

Jury sets \$2.2 million Value for Disputed Reserve Avenue Land

*Sarah Bruyn Jones
The Roanoke Times
March 19, 2010*

Jay and Stephanie Burkholder will be paid \$2.2 million for 3 acres of land they own that the government is taking.

A five-member jury decided the price unanimously Thursday, ending a three-day trial in Roanoke Circuit Court focused on how much the Roanoke Redevelopment and Housing Authority has to pay the couple.

"I think the jury returned a fair verdict in this case," said Mark Loftis, the attorney for the housing authority. "They were one of the most attentive juries I've had."

The \$2.2 million verdict -- which by law had to equal the fair market value for the property on June 29, 2007, the day the housing authority filed the lawsuit to take the land -- represents a significant increase in the value of the land since the Burkholders bought it in 1999 for \$168,840.

At the time the couple took out a loan of \$440,000 to cover the land costs, buying out the lease on the building, and building renovations.

Jay Burkholder testified Thursday that they purchased the property as an investment and to house their flooring business, Surfaces Inc. The couple no longer owns Surfaces.

Still the Burkholders weren't completely satisfied with the jury's sum.

"Obviously we want the number to be higher," Stephanie Burkholder said after hearing the jury's verdict. "But listen, it's never been about the money."

The jury of five property owners took about an hour and a half to reach a decision that fell between the appraisals given by the government and the landowners. The housing authority argued the property appraised for \$1.53 million. The Burkholders hired two appraisers, one who valued the property at \$4.83 million and the other at nearly \$4.5 million.

The Burkholders said the jury's decision confirmed their belief that the government was trying to underpay them for the property. The housing authority initially offered the couple \$1.02 million before raising it to \$1.53 million.

So far the housing authority has successfully negotiated the sale of most of the properties in the South Jefferson Redevelopment area and this is the only case that has gone to a jury to determine the fair market price. However, another couple, William and Maeona Stegall, is fighting the condemnation of their property.

The Burkholders, as the owners of B&B Holdings LLC, have been embroiled in a lengthy legal battle over the housing authority's decision to take their Reserve Avenue property through eminent domain. Both sides have more at stake than a contentious fight for land in a flood-prone former industrial area.

For the city, the land represents part of the larger plan to spur on an economic revival tied to Carilion Clinic medical practices, a medical school and a research institute. While, for the Burkholders, the case is about improving property rights statewide.

"It's about the government taking our property to give it to Carilion," Stephanie Burkholder said. "So, I thank the jury for validating the fact that the city was mistreating us, but we're going to take it to the next level."

The next level is appealing to the Virginia Supreme Court to reverse a November court ruling that the private property could be legally seized by the housing authority for redevelopment.

They are also pledging to fight for a constitutional amendment to better preserve property rights statewide.

"I intend to be a missionary or warrior for property rights," Stephanie Burkholder said. "I will not roll up and go away."

The Burkholders' lawyer, Joe Waldo, said he thought his clients' case would be a landmark for changing eminent domain laws in the state.

"It's made national news and I think it will continue because it really is Virginia's Kelo," Waldo said, referring to the 2005 Kelo v. New London case in which the U.S. Supreme Court ruled that government can take land and sell it to a private developer for economic development purposes.

"I think you are going to see a lot more statewide and you are going to see a constitutional amendment," Waldo said.