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OPINIONS AND ORDERS

OTHER DOCUMENT

ORDER, SUPREME COURT OF MINNESOTA
(JUNE 26, 2024)

STATE OF MINNESOTA
IN SUPREME COURT

No. A23-0859

CBS MN PROPERTIES, LLC,

Petitioner,

vs.

COUNTY OF HENNEPIN,

Respondent.

Before: Margaret H. CHUTICH, Associate Justice.

ORDER

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the petition of CBS MN Properties, LLC for further review is denied.

IT IS FURTHER ORDERED that the motions of the Forum for Constitutional Rights, Lupe Development Partners, LLC, SuperAsh, and Lyn-Lake Association to file and serve a brief as amicus curiae in the above-entitled matter in support of petitioner are each denied as moot.

BY THE COURT:

/s/ Margaret H. Chutich
Associate Justice

Dated: June 26, 2024

OPINION, COURT OF APPEALS
STATE OF MINNESOTA
(MARCH 25, 2024)

This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
No. A23-0859

CBS MN PROPERTIES, LLC,

Appellant,

vs.

COUNTY OF HENNEPIN,

Respondent.

Filed March 25, 2024
Reversed in part
Smith, Tracy M., Judge

Hennepin County District Court
File No. 27-CV-20-10355

Before: BRATVOLD, Presiding Judge,
SMITH, Tracy M., Judge., CLEARY, Judge.*

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* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellant/cross-respondent CBS MN Properties, LLC (CBS) owns property abutting a county road in Hennepin County. As part of a project to improve the road, respondent/cross-appellant Hennepin County temporarily occupied a portion of CBS's property during construction. The county also regraded the road, which made a driveway leading from the road to CBS's property steeper. CBS later obtained a permit from the county to reconstruct the driveway to reduce the slope.

In inverse-condemnation proceedings, a district court determined that the county had engaged in two takings: a temporary construction easement due to the county's occupation of a portion of CBS's property and interference with access to CBS's property due to the altered road. After a jury trial on damage, both parties moved for judgment as a matter of law (JMOL). The district court denied the parties' motions for JMOL and entered judgment for CBS, awarding damage for both takings. On appeal, both parties challenge the award of $130,000 for the interference with access. Neither party challenges the $11,300 award for the temporary construction easement.

We conclude that the district court erred by denying the county's motion for JMOL because (1) under the proper measure of damage, the verdict for interference with access is not supported by the evidence and (2) the cost to cure the interference is not compensable without proof of a diminution in market value of the property due to the interference. We

therefore reverse that portion of the judgment awarding CBS $130,000 in damage for interference with access.

FACTS

CBS's Property

In 2015, CBS purchased the property that is the subject of this action. The property is adjacent to and abuts Wayzata Boulevard (also known as County Road 112) (the road) in Orono. The property has access to the road by an easement to a driveway that connects the property to the road.[1] At the time of trial, the property was mostly vacant except for a daycare and a separate building foundation.

Initial Condemnation and Road Project

In December 2016, the county filed a condemnation petition to acquire property rights for an improvement project on the road. CBS was not included in the petition. After the project was underway, in 2017, the county temporarily occupied a portion of CBS's property adjacent to the road. The county also regraded the roadway and lowered the grade of the curb. This change required the county to reconstruct the entrance of the driveway, which is located in the county's right of way. The result was a steeper slope, which causes some cars to scrape upon entering or exiting the driveway. The following exhibit entered into evidence at trial depicts the reconstructed driveway entrance.

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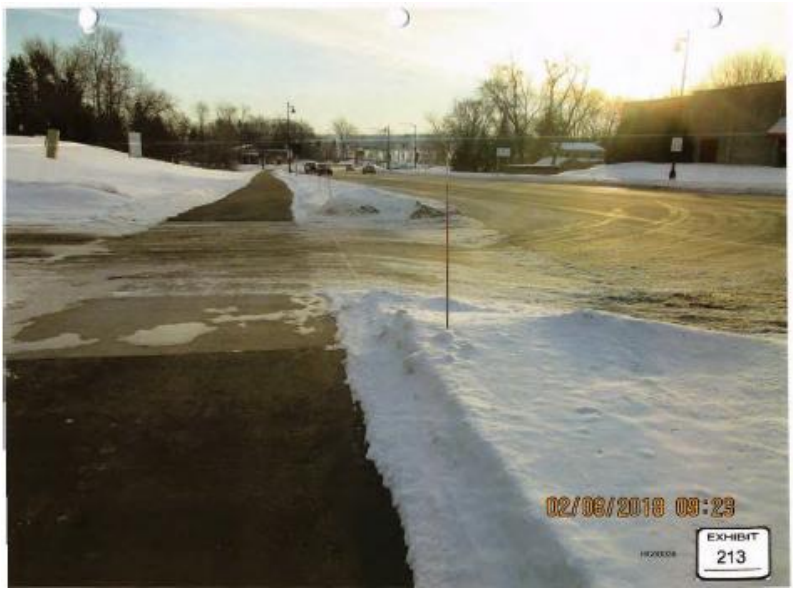
[1] A second entrance to CBS's property, located on Brown Road, was unaffected by the project.



CBS's Mandamus Action

In February 2017, CBS and two other landowners who were also not included in the county's initial condemnation petition began an inverse-condemnation action against the county. In August 2018, following a bench trial, the district court issued an order granting CBS's request for a writ of mandamus and ordering the county "to commence a condemnation proceeding to determine the just compensation to which [CBS is] entitled for the taking or damaging of [its] property and property rights."

The Condemnation Petition

The county amended its condemnation petition to add CBS's property to the proceeding. Due to other amendments not relevant here, the action ultimately became governed by the third amended condemnation petition, which states:

> [The district court] found that Hennepin County interfered with the right of reasonably convenient and suitable access to private property, physically invaded or occupied private property, interfered with the ownership, use, enjoyment and unimpeded possession of private property and interfered with private property resulting in a definite and measurable diminution in the market value of private property.

The petition specifically identifies "[a] temporary easement for construction purposes" over a described portion of land totaling 6,507 square feet.

Condemnation Commissioners' Hearing

In June 2020, a condemnation commissioners' hearing was held. In July 2020, the commissioners awarded CBS $11,300. In August 2020, CBS appealed the commissioners' award to district court for a jury trial on damage.

Permit to Reconstruct the Driveway Entrance

In February 2021—nearly four years after the county altered CBS's driveway entrance—CBS applied to the county for a permit to reconstruct the driveway entrance with a reduced slope. CBS needed a permit from the county because a portion of the driveway was in the county's right of way. CBS's application was denied. CBS reapplied in August 2021, and, in October 2021, the county issued the permit.

Jury Trial on Damages

A jury trial on damage was held in November 2022. In discussions with the parties during trial, and

ultimately in its jury instructions, the district court clarified that the two compensable takings in this case were (1) a temporary construction easement over the section of CBS's property identified in the third amended petition and (2) interference with access caused by the county's alteration of CBS's driveway entrance.

Throughout the case, the parties disputed the appropriate measure of damage for the interference-with-access taking. CBS sought to introduce the testimony of an appraiser who applied a damage analysis that measured the rental value of the property for the period of time from when the driveway's slope was increased until the date that CBS obtained a permit to fix the slope. CBS's rental-value measure of damage was based on the theory that the interference with access was a "permanent taking" that "[b]ecame temporary" once CBS obtained a permit to reconstruct the driveway. The county sought to exclude CBS's appraiser's testimony, arguing that it was based on a taking that was not in the case.

Initially, the district court found CBS's permanent-to-temporary taking theory "illogical." But, after more consideration, the district court concluded that, while it found the "permanent to temporary taking language . . . confusing," it was "going to allow [CBS] to make that argument" because there was no precedent on a fact situation in which the government legally controlled some area that the plaintiff needed to access in order to cure the interference with access. CBS's appraiser thereafter testified regarding the permanent-to-temporary theory and his rental-value determination. He testified that, with a steeper driveway, the property was incapable of being developed for

commercial purposes and that the rental value of the property during the period of time from when the driveway became steeper until the permit was issued was $387,000.

The county argued that the correct measure of damages for an interference with access is the diminution in the market value of the property due to the interference. It introduced the expert testimony of its appraiser, who testified that, based on several factors, including the sales prices of comparable properties with elevated slopes, there was no difference in the fair market value of CBS's property before and after the driveway entrance was altered to a steeper slope. The county's appraiser concluded that the increased slope of the driveway did not diminish the market value of CBS's property.

The parties also disputed the proper measure of damage when discussing jury instructions. The county asked for an instruction on damage for the temporary-construction-easement taking and an instruction on damage for the interference-with-access taking. As to interference with access, the county argued that the district court should instruct on the diminution-of-market-value measure of damage and objected to any instruction on "temporary" interference with access. CBS, on the other hand, advocated for an instruction on "temporary takings" that would apply to interference with access and that would direct that damage are determined by rental value. CBS argued that instructing only on the diminution in value for the interference with access would not reflect the case that the district court had allowed to be tried to the jury. The district court decided to instruct on temporary and permanent takings and stated that the parties

would be "free to argue temporary or permanent as it relates to the access piece."

The final jury instructions provided a measure of damage for both a "temporary taking" and a "permanent taking." For a temporary taking, the instructions explained that "damage are determined by the rental value of the property impacted for the period of time the interference is in place." For a permanent taking, the instructions explained that "damages are determined by the difference between . . . [t]he fair market value of the entire property . . . before the access rights were interfered with, and . . . [t]he fair market value of what is left after the access rights were interfered with." The instructions also provided that the jury could consider the cost to reconstruct the driveway but could award only the lesser of the cost to cure and the difference in fair market value.

