

BRAUN & GRESHAM

ATTORNEYS AT LAW

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LOBBYING

'Jury of View' Neither Visionary Nor Just

IT TAKES PROFESSIONALS, PERSEVERANCE TO DEFUSE A LEGAL LAND MINE FOR TEXAS PROPERTY OWNERS

It was a rude awakening for ranch owner John Boerschig.

"I woke up one morning, and Presidio County had posted a notice up on my ranch gate," Boerschig begins. "It said they were initiating a process called the 'Jury of View' to determine whether the county was going to make the road to my ranch a public road."

The county, it seemed, had examined a map and decided it was rather convenient that Boerschig had a good ranch road on his property that would connect up nicely with some other county roads, so they were going to take it. And using Texas' Jury of View law, they could.

"It's such an archaic and rarely used law, almost no one had heard of it," explains David Braun, principal at Braun & Gresham, one of the law firms Boerschig engaged to help keep his land. "The law was put on the books in the 1880s, and had never been removed, even though by the early 1960s the state passed a whole new section of law for building public roads, providing counties



County notice posted on John Boerschig's ranch gate.

with the power of eminent domain. Under eminent domain, there are all sorts of rules and processes to protect landowners from arbitrary government action. But Presidio County chose to use Jury of View.

"Under Jury of View," Braun continues, "the county commissioners appoint five property owners – the Jury of View – to essentially determine where a new road should go and how much the county should pay for it. Whoever owns the land the new road crosses gets no hearing, and can appeal only the amount of money they get for the land – not the seizing of the land itself."

The Braun team initially tried working directly with Presidio County, urging the county to stop the process. But once Presidio County opted to continue, Braun and the other lawyers adopted a dual approach — taking the county to court on some procedural technicalities while, at the same time, beginning work with the Texas Legislature to repeal the law completely.

S U C C E S S S T O R I E S

Boerschig and the Braun team together persuaded State Representative Lois Kolkhorst (R-Brenham) to sponsor the repeal bill in the Texas House during the 2009 legislative session. Kolkhorst was a natural choice – not only because Boerschig is the fifth-termer’s constituent, but also because Kolkhorst is a staunch supporter of private property rights.

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JOHN BOERSCHIG, TEXAS RANCH OWNER

“She is one of those representatives you want on your side of an issue,” says Regan Beck, Associate Legislative Director of the Texas Farm Bureau, which also championed the repeal measure. “[Representative Kolkhorst] works extraordinarily hard, does an exceptional job, is well-respected and just has boundless energy. She was the right person to sponsor this legislation, no doubt.”

“I believe the freedoms and prosperity we enjoy in America today are rooted in private property rights,” Representative Kolkhorst asserts. “So I’m passionate, I’m driven, I will do all I can to ensure those rights. Over time, the government has taken more and more

from the people, and I’m working hard to return those property rights to the people, and let people hold onto their land.”

Even with straightforward language, a strong sponsor and support from an influential association, the legislation to repeal the Jury of View law still faced a steep and complex uphill climb.

“Nothing is simple about the legislative system,” notes Kolkhorst. “It’s an intensely time-consuming and laborious process, set up for bills to fail, not pass. It was clear we no longer needed this antiquated [Jury of View] law. But during the session, we’re so very busy, the help and expertise Braun offered [to inform and educate members about the legislation] was greatly appreciated.”

And effective. Ultimately, the bill passed both the Texas House and Senate (sponsored by Senator Glenn Hegar, R-Katy) unanimously. The legal team also won the court case against the county, but due to a technicality – it was Braun’s extensive efforts at the State Capitol that closed the door on counties using the outdated and essentially unjust law.

“Our key concern about [Jury of View] was if one county used it, then other counties might see it and think that’s a fine way for them to circumvent many of the safeguards of eminent domain,” Beck says. “We were thrilled to get this off the books so it can’t be abused again.”

And ranch owner John Boerschig likely sleeps a little sounder, knowing with commitment and the right folks behind him, he has helped protect not only his property, but also other Texas landowners.

“Almost any fair-minded person would agree getting rid of Jury of View was just common sense,” Boerschig argues. “But what an undertaking it is when you get down to the legislative nitty-gritty. You need a solid team in there with you – professionals with perseverance – and that’s what Braun was for me. They got it done.”