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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1350**

In the Matter of the Condemnation of Certain Land for
Purposes of Construction of Public School Facilities
Independent School District #709, petitioner,
Respondent,

vs.

Silver Eagle Properties, LLC, et al.,
Appellants,

Wells Fargo Bank, N. A., et al.,
Respondents Below.

**Filed July 9, 2012
Affirmed
Johnson, Chief Judge**

St. Louis County District Court
File No. 69DU-CV-11-781

David R. Oberstar, Fryberger, Buchanan, Smith & Frederick, P.A., Duluth, Minnesota
(for respondent)

Charles H. Andresen, Andresen & Butterworth, P.A., Duluth, Minnesota (for appellants)

Considered and decided by Johnson, Chief Judge; Chutich, Judge; and Crippen,
Judge.*

*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

JOHNSON, Chief Judge

A property owner appeals from a district court's approval of a quick-take condemnation in connection with the construction of a new elementary school building. The property owner argues that the school district did not demonstrate the necessity of acquiring the land and that the quick-take procedure was not warranted. We affirm.

FACTS

Independent School District No. 709 (hereinafter "the school district") recently planned and built a new elementary school in the city of Duluth, which is called Piedmont Elementary School. In 2009, during the planning stage, the school district sought to purchase land owned by Scott Kuiti that is adjacent to the property on which the school building was being built. In November 2010, the school board passed a resolution approving the acquisition of land owned by Kuiti. In December 2010, Kuiti transferred the land to a limited liability company named Silver Eagle Properties, LLC. Negotiations between the school district and Silver Eagle concerning a purchase did not result in an agreement.

In February 2011, the school district notified Kuiti and Silver Eagle of its intent to acquire some of Silver Eagle's property through eminent domain. In March 2011, the school district petitioned the district court for the condemnation of a 15,247 square-foot (approximately .35 of an acre) parcel of Silver Eagle's land. The four-sided parcel is west and north of the new school building. It is bounded on the north by Ensign Street, on the east by school property, and on the south and the west by a shopping center. The

school district's petition states that the land will be used "for purposes of slope, grade, parking and access to" the new school. The petition sought title and possession of the land through the statutory quick-take procedure. *See* Minn. Stat. § 117.042 (2010). Silver Eagle opposed the condemnation.

The case was tried to the district court in May 2011. The school district called one witness, Kerry Leider, its property and risk manager. Leider testified that acquisition of the land identified in the petition is necessary for semi-trailer trucks to properly access the school's loading dock, for the construction of retaining walls to manage the land's natural slope, for school gardens related to educational programs, for parking, and for student recesses. On cross-examination, Leider testified that it was unclear whether the land ultimately would be used for additional parking.

Silver Eagle called two witnesses. Vernon Swing, a traffic engineer, testified that the school district does not need Silver Eagle's land to permit semi-trailer access to the loading dock. Kuiti testified that he had recently seen semi-trailer trucks reach the school's loading dock by driving in reverse across school property.

In June 2011, the district court issued an order and memorandum in which it awarded the school district title to the land, on a quick-take basis, and awarded Silver Eagle compensation of \$76,200. Silver Eagle appeals.

DECISION

I.

Silver Eagle argues that the district court erred by finding that the condemnation of its property was necessary.

“Private property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured.” Minn. Const. art. I, § 13. “The first step in condemnation cases is to determine whether a project has a valid public purpose or public use. The next step in the analysis is [to determine] whether the taking is reasonably necessary to further that public purpose.” *State ex rel. Comm’r of Transp. v. Kettleison*, 801 N.W.2d 160, 164 (Minn. 2011) (citation omitted). In a district court action, the petitioning governmental agency has the burden of proving that a taking is necessary. *Regents of Univ. of Minn. v. Chicago & N. W. Transp. Co.*, 552 N.W.2d 578, 580 (Minn. App. 1996), *review denied* (Minn. Nov. 20, 1996). The determinations of a condemning authority on these questions are deemed “legislative decisions,” which will be overturned “only when they are manifestly arbitrary or unreasonable,” *Lundell v. Cooperative Power Ass’n*, 707 N.W.2d 376, 381 (Minn. 2006) (quotation omitted), which means “capriciously, irrationally, and without basis in law or under conditions which do not authorize or permit the exercise of the asserted power,” *Itasca Cnty. v. Carpenter*, 602 N.W.2d 887, 889-90 (Minn. App. 1999) (quotation omitted). This court applies a clearly erroneous standard of review to a district court’s determination of necessity. *Lundell*, 707 N.W.2d at 381.

The main issue in this case is whether the condemnation of some of Silver Eagle’s property was necessary to complete construction of the new school building. “[T]he requisite necessity for a taking to accomplish a public purpose is not absolute necessity; rather, it is enough to find that the proposed taking is reasonably necessary or convenient for the furtherance of a proper purpose.” *Kettleison*, 801 N.W.2d at 167 (quotations and

alteration omitted). “To overcome a condemning authority’s finding of necessity there must be overwhelming evidence that the taking is not necessary.” *Lundell*, 707 N.W.2d at 381. “The mere suggestions of possible alternatives to the condemning authority’s plan will not in itself support a finding of arbitrariness.” *Id.* (quotation omitted).

