

Eminent Domain in Minnesota

A synopsis

Minnesota Statutes

The right of **eminent domain** is specifically noted throughout Minnesota Statutes with regard to a number of state and local governmental responsibilities and programs. These include the areas of natural resource management, the state's water laws (the various Chapter 103 series), agricultural land preservation, public education, transportation and more.

Eminent domain is generally governed by Minnesota Statutes Chapter 117 – Eminent Domain. Its MS § 117.011 reads as follows:

117.011 Must use this procedure; exceptions.

All bodies, public or private, who have the right of eminent domain, when exercising the right, shall do so in the manner prescribed by this chapter, even though a different procedure may be provided by charter provisions, ordinance or statute, but nothing herein shall apply to the taking of property under laws relating to drainage or to town roads when those laws themselves expressly provide for the taking and specifically prescribe the procedure. The taking of property for a project undertaken by a watershed district under chapter 103D or for a project undertaken by a drainage authority under chapter 103E may be carried out under the procedure provided by those chapters.

This chapter's definitions are brief and all encompassing, to wit:

117.025 Definitions.

Subdivision 1. **Words, terms, and phrases.** Unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases defined in this section have the meanings given them.

Subd. 2. **Taking.** Taking and all words and phrases of like import include every interference, under the right of eminent domain, with the possession, enjoyment, or value of private property.

Subd. 3. **Owner.** "Owner" includes all persons interested in such property as proprietors, tenants, life estate holders, encumbrancers, or otherwise.

Those entities authorized the power of **eminent domain** by the Legislature are noted in its MS § 117.035 to wit:

117.035 Proceedings, by whom instituted.

If such property be required for any authorized purpose of the state, the proceeding shall be taken in the name of the state by the attorney general upon request of the officer, board, or other body charged by law with the execution of such purpose; if by a corporation or other body, public or private, authorized by law to exercise the right of eminent domain, in its corporate or official name and by the governing body thereof; and if by an individual so authorized, in the individual's own name.

Under very proscribed conditions, private corporations are permitted to exercise the privilege of **eminent domain**. They are spelled out in Minnesota Statutes Chapter 300 – Corporation.

Municipalities are specifically authorized the power of **eminent domain** in MS § 465.01 which reads as follows:

465.01 Right of eminent domain.

All cities may exercise the right of eminent domain for the purpose of acquiring private property within or without the corporate limits thereof for any purpose for which it is authorized by law to take or hold the same by purchase or gift and may exercise the right of eminent domain for the purpose of acquiring a right-of-way for sewerage or drainage purposes and an outlet for sewerage or drainage within or without the corporate limits thereof. The procedure in the event of condemnation shall be that prescribed by chapter 117, or that prescribed by the charter of such city.

Broad authority to exercise **eminent domain** is provided in Minnesota Statutes Chapter 469 – Economic Development. Its MS § 469.01 specifically mentions the economic development authority both counties and municipalities enjoy, to wit:

469.001 Purposes.

The purposes of sections 469.001 to [469.047](#) are:

(1) to provide a sufficient supply of adequate, safe, and sanitary dwellings in order to protect the health, safety, morals, and welfare of the citizens of this state;

(2) to clear and redevelop blighted areas;

(3) to perform those duties according to comprehensive plans;

(4) to remedy the shortage of housing for low and moderate income residents, and to redevelop blighted areas, in situations in which private enterprise would not act without government participation or subsidies; and

(5) in cities of the first class, to provide housing for persons of all incomes.

Public participation in activities intended to meet the purposes of sections 469.001 to [469.047](#) and the exercise of powers confined by sections 469.001 to [469.047](#) are public uses and purposes for which private property may be acquired and public money spent.

Selected Minnesota Eminent Domain Cases

The following decisions have been selected because they give good definition to what a municipality, county or township can or can not do in exercising their power of **eminent domain**.

In practice, public bodies, and these can include HRAs, Port Authorities, Economic Development Authorities and other adjuncts of local governmental units, have wide authority and discretion in exercising their eminent Domain authority as long as it is for a defined public purpose and is based on their constitutional police powers to provide for the public health, welfare and safety.

