

NO. A08-880

State of Minnesota
In Court of Appeals

The Housing and Redevelopment Authority in and for the
City of Fridley, Minnesota, a public body corporate and public,
Respondent,

vs.

Main Street Fridley Properties, LLC,

Appellant.

RESPONDENT'S BRIEF

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STATEMENT OF THE ISSUES

1. Whether the district court correctly determined that the HRA's taking was for a proper public purpose and within its authority?

The district court concluded that “[t]he proposed acquisition of the property by Petitioner [HRA] serves a public purpose” and that the “Petitioner, individually and in conjunction with the Minnesota Department of Transportation and the Anoka County Regional Railway Authority, has all powers necessary and convenient to carry out the purposes of this action, including the power of eminent domain.”

- Minn. Stat. § 117.025, subd. 11
- Minn. Stat. § 174.82
- Minn. Stat. § 469.012, subd. 1g
- Minn. Stat. § 471.59, subd. 1
- City of Granite Falls v. Soo Line Railroad Co., 742 N.W.2d 690 (Minn. App. 2007), review granted (Minn. Mar. 18, 2008)
- Renstrom v. Indep. Sch. Dist. No. 261, 390 N.W.2d 25 (Minn. App. 1986)

2. Whether the district court correctly determined that the HRA's taking was necessary to further the public purpose?

The district court concluded that “[t]he necessity for the taking has been shown.”

- City of Granite Falls v. Soo Line Railroad Co., 742 N.W.2d 690 (Minn. App. 2007), review granted (Minn. Mar. 18, 2008)
- Itasca County v. Carpenter, 602 N.W.2d 887 (Minn. App. 1999)
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STATEMENT OF THE CASE

The Housing and Redevelopment Authority in and for the City of Fridley (“HRA”) brought a Petition to condemn vacant and undeveloped property owned by Appellant Main Street Fridley Properties, LLC (“Appellant”), for the purpose of facilitating the construction of a Fridley commuter rail station and related facilities as part of the Northstar rail line and to further its own redevelopment projects. The district court

granted the Petition on the basis that the condemnation served valid public purposes, was within the HRA's authority, and was necessary. Following this decision, Appellant brought a Motion for a New Trial and filed a Notice of Appeal. This Court concluded that the motion for a new trial was improper in a condemnation action and the parties proceeded with this direct appeal.

STATEMENT OF THE FACTS

The Northstar Rail Project (the "Project") involves the construction of a 40-mile commuter rail line from Big Lake to Minneapolis, with stations located in Big Lake, Elk River, Anoka, Coon Rapids, Fridley, and Downtown Minneapolis. (Tr., p. 29).¹ Plans for the Project began in 1997, and the extensive nature and scope of the project has required collaboration between the State, by and through the Minnesota Department of Transportation ("MN/DOT"); the Northstar Corridor Development Authority ("NCDA"), which is made up of over 30 governmental entities along the corridor, including counties, regional rail authorities, and cities and townships; and the Metropolitan Council ("Met Council"), which will operate the Northstar rail line. (Tr., pp. 29, 35).

The Fridley station has always been a part of the Northstar Project and its location was the result of a rigorous siting process undertaken by the NCDA, which included over 50 public hearings and public information meetings. (Tr., pp. 41-42). Appellant's property offered the best location for the Fridley station given its proximity to the throat of Burlington Northern Santa Fe ("BNSF") Railway's Northtown Yard. (Tr., p. 42).

¹ The transcript is located at Resp. Appx. 1-145.

In 2007, the Fridley station was pulled out of the federally-funded portion of the Northstar Project, and funding responsibility for the Fridley station fell to local entities. (Tr., pp. 42-43). Because a Fridley station offers the HRA opportunities to further its redevelopment and housing projects, it had a strong interest in supporting the station. (Tr., pp. 46-49, 60-61). As a result, the HRA teamed with MN/DOT and the Anoka County Regional Railroad Authority (“ACRRA”) for the purpose of acquiring Appellant’s property for the construction of the Fridley station and related facilities. Resp. Appx. 146-147, 188-191.

Specifically, the HRA agreed to fund the acquisition of Appellant’s property, either through a negotiated sale or condemnation, in exchange for (1) ACRRA contracting for, constructing, and funding a necessary underpass for the Fridley station², (2) MN/DOT assisting the HRA with plans and other technical information related to the Fridley station, and (3) both ACRRA and MN/DOT acknowledging the HRA’s financial contribution and assisting with reimbursement, if any, of acquisition costs. Id. These agreements were memorialized in a series of Memoranda of Understanding (“MOU”) between the three entities. Id.

Subsequently, the HRA began attempting good faith negotiations for a voluntary purchase of Appellant’s property. See Resp. Appx. 151-167. Although the HRA offered \$3,165,000.00 for Appellant’s property, which represented the appraised value and

² The underpass has been constructed and paid for, and \$3,165,000 (an amount greater than Appellant’s asking price for the land) has been deposited with Anoka County Court Administration.

exceeded Appellant's actual listing price, Appellant rejected the offer. Appellant insisted that any offer must also include resolutions by the City of Fridley that would assist Appellant in an unrelated federal lawsuit against the City, something outside of the HRA's authority and control. Resp. Appx. 160.

