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Property Law: Limited Compensation Under Minnesota's Minimum-Compensation Statute—County of Dakota v. Cameron

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**PROPERTY LAW: LIMITED COMPENSATION UNDER
MINNESOTA'S MINIMUM-COMPENSATION STATUTE—
COUNTY OF DAKOTA V. CAMERON**

Kristine J. Williams[†]

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I. INTRODUCTION

The government's sovereign power of eminent domain¹ must continuously be critiqued to ensure that there is a proper "balance between the public's need"² and the rights of a private property owner.³ Just compensation, a requirement of an eminent domain taking, is a major factor in that balance and must be vigilantly enforced.⁴ If the government, as the condemning authority, fails to fully compensate the condemned-property owner for a taking, the owner of such property will unfairly be responsible for the burden of an eminent domain action that benefits the public.⁵ Minnesota's eminent domain statute, as amended in 2006, is an attempt to ensure that this balance is achieved; one piece in achieving this balance is the minimum-compensation statute, Minnesota Statutes section 117.187.⁶ However, in creating this statute, the legislature failed to provide clear direction in terms of what minimum compensation actually requires.

In *County of Dakota v. Cameron*, the Minnesota Supreme Court provided some clarity by interpreting the meaning of two undefined, but central, terms in the statute: "community" and "comparable property."⁷ The court's definitions of these two terms provide a proper balance between the competing interests of public taxpayers and condemned-property owners. Although the minimum-compensation statute was an amendment to Minnesota's eminent domain statute, the legislature's use of unclear language prevents the court from being able to divert from the common law and interpret the statute as requiring wide-sweeping changes to eminent domain actions in Minnesota.

1. Olson v. United States, 292 U.S. 246, 254 (1934).

2. United States v. 50 Acres of Land, 469 U.S. 24, 33 (1984) (quoting United States v. Toronto, Hamilton & Buffalo Navigation Co., 338 U.S. 396, 402 (1949)) (internal quotation marks omitted).

3. See San Diego Gas & Elec. Co. v. City of San Diego, 450 U.S. 621, 654 (1981) (arguing that "[a]s soon as private property has been taken . . . the landowner has . . . suffered a constitutional violation").

4. See, e.g., Moorhead Econ. Dev. Auth. v. Anda, 789 N.W.2d 860, 876 (Minn. 2010).

5. John Fee, *Reforming Eminent Domain*, in EMINENT DOMAIN USE AND ABUSE: KELO IN CONTEXT 125, 133 (Dwight H. Merriam et al. eds., 2006).

6. MINN. STAT. § 117.187 (2012).

7. Cnty. of Dakota v. Cameron (*Cameron III*), 839 N.W.2d 700, 707–08 (Minn. 2013).

This case note begins by providing a brief overview of eminent domain law before specifically addressing Minnesota Statutes section 117.187.⁸ The note then discusses the court's interpretation of section 117.187 in *Cameron*.⁹ An analysis of the court's interpretation of the two disputed terms follows, along with a discussion of the scope of permissible damages under the minimum-compensation statute.¹⁰ Finally, the note concludes that the Minnesota Supreme Court properly decided the case before it, but could have taken its analysis one step further to hold that new construction is not covered under Minnesota Statutes section 117.187. The note further suggests that if the legislature intended more significant change to the state's eminent domain law, it should reevaluate the minimum-compensation statute.¹¹

II. HISTORY OF THE RELEVANT LAW

A. *The Requirement of Just Compensation in Eminent Domain*

In the United States, private property has been taken from private owners for public use since the colonial era.¹² However, compensation for the taking has not always been an essential requirement of a valid exercise of eminent domain.¹³ Fear of legislatures and concern for individual rights¹⁴ resulted in a few states incorporating a just-compensation requirement into their constitutions in the late 1700s.¹⁵ In 1791, the just-compensation requirement was brought to the federal government through its inclusion in the Fifth Amendment to the U.S. Constitution; the author of the Bill of Rights, James Madison, "realized the significance of national ratification of a compensation

8. See *infra* Part II.

9. See *infra* Part III.

10. See *infra* Part IV.

11. See *infra* Part V.

12. Sometimes when an owner failed to develop his or her property, it was transferred to another person who would use the property to productively aid development. William Michael Treanor, *The Origins and Original Significance of the Just Compensation Clause of the Fifth Amendment*, 94 YALE L.J. 694, 695–96 (1985).

13. Treanor, *supra* note 12, at 695 ("Eighteenth-century colonial legislatures regularly took private property without compensating the owner.").

14. *Id.* at 706.

15. See *id.* at 701 (arguing that Vermont's Constitution of 1777 and Massachusetts's Constitution of 1780 "required just compensation for governmental taking of private property").

requirement.”¹⁶ Since then, courts have attempted to create a clear interpretation of what the language of the Fifth Amendment requires in terms of the scope and permissible damages of an eminent domain action.

The Fifth Amendment provides that the government may exercise its inherent power of eminent domain,¹⁷ as long as the taking is for public use and the owner of the condemned property receives just compensation.¹⁸ The Fifth Amendment was originally intended only to apply to a “direct, physical taking of property by the federal government.”¹⁹ However, it has been interpreted to have a much broader reach, with clear limitations on compensation.²⁰ Specifically, the public-use requirement has been expanded to include actions that merely have an intended purpose of benefitting the public.²¹ With such a broad interpretation, the just-compensation requirement sometimes becomes the only check on a state’s power of eminent domain.²² This check serves two related purposes. First, it spreads the burden of government action from just one individual to society as a whole.²³ Second, it deters the government from excessively exercising its power of eminent domain by making it accountable to the taxpayers.²⁴

In interpreting the just-compensation requirement of eminent domain, the United States Supreme Court has held that just

16. *Id.* at 709. James Madison was a “committed defender of property rights.” *Id.*

17. *Silver v. Ridgeway*, 733 N.W.2d 165, 169 (Minn. Ct. App. 2007).

18. U.S. CONST. amend. V (“[N]or shall private property be taken for public use, without just compensation.”).

19. Treanor, *supra* note 12, at 711.

20. *See Kelo v. City of New London*, 545 U.S. 469, 489 (2005) (holding that public use includes economic redevelopment); *see also United States v. 564.54 Acres of Land*, 441 U.S. 506, 511 (1979) (holding that just compensation does not include compensation for the special value of the property to the owner).

21. James Geoffrey Durham, *Efficient Just Compensation as a Limit on Eminent Domain*, 69 MINN. L. REV. 1277, 1280 (1985).

22. *See id.* at 1278 (noting that the just-compensation requirement ensures that the government properly weighs the costs and benefits of a taking and, thus, helps prevent the government from inappropriately exercising its power of eminent domain).

23. *See Fee*, *supra* note 5, at 132.

24. *See id.* at 132–33 (noting that the just-compensation requirement helps ensure that the government’s use of eminent domain is efficient, as it is an indicator that the price to the public is greater than the price to compensate every landowner in full).

compensation requires the condemned-property owner to be compensated the “full and exact” monetary equivalent of the taken property.²⁵ In *Olson v. United States*, the Court provided that the property owner is to be put “in as good a position pecuniarily as if his property had not been taken.”²⁶ However, this principle has consistently “not been given its full and literal force,” as the Court has recognized the “practical difficulties in assessing the worth [of] individual places.”²⁷ With these difficulties in mind, the property’s fair market value has been found to be the appropriate standard for damages under the just-compensation requirement.²⁸

“Fair market value” has been defined as the price a willing buyer would pay a willing seller.²⁹ Under a fair-market-value standard, the condemned-property owner is only entitled to compensation that would make him or her whole and is not to be left in a better position than if the property had been sold to a private buyer.³⁰ All costs incurred by the property owner may not be adequately measured³¹ or fully compensated,³² but the fair-market-value standard provides an objective basis on which to determine compensation.³³

Although fair market value is the appropriate measure of compensation under the Fifth Amendment,³⁴ the Court has held

25. *Monongahela Navigation Co. v. United States*, 148 U.S. 312, 326 (1893).

26. 292 U.S. 246, 255 (1934).

27. *United States v. 564.54 Acres of Land*, 441 U.S. 506, 506 (1979).

28. *United States v. Commodities Trading Corp.*, 339 U.S. 121, 123 (1950) (“Fair market value has normally been accepted as a just standard.”); *Olson*, 292 U.S. at 255.

29. *United States v. Miller*, 317 U.S. 369, 374 (1943).

30. *Olson*, 292 U.S. at 255; *see also Miller*, 317 U.S. at 375–79 (stating that fair market value neither compensates for the special value of the property to the owner arising from its special adaptability to his use, nor for the added value arising from the proposed project).

