Case No. A11-1273

State of Minnesota

In Supreme Court

COUNTY OF DAKOTA,

Respondent,

v.

GEORGE W. CAMERON, IV,

Appellant.

An appeal from the Findings of Fact and Conclusions of Law and
Order and Judgment on February 23, 2011 and
Order and Amended Judgment on May 23, 2011 in Case No. 19HA-CV-09-3756 in
Dakota County District Court, Judge Richard G. Spicer
And affirmed by the Court of Appeals on March 26, 2012

APPELLANT'S BRIEF

Dan Biersdorf, I.D. # 0008187
E. Kelly Keady, I.D. #0233729
BIERSDORF & ASSOCIATES, P.A.
33 South Sixth Street, Suite 4100
Minneapolis, Minnesota 55402
(612) 339-7242
Attorneys for Appellant

Michael R. Ring, I.D. # 0091820
Dakota County Attorney's Office
Dakota County Judicial Center
1590 Highway 55
Hastings, MN 55033
(651) 438-4445
Attorney for Respondent

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STATEMENT OF ISSUES

I. The trial court and court of appeals have failed to interpret the plain language of the Minimum Compensation Statute much less liberally construe it in the condemnee's favor or consistent with the purpose of the statute.

The trial court and court of appeal's applications of the Minimum Compensation ignore the statute's plain language. Moreover the resulting opinions are inconsistent with the purpose of the statute to relocate displaced business owners.

<u>Moorhead Econ. Dev. Auth. v. Anda</u>, 789 N.W.2d 860, 876 (Minn. 2010).

<u>Peterson v. Haule</u>, 304 Minn. 160, 170, 230 N.W.2d 51, 57 (1975).

II. Equivalency is the standard for evaluating the comparable attribute to select comparable properties under the Minimum Compensation Statute.

The trial court found that the comparable property can be a lesser property than that the displaced property owner cannot purchase. The court of appeals agreed as long as the properties were similar.

There is no caselaw interpreting this statute.

III. Under the Minimum Compensation Statute a comparable property must be a specific and existing property.

The trial court found that the comparable property under the statute can be a hypothetical property that the displaced property owner cannot purchase. The court of appeals agreed.

There is no caselaw interpreting this statute.

IV. In order to qualify as a comparable property under the Minimum Compensation Statute, the property must be available on the date of taking in order that the displaced owner can actually purchase the property.

The trial court found that the comparable property under the statute can be a hypothetical property that the displaced property owner cannot purchase. The court of appeals agreed.

There is no caselaw interpreting this statute.

V. The Robert Trail Property cannot be a comparable property under the Minimum Compensation Statute because it is not located in the community.

Although differing in their definitions of community, both the trial court and the court of appeals agreed that the Robert Trail Property was in the community under the MCS.

There is no caselaw interpreting this statute.

VI. New construction is properly considered as a comparable property under the Minimum Compensation Statute.

In finding that the Robert Trail Property was comparable, neither court reached this issue.

There is no caselaw interpreting the term "in the community" for the statute.

VII. The trial court erred in failing to award Cameron its hourly fees when the affidavits presented in court by his attorneys demonstrated that the fees considered are reasonable in light of what is regularly charged in the community and the County offered nothing to rebut this *prima facie* showing.

The trial court disagreed and granted fees on a one-third contingent fee basis based upon the amount of recovery over and above what the County had previously paid. The court of appeals affirmed.

State v. Clark, 755 N.W.2d 241, 250 (Minn. 2008).

Kittler & Henderson v. Sheehan Properties, Inc., 295 Minn. 232, 235, 203 N.W.2d 835, 838 (1973).

STATEMENT OF THE CASE

This is an eminent domain case where Appellant is a property owner who seeks compensation from the County of Dakota under the Minimum Compensation Statute (Minn. Stat. §117.187 (2010)). The Honorable Richard M. Spicer, Dakota County District Court, First Judicial District awarded compensation under the Minimum Compensation Statute and attorneys fees. Appellant appealed both the award under the Minimum Compensation Statute as well as the awarded attorney's fees. The court of appeals affirmed. This Court granted Appellant's petition for review.

SUMMARY OF FACTS

Respondent County of Dakota ("County") acquired real property owned by Appellant George W. Cameron, IV ("Cameron") at 6566 Concord Boulevard East ("Subject Property") on July 25, 2008 for the purposes of improving Concord Boulevard. A hearing was held to determine just compensation for Cameron before a panel of commissioners. In their decision to determine just compensation for Cameron, the Minimum Compensation Statute was not considered.[1]

Robert Strachota, an MAI appraiser with Shenehon Company, was hired by Cameron to complete a minimum compensation analysis. Strachota was one of the individuals asked by the Legislature to give specific input with regards to the Minimum Compensation statute.[2] He provided "language and methodologies to

[1] See Trial Transcript at page 242 and Trial Exhibit #19.
[2] See Trial Transcript at page 24, l. 18-21.

protect small businesses in the event of a public taking."[3] And further that the intent of the statute is "to keep the business alive so that it can continue to function."[4] In this case, Strachota completed a minimum compensation report for Cameron which was admitted into evidence as Trial Exhibit 3.[5]

Dan Wilson ("Wilson"), who is employed 98% of the time by condemning authorities,[6] was hired by the County to complete a minimum compensation analysis ("Wilson Report") prior to the taking of the subject property to assist the County in determining the amount of just compensation that it would pay Cameron for the taking of the subject property.[7] The Wilson Report was a draft report, however a final report would not have contained any changes that would have materially altered the conclusions.[8] That Wilson Report was entered as evidence in this case as Trial Exhibit 24.

The Wilson Report identified three properties for his minimum compensation analysis.[9] Wilson concluded that, of those three properties, only the property located on Robert Trail ("Robert Trail Property") was considered a comparable property for purposes of completing his minimum compensation analysis to conform to the requirements of the Minimum Compensation Statute.[10] Wilson concluded that there were no other existing properties that would qualify

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[3] See Trial Transcript at page 24, l. 22-24.
[4] See Trial Transcript at page 42, l. 2-5, see also page 25, l. 2-11..
[5] See Trial Transcript at page 26.
[6] See Trial Transcript at page 279, 1-5.
[7] See Trial Transcript at page 260, l. 2-5.
[8] See Trial Transcript at page 275, l. 21-24.
[9] See Trial Exhibit at Exhibit 24.
[10] Id.; see also Trial Transcript at page 292, l. 19-22.

as a comparable property in the community for purposes of the Minimum Compensation Statute.[11]

The County's George Peppard admitted that the Robert Trail Property was not available on the date of taking and further that when the subject property was acquired, Cameron could not have gone out and purchased the Robert Trail Property.[12]

Cameron hired a broker to assist and identify an existing property that he could acquire in order to move his business after the subject property was taken by the County.[13] Cameron was unable to identify any improved property that would allow him to move his business and continue it in the way it was operated at the subject property prior to the taking.[14]

Wilson concluded in his minimum compensation report that his minimum compensation analysis produced an amount of compensation less than the traditional eminent domain just compensation analysis because the Robert Trail Property could have been acquired for less than the amount determined by Plaintiff as just compensation under the traditional before and after analysis.[15]

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[11] See Trial Exhibit at Exhibit 24., see also Trial Transcript at page 292, l. 19-25, page 293, l. 1-12.
[12] See Trial Transcript at page 224, l. 8-15.
[13] See Trial Transcript at page 206, l. 1-6, page 162, l. 11-14.
[14] See Trial Transcript at page 201, l. 6-8.
[15] See Trial Exhibit at Exhibit 24; see also Trial Transcript at page 275, l. 5-10.

Wilson had no opinion about the amount of minimum compensation damages due to Cameron if it was determined that the Robert Trail Property did not qualify as a comparable property under the Minimum Compensation Statute.[16]

Wilson also admitted that he would exclude from consideration as a comparable property under the Minimum Compensation Statute "any property that had a main floor square footage less than 2,200 square feet"[17] (Cameron had approximately 6,200 square feet of floor area on two levels[18]).

In his report and in his testimony, Wilson believed the Robert Trail Property had a main floor square footage of over 3,000 square feet.[19] Wilson did not measure the square footage of the Robert Trail Property but relied on the listing sheet.[20] During cross-examination, Wilson further admitted that he was confused concerning the square footage the Robert Trail Property[21] and "maybe, I made a mistake".[22] Upon review of the appraisal report introduced by the County, Wilson admitted that main floor square footage of the Robert Trail Property was only 1,560 square feet[23] which is obviously less than 2,200 square feet.

Subsequent to the date of taking for the subject property, Cameron negotiated with the City of Inver Grove Heights to purchase a parcel of land known as Cameron Park in order to construct a new building for his liquor

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[16] See Trial Transcript at page 313, l. 20-25.
[17] See Trial Transcript at page 314, l. 11-16.
[18] See Trial Exhibit at Exhibit 3 at APP-355 (5th bullet point item).
[19] See Trial Exhibit at Exhibit 24; see Trial Transcript at page 315, l. 13-22.
[20] See Trial Transcript at page 314, l. 25, page 315, l. 1.
[21] See Trial Transcript at page 315, l. 2-25.
[22] See Trial Transcript at page 316, l. 1.
[23] See Trial Transcript at page 316, l. 17-25, page 317, page 318, l. 1-13.

warehouse business.[24] The Cameron Park property is located on the opposite side of Concord Boulevard and just slightly north of the subject property's location. The negotiated purchase price for the Cameron Park property was $272,000.[25] While the closing for that purchase agreement had not yet occurred at the time of trial (because the final development agreement has not been completed by the City), Cameron was committed to completing the transaction because all contingencies which would allow Cameron to cancel the contract have expired.[26]

The County, through its Right of Way Agent, Gary Peppard, encouraged Cameron to acquire the Cameron Park property and relocate his business to the site because Peppard considered it an excellent place to move the business.[27]

In completing his minimum compensation analysis, Wilson did not consider the alternative of acquiring a vacant land parcel and constructing a replacement building for the one that the County acquired as part of the subject property because he did not believe that costs for construction are to be considered in determining minimum compensation under the Minimum Compensation Statute.[28]

In 2008, Wilson wrote an instructional paper[29] to assist his teaching of public agency personnel about the Minimum Compensation Statute which

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[24] See Trial Exhibit at Exhibits 8 & 9; see also Trial Transcript at pages 163-180.
[25] See Trial Exhibit at Exhibit 9.
[26] See Trial Transcript at pages 168, 169 l. 1-14.
[27] See Trial Transcript at page 227, l. 11-25, page 228, l. 1.
[28] See Trial Transcript at page 289, l. 6-10.
[29] See APP-1.

included a worksheet[30] (APP-10) wherein the formula for determining minimum compensation included adding amounts for costs to construct additions or make modifications to the purchase price of an existing improved property acquired to accommodate the business which would relocate to it.[31]

Strachota identified two existing improved properties in his minimum compensation report that he discussed with regards to the requirements of the Minimum Compensation Statute.[32] He determined that neither property qualified for designation as a comparable property under that statute.[33]

The first existing improved property analyzed by Strachota was rejected, among other reasons, because it had only about 2,000 square feet of floor area available while the remaining 8,000 square feet of floor area was occupied by tenants under long-term leases.[34] The building acquired from Cameron had approximately 6,200 square feet of floor area on two levels (a main floor and basement).[35] Cameron used the entire floor area in the acquired building to conduct his liquor warehouse business operation.[36] In fact at trial, the County agreed that Cameron used the entire subject property.[37]

Given this, Strachota opined that a comparable property for Cameron under the Minimum Compensation Statute requires at least 6,200 square feet in order for

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[30] See APP-10.
[31] See Trial Exhibit at Exhibit 23; see also Trial Transcript at page 289, l. 11-25, page 290, l. 1-20.
[32] See Trial Exhibit at Exhibit 3 at APP-358, 359.
[33] Id.; see also Trial Transcript at page 72, l. 24-25, page 73, l. 1-8
[34] See Trial Exhibit at Exhibit 3 at APP-358.
[35] See Trial Exhibit at Exhibit 3 at APP-355 (5th bullet point item).
[36] See Trial Transcript at page 198, l. 7-17.
[37] See Trial Transcript at page 228, l. 3-8.

Cameron to continue his business operation.[38] Strachota further opined that a building with less than 6,200 square feet of floor area will not be a comparable property for Cameron under the Minimum Compensation Statute.[39]

Strachota also analyzed the Robert Trail Property as a potential comparable property for Minimum Compensation Statute purposes although he was concerned that this property should not be considered at all because it was sold prior to the date of taking of the Subject Property.[40] Strachota rejected the Robert Trail Property as a comparable property because it was too small to house Cameron's business and it was located over seven miles from the Subject Property, significantly outside the three-mile trade area applicable for the business.[41]

Wilson, Strachota, and Callahan (who was the condemnation commissioner called by the County) all believed that the community for the purposes of Cameron's business would be the trade area for that business.[42]

It was undisputed at trial that the community for Cameron's business is the area on the west side of the river within three miles of the Subject Property's location.[43]

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[38] See Trial Transcript at page 75, l. 21-23, see also Trial Exhibit at Exhibit 3 at APP-355 (5th bullet point item).
[39] Id.
[40] See Trial Transcript at pages 68-72.
[41] See Trial Transcript at pages 70-72.
[42] See Trial Transcript at page 296, l.1-8 and page 320, l. 5-11 for Wilson; pages 40, 41, and 46 for Strachota and page 243, l. 17-25, page 244, l. 1-2 for Callahan.
[43] See Trial Transcript at page 195, l. 13, page 196, l. 20-21, page 196, l. 20-21 pages 40-41 and 46-47; see also, Trial Transcript at page 296, l.1-8 and page 320, l. 5-11; and, page 244, l. 1-2.

It was undisputed at trial that the minimum size for an existing comparable improved property for comparable property purposes under the Minimum Compensation Statute must be at least 6,200 square feet in size.[44]

Given that the Robert Trail Property is not a comparable property for the purposes of a Minimum Compensation Statute damage analysis because:

- it is significantly smaller than the building on the Subject Property (and does not even meet Wilson's own minimum requirement of 2200 square feet for the main floor);
- is well outside of the community in which the Subject Property is located; and,
- was not even available for purchase at the time of taking;

it was undisputed at trial that there are no existing improved structures that qualify as comparable properties in the community for purposes of determining compensation under the Minimum Compensation Statute. Given this, in order to relocate his warehouse liquor business, Cameron found it is necessary to consider the construction of a new building on a vacant property in the community.

The building proposed for construction by Strachota is identical in size and configuration to the building on the Subject Property and is to be built using the same building materials that existed for the building on the Subject Property.[45]

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[44] See Trial Transcript at page 75, l. 21-23, see also Trial Exhibit at Exhibit 3 at APP-355 (5th bullet point item).; see also, Trial Transcript at page 228, l. 3-8; and Trial Transcript at page 228, l. 3-8.

[45] See Trial Exhibit at Exhibit 3 at APP-368, 369, 374, 376; see also, Trial Transcript at pages 90-92.

The undisputed evidence at trial showed that the use of contractor estimates is appropriate to determine the cost to construct the replacement building.[46] This methodology was also utilized by Callahan anytime that he sought cost estimates for construction projects requiring his involvement.[47] Strachota followed standard procedures in determining the costs associated for all components of construction for the replacement property.[48] He properly included the purchase price that Cameron will pay to the City for Cameron Park as part of the total purchase price for the comparable property.[49]

The amount of money necessary for Cameron to purchase the comparable property identified by Strachota in this situation is $2,175,000.[50]

Cameron could not start construction of the new store at the time of trial because he did not have the funds available to do so.[51] Given the economic climate at that time, the number of entities that might be interested in providing financing for the project had diminished significantly.[52]

On February 23, 2011, the Trial Court entered its findings of fact and conclusions of law.[53]

On May 23, 2011, the Trial Court amended its findings to include an additional award for attorneys' fees but did not grant the full hourly fees requested by Cameron.[54]

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[46] See Trial Transcript at page 98, l. 2-4.
[47] See Trial Transcript at page 243, l. 13-15.
[48] See Trial Transcript at pages 97-98.
[49] See Trial Exhibit at Exhibit 3 at APP-374; see also, Trial Transcript at pages 89, 93, 94
[50] See Trial Exhibit at Exhibit 3 at APP-376; see also, Trial Transcript at page 113, l. 12-16.
[51] See Trial Transcript at page 188, l. 12-13.
[52] See Trial Transcript at page 187, l. 14-21.
[53] See Appendix at APP-197-204.

