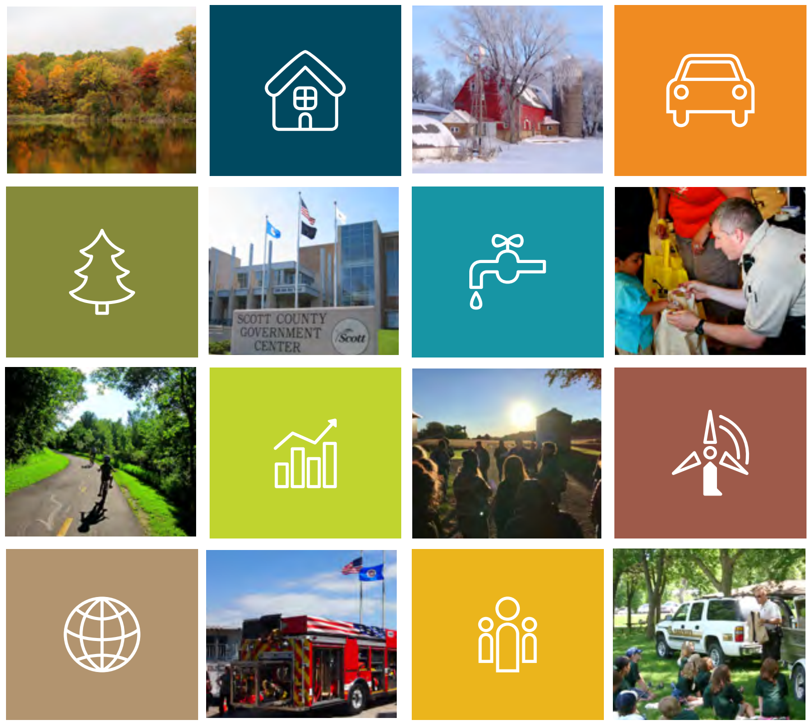
Evaluating Eminent Domain Settlements for Highway Projects



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Resilient Communities Project
University of Minnesota
Building community-university partnerships for sustainability

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Evaluating Eminent Domain Settlements for Highway Projects

Stephanie Gruba

Introduction

A right-of-way (ROW) acquisition is the process of taking private land needed for highway or transportation projects. ROW acquisitions are an important component in highway project development. Because ROW acquisitions take place before construction, it is critical to acquire land in a timely fashion in order to avoid delays, which can significantly impact the cost and schedule of a highway project.[1]

To use the power of eminent domain in a ROW acquisition, under the United States[2] and Minnesota[3] Constitutions, a taking requires (1) a public use and (2) just compensation. Constructing a public road is considered a public use and meets the first requirement. What constitutes just compensation, however, is a common issue for ROW acquisitions. Especially in partial takings, complex issues arise about severance damages and whether certain damages are legally compensable under Minnesota's Constitution and statutes.

Following the U.S. Supreme Court's controversial decision in *Kelo v. City of New London*,[4] many states began enacting reforms to protect private land owners and limit the scope of "public uses" for eminent domain. Although "public use" is not the main topic of this paper, a discussion about the controversies surrounding "public use" is relevant, because post-*Kelo* state laws included broader landowner protections. Minnesota was one of many states that enacted post-*Kelo* legislation, which not only limited the definition of "public use," but also amended condemnation procedures and included other landowner protections. These statute changes have impacted ROW acquisitions and consequently state and county highway projects.[5]

The purpose of this paper is to analyze the post-*Kelo* law enacted by the Minnesota Legislature in 2006 and define "just compensation" in partial takings. Part I of this paper provides background on eminent domain and the *Kelo* decision. Part II analyzes Minnesota's post-*Kelo* statute and compares Minnesota's attorneys' fees provision to other states' laws. Part III provides background on just compensation. Finally, Part IV analyzes Minnesota case law determining what damages are legally compensable in partial takings.

I. Background

Eminent domain is an inherent governmental power to take privately owned land and convert it to public use.[6] This power is not unlimited, however. The United States[7] and

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[1] DAVID JEONG ET AL., MINN. DEP'T OF TRANSP., BARRIERS TO RIGHT-OF-WAY ACQUISITION AND RECOMMENDATIONS FOR CHANGE 1 (2016), http://www.dot.state.mn.us/research/TS/2016/201628.pdf.
[2] U.S. Const. amend V ("[N]or shall private property be taken for public use, without just compensation.").
[3] MINN. CONST. art. I § 13 ("Private property shall not be taken, destroyed, or damaged for public use without just compensation therefor, first paid or secured.").
[4] 545 U.S. 469 (2005).
[5] JEONG, *supra* note 1, at 1.
[6] Black's Law Dictionary (10th ed. 2014). *See* Mississippi & Rum River Boom Co. v. Patterson, 98 U.S. 403, 406 (1878) ("The right of eminent domain . . . appertains to every independent government. It requires no constitutional recognition; it is an attribute of sovereignty.").
[7] U.S. CONST. amend. V.

Minnesota Constitution[8] only allow takings for public uses and require just compensation to be paid to landowners for such takings.

Most of the recent controversy surrounding eminent domain relates to what constitutes a public use and scope of the government's eminent domain authority. In 2005, the U.S. Supreme Court held that a city could use eminent domain authority to acquire private property for economic development purposes.[9] The purpose of the city's economic development project was to revitalize a waterfront area and create a small urban village for commercial and recreational uses.[10] While the recreational areas would be open to the public, the commercial areas would be leased or sold to private commercial entities.[11] The Court took a broad view of "public use" and also recognized the Court's longstanding policy of giving deference to legislatures in discerning local needs.[12] Ultimately, the Court held that the city's economic revitalization plan was a "public use" under the Takings Clause in the United States Constitution.[13]

In *Kelo*, the Court also noted that nothing in its decision prevented states from imposing stricter requirements on eminent domain authority.[14] Following the controversial *Kelo* decision, states did just that and began enacting laws to restrict public uses of eminent domain.[15] Within two years of the *Kelo* decision, forty-two states enacted laws restricting the power of eminent domain.[16]

II. Minnesota Post-*Kelo* Legislation and Comparison to Other States' Reforms

Minnesota was one of the states that enacted legislation in response to *Kelo*. In 2006, the Minnesota Legislature enacted S.F. 2750, amending statutes related to eminent domain and condemnation proceedings.[17] This legislation clarified that eminent domain may only be used for a public use or purpose.[18] In addition, it clarified that "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."[19] Therefore, the legislation limited the scope of eminent domain by specifically excluding purely economic development uses.

The legislation also amended procedures for condemnation proceedings. It requires acquiring authorities to provide landowners with copies of each appraisal obtained for the property at the time an offer is made.[20] It also requires acquiring authorities to make a good-faith attempt to negotiate with landowners before commencing an eminent domain proceeding.[21]

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[8] MINN. CONST. art. I § 13.

