

STATE OF MINNESOTA
COUNTY OF OLMSTED

IN THE DISTRICT COURT
CIVIL DIVISION
THIRD JUDICIAL DISTRICT

State of Minnesota,
By its Commissioner of Transportation,

Petitioner,

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

vs.

Donald Prow, et al,

Respondent.

Court File No. 55-C6-02-4438

This matter came before the Court for court trial at the Olmsted County Courthouse, Rochester, Minnesota, on December 12 and 13, 2011.

Petitioner was represented by Assistant Attorney General Michael Sindt, Saint Paul, Minnesota. Respondent was represented by Attorney Dan Biersdorf, Minneapolis, Minnesota.

The Court, having heard and reviewed the evidence, and having considered the arguments of counsel, now finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Petitioner sought to acquire Respondent's property (the "Subject Property") for purposes of completing a road project on Highway 52 in Rochester, Minnesota.
2. After negotiations to acquire the Subject Property failed, Petitioner commenced this condemnation action.
3. The date of taking was March 27, 2003.
4. Petitioner presented testimony and a real estate appraisal from Jeffrey Warfield ("Warfield Appraisal").
5. Respondent presented testimony and a real estate appraisal from Robert Strachota ("Strachota Appraisal").

6. The Subject Property was a commercial building that housed both a restaurant space ("Restaurant") and a retail automotive service space that contained a quick lube, car wash, and office ("Quick Lube").

7. The highest and best use of the Subject Property is as a restaurant and quick lube facility.

8. The Quick Lube was built in 1986.

9. The Restaurant was built in 1959.

10. Mr. Warfield valued the restaurant portion of the Subject Property at \$260,000. Mr. Strachota valued it at \$250,000. I find the fair market value of the restaurant portion of the Subject Property to be \$250,000.

11. The Quick Lube had a dual-bay setup that allowed the facility to service two cars simultaneously and a basement configured such that technicians could operate on the underside of cars docked on the main level. The design of the Quick Lube allowed for efficiency as a quick lube operation.

12. The Quick Lube is not a new property (with an older property such as this, depreciation is difficult to accurately measure) nor is it a special purpose property (there is sufficient marketplace data available to determine the value of the Quick Lube). The cost approach to valuation is therefore not useful or appropriate for valuing the Quick Lube.

13. The Subject Property has excellent exposure and high traffic counts. This is a particularly good location for an in-and-out automotive service business.

14. The market would consider favorably the design and location of the Quick Lube for continued use as a quick lube facility.

15. The quick lube operated at this location has historically performed well financially.

16. Given the good financial performance, design, and location of the Quick Lube, conversion to general automotive use would have been unlikely. The Quick Lube, with its dual-bay layout and working basement, along with a car wash, is not easily adaptable to another use of comparable economic productivity. Indeed, if the Quick Lube were converted to a use different than its existing use, the unique design features become detriments rather than positive attributes. A quick lube use is the most lucrative market for the Quick Lube portion of the property and the highest and best use of that portion of the property. Given the property's and the Quick Lube's physical characteristics and location, as well as its demonstrated economic success, a buyer of the property would continue to use the Quick Lube as a quick lube facility assuming the buyer is acting prudently.

17. The Quick Lube is an income-producing retail property. The market values such retail properties by using the income capitalization approach, basing real estate value on anticipated financial performance. Here the income capitalization approach to property valuation appropriately allows the past (and reasonably anticipatable future) sales performance of a quick lube facility to be reflected in the Subject Property's real estate value.

18. The relatively good sales performance of the Quick Lube on the Subject Property is an attribute of the real estate -- its location and the design and other favorable aspects of the improvements -- and is not attributable to the particular ownership or management that was operating the quick lube on that site.

19. The market for the Quick Lube would consider the basement design advantageous. The basement in the Quick Lube was an integral aspect of the business's

operation and as valuable to that operation as the above grade space. The marketplace would place equal value on, and pay equal rent for, all of the space used to generate the Quick Lube's income, including the basement.

20. A rental rate of \$20 per square foot accurately reflects the market rental value of the Quick Lube.

21. Mr. Warfield provided no persuasive evidence as to why the Quick Lube, with its demonstrated good financial performance as a quick lube, would be converted to less lucrative general automotive service use.

