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Condemnation battles mark Arlington's growth

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The Rev. Russ Barksdale bristles when he recalls his wrangles with the city over church-owned land needed for the extension of Bowen Road - a quarrel that nearly thrust the two parties into court.

"The city staff are bullies," said Barksdale, pastor of Rush Creek Baptist Church, which only recently settled with the city over the acquisition. "They consider the land their land. They don't care what your opinion is."

Such emotions often emerge when it comes to the process of condemnation, or forcing landowners to sell private property for public use.

But the callous approach described by Barksdale is far from reality, city officials say. Instead, the city tries to acquire land by negotiation first, turning to condemnation when no progress is being made. Fair market value, or the price for the land based on sales of similar parcels, is always offered, they say.

"I think the council takes very seriously its duty to the taxpayers, but also their desire to be fair to the private property owners," Councilman Dixon Holman said.

Yet recent efforts to acquire land for a \$4.1 million extension of Bowen Road from Southwest Green Oaks Boulevard to Sublett Road have been particularly contentious. The city mounted a highly publicized effort to condemn land owned by the Carmelite nuns, who said the project would disrupt the serenity of their south Arlington monastery.

That case and others have elicited complaints that the city doesn't try hard enough to accommodate property owners, that it offers inadequate compensation for land and that it fails to compensate owners for "remainder" damages, or loss of property value because of the public project.

"I'd say Arlington has more restrictions on the individual freedoms of property owners than most communities I come into contact with," said Glenn Sodd, a Corsicana attorney known for representing property owners in condemnation cases. "The city staff and, I suppose, the council seem to have the view that their vision of what's best is better than the property owners'."

City officials said that condemnation is a fact of life, particularly in a city where new facilities pop up as rapidly as dandelions after a rainstorm.

Without the ability to condemn property, water lines and parks would never get built, city officials said. Roads would meander crazily if they could only be built on the parcels of agreeable owners. Even the landmark Ballpark in Arlington might be only a brick-and-granite vision of an imaginative architect.

City officials also maintain that using the condemnation process is relatively rare, considering all the property the city buys.

Figures obtained by the city show that it purchased about 1,500 parcels of land between the start of the 1994-95 fiscal year and last May. About 50 parcels were condemned

during the same period, the figures show.

The city does not keep official statistics on the outcome of condemnation cases, but anecdotal evidence shows mixed results.

Although the city paid more than \$7 million in a condemnation case related to land needed for The Ballpark in Arlington, a property owner who wanted \$260,000 for land needed to expand Center Street was awarded \$175,000 during a commissioners' hearing, Assistant City Attorney Ivan Bland said.

Occasionally, residents sell their homes with little quibbling.

When the city purchased 20 homes on the east side of Center Street between Park Row Drive and Pioneer Parkway, none was condemned and residents received relocation expenses, said Linda Peden, the city's real estate manager.

Mike Eustace, an Arlington real estate appraiser, said that one of the sources of contention in many cases is intangible values. Such was the case with the nuns, who considered their property far more valuable than the city's \$30,000 offer because it was isolated, he said.

"They have a secluded, quiet situation there," he said. "The city is evaluating property based on the going price for land in that area."

Arlington lawyer Paul Goetz, who represented two Dalworthington Gardens couples who had portions of their lots condemned by Arlington for the widening of Bowen Road, said the city fails to adequately compensate for damages.

"As a result of the taking by the city, the removal of trees and everything along with that, that has resulted in a decrease in value of their property," Goetz said of his clients.

Commissioners awarded between \$3,000 and \$8,000 for the properties after a hearing; the owners want \$20,000 to \$30,000, he said.

Bland said that such damages are taken into consideration.

Some current and former city officials said that the biggest problem with the condemnation process is its public relations aspect.

Former Arlington Mayor Harold Patterson, who championed the Carmelite nuns during their squabble with the city, said that the dispute could have been avoided if the City Council had negotiated instead of city staff members and lawyers. The city has agreed to settle the case by paying the nuns \$225,479 and making other concessions.

Although Patterson acknowledges that many downtown businesses were condemned during his tenure to make way for a City Hall and library, the process was carried out with more respect, he said. For example, the city offered downtown landowners up to 5 percent above market value, he said.

"Whenever you condemn property, you ought to do it as a last resort," he said. "You ought to exhaust every effort before going to the courthouse."

Councilwoman Barbara Nash agreed that the council should have become more involved in negotiations with the nuns.

"It probably could have been settled without going to condemnation if the City Council

went out there and talked with them, especially in an issue as sensitive as this," Nash said.

Other property owners say they wish that the city had given more attention to their case. Barksdale, the Rush Creek Baptist Church pastor, said that city officials agreed to pay \$68,000 for the needed property and move a proposed bridge that is part of the project farther south and away from church property. He later was told the city would pay only \$25,000 because redesigning the bridge was more expensive than estimated.

But Mayor Elzie Odom said that Barksdale was treated fairly. He said many landowners are driven by greed when it comes to selling their property.

"Condemnation cases are the hardest and most distasteful things in the world," he said. "Suddenly people owning land decide that their land is most valuable in the world. They decide they want to make a killing off it.

"They ignore the fact that citizens in the whole city, in that whole area, are going to benefit. All of a sudden, nothing else matters except 'me and mine.' "

In pursuit of land The following is a synopsis of the process used by the city to acquire and, if necessary, condemn property for a municipal project.

1. City staff members are given a list of properties to acquire for a municipal project. They contact property owners, get an appraisal and begin negotiating to purchase the property.
2. If no progress is made, a resolution deeming the purchase a necessity is forwarded to the City Council. A final offer is sent to the property owner.
3. If the two sides still can't agree, a condemnation resolution is sent to the council, authorizing the start of court proceedings to acquire the land.
4. The case is filed in a state court, and a judge appoints three Tarrant County property owners, also known as commissioners, to hold a hearing to determine the value of the land. Negotiations between the city and the landowner continue until the hearing.
5. If property owner disagrees with the commissioners' determination, it can be appealed in a state court. The city can buy the property at this point and deposit the payment in a court registry, pending the appeal.
6. If the case goes to appeal, a trial before a judge or jury is held to determine the value of the land. Either party can appeal the outcome.

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