On July 14, 2011, Cameron noticed his appeal in this matter.[55]

On March 26, 2012, the Court of Appeals affirmed the Trial Court.[56]

On May 30, 2012, this Court granted Appellant's petition for review.

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[54] See Appendix at APP-309.
[55] See Appendix at APP-319.
[56] See Appendix at ADD-1.

ARGUMENT

I. THE MINIMUM COMPENSATION STATUTE MUST BE CONSTRUED PURSUANT TO THE STATUTE'S PLAIN LANGUAGE TO ACHIEVE A RESULT CONSISTENT WITH THE PURPOSE OF THE STATUTE.

The traditional method for determining damages, or just compensation, in eminent domain cases utilizes the before/after rule. Minn. Stat. § 117.117 subd. 1. In 2006, the Legislature enacted Minn. Stat. § 117.187 ("the Minimum Compensation Statute" or "MCS") which provides:

> When an owner must relocate, the amount of damages payable, at a minimum, must be sufficient for an owner to purchase a comparable property in the community and not less than the condemning authority's payment or deposit under section 117.042, to the extent that the damages will not be duplicated in the compensation otherwise awarded to the owner of the property. For the purposes of this section, "owner" is defined as the person or entity that holds fee title to the property.

The MCS provides for a new, alternative method for calculating the damages to be paid to the class of property owners who have property acquired by eminent domain and who must relocate their business or home. This case requires this Court to interpret the MCS.

A. The plain language of the Minimum Compensation Statute controls.

Statutory interpretation is a question of law. Auto Owners Ins. Co. v. Perry, 749 N.W.2d 324, 326 (Minn. 2008). The goal of statutory interpretation is

to ascertain the legislature's intent. Krueger v. Zeman Const. Co., 781 N.W.2d 858, 867 (Minn. 2010) (citing Minn. Stat. § 645.16).

1. Application of the Minnesota Compensation Statute must include the term "purchase".

When the language of a statute, so construed, is unambiguous, a court must apply its plain meaning. McCaleb v. Jackson, 307 Minn. 15, 17 n.2, 239 N.W.2d 187, 188 n.2 (1976). According to the rules of statutory construction, the plain meaning should be applied to words used in a statute unless those words have otherwise been provided with a specific meaning. Minn. Stat. § 645.08(1).

The word "purchase" is the first critical word contained within this statute. In the dictionary this word means to "acquire by obtaining money or its equivalent; buy."[57] Under the classic damage determination in eminent domain, damages are based upon a difference between a market value for the subject property prior to the acquisition less the market value of the remainder parcel on the date of taking, assuming that the taking has occurred and the project requiring the taking has been completed.

By using the word "purchase" in the Minimum Compensation Statute, there is the requirement to determine an amount of money to buy something (a comparable property), as opposed to an analysis to determine the value of something (the subject or a comparable property). This is the only way the plain

[57] Funk and Wagnell's Standard Dictionary

language ("purchase a comparable property") can be read in context of the rest of the MCS. Kollodge v. F. & L. Appliances, Inc., 248 Minn. 357, 360, 80 N.W.2d 62, 64 (1956)("[i]t is a cardinal rule of statutory construction that a particular provision of a statute cannot be read out of context but must be taken together with other related provisions to determine its meaning"). The Court of Appeals rejected the adoption of the plain meaning for "purchase" on grounds that are neither supported by law or the record in this case.

The Court of Appeals' rejection is provided in the following passage:

> Cameron's argument that the measure of damages must be based on the list or offer price of a comparable property in the community that is available for sale is based on the premise that we have rejected, namely, that the minimum compensation statute guarantees the purchase of a replacement property. Because the statute does not guarantee a purchase, we discern no reason to require that the damages calculation be based on the list or offer price of a comparable property that is available for purchase at the time of the taking.[58]

The "guarantee" analysis referenced by the Court of Appeals occurred in its discussion about defining "comparable property" where the Court of Appeals rejected Cameron's position relative to determining a "comparable property".

The Court of Appeals' first reason for rejecting Cameron's comparable property analysis was that Cameron asserts that "an owner can keep the fair market compensation ... and do nothing." This position is contrary to the record in this case. Cameron actually did execute a purchase agreement to purchase a

[58] ADD-15.

comparable property.[59] Furthermore, whether a displaced owner must acquire a replacement property to obtain minimum compensation is a non-issue in this case (Issue I, A, 3). From a practical standpoint though, an owner may not be financially able to make a purchase prior to receiving minimum compensation. Cameron has certainly pointed that out to the Court, but it takes a fictional leap of faith to translate that into the assertion being ascribed to Cameron by the Court of Appeals.

The Court of Appeals' second reason for rejecting the plain meaning for the word "purchase" also is based upon a fictional assertion ascribed to Cameron. The Court of Appeals states "we next observe that Cameron's proposed definition of "comparable property" is based on his assertion that the legislature intended to guarantee a displaced business owner's purchase of a replacement property that would allow continued operation of his or her business." Cameron has never asserted the concept the Legislature will guarantee the purchase of the replacement property. All Cameron has addressed is the Legislature's intent for the MCS: provide the money to purchase the property available for sale on the date of taking. Whether that property is ultimately available to purchase when the funds are finally paid, is another, open question – certainly one that is not before the Court in this case. This concept, though, has nothing to do with guaranteeing the

[59] That purchase was completed and a replacement property constructed after the trial.

purchase or closing. It simply establishes an objective benchmark for determining the universe of properties to be considered as comparables.[60]

The third reason that the Court stated to reject Cameron's "comparable property" analysis, and, by the Court's own extension, the plain meaning rule for the word "purchase", is that Cameron's position is unreasonable. As one reads the explanatory paragraph for this reason, though, we quickly understand that the Court is simply restating its "guarantee the purchase" reasoning that it explained earlier.

The foregoing analysis shows that the entire reasoning that the Court of Appeals used to reject the plain language doctrine for "purchase" emanates solely from assertions attributed to Cameron. Nowhere in the record has Cameron made these assertions. However, to eliminate any doubt about this, Cameron hereby affirmatively states that it does not ascribe to the assertions being attributed to him by the Court of Appeals. Thus, the analysis presented by Cameron should not be rejected for consideration of the application of the plain meaning rule to the word "purchase".

The application of the MCS in this case has shown that only Cameron interpreted the statute as requiring the determination of an amount of money to buy something (to purchase a comparable property). Using the plain meaning discussed above (and the application pursuant to the specific terms such as

[60] It may be that the available universe for comparables is determined as of the time of trial rather than the date of taking much like the differing valuation dates under a "slow" take versus a "quick" take. This position, though, has nothing to do with claiming that the statute requires any sort of guarantee, and this issue has not been presented for consideration to the Court in this case.

"comparable" and "community" discussed below at Issues III, IV and V), the MCS requires the determination of the cost to purchase a particular property in a three step process:

1. Identify the community which is applicable to the owner;
2. Identify existing improved properties in that community which satisfy the baseline equivalency requirement for the facts which are important in the comparability analysis; and,
3. Determine the cost necessary to purchase each property (including the costs of required modifications to allow continuation of the relocated business) that satisfies step 2 (the lowest of these costs will be the minimum compensation damage amount).[61]

When a comparable property is identified, the cost to purchase that property is all that matters under the statute. In this case, only Cameron's expert (Robert Strachota) performed his analysis by determining a purchase price.[62] On the other hand, the County's expert (Dan Wilson) performed an analysis that was focused on market value.[63] The Trial Court also focused on market value[64] and so did the Court of Appeals.[65]

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[61] If step 2 produces no improved properties, unimproved properties are identified instead, and step 3 is the lowest cost to purchase and construct a comparable property from those identified.
[62] Trial transcript, page 113, lines 12 to 16
[63] Trial transcript page 269, lines 19 to 21
[64] See APP- 197.
[65] See ADD-1.

However, the term "market value" is not contained in the MCS. Wilson, the Trial Court, and the Court of Appeals erroneously inserted this term into their application of the statute. The absence of the term "market value" in and of itself should evidence that the legislature was not utilizing market value as a basis for minimum compensation. After all, the term "market value" is used elsewhere in the statute, but is not included in the MCS. In addition, the Legislature also used the following language in the MCS to qualify that minimum compensation not only be sufficient *to purchase* a comparable property, but it cannot be "less than the condemning authority's payment or deposit under section 117.042…" The Minn. Stat. § 117.042 payment is the statutory required fair market appraisal value payment made into court for the taking. Consequently, not only is the term "market value" absent from the MCS, but by referencing Minn. Stat. § 117.042, the plain MCS language states that minimum compensation is something other than the market value.

2. There is no reimbursement requirement concerning "purchase" under the MCS.

The Court of Appeals places much emphasis on the guarantee of a purchase requirement (despite the fact it admitted that it was not ruling on whether there was such a requirement).[66] As stated above, Cameron makes no such assertion. Be that as it may, there is no reimbursement requirement concerning "purchase" under the MCS. First of all, there is no reimbursement language in the MCS, so

[66] See p. 8 and footnote 1 of the Court of Appeal's opinion.

there is no such requirement. Second, how would a displaced property owner pay for a replacement property if the condemnor underpaid for the property.

Finally, the Court of Appeals makes a huge leap in logic in stating that, if this is not a reimbursement statute, then "there is no need to limit the universe of comparable properties to only those properties that are available for purchase."[67] Yes, there is. Assume the owner wants to exercise the option of relocating and continuing the business but the lowest priced comparable is not available but a higher priced one is available. Using the Court of Appeals' rationale, the owner would not be paid sufficient funds to purchase the available comparable property to continue the business. Such a scenario completely frustrates the purpose of the statute to allow the displaced owner *to purchase* a comparable property. One cannot purchase something if it is not available.

3. The term "purchase" applies to new construction.

On May 26, 2010, the Trial Court held:

> if a comparable property does not exist, the statute does not foreclose upon the possibility that Cameron could be entitled to a new custom-built building to house his business. Again, the "comparable property" provision is merely a minimum measure of damages. Whether Cameron is entitled to something more than that is an issue for trial.[68]

At trial, the County claimed that new construction is not allowed under the minimum compensation statute. The Trial Court did not further address the issue

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[67] Id.

[68] APP- 176 memorandum attached to the Trial Court's May 26, 2010 order at Issue 3.

since it found the Robert Trail property to be comparable.[69] For the same reason, the Court of Appeals did not address the issue. This is addressed more fully as a remedy at Issue VI, below.

However, the remedy is consistent with the term "purchase" as used in the statute. A buyer must still purchase real property and a structure to go on it. In a somewhat analogous context, the sale of goods, "purchase" is defined as "taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property." U.C.C. § 1-201 (2002). Certainly, both purchasing real property and contracting to build a structure would fall under this definition. Whether the real estate contains an existing comparable structure, or the real estate can accommodate a structure to be built by contract, both must be *purchased.*

B. The Minimum Compensation Statute must be construed broadly to effectuate the intention of the legislature.

The Court of Appeals states that it agrees with the parties "that the minimum-compensation statute leaves many questions unanswered..."[70] and further that "[t]he parties have presented more than one reasonable interpretation of the minimum-compensation statute."[71] Given this, the Court of Appeals concluded "that the statute is ambiguous and that statutory interpretation is

[69] APP- 197, memorandum attached to this Trial Court's findings and conclusions.
[70] ADD-6.
[71] Id. A statute is ambiguous if it is reasonably susceptible to more than one interpretation. Tuma v. Commissioner of Economic Sec., 386 N.W.2d 702, 706 (Minn.1986).

appropriate."[72] However, the court limited its "interpretation to only those issues that are necessary to our review of the district court's damages award in this case: the definition of 'comparable property,' the definition of 'community,' and the damages-calculation method."[73]

If this Court disagrees with the plain language of the statute (as set forth above at Issue I, A) and finds that statutory construction by interpreting intent is necessary, this Court still must interpret the MCS to effectuate the intention of the legislature. Peterson v. Haule, 304 Minn. 160, 170, 230 N.W.2d 51, 57 (1975). To effectuate the intention of the legislature, courts construe technical words according to their technical meaning and other words according to their common and approved usage and the rules of grammar. Minn. Stat. § 645.08 (2009). Consequently, the mere use of the term "purchase", as discussed above, shows the intent of the legislature.

When the language of a statute is ambiguous[74], courts apply the rules of statutory construction which allow them to examine the legislative history surrounding the statute's enactment to assist in interpreting the statute. Minn. Stat. § 645.16 (1994). When engaging in statutory construction, courts must interpret remedial legislation, like the MCS, broadly to better effectuate its purpose. Harrison v. Schafer Constr. Co., 257 N.W.2d 336 (Minn.1977). On the other hand,

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[72] Id

[73] Id.

[74] The trial court and Court of Appeals concluded the entire statute is ambiguous. Cameron does not concede this point.

courts interpret exceptions contained within remedial legislation narrowly. Nordling v. Ford Motor Co., 231 Minn. 68, 77, 42 N.W.2d 576, 582 (1950).

In this case, no court has construed the MCS, much less to effectuate the intention of the legislature to "purchase" a property. In fact, the Court of Appeals' application of the statute is so narrow that it cannot possibly effectuate the intention of the legislature.[75]

The Court of Appeals' narrow application is founded on its inability to understand the legislative history of the MCS. The Court of Appeals states that it found nothing in the legislative history that Minnesota's 2006 eminent domain reform (which includes the MCS) is a result of the backlash from the United States Supreme Court's ruling in Kelo v. City of New London, Conn., 545 U.S. 469, 125 S.Ct. 2655 (2005). However, it was clearly stated in the March 9, 2006 Senate Judiciary Committee that Kelo "prompted people to take a look at eminent domain issues" and that it spurned the drafting of the eminent domain reform bills.[76] In addition, a review of treatises and articles taken from the time of these reforms evidences the Kelo backlash.[77] It is under this backdrop of the Kelo backlash that

[75] See Argument I, C below.
[76] See March 9, 2006 Senate Judiciary Committee hearing on S.F. 2750; see also the comments from Senator Bakk (one of the bill's sponsors) at the Senate floor debate on S.F. 2750 on March 26, 2006.
[77] The Johnson-Bakk bill was introduced in the wake of Kelo. Bill Clements, Dispute underscores eminent domain debate, Finance & Commerce, Feb. 9, 2006, http://finance-commerce.com/2006/02/dispute-underscores-eminent-domain-debate/; Ilya Somin, Assistant Professor of Law at George Mason University School of Law, characterized Minnesota's 2006 eminment domain reforms as "the state's 2006 post-Kelo reform law." Ilya Somin, The Limits of Backlash: Assessing the Political Response to Kelo, 93 Minn. L. Rev. 2100, 2142 (2009); "Forty-three states [including Minnesota] have enacted post- Kelo reform legislation to curb

legislative hearings were held where numerous small business owners testified how they lost their businesses as a result of eminent domain.[78] From this, the Minimum Compensation Statute was born.

The Court of Appeals' guarantee argument from above (Issue I, A) also draws upon its legislative research which in the court's words fails to "reveal a legislative intent to guarantee the purchase of replacement property".[79] However, again, this Court needs to look no further than the plain language of the statute which states: "[w]hen an owner must relocate, the amount of damages payable, at a minimum, **must be sufficient for an owner to purchase a comparable property** in the community..." In researching beyond the plain language in the MCS, the House Research Bill Summary also states that minimum compensation

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eminent domain." Ilya Somin, The Limits of Backlash: Assessing the Political Response to Kelo, 93 Minn. L. Rev. 2100, 2102 (2009; Ninety-one percent of Minnesotans are opposed to the Kelo decision. Ilya Somin, The Limits of Backlash: Assessing the Political Response to Kelo, 93 Minn. L. Rev. 2100, 2112 (2009; "The Kelo backlash probably resulted in more new state legislation than any other Supreme Court decision in history." Ilya Somin, The Limits of Backlash: Assessing the Political Response to Kelo, 93 Minn. L. Rev. 2100, 2102 (2009); see also Noreen E. Johnson, Blight and Its Discontents: Awarding Attorney's Fees to Property Owners in Redevelopment Actions, 93 Minn. L. Rev. 741, 743 (2008) ("This issue of eminent domain reform was never more relevant than it is today. Over the three years since Kelo, almost every state has either reformed or considered reforming its eminent domain code."); Noreen E. Johnson, Blight and Its Discontents: Awarding Attorney's Fees to Property Owners in Redevelopment Actions, 93 Minn. L. Rev. 741, 744 (2008) [internal citations omitted] ("Surveys suggest that eighty-one percent of the American population opposes the Kelo decision, and the overwhelming opposition to the decision crosses both race and political party lines. Thus, state legislatures are now actively considering ways to reform their eminent domain code to protect the rights of property owners, both substantively and procedurally."); Ilya Somin, The Limits of Backlash: Assessing the Political Response to Kelo, 93 Minn. L. Rev. 2100, 2120 (2009). ("As of early 2009, thirty-six state legislatures have enacted post-Kelo reforms.").

