

NO. A08-999

State of Minnesota
In Court of Appeals

City of Jordan, petitioner,

Respondent,

vs.

The Church of St. John the Baptist of Jordan,
a Minnesota religious corporation,

Appellant,

Premier Bank, mortgagee,

Lower Court Respondent.

APPELLANT'S REPLY BRIEF

Larry D. Martin (#220553)
Dennis T. Olson II (#316386)
L. D. MARTIN AND ASSOCIATES, LTD.
1480 White Oak Drive
Chaska, Minnesota 55318
(952) 856-5511

Attorneys for Appellant

Annette M. Margarit (#184445)
SEVERSON, SHELDON, DOUGHERTY
& MOLENDIA, P.A.
7300 West 147th Street, Suite 600
Apple Valley, Minnesota 55124
(952) 953-8815

Attorney for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES	2
ARGUMENT	3
I. The Traffic Signal and Sidewalk Easement Expand the Public Way and Therefore are Part of the Road, Street or Highway.....	3
II. The Sidewalk and Signal System Easements Travel “Through” St. John’s Property.....	5
III. Whether St. John’s Consents to the Project is the Relevant Inquiry; the City’s Argument that St. John’s Should not be Permitted to Prohibit the Structures because of Purported Assistance to St. John’s is Irrelevant and Inaccurate.....	7
IV. The Sidewalk and Signal System are Part of the Street in this Case.....	9
V. A “Roadway” is only a Subpart of a “Street” or “Road” and Therefore its Definition is too Narrow to Assist in the Application and Interpretation of Minn. Stat. § 315.42.....	15
CONCLUSION.....	16

TABLE OF AUTHORITIES

Cases

<u>City of St. Paul v. District Court of Ramsey County</u> , 114 Minn. 287, 290-91, 131 N.W. 327 (1911).....	8, 9
<u>Norbert Scherger v. Northern Natural Gas Company</u> , 575 N.W.2d 578, 580 (Minn. 1998)	5

Statutes

Minn. Stat. § 160.264.....	10
Minn. Stat. § 169.01, subd. 29.....	11, 15
Minn. Stat. § 169.01, subd. 29 and 45.....	3, 10
Minn. Stat. § 645.17(1)	4, 14
Minn. Stat. §160.263.....	9
Minn. Stat. §160.29.....	3, 4, 11
Minn. Stat. §169.01, Subd. 31	15
Minn. Stat. §169.01, subd. 33.....	7, 13, 16
Minn. Stat. §315.42.....	5, 16
Minn. Stat. §505.01 Subd. 1	5, 11

ARGUMENT

I. The Traffic Signal and Sidewalk Easement Expand the Public Way and Therefore are Part of the Road, Street or Highway.

The City¹ argues that the portion of the signal system to be placed upon the easement acquired is analogous to a traffic officer standing in the new easement. Resp't Br. at Brief p. 15 - 16. While it is true that the City can make provisions for individuals to occupy the new easement area for purposes of regulating traffic, this is only true because the sidewalk easement is a new part of the public way. A "public way" is defined to include any "publicly owned interest in real property which is open to the free passage and use of the public." Minn. Stat. §160.29. A street or highway is "the entire width between boundary lines of *any way* or place when any part thereof is open to the use of the public, as a matter of right, for the purposes of vehicular traffic." Minn. Stat. § 169.01, subd. 29 and 45 (emphasis added). Since a street is defined by the limits of "any way" and the easements taken are by definition a "public way," the new easements are part of the street.

The City's argument that the signal system structures are the same as a crossing guard fails to address the primary mission of the signal pole. The signal pole is placed to hold the weight of hundreds of pounds of steel

¹ The Respondent, City of Jordan, is referred to herein as "City". The Appellant, Church of St. John the Baptist of Jordan, is referred to herein as "St. John's".

which rises up, out and over vehicular traffic in a cantilever or bridge like fashion to support the lights that regulate traffic. See Stipulation of facts, Appellant's Appendix, p. 30 - 33; Resp't Appendix, p. RA 8 - 11. Of course, the City will not be placing a traffic officer to hold up the structural steel elements that support the traffic lights. Further, any such traffic control officer could not control traffic from the sidewalk. The signal system on the other hand occupies the sidewalk and the vehicular lanes of traffic at the same time. Accordingly, the City's attempted analogy must fail.

