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**THE USE OF EMINENT DOMAIN FOR ECONOMIC
DEVELOPMENT IN BALTIMORE, MARYLAND: TEN YEARS
AFTER *KELO***

ELVA E. TILLMAN*

*“Restricting the definition of ‘public use’ in the context of eminent domain could tie the hands of local government attempting to redevelop brownfields or economically depressed neighborhoods and business districts. It might very well curtail a community’s ability to direct new growth and development to areas where urban infrastructure and services already exist, a key component of smart growth initiatives.”*¹

INTRODUCTION

Baltimore City, Maryland was founded in 1729;² it was incorporated between 1796 and 1797.³ At that time, it was part of Baltimore County.⁴ In 1851, it became an independent city.⁵ The Port of Baltimore, which has marked its 300th birthday,⁶ is generally recognized as the second largest seaport in the Mid-Atlantic.⁷ Since its founding, Baltimore has been known for both innovation and urban tension. Over the past three centuries, the city has experienced phases of development and decline, both of which have warranted extraordinary measures. In decline, Baltimore, dubbed the “City of Neighborhoods,” has struggled to reinvent itself. More specifically, in the face of population decline, deteriorating infrastructure, grime, crime, and civil unrest the center city has searched for tools to revitalize itself. However, the private sector has not prompted the quick emergence of economic development without government assistance. In Baltimore City, eminent domain has been used as a tool to remove blight

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1. *APA Urges Court to Retain Eminent Domain for Economic Development*, AMERICAN PLANNING ASS’N (Feb. 17, 2005), https://www.planning.org/news_releases/2005/feb17-2.htm (discussing the potential impact of *Kelo v. New London* on urban economic development).

2. SUZANNE ELLERY GREENE, *BALTIMORE: AN ILLUSTRATED HISTORY* 4 (1980).

3. *Id.* at 65.

4. *Id.* at 66.

5. *Id.* at 110.

6. PORT OF BALTIMORE, <http://portofbaltimore300.org/history/> (last visited Dec. 18, 2015).

7. *Id.*

and certain racial and socio-economic groups.⁸ Baltimore has also used eminent domain to stimulate economic development.

While many critics bemoan the use of eminent domain, private development has needed stimulation. In Baltimore, government assemblage of land for redevelopment has spurred economic development. In 1961, the development of the Charles Center marked Baltimore's rebirth—eminent domain was used to assemble the land for that rebirth.⁹ A decade later, acquisition through eminent domain was used in the Inner Harbor project; that project has stimulated worldwide interest.¹⁰ More recently, the City has used eminent domain along with negotiation in the area just east of the Harbor to redevelop the Harbor East community.¹¹ The city has also relied on eminent domain in neighborhoods adjacent to significant institutions such as Johns Hopkins Hospital in East Baltimore and the University of Maryland Professional Schools in West Baltimore. Around Johns Hopkins Hospital, the East Baltimore Development Initiative (“EBDI”) is spearheading a range of housing development and commercial support facilities projects.¹² Similarly, West Baltimore has a thriving Bio Technology Park consisting of twelve acres on the west side of the University of Maryland's campus. Once completed, the “BioPark” will include 1.8 million square feet of laboratory and office space in twelve buildings with garage parking and landscaped parks.¹³

Eminent domain, along with negotiation and other acquisition tools, has been an effective approach to revitalizing Baltimore City. The use of eminent domain for economic development makes good economic sense. Redevelopment through eminent domain has increased the City's tax base and attracted other new, private developments, new residents, and employment opportunities. The Hope VI projects,¹⁴ which involved some eminent domain acquisitions and the redevelopment of the public housing projects such as Pleasant View Gardens (in East Baltimore) and Heritage

8. ANTERO PIETILA, NOT IN MY NEIGHBORHOOD: HOW BIGOTRY SHAPED A GREAT AMERICAN CITY 50–51, 54–56 (2010).

9. BALTIMORE SAVOIR FAIR: A DISCRIMINATING GUIDE TO THE CITY'S BEST SHOPS, BOUTIQUES, RESTAURANTS, UNIQUE SERVICES, AND ATTRACTIONS, INTRODUCTION (1984).

10. *Id.*

11. *See Zografos v. Mayor & City Council of Balt.*, 165 Md. App. 80, 89–90, 884 A.2d 770, 775 (2005) (discussing the City's condemnation of property in Fells Point as part of an “Urban Renewal Plan”).

12. *See generally* Phillip A. Hummel, *East Side Story: The Redevelopment of East Baltimore*, 15 U. BALT. J. ENVTL. L. 97 (2008).

13. THE BIOPARK, <http://www.umbiopark.com/BioPark/> (last visited Nov. 17, 2015).

14. The Revitalization of Severely Distressed Public Housing, or “Hope VI,” grew from a National Action Plan to eradicate severely distressed public housing, spearheaded by the National Commission on Severely Distressed Public Housing. *See Revitalization of Severely Distressed Public Housing (HOPE VI)*, U.S. DEP'T OF HOUSING AND URBAN DEV., <http://portal.hud.gov/hudportal/HUD?src=/hudprograms/hopevi> (last visited Nov. 17, 2015).

Crossing and the Townes at the Terraces (in West Baltimore), have revitalized the residential and commercial scene in Baltimore.¹⁵ Baltimore City is working with private developers, and it has used eminent domain to recreate whole neighborhoods.

Well before this concrete evidence existed, the Maryland appellate courts formally recognized that the use of eminent domain made good economic sense. In 1924, the Court of Appeals decided *Marchant v. Mayor and City Council of Baltimore*,¹⁶ which involved a petition to condemn land for the development of the Baltimore harbor.¹⁷ The petition particularly described shore lands, together with “all riparian and aquatic rights of the [defendants] . . . as the owner . . . of said property.”¹⁸ More specifically, the land was condemned for the purposes of implementing a comprehensive plan for harbor development.¹⁹ The Maryland General Assembly had made provisions for harbor development. On appeal, the appellant land owner raised a number of procedural issues about how the condemnation was done; the *Marchant* court resolved those issues in favor of the City of Baltimore.²⁰

Later, in 1975, thirty years before *Kelo v. City of New London*,²¹ the Maryland Court of Appeals upheld the constitutionality of economic development takings in Maryland.²² The court specifically held that condemning private property for the development of an industrial park meets the “public use” requirement for eminent domain.²³ This is an example of how Maryland courts historically have interpreted the “public use” requirement in condemnation cases broadly and have “almost always” deferred to the legislature’s decision to use eminent domain.²⁴

This Essay provides a review of legislative and judicial responses to *Kelo* in the State of Maryland during the past ten years. More specifically, the use of eminent domain in Baltimore City has spurred the evolution of such appellate court decisions in the State of Maryland. This Essay also offers some advice to minimize the potential of what critics of eminent domain have characterized as the abusive use of eminent domain.

