

Nos. A05-2424 and A05-2425

State of Minnesota
 In Supreme Court

John A. Woodhall, Jr., et al.,

Appellants (A05-2424),

vs.

State of Minnesota,

Respondent,

State of Minnesota, by its Commissioner of Transportation,

Respondent,

vs.

Grove City Grain and Feed Company,

Respondent Below,

and

Timothy R. Pieh, et al.,

Appellants (A05-2425).

APPELLANTS' BRIEF AND APPENDIX

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LEGAL ISSUES

1. Does the district court retain subject matter jurisdiction over a condemnation-award appeal, notice of which was properly served on all parties having an interest in the property but was not served on others having no interest in the property?

Apposite Authority:

Housing and Redevelopment Authority v. Adelman, 590 N.W.2d 327, 333-39 (Minn. 1999) (Anderson, Paul H., J., concurring).

2. Assuming that the district court retains subject matter jurisdiction over such an appeal, does service of the notice of appeal on all respondents who have a legal or equitable interest in the subject property substantially comply with the service provisions of Minn. Stat. § 117.145?

Apposite Authority:

Minn. Stat. § 645.16.

Minn. Stat. § 645.17.

STATEMENT OF THE CASE AND THE FACTS

This appeal presents a purely legal issue, as the facts before the Court are not in dispute:

In December 2002, the State of Minnesota by its Commissioner of Transportation (the “State”) petitioned the Kandiyohi County District Court to acquire by condemnation certain properties in northwestern Kandiyohi County for the expansion of Minnesota trunk highway number 23. (A-1). More than fifty respondents were named in that petition *as having an interest in land* to be acquired by the State. The district court appointed condemnation commissioners, and the commissioners held hearings to determine the value of the various parcels of property acquired by the Minnesota Department of Transportation.

Among the properties affected was a parcel of land nominally owned by Burton and Ella van Ort, which was described as follows:

That part of the Southeast Quarter of the Southwest Quarter of Section 15, Township 121 North, Range 34 West, shown as Parcel 64 on Minnesota Department of Transportation Right of Way Plant Number 34-38 as the same is on file and of record in the office of the County Recorder in and for Kandiyohi County, Minnesota.

(A-4.) In 1998 this property had been sold by the Van Orts on a contract for deed to appellants Mary Pieh and Timothy Pieh (A-21).

Also in 2002, the State petitioned the Kandiyohi County District Court to acquire by condemnation certain other properties (A-39), including a parcel owned by John Woodhall II and Donna Woodhall, John A. Woodhall III and Diane Woodhall, and Douglas and Carmen Woodhall (collectively the “Woodhalls”), which is described as follows:

That part of Government Lot 4 and the Southeast Quarter of the Northeast Quarter of Section 9, Township 120 North, Range 34 West, shown as Parcel 34 on Minnesota Department of Transportation Right of Way Plant numbered 34-18 and 34-19 as the same are on file and of record in the office of the County Recorder in and for Kandiyohi County, Minnesota.

(A-49). On February 11, 2003, the district court authorized the State to acquire both parcels by condemnation and appointed commissioners to determine the value of the various parcels

(A-57).

Each award by the commissioners was a separate court case with a distinct court file number (34-CV-05-112 and -208). The State served a notice of the commissioners' award on the Woodhalls on January 26, 2005 (A-63) and on the Piehs on February 24, 2005 (A-7).

On February 25, 2005, the Woodhalls filed a notice of appeal to the district court from the commissioners' award and served a copy of the notice of appeal upon the Office of the Attorney General (A-74). They did not serve Kandiyohi County with this notice because the county had no proprietary interest in the Woodhalls' property.

Similarly, on March 24, 2005, the Piehs filed a notice of appeal (A-13). The Piehs did not serve their contract vendors, Burton and Ella van Ort, or the Van Orts' mortgagee, Wells Fargo Bank, with a copy of their appeal. The State admits that Wells Fargo Bank has no interest in the property in question (A-18, A-20). The Piehs also did not serve Kandiyohi County, which also had no proprietary interest in the property.

