

City loses to store developer

Judge: Soopers plan should've been reviewed

By **TONY BALANDRAN** 5-2-95
The Coloradoan

Fort Collins has lost a key legal battle against a Denver developer who wanted to build a King Soopers store on Harmony Road.

Now the developer says he intends to sue the city for "in excess

of \$3 million" in damages.

District Judge Arnaud Newton has ruled that a development proposal submitted in June by James M. Sullivan should have undergone the review process and should not have been held up under a six-month moratorium on Harmony Road projects because that measure wasn't approved by the City Council until July.

Instead, the city halted Sullivan's plans because of the moratorium, and the developer claims he has since lost the deal because

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of the council's decision.

Sullivan also said delays and the legal dispute forced the landowner to go to another developer, who wants to build a Safeway store at the site.

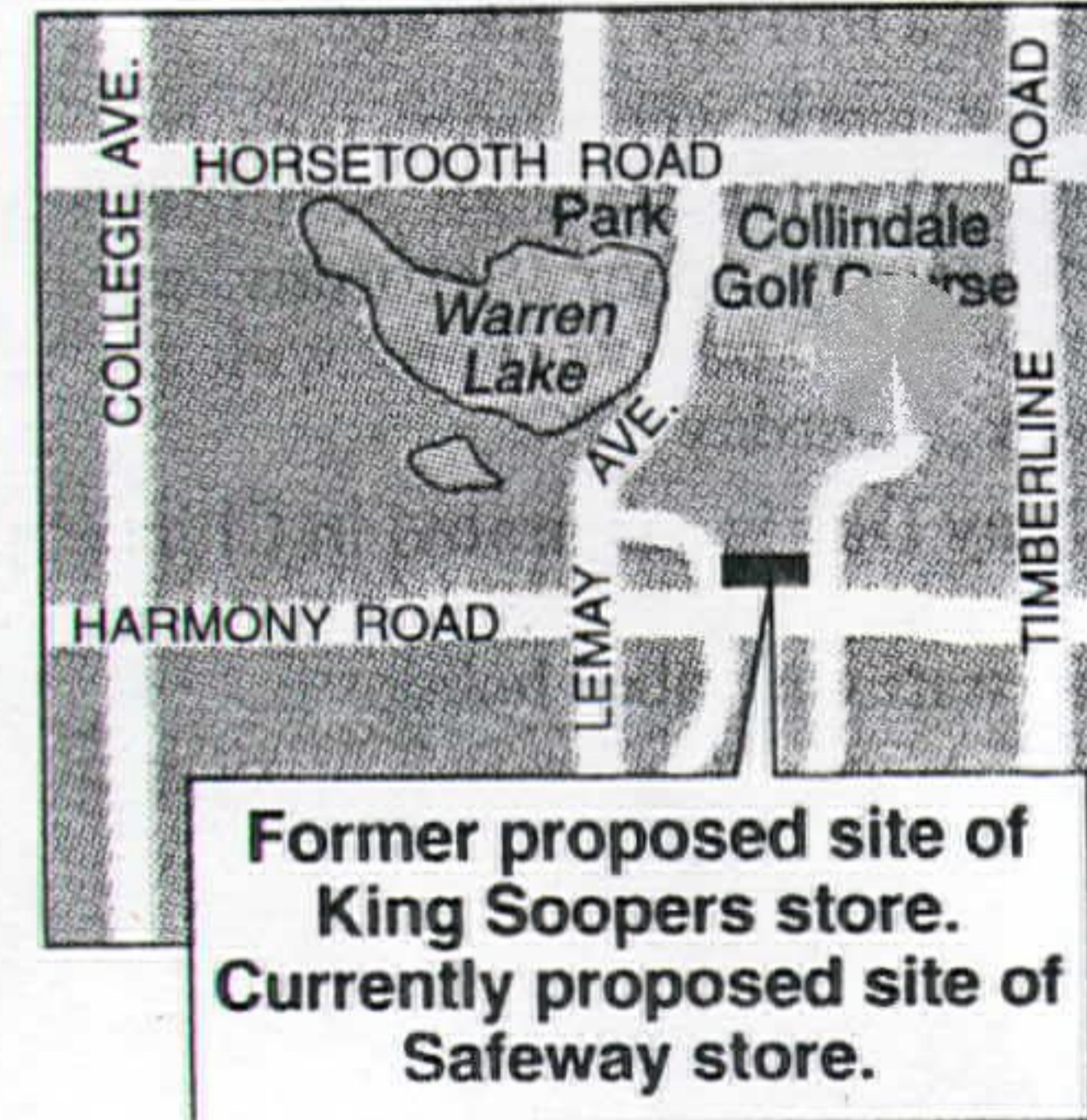
"It was unconscionable the action of the mayor and City Council and I hope the court will hold them accountable," Sullivan, president of Sullivan/Hayes Brokerage in Denver, said Monday.

Appealing Newton's ruling, which came last week, is just one of the options the city is considering, City Attorney Steve Roy said.

"This case is far from over," Roy said. "There are a number of important issues that have to be resolved on their merits."

Another element in the city's response will be based on how an Aspen case, upon which Newton based much of his ruling, holds up in the Colorado Supreme Court.

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In Newton's ruling, the issue was the moratorium that council members unanimously passed July 5 on commercial developments along Harmony Road between College Avenue and Interstate 25.

Council members approved the temporary delay to give officials time to re-evaluate the Harmony Corridor plan and suggest changes.

However, that action stopped Sullivan's proposal, which was filed with the city June 7, to build a 160,000-square-foot retail center north of Harmony Road and between Wheaton Drive and McMurry Avenue. A 66,000-square-foot King Soopers was to be the anchor store.

The developer filed a lawsuit in September, trying to overturn the city's decision to keep him under the moratorium.

In court documents, Sullivan argued that his plan should have been allowed through the city's review process under the Harmony Corridor regulations that were in effect June 7 — and not by any subsequent changes that council made.

City lawyers had argued that state's pending-ordinance doctrine allowed the city to apply newly enacted criteria on development proposals that had been submitted as early as March or April, when officials began to reconsider the Harmony Corridor criteria.

Tim Dolan, a Golden Meadows resident who helped organize the neighborhood's objection to the King Soopers plan, said that despite the judge's ruling, he thinks the City Council still "took the right road."

"I don't see how he (Sullivan) can sue the city if the landowner made the decision to drop the option," Dolan said.

Sullivan, meanwhile, said City Council members have put Fort Collins taxpayers at risk of having to pay for their mistake.

In October, Roy had recommended that the City Council exempt Sullivan from the moratorium. His suggestion was based on the Aspen case, in which the state Court of Appeals decided that some building applications must be reviewed by the rules and policies in place at the time the application is made.

However, the council rejected that suggestion.

"What the city did was wrong," Sullivan said. "They should act on the good advice of their attorney and look at all individuals involved and not just the ones that are putting most of the pressure on them."

Roy described council's action as a "good faith effort" to "make the decision in the best interest of the city."

"Council has a lot of competing interests to balance in any legislative decision, and that was true here," Roy said.