

NO. A05-1505

State of Minnesota
In Court of Appeals

Instant Testing Company, et al.,

Appellants,

v.

Community Security Bank, Eagan Economic
Development Authority, Barbara Alice Kopacek, et al.,

Respondents.

APPELLANTS' BRIEF AND APPENDIX

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LEGAL ISSUES

- I. Whether the district court had subject matter jurisdiction to make a determination of the amount of relocation benefits for which Appellants are eligible under the Minnesota Uniform Relocation Act.
- II. Whether Appellants had standing under Minnesota Statute § 117.232 to bring their claim for a determination of the amount of relocation benefits for which they are eligible.

OVERVIEW OF THE CASE

- 1. The district court had subject matter jurisdiction to make a determination of the amount of relocation benefits for which Appellants are eligible under the Minnesota Uniform Relocation Act.**

Pursuant to Minnesota Statute § 117.232, in cases of a direct purchase, if a displaced person and an acquiring authority cannot agree on the amount of relocation benefits for which the displaced person is eligible the displaced person may bring a motion in district court for a determination of the amount of relocation benefits for which they are eligible. When Respondent denied Appellants' documented actual cost claim for relocation benefits following the direct purchase of the property on which they were located, Respondent informed Appellants they must avail themselves of the appeal policy it had adopted and objected to Appellants filing their motion in district court. In disregard of Minnesota Statute § 117.232, the district court determined it did not have subject matter jurisdiction because Respondent had adopted its own appeal policy and Appellants only remedy was to follow the appeal policy. The decision of the district court in this case strips the district courts of jurisdiction specifically conferred upon them by the Minnesota legislature and this Court should correct that error.

- 2. Appellants had standing under Minnesota Statute § 117.232 to bring their claim for a determination of the amount of relocation benefits for which they are eligible.**

In its decision, the district court concluded that Appellants did not have standing to bring their motion because they were not tenants on the property from which they moved at the time Respondent initiated negotiations to acquire that property. This decision was incorrect because it failed to consider; the previous determination of eligibility by the EDA and the ample evidence submitted by Appellants that they were lawfully in possession of the property when Respondent initiated negotiations for the purchase of that property. The district court also failed to follow the precedent established by this Court in the case *In the Matter of the Kenneth Wren, Residential Relocation Claim*, 699 N.W.2d 758 (Minn. 2005), later affirmed by the Minnesota Supreme Court, which held that if the actions of an acquiring authority and a private developer are sufficiently intertwined their combined actions confer eligibility for relocation benefits upon the displaced person.

STATEMENT OF FACTS

A. Background Facts

1. Factual Overview

Instant Testing Company and Allied Test Drilling (hereinafter “Appellants”) were two businesses located in the City of Eagan (hereinafter “City”) forced to relocate as a result of the acquisition of the property on which they were located via negotiated direct purchase by the Eagan Economic Development Authority (hereinafter “EDA”).

Despite not acquiring the property on which Appellants were located until December 5, 2003, the EDA first contacted Gordon Kopacek¹ (hereinafter “Mr. Kopacek”) more than six years prior to that date, about the redevelopment of his property and relocation of his businesses. (App. 1). In addition to being contacted by the EDA about the displacement of his business in 1997, Mr. Kopacek was also contacted by Mark Parranto (hereinafter “Mr. Parranto”), of Delta Development, in 2001 about Delta Development acquiring his property in a joint undertaking with the EDA, which also would have resulted in the relocation of his businesses. (App. 3)

2. Case Specific Facts

¹ Mr. Kopacek was both the owner of Appellants and the owner of the property on which Appellants operated their businesses. (App. 6) Appellants leased the property as tenants from Mr. Kopacek, with Mr. Kopacek as their landlord. (App. 6)

As early as September 9, 1997, Mr. Kopacek, as a property owner in the Cedarvale Redevelopment Project (hereinafter “Project”) area, received a letter from Jon Hohenstein (hereinafter “Mr. Hohenstein”), the Assistant City Administrator, informing him that the City was going to perform “a feasibility study to determine whether the Cedarvale Area might be eligible to be a redevelopment district under the state’s tax increment financing law.” (App. 1) The letter also informed Mr. Kopacek that, “[o]nce the inspections are complete, we will work with the Cedarvale Task Force, made up of the area’s property owners, to develop alternative plans for possible future redevelopment.” (App. 1)

Approximately six months later, on or about March 10, 1998, Mr. Kopacek received a memo from Mr. Hohenstein regarding a neighborhood informational meeting about the Project. (App. 8) Specifically, the memo invited Mr. Kopacek “to review Delta Homes”² proposal to redevelop certain properties and construct a townhouse development on the south side of Beau D’Rue Drive [now known as Cedar Grove Parkway]” (App. 8) Being a property owner on the south side of Beau D’Rue Drive, the letter directed Mr. Kopacek to contact Mr. Parranto or Mr. Hohenstein if he had any questions regarding the Project. (App. 8)

On or about March 24, 1998, Mr. Kopacek received another memo from Mr. Hohenstein regarding the establishment of a tax increment-financing (hereinafter “TIF”) district. (App. 9) The letter noted that, “the overall Cedarvale TIF area meets the criteria in the statute for a Redevelopment District.” (App. 9)

Mr. Hohenstein concluded by noting “[t]his analysis applies to the entire area analyzed.” (App. 9) The letter indicated that the property on which Appellants were located was clearly within the TIF district. (App. 9)