The City also presents an argument based upon a theory that street right-of-way is distinguishable from the easements that are to be taken for sidewalk and signal purposes because the old and expanded public way is made up of different types of property interests. See Resp't Brief, p. 12 - 13.² The City's argument is factually inaccurate and legally irrelevant. The argument is irrelevant because the relevant inquiry is whether the existing way and the easement taken are a "public way" or a "publicly owned interest in real property which is open to the free passage and use of the public." Minn. Stat. §160.29. An easement is an interest in land

² The City's argument is circular in the sense that it appears to argue that the sidewalk easement and sidewalk construction in the easement area are not a sidewalk and therefore not part of the street. This interpretation is absurd and therefore inconsistent with the presumption that "the legislature does not intend a result that is absurd, impossible of execution, or unreasonable" Minn. Stat. § 645.17(1)

possessed by another which entitles the grantee of the interest to a limited use or enjoyment of that land. Norbert Scherger v. Northern Natural Gas Company, 575 N.W.2d 578, 580 (Minn. 1998). Since the easement taken is to be owned by the City and will be open to the public for pedestrian traffic, it clearly fits the definition of a “public way”.

The City’s argument is factually inaccurate because the nature of the interest is undistinguishable. Like the easements taken, a street right-of-way is generally merely an easement. “A street, road, alley, trail, and other public way dedicated or donated on a plat shall **convey an easement only**. Easements dedicated or donated on a plat **shall convey an easement only**.” Minn. Stat. §505.01 Subd. 1. (emphasis added). St. John’s property is platted property. Petition, Appellant’s Appendix p. 4. Accordingly there is no distinguishable difference between the nature of the interests of an existing street right-of-way and the easements taken for the expanded public way.

II. The Sidewalk and Signal System Easements Travel “Through” St. John’s Property.

The City argues that even if this court determines that the underlying sidewalk constitutes a road or street, Minn. Stat. § 315.42 will not prohibit the taking because the requested easement does not travel “through” St. John’s property. See Minn. Stat. §315.42 (stating that “[n]o roads or streets shall be laid through the property without the consent of the

corporation's governing board"). Not only does that argument fail to account for the physical lay-out of the sidewalk, it is also inconsistent with the dictionary definition cited by the City.

The first entry for the American Heritage Dictionary definition cited by the City defines "through" as "[i]n one side and out the opposite or another side of." See Resp't Br. at 14. The new public way and sidewalk in this case does exactly that; it enters on one side of the property and exists on another.

The City is condemning two parcels from St. John's. In the northwest quadrant of the intersection, the taking is an eight foot by eight foot triangle of land which runs from the south property line through the east property line. Appellant's Appendix, p. 28. In the northeast quadrant, the taking is a triangle that is ten foot by ten foot and runs from the south property line through to the west property line. Appellant's Appendix, p. 15, 28. Going in one boundary and exiting another fits the definition of "through."

Additionally, neither the definition cited by the City, nor common usage, mandates the additional "abutting" requirement that the City would have read into the statute. See Resp't Br. at 14 (arguing that the sidewalk does not go through St. John's property because its property "does not abut both sides of the sidewalk"). The City cites no authority for adding this requirement. In fact, "sidewalk" is unambiguously defined as the

“portion of a street between the curb lines, or lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.” Minn. Stat. § 169.01, subd. 33Error! Bookmark not defined.. The legislature intended no abutting requirement as it contemplated only one boundary between publicly- and privately-owned properties, not one boundary line, a sidewalk and a second boundary line.

III. Whether St. John’s Consents to the Project is the Relevant Inquiry; the City’s Argument that St. John’s Should not be Permitted to Prohibit the Structures because of Purported Assistance to St. John’s is Irrelevant and Inaccurate.

