

*This opinion is nonprecedential except as provided by  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  
A26-0067**

David Lindstrom,  
Trustee of the Gladys B Lindstrom Living Trust, et al.,  
Appellants,

vs.

County of Scott,  
Respondent.

**Filed July 27, 2026  
Affirmed  
Segal, Judge \***

Scott County District Court  
File Nos. 70-CV-23-8569, 70-CV-23-8570

Patrick J. Neaton, Michael L. Puklich, Neaton & Puklich, P.L.L.P, Chanhassen, Minnesota  
(for appellants David Lindstrom, Trustee of the Gladys B. Lindstrom Living Trust, and  
Minnesota Valley Landscape, Inc.)

Ronald Hocesvar, Scott County Attorney, Elisabeth M. Johnson, Assistant County  
Attorney, Shakopee, Minnesota (for respondent County of Scott)

Considered and decided by Wheelock, Presiding Judge; Harris, Judge; and Segal,  
Judge.

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

## NONPRECEDENTIAL OPINION

SEGAL, Judge

In this eminent-domain matter, appellant landowners challenge the district court’s grant of respondent county’s posttrial motion for judgment as a matter of law, arguing that the district court erred by eliminating the jury’s award of cost-to-cure damages based on insufficiency of the evidence. Appellants also challenge the district court’s partial grant of respondent’s motion in limine relating to evidence of line-item damages for the value of trees lost as a result of the condemnation. We affirm.

### FACTS

In 2018, respondent Scott County initiated a “quick-take” action<sup>1</sup> to obtain certain temporary and permanent easements on three adjacent parcels of land owned by appellants David Lindstrom, as trustee of the Gladys B. Lindstrom Living Trust, and Minnesota Valley Landscape, Inc. Appellants operated a retail nursery and landscaping business on the property. The county sought the easements as part of a road construction project to improve access to trunk highway 169 by building service roads on appellants’ property, among other improvements. The permanent easements sought by the county covered most of one parcel (parcel 45) and portions of the other two parcels (parcels 47 and 48).

Appellants challenged the county’s appraisal of damages, and the matter proceeded to a hearing before three commissioners appointed by the district court. *See* Minn. Stat.

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<sup>1</sup> A “quick-take” action allows the condemning authority, upon satisfaction of certain conditions, to take possession of land before damages are ascertained. *See* Minn. Stat. § 117.042 (2024).

§ 117.075, subd. 2(a) (2024). The commissioners awarded damages in the amount of \$1,235,300. Both parties appealed the commissioners' award to the district court and the matter was submitted for a jury trial. *See* Minn. Stat. §§ 117.145, .165 (2024).

In the report prepared by appellants' appraiser for trial, the appraiser assessed the total damages as \$3,424,661. The county's appraiser assessed the total damages as \$655,100.

For parcel 45, appellants' appraiser concluded that appellants suffered damages for a loss in value in the amount of \$424,000, plus \$79,625 in cost-to-cure damages and \$23,000 in temporary easement damages, for a total damages amount of \$526,625. The cost-to-cure damages for parcel 45 represented the cost of replacing 71 screening trees and relocating 23 nursery trees from parcel 45 to the unaffected portions of parcels 47 and 48.

For parcels 47 and 48, appellants' appraiser concluded that appellants suffered damages for a loss in value in the amount of \$2,217,000, plus \$644,536 in cost-to-cure damages, and \$36,500 in temporary easement damages, for a total damages amount of \$2,898,036. A breakdown of the \$644,536 in cost-to-cure damages for parcels 47 and 48 included the cost of converting a storage shed into a new shop for the retail nursery because the existing shop was located on property subject to the county's easement, relocating and replacing nursery trees and decorative trees and plants, repairs to the irrigation system, and replacing security fencing and gates, among other items.

Before trial, the county filed motions in limine requesting, as relevant here, the exclusion of "all testimony, evidence, and damages related to separate line items for tree loss." The district court granted the county's request, in part, ruling that evidence of tree

loss could not be introduced as a separate line item, but that evidence of the cost of tree loss could be introduced as it related to the loss in value of the property “post-taking.”

The district court instructed the jury, among other things, that “just compensation” for a landowner when a government entity takes a portion of an owner’s property for the purpose of a permanent easement equals the difference between “the fair market value of the entire property immediately before the access rights were taken,” and “[t]he fair market value of what is left after the access rights are taken.” The instructions advised that, “[w]hen only a part of a property is taken . . . there may be damages to the property that’s left.” The instructions defined those damages as “severance damages.” The jury was also instructed, as relevant to the issues on appeal, that they could consider evidence related to cost-to-cure damages only if the costs for the curative measures were “less than what the severance damages would have been if the curative measures had not been taken,” and “are reasonable to partially or completely restore the remaining property to its condition or status immediately before the partial taking.”