Some specific points of Minnesota eminent domain law:

- One can not condemn land for a public use that is already devoted to a public use. Minnesota courts have not accepted the doctrine of “higher and/or better use” that some other state jurisdictions follow.

IN COURT OF APPEALS C2-98-875

Town of Fayal, petitioner, Respondent v. City of Eveleth, a municipal corporation, Appellant.

Filed January 5, 1999

Reversed

Amundson, Judge

St. Louis County District Court File No. C8-97-101725

Considered and decided by Klaphake, Presiding Judge, Davies, Judge, and Amundson, Judge.

S Y L L A B U S

1. A township does not have the express or implied statutory authority to condemn a municipality's property that is devoted to public use on the ground that it is private property.
2. Under Minnesota Statute § 365.02 (1996), a township does not have an implied statutory right to condemn property of a municipality, based on the consistent use

doctrine, when the township's proposed use is wholly inconsistent with the municipality's public use of the property.

And

**STATE OF MINNESOTA
IN COURT OF APPEALS
C1-98-2195
C4-98-2207**

In the Matter of Condemnation by Petitioner, Williams Pipeline Company, a Delaware corporation, of Certain Lands in the City of New Brighton to Permit Relocation of Pipeline, Williams Pipeline Company, petitioner, Respondent,

vs.

Soo Line Railroad Company, et al., Respondents Below (C1-98-2195), Soo Line Railroad Company, Respondent (C4-98-2207), MT Properties, Inc., Appellant (C1-98-2195), Respondent (C4-98-2207), Sprint Communications Company, L.P., et al., Lower Court Respondents (C4-98-2207), Minnesota Commercial Railway Company, Appellant (C4-98-2207),

and State of Minnesota, by MT Properties, Inc., Appellant (C1-98-2195),

vs.

Williams Pipeline Company, a Delaware corporation, Respondent (C1-98-2195).

**Filed July 27, 1999
Reversed and remanded
Amundson, Judge**

Ramsey County District Court No. C2-96-8031

S Y L L A B U S

The district court has jurisdiction to consider challenges brought by an affected property owner and a lessee to the exercise of eminent domain power by a common carrier seeking to reroute a pipeline to property outside a Superfund site. Absent statutory authority, Minnesota law does not permit the use of eminent domain power to interfere with an existing, authorized public use. Because Minnesota has not adopted or recognized the doctrine of “higher use” or “more necessary” public use, if one entity has established a public use on property, the courts may not weigh the desirability of permitting another entity to exercise eminent domain to establish an inconsistent use on the same property.

Minn. Stat. § 116B.03 (1998), which precludes a claim under the Minnesota Environmental Rights Act (MERA) for actions taken “pursuant to” an order or stipulation of the Minnesota Pollution Control Agency (MPCA) does not apply when a consent order allows multiple alternative actions. The choice of one among several alternatives may be challenged in an action brought under MERA.

AMUNDSON, Judge

This appeal arises from two actions. The first is a condemnation action brought by Williams Pipeline Company (Williams) to reroute its pipeline through an existing rail yard. The second action is a Minnesota Environmental Rights Act (MERA) suit brought by MT Properties, Inc. (MT) on behalf of the State of Minnesota, claiming that the proposed rerouting would likely cause pollution, impairment, or destruction of protectable natural resources. These actions were consolidated before the district court for hearing.

The district court initially denied the condemnation petition, but then reversed itself, holding that it lacked jurisdiction to consider objections to the petition. The court made extensive findings in January 1998 on the potential environmental, health, and safety impact of the proposed rerouting of the pipeline. In October 1998, the district court dismissed the MERA claim, apparently because it concluded that the claim was barred by Minn. Stat. § 116B.03 (1998).

This appeal is taken from the final decision granting condemnation and dismissing the MERA claim. We reverse and remand.

- The Eminent Domain power may not be exercised for speculative purposes, i.e. it must be for a specific defined public purpose or purposes.

IN COURT OF APPEALS C6-96-583

Regents of the University of Minnesota, a Public Body Established by the Laws of Minnesota and Charter, petitioners, Appellants,

vs.