The State moved to dismiss both appeals (A-16, A-77). In separate orders dated October 18, 2005, the district court granted the motions (A-35, A-79).

The Piehs and Woodhalls separately appealed the dismissals to the Minnesota Court of Appeals (A-38, A-82). The court of appeals consolidated the two appeals. In an unpublished opinion issued July 25, 2006, the court of appeals affirmed the district court's dismissal of both cases (A-83). Both the Woodhalls and the Piehs (hereinafter "Appellants") petitioned for further review, which was granted by this Court on October 17, 2006 (A-88).

ARGUMENT

The court below held that dismissal of the appeals was mandated by a strict reading of Minn. Stat. § 117.145 (2006), which states, in relevant part:

At any time within 40 days from the date that the report [of the commissioners] has been filed, any party to the proceedings may appeal to the district court from any award of damages embraced in the report, or from any omission to award damages, by: (1) filing with the court administrator a notice of such appeal, and (2) serving by mail a copy of such notice on all respondents and all other parties to the proceedings having an interest in any parcel described in the appeal who are shown in the petitioner's affidavit of mailing, required by section 117.115, subdivision 2, as having been mailed a notice of the report of the commissioners.

Here, Appellants served all respondents and other parties to the proceeding who had a property interest in the parcels described in their appeal, but they did not serve respondents who had been mailed the notice of the report of the commissioners but who had no interest in the property. For two separate reasons, the courts below erred. First, even if § 117.145 were read to require service on all named respondents, even those who had no legal or equitable interest in the subject property, the failure to serve non-interested parties does not eviscerate the appeal for lack of subject matter jurisdiction. Second, Minn. Stat. § 117.145 is best read

to require that appellants serve only those parties who have a property interest in the land described in their appeal.

In *Housing and Redevelopment Authority v. Adelman*, 590 N.W.2d 327 (Minn. 1999), this Court held that a party's failure to comply strictly with that portion of Minn. Stat. § 117.145 requiring service on both a party and the party's attorney did not divest the district court of jurisdiction over the appeal:

Section 117.145 also fails to support the court of appeals' conclusion that the notice of filing requirement of section 117.115 was incorporated as a jurisdictional prerequisite to appeal. Section 117.145 enumerates two requirements for an appeal: "(1) filing with the court administrator a notice of such appeal, and (2) serving by mail a copy of such notice on all respondents and all other parties to the proceedings having an interest in any parcel..." The reference to section 117.115, subdivision 2 found in section 117.145 is not enumerated as a separate requirement to perfect an appeal. Rather, the reference merely identifies the respondents who must be served a copy of the notice of appeal. *See id.* Although we do not imply that a condemning authority's failure to comply with the notice of filing provisions of section 117.115 is never of consequence, we hold that under the circumstances presented in this case, strict compliance with the duplicate notice requirements of section 117.115 is not a jurisdictional prerequisite to an appeal from a condemnation award under section 117.145.

Id. at 331.

While the *Adelman* majority opinion did not find it necessary to address such questions as (a) who is included in the phrase "all respondents and other parties to the proceedings having an interest in any parcel," or (b) whether the holding that strict compliance is unnecessary to the perfection of an appeal also applies to a failure to comply strictly with § 117.145, if that section is interpreted to require service on parties not served by

appellants but who have no interest in the outcome of the case, the concurring opinion of Justice Paul H. Anderson pointed out the need for further clarification, not only of § 117.115 but also § 117.145, and strongly suggested that the “no strict requirement” rule announced by the majority be incorporated into any interpretation of § 117.145 itself.