15. Jessica Valdez, *Troubled West Baltimore Site Gets Fresh Start with Heritage Crossing*, BALT. SUN (July 16, 2003), http://articles.baltimoresun.com/2003-07-16/news/0307160102_1_murphy-homes-heritage-crossing-grayson.

16. *Marchant v. Mayor & City Council of Balt.*, 146 Md. 513, 126 A. 884 (1924).

17. *Id.* at 516, 126 A. at 885.

18. *Id.* at 520, 126 A. at 886.

19. *Id.* at 517, 126 A. at 885.

20. *Id.*

21. 545 U.S. 469 (2005).

22. *Id.*

23. *Prince Georges County v. Collington Crossroads, Inc.*, 275 Md. 171, 190–91, 339 A.2d 288–89. The case is discussed *infra* Part III.A.1.

24. *Id.*

I. AN OVERVIEW OF *KELO*

In *Kelo*, the Supreme Court upheld the taking of private property for economic development.²⁵ The facts of the case reveal that the city of New London, Connecticut approved a development plan that authorized the construction of a waterfront hotel, restaurants, retail stores, residences, and office space; in addition, portions of the development area were to be used for marinas and support services.²⁶ As part of the development plan, the city authorized acquisition of property through negotiated sales and eminent domain.²⁷ Most of the property was acquired through negotiated sales, but nine owners refused to sell.²⁸ These homeowners filed suit in the New London Superior Court, alleging that the taking of their properties would violate the “public use” restriction of the Fifth Amendment.²⁹

Following the conclusions of the Connecticut Supreme Court, the United States Supreme Court found that the development plan served a public purpose and therefore constituted a public use under the Takings Clause of the Fifth Amendment.³⁰ The Supreme Court also agreed with the conclusion of the Connecticut court that the plan was not adopted to benefit a particular class of identifiable individuals.³¹ Furthermore, although the owners’ particular properties were not blighted, the Court gave deference to the City’s determination that a program of economic rejuvenation for the overall area was justified.³² The *Kelo* Court held that there was no basis for exempting economic development from the broad definition of “public purpose.”³³ The Court declined to require a reasonable certainty that the expected public benefits would accrue and deferred to the City’s determination of the boundary of the development area.³⁴ Therefore, the *Kelo* Court affirmed the judgment of the Connecticut Supreme Court.³⁵

A. *The Maryland Response*

As discussed in the Introduction, the Maryland Court of Appeals upheld the constitutionality of economic development takings in *Collington*

25. 545 U.S. 469, 489–90 (2004).

26. *Id.* at 472, 474.

27. *Id.* at 475.

28. *Id.*

29. *Id.*

30. *Id.* at 489–90.

31. *Id.* at 478, 485 (declining to follow petitioners’ argument for a bright line rule against eminent domain for economic development and stating that “the government’s pursuit of a public purpose will often benefit individual private parties”).

32. *Id.* at 483.

33. *Id.* at 485.

34. *Id.* at 488–89.

35. *Id.* at 490.

Crossroads—thirty years before *Kelo*.³⁶ Of course, that does not mean that all Marylanders were supportive of the ruling in *Kelo*. Since *Collington Crossroads*, and continuing after *Kelo*, many interest groups have lobbied the Maryland General Assembly to adopt legislation to prohibit the use of eminent domain. Election year efforts seem to be particularly intense because elected officials want to appear to be responsive to critics of the use of eminent domain in their bids to be re-elected.

B. The Task Force on Business-Owner Compensation in Condemnation Proceedings

In July 2004, Maryland's Governor appointed a Task Force composed of private, public, and nonprofit organization representatives with experience in eminent domain to review business-owner compensation in condemnation proceedings.³⁷ Although the Task Force was created the year before the Supreme Court decided *Kelo*, and thus was *not* formed specifically to address that case, the group did consider *Kelo* as their work progressed. The group was established to study issues involved in compensating business owners in condemnation proceedings, such as whether business goodwill is compensable and if so, how courts can calculate it in condemnation proceedings.³⁸ Additionally, the Task Force studied the feasibility of requiring a displacing public agency to conduct a study on the impact of condemnation on businesses in the area where condemnation proceedings take place.³⁹

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.⁴⁰ A preliminary report was submitted to the Governor and General Assembly on January 21, 2005, and a final report was submitted on December 21, 2005; authorization of the Task Force expired December 31, 2005.⁴¹ The impact of the Task Force is reflected below in a discussion of legislative failure and success.

36. *See supra* text accompanying notes 23–26.

37. *Task Force on Business-Owner Compensation in Condemnation Proceedings*, MARYLAND MANUAL ON-LINE: A GUIDE TO MARYLAND & ITS GOVERNMENT, <http://msa.maryland.gov/msa/mdmanual/26excom/defunct/html/04busin.html> (last visited Nov. 20, 2015).

38. REPORT OF THE STATE OF MARYLAND TASK FORCE ON BUSINESS OWNER COMPENSATION IN CONDEMNATION PROCEEDINGS 44–63 (2005), <http://msa.maryland.gov/msa/mdmanual/26excom/defunct/html/04busin.html> (follow “Report, December 21, 2005” hyperlink). Within the concept of business goodwill, the Task Force focused on small business goodwill. *Id.* at 1.

39. *Id.*

40. *Id.*

41. TASK FORCE ON BUSINESS-OWNER COMPENSATION IN CONDEMNATION PROCEEDINGS, *supra* note 37.

II. LEGISLATIVE FAILURE AND SUCCESS

It is interesting to review how legislative efforts in Maryland compare to nationwide trends. Within four months after the *Kelo* decision, four states (Michigan, New Mexico, North Dakota, and South Dakota) enacted eminent domain legislation.⁴² One state passed a constitutional amendment.⁴³ In 2006, the year after the *Kelo* decision, twenty-one states passed reforms to limit the use of eminent domain. Most used statutory provisions, but some undertook constitutional amendments.⁴⁴ From 2005 to 2006, reforms fell into the following seven broad categories:

1. Prohibiting [the use of] eminent domain for economic development . . . ;
2. Limiting eminent domain to a “stated public purpose”;
3. Restricting eminent domain to blighted properties or [to] where an area as a whole is considered blighted;
4. [Imposing] a moratorium on [the use of] eminent domain . . . for 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, for example, 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.⁴⁵

In Maryland, after *Kelo*, in an atmosphere of election year responsiveness and earnest Task Force efforts, more than forty pieces of

42. In Michigan, Senate Joint Resolution E, passed by the legislature on December 13, 2005, approved by voters on November 7, 2006; House Bills 5818, 5819 and 5060, all signed into law on September 20, 2006; House Bill 5820 and 5821, both signed into law on October 3, 2006; Senate Bill 693, signed into law on September 20, 2006; House Bills 6638 and 6639, both signed into law on January 8, 2007. In New Mexico, House Bill 393, signed into law on April 3, 2007, House Bill 401, signed into law on April 3, 2007. In North Dakota, Ballot Measure 2 (sponsored by citizen initiative), approved by voters on November 7, 2006; Senate Bill 2214 signed into law on April 5, 2007. In South Dakota, House Bill 1080, signed into law on February 17, 2006.

