

APPELLATE COURT CASE NO. A12-391

Trial Court Case No. 09-CV-10-913

**STATE OF MINNESOTA
IN COURT OF APPEALS**

CITY OF CLOQUET, petitioner,

Respondent,

vs.

JULIE CRANDALL et al.,

Appellants,

LYN JOHNSON, et al.,

Respondents Below.

**RESPONDENT CITY OF CLOQUET'S RELATED APPEAL BRIEF,
RESPONSE BRIEF AND APPENDIX**

**RUDY GASSERT YETKA &
PRITCHETT, P.A.**

William T. Helwig (#0298682)
Frank Yetka (#0119258)
813 Cloquet Avenue
Cloquet, MN 55720
(218) 879-3363
Attorneys for Respondent

BIERSDORF & ASSOCIATES, P.A.

Dan Biersdorf (#0008187)
E. Kelly Keady (#0233729)
33 South Sixth Street,
Suite 4100
Minneapolis, MN 55402
(612) 339-7242
Attorneys for Appellants

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

	<u>Page</u>
TABLE OF AUTHORITIES	3
Cases	3
Minnesota Statutes	3
Miscellaneous Authorities	3
LEGAL ISSUE NOTED BY RESPONDENT ON RELATED APPEAL	4
LEGAL ISSUES NOTED BY APPELLANT ON APPEAL	4
SUPPLEMENTAL STATEMENT OF FACTS AND PROCEDURAL HISTORY .	7
ARGUMENT AND LEGAL ANALYSIS	11
I. The District Court Erred when it interpreted Minn. Stat. §117.187, to include the Appellant contract for deed purchasers as "owners", when that statutory provision strictly defines an "owner" to be "the person or entity that holds fee title to the property"?	11
II. The District Court Properly Ruled as a Matter of Law That the Carlton Avenue Property Was Comparable Within the meaning of the Minimum Compensation Statute.	18
III. The District Court Properly Ruled as a Matter of Law That the Kolar Property Was Not a Comparable Property within the meaning of the Minimum Compensation Statute.	28
IV. The Trial Court Did Not Abuse its Discretion by Allowing the Expert Testimony of John Vigen And His Minimum Compensation Report Into Evidence With Regard to the Trial of the Issues Before the Court.	31
V. The Trial Court Did Not Clearly Abuse its Discretion in Denying the Appellant's Motion for a New Trial.	36
CONCLUSION	40
RESPONDENT'S ADDENDUM	44

TABLE OF AUTHORITIES

CASES

Amcon Block & Precast, Inc. v. Suess, 794 N.W.2d 386 (Minn.App. 2011) 4, 16, 17

County of Dakota v. Cameron, A11-1273, 2012 WL 987299 (Minn.App.) passim

Larson v. State, 790 N.W.2d 700, 703 (Minn. 2010) 17

Moorhead Econ. Development Auth. v. Anda, 789 N.W.2d 860 (Minn.2010) . . . 5, 11, 32

State by Humphrey v. Baillon Co., 503 N.W.2d 799 (Minn.App. 1993) 6, 32, 37

State v. Malecker, 265 Minn. 1, 5, 120 N.W.2d 36 (1963) 32

State by Mattson v. Goins, 174 N.W.2d 231 (Minn. 1970) 37

STATUTES

Minnesota Statutes § 117.025 13

Minnesota Statutes § 117.036 13, 15

Minnesota Statutes § 117.042 10

Minnesota Statutes § 117.085 6, 37, 38

Minnesota Statutes § 117.187 passim

Minnesota Statutes § 117.012-.52 12

MISCELLANEOUS

2006 Minnesota Laws Chapter 214, § 1-22 4, 11

2006 Minnesota Laws Chapter 214, § 2 13

2006 Minnesota Laws Chapter 214, § 5 13

2006 Minnesota Laws Chapter 214, § 12 12, 14

LEGAL ISSUES

Legal Issue Noted By Respondent on Related Appeal

- I. Did The District Court Commit Error when it interpreted Minn. Stat. §117.187, to include the Appellant contract for deed purchasers as “owners”, when that statutory provision strictly defines an "owner" to be "the person or entity that holds fee title to the property"?**

Although the Trial Court properly ruled against the Appellants on the merits of their claims, the Trial Court erred in allowing the Appellants to proceed to a *trial de novo* on the issue of minimum compensation damages since the Appellants were not the fee owners of the property taken, as argued by Petitioner before the District Court on April 19, 2011, on Petitioner’s pretrial motions in limine (see R.ADD-22). By Order dated May 2, 2011 the Court found that Crandalls, as purchasers on a contract for deed, were owners within the meaning of the statute, and were therefore allowed to proceed on a claim for minimum compensation damages under § 117.187 (see May 2, 2011 Pretrial Order; R.ADD-2). At trial following Appellant’s case in chief, Petitioner moved the Court for a directed verdict because Appellants had failed to put in evidence of their ownership of the property as a holder of fee title (and also that they failed to meet their burden of proof), to which the Court stated that issue had already been addressed in its pretrial order (see Trial Transcript pg.88-91).

Amcon Block & Precast, Inc. v. Suess, 794 N.W.2d 386, 387 (Minn.App. 2011).
Larson v. State, 790 N.W.2d 700, 703 (Minn. 2010).
2006 Minnesota Laws Chapter 214, § 1-22.

Legal Issues Noted by Appellants on Appeal

- II. Did the District Court Commit Error as a Matter of Law When it Determined that the Carlton Avenue Property Was Comparable Within the meaning of the Minimum Compensation Statute?**

The Trial Court properly determined that the Carlton Avenue Property was a comparable property by applying the legal criteria set forth in the *County of Dakota vs. Cameron* case recently decided by this Court.

County of Dakota v. Cameron, A11-1273, 2012 WL 987299 (Minn.App.).

- A. Does the Minimum Compensation Statute Require that in order for a property to be considered comparable it must be equal to or exceed the parcel taken in all respects, including full square footage?**

The Trial Court properly determined that useable full square footage is only one of the criteria that must be considered when reaching a legal determination as to what comprises a comparable property.

County of Dakota v. Cameron, A11-1273, 2012 WL 987299 (Minn.App.).

B. Does the Minimum Compensation Statute Require that in order for a property to be considered comparable it must be available for purchase on the date of taking and must have a determined market value?

The Trial Court properly determined that market value and availability are criteria that may be considered when reaching a legal determination as to what comprises a comparable property but that they are not dispositive.

County of Dakota v. Cameron, A11-1273, 2012 WL 987299 (Minn.App.).

III. Did the District Court Commit Error as a Matter of Law When it Determined that the Kolar Property Was Not A Comparable Property Within the meaning of the Minimum Compensation Statute?

The Trial Court properly determined that the Appellants failed to meet their burden of proof of establishing that the Kolar Property was a comparable property within the meaning of the Minimum Compensation Statute applying the criteria set forth in the County of Dakota vs. Cameron case recently decided by this Court.

County of Dakota v. Cameron, A11-1273, 2012 WL 987299 (Minn.App.).

IV. Did the Trial Court Abuse its Discretion by Allowing the Expert Testimony of John Vigen And His Minimum Compensation Report Into Evidence With Regard to the Trial of the Issues Before the Court?

The Trial Court properly permitted the opinions of John Vigen into evidence given the depth of his qualifications and experience regarding eminent domain issues and the fact that the issues presented which related to the application of the Minimum Compensation Statute were issues of first impression.