[9] Kelo v. City of New London, 545 U.S. 469, 490 (2005).

[10] *Id.* at 474.

[11] *Id.*

[12] *Id.* at 482–83.

[13] *Id.* at 490.

[14] *Id.* at 489.

[15] *See generally* Ilya Somin, *The Limits of Backlash: Assessing the Political Response to* Kelo, 93 MINN. L. REV. 2100 (2009) (analyzing post-Kelo reform state laws and finding that most will likely be ineffective at protecting private landowners).

[16] CASTLE COALITION, 50 STATE REPORT CARD TRACKING EMINENT DOMAIN REFORM LEGISLATION SINCE KELO 1 (2007), https://ij.org/wp-content/uploads/2015/03/50_State_Report.pdf.

[17] S.F. 2750, 84th Leg., 2006 Reg. Sess., 2006 Minn. Laws ch. 195.

[18] 2006 Minn. Laws ch. 214, § 2, subd. 2.

[19] *Id.* § 2, subd. 11.

[20] *Id.* § 5, subd. 2.

[21] *Id.* § 5, subd. 3.

Moreover, the acquiring authority must reimburse a landowner for the cost of appraisals.[22] This reimbursement is capped at $1,500 for a single-family or two-family residential property or any taking under $10,000, and $5,000 for other types of property.[23]

A. Minnesota's Fee-Shifting Provision for Eminent Domain Cases

The post-*Kelo* legislation also included a significant reform, requiring the acquiring authority to pay for fees and costs incurred by a landowner in certain circumstances. Courts are required to award landowners reasonable attorney fees, litigation expenses, appraisal fees, other expert fees, and other related costs if the final award for damages is more than 40% greater than the condemning authority's last written offer.[24] When final awards are at least 20% but not more than 40% greater than the last written offer, courts have the discretion to award reasonable attorney fees and other expenses to the landowner.[25]

There is disagreement over whether the attorneys' fees provision has helped protect landowners. Some critics of the 2006 law change argue that the attorneys' fees provision has resulted in more property owners seeking eminent domain proceedings when they have suffered no damages, created an incentive for landowners to submit excessively high appraisals, and attorneys advising clients not to negotiate with acquiring entities before condemnation proceedings.[26] Others claim the purpose of the law change is to provide an incentive to acquiring authorities to make good faith offers to landowners.[27]

If the Minnesota Legislature determines it is necessary to amend the current attorneys' fees provision, an overview of other states' laws may provide some guidance and options to consider. State laws vary significantly for awarding attorneys' fees in eminent domain cases.

B. Other States' Laws Shifting Attorneys' Fees for Eminent Domain Cases

A survey from the Texas A&M University School of Law shows that roughly half of states have some form of provision awarding attorneys' fees in condemnation proceedings.[28] Most states that have these types of provisions, like Minnesota, award attorneys' fees when the final award for damages exceeds or reaches a certain threshold above the condemnor's offer.[29] Six states allow attorney's fees to be awarded to the landowner when the final award for damages is any amount greater than the condemnor's offer.[30] One state allows attorneys' fees to be awarded when the final award is closer to the landowner's value than the condemnor's value of the property.[31] Other states provide a percentage threshold determining when attorneys' fees

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[22] *Id.* § 5, subd. 2.
[23] *Id.*
[24] *Id.* § 4.
[25] *Id.*
[26] Jeong, *supra* note 1, at 32, 44, 56, 58, 62.
[27] Rob Stefonowicz, *Condemnation Damages: A Property Owner's Constitutional Right to Just Compensation*, Minn. Real Est. J., Jan. 2011, at 2.
[28] Tex. A&M U. Sch. of Law, A Survey of Eminent Domain Law in Texas and the Nation 11 (2017) https://law.tamu.edu/docs/default-source/faculty-documents/a-survey-of-eminent-domain-law-in-texas-and-the-nation.pdf?sfvrsn=2.
[29] *Id.*
[30] *Id.* (listing Oregon, Montana, Louisiana, Indiana, Michigan and New York).
[31] *Id.* (listing South Carolina).

are awarded.[32] Five states allow attorneys' fees when the final award is 110% of the condemnor's offer.[33] Two states allow attorneys' fees when the final award is 115% of the condemnor's offer.[34] Two states allow attorneys' fees when the final award is 120% of the condemnor's offer.[35] And one state allows attorneys' fees when the final award is 130% of the condemnor's offer.[36]

According to this survey, Minnesota's statute has the highest bar at 140%. However, the statute also provides discretion to courts when final awards are between 120% and 140%. This still puts Minnesota toward the upper end, since 13 of the 17 other state laws provide attorneys' fees when the final award is any amount to 120% above the condemnor's offer.

Some states do not provide a threshold to award attorneys' fees and are more restrictive. Texas, for example, only allows attorneys' fees to be awarded to a landowner when the condemnation proceeding is abandoned or dismissed.[37] Georgia allows attorneys' fees to be awarded to landowners when the condemning authority cannot acquire the property or the proceeding is abandoned.[38] A few states cap attorneys' fees. For example, Michigan limits attorneys' fees to 1/3 of the difference between the condemnor's offer and final award.[39] Pennsylvania caps attorneys' fees at $4,000.[40]

In addition, some states tie awards for attorneys' fees to good faith attempts to negotiate. A few states, such as Wyoming, Oregon, and Missouri, allow attorneys' fees to be awarded to landowners when a court finds that the acquiring authority lacked a good faith attempt to negotiate.[41] On the other hand, South Carolina allows attorneys' fees to be awarded to the condemnor if the court determines that a landowner disputed a taking in bad faith.[42]

If Minnesota considers amending the current attorneys' fees provision, there are many options it may consider. Rather than just adjusting the threshold amount for attorneys' fees, it should first attempt to identify the problem. For example, if the Legislature determines that attorneys' fees are making highway projects too expensive, it could impose a limit or cap on the total award. If it finds that landowners are negotiating in bad faith, the Legislature could look to provisions like South Carolina's law that awards damages to the condemnor when the court finds the landowner negotiated in bad faith. Or, on the other hand, it could look at states, such as Oregon, that award attorneys' fees to landowners when the court finds that the acquiring authority negotiated in bad faith.