The special verdict form for the jury did not address the temporary or permanent nature of, or the applicable measure of damage for, the interference with access. Question two on the special verdict form asked, "What amount of money, if any, justly compensates [CBS] for [the county's] interference of reasonable and suitable access by creating a change in slope on the driveway leading to [CBS's] property?"[2] Question three asked, "What amount of money, if any, is the cost to cure/ reconstruct the driveway?"

During closing arguments, the county urged the jury to find that CBS was entitled to zero dollars for

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[2] Question one asked about the damage for the temporary construction easement, which is not at issue in this appeal.

the interference-with-access taking because, according to the testimony of the county's appraiser, there was no difference in the fair market value of the property before and after the county altered the driveway entrance. CBS urged the jury to find that CBS was entitled to $387,000 for the interference with access because, according to the testimony of CBS's appraiser, that amount represented the rental value of the property from the time the county altered the driveway entrance until CBS obtained the permit to reconstruct the driveway. CBS also urged the jury to find that the cost to reconstruct the driveway was $165,053.57. CBS made no argument to the jury regarding the difference in the before and after fair market value of the property.

Verdict and Judgment

The jury returned the special verdict form, finding that (1) $11,300 justly compensated CBS for the county's taking of a temporary construction easement, $262,143 justly compensated CBS for the county's interference with access, and $165,053.57 was the cost-to-cure/reconstruct the driveway.

The district court asked the parties to submit proposed judgments. CBS submitted a proposed judgment of $438,496.57—the sum of the three amounts found by the jury. The county submitted what the district court determined to be a procedurally improper "response" to CBS's proposed judgment. The district court issued an order for judgment. It concluded that the jury's verdict of $11,300 justly compensated CBS for the temporary construction easement. As for the remaining jury awards, it concluded that "[t]he sum of $262,143.00 awarded by the jury justly compensates

[CBS] for the taking of the reasonable and suitable access regarding the driveway slope" and that "[t]he sum of $165,053.57 awarded by the jury is the cost to cure/reconstruct the driveway." But the district court went on to rule that, "[b]ecause the cost to cure is less than the damage for the access taking, only the cost to cure is awarded."

Both parties submitted motions for JMOL. The county also moved for a remittitur of damage. The district court denied both parties' JMOL motions but granted the county's motion for a remittitur. The district court remitted the cost-to-cure damage to $130,000 because the $165,053.57 awarded by the jury included construction work on a berm that was unrelated to fixing the slope of the driveway. The district court entered judgment of $11,300 for the temporary construction easement and $130,000 for the interference with access.

CBS and the county appeal, challenging the district court's award for the interference-with-access taking.

DECISION

CBS asserts two arguments challenging the $130,000 interference-with-access award: (1) the district court erred by holding that CBS was entitled to only the lesser of the rental value of the property and the cost to cure and instead should have awarded the jury's damage verdicts for both and (2) the district court erred by remitting the jury's verdict for the cost-to-cure damages. In its challenge to the interference-with-access award, the county makes three arguments for why the district court erred by denying its JMOL motion: (1) the evidence is not sufficient to support the

jury's verdict for interference-with-access damage because that verdict is based on a different taking from that described in the condemnation petition, (2) the evidence is not sufficient to support the jury's verdict for interference-with-access damage because CBS did not introduce evidence of a diminution in value of the property based on the change to the driveway entrance, and (3) the cost to cure is not compensable because CBS did not introduce evidence of a diminution in value of the property based on the change to the driveway entrance.

The parties' arguments are interrelated. We conclude that this appeal is resolved most efficiently by determining (1) what the proper measure of damage is for the interference-with-access taking in this case and, when that measure is applied, whether the evidence supports the jury's verdict and (2) whether the cost to cure is compensable in this case. We organize our analysis accordingly.

I. Measure of Damages and Evidentiary Support for the Verdict

CBS's first assignment of error—that the district court erred by awarding CBS only the lesser of the rental value and the cost to cure the driveway—is premised on its contention that the proper measure of damage for the interference-with-access taking in this case is the rental value of the property plus the cost to cure the driveway. The county's challenges to the denial of its JMOL motion, on the other hand, are premised on its contention that the proper measure of damage for the interference-with-access taking is the diminution in fair market value of the property due to the interference. The proper measure of damage is a

legal question that appellate courts review de novo. *See Herlache v. Rucks*, 990 N.W.2d 443, 449 (Minn. 2023). The district court's award of damage is reviewed for an abuse of discretion. *See id.* at 449-50.

A. Measure of Damages

The government must pay just compensation for taking a person's property. U.S. Const. amend. V; Minn. Const. art. I, § 13. The county argues that the proper measure of damage for the interference-with-access taking here is the diminution in market value of the property. The county's argument is well supported by Minnesota caselaw. The Minnesota Supreme Court has consistently held that the measure of damage for an interference with the right of access to a highway is "the diminution in the market value of the property" as measured by "the difference between the market value of the property before and after suitable access has been denied." *Beer v. Minn. Power & Light Co.*, 400 N.W.2d 732, 735 (Minn. 1987) (quotation omitted); *see also State by Mondale v. Gannons Inc.*, 145 N.W.2d 321, 327 (Minn. 1966); *Hendrickson v. State*, 127 N.W.2d 165, 173 (Minn. 1964). When the cost to cure is an available remedy, the cost to cure is awarded only if it is less than the diminution in value. *See Sallden v. City of Little Falls*, 113 N.W. 884, 885 (Minn. 1907). And, in that circumstance, only the cost to cure is awarded—the cost to cure is not awarded *in addition to* any diminution in value. *See id.*

CBS attempts to distinguish this case from other interference-with-access cases by characterizing the alteration of the driveway entrance as a permanent

taking that became a "total[3] temporary taking" of the entire developable portion of CBS's property because CBS did not have the right to cure the interference with access until it obtained a permit from the county. In such circumstances, CBS argues, the proper measure of damage is the rental value of the property during the "temporary" taking, not the diminution in property value due to the interference with access.

But the fact that the cure was not immediately within the property owner's rights does not distinguish this case from other interference-with-access cases. In *Gannons*, the interference with access was caused by rerouting the property owner's immediate access to a highway in a manner that rendered access circuitous. 145 N.W.2d at 325. In *Beer*, the interference with access was the closing and rerouting of a highway. 400 N.W.2d at 734-35. Like here, the property owners in

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3 In total-takings cases, the taking results in a "total deprivation of economic use." *Woodbury Place Partners v. City of Woodbury*, 492 N.W.2d 258, 261 (Minn. App. 1992), *rev. denied* (Minn. Jan. 15, 1993). CBS raises the argument that the interference-with-access taking was a "total" taking for the first time on appeal. Upon review of the record, it is clear that the only dispute before the district court was whether the interference-with-access taking was (1) permanent or (2) permanent turned temporary. CBS did not argue that the taking was "total" to the district court. Generally, an appellate court will not address questions not presented to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Further, a review of the record reveals that CBS did not make a showing that the altered driveway entrance resulted in a "total deprivation of economic use." *See Woodbury Place Partners*, 492 N.W.2d at 261. Because the district court was not presented with this issue, and because there is nothing in the record that supports CBS's characterization of the taking as total, we are not persuaded that the interference with access here was a "total taking."

Gannons and *Beer* had no inherent right to cure the interference with access. Yet, in both cases, the supreme court identified the measure of damage as the difference in market value before and after suitable access was denied. *Gannons*, 145 N.W.2d at 327; *Beer*, 400 N.W.2d at 735.

Moreover, CBS has not provided any binding authority or persuasive reasoning as to why the fact that CBS had to seek, and ultimately obtained, a permit to cure the interference compels a different measure of damage. Instead, CBS relies on foreign cases that are not binding[4] and that are factually dissimilar to the case at hand because they do not involve interference-with-access takings.[5] We are

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[4] *See Mahowald v. Minn. Gas Co.*, 344 N.W.2d 856, 861 (Minn. 1984) (explaining that decisions from foreign jurisdictions are not binding authority).

[5] *Keesling v. City of Seattle*, 324 P.2d 806, 809 (Wash. 1958), involved a temporary taking that arose from an encroaching transmission line; *Fowler Irrevocable Trust 1992-1 v. City of Boulder*, 17 P.3d 797, 799-800 (Colo. 2001), involved a temporary taking that arose from the city's use of the plaintiff's property as a construction-staging area, causing damage to the surface of the area occupied; *Primetime Hospitality, Inc. v. City of Albuquerque*, 206 P.3d 112, 114 (N.M. 2009), involved a temporary taking that arose from the city's waterlines being located on the plaintiff's property and the plaintiff's delay in construction caused by the removal of the waterlines; *Akers v. City of Oak Grove*, 246 S.W.3d 916, 919 (Mo. 2008), involved a temporary taking that arose from a city sewer line backup that caused flooding in the plaintiff's commercial apartment building; *Paddock v. Town of Durham*, 261 A.2d 438, 440 (N.H. 1970), involved a temporary taking that arose from a temporary easement.

CBS also cites one U.S. Supreme Court case, *United States v. General Motors Corp.*, 323 U.S. 373, 383-84 (1945). In *General Motors Corp.*, the government temporarily occupied a building

therefore not persuaded that the proper measure of damages here is the rental value of the entire undeveloped portion of CBS's property rather than a diminution in market value of the property due to the interference with access.

