

The Dallas Morning News

May 23, 1997

Judge rules Hurst can take properties Landowners have sued to stop seizure for mall expansion *Kendall Anderson Staff Writer of The Dallas Morning News*

A state District Court judge said Thursday that the city of Hurst can take possession of 10 properties whose owners have filed suit because they refuse to make way for a mall expansion.

Judge Fred Davis of the 17th District Court in Fort Worth was expected to sign an order Thursday or Friday allowing Hurst to demolish the homes on June 6, according to attorneys on both sides of the case.

The city condemned the land several months ago, deposited compensation for the landowners in bank accounts, as required by law, and planned to bulldoze the homes this month as part of the North East Mall project with the Simon DeBartolo Group.

But in a hearing May 8, homeowners' attorney Glenn **Sodd** asked Judge Davis to delay granting the city possession of the properties until he rules on the constitutionality of the condemnation in a summary-judgment hearing this summer.

The 10 property owners are suing the city, contending that officials violated the Texas Constitution by using eminent domain proceedings to help a private mall developer. Eminent domain is the right that governmental entities have to take property; it historically has been used to advance public projects such as streets.

A signed order from Thursday's ruling was not available for review. But both Mr. **Sodd** and George Staples, who is representing the city, said they had spoken with Judge Davis about the ruling.

Both attorneys said the judge decided to let the city proceed with demolition because there was nothing in condemnation law that allowed him to do otherwise.

"This ruling is not unexpected," said Mr. **Sodd**. "The law is a very difficult one for the court and is written on the assumption that basically whoever is doing the condemning - the city - has the power to do it. It doesn't say what the circumstances are where a judge can rule the city can't do it." The law states that a city has the right to take possession of property once it has condemned the land and offered fair compensation to landowners.

Mr. Staples said the judge's ruling makes sense, given the history of eminent domain cases.

"In nearly every case, they [municipalities] take possession before there is a determination of whether the condemnation is right," said Mr. Staples. "The law gives condemnors the right to take possession before the right to condemn is finally decided." Mr. **Sodd** and the property owners he represents said they are counting on the summary judgment hearing this summer to show that the city is wrong.

"We're still going to fight it," said Mr. **Sodd**. "The city of Hurst can go ahead and tear the property down, but if the judge decides the taking of the property was unconstitutional, they will owe my clients some money." Mr. Staples has said the city and its economic development corporation, which was created to oversee revenues from Hurst's economic development sales tax, can afford to compensate the homeowners if the judge rules that the condemnations are unconstitutional. The city is using funds from the development corporation to buy the properties.

The city has said it isn't violating the public-use clause of the eminent domain law because it plans to build a road to serve the mall on eight of the 10 properties. City officials have also pointed to the 117 homeowners in the Richland Park East edition who settled with the city last year. Some of those homeowners got more than their homes' appraisal value, city officials have said.

Mr. **Sodd** has said the fact that other homeowners agreed to be bought out is unrelated to his clients' case. He has also said a road that serves the mall is not a legitimate public use.

Jeff Molenburg, who is losing his home of 18 years to the mall project, said it makes no sense to allow demolition before ruling on the constitutionality of the condemnations.

"Rebuild my house exactly the way it was before and put the signatures back on the wall the way my grandpas left them - it's just not possible," said Mr. Molenburg.

But Mr. Molenburg said he and his wife haven't given up.

"We're still hoping," said Mr. Molenburg. "If we can get a positive ruling that this is unconstitutional and stop this from happening, we will have accomplished something. " City officials, who have begun clearing the land, have said they want to get moving on the project so they can begin generating tax revenues to benefit the city. When the mall is finished - sometime after the year 2000 - the city expects to see an annual increase of about \$11 million in sales tax revenues

Copyright, 2005, Dallas Morning News. All Rights Reserved.