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ALERT

BRENTWOOD DEVELOPMENT

Brentwood businesses sue to block blight designation

Jacob Barker

Dec 13, 2023



Annemarie Wylie prepares ingredients for a chicken dish alongside co-worker Jane Cole, right, at Time for Dinner, a Brentwood meal preparation business that is a plaintiff in a lawsuit to block the potential use of eminent domain along Manchester Road, on Tuesday, Dec. 12, 2023. The owners remodeled the space months before the pandemic began in 2020.

Robert Cohen

Jacob Barker

BRENTWOOD — Several business and property owners represented by a public interest law firm aiming to put Missouri’s development laws to the test have sued to block the potential use of eminent domain along Manchester Road as part of a \$400 million redevelopment of the corridor.

The lawsuit, filed Tuesday in St. Louis County Circuit Court against Brentwood, challenges the redevelopment plan approved by the city this summer, which called for blighting the corridor along Manchester Road between Mary Avenue and Hanley Road.

The Institute for Justice, an Arlington, Va.-based libertarian public interest law firm that litigated the landmark eminent domain case *Kelo v. New London* at the U.S. Supreme Court in 2005, filed the lawsuit on behalf of three small businesses and a property owner along Manchester Road.

“I’m not suing for money, there’s no gain here. I’m suing on behalf of other people that this could happen to,” said one of the plaintiffs, Martin George, who along with his brother owns the building at 8307 Manchester Road where Feather-Craft Fly Fishing is located. “You can’t pick blight and just willy-nilly throw it around like a drunkard. You can’t do that. I’m willing to fight for other people who can’t fight.”

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Under Missouri law, local governments must declare areas blighted before using eminent domain to acquire property for redevelopment. After the Kelo decision, Missouri, like most states around the country, passed several laws intended to tighten how and when governments could use eminent domain to acquire private property.

One of the laws Missouri passed post-Kelo says blighting designations need “substantial evidence” and another says property can’t be acquired via eminent domain for “solely economic development purposes.” The lawsuit against Brentwood says the city violated both.

“We think this is a very important fight to have,” said Jaimie Cavanaugh, the Institute for Justice attorney handling the case. “We want to test these statutes in states that said we want to make our laws stricter in light of the Kelo decision. We want to make sure that those changes actually meant something.”