B. Evidentiary Support for the Verdict

With the correct measure of damage established, we turn to the county's argument that the district court erred by denying its JMOL motion because the jury's verdict awarding damage for interference with access is unsupported by any evidence of a diminution in value. "JMOL is appropriate when a jury verdict has no reasonable support in fact or is contrary to law." *JEM Acres, LLC v. Bruno*, 764 N.W.2d 77, 81 (Minn. App. 2009). Appellate courts review the denial of a motion for JMOL de novo. *Vermillion State Bank v. Tennis Sanitation, LLC*, 969 N.W.2d 610, 618 (Minn. 2022). The reviewing court views the evidence in the light most favorable to the prevailing party. *Id.* An appellate court will affirm the denial of a motion for JMOL "unless no reasonable theory supports the verdict." *Id.* at 618-19.

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and the issue was whether the property holder could obtain compensation not just for the government's occupancy of the building but also for the government's damage to the building's fixtures and permanent equipment. 323 U.S. at 38384. The Supreme Court concluded that the occupancy and the physical property were distinct properties and that each provided a basis for compensation. *Id.* at 384. Unlike in *General Motors Corp.*, here, there is only one taking of one property at issue—an interference with access due to the alteration of the driveway entrance. *General Motors Corp.* does not provide authority to apply a rental-value measure of damage to the interference with access rather than the traditional diminution-of-value measure.

The county argues that the jury's verdict of $262,143 for interference with access is unsupported by the evidence. The county asserts that CBS's appraiser testified only to the rental value of the property and that CBS introduced no evidence showing a difference in market value of the property before and after the taking. The only evidence of the before and after market value of the property, the county asserts, was its appraiser's testimony that the change in driveway slope did not affect the property's market value.

CBS makes no argument that the evidence supports a verdict based on a diminution in market value. It argues only that it is entitled to rental-value damage—a theory of damage that we have rejected. Moreover, in our review of the record, we discern no evidentiary basis for the jury's verdict based on a diminution in value. Though the district court instructed the jury on two measures of damage, including a diminution in property value, CBS did not put in evidence of a change in value. CBS's appraiser acknowledged that he did not use the "before and after method." He explained that a before-and-after analysis would have "overstate[d] the damage" because the interference with access changed the best use of the property from commercial to residential and using the before-and-after approach in that circumstance would misleadingly inflate the damage. But, leaving aside whether the premise of the appraiser's reasoning is accurate, the expert still did not testify to what a before-and-after analysis would actually show. Mere assertions are not enough to support an opinion on diminution in value. *See Alevizos v. Metro. Airports Comm'n*, 317 N.W.2d 352, 359 (Minn. 1982) (agreeing

that "an opinion on diminution, to be persuasive to the trier of fact, should ordinarily be substantiated by some kind of market studies or other documentation" and that "[m]ere assertions are not enough"); *Sallden*, 113 N.W. at 885 (reversing where the only evidence of damage was the plaintiff's husband's testimony that "'to the best of his information and belief' the damage was $1,000"). And, as the county argues, the only evidence regarding the before and after market value of the property is the county's evidence that the difference in value was zero.[6]

On this record, we agree with the county that the district court erred by denying its motion for JMOL because the jury's verdict awarding $262,143 is unsupported by the evidence.[7]

II. Cost-to-Cure Damages

We turn to the cost-to-cure damage. In its judgment awarding $130,000 in damage for the interference-with-access taking, the district court awarded the lesser of the jury's verdict based on the rental value of the property and the jury's verdict for the cost to cure. The county contends that CBS is not entitled

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[6] CBS contends that a taking of property rights cannot result in an award of $0. But CBS has the burden of proving damage. *See State by Lord v. Pearson*, 110 N.W.2d 206, 215 (Minn. 1961) (observing that, in a condemnation action, "[t]he owner has the burden of proving and establishing . . . damage").

[7] Because we conclude that the evidence is insufficient to sustain the jury's verdict awarding damage for the interference-with-access taking on this basis, we need not address the county's alternative argument that the district court erred by denying its JMOL motion because the jury awarded damage for a different taking from that included in the condemnation petition.

to damage for the cost to cure when there was no showing of a diminution in market value of the property and that the district court therefore erred by denying its JMOL motion on this basis. We agree.

The cost to cure may be awarded for an interference with access "only when it [is] shown to be less than the difference in value" of the property before and after the taking. *Sallden*, 113 N.W. at 885; *see also Bull. Publ'g Corp. v. City of Cottage Grove*, 379 N.W.2d 685, 687-88 (Minn. App. 1986) (concluding that the plaintiff "failed to make its case regarding access damage" when its experts "did not indicate that cost-to-cure was less than the market value difference"). In *Sallden*, the property owner obtained a verdict based on the grading of the abutting road. 113 N.W. at 884. The only evidence of damage was the plaintiff's husband's testimony that "'to the best of his information and belief' the damage was $1,000." *Id.* at 885. The Minnesota Supreme Court observed that the plaintiff made no attempt to show the value of the property before and after the taking and concluded that, "in the absence of some evidence in that direction," the cost to cure could not be recovered. *Id.*

As in *Sallden*, CBS did not produce evidence of the before and after value of the property. The only evidence of the before and after value of the property is the county's evidence that the difference in value was zero. Without evidence of a diminution in value, the district court could not determine that the cost to cure was less than the diminution in value. The cost to cure is therefore not compensable. The district

court erred by denying the county's motion for JMOL on this basis.[8]

In conclusion, the proper measure of damage for the interference with access caused by the increased slope of the driveway to CBS's property is the diminution in market value of CBS's property as measured by the before and after value of the property. The record contains no evidence that the market value of CBS's property decreased due to the interference with access. The absence of such evidence precludes a damage award for interference with access, including an award based on the cost to cure the interference. As a result, we reverse that portion of the district court's judgment awarding CBS $130,000 in damage.

Reversed in part.

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[8] Because we conclude that the cost to cure was not compensable, we need not address CBS's contention that the district court erred by remitting the jury's verdict for the cost to cure the driveway.

ORDER ON POST-TRIAL MOTIONS, DISTRICT COURT OF HENNEPIN COUNTY (MAY 3, 2023)

STATE OF MINNESOTA
COUNTY OF HENNPIN
DISTRICT COURT
FOURTH JUDICIAL DISTRICT

CBS MN PROPERTIES, LLC,

Plaintiff,

v.

HENNEPIN COUNTY,

Respondent.

Court File No. 27-CV-20-10355

Before: Jamie L. ANDERSON, District Court Judge.

ORDER ON POST-TRIAL MOTIONS

This matter came before the Court on February 15, 2023, upon Plaintiff's motion for judgment as a matter of law and Defendant's motion judgment as a matter of law, or alternatively, for remittitur. Attorney Ryan Simatic appeared on behalf of Plaintiff. Attorney Faruq Karim appeared on behalf of Defendant.

Based upon all the files, records, and proceedings herein, the Court makes the following:

ORDER

1. Plaintiff's motion for judgment as a matter of law is DENIED.

2. Defendant's motion for judgment as a matter of law is DENIED.

3. Defendant's motion in the alternative for remittitur is GRANTED.

i. Judgment in favor of Plaintiff is reduced to $141,300.

4. The following memorandum is incorporated herein.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

/s/ Jamie L. Anderson
Judge of District Court

Dated: May 2, 2023
Filed in District Court, State of Minnesota
May 03, 2023 2:15 pm

JUDGMENT

I Hereby Certify that the above Order Constitutes the Entry of Judgment of the Court Sara Gonsalves, Court Administrator

By: {not legible} Nelson
May 03, 2023

MEMORANDUM

Background

This matter was tried before a jury at Hennepin County District Court with Judge J. Anderson presiding on November 21-29, 2022. At trial, Plaintiff sought compensation for Defendant's taking of the 6,507 square-foot temporary construction easement, Defendant's interference of reasonable and suitable access by creating a change in the slope of the driveway leading to Plaintiffs property, and the cost to cure/reconstruct the driveway.

The jury returned the Special Verdict Form finding the sum of $11,300 justly compensated Plaintiff for Defendant's taking of the 6,507 square-foot temporary easement, the sum of $262,143 justly compensated Plaintiff for the interference of access by changing the slope on the driveway, and that the cost to cure/reconstruct the driveway was $165,053.57. (Nov. 29, 2022 Verdict, Index No. 229).

Following the jury verdict, the Court issued an Order allowing the parties to submit proposed Findings of Fact, Conclusions of Law, and Order for Judgment based on the jury's answers to the special verdict form. (Nov. 29, 2022 Order, Index No. 228). Plaintiff submitted a proposed order suggesting an entry of judgment in favor of Plaintiff for a total of $438,496.57. (Pl.'s Proposed Order, Index No. 231). Defendant did not submit a proposed order, but instead filed a document titled "Defendant's Response to Plaintiffs Proposed Findings of Fact, Conclusions of Law, and Judgment" in which Defendant made various arguments opposing Plaintiffs proposed order. (*See* Other Doc., Index No. 233). Plaintiff objected to this response as being pro-

cedurally improper. (*See* Correspondence, Index No. 236). The Court subsequently issued the Order for Judgment ordering entry of judgment in favor of Plaintiff in the amount of $176,353.57, noting that "[b]ecause the cost to cure is less than the damage for the access taking, only the cost to cure is awarded." (Dec. 8, 2022 Order, Index No. 238). Additionally, the Order notes that Defendant's response to Plaintiff's proposed order "was procedurally improper and not requested by the Court" and therefore the Court would not consider it. (*Id.*).

Subsequently, the parties filed post-trial motions. Plaintiff moves for judgment as a matter of law (JMOL) in the amount of $563,353.57, or alternatively for $438,496.57. (Pl.'s Not. of Mot. & Mot.). Defendant initially moved for JMOL on the basis that Plaintiff did not carry its burden of proof by failing to measure damages using the before and after method, or alternatively for remittitur to $11,300 or $141,300, or alternatively for a new trial. (Deli's Not. Mot. & Mot.). However, on January 26, 2023, Defendant informed the Court and opposing counsel that it would be withdrawing its motion for a new trial but would still pursue its motions for JMOL and remittitur. (Correspondence, Index No. 251).

