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### Questioning eminent domain

Increasingly, area property owners are waging battles with cities over what is considered public use.

*SUSAN GILL VARDON*  
*Star-Telegram Writer*

Jeri and Jeff Molenburg say that the fight for their Hurst home is a matter of principle, not money.

The Molenburgs and nine other residents of the Richland Park East tract have gone to court to challenge the right of Hurst to take their property for expansion of North East Mall.

"We do not feel they can do this to us for a shopping mall," Jeri Molenburg said. "The city thinks we're little homeowners without the money or power to fight them. They're wrong."

The same battle is being waged by area property owners who have lost their land to Texas Motor Speedway and to The Ballpark in Arlington.

It all comes down to a legal tug of war over what is considered public use, attorneys said. Traditionally, cities use their powers of eminent domain to condemn land for public projects such as roads, city halls and airports.

But in recent years, cities have been in heated competition for shopping malls, entertainment centers and sports stadiums that can add jobs and sales tax revenues to stabilize or boost local economies.

Across the country, courts have allowed the expansion of what governments can claim is public use, said Marc Needles, a Philadelphia attorney whose firm specializes in condemnation law.

"The concept of public purpose has expanded to include urban renewal and redevelopment, and the envelope gets pushed more and more every day," Needles said.

Local officials said that North East Mall in Hurst, Texas Motor Speedway in Fort Worth and The Ballpark in Arlington fall within the legal definition of public use, because the projects bring in sales tax money, new jobs and businesses.

Property owners disagree, arguing that it is unconstitutional to take their land because the projects are not really for public purposes. Thus, the three legal challenges:

The Ballpark in Arlington brings in \$3.5 million in annual rental fees to the city and creates at least 1,800 jobs. The city formed the Arlington Sports Facilities Development Authority in 1991 that built the stadium and leased it to the Texas Rangers.

The sports authority offered the Mathes family \$817,220 for the 12.5 acres of commercial land condemned for the ballpark. In June, a Tarrant County civil jury ordered the city to pay the family almost \$5 million for the land plus accrued interest.

If the Mathes family accepts the \$7.2 million the city offered them last week, they must

drop their constitutional challenge, which sits in a state appeals court, said Glenn **Sodd**, a Corsicana attorney representing the family.

Fort Worth created the tax-exempt Fort Worth Sports Authority that will own the \$110 million Texas Motor Speedway and lease it to North Carolina racing magnate Bruton Smith.

As of this week, the sports authority has condemned 13 lots in the Country Lane Estates mobile home development along Texas 114 and Interstate 35W to make way for roads and parking lots for the speedway, said Walker Beavers, a Houston attorney who works with the sports authority. Eighty-five property owners settled with the authority, he said.

A lawsuit filed by David and Becky Robinson claims that the city has no right to take their land for the speedway. The couple, who have five children, also are challenging a proposed settlement of \$20,000 for their half-acre lot and mobile home, which they believe is worth \$60,000, said their attorney, William D. Tate of Grapevine.

Hurst officials said expansion of North East Mall and the addition of a smaller nearby shopping center could generate about \$7 million in tax revenues. A 2-story Nordstrom is included in the plans.

In an arrangement with mall owner Simon De Bartolo, the city's Community Services Development Corp. has purchased most of the 126 homes needed for mall expansion, parking and a nearby shopping center. Ten homeowners have not settled.

The residents challenging the condemnation are in the process of moving to other locations as construction gets under way.

Emotions are often heightened in condemnation cases because the people involved are facing the loss of the homes where they raised their children or the business site they nurtured during the years, attorneys said.

And it is not right that they should lose their property for projects such as malls and stadiums where a developer will benefit financially, Tate said.

Tate said he doesn't believe that the Texas Development Corporation Act of 1979, which gives cities the power to create development authorities, authorizes eminent domain.

"That's why it has to be challenged," Tate said. "We cannot allow this law to continue to expand in this state and allow people to use it in a nongovernmental way."

But the success of The Ballpark in Arlington has prompted other North Texas cities to start looking at new ways to boost revenues.

"The Texas Constitution and Legislature have defined certain projects as being public in nature - building a sports stadium for people to be entertained, an airport," Beavers said.

"They made the decision that entertainment is as important as traveling on an airplane," he said.

Allan Weegar, Hurst assistant city manager, said the city has not taken the mall condemnation lightly.

"We hope this is the only time we use it," Weegar said. "It's not a pleasant experience going through the criticism coming from this."

"It is something we feel we would do at this time because of the economic development and the taxable impact that this particular project would generate to the city," he said.

Beavers suggested that many lawsuits challenging condemnations are simply negotiating ploys.

The Molenburgs disagreed. They said they are so angry with the way Hursthas treated them that they are willing to go without the \$65,000 the city has offered for their property until the lawsuit is settled.

Last month the couple moved from their three-bedroom home on Pacific Street to a rental property they own in North Richland Hills.

"The money was attractive, but we are going to stand up for what is right," Jeri Molenburg said. "We felt we need to be taking a stand."

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