Without data to capture the problem, it is difficult to identify a solution. Anecdotal evidence from a report issued by the Minnesota Department of Transportation, however, suggests that landowners are not negotiating with acquiring entities.[43] The report surveyed ROW specialists and some respondents suggested that attorneys' fees are incentivizing landowners and their attorneys not to negotiate and present excessively high appraisals at condemnation

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[32] *Id.*
[33] *Id.* (listing Alaska, Washington, Idaho, Iowa, and Oklahoma).
[34] *Id.* (listing Wisconsin and Wyoming).
[35] *Id.* (listing Arkansas and South Dakota).
[36] *Id.* (listing Colorado).
[37] *Id.* at 9.
[38] GA. CODE ANN. § 22-1-22 (West 2018).
[39] MICH. COMP. LAWS ANN. § 213.66(3) (West 2018).
[40] 26 PA. STAT. AND CONS. STAT. ANN. § 710(a) (West 2018).
[41] TEX. A&M U. SCH. OF LAW, *supra* note 28, at 12.
[42] *Id.*
[43] JEONG, *supra* note 1, at 32, 44, 56, 58, 62.

hearings.[44]

In addition to this anecdotal evidence, the current condemnation procedures themselves suggest there is an unlevel playfield in negotiations between landowners and acquiring authorities. The current procedures require the acquiring authority to provide a landowner a written offer before submitting a petition to begin condemnation proceedings.[45] The landowner, however, is not required to provide any appraisal information to the acquiring authority. If a landowner gets their own appraisal and wants the condemnation commissioners to consider it during the condemnation hearing, the landowner must submit the appraisal to the acquiring authority at least five days before the hearing.[46] Therefore, the landowner's appraisal comes much later in the process after the last written offer, which the attorneys' fees provision is based off. Even if there was a justified claim of damages, the county may not receive information in time to adjust its last written offer.

If the goal is to encourage good faith negotiations before condemnation proceedings, the Minnesota Legislature should look at amending the pre-condemnation proceedings. There are a few options the Legislature could consider. First, it could tie awards for attorneys' fees to good faith attempts to negotiate. This is not the best option, however, because a "good faith" standard is very subjective and hard to administer.

A second option would be to require landowners to present appraisals earlier in the process. This would present an exchange of information for the acquiring authority to use before submitting its last written offer. This option may not be feasible in the current process, considering how long it takes to get an appraisal and may not offer landowners enough time or require the timeline to be extended.

Lastly, the Legislature could change the timing of the last written offer. Currently, awards for attorneys' fees are based off the last written offer prior to the filing of the petition for condemnation proceedings.[47] Instead of requiring the last written offer before filing a petition, the statute could change the date of the last written offer to some period after filing a petition but before the hearing. By moving the last offer to after filing a petition, the statute will extend the negotiation time. Alternatively, the statute could base an award for attorneys' fees off the highest offer from the acquiring authority. Or, it could base attorneys' fees off the final offer provided by the acquiring authority after the landowner presents an appraisal. This would require landowners to present an appraisal and provide the acquiring authority an opportunity to respond to the landowners' appraisal.

Moving the timing of the last offer may be the best option for the Legislature to consider. Amending pre-condemnation proceedings to require disclosure of at least some information from both parties would put negotiations on an equal footing. By focusing on getting both sides to negotiate, the statute may address the concerns raised by ROW specialists related to the attorneys' fees provision and the incentive to landowners and their attorneys to not participate in negotiations. Moreover, amending the negotiations may also save landowners, acquiring authorities, condemnation boards, and courts time and resources by resolving the issue before a condemnation hearing is required.

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[44] *Id.*
[45] MINN. STAT. ANN. §§ 117.036, 117.055 (West 2018).
[46] *Id.* § 117.036, subd. 2(b).
[47] *Id.* § 117.031.

III. Legally Compensable Damages in Partial Takings

Many complex issues arise around the determination of "just compensation." This is especially true in partial takings, where a landowner may have damages to the remaining property. Courts and condemnation boards must determine which damages are legally compensable. This section attempts to define "just compensation" by looking at the constitutional and statutory requirements and analyzing case law to determine what damages are legally compensable in partial takings.

A. Interpreting "Just Compensation"

The United States Constitution protects landowners by requiring "just compensation" for all property taken by eminent domain.[48] The Minnesota Constitution also includes landowner protections similar to the United States Constitution.[49] The protections in the Minnesota Constitution, however, are broader than those in the United States Constitution, because the Minnesota Constitution requires compensation not only for land taken, but also for property damaged or destroyed by the government.[50]

Minnesota courts have broadly interpreted the Minnesota Constitution and the protections to landowners from the power of eminent domain.[51] The courts' interpretation of this constitutional provision is supported by Minnesota statute which also recognizes broad landowner protections. Minnesota statute defines a taking as "every interference, under the power of eminent domain, with the possession, enjoyment, or value of private property."[52] In other words, a taking does not require depriving a person of physical possession of land; takings also include enjoyment and value. In addition, Minnesota law recognizes that property rights include "access, air, view, and light . . . ."[53] If a road authority eliminates any of these existing property rights, then owners are to be compensated for the loss through purchase or condemnation.[54] "Thus, the clear intent of Minnesota law is to fully compensate its citizens for losses related to property rights incurred because of state actions."[55]

B. Calculating "Just Compensation" in Partial Takings

In partial takings, landowners can be awarded two types of damages: (1) compensation for land actually taken, and (2) severance or consequential damages to property.[56] Severance damages occur when a partial taking when the remaining land is smaller and consequently, less usable.[57] Consequential damages occur when the remaining land is adversely affected by the

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[48] U.S. CONST. amend. V.
[49] MINN. CONST. art. I § 13.
[50] *Id.*
[51] *See* Arthur G. Boylan, *Property—Losing Clarity in Loss of Access Cases: The Minnesota Supreme Court's Muddled Analysis in* Dale Properties, LLC v. State, 29 WM. MITCHELL L. REV. 695, 706 (2002) ("According to the Minnesota Supreme Court, the takings provision of the Minnesota Constitution is to be given a broad interpretation so as to effectuate its purpose.").
[52] MINN. STAT. ANN. § 117.025, subd. 2 (West 2018).
[53] *Id.* § 160.08, subd. 4.
[54] *Id.* § 160.08, subd. 5.
[55] State by Humphrey v. Strom, 493 N.W. 2d 554, 558 (Minn. 1992).
[56] *Id.* at 562 (Simonett, J. dissenting in part and concurring in part).
[57] *Id.*

partial taking or the way the land partially taken is being used.[58] Consequential damages can include adverse consequences such as reduced access, construction interference, and traffic inconveniences.[59]

To calculate damages in partial takings, Minnesota follows the "before and after" rule.[60] Under this rule, damages amount to the difference between the fair market value of the entire property before the taking and the fair market value of the remainder of the property after the taking.[61] "The result is the just compensation for the part taken as well as for severance damages for the part that is left."[62] Therefore, awards for severance damages are not separate calculations. These damages should be factors considered in determining the fair market value of the remaining property after the taking.[63]

In determining the fair market value, appraisers must consider the highest and best use of the land. Fair market value "is the amount which a purchaser willing but not required to buy the property would pay to an owner willing but not required to sell it, taking into consideration the highest and best use to which the property can be put."[64] Minnesota courts recognize four methods to calculate fair market value in takings: comparable sales, income capitalization, reproduction cost, and development cost.[65]

The highest and best use is the most profitable use of a property. In determining the highest and best use, appraiser consider four criteria: legal permissibility, physical possibility, financial feasibility, and maximum profitability.[66] These criteria must be satisfied to support a highest and best use.

