*This opinion is nonprecedential except as provided by*
*Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A22-0805**

Richard Heggemeyer,
Appellant,

vs.

Spalding Township,
Respondent,

Berg Family Property, LLC,
Respondent.

**Filed February 21, 2023**
**Reversed and remanded**
**Cochran, Judge**

Aitkin County District Court
File No. 01-CV-20-815

Matthew Earl Anderson, Anderson Law Group PLLC, St. Paul, Minnesota (for appellant)

Scott A. Witty, Hanft Fride, A Professional Association, Duluth, Minnesota (for respondent Spalding Township)

William T. Helwig, Rudy, Gassert, Yetka, Pritchett, & Helwig, a Fryberger Law Firm Practice Group, Cloquet, Minnesota (for respondent Berg Family Property, LLC)

Considered and decided by Cochran, Presiding Judge; Bjorkman, Judge; and Reilly, Judge.

## NONPRECEDENTIAL OPINION

**COCHRAN**, Judge

Appellant successfully petitioned respondent-township in 2020 to realign an access route, known as a cartway, over property owned by respondent-LLC. Appellant now challenges the district court's calculation of damages that appellant owes to respondent-LLC resulting from the realignment of the cartway. Under Minnesota law, damages in cartway proceedings generally are measured by determining the difference in the fair market value of the burdened property before and after the establishment of the cartway. *See Silver v. Ridgeway*, 733 N.W.2d 165, 169 (Minn. App. 2007); *County of Hennepin v. Laechelt*, 949 N.W.2d 288, 291 (Minn. 2020).[1] Because the district court erred by not applying the proper legal standard in calculating the damages award, we reverse and remand.

## FACTS

In 1999, respondent Spalding Township granted appellant Richard Heggemeyer's petition to establish a cartway to connect his landlocked property to a public road over property owned by Linda and Martin Berg. Heggemeyer paid $15,000 in damages to Linda and Martin Berg at that time. *See* Minn. Stat. § 164.07, subd. 5 (providing the right to damages sustained through establishment of a road by a town board); Minn. Stat. § 164.08,

[1] In *Silver*, this court explained that establishment of a cartway is an exercise of eminent domain. 733 N.W.2d at 169. In *Laechelt*, the supreme court explained the measure of damages in an eminent-domain proceeding. 949 N.W.2d at 291; *see also* Minn. Stat. § 164.07, subd. 5 (2022).

subd. 2(c) (2022) (providing that damages must be paid by the petitioner before a cartway is opened). In 2011, Linda and Martin Berg deeded their property to a revocable trust. In 2015, the property was transferred from the trust to respondent Berg Family Property LLC (the Bergs).

About ten years after the township granted Heggemeyer's petition for a cartway, Heggemeyer began efforts to construct an access road on the cartway but learned that construction along the approved route would impact a significant amount of wetlands. *See Heggemeyer v. Town Bd. of Supervisors*, No. A14-1329, 2015 WL 2185083, at *1 (Minn. App. May 11, 2015) (detailing this factual background). Heggemeyer thereafter petitioned the township for an alteration of the cartway. *Id.* The township granted an alteration of the cartway subject to certain conditions, including that the altered cartway be developed within two years. *Id.* When construction was not completed within two years, the township vacated the alteration of the cartway, leaving in place Heggemeyer's right to the original cartway. *Id.* at *1-2.

In September 2020, Heggemeyer again petitioned for an alteration of the original cartway. The 2020 petition also requested a change in alignment to avoid impacting wetlands. The proposed alteration would "run along" an old railroad bed and be somewhat longer and wider than the original route. The township granted the petition and ordered Heggemeyer to pay $30,095.88 in damages to the Bergs resulting from the alteration of the cartway. The township calculated the Bergs' damages by adding together the following cost estimates: the county-assessed value of the amount of land included in the original cartway ($2,948), the tax-assessed value of "additional footage" ($2,147.88), and the

estimated value of the railroad bed ($32,500).[2] The township also credited Heggemeyer for half of the $15,000 damages payment he made to Linda and Martin Berg for the cartway granted in 1999 (-$7,500). And the township awarded itself approximately $8,045 in damages to cover the costs it had incurred in connection with the proceedings for the establishment of the alternate cartway. *See* Minn. Stat. § 164.08, subd. 2(c).

