

State of Minnesota

In COURT OF APPEALS

City of Granite Falls,

Petitioner / Respondent,

vs.

BNSF Railway Company,

Respondent / Appellant (A07-417),

and

Twin Cities & Western Railroad Company,

Respondent / Appellant (A07-418).

**BRIEF OF AMICUS CURIAE
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LEGAL ISSUES

- I. Whether the City's condemnation of an easement for the purpose of transferring it to the state for the construction of a recreational trail serves a public purpose where the trail will be open to the public and will stimulate economic development by promoting recreational tourism?

The district court ruled in the affirmative.

- II. Whether the City's condemnation of an easement was necessary where the City reasonably determined that the easement was needed for the development of a recreational trail that the legislature has authorized and the city council has determined is feasible based on surveys and studies.

The district court ruled in the affirmative.

INTRODUCTION

The League of Minnesota Cities (LMC) has a voluntary membership of 830 out of 854 cities in Minnesota. LMC represents the common interests of cities before judicial courts and other governmental bodies and provides a variety of services to its members including information, education, training, advocacy, and insurance services. LMC has a public interest in this appeal as a representative of the hundreds of cities throughout the state that benefit from the existence of public recreational trails.¹

In this case, the City of Granite Falls filed a condemnation petition seeking to acquire an easement over railroad property for the purpose of transferring it to the state for the construction of a multi-user, non-motorized recreational trail extending from Granite Falls to Wegdahl. This trail is eventually to be part of the Minnesota River Trail – a state trail running from Big Stone Lake State Park to the City of Le Sueur. *See* Minn. Stat. § 85.015, subd. 22. The trial court approved the condemnation petition holding that the taking “is for a public purpose, is necessary, and is authorized by law.” Joint App. of Appellants at A-55. Appellants are challenging the trial court’s decision claiming in part that the City’s determination that the taking is for a “public purpose” was legally insufficient. Instead, Appellants urge this Court to adopt a new, heightened standard claiming that the City was required to determine that the taking was for a “municipal purpose.”

¹ Pursuant to Minn. R. Civ. App. P. 129.03, LMC certifies that this brief was not authored in whole or in part by counsel for either party to this appeal and that no other person or entity made a monetary contribution to its preparation or submission.

This case will have a significant impact throughout the state because the new standard Appellants are proposing would apply to the condemnation of property by all Minnesota cities. Minnesota courts have consistently applied the well-established public-purpose standard when reviewing challenges to a city's condemnation of property. Appellants' attempt to create a new standard should be rejected because it is inconsistent with well-established law and because it will prevent cooperation between cities and potential partners – both public and private – for the benefit of Minnesota citizens.

STATEMENT OF THE CASE AND FACTS

The League concurs with Respondent's statement of the case and facts.

ARGUMENT

I. The City reasonably determined the condemnation serves a public purpose.

Respondent's Brief demonstrates why the trial court's decision should be affirmed. LMC concurs with Respondent's legal arguments, which will not be repeated here. Instead, this brief will demonstrate why the new standard Appellants are proposing should be rejected.

Minnesota courts have consistently held that a city's condemnation of land must be supported by a legislative determination of public purpose or public use. *See, e.g., R.E. Short Co. v. City of Minneapolis*, 269 N.W.2d 331, 337 (1978); *City of Minneapolis v. Wurtele*, 291 N.W.2d 386, 390 (1980); *City of Duluth v. State*, 390 N.W.2d 757, 762 (Minn. 1986). Appellants' advocacy for a new, heightened standard of "municipal purpose" conflicts with this well-established law.

Appellants argue that the condemnation in this case is invalid because the city does not intend to develop the recreational trail itself, but instead, will transfer the property to the state for its development. Essentially what Appellants are claiming, is that a city cannot condemn property and then transfer it to achieve a public purpose unless the transfer itself is expressly authorized by statute. Appellants reason that because there is no statute that expressly states that a city can condemn property and convey it to the state for the construction of a recreational trail, there cannot be a “municipal purpose” for the condemnation. This restrictive interpretation of the public-purpose doctrine should be rejected because it conflicts with well-established law and it is bad public policy.

It is well-settled that a city’s legislative determination of public purpose is narrowly reviewed under the deferential “arbitrary and capricious” standard. *See, e.g., R.E. Short Co. v. City of Minneapolis*, 269 N.W.2d 331, 337 (1978); *City of Minneapolis v. Wurtele*, 291 N.W.2d 386, 390 (1980); *City of Duluth v. State*, 390 N.W.2d 757, 763 (Minn. 1986); *In re Condemnation by Minneapolis Community Dev. Agency*, 582 N.W.2d 596, 599 (Minn. Ct. App. 1998), *rev. denied* (Minn. Oct. 29, 1998). In this case, the City of Granite Falls reasonably determined that the creation of a public recreational trail near the City would serve several important public purposes including: (1) promoting the economic development of the City and the surrounding area by promoting recreational tourism; (2) providing recreational opportunities for its citizens; and (3) serving as an asset to help retain the City’s young people in the community. Joint App. of Appellants at A-21-A-23.