On January 10, 2008, the HRA passed Resolution No. 2008-01 authorizing the acquisition of Appellant's property for public use by right of eminent domain. Resolution 2008-01 detailed the various agreements between the HRA and ACRRA and MN/DOT, and stated that "[t]he establishment of a Fridley commuter rail station and related facilities will further the purpose and goals of MN/DOT" and "further the goals and objectives of the HRA, and will further encourage development and re-development of the area surrounding the commuter rail station, making the acquisition of land for the construction of the rail station and related facilities a public purpose for the HRA." Resp. Appx. 168-170.

The HRA served and filed its Petition for Condemnation on January 29, 2008, seeking adjudication that the taking was for a public purpose, necessary and authorized, and that the HRA may acquire the subject property by condemnation. Resp. Appx. 174-178. In addition, the HRA sought to obtain title and possession to the subject property pursuant to the "quick take" procedure identified in Minn. Stat. § 117.042.

On March 4 and 11, 2008, the Court heard the HRA's motion for approval of its Condemnation Petition. The first witness at the hearings was Michael Schadauer, an employee of the Minnesota Department of Transportation ("MN/DOT"), and the Deputy

Director of Budget, Grants and Project Controls of the Northstar Rail Project. Mr. Schadauer testified to being involved in the project since April 2001, but noted that the site for the Fridley commuter rail station was selected at the inception of the project in 1997. (Tr., p. 24). Mr. Schadauer testified that a draft environmental impact statement for this site was already prepared and that the site was chosen because it is undeveloped, will not require relocation of any residences or businesses, and offered a location most conducive to BNSF's operations. (Tr., p. 27).

Mr. Schadauer further testified that the Northstar Project is a collaborative and multi-participant endeavor, as MN/DOT has partners from the NCDA, the county regional rail authorities, the impacted cities and townships, and the Metropolitan Council. (Tr., p. 30). He explained that, although MN/DOT is the responsible government agency for commuter rail in the State of Minnesota, it requires partners to successfully develop and deliver such services. For example, funding for the Project comes from the following sources: half from the federal government, one-third from the state, and about one-sixth from members of the NCDA. Similarly, the Metropolitan Council, through its transit arm, Metro Transit, has been deemed the best agency to operate the line. (Tr., pp. 74, 77).

The second witness was Tim Yantos, who is the Executive Director of the Northstar Project, Executive Director of NCDA, and Executive Director of the Anoka County Regional Railroad Authority ("ACRRA"), and has been involved in this project from its inception. Given his experience, Mr. Yantos was able to address Appellant's

apparent difficulties in distinguishing between the “Project” as a whole, which includes all local, regional, and state efforts and plans relating to the Northstar Line, including the Fridley station, and the “Federally Funded Project,” which deals only with that portion of the rail line receiving 50% of its funding from the federal government.

I’m wondering if I could define the word “project.” “Project” in Mr. Schadauer’s term is a very small definition of project because MnDOT, along with all of us partners, have been working with the [federal] Department of Transportation, which [is] providing half of the funds. And you have to be very careful as to what you define as the “project” in their terms. And in their terms, they provided half of the money of the \$317,000,000 for this project...And the Federal Transportation says the project at one time included the city of Fridley, the Fridley station, which has been in existence since we started the project many years ago. In the Federal Transit Administration, project definition does not exist simply because the federal funds for that project don’t exist...They have a definition of the project with so many stations and so much money and so much activity and so much construction that is all going to go on. The Fridley station had to be pulled out of that project at the last moment simply because of our negotiations with Burlington Northern Santa Fe...From a regional level, from the county level, from the city level, the Fridley project is—The Fridley station is still very, very important to the overall success of moving people from one destination to another destination in this corridor. So if you look at it from a regional point of view and the definition of project, the Fridley station is very important and there are many people who are working and many entities who are working on trying to make this successful station for the project.

(Tr., pp. 36-37).

According to Mr. Yantos’ testimony, while the federal government recently pulled the Fridley station from the Federally Funded Project, it remains part of the larger project

and the planners have always included the Fridley station in the Northstar plans. (Tr., pp. 28-29.) In fact, Mr. Yantos testified that ACRRRA funded the construction of the underpass tunnel adjacent to the Fridley station site,³ and various regional, county, and state agencies have been working to procure funding for the Fridley station. (Tr., pp. 40-43). Thus, Mr. Yantos testified that he fully expects the Fridley station to be constructed and believes that appropriate progress to that end is being made. (Tr., p. 96).

