STATE OF MINNESOTA
IN COURT OF APPEALS
A08-767

Eagan Economic Development Authority,
Respondent,

vs.

U-Haul Company of Minnesota a/k/a U-Haul Co. of Minnesota, et al.,
Appellants,

Randall J. Quam, et al.,
Appellants,

Larson Training Services, Inc. d/b/a Larson's Automotive Repair Services,
Appellants,

vs.

Minnesota's Credit Union, et al.,
Respondents Below,

Irma L. Parranto, et al.,
Respondents,

Jamal D. Ansari, et al.,
Respondents Below.

Filed December 28, 2010
Affirmed
Ross, Judge

Dakota County District Court
File No. 19-CX-07-030126

Robert B. Bauer, Jessica L. Sanborn, Severson, Sheldon, Dougherty & Molenda, P.A., Apple Valley, Minnesota 55124 (for respondent Eagan Economic Development Authority)

Daniel L. Scott, Leonard, Street & Deinard, P.A., Minneapolis, Minnesota, and

Anthony J. Novak, Paula Duggan Vraa, Larson King, LLP, St. Paul, Minnesota 55101 (for appellants U-Haul Co. of Minnesota and Amerco Real Estate Company)

Steven J. Quam, Fredrikson & Byron, P.A., Minneapolis, Minnesota 55402 (for appellants Randall J. Quam and Sandra K. Quam)

Gary G. Fuchs, Elizabeth E. Rein, Gary G. Fuchs, Attorney at Law, P.A., Eagan, Minnesota 55122 (for appellants Larson Training Services, Inc.)

Considered and decided by Ross, Presiding Judge; Johnson, Chief Judge; and Toussaint, Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

This condemnation action involves a 2002 quick-take petition filed by the Eagan Economic Development Authority (EDA) to obtain title to privately owned property for a redevelopment project. The district court granted the petition and on appeal we reversed, concluding that the EDA exceeded the limited powers that the city transferred to it by resolution by allowing the taking without a binding development plan. The supreme court reversed that decision. Now, on remand from the supreme court, we address the remaining arguments of the private owners. Because the district court did not clearly err by concluding that the taking had a public purpose that was reasonably necessary for redevelopment of the district, and that the quick-take procedure was reasonably necessary to avoid loss of tax increment financing (TIF) funding, we affirm.

FACTS

Appellant private property owners' parcels sit southeast of the intersection of Cedar Avenue and Highway 13 within the "Cedar Grove Redevelopment Area" that the City of Eagan and the EDA established in 2001. Cedar Grove was targeted for redevelopment because of blight and in August 2001, the EDA adopted both a redevelopment and TIF plan for the Cedar Grove Redevelopment Area and the city adopted those plans. From 2002 to mid-2007, the EDA and the city negotiated for and purchased a majority of the targeted properties in the district. But by September 2007, negotiations to purchase the remaining properties in Cedar Grove stalled. The stall occurred at a critical time; the five-year period to expend TIF funds would expire on July 22, 2008, and the city's plan to purchase the properties depended on reimbursement with TIF funds.

The EDA resolved that acquisition of the remaining properties was "necessary to carry out the Redevelopment Plan" and sought to exercise its authority to take the properties based on multiple findings, including that the district is blighted, that redevelopment will lead to substantial economic improvement including an increased tax base and employment opportunities, and that it needed to acquire the properties by July 2008 for the city to be eligible for TIF reimbursement.

In November 2007, the EDA gave notice to the property owners that it would use the power of eminent domain to take possession of their property. It filed a quick-take condemnation petition in the district court. Some property owners in the redevelopment district objected to the condemnation. The district court scheduled an evidentiary hearing

to determine if taking the objecting owners' properties was necessary and supported by a public purpose, and whether the use of quick-take was justified. It concluded that (1) the EDA's actions would further a public purpose; (2) the EDA's proposed taking is necessary to redevelop the district; and (3) the EDA could use the statutory quick-take provision to condemn the properties because condemnation was reasonably necessary to obtain a binding development agreement and because the TIF funds must be used before July 22, 2008, or be forfeited.

The property owners appealed and we reversed, invalidating the quick-take order on the ground that the EDA exceeded the scope of its eminent domain authority as limited by city resolution. *Eagan Econ. Dev. Auth. v. U-Haul Co. of Minn.*, 765 N.W.2d 403 (Minn. App. 2009). The supreme court reversed our decision. *Eagan Econ. Dev. Auth. v. U-Haul Co. of Minn.*, 787 N.W.2d 523 (Minn. 2009). This revived the property owners' other arguments that the taking was not necessary for public use and that the EDA was not entitled to use quick-take procedures. We now address the property owners' remaining arguments.