Appellants don't even attempt to dispute these obviously reasonable determinations of public purpose, but instead claim the City must demonstrate the condemnation serves a "municipal purpose" by pointing to statutory authority that expressly authorizes a city to transfer property to the state for the development of a recreational trail. Such a restrictive interpretation of the public-purpose doctrine is contrary to state statute and legal precedent.

The general statute authorizing cities to use the power of eminent domain provides:

All cities may exercise the power 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 power 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 prescribed by chapter 117, or that prescribed by the charter of such city.

Minn. Stat. § 465.01 (emphasis added). The plain language of the statute authorizes a city to condemn property for any purpose for which it is authorized to purchase property. As a result, the first question should be whether a city has legal authority to purchase property to create a recreational trail.

It is obvious that cities throughout Minnesota have in fact created numerous recreational trails. These trails are often among the most highly valued assets of our member cities, and there are several possible sources of statutory authority for their creation.

For example, cities have statutory authority to establish recreational facilities including parkways. Minn. Stat. § 412.491. Cities also have statutory authority to establish “public ways.” Minn. Stat. § 412.221, subd. 6. And the general police powers of cities – which have consistently received a broad interpretation from Minnesota courts – give cities the power to provide for “the benefit of residence, trade, and commerce, and the promotion of health, safety, order, convenience, and the general welfare” of its citizens. Minn. Stat. § 412.221, subd. 32. In addition, cities have authority to purchase property if it is needed for recreational trails because state law provides that cities “have power to make such contracts as may be deemed necessary or desirable to make effective any power possessed by the council.” Minn. Stat. § 412.221.

Because cities are legally authorized to purchase property to create recreational trails, they are also authorized to condemn property to create a recreational trail under the plain language of Minn. Stat. § 465.01. As a result, the next question that must be answered is whether a city has legal authority to transfer condemned property to another party for the creation of a recreational trail. The answer is yes for several reasons.

First, there is no restriction on a city’s ability to transfer condemned property in Minn. Stat. § 465.01. Second, Minnesota courts have consistently recognized that cities have authority to transfer condemned property to achieve a public purpose. *See, e.g., Housing & Redevelopment Auth. v. Greenman*, 96 N.W.2d 673 (Minn. 1959) (noting that the term public purpose must be construed broadly); *City of Duluth v. State*, 390 N.W.2d 757 (Minn. 1986). Indeed, this type of public-private cooperation has been the cornerstone of projects designed to encourage economic development within a

community. If cooperation between two or more public entities serves a public purpose, it is likewise legally authorized and should be encouraged. Third, it is well-established that cities have not only the express powers given to them in statute, but also have all the powers reasonably implied to accomplish those powers. *Mangold Midwest Co v. Village of Richfield*, 143 N.W.2d 813, 820 (Minn. 1966).

Therefore, if a city has express authority to create a recreational trail, it logically follows that a city has implied power to transfer condemned property if it will help accomplish the creation of a recreational trail. Indeed, Minnesota courts have consistently recognized the implied powers of cities in the context of condemnation actions. *See, e.g., Village of Lambertton v. Chicago & N.W. Ry. Co.*, 265 N.W. 801 (Minn. 1936) (general power to lay out, open, and extend streets includes implied power to extend street across railroad right-of-way where the extension does not essentially impair it for railroad purposes); *Minneapolis & St. L. R. Co. v. Village of Hartland*, 88 N.W. 423 (Minn. 1901) (the power to open streets includes the implied power to condemn an easement across railroad rights-of-way, even though there might be some interruption of railway traffic because of the crossing).

This deferential approach to a city's legislative determination of public purpose is consistent with legal precedent and it is good public policy because it maintains the separation between the judicial and legislative branches of government. Minnesota courts have consistently recognized that second-guessing legislative policy decisions is not a proper judicial function. *See, e.g., Nusbaum v. Blue Earth County*, 422 N.W.2d 713, 718 (Minn. 1988). Instead, city councils must be recognized as the experts when

legislative determinations of public purpose are at issue. City councils have the hands-on knowledge of the facts, familiarity with their communities, and in-depth understanding of the issues needed to make informed decisions that are in the best interest of the citizens who have elected them to make important policy decisions.