The City argues that St. John’s will be empowered to prohibit elements of the project if this court concludes that the sidewalk and signal system are part of the public way and therefore part of a street or road.³ This is simply not true. The City has specifically agreed that the project can be built without expanding the public way through St. John’s property. Stipulation of Facts, Appellant’s Appendix, p. 13 at ¶12 (“It is physically possible to shift the intersection to the south to eliminate the taking from St. John’s; however, shifting the intersection would require acquiring easements from properties on the South side of Highway 21.”) Accordingly, St. John’s cannot prohibit the project or elements of the project. St. John’s can only block the street from traveling through its

³ The City argues that “allowing Appellant to prohibit such important upgrades to the existing intersection and sidewalk certainly does not further the legislative purpose of Minn. Stat. § 315.42” Resp’t Brief, p. 9.

property. Contrary to the City's arguments, shifting the road away from St. John's is clearly consistent with and furthers the legislative purpose of Minn. Stat. § 315.42, that is, to protect a religious corporation's sacred mission. See City of St. Paul v. District Court of Ramsey County, 114 Minn. 287, 290-91, 131 N.W. 327 (1911) (holding that the "law should be construed liberally" in favor of entities with a "sacred trust").

The City also attempts to train the court's focus on the alleged assistance that the sidewalk and signal system will provide to the public and St. John's. See Resp't Br. at 8 (stating that "[t]he sidewalk and signal lights will assist the church"). What assistance the easements may or may not confer upon St. John's or the public is simply not relevant. Whether the project elements are or will be a benefit to St. John's or the public is not the issue before the court. Rather, the issue is whether St. John's consent is required pursuant to Minn. Stat. §315.42. The record is clear that consent was not given. Stipulation of Facts, Appellant's Appendix p.11, ¶ 5.

Unlike the eternal mission of St. John's, the project and its elements are merely temporal in nature and subject to capricious legislative decisions now and in the future. The use of the signal system and sidewalk public way can easily shift, change, be postponed or canceled, constructed or reconstructed in ways that may help or hurt St. John's. For

example, under Minnesota Law, the easement can be converted to a bike trail at the whim of the City.⁴

As previously argued, the Minnesota Supreme Court, in reviewing a similar statute, has already prevented the condemnation of property for “opening, widening, and extending” a street through a cemetery when the cemetery association did not consent to the action. City of St. Paul, 114 Minn. at 291-92. Similarly, the purpose of Minn. Stat. § 315.42 must be “construed liberally” to protect St. John’s against the City’s encroachment and to preserve St. John’s property for its sacred purpose—the spiritual and educational fulfillment of its members. See id. at 290-91 (holding that the “law should be construed liberally” in favor of entities with a “sacred trust”). Accordingly, an examination of the assistance the project may or may not extend to the public or St. John’s is irrelevant.

IV. The Sidewalk and Signal System are Part of the Street in this Case.

The City has conceded that sidewalks and utilities may be part of a street. See Resp’t Br. at 6, n. 2. (“The City is not arguing that a sidewalk is never considered part of a street or that a highway right-of-way only includes the actual roadway and doesn’t include utilities.”). The facts of

⁴ “The governing body of any political subdivision may by ordinance or resolution” . . . “designate any sidewalk or portion thereof under its jurisdiction as a bicycle path provided that the designation does not destroy a pedestrian way or pedestrian access.” Minn. Stat. §160.263.

this case demonstrate that the signal system and sidewalk are, and have been, part of the street.

First, by virtue of its petition, the City admits that the sidewalk and the signal are part of the street because it is part of the project as a whole. Appellant's Appendix, p. 1, ¶ 2. This position is consistent with Minnesota law which, by legislative mandate, requires the City to reconstruct the sidewalk: "Whenever an existing bikeway, pedestrian way, or roadway used by bicycles or pedestrians or the sole access to such is destroyed by any new, reconstructed, or relocated federal, state, or local highway, the road authority responsible shall replace the destroyed facility or access with a comparable facility or access." Minn. Stat. § 160.264. If the signal and sidewalk were not part of the street they would not need to be moved.

Second, the sidewalk as part of the street in this instance specifically fits the applicable definitions given by Chapter 169. The terms "street or highway" are expansively defined as "the entire width between **boundary lines of any way** or place when **any part** thereof is open to the use of the public, as a matter of right, for the purposes of vehicular traffic." Minn. Stat. § 169.01, subd. 29 and 45. (emphasis added). Clearly, parts of the streets in this instance are open to the public for the purposes of vehicular traffic. The next relevant inquiry is whether the boundary of "any way" is being expanded by the taking of the signal system and sidewalk easement.

