

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A24-1255**

State of Minnesota, by its Commissioner of Transportation,  
Appellant,

vs.

JKJ Holdings, LLC, et al.,  
Respondents.

**Filed April 21, 2025  
Reversed and remanded  
Bentley, Judge**

Cook County District Court  
File No. 16-CV-23-180

Keith Ellison, Attorney General, Andrew D. Gross, Jeffery S. Thompson, Assistant Attorneys General, St. Paul, Minnesota (for appellant)

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Considered and decided by Ede, Presiding Judge; Harris, Judge; and Bentley, Judge.

**SYLLABUS**

The requirement in Minnesota Statutes section 117.145 (2024) to serve a notice of appeal from an award of damages in an eminent-domain proceeding on “all respondents and all other parties to the proceedings having an interest in any parcel described in the appeal” requires service on all respondents who must be notified under Minnesota Statutes section 117.115, subdivision 2 (2024), of the filing of the commissioners’ report that sets forth the award subject to appeal.

## OPINION

**BENTLEY**, Judge

The primary issue on appeal in this eminent-domain proceeding is whether the district court had subject-matter jurisdiction over an appeal from a court-appointed commissioners' award of damages. The award addressed damages for one parcel among many named in a condemnation petition seeking temporary construction-easement rights. The condemning party, appellant State of Minnesota, by its commissioner of the Minnesota Department of Transportation (MnDOT), appealed the commissioners' award to the district court. *See* Minn. Stat. §§ 117.145, .165, subd. 1 (2024). MnDOT served its notice of appeal on those parties who were required to receive notice of the report setting forth the award. *See* Minn. Stat. § 117.115, subd. 2 (2024).

The owners of the parcel, respondents Java Moose LTD and JKJ Holdings, LLC, (together, Java Moose), moved to dismiss the appeal. The district court granted the motion on the basis that it lacked subject-matter jurisdiction because MnDOT did not serve all parties entitled to service of the notice of appeal under Minnesota Statutes section 117.145. The district court also granted the owners' motion for fees and costs under Minnesota Statutes section 117.031(a) (2024).

We reverse and remand for further proceedings.

## FACTS

### **A. Relevant Statutory Background**

MnDOT may use eminent domain to take private property if it has a public purpose to do so and pays “fair and equitable compensation . . . for land and for the damages arising

from taking it.” Minn. Const. art. XIII, § 4; *see also* Minn. Stat. § 117.012, subd. 2 (2024) (requiring a “public use or public purpose” for a taking). To ensure that MnDOT and other condemning authorities adhere to those guarantees, Minnesota law sets forth a process that subjects the exercise of eminent domain to judicial oversight. *See generally* Minn. Stat. §§ 117.012-.57 (2024).

Before commencing a condemnation proceeding, the condemning authority must obtain an appraisal of the property and make a good faith attempt to negotiate with the owners to acquire the property by direct purchase. Minn. Stat. § 117.036, subd. 3. If negotiation proves unsuccessful, the condemning authority may begin condemnation proceedings by filing a petition in district court. Minn. Stat. § 117.055, subd. 1. The petition must name all statutory owners of the desired land, *id.*, which is a broad classification that includes “all persons with any interest in the property subject to a taking, whether as proprietors, tenants, life estate holders, encumbrancers, beneficial interest holders, or otherwise,” Minn. Stat. § 117.025, subd. 3.

Upon receiving the petition, the district court must hold a hearing to determine whether there is “public use or public purpose, necessity, and authority for the taking.” Minn. Stat. § 117.075, subd. 1. If the court approves the petition, it “shall appoint three disinterested commissioners . . . to ascertain and report the amount of damages that will be sustained by the several owners on account of such taking.” Minn. Stat. § 117.075, subd. 2(a). The commissioners then must “make a separate assessment and award of the damages” with respect to each of the owners “and report the same to the court” after giving notice to the condemning authority. Minn. Stat. §§ 117.085, .115, subd. 1. After the

condemning authority receives the commissioners' report, it must mail notice of the filing of the commissioners' report to three groups of parties:

- (1) each respondent listed in the petition as having an interest in any parcel described in the report;
- (2) each other party to the proceeding whose appearance has been noted by the court in its order approving the petition under section 117.075; and
- (3) each respondent's attorney.