22. To be relevant, the highest and best use of a comparable sale should be the same or similar to the highest and best use of the property being valued, based upon the use of that property *after* the sale.

23. The comparable sales used in the Warfield Appraisal to value the Quick Lube do not share the same highest and best use as the Quick Lube.

24. The Warfield comparables are not characterized by after-sale use as quick lube facilities or even auto service facilities, and therefore I find them to be of little relevance here. These alleged comparables are in general properties that formerly contained gas stations or other auto service-related businesses, but those businesses are no longer in operation. In the cases of these properties the market is in the process of re-purposing the properties to different, more productive uses. The Quick Lube portion of the Subject Property is, in contrast, not a defunct gas station looking for its next commercial incarnation. Rather, it housed a financially successful operation. This success was not, the Court finds, attributable to the unique skills, clientele, or industry of the respondent landowners, but rather to the Quick Lube's location and other physical characteristics. In other words, the past economic performance relevant here is not due to going

concern value that would depart the property with the sale and could not be duplicated by a buyer once he takes over as the new owner. Unlike the alleged comparables relied upon by Mr. Warfield and the Petitioner, this is real estate properly valued by the income capitalization approach, based on the property's past (and thus anticipated future) sales performance as a quick lube facility.

25. The comparable sales used in the Strachota Appraisal to value the Quick Lube are more similar and relevant, in that they are automotive highest and best uses, and two of the five have a quick lube highest and best use.

26. The Rochester market had limited comparable sales data relevant to valuing the Quick Lube.

27. Mr. Strachota appropriately included sales outside Rochester. This is reasonable and consistent with the way a potential buyer of the subject property would likely survey the market.

28. An appropriate capitalization rate for the Quick Lube valuation is 9 percent.

29. The Court, relying primarily on the income capitalization method of valuation for the reasons set out above, finds that the fair market value of the Quick Lube is \$970,000. Added to the value of the Restaurant portion, the total fair market value of the Subject Property as of the taking date was \$1,220,000.

CONCLUSIONS OF LAW

30. Minnesota courts examine three methods in determining the fair market value of property in condemnation proceedings: (1) the market data approach, also known as the direct sales approach; (2) the income capitalization approach; and (3) the reproduction cost approach. *State v. Harbor City Oil Co.*, 486 N.W.2d 455, 456 (Minn. Ct. App. 1992).

31. Just compensation is based upon the amount which a purchaser willing but not required to buy the property would pay to an owner willing but not required to sell it, and also takes into consideration the highest and best use to which the property can be put. *Ramsey County v. Miller*, 316 N.W.2d 917, 919 (Minn. 1982).

32. Just compensation includes all elements of value which inhere in the property, but it does not exceed market value fairly determined. *City of St. Paul v. Rein Recreation, Inc.*, 298 N.W.2d 46, 49 (Minn. 1980). Evidence of any matter which would influence a prospective purchaser and seller in fixing the price at which a sale of the property could be consummated may be considered. *Id.*

33. The Court has given less consideration to the reproduction cost approach and the market data approach for the reasons set out above.

34. The income approach to valuation is most applicable to the Subject Property and the Court has weighted this approach most heavily.

In consideration of the foregoing as well as all arguments and evidence presented by counsel,

IT IS HEREBY ORDERED

The just compensation to be paid by Petitioners and owing to Respondents is \$1,220,000.

LET JUDGMENT BE ENTERED ACCORDINGLY.

The Court's memorandum, filed herewith, is incorporated herein.

Dated: June 12, 2012.

BY THE COURT

Joseph F. Chase
Judge of District Court

JUDGMENT

I hereby certify that the forgoing Findings of Fact, Conclusions of Law, and Order dated _____, 2012, by the Honorable Joseph F. Chase constitutes the judgment of this Court.

Dated June ____, 2012.

