

NO. A08-0767

State of Minnesota
 In Court of Appeals

Eagan Economic Development Authority,

Respondent,

vs.

Larson Training Services, Inc.
 d/b/a Larson's Automotive Repair Services;
 Randall J. and Sandra K. Quam, husband and wife, and
 Competitive Engines, Inc.; and U-Haul Co. of Minnesota and
 AMERCO REAL ESTATE COMPANY,

Appellants.

BRIEF OF RESPONDENT
 EAGAN ECONOMIC DEVELOPMENT AUTHORITY

LARSON • KING, LLP
 Daniel L. Scott (#240837)
 2800 Wells Fargo Place
 30 East Seventh Street
 St. Paul, MN 55101-4922
 (651) 312-6500

*Attorneys for Appellants U-Haul Co. of
 Minnesota and AMERCO REAL ESTATE
 COMPANY*

FREDRIKSON & BYRON, P.A.
 Steven J. Quam (#250673)
 200 South Sixth Street, Suite 4000
 Minneapolis, MN 55402
 (612) 492-7183

*Attorney for Appellants Randall J. Quam and
 Sandra K. Quam and Competitive Engines, Inc.*

SEVERSON, SHELDON, DOUGHERTY
 & MOLENDIA, P.A.
 Robert B. Bauer (#227365)
 Jessica L. Sanborn (#339532)
 7300 West 147th Street, Suite 600
 Apple Valley, MN 55124
 (952) 432-3136

*Attorneys for Respondent Eagan Economic
 Development Authority*

GARY G. FUCHS,
 ATTORNEY AT LAW, P.A.
 Gary G. Fuchs (#32566)
 3440 Federal Drive, Suite 100
 Eagan, MN 55122
 (651) 452-1215

*Attorneys for Appellant Larson Training Services,
 Inc. d/b/a Larson's Automotive Repair Services*

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).

TABLE OF CONTENTS

TABLE OF CONTENTS *i*

TABLE OF AUTHORITIES *iii*

STATEMENT OF LEAGAL ISSUES..... 1

STATEMENT OF THE CASE 3

STATEMENT OF FACTS 3

 A. Location of Project Area 3

 B. Creation of Tax Increment Financing District 5

 C. Property Acquisition 6

STANDARD OF REVIEW 9

ARGUMENT 9

 I. The District Court Correctly Determined that the EDA was Authorized to Utilize Eminent Domain Powers and Exercised Such Powers Lawfully in Bringing this Condemnation Proceeding 9

 A. The EDA is Authorized by Statute to Use Eminent Domain Powers to Acquire Property to Create an Economic Development District and to Remove Blight..... 9

 B. Minn. Stat. § 469.105 does not Prohibit the EDA’s Eminent Domain Action in this Case 12

 C. The Cedar Grove Redevelopment Plan does not Prohibit the EDA’s Exercise of Eminent Domain in this Condemnation Case..... 14

 II. The District Court did not Commit any Error by Upholding the EDA’s Determination of a Public Purpose for the Taking 17

 A. Eliminating Areas of Blight Serves a Public Purpose 19

B.	The Implementation of Programs to Provide New Development in Areas of a City that are Already Built Up in Order to Provide Employment Opportunities, to Improve the Tax Base, and to Improve the General Economy of the State are Public Purposes	21
III.	The District Court did not Commit any Error by Upholding the EDA's Finding of Necessity for the Taking of the Cedar Grove Properties.....	22
IV.	The District Court did not Commit any Error by Refusing to Overturn the EDA's Determination that a Quick Take was Reasonably Required	26
	CONCLUSION	27
	RESPONDENT'S APPENDIX.....	29

TABLE OF AUTHORITIES

<u>Minnesota Cases</u>	<u>Page</u>
<i>City of Duluth v. State</i> , 390 N.W.2d 757 (Minn. 1986).....	2
<i>City of Minneapolis v. Wurtele</i> , 291 N.W.2d 386 (Minn. 1980).....	2, 17, 26
<i>Coop Power Assoc. v. Eaton</i> , 284 N.W.2d 395 (Minn. 1979)	2
<i>Economic Devel. Auth. v. Hmong-American Shopping Center, LLC</i> , A05-1239, 2006 Minn. App. Unpub. LEXIS 438 at *15-16 (Minn. App. May 9, 2006).....	19, 24
<i>Hous. & Redevl. Auth. v. Fronney</i> , 305 Minn. 450, 234 N.W.2d 894 (1975).....	19
<i>Housing & Redevelopment Auth v. Minneapolis Metro. Co.</i> , 104 N.W.2d 864 (1960).....	1, 17, 18
<i>Hous. & Redevl. Auth. v. Schapiro</i> , 210 N.W.2d 211 (Minn. 1973).....	19
<i>Hous. & Redevl. Auth. v. Walser</i> , 630 N.W.2d 662 (Minn. App. 2001)	19, 22, 23, 25
<i>Itaska County v. Carpenter</i> , 602 N.W.2d 887 (Minn. App. 1999).....	24
<i>Lino Lakes Economic Dev. Auth. v. Reiling</i> , 610 N.W.2d 355 (Minn. App. 2000).....	2, 11, 21, 23, 24
<i>Lundell v. Coop. Power Ass'n</i> , 707 N.W. 2d 376 (Minn. 1006)	1, 9, 17, 18, 22, 26
<i>N. States Power Co. v. Oslund</i> , 236 Minn. 135, 51 N.W.2d 808 (1952)	22
<i>Regents of Univ. of Minn. v. Chicago & N.W. Trasnp. Co.</i> , 552 N.W.2d 578 (Minn. App. 1996).....	23
<i>Thiele v. Stich</i> , 425 N.W.2d 580 (1988)	12
 <u>Minnesota Statutes</u>	 <u>Page</u>
Minn. Stat. Chapter 117	1, 10
Minn. Stat. §117.042	2, 26
Minn. Stat. § 117.075	2, 22
Minn. Stat. Chapter 469.....	10
Minn. Stat. § 469.001	1, 9, 10
Minn. Stat. § 469.001 to 047	9, 10
Minn. Stat. § 469.002	14, 19, 20
Minn. Stat. § 469.003	10, 12
Minn. Stat. § 469.012	1, 10, 12
Minn. Stat. § 469.029	14
Minn. Stat. § 469.047	1, 9, 10
Minn. Stat. § 469.090	13
Minn. Stat. § 469.090 to 108	9
Minn. Stat. § 469.091	10, 12, 14
Minn. Stat. § 469.101	9, 10, 11
Minn. Stat. § 469.105	12, 13
Minn. Stat. § 469.108	13
Minn. Stat. § 469.124	1, 21
Minn. Stat. § 469.174	9, 10
Minn. Stat. § 469.179	9

STATEMENT OF LEGAL ISSUES

- I. Did the district court correctly determine that the Eagan Economic Authority was authorized to utilize the powers of eminent domain and did so properly in bringing this condemnation action?

