

Case No. A11-1273

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State of Minnesota

**In Court of Appeals**

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COUNTY OF DAKOTA,

Respondent,

v.

GEORGE W. CAMERON, IV,

Appellant.

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

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**APPELLANT'S BRIEF**

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## STATEMENT OF ISSUES

- I. The trial court failed to interpret the Minimum Compensation Statute liberally in Cameron's favor using the statute's plain language to achieve a result consistent with the purpose of the statute.**

The trial court's interpretation of the Minimum Compensation ignores the statute's plain language, is inconsistent with the purpose of the statute to relocate displaced business owners, and is liberally construed in favor of the County, not Cameron.

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

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

- II. The trial court erred in failing to hold that a comparable property under the Minimum Compensation Statute must be a specific, existent property which the displaced owner can actually purchase.**

The trial court disagreed and found that the comparable property under the statute can be a hypothetical property that the displaced property owner cannot purchase.

*There is no caselaw interpreting this statute.*

**III. The trial court erred in failing to hold that a comparable property under the Minimum Compensation Statute must be available at the time of taking.**

The trial court disagreed and found that the availability of the comparable property is irrelevant.

Iowa Electric Light & Power v. City of Fairmont, 243 Minn. 176, 183, 67 N.W.2d 41 (1954)

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**IV. The trial court erred in finding that the Robert Trail Property was a comparable property under the Minimum Compensation Statute given the undisputed evidence at trial that it was unavailable at the time of taking, not within the community as defined on the Record, and too small.**

The trial court disagreed and found that the Robert Trail Property comparable.

*There is no caselaw interpreting the term “in the community” in the statute.*

**V. The trial court erred in failing to award Cameron its hourly fees even though it agreed that the “fees (and fee arrangement) are not out of line with what is customary for similar work”, Cameron met the**

**statutory threshold for such fees, and its ruling is contrary to the statute's policy to make the property owner whole while conversely causing a chilling effect on smaller claims.**

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

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

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

### **STATEMENT OF THE CASE**

This is an eminent domain case where Appellant is the property owner who seeks compensation from the County of Dakota under the Minimum Compensation Statute (Minn. Stat. 117.187 (2010)). The Honorable Richard M. Spicer, Dakota County District Court, First Judicial District awarded compensation under the Minimum Compensation Statute and attorneys fees too. Appellant appeals the awards under the Minimum Compensation Statute and attorneys fees.

## SUMMARY OF FACTS

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

Robert Strachota, an MAI appraiser with Shenehon Company, was hired by Cameron to complete a minimum compensation analysis. Strachota was one of the individuals who was asked to give specific input with regards to the Minimum Compensation statute.<sup>2</sup> He provided “language and methodologies to protect small businesses in the event of a public taking.”<sup>3</sup> And further that the intent of the statute is “to keep the business alive so that it can continue to function.”<sup>4</sup> In this case, Strachota completed a minimum compensation report for Cameron which was admitted into evidence as Trial Exhibit 3.<sup>5</sup>

Dan Wilson, who is employed 98% of the time by condemning authority<sup>6</sup>, was hired by the County to complete a minimum compensation analysis (“Wilson Report”) prior to the taking of the subject property in order to assist the County in determining the amount of just compensation that it would pay to Cameron in

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<sup>1</sup> See Trial Transcript at page 242 and Trial Exhibit #19.

<sup>2</sup> See Trial Transcript at page 24, l. 18-21.

<sup>3</sup> See Trial Transcript at page 24, l. 22-24.

<sup>4</sup> See Trial Transcript at page 42, l. 2-5, see also page 25, l. 2-11..

<sup>5</sup> See Trial Transcript at page 26.

<sup>6</sup> See Trial Transcript at page 279, 1-5.

conjunction with the taking of the subject property.<sup>7</sup> The Wilson Report was a draft report, however a final report would not have contained any changes that would have materially altered the conclusions from that report.<sup>8</sup> That report was entered as evidence in this case as Trial Exhibit 24.

The Wilson Report identified three properties that were discussed as part of Wilson's minimum compensation analysis.<sup>9</sup> Wilson concluded that, of those three properties, only the property located on Robert Trail ("Robert Trail Property") was considered a comparable property for purposes of completing his minimum compensation analysis to conform with the requirements of the Minimum Compensation Statute.<sup>10</sup> Wilson concluded that there were no other existing properties that would qualify as a comparable property in the community for purposes of the Minimum Compensation Statute.<sup>11</sup>

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

Cameron hired a broker to assist and identify an existing property that he could acquire in order to move his business after the subject property was taken by

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<sup>7</sup> See Trial Transcript at page 260, l. 2-5.

<sup>8</sup> See Trial Transcript at page 275, l. 21-24.

<sup>9</sup> See Trial Exhibit at Exhibit 24.

<sup>10</sup> Id., see also Trial Transcript at page 292, l. 19-22.

<sup>11</sup> See Trial Exhibit at Exhibit 24., see also Trial Transcript at page 292, l. 19-25, page 293, l. 1-12.

<sup>12</sup> See Trial Transcript at page 224, l. 8-15.

the County.<sup>13</sup> Cameron was unable to identify any property improved that would allow him to move his business and continue it in the way it was operated at the subject property prior to the taking.<sup>14</sup>

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

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

Wilson also admitted that he would exclude from consideration as a comparable property under the Minimum Compensation Statute “any property that had a main floor square footage less than 2,200 square feet”.<sup>17</sup>

Wilson did not measure the square footage of the Robert Trail Property but relied on the listing sheet.<sup>18</sup> During cross-examination, Wilson further admitted that he was confused concerning the square footage the Robert Trail Property<sup>19</sup> and “maybe, I made a mistake”.<sup>20</sup> Upon review of the appraisal report, Wilson

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<sup>13</sup> See Trial Transcript at page 206, l. 1-6, page 162, l. 11-14.

