

STATE OF MINNESOTA

COUNTY OF DAKOTA

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Eagan Economic Development Authority, a  
Minnesota municipal corporation,

Petitioner,

v.

Minnesota's Credit Union, a Minnesota corporation; Northern States Power Company, a Minnesota corporation d/b/a Xcel Energy; County of Dakota, a political subdivision of the State of Minnesota; U-Haul Company of Minnesota a/k/a U-Haul Co. of Minnesota, a Minnesota corporation; AMERCO REAL ESTATE COMPANY, a Nevada corporation; American Accounts & Advisers, Inc., a Minnesota corporation; U.S. Bank National Association a/k/a U.S. Bank N.A.; Tami J. Wanner; Richard Leary; Lawrence D. Haugen and Leslie Haugen, husband and wife; Lawrence D. Haugen, CPA; Irma L. Parranto and Mark S. Parranto as Co-Trustees of the Jean E. Parranto Testamentary Trust Share B; Delta Development, Inc., a Minnesota corporation d/b/a Delta Homes; Susan Brewin, Attorney at Law; DDB Systems Corporation, a Minnesota corporation; Sungate Technologies, Inc.; Mark Adelman d/b/a Allstate Insurance; Randall J. Quam and Sandra K. Quam, husband and wife; Competition Engines, Inc., a Minnesota corporation; Jamal D. Ansari and Oraib D. Ansari, husband and wife; Bremer Bank, National Association; Sinclair Oil Corporation, a Wyoming corporation; David Graham d/b/a Rudy's Automotive Service Inc., a Minnesota corporation; Larson Training Services, Inc., a Minnesota corporation d/b/a Larson's Automotive Repair Services; Stratford Holding, LLC, a New York limited liability company; The Sherwin-Williams Company, an Ohio corporation; Superior

DISTRICT COURT

FIRST JUDICIAL DISTRICT

COURT FILE NO.: CASE TYPE: 2

CONDEMNATION

CASE NO. CX-07-30126

**SUPPLEMENTAL ORDER**

FILED DAKOTA COUNTY  
CAROLYN M. RENN, Court Administrator

APR 16 2008  
BY   
DEPUTY

Collision & Paint Inc., a Minnesota corporation; American Bank of St. Paul, a Minnesota corporation, f/k/a Dakota Bank; Jeffrey D. Schendel and Sarah J. Schendel, husband and wife; James William Null and Carol Jean Null, husband and wife; Alcoholics Anonymous; Mary Roe and all others claiming any interest in the property described in Petitioner's Petition,

Respondents.

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This matter came before the Court for an evidentiary hearing on February 13, 2008, at the Dakota County Government Center, 1560 West Highway 55, Hastings, Minnesota 55033.

Robert B. Bauer appeared for and on behalf of Petitioner, Eagan Economic Development Authority (EDA).

Patrick Kelly and Song Fawcett appeared for and on behalf of Respondents Stratford Holdings, LLC, James D. Ansari and Oraib D. Ansari, and American Accounts & Advisers, Inc.

Gary Fuchs appeared for and on behalf of Respondent Larson Training Services, Inc.

Steven Quam appeared for and on behalf of Respondents Randall J. Quam and Sandra K. Quam.

Darcy M. Erickson appeared for and on behalf of Respondents Irma L. Parranto and Mark S. Parranto as Co-Trustees of the Jean E. Parranto Testamentary Trust Share B.

Daniel L. Scott appeared for and on behalf of Respondents U-Haul Company of Minnesota and AMERCO Real Estate Company.

Evidence was received as to the necessity for the proposed taking from Sid Inman, Financial Advisor to the EDA from Ehlers and Associates, Inc.; Jon Hohenstein, Community Development Director for the City of Eagan; and Gene VanOverbeke, Director of Administrative

Services for the City of Eagan. The Court received into evidence EDA Exhibits 1-42 and Larson's Training Services' exhibits A, B, O, N, L, G, I, and Q.

At the hearing on February 13, 2008, Respondents U-Haul of Minnesota and AMERCO Real Estate Company, the owners of Parcel 2, were allowed by this Court to enter their objection to the EDA's petition and to argue before this Court.

At the hearing on February 13, 2008, one of the original objecting Respondents, Stratford Holding, LLC, withdrew its objection to the Petition for Condemnation. Therefore, the property located at 3975 Sibley Memorial Highway and legally described as:

Lot 2, Block 1, Barton McGray Addition

is made subject to this Court's February 6, 2008 Order granting the EDA's Petition for Condemnation for the unobjecting properties.

After the hearing, on February 28, 2008, Respondents Irma L. Parranto and Mark S. Parranto, as Co-Trustees of the Jean E. Parranto Testamentary Trust Share B, withdrew their objections. Therefore, the property located at the property located at 3914 Cedarvale Drive and legally described as:

Lots 1 – 6, Block 1, Cedarvale Office Park.

Together with and subject to a non-exclusive easement for ingress, egress and foot travel over and across portion of Lots 1, 2, 3, 4, 5, 7, 8, 9, 10, 11 and 12, said portions being more particularly described as those portions of said Lots located within an area 14 feet in width lying between the most northerly line of the watermain easement and the most southerly line of the sanitary sewer easement as the same appear on the said plat of Cedarvale Office Park.

Subject to a non-exclusive easement for parking purposes over Lot 6, Cedarvale Office Park.

is made subject to this Court's February 6, 2008 Order granting the EDA's Petition for Condemnation for the unobjecting properties.

The parties were given until February 29, 2008 to make written submissions to the Court. All submissions were received in a timely manner.

Based on the record, the pleadings and memoranda, and on the arguments of counsel, the Court makes the following:

### **FINDINGS OF FACT**

1. The petition and notice of the time and place of the hearing, as required by law, were properly served upon all of the Respondents herein as evidenced by the affidavits of service or admissions of service on file herein.