Trial Court Ruling: The district court concluded that the EDA had the authority to utilize the powers of eminent domain and that it properly exercised its lawful powers in bringing this condemnation action.

Apposite Cases:

- *Housing & Redevelopment Auth. v. Minneapolis Metro. Co.*, 104 N.W.2d 864 (1960).
- *Lundell v. Coop. Power Ass'n*, 707 N.W.2d 376 (Minn. 2006).

Apposite Statutes:

- Minn. Stat. § 469.001 to § 469.047; Minn. Stat. § 469.012 (2000).
- Minn. Stat. Chapter 117.

- II. Did the district court not commit any error by affirming the Eagan Economic Development Authority's determination that the exercise of eminent domain over the properties in the Cedar Grove Redevelopment District, including the properties owned by appellants, was for a public purpose?

Trial Court Ruling: The district court concluded that "[t]here is more than sufficient evidence in the record supporting the existence of a public purpose in the EDA's exercise of eminent domain over the properties in the Cedar Grove Redevelopment District."

Apposite Cases:

- *Housing & Redevelopment Auth. v. Minneapolis Metro. Co.*, 104 N.W.2d 864 (1960).
- *Lundell v. Coop. Power Ass'n*, 707 N.W.2d 376 (Minn. 2006).

Apposite Statutes:

- Minn. Stat. § 469.124 (2007).

- III. Did the District Court not commit any error by affirming the Eagan Economic Development Authority's determination that the taking of the Cedar Grove properties was necessary for a public purpose?

Trial Court Ruling: The district court concluded that the EDA made a prima facie showing of necessity; that Respondents failed to raise overwhelming evidence that the taking is not necessary; and that the EDA's proposed taking is reasonably necessary to lead to the timely redevelopment of the district.

Apposite Cases:

- *City of Duluth v State*, 390 N.W.2d 757 (Minn. 1986).
- *Lino Lakes Economic Dev. Auth.*, 610 N.W.2d 355 (Minn. App. 2000).

Apposite Statutes:

- Minn. Stat. § 117.075 (2005).

- IV. Did the District court not commit any error by affirming the Eagan Economic Development Authority's determination that a quick-take proceeding was reasonably required?

Trial Court Ruling: The district court determined that "the 'quick take' is both necessary and proper.

Apposite Cases:

- *Coop. Power Assoc. v. Eaton*, 284 N.W.2d 395 (Minn. 1979).
- *City of Minneapolis v. Wurtele*, 291 N.W.2d 386 (Minn. 1980).

Apposite Statutes:

- Minn. Stat. § 117.042 (2005)

STATEMENT OF THE CASE

Appellants challenge the district court's supplemental order granting Respondent, the Eagan Economic Development Authority's (EDA) petition to acquire by eminent domain title to properties owned by Appellants.

On November 26, 2007, the EDA filed a petition for the condemnation of thirteen properties located in the Cedar Grove Redevelopment Area. Owners of six of the properties objected. On February 6, 2008, the Honorable Michael Mayer of the Dakota County District Court granted the EDA's condemnation petition as to the unobjecting properties.¹ An evidentiary hearing was held on February 13, 2008. In the Supplemental Order dated April 16, 2008, the district court found a public purpose and granted the EDA's petition. Appellants challenge this decision.

