

CITY OF RICHFIELD
CONDEMNATION PETITION

STATE OF MINNESOTA
COUNTY OF HENNEPIN
DISTRICT COURT
FOURTH JUDICIAL DISTRICT
COURT FILE No. 27-CV-18-16502
Case Type: Condemnation
City of Richfield, a Minnesota municipal corporation,
Petitioner,
v.
G6 Hospitality Property LLC, a Delaware limited liability company; JPMorgan Chase Bank, National Association; Deutsche Bank AG, New York Branch, a branch of Deutsche Bank AG, a German Bank authorized by the New York Department of Financial Services; Port Authority of the City of St. Paul, a body corporate and politic organized under the provisions of Minnesota Statutes, Chapter 458; Northern States Power Company, d/b/a Xcel Energy, a Minnesota corporation; State of Minnesota; County of Hennepin; and all other parties unknown having any right, title or interest in the property described in Petitioner's Petition, together with the unknown heirs or devisees, if any, of the parties that may be deceased, and including unknown spouses, if any, and all others claiming any interest in the property described in Petitioner's Petition,
Respondents.

IN THE MATTER OF CONDEMNATION OF REAL PROPERTY
LOCATED IN THE CITY OF RICHFIELD, COUNTY OF HENNEPIN, MINNESOTA, FOR THE
CONSTRUCTION OF THE 77TH STREET UNDERPASS
OF TRUNK HIGHWAY 77 (CEDAR AVENUE)

TO THE ABOVE NAMED COURT:
Petitioner respectfully represents and states to the Court:

I.
That Petitioner is a municipal corporation, located in Hennepin County, Minnesota, duly organized, created and existing under and by virtue of the laws of the State of Minnesota, with all of the powers enumerated and available to it under Minnesota law, including the power to acquire real property for public purposes through use of eminent domain proceedings, when it determines that doing so is necessary and for a public purpose.

II.
Pursuant to Minn. Stat. § 465.01, Petitioner is authorized to exercise its powers of eminent domain to acquire private property within or outside of its corporate limits for any purpose otherwise authorized by law.

III.
In cooperation with the State of Minnesota Department of Transportation and the State of Minnesota Metropolitan Airports Commission (collectively the "State") and in cooperation with Hennepin County (the "County"), the City, in the exercise of its governmental powers as a city and as a political subdivision of the State of Minnesota, has undertaken the 77th Street/Richfield Parkway Project for the construction of a roadway underpass to allow 77th Street within the City of Richfield to travel under Cedar Avenue/Trunk Highway 77 to and from 77th Street located within the Minneapolis-Saint Paul International Airport property (the "Project").

IV.
The Project will include construction of a north underpass connecting 77th Street on both sides of Cedar Avenue/Trunk Highway 77 (similar to American Boulevard located south of the I-494/Trunk Highway 77 Interchange) to provide local (City of Richfield) access to airport terminals, the Mall of America, properties on the east side of Trunk Highway 77 and other facilities, without accessing the larger highways such as I-494 and Trunk Highway 77. The Project also includes construction of Richfield Parkway to provide improved access and parking adjacent Washington Park, closure of Old Cedar Avenue to through traffic and the installation of a cul-de-sac.

V.
The Project is needed to provide local access to airport terminals, the Mall of America, properties on the east side of TH 77 and other facilities, without the need for accessing the larger surrounding highways, as well as to provide improved access and parking to the adjacent Washington Park.

VI.
The Project requires the acquisition of fee simple absolute title of certain property located in the City of Richfield and described on the attached Exhibit A (the "Subject Property").

VII.
Minnesota Statutes, § 117.042 provides Petitioner with the authority to gain title and possession to all the easement parcels following a 90-day notice period. This statute is commonly referred to as the "quick take" statute. If a condemning authority does not utilize the "quick take" statute, the title and right of possession to the various easement parcels would only transfer to Petitioner following the settlement of the parcel valuation case which can extend over a multi-year period. Petitioner requires transfer of title and possession of the necessary real estate interests for the Project in accordance with Minn. Stat. §117.042. The 90-day "quick take" procedure must be utilized: a) to allow Petitioner to award a single and reasonably economical construction contract for the Project, and b) to meet the 2019 Project construction schedule.

