

CASE NO. A11-1273

**STATE OF MINNESOTA
IN COURT OF APPEALS**

The County of Dakota,

Respondent,

vs.

George W. Cameron, IV,

Appellant.

**BRIEF OF *AMICUS CURIAE*
LEAGUE OF MINNESOTA CITIES**

Dan Biersdorf (#0008187)
E. Kelly Keady (#0233729)
BIERSDORF & ASSOCIATES, P.A.
33 South Sixth Street, Suite 4100
Minneapolis, MN 55402
(612) 339-7242

Attorneys for Appellant

Michael R. Ring (#91820)
Assistant County Attorney
Dakota County Judicial Center
1560 Highway 55
Hastings, MN 55033
(651) 438-4445

Attorney for Respondent

Susan L. Naughton (#0259743)
LEAGUE OF MINNESOTA CITIES
145 University Avenue West
St. Paul, MN 55101-2044
(651) 281-1232

Attorney for Amicus Curiae
LEAGUE OF MINNESOTA CITIES

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
STATEMENT OF THE LEGAL ISSUE.....	1
STATEMENT OF IDENTITY AND INTEREST OF <i>AMICUS CURIAE</i>	2
STATEMENT OF THE CASE AND FACTS.....	2
INTRODUCTION.....	2
LEGAL ARGUMENT.....	3
I. This case will have a significant, statewide impact.....	3
II. Appellant’s plain-meaning argument conflicts with the common usage of the language of Minn. Stat. § 117.187 and it impermissibly rewrites the statute.....	4
III. Minn. Stat. § 117.187 must be interpreted in a way that is consistent with the guidelines for statutory construction and with well-established precedent that requires a just-compensation standard.....	8
CONCLUSION.....	13

TABLE OF AUTHORITIES

	Page
FEDERAL CONSTITUTION	
U.S. Const. amend. V.....	8
STATE CONSTITUTION	
Minn. Const. art. I, § 13.....	8
STATE STATUTES	
Minn. Stat. § 117.186.....	12
Minn. Stat. §117.187.....	<i>passim</i>
Minn. Stat. § 645.08.....	5
Minn. Stat. § 645.17.....	8
STATE CASES	
<i>Albert and Harlow, Inc. v. Great Northern Oil Co.</i> , 167 N.W.2d 500 (Minn. 1969).....	10
<i>Brayton v. Pawlenty</i> , 781 N.W.2d 357 (Minn. 2010).....	8
<i>Cooperative Power Ass'n v. Assand</i> , 288 N.W.2d 697 (Minn. 1980).....	10
<i>Hyatt v. Anoka Police Dept.</i> , 691 N.W.2d 824 (Minn. 2005).....	12
<i>Krummenacher v. Minnetonka</i> , 783 N.W.2d 721 (Minn. 2010).....	7
<i>Larson v. State</i> , 790 N.W.2d 700 (Minn. 2010).....	7
<i>S.M. Hentges & Sons, Inc. v. Mensing</i> , 777 N.W.2d 228 (Minn. 2010).....	5
<i>State v. Kettelson</i> , 801 N.W.2d 160 (Minn. 2010).....	9
<i>United Power Assoc. v. Comm'r of Revenue</i> , 483 N.W.2d 74 (Minn. 1992).....	8

OTHER AUTHORITIES

American Heritage Dictionary of the English Language (4th ed. 2006).....5, 6

STATEMENT OF THE LEGAL ISSUE

Minn. Stat. § 117.187 provides that when an owner of condemned property must relocate damages “at a minimum, must be sufficient for an owner to purchase a comparable property in the community.” Did the trial court err by concluding that § 117.187 doesn’t require damages sufficient for the construction of new property and by concluding that a comparable property doesn’t need to be available for purchase on the date of the taking?

STATEMENT OF IDENTITY AND INTEREST OF *AMICUS CURIAE*

The League of Minnesota Cities (“League”) has a voluntary membership of 830 out of 854 Minnesota cities.¹ The League represents the common interests of Minnesota cities before judicial courts and other governmental bodies and provides a variety of services to its members including information, education, training, policy-development, risk-management, and advocacy services. The League’s mission is to promote excellence in local government through effective advocacy, expert analysis, and trusted guidance for all Minnesota cities. The League has a public interest in this case as a representative of cities throughout the state with the power of eminent domain. All Minnesota cities have a public interest in preventing Minn. Stat. § 117.187 from being erroneously interpreted to authorize the award of falsely inflated eminent-domain damages—damages that must be paid for with tax dollars.