43. Florida House Bill 1567 and new constitution amendment, signed into law on May 11, 2006 has been singled out by Castle Coalition in 2007 as “models for other state legislatures.” *50 State Report Card: Tracking Eminent Domain Reform Legislation Since Kelo*, CASTLE COALITION, <http://castlecoalition.org/50-state-report-card> (last visited Nov. 23, 2015) [hereinafter *50 State Report Card*]

44. See generally *id.*; John C. Murphy, *Eminent Domain*, 41 MD. B. J. 3, 29 (Nov./Dec. 2008); James L. Thompson & Joseph P. Suntum, *The Condemnation Landscape Across the Country Post-Kelo—A Maryland Perspective*, MARYLAND STATE BAR ASS’N, INC., <http://www.msba.org/sections/realproperty/groundrules/winter2007/eminentdomain.aspx> (last visited Nov. 23, 2015).

45. Thompson & Suntum, *supra* note 44.

legislation were introduced in the General Assembly.⁴⁶ Legislation 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.⁴⁷ The primary bills, Senate Bill 3 and House Bill 1137, were introduced during the 2006 legislative session.⁴⁸ The legislation essentially would 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.⁴⁹ Local government organizations opposed the bills, and no such legislation passed that year.⁵⁰

In 2007, pared-down versions of the legislation reappeared with broader 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.⁵¹ The Maryland 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 cap to \$60,000 on costs to re-establish a farm, small business or nonprofit group.⁵² The legislation also requires Maryland state and local governments to initiate eminent domain proceedings within a four-year period of obtaining authorization.⁵³

III. EMINENT DOMAIN AND ECONOMIC DEVELOPMENT—A SLOWLY EVOLVING PRACTICE AREA

Over the past forty years, the Maryland Court of Appeals has sanctioned the use of eminent domain for economic development, while still observing constitutional standards. The following selected cases

46. See *Bill by Subject: Condemnation—2006 Regular Session*, GEN. ASSEMBLY OF MD (2006), <http://mgaleg.maryland.gov/webmga/frmmain.aspx?tab+subject3&ys+2006rs/subjects/co>.

47. *Id.*

48. *Id.*

49. *Id.*

50. *50 State Report Card*, *supra* note 43.

51. See Laura Smitherman, *Eminent Domain Bill Passed in Md. Senate*, BALT. SUN (Apr. 3, 2007), http://articles.baltimoresun.com/2007-04-03/news/0704030027_1_eminent-domain-property-owners-bill.

52. 2007 MD. LAWS 1940 (codified as amended at MD. CODE ANN., REAL PROP. §§ 112-501, 12-202, 12-204–12-205.1) (West 2012).

53. *Id.*

provide a perspective regarding the Maryland Court of Appeals' early and more recent rulings related to eminent domain and economic development.⁵⁴ The case law can be divided into those before *Kelo* and those after *Kelo*. While Maryland courts continue to support the use of eminent domain for economic development, there is an emphasis on demonstrating *necessity* when property is taken immediately via quick-take condemnation.

A. *Before Kelo*

Prior to *Kelo*, the Maryland appellate courts seemed to review their opinions regarding Baltimore City to sanction the use of eminent domain for economic development.

1. *Prince George's County v. Collington Crossroads, Inc.*

When *Collington Crossroads* reached the Court of Appeals in 1975, the court considered “[w]hether the purpose of the condemnation, namely the development of a multi-industry ‘employment center,’ or ‘industrial park,’ constitutes the requisite ‘public use’ so as to justify the County’s exercise of eminent domain.”⁵⁵

In 1968, the Maryland General Assembly authorized Prince George’s County to issue bonds to finance the acquisition of land for the development and the construction of “public airport facilities and industrial parks.”⁵⁶ On August 22, 1968, the County filed a petition for condemnation in the Circuit Court for Prince George’s County seeking to acquire land to construct a “public airport facility.”⁵⁷ After some time, the County moved to amend its petition to allow condemnation of the land solely for the purpose of developing an industrial park.⁵⁸ Around the same time, a fifteen-member Industrial Park Task Force, authorized by the County government, was assigned to formulate a comprehensive plan of development for the industrial park.⁵⁹ *Collington Crossroads*’ tract of land was included as part of the comprehensive plan.⁶⁰ The plan outlined a comprehensive development strategy and explained the public benefits that

54. Stephen Demos, Summer Clerk, University of Maryland Francis King Carey School of Law, initially developed the following case summaries as part of a research project undertaken during his clerkship at the Department of Law (the City Solicitor’s Office) during the summer of 2015. The original summaries have been edited and are included here to provide a context for discussing Maryland Court of Appeals cases.

55. *Prince George’s County v. Collington Crossroads, Inc.*, 275 Md. 171, 172, 339 A.2d 278, 279 (1975).

56. *Id.*

57. *Id.* at 175, 339 A.2d at 280.

58. *Id.*

59. *Id.* at 176, 339 A.2d at 281.

60. *Id.*

would result from such development and economic growth.⁶¹ Collington Crossroads opposed the taking. On May 23, 1974, the circuit court dismissed the County's amended petition for condemnation, finding that the purpose of the condemnation was for private use, not public use.⁶² The court based its ruling on the fact that the commercial land would ultimately be owned by private entities. The County appealed the circuit court's decision to the Court of Appeals.

The Court of Appeals reversed the Circuit Court for Prince George's County, concluding that all "projects reasonably designed to benefit the general public, by significantly enhancing the economic growth of the State or its subdivisions, are public uses, at least where the exercise of the power of condemnation provides an impetus which private enterprise cannot provide."⁶³ The Court concluded that the constitutional term "public use" is not synonymous with physical use or access by the general public. Just because private businesses or persons will also receive benefit from a condemnation does not destroy the public character of a project.⁶⁴

In reaching this conclusion, first, the court relied on the Task Force's comprehensive plan and findings indicating that the type of industrial park, which it considered necessary for the economic well-being of the County, would be too costly for private developers.⁶⁵ Second, the court was persuaded by the fact that the County would be maintaining significant control over the industrial park after the land would be sold to private owners via development covenants and zoning restrictions.⁶⁶ Relying on the precedent of *New Central Coal Co. v. George's Creek Coal & Iron Co.*,⁶⁷ *Pitznogle v. Western Maryland R. R. Co.*,⁶⁸ and *Marchant*, the court reasoned that the public character of a condemnation is not necessarily changed because a private entity will own the property.⁶⁹

2. *Free State Realty Co. v. Mayor & City Council of Baltimore*

The Maryland Court of Appeals considered four issues in *Free State Realty Co. v. Mayor & City Council of Baltimore*:⁷⁰ whether the City had the authority to acquire the property in question; whether the ordinance of the City sets forth proper standards, controls or guidelines for the execution

61. *Id.* at 177–78, 339 A.2d at 281–82.

