

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1170**

Steven Bystedt, et al.,
Appellants,

vs.

City of Duluth,
Respondent.

**Filed May 24, 2021
Affirmed
Slieter, Judge**

St. Louis County District Court
File No. 69DU-CV-18-2343

Shawn B. Reed, Bray & Reed, Ltd., Duluth, Minnesota (for appellants)

Rebecca St. George, Duluth City Attorney, Elizabeth A. Sellers, Assistant City Attorney,
Duluth, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Slieter,
Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this inverse-condemnation action relating to the construction of a multi-level office building and parking ramp between appellants' condominium property and the Duluth Harbor, appellants challenge the district court's summary-judgment dismissal of their claim. Appellants argue that the district court erred by determining that appellants'

loss of quiet enjoyment and peaceful possession and implied easement of light, air, and view did not amount to unconstitutional takings. However, the changes affecting appellants' property caused by the newly constructed building involve inconveniences every landowner in downtown Duluth should reasonably anticipate. Additionally, a property owner does not have a compensable loss of an implied easement of light, air, and view caused by a new building across an alleyway. Therefore, no unconstitutional taking has occurred and we affirm.¹

FACTS

The material facts of this case, which are not in dispute, are as follows. In 2006, appellants Steven Bystedt and Carrie Heikkila purchased a condominium (the unit) in downtown Duluth located in a district zoned for mixed commercial and residential use.² Buildings of up to 15 stories with alley-facing parking on any story are permitted within the zoning district. The unit's building complex is the only residential property on the block. The district court described the lot adjacent to the unit, across the alleyway, as "underdeveloped" and occupied by "a two-story [commercial] building and a surface parking lot." Appellants learned of Maurices Incorporated's intention to construct an office

¹ Because we affirm on the basis that no unconstitutional taking occurred, we need not address appellants' argument that the district court improperly distinguished the portion of the building owned privately by Maurices Incorporated from the city-owned parking ramp.

² Although appellants assert in the fact section of their brief that "[r]espondent changed the zoning" after they purchased the unit, appellants acknowledge that the district was always zoned for mixed commercial and residential use.

building on this adjacent lot. Appellants subsequently moved out of the unit and now use it as rental property.

Construction on the adjacent lot began in 2014 and was completed in 2016. Upon completion, the Maurices Incorporated office building and parking garage (the new building) spanned 11 stories. Respondent City of Duluth (the city) owns and operates the parking garage comprising the alley-facing portion of the lower five floors of the new building. Also newly constructed is a public elevated driveway located two floors below appellants' unit, crossing perpendicular over the alley, connecting the unit's complex and the parking garage of the new building.

In 2018, appellants filed a petition for a writ of mandamus seeking inverse condemnation. The city moved for summary judgment. The district court, by agreement of the parties, considered only the first prong of an inverse-condemnation claim: whether an unconstitutional taking has occurred. The district court determined no unconstitutional taking occurred because the "inconveniences" described by appellants and attributed to the new building were "no more intrusive than those an average member of the community in downtown Duluth would reasonably anticipate." The district court granted the city's motion for summary judgment and dismissed appellants' claim with prejudice. This appeal follows.

DECISION

Summary judgment is appropriate if "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. Appellate courts review *de novo* whether a genuine issue of material fact exists or whether

the district court erred in its application of the law. *State by Comm’r of Transp. v. Elbert*, 942 N.W.2d 182, 187-88 (Minn. 2020). “[Appellate courts] view the evidence in the record in the light most favorable to the party against whom summary judgment was granted.” *See id.* at 187 (quotation omitted).

The Minnesota Constitution requires that the government compensate landowners for actions that take, destroy, or damage private property. Minn. Const. art. I, § 13. A landowner may seek inverse condemnation when the government has appropriated land without formally exercising the “power of eminent domain.” *Alevizos v. Metro. Airports Comm’n*, 216 N.W.2d 651, 657 (Minn. 1974) (quotation omitted). The landowner seeking a writ of mandamus to compel inverse condemnation has the burden to prove that an unconstitutional taking has occurred. *Stenger v. State*, 449 N.W.2d 483, 485 (Minn. App. 1989), *review denied* (Minn. Feb. 28, 1990). Whether an unconstitutional taking occurred is a question of law. *Alevizos*, 216 N.W.2d at 660-61.