<sup>14</sup> See Trial Transcript at page 201, l. 6-8.

<sup>15</sup> See Trial Exhibit at Exhibit 24; see also Trial Transcript at page 275, l. 5-10.

<sup>16</sup> See Trial Transcript at page 313, l. 20-25.

<sup>17</sup> See Trial Transcript at page 314, l. 11-16.

<sup>18</sup> See Trial Transcript at page 314, l. 25, page 315, l. 1.

<sup>19</sup> See Trial Transcript at page 315, l. 2-25.

<sup>20</sup> See Trial Transcript at page 316, l. 1.

admitted that main floor square footage of the Robert Trail Property was only 1,560 square feet<sup>21</sup> which is obviously less than 2,200 square feet.

Subsequent to the date of taking for the subject property, Cameron negotiated with the City of Inver Grove Heights to purchase a parcel of land known as Cameron Park in order to construct a new building for his liquor warehouse business.<sup>22</sup> The Cameron Park property is located on the opposite side of Concord Boulevard and just slightly north of the subject property's location. The negotiated purchase price for the Cameron Park property is \$272,000.<sup>23</sup> While the closing for that purchase agreement has not yet occurred because the final development agreement has not been completed by the City, Cameron is committed to completing the transaction because all contingencies which would allow Cameron to cancel the contract have expired.<sup>24</sup>

The County, through its Right of Way Agent, Gary Peppard, encouraged Cameron to acquire the Cameron Park property and relocate his business to the site because Peppard considered it an excellent place to move the business.<sup>25</sup>

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

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<sup>21</sup> See Trial Transcript at page 316, l. 17-25, page 317, page 318, l. 1-13.

<sup>22</sup> See Trial Exhibit at Exhibits 8 & 9; see also Trial Transcript at pages 163-180.

<sup>23</sup> See Trial Exhibit at Exhibit 9.

<sup>24</sup> See Trial Transcript at pages 168, 169 l. 1-14.

<sup>25</sup> See Trial Transcript at page 227, l. 11-25, page 228, l. 1.

in determining minimum compensation under the Minimum Compensation Statute.<sup>26</sup>

In 2008, Wilson wrote an instructional paper (APP-1) to assist his teaching of public agency personnel about the Minimum Compensation Statute which included a worksheet (APP-10) wherein the formula for determining minimum compensation included adding amounts for costs to construct additions or make modifications to the purchase price of an existing improved property acquired to accommodate the business which would relocate to it.<sup>27</sup>

Strachota identified two existing improved properties in his minimum compensation report that he discussed with regards to the requirements of the Minimum Compensation Statute.<sup>28</sup> He determined that neither property qualified for designation as a comparable property under that statute.<sup>29</sup>

The first existing improved property analyzed by Strachota was rejected, among other reasons, because it had only about 2,000 square feet of floor area available while the remaining 8,000 square feet of floor area was occupied by tenants under long-term leases.<sup>30</sup> The building acquired from Cameron had approximately 6,200 square feet of floor area on two levels (a main floor and basement).<sup>31</sup> Cameron used the entire floor area in the acquired building to

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<sup>26</sup> See Trial Transcript at page 289, l. 6-10.

<sup>27</sup> See Trial Exhibit at Exhibit 23; see also Trial Transcript at page 289, l. 11-25, page 290, l. 1-20.

<sup>28</sup> See Trial Exhibit at Exhibit 3 at APP-358, 359.

<sup>29</sup> Id.; see also Trial Transcript at page 72, l. 24-25, page 73, l. 1-8

<sup>30</sup> See Trial Exhibit at Exhibit 3 at APP-358.

<sup>31</sup> See Trial Exhibit at Exhibit 3 at APP-355 (5<sup>th</sup> bullet point item).

conduct his liquor warehouse business operation.<sup>32</sup> In fact at trial, the County agreed that Cameron used the entire subject property.<sup>33</sup>

Given this, Strachota opined that a comparable property for Cameron under the Minimum Compensation Statute requires at least 6,200 square feet in order for Cameron to continue his business operation.<sup>34</sup> Strachota further opined that a building with less than 6,200 square feet of floor area will not be a comparable property for Cameron under the Minimum Compensation Statute.<sup>35</sup>

Strachota also analyzed the Robert Trail Property as a potential comparable property for Minimum Compensation Statute purposes although he was concerned that this property should not be considered at all because it was sold prior to the date of taking of the Subject Property.<sup>36</sup> Strachota rejected the Robert Trail Property as a comparable property because it was too small to house Cameron's business and it was located over seven miles from the Subject Property, significantly outside the three-mile trade area applicable for the business.<sup>37</sup>

Wilson, Strachota, and Callahan all believed that the community for the purposes of Cameron's business would be the trade area for that business.<sup>38</sup>

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<sup>32</sup> See Trial Transcript at page 198, l. 7-17.

<sup>33</sup> See Trial Transcript at page 228, l. 3-8.

<sup>34</sup> See Trial Transcript at page 75, l. 21-23, see also Trial Exhibit at Exhibit 3 at APP-355 (5<sup>th</sup> bullet point item).

<sup>35</sup> Id.

<sup>36</sup> See Trial Transcript at pages 68-72.

<sup>37</sup> See Trial Transcript at pages 70-72.