62. *Id.* at 179, 339 A.2d at 282.

63. *Id.* at 191, 339 A.2d at 289.

64. *Id.* at 187, 339 A.2d at 286–87.

65. *Id.* at 179–80, 339 A.2d at 283.

66. *Id.* at 180, 339 A.2d at 283.

67. 37 Md. 537 (1873).

68. 119 Md. 673, 87 A. 917 (1913).

69. *Collington Crossroads*, 275 Md. at 187, 339 A.2d at 286–87.

70. 279 Md. 550, 369 A.2d 1030 (1977).

of the ordinance; or alternatively, whether the administrative agency has been given the authority or taken the initiative to issue regulations setting forth standards, controls or guidelines for said execution; whether the taking was for a public use; and whether the evidence proffered established the requisite necessity to exercise a “quick-take” condemnation.⁷¹

Baltimore City filed a petition to condemn and a petition for immediate possession and title to take the leasehold interest in the property located at 2526 West Franklin Street, in Baltimore, Maryland, (the “Property”) “for urban renewal purposes.”

At trial, the court considered the right to condemn and the right to immediate possession as a preliminary matter:⁷²

[A] building inspector testified that when he visited the subject property on September 3, 1974, he observed that ‘[w]indows and doors were broken,’ there ‘was rubbish and debris inside,’ ‘the house was vacant’ and ‘the grounds were unsanitary.’ Another employee of the City’s Department of Housing and Community Development said . . . that when he last visited the property on July 13, 1975, three days before the hearing on the petition, there had been no effort made to rehabilitate the dwelling. The author of the affidavit attached to the petition for immediate possession testified that the City sought to acquire the property ‘because it was reported as a poor condition, blighted property,’ invoking the authority of Ordinance No. 152, § 2(h) approved June 28, 1968. . . . A copy of the letter to the Board of Estimates was filed as an exhibit in the proceeding. The letter said that the Housing Commissioner ‘ha[d], along with members of [his] staff, inspected the properties listed above, and . . . certif[ied] that said properties [did] meet the . . . requirements’ of Ordinance No. 152, § 26(h).⁷³

Consequently, “the trial judge passed an order in which he found ‘that it [was] necessary for the [City] to acquire immediate possession and title to said property.’”⁷⁴ Free State Realty Company appealed to the Court of Special Appeals, which affirmed the lower court’s decision.⁷⁵ The Court of Appeals granted Free State’s writ of certiorari and affirmed the lower court’s holdings for each of the four issues considered.⁷⁶

71. *Id.* at 551–52, 369 A.2d at 1030–31.

72. *Id.* at 553, 369 A.2d at 1031.

73. *Id.* at 553–54, 369 A.2d at 1031–32.

74. *Id.* at 554, 369 A.2d at 1032 (alterations in original).

75. *Id.*

76. *Id.*

The court cited the holding in *Master Royalties Corp. v. City of Baltimore*⁷⁷ as controlling precedent.⁷⁸ In its opinion the court further highlighted the language of the urban renewal ordinance, believing that the City Council had affirmatively granted such power that it was constitutionally authorized to do pursuant to Maryland Constitution Article XI-B, Section 1 and Article III, Section 40A. The court also cited *Herzinger v. City of Baltimore*⁷⁹ and *Matthaei v. Housing Authority*⁸⁰ as the controlling authority. The court referenced *Master Royalties Corp.*⁸¹ and *Herzinger*⁸² to support its holding that the use contemplated in this case was, in fact, public in nature.⁸³

The court then relied on *Murphy v. State Roads Commission*⁸⁴ and *Prince George's Co. v. Beard*,⁸⁵ among other cases, to support its holding that the necessity for a particular condemnation is for the condemnor and not for the courts to decide, and that the decision of such condemnor is final so long as it acts reasonably and in good faith.⁸⁶ The court further explained that the record was devoid of any allegation or implication of improper motive or purpose on the part of the City.⁸⁷

In reaching its conclusion, the court applied the premise laid out in earlier Maryland cases that necessity for a particular condemnation is a decision for the condemnor, not the courts. The court also applied Maryland precedent to conclude that the decision of the condemnor is final—so long as the condemnor has acted reasonably and in good faith. In the subsequent cases discussed in this Essay, the Court distinguished this case from *unnecessary* quick-take condemnation cases. Later cases cite the “*immediate necessity*” of remedying a public health hazard as the distinguishing factor in *Free State Realty Co. v. Mayor & City Council of Baltimore*.⁸⁸

77. *Master Royalties Corp. v. City of Balt.*, 235 Md. 74, 200 A.2d 652 (1964).

78. *Id.* at 80–81, 200 A. 2d at 654–55.

79. 203 Md. 49, 62, 98 A.2d 87 (1953).

80. 177 Md. 506, 516 (1939).

81. *Master Royalties Corp.*, 235 Md. at 74, 200 A.2d at 652.

82. *Herzinger*, 203 Md. at 49, 98 A.2d at 87.

83. *Free State Realty Co. v. Mayor & City Council of Balt.*, 235 Md. 550, 557, 369 A.2d 1030, 1034 (1977).

84. 159 Md. 7, 149 A.2d 566 (1930).

85. 266 Md. 83, 291 A.2d 636 (1972).

86. *Free State Realty Co.*, 235 Md. at 558–60, 369 A.2d at 1034–35.

87. *Id.* at 560, 369 A.2d at 1035.

88. *See, e.g., Mayor & City Council of Balt. City v. Valsamaki*, 397 Md. 222, 247–49, 916 A.2d 324, 341 (2007).

B. After Kelo

Following *Kelo*, the Maryland Court of Appeals has continued to support the use of eminent domain for economic development. However, the Court has placed a clear restraint on the use of quick-take condemnation without “immediate necessity.”⁸⁹

1. Mayor & City Council of Baltimore City v. Valsamaki

In *Mayor & City Council of Baltimore City v. Valsamaki*,⁹⁰ the City of Baltimore (the “City”) appealed from a Circuit Court for Baltimore City judgment. The City asked the court to answer the question, “Under the Code of Public Local Laws of Baltimore City, Maryland, §21-16(a), does the City have the burden to prove ‘necessity’ to proceed with a quick take condemnation for purposes of economic development?”⁹¹

The Mayor and City Council of Baltimore adopted Ordinance No. 82-799 on October 25, 1982, which established the Charles North Urban Renewal Plan for the Charles North Revitalization Area.⁹² The main goal of the Urban Renewal Plan was to revitalize the Charles North area through redevelopment in an effort “to create a unique mixed-use neighborhood” that would enhance the viability of the area and promote the expansion of business.⁹³ Mr. Valsamaki’s Bar & Lounge (the “Property”) was located within the boundaries of the Charles North Revitalization Area as set out by the City Ordinance.⁹⁴ The issue before the court arose on March 9, 2006, when the City acted on Ordinance No. 04-695 and filed a petition for condemnation and a petition for immediate possession of and title to the Property in the Circuit Court for Baltimore City.⁹⁵ The City also attached an affidavit from the Director of Property Acquisition and Relocation, Department of Housing and Community Development, that stated, “The property known as 1924 N. Charles Street . . . must be in possession of the Mayor and City Council of Baltimore at the earliest possible time *in order to assist in a business expansion in the area.*”⁹⁶

89. Under “quick-take” condemnation, the municipality takes immediate possession of the owner’s property with estimated just compensation placed in an escrow account until actual compensation has been ascertained. See BLACK’S LAW DICTIONARY 310 (8th ed. 2004) (referring to a “quick-take” condemnation as a “quick condemnation,” which is “the immediate taking of possession of private property for public use, whereby the estimated compensation is deposited in court or paid to the condemnee until the actual amount of compensation can be established”); see also *Valsamaki*, 397 Md. 222, 916 A.2d 324.