Minn. Stat. § 117.115, subd. 2. The notice must “set[] forth the date of filing of the report, the amount of the award, and all the terms and conditions thereof as the same pertain to the respondent or party listed.” *Id.* The condemning authority must then file “an affidavit of mailing of the notice, setting forth the names and addresses of all the persons so notified.” *Id.*

Any party may appeal the commissioners' award and try the issue of damages to a jury. Minn. Stat. §§ 117.165, subd. 1, .175, subd. 1. An appeal is taken by filing a notice of appeal and serving it by mail on

all respondents and all other parties to the proceedings having an interest in any parcel described in the appeal who are shown in the petitioner's affidavit of mailing, required by section 117.115, subdivision 2, as having been mailed a notice of the report of the commissioners.

Minn. Stat. § 117.145. If a party fails to serve the notice of appeal as required by this provision, the district court lacks subject-matter jurisdiction over the appeal. *Woodhall v. State*, 738 N.W.2d 357, 362-63 (Minn. 2007).

## **B. Factual and Procedural History**

In 2019, MnDOT filed a petition in district court seeking temporary construction-easement rights in 12 parcels of property to facilitate improvements to Trunk Highway 61

in Grand Marais. The petition named 40 respondents who were all statutory owners of the 12 parcels. Java Moose owns the property designated as Parcel 32 and operates a coffee shop there. Additional statutory owners of Parcel 32 named in the petition are Cook County and two individual trustees.

MnDOT sought a 33.5-month temporary construction easement on Parcel 32, encompassing all of the property but its building. After the district court held a hearing on MnDOT's petition, MnDOT paid Java Moose \$84,475 under a "quick-take" process that permits the condemning authority to take possession of land before the filing of a commissioners' award, if the authority pays "an amount equal to petitioner's approved appraisal of value." *See* Minn. Stat. § 117.042. The district court then appointed commissioners to determine just compensation for the taking.

The commissioners held a hearing to determine damages for Parcel 32. They determined that MnDOT's taking would affect access to the coffee shop and that a reasonable buyer could believe that the site would be impacted for "three construction seasons running 5 months each year." The commissioners then filed their report, awarding \$127,913 to Java Moose and \$0 to Cook County and the trustees. MnDOT mailed notice of the commissioners' report to each of the respondents listed in the petition as having an interest in Parcel 32 (JKJ Holdings, Java Moose, Cook County, and the two trustees) and their attorneys, as required by section 117.115, subdivision 2.

MnDOT then filed a notice of appeal of the commissioners' award to the district court, claiming it was "excessive and contrary to Minnesota law" because "construction occurred on the land taken for no more than one construction season." MnDOT served the

notice of appeal on the same subset of respondents to the petition that received notice of the commissioners' report on Parcel 32: JKJ Holdings, Java Moose, Cook County, and the two trustees.

Java Moose filed a notice of cross-appeal in the district court and then moved to dismiss MnDOT's appeal.<sup>1</sup> Java Moose argued that the district court lacked subject-matter jurisdiction over MnDOT's appeal because MnDOT did not serve every respondent named in the condemnation petition, including statutory owners of parcels other than Parcel 32. The district court agreed, concluding that Minnesota Statutes section 117.145 required MnDOT to serve the notice of appeal on all respondents listed in the petition and that MnDOT's failure to do so deprived the court of subject-matter jurisdiction over MnDOT's appeal. Accordingly, the district court dismissed MnDOT's appeal. And, at Java Moose's request, the court also dismissed the cross-appeal.