31. *Durham*, *supra* note 21, at 1278–79.

32. *Fee*, *supra* note 5, at 133 (providing that, in addition to the loss of the fair market value of a property, property owners also have relocation costs, inconvenience, loss of goodwill in a business situation, and personal detachment from home and community).

33. *See United States v. 564.54 Acres of Land*, 441 U.S. 506, 511 (1979) (citing *Miller*, 317 U.S. at 374).

34. David L. Callies et al., *Is Fair Market Value Just Compensation? An Underlying Issue Surfaced in Kelo*, in *EMINENT DOMAIN USE AND ABUSE: KELO IN CONTEXT* 137, 149 (Dwight H. Merriam et al. eds., 2006) (citation omitted) (stating that “even though property value may include attributes that are not transferable,” market

that when the fair market value of a property is not easily ascertainable, or would result in injustice to the condemned-property owner, a different standard of valuation may be appropriate.³⁵ Such other standards require a court to look at the original cost of the property or reproduction costs.³⁶ If the government does not fully compensate for a taking, the burden of an eminent domain action will ultimately “fall selectively upon certain individuals.”³⁷ On the other hand, if the condemning authority could not “compel sales at fair market value,” it may be unable to pursue “large-scale, complex” projects for the public good.³⁸ Therefore, the court must always determine a compensation amount that “is ‘just’ both to an owner whose property is taken and to the public that must pay the bill.”³⁹

B. Eminent Domain and Just Compensation in Minnesota

Compensation for an eminent domain action in Minnesota has a foundation that goes deeper than both the Minnesota and U.S. Constitutions, as the state’s power to take private property was initially limited by the Northwest Ordinance of 1787.⁴⁰ This early limitation on the state’s sovereign power of eminent domain⁴¹ was overridden in 1857 by the adoption of the Minnesota Constitution, which specifically provides that “[p]rivate property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured.”⁴² Thus, by its inclusion in the Minnesota Constitution, just compensation for a

price is still appropriate).

35. *United States v. Commodities Trading Corp.*, 339 U.S. 121, 123 (1950).

36. *See United States v. Toronto, Hamilton & Buffalo Nav. Co.*, 338 U.S. 396, 403 (1949).

37. *Fee*, *supra* note 5, at 133.

38. Thomas S. Ulen, *The Public Use of Private Property: A Dual-Constraint Theory of Efficient Governmental Takings*, in *TAKING PROPERTY AND JUST COMPENSATION: LAW OF ECONOMICS PERSPECTIVES OF THE TAKINGS ISSUE* 163, 171 (Nicholas Mercuro ed., 1992).

39. *Commodities Trading Corp.*, 339 U.S. at 123.

40. The Northwest Ordinance of 1787, which governed part of what would become the state of Minnesota, provided that when “public exigencies make it necessary, for the common preservation, to take any person’s property . . . full compensation shall be made for the same.” NORTHWEST ORDINANCE OF 1787 art. II.

41. *State ex rel. Burnquist v. Flach*, 213 Minn. 353, 356, 6 N.W.2d 805, 807 (1942).

42. MINN. CONST. art. I, § 13.

taking has been found to be an absolute right of each citizen, and no attempt to “deprive the citizen of this incontestable right” is to be tolerated.⁴³

As a constitutional provision meant to protect citizens⁴⁴ and deter the government from senselessly exercising its power of eminent domain,⁴⁵ Minnesota courts have liberally interpreted the just-compensation provision.⁴⁶ In *Minneapolis-St. Paul Sanitary District v. Fitzpatrick*, the Minnesota Supreme Court followed the United States Supreme Court’s direction and held that the property owner is entitled to the “full and exact equivalent” of the property.⁴⁷ Once again, this standard is usually determined by the property’s fair market value.⁴⁸ However, in Minnesota, the fair market value is determined by considering any evidence that “would affect the price a purchaser willing but not required to buy the property would pay an owner willing but not required to sell it.”⁴⁹ The Minnesota Supreme Court has provided that just compensation is to include “all elements of value” in the property, but is not to exceed a fairly determined market value.⁵⁰ The court has further recognized three general ways of ascertaining the fair market value of a property: “(1) market data approach based on comparable sales; (2) income-capitalization approach; and (3) reproduction cost, less depreciation.”⁵¹ Despite the fact that the

43. *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 876 (Minn. 2010) (quoting *State ex rel. Ryan v. Dist. Court of Ramsey Cnty.*, 87 Minn. 146, 151, 91 N.W. 300, 302 (1902)).

44. *Id.* (“[A] constitutional provision for just compensation was ‘inserted for the protection of the citizen.’” (quoting *Adams v. Chicago, Burlington & N. R.R. Co.*, 39 Minn. 286, 290, 39 N.W. 629, 631 (1888))); *see also* *Humphrey v. Strom*, 493 N.W.2d 554, 558 (Minn. 1992) (“[T]he clear intent of Minnesota law is to fully compensate its citizens for losses related to property rights incurred because of state actions.”).

45. *Durham*, *supra* note 21, at 1278.

46. *See generally* *Anda*, 789 N.W.2d at 878 (adopting an exclusion approach to just compensation in environmental condemnation proceedings in order to protect property owners).

47. *Minneapolis-St. Paul Sanitary Dist. v. Fitzpatrick*, 201 Minn. 442, 449, 277 N.W. 394, 398–99 (1937) (quoting *Monongahela Nav. Co. v. United States*, 148 U.S. 312, 326 (1893)).

48. *Id.* (citing *Monongahela Nav. Co.*, 148 U.S. at 326).

49. *Anda*, 789 N.W.2d at 876 (quoting *Strom*, 493 N.W.2d at 559).

50. *Fitzpatrick*, 201 Minn. at 449, 277 N.W. at 398–99 (quoting *Olson v. United States*, 292 U.S. 246, 255 (1934)).

51. *Cnty. of Ramsey v. Miller*, 316 N.W.2d 917, 919 (Minn. 1982) (citing *BEN*

language of the Minnesota Constitution is broader than the U.S. Constitution,⁵² Minnesota courts have limited potentially compensable damages in the same areas as the Supreme Court.⁵³

C. *Changes in Eminent Domain as a Result of the Court's Holding in Kelo*

Both the federal and state power of eminent domain received great attention and revision after the Supreme Court's 2005 holding in *Kelo v. City of New London* that a commercial redevelopment plan unquestionably served a public purpose and satisfied the public-use requirement of the Fifth Amendment.⁵⁴ The controversy around this decision centered on the Court's ruling that it is constitutional to transfer an individual's private property to *private* developers.⁵⁵ By 2009, forty-three states responded to the widespread public outrage⁵⁶ by enacting legislation to curb the power of eminent domain.⁵⁷ Minnesota was one of these states.⁵⁸ The purpose of the Minnesota amendments can be seen as providing more protection to the state's citizens. The chief author of the eminent domain bill stated that his goal for the bill "was [to]

W. PALMER, PALMER'S MANUAL OF CONDEMNATION LAW § 40 (1961); 4 JULIUS L. SACKMAN ET AL., NICHOLS ON EMINENT DOMAIN § 12.32[3] (rev. 3d ed. 1981)).

52. *Strom*, 493 N.W.2d at 558.

53. *See* Hous. & Redevelopment Auth. *ex rel.* City of Minneapolis v. Minneapolis Metro. Co., 273 Minn. 256, 263, 141 N.W.2d 130, 136 (1966) (holding that "enhancement of value resulting from the taking" is not compensable); *see also Strom*, 493 N.W.2d at 560–62 (holding "construction-related interferences" and "loss of visibility to the public traveling" to be evidence in determining damages and not separate damages).

54. 545 U.S. 469, 484 (2005).

55. Ilya Somin, *The Limits of Backlash: Assessing the Political Response to Kelo*, 93 MINN. L. REV. 2100, 2107 (2009).

56. *Id.* at 2108 ("[T]he decision was greeted with widespread outrage that cut across partisan, ideological, racial, and gender lines.").

57. *Id.* at 2102.