C. Legally Compensable Damages

Partial takings raise many complex issues about whether certain damages or injuries are legally compensable. The central issue in partial takings cases is what damages a court may consider when determining the fair market value of the remaining property and what evidence it may take into consideration in calculating damages.

In eminent domain proceedings, "evidence will be admitted concerning any factor which would affect the price a purchaser willing but not required to buy the property would pay to an owner willing but not required to sell it, taking into consideration the highest and best use to which the property can be put."[67] The Minnesota Supreme Court reasoned that not admitting evidence relating to the value would cause factors that are ordinarily considered when

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[58] *Id.*
[59] *Id.*
[60] *Id.* at 558.
[61] *Id.*
[62] Minnesota Dist. Judges Ass'n, Comm. On Civil Jury Instruction Guides, 4 Minnesota Practice Series: Jury Instruction Guides—Civil § 52.65 (6th ed. 2018).
[63] *Strom*, 493 N.W.2d at 560.
[64] Ramsey County v. Miller, 316 N.W.2d 917 (Minn. 1982) (citing City of St. Paul v. Rein Recreation, Inc., 298 N.W.2d 46, 49 (Minn. 1980)).
[65] *Ramsey County*, 316 N.W.2d at 920–21; Deborah A. Dyson, House Research Department, Eminent Domain: Just Compensation 1 (2006), https://www.house.leg.state.mn.us/hrd/pubs/ss/clssedjust.pdf (explaining the four methods of valuation).
[66] Dyson, *supra* note 65, at 2.
[67] *Strom*, 493 N.W.2d at 559.

negotiating for property to be excluded. The resulting fair market value would be for a nonexistent, hypothetical property and not the actual property in the case.[68]

Not all adverse consequences are compensable damages, however.[69] This section examines Minnesota caselaw and analyzes damages that are legally compensable and damages that do not require compensation under the Minnesota Constitution and statutes. Appendix A provides a broad overview of this section and legally compensable damages under Minnesota law.

1. Only Damages Relating to Real Estate Are Relevant

Minnesota courts have found that some damages are not compensable or relevant to severance or consequential damages, including diversion of traffic and loss of customers, income, or profits.[70] These factors may be considered as evidence in determining the highest and best use of property.[71] They cannot, however, be considered for determining consequential damages in partial takings. Courts have reasoned that these injuries are too speculative to be considered for consequential damages, because they depend not only access, but also on "such complex and intangible variables as the initiative and industry of proprietors."[72] Because these personal attributes influence the success of a business wherever it is located, only the diminution in value of the real estate is relevant in determining the diminution in value.[73]

2. General Damages Are Not Compensable

Courts have determined that damages similar to those suffered by the general public are not compensable.[74] In partial takings, this requires damages to arise from changes to the land taken.[75] This limits damages for partial takings cases, because property owners cannot claim damages from changes arising in adjoining land or the general highway construction project.[76] In inverse condemnation claims, where no physical appropriation of land has occurred, the injury must be peculiar to the landowner.[77]

Inverse condemnation claims are brought by landowners that believe their property has been damaged by a highway construction project even when there has been no partial taking or physical appropriation of land. If a landowner believes they have suffered consequential damages, they may file with the district court a writ of mandamus to compel condemnation proceedings.[78] The district court then decides whether or not there has been a constitutional

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[68] *Id.*

[69] *Id.* at 562 (Simonett, J., dissenting in part and concurring in part) ("Not all adverse consequences translate into severance damages.").

[70] *Id.* at 558; Hendrickson v. State, 127 N.W.2d 165, 173 (Minn. 1964).

[71] *See Hendrickson*, 127 N.W.2d at 173 (explaining that a court may receive evidence of lost patronage for the limited purpose of considering a change in the highest and best use of the property).

[72] *Id.*

[73] *Id.*

[74] *E.g.*, Courteaus, Inc. v. State, 268 N.W.2d 65, 67 (Minn. 1978).

[75] *E.g.*, City of Crookston v. Erickson, 69 N.W.2d 909, 913 (Minn. 1955).

[76] *Id.*

[77] *Id.* at 912 ("Where no part of an owner's land is taken but, because of the taking and use of adjoining property, damage is caused to an owner's land, the damage is not compensable unless the consequential injury is peculiar to the adjoining owner's property and not of a type suffered by the public as a whole.").

[78] Thomsen v. State by Head, 170 N.W.2d 575, 580 (Minn. 1969).

taking.[79] If the court decides the landowner has suffered a taking, it must sufficiently define the taking to enable commissioners to assess monetary damages and compel condemnation proceedings.[80] Minn. Stat. § 117.045 recognizes that landowner who successfully bring actions compelling eminent domain proceedings are entitled to reasonable attorney's fees, appraiser costs, and engineering costs.[81]

While the focus of this paper is on partial takings, inverse condemnations are still relevant because in both types of claims the analysis of whether or not the damage is compensable is the same.[82] It is also important to highlight that condemning authorities can be liable for consequential damages to adjoining properties, even where no physical taking occurred.

3. Construction-Related Interferences

Construction-related interferences with remaining property may be compensable under certain circumstances. In *State by Humphrey v. Strom*, the Minnesota Supreme Court held that construction-related interferences could be considered as evidence when determining the diminution in market value of the remaining property in a partial taking.[83] The court stated that an inconvenience resulting from a partial taking that affects the use and enjoyment of the remaining property may be considered as an element that affects the remaining value.[84]

The fact that construction-related interferences are temporary did not bar consideration of the evidence. The court reasoned that a buyer may pay less if the buyer knew that such injuries would occur.[85] Moreover, the court was not persuaded by the state's policy argument, that allowing evidence of construction-related interferences to be considered in the diminution of the fair market value would make highway projects prohibitively expensive. In response to this argument, the court stated that higher costs are "not a reason to under-compensate abutting landowners."[86]

The court also found that the construction-related interferences were not general damages because there was a partial taking.[87] The court looked to *City of Crookston v. Erickson*, and stated that in cases involving a partial taking, "the injured owner is not required to show that the injury is peculiar to his remaining property. It is sufficient that the damage is shown to have been caused by the taking of part of his property even though it is damage of a type suffered by the public as a whole."[88]

It's unclear whether the court was requiring damages to arise from changes in the land taken from the owner or whether an owner could claim construction-related damages from adjoining property. The Minnesota Supreme Court later answered this question in *County of Anoka v. Blaine Building Corp*. Although the court was addressing a different issue, it relied on *Strom* and explained that "damages . . . must arise from changes in the land actually taken, and

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[79] *Id.*
[80] *Id.* at 581.
[81] MINN. STAT. ANN. § 116.045 (West 2018).
[82] Dale Properties, LLC v. State, 638 N.W.2d 763, 765 (Minn. 2002).
[83] State by Humphrey v. Strom, 493 N.W. 2d 554, 560–61 (Minn. 1992).
[84] *Id.* at 560.
[85] *Id.*
[86] *Id.*
[87] *Id.*
[88] *Id.* (quoting City of Crookston v. Erickson, 69 N.W.2d at 912–13).

not merely from the impact of the construction project as a whole."[89] Therefore, in partial takings, construction-related interferences may be legally compensable, but only if the damages arise from changes in the land actually taken from the landowner.