In March 1999, Mr. Kopacek received a copy of the Eagan Business News.³ (App. 10) An article in that newsletter indicated the City retained SRF Consulting to study the Project area and to come up with a redevelopment plan. (App. 10) The map in the article showed that Mr. Kopacek’s property was in the middle of the proposed Project area. (App. 10)

On or about December 6, 1999, Mr. Kopacek received a letter from Jamie Verbrugge (hereinafter “Mr. Verbrugge”), the new Assistant City Administrator, providing him with an update on the concept plan for the Project known as “The Village Plaza.” (App. 12) Specifically, Mr. Verbrugge noted that The Village Plaza was envisioned as a three-phase redevelopment project. One of the three phases was to include the building of new housing units “on the south side of Beau D’Rue Drive. These improvements would require the *acquisition and relocation* of a number of businesses.” (App. 12, emphasis added)

In June 2000, Mr. Kopacek received another issue of the Eagan Business News, which included an article regarding the Project. (App. 13) The article noted that the City was going to start using TIF financing for its redevelopment projects.

² Delta Homes was the prior name of Delta Development.

³ The Eagan Business News is a quarterly newsletter published jointly by the City, the EDA and the Eagan Chamber of Commerce.

(App. 13) The article specifically noted that TIF financing was going to be used for this particular Project that included Mr. Kopacek's property. (App. 13)

In late 2000, Mr. Kopacek received two separate newsletters and fact sheets from either the City or the EDA regarding the Project. (App. 14-18) The newsletters provided specific information regarding the timelines, financing issues and public participation in the ongoing Project. (App. 14-18) The newsletters also directed interested parties to contact Mr. Verbrugge if they had any further questions regarding the Project. (App. 14-18)

In March 2001, Mr. Kopacek received another issue of the Eagan Business News with further information regarding the Project. (App. 19) In one of the articles, the City noted "Delta Development was recently given the go ahead to pursue *negotiations* with property owners on the south side of Beau D'Rue" (App. 19, emphasis added) The article went on further to note that "[t]he City Council has entered into a preliminary redevelopment agreement with Delta that is in effect for nine months" (App. 19) That redevelopment agreement gave Delta Development "exclusive negotiating rights with the City for the designated area." (App. 19) Under the terms of the redevelopment agreement Delta Development was encouraged "to *negotiate acquisition* of the properties in the project area." (App. 19, emphasis added)

On or about June 27, 2001, Mr. Kopacek received a letter from Mr. Verbrugge indicating that at least a portion of the Project was to be funded by TIF

financing. (App. 21) Once again Mr. Kopacek was directed to contact Mr. Verbrugge if he had any questions in this regard. (App. 21)

Sometime thereafter Mr. Kopacek received another fact sheet from either the City or the EDA regarding the Project. (App. 23) The fact sheet specifically informed Mr. Kopacek that “[t]he City expects to enter into a final development agreement with Delta Homes this fall for new housing in the Cedar Grove South district of the redevelopment area.” (App. 23) Additionally, the newsletter noted that construction was “expected to begin in 2002 and be phased in over the next two years.” (App. 23)

After receiving the 2001 fact sheet, Mr. Parranto contacted Mr. Kopacek to negotiate the acquisition of his property for the Project. (App. 3) During these ongoing negotiations, Mr. Parranto informed Mr. Kopacek that he was going to acquire his property by Fall 2001 and that he was going to have to move his businesses by November 2001. (App. 3) However, later that year, Mr. Parranto informed Mr. Kopacek that Delta Development would not be acquiring his property in 2001, but would acquire his property by Fall 2002 and that Appellants were going to have move by November 2002. (App. 3)

Based upon his discussions with Mr. Parranto, and knowing the intentions the City had to redevelop his property, Mr. Kopacek set about the process of locating a replacement site for his businesses. (App. 3) In Spring 2002, Mr. Kopacek found a possible replacement property in Savage, MN. (App. 3) After locating a potential replacement site, Mr. Kopacek contacted Mr. Parranto to

determine if his businesses were indeed going to have to vacate his property by November 2002. (App. 4) Mr. Parranto confirmed that Delta Development was still intent on acquiring his property and that his businesses would have to move by November. (App. 4) Based upon these assurances, Mr. Kopacek acquired the replacement property and began construction of a new building for his businesses in September 2002. (App. 4)

On or about December 2, 2002, the EDA entered into a Development Agreement (“Agreement”) with Delta Development for redevelopment of the Project area. (App. 25) Pursuant to the terms of the Agreement, the EDA was to provide Delta Development with approximately \$1.8 million in financial assistance for the Project. (App. 31) The Agreement stated that Delta Development was to directly negotiate the acquisition of the properties in the project area. (App. 33) However, the EDA pledged that it would acquire either, through *negotiation or condemnation*, those properties Delta Development was unable to acquire on its own. (App.33, emphasis added)

Additionally, if the EDA had to acquire the properties Delta Development was unable to acquire on its own, it would then convey title to those properties to Delta Development. (App. 33) If the EDA had to acquire any such properties, Delta Development was responsible “for any Condemnation Expenses [which included relocation costs] and other costs and fees for which the EDA may be responsible” (App. 33) Finally, in the Agreement, Delta Development agreed

to reimburse the EDA for any relocation expenses it was required to pay under Chapter 117 of the Minnesota Statutes. (App. 34)