[78] See e.g. Transportation Finance Committee hearing on March 23, 2006.

[79] See ADD-9.

"**[r]equires compensation to allow the owner to purchase a comparable property** in the community".[80]

Given the language highlighted above and the legislative history, under plain meaning, much less broadly construing it to effectuate the intention of the legislature, it is clear that minimum compensation must allow property owners in Cameron's position (displaced by condemnation, but still wanting to continue their business) the ability to relocate by allowing the owner to purchase a comparable property. Cameron is not asserting that the Legislature is guaranteeing a purchase of property, but the Legislature is guaranteeing that the funds will be there if the displaced owner relocates.

The Court of Appeals discussion on page 9 of its opinion concerning Minn. Stat. § 117.186 (2010) also is misguided. Cameron agrees that the going concern statute (117.186) recognizes that relocation and continuation of a displaced business may not always be possible, which is exactly why that remedy is available. The MCS is for those displaced business owners who want to relocate and can relocate. The back to back statutes (117.186 & 117.187) are simply two alternatives, one for those relocating (117.187), the other for those who are not (117.186). The existence of one does not preclude the other.

[80] See ADD-30, 34, House Research Bill Summary at 11. Minimum Compensation.

C. The Court of Appeals' application of the Minimum Compensation Statute leads to absurd results.

When construing a statute, the proper application should produce a result that fulfills the intentions of the statute rather than one that is absurd or meaningless. Milbank Mut. Ins. Co. v. Kluver, 302 Minn. 310, 225 N.W.2d 230 (1974).

The Court of Appeals opines that a property need not be available to be comparable. However, if the purpose of the MCS is to "[r]equire[] compensation to allow the owner to purchase a comparable property in the community"[81], then how can one base the minimum compensation on properties that are unavailable. This issue is addressed more fully below in Issue II, but statutory construction exposes the Court of Appeals' absurd logic.

Whenever possible, no word, phrase, or sentence of a statute should be deemed superfluous, void, or insignificant. ILHC of Eagan, LLC v. County of Dakota, 693 N.W.2d 412 (2005). If the purpose of the MCS is to "[r]equire[] compensation to allow the owner to purchase a comparable property in the community", then the only way to achieve that purpose is to base the compensation on available properties. Otherwise, the term "purchase" is superfluous, void, and insignificant. How can someone purchase something if it is not available?

[81] See ADD-30, 34, House Research Bill Summary at 11. Minimum Compensation.

In addition, by holding that minimum compensation is determined by the market value of comparables (that need not be available for the displaced property owner to purchase), the Court of Appeals is mandating a fair market value standard that relies upon the existing use (as opposed to the highest and best use). By definition, the existing use will never be greater than highest and best use, so it is hard to imagine a situation where minimum compensation will ever be greater than the fair market value of the subject property. Given this, yet again the purpose of the statute is frustrated and minimum compensation is irrelevant, rendering the MCS meaningless.

D. Windfall is a value concept that has no place in the Minimum Compensation Statute discussion.

The concept of "windfall" only arises if the amount determined under the Minimum Compensation Statute is compared to the traditional before/after eminent domain award. However, the MCS does not mention "windfall" or any words, clauses, or language of any kind even remotely related to this concept. According to the rules of statutory construction, the plain meaning should be applied to words used in a statute unless those words have otherwise been provided with a specific meaning. Minn. Stat. § 645.08(1). In their briefing before the Court of Appeals both the County and League of Cities echoed the canons of construction that prohibits a court "from adding words to a statute" or supplying "what the Legislature either purposely omitted or inadvertently overlooked" citing Knutson v. Clearwater County, 2010 WL 4721612 (Minn. Ct. App. 2010). Yet, by

imposing a "windfall" consideration on the statute, these canons of construction are violated. Both the Trial Court and Court of Appeals' discussions on windfall also violate these basic canons of statutory construction.

In addition, the faulty windfall logic also ignores very pragmatic concerns for real world problems. One must understand that the large awards which are feared can actually reflect the reality which displaced condemnees do encounter. As Cameron's expert Strachota testified, many small businesses actually close because the cost to acquire a new location to continue the business[82] far exceeds the traditional eminent domain award.[83] By enacting the MCS, the Legislature simply reacted to this reality and set a policy that eminent domain takings should not destroy small businesses. The Trial Court and Court of Appeals ignore this reality and the policy being furthered by the Legislature. Cameron cannot ignore reality. As a result of the taking, his expenses are "five or six times greater" than they were before the taking and he soon may lose his business.[84]

The Trial Court (and the resulting Court of Appeals' affirmance) also fails to see the distinction between the terms market value and minimum compensation. This is evidenced by the consistent quoting of the "fluid approach" in Anda as well as the Supreme Court's holding in Commodities Trading:

> *[W]hen market value has been too difficult to find*, or when its application would result in manifest injustice to owner of public, courts has fashioned and applied other standards... Whatever the

[82] Even the Court of Appeals recognized this reality for Cameron by noting on page 3, "[a]lthough sales have increased at the new location Cameron's Warehouse Liquors is losing money because expenses are significantly greater at the new location."
[83] Trial Transcript at pp. 24-25.
[84] Trial Transcript at pp. 211-212.

> circumstances under which such constitutional questions arise, the dominant consideration remains the same: *What compensation is 'just' both to an owner whose property is taken and to the public that must pay the bill?*

United States v. Commodities Trading Corp., 339 U.S. 121, 123 (1950) [emphasis added]. However, the MCS is an alternative method for determining damages payable to a condemnee. Instead of facing a situation where "*market value has been too difficult to find*" in the traditional eminent domain damage analysis that is based on the market value of the acquired property, this new statute simply requires an independent damage calculation based upon the price to acquire an actual property. Consequently, whether it is difficult to find market value data (as in Anda and Commodities Trading) or not is irrelevant since one is simply seeking the purchase price of an actual property. Therefore the "fluid" approach in Anda and Commodities Trading is irrelevant to finding the purchase price to acquire an actual property under the MCS since it does not involve pitfalls as market value determinations.

Finally, the Court of Appeals cites State by Lord v. Malecker, 265 Minn. 1, 6-7, 120 N.W.2d 36, 39 (1963) describing the case as "indicating the supreme court's objection to a damages-calculation method that would result in a windfall to the owner." Malecker is a 1963 condemnation case and one of the first development cost or "lot method" cases. State by Lord v. Malecker, 265 Minn. 1, 120 N.W.2d 36, (1963). In Malecker, the property owner sought to value unplatted land by basing the damages on how the taking would affect individual lots on the property if it were platted. Id. at 38-39. The trial court barred the testimony, and

this Court affirmed stating "[w]e think that the court's ruling and charge were correct and that to hold otherwise would open the door to unlimited vagaries, speculation, and conjecture, of a kind we have consistently condemned…". Id. at 40.

Although the Court of Appeals states Ramsey v. Miller overturned Malecker "on other grounds", that is not true. Ramsey v. Miller, 316 N.W.2d 920, 922 (1982). Miller recognized that when the development cost approach is used correctly (i.e. the costs of development are identified and deducted), it removes the speculation, conjecture, etc., from valuation. Id. Where in Malecker (1963) the lot method/development cost approach had not been an accepted practice, by Miller (1982) it was. Consequently, this court recognized a commonly accepted approach in the appraisal industry should be allowed in condemnation cases. Id.

Minimum compensation is analogous to the development cost approach described by Miller. When used correctly it removes speculation, conjecture, etc. In fact, the purchase price for a comparable to which the displaced property owner can relocate is far more objective than subjective adjustments made to an open ended universe of comparables using a market value analysis.

E. The Minimum Compensation Statute must be liberally construed in Cameron's favor.

This Court has held that "remedial statutes are generally entitled to liberal construction in favor of the remedy the statutes provide or the class they benefit". S.M. Hentges & Sons, Inc. v. Mensing, 777 N.W.2d 228, 232 (Minn. 2010) (citing

Blankholm v. Fearing, 222 Minn. 51, 54, 22 N.W.2d 853, 855 (1946)). Thus, as a remedial statute, the MCS should be construed liberally to extend the intended benefits to the intended beneficiaries, like Cameron, whose property was taken from him by the County through the power of eminent domain. Moreover, our Supreme Court has also recently stated that statutory eminent domain provisions should be liberally construed in favor of property owners. Anda, 789 N.W.2d at 876.[85] Consequently, when interpreting the MCS, the rules of liberal construction in favor of the property owner should be applied to liberally construe this statute in favor of Cameron.

In this case, no court has construed this statute. As this Court will be the first to construe the MCS, you respectfully, must do so liberally, in favor of Cameron.

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[85] The Anda Court stated:

> Both the United States and Minnesota Constitutions limit this sovereign power, requiring a public purpose and a payment of just compensation to the property owner for each taking. *See* U.S. Const. amend. V; Minn. Const. art. I, § 13; *see also Flach,* 213 Minn. at 356, 6 N.W.2d at 807. The Fifth Amendment to the United States Constitution provides that "nor shall private property be taken for public use, without just compensation," and article I, section 13 of the Minnesota Constitution states: "Private property shall not be taken, destroyed or damaged for public use without just compensation therefore, first paid or secured." When construing this language we have said that "[t]he right of compensation thus granted is absolute, precedent to the constitution itself, inherent without recognition therein; and no attempt to deprive the citizen of this incontestable right could be tolerated in any system of free government." State ex rel. Ryan v. Dist. Court of Ramsey Cnty., 87 Minn. 146, 151, 91 N.W. 300, 302 (1902). Without identifying to which constitution we referred, we have observed that because a constitutional provision for just compensation was "inserted for the protection of the citizen, it ought to have a liberal interpretation, so as to effect its general purpose." Adams v. Chicago, Burlington & N. R.R., 39 Minn. 286, 290, 39 N.W. 629, 631 (1888).

II. EQUIVALENCY IS THE STANDARD FOR EVALUATING THE COMPARABILITY ATTRIBUTE TO SELECT COMPARABLE PROPERTIES UNDER THE MINIMUM COMPENSATION STATUTE.

Identifying a comparable property is the critical determination for the application of the Minimum Compensation Statute. The Court of Appeals found this term "comparable" to be ambiguous. In reconciling this ambiguity, the Court of Appeals on page 11 of its opinion identified two terms that could be considered to express its meaning: "similar" and "equivalent". These two words, though, have materially different meanings. The term "equivalent" is defined as "equal in value, force, meaning, effect, etc." while the term "similar" has been given the meaning of "bearing resemblance to one another or something else." In comparing these definitions, one observes that the term "similar" can encompass something of lesser quality, while the term "equivalent" does not. In order to resolve this ambiguity, it is necessary to examine the legislative history of the statute. While the Court of Appeals undertook this exercise, it did not uncover the most relevant portions of that history.

The legislative history reveals that the earlier versions of the MCS stated:

> When an owner must relocate, the amount of damages payable, at a minimum, must be sufficient for an owner to purchase a ***similar house or building of equivalent size*** in the community and not less than the condemning authority's payment or deposit under section 117.042[86]

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[86] See Minn. Stat. § 117.187 as introduced, 1st engrossment and 2nd engrossment, for House Bill 2846 and Senate bill 2750 for the 84th Legislative session (2005-6).

The language "similar house or building of equivalent size" was changed by amendment to clarify "the criteria that it is something beyond just size for these properties."[87] Instead of "similar house or building of equivalent size" the bill substituted the term "comparable property". [88] The reason for the change was to expand the definition, not limit it. Discussion during the Transportation Committee hearing revealed two important points. The original language, which uses the terms "similar" for houses and "equivalent" for other buildings, contemplated "same size" as the meaning for these terms, and the new language intended to incorporate consideration of the characteristics of the whole property as opposed to limiting compensation solely based on size.[89]

These points are revealed in the statements from Senator Robling:

> as I was reading the first time I thought, you could purchase a similar house or building of equivalent size in the community and I thought, ***as long as it's the same size*** it can be on any lot in the community if we're only addressing the house itself, so ***if you wanted to have a house that is now on a lake*** and if we're only addressing the house and the size of the house, I would think it could have been read that way, and I think we've clarified it by taking out "of an equivalent size" we are not still addressing property. But I'm hoping that we're addressing the whole package, the lot and the house, so we're mainly dealing with the whole property and not just the house. I think we may be doing that here, but ***I just want to make sure that that's clear…I want to make sure it's addressing the whole property, the land and the building on it, and not just the building.*** So that you could have a building that would be on a much more valuable piece of property and ask for that comparison. [90] (emphasis added)

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[87] See March 23, 2006 House Transportation Finance Committee hearing on House Bill 2846 amendment no. A06-1271.
[88] See ADD-20, Amendment to Minimum Compensation Statute.
[89] Id.
[90] See March 16, 2066 Senate Transportation Committee on Bill 2750 (statement occurs near the very end of the hearing at approximately 3:20:00.

Consequently based upon this legislative history, the selection of a comparable property requires 1) identification of the important features associates with the use of the acquired property and 2) assurance that those features are equivalent in the comparable property.

The Court of Appeals provided insight into the categories of features that should be investigated relative to importance when searching for an selecting a comparable property. These include: "size, features, and location; the square footage, age, design, and construction quality of any structures on the land; as well as features related to the property's usage."[91] The importance of these categories will vary on a case by case basis depending on the acquired property and how it is being used. In some cases the age will not matter, but the design must be in a certain configuration, etc. In this case, the key category (other than location/community discussed below) is size.

The evidence at trial established that size was a critical factor for determining the comparable property. George Cameron testified that his warehouse liquor business was based upon inventory volume and utilized the entire 6,200 square-feet of building area for the building operation.[92] The County's Peppard agreed.[93] The video exhibit shown by the County reinforced this conclusion. Strachota testified that the comparable property would need at least the 6,200 square-feet for Cameron to continue his warehouse liquor business

[91] See page 11 of the Court of Appeal's opinion.
[92] See Trial Transcript at p.228.
[93] See Trial Transcript at page 228

which operates on volume.[94] The Robert Trail property had only 3,120 square feet, which is about half the size of the space needed by Cameron to continue his business. Strachota rejected the Robert Trail property as a comparable property on this basis.

Size was also an important criterion for Wilson when identifying a comparable property. He testified that a property needed at least 2,200 square feet of main floor area in order to be considered as a comparable property in this case.[95] He only considered the Robert Trail property as a comparable because he believed it had 3,120 square feet of main floor area.[96] At trial he admitted his belief was wrong by acknowledging that the Robert Trail property only had 1,560 square feet of main floor area. Thus, by Wilson's own size standard, the Robert Trail property cannot be a comparable property. His conclusion to the contrary, in defiance of his own standard, must be rejected.

All of the trial evidence is undisputed that the Robert Trail property is too small to be a comparable property. The Robert Trail property fails the comparability test because it is not at least equivalent to the Cameron property as to this key category. The Trial Court's determination (and Court of Appeal's affirmance) to the contrary is clearly erroneous, lacks factual basis, and must be rejected, as well, for this reason. The Trial Court's methodology of converting the

[94] See Trial Transcript at page 75. In addition, the Court's findings continually refer to the Cameron business as a liquor store. However the only evidence at trial concerned a warehouse liquor store which has different requirements (especially space) than traditional liquor stores. It is contrary to the record to refer to the Cameron business as anything other than a warehouse liquor store.

[95] See Trial Transcript at page 317

[96] See Trial Transcript at page 317.