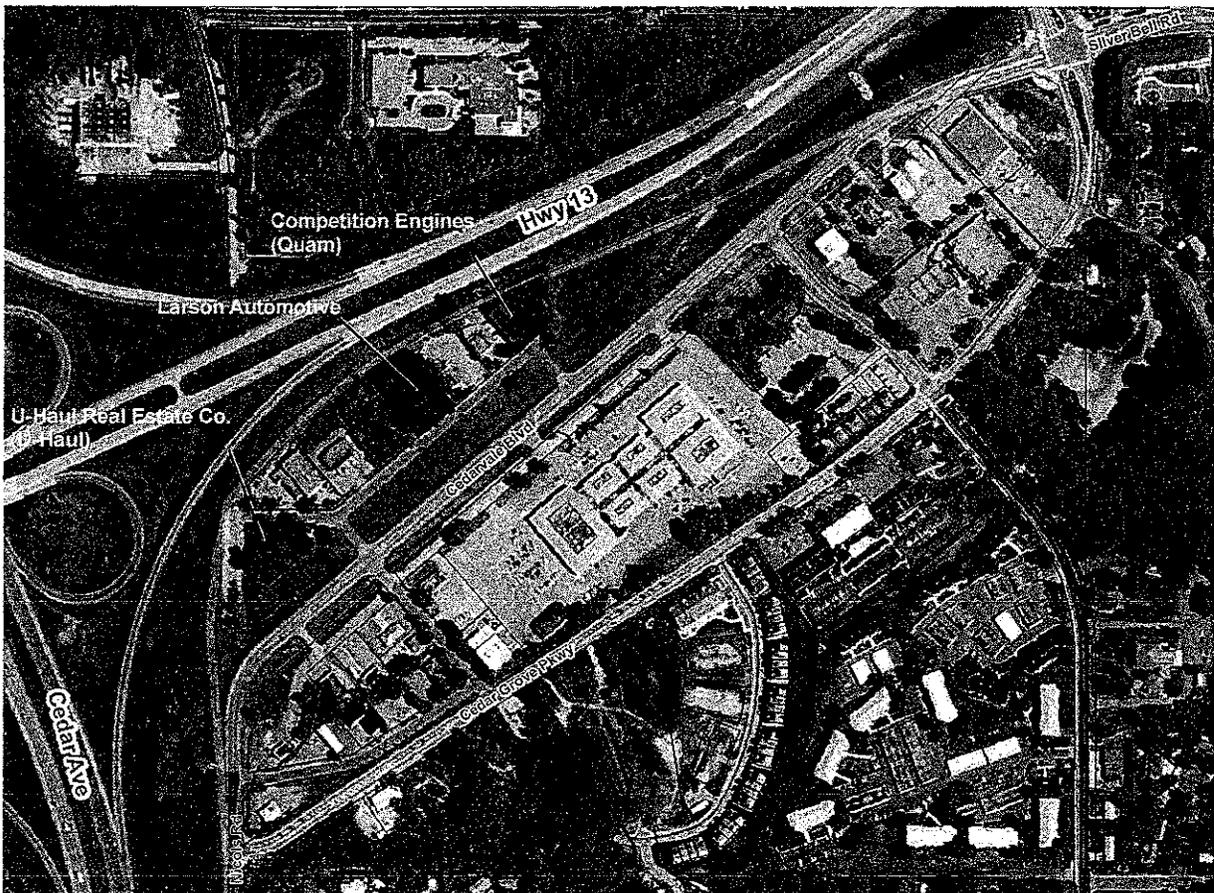
STATEMENT OF FACTS

A. Location of Project Area.

The Cedar Grove area in the City of Eagan is located in the southeast corner of two major Highways and should be a vibrant economic asset to the City of Eagan and its residents. The Cedar Grove area was once considered Eagan's downtown business district, but its commercial viability declined due, in part, to the reconstruction of Minnesota State Highway 13. Today Cedar Grove falls drastically short of its economic potential and is in dire need of redevelopment.

¹ At the hearing, one of the original objecting parties withdrew its objection, (T. 7-8.) another objecting property owner withdrew its objection after the February 13, 2008 hearing; and Appellants U-Haul of Minnesota and AMRCO Real Estate Company, the owners of parcel 2 identified on the Petition, were allowed to enter their objection at the February 13 hearing (T. 10-13.)

As shown below, Cedar Grove is located on the East side of Cedar Avenue/Highway 77 at its intersection with Highway 13 (the area that the EDA seeks to redevelop is referred to as “the Redevelopment District”). For illustrative purposes, the Redevelopment District is within the yellow border. The Appellants’ properties are shown in red. The EDA owns all of the remaining property within the yellow border and the EDA has demolished many of the existing buildings within the yellow border, including the former Cedarvale Mall. (T. at 172-173).



(AA 211 – (although modified to show the Appellants’ properties in red.))

B. Creation of Tax Increment Financing District.

In 2001, the firm of Short Elliot Hendrickson, Inc. (SEH) surveyed and evaluated the properties within the Redevelopment District and determined that fifty-seven percent (57%) of the buildings were “structurally substandard,” needing substantial renovation or clearance. (AA 162-165). In fact, the buildings on the properties owned by appellants U-Haul/AMERCO and Larson Training Services, Inc. were identified as structurally substandard. (*Id.*). The TIF Redevelopment Eligibility Assessment prepared by SEH found the following code violations: heating, ventilation, and cooling systems; electrical systems; energy code compliance; general egress, construction and accessibility; and fire protection systems. (AA 158). The Assessment also noted the following Systems Condition deficiencies: structural and construction type; maintenance; zoning; condition and appearance; and useful life. (*Id.*; see also ¶ 6 Supplemental Order; AA 22).

In 2001, the City found that redevelopment of the Cedar Grove area would not occur solely through private investment within the reasonably foreseeable future. (Resolution 01-63 § 3.02; AA 45). The City of Eagan and the EDA began the necessary steps to acquire properties in order to redevelop the area into one that will result in: (1) increased employment in the City; (2) the renovation of substandard properties; (3) an increased tax base of the State; (4) an increase in the availability of safe and decent life-cycle housing in Eagan; (5) and the addition of high-quality development to the City. (Resolution 01-63; AA 48).

On October 2, 2001, the City approved the Cedar Grove Redevelopment Area Plan (“the Redevelopment Plan”). (Resolution 01-63; AA 44-48). Also on October 2, 2001,

the Eagan City Council approved the creation and establishment of a Tax Increment Financing District (“TIF District”) for the area that comprised the Redevelopment District. (AA 51). On March 4, 2002, the Eagan City Council passed a resolution verifying the findings for the Cedar Grove Redevelopment Tax Increment Financing District. (Ex. 10, Mar. 4, 2002 Minutes). As required by statute, certification of the TIF District, with the County and State was requested on December 31, 2002. (Ex. 11). The TIF plan was certified on July 22, 2003. (AA 56). The deadline for eligible expenditures in the Cedar Grove TIF District was July 21, 2008. (§ 22, Supplemental Order; AA 25). Under Minn. Stat. § 469.1763, subd. 3, for the EDA to be eligible to receive TIF reimbursement for expenditures made in the TIF District, the expenditures needed to be made within five years of certification of the district (i.e. July 21, 2008). If the City did not move forward in the eminent domain action and deposit the funds necessary to compensate the Properties’ owners by the deadline, the City will not be able to claim the cost of acquiring the properties as eligible expenses to be paid from the tax increment generated by the redevelopment. (*Id.*)

C. Property Acquisition.

Since 2002, the City of Eagan has negotiated with willing sellers for the purchase of properties in the Redevelopment District. Through negotiation, the City gained control of over 93% of the properties in the core area of the Redevelopment District. (T. at 156). The EDA cannot purchase property except for a public purpose. Throughout the negotiation process of which Appellants were aware, no objections were made to the determination that the purchases were for a public purpose. Because negotiations were

unsuccessful with the remaining property owners, the EDA determined that eminent domain proceedings were necessary to ensure that the redevelopment of the Cedar Grove area has completed in a timely manner so as to assure the possibility of TIF reimbursement. (Amended Findings of Fact, Conclusions and Resolution: AA 230-238).

In March 2007, the EDA and the Eagan City Council authorized the preparation of appraisals on those properties which had not already been obtained through negotiation. (AA 235). Notices were mailed to the property owners indicating that the appraisals would be conducted to permit the EDA to make offers on the properties. (AA 235-236).