Moorhead Econ. Dev. Auth. v. Anda, 789 N.W.2d 860, 876-77 (Minn. 2010).
County of Dakota v. Cameron, A11-1273, 2012 WL 987299 (Minn.App.).

V. Did the Trial Court Clearly Abuse its Discretion in Denying the Appellants Motion for a New Trial?

The trial court properly denied the Appellant's request for a new trial because the concerns the Appellants now raise were all properly addressed by the Trial Court by motion and it is evident that the Appellants received a fair trial in all other respects.

A. Should the Appellant's be granted a new trial on the basis That the Commissioners considered information outside of the Four walls of the Commissioners Compensation Hearing in Making their fair value determination?

Since the Appellant's were granted a trial de novo in District Court on all issues related to compensation, any alleged irregularities that occurred at the administrative hearing held were inconsequential or harmless error and would not be a basis for a new trial.

State by Humphrey v. Baillon Co., 503 N.W.2d 799, 803 (Minn.App. 1993).
Minnesota Statutes § 117.085.

SUPPLEMENTAL STATEMENT OF FACTS AND PROCEDURAL HISTORY

The Appellants' claim originated as an appeal from a Commissioners determination of value, awarding the Appellants/Crandalls \$198,000 (see Trial Exhibit 6; Appellant's APP-30). The Appellants appealed the Commissioners determination and requested a *trial de novo* and this matter was tried to the Court (Judge David Johnson) over the course of two days (May 5th & 6th, 2011) (see Oct. 12, 2011 Order; Appellant's ADD-1). Kerry and Julie Crandall, the contract for deed purchasers on the parcel taken (hereinafter jointly referred to as "Crandalls" or "Appellants"), presented testimony through only one witness in their case in chief: expert David Reach (see Oct. 12, 2011 Order; Appellant's ADD-1). The sole position advocated by the Crandalls was that they were entitled to additional damages under the minimum compensation statute, and that there was only one satisfactory comparable property available in the community at the time of taking (see Oct. 12, 2011 Order; Appellant's ADD-3). In fact, the parcel they identified was a former car dealership (hereinafter the "Kolar property") which was actually located in Scanlon, an adjacent municipality, which had a listed market value of \$850,000.00, being significantly larger and newer than the parcel taken (see Oct. 12, 2011 Order; Appellant's ADD-3).

The Appellants based that position upon a novel interpretation of rights under the Minnesota minimum compensation statute (Minn. Stat. §117.187). At the close of the Appellants case in chief, the City of Cloquet (hereinafter referred to as the "City" or "Respondent") moved for a directed verdict maintaining that the Appellants did not have standing or a sufficient statutory interest (since they were not fee title owners) to make a claim

for comparable property damages since they were admittedly only purchasers on a contract for deed (see Trial Transcript pg.88-91). The City further argued that Appellants expert (their only witness in their case in chief) had failed to provide sufficient evidence to meet the Appellants burden of proof of establishing that the Kolar Property was a “comparable property” within the meaning and intent of the Minimum Compensation Statute; the Trial Court took that motion under advisement (see Trial Transcript pg.88-91).

Thereafter, the City (the party taking the parcel by eminent domain) presented testimony through four witnesses: John Vigen (Ramsland & Vigen) its expert; Ron Tondryk (realtor and Commissioner); Gerry Manthey (City inspector); and, Roger Maki (realtor and Commissioner) (see Oct. 12, 2011 Order; Appellant’s ADD-1). The parties jointly introduced, and the Court received, thirty-two (32) exhibits (see Oct. 12, 2011 Order; Appellant’s ADD-1). The City advanced an active auction building which had been listed for sale located on Carlton Avenue in Cloquet (hereinafter referred to as the “Carlton Avenue Property”) as a comparable property as part of their case in chief (see Trial Exhibit 19; Appellant’s APP-552). The City also offered evidence with regard to a building located on Avenue C in Cloquet (hereinafter referred to as the “Chief Theatre Building”) as an additional comparable property (although an upgrade)(see Trial Exhibit 19; Appellant’s APP-553).

The Crandalls then presented two witnesses in rebuttal recalling David Reach and calling Kerry Crandall to provide additional testimony. They categorically rejected both options presented by the City as being unacceptable (see Oct. 12, 2011 Order; Appellant’s ADD-3, para.12). After the parties agreed to a post-trial summation schedule, Judge David

Johnson issued a decision determining that the Kolar Property which was the only option offered as a “comparable property” by the Appellants was not a legally comparable property and represented a ‘windfall’ to the Appellants (see Oct. 12, 2011 Order; Appellant’s ADD-3, para.14 & 2). Judge Johnson also concluded, that based upon substantial evidence presented at trial, that the Carlton Avenue Property advanced as a comparable property by the City was, in fact, comparable and affirmed the award of damages of \$198,000 (see Oct. 12, 2011 Order; Appellant’s ADD-3) which would allow the Appellants to purchase the Carlton Avenue Property for \$89,000 (see Trial Exhibit 19; Appellant’s APP-552) and have additional funds of \$109,000 to upgrade or renovate the property as needed for their auction business. Judge Johnson also correctly observed the Carlton Avenue Property was being used as an auction property at the time of taking and was zoned for such (see Oct. 12, 2011 Order; Appellant’s ADD-2).

The purpose of the original taking was to advance a joint plan that arose because the County of Carlton (hereinafter referred to as the “County”) and the City cooperated to construct and locate a new County Human Services Building in downtown Cloquet (see Trial Exhibit 3; Appellant’s APP-7). As part of that process, the City agreed to use its power of eminent domain to obtain the necessary land on which to locate the new facility (see Trial Exhibit 3; Appellant’s APP-7). As part of the project, it was deemed necessary to obtain property and a building owned by Lyn and Rae Johnson and which Kerry and Julie Crandall were in the process of purchasing on a contract for deed (hereinafter referred to as the “Crandall Property”) (see Trial Exhibit 3; Appellant’s APP-6).

At the time the City used its authority to “quick take” the Crandall Property, the Crandalls were using the property to operate an auction business (see Trial Transcript pg.15, 17). The real property involved is legally described as (see Notice of Petition for Condemnation; Appellant’s APP-3):

Lot 4 and the South 15 feet of Lot 5, Block 5,
Subdivision of Outlots 41 and 42, Cloquet, Carlton
County, Minnesota.

The City sought to obtain the Crandall Property by condemnation and was granted an Order and title to the Crandall Property pursuant to the Minnesota “Quick Take” provisions (Minn. Stat. §117.042) on July 2, 2010 (see Trial Exhibit 3; Appellant’s APP-11). As part of that process, the City had the property appraised and paid into the Court the full market value of the appraisal conducted by its expert, John Vigen (see Trial Exhibit 11; Appellant’s APP-14). The amount of compensation was determined to total \$198,000 (see Trial Exhibit 18; Appellant’s APP-491). The actual transfer of title did not take place until payment of the appraised value and the recording of the Order in the County Recorder’s Office, July 19, 2010 (see Trial Exhibit 3; Appellant’s APP-11). Those funds were in turn distributed to the following parties as set forth below:

1. \$138,000 to Lyn and Rae Johnson as owners for the principal balance due on the contract for deed, and accrued back payments and interest due from the occupants and contract purchasers, Kerry and Julie Crandall (See Trial Exhibit 11; Appellant’s APP-16); and,
2. \$7,103.98 to the Carlton County Treasurer for present and delinquent real estate taxes and penalties on the real estate being taken as part of the “quick take” (See Trial Exhibit 11; Appellant’s APP-16, APP-24); and,

3. The balance remaining of \$52,896.02 was paid to Kerry and Julie Crandall as occupants and contract purchasers for the balance of the fair market value of the property as appraised by John Vigen (See Trial Exhibit 11; Appellant's APP-16).

