

Imminent eminent domain:

How public projects are impacting Texas landowners

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From pipelines that cross the state to high-speed rail plans that cut Texas in half, massive projects are underway that have a significant impact on property owners all over the Lone Star State. REDNews touched base with eminent domain expert, David Showalter, to discuss the biggest implications.

Showalter, who got started in real estate law in 1977, has over 40 years of experience in real estate law. In addition to real estate development, he has handled hundreds of eminent domain cases in that time. His clients are a healthy mix of landowners, special-use properties, homeowners and business owners, large and small.

"This broad experience helps us because we see all facets of the process and how it affects different types of owners," says Showalter. "We are more aware of, and sensitive to, the different ways that owners of property can be damaged and we can analyze each of those aspects in every case and make sure we're covering all the ways they've been harmed so that they get full compensation along the way."

HARVEY'S IMPACT

In a post-Harvey landscape, some of Showalter's clients are potentially going to lose property due to Harris County expanded detention requirements.

"It's a fascinating, complicated legal morass that the county and federal government find themselves in. There are many legal protections for governmental entities, such as counties and cities in the state of Texas," Showalter says. "The federal government may be the one that's most exposed to significant potential liability under the Federal Tort Claims Act and other statutes that allow people who are harmed by the federal government to recover for damages."



He says as those issues face pending litigation, it will be interesting to see how they shake out.

"There were projects, as many of your readers know, that were developed where information was available about the flooding risks in the two reservoir areas that flooded. These risks weren't disclosed by developers either to the bond holders who, for example, bought MUD bonds or to the land owners or subsequent purchasers," points out Showalter.

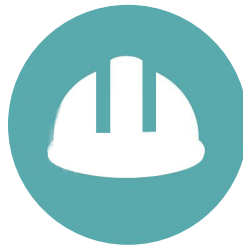
Though there are a number of cases pending based on what happened in the past, he suggests improved education and due diligence for both buyers and sellers in the future.

"As Harvey fades into the background, just as when other hurricanes pass, people begin to forget what happened and how bad it was. The confidence and values come back, so it's easier to sell property," Showalter says. "But I would certainly caution homeowners to make adequate disclosure of what happened and what they know. It is never worth it to not make those disclosures, certainly if the property did flood."

On the flip side, the longtime attorney suggests that buyers do their own research and due diligence when it comes to flood hazards because, too often, sellers, developers and brokers may not offer sufficient information.

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"Just because something's out of the 100-year floodplain, doesn't mean you're not going to flood every year or every other year," Showalter says. "I think I'd take a long, hard look at where your property sits in relationship to the floodplains, which have recently been remapped by FEMA. All the old flood plains with which we were familiar have, for the most part, been modified. A lot of properties are now lower or in a floodplain, be it the 100-year or 500-year, which they hadn't previously been in."

Flooding issues are far from the only ones Showalter's office handles. Some other key focus areas are protecting land rights when it comes to mobility projects (think road and highway improvements), high-speed rail and powerline and pipeline development.

HIGHWAY CONSTRUCTION

Residents in the state's biggest metro areas, such as Houston, DFW, San Antonio, Austin and El Paso, know all too well the cost of growth: endless construction and improvement of highways throughout the area. As more people call the suburbs in outlying counties home, more roads are needed to transport all the extra drivers.

In the case of a new project, such as the extension of the Grand Parkway, the Texas Department of Transportation must acquire the property needed. If an agreement can't be reached with the landowner, the state can make the case that the project is for the greater good and exercise its power of eminent domain.

Showalter says that just the property needed for the new roadway, however, is not the only instance in which property owners can be affected. Widening or improvement projects often have a broader impact.

"They require the acquisition of land for detention because, when you add more concrete that doesn't allow water to soak into the ground, you're creating more run-off to avoid exacerbating the flooding problem," he adds. "These road projects,

just like private developers, have to provide for detention for their project, either along the rights of way or, a lot of times, we see them go acquire acreage that they can use to drain or hold water during storm events."

HIGH-SPEED RAIL

With the goal of curbing traffic along the I-45 corridor between Dallas and Houston, a proposed high-rail line will also eat up property along its route.