58. Amendments were made to Minnesota Statutes section 117.025 (Definitions), section 117.027 (Condemnation for Blight Mitigation and Contamination Remediation), section 117.031 (Attorney Fees), section 117.0412 (Local Government Public Hearing Requirements), section 117.184 (Compensation for Removal of Legal Nonconforming Use), section 117.186 (Compensation for Loss of Going Concern), section 117.187 (Minimum Compensation), section 117.188 (Limitations), section 117.189 (Public Service Corporation Exceptions), and section 117.226 (Right of First Refusal). Act of May 19, 2006, ch. 214, 2006 Minn. Laws 195, 195–204.

limit the use of eminent domain for public use and eliminate the use of eminent domain for economic development.”⁵⁹ Part of the eminent domain amendment that passed in 2006 was the addition of the minimum-compensation statute, which specifically provides that:

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.⁶⁰

However, two pivotal terms within the statute, “comparable property” and “community,” were not defined by the legislature.⁶¹ Additionally, prior to *Cameron*, the Minnesota Supreme Court had never interpreted these two terms in relation to section 117.187.⁶²

Other post-*Kelo* Minnesota Supreme Court decisions show that the court has continued to be rather lenient in its eminent domain holdings. In terms of the public-use requirement, in *State ex rel. Commissioner of Transportation v. Kettleison*, the court held that the requirement was satisfied by a *private* access road.⁶³ In terms of compensation for damages, the appropriate standard continues to appear to be the fair-market-value standard. In *Moorhead Economic Development Authority v. Anda*, the court concluded that when a contaminated property is condemned, “just compensation will usually be the fair market value of the property as remediated.”⁶⁴ However, although the fair-market-value standard continues to be used to determine compensation, the court has held that when a statute specifically calls for other factors to be considered,⁶⁵

59. MINN. SENATE COMM. ON JUDICIARY, MINNESOTA JUDICIARY COMMITTEE 2006 UPDATE, S. 84-2006, Reg. Sess., para. 90 (2006), MN S. Comm. Up., 2006 JUD (Westlaw).

60. MINN. STAT. § 117.187 (2012) (emphasis added). “Whenever the petitioner shall require title and possession of all or part of the owner’s property,” the petitioner “shall pay to the owner or deposit with the court an amount equal to petitioner’s approved appraisal of value.” *Id.* § 117.042.

61. *Cameron III*, 839 N.W.2d 700, 714 (Minn. 2013) (Anderson, J., concurring in part, dissenting in part).

62. *Id.* at 714–15.

63. 801 N.W.2d 160, 166 (Minn. 2011).

64. 789 N.W.2d 860, 883 (Minn. 2010).

65. See MINN. STAT. § 216B.47 (“[D]amages to be paid in eminent domain

meaningful consideration must be given to those statutory factors.⁶⁶ In such a case, the court reasoned that the fair-market-value standard continues to be significant, as the condemned-property owner cannot be compensated an amount “less than the full fair market value of his loss.”⁶⁷

III. THE CAMERON DECISION

A. *Facts and Procedure*

On July 25, 2008, the County of Dakota (“County”) exercised its power of eminent domain to acquire a property for a highway construction project.⁶⁸ The condemned property, a commercial property located in Inver Grove Heights, Minnesota, was a property on which George C. Cameron owned and operated a liquor business.⁶⁹ The condemned property consisted of approximately 13,000 square feet of land⁷⁰ and a building constructed in 1885⁷¹ that had 4444 square feet of ground level and 1600–2000 square feet of basement space.⁷² Using a sales comparison approach,⁷³ the County initially offered Cameron \$560,300.⁷⁴ Cameron rejected this offer, and an administrative hearing followed where Cameron was

proceedings must include the original cost of the property less depreciation, loss of revenue to the utility, expenses resulting from integration of facilities, and other appropriate factors.”).

66. See *City of Moorhead v. Red River Valley Coop. Power Ass’n*, 830 N.W.2d 32, 38 (Minn. 2013) (interpreting section 216B.47).

67. *Id.*

68. *Cameron III*, 839 N.W.2d 700, 703 (Minn. 2013).

69. *Id.* at 703–04.

70. *Cnty. of Dakota v. Cameron (Cameron II)*, 812 N.W.2d 851, 855 (Minn. Ct. App. 2012), *aff’d*, 839 N.W.2d 700 (Minn. 2013).

71. *Id.* The district court provided that the condemned property “‘exhibited wear, tear, and maintenance issues commensurate with its age.’” *Id.* at 864 (quoting *Cnty. of Dakota v. Cameron (Cameron I)*, No. 19-HA-CV-09-3756, 2011 WL 7769947, at *6 (Minn. Dist. Ct. Feb. 23, 2011), *aff’d*, 812 N.W.2d 851, *aff’d*, 839 N.W.2d 700).

72. *Cameron III*, 839 N.W.2d at 703–04.

73. 3 JOHN MARTINEZ, LOCAL GOVERNMENT LAW § 21:34 (2014) (“[S]ales of comparable properties in the area sold at or near the time of taking are examined in order to ascertain the fair market value of the subject property.”).

74. *Cameron III*, 839 N.W.2d at 704.

awarded \$655,000 in damages.⁷⁵ Cameron appealed the award to the Dakota County District Court.⁷⁶

At an evidentiary hearing, Cameron claimed that he was entitled to minimum compensation under Minnesota Statutes section 117.187.⁷⁷ Cameron argued a very narrow interpretation of the definitions of both “community” and “comparable property,” in which “community” consisted of the trade area of the business within a three-mile radius of the condemned property.⁷⁸ According to Cameron, there was no “comparable property” within that community, so he was entitled to an award of damages “that would allow him to purchase land and construct a new building of comparable size.”⁷⁹ Cameron estimated that minimum compensation would therefore be \$2,175,000.⁸⁰

The County, on the other hand, argued that the relevant “community” consisted of the city of Inver Grove Heights.⁸¹ Under this interpretation, the County argued that a liquor store, “the Robert Trail property,” qualified as a “comparable property” within the community.⁸² The Robert Trail property was significantly smaller and located seven miles away from the condemned property, but the County argued that minimum compensation should be based on its June 2008 selling price of \$505,000.⁸³

The district court ultimately held that “community” should be defined as a “location where a business can survive and be profitable.”⁸⁴ It further provided that the “comparable property” need neither be available for purchase nor the same size as the condemned property, but rather, that they should have “similar

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Cameron II*, 812 N.W.2d 851, 855–56 (Minn. Ct. App. 2012), *aff'd*, 839 N.W.2d 700 (Minn. 2013).

81. *Cameron III*, 839 N.W.2d at 704.

82. *Id.*

83. The Robert Trail property was sold one month before the County acquired the condemned property. *Id.* The Robert Trail property was 3120 square feet including the basement, compared to the condemned property’s 6200 square feet including the basement. *Cameron I*, No. 19-HA-CV-09-3756, 2011 WL 7769947, at *8 n.2 (Minn. Dist. Ct. Feb. 23, 2011), *aff'd*, 812 N.W.2d 851, *aff'd*, 839 N.W.2d 700.

84. *Cameron III*, 839 N.W.2d at 707 (quoting *Cameron I*, 2011 WL 7769947, at *4).

effective age, condition, quality, and parking/landscaping.”⁸⁵ The district court therefore agreed with the County that the Robert Trail property was a “comparable property” located within the community.⁸⁶ Factoring in the size differences of the buildings, the district court concluded that Cameron was entitled to \$997,055.84 in damages.⁸⁷

Cameron appealed, and the district court’s decision was affirmed.⁸⁸ In defining “comparable property,” the court of appeals looked to the sales-comparison approach as it is used in the valuation of real estate for tax purposes; under this approach, “due weight [is given] to lands which are comparable in character, quality, and location.”⁸⁹ The court then defined “community,” using the common-usage definition, as “[a] group of people living in the same locality and under the same government.”⁹⁰ The court provided that the district court’s definition of “community” improperly limited the minimum-compensation statute to businesses, but concluded that the district court came to the correct conclusion regarding the comparability of the Robert Trail property.⁹¹

B. *The Minnesota Supreme Court’s Decision*

The Minnesota Supreme Court affirmed the lower court’s conclusions, but adjusted the definitions of “community” and “comparable property.”⁹² Applying a plain meaning approach to the words in the statute, the majority held that “community” means “an identifiable locality that has a socially or governmentally recognized identity, or a group of such localities.”⁹³ The court reasoned that this definition was consistent with the definition of

85. *Id.* at 704 (quoting *Cameron I*, 2011 WL 7769947, at *6).

86. *Id.* at 707–08 (citing *Cameron I*, 2011 WL 7769947, at *7).

87. *Id.* at 704–05 (citing *Cameron I*, 2011 WL 7769947, at *8).

88. *Id.* at 705.

89. *Cameron II*, 812 N.W.2d 851, 859 (Minn. Ct. App. 2012) (quoting MINN. STAT. § 273.12 (2010)), *aff’d*, 839 N.W.2d 700.

90. *Id.* at 860 (alteration in original) (quoting AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 383 (3d ed. 1992)).