Standard of Review

Judgment as a Matter of Law

Under rule 50.02, "a party may make or renew a request for judgment as a matter of law by serving a motion within the time specified in Rule 59 for the service of a motion for a new trial." Minn. R. Civ. P. 50.02. "JMOL is appropriate when a jury verdict has

no reasonable support in fact or is contrary to law." *Longbehn v. Schoenrock,* 727 N.W.2d 153, 159 (Minn. Ct. App. 2007). "In applying this standard, (1) all the evidence, including that favoring the verdict, must be taken into account, (2) the evidence is to be viewed in the light most favorable to the verdict, and (3) the court may not weigh the evidence or judge the credibility of the witnesses." *Lamb v. Jordan,* 333 N.W.2d 852, 855 (Minn. 1983). The jury verdict will not be set aside if it can be "sustained on any reasonable theory of the evidence." *Pouliot v. Fitzsimmons,* 582 N.W.2d 221, 224 (Minn. 1998).

Remittitur

"Remittitur is relief ordered by a district court after determining that a jury award was excessive." *Roach v. Cnty. of Becker,* 962 N.W.2d 313, 318 (Minn. 2021). In considering a motion for remittitur, the court must "consider all of the evidence and determine 'whether the verdict is within the bounds of the highest sustainable award under the evidence.' *Border State Bank of Greenbush v. Bagley Livestock Exch., Inc.,* 690 N.W.2d 326, 336 (Minn. Ct. App. 2004) (quoting *McPherson v. Buege,* 360 N.W.2d 344, 347 (Minn. Ct. App.1984)). However, the court "has broad discretion in determining whether to set aside a verdict as being excessive and should not hesitate to do so where it feels the evidence does not justify the amount, even if the verdict was not actuated by passion and prejudice." *Mrozka v. Archdiocese of St. Paul & Minneapolis,* 482 N.W.2d 806, 813 (Minn. Ct. App. 1992).

Discussion

JMOL

Both Plaintiff and Defendant have moved for JMOL. Plaintiff moves for JMOL in the amount of $563,353.57 as the just compensation owed to Plaintiff, or alternatively, in the amount of $438,496.57. (Pl.'s Notice of Mot. & Mot.). Plaintiff argues that the Court "erred" by altering the verdict without a hearing thus depriving Plaintiff of its due process and by misapplying the cost to cure doctrine. (Pl.'s Mem. in Supp. at 2). Plaintiff also argues that JMOL is appropriate because Plaintiff's expert was the only one to provide testimony of the rental value of the property due to the access impairment. (*Id.*).

Defendant moves for JMOL in the amount of $11,300. (Def.'s Notice of Mot. & Mot.). Defendant argues that it is entitled to JMOL because Plaintiffs appraiser used a "novel" rental analysis method to determine damage for the access impairment, rather than the before and after method, and because Plaintiff's appraiser did not determine damage from the takings in the Third Amended Petition. (in Supp. at 5-12).

The Court finds that JMOL is inappropriate as the arguments made by the parties ultimately concern alleged errors of law, not whether the verdict is supported by the evidence. The parties have only moved for JMOL, and not for a new trial, thus the only question for consideration is whether the jury verdict is supported by the evidence. *See Bosch v. Chicago, M & St. P. Ry. Co.,* 155 N.W. 202, 203 (1915) ("The company does not ask for a new trial, but for judgment notwithstanding the verdict. Consequently the only question for consideration is whether the record shows conclu-

sively that plaintiff is not entitled to recover."). Minnesota courts have held that JMOL "will never be granted for error in either law or procedure committed at the trial" as "the remedy" for such errors "is a new trial, not judgment contrary to the verdict." *Id.; see also Coble v. Lacey,* 433, 90 N.W.2d 314, 322 (1958) ("The rule is well established in this state that judgment notwithstanding the verdict will never be granted for errors in either law or procedure committed at the trial."); *see additionally Kedrowski v. Lycoming Engines,* 933 N.W.2d 45, 55 (Minn. 2019) ("Traditionally, we have said that evidentiary rulings made during trial are not to be revisited on a motion for judgment as a matter of law.").

i. Plaintiff's Due Process Argument

Plaintiff argues that it was deprived of its due process because the Court did not grant Plaintiff a hearing prior to "altering the verdict" by only awarding Plaintiff the cost to cure the driveway. (Pl.'s Mem. in Supp. at 3). As a due process issue does not concern the sufficiency of evidence at trial, raising the issue under a motion for JMOL is improper and thus the Court shall not consider it.

ii. The Parties' Arguments Regarding How Damages Should Be Calculated

Plaintiff essentially argues that the taking of access to its property by changing the driveway slope resulted in a temporary easement and thus it is entitled to both the cost to cure and damage using the rental analysis. (*See* Pl.'s Mem. in Supp. at 3-9). Plaintiff contends that since it did not have a "legal right" to repair the slope on the County right-of-way in front

of the driveway until the County granted it a permit to do so in 2021, it is "unconstitutional" to apply the cost to cure analysis from the date of taking to the date the cure was available and instead a temporary easement was created from 2017 to 2021 for which Plaintiff is entitled to just compensation. (*Id.*). Since only Plaintiff's appraiser provided evidence of damage using the rental analysis, Plaintiff contends it is entitled to JMOL. (*Id.* at 9).

Defendant argues that it is entitled to JMOL because the "correct" measure of damage is the market value of the property before and after it was deprived suitable access, not a rental analysis. (Def.'s Mem. in Supp. at 10). Defendant further argues that since Plaintiff did not provide any evidence of damage using the before and after method it is not entitled to the cost to cure as it cannot show there was a diminution in the value of the property requiring a cure. (*Id.* at 11). Finally, Defendant contends that Plaintiff did not appraise the correct takings in the Third Amended Petition. (Def.'s Reply Mem. at 2-4).

While the parties attempt to frame these issues as going to the sufficiency of the evidence, ultimately the parties make error of law arguments that are not appropriate in a motion for JMOL. First, Defendant's arguments regarding the takings in the Third Amended Petition have been repeatedly raised and ruled on by this Court throughout this case. On May 20, 2022 the Court ruled on the parties' motions in limine and determined that "Plaintiff's damage are not limited to the temporary easement described in the Third Amended Petition" and that the jury would be instructed that Defendant "interfered with the right of reasonably convenient and suitable access" to

Plaintiff's property. (May 20, 2022 Order, Index No. 195). The Court will not reconsider its pretrial rulings on a motion for JMOL.

Second, the parties dispute as to which method should be applied in determining damage for the taking of access was also raised throughout trial and the Court will not revisit its previous rulings on a motion for JMOL. This case involves a novel set of facts in which the slope causing interference with Plaintiff's access to its property was situated on a County right-of-way that Plaintiff could only repair after it obtained a permit from the County several years after the slope occurred. The parties argued throughout trial whether this should be considered a permanent or temporary taking and how damage should be calculated, yet the parties did not present the Court with, nor is the Court aware of, any on-point case law addressing a situation with facts similar to this one. Ultimately, the instructions submitted to the jury included how to calculate damage for both temporary and permanent takings, but did not specify whether the access interference was a temporary or permanent taking. (Jury Instr., Index No. 230). Thus, as previously discussed, the Court will not revisit its past rulings and since the jury could have reasonably reached its verdict based on the evidence presented at trial, the parties' motions for JMOL are denied.

Remittitur

Defendant argues that if the Court does not grant its motion for JMOL, then the Court should remit damage to $11,300 or alternatively $141,300. (Def.'s Mem. in Supp. at 12). Defendant contends that damage should be remitted to $11,300 because the Court's

jury instructions were "erroneous, vague, confusing, and highly prejudicial" and the Court "erred as a matter of law by failing to instruct the jury to measure damage for the interference of access using the 'before and after method.' (*Id.* at 13). Alternatively, Defendant argues the Court should remit the damage to $141,300 because the cost to cure/reconstruct the driveway is excessive and includes work that is unnecessary. *(Id.* at 18-19). Plaintiff argues that remitting damage is improper in this case since the rental analysis is the proper method to determine damage and because whether the cost to cure amount was reasonable was for the jury to decide. (Pl.'s Mem. in Resp. at 20-21).

The Court declines to remit Plaintiffs damage to $11,300 since Defendant's arguments only concern the Court's previous rulings; however, the Court agrees with Defendant that the amount of damage awarded for the cost to cure/reconstruct is excessive and should be remitted to $141,300.

When a jury verdict is excessive and unjustified by the evidence, "the trial court should not hesitate to adjust" it. *Caspersen v. Webber,* 213 N.W.2d 327, 331 (Minn. 1973). Here, the jury awarded $165,053.57 as the amount to cure/reconstruct the driveway—the amount that Plaintiffs expert Jeffrey Shopek calculated in his report. (*See* Tr. Ex. 99). However, at trial Shopek testified that the $165,053.57 sum included construction work on a berm that was unrelated to fixing the slope of the driveway and that the cost to fix the slope was about $130,000. (Trojack Decl., Index No. 235, Ex. 1, Nov. 22, 2022 Tr: 89:1-17; 96:21-97:2; 112:11-20). Thus, based on the evidence, the Jury's award of $165,053.57 as the cost to cure/reconstruct the driveway

is excessive. Plaintiffs damage are therefore remitted to $141,300.

CONCLUSION

Thus, for the forgoing reasons, the parties' motions for JMOL are denied. Defendant's motion for remittitur is granted and Plaintiffs damage are remitted to $141,300.