Justice Anderson carefully analyzed the legislative history of the “strict compliance” rule and concluded that it rested on a mistaken belief that failure to comply with the notice provisions deprived the district court of *subject matter jurisdiction* over such appeals. His analysis also noted that the right to a correct determination of what is “just compensation” in a condemnation action is a fundamental right of a property owner, and that the necessity of strict compliance with notice provisions must be considered with that in mind:

We first made reference to language used in the case of *State v. Rust*, 256 Minn. 246, 98 N.W.2d 271 (1959) to emphasize that attempts on the part of the condemnor to defeat a landowner’s right to his day in court are not looked on with favor, especially when the constitutional right to just compensation for the taking of land is involved. Quoting *Rust*, we said:

“[t]he decisions in this state have never unduly restricted the owner’s constitutional right to just compensation where there has been a taking of private property for public use under the powers of eminent domain. Attempts on the part of condemnor by technical means to defeat the landowner’s right to his day in court have never been viewed with favor. Every owner is constitutionally entitled to a just and equal application of the rule that what he owns shall not be taken from him or destroyed or damaged for public use without just compensation.”

590 N.W.2d at 338 (Anderson, J., concurring) (quoting *State v. Jude*, 258 Minn. 43, 44, 102 N.W.2d 501, 503 (1960)). As the Court noted in its Order granting review in this case (A-89), the issues addressed in Justice Anderson’s concurrence are central to this appeal.

I. THE DISTRICT COURT RETAINED SUBJECT MATTER JURISDICTION OVER THE CONDEMNATION APPEAL BECAUSE APPELLANTS' TIMELY SERVED THE NOTICE OF APPEAL ON ALL RESPONDENTS WHO HAD AN INTEREST IN THE PROPERTY.

Justice Anderson's concurrence in *Adelmann*, 590 N.W.2d at 333-39, thoroughly analyzes the purely legal question of whether -- once a condemnation or eminent domain proceeding has been properly commenced by the governmental petitioner -- a district court retains subject matter jurisdiction over an aggrieved party's appeal of the commissioners' award of compensation for the taking under Minnesota Statutes section 117.145. The construction of the statute is, of course, a question of law subject to *de novo* review by this Court. See *In re Estate of Jotham*, 722 N.W.2d 447, 450 (Minn. 2006).

As Justice Anderson's concurrence correctly notes, the "district court acquires subject matter jurisdiction over eminent domain proceedings upon the presentation to the court of a proper condemnation petition showing a right on the part of the petitioner to acquire the land described in the petition." *Adelmann*, 590 N.W.2d at 333 (Anderson, J., concurring) (citing *Rheiner v. Union Depot St. Ry. & Transfer Co.*, 31 Minn. 289, 294, 17 N.W. 623, 624 (1883)); see also Minn. Stat. § 117.055 (2006). Specifically, the statute requires the petitioner to file a petition "describing the desired land, stating by whom and for what purposes it is proposed to be taken, and giving the names of all persons appearing of record or known to the petitioner to be the owners thereof"¹ and to serve timely notice of the proceedings upon all persons named in the position as owners of the property and all

¹Suppose that the Petitioner erroneously names someone who has no interest in the property. Can it be the law that failure to serve such an erroneously named party deprives the court of jurisdiction?

occupants of the property. § 117.055 (emphasis added). However, the “court is vested with subject-matter jurisdiction upon the presentation of a proper condemnation petition,” and “service of the notice is designed only for the purpose of investing the court with [personal] jurisdiction over the persons interested in the proceeding.” *Adelmann*, 590 N.W.2d at 333-34 (Anderson, J., concurring) (citing *Rheiner*, 31 Minn. at 294, 17 N.W. at 624-25) (emphasis added).

Under the statutory scheme, the district court then appoints three commissioners “to ascertain and report the amount of damages that will be sustained by the several owners on account of such taking.” Minn. Stat. § 117.075, subd. 2 (2006). The commissioners file with the court a report of the damages to be awarded to compensate the property owner for the taking. See Minn. Stat. § 117.105 (2006). A party to the petition proceeding may then appeal the commissioners’ award to the district court:

At any time within 40 days from the date that the report has been filed, any party to the proceedings may appeal to the district court from any award of damages embraced in the report, or from any omission to award damages, by: (1) filing with the court administrator a notice of such appeal, and (2) serving by mail a copy of such notice on all respondents and all other parties to the proceedings having an interest in any parcel described in the appeal who are shown in the petitioner’s affidavit of mailing, required by section 117.115, subdivision 2, as having been mailed a notice of the report of the commissioners.