Heggemeyer appealed the township's damages award to the district court. *See* Minn. Stat. § 164.07, subd. 7 (2022). Heggemeyer argued that the township's damages award to the Bergs "greatly exceeds the damage to the land over which the cartway was granted" and that "the effect of the same on the surrounding land has no support in the record." Heggemeyer did not challenge the damages awarded to the township. In response, the township argued that the amount of the damages awarded to the Bergs was fair and reasonable. The Bergs were then joined as a party defendant.

In September 2021, the district court held a de novo trial on the damages awarded to the Bergs. *See id.*, subd. 8 (2022); Minn. Stat. § 117.175, subd. 1 (2022). At the trial, the district court heard testimony from three witnesses called by the Bergs.

First, the district court heard testimony from the daughter of Linda and Martin Berg, who is also the current trustee of the Berg family estate. She testified that the Berg family uses the property now designated for the cartway for four-wheeling, hiking, hunting, rock picking, snowmobiling, and parking vehicles. She further testified that she understood that

---

[2] In establishing the alteration of the original cartway, the township agreed to expand the cartway from 1,386 to 1,470 feet in length and from 33 to 66 feet in width. The township's $2,948 estimate covers the original 1,386-foot length and the new 66-foot width. The $2,147.88 estimate covers the "additional footage" of 84 feet in length.

she could continue to use the land designated as the realigned cartway after Heggemeyer builds an access road on that route but she noted that her use would be "different." She gave no testimony regarding the fair market value of the Bergs' land or any testimony regarding how much value was lost by the establishment of the realigned cartway.

Second, the district court heard testimony from the district manager for the Aitkin County Soil and Water Conservation District, who was involved in charting the altered cartway route. He testified that the altered cartway crosses over an old field and a railroad bed and follows the only possible route that provides access to Heggemeyer's property without affecting any wetlands. He did not testify as to the value of the Bergs' land.

Third, the district court heard testimony from a construction contractor. The contractor provided an estimate of the "value" of the existing railroad bed that the township used as part of its calculation of the damages award. He arrived at the "value" by estimating how much it would cost to build a new cartway path and subtracting certain cost inputs. He estimated the cost of a new cartway path to be $65,000 and the "value" of the existing railroad bed to be $32,500. He determined that the existing railroad bed is worth $32,500 because Heggemeyer will save approximately that amount in avoided construction costs when he builds a new road over the existing railroad bed to access his property via the cartway. On cross-examination, the contractor testified that he did not know the market value of the strip of land underlying the existing railroad bed.

In addition to the testimony of the three witnesses, the district court received 12 exhibits. The exhibits included: Heggemeyer's 2020 petition to alter the cartway route; the township's resolution and order; the township's damages award and a line-item breakdown

of that calculation; a map of the Bergs' property; a written copy of the contractor's construction estimate; and documents showing the successive ownership of the Bergs' property over time. No appraisal of the Bergs' property, either before or after the establishment of the realigned cartway, was offered into evidence.

On January 5, 2022, the district court issued findings of fact, conclusions of law, an order for judgment, and a judgment in which it determined that the township had properly calculated the damages it awarded to the Bergs. The district court also determined that Heggemeyer had "failed to meet his burden to show that [the township's] determination of damages . . . was done so against the evidence, that [the township] proceeded on an erroneous theory of law, or that [the township] acted arbitrarily and capriciously against the best interests of the public." The district court therefore awarded the Bergs $30,095.88 in damages, the same amount previously awarded by the township. The district court also awarded approximately $8,045 in damages to the township, the same amount as previously awarded by the township.