Java Moose also filed a motion for fees and costs under Minnesota Statutes section 117.031(a). Because the district court had dismissed both appeals, it determined that a final judgment or award had been issued and it could consider whether to award statutory fees and costs under section 117.031(a). That section requires the district court to award fees and costs "[i]f the final judgment or award for damages, as determined at any level in the eminent domain process, is more than 40 percent greater than the last written offer of compensation made by the condemning authority prior to the filing of the petition." The

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<sup>1</sup> Java Moose served its notice of appeal on all respondents to the condemnation petition.

court determined that the 40 percent threshold had been met and awarded Java Moose \$148,702.62 in fees and costs.

MnDOT appeals.<sup>2</sup>

### ISSUES

1. Did the district court err in determining that MnDOT failed to comply with Minnesota Statutes section 117.145 because MnDOT did not serve its notice of appeal of the commissioners' award on all respondents to the condemnation petition, including on respondents who were not required to receive notice of the filing of the commissioners' report pursuant to section 117.115, subdivision 2?
2. If the district court erred in granting Java Moose's motion to dismiss, should we also reverse the award of fees and costs under section 117.031(a)?

### ANALYSIS

MnDOT argues that the district court has subject-matter jurisdiction over its appeal from the commissioners' award because it mailed the notice of appeal to all parties that have had an interest in Parcel 32, which are also the parties who received the notice of the filing of the commissioners' report. Java Moose disagrees and maintains that the district

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<sup>2</sup> In its brief, Java Moose asks us to deny MnDOT oral argument because its brief was untimely filed. *See* Minn. R. Civ. App. P. 134.01 (prohibiting oral argument when a party fails to file a brief timely). Java Moose's request to deny MnDOT oral argument is improper because it was presented in its brief instead of in a "written motion" for an order or other relief, as required by Minn. R. Civ. App. P. 127. We nevertheless note that MnDOT's brief was timely. When the transcript is obtained prior to appeal, as it was in this case, the appellant's brief is due "within 30 days after the filing of the notice of appeal." Minn. R. Civ. App. P. 131.01, subd. 1. Because MnDOT filed its brief within 30 days of filing its notice of appeal, MnDOT's brief is timely. *See id.* It was thus appropriate to allow MnDOT oral argument.

court does not have subject-matter jurisdiction because section 117.145 required MnDOT to serve all respondents listed in the condemnation petition, not only those with an interest in Parcel 32. MnDOT also argues that, if we agree that MnDOT served all parties required under section 117.145 and reinstate the appeal, we must reverse the district court’s award of fees and costs to Java Moose under section 117.031(a).

These issues involve questions of statutory interpretation, which we review de novo. *Wood v. County of Blue Earth*, 994 N.W.2d 309, 312 (Minn. 2023); *see also Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002) (noting that we review issues of subject-matter jurisdiction de novo). The goal of statutory interpretation is to “ascertain and effectuate the intention of the legislature.” *Cambria Co. v. M&M Creative Laminants, Inc.*, 11 N.W.3d 318, 323 (Minn. 2024) (quoting Minn. Stat. § 645.16 (2022)). We construe words and phrases according to their “common and approved usage.” Minn. Stat. § 645.08(1) (2024). And “[w]e interpret a statute as a whole so as to harmonize and give effect to all its parts, and where possible, no word, phrase, or sentence will be held superfluous, void, or insignificant.” *In re Annexation of Certain Real Prop. to City of Proctor*, 925 N.W.2d 216, 218 (Minn. 2019) (quotation omitted). If the language of a statute is plain and unambiguous, we look only to that language to ascertain legislative intent. *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013); *Cambria*, 11 N.W.3d at 323.

Turning to the issues on appeal, we first consider the district court’s determination that section 117.145 requires an appealing party to serve its notice of appeal on all statutory owners named in the condemnation petition. We then address the district court’s decision to award fees and costs under section 117.031(a).



## I

As noted above, under Minnesota Statutes section 117.145, a party appealing from a commissioners' award must

serv[e] by mail a copy of [the] notice [of appeal] on all respondents and all other parties to the proceedings having an interest in any parcel described in the appeal who are shown in the petitioner's affidavit of mailing, required by section 117.115, subdivision 2, as having been mailed a notice of the report of the commissioners.