A public hearing regarding the EDA's decision as to whether to exercise the power of eminent domain was duly noticed and heard before the EDA on July 17, 2007. (AA 230-238). In adopting its September 4, 2007 Resolution, the EDA resolved that the acquisition by quick-take of the remaining properties was necessary "to carry out the Redevelopment Plan within the Redevelopment District." (AA 238). The Resolution authorized and directed the City staff, the EDA's advisors and legal counsel to acquire the Properties through the power of eminent domain including the use of quick take. (*Id.*)

The EDA based its resolution and conclusion in part on its findings that (1) that the Redevelopment District is blighted because more than 50 percent of the buildings were structurally sub-standard; (2) that redevelopment of the district will lead to substantial economic development; (3) that the current deficiencies of the Redevelopment District made it detrimental to the safety and welfare of the City of Eagan; (4) that redevelopment of the Redevelopment District would help eliminate structurally sub-standard buildings in an area of blight, modernize out-dated and incompatible buildings,

increase tax base and employment and further the City's ultimate objective of creating an economically viable Redevelopment District; and (5) that to be eligible for TIF reimbursement, expenditures must be made by the July 2008 deadline. (AA 236; *see also* ¶¶ 5, 10-13 Supplemental Order (AA 22-23)).

The City is ready to proceed with the redevelopment. At the time of the Evidentiary Hearing, the City had selected Doran Pratt as the developer for the redevelopment project and entered into a Preliminary Redevelopment Agreement. (AA 212-215). Doran Pratt provided a \$25,000 deposit to the City, and City Staff and Doran Pratt developed a concept plan for the Cedar Grove area. This plan was submitted to the City Council for comment and approval and a modified site plan was expected to go to the Advisory Planning Commission for comment. The City and the developer had also entered into a lease for a temporary sales center for the development. (Ex. 32; T. at 165).

Doran Pratt has retained professional engineering services to provide cost estimates for the proposed redevelopment. (T. at 165). It has indicated that road reconfiguration may be necessary for its proposed redevelopment. (*Id.*) Doran Pratt has expressed its desire to begin constructing an office building, senior housing, and a commercial component during the next construction season. (¶ 18, Supplemental Order; AA 25). There are also federal funds available for the Minnesota Valley Transit Authority to construct a transit facility adjacent to Cedar Avenue. (T. at 167). These construction activities would take place within the Redevelopment District. (*Id.*)

STANDARD OF REVIEW

Before a condemning authority condemns private land, it must first determine that there is a public use for the land and that the taking is reasonably necessary or convenient for the furtherance of that public use. *Lundell v. Coop. Power Ass'n*, 707 N.W.2d 376, 380-381 (Minn. 2006). These determinations by the condemning authority are regarded as legislative decisions and will only be overturned when they are manifestly arbitrary or unreasonable. *Id.* at 381. So while questions of public use and necessity are “judicial questions,” a reviewing court applies two levels of deference to condemnation decisions: (1) “the district court gives deference to the legislative determination of public purpose and necessity of the condemning authority”; and (2) “the appellate courts give deference to the findings of the district court, using the clearly erroneous standard.” (*Id.*)

ARGUMENT

I. The District Court Correctly Determined that the EDA was Authorized to Utilize Eminent Domain Powers and Exercised Such Powers Lawfully in Bringing this Condemnation Proceeding.

A. The EDA is Authorized by Statute to Use Eminent Domain Powers to Acquire Property to Create an Economic Development District and to Remove Blight.

The EDA approved the establishment of the Redevelopment District and the Eagan City Council approved the creation and establishment of the TIF District in connection with the Cedar Grove Redevelopment Area under the statutory authority provided by Minn. Stat. §§ 469.090 to 469.108, 469.001 to 469.047, 469.174, and 469.179.

The EDA is authorized by statute to create and define the boundaries of economic development districts within the city. Minn. Stat. § 469.101, subd. 1 (2007). The economic development district must satisfy the requirements of section 469.174, subd.

10, which defines a “Redevelopment District.”² These requirements will be discussed further below.

The EDA is also authorized by statute to exercise the power of eminent domain under Minn. Stat. Chapter 117 in order to acquire “the needed right, title, and interest in property to create economic development districts.” Minn. Stat. § 469.101, subs. 2, 4 (2007). In addition, the EDA has statutory authority to acquire real property by the exercise of the power of eminent domain after the adoption of a resolution declaring that the acquisition of the real property is necessary to eliminate one or more of the conditions enumerated in the statute, including blight, or to carry out a redevelopment project.³ Minn. Stat. §§ 469.003, 469.012, subd. 1g(a)(1)-(2); 469.091, subd. 1 (2007) (authorizing a city to enable its economic development authority to exercise the powers of a housing and redevelopment authority in sections 469.001 through 469.047).

Here, the EDA followed the necessary requirements in establishing the Redevelopment District, in establishing the Tax Increment Financing District⁴, and in proceeding with eminent domain. (¶¶ 2-3, Supplemental Order; AA 27). Public Notice was given at least 10 days before the scheduled hearing. (Exs. 34, 35; T. at 168-169).

² “‘Redevelopment district’ means a type of tax increment financing district consisting of a project, or portions of a project, within which the authority finds by resolution that one or more of the following conditions, reasonably distributed throughout the district, exists: (1) parcels consisting of 70 percent of the area of the district are occupied by buildings, streets, utilities, paved or gravel parking lots, or other similar structures and more than 50 percent of the buildings, not including outbuildings, are structurally substandard to a degree requiring substantial renovation or clearance[.]” Minn. Stat. § 469.174, subd. 10(a)(1).

³ The EDA is a separate and distinct entity from the City. It has the power of eminent domain under Minnesota Statutes Chapter 469.

⁴ The lawful establishment of the Eagan Economic Development Authority (EDA), the Cedar Grove Redevelopment District, or the Tax Increment Financing District is not challenged here on appeal.

Public hearings were held. (See Ex. 36; T. at 169). The City and the EDA passed the necessary resolutions. (Exs. 36, 37; ¶ 14 Supplemental Order (AA 24)). According to section 469.101, subs. 2, 4, the EDA is authorized to acquire the property necessary to create the economic development district. The EDA determined that the property within the Cedar Grove Core Area was necessary for the creation of this Redevelopment District. (AA 109-110).⁵ Therefore, the statute provides the EDA with the authority to obtain title to Appellant's property, which was deemed necessary by the EDA for the creation of the Cedar Grove Redevelopment District.

