

By: Coleman

H.B. No. 3709

Substitute the following for H.B. No. 3709:

By: Orr

C.S.H.B. No. 3709

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the exercise of eminent domain power by certain
3 charitable corporations.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Chapter 178 (S.B. 289), Acts of the 56th
6 Legislature, Regular Session, 1959 (Article 3183b-1, Vernon's
7 Texas Civil Statutes), is amended by adding Section 7 to read as
8 follows:

9 Sec. 7. (a) In this section:

10 (1) "Associated low-density multifamily residential
11 housing" means housing that is located in a residential
12 neighborhood or is shown to be an adjunct, section, or other
13 integral part of a residential neighborhood, including townhouses,
14 patio homes, triplexes, quadruplexes, or other low-rise housing of
15 no more than four stories.

16 (2) "Blockbusting activity" means an avoidable act or
17 omission by a medical center condemning entity or the entity's
18 members that is intended to cause, or foreseeably will cause, a
19 substantial reduction of residential-use property values in a
20 residential area, whether in anticipation of sale to the entity or
21 the entity's members or otherwise, including an act or omission:

22 (A) having the effect of increasing traffic,
23 noise, or light intrusion;

24 (B) involving demolition of improvements or

1 property; or

2 (C) allowing improved property to become
3 blighted.

4 (3) "Deed-restricted residential subdivision" means a
5 subdivision, including all of its sections, annexes, extensions, or
6 other additional associated parcels or tracts, that is governed by
7 deed restrictions that restrict the property to residential use and
8 consists of lots for single-family dwellings and associated
9 low-density multifamily residential housing within the
10 subdivision.

11 (4) "Medical center condemning entity" means:

12 (A) a charitable corporation having the power of
13 eminent domain under Section 1 of this Act; or

14 (B) an entity that has the authority to purchase,
15 lease, or otherwise use or occupy property acquired by a charitable
16 corporation having the power of eminent domain under Section 1 of
17 this Act.

18 (5) "Predominately single-family residential
19 subdivision or generally recognized residential area" means an area
20 consisting predominately of single-family dwellings and associated
21 low-density multifamily residential housing, without regard to
22 whether the subdivision or area is governed by deed restrictions.

23 (6) "Property owners' association" means a property
24 owners' association as defined by Section 202.001, Property Code,
25 or described by Section 204.004, Property Code.

26 (7) "Residential litigant" means:

27 (A) a property owners' association representing

1 a residential neighborhood affected by acts or omissions regulated
2 under this section or a residential neighborhood bordering an
3 affected residential neighborhood;

4 (B) a special district in which more than 50
5 percent of the landowners reside in single-family dwellings in the
6 district; or

7 (C) any affected residential landowner.

8 (8) "Residential neighborhood" means:

9 (A) a deed-restricted residential subdivision;

10 (B) a predominately single-family residential
11 subdivision or generally recognized residential area; or

12 (C) a combination of those subdivisions or areas.

13 (9) "Single-family dwelling" means:

14 (A) a lot containing one building designed for
15 and containing not more than two separate units with facilities for
16 living, sleeping, cooking, and eating;

17 (B) a lot on which is located a freestanding
18 building containing one dwelling unit and a detached secondary
19 dwelling unit of not more than 900 square feet; or

20 (C) a building that contains one dwelling unit on
21 one lot that is connected by a party wall to another building
22 containing one dwelling unit on an adjacent lot.

23 (b) A charitable corporation subject to this Act may not:

24 (1) exercise the power of eminent domain and
25 condemnation to acquire property in any residential neighborhood;

26 (2) otherwise acquire property in a residential
27 neighborhood, directly or through an agent or trustee, for future

1 use; or

2 (3) acquire residential property if the value of the
3 property has been materially diminished by blockbusting activity.

4 (c) Within a reasonable time on or before September 1, 2010,
5 a medical center condemning entity that, on September 1, 2009,
6 holds any property acquired in a residential neighborhood for
7 future use shall sell the property. Property sold under this
8 subsection must be made subject to a deed restriction requiring the
9 property to be restored to the property's former status as a bona
10 fide single-family dwelling or, if applicable, reintegrated into
11 its original deed-restricted residential subdivision.