–jla

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR JUDGMENT (AUGUST 9, 2018)

STATE OF MINNESOTA
COUNTY OF HENNPIN
DISTRICT COURT
FOURTH JUDICIAL DISTRICT

ORONO STATION LLC, ORONO STATION WEST LLC AND CBS MN PROPERTIES LLC,

Petitioners,

v.

THE COUNTY OF HENNEPIN,

Respondent.

File No. 27-CV-17-2453

Before: Nancy E. BRASEL, Judge of District Court.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR JUDGMENT

The above-entitled matter came before the Honorable Nancy E. Brasel on a Court Trial beginning February 6, 2018 and concluding February 12, 2018. Joshua Hasko, Esq. and Bradley Gunn, Esq., appeared on behalf of Petitioners Orono Station LLC and Orono Station West LLC. Darrin Rosha, Esq. and Bradley Gunn, Esq. appeared on behalf of Petitioner

CBS MN Properties LLC. Jane N.B. Holzer, Esq. and Deborah Russell, Esq., appeared on behalf of Respondent Hennepin County ("County"). The Court ordered submissions at the conclusion of the trial, and took the matter under advisement upon submissions of the parties. Based upon all of the files, records, and proceedings herein, the Court makes the following:

FINDINGS OF FACT

1. This action involves three properties located at 2160, 2120, and 2060 Wayzata Boulevard West (collectively "Properties") in the city of Orono, Hennepin County, Minnesota. (Tr. Ex. 29.)

2. Each property is owned by a different limited liability company. The 2160 property ("2160") is owned by the limited liability company Orono Station West LLC ("OSW"), the 2120 property ("2120") is owned by the limited liability company Orono Station LLC ("OS"), and the 2060 property ("2060") is owned by the limited liability company CBS MN Properties LLC ("CBS"). (Tr. Test. B. Erickson, C. Erickson, D. Richardson.)

3. Brad Erickson and Christy Erickson are the members of the limited liability companies OS and OSW. (Tr. Test. B. Erickson.)

4. Dale Richardson is the sole member of the limited liability company CBS. (Tr. Test. D. Richardson.)

5. Hennepin County is reconstructing a 1.5 mile long corridor of Wayzata Boulevard (Highway 112) in Long Lake and Orono, Minnesota (the "Project"). When the Project is complete, it will remove the current road, replace the sewer system, and rebuild a narrowed

road with an all-purpose trail on the northern side, a concrete sidewalk along the southern side of the majority of the roadway, together with traffic signal and lighting systems. The Project was designed to be completed in three phases. The Project began construction in April 2017 and after more than six months of reconstruction, Phase I was deemed substantially complete by Hennepin County.

6. Phase I of the Project involved the portion of Wayzata Boulevard directly in front of and abutting the Properties. During the summer of 2017, the two northern lanes of Wayzata Boulevard were under construction. The lanes had been removed and the driveways from the Properties were connected to Wayzata Boulevard via temporary driveways that joined the properties to the two southern lanes.

Orono Station Properties[1]

A. 2160 Property (OSW)

7. The 2160 property is described by Property ID No. 34-118-23-21-0002, and is legally described as:

> State of Minnesota, County of Hennepin, City of Orono, UNPLATTED 34 118 23, The West 200 feet of that part of the East half of the Northwest Quarter of Section 34, Township 118, Range 23 described as commencing at the Northwest corner of said East half of the Northwest Quarter; thence due South (assumed bearing) along the West line of said East Half of the Northwest Quarter a

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1 Headings contained in this Order are not findings or conclusions or law, but are used solely for reference.

distance of 1311.29 feet; thence South 87 degrees 41 minutes East, 545.78 feet to the actual point of beginning; thence North 87 degrees 41 minutes West, 200 feet; thence North 2 degrees 19 minutes East, 188.93 feet; thence North 87 degrees 41 minutes West, 200 feet; thence South 2 degrees 19 minutes West, 334.96 feet to the Northerly right of way line of State Highway No. 12; thence South 69 degrees 41 minutes East along said Northerly right of way line 45.94 feet; thence Easterly 364.3 feet along said Northerly right of way line being a tangential curve to the left having a radius of 1587.28 feet to an intersection with a line bearing South 2 degrees 19 minutes West from the actual point of beginning; thence North 2 degrees 19 minutes East 232.24 feet to actual point of beginning.

8. 2160 is adjacent to and abuts Wayzata Boulevard.

9. 2160 has access to Wayzata Boulevard, the only available public thoroughfare, through two driveways, the "Center" driveway and "Western" driveway. (Tr. Exs. 29; 26 (Property Survey)).

10. The Center driveway connects to Wayzata Boulevard and is shared with 2120. (Tr. Exs. 29; 26 (Property Survey)).

11. The Western driveway connects to Wayzata Boulevard on its western side. (Tr. Exs. 29; 26 (Property Survey)).

12. Since OSW purchased 2160, the property has required significant investment and rehabilitation

after being vacant for several years and falling into disrepair.

13. OSW spent more than a year restoring 2160 back to functional commercial use. The property's main building consists partially of office space, which OSW leases to tenants. The renovation included adding a grocery and convenience store, and significant upgrades and rehabilitation to the retail mall. The grocery and convenience store, now called the Orono Station Market, complemented the existing gasoline station.

14. After the renovation was complete, Orono Station Market (the "Market") opened as 2160's anchor tenant, and OSW leased the remaining 12 units of the retail mall to local businesses, which included services such as a coin laundry, catering company, law office, massage salon, hair salon, pet groomer, security company, t-shirt business, packaging company, and two accounting offices.

15. Future plans for OSW include a car wash and a lower level to be used as an "auto vault" for classic and exotic cars. (Tr. Test. B. Erickson.)

16. The Market requires reasonable and convenient access suitable for its customers, including semi-trucks, large delivery trucks, and gasoline trucks, which is especially true in the summer months when customers fuel boats for a day on nearby Long Lake and Lake Minnetonka.

17. When OSW purchased 2160, the Western driveway had a unique, nonconforming 90-foot wide entrance that enabled larger vehicles and trailers to more easily access the 2160 Property.

B. 2120 Property (OS)

18. The 2120 property is described by Property ID No. 34-118-23-24-0001 and is legally described as:

> State of Minnesota, County of Hennepin, City of Orono, UNPLATTED 34 118 23, That part of the East Half of the Northwest Quarter of Section 34, Township 118, Range 23 described as commencing at the Northwest corner of said East Half of the Northwest Quarter; thence due South (assumed bearing) along the West line of said East Half of the Northwest Quarter a distance of 1311.29 feet; thence South 87 degrees 41 minutes East, 545.78 feet to the actual point of beginning; thence North 87 degrees 41 minutes West, 200 feet; thence North 2 degrees 19 minutes East, 188.93 feet; thence North 87 degrees 41 minutes West, 200 feet; thence South 2 degrees 19 minutes West, 334.96 feet to the Northerly right of way line of State Highway No. 12; thence South 69 degrees 41 minutes East along said Northerly right of way line 45.94 feet; thence Easterly 364.3 feet along said Northerly right of way line being a tangential curve to the left having a radius of 1587.28 feet to an intersection with a line bearing South 2 degrees 19 minutes West from the actual point of beginning; thence North 2 degrees 19 minutes East, 232.24 feet to actual point of beginning, EXCEPT the West 200 feet thereof.

19. 2120 is adjacent to and abuts Wayzata Boulevard.

20. 2120 has access to Wayzata Boulevard, the only available public thoroughfare, through two driveways, the Center driveway and Eastern driveway.

21. The Center driveway connects to Wayzata Boulevard and is shared with 2160.

22. The Eastern driveway connects to Wayzata Boulevard on its eastern side.

23. Since OS purchased 2120, the property has required significant investment and rehabilitation after falling into disrepair.

24. Rehabilitating 2120 included renovating the property's main building, restoring the underground fuel tanks on the property and repaving asphalt on the property.

25. The property now contains an updated office building that also functions as a warehouse and large parking area in which owners of large trucks and trailers lease spaces for extended parking.

26. After completing the renovation, OS leased the main building to a landscaping company, Nutri-green Lawn Care, which is the primary tenant of 2120.

CBS Property (2060 Property)

27. The 2060 Property, owned by CBS, is described by the following legal descriptions (followed by Property ID numbers):

a. Lot 1, Block 1, Amber Woods Office Centre, County of Hennepin (PID 34-118-23-21-0037);

b. Lot 2, Block 1, Amber Woods Office Centre, County of Hennepin (PID 34-118-23-21-0038);

c. Lot 3, Block 1, Amber Woods Office Centre, County of Hennepin (PID 34-118-23-21-0039);

d. Lot 4, Block 1, Amber Woods Office Centre, County of Hennepin (PID 34-118-23-24-0072);

e. Lot 5, Block 1, Amber Woods Office Centre, County of Hennepin (PID 34-118-23-24-0073); and

f. Lot 6, Block 1, Amber Woods Office Centre, County of Hennepin (PID 34-118-23-21-0040).

28. 2060 is adjacent to and abuts Wayzata Boulevard with access to Wayzata Boulevard by an easement to a driveway on the adjacent property to the east ("CBS Wayzata Boulevard" driveway).

29. 2060 has a second driveway to Brown Road through an easement across Orono Woods Senior Living Facility, the property to the east ("Brown Road" driveway).

30. The CBS Wayzata Boulevard driveway and Brown Road driveway are the only available access routes to 2060 from any public thoroughfare.

31. Since CBS purchased 2060, the property has required significant investment and rehabilitation after being vacant for several years and falling into disrepair.

32. Rehabilitating the 2060 Property included completing a building left as a shell and making substantial repairs to the parking lot and common spaces.