D E C I S I O N

I

Before a condemning authority can take private land, it must determine that there is a public use for the land and that the taking is reasonably necessary for that public use. *Lundell v. Coop. Power Ass'n*, 707 N.W.2d 376, 380 (Minn. 2006). The supreme court remanded to this court the property owners' unresolved contention that "the taking was not necessary for public use." *Eagan Econ. Dev. Auth.*, 787 N.W.2d at 539. The parties'

briefs and the district court's order, however, had actually cast the issue as whether the condemnation was necessary for a "public purpose." The distinction appears to be inadvertent and also is not substantial here. Currently, Minnesota statutes define "public purpose" and "public use" to be the same. *See* Minn. Stat. § 117.025, subd. 11(a) (2010) (stating that "'public use' or 'public purpose' means, exclusively . . ."). The parties agree that this definition does not apply to their case because the county certified the TIF district and the EDA filed its condemnation petition before the effective date of the amendment that added this consolidated definition of "public purpose" and "public use." But at the time relevant to this case, the supreme court had already treated those phrases interchangeably:

> Historically, the court has used the words "public use" interchangeably with the words "public purpose," thus implying that even though a public entity, using its eminent domain powers, turns over parcels to a private entity for use by that private entity, the condemnation will, nevertheless, be constitutional if a public purpose is furthered by such a transfer of land.

City of Duluth v. State, 390 N.W.2d 757, 763 (Minn. 1986).

II

The property owners argue both that there was no "public purpose" for the taking and that it was not "necessary" for a public purpose, so we address both the public-purpose requirement and the necessity requirement. Our review of a condemnation is "very narrow." *Cnty. of Dakota (C.P. 46–06) v. City of Lakeville*, 559 N.W.2d 716, 719 (Minn. App. 1997) (citing *City of Duluth*, 390 N.W.2d at 763). A condemning authority's decisions are legislative in nature, so we overturn them only when they are

"manifestly arbitrary or unreasonable." *Lundell*, 707 N.W.2d at 381(quotation omitted). The supreme court has established two levels of deference in condemnation decisions: "[T]he district court gives deference to the legislative determination of public purpose and necessity of the condemning authority and the appellate courts give deference to the findings of the district court, using the clearly erroneous standard." *Id.*

Public Purpose

We first examine whether the condemnation was for a public purpose. The district court affirmed that "[t]he Redevelopment of Cedar Grove will serve public purposes. It will provide new life-cycle housing options for existing Eagan residents, enhance public transportation infrastructure . . . increase the tax base, and increase employment." It also concluded that that the redevelopment district is a blighted area and that "[t]he acquisition of substandard buildings and of adjacent parcels that may not be substandard is an essential part of the Redevelopment Plan." The property owners disagree and maintain that there was no public purpose because a city must have a specific intended use for a private property before a condemnation, and there was no such use that met that requirement.

We broadly construe what qualifies as a public use. *City of Duluth*, 390 N.W.2d at 763. "[T]he standard for overturning a [condemning authority's] decision on public purpose grounds is very strict." *City of Minneapolis v. Wurtele*, 291 N.W.2d 386, 390 (Minn. 1980); *see also Hous. & Redev. Auth. v. Minneapolis Metro. Co.*, 259 Minn. 1, 15, 104 N.W.2d 864, 874 (1960) (*HRA*) ("If it appears that the record contains some

evidence, however informal, that the taking serves a public purpose, there is nothing left for the courts to pass upon.").

A local government's acquiring and clearing a blighted area serves a public purpose. *HRA*, 259 Minn. at 7, 16, 104 N.W.2d at 869, 875. And condemning authorities may address community blight "on an area rather than on a structure-by-structure basis." *Id.* at 16, 104 N.W.2d at 875. Other improvements to established areas of a city may also serve a public purpose, including development that provides employment opportunities, improves the tax base, and improves the general economy of the state. Minn. Stat. § 469.124 (2010).

We recognize that the property owners' arguments also support a different legislative decision. But we afford great deference to the local legislative decision that a project serves a public purpose. *Lino Lakes Econ. Dev. Auth. v. Reiling*, 610 N.W.2d 355, 360 (Minn. App. 2000). Despite competing evidence, the record supports the finding that the redevelopment district is blighted and that redevelopment will lead to increased employment and improve the general state of the economy. We therefore hold that the district court did not clearly err by concluding that the EDA's finding of public purpose was not manifestly arbitrary or unreasonable.

Necessity

We next decide whether the district court erred by finding that the takings are necessary to further the public purpose. The district court found that "[t]he 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 . . .

and [t]here is no evidence of any problems that will interfere with this plan, even if it is not yet finalized into a binding development agreement." And it concluded that "[t]he EDA is not seeking to take these properties for a speculative purpose, nor is it stockpiling properties."