When it became clear to Mr. Kopacek that his new facilities would not be ready by the end of November 2002, he attempted to contact Mr. Parranto on several occasions to request an extension to the vacate date and to discuss the closing of the sale of his property to Delta Development. (App. 4) Despite his previous assurances to Mr. Kopacek, and despite being obligated to acquire his property under the terms of the Agreement, Mr. Parranto failed to contact Mr. Kopacek regarding the acquisition of his property and the date by which his businesses had to move. (App. 4)

Finally, in March 2003, Mr. Kopacek was able to contact Mr. Parranto about Delta Development's acquisition of his property. (App. 4) When he finally spoke with Mr. Parranto, Mr. Kopacek was quite concerned because of the loans he had taken out in 2002 for the acquisition of his replacement property and to construct his new buildings. (App. 4) During the phone conversation Mr. Parranto informed Mr. Kopacek that, despite the terms of the Agreement, he was no longer involved in the purchase of his property. (App. 4) Mr. Parranto instructed Mr. Kopacek to contact the City because he knew the City had been acquiring other properties in that area in lieu of acquisition by Delta Development. (App. 4)

After speaking with Mr. Parranto, Mr. Kopacek contacted Mr. Verbrugge, on or about March 11, 2003, about the possibility of the City acquiring his property in lieu of Delta Development. (App. 4) When the EDA determined it

would acquire the property owned by Mr. Kopacek, it retained the services of an acquisition and relocation-consulting firm to act as its agent to negotiate with Mr. Kopacek and provide the relocation advisory services and claim assistance to Appellants mandated by the Minnesota Uniform Relocation Act (hereinafter “MURA”).⁴ Minn. Stat. §§ 117.50 – 177.56. The name of the firm was Wilson Development Services and the consultant was Dan Wilson (hereinafter “Mr. Wilson”).

Sometime in mid-April 2003, Mr. Wilson approached Mr. Kopacek about the EDA purchasing the property on which his businesses were located. (App. 4) After being approached by Mr. Wilson, verbal negotiations ensued between Mr. Wilson and Mr. Kopacek for the acquisition of his property by the EDA. (App. 4) After their initial meeting, Mr. Wilson informed Mr. Kopacek, the City and the EDA that Appellants were eligible for relocation benefits as a result of the EDA’s acquisition of Mr. Kopacek’s property. (App. 4) On or about May 8, 2003, Mr. Wilson submitted to Mr. Kopacek the EDA’s written offer for the purchase of his property.⁵ (App. 62)

⁴ Minnesota Statutes §§ 117.50 – 177.56, are collectively known as the Minnesota Uniform Relocation Act. The MURA requires that all acquiring authorities must provide the mandatory “relocation assistance, services, payments and benefits under the Uniform Relocation Assistance and Real property Acquisition Policies Act of 1970, United States Code, title 42, sections 4601 to 4655, as amended” Minn. Stat. § 117.52, Subd. 1 (2003).

⁵ In early March 2003, Appellants moved some of their personal property to their new site in anticipation of having to move either as a result of the acquisition of Mr. Kopacek’s property by either Delta Development or the EDA. While some material had been moved when Mr. Wilson approached Mr. Kopacek about the

Despite informing Appellants that they were eligible for relocation benefits, Mr. Wilson did not provide them with the relocation advisory services and claim assistance mandated by the MURA.⁶ Minn. Stat. § 117.52 (2003). These relocation advisory services and claim assistance should have included:

- A personal interview to determine the relocation needs and preferences of the displaced businesses;
- An explanation of the relocation payments and other assistance for which the businesses may be eligible, the related eligibility requirements and the procedures for obtaining such assistance;
- Assistance to obtain and become established in a suitable replacement location;
- Minimizing hardships by providing advice and referrals to other sources of assistance that may be available;
- Reasonable assistance necessary to complete and file a claim for payment; and
- Information regarding documentation that is required to support a claim for relocation benefits.

49 C.F.R. 24.205(c), 49 C.F.R. 24.207 (a), 49 C.F.R. 24.207(b).⁷

EDA acquiring his property, the majority of Appellants' personal property was still at the Eagan site. (App. 4) It was not until Mr. Wilson assured Mr. Kopacek that the EDA would acquire his property that Appellants began in earnest to remove their personal property. (App. 4)

⁶ This is particularly troubling given that Mr. Wilson is so experienced in the area of providing relocation advisory services under the MURA. In previous sworn testimony, Mr. Wilson qualified himself as an expert with thirty-four years of experience in the area of relocation benefits. *In the Matter of River City Woodworking, Inc.* A04-2106 (Minn. App. June 21, 2005). (App. 56) In that same sworn testimony, Mr. Wilson testified that he provided the displaced business in that case with a MnDOT brochure explaining to the owner of that displaced business of his right to make a claim for relocation benefits, along with how to properly submit his claim. (App. 57) Mr. Wilson never provided Mr. Kopacek with that MnDOT brochure or with information on how to properly submit a claim. (App. 7)

⁷ Relocation advisory services and claim assistance are "seen as the key to the entire Uniform Act; the reason for which it was conceived. A person displaced by a project will suffer some harm for the good of the general public. It is the job of

In addition to failing to provide these advisory services and claim assistance, the EDA specifically failed in its duty to: (1) obtain move estimates to determine the cartage costs for the move of Appellants' personal property to their new location,⁸ (2) determine the amount of reestablishment costs for which Appellants were eligible, (3) determine the amount of search costs for which Appellants were eligible and (4) determine the disconnect/reconnection costs for which Appellants were eligible. 49 C.F.R. 24.303(c); 49 C.F.R. 24.304; 49 C.F.R. 24.303(a)(13); 49 C.F.R. 24.303(a)(3). All displaced businesses are eligible for these, as well as, other relocation benefits.

