Practice Pointers and Policy Considerations for the Responsible Use of Eminent Domain Post-*Kelo*

By Andrew G. Bailey and Elva E. Tillman



Introduction

In urban and older suburban areas, there is a constant struggle to control physical deterioration and tax base decline. Eminent domain has assisted with the redevelopment of many communities. As lawyers who represent governmental entities and agencies, we appreciate the *responsible* use of eminent domain.

During the past decade, much of the publicity and discussion about "Eminent Domain," more commonly known as condemnation, has been stimulated by the Supreme Court decision in *Kelo v. City of New London, vs. City of New London,*125 S. Ct. 2655 (2005). Next year marks the 10th Anniversary of *Kelo.* On June 23, 2005, the Supreme Court handed down a 5-4 decision in favor of the City of New London, Connecticut. In summary, the case sustained a government taking of privately owned property for the purpose of economic development. Viewed as a "win" for government and absolute "horror" for property owners, *Kelo* has stimulated a range of legislation and case law nationwide.[1]

As lawyers who represent government agencies, we endeavor to strike a balance when taking private property by weighing the need to redevelop an area with considerations of individual property rights, and the use of constitutionally sanctioned procedures.

In this paper, we review a variety of legislative and judicial responses to the *Kelo* case. We begin our examination with a closer look at *Kelo* to provide perspective. After a review of *Kelo*, we provide a summary of responses from across the country; and focus on the Maryland reaction. As our experience is centered in Maryland, we offer several cases that reflect how Maryland's highest Court, the Court of Appeals, has responded to *Kelo.* The judicial responses afford us the opportunity to examine recent cases from other states as well as Maryland's Court of Appeals. We conclude by offering some advice to minimize the potential of what has been characterized as "abusive use of eminent domain."

An Overview of *Kelo*

In *Kelo*, the Supreme Court sustained the taking of private property for economic development purposes. In short, the facts of the case reveal that the City of New London, Connecticut approved a development plan. The plan called for the construction of a waterfront hotel, restaurants, retail stores, residence, and office space; also, portions of the development area were to be used for marinas and for support services. The City authorized acquisition of property, pursuant to the development plan, through negotiated sales and eminent domain. Most of the property was acquired through negotiated sales; but, nine owners (including Susette Kelo) refused to sell. After condemnation cases were filed, the court found that the development plan served a public purpose and therefore constituted a public use under the Takings Clause of the Fifth Amendment. The plan was not adopted to benefit a particular class of identifiable individuals. Although the owners' properties were not blighted, the City's determination that a program of economic rejuvenation for the overall area was entitled to deference. There was no basis for exempting economic development from the broad definition of "public purpose." The Court declined to require a reasonable certainty that the expected public benefits would accrue, nor was it proper to second-guess the city's determination of the boundary of the development area. The judgment of the Connecticut Supreme Court was affirmed.

Despotic Power

In many states, the legislature and the judiciary have viewed eminent domain as a repressive power. As early as 1795, the U. S. Supreme Court described the power of eminent domain as "the despotic power." The danger of such an extreme power led the framers of the United States and state constitutions to limit the power in two ways—government can only take property for "public use" and government has to pay "just compensation" for the property.[2] While those terms may seem clear, most of the case law relating to eminent domain or condemnation centers on issues of public use, just compensation and what process was used to effect the taking. Often times, the approach to these issues may have an impact on the "just compensation" that is paid to the property owner.

After *Kelo*, cases across the country reflect varied responses from appellate courts:

Board of County Commissioners of Muskogee County vs. Lowery (Oklahoma, 2006)

In this case, decided less than a year after *Kelo,* the County filed condemnation proceedings against the landowners to acquire temporary and permanent right-of way easements for the installation of three water pipelines. The land for two of the pipelines was being taken to serve a privately owned electric generation plant which was proposed for construction. The landowners sought declaratory and injunctive relief on the basis that the County's proposed taking was an unlawful taking of private property for private use, and serving a private purpose of a private company, in violation of both the Oklahoma and United States Constitutions. *Board of County Comm'rs of Muskogee County v. Lowery*, 136 P.3d 639 (Okla. 2006).