STATEMENT OF THE CASE AND FACTS

The League concurs with the County of Dakota’s (“County’s”) statement of the case and facts.

INTRODUCTION

The County’s Brief demonstrates why the trial court’s decision should be affirmed. The League concurs with the County’s legal arguments and will not repeat

¹ The League certifies pursuant to Minn. R. Civ. App. P. 129.03 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 besides the League made a monetary contribution to its preparation or submission.

them here. Instead, this brief focuses on the statewide significance of this case and on why neither the plain language nor the legislative intent of Minn. Stat. § 117.187 supports a statutory interpretation that requires the payment of damages for the construction of new property or that requires a comparable property to be available for purchase on the date of the taking.

LEGAL ARGUMENT

I. THIS CASE WILL HAVE A SIGNIFICANT, STATEWIDE IMPACT.

The case will have a significant, statewide impact on condemning authorities and property owners because this will be the first time that an appellate court will interpret Minn. Stat. § 117.187. This statute's interpretation will directly affect the eminent-domain authority of all Minnesota cities. It is important to all Minnesota cities to ensure that Minn. Stat. § 117.187 is interpreted in a way that is consistent with the well-established and constitutionally required just-compensation standard—a standard requiring compensation that is just to both property owners *and* condemning authorities. Indeed, all Minnesota cities rely on the consistent application of this standard to ensure that public funds are not used to pay falsely inflated damages for property acquired by eminent domain. In this case, for example, if new construction is required, it could result in damages of \$2,175,000—an amount that is \$1,594,600 more than the County's appraised value of Appellant's property and \$1,177,944.20 more than the damages awarded by the trial court. APP-198; APP-200.

II. APPELLANT’S PLAIN-MEANING ARGUMENT CONFLICTS WITH THE COMMON USAGE OF THE LANGUAGE OF MINN. STAT. § 117.187 AND IT IMPERMISSIBLY REWRITES THE STATUTE.

Appellant argues that the meaning of Minn. Stat. § 117.187 is clear and unambiguous. But Appellant’s plain-meaning argument fails because it conflicts with the common usage of the language in the statute and it impermissibly rewrites the statute to add language to authorize damages for the construction of new property and to require that a comparable property must be available for purchase on the date of the taking. Indeed, Appellant’s supporting *Amicus Curiae* even goes so far as to claim that the interpretation of the statute’s term “comparable property” should require the use of a detailed, multi-factored test that it made up—a test that the legislature has not authorized or even considered. Brief of *Amicus Curiae* Minnesota Eminent Domain Institute at 14-16.

In short, none of the requirements that Appellant and its supporting *Amicus Curiae* advocate for are found in the statute’s plain language. Instead, the statute simply 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.

Minn. Stat. § 117.187. A correct plain-meaning analysis of the statute must acknowledge that the terms “comparable” and “community” aren’t defined. And because these

undefined terms are not technical words or words that have acquired a special meaning, they must be interpreted according to their common usage.

Words and phrases are construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a special meaning, or are defined in this chapter, are construed according to such special meaning or their definition.

Minn. Stat. § 645.08; *S.M. Hentges & Sons, Inc. v. Mensing*, 777 N.W.2d 228, 231

(Minn. 2010) (holding that the phrase “an improvement to real property consisting of or providing more than four family units” must be interpreted according to the common and approved usage of the words of the phrase).

First, the word “community” is commonly defined as “a social group of any size whose members reside in a specific locality, share government, and often have a common cultural and historical heritage.” *American Heritage Dictionary of the English Language* (4th ed. 2006). In contrast, Appellant argues that the word community should be subjectively defined as a trade area with a three-mile radius but doesn’t provide any evidence that this has ever been a common usage of the word. Appellant’s Brief at 28. The trial court reasonably rejected Appellant’s proposed definition as too narrow and self-serving. Instead, the trial court objectively interpreted the word community to mean “a location where a business can survive and be profitable.” APP-200. The trial court reasoned that the Robert Trail property was in the same “community” as the condemned property because it was located in the same city.