VIII.
The City Council of the City of Richfield has duly adopted Resolution No. 11544 determining that it is necessary to acquire the property rights described in EXHIBIT A attached hereto and made a part hereof, pursuant to Minnesota Statutes, § 117.042 (the "quick take" statute). Said Resolution also approved the Petitioner's appraised value of the fee taking described in the attached EXHIBIT A.

IX.
That it is the intention of Petitioner to proceed under Minnesota Statutes, Chapter 117, to take title and possession of the Subject Property required for the Project pursuant to the "quick take" provision of Minnesota Statutes, § 117.042.

X.
That Petitioner was assisted by its property acquisition consultant for the direct purchase of fee title to the Subject Property required for the Project. Petitioner has been unable to negotiate a direct purchase settlement of the Subject Property shown in the attached EXHIBIT A.

In 2006, the State of Minnesota enacted various eminent domain reforms including an amendment to Minn. Stat. § 117.036 which: a) requires Petitioner to provide the property owner with a copy of the Petitioner's appraisal and inform the property owner of the right to obtain an appraisal and receive reimbursement of appraisal costs pursuant to § 117.036, b) requires reimbursement of a property owner's appraisal costs up to \$1,500 for single family and two-family residential property and minimum damage acquisitions (i.e. appraised damages of \$10,000 or less) and \$5,000 for other types of property, and c) requires good faith negotiations which include a good faith attempt to negotiate personally with the property owner. Petitioner has complied with the statutory appraisal copy disclosure, notice of property owner appraisal rights, appraisal cost reimbursement, and good faith negotiation requirements of Minn. Stat. §117.036.

XI.
That the property rights to be taken herein by eminent domain proceedings are in the City of Richfield, Hennepin County, Minnesota and described in the attached EXHIBIT A. EXHIBIT A contains the names of all persons appearing of record or known to Petitioner as a result of due and diligent inquiry to be the owners of or to potentially have an interest in the Property, together with the nature of the interest of each to the best of Petitioner's knowledge, information and belief. The listing of the nature of such interest on EXHIBIT A is not intended to limit the right, title, estate or interest that the Petitioner is acquiring in the Property. The Petitioner's intention is that all of the rights, title, interests, and possession that the persons and entities named in EXHIBIT A may have in the affected Property shall be subject to and encumbered by the real estate interests acquired by Petitioner herein, including interests held by such persons or entities but not identified in said EXHIBIT A.

XII.
To the best of Petitioner's information and belief, none of said real estate is in actual public use, except for existing easements of record, to which the taking is made subject.

XIII.
Petitioner reserves the right to recover costs of testing and cleanup and all other damages resulting from the presence of pollutants, contaminants or hazardous materials on the property described in the Petition from all responsible parties in a separate legal action. Petitioner further requests that if tests or evaluations undertaken by or on behalf of Petitioner indicate the presence of pollutants, contaminants or hazardous materials on said properties, requiring that the condemnation commission awards be conditioned on the right of Petitioner to bring a separate legal action to recover cleanup and testing costs and other recoverable damages.

WHEREFORE, Petitioner prays for an Order of the Court as follows:
(a) Adjudging that such proceedings may be had herein provided by law;
(b) Adjudging that the taking by eminent domain proceedings is necessary and authorized by law;
(c) Adjudging that the taking is for a public purpose, is necessary, and such as is authorized by law and that Petitioner may acquire by condemnation the real estate interests described on EXHIBIT A attached hereto as against all persons named in said EXHIBIT A.

(d) Appointing three competent and impartial persons as commissioners to ascertain and report the amount of damages that will be sustained by the several owners or persons interested on account of the above described taking;

(e) Requiring that as provided in the special "Policy on Condemnation Proceedings" in Hennepin County, the Commissioners shall consist of 1) a licensed real estate agent or broker actively engaged in real estate sales; 2) a certified federal general real property appraiser who holds a current, valid license under Minn. Stat. Ch. 82B; and 3) a registered attorney knowledgeable in eminent domain matters (but, in no event shall more than one attorney serve as a commissioner on the panel);

(f) Ordering and fixing the time and place of the first meeting said commissioners and their compensation;

(g) Ordering that in all such cases where, for any reason, it shall be doubtful whom the award shall be paid, the payment be made to the Administrator of such Court to be paid out under the direction of the Court;