33. After completing the renovation, CBS leased the completed building to a child care facility.

The Project

34. Prior to the Project's commencement in 2017, Hennepin County held meetings to present concept and preliminary designs for the reconstruction. As planning progress, the County published project information on its website, which included a "temporary easement" running through the 2160 and 2120 Property. In September 2016, Hennepin County confirmed to OS and CBS that property rights would need to be acquired in order to complete the project, and that therefore, the owners would be entitled to compensation. Hennepin County made offers to OS and CBS for the easements Hennepin County proposed, and then rescinded the offers after OS and CBS attempted to negotiate for more compensation than was offered by the County.

35. On December 8, 2016, the County filed its petition for condemnation and included more than 50 landowners along Wayzata Boulevard from which it intended to permanently or temporarily take private property for Phase 1 of the Project (Court File No. 27-CV-16-17787). In January 17, the County issued Addendum 1 to the Project's plans, in which the temporary easements running across 2060, 2120, and 2160 were removed. On February 23, 2017, Petitioners filed their Petition for Alternative Writ of Mandamus to demand that Hennepin County include 2060, 2120 and 2160 in the Condemnation action.

36. Phase 1 of the Project commenced in April 2017 and was deemed substantially complete in November 2017.

37. To complete the Project, Hennepin County hired Eureka Construction LLC ("Eureka") as the con-

tractor, by entering into a written agreement that included guidelines and specifications for the Project's execution ("Contract"). (Tr. Ex. 103.)

38. The Contract incorporates the Project's Plan Sheets, six addenda that added to and revised the Contract's original terms, and the Minnesota Department of Transportation's Standard Specifications for Construction. (Tr. Exs. 103, 104.)

39. The Contract includes indemnification, hold-harmless, and independent-contractor provisions. (Tr. Exs. 103, 109.)

40. Notwithstanding the indemnification, hold-harmless and independent contractor contract provisions, the Contract assigns to Hennepin County ultimate control and authority of the Project's scope, implementation, and manner of work. (*See, e.g.*, Tr. Ex. 30, pp. 93 at Notes, 2-3, 6-7, 9-13, 18.)

41. The Special Provisions to the Contract assign Paul Backer, Senior Project Engineer with Hennepin County's Public Works Transportation, with Project oversight and authority to modify Project Plans. (Trs. Exs. 36, 38 at pp. 13-S – 42-S.)

42. The Contract provides that Hennepin County: (1) ensured the quality of materials used in the Project were Mn/DOT standards; (2) reviewed and approved any field changes to the Plans requested by the Contractors; (3) approved locations for contractor staging and storage of vehicles, equipment and supplies when not indicated in the Plans; and (4) ensured public safety on the roads, trails and areas impacted by the Project. (Tr. Ex. 38.)

43. In carrying out these duties, Backer was usually onsite 4 times a week and other Hennepin County employees on his team were onsite 5 to 6 times per week.

44. Hennepin County held weekly onsite meetings led by Backer or Ned Miller to address multiple aspects of the Project such as the construction schedule, safety issues, public utilities, traffic control, communications, and land acquisition. (Tr. Ex. 129.)

45. Meeting agenda and Hennepin County website plans for the Project demonstrate Hennepin County included utility work in the Project, and Hennepin County coordinated with the utility companies that were onsite to conduct work for the Project. (Tr. Exs. 9, 11, 129.)

46. Hennepin County began work on the Project in early April 2017 by surveying and assessing the land to be impacted during Phase I.

47. The Hennepin County survey crew entered each of Petitioners' Properties while conducting the survey work, parked vehicles on the Properties and conducted survey work on the Property, but did not have written permission from the Petitioners to do so.

48. Hennepin County understood 2120 and 2160 to be one parcel with three separate driveways and 2060 was a separate property with its own access to Wayzata Boulevard.

49. After construction work commenced, the Project involved heavy machinery work on Wayzata Boulevard causing road closures and detours, construction vehicles and personnel on 2160, 2120, and 2060's private property, intermittent interruptions of

utility services, and uncertainty about further impacts, timing and scope of the Project. (*See e.g.*, Tr. Exs. 20, 32, 33 (videos), 34.) Photographs and videos introduced at trial depict the significant construction interference at the Properties.

50. Construction work and road closures caused by the Project also impaired or eliminated access to Wayzata Boulevard for abutting properties such as 2120, 2160, and 2060. (*Id.*)

51. The Project also involved excavation and lowering of grade, barricades and barriers throughout public and private property, and general interference with surrounding property owners' use and possession of their properties.

52. After Phase I construction commenced, Hennepin County decided to change the location of the Project's bike trail being constructed on Wayzata Boulevard.

53. Described as a "field change" by Backer, the adjustment also involved changing the grade of Wayzata Boulevard from the original specifications in the Project Contract.

54. The re-grading of Wayzata Boulevard lowered the road's elevation by up to 5 additional feet in front of the Properties and required re-building each of the Properties' driveways connecting to Wayzata Boulevard in order to align with the County's re-grading decision.

55. As the Project continued, its scope, timing and impact remained uncertain, due in part to the publicly available plans on Hennepin County's website being marked as "final" yet "subject to change." (Tr. Exs. 9-12.)

Impact on the Properties

56. Leading up to the Project and during the Project, Hennepin County's lack of final plans and failure to establish boundaries caused uncertainty for all three Properties.

57. During the Project, Hennepin County physically invaded all three Properties by working on and occupying the property, storing construction material, debris, equipment, and vehicles on the property, and parking personal vehicles on the property. (*See e.g.*, Tr. Exs. 32-34.)

58. Hennepin County was aware that occupation of the property required an easement. The County adopted a policy of "see something, say something" as it related to workers on the properties. Ned Miller, a Hennepin County team member, instructed: "Please remind Eureka employees and sub-contractors to keep off private property. No worker parking, no materials, no garbage, no tools, no sitting, no standing, etc. Keep trucks and equipment off private property. Do not assume there is an easement, in a lot of cases there is not. The work must be accessed from the public right of way." (Tr. Ex. 116.) Despite this reminder, for all three properties, the County and its contractors continued to act as though there was an easement on the properties.

59. During the Project, Hennepin County closed access to the Center and Western driveways of the Orono Station Properties at the same time by physically barricading the entrances, and by creating or allowing construction interference to deny reasonable and convenient access to 2160. (*See e.g.*, Tr. Exs. 32-33.)

60. During the Project, Hennepin County also closed access to the Center and Eastern driveways at the same time by physically barricading the entrances, and by creating or allowing construction interference to deny reasonable and convenient access to 2120. (*See e.g.*, Tr. Exs. 32-33.)

61. Hennepin County's construction interfered with the use and enjoyment of 2160 and 2120 by impairing or denying prospective customers access to 2160 and 2120, physically occupying or invading 2160 and 2120 with equipment, debris, personnel, and by disrupting the access from and use of Wayzata Boulevard with road closures and detours caused by the Project. (*See e.g.*, Tr. Ex. 32-33.)

62. For example, Christy Erickson credibly testified that she expressed concern to Hennepin County that the driveway access between Wayzata Boulevard and the 2120 and 2160 properties was difficult to see, thereby negatively impacting business. After expressing these concerns, blue signs were placed near open driveways indicating the driveway was open. Erecting the signs did not cure the loss of revenue and loss of business caused by the project interference. For example, a regular customer did not return for the remainder of the summer after his 18-wheel truck got stuck accessing his leased parking space at 2120. (Tr. Ex. 32-089; Tr. Test. B. Erickson, Kling.

63. For example, Joshua Kling, a manager for the lawn care service located at the 2120 property, credibly testified that when a semi-truck and trailer could not enter the 2120 property, he had to open access to the driveway by removing a construction barrel.

64. During the Project, and as a result of the uncertainty, the physical occupation and invasion, the denial of reasonable and convenient access, and the construction interference from the Project, 2160's and 2120's property value was definitely and measurably diminished due to the Project. (Tr. Ex. 13.) Expert witness Scott Ruppert credibly testified the same and the County offered no evidence to rebut Ruppert's expert analysis. (Tr. Test. S. Ruppert.)

65. As a result of the Project, Hennepin County permanently altered the slope of all driveway entrances to 2160 and 2120 by increasing the slope of each driveway to a level outside of industry standards, which creates a hazard for vehicles entering and exiting the property. (Tr. Exs. 22, 25, 26, 32, 33, 39.)

66. Because of the grade of the driveways outside of industry standards, vehicles now scrape upon entering and exiting the Western, Center, and Eastern driveways. Video evidence shows an Audi, Malibu, Maserati, Ford truck with attached trailer, and mobility van scraping upon entering and/or exiting the 2060 and 2120 property. (Ex. 39.)

67. As a result of the permanent changes to each of the driveways, the property value of 2160 and 2120 is definitely, measurably and permanently diminished due to the Project. (Tr. Ex. 13.)

68. During the Project, Hennepin County also closed access to the CBS Wayzata Boulevard driveway and Brown Road driveway at the same time by physically barricading the entrances, and by creating or allowing construction interference to deny reasonable and convenient access to 2060.

69. For example, during the Project, 2060 was undergoing construction work of its own, and contractors for the 2060 construction were unable to access the 2060 property. Dale Richardson credibly testified that he witnessed one of the 2060 workers unable to access the property through the CBS Wayzata Boulevard or Brown Road driveway and, eventually, had to access the property by using one of the 2120 driveways and then drive onto the 2060 property. (Tr. Test. D. Richardson.) Trent Richardson, Dale's son and an employee at CBS, credibly testified that, on at least one occasion, a contractor was forced to deliver materials to 2060 by parking on the 2120 property and then carrying the materials to 2060. (Tr. Test. T. Richardson.)

