

## Eminent Domain Legislation Out In Front

Julie Perrus

The decision by the U.S. Supreme Court this summer in *Kelo v. City of New London* solidified the ability of governmental units to utilize the power of eminent domain, often called a taking, for economic development purposes. The Court held that promoting economic development is a long-accepted government function and that there is no principled way to distinguish it from other public uses that have been recognized by the courts, including roads, schools and utilities. Many argue that the decision does not herald much change for Minnesota, since the decision affirms what was already stated by Minnesota's highest court in the *Walser v. City of Richfield* case. Others, however, argue that while the decisions are similar, the *Kelo* case will embolden local authorities to use eminent domain to take private land and transfer it to other private interests for any reason.

Representative Jeff Johnson (R, Plymouth) and Senator Tom Bakk (DFL, Cook) have agreed to author legislation in 2006 that is supported by Minnesotans for Eminent Domain Reform, a coalition of interest groups that includes the Minnesota Auto Dealers Association, the Minnesota Farmers Union, the Minneapolis Urban League, former Congressman Tim Penny and a host of others. The bill redefines the terms "public use" and "blight" in ways that will limit the use of eminent domain for purely economic

development purposes. The bill requires elected officials to make the final decisions regarding the use of eminent domain during open meetings in order to ensure an open process and accountability. In addition, it includes a provision that allows those affected by a taking to recoup attorney's fees in situations where the government has undervalued a home or business by more than 20%.

*The legislation  
has a long road  
ahead of it...*

The League of Minnesota Cities, the Association of Metropolitan Municipalities, and other public groups are encouraging responsible changes to the eminent domain statutes in Minnesota. They argue that redevelopment and economic development projects are critical to the long-term sustainability of Minnesota cities and that cities use eminent domain responsibly. They are concerned that any major limits on the ability to use eminent domain will affect a community's ability to

## EDITOR'S CORNER

Peter Coyle

Welcome to the 2006 edition of *CapitolWatch!* This pre-session edition kicks off our eleventh year of bringing timely updates on the progress of the Minnesota legislature to you, our valued clients, friends and political observers. This year's legislative session will be different from prior years in that it will be more compressed, commencing officially on March 1st and ending on the constitutional adjournment date of May 22, 2006. The session's compact time frame will not, however, limit the fireworks, due to the fact that in November all statewide constitutional offices and legislative seats will be facing an election. This ongoing experiment with democracy virtually ensures that some level of partisan brinksmanship will occur, albeit in a shorter span of time.

This issue of *CapitolWatch* includes profiles of several issues likely to garner attention by legislators in the coming weeks. Most notable among these will be an effort to reign in the government's use of eminent domain to acquire private property for economic development purposes. The U.S. Supreme Court's decision in *Kelo v. City of New London* ratified Minnesota law regarding the use of condemnation by governmental bodies, but it has set off a firestorm in Minnesota and across the country. Bipartisan support exists in the state capitol to

# Health Care Update

Marnie Moore

The House and Senate health care committees will continue to tackle the issue of medical facility expansion this session. Interest in this topic has risen with the heated battle over a new hospital in Maple Grove. Minnesota currently has a moratorium on hospital construction, thus approval from the legislature is required to build a new hospital or expand the number of beds in a current hospital. In addition, a public interest review process, enacted in 2004, requires preliminary approval from the Minnesota Department of Health to ensure that this expansion is necessary.

The Maple Grove hospital moratorium exception was the first proposal submitted under this new process, with three separate provider groups (Fairview, North Memorial and the Tri-Care Partnership) vying for the building rights. The Department determined that one hospital is needed in Maple Grove; not three. The legislature was then left with the task of choosing between the three candidates. At the end of the 2005 session, there was no agreement on this issue, thus it spilled over into 2006.

Fairview and North Memorial have now decided to work together as partners; this partnership recently received the endorsement of the Maple Grove City Council. If the legislature takes the city's desires into consideration, this gives an advantage to the Fairview/North group.