91. *Id.*

92. *Cameron III*, 839 N.W.2d at 706–10. The court also analyzed the appropriate determination of attorney’s fees under Minnesota Statutes section 117.031(a), but that aspect of the court’s opinion is not discussed in this note. *Id.* at 710–12.

93. *Id.* at 706–07.

the term in other Minnesota statutes.⁹⁴ Thus, under this definition of “community,” the court found that the city of Inver Grove Heights qualified as an appropriate community.⁹⁵

Using a technical interpretation,⁹⁶ the court concluded that a “comparable property” is “an existing property—regardless of its availability for purchase—that has enough like characteristics or qualities to another property that the value of one can be used to determine the value of the other.”⁹⁷ The court reasoned that a “functional[ly] equivalent” property was not a necessary requirement for minimum compensation,⁹⁸ and the property need not be “contemporaneously available for purchase.”⁹⁹ Under the court’s definition, the Robert Trail property qualified as a “comparable property within the community.”¹⁰⁰ Therefore, the court affirmed Cameron’s award of damages in the amount of \$997,055.84.¹⁰¹

In a concurrence and dissent, Justice Anderson agreed with the court’s result but disagreed with the majority’s definition of “community.”¹⁰² Justice Anderson argued that the definition announced by the court had its own problems, as the phrase “socially or governmentally recognized identity” is just as hard to define as “community.”¹⁰³ He further pointed out that the definition advanced by the majority could result in many situations that would not fit within the definition.¹⁰⁴ As a result of potential

94. *Id.* at 707. One statute, for example, defines community as “an identifiable local neighborhood, community, rural district, or other geographically well-defined area in which individuals have common interests or interact.” MINN. STAT. § 52.001, subdiv. 5 (2012).

95. *Cameron III*, 839 N.W.2d at 707–08.

96. *Id.* at 709.

97. *Id.* at 710.

98. *Id.* at 709 (“While functional equivalence may be relevant to the determination of whether a property qualifies as ‘comparable,’ it is not a *necessary* requirement.”).

99. *Id.* (“We are not aware of any technical definition of the phrase ‘comparable property’ that requires a property also to be contemporaneously available for purchase.”).

100. *Id.* at 708. Important factors to consider in determining if a property is comparable include “effective age, condition, quality, and parking/landscaping,” as well as location and similar uses of the properties. *Id.*

101. *Id.* at 712.

102. *Id.* (Anderson, J., concurring in part, dissenting in part).

103. *Id.* at 714–15.

104. *Id.* at 715 (providing examples such as “a very small city, with no

problems that could arise in the future, Justice Anderson argued that defining “community” should be left to the legislature.¹⁰⁵

IV. ANALYSIS

The Minnesota Supreme Court’s interpretation of Minnesota Statutes section 117.187 provided valid definitions for the two disputed terms: “community” and “comparable property.” However, the statutory interpretation and analyses employed by the court in reaching those definitions was incomplete. Additionally, the court failed to fully answer the question of permissible damages under the minimum-compensation statute when there is no “comparable property in the community.”¹⁰⁶

The objective of statutory interpretation is for the court to determine the legislature’s intent in enacting a statute.¹⁰⁷ When the statutory language has a clear meaning, “that meaning governs application of that statute.”¹⁰⁸ Therefore, when the legislature’s intent is clear and unambiguous, with only one reasonable interpretation of a term, the court must use the plain meaning approach to statutory interpretation.¹⁰⁹ On the other hand, when the legislature’s intent is ambiguous, such intent must be ascertained through canons of construction.¹¹⁰ Only after all aspects

comparable properties, or the reverse, a large metropolitan area composed of many different ‘communities’ with vigorous disagreement about what ‘community’ means”).

105. *Id.*

106. MINN. STAT. § 117.187 (2012).

107. *Id.* § 645.16.

108. *Woodhall v. State*, 738 N.W.2d 357, 361 (Minn. 2007) (citing MINN. STAT. § 645.16 (2006)).

109. *See Larson v. State*, 790 N.W.2d 700, 703 (Minn. 2010) (citing *Tuma v. Comm’r of Econ. Sec.*, 386 N.W.2d 702, 706 (Minn. 1986)); *see also* MINN. STAT. § 645.08(1) (2012) (“Words and phrases are construed according to rules of grammar and according to their common and approved usage.”).

110. *Brayton v. Pawlenty*, 781 N.W.2d 357, 363 (Minn. 2010) (citing MINN. STAT. § 645.16 (2008)). Matters to consider to ascertain the legislature’s intent include:

- (1) the occasion and necessity for the law; (2) the circumstances under which it was enacted; (3) the mischief to be remedied; (4) the object to be attained; (5) the former law, if any, including other laws upon the same or similar subjects; (6) the consequences of a particular interpretation; (7) the contemporaneous legislative history; and (8) legislative and administrative interpretations of the statute.

surrounding the eminent domain statute are fully considered will the legislature's intention be effectuated,¹¹¹ and the definitions and conclusions reached by the court provide accurate context for compensation in future eminent domain cases.¹¹²

A. *Definition of "Community" in Minnesota Statutes Section 117.187*

Minnesota Statutes section 117.187 provides that, in an eminent domain proceeding, the property owner is entitled to compensation that would allow him or her to purchase a "comparable property in the community."¹¹³ The definition of "community" in this statute is crucial in providing a framework for determining how broadly or narrowly this statute is to be read, and thus, to the scope of permissible damages under the just-compensation requirement in Minnesota. Throughout the proceedings, there were a number of different interpretations of "community" presented; therefore, the *Cameron* court erred by simply applying the plain meaning approach in its interpretation of the term. Irrespective of this error, the court's definition appears to be consistent with an ascertained legislative intent based on an analysis of the circumstances surrounding the statute's enactment, prior versions of the bill, and the legislature's definition of the term in other statutes.

1. *"Community" Is an Ambiguous Term Within the Statute*

A term is ambiguous when it is subject to more than one "reasonable interpretation."¹¹⁴ In the course of the *Cameron*

MINN. STAT. § 645.16 (2012).

111. See *State ex rel. Comm'r of Transp. v. Kettleon*, 801 N.W.2d 160, 166 (Minn. 2011) (citing MINN. STAT. § 645.16 (2010); *In re* 2010 Gubernatorial Election, 793 N.W.2d 256, 261 (Minn. 2010)).

112. See generally *Hohn v. United States*, 524 U.S. 236, 251 (1998) ("Considerations of *stare decisis* have special force in the area of statutory interpretation" (quoting *Patterson v. McLean Credit Union*, 491 U.S. 164, 172–73 (1989))).

113. MINN. STAT. § 117.187 (2012).

114. *State v. Leathers*, 799 N.W.2d 606, 608 (Minn. 2011) ("A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation." (quoting *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999))). Compare *Brayton*, 781 N.W.2d at 363 (competing interpretations brought into focus the ambiguity of the statute), with *McLane Minn., Inc. v. Comm'r of Revenue*, 773 N.W.2d 289, 297 (Minn. 2009) (competing

proceedings, multiple interpretations of “community” were presented; these definitions included: (1) a trade area of business,¹¹⁵ (2) a city,¹¹⁶ (3) “a location where a business can survive and be profitable,”¹¹⁷ and (4) “[a] group of people living in the same locality and under the same government.”¹¹⁸ Therefore, the term “community” is subject to more than one reasonable interpretation and is ambiguous as it appears within section 117.187. Because “community” is an ambiguous term, the court should have tried to ascertain the legislature’s intent by looking beyond the plain meaning of the word¹¹⁹ and considering “the object to be obtained by the law, prior versions of the law, and the circumstances surrounding the law’s enactment.”¹²⁰

The 2006 amendments to Minnesota’s eminent domain statute, including section 117.187, were a legislative response to the United States Supreme Court’s very broad interpretation of the public-use requirement in *Kelo*.¹²¹ If the minimum-compensation statute is to be seen as narrowing that reach, it could be argued that this section should also broaden permissible compensation. However, this interpretation would be inaccurate, as the “measure

interpretation was unreasonable based on the language of the statute, therefore rendering the statute unambiguous).

115. *Cameron III*, 839 N.W.2d 700, 704 (Minn. 2013). Cameron testified that the trade area of his business was an area within three miles of the condemned property. *Id.*

116. *Id.* The County’s expert testified that the city of Inver Grove Heights could qualify as the relevant community. *Id.*

117. *Cameron I*, No. 19-HA-CV-09-3756, 2011 WL 7769947, at *4 (Minn. Dist. Ct. Feb. 23, 2011), *aff’d*, 812 N.W.2d 851 (Minn. Ct. App. 2012), *aff’d*, 839 N.W.2d 700.

