

## The Dallas Morning News

April 13, 1997

### **Hurst group fights eminent domain Mall project that will raze homes benefits residents, city officials say** *Kendall Anderson Northeast Tarrant Bureau of The DMN*

HURST - The Molenburgs' house has all the things that make it a home: Grandma Martha supplied the rosebushes, father Jeff built the backyard pool and both grandfathers signed their names on the living room wall - a reminder of their help in fixing up the place

But the home belonging to Jeff and Jeri Molenburg and their two children is seeing its last days. The city of Hurst is buying it and nine others in the neighborhood through a process called eminent domain to make way for North East Mall's expansion. The houses are to be demolished in May.

"I thought I lived in America. Instead, I live in the country of Hurst, Texas, where government can do anything it wants," Mr. Molenburg said. "If someone had said two years ago that I'd be forced out of my home for a shopping mall, I never would have believed them. This is wrong." The Molenburgs and nine other property owners in the Richland Park East neighborhood are suing the city and the Simon DeBartolo Group, the largest mall developer in the country. Their suit contends that the home seizures violate the Texas Constitution because the mall project is not a public use.

The city says all residents will benefit from the mall; the developer says it has negotiated in good faith.

By law, cities can use eminent domain to acquire property for projects such as street widening or for a fire station. And in some cases, utilities have been allowed to exercise the right to put in pipelines.

In Hurst, the quasi-private Community Services Development Corp. has used revenues from the city's economic development sales tax to condemn 10 properties and buy out 117 other property owners who agreed to settle.

The Hurst case is the latest instance of a Texas governmental entity's using eminent domain for economic development. Arlington condemned several tracts to make way for The Ballpark in Arlington, and Fort Worth condemned about 25 homes to clear space for Texas Motor Speedway.

Opponents say each example is a misuse of eminent domain.

"It's a trend in which government has become abusive of private property rights and is seizing property from individuals on behalf of their favorite elite," said Jim Runzheimer, an Arlington lawyer who has criticized the ballpark seizure but was not involved in fighting it. "The taking itself is an outrageous abuse of government power." Hurst officials have accused the Molenburgs and the other homeowners of holding out for as much money as possible. The city points to the 117 owners who agreed to sell.

City Attorney George Staples said Hurst officials met the public-use requirement for eminent domain because streets serving the mall will be built on most of the properties.

They also point to the tax benefits of the improved mall as a sign of its public use.

The expanded mall and additional development are expected to increase sales tax revenues by \$11 million a year when the project is finished in about three years.

"We're doing something neat for all of the citizens of Hurst," said City Council member Henry Wilson. "This is going to be something that is really adding to the foundation of the financial stability of our city. " Attorney Glenn Sodd, who represents the Hurst homeowners, said the city is misinterpreting the law to fit its needs.

"Every business generates tax revenues for a city, but that doesn't make them all 'public uses,' " he said. "All they are doing is choosing Simon DeBartolo over these longtime citizens because the developer has more money. If you take their argument to its extreme, you'll have one really big mall and a billion dollars in sales tax revenue in a city with no residents. " Officials with the Indianapolis-based Simon DeBartolo company said they tried to work with property owners "until the very end. " Spokeswoman Billie Scott said the company offered most homeowners more than their homes were worth.

City records show that many homeowners were offered more than the appraised value of their homes. Before condemnation proceedings, the city offered the Molenburgs \$135,000 for their home, which was appraised at \$65,000. The condemnation process awarded them \$65,000, which they have refused to accept pending the outcome of their suit.

The homeowners' suit contends that their right to negotiate the highest price was taken away when the city threatened condemnation.

"They used the threat of eminent domain from the very start," Mr. Molenburg said. "If I myself owned all these properties, instead of a bunch of middle-class homeowners, the developer would have come in and offered me a price, and we would have negotiated.

But because we're homeowners, and our homes aren't anything high-priced, they felt like they could just come in and trample. " Jordan Clark, president of the Washington-based United Homeowners Association, said he was not aware of any similar cases.

"This is amazing," Mr. Clark said. "It sounds like a classic case of developers' coming in and wanting their way and eventually getting it. " The Legislature paved the way in 1991, when the Arlington Sports Authority was given power of eminent domain. It then condemned three properties to make way for the ballpark.

The 1991 change allowed cities such as Fort Worth and Hurst to grant eminent domain to city-appointed bodies such as Hurst's development corporation and the Fort Worth Sports Authority.

This year, the Fort Worth Sports Authority condemned about 25 homes to make way for Texas Motor Speedway.

Those who defend the Fort Worth and Arlington actions note that eminent domain always has been a governmental right and has been used to revitalize decaying inner cities.

"The law of eminent domain has changed with the times. Now what you are seeing is the law trying to figure out what that permissible public use is today," said Arlington City Attorney Jay Doegey.

Bill Wood, a lawyer representing the Fort Worth Sports Authority, said that "it's a question of philosophy that can be debated, but the proper forum for it is in the Legislature. And the Legislature has already spoken to it. " A bill that passed the state Senate on Thursday aims to give residents more say in projects funded by sales tax revenues. The legislation, sponsored by state Sen. David Sibley, R-Waco, would require cities to hold a public hearing before embarking on projects funded with sales taxes.

"I don't think it was ever intended that cities condemn property for a shopping mall," said Karina Casari, director of the Senate Economic Development Committee. "The goal here is to have the public more involved in what these corporations do." Hurst officials, who held public hearings on the mall expansion last summer, said property owners were kept abreast of the plans.

Homeowners say the city had made up its mind about condemnation long before coming to them.

Hurst property owners can't wait for Mr. Sibley's legislation, however. They have to win their lawsuit by May, when the city can bulldoze the 10 properties.

Some have boarded up their homes, which sit on a street that has overgrown lawns, few lights and few signs of life. With the money the city has offered them sitting in a bank account, some are having a hard time making rent and mortgage payments or finding money to buy a second home, Mrs. Molenburg said.

And they know they won't get their neighborhood back, even if they win.

"It's gone," said Mrs. Molenburg. "This neighborhood took 35 years to grow. Everyone knew everybody here. It wasn't your 'drive home after work and stay in the house' kind of neighborhood. That's the part most people are angry about." Tidying up a box of belongings, Mr. Molenburg stared at a living room stripped of personal touches.

"I still vacuum the floor, and people come over and ask why," said Mr. Molenburg, who bought the house in 1979. "I guess I feel like we're standing up for people's rights. We could lose the case, not get anything, and it would be worth it.

"We could face ourselves in the mirror and know we did right.

---

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