Robert Trail sale price to a unitary value and multiplying that by an arbitrary building area[97] is a valuation concept. It is not the determination of any purchase price.[98] No interpretation of the Minimum Compensation Statute authorizes such a methodology, and the Trial Court certainly did not provide one. The Trial Court's reasoning is totally arbitrary and simply ignores the MCS. Based upon the record, the Robert Trail property is too small to be a comparable property under the Statute. Since it is not comparable, it simply cannot be utilized in the minimum compensation damage analysis.

III. A COMPARABLE PROPERTY UNDER THE MINIMUM COMPENSATION STATUTE MUST BE SPECIFIC AND EXISTING.

The Minimum Compensation Statute is an alternative method for determining damages payable to a condemnee. It requires an independent damage calculation based upon the price to acquire an actual property without regard to the traditional eminent domain damage analysis that is based on the market value of the acquired property. The two amounts are, then, simply compared to each other with the condemnee receiving whichever is greater.

Traditional eminent domain damages are determined by subtracting the after value of the remainder from the before value of the parcel. For a total take, such as this case, those damages are simply the market value of the property before it is acquired. By contrast, the Minimum Compensation Statute does not base damages on value. As Cameron explained above (Issue I), minimum

[97] APP-312.

[98] As opposed to Strachota's model which can be purchased and was based upon actual contractor estimates, designs, and specifications.

compensation damages are based upon the amount of money needed to acquire some specific comparable property. If that amount happens to be more than market value, it is not a windfall; it is simply the damages imposed by the statute based upon the amount of money needed to acquire some specific comparable property.

To calculate the purchase price for the comparable property, there certainly are questions about determining the comparable property and the community. But those questions must be analyzed in the context of the statute's purpose: allowing the displaced condemnee to continue the business at a new location after the date of taking. With this backdrop, one can address why an actual property must be identified under the statute.

In spite of the deficiencies and shortcomings (addressed in Issues III, IV & V), the Trial Court concluded that the Robert Trail property was a comparable property under the Statute.[99] Even the Trial Court, though, did not believe that Cameron could continue his business in the Robert Trail property. The Trial Court recognized that Cameron had been using 4,444 square feet of main floor area in the acquired property while Robert Trail had only 1,560 square feet on its main floor. (The Trial Court ignored the approximately 1,600 square feet of lower level space that Cameron had been using.) Because of this size differential, the Trial Court determined the sale price for the Robert Trail property would be insufficient.

[99] Actually, the Trial Court used the "comparable" to establish a unitary market value to be applied against the subject rather than identifying the "comparable" and determining how much it will cost to buy it.

In determining minimum compensation damages, the Trial Court ignored equivalency standards (set forth above in Issue II) and merely used an uncorroborated allocation of the Robert Trail sale to calculate a unitary value based upon the main floor area of that property. This unitary amount was them multiplied by 4,444 which was the size of the building the trial court believed that Cameron should be able to purchase. Thus, although the Trial Court labeled the Robert Trail property as the comparable property in this case, the comparable property under the Trial Court's analysis, which Cameron is supposed to purchase, is a property having 4,444 square feet (failing substantially to meet the 6,200 square feet equivalency standard).

The comparable property that the Trial Court expects Cameron to purchase is missing many important things:

1) It has no address,
2) It has no building dimensions,
3) It has no building material specifications,
4) The nature of it visibility from a high volume traffic corridor is unknown,
5) The nature of its customer access is unknown, and
6) Its location in the Cameron trade area is unknown.

Most important, Cameron cannot continue his business in the property identified by the Trial Court, because he <u>cannot</u> purchase this property. Why? The property identified by the Trial Court is only a hypothetical property.[100] In short, it

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[100] <u>See</u> APP-312, Trial Court's memorandum accompanying its order amending its findings:

> The fact that the Robert Trail property was/is not available does not change the fact that $997,055.84 would be sufficient to purchase it. Likewise, the Court has found that $997,055.84 is sufficient to purchase ***the theoretical*** 4,444 main floor square foot building that was referenced in the Order setting forth the award. Again, the fact that such

is a fictional property that does not exist. The conclusion by the Trial Court blatantly fails to satisfy the purpose and intent of the Minimum Compensation Statute by not recognizing Cameron's right to continue his business in the comparable property. Moreover, how can a fictional property ever be equivalent to an acquired property given the fact that it does not exist. Furthermore, neither the plain meaning nor any other construction of the Minimum Compensation Statute even suggests that the comparable property could be hypothetical and non-existent. Use of a hypothetical property restricts the benefits for the property owner and thus in contravention of Anda[101] and Petersen[102] where this Court has given liberal construction to eminent domain issues and their remedies.

At trial, both experts explained that their searches for a comparable property involved an investigation of property listings for improved properties.[103] Wilson's determined that only one improved property existed which qualified as a comparable property under the MCS (the Robert Trail property).[104] Strachota's search produced the conclusion that no improved property existed which qualified as a comparable property under the MCS.[105] He then determined that the comparable property would have to be a new building purchased by Cameron which would be constructed to the identical specifications (except for modifications required by ordinance) as the acquired building on a parcel

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a building is not currently available does not mean that the $997,055.84 award would be insufficient to purchase such a building if it did become available.

[101] Moorhead Economic Development Authority v. Anda, 789 N.W.2d 860, 876 (Minn.2010).

[102] Peterson v. Haule, 304 Minn. 160, 170, 230 N.W.2d 51, 57 (1975)

[103] Trial Transcript at pages 61-62, 264-267; Trial Exhibit 3, at APP-356.

[104] See Trial Exhibit 24, Trial Transcript at page 292, l. 19-22. The next section of the brief will discuss the reasons that this property does not qualify as a comparable property under the statute.

[105] See Trial Exhibit 3 at APP-356, 358, 359, Trial Transcript at page 72, l. 24-29, page 73 l. 1-8

purchased by Cameron.[106] The parcel for the new construction was across the street and only a few hundred feet north of the location of the acquired property.

Ironically, the Trial Court was skeptical about Strachota "developing" a comparable property that did not exist.[107] Yet, this is exactly what the Trial Court ended up doing in this case. In developing the comparable property for Cameron to purchase, Strachota followed parameters based upon the plain language of the Minimum Compensation Statute:

1) a specific land parcel was identified in the community (across the street from the acquired parcel) that Cameron could actually purchase;
2) the building to be constructed would allow the Cameron business to continue because it was the same configuration as the acquired building; and,
3) the Minimum Compensation damages reflected a purchase price equal to the sum of the purchase price for the land, the price to purchase the building (construction cost bid by a contractor), and the recognized soft costs from a cost service to complete the transaction.[108]

By contrast, the property developed by the Trial Court is not associated with any particular location, has a size that is unsupported by any evidence on the record, a value based upon the sale of another property (it does not reflect actual dollars required to complete a purchase), and even Wilson admits that it cannot be

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[106] See Trial Exhibit 3, at APP-356, Trial Transcript at pages 73-75.
[107] Trial Transcript at pages 35-37.
[108] See Trial Exhibit 3, Strachota Minimum Compensation Report

built given the topography of the property.[109] While the amount determined by Strachota can be tied to the definition of purchase of a specific property and follows the guidelines of the Minimum Compensation Statute, the damage amount determined by the Trial Court is akin to a valuation determination (not a purchase price) of a hypothetical property that disregards the purpose and plain language of the Minimum Compensation Statute and the evidence in this case.

IV IN ORDER TO QUALIFY AS A COMPARABLE PROPERTY, THE PROPERTY MUST BE AVAILABLE FOR PURCHASE ON THE DATE OF TAKING.

It was undisputed at trial that the Robert Trail property was not available at the time of trial, and the Trial Court correctly made that finding.[110] However the Trial Court incorrectly held that, since it was available at the time the County offered to buy the Cameron property, as opposed to the time of the taking of the Cameron property, the Robert Trail property could be used in the analysis.[111] This is a conclusion of law that does not recognize the logical consequences of such a ruling.

In condemnation cases, damages are determined at the time of taking. See Iowa Electric Light & Power v. City of Fairmont, 243 Minn. 176, 183, 67 N.W.2d 41 (1954); State by Spannaus v. Heimer, 393 N.W.2d 687 (Minn.Ct.App. 1986). Up until the taking, the property owner is free to exercise all ownership rights in

[109] See Trial Transcript at page 272, l. 20-22.

[110] See Trial Transcript at page 224, l. 8-15; APP-199 Trial Court's findings at finding # 19; and APP-312, Trial Court's memorandum accompanying its amended findings, "The fact that the Robert Trail property was/is not available does not change the fact…".

[111] See APP-203 Trial Court's memorandum accompanying its findings at the last paragraph starting, "Cameron makes much of the fact that…"

the property, including declining offers from the condemning authority. The mere fact that the condemnor wants the property owners' property or plans to take the property is irrelevant until a taking has actually occurred. Fitger Brewing Co. v. State, , 416 N.W.2d 200, (Minn. Ct. App.1987) review denied, cert. denied, 109 S.Ct. 61, 488 U.S. 819, 102 L.Ed.2d 39 (1988). Since damages are determined at the time of taking, and the Minimum Compensation Statute requires the purchase of an actual, specific comparable property, the opportunity to purchase that property must exist on the date of taking. We will "play out" the scenario envisioned by the Trial Court and show that it produces an absurd result.

Assume the Robert Trail property was available to purchase by Cameron on the date of taking (which it was not-having been sold prior to the date of taking). As a comparable property, the MCS contemplates that Cameron should be able to buy the Robert Trail property and move his business there. In order to accomplish that purchase, Cameron would have had to execute a purchase agreement many months before the taking of his property in order to beat the offer of the person who actually bought it. The MCS contemplates that the proceeds generated by the Statute are needed and used for this acquisition. Prior to a formal taking, in order to generate the funds needed to acquire the Robert Trail property, the displaced owner (Cameron, in this case) would need to sell his existing property to the condemning authority as part of the purchase of the comparable.

In Cameron's case, he would have had to sell his property by deed to the County for their offer price of $560,000. This is over $400,000 less than he would

have received even under the Trial Court's analysis. By signing a deed, though, Cameron would have waived his right to this additional claim. This makes absolutely no sense, but it is the result that occurs when properties not available for purchase on the date of taking are considered for comparable property status. This simply proves that a comparable property cannot be a property that has already been sold as of the date of taking. Thus, the Robert Trail property cannot be considered as a comparable property in this case, because it was not available for purchase on the date of taking.

V. THE ROBERT TRAIL PROPERTY CANNOT BE A COMPARABLE PROPERTY UNDER THE MINIMUM COMPENSATION STATUTE BECAUSE IT IS NOT LOCATED IN THE COMMUNITY.

A plain reading of the Minimum Compensation Statute requires that a comparable property be located "in the community". There is no statutory definition for "community". There are several dictionary definitions for the term "community" one of which is used by the Court of Appeals ("a group of people living in the same locality and under the same government") to rationalize the Trial Court's decision. The failure of the Court of Appeals and the Trial Court is that this definition is too broad and vague.

The parameters for determining a community will vary from case to case, so the identification of the community in a particular case is a factual determination. When the Court of Appeals describes Cameron's definition of community as too narrow since it relates only to commercial (on pages 12-13 of its

opinion), it fails to grasp that Cameron is simply defining community based upon the particular facts in this case.

In the present case, the definition of community was sought from three witnesses. Strachota testified that the determination of the community required knowing the trade area for Cameron's business.[112] Wilson also testified that the term "in the community" is a requirement of the MCS and that, for a commercial business, the trade area of the business will be its community.[113] Lastly, James Callahan, the condemnation commissioner, also testified that, from his perspective, the term "in the community" under the MCS for this case would be the trade area or service area of the owner.[114] Consequently, every witnesses who testified about this term for the MCS in this case agree that that term should be synonymous with the trade area or service area applicable to Cameron's business.

Cameron, himself, testified that his trade area was a radius of three miles around his former location on the west side of the Mississippi River.[115] In its opinion, the Court of Appeals only acknowledged Cameron defining the trade area, but the County's expert, Wilson, even agreed with this radius of three miles around his former location on the west side of the Mississippi River.[116] Thus all the evidence on the record is undisputed that "in the community" for the Cameron case is the trade area for the Cameron business which is a three mile radius on the west side of the Mississippi River.

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[112] See Trial Transcript at pp. 40-41.
[113] See Trial Transcript at pp. 294, 320.
[114] See Trial Transcript at p. 243.
[115] See Trial Transcript at pages 195, 325.
[116] Id. at page 296.

The only witnesses to address the distance of the Robert Trail property from the former Cameron location were Strachota and Wilson. They both agreed that this distance was between seven and eight miles. By being over seven miles from the former Cameron location, the Robert Trail property is by definition beyond the Cameron three mile trade area and, hence, far outside the community as that term has been established by the undisputed evidence in this case. Since the plain reading of the MCS requires a comparable property to be in the community, the location of the Robert Trail property eliminates it from consideration as a comparable property.

The Trial Court circumvented all the witness testimony about the "in the community" requirement by simply ignoring the requirement: "[w]hether a business can function as a retail operation at a given location is more important that retaining particular customers or staying in a particular 'trade area'."[117] As a matter of law, the Trial Court cannot ignore the plain meaning of the MCS, especially where it has provided no explanation for its aberrant reasoning.

More importantly, the Legislature has already made the determination that "in the community" is a statutory requirement. So, where the entire evidence at trial shows that 1) "in the community" means the trade area for the Cameron warehouse liquor business and 2) the Robert Trail property is not within the trade area, the Robert Trail property is not "in the community" and, therefore, not a comparable property. The Trial Court's determination is clearly erroneous and

[117] This finding (#25) at APP-199 should be stricken since, as stated above, no facts on the record support such a finding.

without any factual basis. Wilson's conclusion (that the Robert Trail property was comparable) is also in contravention of the entire body of evidence about the community requirement, including his own admissions.

VI. NEW CONSTRUCTION IS PROPERLY CONSIDERED AS A COMPARABLE PROPERTY UNDER THE MINIMUM COMPENSATION STATUTE WHERE NO EXISTING IMPROVED PROPERTY CAN BE FOUND IN THE COMMUNITY.

The Court of Appeals did not address this issue other than other than affirming the Trial Court's ad hoc analysis. However, at trial only one existing improved property was offered as a comparable property under the MCS. That was the Robert Trail property offered by the County. As shown above, the evidence offered at trial established without any dispute that the Robert Trail property failed to qualify as a comparable property under that statute for three independent reasons:

1. It was not available for purchase on the date of taking;
2. It was too small for consideration as a comparable property; and
3. It was not located in the community.

Thus, the undisputed evidence established that no improved property exists in the community which qualifies as a comparable property under MCS.

The trial court circumvented this situation by concluding that the comparable property should be a hypothetical property with 4,444 square feet of gross building area. Because this hypothetical property does not exist in reality, it

cannot be a comparable property under the statute for two reasons. First, the hypothetical property fails to fulfill the purpose of the MCS in providing a property where Cameron can relocate his business and continue its operation. Second, because the hypothetical property cannot actually be purchased, it cannot generate a purchase price which is the basis for determining damages under the Minimum Compensation Statute. The Trial Court improperly circumvented this problem by establishing damages using a valuation methodology that has no basis under the Statute. The faulty reasoning utilized by the Trial Court firmly establishes that the comparable property must be an actual, specific property rather than one that is fictional or hypothetical.

If the actual property contemplated by the Minimum Compensation Statute is limited to an existing improved property, situations like that facing Cameron will produce the result that the displaced owner receives no minimum compensation damages. That is an absurd result for a remedial statute like the MCS. As the analysis by Strachota showed at trial, the inclusion of new construction on a land parcel in the community allows the statute to provide a remedy for a displaced owner in this situation and avoids the absurd result where a comparable property is limited to only an existing improved property. Including new construction for consideration as a comparable property to avoid the absurd result that would otherwise occur in this situation, is consistent with the rule for statutory interpretation noted above (Issue I, C). Additionally, there is not even a suggestion that such an interpretation should be prohibited under the plain reading

of the MCS. Consequently, new construction should be considered for the comparable property in the MCS. This leads directly to the analysis presented at trial by Strachota.

