Scott Gessler  
Hackstaff Gessler LLC  
1601 Blake Street, Suite 310  
Denver, CO 80202

Maurice G. Knaizer, Esq.  
Deputy Attorney General  
Colorado Department of Law  
1525 Sherman Street, 5th Floor  
Denver, Colorado 80203

  
\_\_\_\_\_



# STATE OF COLORADO

DEPARTMENT OF  
STATE

## CERTIFICATE

I, **GINETTE DENNIS**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the text, motion for rehearing, titles, and the rulings thereon of the Title Board on Proposed Initiative "2005-2006 #86".

.....**IN TESTIMONY WHEREOF** I have unto set my hand  
and affixed the Great Seal of the State of Colorado, at the  
City of Denver this 6th day of April, 2006.

*GINETTE DENNIS*

SECRETARY OF STATE

RECEIVED

FEB 28 2006

ELECTIONS / LICENSING  
SECRETARY OF STATE

16  
3:30pm  
WCC

Final revised measure

Be it enacted by the People of the State of Colorado:

Section 15 of article II of the constitution of the state of Colorado is amended to read:

**Section 15. Taking property for public use – compensation, how ascertained**

(1) Private property shall not be taken or damaged, for public or private use, without just compensation. Such compensation shall be ascertained by a board of commissioners, of not less than three freeholders, or by a jury, when required by the owner of the property, in such manner as may be prescribed by law, and until the same shall be paid to the owner, or into court for the owner, the property shall not be needlessly disturbed, or the proprietary rights of the owner therein divested; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.

(2) IF ANY PUBLIC ENTITY ENACTS OR ENFORCES ANY LAND USE REGULATION OR ANY COMBINATION OF LAND USE REGULATIONS THAT DIMINISHES THE FAIR MARKET VALUE OF ANY PORTION OF PRIVATELY-OWNED REAL PROPERTY BY TWENTY PERCENT OR MORE, THE PUBLIC ENTITY SHALL EITHER PROVIDE JUST COMPENSATION TO THE OWNER OF THE AFFECTED PORTION OF REAL PROPERTY OR EXEMPT THE OWNER FROM THE LAND USE REGULATION.

(a) THIS SUBSECTION (2) SHALL NOT APPLY TO ANY LAND USE REGULATION THAT:

(I) IS ENACTED:

(A) PRIOR TO 1970; OR

(B) AFTER 1970 BUT PRIOR TO ACQUISITION OF THE PROPERTY BY THE OWNER OR A FAMILY MEMBER OF THE OWNER; OR

(II) IS NECESSARY TO:

(A) RESTRICT OR PROHIBIT ACTIVITIES HISTORICALLY RECOGNIZED AS NUISANCES UNDER COMMON LAW;

(B) PROTECT THE PUBLIC HEALTH AND SAFETY; OR

(C) COMPLY WITH FEDERAL LAW.

(b) THE FOLLOWING SHALL APPLY TO ANY EFFORT TO ENJOIN ENFORCEMENT OF A LAND USE REGULATION OR OBTAIN JUST COMPENSATION FROM ANY PUBLIC ENTITY UNDER THIS SUBSECTION (2);