On February 1, 2022, Heggemeyer filed a motion for amended findings. In his motion, Heggemeyer sought to reduce the damages awarded to the Bergs on the grounds that the Bergs had failed to meet their burden to prove they suffered any damages as a result of the establishment of the realigned cartway and that the district court had improperly relied on the township's damages determination rather than conducting a true de novo trial. The Bergs opposed the motion.

After a hearing, the district court denied the motion for amended findings. In an accompanying memorandum, the district court rejected Heggemeyer's assertion that it had

erred by failing to conduct a de novo review of the damages owed. The district court concluded that it had properly used the township's award only as evidence of the land's value and that this evidence, "in conjunction with the record in its entirety," was sufficient to support the damages award.

Heggemeyer appeals the district court's damages award.

## DECISION

Heggemeyer argues that the district court erred as a matter of law by incorrectly calculating the damages he owes to the Bergs because the calculation is not based on any change in the fair market value of the Bergs' property resulting from the establishment of the cartway. The township and the Bergs disagree. The Bergs also assert that Heggemeyer's appeal is not properly before this court. We first address this jurisdictional argument and then consider Heggemeyer's challenge to the district court's damages award.

### I. Heggemeyer has the right to appeal the district court's damages award.

The Bergs argue that Heggemeyer's appeal should be dismissed because he is not the real party in interest and has failed to join an indispensable party. *See* Minn. R. Civ. P. 17.01 (requiring every action to be "prosecuted in the name of the real party in interest"); Minn. R. Civ. P. 19.01 (describing "persons to be joined if feasible"). Specifically, the Bergs argue that Heggemeyer is not the real party in interest because he holds title to the property benefitted by the cartway as co-trustee of a trust rather than in his individual capacity. Relatedly, the Bergs argue that Heggemeyer failed to join an indispensable party—his co-trustee. These arguments are unavailing.

First, Heggemeyer has the right to appeal the damages award to this court because the district court entered a final judgment against him in his personal capacity. Under Minn. R. Civ. App. P. 103.03(a), a final judgment is appealable to this court.

Second, the Bergs did not argue before the district court that Heggemeyer is not the real party in interest or that he had failed to join an indispensable party. Because the Bergs raise these arguments for the first time on appeal, we need not consider them. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (explaining that appellate courts generally only consider issues that the record shows were presented to and considered by the district court). Even so, we note that Minn. R. Civ. P. 17.01 provides that a trustee "may sue in that person's own name without joining the party for whose benefit the action is brought." Therefore, Heggemeyer could bring this action in his personal capacity and is the real party in interest. Accordingly, we conclude that the Bergs' jurisdictional arguments do not warrant dismissal or prevent this court from considering this appeal.[3]

## II. The district court erred in calculating the damages awarded to the Bergs.

Heggemeyer challenges the district court's damages award, arguing that the district court erred as a matter of law when it included the estimated value of the railroad bed in its damages award as a separate line item and did not base the damages solely on the diminution in the market value of the Bergs' land resulting from the cartway.

---

[3] The Bergs also argue that the damages award should be *increased* because the district court incorrectly discounted it based on Heggemeyer's original damages payment. Because the Bergs also raise this argument for the first time on appeal, we do not consider it. *See Thiele*, 425 N.W.2d at 582; *see also Penn Anthracite Mining Co. v. Clarkson Sec. Co.*, 287 N.W. 15, 17 (Minn. 1939) (explaining that a respondent must file a cross-appeal to challenge a decision being appealed).

Under Minn. Stat. § 164.08, subd. 2(a) (2022), a town board must "establish, at the request of a landowner, a cartway for access from a public road to a tract of land containing at least five acres that otherwise has no access." *Kennedy v. Pepin Twp. of Wabasha Cnty.*, 784 N.W.2d 378, 380 (Minn. 2010). "The town board may select an alternative route other than that petitioned for if the alternative is deemed by the town board to be less disruptive and damaging to the affected landowners and in the public's best interest." Minn. Stat. § 164.08, subd. 2(a). The petitioning landowner is responsible for the construction and maintenance of the cartway unless the town board determines that building the cartway is in the public interest. *Id.*, subd. 2(d) (2022).

