



“HUGE CHANGES IN CONDEMNATION LAW”
By Phillip “Rod” Krass

Introduction

by James R. Casserly

There have been dramatic changes in the law on condemnation which should substantially increase compensation to any owner or tenant of property that is being condemned. It will also be extremely difficult to assemble land for any major redevelopment project in an older city. These changes will make condemnation more expensive and will certainly impact developers attempting townhouse and condominium development in fully developed areas. The following article highlights the major changes to Minnesota's condemnation law.

Article

Spurred on by the 2005 United States Supreme Court decision in *Kelo v. City of New London*, which affirmed a local government's ability to condemn property for economic development, the Minnesota Legislature responded quickly and decisively. In the first major overhaul of the condemnation statute in many decades, the legislature created a new, much more property owner-friendly, set of rules. Among the many changes you will find for condemnations covered by this new statute, are the following:

The statute now specifically defines “blight,” for purposes of authorizing condemnation or for providing various methods of public financing to pay for the condemnation of blighted areas. In the recent Minnesota Court of Appeals case involving the condemnation of the Walser car dealership on Interstate 494 to make way for the Best Buy headquarters, the Minnesota Court of Appeals, affirmed by a divided Minnesota Supreme Court, determined that blight did not exist. The legislature decided to specifically define “blight” and required that a blighted area be an urban area where at least half of the buildings are structurally substandard. “Substandard,” according to Minnesota's new statute, means that the buildings have been inspected and cited for enforceable housing or building code violations involving specific structural aspects of the building itself, such as the roof, support walls, or beams. The cited violations must not have been remedied after two notices to the property owner. In addition, “blight” will not exist unless the cost to cure the violations is more than 50 percent of the assessor's market value of the building alone. The law now describes an “environmentally contaminated area” as one where 50 percent of the parcels contain contamination and the estimated cost of dealing with that contamination is more than the assessor's estimated market value for the parcel.

In addition, in a nod to the Walser case, the legislature put in place “assemblage restrictions” on local governments, prohibiting the taking of non-structurally substandard buildings and non-contaminated parcels unless there is “no feasible alternative” to remediate blight or contamination in adjacent parcels. The standard with regard to these takings of blighted areas has been raised to require a “preponderance of the evidence” if challenged in court.

With respect to how governments are required to negotiate with land owners, the legislature has now defined owners to include the actual owners, as well as business tenants. While the cap at the current \$1,500 appraisal reimbursement for residential property or minimum damage acquisitions continues, the cap has been raised to \$5,000 for other types of property. Moreover, no appraisal can be used or considered in the condemnation hearing unless a copy of the written report has been given to the other party at least five days before the hearing.

For the first time, the new law establishes public hearing requirements with regard to condemnations intended to mitigate a blighted area or remediate an environmentally contaminated area. The local governing body must hold such a hearing and then wait at least 30 days before approving the taking. The resolution of approval must identify the public costs and benefits of the project, as well as state how the acquisition serves a public use and why the property is needed. In addressing a sore spot for many property owners, the new law requires the condemning authority to sell the property back to the former owner at the lower of the original price or the current fair market value, if the condemning authority determines that the property has not been used or is no longer needed for a public use. Unfortunately for property owners, this particular rule does not apply to the Minnesota Department of Transportation. Relocation assistance, once determined virtually exclusively by the condemning authority, will now be determined by an administrative law judge, if the displaced person does not accept the condemning authority's offer.

In one of the most remarkable departures from the previous law, Minnesota law now allows a court the discretion to award attorneys' fees if the final award is between 20 and 40 percent higher than the condemning authority's last written offer before filing the condemnation petition. If the award is more than 40 percent greater, the court must award attorneys' fees. In addition, if the property owner successfully challenges the public purpose of the taking, attorneys' fees must be paid. No attorneys' fees will be paid if the final award is less than \$25,000, which is defined as a minimum value taking.

The law previously provided no compensation for business loss except in very limited circumstances. The new law requires compensation for loss of a going concern if the business is destroyed by the taking, unless the condemning authority proves, by a preponderance of the evidence, that the loss is not due to the taking. This provision includes compensation to lessees. Moreover, when an owner or tenant is forced to relocate, the amount of damages payable must be sufficient to purchase a comparable property in the community. The condemning authority, however, may not require an owner to accept a substitute or replacement property as part of the compensation due, and further, the condemning authority must reimburse the owner or tenant up to \$50,000 in reestablishment expenses. A local government must now compensate an owner of a non-conforming use if the local government requires the removal of that non-conforming use as a condition of granting a permit, license, or other approval for the use, construction, or development of a building or property. The condemning authority must also pay compensation, not to exceed three years' previous revenues, minus the cost of goods sold, if the government permanently eliminates 51 percent or more of the driveway access to a business, and that removal results in a loss of revenue of 51 percent or more.

All in all, these are extraordinary changes which significantly increase the damages and costs to be paid to owners and tenants of property being condemned. These changes will also

greatly increase costs of public projects, and as with all government costs, will ultimately be paid by the taxpayer.

If you have any questions regarding your rights with regard to condemnation, please contact Phillip ("Rod") Krass. To review redevelopment issues, please contact James Casserly. Both can be reached at Krass Monroe at 952-885-5999.