Minn. Stat. § 117.145 (2006) (emphasis added).

As the *Adelmann* concurrence correctly notes, the precise rationale applied by both lower courts here -- that the district court obtains subject matter jurisdiction over the appeal

only if the appealing party complies strictly with the requirements of section 117.145 -- necessarily assumes that the court was divested of jurisdiction upon appointment of the commissioners. *See id.* at 334. But that cannot be the law. Taken to its logical consequence, that would mean the district court would lack power to appoint replacement commissioners in the event one died or becomes disabled, to resolve any procedural difficulties encountered by the commissioners, or to decide any issues arising with respect to the scope of the taking. *See id.* This simply makes no sense.

Moreover, as Justice Anderson's concurrence in *Adelmann* demonstrates, the history of section 117.145 "suggests that notice provisions were added to the statute for purposes less radical and more pragmatic than to deprive a district court of subject-matter jurisdiction if a party failed to strictly comply with the notice requirements." *Id.* at 337. Before the 1971 amendment -- which required that the appealing party mail notice of the appeal to all parties of record -- "a party needed to keep a vigilant eye on the clerk of court's office to determine if an appeal was filed before the expiration of the appeal period." *Id.* The 1971 amendment to section 117.145 "merely simplified the procedure by which parties learned of an appeal of the commissioners' award and of the triggering of the timeframe for filing a cross-appeal." *Id.* Thus, the "conclusion that mailing the notice of appeal is a subject-matter jurisdictional requirement raises the significance of this requirement to a level that the legislature never intended." *Id.*

Here, it is undisputed that Appellants timely served notices of appeal on all "parties to the proceeding having an interest in" the property. *See* § 117.145. Appellants did not serve a

notice of appeal on four parties: Kandiyohi County, Wells Fargo Bank, and Burton and Ella Van Ort.² However, it is undisputed that these parties have no interest in the property subject to condemnation.

The effect, if any, of a failure to serve a notice of appeal on parties with no property interest is that, for purposes of the appeal, those parties not served have not been personally brought within the jurisdiction of the district court. It would be like failing to serve a notice of appeal from a judgment on one of the parties – the judgment would be final as to that party. *See Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759 (Minn. 2005). But once the district court acquired jurisdiction over the subject matter upon the filing of a proper condemnation petition, “that jurisdiction is retained and continues even after commissioners are appointed, a commissioners’ hearing is held, and an award is made.” *Adelmann*, 590 N.W.2d at 336 (Anderson, J., concurring).

Even assuming that, for purposes of this appeal, the district court did not have personal jurisdiction over the parties not served (Kandiyohi County, Wells Fargo Bank, and the Van Orts), the loss of personal jurisdiction does not affect Appellant’s condemnation appeal because the parties not served have no interest in the property being condemned. At this stage of the proceedings -- after condemnation has already been granted and the commissioners have awarded compensation -- all that remains is a challenge to the *amount* of compensation. The only parties that have an interest in the amount are the property owners --

² In the case of the Van Orts, they were not served because as contract for deed vendors, their interest in the property was about to be extinguished when the contract was to be paid off in a couple of days. (A-19).

here, the Piehs and Woodhalls -- and the State. The loss of personal jurisdiction as to other parties is tantamount to harmless error.

That this is the correct result is underlined by a consideration of the position of the parties not served here. The Piehs and the Woodhalls are claiming that they were not paid enough by the State for the land which was taken from them. Suppose the district court agrees. There is no prejudice to Wells Fargo, because its mortgagor would be in a sounder position than it was before the appeal. There is similarly no prejudice to the Van Orts, because their contract vendee is financially healthier and better able to pay off the contract for deed. And there is certainly no prejudice to Kandiyohi County, which now has higher-valued land to tax. It is highly unlikely that any of these named respondents would have had any objection to the Piehs' appeal. So the "requirement" of service on all named respondents (if it were a requirement) is purely formal. Property owners should not be deprived of fundamental rights over empty formalities.