- (I) THE OWNER SHALL PROVIDE WRITTEN DEMAND FOR COMPENSATION OR EXEMPTION TO THE PUBLIC ENTITY AT LEAST ONE HUNDRED EIGHTY DAYS PRIOR TO COMMENCING ANY COURT ACTION. THE DEMAND SHALL IDENTIFY THE AFFECTED PORTION OF REAL PROPERTY, ANY LAND USE REGULATION, AND THE AMOUNT OF DIMINUTION;
- (II) WRITTEN DEMAND SHALL BE MADE WITHIN FIVE YEARS OF:
- (A) THE EFFECTIVE DATE OF THIS MEASURE;
  - (B) THE DATE OF THE ENACTMENT OF THE LAND USE REGULATION; OR
  - (C) THE DATE THE PUBLIC ENTITY SEEKS TO ENFORCE THE LAND USE REGULATION, WHICH ENFORCEMENT SHALL INCLUDE USE OF THE LAND USE REGULATION AS AN APPROVAL CRITERIA TO AN APPLICATION SUBMITTED BY THE OWNER.
- (III) WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE WRITTEN DEMAND IS SENT, THE PUBLIC ENTITY SHALL:
- (A) EXEMPT THE OWNER FROM ENFORCEMENT OF THE LAND USE REGULATION;
  - (B) PROVIDE JUST COMPENSATION; OR
  - (C) SUBMIT TO THE OWNER A STATEMENT THAT IDENTIFIES USES OF THE AFFECTED PROPERTY THAT ARE APPROVED BY THE PUBLIC ENTITY. THE PUBLIC ENTITY MAY NOT ACT INCONSISTENTLY WITH THE STATEMENT SUBMITTED TO THE OWNER.
- (IV) AN OWNER MAY ENJOIN ENFORCEMENT OF THE LAND USE REGULATION OR OBTAIN JUST COMPENSATION BY BRINGING AN ACTION IN DISTRICT COURT IN THE DISTRICT WHERE THE REAL PROPERTY IS LOCATED. THE OWNER'S CLAIM SHALL BECOME RIPE FOR JUDICIAL REVIEW ONE HUNDRED EIGHTY DAYS AFTER THE WRITTEN DEMAND. THE OWNER SHALL COMMENCE LEGAL ACTION NO LATER THAN TWO YEARS FROM THE DATE THE OWNER'S CLAIM BECOMES RIPE FOR JUDICIAL REVIEW. THE OWNER NEED NOT COMPLETE ANY ADMINISTRATIVE PROCEDURES BEFORE INSTITUTING COURT ACTION.
- (V) THE OWNER SHALL ESTABLISH A DIMINUTION OF VALUE OR JUST COMPENSATION BY A PREPONDERANCE OF THE EVIDENCE. THE OWNER MAY SUBMIT EVIDENCE IN ADDITION TO EVIDENCE PRESENTED TO A PUBLIC ENTITY OR ADMINISTRATIVE BODY.
- (VI) ALL EXCEPTIONS IN SUBSECTION (2)(a)(II) SHALL BE NARROWLY CONSTRUED AND SHALL BE PROVEN BY THE PUBLIC ENTITY BY CLEAR AND



CONVINCING EVIDENCE. A PUBLIC ENTITY'S DETERMINATION SHALL BE INSUFFICIENT TO ESTABLISH AN EXCEPTION CONTAINED IN SUBSECTION (2)(a)(II), AND A DISTRICT COURT'S APPLICATION OF AN EXCEPTION CONTAINED IN SUBSECTION (2)(a)(II) SHALL BE SUBJECT TO *DE NOVO* REVIEW UPON APPEAL.

(VII) THE OWNER SHALL BE ENTITLED TO REASONABLE COSTS AND ATTORNEY FEES INCURRED IN:

- (A) OBTAINING INJUNCTIVE RELIEF OR JUST COMPENSATION; OR
- (B) SEEKING INJUNCTIVE RELIEF OR JUST COMPENSATION IF THE PUBLIC ENTITY PROVIDES RELIEF WITHOUT FINAL COURT ACTION.

(c) AS USED IN THIS SUBSECTION (2):

(I) "FAMILY MEMBER" SHALL INCLUDE:

- (A) ANY DESCENDANT OR ANCESTOR, BY BIRTH, ADOPTION OR MARRIAGE, OF AN OWNER;
- (B) AN UNCLE, AUNT, NIECE OR NEPHEW;
- (C) AN ESTATE OR TRUST ESTABLISHED BY OR IN THE NAME OF ANY OF THE FOREGOING; OR
- (D) A LEGAL ENTITY OWNED BY THE OWNER, ANY OF THE FOREGOING FAMILY MEMBERS, OR A COMBINATION OF THE OWNER OR ANY OF THE FOREGOING FAMILY MEMBERS.