While the current state of Minnesota caselaw requires construction-related interferences to arise from land actually taken from a landowner, there is some disagreement whether this follows the Minnesota Supreme Court precedent. In a dissenting opinion in *County of Anoka v. Blaine Building Corp.*, Justice Anderson argued that the majority's reading of *Strom* was unduly narrow.[90] Unlike evidence of reduced visibility, the *Strom* court did not expressly limit construction damages to those arising from the state's use of the condemned portion of the landowner's property.[91]

While the *Strom* court's decision is unclear and could be read more broadly as Justice Anderson suggests, precedent supports the majority's opinion limiting construction-related interferences to those from land taken from a property owner. *City of Crookston v. Erickson* addressed this issue and found that "[r]ecovery is generally limited solely to the damage caused by the taker's use of the land acquired from the owner of the remainder area."[92] This means that an owner is not entitled to damages to his remaining land caused by use of property acquired from an adjoining landowner, even if all the property taken is used for the same project.[93]

4. Loss of visibility

Damages resulting from the loss of visibility may also be compensable under certain circumstances. The Minnesota Supreme Court addressed reduced visibility in a partial taking in *State by Humphrey v. Strom*.[94] The court held that evidence of loss of visibility could be considered as evidence when determining the diminution in market value of the remaining property in a partial taking.[95] The court reasoned that a landowner has control of the visibility of their adjoining land. Therefore, when loss of visibility is caused by changes made to a parcel taken by the state, "the state must pay extra for this important commercial asset."[96] In *Strom*, the property at issue was fully visible to motorists from the highway, but the construction project included raising a frontage road 21 feet, which greatly reduced visibility from the highway.[97]

Evidence of reduced visibility, like construction-related interferences, must arise from changes in the property taken from the landowner and cannot result from the general impact of a construction project.[98] *Strom* expressly held that the damage must come from a change in the acquired land: "In a partial taking condemnation action . . . loss of visibility to the public traveling on a redesigned highway result[ing] from changes in the property taken from the owner" is admissible.[99]

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[89] County of Anoka v. Blaine Building Corp., 566 N.W.2d 331, 334 (Minn. 1997).
[90] *Id.* at 338 (Anderson, J., dissenting).
[91] *Id.*
[92] *City of Crookston*, 69 N.W.2d at 913.
[93] *Id. See* Adams v. Chicago, Burlington & Northern R.R. Co., 39 N.W. 629 (Minn. 1888).
[94] State by Humphrey v. Strom, 493 N.W.2d 554 (Minn. 1992).
[95] *Id.* at 561–62.
[96] *Id.* at 561.
[97] *Id.* at 558, 661.
[98] *Id.* at 661.
[99] *Id.*

5. Access

Determining whether an interference with access to an abutting road may be legally compensable is the most complicated factor for courts in determining severance and consequential damages. "Courts have long struggled with the notion of reasonable access and the compensable 'taking' thereof. In doing so, they have adopted labels for the results they have reached which even today generate substantial linguistic and analytical confusion."[100] Most cases addressing access involve inverse condemnation claims. While no physical takings occur in inverse condemnation claims, these cases are still relevant, because they address whether a property owner is entitled to consequential damages. These are the same issues courts must address for property owners involved in partial taking claims.

Minnesota courts have clearly established that property owners have a property interest in "reasonably convenient and suitable access" to a public road abutting their property.[101] This right stems from Minnesota Statute § 160.08 subd. 4, which specifically recognizes that access is a property right.[102] In partial takings, the issue is whether the landowner has been denied "reasonably convenient and suitable access" to the remaining property.

a. Division Between Police Powers and Compensable Damages

Courts have struggled with how to separate the state's or county's use of police power with a compensable taking. This was recognized by the Minnesota Supreme Court in *Johnson v. City of Plymouth*:

> [I]f a governmental action has been found not to infringe the right of access, such action has been deemed a 'reasonable' assertion of the police power and therefore noncompensable. On the other hand, where courts have determined that official action has eliminated a right of access, the action has been characterized as a constitutional 'taking.' The result has been the creation of an unfortunate rhetorical device: Reasonable assertions of the police power are not compensable but the 'taking' of a reasonable right of access is compensable. . . . The statement itself provides no principled means for distinguishing a due process 'taking' from a noncompensable exercise of police powers.[103]

The court concluded that the proper question is not whether the governmental action was an exercise of police power, but whether the exercise of police power unduly restricts access to the property, thereby depriving the owners of their right to reasonable access.[104] The determination of "reasonable access" is a question of fact to be determined in light of the specific facts of each case.[105]

In *Johnson v. City of Plymouth*, a landowner brought an action for damages relating to the city's improvement project of the road abutting the landowners property.[106] The plaintiff

[100] Johnson v. City of Plymouth, 263 N.W.2d 603, 606 (Minn. 1978).
[101] *E.g.*, *id.*
[102] Minn. Stat. Ann. § 160.08, subd. 4 (West 2018).
[103] *Johnson*, 263 N.W.2d at 606.
[104] *Id.* at 607.
[105] *Id.*
[106] *Id.* at 604.

owned a bus company and claimed that the installation of the curb and gutter on the abutting road impaired access to the property by making it more difficult for buses to enter and exit.[107] The trial court held that the improvement project was a valid exercise of police power and therefore, there was no compensable taking.[108] While the Minnesota Supreme Court affirmed the judgment, it used a different analysis to answer the question. The court looked to whether the exercise of police power unduly restricted access to the property.[109] Ultimately, the court determined that the curb cuts were designed with the commercial use of the property in mind and provided generous access to the property.[110] Therefore, the improvement project did not interfere with the property owner's right to reasonable access.[111]