12 (d) For the purposes of Subsections (b)(2) and (c), property
13 is acquired for future use if the charitable corporation or a member
14 of the corporation does not have a plan for the specific, immediate
15 use of the property. For property acquired on or after September 1,
16 2009, if substantial construction of permanent medical facilities
17 designed to deliver health care for the use and benefit of the
18 public, excluding surface parking not related to the medical
19 facilities, has not commenced on the property before the second
20 anniversary of the property's acquisition, the property is
21 considered to be property acquired for future use. For property
22 acquired before September 1, 2009, if substantial construction of
23 permanent medical facilities designed to deliver health care for
24 the use and benefit of the public, excluding surface parking not
25 related to the medical facilities, has not commenced on the
26 property before September 1, 2010, the property is considered to be
27 property acquired for future use.

1 (e) A medical center condemning entity or the entity's
2 members may not purchase property, by private contract or
3 otherwise, in a residential neighborhood if the property values in
4 the neighborhood have been substantially diminished by
5 blockbusting activity.

6 (f) A medical center condemning entity shall remediate the
7 effects of parking facilities constructed on property owned by the
8 entity that was acquired in a residential neighborhood after
9 January 1, 2004, and that is located within a residential
10 neighborhood or directly adjacent to a residential neighborhood.
11 Remediation required by this subsection includes:

12 (1) the installation of louvers, screens, panels, or
13 other permanent fixtures that reduce the level of light emitted
14 from the parking garages to the same level of light emitted from the
15 windows of offices or hospital facilities of the entity or its
16 members that were constructed after January 1, 2004;

17 (2) landscaping with large evergreen trees and
18 evergreen plants to mitigate, to the maximum practical extent, the
19 adverse property value impact of the parking facilities on the
20 adjoining residential neighborhood; and

21 (3) sound reduction measures to mitigate, to the
22 maximum practical extent, the noise emitted from the parking
23 facilities, as well as the noise generated by mechanical systems
24 erected in conjunction with the parking facilities, on formerly
25 residential property.

26 (g) A medical center condemning entity may not challenge the
27 validity of a deed restriction in a condemnation proceeding or in

1 contemplation of condemnation.

2 (h) This section does not limit any right expressly granted
3 in a residential deed restriction that authorizes an express
4 waiver, amendment, or variance with respect to the restrictions, as
5 determined by the relevant property owners' association.

6 (i) In an action under this section, a court shall:

7 (1) award litigation costs, including reasonable
8 attorney's fees, witness fees, court costs, and other reasonable
9 related expenses, to a residential litigant who:

10 (A) prevails in a suit seeking relief under this
11 section, including money damages or equitable, declaratory, or
12 other relief;

13 (B) brings an action under this section that
14 causes or contributes to, directly or indirectly, a beneficial
15 result to a residential neighborhood or to the public interest,
16 notwithstanding which party may have prevailed on the merits; or

17 (C) is required to defend against claims arising
18 out of actions or communications related to the provisions or
19 purposes of this section; and

20 (2) periodically during the pendency of the
21 litigation, on a showing of hardship, award interim costs of
22 litigation to residential litigants who are claimants in the
23 action.

24 (j) An award of interim litigation costs under Subsection
25 (i)(2) is final and not subject to repayment.

26 (k) A court may not award litigation costs against a
27 residential litigant who asserts a claim relating to or arising

1 under this section or engages in actions or communications related
2 to a right created by this section.

3 (1) Except as provided by Subsection (m), in addition to any
4 other defense or immunity conferred by law, a residential litigant
5 is not liable for money damages or subject to injunctive or
6 declaratory relief based on:

7 (1) a decision by the residential litigant as an agent
8 or representative of a property owners' association or a special
9 district; or

10 (2) a communication by the residential litigant to a
11 governmental agency, a public official, or the public information
12 media relating to a matter reasonably of concern to a governmental
13 agency or public official, any other person, or the public.

14 (m) Subsection (1) does not apply if the claimant
15 establishes by clear and convincing evidence that the decision or
16 communication of the residential litigant was not made in good
17 faith.

18 (n) This section shall be liberally construed to effect its
19 purposes, which are to:

20 (1) prevent the abuse of the power of eminent domain by
21 a charitable corporation subject to this Act;

22 (2) protect single-family residential neighborhoods;

23 (3) shield advocates of neighborhood integrity from
24 economic coercion; and

25 (4) correct and remediate the effects of the abuse of
26 condemnation authority used by a charitable corporation under this
27 Act on or after January 1, 2004.

1 SECTION 2. This Act takes effect September 1, 2009.