<sup>38</sup> See Trial Transcript at page 296, l.1-8 and page 320, l. 5-11 for Wilson; pages 40, 41, and 46 for Strachota and page 243, l. 17-25, page 244, l. 1-2 for Callahan.

It was undisputed at trial that the community for Cameron's business is the area on the west side of the river within three miles of the Subject Property's location.<sup>39</sup>

It was undisputed at trial that the minimum size for an existing comparable improved property for comparable property purposes under the Minimum Compensation Statute must be at least 6,200 square feet in size.<sup>40</sup>

Given that the Robert Trail Property is not a comparable property for the purposes of a Minimum Compensation Statute damage analysis because it is significantly smaller than the building on the Subject Property (and does not even meet Wilson's minimum 2200 square feet for the main floor), is well outside of the community in which the Subject Property is located, and was not even available at the time of taking, it was undisputed at trial that there are no existing improved structures that qualify as comparable properties in the community for purposes of determining compensation under the Minimum Compensation Statute so it is necessary to consider the construction of a new building on a vacant property in the community.

The building proposed for construction by Strachota is identical in size and configuration to the building on the Subject Property and is to be built using the same building materials that existed for the building on the Subject Property.<sup>41</sup>

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<sup>39</sup> See Trial Transcript at page 195, l. 13, page 196, l. 20-21, page 196, l. 20-21 pages 40-41 and 46-47; see also, Trial Transcript at page 296, l.1-8 and page 320, l. 5-11; and, page 244, l. 1-2.

<sup>40</sup> See Trial Transcript at page 75, l. 21-23, see also Trial Exhibit at Exhibit 3 at APP-355 (5<sup>th</sup> bullet point item); see also, Trial Transcript at page 228, l. 3-8; and Trial Transcript at page 228, l. 3-8.

The undisputed evidence at trial showed that the use of contractor estimates is appropriate to determine the cost to construct the replacement building.<sup>42</sup> This methodology was also utilized by Callahan anytime that he sought cost estimates for construction projects requiring his involvement.<sup>43</sup> Strachota followed standard procedures in determining the costs associated for all components of construction for the replacement property.<sup>44</sup> He properly included the purchase price that Cameron will pay to the City for Cameron Park as part of the total purchase price for the comparable property.<sup>45</sup>

The amount of money necessary for Cameron to purchase the comparable property identified by Strachota in this situation is \$2,175,000.<sup>46</sup>

Cameron cannot start construction of the new store at this time because he does not have the funds available to do so.<sup>47</sup> Given the current economic climate, the number of entities that might be interested in providing financing for the project has diminished significantly in the last few years.<sup>48</sup>

On February 23, 2011, the Trial Court entered its findings of fact and conclusions of law.<sup>49</sup>

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<sup>41</sup> See Trial Exhibit at Exhibit 3 at APP-368, 369, 374, 376; see also, Trial Transcript at pages 90-92.

<sup>42</sup> See Trial Transcript at page 98, l. 2-4.

<sup>43</sup> See Trial Transcript at page 243, l. 13-15.

<sup>44</sup> See Trial Transcript at pages 97-98.

<sup>45</sup> See Trial Exhibit at Exhibit 3 at APP-374; see also, Trial Transcript at pages 89, 93, 94

<sup>46</sup> See Trial Exhibit at Exhibit 3 at APP-376; see also, Trial Transcript at page 113, l. 12-16.

<sup>47</sup> See Trial Transcript at page 188, l. 12-13.

<sup>48</sup> See Trial Transcript at page 187, l. 14-21.

<sup>49</sup> See Appendix at APP-197-204.

On May 23, 2011, the Trial Court amended its findings to include an additional award for attorneys' but did not grant the full hourly fees requested by Cameron.<sup>50</sup>

On July 14, 2011, Cameron noticed his appeal in this matter.<sup>51</sup>

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<sup>50</sup> See Appendix at APP-309.

<sup>51</sup> See Appendix at APP-319.

## ARGUMENT

### **I. THE MINIMUM COMPENSATION STATUTE MUST BE CONSTRUED LIBERALLY IN FAVOR OF CAMERON USING THE STATUTE'S PLAIN LANGUAGE TO ACHIEVE A RESULT CONSISTENT WITH THE PURPOSE OF THE STATUTE.**

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

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

The Minimum Compensation Statute provides for a new, alternative method for calculating the damages to be paid to the class of property owners who have property acquired by eminent domain. By providing this new method for determining damages, the Minimum Compensation Statute is a remedial statute.

Our Supreme Court has said that “remedial statutes are generally entitled to liberal construction in favor of the remedy the statutes provide or the class they benefit”. S.M. Hentges & Sons, Inc. v. Mensing, 777 N.W.2d 228, 232 (Minn.

2010) (citing Blankholm v. Fearing, 222 Minn. 51, 54, 22 N.W.2d 853, 855 (1946)). Thus, as a remedial statute, the Minimum Compensation Statute should be construed liberally to extend the intended benefits to the statute beneficiaries, like Cameron, whose property was taken from him by the County through the power of eminent domain. Moreover, our Supreme Court has also recently stated that statutory eminent domain provisions should be liberally construed in favor of property owners. Moorhead Economic Development Authority v. Anda, 789 N.W.2d 860, 876 (Minn.2010).<sup>52</sup> Consequently, when interpreting the Minimum Compensation Statute, the rules of liberal construction in favor of the property owner should be applied.