Chicago and North Western Transportation Company, n/k/a Chicago and North Western Railway Company, a Delaware Corporation, Respondent, Chemical Bank, a New York Banking Corporation, Defendant, Northern States Power Company, Defendant, CSM Investors, Inc., Respondent, Minneapolis Community Development Agency, Respondent.

Filed August 27, 1996

Affirmed

Thoreen, Judge*

Hennepin County District Court File No. CD2368

Considered and decided by Willis, Presiding Judge, Peterson, Judge, and Thoreen, Judge.

S Y L L A B U S

In order to prove the requisite necessity for taking property in an eminent domain proceeding, the condemning authority must establish that it intends to use the property for a particular, identified purpose within a reasonable period of time.

THOREEN, Judge

Appellants challenge the trial court's dismissal of a petition by the University of Minnesota (the University) to acquire property by eminent domain. Because the trial court did not clearly err in determining that appellants failed to show the requisite necessity for condemning the property, we affirm.

- Condemnation proceedings only need to establish whether a taking serves a public purpose and is necessary.

STATE OF MINNESOTA IN COURT OF APPEALS C6-99-1473

Lino Lakes Economic Development Authority, Respondent,

vs.

George J. Reiling, Appellant.

**Filed May 16, 2000 Affirmed
Peterson, Judge**

Anoka County District Court File No. C79810569

Considered and decided by Peterson, Presiding Judge, Anderson, Judge, and Huspeni, Judge.

S Y L L A B U S

1. An economic development authority is not required to hold a hearing pursuant to Minn. Stat. § 469.101, subd. 1, or to make the findings required by Minn. Stat. § 469.174, subd. 12, before acquiring property by condemnation to create an economic development district.

2. Judicial review in condemnation proceedings is limited to determining whether the taking serves a public purpose and is necessary, and an appellate court will affirm the district court's findings of public purpose and necessity unless they are clearly erroneous.

And

IN COURT OF APPEALS C2-98-276

IN THE MATTER OF CONDEMNATION BY PETITIONER, THE MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY (MCDA), OF CERTAIN LANDS IN THE CITY OF MINNEAPOLIS SITUATED IN DEVELOPMENT DISTRICT NO. 57, SOUTH NICOLLET MALL

Minneapolis Community Development Agency (MCDA), petitioner, Respondent,

vs.

Opus Northwest, LLC, a Delaware limited liability company, Appellant, University of St. Thomas, et al., Respondents Below,

AND

Opus Northwest, L.L.C., a Delaware limited liability company, Appellant,

vs.

Minneapolis Community Development Agency, Respondent, City of Minneapolis, Respondent.

**Filed August 25, 1998 Affirmed
Schumacher, Judge**

Hennepin County District Court File No. CD2451

Considered and decided by Schumacher, Presiding Judge, Randall, Judge, and Kalitowski, Judge.

S Y L L A B U S

1. Public purpose and necessity cannot be thwarted by alleging that condemnation is illegal if the alleged illegality has not yet occurred or by alleging that the purpose for condemning the property is too speculative if in fact the project is officially supported by the governmental entity and ordinary agreements are in place to realize the project.

2. There is no need to create updated findings for a tax increment financing district if the original estimated amount of indebtedness for the district has not been exceeded.

- As long as a public access is available in at least one direction, there is no compensable taking.

STATE OF MINNESOTA IN COURT OF APPEALS C7-97-1302

City of Lino Lakes, Anoka County, Minnesota, Respondent,

vs.

Richard J. Schreier, et al., Appellants.

Filed December 23, 1997 Affirmed

Schumacher, Judge

Anoka County District Court File No. CO-97-4215

SCHUMACHER, Judge

This is an appeal from the district court's determination that the respondent City of Lino Lakes (the city) had a public purpose and necessity for initiating eminent domain proceedings. We affirm.

FACTS

Main Street runs east to west and intersects Interstate 35E, which runs north and south. The Main Street - 35E intersection is one of the busiest in the city. "Old" Otter Lake Road runs parallel to I-35E and serves as a service road for I-35E. It also intersects with Main Street.