The Supreme Court of Oklahoma held that:

1. The takings were impermissible takings of landowners' private property to confer a private benefit on the private party, in violation of the state constitution; and,

As early as 1795, the U.S. Supreme Court described the power of eminent domain as "the despotic power." The danger of such an extreme power led the framers of the United States and state constitutions to limit the power in two ways—government can only take property for "public use" and government has to pay "just compensation" for the property.

2. Economic development alone was neither a public use nor public purpose to justify the exercise of eminent domain as a matter of Oklahoma constitutional law, nor did it satisfy the public purpose requirement of the eminent domain statute. *Board of County Comm'rs of Muskogee County, supra.*

City of Norwood v. Horney (Ohio, 2006)

Several months later, in Ohio, the City of Norwood filed an action against landowners to take their property and transfer it to a developer of an urban renewal plan for a deteriorating area. The lower court sustained the City's action and determined compensation for the property owners. The property owners appealed. *City of Norwood v. Horney,* 110 Ohio St.3d 353 (Ohio, 2006).

The Supreme Court of Ohio held, among other things, that:

1. The Ohio Courts should apply heightened scrutiny when reviewing statutes that regulate the use of eminent domain powers; and,
2. Economic or financial benefit *alone* is insufficient to satisfy the public use requirement of the takings clause in the Ohio State Constitution. *Norwood v. Horney, supra.*

City of Austin v. Whittington (Texas, 2012)

More recently, the City of Austin ("City") condemned property to build a parking garage for a convention center and a facility to chill water to cool nearby buildings. The Texas Court of Appeals specifically examined and defined the scope of judicial review of legislative takings. The Texas Constitution and the Local Government Code authorize takings by municipalities when the municipality determines the property is necessary for a public use and provides just compensation to the owner. TEX. CONST. ART. I, § 17; TEX. LOC. GOV'T CODE § 251.001(a). The Texas Court of Appeals has long held that a taking may be challenged on the basis of fraud, bad faith, or arbitrary and capricious determinations by the condemnor. In this case, the Court of Appeals confirmed that principle. At trial, the property owners alleged that the City's determination that the property was necessary for public use was fraudulent, in bad faith, and arbitrary and capricious. The jury agreed. The trial court entered judgment on the verdict (invalidating the taking), and the court of appeals

Continued on page 16



Andrew Bailey is a solo practitioner in Towson, Maryland, with concentrations in real estate (eminent domain), wills and estates, and general litigation. He joined the Baltimore City Law Department in 1988, where he served as Principal Counsel before opening his practice in Towson in 2006.



Elva Tillman is a Principal Counsel in the Baltimore City Department of Law. She has had progressive experiences as an urban planner, university professor (administrator/applied researcher) and lawyer. Her education includes a Master's Degree in Urban/Regional Planning from Virginia Tech and a Doctorate of Law from the University of Maryland. She has been recognized for her pro bono work and participation in legal associations.

affirmed. The SupremeCourt of Texas concluded that the City's determinations were not fraudulent, in bad faith, or arbitrary and capricious, reversed the judgment of the Court of Appeals, and remanded the case for entry of judgment in accordance with its opinion. *City of Austin v. Whittington,* 384 S.W.3d 766 (Tex. 2012).

State ex rel. Jackson v. Dolan (Missouri, 2013)

Just last year, the Southeast Missouri Regional Port Authority ("Port Authority") sought to purchase a 30 acre parcel of land owned by a family Trust. After negotiations with the Trustees failed, the Port Authority filed a petition for condemnation in the circuit court of the County seeking condemnation of the parcel. The Trustees filed a motion to dismiss, arguing that the sole purpose for the taking was economic development, in violation of the Missouri Constitution. After an evidentiary hearing, the circuit court ordered condemnation of the property. The circuit court concluded that the taking did not violate the constitution because, in addition to promoting economic development, the taking would facilitate construction of a loop track and would improve river commerce. The trial court also concluded that the taking did not violate the constitution; and, because it served a public purpose, any aid provided to a private entity was incidental to such purpose.