90. 397 Md. at 227, 916 A.2d 324 (2007).

91. *Id.* at 227, 916 A.2d at 327.

92. *Id.* at 228, 916 A.2d at 327–28.

93. *Id.* at 229, 916 A.2d at 328.

94. *Id.*, 916 A.2d at 328–29.

95. *Id.* at 230, 916 A.2d at 329.

96. *Id.* at 231, 916 A.2d at 329.

On March 15, 2006, the circuit court granted the City's petition, and Mr. Valsamaki timely filed an answer challenging the City's *immediate need* for the Property.⁹⁷ At the hearing, two witnesses for the City explained that upon immediate granting of the title, the City, although not currently complete, would have a Request for Proposal ("RFP") ready within a matter of weeks for potential developers.⁹⁸ The witnesses further stated, however, that the City could never predict the results that would stem from the RFP.⁹⁹ The trial court denied the City's petitions, finding that the City had failed to demonstrate sufficient grounds to warrant the finding of necessity requisite for the immediate taking.¹⁰⁰ The City filed a motion for reconsideration to alter or amend judgment, which was denied.¹⁰¹ The City then noted a direct appeal to the Court of Appeals.¹⁰²

The Court of Appeals affirmed the Circuit Court for Baltimore City.¹⁰³ Under the Code of Public Local Laws of Baltimore City, Md., Section 21-16(a), the City must sufficiently demonstrate the reason or reasons why it is necessary for it to have immediate possession and immediate title to a particular property via the exercise of a quick-take condemnation.¹⁰⁴ The court held that quick-take condemnation is to be used by the City only when the public interest demands that it is necessary for property to be immediately taken.¹⁰⁵ Moreover, the court held that careful scrutiny must be employed when evaluating the use of quick-take condemnation procedure "to ensure that its use, in the first place, is supported by the immediacy."¹⁰⁶ The court frowned on "quick-take" acquisitions for "unnamed and unknown developers."¹⁰⁷

In reviewing the language of the statute, the court reasoned that Section 21-16 expressly required the City to state reasons relating to immediacy; "thus the City has the burden not only to present a *prima facie* case of public use, but, additionally, in a quick-take action, the burden to establish the necessity for an immediate taking."¹⁰⁸ The court, highlighting the difference between regular eminent domain proceedings and quick-take condemnation, then compared the case with several other quick-take

97. *Id.*

98. *Id.* at 236, 916 A.2d at 332.

99. *Id.*

100. *Id.* at 238, 916 A.2d at 334.

101. *Id.* at 239, 916 A.2d at 334.

102. *Id.*; see BALT. CITY, MD., CODE OF PUBLIC LOCAL LAWS, § 21-16 (c) (providing "an immediate right of appeal to the Court of Appeals of Maryland from the decision of the trial court").

103. *Id.* at 227, 916 A.2d at 356.

104. *Id.* at 245-46, 916 A.2d at 338.

105. *Id.* at 246, 916 A.2d at 338.

106. *Id.* at 261, 916 A.2d at 347.

107. *Id.*

108. *Id.* at 254, 916 A.2d at 343.

cases.¹⁰⁹ Like the court in *Collington Crossroads*, the court in *Valsamaki* considered the City Council's Charles North Urban Renewal Plan Ordinance in its analysis. However, also like the court in *Collington Crossroads*, the court maintained that the question of *immediate necessity* is a judicial one which could not be determined by the legislature.¹¹⁰

2. *Sapero v. Mayor & City Council of Baltimore City*

*Sapero v. Mayor & City Council of Baltimore City*¹¹¹ took *Valsamaki* two steps further, posing similar yet distinct issues: (1) whether the quick-take statute denies due process where the Appellant was not permitted to conduct and complete discovery; and (2) whether Appellee proved an immediate need for possession by merely testifying that it was necessary for "business expansion."¹¹²

This case arises out of the same redevelopment plan cited in *Valsamaki*—the Charles North Urban Renewal Plan for the Charles North Revitalization Area.¹¹³ On December 8, 2005, the City filed an action for quick-take condemnation with the circuit court that included a petition for immediate possession of and title to the identified properties (the "Properties").¹¹⁴ The petition contained the same language and affidavit as the petition in *Valsamaki*.¹¹⁵ At the "right to take" hearing, the President of Baltimore Development Corporation ("BDC") and the Director of Planning and Design/Project Manager for the Charles North area stated that the City

109. See, e.g., *Free State Realty Co. v. Mayor & City Council of Balt.*, 279 Md. 550, 369 A.2d 1030 (1977) (finding that, based upon an affidavit, the property constituted an immediate serious and growing menace to public health, safety, and welfare); *Segall v. Mayor & City Council of Balt.*, 273 Md. 647, 648, 331 A.2d 298, 298–99 (1975) (finding affidavit showed that all other properties in the development area had been acquired and sale of the entire site could not be completed until the subject property had been acquired). But see *Mayor & City Council of Baltimore v. Kelso Corp.*, 281 Md. 514, 518, 380 A.2d 216, 219 (1977) (finding property owner never challenged the City's compliance with the formal requirements of § 21-16 or lack of power to condemn, and therefore had no basis to attack the City's quick-take condemnation action); *Kelso Corp. v. Mayor and City Council of Balt.*, 45 Md. App. 120, 129, 411 A.2d 691, 696 (1980) ("[The] appellant has failed to show that the City lacked the power or right to condemn its property."). The Court of Special Appeals held in *Kelso* that the desire for the general assemblage of properties for urban renewal might be sufficient to justify the use of regular condemnation proceedings, but absent more specific and compelling evidence, does not satisfy the immediacy and necessity requirements under quick-take condemnation. *Kelso Corp.*, 45 Md. App. at 129, 411 A.2d at 696. The affidavit attached to the petition for immediate possession and title only provided that immediate possession is necessary "in order to assist in a business expansion in the area." *Id.* This statement, in and of itself, while perhaps sufficient to justify regular condemnation, did not justify a quick-take condemnation. *Id.*

110. *Valsamaki*, 397 Md. at 273, 916 A.2d at 354.