The third witness who testified at the hearings was Paul Bolin, an employee of the HRA since August 2004. Mr. Bolin testified to the basis of the HRA's long-standing interest in the Northstar project:

[T]he redevelopment that could happen around Northstar; the interest we have with providing other modes of transportation for all the workers we have in Fridley...and really our mission is to provide different housing opportunities within Fridley, to aid commerce where we can, and the Northstar Rail Station site is one of those issues that can help us with our redevelopment efforts, with getting more housing opportunities and with aiding commerce.”

(Tr., pp. 46-47).

Mr. Bolin testified that a 2004 study commissioned by Anoka County specifically examined the possibility of transit-oriented development around the Fridley station. According to Bolin's testimony, the study identified great potential for redevelopment and higher density and higher valued properties in the area directly around the proposed station site. (Tr., p. 47). Specifically, the study anticipated that the Fridley station would

³ Mr. Yantos also testified to the fact that, if the Fridley station was going to be built, the underpass tunnel needed to be constructed under the BNSF Railroad on Memorial Weekend. Consistent with this time frame, the tunnel has already been constructed.

spur the improvement of existing housing stock as well as result in replacement of older blighted housing stock with new housing stock. (Tr., p. 48). Similarly, in 2006, the City of Fridley commissioned a planning firm in regard to redevelopment of a series of older, dilapidated apartment complexes approximately three to four blocks west of the proposed Fridley station. One of the conclusions of the resulting market study was that a Fridley commuter rail station would allow the HRA to construct much higher valued condominium units or townhouses on and near the station site. As Bolin explained, both of these redevelopment projects are therefore tied to obtaining the Fridley station. (Tr., p. 50).

Mr. Bolin also explained that over the past several years there has been a real focus on the Fridley station site with regard to pending and proposed redevelopment projects in Fridley. He indicated that the HRA has already been working with a group called the Corridor Housing Initiative to redevelop University Avenue just three or four blocks east of the proposed station site, and has acquired some older, vacant, dilapidated commercial buildings along University Avenue as part of this redevelopment project. Further, the HRA's collaboration with commercial real estate developers, housing planners, and experts in medical facilities has revealed that a Fridley station would enable higher and better uses of the property along University Avenue. (Tr., pp. 47-59, 106-113).

Mr. Bolin also testified about the positive impact the tunnel would have on an elementary school whose students must presently cross the railroad tracks, as well as on a

regional bike trail that is currently difficult to access. (Tr., pp. 51-52). In response to a question by Respondent's counsel, Mr. Bolin unequivocally testified that, to further the HRA's development and redevelopment efforts in Fridley and to provide transportation and housing opportunities for the residents, the acquisition of the subject property was necessary. (Tr., p. 59). Mr. Bolin further testified that the use of the subject property for a Fridley rail station was identified in both the 2000 comprehensive plan and the preliminarily-approved current plan as being necessary for the Northstar line and for Fridley's future redevelopment efforts. (Tr., p. 60).

Finally, Mr. Bolin testified to the fact that the proposed Fridley station is within Redevelopment Project No. 1, which is the area where tax increment financing ("TIF") may be utilized. He also indicated that actual TIF districts are not set up until redevelopment projects are imminent, since such TIF districts are limited in the number of years they can provide funds, and that the time limit commences with the creation of the district. As Mr. Bolin explained, this is the reason cities do not create TIF districts until development or redevelopment on a particular parcel is ready to occur. (Tr., p. 121).

The final witness at the hearing on March 11 was Timothy J. Nelson, Appellant's representative. Mr. Nelson is a real estate broker and consultant, and was responsible for representing Appellant in discussions and negotiations with the HRA in regard to acquiring the subject property.

Mr. Nelson testified that in an unrelated legal action, Appellant had sued the City of Fridley in federal court contending that the City interfered with Appellant's

development of the subject property for the past fifteen years. Mr. Nelson indicated that his real estate firm had placed the subject property on the real estate market on behalf of Appellant at the time this condemnation process began for an asking price of \$3,011,000. (Tr., p. 140). Despite this listing price, Appellant rejected the HRA's \$3,165,000 offer to voluntarily acquire the property based on Appellant's insistence that any offer must also include resolutions by the City of Fridley that would assist Respondent in its federal lawsuit, something outside of the HRA's authority and control. Resp. Appx. 160.

Also introduced as evidence at the hearings were the various documents attached to the Petition in Condemnation, including the HRA's Memorandum of Understanding ("MOU") with ACRRA to work jointly to seek financing for the Fridley station; ACRRA's MOU with MN/DOT whereby ACRRA was designated by MN/DOT to enter into an Underground Construction Agreement ("UCA") with BNSF for an underpass tunnel adjacent to the proposed Fridley station and to contribute funding to the the UCA project; and the MOU between the HRA and MN/DOT delegating MN/DOT's commuter rail authority under Minn. Stat. § 174.82 to the HRA. Resp. Appx. 146-147, 188-197.

Pursuant to its MOU with MN/DOT, the HRA agreed to acquire the subject property and pay all costs associated with its acquisition in exchange for MN/DOT's technical assistance with the Fridley station. Further, MN/DOT agreed to acknowledge the HRA's financial contributions in future attempts for reimbursement.