2. This Court has jurisdiction of the subject matter of the proceedings and of the property described in the petition. The legal descriptions of the property to be acquired is set forth on Exhibit "A" attached hereto, including any and all fixtures, easements, hereditaments, appurtenances, adverse rights, gaps, and overlaps (the "Properties").

The court received objections to the Petition from five property owners:

- a. The owner of the property located at 3904 and 3906 Cedarvale Drive and legally described as:

Lots 11 and 12, Block 1, Cedarvale Office Park and that part of Lot 10 lying Southwesterly of a line parallel to and 34 feet Northeasterly of the Northeasterly line of Lot 11 (all in Cedarvale Office Park).

TOGETHER with and subject to a non-exclusive easement for ingress, egress and foot travel over and across portions of Lots 1, 2, 3, 4, 5, 7, 8, 9, 10, 11 and 12, said portions being more particularly described as those portions of said Lots located within an area 14 feet in width lying between the most Northerly line of the water main easement and the most Southerly line of the sanitary sewer easement as the same appear on the said plat of Cedarvale Office Park.

TOGETHER with and subject to a non-exclusive easement for parking purposes over Lot 6, Cedarvale Office Park.

(Identified as Parcel 3 on Exhibit "A" to this Order);

- b. The owner of the property located at 3925 Sibley Memorial Highway and legally described as:

Lot 7, Block 1, Barton McGray Addition

(Identified as Parcel 6 on Exhibit "A" to this Order);

- c. The owner of the property located at 3945 Sibley Memorial Highway and legally described as:

Lot 5, Block 1, Barton McGray Addition

(Identified as Parcel 7 on Exhibit "A" to this Order);

- d. The owner of the property located at 3955 Highway 13 and legally described as:  
Lot 4, Block 1, Barton McGray Addition

(Identified as Parcel 9 on Exhibit "A" to this Order); and

- e. The owner of the property located at 3890 Nicols Road and legally described as:

That part of the NE  $\frac{1}{4}$  of Section 19, Township 27, Range 23, described as follows:

Starting at the Southwest corner of said NE  $\frac{1}{4}$ ; thence North along the West line of said NE  $\frac{1}{4}$  1056 feet to the point of beginning; thence Easterly at right angles to said West line a distance of 195 feet; thence Southeasterly perpendicular to State Highway No. 13 a distance of 86.84 feet to the Northwesterly Right of Way line of said State Highway No. 13; thence Southwesterly along said Right of Way a distance of 333.97 feet to the West line of said NE  $\frac{1}{4}$ ; thence North along said West line 284 feet to the point of beginning. Except the West 33 feet for Highway, also Except that portion of State Highway No. 13 taken for sight purposes.

(Identified as Parcel 2 on Exhibit "A" to this Order).

3. The Petitioner is an economic development authority (EDA), properly organized and existing under the laws of the State of Minnesota. Minnesota Statutes grant the power of eminent domain to the EDA.
4. In October of 2001, after properly noticed public hearings, the EDA approved the Cedar Grove Redevelopment Plan in resolution number 01-63, and verified by resolution 02-17. Also In October 2001, after following statutory requirements and holding properly noticed public hearings, the Eagan City Council approved the creation and establishment of a Tax Increment Financing District ("TIF District") and the accompanying TIF Plan in resolution number 01-63, and verified by resolution number 02-17. The properties owned by the objecting parties were identified as properties that needed to be acquired for the redevelopment.
5. The Redevelopment Eligibility Assessment conducted by the engineering firm of Short Elliot Hendrickson (SEH) found, and the EDA thereafter determined, that approximately 73% of the area in the TIF district was occupied by parcels containing structures or other improvements, and that approximately 57% of the buildings were substandard. It was also determined that redevelopment of the area likely would not occur solely through private investment. The EDA found that the area was blighted and it was in the public interest to acquire the properties to enable the redevelopment plan to proceed.
6. The following code violations were found by the Redevelopment Eligibility Assessment: heating, ventilation, and cooling systems; electrical systems; energy code compliance; general egress, construction, and accessibility; and fire protection systems. The following Systems Condition deficiencies were also found: structural and construction type; maintenance; zoning; condition and appearance; and useful life.

7. The Respondents questioned the findings of the Redevelopment Eligibility Assessment. The Court finds that the EDA properly determined that more than 70% of the area in the TIF district was occupied by structures or improvements, and that more than 50% of the buildings in the TIF district were structurally substandard. There is ultimately no discrepancy between the property ID numbers and the temporary codes assigned by SEH.
8. The Eagan City Council approved the TIF plan on October 2, 2001. Request for certification to the Dakota County Auditor was made on December 31, 2002. The County certified the TIF District in July 2003. The time to challenge the findings made regarding the TIF plan/certification expired in March 2003.
9. The acquisition of substandard buildings and of adjacent parcels that may not be substandard is an essential part of the Redevelopment Plan put into place as a result of resolution 01-63.
10. The Redevelopment District represents a blighted area, as the dilapidation, obsolescence, and faulty arrangement of the buildings, as well as an obsolete layout, is detrimental to the safety, health, and welfare of the community.
11. The Redevelopment of Cedar Grove will serve public purposes. It will provide new life-cycle housing options for existing Eagan residents, enhance the public transportation infrastructure by correcting a number of traffic problems in the area, increase the tax base, and increase employment. Senior housing has already, as part of the redevelopment, been constructed and a new façade was placed on an existing strip mall. Several tenants from the Cedarvale mall have relocated to the strip mall and the traffic flow has already been altered through a redesign of some area access streets.