Mr. Wilson did not wait for Appellants to actually move and incur expenses in that regard to determine the amount of benefits for which they were eligible.⁹

the individual relocation counselor to see that such harm is minimized." *Business Relocation*, United States Department of Transportation, Federal Highway Administration, NHI Publication No. FHWA HI-95-025, 4.3 (May 1995).

The purpose of relocation planning is to minimize economic harm to displaced businesses and increase the likelihood of their remaining in business within the affected community. When you consider the fact that many businesses operate under marginal conditions and any disruption may lead to the failure of weaker businesses, more emphasis must be placed on planning and advisory services when businesses are to be displaced.

Id. at 4.10.

⁸ In his sworn testimony in the *River City Woodworking, Inc.* case, Mr. Wilson stated that in a typical business relocation case, per the relocation regulations, it is standard for him to obtain, early in the claim process, two estimates from commercial movers to determine the cost to move the personal property owned by the business. (App. 58) Despite stating under oath that this is the standard procedure in business relocation claims, Mr. Wilson did not obtain any such estimates for Appellants. (App. 7)

⁹ In his sworn testimony in the *River City Woodworking, Inc.* case, Mr. Wilson testified "[t]he uniform act, or MURA, is essentially a reimbursement program,

Rather, based upon a tour of Appellants' facilities, Mr. Wilson arbitrarily concluded, without the benefit of sufficient documentation (e.g. bids, estimates, hour logs, etc.), that Appellants were only eligible for an actual cost relocation claim of approximately \$36,500.00.¹⁰ (App. 54) However, Mr. Wilson determined that in the alternative, Appellants may be eligible for a payment of up to \$40,000.00. (App. 54) Without any basis for either of those conclusions, and without obtaining any relocation claim documentation from Appellants, Mr. Wilson informed the City that he had negotiated with Mr. Kopacek a relocation benefit payment in the amount of \$40,000.00.¹¹ (App. 7) Based upon his negotiations with Mr. Kopacek, Mr. Wilson ultimately determined that Appellants were eligible for a relocation benefit claim in the amount of \$41,000.00.¹² (App. 7)

Relying upon the representations of Mr. Wilson, and his many years of experience, Mr. Kopacek assumed this really was the full amount of benefits for

and therefore the cost must be incurred in order to be eligible.” (App. 59) However, in this matter Mr. Wilson simply estimated the costs Appellants would incur and informed both Appellants and the EDA would be paid without having to incur those costs.

¹⁰ This is particularly interesting given that the move estimate obtained by Appellants alone was for \$35,199.36. This amount did not include the \$20,000.00 in reestablishment costs and \$2,000.00 in search costs for which, at a minimum, Appellants were eligible.

¹¹ This behavior is contrary to Mr. Wilson's testimony in the *River City Woodworking* case in which he testified that when he deals with businesses that are not represented by attorneys he stated I work “with the displacee in accumulating those invoices, [for relocation expenses] determining -- and preparing the claim on their behalf. (App. 60)

¹² This is contrary to Mr. Wilson's testimony in the *River City Woodworking* case in which he testified that expenses must actually be incurred to be reimbursed and final claims are not negotiated settlements. (App. 59)

which his businesses were eligible.¹³ (App. 7) Had Mr. Kopacek known at that time the full amount of relocation benefits for which his businesses were eligible, he would have asked for them. (App. 7) It is logical to assume that Mr. Kopacek would have instead insisted that Mr. Wilson assist Appellants in documenting their relocation claim once the move had been completed.

On or about April 21, 2003, Mr. Wilson sent a memo to Gene VanOverbeke (hereinafter “Mr. VanOverbeke”), at the City, regarding his verbal negotiations with Mr. Kopacek. (App. 54) In the memo, Mr. Wilson informed Mr.

¹³ The approach taken by the EDA, via its relocation consultant, is contrary to the URA. The relocation laws contemplate that displaced persons are not knowledgeable of their relocation rights. The Federal Highway Administration (hereinafter “FHWA”), the lead agency on the promulgation and interpretation of the URA, recently released comments and rule changes to the URA. Due to the FHWA’s concern regarding abuse of negotiated global settlements, the FHWA noted,

[t]he changes to § 24.205 are not intended to reflect “global settlements.” We do not believe that such settlements are consistent with the requirements of the Uniform Act or this part. The Uniform Act and this part require that relocation payments be determined in accordance with specific fact based criteria. . . . In addition, actual reasonable moving expenses often cannot be determined until after the move has been completed. Relocation benefits provided under the Uniform Act and this part must be determined in accordance with the applicable requirements contained therein, and any “settlement”, related to relocation benefits, that does not do so would not be consistent with statutory and regulatory requirements. Both §§ 24.205 and 24.207(f) are drafted to ensure that displaced persons are fully advised of all relocation assistance benefits that are available to them, and that a displaced person is offered all the assistance and benefits for which he or she is eligible. This applies to both residential and nonresidential displacements.

