

## The family that fought City Hall – and won

*Condemnation case takes 10 years, hinges on value of scenic property*

By JANINE ROBBEN PortlandTribune Issue date: Tue, Dec 16, 2003

**Richard and Gayanne Courter were appalled when representatives of the Portland Water Bureau told them in 1994 that the city wanted to take a chunk of their 12-acre West Hills view property to put in two water storage tanks.**

They thought the \$110,000 the city was offering was "absolutely ridiculous" and decided to fight.

Now, after a nearly 10-year legal battle, a Multnomah County jury has sided with the Courters and decided that they are entitled to \$596,000 – more than five times the city's original offer for their property.

"When the city takes your property, you're pretty helpless," said jury foreman Louis Hanset. "When we delivered the verdict, the look of relief on (Richard Courter's) face – it changed my life. The 'little guy' stopped City Hall from taking his property for a song and a dance."

The unpublicized case was the first time in 100 years that the water bureau had been involved in a trial over a property condemnation, said water bureau administrator Mort Anoushiravani. He said the bureau's long history of reaching agreements with property owners is proof of its "good neighbor" policy.

"Two things are fundamental to how we operate," Anoushiravani said. "To be fair to the property owners, and to offer them just compensation. Condemnation is the tool of last resort.

"In all of these (property-taking) things, we have tried to be fair to property owners," Anoushiravani said. "The jury (in this case) basically saw it differently."

Kelly Clark, the couple's attorney, says the total bill still is being calculated. By the time all costs, interest and a \$25,000 award to another property owner – Gayanne Courter's mother – are added in, the city's bill could grow to as much as \$1 million from the jury's Nov. 21 verdict.

### Sliced in two

In the 1970s, the Courters, along with Gayanne Courter's parents, bought approximately 12 acres of land on a treed ridge off Northwest Skyline Boulevard. The parcel included an unobstructed, sweeping view toward the sunset.

Richard Courter, a consulting forester and part-time Christmas tree farmer, and father-in-law Arthur Johnston cleared the land and built two Northwest-style houses.

Then, in 1994, the city of Portland decided to use its condemnation power to take a 1.6-acre slice out of the middle of the property, splitting the parcel into two unconnected pieces.

The city wanted the land, plus a 0.2-acre access easement, for two 1.3 million-gallon water storage tanks to serve Forest Heights and other West Hills developments then being planned for Northwest Skyline Boulevard – downhill from the Courters.

Under Oregon law, governmental entities can condemn private property if they show that it's needed for a public use and that the proposed use balances the greatest public good with the least private injury.

According to Anoushiravani, the Courters' property had the best location and elevation to allow the tanks to supply water to the West Hills as part of a citywide gravity-fed system.

But Clark, in a pretrial memorandum, put the city's decision another way.

"The Forest Heights subdivision and several other developments were thirsty," he wrote. "The planners had failed to require the tanks to be placed in the new subdivisions themselves and, by 1994, it was clear that they needed to go somewhere."

Richard Courter called the city's first offer of \$110,000, made in late 1995, "just absolutely ridiculous," considering that it was "the best 2 acres of our property."

"It was such a small amount that we were forced to hire attorneys," Courter said. "And as the attorneys' fees built up, we had to keep going."

*(Continued on page 5)*

*(Continued from page 4)*

Courter's now-widowed, 94-year-old mother-in-law, Veda Johnston, also eventually became a party to the city's lawsuit because her property's drainfield -- located in the condemned area downhill from her house -- will be dug up and destroyed when the tanks are put in.

### **Price wasn't only concern**

According to Anoushiravani, the water bureau has purchased private property only 17 other times in the last 10 years. All of those actions were accomplished without legal condemnation actions having to be filed because, Anoushiravani said, the property owners "went away happy" with the city's offers.

But the Courters said that was not their experience and the city's offer (which they say peaked at \$320,000; the city says \$380,000) was not the only issue.

Richard Courter said he and his wife also spent four years "going round and round" with the city about whether the two tanks -- each expected to be about 40 feet high by 75 feet wide -- would be buried and, if so, buried to what extent.

According to Anoushiravani, the city made the Courters a binding offer, well before trial, to bury the tanks completely. But he agreed with Richard Courter's assertion that when the Portland City Council approved the condemnation ordinance in 1998, it did not specify that the tanks would be buried.