118. *Cameron II*, 812 N.W.2d at 860 (quoting AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, *supra* note 90), *aff’d*, 839 N.W.2d 700. “[I]n a smaller municipality, the municipality may be the community. But if the property is located in a large metropolitan area, the community may be a neighborhood or geographic area within the metropolis.” *Id.*

119. See MINN. STAT. § 645.16 (2012); *Staab v. Diocese of Saint Cloud*, 813 N.W.2d 68, 77 (Minn. 2012) (concluding that legislative intent should be examined when a statute is open to more than one reasonable interpretation); *Leathers*, 799 N.W.2d at 611 (“When a statutory provision is ambiguous, it is appropriate to turn to the canons of statutory construction to ascertain a statute’s meaning.”).

120. *State ex rel. Comm’r of Transp. v. Kettleon*, 801 N.W.2d 160, 166 (Minn. 2011) (citing MINN. STAT. § 645.16 (2010)); *In re 2010 Gubernatorial Election*, 793 N.W.2d 256, 261 (Minn. 2010).

121. *Kelo v. City of New London*, 545 U.S. 469 (2005).

of compensation” was not an issue before the Supreme Court in *Kelo*—no argument was made regarding this element of an eminent domain action.¹²² In reaching its holding regarding the public-use requirement, the Supreme Court expressly provided that states may place further restrictions on the exercise of eminent domain within its boundaries.¹²³ Consistent with this holding, Minnesota’s 2006 amendments can be seen as specifically addressing the public-use requirement. This interpretation is supported by statements made by Senator Thomas Bakk, the chief author of the amendments, that his goal was to “stop the use of eminent domain for economic development purposes” with “[t]he heart of the bill [being] provisions defining public uses or public purposes.”¹²⁴

Therefore, the amendments should be interpreted as merely intending to provide greater protection to property owners whose property is being taken for *private* use.¹²⁵ The scope of the minimum-compensation statute is not limited to such situations.¹²⁶ Consequently, the circumstances in which the minimum-compensation statute was enacted¹²⁷ do not provide any clear insight into how this aspect of the amendment should be

122. Oral Argument at 50:52, *Kelo*, 545 U.S. 469 (No. 04-108), *available at* http://www.oyez.org/cases/2000-2009/2004/2004_04_108 (last visited Dec. 7, 2014). Although the Supreme Court acknowledged that the issue of just compensation was not before the Court, in oral argument, Justice Breyer phrased the question in terms of putting “the person in the position he would be in if he didn’t have to sell his house.” *Id.* at 49:54. And Justice Souter stated that the problem that “bothers a lot of us” is the problem of making the “property owner whole.” *Id.* at 50:45.

123. *Kelo*, 545 U.S. at 489.

124. MINN. SENATE COMM. ON TRANSP., MINNESOTA TRANSPORTATION COMMITTEE 2006 UPDATE, S. 84-2006, Reg. Sess., para. 27 (2006), MN S. Comm. Up., 2006 TRP (Westlaw) (follow hyperlink dated “March 31, 2006”).

125. *See generally Kelo*, 545 U.S. at 489 (“We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power.”); *Staab v. Diocese of Saint Cloud*, 813 N.W.2d 68, 73 (Minn. 2012) (citing MINN. STAT. § 645.16 (2010)) (noting that if statutory language is ambiguous, “the court may look beyond the statutory language to ascertain the Legislature’s intent”).

126. *Compare* MINN. STAT. § 117.012, subdiv. 2 (2012) (“Eminent domain may only be used for a public use or public purpose.”), *with id.* § 117.187 (“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 . . .”).

127. *Id.* § 645.16.

interpreted in terms of the intended scope of the definition of “community” for just compensation.

A prior version of Minnesota’s eminent domain bill, on the other hand, provides a more accurate context in which to interpret the legislature’s intent with regard to section 117.187.¹²⁸ The original version of the bill provided that minimum-compensation should be determined based on a “similar sized house or building.”¹²⁹ The legislature ultimately decided to change this wording to “comparable property.”¹³⁰ This change demonstrates a clear intent on the part of the legislature to broaden the scope of what is evaluated when considering permissible potential properties for valuation.¹³¹ In order to fully satisfy that intent and include more properties for valuation purposes, a broad reading of “community” would be required as well.¹³²

That the legislature intended a broad definition of “community” is further supported by the legislature’s definition of the term in other contexts. In Minnesota Statutes section 256.9754,¹³³ the legislature defined “community” as “a town, township, city, or targeted neighborhood within a city, or a consortium of towns, townships, cities, or targeted neighborhoods within cities.”¹³⁴ Another statute, section 52.001,¹³⁵ defines community as an “identifiable local neighborhood, community,

128. See generally *Staab*, 813 N.W.2d at 77 (citing MINN. STAT. § 645.16 (2010)) (reviewing earlier versions of a statute to determine legislative intent after concluding a statute was ambiguous).

129. See MINN. SENATE COMM. ON TRANSP., MINNESOTA TRANSPORTATION COMMITTEE 2006 UPDATE, S. 84-2006, Reg. Sess., para. 33 (2006), MN S. Comm. Up., 2006 TRP (Westlaw) (follow hyperlink dated “March 31, 2006”); MINN. SENATE, MINNESOTA SENATE JOURNAL, S. 84-75, Reg. Sess. (2006), MN S. Jour., 2006 Reg. Sess. No. 79 (Westlaw) (“Page 9, line 26, delete ‘a similar house or building of equivalent size.’” (emphasis omitted)).

130. MINN. SENATE, MINNESOTA SENATE JOURNAL, S. 84-79, Reg. Sess. (2006), MN S. Jour., 2006 Reg. Sess. No. 79 (Westlaw) (“Page 10, line 31, after ‘purchase’ insert ‘a comparable property . . .’” (emphasis omitted)).

131. See generally *Auto Owners Ins. Co. v. Perry*, 749 N.W.2d 324, 328 (Minn. 2008) (viewing the adoption of an amendment as evidence that the legislature wanted to change the law).

132. See *McLane Minn., Inc. v. Comm’r of Revenue*, 773 N.W.2d 289, 297 (Minn. 2009) (citing MINN. STAT. § 645.16 (2008)) (looking at the entire section as a whole and giving “effect to all of its provisions”).

133. MINN. STAT. § 256.9754 (2012).

134. *Id.* § 256.9754, subdiv. 1(a).

135. *Id.* § 52.001 (definitions for credit union banking).

rural district, or other geographically well-defined area in which individuals have common interests or interact.”¹³⁶ Both of these definitions for community focus on physical locality, as opposed to a social construction, and allow for broad applicability of the statute.¹³⁷ Therefore, based on the specific language chosen by the legislature in section 117.187, it can be inferred that the legislature intended such broadness to be applied to the definition of “community” in the minimum-compensation statute as well.

2. *The Court’s Definition of “Community”*

Understanding that the legislature intended a broad definition of “community” focused on physical locality, each proposed definition throughout the lower court proceedings of *Cameron* must be rendered null.¹³⁸ The Minnesota Supreme Court’s majority definition of “community” as “an identifiable locality that has a socially or governmentally recognized identity, or a group of such localities,”¹³⁹ on the other hand, does properly provide a broad definition based on physical locality that extends beyond commercial properties. Although the majority’s definition may not

136. *Id.*

137. *Cf. id.* § 144.1476 (defining “eligible rural community” as “(1) a Minnesota community that is located in a rural area, as defined in the federal Medicare regulations, Code of Federal Regulations, title 42, section 405.1041; or (2) a Minnesota community that has a population of less than 10,000, according to the United States Bureau of Statistics, and that is outside the seven-county metropolitan area, excluding the cities of Duluth, Mankato, Moorhead, Rochester, and St. Cloud”); *id.* § 626.91 (defining “community” as “the Lower Sioux Indian Community”).

138. Cameron’s proposed definition is restricted to a “[three] mile trade area.” *Cameron III*, 839 N.W.2d 700, 706 (Minn. 2013). This clearly goes against the broad legislative intent; such a narrow definition creates a nearly unattainable standard for a “comparable property in the community.” MINN. STAT. § 117.187. The County proposed a definition that included the “city or town [of] the condemned property,” *Cameron III*, 839 N.W.2d at 706, but this improperly excludes all properties outside the city’s boundaries regardless of the property’s use. The district court’s definition as “a location where a business can survive and be profitable,” *id.* at 707, inappropriately limits the applicability of the statute to commercial property. The definition based on the “plain and ordinary meaning,” advanced by the Minnesota Court of Appeals as a “group of people living in the same locality and under the same government,” *id.* at 706, goes against the legislature’s ascertained intent to define “community” based on physical locality as opposed to a social construction.

