

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 440 (Montgomery County Delegation)
Environment and Transportation

Burtonsville Crossing - Acquisition by Montgomery County
MC 13-21

This bill requires Montgomery County to initiate proceedings to acquire Burtonsville Crossing, a shopping center in Montgomery County, by December 31, 2021. The property is located at 15701 Old Columbia Pike in Burtonsville. Montgomery County must acquire the property for a public purpose as quickly as is practicable, by purchase or condemnation. **The bill takes effect July 1, 2021.**

Fiscal Summary

State Effect: None.

Local Effect: Montgomery County expenditures increase by a significant amount in FY 2022. The current property tax assessment for Burtonsville Crossing totals \$7 million. Revenues are not directly affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Potential meaningful if the property is targeted for redevelopment and leads to additional economic activity for small businesses in the Burtonsville area.

Analysis

Current Law:

Eminent Domain

The power to take, or condemn, private property for public use is one of the inherent powers of state government and, through the State, its political subdivisions. Courts have long held that this power, known as “eminent domain,” is derived from the sovereignty of the state. Both the federal and State constitutions limit the condemnation authority. Both constitutions establish two requirements for taking property through the power of eminent domain: (1) the property taken must be for a “public use”; and (2) the party whose property is taken must receive “just compensation.” In either event, the party whose property is being taken is generally entitled to a judicial proceeding prior to the taking of the property. However, the Maryland Constitution does authorize “quick-take” condemnations in limited circumstances prior to a court proceeding.

Other entities have been given express statutory authority by the State to exercise condemnation powers under specified circumstances, including the major subdivisions of the State, municipalities, and specified utilities such as gas, oil pipeline, railroad, telephone and telegraph, and water companies.

Public Use

There is no clear cut rule to determine whether a particular use of property taken through eminent domain is a “public use,” and Maryland courts have broadly interpreted the term. The Court of Appeals has recognized takings that encompass a “public benefit” or a “public purpose.” Maryland courts have given great deference to a legislative determination as to whether property should be taken for a particular public purpose.

The U.S. Supreme Court ruled in *Kelo v. City of New London*, 125 S. Ct. 2655 (2005), that New London, Connecticut’s use of its condemnation authority under a state law to require several homeowners in an economically depressed area to vacate their properties to make way for mixed use development did not violate the U.S. Constitution. In essence, the *Kelo* decision left the determination to state law as to whether eminent domain may be used for economic development purposes. In *Prince George’s County v. Collington*, 275 Md. 171 (1975), the Court of Appeals authorized the county to use its eminent domain authority to take private property to be used for economic development purposes, even though the property was not blighted. The court in *Collington* enunciated the following rule: “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.” *Id.* at 191.

Local Fiscal Effect: Montgomery County expenditures increase by a significant amount in fiscal 2022 to acquire Burtonsville Crossing. Potential costs include the acquisition price, appraisals, title work, surveys, environmental studies, structural studies, and settlement fees. While the actual cost to acquire the property is not known at this time, the State Department of Assessments and Taxation indicates that the current assessment for the property totals \$7.0 million. In addition, assessment records indicate that the property was last transferred in 2003 at a price of \$26.5 million. Further, Montgomery County advises that a portion of fully leased property across the street from Burtonsville Crossing, which is largely vacant, sold for an estimated \$60.0 million within the last three years.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Montgomery County; Department of General Services; State Department of Assessments and Taxation; Department of Legislative Services

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rh/hlb

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