

Eminent Domain: Just Compensation

The state and federal constitutions require payment of just compensation when private property is taken for public use. U.S. Const. 5th Amend.; Minn. Const. art. 1, § 13. The just compensation requirement “was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Armstrong v. United States*, 364 U.S. 40, 49, 80 S. Ct. 1563, 1569 (1960).

Just compensation is determined by looking at the fair market value of the property taken as of the time the commissioners make the award. *City of St. Louis Park v. Almor Co.*, 313 N.W.2d 606, 610 (Minn. 1981) (en banc). Fair market value is what a person who is willing, but not required, to buy the property would pay a seller, who is willing, but not required, to sell it, taking into consideration the highest and best use to which the property can be put. *County of Ramsey v. Miller*, 316 N.W.2d 917, 919 (Minn. 1982). If only part of a property is taken, the owner must be compensated for the diminution in value to the remainder as well as the value of the part taken. The compensation is the difference between the fair market value of the entire property immediately before the taking and the fair market value of the remainder afterwards. *State v. Strom*, 493 N.W.2d 554, 558-559 (Minn. 1992).

Minnesota courts recognize four methods to determine fair market value. Minnesota courts have recognized four ways to calculate the fair market value (FMV) of property in takings cases: comparable sales, income capitalization, reproduction cost, and development cost. *County of Ramsey v. Miller*, 316 N.W.2d 917, 919, 922 (Minn. 1982). These methods are described in various cases and in *The Dictionary of Real Estate Appraisal*, 4th edition (Appraisal Institute 2002) as follows:

Comparable sales is the preferred method of determining FMV and is used to value improved properties, vacant land, or land considered vacant. It is determined by comparing the property to similar properties that have been sold recently and then applying appropriate units of comparison to adjust the sale prices.

Income capitalization is used for determining the FMV of an income-producing property. This method calculates the present value of the future revenues for the useful life of the business, based on past performance.

Reproduction costs less depreciation estimates the current cost to construct a reproduction of (or replacement for) the existing structure, deducting depreciation from the total cost, and adding the estimated land value.

Development cost is the price a developer-purchaser would be warranted in paying for the land, given the cost of development and the probable proceeds of selling it. In order to use this method, the land must be ripe for development, the owner must reasonably expect to be able to secure zoning and required permits to develop the land, and the development cannot take place at too remote a time.

These techniques are neither conclusive nor exclusive but are factors to consider in arriving at FMV. *State v. Harbor City Oil Co.*, 486 N.W.2d 455, 456 (Minn. App. 1992). “Any competent evidence may be considered if it legitimately bears upon the market value.” *State v. Strom*, 493 N.W.2d 554, 559 (Minn. 1992) (quoting *County of Ramsey*, 316 N.W.2d at 919).

There are four aspects to determining the highest and best use. Highest and best use is defined as the

most profitable use for which the property is adaptable. A real estate appraiser will consider four criteria: legal permissibility, physical possibility, financial feasibility, and maximum productivity. *The Dictionary of Real Estate Appraisal*, 4th edition (Appraisal Institute 2002), page 135. The owner's actual use, or intentions for use, is not relevant to determining the highest and best use. *State v. Gannons*, 275 Minn. 14, 18-19, 145 N.W.2d 321, 326 (1966).

The 2006 Legislature established a new minimum compensation. Under the 2006 provision, compensation must allow the owner to purchase a comparable property in the community. A condemning authority cannot require an owner to accept as compensation a substitute property or return of property taken. This does not apply to takings by public service corporations, which include utilities, airports, and pipelines. [Minn. Stat. §§ 117.187, 117.188, 117.189.](#)

Attorney fees are required, permitted, or prohibited in specified takings cases. The court *must* award an owner attorney fees and other costs of litigation if the final compensation award is 40 percent or more than the condemning authority's last written offer made before the condemnation petition was filed or if the court determines that the taking is not for a public use or is unlawful. The court *may* award attorney fees and other fees and costs if the final award is at least 20 percent, but not more than 40 percent, greater than the last written offer. The court *may not* award attorney fees if the judgment or award is not more than \$25,000. The above do not apply to takings by public service corporations. [Minn. Stat. §§ 117.031, 117.189.](#) The *condemning authority* may be granted attorney fees if the owner fails to deliver possession of the real estate. [Minn. Stat. § 117.043](#), subd. 2. The court *may* award reasonable attorney fees to a property owner (1) that brings an inverse condemnation case, and (2) if an eminent domain case is dismissed. [Minn. Stat. §§ 117.045, 117.195](#), subd. 2. The court *must* award reasonable attorney

fees to the property owner who has to bring an action against a commissioner who fails to file a report in eminent domain proceedings if proceedings are set aside as to that owner. [Minn. Stat. § 117.105](#), subd. 2.

Appraisal costs are provided to property owners. An acquiring authority must reimburse an owner up to \$1,500 for an appraisal of a single-family or two-family residential property, or any taking under \$10,000. The cap is \$5,000 for other types of property. This does not apply to takings by public service corporations. [Minn. Stat. §§ 117.036, 117.189.](#) In an appeal, the court may award the property owner reasonable expert witness and appraisal fees. The condemning authority cannot be awarded expert witness fees, costs, or disbursements. [Minn. Stat. § 117.175](#), subd. 2.

A business may be compensated for loss of a going concern. A business owner must be compensated for loss of a going concern related to the taking of real property unless the condemning authority shows that the loss is not due to the taking, reasonable measures could have avoided the loss, or that it will duplicate other compensation awarded. A business owner must be compensated for a permanent loss of a majority of the businesses' driveway access that results in revenue losses. [Minn. Stat. § 117.186.](#)

Relocation assistance is also provided. In addition to the property owner receiving compensation for the value of the property taken, the owner and tenants may receive relocation assistance. An acquiring authority must pay relocation benefits, as defined and regulated by federal law, except that an acquiring authority *must* reimburse a displaced business for actual relocation expenses up to \$50,000. [Minn. Stat. §§ 117.50 to 117.56](#) (referring to 42 U.S.C. § 4601, et seq., and related regulations, 49 C.F.R. § 24.1, et seq.).

For more information: See the House Research publications *Eminent Domain: Public Use*, August 2006, and *Eminent Domain: Regulatory Takings*, August 2006.

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