The district court supported its general finding of necessity by determining that the school district “has definite plans for developing what it reasonably asserts is a proper and safe access for delivery trucks, as well as sloping and grading.” The district court further found that the school district’s “plan for green space as a resource for environmental learning is sufficiently definite and capable of fruition in the near future.” The district court determined that “[t]he plan for possibly developing parking is a speculative and indefinite purpose,” but the district court explained that this uncertainty is not fatal to the school district’s petition.

The evidence presented at trial supports the district court’s finding of necessity. The school district articulated a specific plan for the land owned by Silver Eagle, which is reflected in the school board’s resolution. In addition, Leider testified that it is necessary to build retaining walls to manage the land’s natural slope, to allow semi-trailer trucks to properly access the school’s loading dock, to create gardens for educational purposes, and to provide outdoor space for student recesses. Silver Eagle’s witnesses focused only on one aspect of Leider’s testimony, the matter of access to the school’s loading dock; Silver Eagle did not present any evidence about slope and grading issues. With respect to the loading dock, Silver Eagle attempted to establish only that it is possible for a semi-trailer truck to back up to the school’s loading dock without the condemnation of its property.

But this argument is undermined by the testimony of Silver Eagle's own witness. On cross-examination, Swing testified that, without condemnation, a semi-trailer truck inevitably would cross a portion of Silver Eagle's property while backing up. In addition, such a maneuver might endanger school children who might be on the school's driveway. The district court rejected Silver Eagle's evidence. Silver Eagle has failed to persuade this court that the district court's finding is clearly erroneous.

Silver Eagle relies on the opinion in *Regents*, in which the district court denied the University of Minnesota's petition to condemn a 30-acre tract of land. 552 N.W.2d at 579. This court affirmed the district court on the ground that the University had failed to prove necessity. *Id.* at 581. We noted that the University did not include the property on its master plan for campus development, had "not yet approved a single project for the property," and had not determined a time frame for developing the property. *Id.* at 580. Some University officials testified that land reclamation would take two to seven years, but another official spoke of a "potentially indefinite" period of time before the University would develop the land. *Id.* This court concluded that the University could not acquire the land through condemnation for "speculative future use (stockpiling)." *Id.* Unlike the *Regents* case, however, the school district in this case articulated a plan, outlined specific uses for the land, and established a precise time frame for completing the project. *See id.* The school board passed a resolution that identified the purposes of the condemnation. *See City of Pipestone v. Halbersma*, 294 N.W.2d 271, 272, 274 (Minn. 1980) (reasoning that council resolution is "prima facie evidence of . . . taking as a means reasonably necessary to accomplish [public] use" to expand municipal airport).

The school district also established a precise schedule for its project. The school district petitioned for condemnation in March 2011 based on its plans to open the new school in September 2011. Our conclusion is not affected by the fact that Leider testified on cross-examination that additional parking may or may not be necessary. Even if the school district does not create additional parking spaces on the relatively small parcel that was acquired by condemnation, it has established that the condemnation is necessary.

Thus, the district court did not clearly err in its finding that the school district's condemnation is not "manifestly arbitrary or unreasonable" and, thus, is necessary.

II.

Silver Eagle also argues that the district court erred by permitting the school district to utilize the statute's "quick take" provisions. More specifically, Silver Eagle argues that the school district did not present any evidence to show that it has an immediate need for the land.

"The statutory scheme for eminent domain proceedings contemplates that the district court determine the necessity for the taking and then appoint commissioners to assess and award damages." *Alexandria Lake Area Serv. Region v. Johnson*, 295 N.W.2d 588, 590 (Minn. 1980); *see also* Minn. Stat. § 117.075, subd. 2 (2010). In that event, the commissioners are required to award damages and file a report of the award with the district court. Minn. Stat. § 117.085 (2010). The statutes also provide for an alternative process by which a petitioner may acquire title to property through condemnation before commissioners file a report of the award. Minn. Stat. §§ 117.042, .043 (2010). Use of this quick-take alternative is limited to cases in which the condemning authority can

“reasonably determine that it needs the property before the commissioners’ award could be filed.” *City of Minneapolis v. Wurtele*, 291 N.W.2d 386, 396 (Minn. 1980). We apply a clearly erroneous standard of review to a district court’s determination that a quick take is appropriate. *See Lundell*, 707 N.W.2d at 383.

In this case, the district court found that the school district “reasonably determined it needs the property to complete the Piedmont project before the beginning of the 2011-2012 school year.” This finding is supported by Leider’s testimony that the school district needed to acquire the land by late May or June 2011 in order to open up the new school by September 2011. He testified that the retaining walls already had been delayed for seven or eight months. Silver Eagle offered no evidence relevant to the school district’s time frame for development.

Thus, the district court did not clearly err by granting the school district’s request for quick-take acquisition.

Affirmed.