

Dallas Morning News, The (TX)

June 24, 2005

In light of stadium, ruling pleases Arlington But some attorneys say state courts often side with property owners *JEFF MOSIER and JIM GETZ Staff Writers*

A U.S. Supreme Court decision on a Connecticut condemnation case Thursday has cleared any federal obstacles to building a new \$650 million Dallas Cowboys stadium in Arlington.

The justices, in a 5-4 split, ruled that local governments have broad powers to condemn private property and sell it to other individuals or businesses, provided that officials determine that it's in the public's interest.

There were no direct connections to the new Dallas Cowboys stadium, but a restrictive decision from Washington might have affected the city's expected use of eminent domain to obtain some of the needed property.

"Our attorneys said to me this morning that this is the end of it," Arlington Mayor Robert Cluck said about the Kelo vs. New London case. "This is the final decision, the final appeal. I don't think there is anything out there that is a danger to us now."

In the New London case, the city condemned the houses in a working-class, waterfront neighborhood to make way for a hotel, retail and upscale town homes. New London officials argued that the economic benefits of the new development constituted a "public purpose."

But a Corsicana attorney who has battled Arlington previously over eminent domain said officials there still could face legal hurdles. Glenn Sodd represented property owners displaced by Amerquest Field and said he represents the owners of 15 homes or lots and four apartment complexes that are in the path of the Cowboys stadium. He said he was shocked by the U.S. Supreme Court decision but said he's willing to take his cases to the Texas Supreme Court.

"Most state supreme courts that have considered the constitutionality of condemning land to take from one person and give to another have held that it's unconstitutional," he said.

Jay Doegey, Arlington's city attorney, said Thursday's high court ruling is "consistent with what some Texas courts have done in similar cases." Unless the Texas Legislature passed a law restricting eminent-domain powers, he said, he couldn't see any trouble in the court system.

The Arlington City Council has already agreed to sale prices for about 15 homes or lots and has approved resolutions of necessity for more than two dozen others. The resolutions are the first steps before the city files condemnation proceedings against the property owners, which could happen as early as July or August. The Cowboys stadium, funded jointly by the team and the city, is scheduled to open in 2009.

In the 1990s, Arlington exercised powers of eminent domain to acquire the land for Amerquest Field, and Fort Worth used it to obtain land for Texas Motor Speedway. Hurst used condemnation for an expansion of North East Mall.

Osler McCarthy, spokesman for the Texas Supreme Court, said the high court has yet to hear a condemnation case defining public use.

"Most disputes here are over compensation," he said, "but we have had nothing like the New London case."

A similar case could come the high court's way, however. The state's Third Court of Appeals recently rejected Austin's argument that a parking garage and water-chilling plant was a public use under which the city took someone's property.

The appeals court also cited an earlier Texas court decision that stated that courts, not lawmakers or the executive branch, decide whether a particular use is public. That is unlike the U.S. Supreme Court decision, which deferred such definitions to state and local governments - a point that upsets Steven Anderson, an attorney and coordinator of the Castle Coalition. The coalition is a grass-roots arm of the Institute for Justice, which argued on behalf of Suzette Kelo in the Supreme Court case.

"Whenever they defer to the Legislature on what the Constitution actually means, there's no longer the checks and balances set up when this country was founded," he said. Douglas Laycock, associate dean for research at the University of Texas law school, disagreed, saying most local governments had taken a broad definition of public use for a long time.

The Supreme Court might have been "worried about opening up a huge judicial can of worms. How do they decide what's public use and what's not?"

Mr. Laycock also said it is unlikely that those seeking to curb eminent domain for economic development will find much solace in Texas' highest judicial body.

"The Texas Supreme Court does not often make more restrictive rulings than the U.S. Supreme Court," he said.

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