

PROPERTY: Some say couple should be able to keep their land

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the condemnation of their land by the Roanoke Redevelopment and Housing Authority.

Glenda Edwards, executive director of the authority, also said it was her understanding that Carilion had expressed an interest in the land within the past two or three years.

A judge approved the condemnation last month, ruling the authority properly found that the area surrounding the Burkholders' property was blighted. The next step is for a jury to determine how much the couple should be paid for their land.

Even with Carilion out of the picture and no other developer stepping forward with a shovel-ready plan, the housing authority says the condemnation can proceed under the general concept of redeveloping the area.

But wielding one of government's most drastic powers — the taking of private land for public use — to accomplish such a vague purpose worried some legislators and city council members.

"If Carilion doesn't have any

interest in it, I think we ought to go ahead and let those people have their property," Vice Mayor Sherman Lea said.

The condemnation process, a two-year legal fight that began when the Burkholders refused to sell their land to the housing authority, "doesn't have a good flavor to it in terms of how it was done," Lea said.

The authority filed a petition to condemn the Burkholders' property in June 2007 — just days before new laws took effect that made it more difficult for governments to seize land.

Under the old law that applied to the Burkholder case, property that is not blighted can be taken as long as a majority of a total redevelopment area needs improvement. So while the Burkholder property is "in fine condition," Judge William Broadhurst wrote in his opinion, it could still be condemned.

The General Assembly has since changed the law to allow only blighted property to be condemned. Other overhauls implemented in 2007 bar the taking of land for economic development.

The legislative changes were prompted by a controversial U.S. Supreme Court ruling in 2005 that expanded the use of condemnation.

The court upheld a government taking of land for economic development so a Connecticut city could transfer the property to a private developer. In the past, condemnations were primarily used for schools, roads, hospitals and other historically established public uses.

Any additional action by the General Assembly is unlikely to have an impact on the Roanoke case, House Majority Leader Morgan Griffith of Salem said.

"The redevelopment people may have been right on the law," Griffith said. "But now, whatever the circumstances were in the past, Carilion says, 'We don't want that property.' These people [the Burkholders] want the property. Why not just give it back to them?"



Morgan Griffith
Wants the property given back to the Burkholders.

Griffith said a constitutional amendment like the one suggested by Cuccinelli would strengthen the laws passed by the General Assembly and prevent a recurrence of what happened to the Burkholders.

"I'm upset about it," he said. "I will say that."

Sen. Ralph Smith, R-Botetourt County, agreed the Burkholders should be allowed to keep their property.

"It's not a shiny new penny like the new Carilion buildings built nearby, but as industrial property goes, it's above average," Smith said. "I don't think it hurts the neighborhood, and if it's being operated, it's compatible."

"It would appear to me they just need to settle this thing."

U.S. Rep. Bob Goodlatte, R-Roanoke County, said he's been following the Roanoke case with "keen interest" and that he's preparing to reintroduce federal legislation to limit the use of eminent domain.

But Roanoke Mayor David Bowers pointed out that what is now Riverside Center was once the site of aging industries and run-down businesses.

"You've got to take a look at what this was 10 years ago," Bowers said. "With the addition of the Virginia Tech-Carilion medical school, it's gone beyond my wildest dreams of being successful for the city."

Councilman Rupert Cutler declined to comment on the particulars of the case, but said eminent domain is an important tool for local government.

"I'm just sorry it's become such a controversial matter," he said. "My main dismay is that it's exacerbated the negative public image of the power of eminent domain that's been used so constructively and has been so important in the redevelopment of cities such as Roanoke."

Acting on behalf of the city, the housing authority made repeated efforts to buy the property from the Burkholders.

"It's not that we just did this willy-nilly," said Mark Loftis, an attorney for the authority. "The condemnation was a last resort."

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