Due to substantial recent and projected future growth in the city, and a corresponding desire to control the resulting traffic, the city is constructing a "new" Otter Lake Road that will intersect with Main Street at a location further to the east of the I-35E north-bound exit ramp. The location where old Otter Lake Road currently meets Main Street would be closed. About 300 or 400 feet south of and parallel to Main Street, the city is constructing a road that will connect the northern end of old Otter Lake Road to the new Otter Lake Road. This connector road is referred to as alignment "A," or the "Otter Lake Service Road Street." Alignment "A" will include sewer and water utilities. Under the reconstruction plans, there will be no future access to Main Street between I-35E and the newly aligned Otter Lake Road.

Appellants Richard J. and Patricia N. Schreier own 30 acres located between the old and the new Otter Lake Roads, and to the south of Main Street. The city condemned a portion of the Schreiers' land to build alignment A. The Schreiers challenge the public purpose

and necessity of the acquisition. They also claim that they should be compensated for being denied direct access rights to Main Street. The district court granted the city's condemnation petition.

And

STATE OF MINNESOTA IN SUPREME COURT C3-00-837

Court of Appeals

Page, J. Concurring Specially, Anderson, Paul H., J. and Gilbert, J.

Dale Properties, LLC, Respondent,

vs

State of Minnesota, petitioner,

S Y L L A B U S

The closure of a highway median crossover constitutes a noncompensable exercise of the state's police power when an abutting property owner loses traffic access in one direction, but retains access in the other direction.

- Giving adequate and proper notices to all parties is an essential in condemnation proceedings.

STATE OF MINNESOTA IN COURT OF APPEALS C6-96-924

In the Matter of Condemnation by the Housing & Redevelopment Authority in and for the City of Fridley, Minnesota, petitioner, Appellant,

vs.

Shin Jae Suh, et al., Respondents.

**Filed September 17, 1996 Affirmed
Lansing, Judge**

Anoka County District Court File No. C795934

Considered and decided by Kalitowski, Presiding Judge, Lansing, Judge, and Willis, Judge.

S Y L L A B U S

Under Minn. Stat. §§ 117.115, subd. 2, 117.145 (Supp. 1995), a condemnor must give notice of the filing of the Commissioners' report and notice of appeal to all nonsettling parties who were named in the condemnation petition and who have not been shown to lack an interest in the property. Failure to give notice deprives the district court of subject matter jurisdiction to consider the condemnor's appeal from the Commissioners' award.

OPINION

LANSING, Judge

This is an eminent domain proceeding in which the district court dismissed the condemnor's appeal from a Commissioners' award for lack of subject matter jurisdiction. Because we conclude that a fatal jurisdictional defect resulted from the condemnor's failure to give some of the parties who were named in the condemnation petition notice of the filing of the Commissioners' report and notice of the appeal from the award, we affirm.

- There is no reversionary right to the previous property holder for property taken via eminent domain if and when the public need or purpose terminates.

STATE OF MINNESOTA IN COURT OF APPEALS C7-01-267C3-01-394

Elon Piche, et al., Appellants (C7-01-267), Respondents (C3-01-394),

vs.

Independent School District No. 621, Respondent (C7-01-267), Appellant (C3-01-394).

Filed August 28, 2001 Affirmed in part, reversed in part

Parker, Judge*

Ramsey County District Court, File No. C9003446

Considered and decided by Stoneburner, Presiding Judge, Kalitowski, Judge, and Parker, Judge.

SYLLABUS

1. The party prevailing on an issue that has been argued before and addressed by the district court need not file a notice of review or raise the issue specifically in a posttrial motion to preserve the issue for appeal.

2. A school district, which condemned private property under the authority of Minn. Stat. § 125.06, subd. 2 (1957), for the purpose of acquiring a necessary site for a

schoolhouse, acquired fee simple absolute title to the land condemned. If the use for the land as the site for a school building is discontinued or abandoned, the prior fee owner has no reversionary interest.