I. Appellants did not suffer an unconstitutional taking by loss of quiet enjoyment and peaceful possession.

Pursuant to *Alevizos*, relief is appropriate for property owners “who can show a direct and substantial invasion of [their] property rights of such a magnitude [they] [are] deprived of the practical enjoyment of the property and that such invasion results in a definite and measurable diminution of the market value of the property.” 216 N.W.2d at 662. As to the first element, which is the sole relevant element for our consideration, appellants must demonstrate harm that is “direct, substantial, and *peculiar to them* in that it differs markedly from the damage suffered by the public at large.” *Id.* at 661 (emphasis

added). This harm must also be “repeated and aggravated,” and there must be “a reasonable probability” it will continue in the future. *Id.* at 662. The *Alevizos* court clarified, however, that a claim for relief caused by the purported government action must be balanced by the premise that property owners “must . . . endure that level of inconvenience, discomfort, and loss of peace and quiet which can be reasonably anticipated by any *average member* of a vibrant and progressive society.” *Id.* at 662 (emphasis added).

Appellants contend that the new building represents a “repeated [and] aggravated” invasion of their property rights. The city counters that appellants are unable to distinguish their unit from any similarly situated unit, and that their experience of general inconveniences related to living in downtown Duluth does not support an inverse-condemnation claim. The law compels our agreement with the city.

The parties do not dispute that, after construction of the new building, appellants have experienced:

- increased traffic in the alleyway including that from commercial vehicles to the new building;
- increased noise and fumes from traffic in the alleyway and parking ramp;
- increased odors from the diesel generators;
- fumes from the air venting systems from the office building and Maurices Incorporated employees smoking in the alley;
- increased artificial lights from headlights in the parking ramp;
- increased overhead lighting from the new building; and

- decreased privacy resulting from the public's presence in the parking garage.

These adverse changes attributed to the new building are not distinguished from those one might normally expect in a downtown improvement. In his deposition, appellant Bystedt acknowledged that there are other alley-facing elevated parking ramps in downtown Duluth, but noted that this was “the only one 25-feet away” from appellants’ unit. This fact does not change our conclusion that no unconstitutional taking has occurred. Appellants have not demonstrated that the allegations of increased artificial light, lack of natural light, increased fumes, vibrations, and loss of privacy due to an increased public presence are more intrusive than those an average community member living in downtown Duluth would reasonably anticipate. Additionally, these changes are not distinguishable from those a member of the public might expect from a downtown improvement. Where there is no evidence of unique circumstances, summary judgment is appropriate and we, therefore, affirm dismissal of this claim. *See Stenger*, 449 N.W.2d at 485.

II. Appellants did not suffer an unconstitutional taking by loss of an implied easement of light, air, and view.

A property owner enjoys the benefit of “implied easements for light, air and view” over the public street abutting their property. *Haeussler v. Braun*, 314 N.W.2d 4, 7 (Minn. 1981). A property owner’s implied easements similarly extend over a public alleyway. *McCarthy v. City of Minneapolis*, 281 N.W. 759, 761 (Minn. 1938). However, a property owner “cannot object that [their] building is deprived of light by an erection on adjacent land, [or] that a view from [their] premises is cut off thereby.” *Id.* “The cases allowing lateral operation to the easement of view go no further than to restrain adjoining owners

from putting some obstruction on or over the street or sidewalk in front of the property . . . thus cutting off their neighbor's lateral view of the street." *Id.*

Appellants argue that, before construction of the facility, they had light, air, and a view to the Duluth Harbor, all of which they no longer possess, thus constituting an unconstitutional taking.³ Though the undisputed facts demonstrate such a loss, the law directs our conclusion that such loss is not an unconstitutional taking.

Because the new building is located across the alley from the unit, and appellants have not claimed any impairment of their rights in the alley itself, appellants' claim fails. Relatedly, the *McCarthy* court determined that a property owner's implied easements for light, air, and view "has no operation laterally," noting that a "lofty building" may "cut off much more than light and air," but such a building between a plaintiff's residence and the adjacent street "would be no invasion of plaintiffs' right." *McCarthy*, 281 N.W. at 761. The new building is on adjacent land, separated by the public alleyway and, therefore, appellants have not suffered an unconstitutional taking. As the supreme court in *Haeussler* stated, "This is so because the implied easements do not entitle the landowner to every

³ Appellants do note the existence of the public elevated driveway which connects the unit's building complex and the building by crossing the alley. However, appellants concede that the elevated driveway does not "obliterate [their] access to light, air, and view." This elevated driveway is indeed distinct from an elevated public skyway which the supreme court previously found to constitute a taking. *See Castor v. City of Minneapolis*, 429 N.W.2d 244, 246 (Minn. 1988) (finding the "unusual structure" of the public skyway, running the length of petitioner's building "rather than simply across the alley," four-to-five feet away from petitioner's building and adjacent to petitioner's second-story windows, constituted an improper street use entitling petitioners to compel condemnation proceedings).

particle of sunlight or air that passes over the street. Rather, he is only entitled to the air, light and view that are not obstructed by a proper street use.” 314 N.W.2d at 8.

We conclude that appellants did not suffer an unconstitutional taking as a matter of law.

Affirmed.