In this case, this Court will need to interpret the Minimum Compensation Statute to determine the rights of the parties according to its provisions. When

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<sup>52</sup> The Anda Court stated:

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

interpreting a statute, it is the court's role is to effectuate the intention of the legislature. Peterson v. Haule, 304 Minn. 160, 170, 230 N.W.2d 51, 57 (1975). In doing so, courts construe technical words according to their technical meaning and other words according to their common and approved usage and the rules of grammar. Minn.Stat. § 645.08 (2009). When the language of a statute, so construed, is not ambiguous, a court must apply its plain meaning. McCaleb v. Jackson, 307 Minn. 15, 17 n.2, 239 N.W.2d 187, 188 n.2 (1976). A statute is ambiguous if it is reasonably susceptible to more than one interpretation. Tuma v. Commissioner of Economic Sec., 386 N.W.2d 702, 706 (Minn.1986).

When the language of a statute is ambiguous, courts apply the rules of statutory construction which allow them to examine the legislative history surrounding the statute's enactment to assist in interpreting the statute. Minn.Stat. § 645.16 (1994). When engaging in statutory construction, courts must interpret remedial legislation, like the Minimum Compensation Statute, broadly to better effectuate its purpose. Harrison v. Schafer Constr. Co., 257 N.W.2d 336 (Minn.1977). Courts interpret exceptions contained within remedial legislation narrowly. Nordling v. Ford Motor Co., 231 Minn. 68, 77, 42 N.W.2d 576, 582 (1950).

Finally, when construing a statute, the proper interpretation should produce a result that fulfills the intentions of the statute rather than one that is absurd or

meaningless. Milbank Mut. Ins. Co. v. Kluver, 302 Minn. 310, 225 N.W.2d 230 (1974).

**II. THE COMPARABLE PROPERTY UNDER THE MINIMUM COMPENSATION STATUTE MUST BE A SPECIFIC, EXISTENT PROPERTY, WHICH THE DISPLACED OWNER CAN ACTUALLY PURCHASE, AS OPPOSED TO A NON-EXISTENT, HYPOTHETICAL PROPERTY.**

The first step for interpreting the Minimum Compensation Statute is to understand its purpose or intent. The expert witnesses for both Cameron (Strachota) and the County (Wilson) testified that they believed that the Statute requires the identification of a property to which the displaced owner can relocate and continue the business which was being conducted at the acquired property at the time of taking.<sup>53</sup> Strachota even testified that he had been consulted by members of the Legislature about the relocation concern prior to the enactment of the Statute.<sup>54</sup> Even the Trial Court expressed this same view in its pretrial order.<sup>55</sup> Such an intent can only be fulfilled when an actual property is identified which will accommodate the relocation. The intent and purpose of the Statute is not satisfied by identifying a hypothetical property that does not exist.

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<sup>53</sup> Trial Transcript at page 24, 1.18-21; pages 269-70, page 305, 1.18-20

<sup>54</sup> Trial Transcript at page 24, 1. 18-21.

<sup>55</sup> Minn. Stat. § 117.187 indicates that “the amount of damages payable, **at a minimum**, must be sufficient for an owner to purchase a comparable property in the community...” (emphasis added). Thus, the Minimum Compensation Statute means just that – that it is setting a minimum compensation, not a maximum. An award of funds to purchase a comparable property is certainly adequate under the statute, if such a comparable property exists. However, if a comparable property does not exist, the statute does not foreclose upon the possibility that Cameron could be entitled to a new custom-built building to house his business. Again, the “comparable property” provision is merely a minimum measure of damages. Whether Cameron is entitled to something more than that is an issue for trial. See memorandum attached to this Trial Court’s order dated May 26, 2010 at Issue 3.

The need to identify an actual property as the comparable property under the Statute is reinforced by the Statute's requirement that the displaced owner be able to "purchase" the comparable property. "Purchase" has been defined as "acquired by paying money or its equivalent".<sup>56</sup> Something can only be acquired if it is real. It cannot be hypothetical or imaginary.

Both experts explained at trial that their searches for a comparable property involved an investigation of property listings for improved properties.<sup>57</sup> Wilson's search resulted in his conclusion that only one improved property existed which qualified as a comparable property under the Statute.<sup>58</sup> This property was identified at trial as the Robert Trail property.<sup>59</sup> Strachota's search produced the conclusion that no improved property existed which qualified as a comparable property under the Statute.<sup>60</sup> He then determined that the comparable property would have to be a new building purchased by Cameron which would be constructed to the identical specifications (except for modifications required by ordinance) as the acquired building on a parcel purchased by Cameron.<sup>61</sup> The parcel is across the street and only a few hundred feet north of the location of the acquired property.

In spite of the deficiencies and shortcomings which will be addressed later in this brief, the Trial Court concluded that the Robert Trail property was a

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<sup>56</sup> Funk & Wagnalls Standard Dictionary, Second Edition, 1993.

<sup>57</sup> Trial Transcript at pages 61-62, 264-267; Trial Exhibit 3, at APP-356.

<sup>58</sup> See Trial Exhibit 24, Trial Transcript at page 292, 1. 19-22.

<sup>59</sup> Id. The next section of the brief will discuss the reasons that this property does not qualify as a comparable property under the statute.

<sup>60</sup> See Trial Exhibit 3 at APP-356, 358, 359, Trial Transcript at page 72, 1. 24-29, page 73 1. 1-8

<sup>61</sup> See Trial Exhibit 3, at APP-356, Trial Transcript at pages 73-75.

comparable property under the Statute. Even the Trial Court, though, did not believe that Cameron could continue his business in that property. The Trial Court recognized that Cameron had been using 4,444 square feet of main floor area in the acquired property while Robert Trail had only 1,560 square feet on its main floor. (The Trial Court ignored the approximately 1,600 square feet of lower level space that Cameron had been using.) Because of this size differential, the Trial Court determined the sale price for the Robert Trail property would be insufficient.