Some uses of police power are not compensable. In *Hendrickson v. State*, the Minnesota Supreme Court addressed the relocation and reconfiguration of an abutting highway.[112] The court noted that the particular plaintiffs in *Hendrickson* may have suffered a compensable damage, even though the state exercised its police power to reconfigure and relocate the highway.[113] At the same time, the court noted other instances in which an exercise of police power would not be compensable, including establishing one-way streets or medians, limiting crossovers, restricting U-turns, left and right turns, and parking, as well as regulating the weight, size, and speed of vehicles.[114]

b. Medians and Crossovers

A common issue that arises is whether the closure of a median crossover or construction of a median is a compensable damage. Courts have generally held that this is not a compensable damage and have followed the general rule that "a property owner is entitled to reasonably convenient and suitable access *in at least one direction* to the main-traveled lanes of the highway on which his property abuts."[115]

Although not the central issue in *Hendrickson*, the Minnesota Supreme Court noted that establishing medians prohibiting or limiting crossovers from one lane to another would not be a compensable damage.[116] According to the court, this type of restriction falls within a category of police power in which no compensable loss occurs, because "[n]o compensable damages are sustained by such restrictions . . . which govern all motorists, including abutting property owners, once they are on the traveled portion of the thoroughfare."[117] The Minnesota Supreme Court later confirmed this in *State v. Gannons, Inc.*, by stating "[t]the law is well settled in this state . . . that the dividing of a roadway by median strips or dividers cannot be made the subject of compensation in a condemnation."[118]

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[107] *Id.* at 605.
[108] *Id.*
[109] *Id.* at 607.
[110] *Id.*
[111] *Id.*
[112] Hendrickson v. State, 127 N.W.2d 165 (Minn. 1964).
[113] *Id.* at 172.
[114] *Id.* at 170.
[115] Recke v. State, 515 N.W.2d 786 (Minn. 1974) (emphasis added).
[116] *Hendrickson*, 127 N.W.2d at 170.
[117] *Id.*
[118] State v. Gannons, Inc., 145 N.W.2d 321, 329 (Minn. 1966).

County of Anoka v. Blaine Building Corp. addressed whether the installation of median strips was a compensable damage.[119] In this case, Anoka County widened University Avenue and installed a median, which resulted in the loss of access in one direction of traffic to an abutting property owner.[120] The property owners were subject to a partial taking, but the median was constructed on an existing right of way.[121] The landowners argued that because there was a partial taking, the loss of access in one direction was qualitatively different from inverse condemnation cases involving no physical taking and that it ought to be considered calculating damages.[122] The court reasoned that this argument ignored the fact that losing access in one direction is not compensable and that compensation for direct takings is identical to compensation required for damages without an actual taking.[123] Therefore, the court held that the loss of access could not be a basis for damages where a property owner is subject to a partial taking and coincidentally loses access in one direction due to the construction of a median.[124]

The court also focused on the fact that the median was built on an existing right of way and not on land taken from the property owner.[125] The court explained that this is an additional barrier for the landowner, because generally owners are not entitled to damages caused to the remaining land by property acquired from other landowners, even if all the acquired properties are used for the same project and purpose.[126] It's unclear if the court's holding would have been different, had the median been built on the taken property from the landowner.

Regardless, implying that the median would have to be built on the property taken from the landowner seems inconsistent with past decisions. *Hendrickson v. State*, an inverse condemnation case, recognized that an abutting landowner may have suffered a compensable damage from a highway, to which the landowner had direct and immediate access, that was rebuilt on an existing right of way in a manner that denied the landowner direct access to the highway.[127] Instead, the landowner retained access to the old highway which was reconfigured to a frontage road.[128] *Hendrickson* required the road to be rebuilt on an existing right-of-way but did not require the highway to be built on land taken from the landowner.[129]

While a slightly different issue, *Dale Properties, LLC. v. State* involved the closure of a median crossover.[130] The Minnesota Supreme Court saw no reason to distinguish the construction of a median from the closure of a crossover and held that the closure was not compensable.[131] The state closed an opening to the median along Highway 5, which abutted the plaintiff's property and resulted in the property no longer having direct ingress or egress from the westbound lane of Highway 5.[132] After this

119 County of Anoka v. Blaine Building Corp., 566 N.W.2d 331 (Minn. 1997).
120 *Id.* at 333.
121 *Id.*
122 *Id.* at 336.
123 *Id.*
124 *Id.*
125 *Id.* at 335.
126 *Id.*
127 Hendrickson v. State, 127 N.W.2d 165, 171 (Minn. 1964).
128 *Id.*
129 *Id.* at 169.
130 Dale Properties, LLC. v. State, 638 N.W.2d 763 (Minn. 2002).
131 *Id.* at 767.
132 *Id.* at 764.

closure, those entering the property from the westbound lane had to travel five-eighths of a mile, make a U-turn onto the eastbound lane; those wishing to travel west from the property had to travel an additional mile in the eastbound lane and make a U-turn.[133] The court held that the median closure was not a compensable damage, because the plaintiff retained access to traffic in one direct.[134] The court reasoned that construction of medians constitutes an exercise of police power to regulate public safety on the roads, and that the restriction was not unique to the abutting property owner but affected all members of the traveling public the same.[135] Moreover, if the property owners retained access to the abutting road in at least one direction, the closure of a crossover only results in a more circuitous route rather than a substantial impairment to the right of access.[136] The court was also "weary of creating a legal environment in which the cost of regulating traffic and improving roadways become prohibitive."[137]

c. Relocation and Reconfiguration of Highways

In *Hendrickson v. State*, the property owner suffered no physical taking, but the Minnesota Supreme Court held that a property owner may suffer a compensable damage when a highway to which the owner previously had direct access is rebuilt on an existing right in a manner that impairs the right of reasonably convenient and suitable access.[138] The property owners abutted Highway 63 and had two direct access connecting points.[139] The state began a highway project, which relocated the highway, adjacent to the old highway, which was reconfigured into a service road. The property owners maintained direct access to the service road but lost direct access to Highway 63.[140] The trial court held that the property owners suffered no compensable damage because their access to the road abutting the property remained the same and the reconfiguration only resulted in a more circuitous route to the highway which was not a compensable damage.[141]

The Minnesota Supreme Court, however, decided to follow other jurisdictions, which recognize the rule that "where an existing highway is converted into a limited access thoroughfare, abutting owners have lost a valuable right which is not necessarily restored by furnishing a frontage or service road."[142] The court focused on the different functions of 'freeways' and 'land service roads' and concluded that constructing an abutting service road in place of a highway does not necessarily restore or replace an abutting property owner's right.[143] The case was remanded to the trial court to determine the location of the planned interchange and