Although the two sides eventually came relatively close on compensation for the tank site and an added 0.2-acre access easement to the site, they stayed worlds apart on whether the value of the Courters' remaining 10 acres would be affected by the condemnation.

The city based its offer on its belief that the Courters only are entitled to compensation based on the property's current use as a Christmas tree farm, which would not suffer by being divided in two, according to City Attorney Jenifer Johnston (no relation to Veda Johnston). The city, therefore, was unwilling to offer any compensation for the effect on the rest of the property.

But the Courters argued that they were entitled to compensation based on the possibility that the property eventually might be used for a high-price residential development like Forest Heights. They wanted something in what Clark called "the \$500,000 range." The land would be more easily developed, and therefore more valuable, if it remained in one piece, Clark said.

Anoushiravani said the city's original and subsequent offers were limited by the need to be good stewards of the taxpayers' money.

"As a public agency, we have to be able to justify our expenditures," said Anoushiravani, whose bureau has been under fire in recent years for a malfunctioning billing system that has cost the city millions, as well as a proposal to cap Portland's reservoirs that could cost millions more.

### **'How can you say that?'**

The trial was delayed for five years because of Gayanne Courter's health problems, including breast cancer and a heart attack.

But in the end, the Courters' legal struggle paid off.

"When the city said there was no damage to the (10-acre) remainder (of the property), we said, 'Wow, how can you say that?' " the jury foreman, Hanset, said of himself and his colleagues.

According to Hanset, the jury used evidence submitted by "all sides" to reach its verdict. He said the jury's decision was limited to deciding on the amount of compensation for the city's taking and related damages, not its decision to site the tank.

"All of us said we couldn't sleep at night," said another juror, Laurel Schaffer, who is a registered nurse. "We couldn't stop running numbers through our heads."

*(Continued on page 6)*

## The family that fought City Hall – and won

*(Continued from page 5)*

On Nov. 21, the jury voted to award \$596,000 to the Courters and \$25,000 to Veda Johnston for the damage to her drain field.

In addition, because the award was larger than the city's last offer, state law requires the city to reimburse the Courters and Johnston for their "reasonable" attorneys' fees and other expenses – fees and expenses that the family would have had to pay themselves if the case had settled before trial.

Courter, who said that he and his wife were "spending money like you wouldn't believe" during the trial and its final preparation phase, said their legal fees alone may be more than \$200,000.

Attorneys Clark and Johnston told the Tribune that the city now has three options: pay the final judgment and put the tanks on the Courters' property; place the tanks and appeal the judgment; or pay costs to the Courters and Johnston and walk away from the site.

According to juror Mark Stuart, the jury, while not intending its award to be punitive, did form some negative judgments about the water bureau.

"One thing that struck myself and others was that concessions were being made by the city as the trial progressed," said Stuart, who is a vice president for U.S. Bank. "It went to the credibility issue, because they (the bureau) could have made those (concessions) at any time.

"It seemed to me that the (bureau) hadn't done its homework as well as it could have," Stuart said. "It seems peculiar that in 100 years, the water bureau has never had a trial."

But Johnston said the jury was not allowed to hear evidence of all settlement offers made by the city. She said she was impressed with the water bureau's willingness to try to resolve issues whenever they were raised, including during trial.

Hanset, the jury foreman, put his feelings about the case in strong terms.

"To see what they (the city) were going to do with these people made me so very proud of Richard Courter," he said. "To fight must have cost them a lot of money: It took a lot of personal fortitude.

"I really don't think there was any animosity toward the water bureau," Hanset said of the jury. "But our impression was that if they (the water bureau) make a decision, they're not willing to change it. It made them look like they were trying to walk over these people.

"They knocked on the wrong door," Hanset said. "They picked the wrong guy."

### In Memoriam

Henry Kane (Hank) Trobitz, ACF, passed away in his home on November 29, 2003, of complications from diabetes. Born in Oakland, California, on January 16, 1918, he graduated from the University of California, Berkeley in 1938 with a bachelor's degree in forestry. After graduation he worked for the California Forest Range and Experiment Station. During WWII he served as a 1st Lieutenant Navigation Instructor in the US Army Air Corps from 1943 through 1946. After the war he returned to the Forest Service and later worked for Simpson until he retired and began consulting.

"Hank had a zest for life and was always interested in political issues of the day, new technology, playing on the tractor, and most of all his family friends and faithful animal companions, Missy Tom-Tom and Wilbur. He was never too busy to help a person in need and never expected anything in return except to do your best."