The district court submitted a special verdict form to the jury that asked the jury to determine the amount of money that would be just compensation for the partial taking, and “[w]hat part (if any) of the amount of money” awarded as just compensation “is for costs to cure.” The jury returned an award of \$159,925 as just compensation for parcel 45, designating \$79,625 of that amount as cost-to-cure damages. For parcels 47 and 48, the jury awarded \$1,132,334 as just compensation, designating \$284,250 as cost-to-cure damages. The total damages awarded by the jury for the three parcels was \$1,292,259.

The county moved the district court for judgment as a matter of law, arguing that appellants had failed to prove they were entitled to cost-to-cure damages and that those amounts should therefore be subtracted from the jury's damages award. The district court agreed and found that there was insufficient evidence in the record to support awarding cost-to-cure damages. Specifically, the district court held that the record lacked any evidence showing that the cost-to-cure damages were less than the difference in fair market value of the remaining property without the curative measures. The district court also determined that, because appellants were the proponents of the cost-to-cure damages, that appellants carried the burden of proof on that issue. The district court thus deducted the cost-to-cure damages—\$79,625 for parcel 45 and \$284,250 for parcels 47 and 48—from the jury's damages award, leaving appellants with an award of \$928,384.

This appeal follows.

### **DECISION**

Appellants argue that the district court erred in granting judgment as a matter of law by (1) holding that the evidence was not sufficient to support an award of cost-to-cure damages, and (2) placing the burden of proof on appellants to prove that the cost to cure was less than the reduction in fair market value of the property without the curative measures. Appellants also contend that the district court abused its discretion by granting the county's motion in limine to exclude evidence of the value of tree loss as a separate line item. We first address appellants' challenge to the district court's grant of judgment as a matter of law.

**I. The district court applied the correct legal standard for cost-to-cure damages in its grant of judgment as a matter of law.**

Under Minnesota Rule of Civil Procedure 50.01(a), “[a] court may grant judgment as a matter of law if ‘a party has been fully heard on an issue and there is no legally sufficient evidentiary basis’” to find in favor of the party on that issue. *Gieseke ex rel. Diversified Water Diversion, Inc. v. IDCA, Inc.*, 844 N.W.2d 210, 220 (Minn. 2014) (quoting Minn. R. Civ. P. 50.01(a)). Appellate courts review a district court’s decision to grant or deny motions for judgment as a matter of law de novo, viewing the evidence in the light most favorable to the nonmoving party. *Kidwell v. Sybaritic, Inc.*, 784 N.W.2d 220, 229 (Minn. 2010).

**A. The district court did not err in determining that cost-to-cure damages can only be recovered if such damages are shown to be less than the reduction in fair market value of the remaining property without the curative measures.**

The government may not take private property for public use without just compensation. U.S. Const. amend. V; Minn. Const. art. I, § 13. In partial taking cases, such as this case, when only a portion of a landowner’s property is acquired by the government, the measure of “just compensation includes (1) damages for the value of land actually taken, and (2) the severance damages to the remaining property resulting from the land actually taken.” *State by Comm’r of Transp. v. Elbert*, 942 N.W.2d 182, 192 (Minn. 2020); *see also* Minn. Stat. § 117.175 (2024) (providing that in a condemnation proceeding an owner shall be awarded damages for the land taken and for any damages to the remainder tract not taken). The phrase “severance damages” refers to that portion of the damages that represents the reduction in value of the owner’s remaining property caused

by the taking. *Elbert*, 942 N.W.2d at 192; *see also Victor Co. v. State*, 186 N.W.2d 168, 171 (Minn. 1971) (discussing consequential damages when taking of one tract resulted in damage to the tract remaining).

Damages in a partial taking case are generally calculated using the “before and after” rule. *Elbert*, 942 N.W.2d at 188. This rule measures “the difference between the market value of the entire tract immediately *before* the taking and the market value of what is left *after* the taking.” *Alexandria Lake Area Serv. Region v. Johnson*, 295 N.W.2d 588, 590 (Minn. 1980) (emphasis added). In the context of a partial taking, courts have recognized cost-to-cure damages as an alternative to severance damages. *See id.* An award of cost-to-cure damages is appropriate when the “cost of restoring the property to its natural condition is shown to be less than the difference in value, in which case the cost of restoration is the measure of relief to which the property owner is entitled.” *Sallden v. City of Little Falls*, 113 N.W. 884, 885 (Minn. 1907).

