

Kelo et al. v. City of New London, Connecticut (2005) - - - The city of New London had invoked a state statute that specifically authorized the use of eminent domain to promote economic development.

The question presented in this case was whether the city's proposed disposition of this property qualifies as a public use, within the meaning of the takings clause of the Fifth Amendment to the Constitution.

6-23-2005, The US Supreme Court, held that the city of New London's exercise of eminent domain power in furtherance of an economic development plan satisfied constitutional "public use" requirement.

During the 2006 MN Legislative session, the legislature passed SF 2750, a bill restricting the use of eminent domain and providing greater compensation to property owners. Some of The resulting compensation Provisions of the law under MN Statutes, Chapter 117 are as follows: Loss of Going Concern Compensation , Minimum Compensation, Compensation for loss of Driveway access, Payment of attorney Fees, re-establishment reimbursement to \$50,000.

The focus here will be on Minimum Compensation – Why? Because of a recent article appearing in the January/February issue of the Right of Way Magazine. The article is entitled "The Real Value of Business Property." By Mr. John Schmick . While the article is well written, the conclusion appears questionable. Paraphrasing the conclusion " Minimum Compensation was intended to prevent the unnecessary loss of businesses and jobs when private property is taken through eminent domain.. It is a statute that is unique to Minnesota - - - but has relevance to all states where property can be taken by eminent domain law. - - - " Ultimately, this is a law with numerous public policy benefits and should be considered in other states." = **MAYBE**

Minimum Compensation:

When an owner must relocate, the amount of damages payable, at a minimum, must be sufficient for an owner to purchase a comparable property in the community and not less than the condemning authority's payment or deposit under section 117.04s, to the extent that the damages will not be duplicated in the compensation otherwise awarded to the owner of the property. For the purpose of this section, "owner" is defined as the person or entity that holds fee title to the property.

Impact:

"Agencies are no longer hamstrung by the fair market value approach to acquisition and now have the opportunity to ensure that property owners are put in a situation equal to what they had."

Comment Provided by an Undisclosed Area Attorney

The Valuation:

A. Fair Market Value Analysis:

The acquiring agency completes an appraisal to estimate the fair market value of the property. This is used to establish the traditional concept of "just compensation." This process remains unchanged

B. Minimum Compensation Analysis:

After completing the fair market value analysis, the acquiring agency completes or secures a minimum compensation analysis. The Minimum Compensation analysis is presented together with the fair market value estimate of "just compensation" with the agency offering as payment the higher of the two numbers.

Typically, the appraiser of record completes the minimum compensation analysis to complement or supplement the appraisal.

Challenges:

The appraiser must determine the community applicable to the property under minimum compensation analysis.

The value of the comparable property may take the form of a listing, And/or Sale

The comparable property and/or properties should be as good as or superior to the subject.

Relocation benefits are received as a reimbursement for actual expenses. Minimum Compensation is not conditioned upon an amount that must be spent as a condition to receive payment.

The Court found the goal of the proceedings was to determine what amount of money is sufficient for the owner to purchase a comparable property in the community - - - consequently, replacement cost new for land and buildings exceeded the intent of the law.

The court's only adjustment was made by applying the unadjusted unit value per square foot of the comparable's above ground building area to the subject's above ground building area; thereby, arriving at an amount sufficient for the owner/respondent to purchase a comparable property in the community.

Original certified value = \$ 560,400 - - - rejected by the owner
Updated appraisal = \$ 580,400 - - - presented at hearing
Commissioners Award = \$ 655,000 - - - result of hearing

Respondent's Min Comp. Value = \$ 2,175,000 - - - replacement cost new presented at hearing

Petitioner's -Min Comp. value = \$ -0- - - - MC was less than appraised value

Court Awards = \$ 997,055

Verdict Upheld by MN State Supreme Court- Court of Appeals

in the matter, County of Dakota (Petitioner) V. Cameron(Respondent)

Comments Gleaned from the District Court's findings of fact in the noted matter. While the minimum compensation statute gives the court additional factors to consider in determining a condemnation award, the overarching inquiry remains the same: What sum represents just compensation to the property owner?

In Mn the measure of awardable damages may no longer be limited to Fair Market Value, because in cases requiring the fee holder to relocate the application of Minimum Compensation may apply. What is MC, how did it come about and what have been the outcomes since its inception.