Photo courtesy Houston Chronicle

"From what I gather, Texas Central Railroad (TCR) has acquired a pretty healthy percentage of the right of way it actually needs through voluntary purchases and acquisitions from land owners, rather than using the eminent domain process," says Showalter. "There's some question about whether TCR will acquire the right

of eminent domain, but I think it's highly likely that it will once it gets to the stage where it's ready to request it from the state legislature. TCR is well into the required environmental impact investigation stage"

TCR's plans have received considerable pushback from groups, residents and county commissioners along the route that's proposed to run from Northwest Houston, through Waller County and up to the Dallas area.

"I think there's a really good chance that high-speed rail is going to be a reality. It has adequate funding behind it and a lot of pretty well-connected folks would like to see it happen," Showalter says. "Pretty much everybody thinks it makes sense, but the folks whose property will be cut in half, damaged or destroyed, understandably have a different take."

He offers as an example several clients he represents in a subdivision the proposed route would cut through. It would eliminate 20 to 30 houses and directly impact several others, according to Showalter. He adds that several rural landowners would also have their property changed forever with little payoff beyond the financial.

"There's pretty limited access to this railroad, just a couple of intermediate stops or points where you can get on it, so it's not readily available to everybody along the route or in those areas," he says.

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Despite the opposition, Showalter estimates that construction on the rail line will get going in the next 12 to 24 months.

OIL & GAS PIPELINES

There's a different kind of traffic flow issue affecting Texas homeowners: oil and gas. As vast reserves are developed in different parts of the state, specifically the west, companies are building pipelines to transport materials.

"Those destinations are places such as Corpus Christi or Houston, where companies can build refineries or ship the gas through LNG tankers," says Showalter.

He points to the recently announced Shin Oak Pipeline as an example. Stretching 658 miles from Reeves County, west of Odessa, to east of Houston, the massive project is expected to be able to transport 550,000 barrels of natural gas liquids (NGL) a day when it's complete. That date is expected to come in the second quarter of 2019.

Roughly half of the supply will come from Apache Corporation, which recently discovered a reserve of 15 billion barrels of oil and gas on 350,000 acres outside of Balmorhea. It has committed to moving 205,000 barrels of NGLs a day.

While that's great news for the oil and gas industry, Showalter says it is worrying for the property owners along the way.

"Pipelines can pose safety hazards that can affect the use of property or people's peace of mind beyond what may just be a 50-foot easement that's required," he says.



Photo courtesy The Intelligencer

HIGH-VOLTAGE POWER LINES

Similarly, high-voltage power lines do more than impact the easement on which they sit. Showalter calls them "aesthetic detractions."

"The aesthetic harm of these power lines impacts the value of the entire parcel, so landowners can and should be compensated for the damage to the remainder of their property, not just the value of the easement that's taken, which often just by itself doesn't appear to be that substantial or valuable," he says.

ASK FOR HELP

Because the issue of eminent domain is tricky and loaded with high stakes, Showalter encourages anyone involved in the process to look for skilled legal representation.

"It is highly nuanced when it comes to values. You can't think about value as it would be determined by a standard appraisal for a mortgage, for example. In order to get full compensation, you need somebody who knows the ropes," he says. "It's a fairly narrow practice of law, it's kind of arcane, and having somebody who focuses in that area is helpful."

Don't wait, he adds, to consult an attorney until you realize you're in over your head or you've offered up too much information. Getting legal help early will help you avoid headaches and, he suggests, will pay for itself.

"We find that just about every time we represent a land owner, after all fees and expenses, they're well ahead of the game than what they would have been had they accepted the condemning authority's offer or tried to do it themselves," says Showalter. "These condemning authorities know, even though you may be a sophisticated real estate owner or investor, you still can't get the result you could get by hiring the right lawyer."

As Texas continues to celebrate growth that outpaces the rest of the country, it must also address the needs of its booming population. That will no doubt lead to more projects that impact landowners, which means Showalter will stay busy.

"We're always happy to consult with brokers and lenders as well as commercial property owners about the process and how they benefit from having a competent legal representation," he says. ■