Cost to cure, however, can “be resorted to [as the measure of damages] only when it [is] shown to be less than the difference in value.” *Id.*; *see Alexandria Lake*, 295 N.W.2d at 590-91; *Bulletin Pub. Corp. v. City of Cottage Grove*, 379 N.W.2d 685, 687 (Minn. App. 1986); *CBS MN Props., LLC v. County of Hennepin*, No. A23-0859, 2024 WL 1251563, at \*7-8 (Minn. App. Mar. 25, 2024), *rev. denied* (Minn. June 26, 2024), *cert. denied*, 145 S. Ct. 445 (2024);<sup>2</sup> *cf. Olson v. United States*, 292 U.S. 246, 255 (1934) (providing that an owner “must be made whole but is not entitled to more”). And, as noted above, cost-to-

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<sup>2</sup> Nonprecedential opinions may be cited for their persuasive value. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

cure damages are an *alternative* to severance damages, not a measure of damages to be awarded *in addition to* the loss of value, and are only available if the curative measures result in a lower damages amount than the diminution in value of the property left uncured. See *Alexandria Lake*, 295 N.W.2d at 590; see also 4A *Nichols on Eminent Domain* § 14A.04[2][a] (2025) (commenting that cost to cure “does not create individual rights to damages[;] [r]ather, it is merely evidence of the effect of the taking on market value” (footnotes omitted)).

In this case, the district court concluded that there was no evidence in the trial record to support a jury finding that the cost of restoring the property to its “before” condition is less than the difference in value without the curative measures. Appellants do not challenge the district court’s finding that such evidence is lacking in the record.<sup>3</sup> Instead, they contend that such evidence was not necessary because both parties’ appraisers agreed that the “highest and best” use of the remaining property is to continue operating a retail nursery and landscaping business.<sup>4</sup> Appellants argue that, consequently, there is an “inherent

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<sup>3</sup> The county points out that, when appellants were asked by the district court at the motion hearing whether there was any evidence in the record of what the diminution in value would have been without restoring the parcels to the “before” condition, appellants responded that there was none.

<sup>4</sup> When calculating the market value of a tract of land, “[p]roperty is appraised at its highest and best use, which is the most profitable, competitive use to which the subject property can be put.” *Macy’s Retail Holdings, Inc. v. County of Hennepin*, 899 N.W.2d 451, 453 n.1 (Minn. 2017) (quotation omitted). “The highest and best use of a property is the one that is physically possible, legally permissible, financially feasible, and maximally productive.” *Menard, Inc. v. County of Clay*, 886 N.W.2d 804, 811 (Minn. 2016). Here, the parties do not dispute that the “highest and best use” of the remaining property is continued operation as a retail nursery and landscaping business.



assumption” that the appraisers determined that the cost-to-cure damages are less than the reduction in value of the parcels left uncured. Appellants, however, fail to provide authority to support their argument that such an assumption can override the evidentiary requirement that “cost-to-cure” damages must be shown to be less. And we are not otherwise persuaded that a determination of “highest and best use” necessarily supports such an inference. We thus discern no error in the district court’s determination that evidence of lower cost is a prerequisite to recovery of cost-to-cure damages.

**B. The district court did not err in placing the burden on appellants to prove their entitlement to cost-to-cure damages.**

Appellants argue next that the district court improperly placed on them the burden of proof that the cost to cure was less than the reduction in fair market value of the remaining property without the curative measures. Appellants assert that, because the county is contesting appellants’ entitlement to cost-to-cure damages, it is akin to an affirmative defense and that the burden should therefore be placed on the county. The county argues that the district court correctly placed the burden on appellants because they are the party who stands to benefit from proof of the proposition. *See Sampair v. Village of Birchwood*, 784 N.W.2d 65, 74 (Minn. 2010) (noting that the general rule is that the “party who stands to benefit from proving the affirmative of a proposition of fact . . . bears the burden of proof as to that proposition”).

In eminent-domain cases, the landowner generally has the burden of proving damages. *See* Minn. Stat. § 117.175; *State by Lord v. Pearson*, 110 N.W.2d 206, 215 (Minn. 1961) (observing that, in a condemnation action, “[t]he owner has the burden of

proving and establishing . . . damages”). And when considering cost to cure, caselaw suggests that it is the party advancing cost-to-cure damages who has the burden of proof that the cost to cure is less than the diminution in value. *See, e.g., Bulletin*, 379 N.W.2d at 685 (concluding that the landowner “failed to make its case” when its experts “did not indicate that cost to cure was less than the market value difference”); *see also Ziebarth v. Nye*, 44 N.W. 1027, 1029 (Minn. 1890) (commenting that, if the party “thought that the cost of restoring the land to its former condition would be less than the injury to the value of the land . . . , it was for him to show it”); *CBS*, 2024 WL 1251563, at \*8 (concluding that the landowner was not entitled to cost-to-cure damages because it “did not produce evidence of the before or after value of the property”); *see generally* 4A *Nichols on Eminent Domain* § 14A.04(2)(b) (3d ed. 2013 & Supp. 2008) (“The party claiming the cost to cure as the proper measure of damages, must establish that the . . . cost to cure . . . is less than the diminution to the value of the remainder.”).