139. *Cameron III*, 839 N.W.2d at 706–07.

be perfect,¹⁴⁰ the definition clarifies the intended “sense of the term”¹⁴¹ and creates a context in which the statute is to be read. A definition that tries to address every potential situation risks the possibility of becoming so long and convoluted that it becomes difficult to understand.¹⁴² Therefore, the definition of “community” advanced by the majority is an appropriate standard for application of Minnesota’s eminent domain statute. However, as Justice Anderson concluded in his concurrence and dissent, it may be advantageous for the legislature to reevaluate this statute to more clearly define what is intended by “community,” specifically in the context of minimum compensation.¹⁴³

B. Definition of “Comparable Property” in Minnesota Statutes Section 117.187

The definition of “comparable property” in section 117.187 is the second determinative element in evaluating the framework for the scope of potential damages owed to condemned-property owners in an eminent domain action.¹⁴⁴ Throughout the proceedings, the courts presented one basic interpretation of “comparable property”; however, Cameron argued that there were two additional requirements implied in the phrase: functional equivalence and availability. After evaluating these requirements based on the language of the statute, the court correctly determined that the suggested requirements were unreasonable and that the statute was unambiguous.¹⁴⁵

1. “Comparable Property” Is an Unambiguous Term in the Statute

In the course of the *Cameron* proceedings, “comparable property” was defined as being similar in regards to the property’s

140. *Id.* at 715 (Anderson, J., concurring in part, dissenting in part) (arguing that “socially or governmentally recognized identity” is a phrase no better defined than “community”).

141. Jeanne Frazier Price, *Wagging, Not Barking: Statutory Definitions*, 60 CLEV. ST. L. REV. 999, 1014 (2013).

142. *See id.* at 1052–53.

143. *Cameron III*, 839 N.W.2d at 715.

144. MINN. STAT. § 117.187 (2012).

145. The court concluded that, “[w]hile functional equivalence may be relevant to the determination of whether a property qualifies as ‘comparable,’ it is not a *necessary* requirement.” *Cameron III*, 839 N.W.2d at 709. Further, requiring the property to be available would go against real-estate valuation principles. *Id.*

character, quality, location, and age.¹⁴⁶ Cameron argued that the definition of comparable property required two additional elements: functional equivalence and availability.¹⁴⁷ However, even with alternative interpretations, the language is only unambiguous when such interpretations are reasonable. The question then is what makes an interpretation reasonable. Insight into the answer can be gleaned from a Wisconsin Court of Appeals decision that stated, “An interpretation [of a statute] is unreasonable [when the interpretation] ‘directly contravenes the words of the statute, it is clearly contrary to legislative intent or it is without rational basis.’”¹⁴⁸ Interpreting section 117.187 as requiring a comparable property to be both a functional equivalent and available for purchase would improperly go against the plain language in the eminent domain statute.¹⁴⁹ Therefore, the court correctly determined that the phrase “comparable property” was unambiguous, as there was no reasonable alternative interpretation of the term presented.¹⁵⁰

First, it would be unreasonable to conclude that “comparable property” requires a functionally equivalent property, as this interpretation would contradict the plain language of the statute. When engaging in statutory interpretation, phrases are to be interpreted in accordance with their “common and approved usage.”¹⁵¹ The plain language chosen by the legislature

146. *Cameron II*, 812 N.W.2d 851, 859 (Minn. Ct. App. 2012), *aff'd*, 839 N.W.2d 700.

147. *Cameron III*, 839 N.W.2d at 708–09 (majority opinion).

148. *Berry v. Labor & Indus. Review Comm’n*, 570 N.W.2d 610, 613 (Wis. Ct. App. 1997) (quoting *Harnischfeger Corp. v. Labor & Indus. Review Comm’n*, 539 N.W.2d 98, 103 (Wis. 1995)).

149. *See generally* MINN. STAT. § 645.16 (2012) (“When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.”).

150. *Id.*; *see also* *Ruiz v. 1st Fid. Loan Servicing, L.L.C.*, 829 N.W.2d 53, 57 (Minn. 2013) (“A statute that is not reasonably susceptible to more than one interpretation is not ambiguous.” (citing *City of Saint Paul v. Eldredge*, 800 N.W.2d 643, 647 (Minn. 2011))); *McLane Minn., Inc. v. Comm’r of Revenue*, 773 N.W.2d 289, 297 (Minn. 2009); *Lietz v. N. States Power Co.*, 718 N.W.2d 865, 870 (Minn. 2006) (“This court will not look beyond the plain language of the statute if the words of the statute are ‘clear and free from all ambiguity.’” (quoting *Olmanson v. LeSueur Cnty.*, 693 N.W.2d 876, 879 (Minn. 2005))).

151. MINN. STAT. § 645.08, subdiv. 1 (“[W]ords and phrases are construed according to the rules of grammar and according to their common and approved

consequently establishes that functional equivalence was not intended in the definition of “comparable property,” as such an interpretation changes the plain meaning of the chosen words. A functionally equivalent property would require the comparable property to be “virtually identical.”¹⁵² However, the word “comparable” merely denotes “a similar piece of property.”¹⁵³ “Functional equivalent” is simply a much higher standard of comparability than the legislature’s language requires. Requiring that a comparable property be a functional equivalent would improperly stretch the phrase “far beyond its common meaning”¹⁵⁴ and add words that are not there,¹⁵⁵ ultimately contradicting the language of the statute.¹⁵⁶ Thus, there is no indication based on the language of the statute that the legislature intended “comparable property” to require more than a property with similar characteristics to the property at issue.¹⁵⁷

Second, it would also be unreasonable to interpret the statute as requiring the property to be available for purchase.¹⁵⁸ Although the *Cameron* court reached the correct conclusion regarding this issue, its analysis was once again lacking—the court improperly reasoned, based purely on the technical definition of comparable property in the “analogous context of tax assessment of real property,” that a property need not be contemporaneously available.¹⁵⁹ This line of reasoning alone is insufficient to support the court’s conclusion, as valuation for tax purposes is not used to determine the property’s “true or market value,”¹⁶⁰ which is the

usage . . .”).

152. BLACK’S LAW DICTIONARY 658 (10th ed. 2014) (defining “equivalent”).

153. *Id.* at 340 (defining “comparable”).

154. *See generally* Kirkwold Const. Co. v. M.G.A. Const., Inc., 513 N.W.2d 241, 244 (Minn. 1994) (analyzing the importance of interpreting plain language).

155. *See generally* Fannie Mae v. Heather Apartments Ltd. P’ship, 811 N.W.2d 596, 600 (Minn. 2012) (“We ‘will not read into a statute a provision that the legislature has omitted, either purposely or inadvertently.’” (quoting Reiter v. Kiffmeyer, 721 N.W.2d 908, 911 (Minn. 2006))).

156. *See* Am. Tower, L.P. v. City of Grant, 636 N.W.2d 309, 313 (Minn. 2001).

157. *See generally* Amoco Prod. Co. v. Vill. of Gambell, Alaska, 480 U.S. 531, 549 (1987) (“Nothing in the language or structure of [the statute] compels the conclusion that ‘in Alaska’ means something other than ‘in the State of Alaska.’”).

158. *Cameron III*, 839 N.W.2d 700, 709 (Minn. 2013).

159. *Id.*

160. C.C. Marvel, Annotation, *Valuation for Taxation Purposes as Admissible to Show Value for Other Purposes*, 39 A.L.R.2d 209 (1955).

goal of valuation for an eminent domain action.¹⁶¹ A property's value for tax purposes has, therefore, been held not to be "relevant to the question of that same property's market value."¹⁶² The same differences that make tax assessments irrelevant in eminent domain cases require an independent analysis of whether a property must be available in the context of eminent domain.¹⁶³

In addressing this issue, the court should have looked at the requirement of availability in terms of the fair-market-value standard.¹⁶⁴ When evaluating a property under the fair-market-value standard, the determination of a property's value does not require an actual purchaser willing to purchase a property.¹⁶⁵ The fair-market-value standard merely requires the determination of a value that "in all probability" would have been arrived at through negotiation.¹⁶⁶ The question to satisfy this requirement is not whether the property is readily available, but rather, what would a willing purchaser pay if the property *were* for sale.