Following these hearings, the Court executed a 12-page Order granting the HRA's Petition for Condemnation, which contained 42 Findings of Fact and 7 Conclusions of

Law, along with a 10-page Memorandum explaining its decision to approve both the condemnation, and the use of quick-take procedures. Resp. Appx. 210-232.

Specifically, the Court found that the subject property is located within the City's Redevelopment Project No. 1, has been part of a housing corridor study, that other HRA projects were undertaken in the area, and that the commuter rail station would be a benefit to the overall housing market in the City of Fridley. Resp. Appx. 215, Court Finding 26. Accordingly, the Court concluded that "[t]he proposed acquisition of the property by Petitioner serves a public purpose in that it permits the establishment of a Fridley commuter rail station and related facilities, which will further the goals and objectives of Petitioner, support Petitioner's redevelopment project, and provide necessary public transportation." Resp. Appx. 219, Conclusion 5.

With regard to Appellant's claim that the HRA was without authority to commence this condemnation, the Court indicated that it did not have to determine whether the HRA acting alone had the authority for this action because it was acting in concert with MN/DOT, ACRRA, BNSF, and other entities. Resp. Appx. 230. The Court noted that the various agreements and MOUs between these participants are clearly contemplated and authorized by the legislature as set forth in Minn. Stat. §§ 174.82 and 398A.06. The Court also recognized that under Minn. Stat. § 471.59, governmental agencies may act jointly to exercise any common power. The Court indicated that to the extent, if any, the HRA is exceeding its individual condemnation authority, it has ample

authority nonetheless by virtue of the multiple agreements with agencies which also possess condemnation authority.

Based on the foregoing evidence, the Court entered an Order granting the HRA's Petition, authorizing payment of quick-take proceeds in the amount of \$3,165,000.00 with the Court Administrator, and transferring title of the subject property to the HRA. Resp. Appx. 219-221. Accordingly, the HRA deposited the quick-take proceeds with the Court Administrator and took possession of the property.

In response to the Court's approval of the Condemnation Petition, Appellant brought a post-trial motion for a new trial and a direct appeal to the Court of Appeals. The HRA objected to the motion for a new trial on the basis that such motions are unavailable in condemnation actions and, therefore, the district court lacked jurisdiction. The Court of Appeals agreed with the HRA that there was no jurisdiction for the post-trial motion and the parties proceeded with the present appeal of the condemnation decision.

STANDARD OF REVIEW

Great weight must be given to the determination of the condemning authority, and "[the Court of Appeal's] review in a condemnation case is very narrow. Hous. & Redev. Auth. v. Walser Auto. Sales, Inc., 630 N.W.2d 662, 666 (Minn. App. 2001); Pipestone v. Halbersma, 294 N.W.2d 271, 273-274 (Minn. 1980). If it appears that the record contains some evidence that the taking serves a public purpose, there is nothing left for the courts to pass upon. Pipestone, 294 N.W.2d at 273. To establish that a taking is

“necessary” for purposes of a condemnation petition, “[a]bsolute necessity is not required...it is sufficient that ‘the proposed taking is reasonably necessary or convenient for the furtherance of a proper purpose.’” County of Dakota v. City of Lakeville, 559 N.W.2d 716, 720 (Minn. App. 1997). “The court is precluded from substituting its own judgment for that of the public body as to what may be necessary and proper to carry out the purpose of the plan.” Walser, 630 N.W.2d at 666.

The rationale for this narrow scope of review is that “the determinations of the condemning authority are regarded as legislative decisions which will be overturned only when they are ‘manifestly arbitrary or unreasonable.’” Lundell v. Coop. Power Ass’n, 707 N.W.2d 376, 380-81 (Minn. 2006). “Thus, there are two levels of deference paid to the condemnation decisions: the district court gives deference to the legislative determination of public purpose and necessity of the condemning authority and the appellate courts give deference to the findings of the district court, using the clearly erroneous standard.” Id.; see also Walser, 630 N.W.2d at 666 (“Public purpose and necessity are questions of fact, and the district court’s decisions on these matters will not be reversed unless clearly erroneous.”).

ARGUMENT

I. THE DISTRICT COURT CORRECTLY CONCLUDED THAT THE ACQUISITION SERVED A PUBLIC PURPOSE AND WAS WITHIN THE HRA’S AUTHORITY.

On appeal, Appellant reiterates the contention that the HRA lacked a public purpose and authority to take Appellant’s property because it did so for a “state purpose,”

as a “mere conduit,” and “will neither own nor control the property it is taking.” (App. Br., pp. 13-14, 16). This argument, however, is premised on four flawed assumptions: (1) that there can only be one public purpose for a condemnation and that authority to condemn derives from such singular purpose; (2) that there exist separate and distinct public purposes for the state and other governmental entities; (3) that the condemning authority must be the end-user, owner, operator or possessor of the condemned property; and (4) that MN/DOT did not delegate its authority to the HRA.

