

Eminent Domain Legislation Passes

Julie Ferrus

The final passage of legislation to reform the eminent domain process in Minnesota surprised few at the Capitol. The ability of local governments to use this power to facilitate economic development by taking private property to benefit private business interests has been strictly limited under the new law, most of which took effect on May 21, 2006. Property rights advocates herald the new law as a victory for Minnesota property owners.

Sponsored by Representative Jeff Johnson (R-Plymouth) and Senator Tom Bakk (DFL-Cook) as a response to the controversial 2005 United States Supreme Court case *Kelo et al v. New London, CT*, the law states that eminent domain may only be used for a "public concern or purpose," the definition of which is limited to what most believe are traditional public uses such as the construction of parks, schools, publicly-owned buildings or utilities, roads and bridges, as well as the mitigation of blight and the remediation of environmentally contaminated areas. The legislative authors included a provision to specifically limit the use of eminent domain as a tool for economic development, stating that "an increase in tax base, tax revenues, employment, or general economic health" do not meet the standard of public use or purpose. The new law also contains a requirement that property owners whose businesses are destroyed by a taking be compensated for loss of going concern. Additionally, the evidentiary standard for eminent domain takings for blight or environmental contamination now

requires proof by a "preponderance of the evidence" versus the historical "substantial evidence" standard.

Local governments argue that the new law goes too far and will limit their ability to address nuisance properties and contaminated areas. One provision that was hotly debated is a much more limited definition of "blight," which in urban use areas requires that 50 percent of the buildings to be taken be structurally substandard. The law defines a "structurally substandard" building as a building that: (1) has been inspected and cited for enforceable housing, maintenance or building code violations; (2) the building code violations involve structural problems with the building; (3) the property owner has not remedied the cited violations after two notices to cure the noncompliance; and (4) the cost to cure the violations is more than 50 percent of the assessor's taxable market value for the building (this excludes any additional land value).

The definition of an "environmentally contaminated area" changed to an area where more than 50 percent of the parcels contain contamination and the estimated costs of investigation, monitoring and testing and remediation are more than the estimated market value of the parcel, or one in which the owner has not complied with a court order requiring cleanup or remediation within a period of time. In addition, any taking that

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EDITOR'S CORNER

Peter Coyle

The 2006 session of the Minnesota Legislature is a wrap, with no prospect for a special session in sight. It was a session marked by minimal partisan strife, though notably a bonding bill, two stadiums and major reform of the process for condemning property were completed. While the state's budget picture is much improved compared to recent years, there was limited available cash to fund splashy big initiatives. Consequently, initiatives relating to education, highways, health care and the environment will have to await next year and a new crop of legislators.

Put simply, this session was more about getting the bonding bill passed and ending the session on time; everything else was secondary. Every seat in the House and Senate, as well as the governor's office, is up for grabs in November. State elected officials are keenly aware of this fact and that razor-thin margins separate the party caucuses. Both major political parties sought to avoid being painted as obstructive or belligerent, though periodic outbursts of partisan sniping did occur (this is politics, after all!). Now, however, legislators are safely home in their districts planning their upcoming re-election campaigns.

Both Democrats and Republicans have completed their endorsing conventions, with credible

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Bonding For A Better Minnesota

Marnie Moore

After a promising start, a roller-coaster ride of contentious conference committee meetings and final negotiations behind the locked door of the governor's office, the 2006 session brought forward a bonding bill of noteworthy proportions. In total, the bill allocated nearly one billion dollars for bonding projects from agricultural labs to zoological gardens.

Pressure was on from the beginning to guarantee passage of this important bill, based in part on the failure to pass a bonding bill during the 2004 session (the bill was eventually passed in 2005). Both Republicans and Democrats were well aware that a failed bonding bill could be detrimental to legislators during an election year, as local projects are critical to constituent contentment. Through compromise, spirited debate, a little bit of stubbornness and sheer determination, key House and Senate members worked with each other and the governor's office to hammer out an acceptable deal. In the end, the bonding bill passed

with a vote of 111-21 in the House and 60-6 in the Senate. Although not everyone got what they wanted this year, enough projects were funded to deem the bill an overall success.

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Bonding At A Glance

If you love the arts, you can look forward to a refurbished Schubert Theatre in Minneapolis, thanks to \$11 million provided in bonding funds. In addition, the Ordway Center in St. Paul received \$7.5 million, \$5 million was allocated to the MacPhail Center for Music in Minneapolis and \$1.05 million

to the Perpich Center for Arts Education in Golden Valley.