The Supreme Court of Missouri held that:

1. The condemnation by the Port Authority satisfied the public use requirement; but,
2. The taking violated the statute prohibiting the Port Authority from acquiring private property through eminent domain for solely economic development purposes. *State ex rel. Jackson v. Dolan*, 398S.W.3d 472 (Mo. 2013).

Utah Department of Transportation v. Carlson (Utah, 2014)

The Utah Department of Transportation ("DOT") initiated an eminent domain suit against a property owner, seeking to condemn the entirety of the owner's 15-acre parcel, even though only 1.2 acres was necessary for a light-rail transportation project. The lower court entered summary judgment for DOT, and the owner appealed. *Utah Dep't of Transp. v. Carlson,* 2014 UT 24.

The Utah Supreme Court, held that:
1. DOT has the statutory authority to acquire, by eminent domain, property in excess of that needed for public improvement; and,
2. DOT's statutory authority to acquire by eminent domain land in excess of that needed for planned improvement was not limited to condemnation for specifically enumerated public uses identified in the eminent domain statute.

Nevertheless, the case was remanded for the District Court to consider the owner's claim that the statute authorizing condemnation of land in excess of that needed for public use violated the Takings Clauses of federal and state constitutions. *Utah Dep't of Transp. v. Carlson, Supra.*

The Maryland Response

In 1975, thirty years before *Kelo*, the Court of Appeals of Maryland upheld the constitutionality of economic development takings in Maryland. The Court of Appeals specifically held that condemning private property for the development of an industrial park meets the "public use" requirement. *Prince George's County vs. Collington Crossroads, Inc.*, 275 Md. 171 (1975). Maryland courts historically have interpreted "public use" broadly and have "almost always" deferred to the legislature's decision to use eminent domain. *Collington Crossroads, Inc., supra.*[3] *Collington Crossroads* can be summarized as a case that involved the filing of a petition to condemn land to develop an industrial development park in Prince Georges' County, Maryland ("County"). The trial court dismissed the petition and denied the county's motion to amend. The County appealed. The Court of Appeals reversed and remanded for further proceedings. Upon further appeal after remand, the Court of Appeals held that the County's condemnation of land at the intersection of two major highways, to create a type of industrial development which was desired but not present in the county, for the purpose of providing employment and general economic benefit to the county, was for a 'public use' rather than private use, within the meaning of the constitution. Further, the fact that the commercial property would be owned by private entities did not offend the constitution. *Collington Crossroads, Inc., supra.*

The Task Force on Business-Owner Compensation in Condemnation Proceedings

In 2004, Maryland's Governor appointed a Task Force to review business-owner compensation in condemnation proceedings. The group was composed of a wide variety of private, public and non-profit organization representatives, with experience in eminent domain. *Maryland Manual On-Line* describes the Task Force on Business-Owner Compensation in Condemnation Proceedings as being authorized in July 2004 (Chapter 446, Acts of 2004).[4]

Note that the Task Force was not formed to address *Kelo*, having been created in 2004, the year before *Kelo* was decided. Nevertheless, as its work progressed, it did consider the *Kelo case.* The group was established to study issues involved in compensating business owners in condemnation proceedings, including the concept of business goodwill, particularly small business goodwill, i.e., whether business goodwill can be compensated and how to calculate such compensation in condemnation proceedings. The Task Force studied the feasibility of requiring a displacing public agency to conduct a study of the condemnation impact on businesses in the area where condemnation proceedings take place.[5]

In addition, the Task Force looked at the appropriateness of establishing a fund to provide financial assistance to businesses impacted by a condemnation proceeding and the feasibility of shortening the condemnation process

for businesses. A preliminary report was submitted to the Governor and General Assembly on January 21, 2005 and a final report on December 21, 2005. Authorization of the Task Force expired December 31, 2005.[6]