12. The EDA, by Resolution Number 01-63, has shown that the acquisition of the Subject Properties was necessary for a public purpose. The clearing of a blighted area, the establishment of new housing and employment opportunities, as well as the enhancement of transit infrastructure and the increase in the tax base, which are all the case in this situation, qualify as public purposes supporting the EDA's actions.
13. The EDA determined that the taking of the properties within the Cedar Grove Redevelopment District was necessary to further proper purposes including the curing of an area of blight and the promotion of economic vitality.
14. The EDA, by Resolution Number 01-63, has made a prima facie showing that the acquisition of the Subject Properties was necessary. Respondents have failed to rebut this showing by Petitioner, as there is no overwhelming evidence that the taking is not necessary or that it is not for a public purpose.
15. The EDA is not seeking to take these properties for a speculative purpose, nor is it stockpiling properties.
16. The EDA has taken steps to facilitate the Cedar Grove redevelopment including a number of studies of the area: Phase I and Phase II Environmental Assessments; traffic study; and two separate market studies.
17. The redevelopment district has already been in the process of redevelopment including the following projects: Nicols Ridge Project; CDA youth supportive housing project; Keystone Senior housing; McDonalds was demolished and rebuilt; Silver Bell Shopping Center received a new façade and was renamed to the Shoppes at Cedar Grove; River Ridge Condominiums; Schwanns Food Distribution Center; Opus Office Show Room.



18. The EDA has selected Doran Pratt to redevelop the Cedar Grove Redevelopment District and a conceptual redevelopment plan has been submitted to the City for comment and approval. It is expected to go to the Advisory Planning Commission for comment. The plan is to begin constructing an office building, senior housing, and a commercial component during the next construction season. The EDA entered into a lease with Doran Pratt to allow for a temporary sales center.
19. The EDA has demonstrated that it has a specific development plan in place for the redevelopment district, and that a number of projects have already been undertaken and/or completed. There is no evidence of any problems that will interfere with this plan, even if it is not yet finalized into a binding development agreement.
20. The language in Section 1-8 of the Redevelopment Plan, when read in conjunction with other provisions of the Plan, does not preclude the taking of property absent a binding development agreement. Section 1-12, for example, allows the EDA, when it is necessary and desirable, as it is here, to acquire Respondent's property to assist in the implementation of the Redevelopment Plan.
21. Petitioner's appraised values for the properties of the five objecting property owners totals \$2,813,660.00.
22. In order to eligible for TIF reimbursement, expenditures in the Cedar Grove TIF District must be made by July 22, 2008. If this action does not move forward and the City does not undertake a quick take and make a deposit of \$2,813,660.00, the City would not be able to claim these as eligible costs that could be paid from the tax increment generated by the redevelopment. The use of the quick-take provision is therefore necessary. The loss of those funds would certainly be detrimental to the City and its residents.

23. The EDA has already obtained control of in excess of 93% of the properties in the core area of the redevelopment district. It is necessary for the EDA to acquire the remaining properties at issue here so that the redevelopment may occur in a timely fashion. This situation further supports the use of the quick-take provision.
24. The Eagan City Council's and the EDA's actions were not arbitrary, capricious, or unreasonable. Their findings and actions were lawful and well reasoned. They followed the requirements of Minnesota state statutes.
25. Other judges have previously ordered that condemnation of properties within the redevelopment district was appropriate. On June 23, 2006, November 7, 2006 and February 5, 2008, judges have found that the use of eminent domain was appropriate and that a public purpose and necessity existed such that the EDA could acquire through condemnation properties within the redevelopment district, and do so using the quick-take process. These matters were not contested by the property owners but Findings of Fact and Conclusions of Law were made by the Court.
26. The doctrine of collateral estoppel could, in theory, apply, barring the re-litigation of issues already settled in these previous lawsuits. The issue in this proceeding is the same as in the prior adjudications. There was a final judgment on the merits in the previous proceedings. The estopped party, the Respondents in this case, could arguably have been in privity with a party to the prior adjudications. The estopped party could have had a full and fair opportunity to be heard on the adjudicated issue.
27. However, the application of collateral estoppel would not be equitable in this case. The Respondents did not, in the previous proceedings, air their grievances with either the

process or the law. They were entitled to utilize the process of law to challenge the condemnation.

### CONCLUSIONS OF LAW

1. "Great weight must be given to the determination of the condemning authority, and the scope of review is narrowly limited." *Housing & Redevelopment Auth. v. Minneapolis Metro. Co.*, 104 N.W.2d 864, 874 (1960). The ability of the Court to substitute its judgment for that of the legislative body that took the legislative action is therefore, close to non-existent.
2. The petition in condemnation and motion for transfer of title and possession, notice of motion for transfer of title and possession, notice of intent to take possession, and proposed order granting petition, appointing commissioners and authorizing payment for deposit and transferring of title, all under Minn.Stat. § 117.042, were properly served upon all respondents named in the petition in a timely fashion, and proof of service has been filed with the district court administrator. The petition in condemnation and motion for transfer of title and possession, under Minn.Stat. § 117.042, is in proper form as required by the applicable Minnesota statutes. All procedural requirements were met.
3. The EDA was properly established according to Minn.Stat. § 469.101. The proper procedures were followed during the establishment of the Eagan EDA.
4. "An authority shall be a public body corporate and politic and shall have all the powers necessary or convenient to carry out the purposes of sections 469.001 to 469.047...Its powers include the following powers in addition to others granted in sections 469.001 to 469.047...within its area of operation, to acquire real or personal property or any interest

therein by...the exercise of the power of eminent domain, in the manner provided by chapter 117, to acquire real property which it may deem necessary for its purposes, after the adoption by it of a resolution declaring that the acquisition of the real property is necessary to eliminate one or more of the conditions found to exist in the resolution adopted pursuant to section 469.003...or is necessary to carry out a redevelopment project. Real property needed or convenient for a project may be acquired by the authority for the project by condemnation pursuant to this section.” Minn.Stat. § 469.012, subd. 1(6) (2000). The listed purposes are present in this case and Petitioner therefore has the authority to utilize the powers of eminent domain.