In addition, the EDA passed a Resolution on September 4, 2007, declaring that the Redevelopment District was blighted and that the EDA needed to acquire the properties

⁵ Appellants' argument that the EDA does not need to condemn land to create the economic development district because it created such district by resolution is misinformed and misreads the statute and case law. (See App. Br. at 22.) Permitting an EDA to create a district by resolution and then concluding that because a district is "created" the EDA need not acquire title to the necessary land within the district, makes the creation of such an economic development district meaningless. An Authority cannot proceed with redevelopment plans within a district when it lacks any title or right to the properties within that district. The EDA is authorized to create and define the boundaries of an economic development district. See Minn. Stat. § 469.101, subd. 1. This is what the City did by resolution. (AA 44-48). The EDA is also authorized to acquire the title to the property needed to create the economic development district. Minn. Stat. § 469.101, subd. 2. Creating an economic development district on paper is meaningless unless the economic development district is created in reality. The EDA is authorized to acquire the title to Appellant's property to create the economic development district in question. *Lino Lakes Economic Dev. Auth. v. Reiling*, 610 N.W.2d 355 (Minn. App. 2000) does not limit the EDA's authority to acquire property for an economic development district to the time before the district is created. Rather, this Court recognized that an Authority *could* acquire property needed to create an economic development district before holding the hearing required in section 469.101, subd. 1. *Id.* at 358-59. It did not hold that an Authority must acquire the property before holding the public hearings and actually creating the district. Such an interpretation would erode the protection to the public already provided in section 469.101, subd. 1.

within the Redevelopment District in order to proceed with the Redevelopment Plan (AA 228-238). The acquisition of Appellants' property by eminent domain is therefore also authorized by Minn. Stat. §§ 469.003, 469.012, subd. 1g(a)(1)-(2); 469.091, subd. 1. The district court did not err by determining that the EDA is authorized by statute to utilize eminent domain proceedings and did so properly here.

B. Minn. Stat. § 469.105 does not Prohibit the EDA's Eminent Domain Action in this Case.

For the first time on appeal, Appellants' attempt to argue that the EDA's exercise of eminent domain here is unauthorized by law because it allegedly violates Minn. Stat. § 469.105. (See App. Br. at 13-14.) This argument was not brought before the district court. (See 2/28/08 Memorandum Opposing Petition for Condemnation). An appellate court need not consider an argument or theory raised for the first time on appeal and not considered by the district court below. *See Thiele v. Stich*, 425 N.W.2d 580, 582-83 (1988). Should this Court choose to consider this new argument, it should determine that Appellants misconstrue the statute, which simply has no bearing on the EDA's authority to acquire property by eminent domain.

Section 469.105 authorizes an EDA to sell and convey property within an economic development district "if it determines that the sale and conveyance are in the best interests of the city or district and its people, and that the transaction furthers its general plan of economic development." Minn. Stat. § 469.105, subd. 1 (2007).

The terms of such sale must follow the statute:

The terms and conditions of sale of the property *must include the use that the bidder will be allowed to make of it*. The authority may require the

purchaser to file security to assure that the property will be given that use. In deciding the sale terms and conditions the authority may consider the nature of the proposed use and the relation of the use to the improvement of the authority's city and the business and the facilities of the authority in general. The sale must be made on the authority's terms and conditions. The authority may publish an advertisement for bids on the property at the same time and in the same manner as the notice of hearing required in this section. *The authority may award the sale to the bid considered by it to be most favorable considering the price and the specified intended use.* The authority may also sell the property at private sale at a negotiated price if after its hearing the authority considers that sale to be in the public interest and to further the aims and purposes of sections 469.090 to 469.108.

Minn. Stat. § 469.105, subd. 4 (2007) (emphasis added). This statute does not apply to the proceedings at hand. When the EDA reaches the point at which it is ready to sell the land to a developer, then this statute will be applicable to the terms of the sale. At that time, the EDA can determine the use that a bidder will be allowed to make of the property. The EDA does not need to come up with the specific intended use of the property before it acquires the property through eminent domain proceedings. The statute does not even indicate that the EDA must be the one to come up with the specific intended use. Rather the EDA can consider the purchaser's specific intended use for the property when considering whether to accept its bid. The EDA's powers are defined in subdivision 1, which only requires that the sale be in the best interest in the city or the district and its people and that the transaction further its "*general plan* of economic development." (Emphasis added). Appellants' use of section 469.105 to challenge the EDA's authority to exercise eminent domain here is baseless. This is not the proper time or venue to challenge the EDA's prospective sale of the land to be acquired through eminent domain.

C. The Cedar Grove Redevelopment Plan does not Prohibit the EDA's Exercise of Eminent Domain in this Condemnation Action.

Nearly the entirety of Appellants' argument rests on their assertion that the condemnation proceedings in this case are unauthorized because the EDA allegedly violated its own redevelopment plan by acquiring property before a binding development agreement was in place. According to Appellants, there can be no public purpose, no necessity, no need for quick-take condemnation because a binding development agreement is not in place and such failure violates the Cedar Grove Redevelopment Plan. First, the Redevelopment Plan does not create any unique rights granted specifically to the Appellants. Second, their argument lacks merit and does not affect the EDA's statutory authority to commence and proceed with the condemnation action in this case.

A "Redevelopment Plan" is

a plan approved by the governing body, or by an agency designated by the governing body for the purpose of approving such plans or authorized by law to do so, of each city in which any of a redevelopment project is to be carried out, which plan provides an outline for the development or redevelopment of the area and is sufficiently complete (1) to indicate its relationship to definite local objectives as to appropriate land uses; and (2) to indicate general land uses and general standards of development or redevelopment.

Minn. Stat. § 469.002, subd. 16 (2007). It is not an enabling statute nor an enabling resolution by the EDA. *See* Minn. Stat. § 469.091. Rather, a redevelopment plan may be modified at any time. Minn. Stat. § 469.029, subd 6. Certain modifications must be preceded by public notice and public hearings. *Id.* However,

If the authority determines the necessity of changes in an approved redevelopment plan or approved modification thereof, *which changes do not alter or affect the exterior boundaries, and do not substantially alter or*

affect the general land uses established in the plan, the changes shall not constitute a modification of the redevelopment plan nor require approval by the governing body of the political subdivision in which the project is located.

Id. (emphasis added).

Here, any alleged change or deviation from the Redevelopment Plan does not nullify the EDA's authority under the relevant statutes nor under the Redevelopment Plan.

Appellants base their argument on the language of Sec. 1.8 of the Cedar Grove Redevelopment Plan. This section provides:

The Redevelopment Plan contemplates that the City may acquire property and reconvey the same to another entity. Prior to formal consideration of the acquisition of any property, the City will require the execution of a binding development agreement with respect thereto and evidence that Tax Increments or other funds will be available to repay the Public Costs associated with the proposed acquisition. It is the intent of the City to negotiate the acquisition of property whenever possible. Appropriate restrictions regarding the reuse and redevelopment of property shall be incorporated into any development agreement to which the City is a party.

