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Minnesota Becomes the Latest State to Require Developers to Pay the Cost of Relocating Utility Lines

By Cory D. Olson // 3 Minute Read



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If you have ever viewed a property survey, you know just how detailed and technical they can be. This is particularly true in urban and suburban areas, where years of development have resulted in parcels being chopped, divided, combined, and rearranged any number of times. The properties will often be crisscrossed with water, electrical, and communication lines and dotted with boxes, vaults, meters, hydrants, and other pieces of equipment, usually placed in the public right-of-way lining adjacent streets and highways. Whenever a developer seeks to build on a property, or a municipality seeks to expand or move a road, these utility lines and equipment must often be relocated. This can be an expensive process, adding hundreds of thousands, if not millions, of dollars to construction budgets.

Not surprisingly, determining who should pay for these relocation costs has long been the source of litigation. Indeed, disputes over the relocation of utility lines have been litigated since the mid-1800s. By the early 1900s, a general rule developed requiring utility companies to bear the relocation costs if the relocation was necessitated by a public project, such as the construction or expansion of a highway, laying municipal sewer lines, building a tunnel, or other such work. The basic rationale was that, although a utility may be permitted to use the public right-of-way, that did not guaranty the utility the right to remain in a specific location. Utilities remained subject to the government’s authority to regulate the location of lines, and the governing authority could order the utility to move its lines if doing so would benefit the public at large.

In the latter half of the 20th century, governments started taking a proactive approach toward development. Rather than reacting to increased demands, governments began requiring developers to perform or pay for certain infrastructure improvements as a condition to receiving approval for a project, a condition known as an “exaction.” For example, a city may require a developer to expand a nearby road as a condition to approving a new housing development.

Exactions led to a new round of disputes over relocation costs. Developers argued that the cost of exactions should follow the old rule. After all, the government was mandating the improvement. Why should it matter whether the relocation occurred now or in the future? Utilities, on the other hand, argued that the developers should pay, since the developers were the ones creating the demand, stood to profit from the development, and could choose to abandon the project if the exaction was too expensive.

As these disputes were litigated, a new rule emerged, siding with the utilities. Under the new rule, if a relocation is necessitated by private development, then the developer must bear the relocation costs. This is true even if the exaction will benefit the public at large, such as an expansion of a road. The basic rationale is that if the developer must pay, it will pass these costs to the users of the development, who stand to benefit the most from the improvement, rather than to the users of the utility, who may gain little or nothing.

In December 2024, in a case titled *ExteNet Systems, LLC v. Sherman Associates, Inc.*, 15 N.W.2d 690 (Minn. Ct. App. 2024), Minnesota became the latest state to adopt the emerging rule. *ExteNet Systems* arose out of a residential development in downtown Minneapolis. As part of the development, Minneapolis required the developer reimburse the city for replacing streetlights in the adjacent right-of-way. This included two streetlights on which ExteNet had installed, with the city’s permission, small-cell wireless transmitters. After the city removed or disconnected the transmitters to make way for the development, ExteNet sued the developer, seeking payment of the anticipated relocation costs. The district court sided with ExteNet, and the developer appealed. The Court of Appeals affirmed, holding that, “when a private party, on its own initiative and not that of the government, develops property and thereby creates or aggravates a need for public improvement necessitating the relocation of existing utility equipment, the private party shall bear the relocation costs.”

The decision has significant implications for developers, utilities, and the public at large. Because of this new rule, developers must be mindful of possible relocation costs and account for those costs in their budgets. For utilities, the rule allows them to demand payment of relocation costs before moving their lines or equipment. And for the general public, the rule ensures that relocation costs are borne by those who use the development, rather than the users of the utility, who may have little to gain from the development.

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