Legislative Failure and Success

Within four months after the *Kelo* decision, four states enacted eminent domain legislation. One passed a constitutional amendment. In 2006, the year after the *Kelo* decision, 21 states passed reforms to limit *Kelo.* Most used statutory provisions; but, some undertook constitutional amendments.[7] From 2005 to 2006, reforms fell into the following seven broad categories:

1. Prohibiting eminent domain for economic development, including for generation of increased tax revenues or for transferring property to another private party;
2. Limiting eminent domain to a "stated public purpose";
3. Restraining eminent domain to blighted properties or to where an area as a whole is considered blighted;
4. Imposing a moratorium on eminent domain economic development for a stated period, while legislative task forces evaluated the issue;
5. Increasing the compensation amount for condemned property where it is a person's principal residence;
6. Imposing greater procedural requirements on eminent domain use, e.g., greater public notice, more public hearings, good-faith negotiations and elected governing body approval; and,
7. Redefining "public use" as possession, occupation or enjoyment of the property by the public at large, public agencies or public utilities.[8]

In Maryland, after the *Kelo* decision, in an atmosphere of election year responsiveness and earnest Task Force efforts, more than 40 pieces of legislation were introduced in the General Assembly. Bills included efforts to provide business owners with compensation for the loss of goodwill if the business could not be relocated, as well as the loss of income during the period the business was interrupted. The primary bills, Senate Bill 3 and House Bill 1137, were introduced during the 2006 legislative session. The legislation essentially woul have required a specified government unit to make findings in writing before condemning and transferring private property to a private party for economic development purposes; established a standard for judicial review of government units' findings; provided that damages awarded for the taking of property used for a business or farm operation may include specified damages for the loss of "goodwill" under specified circumstance; etc. The bills were opposed by local government organizations--a strong opposition coalition had developed--and no such legislation passed that year.[9]

In 2007, paired down versions of the legislation made a re-appearance with a broader base of support. There seemed to be an agreement that "something" needed to be done to make property owners under condemnation "whole" and send a message that government should use eminent domain in a "responsible" manner.[10] The General Assembly session concluded with property owners under eminent domain reaping more compensation. The legislation passed allowing a higher compensation package for property owners, including relocation expenses. For instance, the legislation raised a $10,000.00 cap to $60,000.00 on costs to re-establish a farm, small business or nonprofit group. The legislation also requires Maryland state and local governments to initiate eminent domain proceedings within a four year period of obtaining authorization.[11]

Maryland Condemnation Case Law

While the Maryland Court of Appeals will sanction the use of eminent domain, there are constitutional standards that must be observed, and the Court will not tolerate the trampling of individual rights. Eminent domain in Maryland is not unfettered. The following four cases in Baltimore City provide a window into the Court's recent rulings.

Mayor and City Council of Baltimore City v. George Valsamaki (2007)

In February 2007, the Maryland Court of Appeals handed down an opinion which fundamentally changed the way in which the City of Baltimore had handled economic development projects through the use of "quick take condemnation." *Mayor and City Council of Baltimore City v. George Valsamaki,* 397 Md. 222 (2007). Quick-take condemnation is the method through which the condemning authority takes possession of the property prior to trial, upon payment into court of its estimate of the value of the property taken; the valuation of the property is determined at a subsequent time. In *Valsamaki,* a bar owner challenged the City's use of quick take condemnation pursuant to the Charles North urban renewal plan. This was the first time that the Court of Appeals had reviewed this expedited form of condemnation. Sustaining the ruling of the Circuit Court for Baltimore City, the Court wrote that the City has the burden to prove immediate necessity in order to proceed with a quick take condemnation. The Court further indicated that in carrying the burden, the City must show that the necessity is for a public use or purpose. In *Valsamaki,* the City had merely provided an affidavit indicating that it was taking the property for business development. The record revealed that the City did not have a specific plan. The Court also cautioned the City that it should adhere to the due process requirements that are set out under Maryland Real Property Article 12, for condemnation. *Valsamaki, supra.*