Charles L. Kjos
Court Administrator

By: _____
Deputy Clerk

Memorandum

Facts

A court trial in the above-entitled matter was held from December 12, 2011 to December 13, 2011 in Olmsted County, Rochester, Minnesota. At issue was compensation for the State's total taking of a property located at 1701 2nd Street Southwest in Rochester, Minnesota and designated by the Minnesota Department of Transportation as Parcel 18 ("Subject Property"). At the time of the taking, the property was owned by Respondents Roger L. Lingofelt, Terry R. Lingofelt, Shirley K. Lingofelt, and Judy M. Lingofelt ("Lingofelts").

Two facilities occupied the property: An automobile oil change facility ("Quick Lube") built in 1986 and a restaurant ("Restaurant") built in 1959. The Quick Lube had a 2,024 square foot basement, a 2,568 square foot first level, and a 407 square foot second level covering a total of 4,999 square feet. The Restaurant had a 1,664 square foot basement and a 1,664 square foot first level covering a total of 3,328 square feet.

The Subject Property was located on the corner of 2nd Street Southwest and West Frontage Road. It could be accessed from both 2nd Street Southwest and West Frontage. West Frontage Road served as an exit ramp from Highway 52, a major roadway in the City of Rochester. The Subject Property was visible to travelers and was accessible from the highway via West Frontage Road.

At trial, the Lingofelts and the State each presented expert testimony as to the value of the Subject Property. Mr. Robert Strachota testified on behalf of the Lingofelts and valued the property at \$1,550,000. Mr. Jeffrey Warfield testified on behalf of the State and valued the Subject Property at \$880,000. Mr. Strachota and Mr. Warfield valued the Restaurant portion of the Subject Property to be \$250,000 and \$260,000, respectively. The difference in their total values is almost entirely based on the value of the Quick Lube.

The Quick Lube consisted of two tandem service bays which allowed technicians to service 4 vehicles at once. The main level of the Quick Lube also contained a carwash bay, an office, a waiting area, an unfinished shop area, and a utility room. The second level was used as an employee locker room. The basement was designed as a workspace beneath the service bays and provided access to the underside of vehicles through rectangular cutouts in the floor.

The Quick Lube grossed \$962,500 in sales in 1999; \$990,000 in 2000; \$1,009,353 in 2001; and \$1,028,466 in 2002. Evidence indicated that a typical automotive oil change facility in the same region produces roughly \$550,000 in sales.

Law

In condemnation, "the measure of compensation is the amount which a purchaser willing but not required to buy the property would pay to an owner willing but not required to sell it, taking into consideration the highest and best use to which the property can be put." *County of Ramsey v. Miller*, 316 N.W.2d 917, 919 (Minn. 1982). "Fair market value is calculated upon

consideration of the highest and best use of the property and of the probable price for which the property in its highest and best use can be sold on the open, competitive real estate market." *City of St. Paul v. Rein Recreation, Inc.*, 298 N.W.2d 46, 50 (Minn. 1980). "The highest and best use of a property is defined as 'the reasonable probable and legal use of vacant land or an improved property that is physically possible, legally permissible, appropriately supported, financially feasible, and that results in the highest value.'" *American Crystal Sugar Co. v. County of Polk*, 2009 WL 2431376 (Minn. Tax Regular Div. 2009), citing *The Appraisal of Real Estate*, 305 (12th Ed. 2001). Put more simply, "the property's highest and best use. . . means the most profitable likely use for a property." *Port Authority for the City of St. Paul v. DRF IV Limited Partnership*, 2001 WL 1646626 at *3 (Minn. App. 2001).

"To determine the fair market value of the property in a condemnation proceeding 'any competent evidence may be considered, if it legitimately bears upon the market value.'" *Id.*, quoting *State v. Malecker*, 120 N.W.2d 36, 38 (Minn. 1963).¹ "Minnesota courts have traditionally used three methods to determine the fair market value of property in condemnation proceedings: (1) the market data approach; (2) the income-capitalization approach; and (3) the reproduction cost approach." *State v. Harbor City Oil Co.*, 486 N.W.2d 455, 456 (Minn. App. 1992), citing *County of Ramsey v. Miller, supra*, at 919.

