



# MN. REGULATORY CHANGES – POST KELO

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STATE HIGHWAY AND  
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# THE CATALYST = KELO

- Kelo et al. v. City of New London, Connecticut (2005) - - - The city of New London had adopted 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 the constitutional "public use" requirement.

# MN REACTION TO THE KELO DECISION

- 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 for loss of Driveway Access, and Minimum Compensation

# MINNESOTA STATUTES

## 117.186 - LOSS OF GOING CONCERN & DRIVEWAY ACCESS



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### 117.186, Minnesota Statutes 2006

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#### 117.186 COMPENSATION FOR LOSS OF GOING CONCERN.

Subdivision 1. **Definitions.** For purposes of this section:

- (1) "going concern" means the benefits that accrue to a business or trade as a result of its location, reputation for dependability, skill or quality, customer base, good will, or any other circumstances resulting in the probable retention of old or acquisition of new patronage; and
- (2) "owner" has the meaning given in section 117.025 and includes a lessee who operates a business on real property that is the subject of an eminent domain proceeding.

Subd. 2. **Compensation for loss of going concern.** If a business or trade is destroyed by a taking, the owner shall be compensated for loss of going concern, unless the condemning authority establishes any of the following by a preponderance of the evidence:

- (1) the loss is not caused by the taking of the property or the injury to the remainder;
- (2) the loss can be reasonably prevented by relocating the business or trade in the same or a similar and reasonably suitable location as the property that was taken, or by taking steps and adopting procedures that a reasonably prudent person of a similar age and under similar conditions as the owner, would take and adopt in preserving the going concern of the business or trade; or
- (3) compensation for the loss of going concern will be duplicated in the compensation otherwise awarded to the owner.

Subd. 3. **Procedure.** In all cases where an owner will seek compensation for loss of a going concern, the damages, if any, shall in the first instance be determined by the commissioners under section 117.105 as part of the compensation due to the owner. The owner shall notify the condemning authority of the owner's intent to claim compensation for loss of going concern within 60 days of the first hearing before the court, as provided in section 117.075. The commissioner's decision regarding any award for loss of going concern may be appealed by any party, in accordance with section 117.145.

Subd. 4. **Driveway access.** A business owner is entitled to reasonable compensation, not to exceed the three previous years' revenues minus the cost of goods sold, if the owner establishes that the actions of a government entity permanently eliminated 51 percent or greater of the driveway access into and out of a business and as a result of the loss of driveway access, revenue at the business was reduced by 51 percent or greater. Determination of whether the revenue at the business was reduced by 51 percent or greater must be based on a comparison of the average revenues minus the average costs of goods sold for the three years prior to commencement of the project, with the revenues minus the costs of goods sold for the year following completion of the project. A claim for compensation under this section must be made no later than one year after completion of the project which eliminated the driveway access. The installation of a median does not constitute elimination of driveway access.

**History:** 2006 c 214 s 11

# GOING CONCERN

## Going Concern

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- M.S.117.186
- Business or trade must be destroyed by a taking
- The owner must notify the state of their intent to claim going concern damages within 60 days of the hearing on petition
- Documentation to support the claim must be provided to the opposing party 14 days prior to the commissioners hearing
- Compensation will be determined first by condemnation commissioners but it may be appealed to district court
- The state has the burden of proof

# MINNESOTA STATUTES

## 117.187 - MINIMUM COMPENSATION

117.187, Minnesota Statutes 2006

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### 117.187, Minnesota Statutes 2006

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#### **117.187 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 [117.042](#), to the extent that the damages will not be duplicated in the compensation otherwise awarded to the owner of the property. For the purposes of this section, "owner" is defined as the person or entity that holds fee title to the property.

**History:** *2006 c 214 s 12*

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# MINIMUM COMPENSATION – POINTS OF VIEW

- In Minnesota, 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.

In Minnesota “ 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.”