II. SECTION 117.145 SHOULD BE CONSTRUED TO REQUIRE SERVICE ONLY ON THOSE WITH A PROPRIETARY INTEREST IN THE REAL PROPERTY IN QUESTION.

Because Minn. Stat. § 117.145 limits an owner's fundamental constitutional rights (see pp. 18-24, *infra*), any ambiguity in the language of that statute must be read in favor of the property owner. However, even without resort to an "ambiguity" analysis, a sound reading of § 117.145 dictates reversal here.

The service clause of Minn. Stat. § 117.145 (quoted above at p. 8) can be read in one of two ways:

(a) by serving by mail a copy of such notice on (1) all respondents having an interest in any parcel described in the appeal and (2) all other parties to the proceedings having an interest in any parcel described in the appeal (3) who are shown in the petitioner's affidavit of mailing,

or

(b) by serving by mail a copy of such notice on (1) all respondents (2) all other parties to the proceedings, if such other parties have an interest in any parcel described in the appeal and (3) are shown in the petitioner's affidavit of mailing,

Grammatically, either interpretation is plausible. The phrase "having an interest in any parcel" can be read to modify both "all respondents" and "all other parties," or it can be read to modify the words "all other parties" only. When there is a prima facie ambiguity in phrase in a statute, Minn. Stat. § 645.16 (2006) provides an important guide to its interpretation:

When the words of a law are not explicit, the intention of the legislature may be ascertained by considering, among other matters:

- (1) The occasion and necessity for the law;
.....
- (4) The object to be attained;
.....
- (6) the consequences of a particular interpretation

And Minn. Stat. § 645.17 (2006) provides additional useful directives:

In ascertaining the intention of the legislature the courts may be guided by the following presumptions:

- (1) The legislature does not intend a result that is absurd, impossible of execution, or unreasonable;

(2) The legislature intends the entire statute to be effective and certain

To sum up these principles in a nutshell, the interpretation to be adopted must make sense. The interpretation urged by the appellants makes sense. The interpretation urged by the State does not.

If the statute is read the way the way the State urges, then the words “all respondents” is grammatically independent of the words “having an interest in any parcel described in the appeal.” But if the respondents are not parties who have an interest in a parcel under appeal, then who are they? There are only two possibilities: they are all the respondents named by the State in its original condemnation petition, or they are the respondents in the appeal. But neither possibility makes sense. If “all respondents” means “all respondents named by the State in its condemnation petition,” then an appellant would have to serve multiple parties who have no interest at all in the parcel in question. Serving them would be a pure waste of time and money, and where respondents potentially number in the dozens or hundreds, requiring service on all of them would be merely a “trap for the unwary,” not to mention being completely pointless. The legal purpose of requiring service in any action is to make certain someone who has an interest in the outcome of an action is in a position to defend that interest. In this case, the service requirement is for the benefit of the respondents, not the benefit of the State. But if an original respondent to the condemnation action has no legal interest in a parcel, the principle that the legislature does not intend an absurd result would be violated.

The State half-recognizes this. In its summary judgment motion, it alleged that the Piehs and the Woodhalls violated § 117.145 by not serving four respondents only – Wells Fargo Bank, Burton van Ort, Ella van Ort, and Kandiyohi County. But if Minn. Stat. § 117.145 is to be read literally to require service of a notice of appeal on “all respondents,” and not just “all respondents . . . having an interest in the parcel” then the State would have argued that forty-five other respondents had not been served, either. Whether explicitly or implicitly, the State recognized the absurdity of such an argument, and did not make it. But if “all respondents” is not “all respondents named in the petition,” the only other alternative reading is “all respondents having an interest in the parcel,” a reading the State vigorously opposes.

The other possibility is that “all respondents” means “all respondents to the appeal.” If this is the case, the Piehs and the Woodhalls have served the only party they had named as respondents to their appeal -- the State of Minnesota.

When a property owner appeals from the commissioners’ award, the appeal is filed in the district court where the State’s condemnation petition was filed. It is captioned in the name of the property owner(s) as appellant, and is given a file number separate from the file number of the State’s condemnation petition.