"The general rule is that loss of going-concern value is not recoverable on condemnation." *Frantz v. Board of County Commissioners of Anoka County*, 210 N.W.2d 51, 52 (Minn. 1973). "Going concern value relates to the good will value of a business." *Housing and Redevelopment Authority of the City of St. Paul v. Lambrecht*, 645 N.W.2d 157, 164 (Minn. App. 2002), citing *Roth v. Roth*, 406 N.W.2d 77, 80 (Minn. App. 1987).

Various rationales for this rule [denying recovery for loss of going concern value as part of a condemnation award] are given, among them: (1) there has been no "taking" in the constitutional sense of the business itself [authority cited]; (2) going concern value is too intangible to be considered "property" for constitutional purposes, [authority cited]; (3) the amount of damage resulting from loss of going-concern value is too speculative.

City of Minneapolis v. Schutt, 256 N.W.2d 260, 261-62 (Minn. 1977).

"Fair market value does not include the special value of property to the owner arising from its adaptability to his particular use." *State v. KQRS, Inc.*, 2004 WL 117558 (Minn. App. 2004), quoting *United States v. Miller*, 317 U.S. 369, 374-75 (1943). However, "a building's history and capability of generating rental income is a legitimate factor to consider in determining fair market value in a condemnation action." *Port Authority for the City of St. Paul*

¹ See also, *Regents of the University of Minnesota v. Irwin*, 57 N.W.2d 625, 627 (Minn. 1953), quoting with approval *King v. Minneapolis Union Railway Co.*, 20 N.W. 135, 136 (Minn. 1884): "[A]ny evidence is competent and any fact is proper to be considered which legitimately bears upon the question of the marketable value of the property . . . The owner has a right to its value for the use for which it would bring the most in the market."

v. DRF IV Limited Partnership, supra, at *9 citing *Regents of the University of Minnesota v. Irwin*, in which the Minnesota Supreme Court reasoned as follows:

It seems to us that because of the apparent demand for rental space in that particular location the rentals received from the rooms available for rental purposes . . . would necessarily affect values placed on the entire property and would be considered by prospective purchasers in estimating the market value of the premises. For that reason, it is our opinion that the jury should have been given the benefit of such information . . . to aid it in arriving at the market value.

Id. at 627.

Analysis

The State argues that the highest and best use of the Quick Lube – the use upon which the court should base its valuation – is as a general automobile service facility. General automotive service facilities provide a range of services billed at an hourly rate. In contrast, a quick lube generally charges a flat rate and is almost exclusively volume-driven. The type of basement present here, an asset to this quick lube facility, would be largely unnecessary space for a general automotive service. A basement of the type seen here provides access to the underside of vehicles through panels in the floor, increasing efficiency by eliminating the need to use lifts.

In support of its valuation, the State relies upon a rule it calls the “all available uses” rule derived from *Board of Educ. of City of Minneapolis v. Heywood Mfg., Co.*, 192 N.W. 102 (Minn. 1923). In that case, the Minnesota Supreme Court noted that:

Damages are not to be awarded in reference to the peculiar situation or circumstances or plans of the owner, or to the business in which he happens to be engaged; but any and all of the uses to which the land considered as property may profitably be applied, whether contemplated by the owner or not, may well be taken into account by the jury.

Id. at 103 (citing *Maynard v. City of Northampton*, 31 N.W. 1062 (Mass. 1892)). The “all available uses” rule is designed to prevent compensating a landowner based on the particular suitability of that property to the specific landowner’s use. On the open market, a prospective buyer would not pay a premium for value that only the seller could realize.

That is not, however, the case before the court. Here, the Quick Lube is improved property designed for a quick lube service business, a type of enterprise with a track record of sales success at the location. Here, prospective buyers could reasonably expect to step into the shoes of the landowner and run the business or rent the space to someone else who will run the business. The property was not peculiarly adapted to the *Lingofelts*’ use, but rather to the transferrable use as a quick lube.

