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Hurst can seize 10 homes for disputed mall project A judge rules that the 10 houses can be demolished for a North East Mall expansion, although a lawsuit challenging city powers is undecided.

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HURST - The city can bulldoze 10 houses for North East Mall's expansion while the homeowners await the outcome of a lawsuit that accuses Hurst of overstepping its condemnation powers, a judge has decided

The decision affirming the city's right to take possession of the homes came yesterday from 17th Judicial District Judge Fred Davis in Fort Worth.

Davis issued an "order for possession" that said in part, "In the opinion of the court under the statutes of the state of Texas, the defendants are entitled to immediate possession of the property. " The homeowners were hoping to preserve their houses until a court decides whether cities can use their power of eminent domain for private development projects. The case has attracted national media attention, and some have described it as perhaps the first case in which a city forced out homeowners for a mall project.

"The homes will be destroyed before the trial, which is a tragedy for everyone," said Glenn Sodd, an attorney who represents the property owners. "If we win, the city doesn't have the property. Even though we may get paid, my folks will have lost their homes. " According to Davis' order, the city will take possession of the homes at 1 p.m. June 6. "We feel we've been violated," said Jeri Molenburg, one of the homeowners suing Hurst. "That sums it up. " The owners of North East Mall plan a major expansion and want the land south of the mall for retail space and parking lots. Of the 127 homes in the buyout area, 117 were sold after the owners agreed to a sale price.

Billie Scott, spokeswoman for mall owner Simon DeBartolo, said the mall expansion will move forward.

"Needless to say, we're pleased with today's ruling," Scott said yesterday. "We'll now proceed with our plans to make North East Mall an even stronger corporate citizen in Hurst through creating jobs and increasing tax revenue to the city. " City officials have argued that the mall project is a public use because of its economic benefits, so they condemned the homes of the 10 holdout owners. Governments often use eminent domain to acquire property for public uses such as expanding streets and building parks and schools.

"There was never a question in my mind" that the Texas Property Code allows the city to take possession of the homes, City Attorney George Staples said. "The statute gives the city the authority, and that is quite clear. " No date has been scheduled for the civil trial, but the homeowners said they intend to continue fighting.

Yesterday, three families remained in the homes in the Richland Park East neighborhood, residents said. Billy McElroy, who owns a house at 1000 Cranford Drive, said this week that his family decided to move out.

"The safety factor was a big issue for me and my family," said McElroy, who now lives in Euless.

The homes that were sold were stripped and then demolished, leaving the remaining homes isolated in a barren area.

In February, Molenburg's family moved from their three-bedroom home on Pacific Street to a rental property that they own in North Richland Hills. Hurst offered them \$65,000 for the Hurst property.

But Molenburg said the issue is not money but being forced out.

"We'll continue," said Molenburg, 40, who lived in the Hurst house for nine years. "It's not anywhere near over. The fight hasn't really even begun. " **Sodd** said that existing condemnation law makes it unlikely that the judge could have preserved the homes while the legal issue was unresolved.

"The judge doesn't have a lot of choice," **Sodd** said. "It's just an unfortunate statute that seems to allow the government to go ahead and take possession before the courts can rule whether they have the right to take it in the first place. " An independent panel determined a price for the homes, and the city has had to deposit the money in a special fund.

If the homeowners prevail, a jury would decide how much they should receive in damages.

Both sides have said the issue could end up in the Texas Supreme Court.

Hurst plans to build a street through the 10 properties.

"You had over 90 percent of the homeowners that were happy," Councilman Ralph Bryan said. "I think the ones that were holding out were in the money game. " Bryan said the city received letters from families who were happy to receive settlements that would allow them to buy \$110,000 or \$115,000 homes in exchange for their \$75,000 ones.

But **Sodd** said that many people are sympathetic with the remaining 10 homeowners.

"People around the country are quite incensed with what is happening to these people," **Sodd** said. "You just don't think they can take your homes. " Staff writer Susan Gill Vardon contributed to this report

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