Unlike the Trial Court's arbitrary hypothetical property analysis, Strachota's analysis was objective. It was guided by the intent of the MCS to provide a property where the displaced owner could relocate his business and continue its operation. Strachota maximized comparability by constructing a building with specifications identical to the one that was acquired by the condemning authority except for modifications required by building codes. His analysis also met the requirement that the property be in the community. The Trial Court's determination of the purchase price for its hypothetical property was also totally arbitrary. It did not follow guidance from the Statute or actions from the marketplace.

By contrast, Strachota determined a purchase price based entirely upon objective criteria. Total purchase price included three components. The first component was the actual price which Cameron would pay pursuant to the purchase agreement for the parcel he was acquiring from the City. The second component was the price that Cameron would expect to pay to build the structure and related site improvements based upon a bid from a qualified and reputable construction company. Lastly, the third component was the soft costs which Cameron would pay to complete his purchase of the land and new building. These soft costs were based upon a recognized cost service. Based upon this analysis,

Strachota determined the total purchase price for the comparable property to be $2,175,000.

VII. THE TRIAL COURT'S AWARD OF FEES WAS AN ABUSE OF DISCRETION AND CONTRARY TO THE INTENT OF THE STATUTE AND CASE PRECEDENT.

In 2006, the Minnesota Legislature amended Chapter 117 by adding Minn. Stat. § 117.031. Section 117.031 governs fee and litigation expenses for the prevailing party. Minn. Stat. § 117.031 provides in relevant part:

> (a) If the final judgment or award for damages, as determined at any level in the eminent domain process, is more than 40 percent greater than the last written offer of compensation made by the condemning authority prior to the filing of the petition, the court *shall* award the owner reasonable attorney fees, litigation expenses, appraisal fees, other experts fees, and other related costs in addition to other compensation and fees authorized by this chapter. If the final judgment or award is at least 20 percent, but not more than 40 percent, greater than the last written offer, the court may award reasonable attorney fees, expenses, and other costs and fees as provided in this paragraph. The final judgment or award of damages shall be determined as of the date of taking. [emphasis added.]

In any legislative act in Minnesota, "may" must be construed as permissive, and "shall" must be construed as mandatory. See Minn. Stat. § 645.44 subdiv. 15-16 (2010). See also State v. Clark, 755 N.W.2d 241, 250 (Minn. 2008) (noting that in statutory interpretation, "shall" is mandatory).[118] The mandatory 40%

[118] The Wisconsin Supreme Court, in construing a nearly identical provision for payment of attorney fees in condemnation actions, stated: "The use of the term 'shall' denotes that attorney fee awards are mandatory." Standard Theatres, Inc. v. State Dep't of Trans., 118 Wis.2d 730, 739, 349 N.W.2d 661, 667 (1984).

threshold may be contrasted with the 20-40% threshold where the condemnor "may" pay attorneys fees. *See* Minn. Stat. § 117.031. Under the 40% threshold, Section 117.031 mandates that the Court award reasonable attorney fees, expenses, and other costs. This is not a discretionary choice. Consequently, Minn. Stat. § 117.031 states that a condemnee *shall* be awarded reasonable attorney fees, litigation expenses, appraisal fees, expert fees and other related costs if the final judgment or award for damages is more than 40% greater than the last written offer of compensation made by the condemning authority.

On July 25, 2008, George W. Cameron, IV ("Cameron"), received an original condemnation award of $560,400.00. On February 23, 2011 the Court awarded Cameron an additional $430,655.84 (with interest the amount is $485,893.49). The additional award is far in excess of the 40% required to trigger mandatory payment of attorney's fees to the condemnee by the condemning authority.

A contract for attorneys' fees that is fairly entered into and does not involve fraud by the attorneys is valid and enforceable. Kittler & Henderson v. Sheehan Properties, Inc., 295 Minn. 232, 235, 203 N.W.2d 835, 838 (1973). Respondent freely and voluntarily entered into a contingent fee contract with Biersdorf & Associates. This contract provided for attorneys' fees based upon one-third of the recovery *or* an hourly fee, whichever is greater See APP-235, Affidavit of E. Kelly Keady at Ex. A, the representation agreement. Under the agreement, Cameron incurred attorney's fees totaling $217,991.45 ($185,207.50 for Biersdorf

& Associates and $32,783.95 for the Cameron Law Office). See APP-238 to 250, Ex. B and C to the Affidavit of E. Kelly Keady, respectively.

Even the County has acknowledged that Cameron's award is in excess of 40% greater than the County's last offer and that it is mandated to pay attorney fees in this case.[119] There is no dispute that fees and costs are mandatory in this case.

Much of the focus at the Trial Court concentrated on contingent fees with the County acknowledging contingency fee agreements are valid unless unreasonable or unconscionable and the Trial Court awarding fees based upon a contingent fee.[120] However, the one-third contingency fee agreement was only brought up at the Trial Court level in the context that Cameron is reserving its rights for a one-third contingency if the Court amends its findings and the award increases (the representation agreement provides for a one-third contingency *or* hourly, depending on which is greater). See APP-235 (at paragraph 2) Cameron's claimed fees were actually based on *hourly* calculations not a proportional calculation (with the one exception being the $4,000 flat fee trial rate).

The County presented no evidence as to how this agreement is unreasonable or the hourly (or day rate for trial) rates are unreasonable. By contrast, Cameron's attorneys provided expert testimony asserting the common nature of the fee agreement in eminent domain matters and the reasonableness of

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[119] See APP-282, Plaintiff's Resp. Mot. Att'y's Fees at p. 2, last paragraph.

[120] See APP-281, 282, Plaintiff's Resp. Mot. Att'y's Fees at pp. 1-2 (citing Hollister v. Ulvi, 199 Minn. 269, 276, 271 N.W. 493, 497 (1937)); see also APP-310, 311, the Trial Court's order awarding fees.

the rates contained Cameron's agreement.[121] The County did nothing to rebut Cameron's evidence that these hourly fees were reasonable.

The fact that the County put *nothing* into evidence as to the reasonableness of fees and costs was ignored by the Trial Court and the Court of Appeals. However, it was not ignored in the Amicus briefing. Cameron agrees with the position of Amicus brief filed before the Court of Appeals that set forth the standard below:

> If the claim for reimbursement and/or the affidavits presented in court by attorneys or others demonstrate that the fees considered are reasonable in light of what is regularly charged in the community, the fee is should be held to be *prima facie* "reasonable" under the statute.

Applying this standard to the present case, the Affidavits by Mark Savin[122], Dan Biersdorf[123] and E. Kelly Keady[124] (with their attached exhibits) satisfied Cameron's *prima facie* burden by establishing that the fees are reasonable in light of what is regularly charged in the community. Since the County failed to respond to Cameron's affidavits in any manner, other than calling them self serving, the Trial Court erred in completely disregarding the reasonable hourly fees and fashioning its own contingent fee in this case.

The Amicus standard is similar to what this Court has held in other eminent domain cases i.e. where a motion for attorneys' fees and costs has not been substantively challenged, this Court will order full reimbursement. DeCook v.

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[121] See APP-231, Biersdorf Aff. ¶ 4; see APP-234, Keady Aff. ¶ 8; see also APP-439, 440, Savin Aff. ¶¶ 2, 7.
[122] See APP-439 to 440.
[123] See APP-231 to 232
[124] See APP-233 to 234.

Rochester Int'l Airport Joint Zoning Bd., 811 N.W.2d 610 (Minn. 2012) (because the Airport Zoning Board did not challenge either the number of hours expended by counsel or the reasonableness of the counsel's rates, the Court ordered that the fees and costs be fully reimbursed). Just as in DeCook, Cameron submitted detailed billing records, affidavits of counsel, in addition to another well-respected attorney practicing in eminent domain (Savin[125]). Also, like the Airport Zoning Board in DeCook, the County has not substantively challenged either the number of hours expended by counsel or the reasonableness of counsel's rate. The County submitted nothing. On these points, the above facts make this case indistinguishable from DeCook.

Moreover, "[w]hat constitutes the reasonable value of the legal services is a question of fact to be determined **by the evidence submitted, the facts disclosed by the record** of the proceedings, and the court's own knowledge of the case." State v. Paulson, 188 N.W.2d 424, 426 (Minn. 1971) (emphasis added). The record contains no findings of waste, duplication, or over-charges. In fact, the Trial Court did not even find the hourly fees unreasonable. In an *ad hoc* manner, the Trial Court simply fashioned his fees on a non-existent contingent fee that he believed to be more reasonable than the Cameron hourly fees. Obviously this punishes Cameron by forcing him to pay fees he had to incur to prove the County inadequately paid him for the taking. Where the 40% mandatory fee reimbursement threshold in Minn. Stat. 117.031 is established, the record contains only affidavits that state that the rates and hours were reasonable, and there is no

[125] APP-439.

finding of waste, duplication, or over-charges, it is an abuse of discretion to order fees based upon a non-existent fee arrangement.

In addition, Minnesota law has long rejected the notion that a retainer agreement providing for an hourly fee can simply be substituted for a contingent fee agreement. Liess v. Lindmeyer, 354 N.W.2d 556, 558 (Minn. Ct. App. 1984). Minnesota law is consistent with the law of other jurisdictions. See, e.g., Standard Theatres, Inc. v. State Department of Transportation, 349 N.W.2d 661, 669 n.7 (Wis. 1984) (any analysis of what a reasonable fee would have been had the retainer agreement provided for a contingency fee is irrelevant when the retainer agreement calls for fees to be charged on an hourly basis; *a contingency fee agreement cannot be utilized to control reasonable attorneys' fees where one does not exist at all*).

If courts are allowed to impose contingent fees on eminent domain claimants contrary to their hourly fee arrangements, the result will be a chilling effect on filing eminent domain claims. Attorneys will not take small cases if they are only allowed a contingent fee. If an attorney knows it will cost $100,000 in attorney fee time to try a case worth $90,000, the attorney will not take the case if he will be paid only $30,000 for $100,000 worth of work. This chilling effect cannot be further from the legislative intent which states that one of its purposes is to punish the condemnors for low offers, not to punish small property owners.

In rewriting the Cameron's attorney fee agreement, the Trial Court reviewed the State by Head v. Paulson factors and found them all to be in favor of

Cameron, other than for "amount involved and results obtained". Basically, the Trial Court thought Cameron aimed too high in its case and awarded a fee based upon a one third contingent fee of what the Trial Court awarded over and above what the County previously paid.[126] Under the Trial Court's reasoning, unless condemnee prevails in 100% of its case, the court can reduce the fees regardless of any other Paulson factor. The United States Supreme Court has rejected such an approach noting that the "results obtained" factor generally is "subsumed within other factors used to calculate a reasonable fee" and should not provide an independent basis concerning the fee award. Blum v. Stenson, 465 U.S. 886, 900, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984).

The Trial Court also ignores the fact that the Legislature has already considered the "results obtained" standard for eminent domain cases. The Legislature set the threshold for mandatory fees at 40% (Cameron doubled this). Minn. Stat. § 117.031. The Legislature could have drawn up legislation similar to that of South Carolina, but chose a scheme closer to that of Wisconsin. In South Carolina, the threshold for fees is similar to what the Trial Court in this case: it is based upon whose appraisal is closest to the award. See S.C.Code Ann. § 28–2–510(B); see also South Carolina Dep't of Transp. v. Thompson, 357 S.C. 101, 590 S.E.2d 511 (S.C.App. 2003). The Minnesota Legislature rejected such an approach[127] and adopted an approach similar to its border state, Wisconsin where

[126] See APP-310-311.
[127] See testimony of Marc Manderscheid in opposition to HF2846 on March 23, 2006 (at 1:22 into the hearing) before the House Transportation Finance Committee.

their Supreme Court has recognized that fees should have little bearing on the results obtained in condemnation cases:

> [v]aluation is not an exact science, and we acknowledge that litigation expenses may dwarf the difference between the compensation offered and that eventually awarded.

Klemm v. Am. Transmission Co., LLC, 333 Wis. 2d 580, 609, 798 N.W.2d 223 (2011).

Finally, there is another reason why the Trial Court's decision is contrary to the purpose of this eminent domain fee shifting statute. Section 117.031 has multiple objectives. One is to make property owners whole. "Most importantly, [however,] it ensures that property owners will be reimbursed for the worst instances of eminent domain abuse…." Noreen E. Johnson, Comment, *Blight and its Discontents: Awarding Attorney's Fees to Property Owners in Redevelopment Actions*, 93 Minn. L. Rev. 741, 773 (2008). The Supreme Court of South Dakota, construing their attorney fee recovery statute (and quoting the Wisconsin Supreme Court), stated that "[t]he formula [in SDCL 21–35–23] indicates that the [L]egislature meant to discourage the condemnor from making inequitably low jurisdictional offers." City of Sioux Falls v. Kelley, 513 N.W.2d 97, 111 (S.D.1994) (quoting Standard Theatres v. State, Dep't of Transp., 118 Wis.2d 730, 349 N.W.2d 661, 668 (Wis.1984)). See also Dep't of Transp. v. Clark, No. 25788 (S.D. filed May, 11, 2011) ("The purpose of SDCL 21–35–23 is to encourage fair offers from a condemnor…").

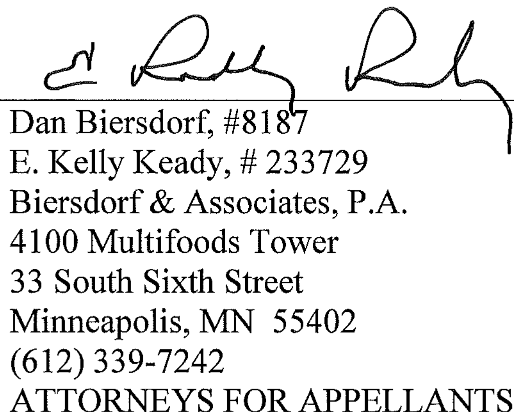
Even this Court has held several times that the purpose of attorney fee recovery provisions in eminent domain "is to assure that any landowner who is forced to take legal action against an acquiring authority is made whole." Spaeth v. City of Plymouth, 344 N.W.2d 815, 823 (Minn. 1984); see also DeCook v. Rochester Int'l Airport Joint Zoning Bd., 811 N.W.2d 610, (Minn. 2012). The County made an inequitably low offer and paid Cameron the same. He was forced to take legal action. This legal action resulted in an increase of nearly a half a million dollars over what the County paid for the taking, more than double the statutory threshold mandating attorney fees. If the Trial Court is upheld, Cameron is not made whole. Instead, in addition to having his property and business that have been in the family for generations taken from him, there is an additional twist of the knife resulting in him being stuck with a legal bill for $56,026.95 for legal fees he incurred in seeking just compensation. For all the reasons stated above, this Court, respectfully should reverse the Trial Court[128] on attorney's fees; Cameron should be made whole.

[128] Given, the Trial Court's conclusion on fees rests solely on its own analysis on the underlying case, if this Court overturns the Trial Court's analysis on Minimum Compensation, then the attorney fees award must be overturned as well.

CONCLUSION

Cameron respectfully requests this Court to reverse the Trial Court's award of compensation and for attorneys' fees as well as the Court of Appeals holding affirming the lower court. Given that the Record is undisputed on these two issues (without the Robert Trail property, the only evidence on Minimum Compensation is Strachota's $2,175,000; and, on fees, the affidavits submitted and even the Trial Court admitted that the $217,991.45 in hourly fees were reasonable and consistent with what others attorneys charge for similar work), Cameron respectfully requests that the reversal be remanded with instructions. If the Court reverses the Trial Court on the Minimum Compensation issue, the instruction would be to render $2,175,000 as compensation with interest and further that attorneys' fees are to be calculated on a one-third basis of that recovery (based upon the fee agreement). If this Court sustains the Trial Court on compensation, it should still reverse on attorneys' fees with the instruction that $217,991.45 be entered for attorneys' fees plus those fees and costs associated with the appeal.