The total amount received in cash (\$198,000) represented the maximum fair market value of the property taken as determined by the Commissioners (see Trial Exhibit 6; Appellant's APP-30). This was clearly a favorable valuation considering the fact that the Crandalls had negotiated a purchase price of \$130,000 in the year 2000 (See Trial Exhibit 8; Appellant's APP-21). Therefore, the damage award based upon "market value" clearly met the constitutional requirements for providing "just compensation." See Moorhead Econ. Development Auth. v. Anda, 789 N.W.2d 860, 877 (Minn.2010).

The Trial Court properly affirmed the original award by the Condemnation Commissioners (\$198,000.00) (see Appellant's ADD-3), and ruled that under both a traditional fair market value approach, and under a minimum compensation approach that the amount of damages properly compensated the Crandalls (see Appellant's ADD-3). This appeal followed after Crandall's unsuccessful motion for amended findings or for a new trial (see Appellant's ADD-5).

ARGUMENT AND LEGAL ANALYSIS

- I. **The District Court Erred when it interpreted Minn. Stat. §117.187, to include the Appellant contract for deed purchasers as "owners", when that statutory provision strictly defines an "owner" to be "the person or entity that holds fee title to the property"?**

In 2006, the Minnesota legislature amended Chapter 117, by enacting Minnesota Laws Chapter 214, Sections 1-22 (see R.ADD-3-13) which were codified as amended at Minn.Stat.

§§ 117.012-.52. The 2006 amendments created a new requirement providing for additional damages to dispossessed “holders of fee title” to property where an involuntary taking occurs (the minimum compensation statute), available to a narrow group of “owners” (2006 Minn. Laws Ch. 214, § 12, adding Minn. Stat. §117.187). The new statute, Minnesota Statutes § 117.187, entitled “Minimum Compensation,” provides as follows,

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. However, such compensation is only available 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*. (emphasis added).

Prior to 2006 Minn. Stat. § 117.187 did not exist (see R.ADD-11). Crandalls argued an untested legal theory based on this statute in their Appraisal Report and at the Commissioners' Hearing (over the objection of the Petitioner), arguing that under their interpretation, the only “comparable property in the community” is a former auto dealership property with a value of \$818,000 (See Trial Exhibit 9, pg.4; Appellant's APP-307), with alleged damages now increasing to \$843,000 in their March 14, 2011 Supplemental letter (See Trial Exhibit 10, pg.11-12; R.APP-479-480), which was relied upon by Appellant at trial. Petitioner disputes Appellants' interpretation of Minnesota Statutes § 117.187, however, it is evident from the legislative history of that provision that it was never intended to apply to purchasers on a contract for deed. Since the Crandalls were never fee owners they cannot advance such a claim.

What is evident from the 2006 amendment, 2006 Minn. Laws Ch. 214, was that the legislature clearly intended to differentiate between the remedies available to fee and non-fee owners such as contract for deed purchasers. This is clear from the manner in which it chose to differentiate and define the term “owner” in different sections of Chapter 214, which includes an amendment to the general definition of owner for the eminent domain statutes, and which also creates two new specific and more restrictive definitions of owner for two specific sections.

With regard to the general definitions applicable to the Minnesota Eminent Domain Statutes, Chapter 117, set forth in Minn. Stat. 117.025, the definition was amended by 2006 Minn. Laws Ch. 214, § 2 (see R.ADD-3), as follows:

Subd. 3. **Owner.** "Owner" includes all persons ~~interested in such~~ with any interest in the property subject to a taking, whether as proprietors, tenants, life estate holders, encumbrancers, beneficial interest holders, or otherwise.

As can be seen, the amendments to this definition bring a much broader range of affected interests within the purview of entitlement to compensation for the full market value of property taken than would be available if a common usage definition of owner were used.

With regard to the provisions applicable to Appraisal and Negotiation Requirements found in Minn. Stat. §117.036, a new more restrictive definition of owner was created by 2006 Minn. Laws Ch. 214, § 5 (see R.ADD-6), specific to that section, as follows:

Subd. 1a. **Definition of owner.** For the purposes of this section, “owner” means fee owner, contract purchaser, or business lessee who is entitled to condemnation compensation under a lease.

Finally, with regard to the minimum compensation provisions of Minn. Stat. §117.187, that entire section is new, including a new and even more restrictive definition of owner, created by 2006 Minn. Laws Ch. 214, § 12 (see R.ADD-10), by which the legislature articulated its intent to limit such damages to fee owners. The last sentence of that section reads as follows:

For purposes of this section, “owner” is defined as the person or entity that holds fee title to the property.

That specific definition of “owner” was added by amendment to the proposed §117.187 at the Eminent Domain Conference Committee hearing held on April 28, 2006 to put the section in its final form (see Affidavit of Bethany P. Helwig, R.ADD-14). The final comment on the record prior to the vote to approve is very telling, which was made by Legislative Counsel to the Transportation Committee, Bonnie Berezovsky, stating,

Mr. Chair I just wanted to add in my understanding as well that *fee owner would not include a purchaser under a contract for deed.*

(Transcript of Eminent Domain Conference Committee: Senate File No. 2750, April 28, 2006, at 1:53:03 to 1:56:58 of recording; R.ADD-17). Following that statement, there was then a request by the committee chair for further discussion, but seeing none the vote was called and the amendment passed, following which the final vote to approve §117.187 as being in its final form was taken and also passed (R.ADD-17).

The amended general definition for owner, and both new specific definitions (above) for owner, were made in the same amendment to the eminent domain laws by the legislature in Chapter 214 of the 2006 Minnesota Laws.

What is clear then, is that the 2006 legislature understood the distinction between a contract purchaser and a fee title holder, when they required that both receive copies of appraisal reports under §117.036 by including both in the definition of “owners” within that specific statute, but at the same time chose not to allow contract purchasers access to minimum compensation damages under §117.187, by excluding contract purchasers from the definition of “owners” within that specific statute, and being so advised of that result by legislative counsel prior to the vote.

Such a limitation is reasonable given the possibility of a contract purchaser being in default as Crandalls were (see Trial Exhibit 5; Trial Transcript pg.97-98), and thereby being subject to a possible contract cancellation which would have severed their equitable interest in the property, and left the Johnsons with the only valid claim under any portion of Chapter 117. In fact, Appellants testimony at trial was that the original contract price was \$130,000 in the year 2000 (see Trial Transcript pg.92-93; Trial Exhibit 8; Appellant’s APP-21), and the payoff to Johnsons was \$138,000 in September of 2010 (see Trial Exhibit 11; Appellant’s APP-16,17), because they had been paying interest only on the contract (see Trial Transcript pg.98), and were in arrears to some degree as well (see Trial Exhibit 5; Trial Transcript pg.97-98). It is therefore clear that Appellants had not gained any principal equity in the property and were essentially only renters with an option to purchase (as stated in their original contract agreement with the Johnsons) (see Appellant’s APP-21). The legislature saw fit not to give those with such minimal equity invested, and holding such a risky equitable interest in property, access to damage claims beyond that of the usual claim for market value.

