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Eminent domain not a threat locally

Mitchell Schnurman
IN MY OPINION

Tarrant County College spent months secretly buying large tracts for a downtown campus, and it might still have to use the power of eminent domain to secure a couple of key pieces.

"We're going to great lengths to try to avoid it," says David Wells, the college's provost. "But we have to protect the public, too."

The TCC story is notable, because it shows the need for government intervention and the reluctance to use the ultimate hammer.

This isn't the kind of case that prompted the Supreme Court to review eminent domain last week, but it demonstrates why the court's decision won't change the status quo in North Texas.

The court upheld a Connecticut city's right to seize personal property, with just compensation, to facilitate a redevelopment project. It ruled, 5-4, that economic development was justification for using eminent domain.

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That's not exactly news around here.

Communities have always used eminent domain to acquire land for roads, sewers, water towers and the like. But here, they've also seized private property to build North East Mall in Hurst, Texas Motor Speedway and LaGrave Field in Fort Worth, Amerquest Field in Arlington and the American Airlines Center in Dallas.

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In those deals, local leaders believed the public stood to gain significantly from the additions. The record shows they were right.

When a small number of landowners refused to sell for those developments, the cities took their property anyway.

Sometimes, owners object on principle alone. More often, it's a question of money: What's fair compensation for the land and the disruption to their families?

In most cases, the threat of seizure is enough to prompt a settlement. Tarrant County College, for example, is still pursuing a deal with two holdouts, who own less than 1 acre near the bluffs in downtown Fort Worth.

The school has acquired 55 acres, which were controlled by six parties. Those purchases were made on the open market, sometimes with "straw-men" investors.

The college tried to buy the land secretly so prices wouldn't soar. In theory, Tarrant County College didn't have to work that hard; it could have used eminent domain to seize the land, as colleges across the country have done to expand campuses and even build parking garages.

But kicking people out of their homes and offices creates an ugly scene.

Landowners hire lawyers, who make sure the public learns what's happening. And the right to own property is so fundamental to Americans that many don't accept government seizures under any circumstances.

"It has to be an option of last resort," says Wells, adding that Tarrant County College has never had to condemn property.

The negative publicity can continue for a while, as the proposal goes through public hearings and court challenges.

Victims often strike an emotional chord with the public, and they usually win larger settlements when cases go to a jury.

Hurst, in particular, took a big hit when it forced out 10 landowners for the expansion of the North East Mall area in the mid-1990s. Two died while the four-year battle was going on, and the court case resulted in much higher payments to the holdouts -- a \$3 million settlement, rather than the \$1 million that Hurst originally offered.

North Texas leaders still cite that example, and they're gun-shy about eminent domain because of it.

Don't expect the Supreme Court decision to embolden them to overreach.

"This ruling doesn't change how North Texas governments will do business," said Darrell Cook, a Dallas lawyer who handles property cases. "Cities don't want to spend their economic and political capital to do something that's unpopular."

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Developers will note the court decision, of course, and probably trot out grand ideas that hinge on getting property -- even if it requires eminent domain.

Maybe that will fly in towns where local leaders and business powers are entwined, and the public scrutiny is not intense. Dissenters on the Supreme Court worry that the rich and powerful will now use eminent domain to their advantage.

But I don't think that cities around here will bite on many such plans, not unless the project is so substantial that it requires extraordinary action. And if that's the case, why be precluded from using eminent domain?

In my mind, the Trinity River Vision in Fort Worth and the Cowboys' new stadium in Arlington are the kind of once-in-a-decade deals that justify all the tools in the toolbox.

The Supreme Court ruled that it's up to a community to decide whether a proposal meets such standards. The court didn't want to draw a bright line about what qualifies as an appropriate public use.

"Just as we decline to second-guess the city's considered judgments about the efficacy of its development plan, we also decline to second-guess the city's determinations as to what lands it needs to acquire in order to effectuate the project," wrote Justice Paul Stevens in the majority opinion.

There are checks and balances in this process, including the legal system and the news media. But public outrage is the all-powerful force in local politics.

The outcry over proposed annexations and a city-owned hotel forced real changes in Fort Worth government. Hurst's public problems with eminent domain -- and the high price it paid -- sent a message to nearby communities, too.

Lawyers, personal property advocates, the news media and the courts will be monitoring this issue closely. They'll be looking for cities that don't show the proper restraint about their residents' property rights.

The Supreme Court has lowered the legal threshold for these cases. But in the court of public opinion, it's still a tough sell.

*Mitchell Schnurman's column appears Wednesdays and Sundays. (817) 390-7821
schnurman@star-telegram.com*



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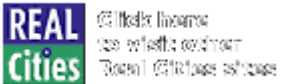
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