111. 398 Md. 317, 920 A.2d 1061 (2007).

112. *Id.* at 321, 920 A.2d at 1063.

113. *Id.* at 323, 920 A.2d at 1064.

114. *Id.* at 320, 920 A.2d at 1062.

115. *Id.* at 327, 920 A.2d at 1066–67.

had already received three proposals to redevelop the Properties.¹¹⁶ Consequently, the circuit court granted the City's petitions and denied Mr. Sapero's motion to vacate.¹¹⁷ Mr. Sapero filed a motion to alter or amend judgment, which the circuit court denied.¹¹⁸ Mr. Sapero subsequently appealed directly to the Court of Appeals.¹¹⁹ In reversing the circuit court, the Court of Appeals maintained that (1):

Whenever immediate possession is sought, given the minimal time frame envisioned for proceeding under [Baltimore, Maryland, Code of Local Public Laws, Section] 21-16, discovery appropriate to the case should occur, even if the normal discovery time frames are shortened by order of the court based on a party's motion¹²⁰

The court continued, and (2):

In the case of regular condemnation, once the City establishes at least a minimal level of public use or purpose, judicial review may be thereafter limited to determining that the agency's decision is not so oppressive, arbitrary or unreasonable as to suggest bad faith; that, however, is not the case in assessing immediacy in a quick-take condemnation action [pursuant to Baltimore, Maryland, Code of Local Public Laws, Section] 21-16. Rather, the court must also determine whether there is a necessity to justify an *immediate* taking and, in that determination, must be able to assess the reasons for the immediacy. [Code of Local Public Laws of Baltimore City,] Section 21-16 expressly requires the *City* to state reasons relating to immediacy, thus the City has the burden not only to present a *prima facie* case of public use, but, additionally, in a quick-take action, the burden to establish the necessity for an immediate taking.¹²¹

The court reasoned that “[q]uick-take condemnation results in a deprivation of the constitutionally protected right to property without the more complete due process protections available in a regular condemnation action.”¹²² The City cited *Johnson v. Consolidated Gas, Electric Light & Power Co.*¹²³ in arguing that the taking only had to be “reasonable under the

116. *Id.* at 330–33, 920 A.2d at 1069–70.

117. *Id.* at 330, 920 A.2d at 1068.

118. *Id.* at 333, 920 A.2d at 1070.

119. *Id.*

120. *Id.* at 347, 920 A.2d at 1079.

121. *Id.* at 335, 920 A.2d at 1071 (quoting *Mayor & City Council of Balt. v. Valsamaki*, 397 Md. 222, 254, 916 A.2d 324, 343 (2007)).

122. *Id.* at 338, 920 A.2d at 1073.

123. 187 Md. 454, 50 A.2d 918 (1947).

circumstances.”¹²⁴ However, the court distinguished *Johnson*, noting that that case did not involve a quick-take condemnation under Section 21-16.¹²⁵ The *Sapero* court also distinguished *Free State Realty Co.*, noting that there was no evidence presented that quick-take was necessary for the public’s health, safety, or immediate welfare, nor was it asserted by admitted evidence that Mr. Sapero was a “hold-out” of any sort.¹²⁶

The court further noted that the City in both *Sapero* and *Valsamaki* never bothered to respond to discovery requests.¹²⁷ The Court of Appeals emphasized that no extreme circumstances existed that warranted abridgement of procedural due process protections available in regular condemnation proceedings.¹²⁸ Moreover, the City had to respond to discovery requests in quick-take condemnation cases.¹²⁹ The lack of response to discovery request placed the defendant property owners at a distinct disadvantage when challenging the City’s right to take the property. The property owners were unable to counter the City’s arguments and fully litigate the issues upon which the City’s witnesses testified at the hearing and were not able to sufficiently prepare.¹³⁰

3. *A&E North, LLC v. Mayor & City Council of Baltimore*

*A&E North, LLC v. Mayor & City Council of Baltimore*¹³¹ focused on the relocation concerns of a property owner. The owner, A&E North, LLC (“A&E”) wanted the City to pay relocation expense prior to the trial for valuation of the property.¹³² Thus, the Court of Appeals was requested to consider whether “a condemnee [is] entitled to a payment of relocation expenses in advance of the trial, when the condemnee challenges the condemning agency’s authority to condemn.”¹³³

On October 9, 2008, the Mayor and City Council of Baltimore filed a Petition for Condemnation (regular condemnation) in the Circuit Court for Baltimore City, seeking to condemn A&E’s theater ““for the public purpose of urban renewal, pursuant to the Charles/North Revitalization Area Urban Renewal Plan.””¹³⁴ Six weeks before trial, A&E filed an Emergency Motion to compel the immediate payment by the City of relocation expenses, which would allow A&E to move its personal property from the

124. *Sapero*, 398 Md. at 339, 920 A.2d at 1074.

125. *Id.* at 340, 920 A.2d at 1074.

126. *Id.* at 341–42, 920 A.2d at 1075–76.

127. *Id.* at 347, 920 A.2d at 1078.

128. *Id.*

129. *Id.*

130. *Id.* at 339.

131. 431 Md. 253, 64 A.3d 903 (2013).

132. *Id.* at 255, 64 A.3d at 905.

133. *Id.* at 259–60, 64 A.3d at 907.

134. *Id.* at 256, 64 A.3d at 905.

Parkway Theater prior to trial.¹³⁵ A&E argued that “the presence of the Personal Property obstruct[ed] the views of the magnificent interior and [would] cause the jury to discount its value, thereby severely prejudicing [its] case in the eyes of the jury.”¹³⁶ The circuit court denied both A&E’s motion for payment and its request for postponement of the trial.¹³⁷ At the beginning of the trial, A&E again requested a continuance, citing its lack of appraisals, the owner’s health, and the continued presence of junk in the theater, but the court denied the motion.¹³⁸ The jury returned a verdict based upon the City’s fair market value of \$340,000.¹³⁹ Based upon that judgment, the circuit court entered an inquisition transferring the Property to the Mayor and City Council.¹⁴⁰ A&E then petitioned the Court of Appeals, which granted both A&E’s petition for a writ of certiorari and the City’s cross-petition.¹⁴¹

The Maryland Court of Appeals concluded that, at the time A&E filed the Emergency Motion, it was not a “displaced person.”¹⁴² Under the Maryland Real Property Code:

[P]ersons who move themselves or move personal property ‘[a]s a direct result of a written notice of intent to acquire or the acquisition of . . . real property in whole or in part by a displacing agency,’ are considered ‘displaced persons’ and may be entitled to a payment of their relocation expenses.¹⁴³

The Maryland Real Property Code continues, stating:

The purpose of the relocation statutes is to assist with relocation by providing for (1) reimbursement of actual relocation and moving expenses and (2) payment of relocation expenses in advance of the move in hardship cases. While the purpose of a payment in advance of a move is to facilitate the move, a payment in advance of trial is “to enhance the Property’s visual appeal to a jury.”¹⁴⁴

According to the court, the latter is not a goal contemplated by the Relocation Act.¹⁴⁵ The court dismissed A&E’s argument that the entity was entitled to an advance relocation payment prior to trial because the owner

135. *Id.* at 257, 64 A.3d at 906.