5. “No such authority shall transact any business or exercise any powers until the governing body of the city shall, by resolution, find that in that city (1) substandard, slum, or blighted areas exist which cannot be redeveloped without government assistance.” Minn.Stat. § 469.003, subd. 1 (2000). The EDA has appropriately found, based upon the report from SEH, that a substandard, blighted area existed within Eagan and is appropriately exercising its powers to cure this substandard, blighted area. The Eagan City Council concurred.
6. “The economic development authority may acquire by lease, purchase, gift, devise, or condemnation proceedings the needed right, title, and interest in property to create economic development districts.” Minn.Stat. § 469.101, subd. 2 (2000). Petitioner is properly exercising its lawful powers in bringing this condemnation proceeding.
7. “The economic development authority may exercise the power of eminent domain under chapter 117, or under its city's charter to acquire property it is authorized to acquire by condemnation. The authority may acquire in this way property acquired by its owner by

eminent domain or property already devoted to a public use only if its city's council approves. The authority may take possession of property to be condemned after it files a petition in condemnation proceedings describing the property.” Minn.Stat. § 469.101, subd. 4 (2000). Petitioner has properly filed a petition and brought this condemnation proceeding in order to acquire property through its lawful eminent domain powers.

8. The Petitioner followed the necessary procedures for establishing a TIF district, pursuant to Minn.Stat. §§ 469.090, 469.108, 469.001-047, 469.174-179.
9. “‘Redevelopment district’ means a type of tax increment financing district consisting of a project, or portions of a project, within which the authority finds by resolution that one or more of the following conditions, reasonably distributed throughout the district, exists: (1) parcels consisting of 70 percent of the area of the district are occupied by buildings, streets, utilities, or other improvements and more than 50 percent of the buildings, not including outbuildings, are structurally substandard to a degree requiring substantial renovation or clearance.” Minn.Stat. § 469.174 subd. 10(a)(1) (2000). Petitioner properly determined that approximately 73% of the area of the district is occupied by structures or improvements, and that approximately 57% of the buildings are substandard.
10. An action contesting the validity of a determination by an authority must be commenced within the later of “(1) 180 days after the municipality's approval under section 469.175, subdivision 3; or (2) 90 days after the request for certification of the district is filed with the county auditor under section 469.177, subdivision 1.” Minn.Stat §469.1771, subd. 7 (2007). The Respondents have failed to timely raise an objection to the EDA's determination of the TIF district as a redevelopment district.

11. "Blighted area' means any area with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light, and sanitary facilities, excessive land coverage, deleterious land use, or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community." Minn.Stat. § 469.002 subd. 11 (2000). The redevelopment district was properly deemed a blighted area with dilapidated and obsolete buildings and layout.
12. "The acquisition and clearing of blighted areas serves a public purpose" *Housing & Redevelopment Auth. v. Minneapolis Metro. Co.*, 104 N.W.2d 864, 869 (1960). Petitioner has established that its actions were in furtherance of a public purpose as required by eminent domain law.
13. "Cities are authorized to develop a program for improving a district of the city to provide impetus for commercial development; to increase employment; to protect pedestrians from vehicle traffic and inclement weather...and to provide other facilities as are outlined in the development program adopted by the governing body. The legislature declares that the actions required to assist the implementation of these development programs are a public purpose and that the execution and financing of these programs are a public purpose." Minn.Stat. § 469.124 (2000). Petitioner has further established that its actions qualified as a public purpose as required by eminent domain law.
14. "The standard for overturning a condemning authority's determination of public purpose is very strict." *Lundell v. Coop. Power Ass'n*, 707 N.W.2d 376, 381 (Minn. 2006). "Any evidence in the record supporting the existence of a public purpose is sufficient." *Housing & Redevelopment Auth. v. Minneapolis Metro. Co.*, 104 N.W.2d 864, 874

(Minn. 1960). There is more than sufficient evidence in the record supporting the existence of a public purpose in the EDA's exercise of eminent domain over the properties in the Cedar Grove Redevelopment District.

15. "If the proposed taking shall appear to be necessary and such as is authorized by law, the court by an order shall appoint three disinterested commissioners, and at least two alternates, residents of the county, to ascertain and report the amount of damages that will be sustained by the several owners on account of such taking." Minn.Stat. § 117.075 (2000). By law, Petitioner must establish that the proposed taking is necessary.

16. "The existence of necessity is a judicial question." *City of Duluth*, 390 N.W.2d 757, 764 (Minn. 1986).

17. "An Authority's resolution finding necessity is prima facie evidence that condemnation is necessary." *Lino Lakes Economic Dev. Auth.*, 610 N.W.2d 355, 360 (Minn.App. 2000). Petitioner's resolution stated the necessity for the condemnation, establishing a prima facie case of necessity.

18. "To overcome a condemning authority's finding of necessity there must be overwhelming evidence that the taking is not necessary." *City of Duluth*, 390 N.W.2d 757, 764 (Minn. 1986). Petitioner has made a prima facie showing of necessity and Respondents have failed to raise overwhelming evidence that the taking is not necessary. The lack of a finalized development contract does not amount to overwhelming evidence that the taking is not necessary.

19. "[T]he requisite necessity is not absolute necessity. It is enough to find that 'the proposed taking is reasonably necessary or convenient for the furtherance of a proper purpose.'" *City of Duluth v. State*, 390 N.W.2d 757, 764 (Minn. 1986). (quoting *City of*

*Pipestone v. Halbersma*, 294 N.W.2d 271, 274 (Minn. 1980)). Petitioner's proposed taking is reasonably necessary to lead to the timely redevelopment of the district, since over 93% of the other properties in the core area have already been acquired and significant improvement and relocation by area businesses has already taken place.