In trying to ascertain the legislature's intent, it is also important to consider "the consequences of a particular interpretation."¹⁶⁷ In this case, interpreting Minnesota Statutes section 117.187 as requiring a property to be available for purchase would improperly affect other provisions of the 2006 amendments to the eminent domain statute. For example, section 117.186 provides for compensation for loss of going concern.¹⁶⁸ This statute states:

161. See *Almota Farmers Elevator & Warehouse Co. v. United States*, 409 U.S. 470, 474 (1973) ("The owner is entitled to the fair market value of his property at the time of the taking.").

162. *EOP-Nicollet Mall, L.L.C. v. Cnty. of Hennepin*, 723 N.W.2d 270, 283 (Minn. 2006); see also *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 882 (Minn. 2010) ("[I]n a tax court proceeding, the admission of contamination evidence does not raise the same constitutional concerns of due process and just compensation that it does in a condemnation proceeding.").

163. See *Cont'l Retail, L.L.C. v. Cnty. of Hennepin*, 801 N.W.2d 395, 402 (Minn. 2011) (providing that, in the tax context, the sales comparison approach is "based on the price paid in actual market transactions of comparable properties" (citing *Kmart Corp. v. Cnty. of Becker*, 709 N.W.2d 238, 240 (Minn. 2006))).

164. See *infra* Part IV.C (explaining that the fair-market-value standard continued as the valuation standard).

165. See *Olson v. United States*, 292 U.S. 246, 257 (1934).

166. *Id.*

167. See MINN. STAT. § 645.16 (2012).

168. *Id.* § 117.186, subdiv. 2. A going concern is the "benefit[] that accrue[s] to a business or trade as a result of its location, reputation for dependability, skill

If a business or trade is destroyed by a taking, the owner shall be compensated for loss of going concern, unless . . . 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 taken¹⁶⁹

If section 117.187 were interpreted as requiring a property to be available, it would follow that a property would also need to be available under section 117.186, and there would never be a need to “compensate for loss of going concern” as the loss would always be preventable through business relocation. Therefore, an interpretation requiring property availability is thus unreasonable as it would improperly result in an invalidation of section 117.186.

Another section of the statute, section 117.188, further provides that “[t]he condemning authority must not require the owner to accept as part of the compensation due any substitute or replacement property.”¹⁷⁰ If the condemning authority cannot require the condemned-property owner to accept an available property, it does not make sense to interpret section 117.187 as requiring the condemning authority to provide such property.¹⁷¹

Interpreting section 117.187 as requiring the property to be available would drastically limit, hamper, and unduly complicate eminent domain proceedings by entangling them into a real estate process. The legislature simply cannot guarantee that an actual purchase of property will happen. The focus of the proceedings would switch from a monetary award to a property award.¹⁷² Based on the language used in the statute, there is no indication that the legislature intended this result. Therefore, the court correctly determined that there was no reasonable alternative definition, and “comparable property” was an unambiguous phrase within section 117.187.¹⁷³

or quality, customer base, good will, or any other circumstances resulting in the probable retention of old or acquisition of new patronage.” *Id.* § 117.186, subdiv. 1(1).

169. *Id.* § 117.186, subdiv. 2(2).

170. *Id.* § 117.188.

171. *See Woodhall v. State*, 738 N.W.2d 357, 361 (Minn. 2007) (“[E]very law shall be construed to give effect to all its provisions” (citing MINN. STAT. § 645.16 (2006))).

172. *See Cameron III*, 839 N.W.2d 700, 710 (Minn. 2013).

173. *See id.* at 709.

2. Definition of “Comparable Property”

As an unambiguous term, “comparable property” would be subject to the plain meaning approach of statutory interpretation,¹⁷⁴ unless it were a technical word or phrase,¹⁷⁵ in which case a definition based on the acquired technical meaning of the term would be required.¹⁷⁶ Here, the phrase “comparable property” is neither technical nor has it acquired a special meaning. Therefore, the court improperly provided a technical definition when it should have applied the plain meaning approach.

Irrespective of this error, the definition reached by the court provides an adequate definition for comparable property as “a piece of property that has enough like characteristics and qualities to another piece of property that the value of one can be used to determine the value of the other.”¹⁷⁷ This definition is consistent with the dictionary definition of “comparable,” which is defined as “[a] piece of property used as a comparison to determine the value of a similar piece of property.”¹⁷⁸ When applying this definition, additional factors to consider include: “land size, features, and location; the square footage, age, design, and construction quality of any structures on the land; as well as features related to the property’s usage.”¹⁷⁹

174. The legislature’s intent can be discerned from the “plain and unambiguous language” of the statute. *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001) (citing MINN. STAT. § 645.16 (2000) and *Ed Herman & Sons v. Russell*, 535 N.W.2d 803, 806 (Minn. 1995)).

175. MINN. STAT. § 645.08 (2012).

176. See generally *Ruiz v. 1st Fid. Loan Servicing, L.L.C.*, 829 N.W.2d 53, 57 (Minn. 2013) (citing *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 72 (Minn. 2012)) (stating that, when technical words and phrases are involved, such language must be defined based on their “special meaning”).

177. *Cameron III*, 839 N.W.2d at 708. Characteristics and qualities may include “location, use, physical features, economic attributes, financing terms, conditions of sale, market conditions, and legal characteristics such as zoning and other restrictions.” *Id.* at 708 n.2 (citing APPRAISAL INST., *THE APPRAISAL OF REAL ESTATE* 141 (13th ed. 2008)).

178. BLACK’S LAW DICTIONARY, *supra* note 152, at 340.

179. *Cameron II*, 812 N.W.2d 851, 859 (Minn. Ct. App. 2012), *aff’d*, 839 N.W.2d 700.

C. *Damages Based on Fair Market Value in Minnesota Statutes Section 117.187*

A thorough reading of Minnesota Statutes section 117.187, in light of the surrounding sections, indicates that the legislature intended the fair-market-value standard to continue to be the appropriate measure of damages for eminent domain proceedings. The fair market value is the appropriate standard under common law;¹⁸⁰ the standard would only change if there was a clear indication from the legislature that such change was intended.¹⁸¹ Based on the language of section 117.187, there is no such indication here. Instead, this statutory language indicates that the legislature simply intended to switch the property valued under the fair-market-value standard from the traditional condemned property to the comparable property.¹⁸²

The underlying theory of compensation provides that the property owner must be made whole for the taking.¹⁸³ When there is a comparable property within the community, being made whole under section 117.187 would be satisfied by providing the property owner with sufficient monetary compensation to be able to purchase a property similar to the one lost.¹⁸⁴ According to the court, such was the case in *Cameron*, and compensation based on the sale of the Robert Trail property was an appropriate property on which to base damages.¹⁸⁵

However, had the court determined that the Robert Trail property was not a “comparable property within the community,” the court would have faced the question of whether just compensation under the minimum-compensation statute would

180. *United States v. Commodities Trading Corp.*, 339 U.S. 121, 123 (1950) (“Fair market value has normally been accepted as a just standard.”); *Olson v. United States*, 292 U.S. 246, 255 (1934).

181. *See Staab*, 813 N.W.2d at 75 (providing that the legislature could have expressly limited the definition of “persons” if that is what it intended); *Premier Bank v. Becker Dev., L.L.C.*, 785 N.W.2d 753, 760 (Minn. 2010) (reasoning that rules of statutory interpretation “forbid adding words or meaning to a statute”) (quoting *Genin v. 1996 Mercury Marquis*, 622 N.W.2d 114, 117 (Minn. 2001)).

182. *Cameron II*, 812 N.W.2d at 861; Brief of Amicus Curiae League of Minnesota Cities at 13, *Cameron III*, 839 N.W.2d 700 (No. A11-1273), 2012 WL 10020704.

183. *Olson*, 292 U.S. at 255.

184. MINN. STAT. § 117.187 (2012).

185. *Cameron III*, 839 N.W.2d at 710.

include the costs for new construction.¹⁸⁶ The answer to this question provides the final element of the scope of section 117.187. Absent a comparable property from which appropriate compensation would be determined, other valuation methods would need to be applied. Courts have “occasionally used the cost of replacement as an alternative to fair market value.”¹⁸⁷ Compensation based on the replacement-cost standard would entitle the condemned-property owner to receive compensation for the “cost to construct a building with an equivalent utility to the building being appraised, at current prices, using modern materials, standards, design and layout.”¹⁸⁸ In order for the replacement-cost standard to apply to just-compensation damages, a strict standard should be met.¹⁸⁹ This standard would require the court to carefully consider the line between making the property owner whole and providing him or her with a windfall.¹⁹⁰ If the strict standard is met, the property owner may be entitled to compensation that covers the cost of replacement.¹⁹¹ However, it has been argued that compensation based on replacement costs should consider “physical ‘wear and tear’ and economic and functional obsolescence.”¹⁹² Therefore, it can be inferred that while

186. *See id.* at 704 (arguing that “in the absence of a comparable property available for purchase, he was entitled to compensation that would allow him to purchase land and construct a new building of comparable size and quality”).