To determine the purchase for minimum compensation damages, the Trial Court used an uncorroborated allocation of the Robert Trail sale and calculated a unitary value based upon the main floor area of that property. This unitary amount was then multiplied by 4,444 which was the size of the building the trial court believed that Cameron should be able to purchase. Thus, although the Trial Court labeled the Robert Trail property as the comparable property in this case, the comparable property under the Trial Court's analysis, which Cameron is supposed to purchase, is a property having 4,444 square feet.

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

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

Most important, Cameron cannot continue his business in the property identified by the Trial Court, because he cannot purchase this property. Why? The property identified by the Trial Court is only a hypothetical property.<sup>62</sup> In short, it is a fictional property that does not even exist. The conclusion by the Trial Court blatantly fails to satisfy the purpose and intent of the Minimum Compensation Statute by not recognizing Cameron’s right to continue his business in the comparable property. Furthermore, neither the plain meaning nor any other construction of the Minimum Compensation Statute even suggests that the comparable property should be hypothetical and non-existent. Use of a hypothetical property restricts the benefits for the property owner and is in contravention of Anda<sup>63</sup> and Petersen<sup>64</sup>.

Ironically, the Trial Court was skeptical about Strachota “developing” a comparable property.<sup>65</sup> Yet, this is exactly what the Trial Court ended up doing in this case. In developing the comparable property for Cameron to purchase, Strachota followed parameters based upon the plain language of the Minimum Compensation Statute:

- 1) A specific land parcel was identified in the community (across the street from the acquired parcel) that Cameron could actually purchase.

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<sup>62</sup> See APP-312, Trial Court’s memorandum accompanying its order amending its findings:  
The fact that the Robert Trail property was/is not available does not change the fact that \$997,055.84 would be sufficient to purchase it. Likewise, the Court has found that \$997,055.84 is sufficient to purchase *the theoretical* 4,444 main floor square foot building that was referenced in the Order setting forth the award. Again, the fact that such a building is not currently available does not mean that the \$997,055.84 award would be insufficient to purchase such a building if it did become available.

<sup>63</sup> Moorhead Economic Development Authority v. Anda, 789 N.W.2d 860, 876 (Minn.2010).

<sup>64</sup> Peterson v. Haule, 304 Minn. 160, 170, 230 N.W.2d 51, 57 (1975)

<sup>65</sup> Trial Transcript at pages 35-37.

- 2) The building to be constructed would allow the Cameron business to continue because it was the same configuration as the acquired building
- 3) The Minimum Compensation damages reflected a purchase price equal to the sum of the purchase price for the land, the price to purchase the building (construction cost bid by a contractor), and the recognized soft costs from a cost service to complete the transaction.<sup>66</sup>

By contrast, the property developed by the Trial Court is not associated with any particular location, has a size that is unsupported by any evidence on the record, a value based upon the sale of another property (it does not reflect actual dollars required to complete a purchase), and even Wilson admits that it cannot be built<sup>67</sup>.

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

### **III. THE ROBERT TRAIL PROPERTY CANNOT BE A COMPARABLE PROPERTY AS A MATTER OF LAW UNDER ANY INTERPRETATION OF THE MINIMUM COMPENSATION STATUTE.**

#### **A. In Order to Qualify as a Comparable Property, the Property Must be Available for Purchase on the Date of Taking.**

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<sup>66</sup> See Trial Exhibit 3, Strachota Minimum Compensation Report

<sup>67</sup> See Trial Transcript at page 272, l. 20-22.

It was undisputed at trial that the Robert Trail property was not available at the time of trial, and the Trial Court correctly made that finding.<sup>68</sup> However the Trial Court incorrectly held that, since it was available at the time the County offered to buy the Cameron property, as opposed to the time of the taking of the Cameron property, the Robert Trail property could be used in the analysis.<sup>69</sup> This is a conclusion of law that does not recognize the logical consequences of such a ruling.

In condemnation cases, damages are determined at the time of taking. See Iowa Electric Light & Power v. City of Fairmont, 243 Minn. 176, 183, 67 N.W.2d 41 (1954); State by Spannaus v. Heimer, 393 N.W.2d 687 (Minn.App.,1986). Up until the taking, the property owner is free to exercise all ownership rights in the property, including declining offers from the condemning authority. The mere fact that the condemnor wants the property owners' property or plans to take the property is irrelevant until a taking has actually occurred. Fitger Brewing Co. v. State, 416 N.W.2d 200, (Minn. Ct. App.1987) review denied, certiorari denied 109 S.Ct. 61, 488 U.S. 819, 102 L.Ed.2d 39. Since damages are determined at the time of taking, and the Minimum Compensation Statute requires the purchase of an actual, specific comparable property, the opportunity to purchase that property must exist on the date of taking. We will "play out" the scenario envisioned by the Trial Court and show that it produces an absurd result.

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<sup>68</sup> See Trial Transcript at page 224, l. 8-15; APP-199 Trial Court's findings at finding # 19; and APP-312, Trial Court's memorandum accompanying its amended findings, "The fact that the Robert Trail property was/is not available does not change the fact..."

<sup>69</sup> See APP-203 Trial Court's memorandum accompanying its findings at the last paragraph starting, "Cameron makes much of the fact that..."