(II) "JUST COMPENSATION" SHALL BE THE DIMINUTION IN FAIR MARKET VALUE CAUSED BY ANY LAND USE REGULATION OR COMBINATION OF LAND USE REGULATIONS.

(III) "LAND USE REGULATION" INCLUDES ANY PERMANENT OR TEMPORARY ACTIONS TAKEN BY ANY PUBLIC ENTITY THAT AFFECTS OWNERSHIP OF, OR AN INTEREST IN, REAL PROPERTY. THE TERM SHALL INCLUDE, BUT NOT BE LIMITED TO, ANY LAW, REGULATION, MORATORIUM, ORDINANCE, RULE, GUIDELINE, ENFORCEMENT ACTION, DEED RESTRICTION, OR OTHER ACTION TAKEN IN CONNECTION TO AN APPLICATION OR PERMIT, TO INCLUDE THE DENIAL OF AN APPLICATION OR PERMIT. "LAND USE REGULATION" SHALL INCLUDE TWO OR MORE LAND USE REGULATIONS.

(IV) "OWNER" SHALL INCLUDE THE PRESENT OWNER OF REAL PROPERTY OR ANY INTEREST IN REAL PROPERTY. "OWNER" SHALL NOT INCLUDE A PUBLIC

ENTITY, OR THE UNITED STATES, OR ANY AGENCY, DEPARTMENT OR DIVISION OF THE UNITED STATES.

(V) "PUBLIC ENTITY" INCLUDES THE STATE OF COLORADO, ANY POLITICAL SUBDIVISION OF THE STATE, ANY AGENCY OR DEPARTMENT OF THE STATE GOVERNMENT, A COUNTY, CITY AND COUNTY, CITY, TOWN, SERVICE AUTHORITY, SCHOOL DISTRICT, LOCAL IMPROVEMENT DISTRICT, LAW ENFORCEMENT AUTHORITY, CITY OR COUNTY HOUSING AUTHORITY, OR WATER, SANITATION, FIRE PROTECTION, METROPOLITAN, IRRIGATION, DRAINAGE, OR OTHER SPECIAL DISTRICT, OR ANY OTHER KIND OF MUNICIPAL, QUASI-MUNICIPAL, OR PUBLIC CORPORATION ORGANIZED PURSUANT TO LAW, OR ANY ENTITY THAT INDEPENDENTLY EXERCISES GOVERNMENTAL AUTHORITY. "PUBLIC ENTITY" SHALL INCLUDE TWO OR MORE PUBLIC ENTITIES.

(VI) "REAL PROPERTY" MEANS ANY INTEREST IN REAL PROPERTY RECOGNIZED BY THE LAWS OF COLORADO.

RECEIVED

William G. Mohram, Jr.  
567 Twinning Flats Road  
Aspen, CO 81611

Betty S. LaMont  
0085 Elliot Way  
Meredith, CO 81642

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COLORADO TITLE SETTING BOARD

MAR 22 2006

CH-7P.M.  
3:37

ELECTIONS/LICENSING  
SECRETARY OF STATE

In re Title and Ballot Title and Submission Clause for Initiative 2005-06 #86

MOTION FOR REHEARING

On behalf of Michael A. Bowman and Douglas B. Monger, registered electors of the State of Colorado, the undersigned hereby moves for a rehearing of the title, ballot title and submission clause for Initiative 2005-06 #86, set by the Title Board on March 15, 2006. The Petitioners allege that the title set by the Board is misleading, inaccurate, and incomplete for the following reasons.