It is also clear that Crandalls' never held fee title to the property at any time, but only held an equitable interest as a contract purchaser, which was acknowledged by the Trial Court's Order (see Appellant's ADD-1). Title transferred directly to the City on payment of the City's Approved Appraisal of Market Value into the Court on July 19, 2010, and on the recording of the Order Granting Title and Possession, recorded in the Office of the Carlton County Recorder on July 19, 2010 pursuant to that Order (Trial Exhibit 3 pg.7-11; Appellant's APP-11-13). Crandalls' never received a deed from the Johnsons, because by the time the Johnsons received payment from the Court to payoff the Contract for Deed in September of 2010, they no longer had any title to give, but instead provided Crandalls' with a Satisfaction of a Contract for Deed, to release Crandalls from any further obligation under the Contract for Deed (Trial Exhibit 12; Appellants APP-28).

However, the Trial Court found that "the statutory meaning of fee title is not limited to legal title, but also includes equitable title." (May 2, 2011 Pretrial Order; R.ADD-2). The District Court further found that "Contract for deed purchasers hold equitable title, and therefore, hold fee title, within the meaning of the statute." (R.ADD-2). The District Court then reasoned that "Petitioner's interpretation of the statute would produce a fundamentally unfair and absurd result." (R.ADD-2).

The construction of a statute is a question of law, which appellate courts review de novo. Amcon Block & Precast, Inc. v. Suess, 794 N.W.2d 386, 387 (Minn.App. 2011). The object of statutory construction is to ascertain and effectuate the intent of the legislature. Minn.Stat. § 645.16 (2010); Id. When interpreting a statute, courts first look to see whether

the statute's language, on its face, is clear or ambiguous. Id. If the statutory language is unambiguous, the statute's plain meaning applies. Minn.Stat. § 645.16; Id. The language of a statute is ambiguous only if it is susceptible of more than one reasonable interpretation. Id.

When interpreting a statute, a particular provision is to be read in context with other provisions of the same statute in order to determine the meaning of the particular provision. Amcon at 387. It is also presumed that the legislature understood the effect of its words and intended the entire statute to be effective and certain. Id. at 388. It is not within the purview of the appellate court to supply through statutory construction that which the legislature has eliminated or omitted through the legislative process. Id.

In this case the definition of owner found in § 117.187 is not ambiguous. The legislature made it clear that they only intended the holder of fee title to take advantage of those provisions. The District Court used statutory construction to correct what it felt would bring about an unfair result, in holding that a purchaser on a contract for deed is also a fee title holder, however when there is no ambiguity statutory construction is not allowed. Even if the definition of “owner” were held to be ambiguous, it is clear from the legislative history, as well as from examining other sections of Chapter 214, that ordinary meanings and usage do not apply to this specific definition, in which the legislature clearly differentiated between a contract purchaser and a holder of fee title, and did not intend to extend the provisions of § 117.187 to a purchaser on a contract for deed. See Larson v. State, 790 N.W.2d 700, 703 (Minn. 2010) (where a statute provides conditions under which a district court may order the remedy, if those conditions are not satisfied, then a district court lacks the statutory authority

to order the remedy). The holding of the District Court on this issue should therefore be reversed, and the Appeal by the Crandalls dismissed, since it is based entirely upon a minimum compensation argument.

II. The District Court Properly Ruled as a Matter of Law That the Carlton Avenue Property Was A Comparable Property Within the meaning of the Minimum Compensation Statute.

There is a distinct difference in the interpretation of the minimum compensation statute advocated by Appellants and their expert, David Reach, as opposed to the City and its expert, John Vigen. The parties also fundamentally disagree as to how minimum compensation is to be determined under the statute. It is our position, that the Trial Court in the instant case, as well as the Minnesota Court of Appeals in the recently decided case of the *County of Dakota v. Cameron*, 2012 WL 987299 (Minn.App.), properly applied the statute to the facts by assessing comparability of properties utilizing a market-value analysis but applying a fluid approach to the standards of what compensation is just in any given case on a case by case basis. *Id.* at 12. Both Courts properly balanced and applied a number of factors including, land size, features, location, the square footage, age, design and the construction quality of any structures on the land, as well as features related to the property's usage in reaching a conclusion, *see Id.* at 8.

The measure of damages in an eminent domain context where the minimum compensation provisions apply is precisely set forth in Minn. Stat. §117.187 (2010) in pertinent part as follows:

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, . . .

What the statute clearly indicates is that the damages must, at a minimum, be sufficient "to purchase a comparable property in the community" and that those damages cannot be less than the payment authorized by the condemning authority.

The Trial Court properly determined that the Carlton Avenue Property which was being operated as a auction business in the community at the time of taking could be purchased and improved to provide the Appellants with a comparable site for their auction business. That same conclusion had been reached by the Commissioners at the time they arrived at an award of \$198,000. The amount of \$198,000 awarded was clearly sufficient to purchase the Carlton Avenue Property at full list price (\$89,000) and still provide sufficient monies for improvements and renovation to permit the continued operation of Appellant's business in the community a few blocks away.

On the other hand, the Appellants espouse the view that "minimum compensation" is an open-ended concept which merely provides a bottom value (minimum) on damages they can claim, with no apparent maximum limit. Under such a view, the displaced landowner is permitted to find and choose the "perfect" comparable property. This position requires that any comparable property at a minimum meet each of the criteria factors at a level "suitable" to the optimum operation of his business, which are code words for only properties he *wants* for his business and which would necessarily have greater value, but would exclude any property which would be otherwise comparable except for the fact that one or more of the

criteria applied might be inferior to some degree to the property taken. What the statute requires is not an ideal or superior replacement location but a “comparable property in the community” which could be used to continue operation of the business.

The phrase “comparable property” is clearly understood in the real estate community by realtors, real estate appraisers, and other persons knowledgeable in real estate values, who use “comparable properties” which have been sold (comparables) to assist in establishing values when conducting market appraisals. See *County of Dakota v. Cameron*, 2012 WL 987299, 8 (Minn.App.). We would submit that an application of the minimum compensation statute (Minn. Stat. §117.187) also includes an implied requirement that the “comparable property” be one in which the displaced business could feasibly continue to operate after displacement, even if it would not be required to do so (*see Id.* at 7), otherwise it would not logically be a comparable property.

In any given instance and in practical application, the real estate appraiser performs a market study identifying properties comparable to the subject property, and then narrows the list of comparable properties down to those from which the displaced business can reasonably operate from in a similar fashion. This is precisely what the City’s expert, John Vigen, did in this case. On the other hand, Mr. Reach claims that a “comparable property” has an entirely different meaning (other than in the real estate sense) when used in the minimum compensation statute. He asserts that even though there is no separate definition in the statute (like there is for “owner”), and even though the final determination of what qualifies as a “comparable property” is by statute left to a panel of realtors, that the appraisers or persons

knowledgeable in real estate matters sitting as commissioners are not applying the statute correctly. Under Mr. Reach's definition, two extremely divergent properties are considered "comparable" so long as they are each acceptable to the business owner for the use of his business. If a million dollar property is acceptable to the business owner to house a business coming from a \$50,000 property, then under Mr. Reach's definition it is a "comparable property." According to Mr. Reach that means that at a minimum the proposed "comparable property" must be equivalent to or greater in preference than each of the criteria listed, of which only the Kolar property passed his determination as a comparable property (T.T. pg.29, line 7-9) (T.T. pg.39, line 9-12).