While the Quick Lube property *could* potentially be used for some other purpose, the location and physical features make this property particularly adapted to use as a quick lube such that a reasonable buyer would be unlikely to convert it to any other use. The quick lube business

is volume driven. Operators charge a flat rate for service and make a profit by doing that service as frequently as possible each day. Its success relies on a physical design that promotes efficiency and a location with high traffic count, convenient access, and visibility. The service performed by a quick lube tends to be routine, basic maintenance, primarily focused on getting customers in and out as quickly as possible. The building on the Subject Property had two tandem service bays to service four vehicles at once. While lifts are common in the general automotive service industry, time spent raising and lowering vehicles limits the number of vehicles that can be serviced and how quickly. This facility occupied a high traffic intersection with visibility and access from Highway 52. The location and design were well adapted for the "drive-through" services of a quick lube. A general automotive service would be unable to reap the full benefits of the location of the property and design of the facility.

The "highest and best use" of the Quick Lube portion of the property is as a quick lube facility. The basement that increases the efficiency and productivity of the Quick Lube is as valuable to that use as the space at and above grade.

I rely here primarily on the "income-producing" or "income capitalization" method of valuation. In *Eden Prairie Mall, LLC v. County of Hennepin*, 797 N.W.2d 186 (Minn. 2011), the Minnesota Supreme Court described the income capitalization approach -- which "determines the value of income-producing property by capitalizing the income the property is expected to generate over one year . . . at a specified capitalization or yield rate" -- as follows:

Under the income capitalization approach, the appraiser determines the value of the subject real property by dividing the net operating income of the property by the capitalization rate attributable to the property. The net operating income (NOI) is the actual or anticipated net income that remains after all operating expenses are deducted from gross income, but before debt service and book depreciation are deducted. See Appraisal Institute, *The Appraisal of Real Estate* 457 (13th Ed. 2008).

The income generated by investment properties such as the subject property consists primarily of rents. In valuing a fee simple interest in property, the value of rentable space is estimated using market rent levels. *Id.* at 453. Typically, an appraiser conducts extensive market research to determine market rents: The rent that a property should bring in a competitive open market . . .

The second component of the income capitalization method is the overall capitalization rate, which capitalizes a single year's income expectancy into an indication of value. More specifically, the value of an income-producing property can be estimated by dividing the property's net operating income by the capitalization rate. *Appraisal of Real Estate* at 501.

The capitalization rate is extracted from market data. *Id.* at 499-501. The capitalization rate requires extensive market research because it is influenced by, among other things, the degree of perceived risk in the investment, market

expectations of future inflation, the rates of return earned by comparable properties in the past, and tax law. *Eden Prairie Mall* at 195, 198.²

Here the landowners bring to the Court's attention the good financial performance of the quick lube business on the Subject Property. They claim, and the State does not seem to seriously dispute, that this was a very financially productive quick lube operation. The State cautions, however, that the Court's task here is not to determine the fair market value of the quick lube *business* -- which, although conducted on the subject real estate, was *not* taken. Rather, the Court's sole task is to determine the fair market value of the *real estate*, which *was* taken.

The State's appraiser attached little or no weight in his valuation to the past financial performance of the Quick Lube. The State objects to the Court giving any consideration to the Quick Lube's historic productivity. The State argued that to consider the Quick Lube's financial performance would be to improperly compensate "going concern" value and violate what might be called the "*KQRS* rule":

Although the most advantageous use of land, and its highest and best use for a particular landowner might be the current use to which the owner has put the property, the referent of the fair market value calculation is not the landowner, but rather willing buyers in the open, competitive real estate market. *KQRS* frequently loses sight of this fact in its argument and shifts its focus almost entirely to its own use and its own subjective value. Doing this, *KQRS* virtually ignores the "market."

* * *

But the dispositive consideration is *market* value. The respective appraisal experts for both parties agree that there is virtually no market for a radio station...

* * *

In a market as limited as that for radio stations, to treat as relevant the demand of a landowner in an extremely limited market as this would be tantamount to allowing the landowner to control and dictate "market value" because *KQRS*'s sole demand does not reflect the competitive and open real estate market, its demand is irrelevant and the district court did not abuse its discretion by ruling that such evidence would be excluded from the trial.

State v. KQRS, supra at *4-5.

