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Eminent domain law could impact riverfront redevelopment plans

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by [Christopher Sheffield](#)

Eminent domain legislation signed by Gov. Phil Bredesen this week could give renewed hope to those opposing the redevelopment of Downtown property by the [Riverfront Development Corp.](#)

Although House Bill 3450 is one of the least restrictive of several bills introduced by lawmakers this past session, certain provisions give landowners some real recourse to having their land taken for economic development purposes, says Kevin Walsh with Harris Shelton Hanover Walsh, who primarily represents landowners in eminent domain disputes.

In the session that just ended, 59 bills were filed by state Democrats and Republicans in both the House and Senate to limit the use of eminent domain by local governments.

The flurry of activity on the issue was in response to the U.S. Supreme Court 5-4 ruling in 2005 that found that the [New London Development Corp.](#), acting through the City of New London, Conn., had the authority to take homes for a development plan that included a resort hotel and conference center, a new state park, 80-100 new residences and various research, office and retail space. The case is now often referred to as the Kelo Case, named after local homeowner and lead plaintiff Susette Kelo.

"I do think it is a good step toward addressing the Kelo issue in Tennessee," Walsh says.

Walsh says the legislation, which was signed June 5 and is still being digested by the legal community, clarifies the limited nature of public use for the stated purpose of taking a property for economic development.

"That should provide some comfort to owners of property that there is a recognized prohibition of taking property solely for economic development," Walsh says.

Test case in riverfront redevelopment?

Locally, the most prominent case that may test the legislation is the [RDC's](#) \$50 million plan to remake 6 acres of prime riverfront property that now contain the Cossitt Library, Fire Station No. 1, the old Customs House (future home of the University of Memphis School of Law) and Confederate Park.

Private developments, including three proposed new buildings, would pay for projects like a two-level promenade and the relocation of parking garages underground. The buildings would be mixed-use, with restaurants and shops lining the bottom floors. Ground leases would keep the property under the control of the city. The plan also calls for pedestrian bridges that would stretch across Monroe and Court and for improvements to sidewalks on the promenade. Grand staircases would provide access to the upper level of the pedestrian walkways.

RDC president Benny Lendermon, who says he had not seen the new legislation as of Wednesday, didn't express much concern about the impact of the new law on RDC's redevelopment plan.

While saying that the RDC has hoped to never use eminent domain to obtain property, he says the process "is important for municipalities to grow and prosper."

Eminent domain is not a favorable option because the governing authority often pays much more than the fair market value to get it.

"The courts always make sure the property owner is duly compensated," he says.

But in the case of the property in question, it may be a question of actual ownership.

There has long been a legal dispute about the use of the property and who has the authority to decide it.

The property was apparently donated by the city's founding fathers for use as a public promenade decades ago, although the heirs of the founders reportedly still hold title.

Legal showdown may be afoot

Arguments over aspects of the donated land have gone all the way to the Tennessee Supreme Court in the past. Some members of the legal community see another legal showdown brewing between the City of Memphis, RDC and the heirs, chiefly the Overton family, whose name is attached to one of the city's largest recreation areas, Overton Park.

The riverfront land in question "was given to the citizens of Memphis," says Virginia McLean, an Overton heir and president of the Friends for Our Riverfront. "The city acts as a trustee of the land."

It was the intention of McLean's family that the land be used as a public promenade or public open space like Boston Common.

She says she is not against the property being developed and improved, "but the question is who is the land being improved to benefit? Improved for a public promenade or private development?"

Despite Lendermon's stated hope that eminent domain would not be involved, McLean says she is confident the city plans to initiate eminent domain proceedings.

Lendermon says since the project was approved by the City Council in 2004 there has been little movement due to the city's budgeting problems and other priorities. But with a new budget approved and those problems seemingly behind it, talks can now begin on how to proceed.

"Dealing with the promenade property in the future will be some target on that schedule," he says.

City attorney Sara Hall did not return calls seeking comment.

RDC's first move is with the city

Whatever direction RDC and the city attorney's office take will first come before the City Council's economic development, tourism and technology committee chaired by attorney Dedrick Brittenum Jr., managing partner of Farris Mathews Branam Bobango Hellen & Dunlap PLC.

Brittenum, who joined the City Council in November and has handled eminent domain cases in his practice, says he was briefed on the RDC and progress on the promenade project by Lendermon just two weeks ago.

He says if any eminent domain proceedings are to begin, the RDC would first have to make the request to the city.

Brittenum says he was about to ask Lendermon if RDC planned to take that step when a fire alarm in One Commerce Square abruptly ended the meeting before Lendermon could answer.

"He was, literally, saved by the bell," Brittenum says.

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