What the Court of Appeals has recently determined in County of Dakota v. Cameron, 2012 WL 987299 (Minn.App.) is that a court must take a balanced approach and give due weight to a number of factors when determining whether a property is comparable to the one taken. As in that case, the Court properly concluded there can be upward and downward adjustments made to account for property differences and that even if the proposed comparable is smaller in size it can nonetheless be "comparable" for purposes of the operation of the minimum compensation statute *See Cameron* at 8. That is precisely the analysis applied by the Trial Court in the case at hand.

In Cameron this Court held that the major issue which must be resolved in a minimum compensation case is whether a "comparable property in the community" exists for purposes of determining the value of minimum compensation. *See Id.* at 8. This Court further indicated that the goal of the proceedings is to determine an amount of money damages that fairly

compensated the landowner and that it was irrelevant that the identified comparable property was no longer available for purchase at the time of the taking, Cameron at 7; even though in this case it was. The Court also held that while the comparable property used may no longer be available for purchase, its most recent sale price is still instructive as it relates to how much the business owner could expect to pay for a comparable property in the community. Id. Significantly, in Cameron (as in this case), the comparable property had less main floor space than the subject property (see Trial Exhibit 23, Cameron at 8), but was still found to be comparable over the business owner's objection, because the business could operate out of it, which is the same conclusion that was reached by the Trial Court in our case. The Court reasoned that it seems unlikely that a "perfect" comparable property (as proposed by the business owner) could ever be found, and that insisting that every criteria be met or exceeded would always provide the business owner with a betterment at public expense and he did not believe that was the legislature's intent in enacting the statute. What appears evident based upon the position taken by the Appellants and their expert, Mr. Reach, is that they are asking this Court to adopt an interpretation based more upon their wishes rather than one based upon the legal guidance of Judge Spicer and this Court.

Applying the very same criteria cited by David Reach, the Trial Court determined that the Carlton Avenue Property was comparable using the very criteria delineated. Although Mr. Reach concludes otherwise, a review of those criteria with regard to that property leads the fact-finder, here the Trial Court, to a different conclusion.

First with regard to similar *location*, the Crandall Property and the Carlton Avenue Property are both located in the same municipality (the City of Cloquet), and are subject to the same zoning rules and regulations. The properties are located approximately half a mile from each other and are both located in older commercial/mixed commercial locations within the City of Cloquet.

With regard to the relative *size* of the two locations, the Carlton Avenue Property is located on .4 acres of land (see Trial Exhibit 28; R.ADD-20) which is also considerably larger than the .16 acre parcel previously occupied by the Crandall Property (see Trial Exhibit 26; R.ADD-18) but is much more in line, with regard to size, than the Kolar property (4.6 acres) (see Trial Exhibit 27; R.ADD-19) which is more than 28 times larger than the parcel taken. The Crandall Property floor level space was comprised of 5,566 finished square feet on the main level as opposed to 4,100 hundred square feet of retail space on the main level in the Carlton Avenue building. However, given the larger size of the lot available it is apparent that additional storage space could be constructed or added on the additional acreage available to accommodate the auction business as stated by City's expert at trial (see Trial Transcript pg. 208). In addition, both sites were actively being used as auction businesses at the time of taking.

With regard to the issue of *age*, both buildings are pre-World War II construction with similar age and condition. Both buildings were in need of repair and the deficiencies of each adequately assessed by both Mr. Reach and Mr. Vigen during the course of their respective testimony.

With regard to *zoning and access*, both of those criteria were similar on the Carlton Avenue Property and Crandall Property. Both provided on-street parking and both were located in similar older areas in Cloquet which allow for the operation of auction commercial establishments. Both sites were zoned to permit commercial use of the property as an auction site and both businesses were operating as auction businesses at the time of taking. The Carlton Avenue Property continued to be used as an auction site through the date of trial. Accordingly, we would submit that despite the fact that David Reach reached the conclusion that the Carlton Avenue Property was not a comparable property, the Trial Court properly concluded it was, based upon an analysis of the very same criteria.

IIA. Appellants' assertion that the Carlton Avenue Property is not a comparable property because it is not large enough to be used for his auction business is not supported by the evidence presented at trial.

Appellants argue that the Carlton Avenue site is not comparable because the main floor of the Wait building is not quite as large (4,100 square feet) as the main floor of the building taken (5,600 square feet). Such a claim is simply not credible nor is it supported by the analysis set forth in the case law. What is evident from the evidence presented at trial is that for the ten years the Crandalls operated their auction business, that it was only in the last year prior to the taking that they actually used more than one half of the main floor on street level. In fact, Mr. Crandall testified that the beauty shop that was operating on the other half of the main floor moved out of the site only when it became apparent that the building property was going to be taken as part of an eminent domain proceeding (see Trial Transcript pg.96), leaving them with the entire floor for their use, but not due to their need. Therefore, we would submit

that it is a red herring argument for Crandalls to claim that they could not continue to conduct his auction business on a comparable site of less than 5,600 square feet of main floor space when they had basically done so for ten years.

In fact, what became apparent from Mr. Crandall's rebuttal testimony was that at the time of trial he was actually operating on a site significantly smaller than both the Wait Property and the original Crandall Property which he identified as the Gordy's Farm Market Property on Highway 33. That site has only 1,100 square feet (approximate), or one-tenth (1/10th) the total building area he claims he was using previously, and one-fifth (1/5th) his prior main floor space. However Respondent does acknowledge that the Farm Market building is cramped for Crandalls use and would not provide a long term solution for them.

Accordingly, when considering the relative size of the Crandall versus the Wait property, it is evident that Mr. Crandall could have operated his auction business at the Wait site in a space that had similar seating and configuration and in a location that was historically larger than the size of the floor space he had actually conducted his auctions for a majority of the time he was purchasing the property on a Contract for Deed. In addition, since the actual real estate at the Wait site was two and a half times larger than the site Crandall had previously operated on, there were adequate options available to him to provide additional storage for items to be sold at the auction than he had previously had in the basement located at his prior location.

Further, the Court should consider the financial realities that would be presented to Mr. Crandall in the event that the Kolar Property was seriously considered as an alternate location

for his business. At the time of taking, Mr. Crandall was paying approximately \$3,300 in real estate taxes. Despite that fact, he was considerably delinquent in the payment of those taxes and considerable taxes were in arrears based upon his financial inability to keep those current. If Mr. Crandall relocated his business to the Kolar site he could anticipate paying real estate taxes on the annual basis of approximately \$33,000. Based upon the income generated by his auction business as reflected by his testimony and on his tax returns what is evident is that he could not possibly pay the taxes and overhead that would be represented by such an upgrade in property locations. Accordingly, irrespective of the fact that the Kolar Property is not a comparable property based upon an application of Judge Spicer's criteria, it would represent a financial impossibility for the Claimant based upon the historic returns generated by the business being relocated (see Appellant's ADD-3). If it is not economically feasible to continue to operate the business at a new location, that location is not comparable within the meaning of the statute.

Finally, Appellants rely on a quote from a Senate Transportation Committee hearing on Bill 2750, held March 16, 2006 (Appellant's Brief, pg.20-21), to show that legislative intent supports their position that a "comparable property" requires equivalent size between the buildings (among other requirements), under § 117.187. However, on review of that discussion and the quote from Senator Robling regarding the substitution of "comparable property" into the statute, what is clear is that the Senator's concern was that the prior language which provided for damages sufficient to "purchase a similar house or building of equivalent size in the community" could lead to abuse.