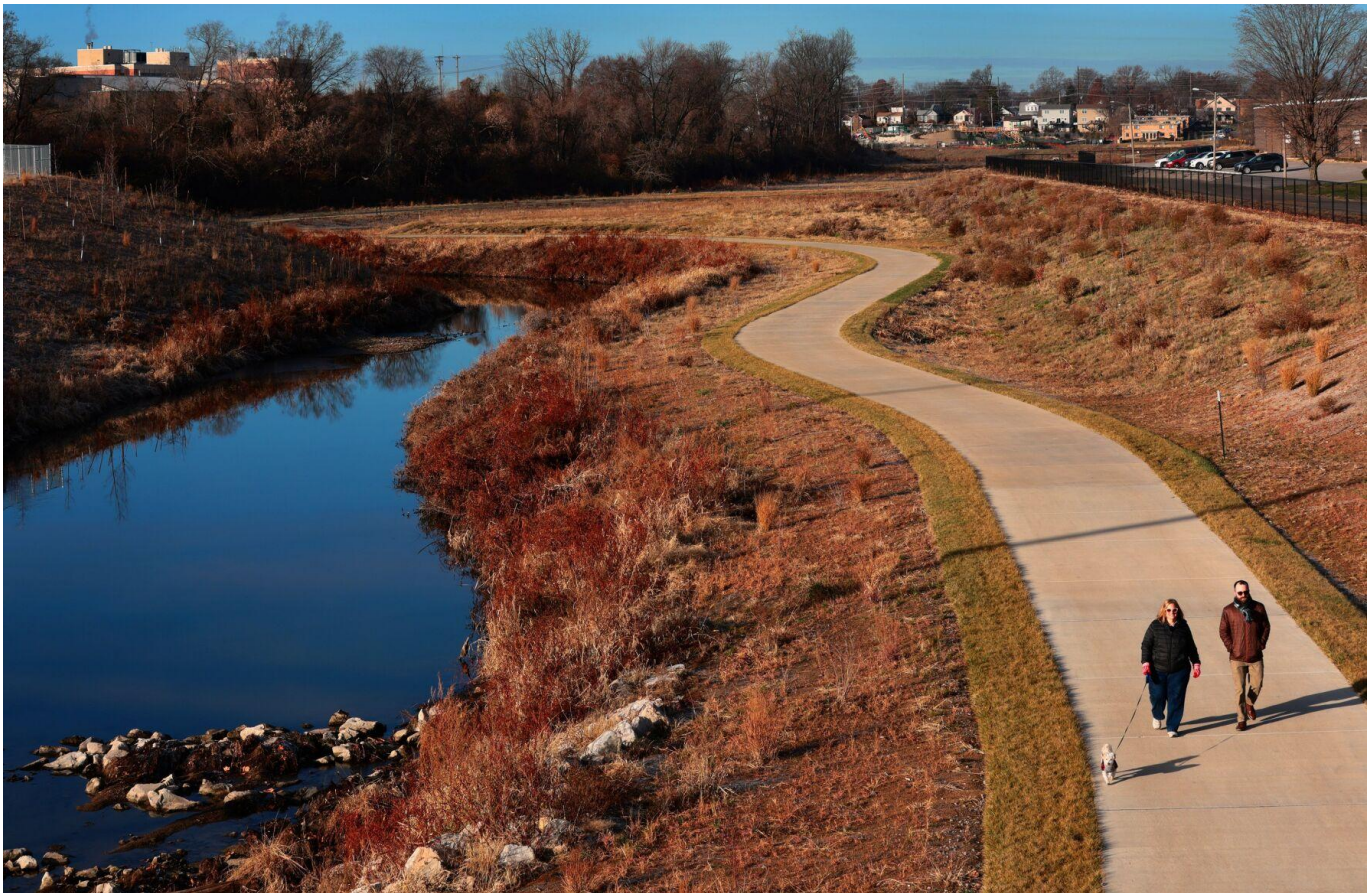


Traffic moves along the new bridge over Black Creek at the intersection of Manchester and South Hanley roads in Brentwood on Monday, Dec. 11, 2023. Photo by Robert Cohen, rcohen@post-dispatch.com

Robert Cohen, Post-Dispatch

Over the last five years, Brentwood and the Missouri Department of Transportation have poured \$120 million into the area. Some of that money paid for road and sidewalk improvements along Manchester Road and rebuilding the bridge over Black Creek at Hanley Road, **turning Manchester Road into a dead end for months.**

But **the bulk of the money was spent to tame flooding issues from Deer Creek**, which has long plagued businesses along that low-lying stretch of Manchester Road after heavy rains. Brentwood bought out several commercial and industrial buildings — sometimes resorting to eminent domain — and removed tons of earth around the creek to give it more room.



Pedestrians walk on the Deer Creek Greenway in Brentwood Park, as work continues on nearby structures on Monday, Dec. 11, 2023.

Robert Cohen, Post-Dispatch

With that work mostly complete, the city last year turned its attention to redeveloping the district of mostly low-density industrial and commercial buildings. **It approved a redevelopment plan and tapped developer Green Street St. Louis for the**

project, which the company pitched as a \$400 million, mixed-use revamp of the area into apartments and restaurants.

Part of the lawsuit's argument is that Brentwood lacks evidence that the corridor remains blighted after more than \$100 million in public investment in the area. And it argues that some property and business owners deferred some investments until the yearslong construction project along Manchester Road wrapped up.



Winterberry stands on a walking trail beside a pond with an overlook under construction in the new Brentwood Park on Monday, Dec. 11, 2023. Photo by Robert Cohen, rcohen@post-dispatch.com

Robert Cohen, Post-Dispatch

“To the extent that any of the conditions in the Manchester Corridor have declined (and Plaintiffs are not admitting any conditions have declined), Brentwood’s actions caused such decline,” the lawsuit says.

And, Cavanaugh said, the lawsuit challenges the lack of specificity in Brentwood’s blight designation. It includes what she called “vague” details, including a claim that five of the properties are “insanitary or unsafe,” one of the criteria in the state’s blighting definition. However, she said, Brentwood’s report doesn’t list those properties, so challengers can’t even determine if, for instance, the properties are owned by the city. Brentwood will own about half of the corridor’s properties, according to the blight study.

“The blight study itself, if you look at it, it doesn’t have concrete evidence of problems that relate to the whole corridor,” Cavanaugh said.



Traffic heads east along Manchester Road toward Hanley Road on Tuesday, Dec. 12, 2023. Improvements to the Brentwood corridor, including road and sidewalk improvements and the replacement of the Black Creek bridge, were recently completed.

Robert Cohen, Post-Dispatch

Missouri’s statutory blighting definition is based on broad requirements, such as physical conditions and conditions that constitute an “economic or social liability.” The state courts have not clearly explained them, said Daniel Mandelker, a retired Washington University law school professor and a nationally respected expert on land use law. But Missouri courts have tended to defer to local governments, he said.

“Courts have usually been receptive to blight designations because they’re legislative actions entitled to a presumption of validity,” Mandelker said.

Caught off guard

Business and building owners told the Post-Dispatch last summer they were caught off guard by the redevelopment plan and specter of eminent domain.

“We were hoping that all the construction and everything that they were doing would make things better for us,” said Amy Stanford, one of the plaintiffs in the lawsuit and co-owner of Time for Dinner, a pre-packaged meal business. “We certainly didn’t think they were gonna pull the rug out from under us.”