In assessing what to pay for the Subject Property, buyers in the marketplace would pay nothing for business performance at that location that could not be duplicated by anyone but the selling landowner. When the landowner sells the parcel and departs, he takes with him all

² The *Eden Prairie Mall* case is a tax matter, not a condemnation case. However, there does not seem to be any difference in the performance of the income capitalization method of property valuation in taxation cases versus condemnation.

attributes of "going concern" that are idiosyncratic to him -- his reputation, connections, "good will," "efficiency value," and so forth. *City of Minneapolis v. Schutt, supra*, at 262, fn 2. Mr. Warfield explained -- accurately, it seems to me -- that the market would value the potential post-sale economic productiveness of the Subject Property based not on the Lingofelts' particular management, but on "typical" management -- how well the property could be expected to do in the hands of a new owner. The Court accepts this as an accurate statement of the proper analysis.

I am not convinced, however, that this means that consideration of the Quick Lube's past performance is per se improper and a violation of the "going concern" rule, as the State suggests. I do not believe the State's position on this point is supported by the case law (the *KQRS* case, for example, is readily distinguished); and it is unrealistic.

Obviously a prior operator's business success at the property may *not*, under some circumstances, be much of an indication of a future operator's prospects. The next painter to occupy Picasso's former studio will have difficulty reproducing the prior tenant's success there. On the other hand, the prior occupant's track record *may* be a reliable indicator of what others can reasonably expect to do at the site. Mr. Strachota credibly described the subject property as a prime location for an automobile service-related use, based on Highway 52 and 2nd Street SW traffic counts, its corner location, site visibility, convenience of motor vehicle access, and so forth. Furthermore, the evidence regarding the subject property's improvements -- the two tandem bay set-up, the basement configuration allowing work underneath cars without the need for automobile lifts, and so forth -- persuade me that the physical plant was well suited for efficient operation of a quick lube business. And Mr. Strachota presented evidence that in 2003 quick lube in general continued to be an economically productive business type. None of this has anything to do with the "good will" or "going concern."

The question is how the marketplace would treat information about the prior operator's success. The frequently heard and well understood concept that "past performance is no guarantee of future results" does not mean that the marketplace *ignores* past performance. To the contrary, it seems to me that potential buyers considering the price they may be willing to pay for this property would be very interested to know how the existing quick lube business at this site had done financially in recent years. One presumes that potential buyers might discount somewhat the weight given to that historic information, factoring in the possibility that the particular industriousness and business skills of the prior ownership materially contributed to the financial success of the operation. But no evidence was presented to the Court indicating that the Lingofelts and their efforts were so unique as to make historic performance irrelevant to the question of how other potential operators could reasonably expect to do at the subject corner. There is no evidence to indicate that the Lingofelts' management was anything other than "typical."

The reasonably predictable future financial performance of potential tenants at a commercial property is plainly relevant to the property's market value. When the price of corn goes up, so does the price of farmland in southeast Minnesota. When corn prices are high, potential buyers of farmland are willing to pay more for it, because corn-growing farmers, anticipating greater income from sales, will pay more to rent that land. Similarly, if the new

owner of the Subject Property, in placing it on the rental market, is able to show potential tenants that he is offering them a demonstrated quick lube gold mine, the property will command higher rents. I am persuaded that potential buyers and tenants in the marketplace would legitimately pay attention to past financial performance at the Subject Property; and that market value would realistically be affected by potential tenants' expectation that, given this property's valuable commercial attributes, those tenants could achieve something similar to the financial success of their predecessor.

In my view, contrary to the State's arguments, using the Quick Lube property's past sales in this manner yields a less speculative market value than an approach based on questionable comparable sales or replacement cost. The valuation of a commercial property like this one is more tangibly, reasonably, and justifiably based on the market's consideration of demonstrated financial performance than on any other analysis. "Based on [this] principle of anticipation, that a buyer of an income-producing asset will pay an amount equal to the income that the property should reasonably be expected to generate, minus expenses, divided by a capitalization rate that investors would reasonably expect to obtain" (*Montgomery Ward & Co., Inc. v. County of Hennepin*, 482 N.W.2d 785, 788 (Minn. 1992)) -- income capitalization is the best approach to determine the Quick Lube's value.