Dated: June 29, 2012

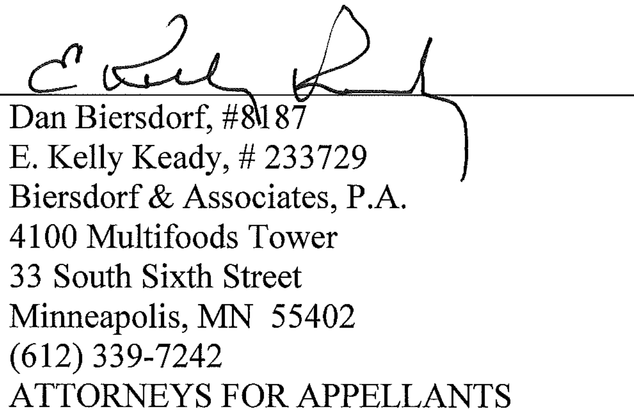


Dan Biersdorf, #8187
E. Kelly Keady, # 233729
Biersdorf & Associates, P.A.
4100 Multifoods Tower
33 South Sixth Street
Minneapolis, MN 55402
(612) 339-7242
ATTORNEYS FOR APPELLANTS

FORM AND LENGTH CERTIFICATION

I certify that this brief conforms to the rules contained in Minnesota Rules of Appellate Procedure for a brief produced using the following font: Times New Roman, 13 point. The word count for the brief is 12,599 words.

Dated: June 29, 2012



Dan Biersdorf, #8187
E. Kelly Keady, # 233729
Biersdorf & Associates, P.A.
4100 Multifoods Tower
33 South Sixth Street
Minneapolis, MN 55402
(612) 339-7242
ATTORNEYS FOR APPELLANTS

STATE OF MINNESOTA
IN THE SUPREME COURT

The County of Dakota,

Respondent

v.

George W. Cameron, IV,

Appellant.

Appellate Court Case No.:A11-1273

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
)
COUNTY OF HENNEPIN)

E. Kelly Keady being duly sworn and on oath, does certify:

That on the 29th day of June, 2012, I caused to be served by U.S. Mail, two true and complete copies of Appellant's Brief and Appendix upon Petitioner-Respondent's counsel and the Attorneys for Amicus Curiae at the following addresses:

Michael R. Ring
Dakota County Assistant Attorney
Dakota County Judicial Center
1590 Highway 55
Hastings, MN 55033
Attorney for Respondent County of Dakota

Kirk Schnitker
Jon. W. Morphew
Leland J. Frankman
Bradley J. Gunn
Minnesota Eminent Domain Institute
1330 81st Avenue Northeast
Spring Lake Park, MN 55432
Attorneys for Amicus Curiae

Susan Lynn Naughton
Thomas Grundhofer
League of Minnesota Cities
145 University Avenue
Saint Paul, MN 55103
Attorneys for Amicus Curiae

Steven J. Quam
Richard D. Snyder
Fredrickson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402
Attorneys for Amicus Curiae

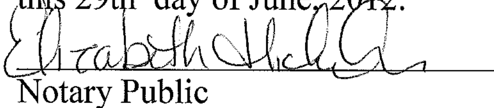
Lee U. McGrath
Katelynn K. McBride
Institute for Justice Minnesota Chapter
527 Marquette Avenue, Suite 1600
Minneapolis, MN 55402-1330
Attorneys for Amicus Curiae

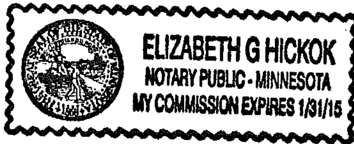
Patrick Whiting
Office of the Attorney General
445 Minnesota Street, Suite 1800
St. Paul, MN 55101-2134
Attorney for Amicus Curiae

FURTHER AFFIANT SAYETH NOT.

E. Kelly Keady

Subscribed to and sworn before me
this 29th day of June, 2012.


Notary Public



ADDENDA

ADDENDA
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Excerpt of Transcript of Senator Robling's Testimony Concerning the Minimum Compensation Statute, Senate Transportation Committee, on Bill 2750, March 16, 2006 .... ADD-29

House Research Bill Summary, S.F. 2750 (H.F. 2846), April 10, 2006 .... ADD-30

STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1273

The County of Dakota,
Respondent,

vs.

George W. Cameron, IV,
Appellant.

Filed March 26, 2012
Affirmed
Larkin, Judge

Dakota County District Court
File No. 19HA-CV-09-3756

James C. Backstrom, Dakota County Attorney, Michael R. Ring, Assistant County Attorney, Hastings, Minnesota (for respondent)

Daniel Biersdorf, Edward Kelly Keady, Biersdorf & Associates, P.A., Minneapolis, Minnesota (for appellant)

Thomas L. Grundhoefer, Susan Naughton, League of Minnesota Cities, St. Paul, Minnesota (for amicus curiae League of Minnesota Cities)

Jon W. Morphew, Kirk A. Schnitker, Schnitker Law Office, P.A., Spring Lake Park, Minnesota (for amicus curiae Minnesota Eminent Domain Institute)

Considered and decided by Peterson, Presiding Judge; Larkin, Judge; and Collins, Judge.*

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* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

SYLLABUS

1. The terms "comparable property" and "community" in Minnesota's eminent-domain minimum-compensation statute, Minn. Stat. § 117.187 (2010), are defined according to their common usage.

2. A determination of damages under Minn. Stat. § 117.187 is based on traditional market-value analysis of comparable properties in the community.

OPINION

LARKIN, Judge

In this eminent-domain proceeding, appellant challenges the district court's award of damages under Minnesota's minimum-compensation statute, Minn. Stat. § 117.187. Appellant argues that the district court misconstrued section 117.187 in determining minimum compensation for the taking of his property and that the district court erred in refusing to award him all of the attorney fees that he requested. Because the district court properly construed section 117.187 and awarded appellant just compensation, and because the district court did not err in determining a reasonable award of attorney fees, we affirm.

FACTS

In 2008, respondent the County of Dakota commenced a condemnation action to acquire various properties in Inver Grove Heights and South St. Paul to provide a right-of-way for reconstruction of County State-Aid Highway 56, also known as Concord Boulevard. One of the properties was owned by appellant George W. Cameron IV. Cameron's property was located at 6566 Concord Boulevard East in Inver Grove Heights

(the taken property). The taken property consisted of approximately 13,000 square feet of land and a building that was constructed in 1885. The building had 4,444 square feet of space on the ground level, and a 1,756-square-foot, unfinished basement. The effective date of taking was July 25, 2008.

Cameron is the sole shareholder of Cameron's Warehouse Liquors Inc. Prior to the taking, Cameron's Warehouse Liquors occupied the taken property and sold beer, wine, and liquor under a liquor license issued by the city of Inver Grove Heights. According to Cameron, Cameron's Warehouse Liquors' trade area was on the west side of the Mississippi River within a three-mile radius of the property. After the taking, Cameron's Warehouse Liquors relocated to a temporary location. Although sales have increased at the new location, Cameron's Warehouse Liquors is losing money because expenses are significantly greater at the new location.

The county initially offered Cameron $560,400 for the taken property based on a real-estate appraisal. Cameron rejected the offer. The parties were unable to agree on an award of damages, and the dispute was heard by three court-appointed condemnation commissioners on April 28-30, 2009. At the hearing, the county's appraiser increased his estimate of the fair market value of the taken property to $580,400. The commissioners ultimately awarded Cameron $655,000 in damages. Cameron appealed the commissioners' decision to the district court.

At the ensuing evidentiary hearing in district court, Cameron argued that he was entitled to minimum compensation under Minn. Stat. § 117.187, that is, an amount of money that would enable him to purchase a comparable property in the community. But

Cameron's expert testified that no comparable property was available for purchase in the community. Cameron therefore argued that he should be awarded funds sufficient to purchase vacant land and construct a new building comparable to the building on the taken property. Cameron presented a detailed estimate showing that it would cost $2,175,000 to purchase the land and construct a comparable building. Cameron requested damages in that amount.

The county's expert offered evidence regarding his minimum-compensation analysis, which was based on the value of a recently sold liquor store located on South Robert Trail in Inver Grove Heights. The expert opined that the South Robert Trail property was comparable to the taken property. The South Robert Trail property sold for $505,000 in June 2008. Of that amount, $155,000 was compensation for the business and the remaining $350,000 was compensation for the building and land. The expert concluded that because Cameron's property had appraised for more than the South Robert Trail sale price, Cameron was not entitled to minimum compensation and should merely receive the appraised value of his property. Although the county did not advocate a specific amount of compensation at the hearing, it opposed Cameron's request for damages in the amount necessary to purchase land and construct a new building.

The district court determined that the South Robert Trail property was comparable to the taken property. Next, the district court engaged in a market-value analysis based on the sale price of the South Robert Trail property and concluded that Cameron was entitled to $997,055.84 as just compensation. Later, the district court issued an amended order, awarding Cameron $161,964.50 in reasonable attorney fees and $62,006.63 in

litigation expenses, appraisal fees, expert fees, and other related costs. Cameron had requested $217,991.45 in attorney fees, which was the actual amount of fees incurred under his attorney-fee agreement. This appeal follows, in which Cameron challenges the damages and attorney-fee awards.

ISSUES

I. Is Minn. Stat. § 117.187 ambiguous and therefore properly subject to judicial interpretation?

II. Did the district court err in its construction and application of the term "comparable property" under Minn. Stat. § 117.187?

III. Did the district court err in its construction and application of the term "community" under Minn. Stat. § 117.187?

IV. Did the district court err in using a market-value analysis to determine a minimum-compensation award under Minn. Stat. § 117.187?

V. Is the district court's award of $997,055.84 just compensation?

VI. Did the district court err in awarding attorney fees?

ANALYSIS

I.

In this case of first impression, we are asked to review the district court's award of minimum compensation under Minn. Stat. § 117.187 in an eminent-domain proceeding. Minn. Stat. § 117.187 states that:

> When an owner must relocate, the amount of damages payable, at a minimum, must be sufficient for an owner to purchase a comparable property in the community and not less than the condemning authority's payment or deposit under section 117.042, to the extent that the damages will not

be duplicated in the compensation otherwise awarded to the owner of the property.

The statute sets forth a measure of damages that must be utilized when an owner must relocate. "Owner" is defined as "the person or entity that holds fee title to the property." Minn. Stat. § 117.187. The parties agree that the minimum-compensation statute is applicable in this case because Cameron was the fee owner of the taken property, he suffered a total taking, and he had to relocate his business to continue its operation. Thus, the damages payable must, at a minimum, be sufficient for Cameron "to purchase a comparable property in the community." *Id.*

The parties disagree regarding how minimum compensation is determined under the statute, arguing that the statute is ambiguous and urging this court to resolve the ambiguity through statutory interpretation. The county asserts that the statute "is so vague and ambiguous that reasonably minded persons cannot agree upon its meaning." The district court recognized the purported ambiguity, observing that key terms were left undefined and understandably stating that it hoped "the legislature will revise the minimum-compensation statute to more directly and clearly define the concepts of 'purchase,' 'comparable property,' and 'in the community.'"

We agree that the minimum-compensation statute leaves many questions unanswered, including when an owner must relocate; whether a relocating owner must actually purchase a property to receive minimum-compensation; how "comparable property" should be defined; whether a "comparable property" may be a recently sold property or must be one that is available for purchase; how "community" should be

defined; whether minimum compensation should be calculated using a traditional market-value analysis; and, if there is no "comparable property" in the community, whether damages should be based on the amount that it would cost to construct an identical property in the community.

The parties have presented more than one reasonable interpretation of the minimum-compensation statute in an attempt to answer these questions. We therefore conclude that the statute is ambiguous and that statutory interpretation is appropriate. *See Brayton v. Pawlenty*, 781 N.W.2d 357, 363 (Minn. 2010) ("[I]f a statute is ambiguous, [appellate courts] apply canons of construction to discern the Legislature's intent."); *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) ("[An appellate court] first look[s] to see whether the statute's language, on its face, is clear or ambiguous. A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation." (quotation and citation omitted)). But we limit our de novo interpretation to only those issues that are necessary to our review of the district court's damages award in this case: the definition of "comparable property," the definition of "community," and the damages-calculation method. *See Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 122 (Minn. 2007) ("Statutory construction is . . . a legal issue reviewed de novo.").

II.

We begin by defining the term "comparable property" under the minimum-compensation statute. Cameron argues that a comparable property "must be a specific, existent property, which the displaced owner can actually purchase, as opposed to a non-

existent hypothetical property." Cameron contends that the legislature intended that the displaced owner would be able to relocate to the comparable property and that "[s]uch an intent can only be fulfilled when an actual property is identified which will accommodate the relocation." Cameron therefore argues that "a comparable property cannot be a property that has already been sold as of the date of taking."

Cameron's argument is not persuasive for several reasons. We first observe that Cameron's interpretation is inconsistent with his assertion that a displaced owner is not required to purchase a substitute property in order to obtain minimum-compensation damages. Cameron asserts that "an owner can keep the fair market compensation . . . and do nothing." Assuming, as Cameron argues, that he is not required to purchase a replacement property to obtain damages under the minimum-compensation statute,[1] there is no need to limit the universe of comparable properties to only those properties that are available for purchase.

We next observe that Cameron's proposed definition of "comparable property" is based on his assertion that the legislature intended to guarantee a displaced business owner's purchase of a replacement property that would allow continued operation of his or her business. We reject this construction for two reasons. First, although Cameron generally alleges that an anti-government-taking atmosphere followed the United States Supreme Court's decision in *Kelo v. City of New London, Conn.*, 545 U.S. 469, 489-90, 125 S. Ct. 2655, 2668 (2005) (holding that the city's exercise of eminent-domain power

[1] Because this issue is not disputed in this appeal, we need not address whether, or to what degree, Cameron's assumption is accurate.

in furtherance of an economic development plan satisfied the constitutional "public use" requirement), and suggests that the 2006 passage of the minimum-compensation statute was a result of that atmosphere, he does not cite to anything in the legislative record or history of the minimum-compensation statute to support his assertion regarding legislative intent. Nor does our thorough review of the legislative history of the minimum-compensation statute reveal a legislative intent to guarantee the purchase of a replacement property, or, as Cameron argues, the continued operation of a displaced business. In fact, the legislature's concurrent passage of what is now Minn. Stat. § 117.186 (2010), which provides for loss-of-going-concern[2] compensation when a business or trade is destroyed by a taking, indicates that the legislature recognized that relocation and continuation of a displaced business may not always be possible. In sum, our review of the legislative history of the minimum-compensation statute, combined with the legislature's contemporaneous enactment of Minn. Stat. § 117.186, reveals that, although the legislature intended to increase the damages award to enable a displaced owner of property to purchase a comparable property in the community, the legislature nevertheless recognized that relocation may not be possible. *See* Minn. Stat. § 117.186; *see also Schroedl*, 616 N.W.2d at 277 ("We are to read and construe a statute as a whole and must interpret each section in light of the surrounding sections to avoid conflicting interpretations.").

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[2] Loss-of-going-concern damages are not at issue here because, at the time of the evidentiary hearing, Cameron's Warehouse Liquors continued to operate at a new location and Cameron did not request loss-of-going-concern damages.

Cameron's proposed construction of the term "comparable property" is also unpersuasive because it is unreasonable. *See* Minn. Stat. § 645.17 (2010) (stating that, in ascertaining legislative intent, courts presume that the legislature does not intend results that are "absurd, impossible of execution, or unreasonable"); *Coop. Power Ass'n v. Aasand*, 288 N.W.2d 697, 701 (Minn. 1980) (stating that, in order to survive review, "a requirement of reasonableness must be read into" the terms of a statute). There are numerous reasons why the purchase of a replacement property may not be possible even though a comparable property is available for purchase in the community. Although the legislature may reasonably require an award of damages sufficient to purchase a property—assuming that a purchase can be finalized—the legislature cannot reasonably guarantee consummation of the purchase. And because the legislature cannot guarantee completion of a purchase, we reject Cameron's argument that a comparable property must be an existing property that is available for purchase. We instead define "comparable property" according to its common usage.

When a word or phrase is undefined we follow the general rule that "words and phrases are construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a special meaning, or are defined in chapter [645], are construed according to such special meaning or their definition." Minn. Stat. § 645.08(1) (2010). "Comparable" is commonly defined as "similar or equivalent." *American Heritage Dictionary of the English Language* 384 (3rd ed. 1992). And the term "comparable property" is commonly used in other contexts. For example, when utilizing the comparable-sales approach to

real-estate valuation "in estimating and determining the value of lands for the purpose of taxation," the appraiser must "consider and give due weight to lands which are comparable in character, quality, and location, to the end that all lands similarly located and improved will be assessed upon a uniform basis and without discrimination." Minn. Stat. § 273.12 (2010). Upward or downward adjustments are regularly made to account for property differences, including age and size. *See, e.g.*, *McNeilus Truck & Mfg. Inc. v. Cnty. of Dodge*, Nos. C2-04-248, CV-05-357, CV-06-11, 2006 WL 3155657, at *5 (Minn. Tax Ct. Oct. 31, 2006). Consistent with this approach, in identifying a comparable property under the minimum-compensation statute, one should consider land size, features, and location; the square footage, age, design, and construction quality of any structures on the land; as well as features related to the property's usage.