20. "Factors supporting a finding of necessity include: when an EDA has a specific plan for the property it seeks to condemn, when the EDA is creating a statutorily authorized district, and when there is no evidence of any problems that will interfere with that plan." *Lino Lakes Economic Dev. Auth.*, 610 N.W.2d at 361. Petitioner has established that it has a preliminary development agreement which outlines a plan for the property, and that substantial steps have already been taken in furtherance of the plan.

21. The Redevelopment Plan contains a provision as follows: "Prior to formal consideration of the acquisition of any property, the city will require the execution of a binding development agreement with respect thereto." Redevelopment Plan Section 1-8.

22. The Redevelopment Plan also contains the following provision: "The City may acquire such property, or appropriate interest therein, within the Redevelopment Project Area, as the City may deem to be necessary to assist in the implementation of the Redevelopment Plan." Redevelopment Plan Section 1-12. Read together, these two provisions of the Redevelopment Plan contemplate that the EDA would be able to acquire the necessary properties in order to insure the appropriate implementation of the Redevelopment Plan.

23. "Revenues derived from tax increments are considered to have been expended on an activity within the TIF district under subdivision 2 only if one of certain provisions occur. In this case the applicable provision requires that before or within five years after certification of the district, the revenues are actually paid to a third party with respect to



the activity.” Minn.Stat. § 469.1763, subd. 3 (2000). Since the TIF plan was certified on July 22, 2003, Petitioner must use the TIF funds prior to July 22, 2008.

24. Minnesota’s quick-take provision provides that “whenever the petitioner shall require title and possession of all or part of the owner’s property prior to the filing of an award by the court appointed commissioners, the petitioner shall, at least 90 days prior to the date on which possession is to be taken, notify the owner of the intent to possess by notice served by certified mail. Before taking title and possession the petitioner shall pay to the owner or deposit with the court an amount equal to petitioner’s approved appraisal of value.” Minn.Stat. § 117.042. Petitioner has followed the appropriate procedure for implementing a quick-take in this proceeding.

25. “The parties to a condemnation are permitted to present evidence at a judicial hearing on whether the condemning authority actually ‘required’ the property prior to the filing of the commissioners’ award.” *Cooperative Power Association v. Eaton*, 284 N.W.2d 395 (Minn. 1979).

26. “An Authority is limited in its use of ‘quick take’ to cases where a municipality could reasonably determine that it needs the property before the commissioners’ award could be filed.” *City of Minneapolis v. Wurtele*, 291 N.W.2d 386, 396. (Minn. 1980). Petitioner has already acquired 93% of the properties in the core area, and it is reasonably necessary for the implementation of a binding development agreement that the remaining properties are acquired through a quick-take process. The commissioner’s award will not be filed in the near future, thus requiring the use of the quick-take to enable Petitioner to acquire the remaining properties. The fact that the TIF funds must be used before July 22, 2008 is further evidence of the necessity of using the “quick take” provisions of the statute.

27. A quick take has been found proper where, even though parts of the condemned property would not be developed until a much later date, "the city needed to assure itself...of clear title before further investments were made." *City of Minneapolis v. Wurtele*, 291 N.W.2d 386, 396. (Minn. 1980). Petitioner needs to ensure that it has clear title to the entire core zone, since all but 7% of that area is already acquired, and redevelopment hinges on the acquisition of Respondents' properties. Portions of the redevelopment are underway and it is not uncommon for redevelopment to take place in phases. There is no evidence that any significant delay is anticipated. The "quick take" is both necessary and proper.
28. A court may properly deny a petition for condemnation where the proposed condemnor's actions are manifestly arbitrary or unreasonable. A condemning authority acts in an arbitrary and unreasonable manner when it acts "capriciously, irrationally, and without basis in law or under conditions which do not authorize or permit the exercise of the asserted power." *Housing & Redevelopment Auth. v. Minneapolis Metro. Co.*, 104 N.W.2d 864, 874 (1960). Here, Petitioner has not acted in an arbitrary or unreasonable manner. The EDA has followed the requisite procedure in a condemnation case. They have put out notices and held public hearings, and they have made the appropriate findings and resolutions. They have acted within their authority under the law and their actions have not been capricious, irrational, or without basis under Minnesota law.
29. "Applying collateral estoppel is appropriate if all of the following are satisfied: a) the issue must be identical to one in a prior adjudication; b) there was a final judgment on the merits; c) the estopped party was a party or was in privity with a party to the prior adjudication; and d) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue." *Care Inst., Inc.-Roseville v. County of Ramsey*, 612 N.W.2d

443, 448 (Minn.2000). There is a question as to whether the Respondents were in privity in the prior actions and whether they had a full and fair opportunity to be heard.

30. In order to be in privity, the party to be estopped "must have its interests sufficiently represented in the first action so that the use of collateral estoppel is not inequitable." *Miller v. Northwestern Nat'l Ins. Co.*, 354 N.W.2d 58, 61 (Minn.App.1984). Here, reliance on collateral estoppel would not be equitable.

Based on the foregoing, the Court makes the following:

### ORDER

1. The petition in condemnation is hereby GRANTED and the Petitioner is authorized pursuant to Minn. Stat. § 117.042 to acquire through condemnation fee title to all Properties identified in its Amended Petition (and set forth on Exhibit A to this order), including the Properties legally described below:

A. the property located at 3890 Nicols Road and legally described as:

That part of the NE ¼ of Section 19, Township 27, Range 23, described as follows:

Starting at the Southwest corner of said NE ¼; thence North along the West line of said NE ¼ 1056 feet to the point of beginning; thence Easterly at right angles to said West line a distance of 195 feet; thence Southeasterly perpendicular to State Highway No. 13 a distance of 86.84 feet to the Northwesterly Right of Way line of said State Highway No. 13; thence Southwesterly along said Right of Way a distance of 333.97 feet to the West line of said NE ¼; thence North along said West line 284 feet to the point of beginning. Except the West 33 feet for Highway, also Except that portion of State Highway No. 13 taken for sight purposes.

