



RINKE NOONAN

attorneys at law

When to Call Your Attorney

By Adam Ripple and Igor Lenzner

Firmly Committed.



Quiz – Warm UP

- \$89,465
- \$134,500
- \$169,230
- \$194,300

Firmly Committed.

Firmly Committed.



Why would you ever need to call an attorney?

- Feel like talking with someone who will pretend to care.
- Reminds you why you didn't go to law school (would have had to be around people like that all day).
- Want to talk with someone who knows nothing about engineering, but will always have some stupid opinion. (And the County Board doesn't meet for another week!)

Firmly Committed.



You have no road.

i.e. – You have pavement, ditches and utilities, but nothing of record.

Firmly Committed.

Firmly Committed.



No Road - continued.

- Where did you look?
- Auditor, Historical Society, etc.
- Minn. Stat. § 160.05 – Dedication of Roads
 - “When any road or portion of a road has been used and kept in repair and worked for at least six years continuously as a public highway by a road authority, it shall be deemed dedicated to the public to the width of the actual use and be and remain, until lawfully vacated, a public highway whether it has ever been established as a public highway or not.” Subd. 1(a)
 - What is all included?
 - Ditches, permitted utilities, thrown snow?
 - 33’ all across the right-of-way?



**You have a road, but
there is someone else's
stuff on your road.**

i.e. – vehicles, fish house,
buildings, trees, boat lift, etc.

Firmly Committed.

Firmly Committed.



**You have a road, but you
want to use it for a boat
landing or park.**

Firmly Committed.

Firmly Committed.



**You have a utility
easement or drainage
easement and want to
use it for a temporary
construction easement or
permanent right-of-way.**

Firmly Committed.

Firmly Committed.



You have a road, but it needs to be wider (and it should be easy because it is not much land or much value).

Firmly Committed.

Firmly Committed.



Minimal Additional Right of Way Needed.

- Do we need an appraisal?
 - If the acquisition is GREATER THAN \$25,000, then you must obtain an appraisal (Federal money is \$10,000).
 - Minimum Damage Acquisitions – qualified person with appraisal knowledge must confer with one or more of the owners of the property if reasonably possible.

Firmly Committed.

Firmly Committed.



Do I really need to reimburse for an appraisal when it's a \$250 acquisition?

- Minn Stat. § 117.036 “The owner is entitled to reimbursement for the reasonable costs of the appraisal from the acquiring authority up to a maximum of \$1,500 for single family and two-family residential property and minimum damage acquisitions and \$5,000 for other types of property.”
- Must submit information necessary for reimbursement, including a copy of the owner's appraisal, at least five days before a condemnation commissioners' hearing.
 - You need to pay within 30 days.
 - You can pay the appraiser directly.
- For purposes of this subdivision, a "minimum damage acquisition" means an interest in property that a qualified person having an understanding of the local real estate market indicates can be acquired for \$25,000 or less.

Firmly Committed.



Do we have to tell them about the appraisal reimbursement?

- Minn. Stat. § 117.036 – “The acquiring authority must inform the owner of the right to obtain an appraisal under this section.”

Firmly Committed.

Firmly Committed.



That little strip of additional right-of-way-continued.

- That little \$250 strip may be more of an impact that you thought.
- Remember the Before and After Rule in Minnesota.
- Need to look at the entire property.
- Are we getting close to a house?
- Are we messing up parking for a business?
- Are we making their lot too small for zoning or otherwise?

Firmly Committed.



**Your MDA comes in at
\$24,000.**

Firmly Committed.

Firmly Committed.



You need to expand the road and there is the small issue of a house in the new right-of-way.

Firmly Committed.

Firmly Committed.



Relocation Benefits

YOU ARE DISPLACING PEOPLE OR A BUSINESSES:

“Displaced Person” includes any owner or tenant who moves from a dwelling (including a mobile home), business, farm or non-profit (*so includes lawyers*).

Minnesota – Uniform Act Benefits and Services apply regardless of federal funding (See Minn. Stat. § 117.52).

What type of services and benefits must be provided:

- a. Residential Occupants (owners and tenants)
 - i. Moving Expense Payment (actual, reasonable and necessary expenses)
 - ii. Housing Replacement Payment (maximum for owners \$31,000 and maximum for tenants is \$7,200). This is known as a “soft cap” because of the potential for “housing of last resort.”
- b. Business
 - i. Moving Expense Payment (personal property)
 - ii. Business Reestablishment (\$50,000 maximum)(reasonable and necessary to reestablish including items such as repairs or improvements to the replacement property, modifications to the replacement property to accommodate the business, installation of signage, redecoration, advertising the replacement site, and increased costs of operation in the first two years). Cannot buy equipment and cannot build a building.

Firmly Committed.



Relocation Benefits.

Waivers and fixed payments?