Appellants primarily rely on a 1958 attorney general opinion to support their argument for a new, heightened “municipal purpose” standard. Op. Minn. Atty. Gen. 59a-14 (Dec. 30, 1958). Addendum of Appellant BNSF Railway Co. at Add-1-Add-3. In this advisory opinion, the City of Thief River Falls questioned whether it could condemn a tract of land for the purpose of “conveying the same to the state for a roadside parking area and historic monument.” *Id.* The attorney general concluded that the proposed condemnation was beyond the powers delegated by Minn. Stat. § 465.01. *Id.*

There are several reasons why Appellants’ reliance on this attorney general opinion is not persuasive. First, the attorney general opinion is distinguishable because in this case – as previously discussed – the City has clear statutory authority to purchase property for a recreational trail; and as a result, the City also has clear authority to condemn property for a recreational trail. Second, opinions of the attorney general are only advisory and are not binding on courts. *See, e.g., Governmental Research Bureau, Inc. v. St. Louis County*, 104 N.W.2d 411, 416 (1960). Third, this attorney general opinion conflicts with well-settled legal precedent that has upheld the transfer of condemned property to achieve a public purpose and has construed the term public-purpose broadly. *See, e.g., Housing & Redevelopment Auth. v. Greenman*, 96 N.W.2d 673 (Minn. 1959); *City of Duluth v. State*, 390 N.W.2d 757 (Minn. 1986).

II. The City reasonably determined the condemnation was necessary.

A city's determination of necessity, like its determination of public purpose, is subject to narrow review and may only be overturned if it is "arbitrary, unreasonable, or capricious, or [if] the evidence against the necessity or public use is overwhelming." *City of Duluth v. State*, 309 N.W.2d 757, 764 (Minn. 1986) (alteration in original) (quotation omitted). A city is only required to demonstrate that a proposed taking "is reasonably necessary or convenient for the furtherance of a proper public purpose." *Reilly Tar and Chemical Corp. v. City of St. Louis Park*, 121 N.W.2d 393, 397 (Minn. 1963). "The mere suggestions of possible alternatives to the condemning authority's plan will not in itself support a finding of arbitrariness." *City of Pipestone v. Halbersma*, 294 N.W.2d 271, 274 (Minn. 1980).

Appellants argue that no necessity exists because the project is speculative primarily relying on *Regents of the University of Minn. v. Chicago and Northwestern Transportation Co.*, a case involving the "stockpiling" of land targeted for condemnation for which the University had no specific plans. 552 N.W.2d 578 (Minn. Ct. App. 1996), *rev. denied* (Minn. Nov. 20, 1996). Essentially Appellants claim the City's condemnation of the easement in this case was not necessary for two reasons: (1) because the plan for the creation of the trail is too uncertain; and (2) because the construction of the trail will not be accomplished in a reasonable period of time. Appellant Twin Cities & Western Railroad Company's Brief at 13; Appellant BNSF Railway Company's Brief at 19. Appellants are wrong for several reasons.

First, the City is not stockpiling land for an unspecified purpose. Rather, the City reasonably determined that condemnation of the easement was necessary for a specific purpose – the development of a recreational trail. Second, the recreational trail is to be part of a larger state trail the creation of which has already been authorized by the legislature. Minn. Stat. § 85.015, subd. 22. Third, the City’s determination of necessity was based on feasibility studies and a preliminary engineering study of the property that determined that the proposed route is feasible. Joint Appendix of Appellants at A-54.

In addition, the reasonableness of the timing of the completion of a project for which property is condemned must necessarily depend on the type of project at issue and the steps involved in completing it. As the appeals in this case demonstrate, acquiring land for a state trail project is not a simple matter. And because one of the steps involved in creating this trail is to secure funding from the legislature, sufficient time must be allowed. Understandably, the legislature chooses not to fund projects like that involved in this case until the necessary property is secured. If projects like these are deemed speculative, it will result in a “Catch-22” to the detriment of Minnesota citizens. Cities will not be able to acquire the property for state or regional recreational trails because there is no funding or contract in place for their construction and the state will not consider funding or contracting for the construction of a proposed trail because the necessary property has not been secured. Appellants’ restrictive interpretation of the term necessary is inconsistent with legal precedent and it is bad public policy because it will prevent cooperation between cities and potential partners – both public and private – that would benefit Minnesota citizens.

CONCLUSION

Appellants are proposing a new, heightened standard that would require cities to demonstrate a “municipal purpose” to support a proposed condemnation of property. This new standard should be rejected because it conflicts with the well-established public-purpose standard and because it will prevent cooperation between cities and potential partners – both public and private – for the benefit of Minnesota citizens.

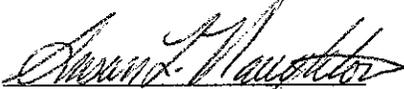
In addition, the City’s determination of necessity should be affirmed because the City reasonably concluded that the condemnation of the easement was necessary to construct a recreational trail that has been authorized by the legislature and has been determined feasible by the City based on surveys and studies.

For all these reasons, LMC respectfully requests that this Court affirm the trial court’s decision.

Dated: July 9, 2007

Respectfully submitted,

LEAGUE OF MINNESOTA CITIES

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