More Eminent-Domain Bullying

BY FREDRICK K. McCARTHY

The bare facts of the case are these. The N. K. Hurst Co. is a producer and national distributor of specialized dried-bean and related products. Begun 68 years ago, the family-owned business has operated successfully at its present location near downtown Indianapolis for 59 years. It employs approximately 50 people in a building on 4.2 acres.

Surrendering to the usual National Football League blackmail, the city decided to build a new stadium for the Indianapolis Colts. As a part of the process the Colts were promised a specific number of parking spaces with the new stadium. Although it knew the Hurst property would be needed, the city made this commitment before it had acquired ownership or any control of the property.

When finally approached officially, Hurst said, "No. We wish to stay where we are." Contending that a handful of parking spaces to be used only a few times a year were more important than a thriving business, and that such parking spaces were actually a "public use," the state of Indiana, through its newly created Indiana Stadium and Convention Building Authority (ISCBA), filed an eminent-domain suit against the company.

That decision followed months of "negotiations," which were preceded by this statement from the executive director of the building authority: "We absolutely need their [Hurst] property. What's to be negotiated is how we pay them." So much for good-faith "negotiating."

The actual narrative starts as much as a decade ago when the decision to build a new stadium took form despite official denials that continued almost to the announcement of the agreement between the city and the Colts.

The city began quietly to purchase land near the present convention center, which also houses the RCA Dome, the current home of the Colts. The few perfunctory questions asked by the media about the future use of such lands went unanswered. It was apparent to any reasonable observer that something was in the works, but no investigative action took place. Media research appeared to be limited to making certain the mayor's publicity releases—mostly denying plans for a stadium—were quoted correctly and punctuated properly.

City officials then decided on an end-around play. They announced that the Convention Center was much too small, that extensive expansion was needed, and that expansion would require demolition of the RCA Dome. The then-"required" new stadium was hyped as a "multiuse facility" with only coincidental use by the football team. Despite this charade, everyone knew the Colts were in the driver's seat and it was their demand that the stadium have a retractable roof, adding $70–$80 million to its cost.

It was of course a foregone conclusion that the taxpayers should finance the new palace.

The land being purchased was adjacent to the Hurst property, and city representatives finally approached the company about acquisition. The Hursts, despite their saying no, believed the city might be open to real negotiation, including a land swap that would be costly to neither party.

There was one little problem with the project: money. The estimated cost of the whole thing—

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Does this look like a company being intentionally obstructionist?

stadium and convention center—was now nearing three quarters of a *billion* dollars. The state legislature was asked to allow the city to fund the project with new and increased revenues from gambling. This proposal was doomed from the start, which the proponents undoubtedly knew.

But by now, with "stadium necessity" hysteria having been whipped up by the local media, "whether?" was no longer the acceptable question. The question being discussed was "how?" The use of gambling revenues having been vetoed, city officials felt entitled to say to the state, "Okay, you didn't like our idea. Let's hear from you."

State tax revenues were already involved. When increased state participation was proposed, the state took responsibility for the construction of the project. The activity would be carried out by the Building Authority, a seven-member board, four of whom are appointed by the governor. Under the terms of the 2005 legislation establishing the board, it would relinquish operation of the facility to the city when construction was complete.

Shortly after the state took over, the Building Authority's head made the previously cited statement that the only thing to be negotiated was "how much." When the governor received a letter protesting the "negotiations," his chief of staff claimed the Building Authority was forced into its actions by having to work within restrictions of the previous city agreement. No mention was made that the state had shoehorned its way into the situation. The chief's letter added that state representatives "have had negotiations with the Hursts to see if there is a way for the operation to stay in place without adversely affecting the Project."

It should be noted that the Hurst decision to stay put was not simply a selfish or stubborn one. Employees have been with the company an average of 16 years. A move out of downtown would have put many of those employees at the mercy of a sadly deficient public transportation system and might have cost them their jobs.

With meetings continuing and threats of eminent domain being heard, letters to the local newspaper in support of the Hursts began to appear. Legislators were also making noises about tightening up the eminent-domain law in the coming session.

The State Files Suit

The Building Authority decided to file the suit with the express purpose of heading off any action the legislature might take. The newspaper editorially described this action as "reasonable," even though it came while the Hursts were still negotiating in good faith.

While the top offer by the Authority was "up to $6 million," the Hursts had long ago determined that the actual cost of moving would be over $10 million.

Determined to stay, the Hursts offered an irregularly shaped piece of the land to the Authority in exchange

for a parcel adjacent to their own property and already controlled by the Authority. The even trade would leave both parties with regular, "squared off" sections. The Authority rejected the offer out of hand. Eventually the Authority settled for a swap that gave it 2.7 acres of Hurst land in return for one acre of state land, leaving the building and the business at the same location but with no room for expansion.

But at this point the bargaining had been reduced primarily to provisions insisted on by the Building Authority that concerned control of the company and its future business activities—none of which had any bearing on the construction of the stadium or the provision of parking spaces.

The Hursts were now spending far more time on this problem than on the business itself. Legal costs, even without a trial, were about $700,000. The state's antagonistic manner in the "negotiations" made a drawn-out trial inevitable, diverting ever-increasing time and money from far better uses in operating the plant.

So the Hursts reached a final agreement that allowed the business to remain at its location, but with completely unreasonable restrictions the owners felt they had to accept if they were to get on with their lives. Interestingly, the Authority signed the agreement three days before it would have had to turn over discovery documents for the upcoming litigation.

Under the terms, for the next 30 years the Building Authority can take over the property if the Hursts: 1) decide they wish to change the nature of their business; 2) receive an acceptable third-party offer to purchase the property; 3) are, in the opinion of the Authority, no longer operating the business within the present property; or 4) are no longer owners of 50 percent of the business. They could also lose the property if the current operation no longer constitutes 50 percent of the business being done there.

The newspaper quoted the Authority chairman saying that since the state did not get all the land it "needed" it would have to build a $15–$18 million parking garage, implying that this was the Hursts' fault.

Shameful Blot

This episode is a shameful blot on the reputation of the state and city. Surely this governmental bullying of small business, which politicians are so fond of claiming as the heart of the economy, would not be overlooked by a firm seeking a new site in the area.

There is also a blot on the business community. Throughout the process no local or state business association gave public support to or made any offer to assist this small business in its battle against an arrogant, non-elected state agency.

Dictionaries used by business and political leaders of the state and city appear to have lost the page that contains the words "principle" and "priority."