VanOverbeke that both of Mr. Kopacek's businesses were eligible for relocation benefits and estimated that claim to approximately be \$36,500.00, but may go as high as \$40,000.00. (App. 54) On or about April 30, 2003, Mr. VanOverbeke noted in writing on the memo that the numbers discussed with Mr. Kopacek were "within the ballpark of Parranto's budget." (App. 54)¹⁴

On or about May 5, 2003, Mr. Wilson sent another memo to Mr. VanOverbeke with the final terms he had negotiated with Mr. Kopacek. (App. 61) The memo specifically noted that Mr. Kopacek was to be paid \$40,000.00 for his business' relocation benefits. (App. 61) On or about May 8, 2003, Mr. Wilson submitted a written offer on behalf of the EDA to Mr. Kopacek, which included \$40,000.00 in relocation benefits for his businesses. (App. 62) On that same day, Mr. Wilson sent another memo to Mr. VanOverbeke with the terms of the negotiated settlement, which included "Business relocation: \$40,000 above and beyond acquisition amount. Satisfies EDA/City responsibility for two businesses, Instant Testing Co. and Allied Test Drilling Co. Amount to be paid at closing." (App. 64)

On or about June 16, 2003, Mr. Wilson sent another memo to Mr. VanOverbeke in an attempt to resolve problems that arose during the final wording of the purchase agreement. (App. 68) In that memo Mr. Wilson noted that Mr. Kopacek was now eligible for a relocation benefit payment in the amount

¹⁴ This clearly indicates that the EDA and Delta Development were still working together for the acquisition of Mr. Kopacek's property and redevelopment of the

of \$41,000.00. (App. 68) Mr. Wilson also noted that the EDA should pay those benefits to Mr. Kopacek “when he vacates the property, presumably this week.” (App. 69)

Subsequent to the move of his businesses, Mr. Kopacek realized the costs to move and reestablish his businesses at their new location greatly exceeded \$41,000.00. (App. 7) On or about August 11, 2004, Appellants informed the EDA that they were going to make a documented actual cost claim for relocation benefits. (App. 77) On or about November 9, 2004, Appellants submitted their documented actual cost claim for relocation benefits to the EDA, with their final documentation submitted on November 15, 2004.

On or about February 4, 2005, Appellants received the EDA’s response to their claim, and in a retaliatory action designed to punish Appellants for making their claim, the EDA reversed its previous determination of Appellants’ eligibility and denied that they were even eligible for any relocation benefits in the first place. (App. 79-88) This is contrary to the position taken by Mr. Wilson and the EDA during the negotiations with Mr. Kopacek and begs the question of why the EDA paid Appellants some of their relocation benefits if they were not eligible for relocation benefits at all.

B. Procedural History

When the EDA served Appellants with the denial of eligibility it also served Appellants with a copy of its “Relocation Assistance – Procedure For

Appeals” policy (hereinafter “Appeal Policy”). (App. 89) According to the Appeal Policy, if Appellants chose to appeal the denial of eligibility, the City would appoint the City Attorney for the City of Inver Grove Heights to be the hearing officer for the administrative appeal hearing. The City Attorney for Inver Grove Heights was the law firm of LeVander, Gillen & Miller (hereinafter “LeVander firm”). (App. 89)

Upon receipt of the Appeal Policy, Appellants’ attorneys objected to the use of the LeVander firm because of the conflicts Appellants’ attorneys had with that firm. (App. 91) These conflicts included one open relocation case Appellants’ attorneys had against that firm at that time in its role as the city attorney for the City of West St. Paul. (App. 91) These conflicts also included the many relocation claim cases Appellants’ attorneys had litigated against the LeVander firm. (App. 91)

Despite the existence of these conflicts, the EDA refused to appoint an alternative Hearing Officer for the administrative appeal hearing. Based upon their belief that the LeVander firm, and by imputation any member of that firm, had a conflict, Appellants filed their motion at special term of the district court and for that court to make the determination of the amount of relocation benefits for which they are eligible. Minn. Stat. § 117.232, Subd. 2 (2004).

In disregard for the jurisdiction specifically conferred upon the district courts by the Minnesota legislature via Minnesota Statute § 117.232, the district court concluded that because the EDA adopted the Appeal Policy the court lacked

“subject matter jurisdiction to hear petitioners’ claims.” (App. 96) Additionally, the district court concluded, in spite of the evidence submitted on the record and the joint undertaking by Delta Development and the EDA that resulted in Appellants’ displacement, that Appellants were not owners or tenants on the Property at the initiation of negotiations and therefore lacked “standing to bring a claim for relocation benefits under Minn. Stat. § 117.232.” (App. 96)

After receiving the district court decision, Appellants followed the direction provided by the district court and attempted to exhaust its administrative remedies by requesting an administrative appeal hearing based upon the Appeal Policy. (App. 104) However, the EDA denied Appellants’ request as being untimely and would not provide Appellants with the requested administrative appeal hearing. (App. 111)

In addition to attempting to deny Appellants’ right to procedural due process by appointing the LeVander firm, the EDA failed to follow the argument it made to the district court that Appellants had no choice but to follow the Appeal Policy and denied Appellants’ right to any sort of administrative appeal hearing. This denial of an appeal hearing meant Appellants could not exhaust their administrative remedies and gave them no option but to file an appeal to this Court.

STANDARD OF REVIEW

Interpretation of state statutes and existing local ordinances “are questions of law that this court reviews de novo.” *Buss v. Johnson*, 624 N.W.2d 781, 784 (Minn. App. 2001).

ARGUMENT

I. The district court had subject matter jurisdiction to make a determination of the amount of relocation benefits for which Appellants are eligible under the Minnesota Uniform Relocation Act.