187. Christopher Serkin, *The Meaning of Value: Assessing Just Compensation for Regulatory Takings*, 99 NW. U. L. REV. 677, 702 (2005). Replacement value is used when: (1) the market value is not readily available, (2) there are extremely high compensable consequential damages, or (3) the fair market value results in manifest injustice. *Id.* at 702–03.

188. *Am. Express Fin. Advisors, Inc. v. Cnty. of Carver*, 573 N.W.2d 651, 660 (Minn. 1998).

189. *See* Case Comment, “*Substitute Facilities*” *Compensation for Private Condemnees: United States v. 564.54 Acres of Land*, 92 HARV. L. REV. 514, 523 (1978).

190. *See* *United States v. 50 Acres of Land*, 469 U.S. 24, 34–35 (1984) (reasoning that “any increase in the quality of the facility may be as readily characterized as a ‘windfall’ as the award of cash proceeds for a substitute facility that is never built”); Eric Kades, *Windfalls*, 108 YALE L.J. 1489, 1493 (1999) (explaining that one person’s windfall is another person’s loss).

191. *Am. Express Fin. Advisors, Inc.*, 573 N.W.2d at 660.

192. *State by Lord v. Red Wing Laundry & Dry Cleaning Co.*, 92 N.W.2d 206, 209 (Minn. 1958); *see also* *Lewis v. Cnty. of Hennepin*, 623 N.W.2d 258, 263 (Minn. 2001) (reasoning that appraisers “discounted the building replacement cost” in a valuation proceeding to account for “functional obsolescence”).

Minnesota Statutes section 117.187 would not fully cover the cost of new construction, it perhaps would permit compensation to remodel a property in the “community” into a comparable property.

This limited interpretation of replacement-cost compensation is founded on the basic principles behind the fair-market-value and just-compensation requirements. Regardless of the valuation method employed, just compensation does not require the “condemning authority [to] pay more than the market value of the property.”¹⁹³ In *United States v. 50 Acres of Land*, the United States Supreme Court specifically rejected compensation for a replacement facility, as “any increase in the quality of the facility may be readily characterized as a ‘windfall,’” and creating a formula to reduce such possibility “would enhance the risk of error and prejudice.”¹⁹⁴ In a free market, a property owner would not receive the full amount that it would cost the buyer to purchase the property and build a new structure on it; the property owner would receive the value of the property, and the buyer would incur additional costs to construct the building. Providing a condemned-property owner with full new construction compensation would allow the property owner to have an old building replaced with a brand new and more valuable building,¹⁹⁵ paid for at the expense of public funds.¹⁹⁶ In such situations, the property owner would receive damages that would far exceed his or her actual loss,¹⁹⁷ which would go against basic principles of fairness¹⁹⁸ and the general understanding that the public interest¹⁹⁹ outweighs the

193. *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 897 (Minn. 2010) (Dietzen, J., concurring in part, dissenting in part).

194. 469 U.S. at 34–36.

195. *See id.* at 34 (arguing that “[i]f the replacement facility is more costly than the condemned facility, it presumably is more valuable”).

196. *See Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 543 (2005) (reasoning that the burden should “be spread among taxpayers through the payment of compensation”).

197. *See Kades*, *supra* note 190, at 1559 (“Paying anything more than market value price would result in windfalls for those lucky enough to own property needed for public projects . . .”).

198. *See United States v. Commodities Trading Corp.*, 339 U.S. 121, 124 (1950).

199. *See generally Serkin*, *supra* note 187, at 706–08 (“The government would come to a standstill if required to compensate for every harm it imposed.”).

private interest.²⁰⁰ Interpreting the amendment as fully covering the cost of new construction would thus produce an absurd and unjust result, contradicting an important principle of statutory interpretation.²⁰¹ In the end, such unrealistically high damages could prevent the government from exercising its power of eminent domain, even when it would be in the public's best interest.²⁰²

Therefore, when there is no "comparable property within the community," damages under Minnesota Statutes section 117.187 should be based on a reproduction-cost standard minus depreciation. In the end, valuation involves the exercise of judgment.²⁰³ It would not be unreasonable for such judgment to determine that when the situation involves a property where fair market value cannot be ascertained, the replacement-cost standard may be applied. Had the legislature intended to significantly modify the structure of compensation to include the cost of new construction, such instruction would have been clearly indicated in the amendment's language.²⁰⁴

D. Effect of the Cameron Decision on Eminent Domain

Not only did the *Cameron* court determine damages based on a fair-market-value standard, but the court left unanswered the question of "whether the minimum-compensation statute permits an upward or downward adjustment from the value of the comparable property" to factor in differences between the properties.²⁰⁵ It can be inferred from the court's statement regarding this aspect of damages that, had the damages been challenged by the state, the court may not have awarded such

200. MINN. STAT. § 645.17(5) (2012).

201. See *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 278 (Minn. 2000) (citing *Erickson v. Sunset Mem'l Park Ass'n*, 259 Minn. 532, 543, 108 N.W.2d 434, 441 (1961)).

202. See generally Bernard W. Bell, *Legislatively Revising Kelo v. City of New London: Eminent Domain, Federalism, and Congressional Powers*, 32 J. LEGIS. 165, 176–77 (2006) ("A government project furthered by the use of eminent domain must be more valuable than the compensation due in order for the use of eminent domain to make economic sense.").

203. 4 SACKMAN ET AL., *supra* note 51, § 12.01.

204. See generally *United States v. Commodities Trading Corp.*, 339 U.S. 121, 123 (1950) ("Fair market value has normally been accepted as a just standard.").

205. *Cameron III*, 839 N.W.2d 700, 708 n.3 (Minn. 2013).

adjustments. This element of the opinion brings to light the hard stance that the court is taking regarding permissible compensation in eminent domain proceedings. Consequently, even though there were changes to eminent domain law as a result of *Kelo*,²⁰⁶ the reality that *Cameron* seems to establish is that the amendments may actually have resulted in very minimal actual change.²⁰⁷ If real change was intended by the legislature, such change should have been clearly shown by: (1) stating the purpose of the statute, (2) describing the intended remedy, and (3) providing a clear path for how that remedy should be achieved. Without clear language that such change is intended, no real change will occur,²⁰⁸ as courts will continue to be required to adhere to the doctrine of stare decisis “in order that there might be stability in the law.”²⁰⁹ If the legislature intends a more limited interpretation of permissible comparable properties or broader interpretation of compensable damages, it should reevaluate the statute and clearly articulate its intended application.

V. CONCLUSION

The court’s interpretation of Minnesota Statutes section 117.187 can be seen as being pro-condemning authority. The court provided a broad definition of both “community” and “comparable property,”²¹⁰ permitting a greater range of permissible properties to be included in the determination of just compensation in an eminent domain action. This decision can be seen as a pushback to the post-*Kelo* public outrage. If the legislature had intended the minimum-compensation statute to significantly change the structure of just compensation under eminent domain, such intent would have been clearly reflected in the statute.

206. *Kelo v. City of New London*, 545 U.S. 469, 489 (2005).

207. *Cameron III*, 839 N.W.2d at 713 (Anderson, J., concurring in part, dissenting in part) (“But if the Legislature intended to increase compensation to displaced property owners, then I fear that Minn. Stat. § 117.187 fails to provide courts with sufficient guidance to achieve that aim.”).

208. *See generally* State *ex rel.* Comm’r of Transp. v. Kettleson, 801 N.W.2d 160, 165 (Minn. 2011) (“Nothing in [the statute] disturbs the long-standing principle of deference by the courts to the Commissioner’s legislative decision-making in condemning private property to build highways.”).

209. *Woodhall v. State*, 738 N.W.2d 357, 363 (Minn. 2007) (citation omitted).

210. *Cameron III*, 839 N.W.2d at 706–710.

Therefore, the court in *Cameron* ultimately established appropriate and valid definitions for both “comparable property” and “community.”²¹¹ Additionally, the court correctly held that Minnesota Statutes section 117.187 does not include compensation for replacement-cost damages in an eminent domain proceeding where there is a comparable property within the community.²¹² However, the court could have taken its analysis one step further and established that, in Minnesota, eminent domain damages will not include new construction, even in the absence of a comparable property in the community. In a case where the fair-market-value standard cannot be applied, reduced replacement costs may provide appropriate compensation.

211. *Id.*

212. *Id.*