Ignoring for the moment the issues of “in the community” and size, we will consider the Robert Trail property as a comparable property under the minimum Compensation Statute with the knowledge that the property had previously sold and was unavailable to purchase by Cameron on the date of taking. As a comparable property, the Statute contemplates that Cameron should be able to buy the Robert Trail property and move his business there. In order to accomplish that purchase, Cameron would have had to execute a purchase agreement many months before the taking of his property in order to beat the offer of the person who actually bought it. The Statute contemplates that the proceeds generated by the Statute are needed and used for this acquisition. Prior to a formal taking, in order to generate the funds needed to acquire the Robert Trail property, the displaced owner (Cameron, in this case) would need to sell his existing property to the condemning authority as part of the purchase of the comparable. In Cameron’s case, he would have had to sell his property by deed to the County for their offer price of \$560,000. This is over \$400,000 less than he would have received even under the Trial Court’s analysis. By signing a deed, though, Cameron would have waived his right to this additional claim. This makes absolutely no sense, but it is the result that occurs when properties not available for purchase on the date of taking are considered for comparable property status. This simply proves that a comparable property cannot be a property that has already been sold as of the date of taking. Thus, the Robert Trail property cannot be considered as a comparable

property in this case, because it was not available for purchase on the date of taking.

**B. The Robert Trail Property Cannot be a Comparable Property Under the Minimum Compensation Statute Because it is not Located in the Community.**

A plain reading of the Minimum Compensation Statute requires that a comparable property be located “in the community”. There is no statutory definition for “community”. There are several dictionary definitions for the term “community”. One definition that is probably the most relevant relates to “an area that has a commonality in interest”. Funk & Wagnalls Standard Dictionary, Second Edition, 1993. Since the parameters for determining a community will vary from case to case, the identification of the community in a particular case is a factual determination.

In the present case the definition of community was sought from three witnesses. Strachota testified that the determination of the community required knowing the trade area for Cameron’s business.<sup>70</sup> Wilson also testified that the term “in the community” is a requirement of the Minimum Compensation Statute and that, for a commercial business, the trade area of the business will be its community.<sup>71</sup> Lastly, James Callahan, one of the commissioners who heard testimony at the commissioners’ hearing, also testified that, from his perspective, the term “in the community” under the Minimum Compensation Statute for this

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<sup>70</sup> See Trial Transcript at pp. 40-41.

<sup>71</sup> See Trial Transcript at pp. 294, 320.

case would be the trade area or service area of the owner.<sup>72</sup> Consequently, all of the witnesses who testified about this term for the Minimum Compensation Statute in this case agree that that term should be synonymous with the trade area or service area applicable to Cameron's business.

Cameron, himself, testified that his trade area was a radius of three miles around his former location on the west side of the Mississippi River.<sup>73</sup> Wilson even agreed with this.<sup>74</sup> Thus all the evidence on the record is undisputed that "in the community" for the Cameron case is the trade area for the Cameron business and that trade area is a three mile radius on the west side of the Mississippi River.

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

The Trial Court circumvented all the witness testimony about the "in the community" requirement by simply ignoring the requirement: "Whether a business can function as a retail operation at a given location is more important

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<sup>72</sup> See Trial Transcript at p. 243.

<sup>73</sup> See Trial Transcript at pages 195, 325.

<sup>74</sup> Id. at page 296.

that retaining particular customers or staying in a particular ‘trade area’.”<sup>75</sup> As a matter of law, the Trial Court cannot ignore the plain meaning of the Minimum Compensation Statute, especially where it has provided no explanation for its aberrant reasoning. More importantly, the Legislature has already made the determination that “in the community” is a statutory requirement. So, where the entire evidence at trial shows that 1) “in the community” means the trade area for the Cameron warehouse liquor business and 2) the Robert Trail property is not within the trade area, the Robert Trail property is not “in the community” and, therefore, not a comparable property. The Trial Court’s determination is clearly erroneous and without any factual basis. Wilson’s conclusion (that the Robert Trail property was comparable) is also in contravention of the entire body of evidence about the community requirement, including his own admissions.

**C. The Robert Trail Property Cannot be a Comparable Property Because it is Too Small, Based Upon All The Evidence at Trial.**

The evidence at trial established that size was a critical factor for determining the comparable property. George Cameron testified that his warehouse liquor business was using the entire 6,200 square-feet of building area for the building operation.<sup>76</sup> The County’s Peppard agreed.<sup>77</sup> The video exhibit shown by the County reinforced this conclusion. Strachota testified that the comparable property would need at least this much space for Cameron to continue

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<sup>75</sup> This finding (#25) at APP-199 should be stricken since, as stated above, no facts on the record support such a finding.

<sup>76</sup> See Trial Transcript at p.228.

<sup>77</sup> See Trial Transcript at page 228

his warehouse liquor business which operates on volume.<sup>78</sup> The Robert Trail property had only 3,120 square feet, which is about half the size of the space needed by Cameron to continue his business. Strachota rejected the Robert Trail property as a comparable property on this basis.

Size was also an important criterion for Wilson when identifying a comparable property. He testified that a property needed at least 2,200 square feet of main floor area in order to be considered as a comparable property in this case.<sup>79</sup> He only considered the Robert Trail property as a comparable because he believed it had 3,120 square feet of main floor area.<sup>80</sup> At trial he admitted his belief was wrong by acknowledging that the Robert Trail property only had 1,560 square feet of main floor area. Thus, by Wilson's own size standard, the Robert Trail property cannot be a comparable property. His conclusion to the contrary, in defiance of his own standard, must be rejected.