Mr. Strachota valued the Quick Lube rental value at \$25 per square foot while Mr. Warfield valued the Quick Lube at \$19 per square foot (and Mr. Warfield ignored entirely the rental of the basement space). I have examined both experts' rental figures for other properties (Mr. Strachota's ranging between \$14 and \$23 and Mr. Warfield's between \$17 and \$22) and determine that \$20 per square foot is a reasonable annual rent for the Quick Lube portion of the Subject Property.

From the gross rent, each expert agreed that specific expenses must be extracted. Rental properties are anticipated to be periodically vacant. The average vacancy rate for retail property in Rochester is 15.8%. Because of its prime location, both experts determined that a vacancy rate at less than half of the city average would be appropriate for the Subject Property.

Under an anticipated lease in this case, a tenant would be required to bear operating expenses including taxes, insurance, utilities, repairs, and maintenance. In the event of vacancy, those expenses would shift to the landowner. Both experts estimated operating expenses at around \$3 per square foot for the period of an anticipated vacancy.

In addition, a prospective buyer would factor in the cost of property management. Mr. Strachota estimated a professional property management fee for the Quick Lube to be about 3%. Mr. Warfield estimated a management fee to be around 2% due to the single tenant nature of the facility and the fact that many investors would manage the facility themselves. In the calculation below, the court uses a 3% management fee.

Finally, each expert made an allowance for the replacement of short-lived items of premises improvement which would not be recoverable from a tenant, including roofing, HVAC systems, floor coverings, interior office finishing, and bituminous parking areas. Mr. Strachota estimated that \$.20 per square foot would be sufficient while Mr. Warfield opined that \$.30 per

square foot would cover the expenses. With a minimal interior finish constructed of low maintenance materials, a \$.20 per square foot allowance seems appropriate.

Mr. Strachota used a 9% capitalization rate, while Mr. Warfield used 8%. Mr. Warfield performed his analysis under the assumption that the Quick Lube was a general automotive facility rather than as quick lube. A property such as the Quick Lube has fewer potential users and thus may carry more risk. Because of the additional risk, a capitalization rate of 9% is appropriate.

Based on the above findings, the court performs the income capitalization calculation as follows:

	\$	99,980	(Annual gross rent calculated at 4,999 sf x \$20/sf)
-	\$	7,498.50	(7.5% vacancy rate)
-	\$	1,124.78	(\$3/sf operating expenses x 7.5% vacancy rate)
-	\$	2,999.40	(3% management fee)
-	\$	999.80	(\$.20/sf in replacement reserves)
	\$	87,357.52	Net Annual Operating Income
/		9%	Capitalization Rate
	\$	970,639.11	
	\$	970,000	Rounded value of the Quick Lube
+	\$	250,000	Value of the Restaurant
	\$	1,220,000	Total value of the Subject Property

J.F.C.

Assistance with research and preparation provided by Luke Peterson, J.D.

State of Minnesota
Olmsted County

District Court
Third Judicial District

Court File Number: **55-C6-02-004438**

Case Type: Condemnation

EDWARD KELLY KEADY
BIERSDORF & ASSOCIATES
4100 MULTIFOODS TOWER
33 SOUTH SIXTH STREET
MINNEAPOLIS MN 55402

Notice of:

<input checked="" type="checkbox"/>	Filing of Order
<input type="checkbox"/>	Entry of Judgment
<input type="checkbox"/>	Docketing of Judgment

STATE OF MINNESOTA, vs. DONALD PROW, et al. [LTC]

You are hereby notified that the following occurred regarding the above-entitled matter:

<input checked="" type="checkbox"/>	An Order was filed on June 14, 2012.
<input type="checkbox"/>	Judgment was entered on .
<input type="checkbox"/>	You are notified that judgment was docketed on at in the amount of \$. Costs and interest will accrue on this amount from the date of entry until the judgment is satisfied in full.

Dated: June 18, 2012

Charles L. Kjos
Court Administrator
Olmsted County District Court
151 S.E. 4th Street 5th Floor
Rochester MN 55904
507-206-2400

cc: MICHAEL ALAN SINDT

A true and correct copy of this Notice has been served by mail upon the parties named herein at the last known address of each, pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.

JUN 19 2012