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[133] *Id.* at 764–65.
[134] *Id.* at 767.
[135] *Id.* at 765.
[136] *Id.* at 767.
[137] *Id.*
[138] Hendrickson v. State, 127 N.W.2d 165, 172–73 (Minn. 1964).
[139] *Id.* at 167.
[140] *Id.* at 167–68.
[141] *Id.* at 169.
[142] *Id.* at 172.
[143] *Id.* at 171.

for the jury to determine whether the proposed location would substantially impair the landowner's right to reasonably convenient access to the main thoroughfare.[144]

The court recognized that it was addressing the narrow question of whether the property owners suffered a compensable damage by being denied access to the main highway, if the property also has unlimited access to a frontage road which reaches the main highway by a circuitous route.[145] The court explained that not every denial of immediate access supports a claim for damages and that it could conceive of instances in which a property, especially in residential areas, would benefit from a service road and reduced traffic.[146] Moreover, non-abutting landowners are not entitled to damages because the reconfiguration causes them a more circuitous route.[147] These damages are similar to those suffered by the general public.[148]

Although *Hendrickson's* holding was narrow, the Minnesota Supreme Court relied on it in *Johnson Brothers Grocery, Inc. v. State, Dep't of Highways* in holding that the property owner suffered a compensable damage.[149] In this case, the property owner abutted and had unlimited and direct access to Hudson Road, which became the temporary location of Highway Truck No. 12 in 1933.[150] In the 1940's, No. 12 was permanently located directly south and parallel to Hudson Road and converted into a 4-lane highway, but the property owner retained direct access to No. 12 by way of an access point directly across from the property, connecting Hudson Road and No. 12.[151] Sometime before 1971, the crossover lane between the eastbound and westbound lanes of No. 12 was closed, leaving the property owner direct access only to the westbound land.[152] In 1973, the access point between No. 12 and Hudson Road was also closed, leaving the property owner without direct access to No. 12 and essentially turning Hudson Road into a frontage road.[153] The property owner brought a writ of mandamus to compel the state to commence condemnation proceedings.[154] The court held that the property owner was entitled to compensation for the constitutional taking of access, which was "factually and legally indistinguishable from the *Hendrickson* case."[155]

Although *Johnson Brothers Grocery* applied *Hendrickson*, most courts have distinguished it from other cases involving relocating or reconfiguring highways. Following the decision in *Johnson Brothers Grocery Inc. v. State Dep't of Highways*, two adjoining landowners two blocks from Johnson Brothers Grocery also sought compensation for damages, asserting that the highway reconfiguration interfered with their right to access.[156] In *Courteaus, Inc. v. State, Dep't of Highways*, the Minnesota Supreme Court disagreed and held that the property owners were not entitled to damages.[157] The court found that *Johnson Brothers Grocery* was not

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[144] *Id.* at 172–73.
[145] *Id.* at 169.
[146] *Id.* at 173.
[147] *Id.* at 170–71.
[148] *Id.*
[149] Johnson Brothers Grocery, Inc. v. State, Dep't of Highways, 229 N.W.2d 504 (Minn. 1975).
[150] *Id.* at 504.
[151] *Id.* at 504–05.
[152] *Id.* at 505.
[153] *Id.*
[154] *Id.*
[155] *Id.*
[156] Courteaus, Inc. v. State, 268 N.W.2d 65 (Minn. 1978).
[157] *Id.* at 67.

controlling, because the property owners did not abut the access point on Hudson Road to No. 12 and therefore, never had direct access to No. 12.[158] The court ultimately found that the property owners had no vested property interest in retaining indirect access to No. 12 and that the closure of these access points caused them damage that was similar to the experience by the general public.[159]

In *Recke v. State*, the Minnesota Supreme Court also found that the reconfiguration of a highway was not a compensable damage.[160] A motel owner claimed that the reconfiguration of a highways 169 and 212, which previously abutted the property but were relocated to distances away from the motel, caused a diminution in value of the property.[161] The highways 212 and 169 were constructed on new right-of-ways, which were located some distance from the motel and did not abut the property.[162] The property owner retained the same access to the old highway as it did prior to the relocation.[163] Therefore, there was no compensable damage because the case fell "within the principle that compensation need not be paid for damages caused by the relocation of a highway which results in a diversion of the main flow traffic."[164]

The *Recke* court focused on the fact that the road was built on a new right-of-way to distinguish *Hendrickson*. Looking closely at *Hendrickson* and *Recke*, the facts are relatively similar, and *Recke* arguably suffered more damage since the highway was relocated further away from the property. Both properties abutted highways, which were relocated and no longer abutted the properties, and the abutting former highways were reconfigured. The former highway in *Hendrickson* was reconfigured to a service/frontage road and the former highway in *Recke* became Flying Cloud Drive. Because the highway was built on a new right of way, *Recke* court determined that this was a diversion of traffic, which is not a compensable damage, rather than an interference with reasonably convenient and suitable access. This may have been in recognition of *Hendrickson's* narrow holding. The court also may have been motivated to distinguish from *Hendrickson* for policy reasons and wanting to avoid increasing the cost of highway projects. Holding that the change in access in *Recke* was legally compensable would have significant impacts on highway projects, potentially requiring a county or the state to compensate every abutting landowner for relocating a highway.

6. Flow of Traffic

Courts have clearly stated that property owners do not have a vested interest in the continued flow of traffic.[165] This issue typically arises in cases involving disputes over whether a landowner has suffered an interference with their right to reasonably convenient and suitable access. Courts have reasoned that reconfiguring the flow of traffic is a police power, which may be used to divert traffic without being liable for consequential damages to abutting landowners.[166]

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[158] *Id.*
[159] *Id.* at 68.
[160] Recke v. State, 215 N.W.2d 786 (Minn. 1974).
[161] *Id.* at 787.
[162] *Id.*
[163] *Id.* at 788.
[164] *Id.*
[165] *E.g.*, County of Anoka v. Blaine Building Corp., 566 N.W.2d 331, 334 (Minn. 1997).
[166] Hendrickson v. State, 127 N.W.2d 165, 170 (Minn. 1964).