In this case, it is appellants who are claiming entitlement to cost-to-cure damages. It is thus appellants who stand to benefit from proof of the proposition and, as such, should bear the burden of proving entitlement to that measure of damages, including evidence that the cost to cure is less than the diminution in value of the remaining property left uncured. While this conclusion might seem counterintuitive, that the landowner is tasked with proving that they are entitled to less in damages than the diminution in value of the remaining property, we are persuaded that this is the correct result.

In a typical case when there is a dispute over the measure of damages—diminution in value versus cost to cure—we would expect that it would be the condemning authority

who would be the proponent of the lesser measure of damages—cost-to-cure damages—not the landowner, and it would thus be the condemning authority who would carry the burden of proof on this issue. But the fact that this case involves the converse and departs from the expected pattern is not sufficient to justify excusing appellants from carrying the burden of proof that they are entitled to the measure of damages they seek.

Accordingly, given the record in this case and the issues before us, we conclude that the district court did not err when it placed the burden on appellants of proving that the cost-to-cure damages were less than the diminution in value to the remaining property without the curative measures.

**II. The district court did not abuse its discretion in granting the county’s motion in limine to restrict appellants from seeking line-item damages for the loss of trees.**

Appellants also argue that the district court erred by excluding, as a separate line item of damages, the replacement cost of trees on the land taken by the county when calculating the property’s fair market value before and after the taking. Appellate courts review evidentiary rulings of the district court for abuse of discretion. *Doe 136 v. Liebsch*, 872 N.W.2d 875, 879 (Minn. 2015). A district court abuses its discretion if its findings of fact are unsupported by the record, if it improperly applies the law, or if it resolves the question in a manner that is contrary to logic and the facts on record. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997).

To determine the fair market value of property in condemnation cases, courts may “consider any competent evidence that legitimately bears on the market value.” *County of Hennepin v. Laechelt*, 949 N.W.2d 288, 291 (Minn. 2020). This may include “[e]vidence

of any matter that would influence a prospective purchaser and seller in fixing the price” of the property. *Elbert*, 942 N.W.2d at 192 (quotation omitted). But such evidence must relate to its impact on fair market value; separate factors may not be considered as specific items of loss. *State by Humphrey v. Strom*, 493 N.W.2d 554, 559 (Minn. 1992).

Appellants’ arguments on this issue are essentially the same as their arguments on the cost-to-cure damages issue—that they should be entitled to recoup the value of the lost trees in addition to loss-in-value damages. This, however, as discussed above, is not the measure of just compensation for a taking. Under the federal and state constitutions and applicable law, appellants are entitled to the fair market value for the acreage taken where the trees were located. *See Elbert*, 942 N.W.2d at 192; *Strom*, 493 N.W.2d at 559. And both parties’ appraisers, in fact, set a per-square-foot fair market value for the property taken for permanent easements in the condemnation. Market value should include the value of the land in the “before” condition, including trees, landscaping, and any other improvements on the property. The law does not allow appellants to effectively double dip and seek both the fair market value of the property and, *in addition*, seek damages for the loss of landscaping. *See Strom*, 493 N.W.2d at 559 (stating that “separate factors may not be considered as specific items of loss” and that “fair market value operates as the limit of the owner’s recovery”); *cf. State v. Robinson*, 123 N.W.2d 812, 821 (Minn. 1963) (concluding that, in apportioning a takings award between a property owner and lessee, it is not appropriate to consider the line-item value of the leasehold and fixtures separately, “the sum of which constitutes market value,” but to assess “what price a buyer would be

willing to pay for the leasehold and fixtures together” in determining market value of the lease).

Here, while the district court granted the county’s request to exclude evidence of damages related to the value of the loss of trees as a separate line item of damages, the district court expressly allowed appellants to “present evidence of the destruction of trees as it relates to the reduced value of the property post-taking—*e.g.* [appellants’] appraiser may testify that the loss of trees reduced the value of the property post-taking.” This ruling by the district court was consistent with established law and we discern no abuse of discretion by the district court.

**Affirmed.**