



## LAND USE ALERT

TO: Friends and Clients  
FROM: Isaacson Rosenbaum P.C.  
DATE: May 14, 2007  
RE: Droste v. Board of County Commissioners of the County of Pitkin, Colorado

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Today, in a statutory construction case, the Colorado Supreme Court affirmed Pitkin County's authority, following a public hearing process, to adopt ordinances that impose a temporary moratorium on land use application reviews pursuant to the Local Government Land Use Control Enabling Act, §§ 29-20-101 to -107, C.R.S. (2006) ("Land Use Enabling Act").

Affected land owners challenged the validity of a Pitkin County moratorium arguing that counties only have authority for a moratorium under § 30-28-121, C.R.S. of the County Planning and Building Codes ("County Planning and Building Codes"). The County Planning and Building Codes limits counties' ability to adopt moratoria without a public hearing in the context of zoning plan adoption for a period of up to six months.

The Colorado Supreme Court upheld the judgment of the Colorado Court of Appeals finding that the General Assembly's grant of land use authority to counties implies the authority to adopt temporary moratoria to suspend review of development applications for a reasonable period of time necessary for the counties to prepare required master plans. The Colorado Supreme Court found that the County Planning and Building Codes do not preempt or conflict with Pitkin County's necessarily implied authority under the Land Use Enabling Act to adopt a reasonable moratorium of sufficient duration to prepare a master plan. The issue turned on Pitkin County's use of public hearings to adopt two ordinances imposing the temporary moratorium. Although this was a statutory construction case, the Colorado Supreme Court added that the length and conditions of a moratoria are subject to the protection of property owners against uncompensated takings.

Justice Eid, joined by Justice Coats, dissented, taking issue with the fact that Pitkin County held a public hearing nearly a month after the Board of County Commissioners of Pitkin County imposed an emergency ordinance prior to a hearing under the County's home rule charter. Droste v. Board of County Commissioners of the County of Pitkin, Colorado.

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