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BEN WEAR: GETTING THERE

Of pigs, pythons, doughnuts and eminent domain

Monday, July 25, 2005

As you might have heard, in June the U.S. Supreme Court boosted the government's right to forcibly buy your property, expanding the definition of "public purpose" to include economic development projects.

This increase in what is called eminent domain power raised both Democratic and Republican hackles. But it seemed to generate the greatest passion among the Libertarian-leaning subset of the Republican Party.

Here in Texas, where you can buy a "Come and Take It" T-shirt for your toddler at the Capitol gift shop, it took less than a day for legislators to decide that state law needed to say no way to this new license.

Senate Bill 62, the legislation to do this, ended up sawdust, like everything else lawmakers attempted in their first special session of 2005. They're back at it for another 30 days, though, so the eminent domain legislation probably will make a comeback.

What's interesting about it, at least for this column, is language inserted by Sen. Eliot Shapleigh, D-El Paso, that would prohibit the Texas Department of Transportation from condemning land to build anything in the median of a toll road other than a convenience store or service station.

If this language survives in a future eminent domain measure — and both houses said yes to it in SB 62 — it would cancel to some degree law that the Legislature just passed in May.

Way back then, two months ago, lawmakers said in House Bill 2702 that it would be OK for the Transportation Department to acquire land, either with a willing seller or through condemnation, for an "ancillary facility" on a tollway, including "a gas station, garage, store, hotel, restaurant, or other commercial facility."

Commercial facility, of course, brings in just about anything an entrepreneurial mind can conjure up.

That provision, however, did not apply to the Trans-Texas Corridor, Gov. Rick Perry's proposed 4,000 miles of intrastate toll roads, railroads and utility lines. Rural folks had raised enough of a stink about the idea of losing farm acreage for a Hilton Hotel or a doughnut factory on state land that the corridor was slapped with the gas station/convenience store limitation.

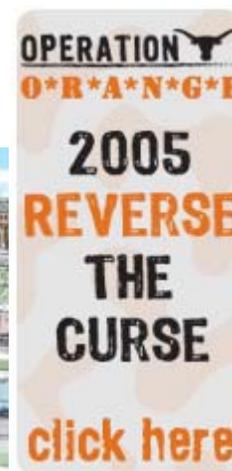
Not so the rest of the state's roads (with or without tolls), mostly because the sponsor of HB 2702, state Rep. Mike Krusee,



GATEWAY PLANNING GROUP

[\(enlarge photo\)](#)

Rep. Mike Krusee wants to preserve the state's right to build on highway rights of way, such as this proposed overpass on U.S. 183-A.



GETTING THERE

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R-Williamson County, wanted it that way.

Krusee's template for this sort of setup is U.S. 183-A, the tollway under construction in Cedar Park and Leander.

Leander leaders would like to sink the road 20 feet as it passes through town, then put shops on an overpass and maybe a hotel and other businesses on the land at ground level. Leasing land to the developers would help pay for the extra cost of building the road in a trough and maybe bring in some more cash on the side for other purposes.

Krusee, asked about this last week, sees no contradiction in allowing such development on state land on tollways and at the same time dialing back on the Supreme Court ruling.

He points to other transportation facilities, such as airport terminals, where government might condemn land for the airport property and then put bookstores and restaurants in the concourse or a hotel on surrounding land.

And in the case of U.S. 183-A, those overpass shops would be in the same footprint as the road, just at a higher elevation.

In other words, the land had to be acquired to build the road anyway, and the shops — along with the revenue they would bring in for the Central Texas Regional Mobility Authority, builder of the road — are just gravy.

The concern on the Trans-Texas Corridor was not about shops on overpasses but rather about the state acquiring extra land alongside the road and at key intersections with other state highways, then leasing that land to private developers.

It's this sort of pig-in-the-python footprint, potentially created through government fiat, that raises concerns.

If Shapleigh's language for SB 62 becomes law, then Krusee and the mobility authority could still carry out their Leander plan.

The state could even craft some of those pig-in-the-python developments alongside roads. But only from a willing seller.

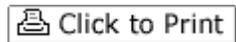
No condemnation, in other words, for anything other than facilities directly related to travel.

No "come and take it," just "pretty please." And a fistful of dollars.

Getting There appears Mondays. For questions, tips or story ideas, contact Getting There at 445-3698 or bwear@statesman.com.

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