136. *Id.*

137. *Id.* at 257, 64 A.3d at 906.

138. *Id.* at 257–58, 64 A.3d at 906.

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.* at 270, 64 A.3d at 914.

143. *Id.* at 264, 64 A.3d at 910 (quoting MD. CODE ANN., REAL PROP. §§ 12-201(e) (1), 205, 210(c) (2) (West 2015)).

144. *Id.* at 267, 64 A.3d at 912.

145. *Id.*

was indigent.¹⁴⁶ The court found that A&E tied the claim of entitlement to an advance payment to the trial, as opposed to the move.¹⁴⁷ The court further reasoned that the argument overlooked the circumstances of the case, namely, that at the time A&E requested an advance payment, it was contesting the City's right to condemn the theater.¹⁴⁸ Furthermore, although the argument focused on A&E's alleged hardship, as in any other relocation assistance case, the primary consideration before the court was whether A&E was a "displaced person" at the time it requested assistance.¹⁴⁹ The court concluded that A&E was not.¹⁵⁰

4. *Makowski v. Mayor & City Council of Baltimore*

*Makowski v. Mayor & City Council of Baltimore*¹⁵¹ involved the issue of a "hold out" in a development project.¹⁵² "[B]eginning in the 1950s, Baltimore City, and particularly, the East Baltimore neighborhood, began losing manufacturing jobs. The City continued to hemorrhage jobs through the 1990s, causing significant urban decay marked by high crime, high unemployment, population loss, and a general deterioration in the Middle East neighborhood."¹⁵³

After a sequence of failed piecemeal redevelopment strategies, [t]he City, then, turned to more comprehensive redevelopment and revitalization efforts, including a "non-profit partnership between government, philanthropists, institutions, and the community" to undertake a massive revitalization of property in the East Baltimore community, called the East Baltimore Development Initiative ("EBDI"). EBDI was intended to "address, for the first time, on a comprehensive basis the blight and disinvestment in the neighborhood" through the redevelopment of an area encompassing 88 acres in proximity to the Johns Hopkins University Medical Campus; specifically, it would involve the construction of "biotechnology, research, and life sciences buildings, a new community school . . . senior housing . . . mixed income residential homes and rental units, commercial and retail property, green/open spaces, a new park, and fresh food stores." To acquire the properties necessary for the EBDI project, the City was authorized, pursuant to the

146. *Id.* at 265–66, 64 A.3d at 911.

147. *Id.* at 266, 64 A.3d at 911.

148. *Id.* at 268, 64 A.3d at 912.

149. *Id.*

150. *Id.* at 270, 64 A.3d at 914.

151. 439 Md. 169, 94 A.3d 91 (2014).

152. *Id.* at 185, 94 A.3d at 101.

153. *Id.* at 173, 94 A.3d at 94.

Baltimore City Ordinance No. 11-453 entitled the “Middle East Urban Renewal Plan”, to acquire, via voluntary conveyance, purchase or condemnation, properties in the project area.”¹⁵⁴

The property located at 900–902 N. Chester Street, Baltimore, Maryland (the “Property”) was situated in the designated urban renewal area.¹⁵⁵ Before filing a condemnation proceeding, the City negotiated a rental agreement and a right of entry to the Property. As negotiations regarding the fair market value of the Property failed, in April of 2012, the City filed a Petition for Condemnation (regular condemnation) in the circuit court pursuant to Baltimore City Ordinance Nos. 1202 and 11-453.¹⁵⁶

Prior to trial, the City filed a Petition for Immediate Possession and Title pursuant to Section 21-16 of the Code of Public Local Laws of Baltimore City and deposited into the Court Registry the fair market value of the Property.¹⁵⁷ An affidavit included in the petition indicated that immediate possession of the Property was necessary and that the City had effectively acquired title to all other properties on Block 1587, where the Property was located.¹⁵⁸

The circuit court held a hearing on the City’s right to take the Property in which the Director of Property Acquisition and Relocation, Department of Housing and Community Development, was the City’s only witness.¹⁵⁹ He testified,

consistent with his affidavit, that the City had an immediate need for the [Subject] Property, because the structures on Block 1587 had to be demolished prior to the opening of the school in August “to mitigate the possible effects of dust and other elements that would result from having to do the demolition if the school were, in fact, in session.” He also testified that there were only two properties that had not yet been acquired on Block 1587 within two weeks of the hearing—the [Subject] Property and a church, . . . which the City had acquired in the intervening period of time between filing of the quick-take petition and the hearing date.¹⁶⁰

The Circuit Court for Baltimore City concluded that Mr. Makowski was in fact a “hold-out” and, as a result, granted the City’s quick-take Petition.¹⁶¹ Mr. Makowski filed a Motion for Reconsideration, which was

154. *Id.* at 175, 94 A.3d at 95.

155. *Id.* at 176, 94 A.3d at 95.

156. *Id.* at 177, 94 A.3d at 96.

157. *Id.*

158. *Id.* at 179–80, 94 A.3d at 98.

159. *Id.* at 182, 94 A.3d at 99.

160. *Id.* at 182, 94 A.3d at 99–100.

161. *Id.* at 185, 94 A.3d at 101.

denied.¹⁶² Thereafter, Mr. Makowski appealed directly to the Court of Appeals.¹⁶³

The Court of Appeals affirmed the Circuit Court for Baltimore City, emphasizing “that to prevail in a quick-take condemnation, the City must prove that the property is being condemned for a public use and that it has an immediate need to acquire the property.”¹⁶⁴ “[T]he City must provide specific evidence of an immediate need, not merely a bald assertion that one exists.”¹⁶⁵ Pursuant to Section 21-16 of the Code of Public Local Laws of Baltimore City, the City may condemn property via “quick-take” proceedings to address a “hold-out” situation.¹⁶⁶

A “hold-out” occurs in projects involving property assemblages, i.e., when multiple properties are assembled for a single project, where “one or more property owners resist selling, wanting to be the last owner of a parcel or among the last, in order to be able to demand higher prices for their property because they are holding up a large project.”¹⁶⁷

Furthermore, the court held that neither *Valsamaki* nor *Sapero* required “that the City bear a burden higher than what is traditionally required in civil cases—a preponderance of the evidence.”¹⁶⁸ The Court of Appeals agreed with the circuit court’s analysis distinguishing this case from *Valsamaki* and found it analogous to *Segall v. Mayor & City Council of Baltimore*¹⁶⁹ because the property owner appeared to be taking part in a hold-out scenario.¹⁷⁰

The question of whether the use of eminent domain for purpose of economic development is constitutional remains a moot point. The two justifications for the immediate taking of a property remain the same as in *Valsamaki*: (1) if the property is a hold-out; or, (2) if the property poses a significant risk to public health.¹⁷¹ The court in *Makowski*, however, did not reach the merits of the argument that delaying the acquisition of the property could pose a health risk to students once school began.¹⁷²

162. *Id.* at 186–87, 94 A.3d at 102.

