











**Known Condemnations
Benefiting Private Parties***

Filed         8

Threatened **Not specified**

Total **8**

**Known Development
Projects w/Private
Benefit Condemnations***



Legend  = 1  = 1  = 1

OVERVIEW

Alabama has mostly refrained from abusing the power of eminent domain in recent years. Indeed, there are no news reports of such condemnations in Alabama. When Alabama successfully lured a new Hyundai plant to open in the state, it did so by offering Hyundai a piece of land the State already owned, rather than by resorting to the condemnation of private property.¹ One Alabama city did condemn land for public parking to support nearby private businesses, but the condemnations were thrown out in court. The Alabama legislature considered but failed to pass a bill to make it more difficult to condemn land for private use. At least so far, however, the legislature's reticence in passing the bill does not seem to mean that there are private condemnations in the works. Hopefully, Alabama will continue its positive track record.

*These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

¹ Patrick Howington, "Hyundai Picks Alabama Over Kentucky; Patton Said Difficulty Acquiring One Piece of Land in Hardin County Impeding the State's Bid for the \$1 Billion Auto Plant," *The Courier-Journal* (Louisville, Ky.), Apr. 2, 2002, at 1A.

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LEGISLATIVE ACTIONS

The Alabama state legislature recently considered a bill that would specify the burdens of proof in various types of eminent domain challenges by landowners, including where property is being condemned for other private parties. House Bill 656, which was introduced in March 2002 but died before getting beyond the House Judiciary Committee, explicitly set forth that “[I]f the condemnor is a private entity... the condemnor shall be required to demonstrate by clear and convincing evidence the need to take the property.”²

PRIVATE USE CONDEMNATIONS

Mountain Brook

Claiming that it wanted to tackle a parking shortage in the Mountain Brook Village commercial district of the City of Mountain Brook, the Mountain Brook City Council hired a parking consultant. The consultant’s report found no parking shortage, but recommended a new parking garage for the district anyway. Based on the consultant’s report, the City Council adopted a resolution to condemn two commercial tracts, the Mountain Brook Mall property and five other storefront properties, to make way for the unnecessary parking garage. In total, the targeted properties contained eight businesses. After the owners refused to sell, the City filed a condemnation suit on June 21, 2001 seeking to take the properties “for public use as a municipal parking facility and ordinary uses associated therewith.”³ The City’s complaint failed to name any of the tenants who operated businesses on those properties as condemnees, even though it knew their identities and Council members frequently patronized those stores. Some of the unnamed tenants had made improvements to their properties (giving them a property interest in the condemnation), and yet they received no notice prior to the City’s action. Another fact not stated in either the parking report or the complaint is that the parking consultant had a ten percent ownership interest in another shop located within the targeted area (his sister owned the rest) that was considered for condemnation but not selected.

At trial, the judge ruled that the City had grossly abused its discretion in condemning the properties by (1) failing to specify exactly what land was needed to construct the parking facility; (2) excluding the tenants from the lawsuit despite their potential entitlement to just compensation for improvements they made to the properties; and (3) basing its decision on the consultant’s report although the consultant failed to disclose his potential conflicts of interest.⁴

² H.B. 656, 2002 Sess. (Ala. 2002).

³ See *City of Mountain Brook v. Domit*, No. 175074, slip op. at 4 (Jefferson County, Ala. Probate Ofc. Jan. 14, 2002).

⁴ *Id.* at 10-11.