Although the Robert Trail property may not be as close to Cameron’s old property as Cameron would like, the fact remains that both properties are/were located in the same city—Inver Grove Heights. While location in the same city might not be significant or dispositive as to “community” in a large city such as St. Paul, with a

population of hundreds of thousands, it does not seem particularly out of line to make that connection in a suburb of 30,000 people such as Inver Grove Heights. Inasmuch as both properties are located in Inver Grove Heights, the Court feels that they can fairly be regarded as being in the same community for purposes of the statute, regardless of whether the Robert Trail property lies within Cameron's trade area.

APP-203.

Second, the word "comparable" is commonly defined as "capable of being compared; having features in common with something else to permit or suggest comparison." *American Heritage Dictionary of the English Language* (4th ed. 2006). Again, Appellant prefers a narrow, self-serving definition that is not supported by common usage. Appellant argues that the term "comparable property" should be interpreted to authorize the construction of new property that is identical in size and configuration and is built using the same building materials as the condemned property. Appellant's Brief at 14. The trial court rejected Appellant's definition concluding that it was too narrow and could be easily manipulated.

[I]t seems unlikely that a "perfect" comparable property under the parameters advanced by Cameron—that is, a property that was (among other things) available for purchase, within three miles, with proper zoning, and with 6,200 square feet of space in the needed configuration—could have ever been found during this process. Indeed, if the court were to accept Cameron's approach to finding a comparable property (or *not* finding one, as the case may be), liquor store owners statewide would almost always be in a position to ask for brand new buildings at public expense when forced to relocate by eminent domain proceedings.

APP-203 (emphasis in original). Instead, the trial court reasonably concluded that the Robert Trail property was a comparable property based on the similarities between the two properties.

Among other considerations, it was noted that the property is used as a liquor store, just as Cameron's property was used; is located within the same city as the Cameron property (Inver Grove Heights); and has similar effective age, condition, quality, and parking/landscaping.

APP-202. In fact, the trial court even went so far in Appellant's favor as to use market data to increase the amount of damages to make up for the difference in square footage between the two buildings. APP-204. Indeed, the fact that the trial court provided damages that went well beyond the estimated fair-market value of Appellant's property demonstrates that the trial court provided an alternate method of damages and thus achieved the purpose of Minn. Stat. § 117.187.

Appellant's plain-meaning argument also fails because it impermissibly rewrites the statute to add language that authorizes damages for the construction of new property and that requires a comparable property to be available for purchase on the date of the taking. Appellant's attempt to add these requirements to the statute must be rejected because it conflicts with the Minnesota Supreme Court's consistent holding that it is impermissible to rewrite the language of a statute under a plain-meaning analysis. *See, e.g., Kruppenacher v. Minnetonka*, 783 N.W.2d 721, 728 (Minn. 2010) (rejecting a city's request to interpret the variance statute to allow a variance from zoning regulations if a property owner proposes a reasonable use for the property when the statute's plain language provided that a variance could only be allowed if "the property in question cannot be put to a reasonable use" without the variance); *Larson v. State*, 790 N.W.2d 700 (Minn. 2010) (rejecting a property owner's request to interpret statutory language to allow for an order discharging only a portion of a condemned easement when the

statute's plain language allowed for an order "discharging the easement" if it was not being used for the purpose for which it was acquired).

III. MINN. STAT. § 117.187 MUST BE INTERPRETED IN A WAY THAT IS CONSISTENT WITH THE GUIDELINES FOR STATUTORY CONSTRUCTION AND WITH WELL-ESTABLISHED PRECEDENT THAT REQUIRES A JUST-COMPENSATION STANDARD.

In contrast with Appellant's unpersuasive plain-meaning argument, Respondent reasonably acknowledges that the statute is ambiguous because it can be interpreted in different ways.² Respondent's Brief at 8. The trial court agreed that the statute was ambiguous and properly interpreted it using the guidelines for statutory construction and well-established precedent as a framework.