The petitioning landowner is also responsible for damages caused by the establishment or alteration of the cartway. Under Minnesota law, the town board must assess and award damages to be paid by the petitioning landowner to any burdened landowners before the new cartway is opened. Minn. Stat. §§ 164.07, subd. 5, 164.08, subd. 2(c). "In ascertaining the damages which will be sustained by any owner, the town board shall determine the money value of the benefits which the establishment . . . [of the road] will confer, and deduct the benefits, if any, from the damages, if any, and award the difference, if any[,] as damages." Minn. Stat. § 164.07, subd. 5. Once a town board has awarded damages, the damages award may be appealed to the district court. *Id.*, subd. 7.

An appeal to the district court of a town board's damages award is tried like an eminent-domain appeal. *Id.*, subd. 8. In eminent-domain proceedings, damages reimburse a landowner for the value of the land actually taken and any damages to the landowner's remaining property resulting from the taking. Minn. Stat. § 117.175, subd. 1; *Laechelt*,

949 N.W.2d at 291. The landowner has the burden to prove any damages. Minn. Stat. § 117.175, subd. 1.

Damages in partial taking cases are measured by the "before and after" rule: "the difference between the market value of the entire tract immediately before the taking and the market value of what is left after the taking." *Laechelt*, 949 N.W.2d at 291 (quotation omitted). To determine the fair market value of the property, courts may "consider any competent evidence that legitimately bears on the market value." *Id.* This may include "[e]vidence of any matter that would influence a prospective purchaser and seller in fixing the price" of the property. *Id.* (quotation omitted).

Appellate courts review a district court's decision to award damages for an abuse of discretion. *In re Minnwest Bank Litig. Concerning Real Prop.*, 873 N.W.2d 135, 141 (Minn. App. 2015). But "the amount and extent of damages is a question of fact" that we review for clear error. *Id.* at 143 (quotation omitted). And we review a district court's method of determining damages de novo. *Id.* at 144; *Snyder v. City of Minneapolis*, 441 N.W.2d 781, 789 (Minn. 1989) (explaining that "whether the [district] court's theory of valuation of damages is speculative or erroneous is a question of law").

The parties disagree as to the proper measure of damages in this case. Heggemeyer argues that damages must be measured by applying the "before and after" rule: comparing the fair market value of the Bergs' property before the partial taking to the fair market value of the property after the partial taking. He contends that improvements to the land, such as the railroad bed, are relevant only insofar as they affect the market value of the underlying property; they are not added as a separate measure of damages. And he argues

that the district court erred by itemizing the costs of improvements to the land (namely, the railroad bed) in calculating the damages award because these costs do not approximate the fair market value of the property.

Heggemeyer further asserts that the only concrete evidence of the fair market value of the property introduced at trial is the tax-assessed value of the land actually taken for the cartway, which totals approximately $5,095 in value.[4] Heggemeyer argues that calculation of the damages award should have ended there because the estimates totaling $5,095 comprise the only evidence in the record regarding the change in the market value of the Bergs' property arising from the establishment of the cartway. Finally, Heggemeyer argues that the district court's damages award was impermissibly speculative. *See Faust v. Parrott*, 270 N.W.2d 117, 120 (Minn. 1978) (explaining that damages need not be "calculable with absolute precision" but "must nevertheless be ascertainable with reasonable exactness and may not be the product of benevolent speculation").

The township and the Bergs agree that damages for a partial taking in a cartway proceeding are generally calculated based on any diminution in the fair market value of the burdened property, but they argue that the district court properly calculated damages because the "costs of existing improvements subject to the taking may be considered when making that calculation." In other words, they argue that the current value of existing

---

[4] This amount was calculated by adding the tax-assessed value of the strip of land originally designated for the cartway ($2,948) (expanded from 33 to 66 feet wide) and the value of "additional footage" added through the alteration ($2,147). Though Heggemeyer asserted in his brief that the only evidence of the value of the land taken for the cartway totaled $2,948, he revised that estimate upward at oral argument to include the value of the "additional footage" needed.

improvements to the land (in the form of the railroad bed) "has a legitimate bearing on market value and on the loss of value when the taking involves those improvements."