If you love the outdoors, \$100.7 million was provided to preserve, enhance and further the enjoyment of Minnesota's natural resources.

If you love animals, Como Zoo in St. Paul will receive \$9 million, the Minnesota Zoo in Apple Valley \$7.5 million, the Lake Superior Zoo \$600,000 and the Little Falls Zoo \$400,000.

If you hate traffic, \$60 million is allocated for the Northstar commuter rail line running from Big Lake to Minneapolis.

If you support education, over 30% of the total bonding bill is allocated for higher education, providing both the Minnesota State Colleges and Universities (MnSCU) system and the University of Minnesota with funds for new buildings, renovations and asset preservation. ■

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involves blight mitigation or environmental remediation requires a public hearing.

Another provision of the law that forces local government accountability is the section addressing attorney's fees. Previously, property owners who sued a governmental agency for damages based on appraisals that were well below fair market value often paid a substantial portion of any money received in attorney's fees. In the final version of the legislation, attorney fees are specifically not available as a remedy to the property owner if the value of the taken property is less than \$25,000. For properties valued above \$25,000, if the final award is less than 20 percent above the government's most recent appraisal, a court is prohibited from granting

attorney's fees to the property owner. If the final award is between 20 and 40 percent greater, the court is allowed to award attorney's fees; if the final award is more than 40 percent greater, the court must award attorney's fees.

This legislation represents a significant shift in eminent domain law in Minnesota. It was clearly a hot political topic in 2006, and many legislators wanted to utilize the issue on the campaign trail. Just how limiting this law will be to urban areas, where redevelopment plays a large role, is yet to be seen. Most likely, local governments will be back at the table in the next few years asking for changes to the new law or special legislation to address specific projects. ■

Stadiums

Julie Perrus

The long awaited and much anticipated end to years of stadium debates at the Capitol has seemingly come to an end, at least for the University of Minnesota and the Minnesota Twins.

Gophers Come Home

After over two decades of Gopher football at the Metrodome, the University plans to return the team to campus in the fall of 2009. The football stadium will also be home to the marching band, intramural sports, graduations and other special events.

The open-air stadium will seat 50,000 and will cost the state \$10.25 million per year for a maximum of 25 years. In return, the University will transfer to the state 2,840 acres of university-owned land at UMore Park near Rosemount, Minnesota. Before the state money is granted, the University must ensure that \$110.75 million in non-state revenues is raised for stadium construction. \$35 million of that total has already been committed by TCF Financial Corp., in exchange for stadium naming rights.

Critics point to the lack of dedicated funding for the stadium. The state contribution will be taken from the general fund, which means it will compete with other programs for limited resources. In addition, the land transfer at UMore Park includes a prohibition on development, which reduces its value and gives the University a perpetual right to continue using the land. The bill passed in spite of these concerns, and Gopher football will be back home soon.

The Days Of The Metrodome Are Numbered

The Minnesota Twins finally succeeded in getting a stadium bill passed in the waning hours of session. After nearly two hours of debate early Sunday morning, the Senate approved the conference committee report that allows the Twins to build a new baseball stadium in Hennepin County without a referendum on a proposed sales tax. Opponents were vocal in their criticism of the bill, stating that

...the University must ensure that \$110.75 million in non-state revenues is raised for stadium construction.

Hennepin County residents deserve a right to vote on the 0.15 percent local option sales tax Hennepin County plans to impose to pay for its share of the stadium financing.

The total cost of the 42,000-seat ballpark that will be constructed on the western edge of downtown Minneapolis is \$522 million. This cost includes new infrastructure needed to support the stadium. The Twins will contribute \$130 million and will receive a sales tax exemption for construction materials, which will contribute an additional \$14 million. The Hennepin County sales tax will provide for nearly 80 percent of the cost of the new ballpark, with revenues of approximately \$475 million over 30 years.

The Twins plan to open the 2010 season at the new stadium, which remains to be named.

The Minnesota Vikings almost succeeded in riding the Twins' coattails to a new stadium this year, as well. The Vikings' proposal, which includes a stadium estimated at \$675 million, is planned as a part of a larger commercial complex in Blaine, Minnesota, called Northern Lights. The Vikings proposed a 0.75 local option sales tax for the citizens of Anoka County to help fund the deal. Even with the tax, a funding gap of \$115 million existed in the proposal, caused in part by the need for additional road improvements to access the stadium. In order to ensure passage of the Twins bill, legislators removed the Vikings proposal in the final days of session.