A. Minnesota Statute § 117.232

As previously noted, Appellants were two businesses forced to relocate as a result of the acquisition of the property on which they were located via direct purchase by the EDA. Pursuant to Minnesota Statute § 117.232, Subd. 1, when private property is acquired through direct purchase, “[t]he purchaser in all instances shall inform the owner of the right . . . to reimbursement for appraisal fees reasonably incurred . . . together with relocation costs, moving costs and any other related expenses to which an owner is entitled by sections 117.50 to 117.56 .” Additionally, § 117.232 provides that,

[i]n the event the purchaser and owner agree on the fair market value of the property but cannot agree on the appraisal fees and moving costs, the owner shall have the option to accept the offer for the property and reject the offer for the appraisal fees and moving costs. In addition thereto, the owner may, after due notice to all interested parties, bring a *motion at a special term of the district court* in the county in which the property is located for a determination of such moving costs and appraisal fees by the court.

Minn. Stat. § 117.232, Subd. 2 (2005) (emphasis added). Chapter 117 of the Minnesota Statutes defines an owner as “all persons interested in such property as proprietors, *tenants*, life estate holders, encumbrances, or otherwise.” Minn. Stat. § 117.025, Subd. 3 (2003) (emphasis added).

Based upon Minnesota Statute § 117.232, the district court had subject matter jurisdiction over Appellants’ claim because:

1. The EDA negotiated the direct purchase of Mr. Kopacek’s property;
2. Appellants and the EDA did not agree on the amount of relocation benefits for which Appellants were eligible;
3. Appellants had an interest in the property as tenants both at the time Delta Development and the EDA initiated negotiations for the purchase of Mr. Kopacek’s property and the previous determination of their eligibility for relocation benefits by the EDA.

B. Doctrine of Conflicts

When the district court issued its decision in this matter it noted, “Petitioners failed to exhaust their administrative remedies under the relocation Assistance – Procedure for Appeals policy adopted by both the City of Eagan and Eagan Economic Development Authority.” (App. 96) In rendering its decision the district court upheld a local ordinance that is expressly in conflict with a statute adopted by the Minnesota legislature. Additionally, in rendering its decision, the district court concluded that a municipal corporation (or its political subdivisions) has the power to strip the district courts of the jurisdiction specifically conferred upon them by the Minnesota legislature.

Despite the decision of the district court in this case, district courts in Minnesota have jurisdiction in all cases “wherein such jurisdiction is especially

conferred upon them by law.” Minn. Stat. § 484.01 (2005). In the case *Robinette v. Price*, 8 N.W.2d 800, 804 (Minn. 1943), the Minnesota Supreme Court noted a “court’s power and authority emanates from the applicable statutes. . . . Whenever that power is given, jurisdiction is conferred, no matter what terms the statute employs.” See, *Carlson v. Chermak*, 639 N.W.2d 886 (Minn. App. 2002).

Consistent with the Supreme Court’s decision in *Price*, the plain language of Minnesota Statute § 117.232, Subd. 2, confers jurisdiction upon the district courts in cases of direct purchase by an acquiring authority, to make a determination of the amount of relocation benefits for any displaced person would be eligible.

The Appeal Policy adopted by the EDA is irreconcilable with Minnesota Statute § 117.232, because it specifically forbids what § 117.232 allows. There are four principals courts must consider when determining whether a local ordinance is invalid for being in conflict with a state statute:

- (a) As a general rule, conflicts which would render an ordinance invalid exist only when both the ordinance and the statute contain express or implied terms that are irreconcilable with each other.
- (b) More specifically, it has been said that conflict exists where the ordinance permits what the statute forbids.
- (c) Conversely, a *conflict exists where the ordinance forbids what the statute expressly permits*.
- (d) It is generally said that no conflict exists where the ordinance, though different, is merely additional and complementary to or in aid and furtherance of the statute.

Buss, 624 N.W.2d at 784 (Minn. App. 2001) (emphasis added) (citing *Northern States Power Co. v. City of Granite Falls*, 463 N.W.2d 541, 544-45 (Minn. App. 1990)).

The Appeal Policy adopted by the EDA prevents a displaced person in cases like this from bringing a motion at special term of the district court to determine the amount of relocation benefits for which they are eligible. Minnesota law is clear, an appeal of a quasi-judicial decision of a Hearing Officer is directly to this Court by writ of certiorari. *Naegele Outdoor Advertising v. Minneapolis Community Development Agency*, 551 N.W.2d 235, 237 (Minn. App. 1996). Once a displaced person avails himself or herself of the administrative appeal hearing process, they no longer have the right of judicial review in district court. *Id.*

In certain cases the Appeal Policy may be applicable and legal.¹⁵ However, in this case, the Appeal Policy forbids what Minnesota Statute § 117.232 expressly permits and the district erred in concluding it did not have subject matter jurisdiction to make the determination of the amount of relocation benefits for which Appellants are eligible.

As a result of the decision of the district court, a condemnor would now have the power to strip the district courts of jurisdiction over the Chapter 117 eminent domain process by simply adopting an “Eminent Domain Appeals Policy”. No reasonable person would ever conclude that a condemning authority had such a power. However, because this is a case of first impression, the district court concluded an acquiring authority would have that power in this case and this

¹⁵ Those cases would include those where a direct purchase did not occur and § 117.232 did not apply, or where a conflict of interest does not exist.

