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# 'QUICK TAKE' TAKES A HIT

## Md. court rules against city's sped-up eminent domain

BY JILL ROSEN  
(SUN REPORTER)

In a decision likely to force Baltimore to rethink its economic development strategy, Maryland's highest court ruled yesterday that the city cannot continue using eminent domain to "run roughshod over the owners of pri-

ivate property."

The state Court of Appeals, in a blunt opinion that harshly criticized the city's favored property seizure technique, found Baltimore had no good reason to take a Charles North bar called The Magnet last year with a sped-up version of eminent domain called "quick take."

The decision is sure to have im-

plications for the Baltimore Development Corp. — and could affect similar agencies around the country using quick take, a tactic hardly tested in the legal system. It also runs counter to the Supreme Court's 2005 decision giving governments broad powers to take properties for private development.

Quick take, the state court

pointed out, requires an agency to prove that it needs property urgently and for the public good. In this case, wrote Judge Dale R. Cathell, the BDC demonstrated neither.

"Agents of the City literally refused to answer any questions directed at the immediate need for this specific property, but ap- [Please see QUICK TAKE, 4A]

## COURT DECISION

**The ruling:** The Court of Appeals, Maryland's highest court, concluded that the Baltimore Development Corp. improperly tried to seize a Charles North bar using a form of eminent domain known as "quick take."

**What's next:** The Baltimore city solicitor says development officials will need to devise more specific economic development plans before trying to seize property in the future.

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## FROM THE COVER

## Md. court takes down city's 'quick take' policy

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peared to have adopted the attitude that the City did not have to have a specific immediate need for the property, so long as sometime in the near or distant future they had such a need," Cathell wrote. "This extraordinary power conferred upon the City ... was not for the purpose of allowing such entities to use it 'whenever they wanted to.'"

### Strong message

John C. Murphy, the attorney for Magnet owner George Valsamaki, said the high court clearly sent a strong message to those who would stretch the limits of eminent domain and harm property owners in the process.

"The court is saying that what the city is doing now does not meet the standards," he said. "That's a big change for a city which basically has used quick take for all of its acquisitions."

Institute for Justice senior attorney Dana Berliner predicted that the decision would have national reverberations — particularly for quick take.

"Other states are going to look at this and say there has to be a justification for using quick take," she said. "This decision says this is inappropriate, using this profound government power to take someone's property without saying why. Hopefully, this will place a check on that."

The ruling affirms state Circuit Judge John Philip Miller's decision in May that the BDC failed to show sufficient grounds to warrant taking the bar and package goods shop at 1924 N. Charles St. — the first time the courts blocked a Baltimore quick take.

It also puts Maryland among a handful of states whose judiciaries have restrained the property seizure powers that the Supreme Court granted government in the 2005 landmark *Kelo v. New London*. The high court ruled that government can take homes or businesses for private economic development projects.

By condemning the bar and about 20 other Charles North properties, Baltimore officials aimed to assemble a sizable tract that would entice developers. The goal was revitalizing the depressed area between Mount

Vernon and Charles Village along the busy Charles Street corridor.

The city filed a quick take petition on The Magnet in March, gaining immediate possession of the property without a hearing.

Valsamaki learned of the seizure in a terse affidavit that stated: "The property ... must be in possession of the Mayor and City Council of Baltimore at the earliest time in order to assist in a business expansion of the area."

He had 10 days to challenge the seizure, which he did, calling the city's stated reason for taking his property "patently insufficient."

### Specifics wanted

Baltimore City Solicitor George Nilson agreed that with this verdict, the city will, to some degree, have to change its ways.

"I think they're saying you have to have more specific things in hand when you exercise quick take power and that the government bears the burden of proving that the taking is justified," Nilson said. "And, because you bear that greater burden, you're going to have to have fairly particular plans."

As BDC officials argued in court, Nilson called quick take "critically important" to Baltimore's neighborhood revitalization projects. It would be all but impossible, city officials have said, to interest de-

## EMINENT DOMAIN

Baltimore officials wanted to seize The Magnet bar as part of a redevelopment effort sought for the city's Charles North neighborhood.



[SUN NEWS GRAPHIC]

developers in a site with ownership questions hovering over it.

Typically, the Baltimore Development Corp. seizes property and then leaves it up to developers vying for the land to decide whether they want to build houses, shops, offices or something else.

"When you have a pretty decent

idea of what you think needs to be done to that area, are you far enough along in the specifics of your planning to support the condemnation?" Nilson asked. "How do you strike the balance that is now going to require us to have to show that the taking is important and in the public benefit?"

Though Nilson, who late yesterday said he had not finished reading the opinion, seemed confident that Baltimore would be able to continue using quick take for urban renewal, the court's opinion appears to strongly suggest otherwise.

## Lower courts urged

Cathell wrote that without evidence that a building or property is "immediately injurious to the health and safety of the public, or is otherwise immediately needed for the public use, there is no way to justify" quick take.

The judge urged other courts to make sure that government agencies aren't seizing property for ambiguous future needs.

"[T]he lower courts should carefully scrutinize the use of this quick-take procedure to ensure that its use, in the first place, is supported by the immediacy, not of the process, but of the alleged public need," Cathell wrote. "General allegations that 'we are using it in this case because sometime in the future we want to request

proposals from some unnamed and unknown developers, for us to consider, so that we can then convey the property to a developer and it will then construct something that will help 'renew' this property' simply do not suffice."

The decision marks the second time in three months that Maryland's high court has reined in the BDC. In November, the court ruled that the secretive agency must open its meetings and books and behave like a public body.

Murphy, who orchestrated both of those challenges, said he thinks the rulings reveal the public's ever-shrinking trust in government.

"We're in a different era now. There's just a greater degree of skepticism," he said. "I really think just from the standpoint of the home owner or business owner, [these rulings give] them the correct protections they did not have before."

Valsamaki made a living for 32 years running The Magnet but closed it recently in frustration over its uncertain future, he said. The city offered him \$140,000 for the three-story building.

He didn't have much to say yesterday about his victory.

"I'm not one for a whole lot of publicity," he said. "It's been a long battle."

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