(h) Authorizing the transfer of the property rights described in EXHIBIT A to Petitioner to be effective immediately upon payment to the owners or deposit with the District Court Administrator of the Petitioner's approved appraisal of value pursuant to Minn. Stat. §117.042, as amended;

(i) Ordering that Petitioner be reserved the right to recover costs of testing and cleanup and all other damages resulting from the presence of pollutants, contaminants or hazardous materials on the property described in this Petition, from all responsible parties in a separate legal action. Further, should tests or evaluations undertaken by or on behalf of Petitioner indicate the presence of pollutants, contaminants or hazardous materials on said properties, requiring that the condemnation commission awards be conditioned on the right of Petitioner to bring a separate legal action to recover cleanup and testing costs and other recoverable damages; and

(j) For such other and further relief as may be proper and pursuant to law.
Dated: October 1, 2018
LeVANDER, GILLEN & MILLER, P.A.
/s/ Jay P. Karlovich
Jay P. Karlovich, Lic. No. 247650
Tona T. Dove, Lic. No. 0232130633 South Concord Street, Suite 400
South St. Paul, MN 55075
(651) 451-1831
Attorneys for Petitioner

ACKNOWLEDGMENT
The party above-named represented by the undersigned, hereby acknowledges that sanctions may be imposed pursuant to Minnesota Statutes, § 549.211.
/s/ Jay P. Karlovich
Jay P. Karlovich

EXHIBIT A				
Interest	Name	Address and Telephone Number		
Fee Owner	G6 Hospitality Property LLC, a Delaware limited liability company	G6 Hospitality Property LLC c/o Corporation Service Company 2345 Rice Street, Suite 230 Roseville, MN 55113		
		G6 Hospitality Property LLC c/o Curtis Stogsdill Director of Real Estate 4001 International Parkway Carrollton, TX 75007		
Mortgage	JPMorgan Chase Bank, National Association	JPMorgan Chase Bank, National Association c/o C T Corporation System Inc. 1010 Dale Street North St. Paul, MN 55117		
Mortgage	Deutsche Bank AG, New York Branch, a branch of Deutsche Bank AG, a German Bank authorized by the New York Department of Financial Services	Deutsche Bank AG, New York Branch 60 Wall Street, 10th Floor New York, NY 10005		
	Deutsche Bank Insurance Agency Incorporated, a Maryland corporation	Deutsche Bank Insurance Agency Incorporated c/o C T Corporation System Inc. 1010 Dale Street North St. Paul, MN 55117		
Possible Mortgage/Security Interest	Port Authority of the City of St. Paul, a body corporate and politic organized under the provisions of Minnesota Statutes, Chapter 458	Port Authority of the City of St. Paul 380 St. Peter Street, Suite 850 St. Paul, MN 55102		
Easement Interest	Northern States Power Company, d/b/a Xcel Energy, a Minnesota corporation	Northern States Power Company c/o Corporation Service Co. 2345 Rice Street, Suite 230 Roseville, MN 55113		
		Northern States Power Company c/o Christopher B Clark, CEO 414 Nicollet Mall, Suite 500 Minneapolis, MN 55401		
Easement Interest	State of Minnesota	State of Minnesota Minnesota Attorney General 445 Minnesota Street, Suite 1400 St. Paul, MN 55101		
Property Taxes	County of Hennepin	Hennepin County Auditor A-600 Government Center 300 South 6th Street Minneapolis, MN 55487 612-348-3011		
		Hennepin County Assessor A-2103 Government Center 300 South 6th Street Minneapolis, MN 55487		
		Hennepin County Attorney C-2000 Government Center 300 South Sixth Street Minneapolis, MN 55487 612-348-5550		
Possible Unknown Real Property Interest Owners	All other parties unknown having any right, title or interest in the real property described below, together with the unknown heirs or devisees, if any, of the parties that may be deceased and including unknown spouses, if any, and all others claiming any interest in the property described below.			
LEGAL DESCRIPTION OF LANDOWNER'S PROPERTY				
Real Property located in the City of Richfield, Hennepin County, Minnesota, described as follows: That part of the North 1/2 of the Southeast Quarter of the Southeast Quarter of Section 35, Township 28, Range 24, lying South of the North 10 acres of said quarter-quarter and East of the extension South of the East line of 18th Ave. So. as laid out in the plat of "Larson's South View Gardens Second Addition." Torrens Property				