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> **NEWS**

Kangaroo court

PART ONE IN A SERIES

Meet the City's new extra-Constitutional crime-fighting tool

GREG HARMAN

Malcolm Monroe stands in the doorway of his parents' home, where his brother was shot in 2007. The City voted to demolish it last September. He is currently fighting the order.

ADD THIS

BY **ELAINE WOLFF**

It's February 22, 2010, and the second monthly meeting of San Antonio's Dangerous Structures Determination Board is in session in the City Council chambers. Projected on the giant screens in the front of the room are images of deep urban decay: rotting wood, exposed floor beams, cement piers moldering in a pile, holes in the roof big enough to accommodate 'possum ... drug paraphernalia on a side table. That's what we're told it is anyway. I'm not sure, because I'm fixated on the bed, which seems to be in a room that is at least partially open to the elements. Yet, it has bedding, and what looks like a row of clothes hung neatly on nails sticking out of the wall studs. Someone is living here? Someone who needs help, from the looks of it.

But any assistance rendered today will be of the tough-love variety.

The faces on the dais are not as familiar as District 1 Council Member Mary Alice Cisneros's, or as famous as Mayor Julian Castro's, but they wield a power as awesome as any held by our local elected leaders. By a simple majority vote, these six individuals can order a house demolished, any tenants relocated, and send the bill ($4.12 per square foot) to the owner. A quorum is four, so some days fate rests in even fewer hands.

A police officer tells the board that squatters on the property "confessed to using drugs on a regular basis." A second officer reminds them that the house is just north of the "Hackberry area," which is known for prostitution and drugs. A Fire Department representative asks about missing flooring, and the board votes unanimously to demolish the house.

• Police Action

Our property rights, enshrined in the Constitution, are not absolute, a fact brought home with force and rancor by the 2005 Supreme Court ruling in *Kelo v. City of New London,* which held that the definition of "public good" for which the government can take private property includes private redevelopment projects. Of course, in those cases, property owners must be compensated.

The other notable instance in which the government can interfere with your property rights is when you neglect or operate your property in such a way that it becomes a danger to others. A brief submitted by the cities of Houston and San Antonio in a case currently before the Supreme Court of Texas sums it up this way: "All property in Texas is held subject to the government's valid exercise of its police powers to protect the public safety." The U.S. Supreme Court has held that once a property is declared a public nuisance, the compensation provisions in the Takings Clause no longer apply.

In Texas, the task of determining which structures are such a nuisance that there's no other course of action but to tear them down is delegated to what's known in the legal world as "quasi-judicial bodies." To the layperson that means local administrative boards that are neither elected nor actually judges; to City officials, it means a way to get rid of problem properties without the time and expense of going through the actual court system. That same legal brief before the Texas Supremes laments the days "prior to the enactment of these statutes when all public nuisances had to be judicially determined — a process which could be drawn out for years and often was, while the structure continued to deteriorate even further and often collapsed."

Speed and efficiency, however, are achieved at a steep price.

"When you're in front of the DSDB, one of the things you don't get to do is ask questions of the witnesses," says attorney Eddie Bravenec, who has represented several clients with cases before the board. "You have to ask questions of the board, and then the board gets to ask the witnesses questions."

Those witnesses, including the code-enforcement officers who inspected the properties and, increasingly frequently, San Antonio police officers, aren't under oath, unlike witnesses in an actual court proceeding, and so aren't subject to perjury. Property owners don't have the right to object to members of the DSDB whom

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