(Identified as Parcel 2 on Exhibit "A" to this Order).

B. the property located at 3904 and 3906 Cedarvale Drive and legally described as:

Lots 11 and 12, Block 1, Cedarvale Office Park and that part of Lot 10 lying Southwesterly of a line parallel to and 34 feet Northeasterly of the Northeasterly line of Lot 11 (all in Cedarvale Office Park).

TOGETHER with and subject to a non-exclusive easement for ingress, egress and foot travel over and across portions of Lots 1, 2, 3, 4, 5, 7, 8, 9, 10, 11 and 12, said portions being more particularly described as those portions of said Lots located within an area 14 feet in width lying between the most Northerly line of the water main easement and the most Southerly line of the sanitary sewer easement as the same appear on the said plat of Cedarvale Office Park.

TOGETHER with and subject to a non-exclusive easement for parking purposes over Lot 6, Cedarvale Office Park.

(Identified as Parcel 3 on Exhibit "A" to this Order);

- C. the property located at 3925 Sibley Memorial Highway and legally described as:  
Lot 7, Block 1, Barton McGray Addition

(Identified as Parcel 6 on Exhibit "A" to this Order);

- D. the property located at 3945 Sibley Memorial Highway and legally described as:

Lot 5, Block 1, Barton McGray Addition

(Identified as Parcel 7 on Exhibit "A" to this Order);

- E. the property located at 3955 Highway 13 and legally described as:

Lot 4, Block 1, Barton McGray Addition

(Identified as Parcel 9 on Exhibit "A" to this Order); and

including any and all fixtures, easements, hereditaments, appurtenances, adverse rights, gaps and overlaps.

2. The compensation for each of the commissioners shall be and is hereby fixed at Two Hundred Fifty Dollars (\$250.00) per day or One Hundred Twenty-five (\$125.00) per half day for each and every day actually occupied by them in the performance of their duties as such

commissioners. The commissioners will be reimbursed for mileage actually traveled in their own conveyances at the rate of 50.5 cents per mile.

3. At the hearing on February 13, 2008, one of the original objecting Respondents, Stratford Holding, LLC, withdrew its objection to the Petition for Condemnation. Therefore, the property located at 3975 Sibley Memorial Highway and legally described as:

Lot 2, Block 1, Barton McGray Addition

is made subject to this Court's February 6, 2008 Order granting the EDA's Petition for Condemnation for the unobjecting properties.

4. After the hearing, on February 28, 2008, Respondents Irma L. Parranto and Mark S. Parranto, as Co-Trustees of the Jean E. Parranto Testamentary Trust Share B, withdrew their objections. Therefore, the property located at the property located at 3914 Cedarvale Drive and legally described as:

Lots 1 – 6, Block 1, Cedarvale Office Park.

Together with and subject to a non-exclusive easement for ingress, egress and foot travel over and across portion of Lots 1, 2, 3, 4, 5, 7, 8, 9, 10, 11 and 12, said portions being more particularly described as those portions of said Lots located within an area 14 feet in width lying between the most northerly line of the watermain easement and the most southerly line of the sanitary sewer easement as the same appear on the said plat of Cedarvale Office Park.

Subject to a non-exclusive easement for parking purposes over Lot 6, Cedarvale Office Park.

is made subject to this Court's February 6, 2008 Order granting the EDA's Petition for Condemnation for the unobjecting properties.

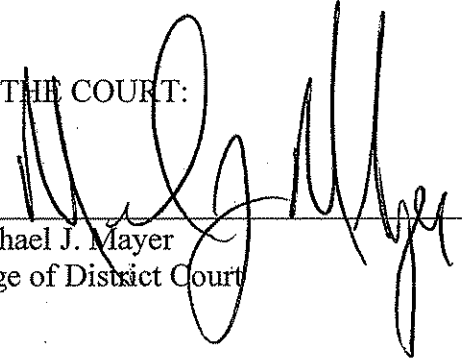
5. At the hearing on February 13, 2008, Respondents U-Haul of Minnesota and AMERCO Real Estate Company, the owners of Parcel 2, were granted relief from the February

6, 2008 default Order and allowed by this Court to enter their objection to the EDA's petition and to argue before this Court.

6. This Order supplements the terms of this Court's February 6, 2008 Order. The terms set forth in this Court's February 6, 2008 Order are hereby made applicable to the properties described above.

DATED: April 16, 2008

BY THE COURT:

  
\_\_\_\_\_  
Michael J. Mayer  
Judge of District Court

**Exhibit "A"**

**1. PIN: 10-16901-040-01; 10-16901-030-00 and 10-16901-040-00**

**Property Address: 3880 Sibley Memorial Highway**

**Fee Owner: Minnesota's Credit Union, a Minnesota corporation**

**Easements Holder: Northern States Power Company, a Minnesota corporation d/b/a Xcel Energy**

**Taxing Authority: County of Dakota, a political subdivision of the State of Minnesota**

Lot 4, Block 1, and Outlots C and D, Cedarvale 2nd Addition

**2. PIN: 10-01900-010-03**

**Property Address: 3890 Nicols Road**

**Fee Owners: U-Haul Company of Minnesota AKA U-Haul Co. of Minnesota, a Minnesota corporation; and**

**AMERCO REAL ESTATE COMPANY, a Nevada corporation**

**Taxing Authority: County of Dakota, a political subdivision of the State of Minnesota**

That part of the NE ¼ of Section 19, Township 27, Range 23, described as follows:

Starting at the Southwest corner of said NE ¼; thence North along the West line of said NE ¼ 1056 feet to the point of beginning; thence Easterly at right angles to said West line a distance of 195 feet; thence Southeasterly perpendicular to State Highway No. 13 a distance of 86.84 feet to the Northwesterly Right of Way line of said State Highway No. 13; thence Southwesterly along said Right of Way a distance of 333.97 feet to the West line of said NE ¼; thence North along said West line 284 feet to the point of beginning. Except the West 33 feet for Highway, also Except that portion of State Highway No. 13 taken for sight purposes.