Ordinarily when a new lawsuit is commenced, the word “respondents” refers to the respondents in that new lawsuit. The appellants would not name the other parties to the condemnation proceeding in their appeal, such as the Van Orts, or the Piehs, or Kandiyohi County as respondents, because the appellants typically do not want any relief from them.

So if the appeal of a commissioners' award were truly an independent action, separate and apart from the underlying condemnation suit, § 117.145 would be satisfied by serving the State of Minnesota, the only respondent named in the appeal.

But surely that result is absurd in this context. First, a petitioner always serves the respondent he names in the action. Otherwise why bring the action at all? The additional service requirements of § 117.145 would be superfluous. Second, since a petitioner can name any respondent he deems fit, a petitioner could perfect his appeal simply by serving any respondent he names. Since "all respondents" cannot mean "all respondents named in the condemnation petition" and cannot mean "all respondents designated as such in the appeal," it can only mean "all respondents having an interest in the parcel." If, on the other hand, "all respondents" refers the respondents in the condemnation petition, the context makes it clear that the appellant is directed to serve all respondents who have a property interest in the parcel in question.

To interpret § 117.145 to require a party to perfect an appeal by serving (1) all respondents, irrespective of whether they have an actual proprietary interest in the property, and (2) all other parties with a proprietary interest, would lead to an absurd result. Assume, for example, that the petitioning party named as a respondent "President George W. Bush"—a person who clearly has no interest in the subject property. Under the lower courts' construction of the statute, a party could not perfect an appeal, and the court would lack subject matter jurisdiction, unless and until the appealing party served President Bush with notice of the appeal. Appellants respectfully submit that it would be an absurd result to

condition the right to appeal a compensation award by commissioners – none of whom are members of the judiciary – on service of notice on President Bush, who has no legal interest in or knowledge of this dispute.

III. WHERE A PROPERTY OWNER HAS A FUNDAMENTAL CONSTITUTIONAL RIGHT TO JUST COMPENSATION FOR THE LOSS OF HIS PROPERTY IN A CONDEMNATION ACTION, ANY PROCEDURAL IMPEDIMENT TO THE EXERCISE OF THAT RIGHT MUST BE STRICTLY CONSTRUED AGAINST THE GOVERNMENT, AND LIBERALLY IN FAVOR OF THE PROPERTY OWNER.

Any reading of the statute which defeats an appeal because irrelevant persons are not served would raise a serious constitutional issue: whether judicially imposed strict compliance requirements can serve to deprive a property owner of a fundamental right when the statutes themselves do not make strict compliance a jurisdictional prerequisite. In *Adelmann*, this Court held that strict compliance with literal requirements of the eminent domain statute (specifying the persons upon whom notice of the report of the condemnation commissioners should be served) was not a jurisdictional prerequisite to the Housing and Redevelopment Authority's appeal from damages award. *See Adelmann*, 590 N.W.2d at 331.

While that case happened to be decided in favor of the government, the Court suggested that the same logic would also apply to minor procedural errors by the property owner.

In considering the strictness with which notice requirements are to be applied, a court of last resort must balance several salient factors. The governing principle adopted by the court should be relatively easy to apply. It should apply to a broad range of cases. The principle should yield a consistent result. It should apply equally to the government and the property owner. It should be fashioned with a healthy respect for the importance of the rights

which are at stake. And, perhaps most important, it should protect a person's fundamental constitutional rights.

The right to just compensation for property taken by eminent domain is guaranteed by both the Fifth Amendment to the United States Constitution and Article I, § 13 of the Minnesota Constitution. In interpreting statutes which affect such rights, it is well to bear in mind the famous pronouncement of Chief Justice John Marshall in *McCulloch v. Maryland*, 17 U.S. 316, 407 (1819): "In considering this question, then, we must never forget that it is a *constitution* we are expounding." That principle fully applies in eminent domain cases.