(Redevelopment Plan, App. Br. at AA62.)

Section 1.8 deals with the proposed reuse of property. As explained by the EDA's consultant, Sid Inman, at the February 13, 2008 hearing, Sec. 1.8 of the Redevelopment Plan is not applicable here where the condemning authority, rather than the developer, has taken the lead in acquiring property. (T at 111). The EDA is clearly authorized by Section 1.12 of the plan to acquire necessary parcels to accomplish the redevelopment of the district⁶. This section states: "The City may acquire such property, or appropriate interest therein, within the Redevelopment Project as the City may deem to be necessary

⁶ As a threshold matter, Section 1.8 references the "City." There is no mention of the EDA or any alleged restriction upon the EDA.

or desirable to assist in the implementation of the Redevelopment Plan.” (AA 63). Section 1.8 should not be interpreted as limiting the EDA’s authority to initiate condemnation proceedings until a binding development agreement is in place.⁷ As the district court correctly concluded:

The language in Section 1-8 of the Redevelopment Plan, when read in conjunction with other provisions of the Plan, does not preclude the taking of property absent a binding development agreement. Section 1-12, for example, allows the EDA, when it is necessary and desirable, as it is here, to acquire Respondent’s property to assist in the implementation of the Redevelopment Plan.

(¶ 20, Supplemental Order (AA 25)).

Even *if* Sec. 1.8 of the Redevelopment Plan limited the EDA’s authority to acquire parcels until a binding development agreement was in place, the EDA has recognized that this would put it into a Catch-22 position: its ability to enter into a binding development agreement is severely hampered if not impossible without the acquisition of the parcels in the area. Moreover, as discussed above, the EDA can freely change this part of the Redevelopment Plan. Because this change does not alter or affect the exterior boundaries or substantially alter or affect the general land uses established in the plan it is not a “modification” and does not require adoption nor approval. The EDA is not bound by this provision.

The existence of and alleged violation of sec. 1.8 does not affect the viability of the Redevelopment Plan nor the EDA’s determination of public purpose or necessity of

⁷ Appellants incorrectly allege that the district court’s interpretation of this clause was solely in the “Conclusions of Law” section. (App. Br. at 17). Instead, the district court also addresses this in paragraphs 19 and 20 of its “Findings of Fact.” (AA 20).

obtaining the land within the Redevelopment District by eminent domain proceedings. The EDA was authorized by statute to acquire land through eminent domain for the purpose of removal of blight and economic redevelopment. It followed the procedures outlined in the statute to effectuate this process. The district court did not err by determining that the EDA was authorized to exercise eminent domain powers and did so properly in this case.

II. The District Court did not Commit any Error by Upholding the EDA's Determination of a Public Purpose for the Taking.

“The standard for overturning a [condemning authority’s] decision on public purpose grounds is very strict.” *Lundell v. Coop. Power Ass’n.*, 707 N.W.2d 376, 381. (quoting *City of Minneapolis v. Wurtele*, 291 N.W.2d 386, 390 (Minn. 1980)). Any evidence in the record supporting the existence of a public purpose is sufficient. *Hous. & Redev. Auth. v. Minneapolis Metro.*, 259 Minn. 1, 15, 104 N.W.2d 864, 874 (1960). “Great weight must be given to the determination of the condemning authority. . . . If it appears that the record contains some evidence, however informal, that the taking serves a public purpose, there is nothing left for the courts to pass upon.” *Id.* When state statutes confer power on an Authority to exercise its judgment to remove blight and create economic development districts, courts apply the following rule:

In determining whether a particular area may legally be selected for redevelopment, either under the terms of the statute, or in terms of the requirement that the particular project serve a ‘public use,’ the role of judicial review is severely limited by the rule that the finding of the redevelopment authority, or similar administrative agency, that a particular

area is 'blighted,' that redevelopment serves a 'public use,' or the like, is not generally reviewable, unless fraudulent or capricious, or in some instances, unless the evidence against the finding is overwhelming.

Id. at 15-16, 104 N.W.2d at 874.

"Public purpose is construed broadly." *Lundell*, 707 N.W.2d at 381. Here, the EDA determined in its Resolution to acquire the Properties through quick-take condemnation (1) that the Redevelopment District was blighted; (2) that the deficiencies and obsolescence of the Redevelopment District are detrimental to the safety and welfare of the City; (3) that obtaining the Properties was necessary to carry out the Redevelopment; (4) that the redevelopment of the Redevelopment District will lead to substantial economic development, eliminate structurally substandard buildings, increase the tax base and employment, and further the City's ultimate objective of creating an economically viable Redevelopment District. (Resolution at 7; AA 236). These findings are supported by, among other things, an independent property assessment by SEH, and they are not arbitrary, fraudulent, or capricious, nor are they refuted by overwhelming evidence. As the trial court correctly found:

The EDA, by Resolution Number 01-63, has made a prima facie showing that the acquisition of the Subject Properties was necessary. [Appellants] have failed to rebut this showing by the [EDA], as there is no overwhelming evidence that the taking is not necessary or that it is not for a public purpose.

(¶14, Supplemental Order; AA 24).

A. Eliminating Areas of Blight Serves a Public Purpose.

Acquiring and clearing blighted areas serves a valid public purpose.⁸ *Hous. & Redevl. Auth. v. Walser*, 630 N.W.2d 662, 669 (Minn. App. 2001); *Hous. & Redevl. Auth. v. Fronney*, 305 Minn. 450, 453, 234 N.W.2d 894, 896 (1975). The subsequent transfer of such lands to private parties is incidental to the main public purpose. *Hous. & Redevl. Auth. v. Schapiro*, 210 N.W.2d 211, 213 (Minn. 1973). A blighted area is

any area with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light, and sanitary facilities, excessive land coverage, deleterious land use, or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community.

Minn. Stat. ¶ 469.002, subd. 11.

The fact that a particular building subject to the condemnation is not substandard does not invalidate the taking. *Schapiro*, 210 N.W.2d at 213. “The problem of eliminating blighted parts of a community may be attacked on an area basis rather than a structure-by-structure basis.” *Id.* Courts defer to the judgment of those charged with making the determination that if an area is to be restored to a use which would be productive to the community as a whole the entire area needs redesigning. *Id.* at 214.