Java Moose argues, and the district court determined, that "all respondents" refers to all statutory owners named in the condemnation petition. For the reasons that follow, we disagree and conclude that section 117.145 requires service on all respondents who were required under section 117.115 to have been mailed a copy of the relevant commissioners' report. It does not require service on all other respondents listed in the condemnation petition.

### A. **The *Woodhall* Case.**

In *Woodhall v. State*, the supreme court interpreted the service requirement in section 117.145 and explained that it "unambiguously requires service of notice of appeal on all parties who are required to receive notice of the commissioners' report as indicated in the state's affidavit of mailing" under section 117.115, subdivision 2. 738 N.W.2d at 358 (syllabus by the court). *Woodhall* also decides this case. The supreme court's analysis there leads us to conclude that section 117.145 does not require service on respondents listed in the condemnation petition who were not required to receive notice of the commissioners' report.

*Woodhall* involved two appeals from commissioners' awards, consolidated on appeal to this court, that stemmed from petitions by the state "to acquire certain parcels of property . . . under the power of eminent domain." *Id.* at 359. Commissioners had awarded damages with respect to two of the parcels identified in those petitions, and the statutory owners of those parcels filed notices of appeal to the district court under section 117.145. *Id.* The owners only served the state with the notice of appeal; they did not serve other statutory owners who had received notice of the filing of the commissioners' reports pursuant to section 117.115, subdivision 2(1). *See id.* The state moved to dismiss the owners' appeals to the district court "on the grounds that [the owners] failed to serve timely notices of their appeals on" the other parties who had received notice of the filing of the commissioners' report, so the district court lacked subject-matter jurisdiction over their appeals. *Id.* The owners, in turn, explained that they did not serve all the statutory owners who received the notice of the commissioners' report because the unserved respondents purportedly no longer held interests in the properties. *Id.* at 360. The owners argued that section 117.145 required "service only on those parties that retain an ongoing interest in the land that is the subject of the appeal." *Id.*

The district court granted the motion to dismiss, and the owners appealed to our court. We affirmed on the basis that "Minn. Stat. § 117.145 unambiguously requires service of notice of appeal on all 'respondents named in the eminent domain proceeding.'" *Id.* (quoting *Woodhall v. State*, No. A05-2424, 2006 WL 2053415, at \*2 (Minn. App. July 25, 2006), *aff'd*, 738 N.W.2d 357 (Minn. 2007)). The supreme court then also affirmed, but on different grounds. *Id.* at 360-61.

The supreme court did not construe the service provision in section 117.145 as requiring service on all respondents listed in the condemnation petition, as we had. Instead, the supreme court interpreted the notice of appeal provision, section 117.145, in tandem with the mailing of the notice of the commissioners' award provision, section 117.115, subdivision 2. *Id.* at 361. If a respondent was listed in the petition as having an interest in the parcel described in the appeal, then that respondent was required to receive notice of the filing of the commissioners' report under section 117.115, subdivision 2, and, in turn, was required to have received a notice of appeal of the commissioners' award under section 117.145. *See id.* at 361.

In construing section 117.145 as “promot[ing] the goal of ensuring that all parties with a potential stake in the outcome of the proceedings are involved at all stages of the proceedings,” the court rejected the premise that parties who never had an interest in the parcel described in the appeal are entitled to service of a notice of appeal under section 117.145. *Id.* at 362. The court dispelled the notion that its “ruling [or] the facts of [the] case suggest that the service requirement sweeps so broadly” that “a condemning authority could name any number of unrelated parties as respondents merely to make taking an appeal logistically burdensome.” *Id.*

In light of that reasoned analysis, we understand *Woodhall* to mean what it says, and nothing more: section 117.145 “unambiguously requires service of notice of appeal on all parties who are required to receive notice of the commissioners' report as indicated in the state's affidavit of mailing” under section 117.115, subdivision 2. *Id.* at 358 (syllabus

by the court). Section 117.145 does not also require service on all other respondents who did not receive notice of the commissioners' report.