Sapero vs. Mayor and City Council of Baltimore City (2007)

The owner of the vacant former Chesapeake Restaurant and several adjacent properties challenged Baltimore City's taking of his properties for redevelopment of the Charles North urban renewal area. The evidence in this case was similar to that in *Valsamaki,* supra. The City provided an affidavit stating the purpose of the taking as "business development." The record

Continued on page 34

Ethical, Legal Policy *Cont'd from page 33*

[filed on behalf of the government appellants] reads: 'For the foregoing reasons, the judgment of the court of appeals *should be affirmed*.' That will not cure the Government's injury, but carve it into stone. One could spend many fruitless afternoons ransacking our library for any other petitioner's brief seeking an affirmance of the judgment against it. What the petitioner United States asks us to do in the case before us is exactly what the respondent Windsor asks us to do: not to provide relief from the judgment below but to say that that judgment was correct ... Since both parties agreed with the judgment of the District Court for the Southern District of New York, the suit should have ended there ... We have never before agreed to speak—to 'say what the law is'—where there is no controversy before us." *Windsor*, 133 S. Ct. at 2699-700 (emphasis in the original) (citations and footnotes omitted).

42. Hollingsworth v. Perry, 133 S. Ct. 2652 (U.S. 2013).

43. This approach seems to conflict with California law. Specifically, the California constitution states that "[i]t shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced." CAL. CONST. art. V, § 13. In addition, the California Supreme Court had previously ruled that the attorney general "has the duty to defend all cases in which the state or one of its officers is a party." *D'Amico*, 11 Cal. 3d at 15. That court had also held that in "the exceptional case the Attorney General, recognizing that his paramount duty to represent the public interest cannot be discharged without conflict, may consent to the employment of special counsel by a state agency or officer." *Id.* at 14. No such special counsel was appointed in the California gay marriage case.

44. Holder, *supra* note 10.

45. *Id.*

46. Bostic v. Rainey, 970 F. Supp. 2d 456, 468 (E.D. Va. 2014) ("Defendant Schaefer is a proper defendant here because he is a city official responsible for issuing and denying marriage licenses and recording marriages .... Defendant Rainey is a proper defendant because she is a city official responsible for providing forms for marriage certificates.").

47. As other challenges to various state laws barring gay marriage work their way through district courts, a variety of approaches to their defense have emerged. In Indiana, Utah, Oklahoma and Texas, government officers are defending the laws themselves. The Governor of Kentucky hired a private firm to defend its law after the state attorney general refused to do so. Brett Barrouquere, *Kentucky Gay Marriage Appeal Will be Handled by Ashland Firm Under $100K Contract*, THE COURIER-JOURNAL (Mar. 13, 2014),http://www.courier-journal.com/story/news/local/2014/03/13/Kentucky-gay-marriage-appealwill-be-handled-Ashland-firm-under-100K-contract/6388039. Outside the context of gay marriage, the Ohio Attorney General advanced a novel approach: file briefs on both sides. The Attorney General's office filed one brief to defend an Ohio law that makes it a crime to knowingly lie during an election campaign and another brief arguing that the law violates the First Amendment. The Attorney General argued that his dual constitutional obligations—to uphold the laws of Ohio and to protect the rights of its citizens—compelled his decision. Adam Liptak, *In Ohio, a Law Bans Lying in Elections. Justices and Jesters Alike Get a Say*, N.Y. TIMES, Mar. 25, 2014, at A16.

48. Brown v. Bd. of Educ., 347 U.S. 483 (1954).

49. PAUL E. WILSON, A TIME TO LOSE: REPRESENTING KANSAS IN BROWN V. BOARD OF EDUCATION 100-01 (Univ. Press of Kan. ed. 1995).