The Vikings are provided with some comfort language in the final ballpark bill. The Vikings are tasked with negotiating a workable proposal with Anoka County and asked to report to the legislature in 2007. Additionally, the Vikings will be given \$40 million dollars from the sale of the Metrodome, which is expected to bring a sale price of \$45 million. Some legislators are angered by the placeholder language, which leaves the door open for a continued stadium debate next year. ■

Health Care Update

Marnie Moore

Partially due to the overwhelming focus on stadiums and most likely due to lack of money, health care was decidedly a back burner issue during the 2006 session. In addition, the session lacked the passage of an omnibus health and human services bill that serves as the vehicle for many smaller, diverse health care bills during a budget year. Finally, the always divisive abortion issue played a role as session dwindled to a close with legislators in the Senate wary of bringing to the floor any bills that could be a vehicle for pro-life amendments.

Early on, the legislature acted swiftly to pass a bill granting an exception to Minnesota's hospital moratorium allowing the partnership of North Memorial Health Care and Fairview Health Services to construct a 300-bed facility in Maple Grove. The hospital will be located near the intersection of the new Highway 610 extension and Interstate 94. Construction is anticipated to be completed by December 2009.

Several legislators took this opportunity to question the established hospital moratorium selection and approval process used to determine if a new hospital should be constructed or if additional beds should be granted to an existing facility. Under the system in place at the time the Maple Grove hospital debate occurred, the Minnesota Department of Health reviewed proposals solely to determine if they were in the public's interest, with the actual decision-making left to the legislature. Some argued that the Department should play a more active role.

This debate came to a temporary standstill only to be resurrected during the final hours. An amendment added to an ambulance-purchasing bill established a new two-pronged approach. If an established hospital seeks to increase its number of licensed beds, or an organization seeks to obtain a hospital license and no other organizations are competing with the entity for a hospital license in the same or similar service area, the system remains status quo with the addition of a mandatory public hearing. If, however, two or more entities seek to obtain a hospital license in competition with each other, they must go through an alternative approval process.

Under this new process, the Commissioner of Health must first conduct a comprehensive-needs assessment to determine if a new hospital is justified in the proposed service area. If need is demonstrated, the Commissioner then selects the applicant best able

to provide services to the area based on established criteria. This selection is made following an intensive review and public hearing process. The Department's decision is then reported to the legislature for it to act upon. An earlier version of the bill made this selection binding; the final version leaves this open to discretion.

In addition, the bill also requires the Commissioner of Health to conduct a "Study of Medical Facility Construction" to examine the need for a new process for approving the construction of medical facilities or the addition of services at existing medical facilities. The study must be reported to the legislature by February 15, 2007.

Other Successful Health Policy Initiatives:

- Legislation requiring health plan companies, hospitals and outpatient surgical centers to provide "price transparency" information to consumers.
- A health care "cost-containment" bill containing measures encouraging and promoting initiatives such as electronic billing, the posting of health care information on state websites and the use of alternative health care. The bill also calls for several health-related studies to be conducted by the Departments of Health and Human Services, respectively, and includes provisions related to licensing of health care professions.

Some Failed Health Policy Initiatives:

- A "school pool" proposal that would have created a mandatory health insurance pool for Minnesota school district employees.
- The "Wal-Mart bill" that would have required employers with more than 10,000 employees to spend at least 8% of total wages paid annually on health care. Employers spending less would have been required to pay the difference between their contribution and the 8% standard to the state's Health Care Access Fund.
- A proposed constitutional amendment that would have allowed voters to adopt a provision stating that every Minnesota resident has the right to affordable health care. ■

Happy Trails To You: Legislators Announce Their Retirements

Marnie Moore

As the 2006 session drew to an end on Sunday, May 21, both the House and the Senate continued their tradition of designating chamber floor time for heartfelt retirement speeches from members not running for re-election. Although there were no real surprises this year, there were a fairly large number of speeches with seventeen House and eight Senate members saying their good-byes.

Several House members bid farewell to the House chambers with the hopes of making a reappearance next year on the Senate side, including: Rep. Katie Sieben (DFL-Newport) running for the seat presently held by the retiring Senator Sharon Marko (DFL-Cottage Grove); Rep. Ray Vandever (R-Forest Lake) hoping to obtain the seat that Senator Michele Bachmann (R-Stillwater) is abdicating in her bid for Congress; and Rep. Dan Larson (DFL-Bloomington) running for the seat left open by the retirement of Senator Jane Ranum (DFL-Minneapolis).