**3. PIN: 10-16850-123-01; and 10-16850-122-01**

**Property Address: 3904 and 3906 Cedarvale Drive**

**Fee Owner: American Accounts & Advisers, Inc., a Minnesota corporation**

**Mortgagee: U.S. Bank National Association**

**Judgment Creditors: Tami J. Wanner  
Richard Leary**

**Taxing Authority: County of Dakota, a political subdivision of the State of Minnesota**

Lots 11 and 12, Block 1, Cedarvale Office Park and that part of Lot 10 lying Southwesterly of a line parallel to and 34 feet Northeasterly of the Northeasterly line of Lot 11 (all in Cedarvale Office Park).

TOGETHER with and subject to a non-exclusive easement for ingress, egress and foot travel over and across portions of Lots 1, 2, 3, 4, 5, 7, 8, 9, 10, 11 and 12, said portions being more particularly described as those portions of said Lots located within an area 14 feet in width lying

between the most Northerly line of the water main easement and the most Southerly line of the sanitary sewer easement as the same appear on the said plat of Cedarvale Office Park.

TOGETHER with and subject to a non-exclusive easement for parking purposes over Lot 6, Cedarvale Office Park.

**4. PIN: 10-01900-073-06**

**Property Address:** 3910 Cedarvale Drive

**Fee Owners:** Lawrence D. Haugen and Leslie Haugen, husband and wife

**Tenant:** Lawrence D. Haugen, CPA

**Mortgagee(s):** U.S. Bank N.A.

**Taxing Authority:** County of Dakota, a political subdivision of the State of Minnesota

Apartment C, Cedar Office Buildings, Condominium File No. 2. Dakota County, Minnesota.

**5. PIN: 10-16850-031-01; 10-16850-040-01; 10-16850-050-01; and 10-16850-060-01**

**Property Address:** 3914 Cedarvale Drive

**Fee Owners:** Irma L. Parranto and Mark S. Parranto as Co-Trustees of the  
Jean E. Parranto Testamentary Trust Share B

**Tenants:** Delta Development, Inc., a Minnesota corporation d/b/a Delta Homes

Susan Brewin, Attorney at Law

DDB Systems Corporation, a Minnesota corporation

Sungate Technologies, Inc.

Mark Adelman d/b/a Allstate Insurance

**Taxing Authority:** County of Dakota, a political subdivision of the State of Minnesota

Lots 1 – 6, Block 1, Cedarvale Office Park.

Together with and subject to a non-exclusive easement for ingress, egress and foot travel over and across portion of Lots 1, 2, 3, 4, 5, 7, 8, 9, 10, 11 and 12, said portions being more particularly described as those portions of said Lots located within an area 14 feet in width lying between the most northerly line of the watermain easement and the most southerly line of the sanitary sewer easement as the same appear on the said plat of Cedarvale Office Park.

Subject to a non-exclusive easement for parking purposes over Lot 6, Cedarvale Office Park.

**6. PIN: 10-13700-070-01**

**Property Address:** 3925 Sibley Memorial Highway

**Fee Owners:** Randall J. Quam and Sandra K. Quam, husband and wife

**Tenant:** Competition Engines, Inc., a Minnesota corporation

**Taxing Authority:** County of Dakota, a political subdivision of the State of Minnesota

**Assessment Deferral Agreement:** City of Eagan

Lot 7, Block 1, Barton McGray Addition



**7. PIN: 10-13700-050-01**

**Property Address: 3945 Sibley Memorial Highway**

**Fee Owners: Jamal D. Ansari and Oraib D. Ansari, husband and wife**

**Mortgagee: Bremer Bank, National Association (Due 6/14/07)**

**Taxing Authority: County of Dakota, a political subdivision of the State of Minnesota**

**Assessment Deferral Agreement: City of Eagan**

Lot 5, Block 1, Barton McGray Addition

**8. PIN: 10-01900-010-08**

**Property Address: 3946 Nicols Road**

**Fee Owner: Sinclair Oil Corporation, a Wyoming corporation**

**Tenant: David Graham d/b/a Rudy's Automotive Service, Inc., a Minnesota corporation**

**Easements Holder: Northern States Power Company, a Minnesota corporation d/b/a Xcel Energy**

**Taxing Authority: County of Dakota, a political subdivision of the State of Minnesota**

That part of the NE ¼ of Section 19, Township 27, Range 23, Egan Township, Dakota County, Minnesota described as follows: Commencing at the Southwest corner of said NE ¼, thence North along the West line of said NE ¼ a distance of 198.82 feet; thence East 33 feet to the Easterly right of way of Cedar Avenue also to be known as the actual point of beginning; thence North 47 degrees East a distance of 270 feet; thence North 18 degrees 13 minutes East a distance of 159.4 feet; thence North 40 degrees 55 minutes West a distance of 75 feet to a line parallel with and 60 feet Southeasterly of the Southeasterly right of way line of Highway No. 13; thence North 49 degrees 05 minutes East a distance of 408.8 feet along above described parallel line; thence North 40 degrees 55 minutes West a distance of 60 feet to the Southeasterly right of way line of Highway No. 13; thence South 49 degrees 05 minutes West a distance of 468.8 feet along the Southeasterly right of way line of Highway No. 13; thence South 24 degrees 32 minutes 30 seconds West a distance of 272.85 feet along the Southeasterly right of way line of Highway No. 13 to the Easterly right of way line of Cedar Avenue; thence South 150 feet along the Easterly right of way line of Cedar Avenue to the actual point of beginning; subject to easements of record.

