

TESTIMONY OF DONOVAN DYRDAL ON HR 1182

Minn. Stat. § 117.189, adopted in 2006 as part of 2006 Minn. Laws ch. 214, § 14, creates an exemption for “public service corporations” from requirements which other “public” condemning authorities must extend to landowners. Condemning authorities which are not public service corporations:

- 1) are required to pay attorneys fees in case a landowner succeeds in establishing a higher award than the condemning authority (Minn. Stat. § 117.031 (a));¹
- 2) are required to negotiate in good faith and pay an owner at least \$1,500 for appraisals for residential and “minimum damage acquisitions” and \$5,000.00 for appraisals in other nonresidential condemnations (Minn. Stat. § 117.036, subd. 2);²
- 3) are required to provide notice of the right and a hearing to contest public use and public necessity at a condemnation hearing under Minn. Stat. § 117.075;
- 4) may not require the landowner to accept the return of the property (Minn. Stat. § 117.188).

Requiring condemnors to negotiate in good faith, requiring them to pay for landowner appraisals and awarding attorneys fees to landowners who succeed in establishing fair market value above

¹(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.

²(b) The owner may obtain an appraisal by a qualified appraiser of the property proposed to be acquired. The owner is entitled to reimbursement for the reasonable costs of the appraisal from the acquiring authority up to a maximum of \$1,500 for single family and two-family residential property and minimum damage acquisitions and \$5,000 for other types of property, provided that the owner submits to the acquiring authority the information necessary for reimbursement, including a copy of the owner's appraisal, at least five days before a condemnation commissioners' hearing. For purposes of this paragraph, a "minimum damage acquisition" means an interest in property that a qualified person with appraisal knowledge indicates can be acquired for a cost of \$10,000 or less.

the condemnor's offered or highest negotiated price is a good policy that rewards honest and fair dealing by entities exercising the sovereign power of the state to take private property for public use. What logic extends a good policy that protects landowners from dishonest dealing exempts for-profit monopolies from that policy? Nothing in human experience can lead to the conclusion that people or corporations are more honest and fair when they are working for profit than when they are public and not. If anything, we are more likely to assume that people and corporations operating for profit are likely to be less honest. There is no rational basis for denying landowners the same rights to notice and hearing, to good faith negotiation and appraisal, and to attorneys fees in case a landowner succeeds in establishing fair market value higher as they have where the condemnor is a governmental entity just because the condemnor operates for profit.

The Legislature should enact HR 1182 and repeal the "public service corporation" exemption from these requirements for other condemning authorities in Minn. Stat. § 117.189.