# MN DOT IMPLEMENTATION OF MINIMUM COMPENSATION

## Minimum Compensation

- M.S. 117.187
- Applies to fee owners of residential or commercial property who must relocate
- The DP offer letter indicates market value & MC
- MC is the amount needed to purchase comparable property in the community
- Owners do not have to spend it to get it
- May be eligible for a separate relocation supplemental payment



# VALUATION CONSIDERATIONS

## **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.**

# VALUATION CHALLENGES

## **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 MN. SUPREME COURT'S DECISION - - - ELIMINATES SOME OF THE LAW'S AMBIGUITY

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)

# MONETARY CONSEQUENCES OF MINIMUM COMPENSATION --- FROM ITS INCEPTION IN 2006 THRU TODAY(4-21-2015) ---

Minnesota Department of Transportation Right of Way Electronic Acquisition and Land Management System (REALMS)						
MnDOT Parcels Acquired						
From Date:	7/1/2006					
To Date:	4/21/2015					
Parcels	Parcels	Appraisal Amount	Purchase Amount	Amount Paid	% Change	
81%	4097 Parcels: Direct Purchase	\$141,276,613.38	\$162,738,427.90	\$163,689,910.39	15%	
19%	968 Parcels: Awarded	\$128,191,577.00	\$249,635,985.08	\$280,971,865.62	95%	
<b>Total of All Acquired Parcels 5065</b>		<b>\$269,468,190.38</b>	<b>\$412,374,412.98</b>	<b>\$444,661,776.01</b>	<b>53%</b>	
Parcels		Appraisal (\$Millions)	Purchase Amt (\$Millions)	Paid to Date (\$Millions)	% Change	
<b>Eminent Domain</b>						
599	Parcels: Dismissed	\$39.6	\$46.4	\$46.7	17%	
968	Parcels: Awarded	\$128.2	\$249.6	\$281.0	95%	
94	Parcels: Appealed	\$35.2	\$72.0	\$82.4	104%	
1661	<b>Parcels</b>	<b>\$203.0</b>	<b>\$368.0</b>	<b>\$410.1</b>	<b>102%</b>	
<b>Total of All Acquired Parcels</b>		<b>\$269</b>	<b>\$412.07</b>	<b>\$444.41</b>	<b>53%</b>	
Minnesota Department of Transportation Right of Way Electronic Acquisition and Land Management System (REALMS)						
Minimum Compensation and Certified Valuation						
Parcel #	Certified Amount	Minimum Comp Amount			Residential Parcels = 54 Commercial Parcels = 12	
<b>Grand Totals:</b>						
66 Parcels	\$20,875,375.00	\$24,333,475.00	16.6%			

# MINNESOTA STATUTES

## 117.031 – ATTORNEY FEES



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#### 117.031, Minnesota Statutes 2006

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##### 117.031 ATTORNEY FEES.

(a) If the final judgment or award for damages, as determined at any level in the eminent domain process, is more than 40 percent greater than the last written offer of compensation made by the condemning authority prior to the filing of the petition, the court shall award the owner reasonable attorney fees, litigation expenses, appraisal fees, other experts fees, and other related costs in addition to other compensation and fees authorized by this chapter. If the final judgment or award is at least 20 percent, but not more than 40 percent, greater than the last written offer, the court may award reasonable attorney fees, expenses, and other costs and fees as provided in this paragraph. The final judgment or award of damages shall be determined as of the date of taking. No attorney fees shall be awarded under this paragraph if the final judgment or award of damages does not exceed \$25,000. For the purposes of this section, the "final judgment or award for damages" does not include any amount for loss of a going concern unless that was included in the last written offer by the condemning authority.

(b) In any case where the court determines that a taking is not for a public use or is unlawful, the court shall award the owner reasonable attorney fees and other related expenses, fees, and costs in addition to other compensation and fees authorized by this chapter.

**History:** 2006 c 214 s 4

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