For example, courts must interpret statutes in a way that is consistent with the state and federal Constitutions. Minn. Stat. § 645.17(3) (legislature presumed not to intend to violate the state and federal Constitutions); *Brayton v. Pawlenty*, 781 N.W.2d 357 (Minn. 2010) (interpreting the unallotment statute to avoid a constitutionally prohibited separation-of-powers conflict even though the statute didn't expressly reference this constitutional requirement). Both the state and federal Constitutions entitle owners of condemned property to "just compensation." U.S. Const. amend. V; Minn. Const. art. I, § 13. Therefore, while it is undisputed that Minn. Stat. § 117.187 provides an alternate

² In fact, a case is currently pending in the Fourth judicial district where Hennepin County is arguing that Minn. Stat. § 117.187 is so ambiguous that it is unconstitutionally vague on its face. See *Petitioner Hennepin County's Memorandum of Law Opposing Respondent's Motion for Partial Summary Judgment*, Sept. 9, 2011. *Amicus Curiae* ADD-1-ADD-18. This pleading was not part of the record below, but this Court may take judicial notice of a matter of public record. *United Power Assoc. v. Comm'r of Revenue*, 483 N.W.2d 74, 78 n.3 (Minn. 1992).

method of calculating damages for condemned property, the trial court properly recognized that the ultimate goal must still be the same—to provide the constitutionally required just compensation, and not—as Appellant urges—to provide him with a windfall sufficient to pay for the construction of new property worth \$1,594,600 more than his condemned property.

While the minimum compensation statute gives the court additional factor(s) to consider in determining a condemnation award, the overarching inquiry remains the same: What sum represents just compensation to the property owner?

ADD-202.

In addition, when interpreting statutes, courts must presume that the legislature intends to favor the public interest as against any private interest. Minn. Stat. § 645.17(5). Appellant’s interpretation of Minn. Stat. § 117.187 impermissibly favors a private interest at the expense of the public interest. As the trial court observed, Appellant’s interpretation allows property owners to manipulate the statute. Indeed, if Appellant’s subjective definitions of “community” and “comparable” are adopted, it will be easy for property owners to ensure that comparable property can’t be found, and thereby ensure that they will be entitled to receive higher damages for the construction of new property—damages that would be paid for with tax dollars.

In addition, Appellant and its supporting *Amicus Curiae*’s interpretation of the significance of the 2006 amendments to the eminent-domain laws conflicts with well-established precedent. In fact, the Minnesota Supreme Court recently confirmed that the 2006 amendments didn’t disturb the well-established precedent that requires courts to show deference to condemning authorities’ legislative determinations of public purpose.

State v. Kettelson, 801 N.W.2d 160, 165 (Minn. 2010) (noting that “the 2006 changes have not affected the broad deference we give to the condemning authority”). Likewise, the 2006 amendments didn’t disturb the well-established precedent requiring the payment of just compensation. There simply is no precedent that supports Appellant’s claimed entitlement to a windfall of damages sufficient to pay for the construction of new property. This Court should not make such a dramatic change in eminent-domain law without clear direction from the Legislature. *See Albert and Harlow, Inc. v. Great Northern Oil Co.*, 167 N.W.2d 500, 505 (Minn. 1969) (the Minnesota Supreme Court declined to adopt a significant change in Minnesota’s lien law because of the lack of statutory language “clearly and unequivocally” supporting the change).

Appellant’s interpretation of the statute should also be rejected because it’s unreasonable. In a case involving the interpretation of an eminent-domain statute that authorized public utilities to condemn easements to erect high-voltage-transmission lines, the Minnesota Supreme Court held that a “requirement of reasonableness” must be read into the statute.

As written, § 116C.63, subd. 4 is subject to a construction that could produce bizarre and unjustifiable results; landowners could compel commercially unreasonable acquisitions which, in light of the purpose of the statute, would impose an undue burden on utilities. For § 116C.63, subd. 4 to survive review, a requirement of reasonableness must be read into its terms.