Brentwood Mayor David Dimmitt said the city had not yet seen the petition and declined to comment.

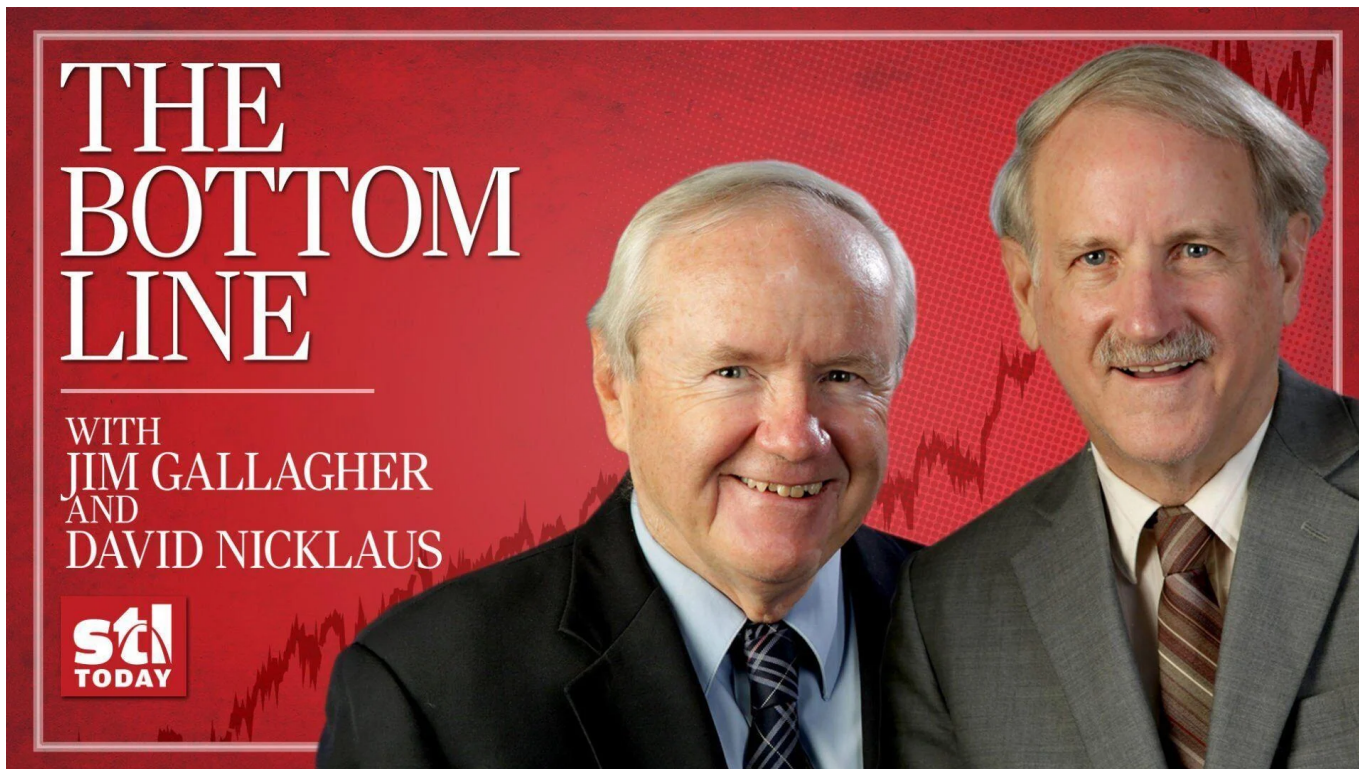
But Brentwood leaders have said they were always upfront about long-term plans for redevelopment following the flood mitigation work in the area. And Green Street, the designated developer, has said it doesn’t want to use eminent domain but that it is a necessary tool if a developer hopes to assemble a large swath of contiguous property for a major redevelopment.

“Obviously no developer ever wants to use eminent domain,” Green Street’s head of development, Joel Oliver, said at a Brentwood redevelopment board meeting last summer. “It’s a pain in the butt. It’s expensive. It makes people unhappy. But it is an incentive that’s on the table.”

Green Street CEO Phil Hulse could not immediately be reached for comment.

Another plaintiff, Carter Maier, who co-owns Convergence Dance and Body Center with his wife, Roxanne Maier, said the couple was very supportive of the Manchester Road and flood mitigation work until they realized their business would have to move to make way for Green Street’s project. The city isn’t planning to use eminent domain to build a highway or other public infrastructure, he said.

“This is something that’s bigger than us and we really need to do what we can to rectify it,” Maier said. “This is for private development, that’s what we really have a problem with.”



High and dry? Brentwood is considering a \$400 million development on land that benefits from a major flood-control project. Jim Gallagher and David Nicklaus say the city needs to make sure the developers take care of existing businesses first.

David Nicklaus , Chris Drury

By Jacob Barker

Reporter