The district court determined that the South Robert Trail property is comparable to the taken property because it had "similar effective age, condition, quality, and parking/landscaping." The district court also noted that both properties were used to house liquor stores. Cameron argues that despite these similarities, the South Robert Trail property is not comparable because "it is too small." But the district court acknowledged that the South Robert Trail property is significantly smaller than the taken property, and, as discussed in section IV, appropriately accounted for the size difference. In sum, the district court did not err in determining that the South Robert Trail property was a comparable property under the minimum-compensation statute.

III.

We next define the term "community" under the minimum-compensation statute. Cameron argues that the "community" in this case is Cameron's Warehouse Liquors' trade area, which is "a three mile radius on the west side of the Mississippi River." The district court rejected this argument, concluding that the South Robert Trail property can "fairly be regarded as being in the same community for purposes of the statute, regardless of whether the South Robert Trail property lies within Cameron's trade area." Cameron suggests that the district court erred because all of the witnesses testified that his trade area constitutes the "community." We disagree that the evidentiary record compels any conclusion regarding the definition of the term "community." "The appropriate definition of a statutory term is a legal conclusion." *Thomas v. W. Nat'l Ins. Grp.*, 543 N.W.2d 712, 714 (Minn. App. 1996), *aff'd*, 562 N.W.2d 289 (Minn. 1997). In making a legal conclusion, a court may rely on arguments of counsel and evidence supporting those arguments, but the court is not bound to adopt the opinions of the witnesses when defining statutory terms.

Moreover, Cameron's proposed definition is limited to the commercial-property context, whereas the language of the minimum-compensation statute is not limited to commercial-property takings. Discussions at the relevant legislative hearings indicated that the legislature intended the statute to apply in both residential and commercial contexts. Hearing on S.F. No. 2750 Before the S. Judiciary Comm. (Mar. 9, 2006). Because the legislature did not limit application of the minimum-compensation statute to commercial-property takings, we will not construe the statute as if it had. Instead, we

define "community" in a way that has meaning in both residential and commercial contexts, and therefore reject Cameron's trade-area definition because it is meaningless in the residential-property context. And because the term "community" is not technical, we define it according to its common usage. *See* Minn. Stat. § 645.08(1) (stating that undefined, nontechnical words and phrases are construed according to rules of grammar and according to their common and approved usage).

Community is commonly defined as "[a] group of people living in the same locality and under the same government." *American Heritage Dictionary of the English Language* 383 (3rd ed. 1992). Under this common-usage definition, a determination of the relevant community inevitably will be fact dependent. The district court concluded that the South Robert Trail property is in the same community as the taken property because both properties are located in Inver Grove Heights. The district court stated:

> While location in the same city might not be significant or dispositive as to 'community' in a large city such as St. Paul, with a population of hundreds of thousands, it does not seem particularly out of line to make that connection in a suburb of 30,000 people such as Inver Grove Heights.

The district court's reasoning is sound. If the subject property is located in a smaller municipality, the municipality may be the community. But if the property is located in a large metropolitan area, the community may be a neighborhood or geographic area within the metropolis.

We recognize that the district court defined "community" as "meaning a location where a business can survive and be profitable," and that this definition is inconsistent with the common-usage definition adopted by this court. But the district court's ultimate

conclusion that the South Robert Trail property is within the community is correct under the definition adopted herein. Thus, any district court error in construing the term is not a basis for reversal. *See* Minn. R. Civ. P. 61 (stating that "any error or defect in the proceedings which does not affect the substantial rights of the parties" must be disregarded). In sum, because the district court's conclusion that the South Robert Trail property is in the same community as the taken property is consistent with the common-usage definition of community, the district court's conclusion is not erroneous.

IV.

Having defined the terms "comparable property" and "community" according to their common usage, we next consider the method by which a damages award is calculated under the minimum-compensation statute; that is, how does one determine an amount that is sufficient to purchase a comparable property in the community? Cameron contends that this amount must be based on one of two figures: the purchase price of a comparable property in the community; or, if no such property exists, the cost to construct a comparable property in the community with no allowance for depreciation.[3] Cameron argues that "a purchase price . . . is the basis for determining damages" under the minimum-compensation statute and that the district court erred in using a "valuation methodology" to determine damages, asserting that "[t]his is not a market value case. This is a minimum compensation case."

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[3] Because we conclude that the district court correctly determined that the South Robert Trail property is a comparable property in the community, we do not address Cameron's arguments regarding application of the minimum-compensation statute when no such property exists.

Cameron's argument that the measure of damages must be based on the list or offer price of a comparable property in the community that is available for purchase is based on a premise that we have rejected, namely, that the minimum-compensation statute guarantees the purchase of a replacement property. Because the statute does not guarantee a purchase, we discern no reason to require that the damages calculation be based on the list or offer price of a comparable property that is available for purchase at the time of the taking. Although the list or offer price may be an appropriate consideration when a comparable property in the community is available for purchase at the time of the taking, it is not the only basis for a damages calculation under the minimum-compensation statute.

A market-value analysis is traditionally used to determine just compensation in an eminent-domain case. *See Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 876 (Minn. 2010) ("[A] condemning authority must give the property owner a full and exact equivalent for the property taken. This equivalent is usually the market value of the property at the time of the taking contemporaneously paid in money." (quotations and citations omitted)). We discern no reason not to rely on traditionally utilized market-value approaches when determining damages under the minimum-compensation statute. But instead of determining the market value of the taken property, the focus shifts to the market value of comparable properties in the community.

"To determine the fair market value of property in a condemnation proceeding any competent evidence may be considered, if it legitimately bears upon the market value." *Cnty. of Ramsey v. Miller*, 316 N.W.2d 917, 919 (Minn. 1982) (quotation omitted). "The

measure of compensation is the amount which a purchaser willing, but not required, to buy the property would pay to an owner willing, but not required, to sell it, taking into consideration the highest and best use to which the property can be put." *Id.* "[C]ourts have traditionally used three methods of determining fair market value of real property: (1) market data approach based on comparable sales; (2) income-capitalization approach; and (3) reproduction cost, less depreciation." *Id.* "Artificial rules of evidence which exclude from the consideration of the jurors matters which men consider in their everyday affairs hinder rather than help them at arriving at a just result." *Id.* at 921 (quotation omitted). "In no branch of the law is it more important to remember this, than in cases involving the valuation of property, where at best, evidence of value is largely a matter of opinion." *Id.* (quotation omitted).

After determining that the South Robert Trail property was a comparable property in the community, the district court utilized a market-data approach to determine minimum compensation, utilizing the sale price of the South Robert Trail property. In doing so, the district court recognized that the South Robert Trail property was significantly smaller than Cameron's taken property: the main-floor square footage of the South Robert Trail property was 1,560 square feet and the main-floor square footage of Cameron's property was 4,444 square feet. The district court reasoned that "[s]ince the South Robert Trail property has considerably less main floor space than the Cameron property, the figures from [the South Robert Trail] sale will need to be extrapolated to determine a suitable award in this case." The district court divided the $350,000 building-and-land purchase price of the South Robert Trail property by the property's

1,560 main-floor square footage and concluded that the property sold for $224.36 per main-floor square foot. The district court declined to adopt certain adjustments that an appraiser had made to the price-per-square-foot calculation, such as land-to-building ratios, reasoning that such adjustments were inconsistent with "the interests of equity and justice." The district court concluded that the "unadjusted price per square foot more accurately reflects [the] reality" that Cameron was not "voluntarily looking for a place to move his business." The district court multiplied the $224.36 main-floor-square-foot price of the South Robert Trail property by 4,444, the main-floor square footage of the taken property, for a total of $997,055.84, which is the amount it awarded as minimum compensation.

Cameron argues that the district court erred in using this extrapolation method to account for the size difference between the two properties. We disagree. Although the statute does not specifically authorize this process, it is consistent with traditional market-value analysis. For example, "[t]he comparable sales method attempts to value a property by comparing the recent arm's length sales prices of similar properties and then adjusting those sales prices for differences between the sold property and the subject property." *Kmart Corp. v. Cnty. of Becker*, 709 N.W.2d 238, 240 (Minn. 2006).

Cameron also argues that the district court's use of the 4,444 square foot figure in its extrapolation is erroneous because his property contained 6,200 square feet: 4,444 square feet on the main floor and 1,756 square feet in the basement. But the district court's price-per-square-foot calculation is based on the main-floor square footage of the South Robert Trail property and not on its total square footage. As the district court

explained, it would have been inappropriate to multiply the South Robert Trail main-floor-square-foot price by the total square footage of the taken property. The district court further explained that if it had based its extrapolation on the total square footage of the taken property, the district court would have calculated the South Robert Trail price per square foot based on that property's total square footage. In which case, the price per square foot would have been $112.18 (i.e., the $350,000 South Robert Trail sale price divided by the property's total square footage of 3,120) and Cameron's award would have been $695,516 (i.e., $112.18 multiplied by 6,200 square feet), which is substantially less than the district court's award. The district court stated that it "gave Cameron the benefit of the doubt by using the more advantageous 'price per main floor square foot' approach."

Lastly, Cameron argues that the record does not provide support for the district court's extrapolation method. Cameron asserts that if this extrapolation had been undertaken by an appraiser, "it would be considered a 'back of a napkin' appraisal with no analysis and a total lack of credibility." But the district court had to base its decision on the evidence presented by the parties. *See Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) ("[A] party cannot complain about a district court's failure to rule in [the party's] favor when one of the reasons it did not do so is because that party failed to provide the district court with the evidence that would allow the district court to fully address the question."), *review denied* (Minn. Nov. 25, 2003). And as explained in section V, the district court concluded that neither the appraised value of the taken property nor Cameron's proposed new construction costs would constitute just

compensation. Once the district court rejected these alternatives, it had no choice but to fashion a remedy based on the evidence submitted by the parties. Because the resulting extrapolation was based on evidence presented at the hearing, because it was adequately explained by the district court, and because Cameron has not otherwise shown it to be defective, we conclude that it was not erroneous. *See 444 Lafayette, LLC v. Cnty. of Ramsey*, ___ N.W.2d ___, ___, 2012 WL 204534, at *1 (Minn. Jan. 25, 2012) (stating that "when the tax court rejects the testimony of both appraisers, that court must indicate one way or another the basis for its calculations and must provide an adequate explanation and factual support in the record for its conclusions" (quotation omitted)). In sum, the district court properly relied on recent sales data regarding the South Robert Trail property to determine damages under the minimum-compensation statute.

V.

Having determined that the district court did not err in its calculation of the damages award, we now consider whether the award is just compensation. "A state's ability to use eminent domain to take an individual's property is an awesome power." *Anda*, 789 N.W.2d at 875. "Both the United States and Minnesota Constitutions limit this sovereign power, requiring a public purpose and a payment of just compensation to the property owner for each taking." *Id.* at 876. The Fifth Amendment to the United States Constitution provides that private property shall not be "taken for public use, without just compensation." U.S. Const. amend. V. The Minnesota Constitution states that "[p]rivate property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured." Minn. Const. art. I, § 13. The supreme

court has "observed that because a constitutional provision for just compensation was inserted for the protection of the citizen, it ought to have a liberal interpretation, so as to effect its general purpose." *Anda*, 789 N.W.2d at 876 (quotation omitted).

> Although condemnation awards are usually based on the fair market value of the property in whatever condition the property is at the time of the taking, the constitutional standard that courts must adhere to is 'just compensation.' Courts can be fluid in the standards they apply to determine 'just compensation' when fairness so requires.
>
> When market value has been too difficult to find, or when its application would result in manifest injustice to owner or public, courts have fashioned and applied other standards. Whatever the circumstances under which such constitutional questions arise, the dominant consideration always remains the same: What compensation is "just" *both to an owner whose property is taken and to the public that must pay the bill?*

Id. (emphasis added) (quotation omitted). "The word 'just' in the Fifth Amendment evokes ideas of 'fairness' and 'equity.'" *United States v. Commodities Trading Corp.*, 339 U.S. 121, 124, 70 S. Ct. 547, 549 (1950).

The district court appropriately considered constitutional precedent in determining that $997,055.84 in damages is just compensation. The district court's order is supported by a well-reasoned memorandum that explains the court's analysis. The district court observed that it was involved in a "delicate balancing act." The court considered that Cameron's building was 124 years old and "exhibited wear, tear, and maintenance issues commensurate with its age." The district court also recognized that Cameron "enjoyed a loyal customer base, was apparently content where he was, and had no intention of moving his business." The district court reasoned that "for no other reason than his

property being taken through eminent domain, Cameron is forced to bear the costs of obtaining a new location for his business and complying with code and zoning." The district court concluded that "the mere payment of the strict replacement cost of a well-worn 124 year old property may not adequately compensate Cameron for what he lost in the taking." The district court therefore rejected the county's argument that "Cameron should not receive a 'betterment' over what he had before the taking."

But the district court also correctly reasoned that "Cameron should not enjoy a windfall as a result of the taking." *See State by Lord v. Malecker*, 265 Minn. 1, 6-7, 120 N.W.2d 36, 39 (1963) (indicating the supreme court's objection to a damages-calculation method that would result in a windfall to the owner), *overruled on other grounds by Miller*, 316 N.W.2d at 920-22. The district court explained that:

> If Cameron had ever desired to move his business to a new, fully compliant building on his own, he would have done so at significant expense to himself. If Cameron were to get a new building fully at the County's expense simply because his old building was taken, such would seem to put him in a significantly better position than he would have been in had the taking not occurred.

On balance, the district court concluded that Cameron should not have to bear "complete financial responsibility for the incremental 'upgrade' to a more modern building." The district court explained that the county "should not be able to fulfill its obligation to provide just compensation by merely paying the strict replacement cost of a century-old non-compliant building, when reality dictates that it will cost Cameron significantly more than that to obtain a modern building that can house his liquor store business." But the district court rejected Cameron's request for funds to construct a

brand new building. We agree with the district court's implicit conclusion that both alternatives would have resulted in a manifest injustice—the former to Cameron and the latter to the public.

The district court's fluid approach to its just-compensation determination is sound. *See Anda*, 789 N.W.2d. at 880 ("Courts can be fluid in the standards they apply to determine 'just compensation' when fairness so requires."). The district court appropriately considered what compensation was just "both to [the] owner whose property [was] taken and to the public that must pay the bill." *Id.* (quotation omitted). And although the district court rejected Cameron's new construction proposal as providing too great a windfall, it awarded him significantly more than the county's appraiser and the commissioners recommended, based on its determination that Cameron would need greater funds to purchase a comparable replacement property in the community. The resulting damages award of $997,055.84 is fair and equitable, and it provides just compensation for the taking. We therefore affirm the award.

VI.

We last consider Cameron's challenge to the district court's attorney-fee award. Minn. Stat. § 117.031(a) (2010) provides that

> [i]f the final judgment or award for damages, as determined at any level in the eminent domain process, is more than 40 percent greater than the last written offer of compensation made by the condemning authority prior to the filing of the petition, the court shall award the owner reasonable attorney fees, litigation expenses, appraisal fees, other experts fees, and other related costs in addition to other compensation and fees authorized by this chapter.

It is undisputed that the district court's final award exceeded the last written offer of compensation by more than 40%. The county therefore concedes that Cameron is entitled to reasonable attorney fees. Cameron argues that the district court erred in determining the amount of the fee award. Cameron argues that he should have been awarded $217,991.45 in attorney fees. This amount represents the actual fees that he incurred under his attorney-fee agreement, which provided for attorney fees based on one-third of the recovery over the county's original offer or an hourly fee, whichever was greater.