A. The taking serves multiple public purposes that bring it within the HRA’s statutory condemnation authority.

Appellant makes the unavailing argument that the only public purpose for the condemnation is to facilitate a commuter rail station and that the HRA lacks authority to condemn for this purpose. This argument, however, ignores the interplay between the condemnation statute and the HRA’s enabling statute, and disregards the multi-agency nature of such an extensive project.

Eminent domain may only be instituted for a public use or public purpose. Minn. Stat. § 117.012, subd. 2. Public use/public purpose is statutorily defined as:

- (1) the possession, occupation, ownership, and enjoyment of the land by the general public, or by public agencies;
- (2) the creation or functioning of a public service corporation; or
- (3) mitigation of a blighted area, remediation of an environmentally contaminated area, reduction of abandoned property, or removal of a public nuisance.

Minn. Stat. § 117.025, subd. 11(a) (emphasis added). The HRA's acquisition of the subject property for a Fridley commuter rail station clearly qualifies as a "public purpose" under subpart (1), as the evidence established that the station will operate for the benefit, enjoyment and convenience of the general public, and confirmed that the ultimate ownership, possession, and operation of the subject property will rest with the Metropolitan Council, a "public agency." Further, Minn. Stat. § 174.82, which governs commuter rail, provides that "[t]he planning, development, construction, operation, and maintenance of commuter rail track, facilities, and services are governmental functions, serve a public purpose, and are a matter of public necessity."

The statutory definition of "public purpose" continues, however, by stating that, "[t]he public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health, do not by themselves constitute a public use or public purpose." Minn. Stat. § 117.025, subd. 11(b) (emphasis added). The inclusion of subpart (b) in the statutory definition of public purpose necessarily implies that the presence of these additional purposes not only does not defeat a taking but will supplement the basis therefor, as long as they are in conjunction with a defined public purpose.

Here, the record clearly established that a Fridley commuter rail station serves the additional purposes of increasing economic development, furthering the HRA's redevelopment plans, and spurring housing projects. Paul Bolin testified that the condemnation of the subject property for a Fridley commuter rail station would create

mixed-income housing and re-development on and near the station site. (See, e.g., Tr., p. 59 (“[T]o further our development and redevelopment efforts in Fridley and provide transportation opportunities and additional housing opportunities for our residents, yes, we do need the property.”)). Specifically, Bolin noted that University Avenue Northeast and Highway 694 at River Road, both areas historically unattractive to investors and developers, would become prime locations for residential and commercial development given their proximity to the Fridley commuter rail station. (Tr., p. 50 (“[T]hrough the planning process it became very clear that if Northstar were already up and running, we would be able to put a really higher and better use along University Avenue.”)). Bolin also testified that the subject property is included in the HRA’s Redevelopment Project No. 1 and its redevelopment plan, and defined redevelopment district and, thus, the construction of a Fridley commuter rail station on the property would further the HRA’s redevelopment goals and objectives. (Tr., pp. 105-106, 120).

Contrary to Appellant’s assertion, the HRA clearly stated these additional purposes in its Condemnation Resolution and Petition. Specifically, HRA Resolution No. 2008-01, incorporated by reference in the Petition, expressly provides that “[t]he establishment of a Fridley commuter rail station and related facilities will further the goals and objectives of the HRA, and will further encourage development and redevelopment of the area surrounding the commuter rail station, making the acquisition of land for the construction of the commuter rail station and related facilities a public purpose for the HRA.” Resp. Appx. 168-170 (emphasis added).

These additional purposes bring the commuter rail project within the purview of the HRA's condemning authority:

- (a) an authority may, within its area of operation, acquire real or personal property or any interest therein by...the exercise of eminent domain, in the manner provided by chapter 117, acquire real property which it may deem necessary for its purposes, after the adoption by it of a resolution declaring that the acquisition of the real property is necessary:
 - (1) to eliminate one or more of the conditions found to exist in the resolution adopted pursuant to section 469.003 or to provide decent, safe, and sanitary housing for persons of low and moderate income; or
 - (2) to carry out a redevelopment project.
- (b) Real property needed or convenient for a project may be acquired by the authority for the project by condemnation pursuant to this section.

Minn. Stat. § 469.012, subd. 1g (emphasis added).

Appellant's rigid interpretation that there can only be one public purpose and that this singular purpose dictates condemnation authority would render it impossible to engage in large-scale, multi-agency projects like the Northstar Rail Line. Indeed, this interpretation would require MN/DOT, which Appellant claims has "sole authority to plan, develop, construct, operate, and maintain commuter rail track, facilities, and services," to independently condemn property for, fund, construct, and operate the entire Northstar Rail. Such an interpretation is not only absurd but is contrary to public policy favoring cooperation and shared responsibility among public agencies.

Because the HRA has authority to condemn in furtherance of a redevelopment project and the evidence clearly establishes that redevelopment is an additional public purpose for the condemnation, there is no merit to Appellant's argument that the HRA lacked a public purpose or authority to take its property, and the district court's condemnation decision must be upheld.