In the meantime, the overall issue of medical facility expansion has received an increasing amount of attention at the Capitol. Senator Becky Lourey (DFL, Kerrick) convened a meeting of the Health and Family Security Committee in

November to begin initial discussions on this topic, focusing on both hospital and non-hospital-based capital expenditures. The Department of Health provided a general overview for the committee focusing on the key themes of Infrastructure Regulation and Capacity and Utilization Trends. According to the Department, spending for outpatient imaging centers has grown rapidly over the last few years and the number of free-standing outpatient surgical centers has tripled since 1997.

A key question for the legislature to address moving forward is how to balance rising health care costs with the effective use of health care resources. Adding another piece to the puzzle, the Attorney General's office presented information on federal self-referral and anti-kickback

laws designed to prohibit physicians from profiting from referrals, candidly pointing out some of the statutory exceptions.

The Citizens League of Minnesota has also been active on this topic with the creation of a Medical Facilities Study Committee to address medical facilities expansion. According to co-chair and former Senate Minority Leader Duane Benson, the group has been formed to "take a more comprehensive view and look more closely at the long-term role of medical facilities throughout Minnesota." The two co-chairs and 24 members represent a variety of interests with experience

in health care policy and practice (the Citizens League was careful not to include any primary stakeholders involved with the Maple Grove hospital battle). The committee is also examining if financial incentives affect investment in facilities and what the impact of this is on clinics and hospitals. The goal of the committee is to present its findings to the legislature with recommendations on a process that links health

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care demand with facility need in an attempt to provide the most cost-effective health care system for Minnesota. It remains to be seen what this proposal will include.

Although the session won't officially begin until March 1, the health care committees continue to actively meet for informational hearings and should be ready to hear relevant bills early this session. Expect to see proposed legislation resolving the Maple Grove hospital issue and bills either advocating reform in the area of medical facilities construction or strengthening prohibitions on self-referrals. ■

# MEET THE NEW LEGISLATORS

*Four special elections this fall have changed some of the faces at the legislature.*

**Senate District 19**  
**Amy Koch (R)**



Mark Ourada (R), former state senator from Buffalo, Minnesota, resigned his seat after 11 years in the legislature. He is now working in external affairs for the Center for Energy and Economic Development in Alexandria, Virginia. The special election to fill the vacancy was held in November 2005. Without surprise to those monitoring the race, the Republicans held on to the seat, electing Amy Koch. Koch is an Air Force veteran and long-time Republican activist. She won in a three-way race with 52% of the vote. ■

**Senate District 15**  
**Tarryl Clark (DFL)**



Former senator Dave Kleis (R) made a successful run for mayor of St. Cloud and resigned his seat in November 2005. Dan Ochsner (R), a St. Cloud radio personality, challenged DFL candidate Tarryl Clark. Clark, who came close to defeating Kleis in the 2002 election, defeated Ochsner by a margin of nearly 20%. Clark is a former commissioner of the Housing and Redevelopment Authority of St. Cloud and has been a long-time activist with the DFL. ■

**Senate District 43**  
**Terri Bonoff (DFL)**



Terri Bonoff, a former vice president at Tonka Toys, challenged Plymouth Mayor Judy Johnson (R) for the open seat in Senate District 43. David Gaither (R) left office after being appointed chief of staff in the office of Governor Pawlenty. Johnson was considered the favorite in the race, but Bonoff prevailed in a 54-45% victory. ■

**House District 15B**  
**Larry Haws (DFL)**



A week before the special election in St. Cloud, the Supreme Court agreed with a lower court ruling that Sue Ek (R) had not been a resident of St. Cloud long enough to be on the ballot. Her mother, Kay Ek (R), was a write-in candidate, but could not muster enough momentum to take on Larry Haws (DFL), who won the race with 71% of the vote. Haws replaces Joe Opatz (DFL) in the Minnesota House, who left his seat after 13 years to head the Central Lakes College in Brainerd. ■

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move toward a vision for the future. These groups argue that minor changes to the eminent domain procedures will ensure that cities retain the authority to respond to local concerns and priorities, while protecting property owners from abusive use of the power.