Generally, appellate courts "review the district court's award of attorney fees or costs for abuse of discretion." *Brickner v. One Land Dev. Co.*, 742 N.W.2d 706, 711 (Minn. App. 2007), *review denied* (Minn. Mar. 18, 2008). But Minn. Stat. § 117.031(a) requires the district court to award "reasonable attorney fees," and the reasonable value of counsel's work is a question of fact that we must uphold unless it is clearly erroneous. *See Amerman v. Lakeland Dev. Corp.*, 295 Minn. 536, 537, 203 N.W.2d 400, 400-01 (1973). In determining the reasonableness of attorney fees, the district court should consider: (1) the time and labor required; (2) the nature and difficulty of responsibility assumed; (3) the amount involved and the result obtained; (4) the fee customarily charged for similar legal services; (5) the experience, reputation, and ability of counsel; (6) the fee arrangement existing between counsel and the client. *State by Head v. Paulson*, 290 Minn. 371, 373, 188 N.W.2d 424, 426 (1971).

In determining a reasonable amount of attorney fees, the district court observed that this case required considerable time and labor, and that "it was a difficult case to

handle, especially in view of the lack of appellate guidance on the central issue." The district court acknowledged that Cameron's counsel is "highly respected and has considerable experience and ability in the field of eminent domain." In addition, the district court stated that the fees and the fee arrangement were not out of line with what is customarily charged for similar work. The only "problem" that the district court had with Cameron's fee request related to "the amount involved and the results obtained." The district court observed that Cameron sought $279,998.08 in fees, which was incurred to recover an additional $485,893.49 in compensation. The court stated:

> In other contexts, the net result of recovering $205,895.41 more than was spent in fees and costs might be considered an excellent result. Here, however, the Court did not go along with the bulk of Cameron's arguments, and he did not recover nearly the amount that he was seeking. Cameron sought $1,614,600 (plus interest) more than the County offered; the Court awarded him $485,893.49 (including interest). The amount that Cameron did recover came chiefly as the result of the Court's own legal and equitable analysis of what constitutes minimum and just compensation in this case, as opposed to the unsuccessful arguments that Cameron's counsel made regarding new construction, etc. In view of the results obtained, the Court feels that a modest reduction in the requested fees is appropriate.

The district court therefore awarded Cameron one-third of the additional $485,893.49 that he recovered.[4]

In arguing that the district court abused its discretion, Cameron focuses on the fee arrangement, asserting that, "[i]f the claim for reimbursement and/or the affidavits

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[4] The brief of Amicus Curiae Minnesota Eminent Domain Institute states that "[p]erhaps the most common method of setting fees between attorneys and clients in Minnesota condemnation cases is a contingent fee based on the recovery over the offer made by the condemning authority."

presented in court by attorneys or others demonstrate that the fees considered are reasonable in light of what is regularly charged in the community, the fee [] should be held to be *prima facie* 'reasonable' under the statute." We disagree with Cameron's suggestion that so long as the underlying fee arrangement is reasonable, any fees incurred under the arrangement are reasonably awarded under section 117.031(a). A fee arrangement is only one of six factors to be considered by the district court when determining a reasonable award of attorney fees. *Paulson*, 290 Minn. at 373, 188 N.W.2d at 426. Adoption of Cameron's approach, wherein the fee arrangement alone determines the reasonable fee award, would constitute a departure from precedent. We cannot change the law in this manner. *See Lake George Park, L.L.C. v. IBM Mid-America Emps. Fed. Credit Union*, 576 N.W.2d 463, 466 (Minn. App. 1998) (stating that "[t]his court, as an error correcting court, is without authority to change the law"), *review denied* (Minn. June 17, 1998). And because the district court appropriately considered all of the relevant factors and did not clearly err in determining the reasonable value of counsel's work, we affirm its attorney-fee award.

DECISION

The district court's determination that the South Robert Trail property was a "comparable property" within the "community" is consistent with the common-usage definitions of these terms under the minimum-compensation statute. And the district court appropriately used a market-value analysis based on recent sales data regarding the South Robert Trail property to calculate damages under the minimum-compensation statute. Because the resulting calculation provided just compensation for the taking of

Cameron's property, and because the district court did not err in determining a reasonable attorney-fee award, we affirm.

Affirmed.

117.187 MINIMUM COMPENSATION.

When an owner must relocate, the amount of damages payable, at a minimum, must be sufficient for an owner to purchase a comparable property in the community and not less than the condemning authority's payment or deposit under section 117.042, to the extent that the damages will not be duplicated in the compensation otherwise awarded to the owner of the property. For the purposes of this section, "owner" is defined as the person or entity that holds fee title to the property.

History: *2006 c 214 s 12*

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(4)

Adopted 3/23/06

1.1 Rep Harnstein moves to amend H. F. No. 2846, the fourth engrossment, as follows:

1.2 Page 6, line 20, delete "similar house or building of equivalent size" and insert "
1.3 comparable property"

1.4 Page 6, line 22, before the period, insert ", to the extent the damages will not be
1.5 duplicated in the compensation otherwise awarded to the owner of the property"

Excerpt from the March 16, 2006 Senate Transportation Committee on Bill 2750 (statements occurs near the very end of the hearing at approximately 3:20:00

Senator Robling:

And I think this might be a great improvement because as I was reading the first time I thought, you could purchase a similar house or building of equivalent size in the community and I thought, as long as it's the same size it can be on any lot in the community if we're only addressing the house itself, so if you wanted to have a house that is now on a lake and if we're only addressing the house and the size of the house, I would think it could have been read that way, and I think we've clarified it by taking out "of an equivalent size" we are not still addressing property. But I'm hoping that we're addressing the whole package, the lot and the house, so we're mainly dealing with the whole property and not just the house. I think we may be doing that here, but I just want to make sure that that's clear.

Unknown1:

I'm sorry, was there a question?

Unknown2:

Umm, no. I think it was a statement looking for maybe an answer but not specifically a question, Senator Robling. Were you looking for some...

Senator Robling:

I want to make sure it's addressing the whole property, the land and the building on it, and not just the building. So that you could have a building that would be on a much more valuable piece of property and ask for that comparison.

Unknown3:

Mr. Chair and members of the committee, actually as the amendment reads, it does say house or building. We are frankly quite comfortable if you want to eliminate the word house or building and say comparable property.

Unknown 4:

I'll make that change. I'll incorporate that amendment Mr. Chair.

House Research Bill Summary

File Number: S.F. 2750 (H.F. 2846) <>
Date: April 10, 2006

Version: Second unofficial engrossment

Status: As passed the House

Authors: Johnson, J., and others

Subject: Eminent domain

Analyst: Deborah A. Dyson

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Summaries are also available on our website at: www.house.mn/hrd/hrd.htm.

Overview

In general, this bill prohibits the use of eminent domain for economic development purposes alone and raises the burden of proof to show that a taking is for a public use and necessary when it is for blight mitigation, contamination remediation, reducing abandoned buildings, or removing public nuisances. The bill also provides for attorneys fees to property owners, makes changes in allowable or required compensation paid to owners of property taken, and establishes other related causes of action.

Section

1 1 **Preemption; no implied authority.**

Subd. 1. Preemption. Provides that Minnesota Statutes, chapter 117, preempts all other laws, including special laws, home rule charters, and other statutes, that provide for eminent domain procedures, definitions, remedies, or limitations, unless they do not diminish or deny substantive and procedural rights and protections of owners under chapter 117.

Subd. 2. Requirement of public use or public purpose. Requires

eminent domain to be used only for public use or public purpose.

Subd. 3. Extraterritorial use prohibited. Prohibits the use of eminent domain outside the condemning authority's jurisdiction unless the jurisdiction in which the property is located consents.

2 2 **Definitions.**

Subd. 1. Words, terms, and phrases (definitions). Provides that the definitions in Minnesota Statutes, section 117.025 (the definition section for the chapter of statutes governing eminent domain procedures), apply to any general or special law authorizing the exercise of the power of eminent domain.

Subd. 3. Owner. Technical, clarification.

Subd. 4. Condemning authority. Defined as any person or entity with the power of eminent domain.

Subd. 5. Abandoned property. Defined as property not legally occupied or used for any commercial or residential purpose, for which the condemning authority cannot locate the owner.

Subd. 6. Blighted area. Defined as an area that at the time condemnation is commenced, is in urban use and where more than 50 percent of the buildings are dilapidated (defined below).

Subd. 7. Dilapidated building. Defined to be a building that was inspected and cited for building code violations at least 12 months before the condemnation began, that has not been fixed, and that as of the beginning of the condemnation action is structurally substandard (defined below). Permits a local government to get a search warrant to do an interior inspection.

Subd. 8. Environmentally contaminated area. Defined as an area where more than 50 percent of the parcels contain contamination and for which the estimated costs of investigation, monitoring, testing, and clean-up are more than the estimated market value of the parcel, or where a court has issued a clean up order and the owner has not complied within a reasonable time.

Subd. 9. Public nuisance. Applies Minnesota Statutes, section 609.74, as the definition of public nuisance for eminent domain purposes. Section 609.74 provides:

"Whoever by an act or failure to perform a legal duty intentionally does any of the following is guilty of maintaining a public nuisance, which is a misdemeanor:

(1) maintains or permits a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort, or repose of

any considerable number of members of the public; or

(2) interferes with, obstructs, or renders dangerous for passage, any public highway or right of way, or waters used by the public; or

(3) is guilty of any other act or omission declared by law to be a public nuisance and for which no sentence is specifically provided."

Subd. 10. Public service corporation. Defined as a public utility, gas, electric, telephone, or cable communications company, and other listed utilities, and also as a municipality or public corporation when operating an airport, a common carrier, a watershed district, or a drainage authority.

Subd. 11. Public use, public purpose. Defines these terms to mean ownership and use of the land by the public, public agencies, or public service corporations, or to mitigate blighted areas, remediate environmentally contaminated areas, reduce abandoned property, or remove a public nuisance.

Specifically excludes the public benefits of economic development.

Subd. 12. Structurally substandard. Defined as building code violations for listed elements. Provides that a building is not structurally substandard if the estimated cost of fixing it does not exceed 50 percent of the estimated market value of the building.

3 3 **Condemnation for blight mitigation, contamination remediation.**

Subd. 1. Nondilapidated buildings in areas of blight mitigation; absolute necessity. Prohibits a condemning authority from taking buildings that are not dilapidated unless there is no feasible alternative and all possible steps are taken to minimize taking nondilapidated buildings.

Subd. 2. Uncontaminated property in environmental contamination remediation areas; absolute necessity. Prohibits a condemning authority from taking uncontaminated property unless there is no feasible alternative and all possible steps are taken to minimize taking noncontaminated parcels.

Subd. 3. Contribution to condition by developer disallowed. Prohibits considering blight or environmental contamination caused by a developer involved in the redevelopment of a blighted or contaminated area in determining whether an area is blighted or contaminated.

4 4 **Attorney fees.** Requires the court to award an owner attorneys fees and other costs of litigation if the final compensation award is 20 percent or more than the last written offer made before the condemnation petition was filed. The final judgment or award of damages is determined as of the date of taking. Prohibits an award of attorney fees if the judgment or award is not more than

$5,000. Requires the court to award an owner attorneys fees and other costs if the court determines that the taking is not for a public use or is unlawful.

5 5 **Hearing on taking; evidentiary standard.** Requires a condemning authority at the hearing in district court on the petition for condemnation for mitigation of a blighted area, remediation of a contaminated area, reducing abandoned property, or removing a public nuisance to show by clear and convincing evidence that the taking is necessary and for the stated public use.

Under current law, the courts generally defer to the condemning authority's legislative determination of public use and necessity, and will only overrule it if the court finds it "manifestly arbitrary and unreasonable." *See Housing & Redevel. Auth. of Minneapolis v. Minneapolis Metro Co.*, 259 Minn. 1, 15, 104 N.W.2d 864, 874 (1960).

6 6 **Compensation for removal of legal nonconforming use.** Requires a local government to compensate the owner of a nonconforming use if the local government requires its removal as a condition of granting a permit, license, or other approval for a use, structure, development or activity. Provides that the section does not apply if the permit, license or approval is for construction that cannot be done unless the nonconforming use is removed. Provides that the section does not apply to regulations relating to adult uses.

7 7 **Other regulatory takings.** Makes historic preservation designation adopted on or after August 1, 2002, that reduces the fair market value of real property or that interferes with its use, a regulatory taking that must be compensated. Allows the state or local government to repeal or amend the designation to eliminate the adverse impact instead of paying damages.

8 8 **Compensation for loss of going concern.** Provides the owner of a business or trade compensation for loss of going concern related to taking of real property. Provides that the claim can be avoid by the condemning authority upon a showing by clear and convincing evidence that the loss is not due to the taking, the loss could have been avoid with reasonable measures, or that the going concern compensation would duplicate compensation otherwise being awarded. Requires the owner to give the condemning authority notice of intent to seek compensation for loss of going concern within 60 days of the first court hearing on whether the proposed taking is for a public use and necessary.

Prohibits use of appraisal information or testimony at the commissioners' hearing on loss of going concern unless the information has been provided to the opposing party at least five days before the hearing.

9 9 **Government entry into mixed municipal solid waste services business; inverse condemnation.** Permits a person to bring an inverse condemnation action against a city that takes over or limits providers of trash hauling, causing harm to the person and that but for the city's actions, the person would still be in business. Prohibits an action based on termination or nonrenewal of a contract as authorized by the terms of the contract, or if the person has engaged in criminal or fraudulent conduct. Establishes a six month

statute of limitations.

10 10 **Compensation for loss of access.** Requires compensation if a governmental entity permanently eliminates 51 percent or more of the driveway access to a place of business, resulting in loss of revenues of 51 percent or more. The loss of revenue is based on revenues of year before loss of access. Requires the claim to be made within one year of completion of the project causing loss of access. Provides that compensation cannot exceed the difference between two years of revenues and costs of goods sold.

11 11 **Minimum compensation.** Requires compensation to allow the owner to purchase a comparable property in the community and not less than the quick take payment or deposit, as long as it does not duplicate compensation otherwise awarded.

12 12 **Limitations.** Prohibits a condemning authority from requiring an owner to accept as compensation a substitute property or return of property taken.

13 13 **Public service corporation exception.** Provides that the provisions prohibiting extraterritorial condemnation (section

14 1

, subdivision 3), for attorneys' fees (section

15 4

), compensation for loss of going concern (section

16 8

), minimum compensation (section

17 11

), and limitations (section

18 12

), do not apply to public service corporations.

19 14 **Public hearing.** Requires the city council, county board, or board of township supervisors to hold a public hearing on a proposed taking by the local government or agency of the local government after public notice, and specific notice to owners. Requires the governing body to allow public testimony. Requires the city council, county board, or board of township

supervisors to vote on the proposed taking at a regularly scheduled meeting of the governing body held after the public hearing. Requires the resolution for a taking to mitigate blight, reduce abandoned property, remediate environmental contamination, or remove a public nuisance to identify and describe the public costs and benefits known or expected from the project, and address how acquisition serves one or more identified public uses or purposes and why the property is needed.

20 15 **First right of refusal.** Requires property acquired by condemnation that is no longer needed by the condemning authority to be offered back to the person from whom it was acquired, if the person can be located, at the lower of the original price or the current fair market value.

21 16 **Relocation assistance amount determined by administrative law judge.** Requires relocation assistance to be determined by an administrative law judge under a contested case proceeding if the displaced person does not accept the condemning authority's offer.

22 17 **Information on owners rights and procedures.** Directs the attorney general to provide public information on the significant legal rights and obligations of condemning authorities, owners, and tenants, including applicable statutes and case law on the procedures and time frames involved in an eminent domain action. Requires annual updating.

23 18 **Condemnation for access to private property limited.** Prohibits a road authority from acquiring property by eminent domain to establish a local road or street for access to property of less than five acres that will serve projected traffic of less than 100 average daily trips, unless the property is landlocked or the road authority can show that the local road or street is necessary to cost effectively mitigate ongoing safety concerns. Provides that access only by navigable waterway means the property is landlocked.

24 19 **Ownership of lot or parcel not relevant.** Prohibits a county, city or town from prohibiting sales or refusing to issue a construction permit for a single-family residence based on ownership of contiguous nonconforming lots. Applies to shorelands.

25 20 **Revisor's instruction.** Directs the Revisor to change "right of eminent domain" to "power of eminent domain" in statutes and rules.

26 21 **Effective date.** Makes the act effective the day after enactment and apply to eminent domain proceedings commenced on or after March 1, 2006, except for acquisitions in tax increment financing areas or abatement areas by deadlines stated.