- a. Fixed Payments – (i) residential not applicable; (ii) business/farm in lieu of both moving expense reimbursement and reestablishment payments. Maximum Fixed Payment for a business, farm or non-profit is \$40,000 Fixed payments are based upon average net earnings for the prior to taxable years.
- b. Fixed Payment for Partial Acquisition for Farmers. Farm operations may also be entitled to a fixed payment if a “partial acquisition caused a substantial change in the nature of the farm operation.”
- c. Waivers – very limited situations can these be used – basically voluntary, no threat of eminent domain (in writing say it won't happen), property for sale previously etc. (Minnesota is even more limited than Federal Rules.)

Firmly Committed.



Relocation Benefits.

- At least 90 days written notice to vacate.
- After you provide replacement housing.
- Comparable decent, safe, and sanitary replacement housing within the persons financial means must be available before a person may be displaced.

Firmly Committed.

Firmly Committed.



Minimum Compensation

Minn. Stat. § 117.187

117.187 MINIMUM COMPENSATION.

When an owner must relocate, the amount of damages payable, at a minimum, must be sufficient for an owner to purchase a comparable property in the community and not less than the condemning authority's payment or deposit under section 117.042, to the extent that the damages will not be duplicated in the compensation otherwise awarded to the owner of the property. For the purposes of this section, "owner" is defined as the person or entity that holds fee title to the property.

Firmly Committed.

Firmly Committed.



Minimum Compensation – continued.

When does this apply:

1. Owner must relocate.
2. Fee title owner.

What does it mean:

1. Nobody knows.
2. Something different than fair market value.
3. Something different from the housing replacement payment.
4. Most still look to for sale properties.

Firmly Committed.

Firmly Committed.



You need to re-route the road, but it goes through the middle of a farm.

Firmly Committed.

Firmly Committed.



You need to limit access.

Firmly Committed.

Firmly Committed.



Limiting Access.

Controlled Access Highways. You have the ability to regulate access to County Highways. 2023 case *Wood vs. Blue Earth* – no right of access to a newly constructed controlled access highway. See Minn. Stat. § 116.18 and *C&R vs. Chisago*.

Firmly Committed.

Firmly Committed.



Limiting Access.

- Closing Driveways (or creating one or two accesses where it was entirely open previously). Right to reasonably convenient and suitable access. Subject to Minn. Stat. § 116.18?
- Minn. Stat. § 117.186, Subd. 4 allows a business owner to claim compensation if they establish 51% or greater of their driveway access and reduction in revenue by 51% or greater. Formula for determining based upon average revenue minus cost of goods sold for three years prior to the project.

Firmly Committed.



Limiting Access.

- Limiting Turning Motions (medians, pork chops, etc.) – as long as the owner retains access in one direction they are not entitled to compensation, but they must still have reasonably suitable and convenient access.
- Whether a taking occurred is a matter of law. Whether remaining access is reasonably suitable and convenient is a question of fact. What is reasonable access depends, in part, on the nature of the property.



**You cannot find the
property owner.**

Firmly Committed.

Firmly Committed.



**The title records do not
show who owns the
right-of-way.**

Firmly Committed.

Firmly Committed.



The strip of land you need contains a well and/or septic system!

- Setbacks required for septic systems 10' in many counties.
- Heavy equipment may damage septic systems.
- Wells –
 - Chat GPT says risk of run off contamination from oils, chemicals, heavy metals and other pollutants. And Chat GPT warned of safety concerns about wells being located within the right-of-way.

Butterfly Effect – single action sets off a chain reaction of consequences (i.e. small lot with no other place for their septic Enjoy the new historic property the county is suddenly buying!)

Firmly Committed.



**Your road project
requires a retaining wall.**

Firmly Committed.

Firmly Committed.



Retaining Wall.

- Inside permanent right-of-way?
- Maintenance.
- Drainage.
- Damages from Cars.



**Your road project
requires a stormwater
pond.**

Firmly Committed.

Firmly Committed.



**Your contractor goes
outside of the easement.**

Firmly Committed.

Firmly Committed.



**You find a box of
unrecorded easements.**

Firmly Committed.

Firmly Committed.



**You have a wind project
using your right-of-way.**

Firmly Committed.

Firmly Committed.



**You don't understand
why you should be
flexible in your design.**

Firmly Committed.

Firmly Committed.



**Your Recorder is
requiring to pay taxes to
file a deed.**

Firmly Committed.

Firmly Committed.



**Your Auditor wants you
to pay taxes on property
you just acquired.**

Firmly Committed.

Firmly Committed.



**You think AI can replace
your attorney.**

Firmly Committed.

Firmly Committed.



Igor Lenzner & Adam Ripple

Rinke Noonan, Ltd.

**1015 West St. Germain Street,
Suite 300**

P.O. Box 1497

St. Cloud, MN 56302-1497

(320) 251-6700

Firmly Committed.



Thank you!

**Please feel free to contact
Rinke Noonan if you need
any additional information.**

www.RinkeNoonan.com

Firmly Committed.