The Senator hypothesizes if a home was taken, and the only requirement is another house of equivalent size, and “if you wanted a house that is now on a lake,” under the prior language you could demand those damages because the statute said nothing about the property as a whole. The Senator wanted to make sure that the language addressed “the whole package, the lot and the house.” The Senator states that the bill was clarified by taking out language “of an equivalent size”, which would make it only refer to damages sufficient to purchase a similar house or building in the community. However the Senator was not satisfied because the language was “not still addressing property.”

The Senator, in commenting on the substitution of the “comparable property” language into the statute, states that “we’re mainly dealing with the whole property and not just the house. I think we may be doing that here.” The Senator then strongly reiterates, “I want to make sure it’s addressing the whole property, the land and the building on it, and not just the building.” The Senator then suggests that with this “comparable property” language, if someone has a building on a valuable piece of property that gets taken, now they can ask for that whole property comparison.

The Senator’s concern that the entire property, land and buildings, when viewed as a whole be comparable, fits with City’s proposition that the Carlton Avenue property is comparable. The Carlton Avenue property has a somewhat smaller building and a somewhat larger lot (see Trial Exhibit 28; R.ADD-20) than the property that was taken (see Trial Exhibit 26; R.ADD-18), providing room for exterior expansion, and at a much lower cost provides the financial resources to expand. However, the Senator’s concern here flies in the face of

Appellant's proposed comparable property, the Kolar Auto Dealership, with a much larger and newer building and a land area twenty-eight times the size of that which was taken (see Trial Exhibit 27; R.ADD-19), this was clearly the scenario the Senator was concerned about when he stated that someone could demand a much more valuable property such as lakefront property under the prior language. Even the present language has not stopped Appellants from demanding a much more valuable piece of property, on the river front (see Trial Exhibit 31; R.ADD-21).

IIB. Appellants Assertion that in order for a property to be considered comparable under the Minimum Compensation Statute Require that it must be available for purchase on the date of taking and must have a determined market value is inconsistent with the intent of the statute.

As this Court properly held in *Cameron*, since the Minimum Compensation Statute does not require the affected landowner to purchase a replacement property, it makes no sense to limit the universe of comparable properties to only those properties that are available for purchase or have a determined market value in determining a claim of damages, *see Cameron*, at 7.

III. The District Court Properly Ruled as a Matter of Law That the Kolar Property Was Not a Comparable Property within the meaning of the Minimum Compensation Statute and that An Award of Damages Based Upon that Property Would Represent a Windfall to the Appellants.

Appellants had the burden of proof at trial to provide adequate evidence to support the assertion that the Kolar property was a comparable property within the meaning of the statute. The Appellants only presented proof as to one parcel they considered comparable.

During their case in chief, the Appellants presented evidence solely through a single witness, Expert David Reach, who concluded that the *only* comparable property available that would meet all the business needs of Mr. Crandall was the Kolar Property. Interestingly enough, that parcel is located in an entirely separate municipality, in the City of Scanlon. Based on the conclusions reached by Mr. Reach, the cost to acquire and renovate that location and the amount claimed as damages in his original report was \$818,000.00 which was amended in his supplemental report to \$843,000. Mr. Reach evaluated nine different properties and concluded that the Kolar site was the only site that would meet Mr. Crandall's ongoing business needs. In reaching that conclusion, Mr. Reach testified that he applied criteria set forth by Judge Richard Spicer in a summary judgment order in a district court case titled the County of Dakota v. George W. Cameron, which order was issued in May, 2010. That case has since been decided by this Court. In assessing the concept of "comparable property" Judge Spicer and the Court of Appeals considered a number of criteria:

The Court feels that the term 'comparable property' refers to a property of similar location, size, age, condition, zoning and access at the property taken. Yet further in a case such as this where a business needs to be moved, the comparable property should be such that it can reasonably house the business in question. Such a property may or may not presently exist.

What is apparent in applying these criteria to the facts at hand is that Mr. Reach's conclusion that the Kolar Property is a comparable property is misguided.

With regard to *size*, in viewing aerial photographs of the property at the same scale, there is no comparison between the two sites. Whereas the Crandall Property taken consisted of .16 acres (see Trial Exhibit 26; R.ADD-18) located in the Cloquet central business district

and had street level useable space of 5,566 square feet, the Kolar property is located on 4.6 acres (see Trial Exhibit 27; R.ADD-19) of prime property fronting on the St. Louis River on the one side, presenting a clear view to traffic on Interstate Highway 35, which crosses the St. Louis River just to the South and just before the Scanlon exit, and with hundreds of feet of exposure along Highway 61 on the North side of the property (see Trial Exhibit 31, #1-Crandall property, #2-Kolar property, #3-Carlton Avenue property; R.ADD-21), with the existing building having ground level space of 16,780 square feet, which is more than three times the main floor square footage of the Crandall property taken. The real estate footprint also represents more than twenty eight times (28X) the acreage, including river-front property and acres of paved parking (see Trial Exhibits 26 & 27 for visual comparison). Practically then it is understandable why the Kolar property taxes are ten times (10X) what they were for the Crandall property taken. That fact was acknowledged by Mr. Reach who still maintained that the two properties were comparable. Such an assertion flies in the face of reason.

Regarding the relative *age* of the two structures, the Crandall Property was constructed pre-World War II (1920's or 30's) and has previously been used as a retail grocery store, a retail Sears location, and a drivers training location prior to being purchased on a Contract for Deed by Crandall. The Kolar building was constructed new in 1970 and therefore is at least thirty (30) years (or more) newer in age than the Crandall Property taken..

With regard to the criteria of *condition*, based upon the testimony there is no comparison as to the condition between the Kolar site and that of the Crandall Property taken. Considerable testimony and pictures were submitted as evidence at trial to substantiate the

deteriorated condition of the Crandall Property. Even Crandall's expert acknowledged the fact that the Kolar Property was constructed in 1970 and was considered in good condition. The testimony of Gerald Manthey established beyond a doubt that there were considerable structural problems that existed with the Crandall property at the time of taking; the properties simply are not comparable in condition.

With regard to the issue of *zoning*, both properties are commercial in nature such that the operation of an auction business would be permitted. However, the zoning applicable to the original Crandall Property was downtown commercial and was governed by the City of Cloquet zoning code. The Kolar property is located in a different municipality (City of Scanlon bordering the City of Cloquet to the east) (see Trial Exhibit 31 #1; R.ADD-21) which has different zoning requirements.

And finally with regard to *access* to the property taken, it is quite evident that the access to the Kolar Property is far superior given its exposure to Interstate Highway 35 and State Highway 61, as opposed to the downtown location of the Crandall property which was buried a block off of main street in Cloquet with no highway exposure (see Trial Exhibit 31; R.ADD-21).

In conclusion then, there was adequate support in the record for the Trial Court to conclude that the Kolar Property was not comparable and the Trial Court's decision in that regard should be affirmed in all respects.

IV. The Trial Court Did Not Abuse its Discretion by Allowing the Expert Testimony of John Vigen And His Minimum Compensation Report Into Evidence With Regard to the Trial of the Issues Before the Court.