B. Public agencies can have common public purposes for condemnation.

Appellant's argument is also based on the faulty premise that "there exist separately delineated purposes for the state, for municipalities, and for certain, authorized individuals." App. Br., p. 13. To support this proposition, Appellant relies on Minn. Stat. § 117.035, which provides:

If such property be required for any authorized purpose of the state, the proceeding shall be taken in the name of the state by the attorney general upon request of the officer, board, or other body charged by law with the execution of such purpose; if by a corporation or other body, public or private, authorized by law to exercise the power of eminent domain, in its corporate or official name and by the governing body thereof; and if by an individual so authorized, in the individual's own name.

The statutory language does not mention much less prescribe separate and distinct purposes for the state, municipalities, and individuals and, instead, simply addresses by whom a condemnation action should be instituted. Indeed, the phrase "upon request of the officer, board, or other body charged by law with the execution of such purpose" counters Appellant's interpretation by suggesting that an authorized purpose of the state can be executed by other entities or government bodies, and that the state, by and through

the attorney general, is a required participant only if requested by the executing entity or government body. Further, the statute in no way proscribes the state, municipalities, or other entities from having common public purposes. Accordingly, Appellant's argument is without merit and the district court properly concluded that the HRA's condemnation was based on a valid public purpose.

C. Minnesota law does not require the condemning authority to be the end user, owner, operator, or possessor of the taking.

Another flawed premise upon which Appellant relies is that a condemning authority cannot engage in a "conduit condemnation," i.e., take property and turn it over for ownership, operation, or use by another public entity. Stated differently, Appellant erroneously asserts that the condemning authority must also be the end-user, owner, operator, or possessor of the condemned property.

Public use/public purpose is statutorily defined as:

- (1) the possession, occupation, ownership, and enjoyment of the land by the general public, or by public agencies;
- (2) the creation or functioning of a public service corporation; or
- (3) mitigation of a blighted area, remediation of an environmentally contaminated area, reduction of abandoned property, or removal of a public nuisance.

Minn. Stat. § 117.025, subd. 11(a) (emphasis added).

Clearly, the condemnation statute by its definition of "public purpose" contemplates "conduit condemnations" and does not require the condemning authority to be the end-user, owner, operator, or possessor of the acquired property. Subpart (1) of

section 117.025 does not focus on to whom the public purpose belongs, but rather on whether the public will be the ultimate beneficiary of the condemnation. The fact that the definitional language provides for possession, occupation or ownership “by public agencies” rather than “by the public agency” or “by the condemning authority” contravenes Appellant’s narrow proffered interpretation. As the district court recognized:

Had the Legislature intended this result [Appellant’s interpretation], it could easily have done so by inserting language into §§ 117.012 and 117.025 requiring the condemning authority to also be the ultimate user of the acquired property. § 117.025, subd. 11(a) demonstrates that the Legislature knows how to use the word “exclusively.” Its absence from the very next clause in subdivision 11(a)(1) is noteworthy.

Resp. Appx. 230.

In addition, Minnesota courts have not imposed an end-user requirement as part of a public purpose analysis. Resp. Appx. 227. To the contrary, the Minnesota Court of Appeals recently reached the opposite conclusion:

We do not read our takings jurisprudence to make a distinction based on whether the entity that actually develops the property for a public purpose is a public or private entity. Rather, we read existing law to focus on whether the proposed use is public or not.

City of Granite Falls v. Soo Line Railroad Co., 742 N.W.2d 690, 698 (Minn. App. 2007), review granted (Minn. Mar. 18, 2008). Similarly, the statute governing commuter rail stations explicitly permits the State, by and through MN/DOT, to enter into agreements with other public entities to carry out activities relating to “[t]he planning, development,

construction, operation, and maintenance of commuter rail track, facilities, and services[.]” Minn. Stat. § 174.82.

Appellant’s sole authority for the proposition that “conduit condemnations” are prohibited is a 1958 Minnesota Attorney General Opinion that is readily distinguishable from the present action. There, the Attorney General was asked to consider whether the City of Thief River Falls could condemn private property located outside the city limits for the purpose of conveying it to the Minnesota Department of Highways for the construction of roadside parking and a historic monument. See App. Add. 01. The purposes for which cities could condemn private property at that time were specifically enumerated by statute, and creation of roadside parking and a historic monument was not among these purposes. Id. Accordingly, the Court concluded that the condemnation was unauthorized because condemnation for that proposed purpose was not among the designated purposes for which a city could take property. App. Add. 03.

In contrast, the Fridley station and commuter rail project are within the purview of the HRA’s statutory condemnation authority, which permits acquisition by eminent domain “to carry out a redevelopment project.” Minn. Stat. § 469.012, subd. 1g (“Real property needed or convenient for a project may be acquired by the authority for the project by condemnation pursuant to this section.”). Because, as discussed infra Section I.A., the HRA has authority to condemn in furtherance of a redevelopment project and the evidence establishes that redevelopment is an additional public purpose for the condemnation, Appellant’s reliance on the Attorney General opinion is misplaced.