While the instant case does not involve a direct constitutional challenge to Minn. Stat. § 117.145, eminent domain laws are rooted in the constitution and must be interpreted in light of the fact that they raise issues of constitutional magnitude. Indeed, if Minn. Stat. § 117.145 were read to deny just compensation to a property owner for a reason as trivial as the failure to serve process on a governmental subdivision with no possible interest in the outcome of the litigation, its constitutionality would be in considerable doubt.

The right to just compensation for a taking is, after all, a fundamental constitutional right. As the Maryland Court of Appeals put it in *Acting Director, Department of Forests and Parks v. Walker*, 319 A.2d 806, 808 (Md. 1974): "The right of an American citizen to be secure from the expropriation of his lands by the sovereign without just compensation is a fundamental right." The New Hampshire Supreme Court came to the same conclusion, stating:

The right of a citizen not to have his property taken from him for public use without just compensation is a fundamental right the roots of which reach back to Magna Carta. City officials have no legitimate interest in attempting to extort from a citizen surrender of this right as a price for site plan approval.

Robbins Auto Parts, Inc. v. City of Laconia, 371 A.2d 1167, 1169 (N.H. 1977).

While this Court has not used the phrase “fundamental right” in the eminent domain context, the Court clearly has long regarded the constitutional right to just compensation as fundamental. The expansive language in *Langford v. County Commissioners of Ramsey County*, 16 Minn. 333 (1871), is no less applicable now than it was when that decision was written:

There is no doubt whatever that the right to take the property of a citizen and appropriate it to public use is an inherent attribute of sovereignty, and it is equally certain, under our constitution and laws, at least, that a provision for compensation is a necessary attendant on the due and constitutional exercise of the power of the lawgiver to deprive an individual of his property without his consent in cases like that now under consideration. 2 Kent, Comm. 339.

In this, and similar cases, the legislature alone can, and indeed frequently does interpose, and compel the individual to acquiesce. But how does it interpose and compel? Not by absolutely stripping the subject of his property in an arbitrary manner, but by giving him a full indemnification and equivalent for the injury thereby sustained. The public is now considered as an individual treating with an individual for an exchange.

Id. at 337-38.

Since the right to just compensation is a fundamental constitutional right, any attempt on the part of the legislative or executive branches to limit it is subject to strict scrutiny. *See State ex rel. Morrow v. LaFleur*, 590 N.W.2d 787, 796 (Minn. 1999). If a fundamental right

is at stake, the state action is subject to strict scrutiny and the state must show “a legitimate and compelling interest” for abridging that right. *In re Blodgett*, 510 N.W.2d 910, 914 (Minn. 1994).

Fundamental rights may be denied as much by arbitrary procedural requirements as by substantive legislative or executive contradictions of such rights. For example, a number of jurisdictions have held that a notice requirement that is too short is unconstitutional, either because it violates equal protection or because it is simply arbitrary and irrational. *See, e.g., Miller v. Boone County Hosp.*, 394 N.W.2d 776, 780 (Iowa 1986); *Reich v. State Highway Dep’t*, 194 N.W.2d 700, 702 (Mich. 1972); *Turner v. Staggs*, 510 P.2d 879, 882 (Nev. 1973); *Hunter v. N. Mason High Sch.*, 539 P.2d 845, 849 (Wash. 1975); *O’Neil v. City of Parkersburg*, 237 S.E.2d 504, 508 (W. Va. 1977).

This Court has made it clear that procedures and remedies may not be unreasonable or arbitrary, and must satisfy the constitutional requirement of reasonable notice and opportunity to be heard. For example, in *Baker v. Kelley*, 11 Minn. 480 (1866), the Court held that if a law requiring a person to challenge title to land based upon tax deed were construed to bar an individual from testing the validity of the sale, it would be unconstitutional because it would irrationally deprive a litigant of his rights and remedies under Minn. Const. Art. I § 8.