Appellants maintain the Court improperly admitted the testimony and report of Petitioner's expert, John Vigen. They do so because they disagree with the content and the opinions contained in Mr. Vigen's report because they cite no substantive reason for disallowing the testimony. What is evident from this Court's most recent decision in Cameron is that the interpretation of the Minimum Compensation Statute is one of first impression, *see County of Dakota v. Cameron*, 2012 WL 987299, 6 (Minn.App.). As this Court can determine from his qualifications, John Vigen is one of the most experienced real estate market analysts in the State. He testified extensively at trial as to the lengths he went investigating with his peers as to how the new statute should be applied and opined responsibly to the Trial Court. We would submit that the evidence that should be allowed to be submitted in a condemnation proceeding should be very broad, and our courts have concluded that any competent evidence may be considered:

In State by Humphrey v. Strom, we addressed the question as to what evidence is relevant and admissible in an eminent domain trial. 493 N.W.2d 554 (Minn.1992). We stated that "evidence will be admitted concerning any factor which would affect the price a purchaser willing but not required to buy the property would pay an owner willing but not required to sell it." *Id.* at 559. We have also said, "Any competent evidence may be considered if it legitimately bears on the market value." State v. Malecker, 265 Minn. 1, 5, 120 N.W.2d 36, 38 (1963).

Moorhead Econ. Dev. Auth. v. Anda, 789 N.W.2d 860, 876-77 (Minn. 2010).

This was a trial to the court and we would submit that the Trial Court should be the final arbiter as to what evidence is relevant and what weight it should be given. Accordingly, if the Trial Court were to determine that Mr. Vigen's report was lacking in some respect, that does not present sufficient grounds to prohibit its use as opinion evidence for consideration by the

Court. Claimant's counsel argues that John Vigen's testimony with regard to his "Alternate Property Study" should be stricken because his report fails to give a figure at which a comparable property could be purchased. As this Court properly observed in Cameron, since there is no statutory requirement that a displace landowner purchase a comparable property, for purposes of assessing damages, there is no reason why a report that sheds light on valuation should be excluded for that reason. And while the Appellants continue to make such an assertion they provide no legal support for the premise that an expert witness report can be excluded based upon a failure to include a specific amount necessary to purchase a comparable property.

The implication of Appellants' counsel is that a Seller's list price is the value of the property for such purposes, which interpretation was specifically rejected by this Court in Cameron (at 10). At trial both experts (David Reach and John Vigen) testified that this area of the law, and specifically the precise meaning of the application of the Minimum Compensation Statute, was professional new ground and that there were no specific standards yet adopted on which to rely. In fact, Mr. Reach indicated that the only other case in which he had tendered an opinion on the application of the statute was for Cameron, which recent decision rejects the basis for both of Mr. Reach's "Appraisal" opinions written in this case. As a consequence, there is absolutely no basis for excluding the report or opinions of John Vigen whose experience and qualifications are beyond reproach, and who's methods in this case most closely mirror those approved by this Court in Cameron.

At trial, John Vigen testified extensively on the exhaustive research he conducted into the standards applicable to appraisal experts in the State of Minnesota with regard to a Minimum Compensation analysis. What was evident from both his testimony and that of David Reach is that this is a very fluid legal situation on which there is very little judicial legal precedence. As a consequence, since the wording of the statutory language is clear, and since this matter was tried to the Court, this Court should avail itself of the testimony of as many “experts” as possible to attempt to discern the legislature’s intent regarding the proper amount of compensation that is warranted in this context. Therefore, there is absolutely no legal basis for excluding John Vigen’s “Alternate Property Study” or his testimony in support of that report based upon an allegation that it lacks foundation or is speculative. Such an assertion would be more valid in assessing the “theories” of valuation and compensation advanced by David Reach given the holding in Cameron opposing Mr. Reach’s prior report in that case, and given the otherwise dearth of legal precedence with regard to the application of the Minimum Compensation statute now available.

What is now evident from Judge Spicer’s and this Court’s interpretation of the requirements of the minimum compensation statute in Cameron is that they do not agree with much of Mr. Reach’s interpretation. Mr. Reach is therefore in disagreement with the learned Judge that Mr. Reach cited at trial as his sole legal basis for his understanding of minimum compensation law.

In Cameron this Court held that the major issue which must be resolved in a minimum compensation case is to resolve whether a “comparable property in the community” exists for

purposes of determining minimum compensation. Accordingly, the goal of the proceedings is to determine an amount of money damages that would allow the business to continue at a comparable location, but that it was not dispositive that the identified comparable property was no longer available for purchase. In our case, not only was a comparable identified that was available, but it had a market value that was specifically determinable. It is clear then from his testimony at trial that even though Mr. Reach claims to get his understanding and interpretation of the minimum compensation statute from Judge Spicer, he in fact takes a position with regard to much of the statute that is in direct opposition to Judge Spicer's conclusions.

Finally, from a practical standpoint, John Vigen's opinions more closely align with the conclusions reached by this Court in Cameron than do the opinions advanced by Mr. Reach. Mr. Vigen testified that with regard to the applicability of the Minimum Compensation Statute that this is an area of first impression with regard to professionals in the real estate community. Mr. Vigen readily acknowledged that this had been the first minimum compensation analysis he had personally performed with regard to commercial properties. Mr. Reach admitted that it was only the second one he had done. Nonetheless, Mr. Vigen properly concluded, based upon his thorough assessment of the Carlton Avenue Property applying the criteria set forth by this Court in Cameron that the Carlton County Property would constitute a comparable location for purposes of conducting Mr. Crandall's auction business. It is for that reason that the Appellants want his opinions stricken.

Since the Commissioner's had also toured and thoroughly evaluated the Carlton Avenue Property and considered it a comparable property at the time that they determined damages of

\$198,000, we would submit that both the Commission and Mr. Vigen properly applied the reasoning intended by the Minimum Compensation Statute in assessing the proper amount of damages due the Appellants in this situation.

Mr. Vigen also provided adequate testimony on which the Trial Court could properly conclude that the Kolar Property was not a comparable property and that such a position was clearly unreasonable based upon the relative comparisons of the criteria of the two properties. He opined that the Kolar Property represented a considerable upgrade and windfall to Mr. Crandall. In addition, what is apparent from the trial testimony of Mr. Crandall and the exhibits offered into evidence is that Crandall was not even able to keep up with the real estate tax payments on the property that he occupied prior to taking. The Kolar Property represented an increase in real estate taxes of approximately \$30,000 a year which far exceeded the profitability of the auction business being conducted by Crandall according to business tax returns and testimony. Accordingly, not only did the Kolar option represent property which is not comparable based upon the application of this Court and Judge Spicer's criteria, but an award of such a site would represent financial incompatibility since Mr. Crandall could not afford the overhead and the taxes on the site and continue to operate his business as he had prior to the time of taking.

V. The Trial Court Did Not Clearly Abuse its Discretion in Denying the Appellant's Motion for a New Trial.

The Respondents make the claim that they are entitled to a new trial since the Trial Court apparently abused its discretion and simply adopted the commissioner's findings in this case. By implication, they suggest that no consideration was given to the actual evidence submitted

to the Court at trial. The Appellants also claim that by permitting the commissioner's to testify at trial, that the Trial Court assisted ("rubber stamped") the perpetration of a fraud on the judicial system. We would submit that this over-the-top hyperbole could not be farther from the truth.