Consequently, Appellant's "conduit condemnation" argument fails and the condemnation decision is consistent with and supported by Minnesota law.

D. The HRA properly acquired the subject property on behalf of other governmental entities.

Appellant argues that MN/DOT "has not delegated any authority, eminent domain or other, to Fridley HRA" and that the memorandum of understanding between the two "falls fatally short of an actual delegation."⁴ App. Br., pp. 19-20. This argument is premised on the faulty assumption that there is a single and exclusive way to delegate authority. However, the law does not support such an unduly formalistic approach.

Minn. Stat. § 174.82 expressly contemplates that MN/DOT "may enter into a memorandum of understanding or agreement with a public or private entity...to carry out [commuter rail] activities." See Resp. Appx. 227 ("Indeed, the statute appears to clearly provide to the contrary [of Respondent's position] and to recognize the complexity of commuter rail projects and the necessity for MnDOT to involve many and various public agencies, bodies, and private businesses in order to fulfill its legislative mandate."). Contrary to Appellant's argument, the statute does not prescribe any specific format, terminology, or parameters for the memorandum of understanding or agreement. Cf. App. Br., p. 20 (arguing that the memorandum of understanding between MN/DOT and the HRA was too general and did not contain the term "designee").

⁴ It is important to note that Appellant cites no legal authority for its assertions that the memorandum of understanding between MN/DOT and the HRA "falls fatally short of an actual delegation" and that "[t]he use of the term 'designee' in the memorandum of understanding with Fridley HRA is not only significant, but dispositive." App. Br., p. 20.

In addition, “[t]wo or more governmental units, by agreement entered into through action of their governing bodies, may jointly or cooperatively exercise any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised.” Minn. Stat. § 471.59, subd. 1. An agreement under section 471.59 “may provide for the exercise of such powers by one or more of the participating governmental units on behalf of other participating units.”⁵ *Id.* (emphasis added). The only required terms are the purposes of the acquisition, the powers to be exercised, and the funding of the acquisition. *See* Minn. Stat. § 471.59, subs. 2-3. Indeed, Minnesota courts have adopted an informal and flexible approach to such agreements, recognizing that they need not even be in writing so long as “the intent of the parties to perform...is clear from their actions.” *Renstrom v. Indep. School Dist. No. 261*, 390 N.W.2d 25, 29 (Minn. App. 1986).

Here, it is undisputed that the power of eminent domain is common to the HRA, ACRRRA, and MN/DOT, and both ACRRRA and MN/DOT have entered into memoranda of understanding with the HRA. *See* Resp. Appx. 146-147, 188-191; *see, e.g.*, Minn. Opp. Atty. Gen. 1007, 1983 Minn. AG. LEXIS 13 (May 9, 1983) (authorizing joint exercise of powers by city and surrounding towns to acquire a telephone exchange). Resp. Appx. 233-235. These agreements provide that the acquisition is for the dual

⁵ This provision expressly counters Respondent’s argument that the condemnation action is somehow procedurally deficient because MN/DOT and/or ACRRRA are not named Petitioners, and the Attorney General did not commence the proceedings. Similarly, Appellant’s reference to Section 117.016 regarding the “joint acquisition of land” is inapposite as MN/DOT and the HRA are not apportioning the subject property between them.

purposes of constructing a commuter rail station and furthering the HRA's redevelopment plans and projects; that the HRA will exercise the powers of eminent domain on behalf of MN/DOT and ACRRA; and that funding will be provided by the HRA with the possibility for future reimbursement. See Resp. Appx. 146-147, 188-191. Further, the signatories' intent to have the HRA acquire the subject property on behalf and in furtherance of their interests in the Fridley station project is apparent from their conduct in assisting with reimbursement efforts, providing technical support, and entering collateral agreements related to the Fridley station. See Resp. Appx. 188-201.

Accordingly, the Court correctly concluded that the HRA "has ample authority [] by virtue of the multiple agreements with agencies which also possess condemnation authority."

E. Appellant's purported newly discovered evidence was neither material nor likely to have a "probable effect on trial."

Finally, an examination of Appellant's purported newly-discovered evidence reveals that it consisted of nothing more than innocuous emails. In fact, the exchange between MN/DOT representatives Mike Schadauer and Bob McFarlin, simply reaffirms the HRA's position that MN/DOT is statutorily permitted to delegate its commuter rail authority. Accordingly, this evidence would not have bolstered Appellant's position nor altered the district court analysis and, thus, is neither material nor likely to have impacted the proceedings. See Gruenhagen v. Larson, 246 N.W.2d 565, 569 (Minn. 1975) (recognizing that, to warrant a new trial, newly discovered evidence must be likely to have a "probable effect on a new trial" and not merely cumulative).

For the foregoing reasons, Appellant's arguments are unavailing and contrary to Minnesota law, and the district court properly concluded that the HRA's acquisition of the subject property served a public purpose and was within its authority.