Court should correct this obvious error.

Based upon the express conflict between the Appeal Policy and Minnesota Statute § 117.232, this Court should determine that the Appeal Policy is not applicable in this case, reverse the decision of the district court and determine that the district court has subject matter jurisdiction to determine the amount of relocation benefits for which Appellants are eligible.

II. Appellants had standing under Minnesota Statute § 117.232 to bring their claim for a determination of the amount of relocation benefits for which they are eligible.

As previously noted, Chapter 117 of the Minnesota Statutes defines an owner as “all persons interested in such property as proprietors, tenants, life estate holders, encumbrances, or otherwise.” Minn. Stat. § 117.025, Subd. 3 (2003). Any such person has the right under Minnesota Statute § 117.232 to bring a motion at special term of the district court to determine the amount of relocation benefits for which they are eligible. Appellants had the right as tenants on the property owned by Mr. Kopacek, as well as being eligible displaced persons, to bring their motion at special term of the district court.

In its decision, the district court concluded that Appellants did not have standing to bring their claim because “[t]here is *no evidence* to support the assertion that petitioners were tenants or owners within the meaning of Minn. Stat. § 117.025, subd. 3 at the time the EDA began negotiations.” (emphasis added) (App. 96) The decision of the district court was patently incorrect in this regard because it failed to consider the ample evidence submitted by Appellants that they

were lawfully in possession of the property when the EDA initiated negotiations for the purchase of the Mr. Kopacek's property. The district court also failed to follow the precedent established by this Court in the case *In the Matter of the Kenneth Wren, Residential Relocation Claim*, 699 N.W.2d 758 (Minn. 2005), later affirmed by the Minnesota Supreme Court, which held that if the actions of a governmental entity and a private developer are sufficiently intertwined their combined actions make the acquisition of a displaced person's property a joint undertaking for the purposes of conferring eligibility for relocation benefits upon the displaced person.

A. Prior to their move, the EDA determined that appellants were eligible for relocation benefits.

As previously noted, when he first met with Mr. Kopacek, Mr. Wilson informed him that his businesses were eligible for relocation benefits as a result of the acquisition of his property by the EDA. At the time Mr. Kopacek agreed to sell his property to the EDA, it had no objection to paying Appellants their relocation benefits. However, it was not until Appellants submitted their documented claim that the EDA determined they were not eligible for relocation benefits in the first place. Being an eligible displaced person gives that person standing under Minnesota Statute § 117.232. The reason for this is that if § 117.232 did not give them standing there would have been no reason for the Minnesota legislature to have adopted the statute because only eligible displaced persons can make a claim for relocation benefits.

The after-the-fact denial of eligibility by the EDA does not strip a displaced person of standing Minnesota Statute § 117.232 to bring their motion. If that were the case an acquiring authority could inform a displaced person they previously provided with a Notice of Relocation Eligibility that they were no longer eligible in an attempt to prevent them from exercising their rights under Minnesota Statute § 117.232. This is clearly contrary to the letter and the spirit of the law and should not be tolerated by this Court.

B. Appellants were tenants on the property at the initiation of negotiations by the EDA.

Despite the conclusions of the district court, Appellants were lawful tenants in possession of the property when the EDA initiated negotiations with Mr. Kopacek. (App. 4) While Appellants had moved some of their personal property in early March 2003 to their replacement site, a significant amount of their personal property remained at the Eagan site while they remained in possession of that property. (App. 4) The record clearly reflects that Appellants did not have the first dumpster for disposing of the personal property they did not want to move to their replacement site until May 7, 2003, which was almost a month after Mr. Wilson first approached Mr. Kopacek about the EDA acquiring his property. (App. 97) The record also clearly reflects that the final dumpster was delivered on June 11, 2003, which was more than two months after the EDA initiated negotiations for the purchase of Mr. Kopacek's property. (App. 103)

This evidence disregarded by the district court demonstrates that Appellants were still in lawful possession when the EDA initiated negotiations. If Appellants were not in possession at the initiation of negotiations it begs the question of why did Mr. Wilson and the EDA determine they were eligible for relocation benefits.

The only logical conclusions are:

1. Even though Appellants had moved a small amount of personal property to their replacement, Mr. Wilson realized a significant amount of personal property remained on the site and that Appellants had not vacated prior to the initiation of negotiations; or
2. The EDA realized the only reason why Appellants were moving was because of the acquisition of the property on which they were located for the Project.

In addition to having a significant amount of personal property still located on the displacement site at the time the EDA initiated negotiations, Appellants had not been evicted or had their month-to-month leases terminated by Mr. Kopacek prior to the EDA initiating negotiations for the purchase of his property. (App. 4) In a prior decision, this Court determined that a displaced business simply has to be in lawful possession of their property at the time of the move to be eligible for relocation benefits. *In re James Brothers Furniture, Inc.*, 642 N.W.2d 91, 100 (Minn. App. 2002). Appellants were in lawful possession of the property at the time of their move and the record is uncontested in this regard.

C. *In the Matter of the Kenneth Wren, Residential Relocation Claim*

As previously noted, the district court ignored the precedent established by this Court, and later affirmed by the Minnesota Supreme Court, in which these Courts concluded that when the actions of a private developer and governmental

entity are “sufficiently intertwined” and the private developer acquires the displaced person’s property, it is considered a joint undertaking between the developer and the governmental entity making the displaced person eligible for relocation benefits under Minnesota Statute § 117.52. *Wren*, 699 N.W.2d at 765.