The property owners dispute this conclusion by arguing that the taking is not "necessary" because there is no specific project or identified use to realize the redevelopment project. A city council resolution that a taking is reasonably necessary for a proper use is prima facie evidence of necessity. *City of Duluth*, 390 N.W.2d at 765. This finding can be overcome by overwhelming evidence that the taking is not necessary. *Lundell*, 707 N.W.2d at 381. "Necessity," in this context, refers to "now or in the near future," *Regents of Univ. of Minn. v. Chi. & Nw. Transp. Co.*, 552 N.W.2d 578, 580 (Minn. App. 1996) (quotation omitted), and looks in part to whether there are ordinary agreements in place to realize a project, *In re Condemnation by Minneapolis Cmty. Dev. Agency v. Opus*, 582 N.W.2d 596, 597 (Minn. App. 1998) (*MCDA*), *review denied* (Minn. Oct. 29, 1998). Although speculation cannot support necessity, *Regents*, 552 N.W.2d at 580, absolute necessity is not required for a finding of public purpose, *Hous. & Redev. Auth. v. Walser Auto Sales, Inc.*, 630 N.W.2d 662, 670 (Minn. App. 2001), *aff'd by* 641 N.W.2d 885 (Minn. 2002). A taking must only be "*reasonably necessary or convenient* for the furtherance of the end in view." *Lundell*, 707 N.W.2d at 381 (quotation omitted).

The property owners assert that there is overwhelming evidence that the taking is not necessary because there is no binding development agreement in place, there is no

time frame in which development will occur, and the condemnation action is purely speculative without an identified public use for the properties. But the city council's finding is prima facie evidence of necessity. The city council resolution that adopted the EDA's redevelopment plan for the Cedar Grove Redevelopment Area determined that acquiring substandard properties and adjacent parcels within the redevelopment district was necessary to provide a site of sufficient size to permit redevelopment. And the district court concluded that the EDA, by a resolution of the city council, showed "that the acquisition of the Subject Properties was necessary [for a public purpose]."

The property owners' concern about the uncertain nature of the redevelopment is not without merit. But the fact that the precise use of a parcel or a development plan is not certain does not render a taking unnecessary. *See MCDA*, 582 N.W.2d at 601 (concluding that "[c]onsidering our standard of review, the trial court's finding that the public purpose of the project is proper and not speculative is supported by the evidence and is not clearly erroneous" even though the proposed development was only "relatively certain" with only "normal contingencies"). The district court concluded that the city and the EDA have taken considerable steps to prepare the site for redevelopment. Despite their reasonable arguments, the property owners have not presented overwhelming evidence that the taking was not necessary. Again, our review is deferential; we hold that the district court did not clearly err by concluding that the EDA's finding of necessity was not manifestly arbitrary, capricious, or unreasonable.

III

We next address whether the EDA was entitled to use quick-take procedures in the condemnation action. The use of quick-take condemnation is limited to cases where a condemner "could reasonably determine that it needs the property before the commissioners' award could be filed." *Wurtele*, 291 N.W.2d at 396. The district court concluded that statutory quick-take condemnation was reasonably necessary because the EDA needed clear title to the property owners' parcels in order to move forward with the redevelopment project and because the TIF funds had to be used before July 22, 2008. The property owners argue that the district court's findings were clearly erroneous because the city failed to show that accelerated acquisition was reasonably necessary. We review only to determine whether the district court erred in concluding that the requisite public necessity existed. *See Alexandria Lake Area Serv. Region v. Johnson*, 295 N.W.2d 588, 590 (Minn. 1980) (declining to extend appellate review of quick-take condemnation beyond the issue of public necessity).

To use TIF funds to pay for redevelopment expenses, the EDA had to transfer funds to a third party before July 22, 2008. We held by special term order that the EDA's depositing the TIF funds with the district court administrator was "deemed to satisfy" the TIF statute's requirement of payment to a third party. *Eagan Econ. Dev. Auth. v. U-Haul Co. of Minn.*, No. A08-767 (Minn. App. July 12, 2008). The property owners specifically contend that "[t]he ruling by this Court alleviates any urgency the City or district court may have felt with regard to the TIF funds" and therefore that the existence of an approaching TIF deadline did not support a quick-take. But the language of our ruling

regarding the payment-to-third-party requirement is very narrow: "[O]n the record and arguments presented here, we deem a deposit with the district court to satisfy the TIF statute because . . . the length of this litigation should not preclude the use of TIF funds." *Id.* If the EDA had pursued a regular condemnation, it may not have been resolved until after July 22, 2008, as opposed to the quick-take petition, which was resolved before the deadline. This court's order did not render a quick-take unnecessary.

The property owners also argue that the approaching of the TIF deadline should not have supported the quick-take petition because the "timing hardship" was created by the EDA itself. But the district court found that the EDA "did not unduly delay in proceeding with the condemnation of the properties" and "[t]he fact that [the EDA] is now up against a deadline created by the legislature for expending TIF funds is not the fault, intentional or otherwise, of the EDA." The record does not support the property owners' concerns that the EDA deliberately waited for the expiration of the TIF funds, and no evidence suggests that the district court's finding on this issue is clearly erroneous. Because the EDA would lose access to the TIF funds unless it deposited them with a third party before July 22, 2008, we hold that the district court did not clearly err by finding that obtaining the property by a quick-take petition was reasonably necessary.

Affirmed.