⁵ The easements provide a “public way” for the construction of part of the signal system necessary for the regulation of traffic in the original way and sidewalk for public pedestrian traffic. Therefore, the conclusion is inescapable that the new easements are an expansion of the “public way”⁶ and fall squarely within the boundary of a “street” which by definition is bounded by the limits of “any way.” Minn. Stat. § 169.01, subd. 29.

The “way” does not have to be totally occupied by pavement for vehicular traffic to be classified a street because the definition of street clearly states that the “way” is a highway or street even when only a part of the “way” is used for vehicular traffic. Id. Accordingly, when the City acquired the sidewalk and signal easement, it expanded the “way” and therefore the street through St. John’s property.

Third, the sidewalk and the signal system have existed and are being reconstructed primarily within the existing public way. The bulk of

⁵ The City misconstrues and misinterprets this inquiry as an exercise to determine the location of fee simple interest property lines of St. John’s and the government. This is simply irrelevant. The very reason that the statute refers to the boundary lines of “any way” instead of fee simple interest property lines is that generally the right of way of a street is merely an easement. “A street, road, alley, trail, and other public way dedicated or donated on a plat shall convey an easement only. Easements dedicated or donated on a plat shall convey an easement only.” Minn. Stat. §505.01 Subd. 1. Accordingly, the City’s argument related to fee simple property lines is irrelevant.

⁶ “The term “public way” means any highway, road, street, cartway, alley or lane or other publicly owned interest in real property which is open to the free passage and use of the public.” Minn. Stat. §160.29 (emphasis added).

the sidewalk and signal system are located within the existing street public way except for the relatively small portions of the sidewalk and signal system being pressed into St. John's property to provide room for current and future encroachments of roadway towards St. John's. Stipulation of facts, Exhibit H, Appellant's Appendix, p. 33; Resp't Appendix, p. RA11. Therefore the sidewalk and signal system are part of the street.

Fourth, as referenced above, easement areas are being acquired to permit the widening of the street today and in the future. Vehicular traffic will still be brought "approximately two-feet closer to the Church than current traffic." Appellant's Appendix, p. 8 n.2. The dedicated right turn lane for west bound traffic on Highway 282 will be delayed until some future date when the lane is needed; however, the proposed placement of signal and sidewalk improvements on St. John's property is positioned to accommodate the addition of the future turn lane on the south side of the Church. Stipulation of Facts, Appellant's Appendix, p. 11-12. Since the sidewalk and signal easements benefit the street and street expansion, the easements are part of the street.

Fifth, the easement areas are being acquired so that the traffic signal poles can be placed far enough from the traffic lanes to reduce truck/signal pole collisions. Stipulation of Facts, Ex. C., Appellant's Appendix, p. 25. Accordingly, the new public way is being acquired to support the street not only for the regulation of traffic but to also to place

the base of the signal pole outside of harms way. Since the new easement benefits the street in this way, the easement is part of the street.

Sixth, the sidewalks follow the alignment of the street in a parallel fashion along the public way in each direction. Stipulation of facts, Exhibit H, Appellant's Appendix, p. 33; Resp't App., p. RA11. Clearly, the sidewalk has been constructed and maintained to channel pedestrian traffic along the street and out of the way of vehicular traffic in a manner consistent with statutory definitions. See Minn. Stat. §169.01, subd. 33. Since the sidewalk is designed to reduce pedestrian/vehicle conflicts in the street corridor, the sidewalk benefits and is part of the street.

