

SC 14 – Evaluating Eminent Domain Settlements for Highway Projects



Project Lead:

Lisa Freese, Transportation Director
(952) 496-8363
lfreese@co.scott.mn.us

Description: Both the U.S. Constitution and the Minnesota state constitution expressly allow the use of eminent domain for public infrastructure projects after fair and just compensation to the landowner. However, in the wake of the Supreme Court’s ruling in *Kelo vs. City of New London*, the Minnesota legislature amended the state’s eminent domain statute in 2008 in ways that unfairly favor property owners in the determination of “fair and just compensation.” This has resulted in significant increases in the cost of local highway projects—a cost that is ultimately passed on to tax payers.

Under state law, if counties and cities cannot reach an administrative settlement with a property owner for what constitutes fair and just compensation through direct negotiation, the County is forced to condemn the property and the case goes before a condemnation commission to determine fair and just compensation. Scott County has encountered numerous issues with the use of eminent domain for highway projects since the 2008 statutory changes:

- The number of instances in Scott County in which property owners refuse to settle and force condemnation proceedings appears to have increased significantly. Before the 2008 amendments, roughly 90% of cases were settled through direct negotiation; now, roughly 60% are settled.
- There are huge disparities between County appraisals and property owner appraisals. Property owner appraisals often exceed 200% of the county appraisals. State statute requires that if the condemnation settlement is more than 40% higher than the final local government agency offer during direct negotiation, the government agency must pay attorney fees. This has created an industry of attorneys who “guarantee” their clients additional money if they do not settle and instead force condemnation.
- There are no statewide training requirements or standards for appraisers, and no clear guidelines establishing how to properly conduct land appraisals. Since condemnation commissions are appointed and are typically composed of attorneys and appraisers, the lack of training requirements for appraisers or guidelines for appraisals likely contributes to the growing disparity in final settlement amounts.
- There are significant differences in state law regarding the authority granted to MnDOT and those granted to local government agencies during the eminent domain process. For example, MnDOT has access to counter appraisals from property owners during the administrative settlement phase, whereas counties and cities do not, putting the latter at a significant disadvantage during negotiation with landowners.

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The purpose of this project is to (1) understand and document how statutory changes to state eminent domain law in 2008 have impacted the cost and administrative settlement rates for local highway projects in counties in the Twin Cities, Duluth, and St. Cloud metro areas; and (2) identify a better and fairer local eminent domain process that protects both land-owner and tax-payer interests and that could form the basis for a state-level policy change.

Key Issues, Questions, and Ideas for Exploration:

- Comparing land parcels “taken” through eminent domain for county highway projects both before and after the 2008 statutory changes:
 - what has been the change in the percentage of cases concluded through administrative settlement vs. condemnation proceedings?
 - what has been the change in percentage spread between negotiated settlement offers by local government agencies, property owner appraisals, and condemnation settlement amounts? Are there certain parcel sizes or attributes that correlate with a larger spread between agency offer, property owner appraisals, and condemnation settlement amounts?
 - what has been the change in the percentage of highway project costs for land acquisition vs. project construction?
- What differences are there in statutory authority granted to MnDOT vs. local government agencies with respect to eminent domain? What is the basis or justification for these differences in authority?
- Do other states have training requirements for land appraisers, or standards for conducting land appraisals, that the State of Minnesota should consider adopting?
- Are there examples of eminent domain statutes in other states that better protect and balance the interests of both land owners and tax payers?

How Will Student Work Be Used to Build Resiliency?

Student research will be used by Scott County staff to inform decision making with regard to future eminent domain proceedings for highway projects, and will be made available to other local government agencies responsible for infrastructure projects.

Depending on outcomes, the research may be used to seek legislative changes to state eminent domain law to better balance and protect the rights of both property owners and tax payers.

Existing Plans and Reports:

- [MN State Statute, Chapter 117: Eminent Domain](#)
- [Federal Code Title 23: Highways](#)
- [Federal Code Title 42, Chapter 61: Uniform Relocation Assistance and Real Property Acquisition Policies](#)
- Scott County Right of Way Processes (Current State Documents – Multiple)
- Dakota County Real Estate Acquisition Phase 2 Report

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- [MnDOT State Aid Manual, Chapter 5.2: Right-of-Way](#)
- MnDOT, Barriers to Right-of-Way Acquisition and Recommendations for Change

Potential Stakeholders and Partners:

- Other counties in Minnesota
- Association of Minnesota Counties
- Minnesota Department of Transportation (MnDOT)
- Eminent domain attorneys and appraisers

To learn more about this project or discuss how to integrate it into a UMN course or an individual student project (such as a culminating experience, capstone, master's project, or independent study), please contact Sarah Tschida or Mike Greco with the Resilient Communities Project at rcp@umn.edu.