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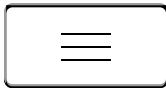


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Hunker: The story of Texas begins with respecting private property

Posted: 2:02 p.m. Tuesday, July 29, 2014

By Kathleen Hunker



If you're looking for some indoor recreation this summer, I suggest that you pay a visit to the Bullock Texas State History Museum in downtown Austin. It offers an exciting illustration of the "Story of Texas," highlighting the different ways that the quest for liberty, property and opportunity helped create one of the most dynamic

states in the nation.

What struck me was how private property – and the law’s respect for it – led to repeated innovations that transformed the Texas way of life. From the introduction of barbed wire on cattle ranches, to seismic surveys on Texan oilfields, Texas’ journey to a state boasting seven of the 15 fastest growing cities nationwide began with an energetic defense of property rights.

That commitment, however, has since eroded.

Just ask Hinga Mbogo, a Kenyan immigrant who has been fighting the city of Dallas to keep his 28-year-old auto repair shop open.

Located on Ross Avenue, the City Council rezoned Mbogo’s property in 2005 as part of its redevelopment scheme to beautify what city planners view as the gateway to the Dallas Arts District.

Mbogo has proven luckier than most. The City gave Mbogo permission to stay in business another two years. Although his extension expires in 2015, Mbogo hopes the additional time will let him hold out for a better offer from developers.

Thanks to a combination of judicial abdication and loopholes in Texas statute, stories like the one about Hinga Mbogo are all too common.

The Texas Supreme Court has explicitly stated that landowners “do not acquire a constitutionally protected vested right in property uses,” and that rezoning is legitimate so long as it’s “reasonable,” “accomplishes a legitimate goal,” and not so severe as to deny the owner “all economically viable use of the property.”

Simply put, cities can force Texans like Mbogo to close shop without compensation because he could theoretically start a new type of business or sell his land. Nevermind that, near age 60, he may find it almost impossible to start anew or that buyers may offer below-market prices since the city has put the negotiations under a stopwatch—something Mbogo already discovered.

State lawmakers attempted to address this shortcoming with the Private Real Property Preservation Act in 1995. But, the statute exempted cities, leaving many Texans with little recourse when their business and homes are evicted in favor of high-end projects.

The oversight has significant implications in how Texas transitions into the next chapter of its economic growth.

The opportunities behind the settlement of Texas –and the innovations that drove the state’s prosperity– arose from residents’ right to use their land as they saw fit.

Land has little realistic value unless it’s accompanied by a right to use it, and property owners will invest in improvements only when they have confidence that their rights will be respected.

Fortunately, the Texas Legislature has the power to correct these shortcomings by amending the Private Real Property Preservation Act to include municipalities.

In the eyes of a city planner, modest businesses will never carry the same sparkle as windows in high-end condominiums. It's up to the Texas Legislature to ensure that the "Story of Texas" is one where the opportunities provided by private property remain available to all.

Kathleen Hunker is a policy analyst with the Center for Economic Freedom at the Texas Public Policy Foundation. Follow her on Twitter @KathleenHunker.

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This is just factually wrong -- a property that is rezoned may continue the existing operation as a non-conforming use. How about some basic research? Why should anyone take you seriously when you fail to articulate even basic notions of land use?

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