Seventh, the nature and character of the signal system and sidewalk are so intertwined with the street that when the lanes of traffic are shifted the signal system and sidewalk shift with the street. As stated above, part of the signal system and sidewalk are shifted onto St. John's property because of the alignment and shifting of the roadway closer to St. John's property. Appellant's Appendix, p. 8 n.2.; Stipulation of Facts, Appellant's Appendix, p. 11-12. Likewise, as agreed to by the parties, if the roadway is shifted away from St. John's, the new public way in the form of the signal and sidewalk easement are not necessary. Stipulation of Facts, Appellant's Appendix, p. 13 at ¶12. ("It is physically possible to shift the Intersection to the south to eliminate the taking from St. John's; however, shifting the intersection would require acquiring easements from properties on the

South side of Highway 21”) Since the placement of the sidewalk and signal are so intertwined with the placement of the street, the sidewalk and signal system are part of the street.

Eighth, the district court below found that the signal and sidewalk easements are necessary for the project, which is predominantly for the reconstruction and widening of the intersection. Order, Appellant’s Appendix, p.A59. (Stating that “The proposed taking of easements is necessary for public improvements to the intersection of Trunk Highways 282 and 21, specifically for sidewalk and placement of new signal lights.”) Since the signal and sidewalk are necessary for the intersection, they are part of the street.

Ninth, and finally, if a traffic signal system is not an integral part of the street, road or highway that it controls, what is the signal system part of and why is it necessary for the street, road or highway that it controls? Any conclusion that a signal system is not part of the street that it controls arguably is absurd and unreasonable and therefore inconsistent with the presumption that “the legislature does not intend a result that is absurd, impossible of execution, or unreasonable.” Minn. Stat. § 645.17(1)

Consistent with the City’s concession that a sidewalk and other utilities may be part of a street, see Resp’t Br. at 6, n. 2., the facts of this case demonstrate that the sidewalk and signal system are part of the street. Accordingly, pressing the public way for the sidewalk and signal

system into St. John's property requires the consent of St. John's pursuant to Minn. Stat. §315.42.

V. A "Roadway" is only a Subpart of a "Street" or "Road" and Therefore its Definition is too Narrow to Assist in the Application and Interpretation of Minn. Stat. § 315.42.

The City argues that because another subpart of a "street" or "road"—the "roadway"—is defined to be limited to "that portion of the highway . . . used for vehicular travel," a sidewalk is not part of a street or road. Resp't Brief at p. 13. To the contrary, the citation relied upon by the City explicitly demonstrates that a "roadway" (like a sidewalk) is but a portion of the street, road or highway. Minn. Stat. §169.01, Subd. 31. The term "Roadway" means **"that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the sidewalk or shoulder."** *Id.* (emphasis added). The terms "street" and "highway" are synonymous; therefore the roadway is only a portion of the street. Minn. Stat. § 169.01, Subd. 29. ("Street or highway" means the entire width between boundary lines of any way or place when any part thereof is open to the use of the public, as a matter of right, for the purposes of vehicular traffic."). The definition of sidewalk also clearly defines roadway to be only a subpart of the street. "Sidewalk" is defined as **"that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.** Minn. Stat. §169.01,

Subd. 33. Clearly, the sidewalk, curb and roadway are all only subparts of a street.

Minn. Stat. § 315.42 refers to a “road” or “street” and specifically does not reference “roadway.” Id. (“No roads or streets shall be laid through the property without the consent of the corporation's governing board.”) If the legislature wanted to limit the application of Minn. Stat. § 315.42 to simply the vehicular lanes of traffic, the legislature would have used the term “roadway” instead of “road or “street.” By using the broad terms “road” or “street” the legislature has prohibited all subparts of a “road” or “street” from being laid through religious association property without the consent of the association.

CONCLUSION

The City has taken the land at issue to expand the public way and shift the public sidewalk and part of the signal system through St. John’s property. Without St. John’s consent, however, the land cannot be taken because no road or street can be laid through property owned by a religious association without such consent. Minn. Stat. §315.42. Neither Minnesota statutes nor case law so narrowly defines road or street to exclude the public way expansion or improvements. Because St. John’s does not consent to the underlying action, the district court’s order granting

the Amended Petition for condemnation should be overturned and this case should be remanded with directions to dismiss.

Date: August 25, 2008

By:



Larry D. Martin (220553)
Dennis T. Olson II (0316386)
L. D. Martin and Associates, Ltd.
1480 White Oak Drive
Chaska, Minnesota 55318
952.856.5511

Attorney for Appellant Church of
St. John the Baptist of Jordan