Cooperative Power Ass’n v. Assand, 288 N.W.2d 697, 701 (Minn. 1980). Likewise, a requirement of reasonableness must also be read into Minn. Stat. §117.187. It simply isn’t reasonable to believe that the legislature could have intended to abandon over a century of precedent and authorize property owners to receive this type of windfall of

damages without first providing clear statutory authorization for it. Further, it isn't reasonable to believe that the Legislature would choose to adopt a damages standard that conflicts with the constitutional requirement of just compensation—compensation that is just to both property owners *and* condemning authorities. And finally, it isn't reasonable to interpret the statute to award—at the public's expense—damages to allow the owner of a 124-year-old non-conforming building to build a brand new building that is in full conformance with all building standards and that is worth \$1,594,600 more than his condemned property.

Appellant also argues that Minn. Stat. § 117.187 must be interpreted to provide damages for the construction of new property in order to avoid the “absurd result” of a property owner not being able to receive damages under § 117.187 in situations where comparable property can't be located. Appellant's Brief at 32. This argument fails for two reasons. First, it's inconsistent with the extremely high threshold that the Minnesota Supreme Court has established for what can constitute an “absurd result” under a plain-meaning statutory analysis. For example, in a case involving the strict-liability dog-bite statute, the Anoka Police Department argued that it would be an absurd result to apply the statute to police dogs because police officers are statutorily authorized to use reasonable force. The Minnesota Supreme Court rejected this argument as conflicting with the statute's plain meaning and noted that there is an extremely high threshold for what can constitute an absurd result for purposes of statutory interpretation.

We recently declined the invitation to disregard the plain meaning of the words of a statute where it was argued that the plain meaning would produce an absurd

result... We concluded that we could disregard a statute's plain meaning only in rare cases where the plain meaning "utterly confounds a clear legislative purpose."

Hyatt v. Anoka Police Dept., 691 N.W.2d 824, 827 (Minn. 2005) (quoting *Mut. Serv. Cas. Ins. Co. v. League of Minn. Cities*, 659 N.W.2d 755, 760 (Minn. 2003)). Appellant fails to satisfy this high threshold because he can't point to any express statutory language or any clear statement of legislative intent to demonstrate that Minn. Stat. § 117.187 was intended to authorize damages for the construction of new property.

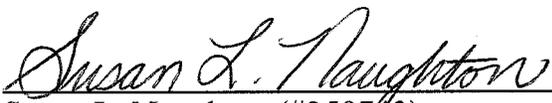
Second, Appellant's absurd-result argument fails because it's not absurd to conclude that there were fact situations that the legislature simply didn't consider when it adopted Minn. Stat. § 117.187. It's not absurd to conclude that the legislature simply didn't consider the question of whether new construction of property should ever be required or the question of whether a comparable property must be available on the date of the taking. Appellant's argument fails because the statute's plain language doesn't impose these requirements and because there is nothing in the legislative history to suggest that the legislature considered these questions or intended for the statute to address them. In short, Appellant should direct his arguments on these issues to the legislature and not this Court. And finally—as Respondent has already pointed out—one way to address the question of what should happen in the rare situation where no comparable property can be located is to consider chapter 117 as a whole and to allow the public to either pay for the fair-market value or the going-concern value of what was taken. Appellant's Brief at 21; *See* Minn. Stat. § 117.186, subd. 2.

CONCLUSION

This case will have a significant, statewide impact on property owners and condemning authorities. Appellant's plain-meaning argument should be rejected because it conflicts with the common usage of the language of Minn. Stat. § 117.187 and it impermissibly rewrites the statute. This Court should not make a dramatic change in eminent-domain law without clear direction from the legislature. Appellant's attempt to add additional requirements to Minn. Stat. § 117.187 should be addressed to the legislature and not to this Court. This Court should affirm the trial court's decision because it reasonably interpreted the statute in a way that is consistent with the guidelines for statutory construction and with well-established precedent. The trial court's interpretation is consistent with constitutional requirements and it advances the public interest because it ensures that property owners receive just compensation while also ensuring that tax dollars are not spent to pay falsely inflated eminent-domain damages. For all of these reasons, the League respectfully requests that this Court affirm the trial court's decision.

LEAGUE OF MINNESOTA CITIES

Date: October 7, 2011


Susan L. Naughton (#259743)
145 University Avenue West
St. Paul, MN 55103-2044
(651) 281-1232
Attorney for *Amicus Curiae*
League of Minnesota Cities