First, with regard to any alleged improprieties committed by the commissioners during their investigation, the Appellants suggest that the commissioners conducted a complete investigation outside the scope of the testimony that was taken at the commissioners' hearing instead of simply relying upon the sworn testimony taken before counsel. Respondents claim that this investigation included the solicitation of information from four witnesses outside the strict confines of the hearing. Respondents further assert that by visiting properties during their deliberations that the commissioners acted inappropriately, suggesting that such activities were improper, "just as private interviews with witnesses, are independent investigations that do not belong in our judicial system much less eminent domain law involving constitutional rights." What Respondent has clearly failed to acknowledge is that a commissioner's hearing is a non-judicial statutory proceeding to which the rules of civil procedure and the canons of our adversarial system do not apply. It is intended to provide an expedited forum to arrive at a figure of just compensation for the landowner whose property has been taken.

It has previously been determined by our courts that the commissioner's proceeding in producing the original damage award does not have sufficient "indicia of a trial" to be treated as a "civil action" since it may be appealed to District Court. *See* Minn.Stat. § 117.085 (1992) (commissioner's proceeding is more inquisitorial than adversarial). *See generally State by Mattson v. Goins*, 174 N.W.2d 231, 233 (Minn. 1970) (under predecessor statute, "after the filing of an appeal in district court from the commissioner's report in an eminent domain proceeding, it becomes a judicial proceeding and the rules of civil procedure apply") (emphasis added).

State by Humphrey v. Baillon Co., 503 N.W.2d 799, 803 (Minn.App. 1993).

A close reading of the statute in question, Minn. Stat. § 117.085, makes it clear that the commissioners' investigation was appropriate in this context. It is evident that all testimony elicited must be given at the commissioners' hearing. It is also clear that there is no requirement that the only evidence which can be considered by the commissioners is evidence presented in the four corners of the commissioners' hearing (which is not a judicial proceeding). The commissioners are given the power to "require the petitioner or owner to furnish for their use maps, plats, and other information which the petitioner or owner may have showing the nature, character, and extent of the proposed undertaking and the situation of lands desired therefor." See Minn. Stat. § 117.085. This information is clearly intended to be used by the commissioners in making their determination. Again, there is no requirement that it be entered into evidence at the commissioners hearing before it can be considered. In fact, only the City and the Crandalls submitted evidence at the commissioners' hearing. Since there is no mechanism for the commissioners to "put in" evidence, they have statutory authority to require and consider additional evidence and that it be produced by either party. Further, the statute anticipates that the commissioners "shall view the premises," see Minn. Stat. § 117.085. Again, there is no requirement that this viewing take place at a public hearing. The claim made by Appellant's that visiting properties during their deliberations does not belong in eminent domain law flies in the face of the intent of this statute. The Commissioners need to view the properties they determine to be at issue to make an informed decision.

The commissioners' hearing was not a civil trial, and the commissioners clearly had the power to view the properties brought into question by the parties for purposes of making a complete and informed determination. The commissioners clearly are intended to have the power to consider additional information not presented by either party which the commissioners believe will help to show the nature, character, and extent of the proposed taking. This is exactly what this group of commissioners did. The statute specifically authorizes the commissioners to contact the Petitioner (City), for such additional information, which they acknowledged they did. The information received from the City did not amount to opinion testimony; rather, it amounted to a mere verification of facts which had been presented at the hearing. Therefore, even if the additional information that was considered was error, it would have amounted to nothing more than harmless error given the fact that the Appellants requested a trial de novo and were afforded an opportunity to cross-examine and depose all of the witnesses that participated in the investigation, which renders the argument meritless.

What is also clear is that Appellants' continuing claims of procedural irregularities regarding the Commissioners' hearing are without substance since such non-judicial administrative proceedings provide no basis upon which to request a new trial. In any event, the Respondent was afforded the right to appeal to District Court for a trial de novo, a judicial proceeding governed by the Rules of Civil procedure. Therefore, that action rendered moot any claim of alleged improprieties at the commissioners hearing, and the Respondents are not now entitled to a new trial based upon such allegations.

CONCLUSION

In conclusion, the Appellants' appeal should be rejected for a number of reasons. First and foremost, the Minimum Compensation Statute and legislative history are clear in that in order for a claimant to assert a claim for "minimum compensation" damages, a claimant must be an "owner" who is a *fee title holder* to the property taken, which specific definition was approved following the advisement by legislative counsel that it "*would not include a purchaser under a contract for deed.*" The Appellants in this case have conceded they were never more than vendee purchasers on a contract for deed. At no time prior to the taking were they fee owners. Appellant's should not have been included under the statute even given an ordinary meaning of "fee title holder", where the contract seller holds fee title until the contract is paid in full, before conveyance of title to the purchaser. In this case, at the time of the taking the contract purchasers (Appellants) owed more than the entire original contract price, and were in the same position equitably, as business owners who were renting with an option to purchase, so they do not even present a valid equitable claim to be considered an owner of the property taken. Clearly, because they are specifically excluded by the plain language of the statute and by the clear intent of the legislature, any claim the Appellants make under § 117.187 for additional damages beyond fair market value is moot and should be dismissed.

Second, the Appellants have the burden of proof as to the issue of damages and have the affirmative duty to proceed and put into evidence sufficient proof of a comparable property to establish a right to compensation. Here the Appellants had the affirmative duty to put in sufficient proof of a comparable property, *in the community*, on which the Court could rely for

purposes of determining compensation. The *only* comparable property the Appellants offered was the Kolar Property which the Trial Court properly concluded represented such a windfall that it was not comparable by any reasonable measure of valuation. The Trial Court properly concluded that not only could the Appellants not have afforded to operate a building of that size financially, but we would further submit that in view of this Court's decision in Cameron, their proposed comparable was not even located in the same community. The Kolar property is located in Scanlon, which is a separate municipality located adjacent to the City of Cloquet geographically, with its own city government, zoning provisions and municipal structure.

At trial the Trial Court fairly and properly concluded that the award of \$198,000 was more than sufficient to allow the Appellants to purchase and improve the comparable property proposed by the City. What is now apparent is that the Appellants did not seek a "comparable property" for purposes of continuing the operation of their business but sought to hit a home run and have the Trial Court adopt an untested interpretation of the Minimum Compensation Statute Minn. Stat. §117.187 that assured them monetary damages far in excess of any actual losses incurred. It was the Appellants that elected to advance only one parcel as a comparable property at trial, which was their affirmative burden. Now, after the Trial Court properly concluded that the Kolar property was not comparable and that the Carlton Avenue Property was comparable, the Appellants seek to have the Trial Court's decision set aside so they can start over. Throughout the litigation of this matter the Appellants have stood by their position that the sole comparable property available for consideration was the Kolar site. They must now live with the consequences of advancing that strategy. As we have continuously argued,

and the testimony of John Vigen substantiated at trial, we submit that it was the legislature's intent that damages under Minn. Stat. §117.187 be limited to damages that are reasonable under the circumstances and which are based upon practicality and actual evidence of comparability. The Kolar property clearly represents a measure of damages that are not "comparable" but rather represent a "windfall", which this Court has determined was not the intent of the statute. See Cameron at 12-13.

As a consequence, we would respectfully request that this Court deny the Appellants Appeal in all respects, and grant our Related Appeal and dismiss the Appellants claim based upon the fact that the Appellants were not owners who were fee title holders within the meaning of the statute, and they are therefore not entitled to minimum compensation damages. In the alternative we would ask that the Trial Court's decision be affirmed in all respects.

Respectfully submitted,

Dated this 15th day of MAY, 2012.



William T. Helwig (#298682)
Frank Yetka (#119258)
Rudy Gassert Yetka & Pritchett, P.A.
Attorneys for Petitioner
813 Cloquet Avenue
Cloquet, MN 55720
(218) 879-3363