In *County of Anoka v. Blaine Building Corp.*, a property owner lost access to one direction of traffic.[167] The property owners argued that although they had no right to the flow of traffic, the loss of traffic from one direction should be allowed to be included in the determination of severance damages, because traffic affects the market value of the remaining property.[168] The court refused to allow evidence of reduced traffic to be admitted for determining the market price of the remaining property. By allowing this evidence, the court would allow the property owners to indirectly be compensated for the loss of access in one direction, which is not a compensable damage.[169]

7. Special Benefits

The damages analyzed thus far have been considered by courts for the diminution in the fair market value. In some cases, a property's value may be enhanced by a highway construction project and the issue becomes whether these special benefits may offset part of an award for a taking. While not all states allow special benefits to be deducted from damages, Minnesota courts have allowed special benefits to offset awards for damages but do not allow general benefits to be deducted from damages.[170] Therefore, the primary question in partial takings is whether the enhancement in value is a special benefit to the particular landowner or a general benefit that surrounding landowners also receive.[171]

In order to be considered a special benefit, courts generally require the enhancement to include a physical change in the condition or adaptability of the property at issue.[172] Providing new access to property after a taking is considered a special benefit. In *State by Mondale v. Mecklenburg*, land was taken from two farms, essentially dividing each farm into two.[173] This was a special benefit, because the landowners received access they did not have before the taking. The newly constructed road and access opened up part of the land to a higher and better use for residential lakeshore lots and recreational purposes.[174] Therefore, the value of this benefit could offset the award of damages for the partial taking.[175]

In addition, benefits of drainage from land may be considered as a special benefit. In *Appeal of Berg*, a part of a landowner's property was taken, but the Rosedale town board determined that the benefits of drainage were higher than the damages from the taking.[176] The Minnesota Supreme Court held that the jury was properly submitted the question of whether a new road as constructed benefited the property owner's land by draining it and that evidence warranted submission of the question to the jury.[177]

[167] *Blaine Building Corp*., 556 N.W.2d at 333.
[168] *Id.*
[169] *Id.* at 335.
[170] State v. Colon, 194 N.W.2d 574, 577 (Minn. 1972) (explaining that 17 states do not permit special benefits to be deducted from damages, while some allow an offset against damages).
[171] *Id.*
[172] *Id.* at 579.
[173] State by Mondale v. Mecklenburg, 140 N.W.2d 310, 314 (Minn. 1966).
[174] *Id.* at 315–16.
[175] *Id.*
[176] Appeal of Berg, 174 N.W. 309, 310 (Minn. 1919).
[177] *Id.*

An increase in traffic considered a general benefit not a special benefit. In *State by Mattson v. Colon*, part of a farm was acquired for construction of an interchange.[178] The state was denied the ability to present evidence that because of the increased traffic, the highest and best use of the remaining land was no longer farming, but commercial purposes.[179] Therefore, the enhanced value after the taking was actually higher than the value before the taking.[180] The Minnesota Supreme Court affirmed the denial of this evidence, finding that increased flow of traffic was a general benefit.[181] The court reasoned that the landowners should not be required to pay for a benefit that his neighbor received gratis.[182] Moreover, the value of increased traffic should not offset damages because the landowner has no vested right in the flow of traffic.[183]

Special benefits may not offset damages where the condemning authority has the power to require property owners to pay for the improvement though the levy of special assessments.[184] Allowing an offset to damages to a landowner who is also subject to a special assessment for the benefit would penalize the landowner for the taking by requiring them to pay more than others are required to pay for the same benefit.[185]

Conclusion

In 2006, the Minnesota Legislature enacted a statute in response to the Supreme Court's *Kelo* decision. Among other amendments, this statute included a provision awarding attorneys' fees to landowners in certain circumstances. Some have raised concerns that this provision incentivizes landowners and their attorneys to stonewall negotiations and submit excessively high appraisals at condemnation hearings. Rather than amending the attorneys' fees provision, the Minnesota Legislature should consider changing the pre-condemnation procedures to require both landowners and acquiring authorities to participate in negotiations before condemnation hearings. By reforming the negotiation process, many condemnation proceedings could be avoided, saving landowners, acquiring authorities, condemnation boards, and courts time and resources.

In addition, many complex issues arise around just compensation. In partial takings, condemnation boards and courts must determine what damages are legally compensable and may be considered when determining the diminution in the fair market value of the remaining property. Some damages are never legally compensable, like certain uses of police powers, damages similar to those suffered by the general public, and the diversion of traffic away from a property. Construction-related interferences and loss of visibility may be compensable, but only if the loss or interference arises from changes in the land taken from the property owner. Additionally, a loss of access is generally not a legally compensable damage if the property owner retains reasonably convenient and suitable access in one direction.

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[178] State v. Colon, 194 N.W.2d 574, 575 (Minn. 1972).
[179] *Id.* at 576.
[180] *Id.*
[181] *Id.* at 580.
[182] *Id.* at 579.
[183] *Id.*
[184] State v. Colon, 194 N.W.2d at 579.
[185] *Id.* (citing City of St. Louis Park v. Engell, 168 N.W.2d 3, 10 (Minn. 1969).

Appendix A – Legally Compensable Damages in Partial Takings Under Minnesota Law

- When there has been a partial taking of property, the owner may be compensated for consequential and severance damages to the remaining property, in addition to compensation for the taking.
- In calculating damages in partial takings, Minnesota follows the "before and after" rule, which is the difference in the fair market value of the property before the taking and the fair market value of the remaining property after the taking.
- Minnesota courts have interpreted the Minnesota Constitution and statutes to determine what damages to property are legally compensable in partial takings and may be considered when determining the remaining property's fair market value.

The following may be legally compensable damages:

Construction-related interferences – interference must arise from the property taken from the landowner.	*County of Anoka v. Blaine Building Corp.*, 556 N.W.2d 331 (Minn. 1997); *State by Humphrey v. Strom*, 493 N.W.2d 554 (Minn. 1992); *City of Crookston v. Erickson*, 69 N.W.2d 909 (Minn. 1955).
Loss of visibility – must arise from changes in the property taken from the landowner.	*State by Humphrey v. Strom*, 493 N.W.2d 554 (Minn. 1992).
Loss of access from relocation of highway – if a highway, abutting a landowner who has direct and unlimited access, is rebuilt on an existing right-of-way, in a manner denying the landowner direct access	*Johnson Brothers Grocery v. State, Dep't of Highways*, 229 N.W.2d 504 (Minn. 1975); *Hendrickson v. State*, 127 N.W.2d 165 (Minn. 1964).

The following are not legally compensable damages:

Damages suffered by the general public	*E.g. County of Anoka v. Blaine Building Corp.*, 556 N.W.2d 331 (Minn. 1997)
Diversion or rerouting of the main flow of traffic	*County of Anoka v. Blaine Building Corp.*, 556 N.W.2d 331 (Minn. 1997)
Loss of access in one direction – so long as the landowner retains reasonably convenient and suitable access in one direction.	*Dale Properties, LLC v. State*, 638 N.W.2d 763 (Minn. 2002); *County of Anoka v. Blaine Building Corp.*, 556 N.W.2d 331 (Minn. 1997); *State v. Gannons, Inc.*, 145 N.W.2d 321 (Minn. 1966).

Loss of access from relocation of highway – when an abutting highway is relocated on a new right-of-way no longer abutting the landowner, but landowner retains access to the old/reconfigured highway	*Recke v. State*, 215 N.W.2d 786 (Minn. 1974).