163. *Id.* at 187, 94 A.3d at 102. Mr. Makowski initially appealed to the Court of Special Appeals. *Id.* Since quick-take proceedings are appealed directly to the Court of Appeals, his appeal was transferred to that court. *Id.*

164. *Id.* at 190, 94 A.3d at 104.

165. *Id.* at 191, 94 A.3d at 104.

166. *Id.*

167. *Id.* at 191, 94 A.3d at 104–05.

168. *Id.* at 196 n.25, 94 A.3d at 107.

169. 273 Md. 647, 331 A.2d 298 (1975).

170. *Makowski*, 439 Md. at 186, 94 A.3d at 102.

171. *Id.* at 191, 94 A.3d at 104.

172. *Id.* at 195, 94 A.3d at 107.

IV. PRACTICE POINTERS AND POLICY CONSIDERATIONS

Baltimore, like most major urban centers, continues to struggle in the face of intractable poverty, absentee landlords, civil unrest, crime, and an assorted range of social problems.¹⁷³ In Baltimore City, both the State of Maryland and City of Baltimore governments have used eminent domain to stimulate private investment for economic development.¹⁷⁴

There are lessons, practice pointers, and policy considerations to be gleaned from the foregoing cases and experience in Baltimore City.¹⁷⁵ Basic constitutional standards require that no property be taken without just compensation, that the property is used for a “public purpose,” and that the property owner receives a fair process, which requires notice and an opportunity to be heard.¹⁷⁶ Even the most supportive judiciary requires a legislative process providing authority, a well thought-out plan, and a clear process when subdivisions seek to acquire property through eminent domain. During the past decade, a number of issues (i.e., use of regular condemnation versus quick-take, the basis for condemnation, right to take, and fair market value) have been confronted in the defense of condemnation cases for the City of Baltimore.¹⁷⁷ The following is advice offered to overcome the charges of eminent domain abuse, and to facilitate the government’s redevelopment of blighted and/or undeveloped areas:

1. Keep legislative authorization updated and current. Most codes have provisions for emergency situations; however, sunset determinations negate *ad infinitum* authority for legislative authorization. The Maryland legislature has recognized the need to decrease the amount of time that

173. The Baltimore City Police Department documents crime statistics. *See generally* OPEN BALTIMORE, <https://data.baltimorecity.gov> (last visited Jan. 28, 2016). *See also*, CENSUS 2010, <http://census.maryland.gov/census2010/pl-total> (last visited Feb. 2, 2016). The Census documents population decline, vacant housing, and disinvestment, among issues.

174. Oriole Park at Camden Yards and M&T Bank stadium, home to the Ravens franchise, are prime examples of state projects that were developed with the assistance of eminent domain. These venues have spurred a range of residential and commercial development to support the athletic events they hold. *See Maryland Stadium Authority*, MARYLAND MANUAL ON-LINE: A GUIDE TO MARYLAND & ITS GOVERNMENT <http://msa.maryland.gov/msa/mdmanual/25ind/html/66stadf.html> (last visited Jan. 28, 2016). The state-funded Hippodrome Theatre project in 2004, which revitalized the 2300-seat theatre built in 1914, is another project that set in motion the vitalization of the City’s West Side community (that is, the west side of the former central business district). Eminent domain was used on the West Side Community Project to stimulate a comprehensive approach. While the redevelopment has lagged during the economic downturn since 2008, development continues.

175. Andrew G. Bailey & Elva E. Tillman, Practice Pointers and Policy Considerations for the Responsible Use of Eminent Domain Post-*Kelo* (September 10-14, 2014) (paper presented at the International Municipal Lawyers Association (“IMLA”), 2014 Annual Conference, Baltimore, Maryland) (on file with author and included in the *Municipal Lawyers Magazine*, Sept.—Oct., 2014, available to IMLA members).

176. U.S. CONST. amends. V, XIV.

177. *See generally* cases cited in *supra* Section III.B.

governmental entities have to bring condemnation actions.¹⁷⁸ Legislative authorizations typically include notice and opportunity to be heard. In Baltimore, such authorization has taken the form of urban renewal plans.¹⁷⁹ Citizen participation in these plans is very high. The planning commission and the city council hearings afford opportunities for the affected population to review plans and to be heard. These opportunities to be heard are available for not only people living in the area, but also for those who work and own property in the area.¹⁸⁰

2. Acquire property pursuant to a well-reasoned plan that is supported by a legitimate legislative process. Property should not be acquired to be stockpiled.¹⁸¹ All of the Maryland cases discussed in this Essay indicate that a well-reasoned plan is preferred. The use of eminent domain is a serious threat to individual property rights. That use should be tempered by the development of a plan that provides significant impact for public use and/or benefit.

3. Support public purpose through public benefit, if not public use. If we use eminent domain for economic development it is clear that not all projects will be for the use of the public “at large.” However, we can be certain that each project is grounded in public benefit, that is, it is not a project so narrowly drawn that a minimal number of people will benefit from it.

4. Provide relocation to assist in making the property owner whole. The federal and state governments define a “displaced person” as one who moves as a result of the acquisition of a property for public use.¹⁸² A displaced person can include any individual, family, partnership, corporation or association. The aim is to formulate and follow a uniform policy for the fair and equitable treatment of displaced persons.¹⁸³

5. Mediate the valuation of the property. Experience has indicated that condemnation cases are complex matters, involving the right to take and valuation. It is always better to have the parties decide the valuation in a collaborative manner instead of a disinterested person (i.e., a judge or

178. Maryland Annotated Code, Real Property Article § 12-105.1 was added to the annotated code. Prior to this amendment the State and its local subdivisions had an unfettered ability to take property at any time. Section 12-105.1 initially reflected a three year time limit for taking property but was amended to afford the State and its subdivisions four years to file a petition for condemnation.

179. See BALT., MD, BALT. CITY CODE art. 13, § 2-6 (2015).

180. The hearing requirements are laid out for Urban Renewal Plans in BALTIMORE CITY CODE art. 13, § 2-6(d).

181. See *Mayor & City Council of Balt. City v. Valsamaki*, 397 Md. 222, 261, 916 A.2d 324, 347 (2007).

182. See, e.g., Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. No.91-646, 84 Stat. 1894 (codified at 42 U.S.C. §§ 4601–4655 (2012)); see also *A & E North, LLC v. Mayor & City Council of Balt.*, 431 Md. 253, 64 A.3d 903 (2013).

183. *Id.*

jury). In a condemnation case, it can take a year to finally get to trial. A final verdict can result in appeals which can lengthen an already long process. Mediation affords a final resolution and an opportunity to conclude the case.