3. The Marketable Title Act applies to interests in the title to property acquired by a governmental entity through eminent domain proceedings, and such application does not violate the constitutional protections against governmental takings of private property without just compensation.

4. An unambiguous warranty deed conveys fee simple absolute title despite the fact that the deed was conveyed under a threat of condemnation.

- Property taken for one public purpose via eminent domain can also subsequently be used for other public purposes, not necessarily stated in the original taking.

STATE OF MINNESOTA IN COURT OF APPEALS C3-01-265

Harlan Anderson, Appellant,

vs.

City of Cokato, a Minnesota municipal corporation, Respondent.

Filed July 17, 2001, Affirmed

Parker, Judge*

Wright County District Court, File No. C4002188

Considered and decided by Harten, Presiding Judge, Parker, Judge, and Foley, Judge.*

S Y L L A B U S

The condemning authority's change of the use for which acquired land has been taken, after title has been transferred to the condemnor in a condemnation proceeding, is not a discontinuance under Minn. Stat. § 117.195 (2000), such as to entitle the landowner to an award of attorney fees and costs.

D E C I S I O N

The plain language of Minn. Stat. § 117.195, subd 2 (2000), does not provide a remedy when, after the judgment has been satisfied, the condemning authority changes its purpose for property taken by eminent domain.

- The tests for invalidating a condemnation are very narrow.

STATE OF MINNESOTA IN COURT OF APPEALS C6-01-387

Port Authority of the City of Saint Paul, petitioner, Respondent,

vs.

Baillon Company, Appellant, Imperial Parking, Inc., et al., Respondents Below.

Filed August 7, 2001 Affirmed

Gordon W. Shumaker, Judge

Ramsey County District Court, File No. C80010078

Considered and decided by Amundson, Presiding Judge, Lansing, Judge, and Shumaker,

In this appeal from “quick-take” condemnation orders allowing respondent’s acquisition of appellant’s real estate, appellant alleges that the district court made various procedural errors and denied appellant due process of law. Because the district court followed and applied all requisite legal procedures and accorded appellant due process of law, we affirm.

D E C I S I O N

The judiciary’s review of condemnation proceedings has always been “very narrow.” *In re Condemnation by Minneapolis Community Dev. Agency*, 582 N.W.2d 596, 598 (Minn. App. 1998), *review denied* (Minn. Oct. 29, 1998) (*MCD A Nicollet*). The court’s limited scope of review only allows the port authority’s decision to be overturned if it was “arbitrary, unreasonable, or capricious, or if the evidence against the necessity or public use is overwhelming.” *City of Duluth v. State*, 390 N.W.2d 757, 764 (Minn. 1986) (citation omitted).

- Condemnation awards advisedly should consider benefits as well as damages to the property taken.

STATE OF MINNESOTA IN COURT OF APPEALS C8-00-1157

County of Hennepin, Respondent,

vs.

. William Lurton, et al., Respondents Below, Barbara J. Lefky, Appellant.

Filed April 10, 2001 Affirmed

Kalitowski, Judge

Hennepin County District Court File No. CD2485

Considered and decided by Kalitowski, Presiding Judge, Schumacher, Judge, and Poritsky, Judge.*

UNPUBLISHED OPINION

KALITOWSKI, Judge

On appeal from the denial of her motion for a new trial in this eminent domain proceeding, appellant-landowner Barbara J. Lefky challenges the district court's refusal to instruct the jury that general benefits to the remaining property should not be included in the jury's compensation award. We affirm.

DECISION

District courts have broad latitude in selecting the language of jury instructions provided that the entire charge fairly and adequately states the applicable law. *Alholm v. Wilt*, 394 N.W.2d 488, 490 (Minn. 1986). Appellate courts will not reverse a district court's jury instructions unless the court abused its discretion. *Id.* A new trial is warranted only when the jury instructions, considered as a whole, do not fairly and correctly state the applicable law, cause a miscarriage of justice, or result in substantial prejudice. *H Window Co. v. Cascade Wood Prods., Inc.*, 596 N.W.2d 271, 277 (Minn. App. 1999), *review denied* (Minn. Aug. 17, 1999).