II. THE EVIDENCE SUPPORTS THE CONCLUSION THAT THE TAKING IS NECESSARY.

A. Acquisition of the subject property is necessary to further the public purpose.

Appellant argues that the taking constitutes an unnecessary "stockpiling" because "a Fridley station has since been excluded and there are not currently approved or funded plans to re-insert a Fridley station into the project." App. Br., p. 28. Appellant's argument, however, misconstrues both the law and the evidence in the record.

In support of its argument, Appellant relies exclusively on Regents of the Univ. of Minn. v. Chicago & Nw. Transp. Co., 552 N.W.2d 578 (Minn. App. 1996), a case that is clearly distinguishable. In Regents, the University of Minnesota filed a petition to acquire property by eminent domain, which the district court dismissed on the basis that the proposed condemnation was not "necessary" due to the University's failure to articulate a purpose for which it intended to use the property. Id. at 579. On appeal, the Court noted the following:

The record indicates that the University has not included this property on its master plan for its anticipated development of the Twin Cities campus...[T]he Board of Regents has not yet approved a single project for the property. Finally, because of soil contamination problems, it is undisputed that the University could not currently use the property for any of its proposed uses. The parties have not yet agreed on a remediation plan; decontamination of the property will

require from approximately two to seven years to complete. At least one University official has described the time period before the University would use the property as ‘potentially indefinite.’

Id. at 580. Accordingly, the Court concluded that that University’s proposed condemnation could not support the assertion of necessity because it was for speculative “stockpiling” purposes. Id. at 579-580.

Following the Regents decision, the Court of Appeals “clarified that necessity cannot be thwarted by alleging that the purpose for condemning the property is too speculative if in fact the project is officially supported by the governmental entity and ordinary agreements are in place to realize the project.” City of Granite Falls v. Soo Line Railroad Co., 742 N.W.2d 690, 699 (Minn. App. 2007). Moreover, the Court recognized that “[t]he rule established in Regents...is limited by the extreme facts present in that controversy,” and that “all that is required is the demonstration of a ‘necessity either now or in the future.’” Itasca County v. Carpenter, 602 N.W.2d 887, 889-90 (Minn. App. 1999).

Here, the evidence offered by the HRA demonstrated that a Fridley commuter rail station is being actively planned, developed, and implemented. As Tim Yantos testified, the Fridley station has been identified in every definition of the Northstar Rail Project and the selection of this particular location was the result of a “rigorous siting process.” Further, Yantos indicated that “there are many people who are working and many entities who are working on trying to make this a successful station for the project.” (Tr., pp. 37, 39). Similarly, Paul Bolin testified to weekly planning meetings in preparation for the

construction and operation of the Fridley station. (Tr., p. 128). Indeed, the Fridley station is recognized as an integral component of the larger Northstar Project. (Tr., p. 37) (recognizing that the Fridley station is “very, very important to the overall success of moving people from one destination to another destination in the corridor.”)).

Moreover, the definite and imminent nature of the project is evidenced by the receipt of formal approval of the location by BNSF, the recent construction of the underpass tunnel adjacent to the proposed Fridley station, and as well as the “quick take” of Respondent’s property, for which \$3,165,000.00 was deposited with the Court. Both Tim Yantos and Paul Bolin testified that they fully expect the Fridley station to be constructed by 2009 and believe that progress to that end is being made. (Tr., pp. 96, 128).

In addition, there is no merit to Respondent’s assertion that the Fridley station has been “excluded” from the Project and has been relegated to a mere “place-holder.” As the testimony indicated, while the federal government recently pulled the Fridley station from the Federally Funded Project, it remains part of the larger project. (Tr., pp. 28-29, 36-37 (testimony of Tim Yantos clarifying and defining the word “project”)). Mr. Yantos testified that the Anoka County Rail Authority funded the construction of the underpass tunnel adjacent to the Fridley station site, and various regional, county, and state agencies have been working to procure funding for the Fridley station. (Tr., pp. 40-43). Further, the HRA has deposited \$3,165,000.00 with the district to fund the condemnation. Funding has therefore been obtained for the first two important steps

toward completing the Fridley station. Appellant's reference to selective quotes without a larger context is simply insufficient to overcome the determination of necessity. City of Duluth v. State, 390 N.W.2d 757, 764 (Minn. 1986) (recognizing that to overcome a condemning authority's finding of necessity there must be overwhelming evidence that the taking is not necessary).

There is nothing speculative about the Fridley station project and the subject property has already been used for the underpass construction. It is certainly not being stockpiled indefinitely as in Regents. The evidence presented demonstrates both that the HRA exercised judgment rather than mere whim or caprice in selecting the subject property for condemnation, and that acquisition of the subject property is necessary to further the public purpose of a Fridley commuter rail station. Thus, the Court properly concluded that the "necessity for taking has been shown." Resp. Appx. 224.

CONCLUSION

For the foregoing reasons, this Court should affirm the district court's condemnation decision in its entirety.

Dated: July 23, 2008

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