This Court has recently noted that the removal of blight does not specifically require a “redevelopment plan,” and that even if a redevelopment plan was required, the statute does not require that a final design concept be in place. *Economic Devel. Auth. v. Hmong-American Shopping Center, LLC*, A05-1239, 2006 Minn. App. Unpub. LEXIS

⁸ Appellants have failed to acknowledge or address this issue in their appeal.

438 at *15-16 (Minn. App. May 9, 2006) (citing Minn. Stat. § 469.002, subd. 16 (2004))⁹ (concluding that the EDA only needed to show that the condemnation of the property was reasonably necessary or convenient for the redevelopment project—the removal of the blighting influence).

Here, the EDA hired SEH to survey, evaluate and analyze the properties in the Redevelopment District. SEH prepared the Redevelopment Eligibility Assessment, which found that more than 50 percent of the buildings in the TIF district were structurally substandard to a degree requiring substantial renovation or clearance. (¶5-6, Supplemental Order; AA 22). The code deficiencies found by SEH included: Heating, ventilation, and cooling systems; electrical systems, energy code compliance, general egress, construction and accessibility; and fire protection systems. (*Id.*) SEH also found deficiencies in structural and construction type; maintenance; zoning; condition and appearance; and useful life. (*Id.*; T. at 35). These findings support the EDA's determination that the Redevelopment Area was blighted and in need of redevelopment. The district court did not clearly err by affirming the EDA's determination that the condemnation of the properties within the Cedar Grove Core Area serves a public purpose.

⁹ A copy of this unpublished opinion is provided at pages RA 1-7 of Respondent's Appendix.

B. The Implementation of Programs to Provide New Development in Areas of a City that are Already Built Up in Order to Provide Employment Opportunities, to Improve the Tax Base, and to Improve the General Economy of the State are Public Purposes.

The EDA determined that the redevelopment of Cedar Grove would replace an obsolete shopping center; provide new life-cycle housing options for existing Eagan residents; enhance the public transportation infrastructure by correcting a number of traffic problems in the area; increase the tax base; and increase employment. (Resolution at 4, 7; AA 233, 236). Therefore, the EDA formed the Redevelopment District and the TIF District in order to facilitate this necessary redevelopment.

The public purpose for takings for economic development projects has been established by the legislature in Minn. Stat. § 469.124.

The legislature finds that there is a need for new development in areas of a city that are already built up in order to provide employment opportunities, to improve the tax base, and to improve the general economy of the state. Therefore, cities are authorized to develop a program for improving a district of the city to provide impetus for commercial development; to increase employment; to protect pedestrians from vehicle traffic and inclement weather; to provide the necessary linkage between peripheral parking facilities and places of employment and shopping; to provide off-street parking to serve the shoppers and employees of the district; to provide open space relief within the district; and to provide other facilities as are outlined in the development program adopted by the governing body. The legislature declares that the actions required to assist the implementation of these development programs are a public purpose and that the execution and financing of these programs are a public purpose.

Minn. Stat. § 469.124 (emphasis added). Courts grant “great deference to the initial legislative determination that a particular project serves a public purpose.” *Lino Lakes Economic Dev. Auth. v. Reiling*, 610 N.W.2d 355, 359 (Minn. App. 2000).

The EDA's objectives for creating the Redevelopment District and the TIF District and for petitioning for condemnation of the Cedar Grove Properties falls within this stated public purpose.

Here, there is sufficient evidence in the record supporting the existence of a public purpose for the EDA's exercise of eminent domain over the properties in the Cedar Grove Redevelopment District. Its determination of public purpose was neither manifestly arbitrary nor unreasonable, and the district court did not clearly err by upholding the EDA's determination of the public purpose for the taking.

III. The District Court did not Commit any Error by Upholding the EDA's Finding of Necessity for the Taking of the Cedar Grove Properties.

The EDA determined that the taking of the properties within the Cedar Grove Redevelopment District was necessary to further the redevelopment project, cure an area of blight, and promote economic vitality. Before condemning private land, a condemning authority must determine that the taking is necessary for the furtherance of a public purpose. *Lundell*, 707 N.W.2d at 381; *see also* Minn. Stat. § 117.075, subd. 2 (2005). The EDA made such a determination herein, which decision was supported by the record.

"Absolute necessity is not required for a finding of a public purpose[.]" Walser, 630 N.W.2d at 670 (emphasis in original). The taking must only be *"reasonably necessary or convenient* for the furtherance of the end in view." *Lundell*, 707 N.W.2d at 381 (emphasis in original) (quoting *N. States Power Co. v. Oslund*, 236 Minn. 135, 137, 51 N.W.2d 808, 809 (1952)). It requires "overwhelming evidence" that the taking is not necessary to overcome a condemning authority's finding of necessity. *Id.* Appellants did

not produce such overwhelming evidence. (¶ 14, Supplemental Order (AA 24)). Mere suggestions of possible alternatives to the condemning authority's plan are not sufficient to challenge a finding of necessity. *Id.* Further, a resolution by a municipal authority that a taking is necessary to accomplish a proper purpose is prima facie evidence of that necessity when no higher judicial finding of necessity is statutorily mandated. *Lino Lakes Economic Dev. Auth. v. Reiling*, 610 N.W.2d 355, 360 (Minn. 2000).

The taking of these properties is necessary to move forward with the redevelopment. This is not a case in which the EDA is "stock-piling" land for some unknown, future need. *See e.g. Walser*, 630 N.W.2d at 670 (distinguishing *Walser* from *Regents of Univ. of Minn. v. Chicago & N.W. Trasnp. Co.*, 552 N.W.2d 578 (Minn. App. 1996) in which the court determined that the University could not stockpile land for speculative future use by condemnation; *see also*, ¶ 15, Supplemental Order (AA 24)). Appellants rely heavily on *Regents* to oppose the City's petition for condemnation. This reliance is misplaced.