Under Minn. Const. art. 1, § 13, property owners are entitled to just compensation for property taken, destroyed, or damaged for public use. Where only a part of a tract of land is taken, the landowner is entitled to damages for loss to the part remaining as well as to the part actually taken. *State by Lord v. Hayden Miller Co.*, 263 Minn. 29, 29 116 N.W.2d 535, 536 (1962). In such a case, the measure of damages is ordinarily the difference between the market value of the entire tract prior to the taking and the market value of the remainder after the taking, "excluding from consideration general benefits and deducting from the difference special benefits." *Id.*

- The following case very clearly defines the legal tests an eminent domain taking must meet in Minnesota.

STATE OF MINNESOTA IN COURT OF APPEALS C8-01-309

The Housing and Redevelopment Authority in and for the City of Richfield, petitioner,
Respondent,

vs.

Walser Auto Sales, Inc., et al., Appellants.

Filed July 3, 2001 Affirmed

Harten, Judge

Considered and decided by Toussaint, Chief Judge, Randall, Judge, and Harten, Judge.

S Y L L A B U S

1. When a taking of real property is authorized by law, serves a public purpose, and is necessary and convenient in furtherance of a redevelopment project, a district court does not err in granting a condemnation petition.

2. Because the law of eminent domain does not preclude an appellate court, in reviewing a challenge to the public necessity for a taking, from directing that property be returned to a condemnee, a condemnee's appeal of the public necessity for the taking is not rendered moot simply because a condemnor has acquired title to the property under the Minnesota quick-take statute.

1. Condemnation Petition

"Our scope of review in a condemnation case is very narrow." *County of Dakota (C.P.46-06) v. City of Lakeville*, 559 N.W.2d 716, 719 (Minn. App. 1997) (citing *City of Duluth v. State*, 390 N.W.2d 757, 763 (Minn. 1986)).

Great weight must be given to the determination of the condemning authority, and the scope of review is narrowly limited. If it appears that the record contains some evidence, however informal, that the taking serves a public purpose, there is nothing left for the courts to pass upon. *
* * The court is precluded from substituting its own judgment for that of the [public body] as to what may be necessary and proper to carry out the purpose of the plan.

In re Minneapolis Cmty. Dev. Agency (MCDA) v. Opus N.W., L.L.C., 582 N.W.2d 596, 598 (Minn. App. 1998) (quoting *City of Duluth*, 390 N.W.2d at 763 (quoting *Housing & Redev. Auth. v. Minneapolis Metro. Co.*, 259 Minn. 1, 15, 104 N.W.2d 864, 874 (1960))), review denied (Minn. Oct. 29, 1998).

Public purpose and necessity are questions of fact, and the district court's decisions on these matters will not be reversed on appeal unless clearly erroneous.

MCDA, 582 N.W.2d at 599 (citing *State by Humphrey v. Byers*, 545 N.W.2d 669, 672 (Minn. App. 1996)).

b. Public Purpose

Appellants argue that the evidence does not support the district court's finding that the taking serves a public purpose.

[I]n light of the deferential scope of review, this court has construed the words "public use" broadly. Historically, the court has used the words "public use" interchangeably with the words "public purpose," thus implying that even though a public entity, using its eminent domain powers, turns over parcels to a private entity for use by that private entity, the condemnation will, nevertheless, be constitutional if a public purpose is furthered by such a transfer of land.

City of Duluth v. State, 390 N.W.2d 757, 763 (Minn. 1986).

c. Necessity

Appellants argue that the evidence does not support the district court's finding that the taking was necessary.

Absolute necessity is not required for a finding of public purpose, rather it is enough to find that the proposed taking is *reasonably necessary* or *convenient* for the furtherance of a proper purpose.

MCDA, 582 N.W.2d at 600 (quotations omitted). Appellants contend that "there is no evidence that other alternatives were even explored." But, "[a] party challenging the necessity of the condemnation of a parcel will not succeed by merely suggesting alternatives to the government's plan." *Id.* (citing *City of Duluth*, 390 N.W.2d at 766).