The legislation authored by Representative Johnson and Senator Bakk has a long road ahead of it. In a session that is intended to run under 12 weeks, a number of committees in the House and Senate have

requested to hear the proposals. These committees will have to hear the proposals within the first four weeks, as the first legislative deadline has been set for March 28. Achieving reform during the 2006 legislative session will require cooperation on the part of the authors, interest groups and legislative staff.

Stay tuned for more information on the issue of eminent domain throughout the session. ■

do something to limit the use of eminent domain. How much of a restriction is the open question. Private and public sector interests are already lined up across from each other seeking support for their respective points of view. We will keep you posted on this important topic as the session evolves.

Separately, we profile new legislators elected to fill vacancies in the legislature over the past few months. And, of course, we profile Larkin Hoffman's governmental relations team, which this year includes two newcomers, Julie Perrus and Marnie Moore. Both Julie and Marnie have a wealth of

experience that will be invaluable to us and our clients during this session and sessions to come.

If you would like to have your name added to the mailing list for future issues of *CapitolWatch*, please let us know. We send out our session updates via email or fax, as requested.

We hope you enjoy this issue of *CapitolWatch*! Please contact us with any questions about topics discussed in this or future issues. We always welcome your feedback. ■

## Larkin Hoffman's Government Relations Department



**GERALD L. SECK** is a shareholder and member of the Government Relations department at Larkin Hoffman. Jerry has been an active lobbyist at the Minnesota Legislature since 1971 and has lobbied for a variety of clients and issues for governmental units and private concerns.

His experience includes legal director of the Minnesota Public Interest Research Group, Executive Director of the Leech Lake Indian Reservation Legal Services Project, Director of the Truk Office of Micronesian Legal Service and a clerkship for Justice James C. Otis on the Minnesota Supreme court. He has also been recognized by the U.S. Environmental Protection Agency (EPA) for his environmental work. ■



**PETER J. COYLE** is chair of Larkin Hoffman's Government Relations department. He is also a member of the firm's Land Use and Real Estate department and serves on the firm's Board of Directors. Peter's government relations regulatory practice encompasses

local, state and federal administrative agencies and the Minnesota Legislature. He represents private developers, landowners and businesses before state agencies, the Metropolitan Council, county boards and city councils. Peter has previously served as Staff Director and Chief Counsel to United States Senator Rudy Boschwitz and the U.S. Senate Committee on Small Business in Washington D.C. ■



**JULIE L. PERRUS** is an associate with Larkin Hoffman and is a member of the firm's Government Relations and Land Use and Real Estate departments. Julie has experience working with senators and lobbyists to resolve statutory issues and manage legislation and policy issues.

Prior to joining Larkin Hoffman, she was the committee administrator for the State and Local Government Operations Committee at the Minnesota State Senate. She also served as a legislative assistant to State Senator Linda Higgins and as a staff assistant to U. S. Senator Paul Wellstone. Julie received her J.D. from William Mitchell College of Law in 2005 and graduated with her B.S. from Winona State University in 1998. ■



**MARNIE S. MOORE** is a paralegal with Larkin Hoffman and a member of the firm's Government Relations department. Before joining Larkin Hoffman, she was the manager of government affairs at Cook Hill Girard Associates and prior to that spent several years with the

Minnesota Wild Hockey Club as a corporate account manager. Marnie is currently serving as a Governor's appointee on the Board of Dietetics and Nutrition Practice and the Council of Health Boards. Volunteer involvement includes the International Girls' Forum and the Epilepsy Foundation of Minnesota. Marnie received her B.A. from the University of Minnesota, Twin Cities and is currently completing her J.D. at Hamline University. ■