In addition, many of their peers are leaving the legislature to seek higher office, among them Senator Michele Bachmann, the Republican-endorsed candidate running for Congress in the 6th District, and Rep. Keith Ellison (DFL-Minneapolis), the endorsed DFL candidate in the 5th Congressional District. Representatives Jeff Johnson (R-Plymouth) and Matt Entenza (DFL- St. Paul) will spend the summer and fall battling for the title of Minnesota Attorney General. Senator Becky Lourey (DFL- Kerrick) resigned to pursue the Governor's office.

For some, other chambers beckon. Rep. Ron Abrams (R-Minnetonka) received an appointment to serve as Hennepin County Judge in the 4th Judicial District. Rep. Scott Newman (R-Hutchinson) plans to take advantage of the U.S. Supreme Court's ruling allowing partisan endorsements in judicial elections by seeking Republican party endorsement in connection with his campaign for judge in the 1st Judicial District.

For others, all political aspirations have run their course and retirement simply means a return to "business as usual" or perhaps more quality time spent with the grandkids. We wish them all good luck in their future pursuits.

Announced House Retirees:

Doug Meslow, Scott Newman, Dan Larson, Katie Sieben, Fran Bradley, Barb Goodwin, Jeff Johnson, Ruth Johnson, Char Samuelson, Keith Ellison, Ray Vandever, Jerry Dempsey, Andy Westerberg, Barb Sykora, Jim Knobloch, Ron Abrams, Matt Entenza, Dan Dorman, John Dorn and Irv Anderson.

Announced Senate Retirees:

Michele Bachmann, John Hottinger, Sheila Kiscaden, Becky Lourey, Sharon Marko, Jane Ranum, Wes Skoglund and Bob Kierlin. ■

IN BRIEF

Julie Perrus

Legislative drafting was prolific in 2006, with 3,139 new bills introduced by the House and Senate, the focus of the legislators at the Capitol was more narrow. Some bills became amendments to larger bills and others were discarded immediately, but in the end only 114 bills passed both bodies to be sent to the Governor. Here is a small sample of bills that made it and bills that didn't:

- **PASSED** The Clean Water Legacy Act, which provides a process for cleaning waters that are found to be in violation of the federal Clean Water Act, as well as clarifying the procedural requirements for permitting discharges into the waters of the state. SF 762
- **FAILED** No Omnibus Transportation bill passed in 2006. A conference committee met several times, but House and Senate members could not reconcile the contentious items such as a half-cent sales tax increase in the seven-county metro area, policy changes regarding seatbelts and child booster seats and \$2.5 billion in bonding proposals to fund transportation projects that would depend on the passage of a constitutional amendment. SF 3764/ HF 3761
- **PASSED** The final bill passed this session was the Supplemental Appropriations bill. Provisions in the bill include funding for sex offender treatment and tracking, programs for veterans, funding for biomedical research at the University of Minnesota, funding for flu pandemic preparedness and gang strike force funding. The bill did not include any supplemental aid for education. HF 4162.
- **PASSED** A limited Omnibus Tax bill passed this year. While the bill provided a fix to the alternative minimum tax, incentives for alternative energy and an active duty military tax credit, it failed to provide any permanent property tax relief. HF 785
- **PASSED** A minor under the age of 17 may now face a \$25 civil penalty if he or she knowingly rents or purchases a video game rated "Mature." SF 785
- **PASSED** The Honeycrisp Apple is now the state fruit. SF 2302

candidates assured for all statewide positions. The Independence Party will hold its state convention on June 24, 2006. But just to keep it interesting, critical primaries apparently will be needed to determine the DFL candidate for governor and 5th District congressperson, respectively. Attorney general Mike Hatch will be challenged by state senator Becky Lourey for governor; state representative Keith Ellison is being challenged by Paul Ostrow, Ember Reichgott Junge and Mike Erlandson. These will be seriously contested primaries, consuming campaign time and resources, while the Republican challenger (at least in the governor's race), will be able to focus on November's election.

But right now, the sun is shining, the grass is green, flowers are blooming and someplace in Minnesota a baseball game is being played. Enjoy your summer!!

If you would like to have your name added to the mailing list for future issues of *CapitolWatch*, please let us know. 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



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