All of the trial evidence is undisputed that the Robert Trail property is too small to be a comparable property. The Trial Court's determination to the contrary is clearly erroneous, lacks factual basis, and must be rejected, as well, for this reason. The Trial Court's methodology of converting the Robert Trail sale price to a unitary value and multiplying that by an arbitrary building area is a valuation concept. It is not the determination of any purchase price. No interpretation of the

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<sup>78</sup> See Trial Transcript at page 75. In addition, the Court's findings continually refer to the Cameron business as a liquor store. However the only evidence at trial concerned a warehouse liquor store which has different requirements (especially space) than traditional liquor stores. It is contrary to the record to refer to the Cameron business as anything other than a warehouse liquor store.

<sup>79</sup> See Trial Transcript at page 317

<sup>80</sup> See Trial Transcript at page 317.

Minimum Compensation Statute authorizes such a methodology, and the Trial Court certainly did not provide one. The Trial Court's reasoning is totally arbitrary and simply ignores the Statute. Based upon the record, the Robert Trail property is too small to be a comparable property under the Statute. Since it is not comparable, it simply cannot be utilized in the minimum compensation damage analysis.

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

Only one existing improved property was offered at trial as a comparable property under the Minimum Compensation Statute. That was the Robert Trail property offered by the County. As shown above, the evidence offered at trial established without any dispute that the Robert Trail failed to qualify as a comparable property under that statute for three independent reasons:

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

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

The trial court circumvented this situation by concluding that the comparable property should be a hypothetical property with 4,444 square feet of

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

If the actual property contemplated by the Minimum Compensation Statute is limited to an existing improved property, situations like that facing Cameron will produce the result that the displaced owner receives no minimum compensation damages. That is an absurd result for a remedial statute like the Minimum Compensation Statute. As the analysis by Strachota showed at trial, the inclusion of new construction on a land parcel in the community allows the Statute to provide a remedy for a displaced owner in this situation and avoids the absurd result where a comparable property is limited to only an existing improved property. Including new construction for consideration as a comparable property to avoid the absurd result that would otherwise occur in this situation, is consistent with the rule for statutory interpretation noted in the first section of this brief.

Additionally, there is not even a suggestion that such an interpretation should be prohibited under the plain reading of the Statute. Consequently, new construction should be considered for the comparable property in the Minimum Compensation Statute. This leads directly to the analysis presented at trial by Strachota.

Unlike the trial Court's arbitrary hypothetical property analysis, Strachota's analysis was objective. It was guided by the intent of the Statute to provide a property where the displaced owner could relocate his business and continue its operation. Strachota maximized comparability by constructing a building with specifications identical to the one that was acquired by the condemning authority except for modifications required by building codes. His analysis also met the requirement that the property be in the community. The trial court's determination of the purchase price for its hypothetical property was also totally arbitrary. It did not follow guidance from the Statute or actions from the marketplace. By contrast, Strachota determined a purchase price based entirely upon objective criteria. Total purchase price included three components. The first component was the actual price which Cameron would pay pursuant to the purchase agreement for the parcel he was acquiring from the City. The second component was the price that Cameron would expect to pay to build the structure and related site improvements based upon a bid from a qualified and reputable construction company. Lastly, the third component was the soft costs which Cameron would pay to complete his purchase of the land and new building. These soft costs were

based upon a recognized cost service. Based upon this analysis, Strachota determined the total purchase price for the comparable property to be \$2,175,000.

## V. THE TRIAL COURT'S ERRED IN ITS AWARD OF FEES.

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

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

In any legislative act in Minnesota, “may” must be construed as permissive, and “shall” must be construed as mandatory. See Minn. Stat. § 645.44 subdiv. 15-16 (2010). See also State v. Clark, 755 N.W.2d 241, 250 (Minn. 2008) (noting that in statutory interpretation, “shall” is mandatory).<sup>81</sup> The mandatory 40% threshold may be contrasted with the 20-40% threshold where the condemnor

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<sup>81</sup> The Wisconsin Supreme Court, in construing a nearly identical provision for payment of attorney fees in condemnation actions, stated: “The use of the term ‘shall’ denotes that attorney fee awards are mandatory.” Standard Theatres, Inc. v. State Dep’t of Trans., 118 Wis.2d 730, 739, 349 N.W.2d 661, 667 (1984).

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

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

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

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

Even the County has acknowledged that Cameron's award is in excess of 40% greater than the County's last offer and that it is mandated to pay attorney fees in this case.<sup>82</sup>

Much of the focus below concentrated on contingent fees with the County acknowledging contingency fee agreements are valid unless unreasonable or unconscionable and the Trial Court awarding fees based upon a contingent fee.<sup>83</sup>

However, the one-third contingency fee agreement was only brought up at the Trial Court level in the context that Cameron is reserving its rights for a one-third contingency if the Court amends its findings and the award increases (the representation agreement provides for a one-third contingency *or* hourly, depending on which is greater). See APP-235 (at paragraph 2) Cameron's claimed fees were actually based on *hourly* calculations not a proportional calculation (with the one exception being the \$4,000 flat fee trial rate). The County presented no evidence as to how this agreement is unreasonable or the hourly (or day rate for trial) rates are unreasonable. By contrast, Cameron's attorneys provided expert testimony asserting the common nature of the fee agreement in eminent domain matters and the reasonableness of the rates contained Cameron's agreement. See APP-231, Biersdorf Aff. ¶ 4; see APP-234, Keady Aff. ¶ 8; see also APP-439,

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<sup>82</sup> See APP-282, Plaintiff's Resp. Mot. Att'y's Fees at p. 2, last paragraph.