As in the *Wren* case, the record taken as a whole clearly indicates that the actions of Delta Development and the EDA were so sufficiently intertwined that this Project was a joint undertaking so that Appellants’ eligibility for relocation benefits vested when Delta Development first approached Mr. Kopacek about acquiring his property:

- On or about September 9, 1997, Mr. Kopacek, as a property owner in the Project area, received a letter from Mr. Hohenstein informing him that the City was going to study the feasibility of establishing a TIF district in the Project area.
- On or about March 10, 1998, Mr. Kopacek received a memorandum from Mr. Hohenstein about the possibility of reviewing Delta Homes’ redevelopment plan for the Project area.
- On or about March 24, 1998, Mr. Kopacek received confirmation from Mr. Hohenstein that the Project area met the criteria for the establishment of a TIF district.
- On or about December 6, 1999, Mr. Kopacek received a letter from Mr. Verbrugge about the acquisition of his property and the relocation of his businesses for a three-phased redevelopment project in the Project area.
- In June 2000, Mr. Kopacek received information from the City that it was going to start using TIF funds to finance its redevelopment in the Project area.
- In March 2001, Mr. Kopacek received information from the City that the City had entered into a preliminary redevelopment agreement with Delta Development and that Delta Development was encouraged to begin negotiating with property owners in the Project area for the acquisition of their properties for the Project.
- In 2001, Delta Development entered into negotiations with Mr. Kopacek to acquire his property for the Project.

- On or about November 19, 2002, the EDA entered into a Development Agreement with Delta Development for the redevelopment of the Project area.
- Pursuant to the terms of the Agreement, the EDA provided Delta Development with \$1.7 million in financial assistance for the Project.
- Additionally, Delta Development was to directly negotiate the acquisition of the properties in the Project area, and if it failed to acquire any properties, the EDA pledged to negotiate or use its power of eminent domain to acquire those properties Delta Development was unable to acquire. Delta Development pledged to reimburse the EDA for any relocation expenses it was required to pay as a result of having to acquire any properties in the Project area.
- The EDA kept in frequent contact with the property owners in the Project area about the ongoing status of the Project.

By negotiating directly with Mr. Kopacek, the EDA was doing what it pledged to do in the Agreement and was a continuation of the joint undertaking by Delta Development and the EDA to acquire Mr. Kopacek's property. Even though the EDA ultimately acquired Mr. Kopacek's property, at the time Delta Development initiated negotiations as part of the joint undertaking with the EDA, neither the EDA, nor the district court, disputes that Appellants were tenants on Mr. Kopacek's property, making them an owner for the purposes of Minnesota Statute § 117.025, Subd. 3.

In rendering its decision the district court ignored the history of significant interaction between the EDA and Delta Development and only considered the ultimate acquisition of Mr. Kopacek's property by the EDA in a vacuum. From the perspective of the district court there was no involvement in this matter by the EDA prior to Mr. Wilson's meeting with Mr. Kopacek on April 9, 2003. However, the facts of this case clearly demonstrate a plan by the EDA that began

as early as 1997 to finance the acquisition and redevelopment of the property on which Appellants were located.

For the foregoing reasons, Appellants respectfully request this Court reverse the decision of the district court and determine that they had standing to bring their claim under Minnesota Statute § 117.232.

CONCLUSION

In cases of direct purchase, the Minnesota legislature wanted displaced persons to be able to bring a motion in district court for a determination of the amount of relocation benefits for which they are eligible. Despite the clear language of Minnesota Statute § 117.232, the district court concluded that because the EDA adopted its own Appeal Policy it did not have subject matter jurisdiction to make a determination of the amount of relocation benefits for which Appellants are eligible. The Appeal Policy adopted by the EDA is irreconcilable with § 117.232 because it expressly prohibits what is allowed § 117.232 and based upon the Doctrine of Conflicts, a local ordinance may not prohibit what is allowed by statute.

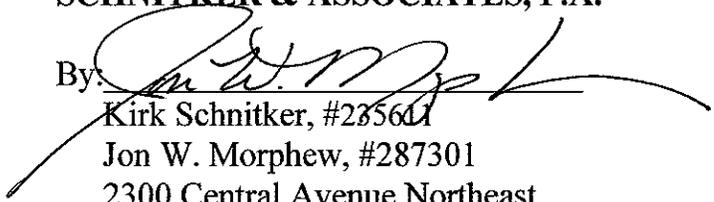
In addition to concluding that it did not have subject matter jurisdiction, the district court concluded, without merit, that Appellants did not have standing to bring their claim. The decision by the district court completely disregarded the evidence on the record that the EDA previously determined Appellants to be eligible for relocation benefits, that Appellants were lawfully in possession of the property on which they were located when the EDA initiated negotiations for the

purchase of Mr. Kopacek's property and, based upon the *Wren* case, at the time Delta Development initiated negotiations for the purchase of Mr. Kopacek's property, it is undisputed that Appellants were tenants on Mr. Kopacek's property.

For the foregoing reasons, Appellants respectfully request this Court to determine that the Appeal Policy is not applicable in this case and that the district court has subject matter jurisdiction to make the determination of the amount of relocation benefits for which Appellants are eligible. Additionally, Appellants respectfully request this Court determine they did have standing to bring their motion and it was an error for the district court to conclude otherwise.

Respectfully submitted, this 3rd day of November 2005.

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).