1. The titles state that the measure addresses diminished property values when a governmental entity "enacts" a land use regulation and omit the measure's applicability when a public entity "enforces" a land use regulation.
2. "Just compensation" is a legal term of art, used in connection with a taking of property by government. Because the initiative's use of this phrase is unrelated to such a taking, the use of "just compensation" in the title is misleading.
3. As used here, "just compensation" is a catchphrase and thus misleading.
4. "Remedies" in the introductory clause of the titles is not language found in the initiative text and is prejudicial.
5. The titles do not reflect the initiative's newly created standard for a "public entity" engaged in land use regulation. That new standard includes entities not currently involved in or associated with such regulation: the State of Colorado, any agency or department of state government, school districts, service authorities, law enforcement authorities, city or county housing authorities, and all special districts (including the listed water, sanitation, fire protection, metropolitan, irrigation, and drainage districts).
6. The titles do not reflect the initiative's newly created, open-ended standard for "land use regulation." That new standard is not limited to the listed actions and includes acts that have never been considered to be land use regulations, such as guidelines, enforcement actions, deed restrictions, and any action taken in connection with applications and permits, including their denial.
7. The titles fail to state that the measure applies to land use regulations that have been in effect since 1970.

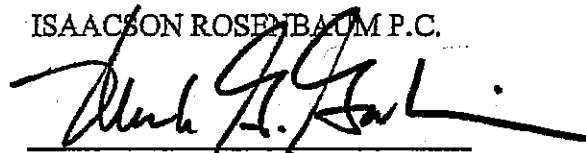
8. The titles fail to state that the measure creates significant exceptions for land use regulations that are necessary to prevent common law nuisances, protect the public health and safety, or comply with federal law.

9. The titles fail to state that the exceptions listed under 8. above may not be established by a public entity engaged in land use regulation.

10. The titles fail to refer to the only process by which an exception listed under 8. above is established, namely that such exception is found by a court of law and such finding cannot be further appealed.

Respectfully submitted this 22<sup>nd</sup> day of March, 2006.

ISAACSON ROSENBAUM P.C.



Mark G. Grueskin, #14621  
Kara Veitch, #32227  
633 17<sup>th</sup> Street, Suite 2200  
Denver, CO 80202  
Phone: 303-292-5656  
Fax: 303-292-3152

Addresses of Objectors:

Michael A. Bowman  
28455 County Road HH  
Wray, CO 80758

Douglas B. Monger  
12110 County Road 69  
Hayden, CO 81639

CERTIFICATE OF SERVICE

I hereby certify that on the 22<sup>nd</sup> day of March, 2006, a true and correct copy of the foregoing **MOTION FOR REHEARING** was placed in the United States mail, postage prepaid, to the following:

Scott Gessler  
Hackstaff Gessler LLC  
1601 Blake Street, Suite 310  
Denver, CO 80202

  
\_\_\_\_\_

**Ballot Title Setting Board**

**Proposed Initiative 2005-2006 #86<sup>1</sup>**

The title as designated and fixed by the Board is as follows:

An amendment to the Colorado constitution concerning a requirement that public entities provide remedies to owners of privately-owned real property for land use regulations that diminish the value of the property, and, in connection therewith, requiring public entities to provide compensation to an owner or exempt the owner from the land use regulations if a public entity enacts or enforces land use regulations that reduce the value of any portion of the property by twenty percent or more.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be an amendment to the Colorado constitution concerning a requirement that public entities provide remedies to owners of privately-owned real property for land use regulations that diminish the value of the property, and, in connection therewith, requiring public entities to provide compensation to an owner or exempt the owner from the land use regulations if a public entity enacts or enforces land use regulations that reduce the value of any portion of the property by twenty percent or more?

*Hearing March 15, 2006:*

*At request of proponent, technical correction allowed in text of measure. (In Section 15(2)(c)(III), line 6, changed the first "to" to "with".)*

*Single subject approved; staff draft amended; titles set.*

*Hearing adjourned 2:33 p.m.*

*Hearing April 5, 2006:*

*Motion for Rehearing granted in part to the extent Board amended titles; denied in all other respects.*

*Hearing adjourned 3:02 p.m.*

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<sup>1</sup>Unofficially captioned "Compensation for Land Use Regs that Diminish Value" by legislative staff for tracking purposes.

Such caption is not part of the titles set by the Board.