Another example: This Court now has before it on further review the case of *Hans Hagen Homes, Inc. v. City of Minnetrista*, 713 N.W.2d 916 (Minn. App. 2006). However

this Court ultimately decides that case, Judge Randall made an excellent point about arbitrary and burdensome procedural requirements as bar to need relief:

The Minnesota Supreme Court held that arbitrary deadlines are sometimes “unduly harsh.” *Terrell v. State Farm Ins. Co.*, 346 N.W.2d 149, 152 (Minn.1984). In *Terrell* the supreme court conducted a similar analysis as this court does today regarding a strictly worded legislative scheme. *Id.* The supreme court noted that absent such direct statutory direction, public policy would require an avoidance of injustice through requiring actual prejudice. *Id.* at 151. In recognizing disfavor on forfeiture of decisions or policies due to the passing of arbitrary deadlines, the legislature amended the statute at issue in *Terrell* to require a showing of actual prejudice. 1984 Minn. Laws ch. 592, § 55, at 1282. Subsequent decisions from this court then did not apply the same strict scrutiny administered by the supreme court in *Terrell* partly due to the legislature’s change in heart. *See, e.g., LaFriniere v. State Farm Mut. Auto. Ins. Co.*, No. C5-88-1582, 1989 WL 23535, at *2 (Minn. App. Mar. 21, 1989). In general, actual prejudice need be shown or there may be a limit to recovery. *L & H Transport, Inc. v. Drew Agency, Inc.*, 369 N.W.2d 608, 611 (Minn. App. 1985), *aff’d*, 384 N.W.2d 435 (Minn. 1986).

Id. at 924 (Randall, J., concurring). It is worth noting that Judge Randall was discussing the government’s right to contest a variance, not the much stronger fundamental personal right of just compensation.

The loss of one’s property without just compensation is in effect a forfeiture of that property – moreover, a forfeiture without any wrongdoing on the part of the property owner. Forfeitures are not favored in law. *Jandric v. Skahen*, 235 Minn. 256, 260, 50 N.W.2d 625, 628 (1951); *Borgen v. 418 Eglon Ave. & \$1,230.00 in U.S. Currency*, 712 N.W.2d 809, 812 (Minn. App. 2006). Certainly loss of one’s property without just compensation is deserving of protection of the opportunity for judicial review. The same logic which applies to the

length of time within which notice must be given applies to the requirements regarding the persons who must be served with notice.

The extinguishment of a property owner's right to just compensation through a failure to provide notice to a county which has no interest in the property raises issues of constitutional magnitude, and any interpretation of the procedural requirements with respect to the exercise of those rights must not have the effect of eviscerating them for light and transient reasons. In this case, the interpretation of § 117.145 which permits an appeal if all parties with an interest in the subject parcels have been served does not run the risk of running afoul of a property owners' fundamental rights. But a stricter interpretation requiring a property owner to serve all respondents, regardless of their interest in the property would be an irrational impediment to just compensation and serves no valid State interest. Hence, the interpretation urged here, which preserves § 117.145 from constitutional infirmities, should prevail. And even if the Court were to determine that such an interpretation is unacceptable as a general matter, a "strict compliance" requirement which takes away a property owner's right to his "day in court" on a fundamental issue should be avoided, and the Court should deem that such compliance with the statute as the appellants in this case have made was sufficient to perfect their appeal.

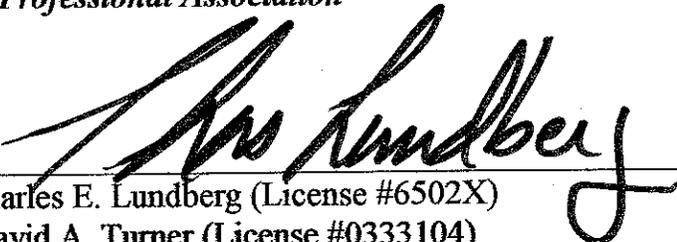
CONCLUSION

For these reasons, Appellants request that the Court reverse the opinion of the Court of Appeals and remand both appeals to the district court for a full hearing on the merits.

Respectfully submitted,

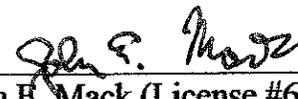
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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).