

Honorable Phillip H. Goodman  
Mayor of Baltimore City

(continued)

In the case of Flacconio v. City of Baltimore, 194 Md. 275 (1949), the Mayor and City Council of Baltimore sought the condemnation of the appellant's property for an addition to the Star Spangled Banner Flag House. The Court found the condemnation to be for a public use, and in so holding said:

"In the case of Riden v. Phila. B. & W. R.R. Co., (supra), the Court, discussing the power of eminent domain, the prohibition against taking property for private use, and the definition of what is a public use, reiterated the Maryland rule that 'public use' means use by the public, and said that the determination of whether, in a particular instance, the taking is for public use is a judicial question."

It, of course, becomes necessary to determine what is a public use and whether or not the use contemplated herein is a public or private one. Authorities around the country differ as to what is a public use, and in certain states "public use" has been defined as any public improvement, but of course, whether a particular use for which private property is sought is in fact public is ultimately for the determination of the Court. In Maryland, the Court of Appeals in the Riden case cited above defines the meaning of "public use" as a use by the public. The Court said further, at page 341:

" . . . there are cases where it would obviously be for the public benefit if properties owned by certain individuals were in the hands of others so that dilapidated buildings could be replaced by better ones, and unsightly places beautified, for such improvements would give an aspect of beauty, thrift and comfort to the community, and thereby invite settlement, increase the value of land, and gratify the public taste; but certainly such a circumstance alone would not warrant expropriation of the properties from the owners . . . So, if the term 'public use' connotes public improvement, it is seriously questioned whether a sufficient limitation is set upon the power of eminent domain to guard the people from the possibility of an invasion of their constitutional right to acquire and possess property."

In view of the above, it would appear that the City cannot condemn properties which appear to be deteriorating but are not located within any Renewal Area designated by ordinance as hereinafter