

Wild in Texas

You take my car without my consent, it is theft. If you take my land without my consent, it is eminent domain, or condemnation by the government or those given the government's power to condemn - like oil companies, football and baseball teams, n speedways, shopping centers, and anyone with good political stroke."

Excerpts: Glenn Sodd, Partner, Dawson & Sodd PC "Real Estate Center," Eighteenth Annual Outlook for Texas Land Markets Conference, April 24 - 25, 2008.

by: Marjorie Gohmert, REDNews



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Mr. Sodd spoke at the Real Estate Center, Eighteenth Annual Outlook for Texas Land Markets Conference, April 24-25, 2008 regarding Current Issues in Eminent Domain Policy & Litigation. He addresses how vulnerable Texas land owners are to condemnation law.

Following is the introduction to his presentation as well as suggestions his law firm recently made to the Texas legislature. To read all of Mr. Sodd's comments and suggestions, log on to www.rednews.com.

Eminent domain has always been hard on Texas landowners. The condemning party (often the government, sometimes private utility or powerline companies), takes your property, and generally not much you can do to stop it. You can always sue and expenses to fight for more adequate compensation, but then, the government has set up a series of obstacles. Recent Texas Supreme Court decisions, combined with a Property Code that favors the condemning entities, have made it even more difficult for landowners to be adequately compensated when their land is taken. These problems are compounded by the fact that there is more eminent domain now than ever before. As population increases, the desire to take your land without your consent will continue to worsen.

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Bad Changes to the Law

Economic Development

In response to a US Supreme Court decision in which they ruled that the Federal Constitution did not prevent a city from kicking long-time residents off their property and giving it to developers, the Texas Legislature made a law to try to stop condemnation for economic development in Texas, but condemnors' lobbyists managed to get loopholes inserted for things like "flood control", "slums", "blighted areas", etc.

No More Good Faith Negotiations

Recent Texas Supreme Court decisions have undermined many of the protections laid out in the Texas Constitution and Property Code. "Good faith negotiations" have fallen by the wayside as demonstrated in the recent case of *Hubenek v. San Jacinto Gas Transmissions Company*. The court held that the condemnor satisfied the good faith negotiations requirement by making offers for easement rights they had no power to condemn, and after being condemned, no offer was made for the easement. By the court's actions, any incentive for condemnor to enter meaningful negotiations with a land owner before suing was effectively eliminated. In short, the land owner was at the mercy of the condemnor.

The Pipeline Value Problem

Another recent Texas Supreme Court decision has made it more difficult for landowners to collect adequate compensation for easements. In the case of *Exxon Pipeline Co. v. Zurahr*, the Zurahrs found themselves in this situation where the courts ruled against them.

Highway Damages are Limited by Schmidt

In *State of Texas v. Schmidt*, the state raised Highway 183 thirty-seven feet and eliminated the direct driveway access to businesses, drastically reducing visibility to customers and forced customers to take an inconvenient, roundabout route, but the court said the landowners could receive nothing for their losses. Without a requirement that condemnors pay for causing damage to property, no incentive exists to make any effort to avoid doing damage.

The New "I'm Dumb" Defense for the Government

Inverse condemnation happens when the government takes private property for public use without the owner's consent without going through the condemnation process, forcing the landowner to sue to collect the money the government has paid him in the first place. The landowners must show that an act was "intentional" or that the government "knew" the consequences of their actions, so all the government has to do is show that it was too dumb to understand the consequences of its conduct. Who can prove that government is not dumb?

The Law Must Be Changed

In recent testimony before the Texas legislative committee considering eminent domain changes, Dawson & Sodd made the following suggestions:

- That landowners condemned for revenue generating projects (like pipelines, power lines, NFL football stadiums, Frito-Lay Corporation operated Tollways) should be paid based on the revenue to be generated by the use of their land - just like privately negotiated oil lease, agricultural lease, etc. . . .
- That the law change to make it clear that damages caused by highway work be fully paid, without exception, and the Constitution requires.
- That government negligence and alleged ignorance of the effects of their conduct should not be a defense to a claim for damages to land under a constitution that requires, with no exception or limitation, adequate compensation for land taken, damaged or destroyed for public use.
- That when low offers are made, forcing a landowner to sue for legal and expert help, the prevailing landowner should be awarded litigation costs. . . .
- That the Texas constitution be amended to assure that eminent domain condemnations primarily for economic development are stopped in Texas.