50. Plessy v. Ferguson, 163 U.S. 537 (1896).

51. Mayor of New York v. City Council of New York, 451543/2013 (N.Y. Sup. Ct. 2013).

52. Patrolmen's Benevolent Ass'n of N.Y. v. City Council of New York, 654550/2013 (N.Y. Sup. Ct. 2013). Mayor De Blasio subsequently reversed Mayor Bloomberg's position and withdrew the office's challenge to the racial profiling law. J. David Goodman, *De Blasio Drops Challenge to Law on Police Profiling*, N.Y. TIMES, Mar. 6, 2014, at A25.

53. Henry M. Greenberg, *A Principled Discussion of Professionalism: Lawyer Independence in Practice*, 6 N.Y. JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW 21 (2013).

54. Weinstein, *supra* note 5, at 172 (emphasis added). ML

Eminent Domain *Cont'd from page 17*

revealed no concrete development plans. Two months after its opinion in *Valsamaki,* the Maryland Court of Appeals issued, *Sapero v. Mayor and City Council of Baltimore*, 398 Md. 317 (2007), emphasizing that the CODE OF PUBLIC LOCAL LAWS OF BALTIMORE CITY, §21-16 requires that, in order to use quick-take condemnation, the City of Baltimore must demonstrate why, because of some exigency or emergency, it is necessary and in the public interest for the City to take immediate possession of a particular property. *Sapero* also went on to emphasize the need to make certain that the quick take process did not abridge a property owners' fundamental rights and that the due process requirements of the Maryland Real Property Article had to be followed. *Sapero, supra.*

A & E North, LLC vs. Mayor & City Council of Baltimore City (2013)

Last year, the *A & E North, LLC* case arose from a regular condemnation action filed in the Circuit Court for Baltimore City to acquire the former Parkway Theatre. The theatre is an historically and architecturally significant structure. At the time of the lower court proceedings, the A & E North, LLC ("Owner") stored a significant amount of personal property in the theatre. Prior to trial, the Owner requested the lower court to postpone the scheduled trial date and to order the City to pay the Owner's expenses to move the personal property from the theatre to another location. The lower court denied both requests.

At trial, the jury took a view of the property, heard testimony from the City's sole witness (an appraiser), and awarded damages in an amount consistent with the City's evidence as to value. The Owner appealed initially to the Court of Special Appeals (the intermediate appellate court) and subsequently to the Court of Appeals. Both courts sustained the lower court's ruling, holding that an owner challenging the right to take is not entitled to relocation benefits, and that he was not a displaced person under the statute.

A&E North, LLC v. Mayor and City Council of Baltimore, 427 Md. 605 (2013).

Makowski vs. Mayor and City Council of Baltimore (2014)

In a case decided in June of this year, the property involved was one of 150 properties in a square block that the City of Baltimore set out to acquire either through negotiated sales or regular condemnation for a redevelopment project as part of the East Baltimore Development Initiative (EBDI). To acquire the property, the City of Baltimore initially filed a regular condemnation case. The commercial property had been rented as a church. A year had passed, and all of the other properties had been acquired. The church tenant had been relocated and the city continued to pay rent to the owner. The City converted the regular condemnation case to a quick take because of the time that had elapsed since the filing of the case and the urgency to proceed with the project.

The owner challenged the quick take action. At a hearing on the challenge, the Circuit Court for Baltimore City granted the City's petition for immediate possession and title. Upon direct appeal to the Court of Appeals,[12] the Court unanimously concluded that the evidence was sufficient to support the trial court's finding that the property owner was a "hold out" and that the City's quick take action was warranted. *Edward J. Makowski v. Mayor and City Council of Baltimore*, 2014 WL 2853818 (June 24, 2014).

