

Ranchers battle land seizure

By Greg Bowen New Braunfels Herald-Zeitung | Posted: Wednesday, April 1, 2015 11:57 pm

A municipal utility district operating in a Bulverde area subdivision is asking a Comal County judge to allow it to take seven acres of land from a neighboring ranching family under the state's eminent domain laws, which let governments seize private lands for the public good.

The ranchers are fighting back.

According to court records, Comal County Court at Law No. 2 Judge Charles Stephens II has appointed a special three-member commission that has initiated the eminent domain proceedings.

The commission — made up of Barry Moore of New Braunfels, Len Heimer of Canyon Lake and Curtis Bremer of New Braunfels — has scheduled a hearing on the matter for April 20 in New Braunfels.

Terrell Graham, a spokesman for the Lux-Graham-Hastings ranching family, said Wednesday that, should the court proceedings go against his family, they'll seek an injunction to stop the land seizure.

Paul Barkhurst, an attorney for the Johnson Ranch Municipal Utility District (JRMUD), said Wednesday that the court's special commissioners have the jurisdiction to do one thing only: award a value of the land for the MUD's acquisition of the acreage.

"As far as whether the MUD can legally condemn (the land), which I believe clearly they can, that's an issue for judge alone," he said. If the judge agrees with the landowners that the land seizure shouldn't go forward, Barkhurst said, the case is dismissed and the MUD does not acquire the land.

'An alter ego'

The Lux-Graham-Hastings family is also working to stop the seizure by filing a petition asking the Texas Commission on Environmental Quality (TCEQ) to dissolve JRMUD.

Graham said the family believes that JRMUD is not a governmental entity but "simply an alter ego for" DHJB Development of Boerne, which is developing the Johnson Ranch subdivision, located along FM 1863 near U.S. 281.

Barkhurst said the alter ego accusation is "just legally wrong." He said the ranchers unsuccessfully raised that and other issues about the MUD previously in District Court in Comal County.

"(Those issues) did not win the day for them there — and we do not expect them to win the day for them in this court either," Barkhurst said.

In District Court, he said, Judge Dib Waldrip "found that JRMUD was properly and legally constituted and had the rights granted to it by the state."

Another attorney for JRMUD, Philip Haag of Austin, also disputes the ranchers' allegations and is asking TCEQ to dismiss their petition.

The MUD — a political subdivision of the state of Texas authorized by TCEQ to provide water, sewage, drainage and other services within the MUD boundaries — was originally formed in 2007, Haag said in his reply to the ranchers' petition.

Graham said the family received a letter from TCEQ on Tuesday telling them their petition was incomplete, which he doesn't consider as a positive sign.

"We are considering how to respond," he said.

Vested with the power

In JRMUD's "petition of condemnation" to the Comal court, attorney Barkhurst writes that the MUD is "vested with the power of eminent domain" and asks the court to grant it title to the rancher's seven acres in order to construct public improvements.

The MUD is seeking the acreage to build a stormwater drainage project to move flood waters away from the Johnson Ranch subdivision. The MUD says it has made a "bona fide" offer to the family for the acreage, but that the parties have failed to reach an agreement on the value.

Rancher Graham said that JRMUD has made a "take or leave it" monetary offer of approximately \$125,000 for all seven acres. "We do not feel the Johnson Ranch MUD's offer is sufficient," he said. According to information from the Comal Appraisal District, the average per-acre market value for agricultural land in Comal was \$7,503 last year.

Barkhurst said he didn't have the case file in front of him Wednesday evening and couldn't confirm the amount of the offer.

"But the land was appraised by an independent appraiser who came up with a value that may be too high or too low — but that's his opinion as a qualified appraiser and that's the amount that was offered. If (the ranchers) want to go get their own appraisers, that's great. The (court's special) commissioners will sort out the numbers between the two appraisers."

Barkhurst said that the proposed taking of the land is for a "very specific and solid public purpose — and the only question really is how much does the MUD need to pay the landowners for this land. The MUD certainly wants to be fair and pay a fair value for the land."

Graham said there are other routes available through the subdivision for the drainage project, and other options, including building stormwater detention ponds on subdivision lands. But the developer would rather take his family's lands than waste valuable acreage on which it can build and sell more homes, he said.

"That's part of why I don't feel this is a public need," Graham said, adding that Texas' laws are

supposed to prevent governmental entities from taking private property in order to benefit for-profit business ventures.

Graham said that up until March 2014, the family and the developer were negotiating stormwater and wastewater issues associated with the Johnson Ranch development through a TCEQ mediator.

Then, in March 2014, the family received notice from JRMUD's attorney that the MUD was considering condemning their property for its stormwater system.

Graham said it was an act of harassment.

"This was a direct response to us contacting the government to seek redress and contacting the news media," he said. "We believe this is an illegal attempt to try to inhibit our ability to utilize our constitutional rights of free speech. We thought then and think now that this threat of condemnation was simply the developer trying to stop our communications with government officials and the press."

Wastewater at issue, too

The fight between the ranchers and developer DHJB made the news last month when a state judge recommended the denial of a permit filed by the developer, who is seeking to discharge treated sewage effluent from a proposed subdivision wastewater treatment plant onto the neighboring ranch.

The recommendation, filed by State Administrative Law Judge Sarah Ramos of the State Office of Administrative Hearings (SOAH), will now go to TCEQ's three-member commission for a final decision on whether to issue the permit. If granted, the permit would allow DHJB to discharge as much as 350,000 gallons of effluent per day from the subdivision onto the ranch. Graham said the TCEQ commission is expected to take up the issue in the coming months.

Environmentalists involved

An environmental group, the San Antonio-based Greater Edwards Aquifer Alliance (GEAA), which works to protect the Edwards Aquifer from pollution, has gotten involved in the matter.

GEAA Executive Director Annalisa Peace said the MUD has been attempting to legally "bully" the family, which has owned its working farm and cattle ranch for 110 years.

"The saga of the Graham family in dealing with DHJB Development and JRMUD should serve as a cautionary tale to all who dream of buying a ranch and enjoying a quiet life in the Texas Hill Country. It is time for the Texas Legislature to curb abuses of eminent domain that allow developers to profit from taking private land," Peace said.