AND EXCEPTING the following property deeded to the County of Dakota for road purposes.

A tract of land 17 feet wide, lying in the NE ¼ of Section 19, Township 27, Range 23, described as follows:

Beginning at a point 198.82 feet North and 33 feet East of the Southwest corner of NE ¼ of said Section 19, thence North 47 degrees 00 minutes East, 23.24 feet thence North 171.38 feet; thence South 24 degrees 32 minutes 30 seconds West, 40.93 feet; thence South 150 feet along present (1964) 33 feet Easterly right of way line of C.S.A.H. 23 to the point of beginning.

**9. PIN: 10-13700-040-01**

**Property Address: 3955 Highway 13**

**Fee Owner:** *Larson Training Services, Inc., a Minnesota corporation d/b/a Larson's Automotive Repair Services*

**Taxing Authority:** *County of Dakota, a political subdivision of the State of Minnesota*

**Assessment Deferral Agreement:** *City of Eagan*

Lot 4, Block 1, Barton McGray Addition

**10. PIN:** *10-13700-020-01*

**Property Address:** *3975 Sibley Memorial Highway*

**Fee Owners:** *Stratford Holding, LLC, a New York limited liability company*

**Tenant:** *The Sherwin-Williams Company, an Ohio corporation*

**Taxing Authority:** *County of Dakota, a political subdivision of the State of Minnesota*

Lot 2, Block 1, Barton McGray Addition

**11. PIN:** *10-13700-010-01*

**Property Address:** *3985 Cedarview Drive*

**Fee Owners:** *Superior Collision & Paint Inc., a Minnesota corporation*

**Mortgagee:** *American Bank of St. Paul, a Minnesota corporation, f/k/a Dakota Bank*

**Taxing Authority:** *County of Dakota, a political subdivision of the State of Minnesota*

**Assessment Deferral Agreement:** *City of Eagan*

Lot 1, Block 1, Barton McGray Addition

**12. PIN:** *10-01900-050-08 and 10-01900-090-08*

**Property Address:** *3995 Cedarvale Drive and 4015 Cedarvale Drive*

**Fee Owners:** *Jeffrey D. Schendel and Sarah J. Schendel, husband and wife*

**Taxing Authority:** *County of Dakota, a political subdivision of the State of Minnesota*

That part of the NE ¼ of Section 19, Township 27, Range 23, Dakota County, Minnesota, described as follows: Commencing at the Southwest corner of said NE ¼; thence North, assumed bearing, along the west line of said NE ¼ a distance of 198.82 feet; thence East 33 feet to the easterly right of way line of Cedar Avenue; thence N. 47 degrees 00 minutes E. a distance of 143.0 feet to the actual point of beginning; thence continue N. 47 degrees 00 minutes E. a distance of 127.0 feet; thence N. 18 degrees 13 minutes E. a distance of 159.4 feet; thence S. 40 degrees 55 minutes East a distance of 75.0 feet; thence South 49 degrees 05 minutes West a distance of 20.0 feet; thence S. 40 degrees 55 minutes E. a distance of 140.35 feet; thence S. 56 degrees 41 minutes W. a distance of 30.02 feet; thence S. 79 degrees 22 minutes 20 seconds W. a distance of 247.81 feet to the point of beginning.

AND

That part of the NE ¼ of Section 19, Township 27, Range 23, described as follows: Commencing at the SW corner of said NE ¼; thence North along the West line of said NE ¼ a distance of 198.82 feet; thence East 33 feet to the easterly right of way line of Cedar Avenue; thence North 47 degrees East a distance of 270 feet; thence North 18 degrees 13 minutes East a distance of 159.4 feet; thence North 40 degrees 55 minutes West a distance of 75.0 feet to a point on a line parallel with and 60 feet southeasterly of the southeasterly right of way line of State Highway No. 13; thence North 49 degrees 05 minutes East parallel with said Southeasterly right of way line 358.8 feet; thence south 40 degrees 55 minutes East a distance of 112.0 feet to the actual point of beginning; thence South 49 degrees 05 minutes West parallel with said southeasterly right of way line 158.8 feet thence South 40 degrees 55 minutes East a distance of 78.0 feet; thence North 49 degrees 05 minutes East parallel with said southeasterly right of way line 158.8 feet; thence North 40 degrees 55 minutes West a distance of 78.0 feet to the point of beginning.

**13. PIN: 10-01900-030-08**

**Property Address: 3998 Sibley Memorial Highway**

**Fee Owner: James William Null and Carol Jean Null**

**Tenant: Alcoholics Anonymous**

**Taxing Authority: County of Dakota, a political subdivision of the State of Minnesota**

That part of the NE ¼ of Section 19, Township 27, Range 23, described as follows:

Commencing at the SW corner of said NE ¼; thence North along the West line of said NE ¼ a distance of 198.82 feet; thence East 33 feet to the Easterly right of way line of Cedar Avenue; thence North 47 degrees East a distance of 270 feet; thence North 18 degrees 13 minutes East a distance of 159.4 feet; thence North 40 degrees 55 minutes West a distance of 75 feet to a point on a line parallel with and 60 feet Southeasterly of the Southeasterly right of way line of State Highway No. 13; thence North 49 degrees 05 minutes East parallel with said Southeasterly right of way line 100.0 feet to the actual point of beginning; thence South 40 degrees 55 minutes East a distance of 190.00 feet; thence North 49 degrees 05 minutes East parallel with said Southeasterly right of way line 100.0 feet; thence North 40 degrees 55 minutes West a distance of 190.0 feet to a point on a line parallel with and 60 feet Southeasterly of said Southeasterly right of way line; thence South 49 degrees 05 minutes West a distance of 100.0 feet to the point of beginning.