<sup>83</sup> See APP-281, 282, Plaintiff's Resp. Mot. Att'y's Fees at pp. 1-2 (citing Hollister v. Ulvi, 199 Minn. 269, 276, 271 N.W. 493, 497 (1937)); see also APP-310, 311, the Trial Court's order awarding fees.

440, Savin Aff. ¶¶ 2, 7. The County did nothing to rebut Cameron's evidence that these hourly fees were reasonable.

The Trial Court reviewed the State by Head v. Paulson factors and found them all to be in favor of Cameron other than for "amount involved and results obtained". Basically, the Trial Court thought Cameron aimed too high in its case and awarded a fee based upon a one third contingent fee of what the Trial Court awarded over and above what the County previously paid. See APP-310-311,

Just like the underlying case, there is nothing on the record supporting the Trial Court's decision on fees. The underlying record on the reasonableness of the rates and fees is undisputed. See APP-231, Biersdorf Aff. ¶ 4; see APP-234, Keady Aff. ¶ 8; see also APP-439, 440, Savin Aff. ¶¶ 2, 7. There is nothing on the record to rebut Cameron's evidence that these hourly fees were reasonable.

The last written offer prior to filing of the petition was \$560,400.00. The Court awarded Cameron an additional \$430,655.84. Clearly, the later award exceeds the former by over 40%. There can be no dispute that Biersdorf obtained an excellent result for his client. The County could have avoided mandatory attorney's fees of this magnitude by offering an amount remotely close to the true value of the property. Minnesota Statutes Section 117.031 was written to force a condemnor to avoid such inequitably low offers. Had the condemnor made a fair offer, attorneys fees would not be at issue.

This brings us to how the Trial Court's decision also is contrary to the purpose of this eminent domain fee shifting statute. Section 117.031 has multiple

objectives. One is to make property owners whole. “Most importantly, [however,] it ensures that property owners will be reimbursed for the worst instances of eminent domain abuse....” Noreen E. Johnson, Comment, *Blight and its Discontents: Awarding Attorney’s Fees to Property Owners in Redevelopment Actions*, 93 Minn. L. Rev. 741, 773 (2008). The Supreme Court of South Dakota, construing their attorney fee recovery statute (and quoting the Wisconsin Supreme Court), stated that “[t]he formula [in SDCL 21–35–23] indicates that the [L]egislature meant to discourage the condemnor from making inequitably low jurisdictional offers.” City of Sioux Falls v. Kelley, 513 N.W.2d 97, 111 (S.D.1994) (quoting Standard Theatres v. State, Dep’t of Transp., 118 Wis.2d 730, 349 N.W.2d 661, 668 (Wis.1984)). See also Dep’t of Transp. v. Clark, No. 25788 (S.D. filed May, 11, 2011) (“The purpose of SDCL 21–35–23 is to encourage fair offers from a condemnor...”). Where, as here, a condemnor has made an inequitably low offer (by almost half a million dollars), it should not be saved from the remedy of Minn. Stat. § 117.031 merely because the Trial Court believes the property owner aimed too high especially where the result obtained triggers mandated statutory fees. To offer this discount thwarts the purpose of the statute and the intention of the Legislature by forcing Cameron to pay fees out of his award...punishing the property owner even though he won the case.

In addition, the Trial Court forces a contingent fee arrangement on the parties ignoring the fee agreement Cameron had with his attorneys (APP-235). If courts are allowed to impose contingent fees on eminent domain claimants

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

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

### **CONCLUSION**

Cameron respectfully requests this Court to reverse the Trial Court's award of compensation and for attorneys' fees. Given that the Record is undisputed on these two issues (without the Robert Trail property, the only evidence on Minimum Compensation is Strachota's \$2,175,000; and, on fees, the affidavits submitted and even the Trial Court admitted that the \$217,991.45 in hourly fees were reasonable and consistent with what others attorneys charge for similar work), Cameron respectfully requests that the reversal be remanded with instructions. If the Court reverses the Trial Court on the Minimum Compensation issue, the instruction would be to render \$2,175,000 as compensation with interest and further that attorneys' fees are to be calculated on a one-third basis of that

recovery (based upon the fee agreement). If this Court sustains the Trial Court on compensation, it should still reverse on attorneys' fees with the instruction that \$217,991.45 be entered for attorneys' fees plus those fees and costs associated with the appeal.

Dated: August 31, 2011



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**FORM AND LENGTH CERTIFICATION**

I certify that this brief conforms to the rules contained in Minnesota Rules of Appellate Procedure for a brief produced using the following font: Times New Roman, 13 point. The word count for the brief is 7,144 words.

Dated:

8/31/11



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STATE OF MINNESOTA  
COURT OF APPEALS

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The County of Dakota,

Appellate Court Case No.:A11-1273

Respondent

v.

George W. Cameron, IV,

AFFIDAVIT OF SERVICE

Appellant.

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STATE OF MINNESOTA)  
)  
COUNTY OF HENNEPIN)

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

That on the 31st day of August, 2011, I caused to be served by hand, two true and complete copies of Appellant's Brief and Appendix upon Petitioner-Respondent's counsel and the Attorneys for Amicus Curiae at the following addresses:

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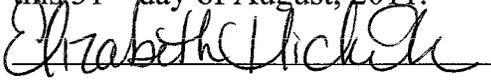
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FURTHER AFFIANT SAYETH NOT.

  
E. Kelly Keady

**Subscribed to and sworn before me**

this 31<sup>st</sup> day of August, 2011.



Notary Public