70. Hennepin County's construction interfered with the use and enjoyment of 2060 by impairing or denying prospective customers access to 2060, physically occupying or invading 2060 with equipment, debris, personnel, and by disrupting the access from and use of Wayzata Boulevard with road closures and detours caused by the Project. (Tr. Exs. 39.)

71. During the Project, and as a result of the uncertainty, the physical occupation and invasion, the denial of reasonable and convenient access, and the construction interference from the Project, 2060's property value was definitely and measurably diminished due to the Project. (Tr. Ex. 14; Tr. Test. S. Ruppert.)

72. As a result of the Project, Hennepin County permanently altered the slope of the CBS Wayzata Boulevard driveway entrance by increasing the slope of the driveway to a level outside of industry standards, which creates a hazard for vehicles entering and exiting

the property. (Tr. Exs. 22, 25, 26, 32, 33, 39; Tr. Test. Vernon Swing.)

73. Cars now scrape upon entering and exiting the CBS Wayzata Boulevard driveway. Although Tom Bloom, manager of Orono Woods Senior Living Facility, credibly testified he has not received complaints of cars scraping and his Mercedes has not had trouble entering or exiting the driveway, equally credible video evidence shows a variety of vehicles, including an Audi, Malibu, Maserati, and Ford truck with attached trailer, scraping upon entering and/or exiting the 2060 property. (Tr. Test. T. Bloom; Ex. 39.)

74. As a result of the permanent changes to the CBS Wayzata driveway, 2060's property value was definitely, measurably and permanently diminished due to the Project. (Tr. Ex. 13.)

CONCLUSIONS OF LAW

75. Both the United States and Minnesota Constitutions require just compensation to be paid when private property is taken for public use. *U.S. Const. amend. V*; Minn. Const. Art. I, § 13.

76. The Minnesota Constitution offers broader protection for private landowners than its federal counterpart, and "the clear intent of Minnesota law is to fully compensate its citizens for losses related to property rights incurred because of state action." *State by Humphrey v. Strom*, 493 N.W.2d 554, 558 (Minn. 1992).

77. "Private property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid and secured." *Interstate Cos., Inc.*

v. City of Bloomington, 790 N.W.2d 409 (Minn. Ct. App. 2010); Minn. Const. Art. I, § 13.

78. A *de facto* taking is a "taking in which an entity clothed with eminent-domain power substantially interferes with the owner's use, possession, or enjoyment of the property."

79. Whether a taking is permanent or temporary only goes to the amount of damage owed to the property owner, not whether the property owner is entitled to damage. *Kick's Liquor Store, Inc. v. City of Minneapolis*, 587 N.W.2d 57, 60 (Minn. Ct. App. 1998).

80. Property owners who believe their property has been taken may petition the district court for a writ of mandamus to compel the state to initiate condemnation proceedings under Minnesota Statute Chapter 117. *Grossman Invs. v. State by Humphrey*, 571 N.W.2d 47, 50 (Minn. Ct. App. 1997), *review denied* (Minn. Jan. 28, 1998).

81. A district court reviewing a petition for a writ of mandamus "must decide, as a threshold matter, whether a taking of property has occurred in the constitutional sense." *Id*.

82. "In general, it can be said that no firmly established test exists for determining when a taking has occurred, instead takings law turns largely on the particular facts underlying each case." *Zeman v. City of Minneapolis*, 552 N.W.2d 548, 552 (Minn. 1996).

83. In an inverse condemnation case, "temporary takings . . . are not different from permanent takings." *Zeman*, 552 N.W.2d at 553.

84. Here, the Petitioners argue that under the foregoing principles, a taking occurred due to the County's:

a. Interference with the right of reasonably convenient and suitable access to private property;

b. Physical invasion or occupation of private property;

c. Interference with the ownership, use, enjoyment and unimpeded possession of private property; and

d. Interference with private property resulting in a definite and measurable diminution in the market value of private property.

85. The Court determines that a taking has occurred under all of the theories above.

Interference with Reasonably Convenient and Suitable Access

86. A taking results from interference with the right of reasonably convenient and suitable access to private property. "It is well settled under Minnesota law that property owners have a right of reasonably convenient and suitable access to a public street or highway which abuts their property." *Johnson*, 263 N.W.2d at 605 (citation omitted).

87. The implementation of any improvement project on a public thoroughfare is undertaken in the interest of public safety and welfare under the government's inherent police power, "[a]t the time same, however, the exercise of such powers can operate to deny an abutting property owner the right of reason-

able access which this court has frequently recognized." *Johnson*, 263 N.W.2d at 606.

88. "What constitutes reasonable access must, of course, depend to some extent on the nature of the property under consideration. The existence of reasonable access is thus a question of fact to be determined in light of the circumstances to each case." *Johnson*, 263 N.W.2d at 607.

89. Hennepin County argues that keeping one of the Western, Center, or Eastern driveways open provided sufficient legal access to 2120 and 2160. Upon a thorough review of Minnesota State and the Eighth Circuit case law and statutes, there appears to be no controlling law upon whether continuous tracts, owned by separate limited liability companies, but with identical members, are to be treated as one unit for the purpose of condemnation proceedings. However, persuasive authority indicates that whether separate parcels should be treated as one depends on three factors: physical contiguity, unity of ownership, and unity of use.[2] *See City of Rogers v. KMR Partners, LLC*, No. 27-CV-13-12367, 2013 WL 12289560 (Minn. Dist. Ct. Nov. 6, 2013) (citing *City of Minneapolis v. Yale*, 269 N.W.2d 754, 756 (Minn. 1978); *Victor Co. v. State by Head*, 186 N.W.2d 168, 171 (Minn. 1971); *e.g., City of San Diego v. Neumann*, 863 P.2d 725, 729 (Cal. 1993); *State ex rel. Comm'r of Dep't of Correction v. Rittenhouse*, 634 A.2d 338, 343 (Del. 1993); *Dep't of Transp., Div. of Admin. v. Jirik*, 498 So.2d 1253, 1255

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[2] The case law discusses the issue of noncontiguous tracts in condemnation proceedings; however, the reasoning is persuasive in determining whether the 2160 and 2120 properties are to be regarded as one property.

(Fla. 1986); *Dep't of Transp. v. Chicago Title & Trust Co.*, 707 N.E.2d 637, 645 (Ill. Ct. App. I 999) (citing *Lake Cnty. Pub. Bldg. Comm'n v. La Salle Nat. Bank*, 531 N.E.2d 110, 114 (Ill. Ct. App. 1988)); *Barnes v. N Carolina State Highway Comm'n*, 109 S.E.2d 219, 225 (N.C. 1959); *Dep't of Transp. v. Nelson Co.*, 489 S.E.2d 449, 450 (N.C. Ct. App. 1997); *Lewis v. S. Carolina State Highway Dep't*, 293 S.E.2d 434, 435 (S.C. 1982); *Tale v. Wandermere Co.*, 949 P.2d 392, 397 (Wash. Ct. App. 1997); James Timothy Payne, Annotation, *Eminent Domain: Unity or Contiguity of Separate Properties Sufficient to Allow Damages for Diminished Value of Parcel Remaining After Taking of Other Parcel*, 59 A.L.R.4th 308 (1988); 26 AM. JUR. 2D *Eminent Domain* § 338 (2013); 4B NICHOLS ON EMINENT DOMAIN § 14B.03 (Matthew Bender, ed., 3rd ed.). Physical contiguity is established between 2160 and 2120.

90. "Unity of ownership requires the parcels claimed as a single to be owned by the same party or parties." *City of Rogers v. KMR Partners, LLC*, No. 27-CV-13-12367, 2013 WL 12289560 (Minn. Dist. Ct. Nov. 6, 2013) (citing *Bd. Of Transp. v. Martin*, 349 S.E.2d 390, 394 (N.C. 1978); *Sams v. Redevelopment Authority*, 244 A.2d 779 (Pa. 1968); *Jonas v. State*, 121 N.W.2d 235, 238 (Wis. 1963)).

91. 2160 and 2120 are owned by different limited liability companies. 2160 is owned by OSW and 2120 is owned by OS.

92. "A limited liability company is an entity distinct from its members." Minn. Stat. § 322C.0104, subd. 1. Pursuant to this clear statutory mandate, there is no unity of ownership between the 2160 and

2120 properties because each property is owned by a distinct and separate legal entity.

93. Unity of use exists when the use of the tracts are "so connected, that the taking from one in fact damage the other." *City of Minneapolis v. Yale*, 269 N.W.2d 754, 757 (Minn. 1978) (finding separate tracts were "so connected" where the one property was used in conjunction with the other property's entire operation); *Housing Authority of City of Newark v. Norfolk Realty Co.*, 364 A.2d 1052, 1055-57 (N.J. 1976) (finding unity of use where a refrigerator facility, owned by a meat processing plant located across the street, was taken through condemnation).

94. 2160 and 2120 are not "so connected" as to have utility of use, because the two properties function entirely separately from the other. 2160 operates a gas station, convenience store, and commercial space for local businesses. 2120 operates as a leased commercial space for a landscaping company and rents long-term parking spaces for storing large trucks and trailers. The uses of 2160 and 2120 are distinct from each other and are not used in concert, or as one overall larger operation.

95. 2160 and 2120 are two separate properties. 2160 has access to two driveways, the Western and Center driveway, and 2120 has access to two driveways, the Center and Eastern driveways.

96. During Phase I of the Project, Petitioners were denied reasonably convenient and suitable access to their Properties due to Hennepin County's failure to maintain at least one open access to each property at all times. First, there were times when driveway access was denied entirely, due to Hennepin County's

misconception about the ownership of the properties. At times, Hennepin County closed the Center driveway and either the Eastern or Western driveway, meaning that one of the Orono Station properties had no legal access to Wayzata Boulevard. Likewise, at times, Hennepin County restricted access to 2060. Second, even when Hennepin County declared the driveways "open" for access, hazardous road conditions and ongoing construction interference within the driveway made access unreasonable, dangerous, inconvenient and interfered with Petitioners' property rights.