In *Regents*, the University of Minnesota sought to exercise eminent domain to acquire property after its offer to purchase that land was rejected by the owner. *Regents*, 552 N.W.2d at 579-80. The district court dismissed the petition, determining that the proposed condemnation was not necessary. *Id.* at 580. The University's master plan for anticipated development of the Twin Cities campus did not include the land at issue. *Id.* The three uses for the property identified by the University were mutually exclusive and the Board of Regents had not yet approved a single project for the property. *Id.* Finally, because of soil contamination, the University could not use the property for any of its

intended uses any time in the near future. *Id.* A University official even described the period of time before the University would use the property as “potentially indefinite.” *Id.* The Court of Appeals determined that the University did not have the right to acquire the property “for speculative future use (stockpiling) by condemnation.” *Id.* Later courts have limited the rule in *Regents* to the “extreme facts present in that controversy.” *See e.g., Itaska County v. Carpenter*, 602 N.W.2d 887, 890 (Minn. App. 1999).

Findings of necessity include: when an Authority has a specific plan for the property it seeks to condemn, when the Authority is creating statutorily authorized district, and when there is no evidence of any problems that will interfere with that plan. *Lino Lakes Economic Dev. Auth.*, 610 N.W.2d at 361. This Court has also found a public purpose when recognizing that an Authority’s purchase of adjacent parcels demonstrated its commitment to redevelopment of the specific area, made plans to solicit further development proposals after razing and preparing the site, and the approaching expiration of the TIF funding period supported a finding of necessity and was not speculative. *Hmong-American Shopping Center, LLC*, A05-1239, 2006 Minn. App. Unpub. LEXIS 438 at *17.

The Eagan EDA has a specific plan for the Cedar Grove Redevelopment area. The EDA created a tax increment financing district and redevelopment district, as authorized by statute. There are no foreseeable problems to interfere with the EDA’s plan. The Cedar Grove Redevelopment area is not being set aside for some unknown development. Rather, the EDA has selected Doran Pratt as the developer for the redevelopment project, and the City and Doran Pratt entered into a Preliminary

Redevelopment Agreement. (AA 212-214). Doran Pratt provided a \$25,000 deposit to the EDA. City staff and Doran Pratt have met frequently to develop a concept plan for the Cedar Grove area. (T. at 164). At the time of the evidentiary hearing, this plan was submitted to the City Council for comment and approval and was expected to go to the Advisory Planning Commission for comment. (*Id.*) The EDA and the developer also entered into a lease for a temporary sales center for the development. (Ex. 32).

Doran Pratt has retained professional engineering services to provide cost estimates for the proposed redevelopment. (T. at 165). It has indicated that road reconfiguration may be necessary for its proposed redevelopment. (*Id.*) Doran Pratt has expressed its desire to begin constructing an office building, senior housing, and a commercial component during this construction season. (T. at 166). There are also federal funds available for the Minnesota Valley Transit Authority to construct a transit facility adjacent to Cedar Avenue. (T. at 167). These construction activities would take place within the Redevelopment District.

The taking of the Properties within this district is necessary in order to allow the EDA and the Developer to begin the construction and to move forward with the redevelopment plan. Normal contingencies for a major development project, such as permits and approvals, are not an obstacle for a finding of necessity for condemnation. *Walser*, 630 N.W.2d at 670. At the time of the public purpose hearing, the EDA had a plan for redevelopment, hired a developer, started the process of redevelopment, and obtained control of 93% of the properties within the Redevelopment district. The taking of the remaining properties was necessary to further this redevelopment plan.

The EDA's determination of necessity is supported by the evidence and is not manifestly arbitrary or unreasonably. The district court did not clearly err by upholding the EDA's determination of necessity.

IV. The District Court did not Commit any Error by Refusing to Overturn the EDA's Determination that a Quick Take was Reasonably Required.

The EDA initiated quick-take condemnation proceedings against the properties in the Cedar Grove area. Quick-take condemnation proceedings are authorized

Whenever the petitioner shall require title and possession of all or part of the owner's property prior to the filing of an award by the court appointed commissioners, the petitioner shall, at least 90 days prior to the date on which possession is to be taken, notify the owner of the intent to possess by notice served by certified mail and before taking title and possession shall pay to the owner or deposit with the court an amount equal to petitioner's approved appraisal of value.

Minn. Stat. § 117.042 (2005). The use of "quick take" is limited to cases where a municipality "could reasonably determine that it needs the property before the commissioners' award could be filed." *City of Minneapolis v. Wurtele*, 291 N.W.2d 386, 396 (Minn. 1980). Minnesota courts have determined that a quick take is proper where, "even though parts of the condemned property would not be developed until a much later date, the city needed to assure itself of clear title before further investments were made." *Lundell*, 707 N.W.2d at 383 (quoting *Wurtele*, 291 N.W.2d at 396).

Here, the EDA determined that the quick-take of the Cedar Grove redevelopment district properties was necessary for a number of reasons. First, the use of quick-take is necessary because in order to be eligible for TIF reimbursement under Minn. Stat. § 469.1763, subd. 3 (2007), expenditures in the Cedar Grove TIF District must be made

within five years of certification of the TIF district—in this case by July 2008. If the EDA did not move forward in its condemnation action and deposit the money, the EDA could not claim this money as eligible costs to be paid from the tax increment generated by the redevelopment.

Second, the City had already invested over \$27 million in the Cedar Grove redevelopment district. (Ex. 24; T. at 127). At the time of the public purpose hearing, the EDA controlled 93% of the properties in the district. Now it has unassailable title to all of the properties, except for the three properties owned by Appellants. It is reasonably necessary for the EDA to have clear title to the remaining properties within the district to allow the developer to move forward with the project.

There is sufficient evidence in the record supporting the EDA's determination that a quick take was reasonably required. Its determination was neither manifestly arbitrary nor unreasonable. And the district court did not clearly err by upholding the EDA's determination to use quick take in this condemnation proceeding.

CONCLUSION

Because there is substantial evidence in the record supporting the EDA's determinations of public purpose, necessity, and the reasonableness of using quick-take, its determinations were not manifestly arbitrary or unreasonable. Therefore, the district court did not clearly err in upholding the determinations of the EDA in this condemnation proceeding. Respondents respectfully request that this Court affirm the decision of the Dakota County District Court and allow the condemnation proceedings against Appellants' properties to proceed.

Dated: 9/10, 2008

SEVERSON, SHELDON, DOUGHERTY
& MOLEND, P.A.



By: Robert B. Bauer, I.D. #227365
Jessica L. Sanborn, I.D. #339532
7300 West 147th Street, Suite 600
Apple Valley, Minnesota 55124
(952) 432-3136
Attorneys for Respondent
Eagan Economic Development Authority