With this view in mind, the township and the Bergs argue that the district court properly awarded damages based on the testimony and documentary evidence received at trial. They emphasize the evidence presented at trial as to the loss of the Bergs' right to exclusive use of their property and the fact that the altered cartway route saves Heggemeyer "a considerable amount of money" in construction costs by avoiding nearby wetlands. And they argue that the district court's damages award should be affirmed because it "is not clearly erroneous such that it is shocking or a plain injustice." *See Minnwest*, 873 N.W.2d at 143 (explaining that appellate courts will not generally reverse a damages award "unless the failure to do so would be shocking or would result in plain injustice" (quotation omitted)). We are not persuaded by these arguments.

We conclude that the district court erred as a matter of law in assessing the damages owed to the Bergs. As both parties acknowledge, the correct standard for determining the measure of damages in this case is the difference between the fair market value of the property before and after the taking. *See Laechelt*, 949 N.W.2d at 291. This includes the value of the land actually taken for the cartway and any diminution in the value of the remaining land as a result. Minn. Stat. § 117.175, subd. 1; *id.* And while the district court *could have* considered any competent evidence bearing on the fair market value of the property when assessing the damages owed, the only competent evidence of fair market value *actually* presented at trial was the tax-assessed value of the land taken for the cartway, totaling $5,095.

The value of any existing improvements to the property may be factored into the damages calculation only to the extent that it impacts the fair market value of the property. *See Laechelt*, 949 N.W.2d at 291. In *State by Youngquist v. Wheeler*, for example, where the state condemned a strip of land (6.76 acres) across a farm to create an access road for a highway, an expert witness testified that the farm lost $12,000 in market value due to the establishment of the access road and further estimated that the value of the land actually taken *and* the cost of fencing needed to accommodate the road amounted to an additional $2,500. 230 N.W. 91, 93 (Minn. 1930). The jury's damages award included both estimates and an additional sum. *Id.* The supreme court reversed the damages award based in part on its determination that "[t]he necessity for additional fencing and the value of the land taken were elements to be taken into consideration in arriving at the depreciation in value of the farm as a whole, *but not to be added thereto*." *Id.* (emphasis added). The supreme court further explained that damages could be measured either by estimating "the depreciation in the market value of the farm as a whole" or "by taking the reasonable market value of the 6.76 acres taken, as one item, and the depreciation in the value of the remaining acreage as the other item." *Id.*

Here, while the value of the existing improvements may have *some* bearing on the fair market value of the Bergs' property, that value does not equate to or approximate an actual measure of fair market value. *See Minnwest*, 873 N.W.2d at 143 (explaining that "the best measure of market value is the actual purchase price paid by a willing buyer and accepted by a willing seller"). The district court therefore erred by adding the estimated value of the existing railroad bed to its calculation of damages as a separate line item. *See*

*Wheeler*, 230 N.W. at 93; *see also Faust*, 270 N.W.2d at 120 (explaining that a damages award may not be based on "benevolent speculation").

In sum, we conclude that the district court erred in calculating the Bergs' damages award because it included a separate measure of damages for existing improvements to the land (i.e., the railroad bed) and did not base the damages award on the actual fair market value of the land taken for the cartway and any diminution in the fair market value of the remaining property as a result.[5] We therefore reverse and remand to the district court to recalculate the damages by applying the proper legal standard, as set forth in this opinion, to the existing record.

**Reversed and remanded.**

---

[5] Because we agree with Heggemeyer that the district court incorrectly calculated the damages award, we need not reach his related argument that the district court erred by accepting the township's damages calculation without considering the damages de novo.