Physical Invasion

97. Physical invasions will constitute a taking "no matter how minute the intrusion and no matter how weighty the public purpose behind it . . . " *Lucas v. South Carolina Coastal Council*, 112 S. Ct. 2886, 120 L. Ed. 798 (1992).

98. When a governmental entity such as Hennepin County temporarily uses private property to facilitate construction of a public infrastructure improvement project, the impacted owners are entitled to compensation for the taking of a property during the temporary period of time. *Strom*, 493 N.W.2d 554; *City of Woodbury v. Woodbury Tp. Co.*, 254 N.W.2d 385 (Minn. 1977); *Metropolitan Sewer Bd. v. Moore*, 226 N.W.2d 314 (Minn. 1975).

99. Throughout Phase I of the Project, Hennepin County physically occupied Petitioners' properties by conducting construction work, storing equipment and material and allowing construction personnel on Petitioners' properties. On a daily basis, construction workers stored equipment, parked their vehicles, conducted work and took breaks with no regard to the

project boundaries, acting as if there was an easement, when there was not. Hennepin County supervisors Paul Backer and Ned Miller each admit to not knowing the project boundary location. (Tr. Test. Backer, Miller.)

100. In addition, Hennepin County dug a hole into the blacktop of 2160, saw-cut into 2160's driveway for asphalt replacement, removed grass and other landscaping from both Orono Station Properties, and regraded the Properties, all without authority or compensation. (Tr. Ex. 32.)

Interference with Ownership, Use, Enjoyment and Unimpeded Possession

101. "To be constitutionally compensable, the taking or damage need not occur in a strictly physical sense and can arise out of any interference by the state with the ownership, possession, enjoyment, or value of private property." *Johnson v. City of Plymouth*, 263 N.W.2d 603, 605 (Minn. 1978) (*citing Burger v. City of St. Paul*, 64 N.W.2d 73, 78 (1954)); *see also* 2 Nichols, Eminent Domain, (3 ed. Rev.) §§ 6.1, 6.3.

102. A compensable taking may occur despite there being no trespass on the property owner's parcel. *Stuhl v. Great N.R. Co.*, 136 Minn. 158, 161 (1917) ("It is sufficient that the construction and operation of the public utility is the cause of some special pecuniary damage, and though the damage is consequential the owner may recover.")

103. Hennepin County interfered with Petitioners' ownership, use, enjoyment, and possession of their Properties during Phase I of the Project.

104. As a result of the Project, Petitioners' driveway slopes have been permanently increased beyond industry standards and now impair access to the Properties.

105. Throughout Phase I of the Project, Hennepin County did not finalize its construction plans, identify definitive construction boundaries or describe a specific scope of work, which caused uncertainty as to the Project's duration, scope and ultimate impact on the Properties.

Loss in Fair Market Value

106. Loss of a property's fair market value may be a compensable taking, and "the measure of damage is the difference between the fair market value of the entire piece of property immediately before the taking and the fair market value of the remainder of the property after the taking." *Strom*, 493 N.W.2d at 558 (describing the "before and after rule" used in Minnesota). A taking has occurred when a property suffers a definite and measurable diminution in market value. *Strom*, 493 N.W.2d at 558.

107. As a result of the construction interference and uncertainty caused by the Project, each of the Properties suffered a definite and measurable diminution in market value.

108. Scott Ruppert's unrebutted testimony and report establish that the property values of all three Properties were diminished by the Project. Ruppert identified several negative project related impacts, including:

a. Uncertainty regarding extent of permanent and/or temporary project acquisitions and interference with the current use;

b. Physical invasion of the Properties, including construction work, material, debris, and equipment on site, and construction vehicles and personal vehicles of County-controlled personnel parking on the Properties;

c. Reconstruction of access points along Wayzata Boulevard . . . ;

d. Temporary construction related interferences, including the temporary closure of access points along Wayzata Boulevard, road closures, detours, interruption of utilities such as gas, electric, phone, and internet services, and construction debris, equipment, and material surrounding the Properties. (Tr. Ex. 14; Tr. Test. Ruppert.)

Hennepin County's Independent Contractor Argument

109. A condemning authority cannot shield itself from liability for work it authorizes contractors to conduct. *Dickerman v. Duluth*, 88 Minn. 288, 294 (Minn. 1903) (finding city liable for damage caused by work it authorized a railroad company to conduct stating "it is immaterial to plaintiff what the relations may be between [the city] and the parties doing or directly causing the work to be done").

110. "It is well settled that the nature of the relationship of the parties is to be determined from the consequences which the law attaches to their arrangements and conduct rather than the label they

might place upon it. Therefore, whether the parties have entered into a contract defining their relationship is not determinative." *St. Croix Sensory Inc. v. Dep't of Emp't and Econ. Dev.*, 785 N.W.2d 796, 800 (Minn. Ct. App. 2010) (citing *Speaks, Inc. v. Jensen*, 243 N.W.2d 142, 145 (Minn. 1976)); *Wise v. Denesen Insulation Co.*, 387 N.W.2d 477 (Minn. Ct. App. 1986).

111. The contract provision labeling Eureka as an independent contractor does not exculpate Hennepin County from the physical invasion and construction related interference of Petitioners' properties. *Ossenfort v. Associated Milk Producers, Inc.*, 254 N.W.2d 672 (Minn. 1977) (providing that the label which a contractor attaches to an employment relationship is not determinative of employer-employee or independent contractor status; rather, courts look primarily to the conduct of the parties operating under the agreement, for it is that conduct to which the law attaches consequences).

112. Hennepin County had ultimate control and authority of the Project's scope, implementation, and manner of work.

Conclusions

113. Under Minn. Stat. § 117.045, landowners who successfully bring an inverse condemnation action are entitled to recover costs and expenses, reasonable attorneys' fees, and appraisal and engineering fees that were incurred in bringing the action.

114. Hennepin County failed to meet its legal obligation to include 2060, 2120, and 2160 in condemnation proceedings.

115. By evidence and testimony, OSW established Hennepin County physically occupied its property, denied reasonable access to its property, interfered with its use, enjoyment and possession of its property, and caused a definite and measurable diminution in the property's market value, all of which constitute a taking or damage by Hennepin County entitling OSW to just compensation.

116. By evidence and testimony, OS established Hennepin County physically occupied its property, denied reasonable access to its property, interfered with its use, enjoyment and possession of its property, and caused a definite and measurable diminution in the property's market value, all of which constitute a taking or damage by Hennepin County entitling OS to just compensation.

117. By evidence and testimony, CBS established Hennepin County physically occupied its property, denied reasonable access to its property, interfered with its use, enjoyment and possession of its property, and caused a definite and measurable diminution in the property's market value, all of which constitute a taking or damage by Hennepin County entitling CBS to just compensation.

118. Hennepin County is ordered to add the properties located at 2160, 2120, and 2060 Wayzata Boulevard West in the City of Orono to the County's ongoing condemnation proceeding, and the pay Petitioners' reasonable fees, costs, and expenses they necessarily incurred in bringing the present action.

ORDER

119. Petitioners request for a Writ of Mandamus under Minnesota Statutes Chapter 586 and 117, and all corresponding rights flowing therefrom, is **GRANTED**, and

120. Respondent Hennepin County is ordered to commence a condemnation proceeding to determine the just compensation to which the Petitioners are entitled for the taking or damaging of their property and property rights, and

121. Petitioners request for reimbursement of reasonable fees, costs, and expenses, is **GRANTED**, and

122. Petitioners shall submit an affidavit of attorneys' fees and costs, along with any supporting documentation, within 10 days of the date of this Order.

IT IS SO ORDERED.

BY THE COURT:

/s/ Nancy E. Brasel
Judge of District Court

Dated: August 9, 2018

SPECIAL VERDICT FORM
(NOVEMBER 29, 2022)

STATE OF MINNESOTA
COUNTY OF HENNPIN
DISTRICT COURT
FOURTH JUDICIAL DISTRICT

CBS MN PROPERTIES, LLC,

Plaintiff,

v.

HENNEPIN COUNTY,

Respondent.

Court File No. 27-CV-20-10355

SPECIAL VERDICT FORM

We the jury impaneled and sworn in the above-entitled matter, answer the questions presented to us as follows:

Question No. 1:

What amount of money, if any, justly compensates Plaintiff for Defendant's taking of the 6,507-square-foot temporary construction easement?

ANSWER: $11,300.00

Question No. 2:

What amount of money, if any , justly compensates Plaintiff for Defendant's interference of reasonable and suitable access by creating a change in slope on the driveway leading to Plaintiff's property?

ANSWER: $262,143.00

Question No. 3:

What amount of money, if any, is the cost to cure/reconstruct the driveway?

ANSWER: $165,053.57

{signature not legible}
Foreperson

Dated: 11/29/2022

When all jurors agree with the verdict, only the Foreperson shall sign it.

If the jury is unable to arrive at a unanimous verdict after deliberating 6 hours or more, 7 of you may return a verdict by each of the 7 concurring jurors. The same jurors must agree on all answers and sign below and indicate the date and time of the 6/7 verdict.

Time Deliberation Began:

_____ 2022 ___:___ a.m./p.m.

Time 6-Hour Period Expired:

_____ 2022 ___:___ a.m./p.m.

_____	_____
Juror	Juror
_____	_____
Juror	Juror
_____	_____
Juror	Juror
_____	
Juror	