Conclusions:

What the Future Holds-Practice Pointers and Policy Considerations

Focusing on Maryland law with reference to trends in other states, this paper merely scratches the surface regarding the issues involved in an eminent domain practice representing governmental clients/agencies. Basic constitutional standards require that no property be taken without just compensation for a "public purpose," through a fair process which requires notice and opportunity to be heard. Even the most supportive court system requires a legislative process providing authority, a well thought-out plan and a clear process when subdivisions seek to acquire property through eminent domain. While we have raised several issues, our advice to overcome the charges of eminent domain abuse, and to facilitate government's redevelopment of blighted and/or undeveloped areas, is to make certain that:

1. Legislative authorization, which by its very nature includes notice and opportunity to be heard, should be current.
2. Property should be acquired pursuant to a well-reasoned plan that is supported by a legitimate legislative process.
3. Public purpose should be grounded in public benefit, if not public use.
4. Relocation should assist in making the property owner whole.
5. Valuation of the property is best achieved through a mediated process. It is always better to have the parties decide the valuation instead of a disinterested person.

1. *See generally* "50 State Report Card Tracking Eminent Domain Reform Legislation since Kelo," Castle Coalition, August 2007; "The Condemnation Landscape Across the Country Post Kelo—A Maryland Perspective," Maryland State Bar Association, Real Property Section, Ground Rules, Winter 2007, James L. Thompson and Joseph P. Suntum, Miller, Miller & Canby, Chtd.; "Eminent Domain," John C. Murphy, Maryland Bar Journal, November/December 2008.
2. *See* "Public Power, Private Gain—A Five-Year, State by State Report Examining the Abuse of Eminent Domain," by Dana Berliner, Castle Coalition—Citizens Fighting Eminent Domain Abuse, April 2003.
3. *See* "The Legitimacy and (Un)Fairness of Public Land Banking, The Unarticulated Issues of Eminent Domain, "Jonathan Cheng, Maryland Legal History Publications, August 2007.
4. See on line document at msa.maryland.gov/msa/mdmanual.
5. *See* on line document at msa.maryland.gov/msa/mdmanual.
6. *Id.*
7. Thompson and Castle Coalition publications, *supra*.
8. *Id.*
9. *See* Maryland State Bar and Castle Coalition publications, *supra.*
10. *See* "Eminent Domain Bill Passed in Maryland Senate," *Sunpapers*, Baltimore, Maryland, April 3, 2007.
11. *See* Chapter 305 (Senate Bill 3), "Real Property—Condemnation—Procedures and Compensation," Approved by the Governor, May 8, 2007 (by adding to Article—Real Property Section 12-105.1 and 12-205.1, ANNOTATED CODE OF MARYLAND (2003 Replacement Volume and 2006 Supplement); By repealing and reenacting with amendments, Article—Real Property, Section 12-202, 12-204 and 12-205 ANNOTATED CODE OF MARYLAND (2003 Replacement Volume and 2006 Supplement).
12. The *Code of Public Local Laws of Baltimore City*, §21-16 provides for an immediate right of appeal to the Court of Appeal of Maryland from the decision of the trial court in a quick take condemnation case. **M.**

Code Enforcement *Cont'd from page 19*

at the end of rainbows by having as many establishments and machines as possible. Could you imagine your downtown storefronts all taken up by video gaming cafes? Unfortunately for my community, our downtown has many vacant storefronts where this could be a reality if these types of businesses are allowed to open. Additionally, if a significant number of these types of businesses were to open, fraternal and veterans' organizations could see the result they were trying to avoid with the gaming revenue, namely closing their doors. And, we could also realistically see a decline in locally-owned taverns due to loss of customers and revenue.

One aspect of the State statute – a provision entitled "undue economic concentration" – could impact these possibilities. The State would look at whether this type of requested operation (video gaming cafes) would impede or suppress competition, adversely impact the economic stability of the video gaming industry, and/or would negatively impact the purposes of the State video gaming act. The potential problem with this posture is that it relies on the State to follow through on this examination prior to issuing licenses for these sorts of gaming businesses. Given the State's hesitancy to expand casinos, I would hope they would involve themselves in discussions about these types of businesses. At a minimum, municipalities should discuss the potential impact video gaming cafes would have and determine the need for additional licensing, regulations or other ordinances that could impede

Continued on page 36