Java Moose argues that *Woodhall* supports its position that section 117.145 does require service of a notice of appeal of a commissioners' award on all respondents to the condemnation petition. We are not persuaded. First, Java Moose focuses on a statement in one part of the *Woodhall* analysis that says the statute requires service "on two separate groups: (1) all respondents, and (2) all other parties to the proceedings who are required by section 117.115, subdivision 2, to have been mailed notice of the commissioners' report." *Id.* at 361. But the relevance of that distinction in *Woodhall* makes sense in the context of the text of the statute. In its entirety, the statutory clause identifying "all other parties" describes them as "all other parties to the proceedings *having an interest in any parcel described* in the appeal who are shown in the petitioner's affidavit of mailing, required by section 117.115, subdivision 2, as having been mailed a notice of the report of the commissioners." Minn. Stat. § 117.145 (emphasis added). As explained, the issue in *Woodhall* was whether the respondents, who at one time had an interest in the property but purportedly no longer did at the time of the appeal, were required to be served with a notice of appeal under section 117.145. Through that lens, the court's distinction between the "all respondents" and the "all other parties to the proceeding having an interest in any parcel" (i.e., parties with a present interest) makes sense. The court did not view the clause "having an interest in any parcel" as modifying the "all respondents" category, such that it restricted the respondents entitled to receive service to those with a present interest in the property. *See Woodhall*, 738 N.W.2d at 361-62. Instead, the court focused on whether the unserved

respondents “had an interest in the affected parcel at the beginning of the condemnation proceeding.” *Id.* at 362. And each of those respondents received notice of the commissioners’ report pursuant to section 117.115, subdivision 2, which requires service of the report on “each respondent listed in the petition as having an interest in any parcel described in the report.” Nothing in the court’s analysis leads to the conclusion that “all respondents” means all respondents to the underlying condemnation petition.

Second, Java Moose’s argument that “all respondents” means “‘all respondents’ to the initial petition” ignores the posture of *Woodhall*. Like here, the appeals in *Woodhall* stemmed from condemnation petitions concerning more parcels than those parcels that were described in the commissioners’ reports at issue in the appeals. *See id.* at 359-60. That means there were other unserved respondents to the condemnation petitions in *Woodhall*, in addition to the unserved respondents who had received notice of the commissioners’ report. And yet the supreme court did not hold, as this court did, that the “all respondents” language referred to “all ‘respondents named in the eminent domain proceeding.’” *Id.* at 360 (quoting *Woodhall*, 2006 WL 2053415, at \*2). Rather, it focused solely on whether it mattered that a respondent has an ongoing interest in the parcel described in the appeal. *See id.* at 361-62. That analysis would have been unnecessary had the court understood section 117.145 to require service on all respondents to the condemnation petition.

For these reasons, our close read of *Woodhall* leads us to conclude that the district court erred in dismissing MnDOT’s appeal of the commissioners’ award for lack of subject-matter jurisdiction on the basis that MnDOT did not serve all respondents to the condemnation petition.

**B. The Plain Meaning of the Service Requirement in Section 117.145.**

To the extent *Woodhall* leaves any doubt about the meaning of section 117.145, the plain language of that provision unambiguously requires service of a notice of appeal on only those respondents who were required to be included in the petitioner’s affidavit of mailing of the commissioners’ report—i.e., those “listed in the petition as having an interest in any parcel described in the report.” Minn. Stat. § 117.115, subd. 2. The service provision in section 117.145 begins by requiring the appealing party to “serv[e] by mail a copy of [the] notice” on “on all respondents and all other parties to the proceedings having an interest in any parcel described in the appeal” who are required by section 117.115, subdivision 2, to have been mailed notice of the commissioners’ report. Minn. Stat. § 117.145. Section 117.145 then specifies how service by mail is effected: “upon deposit of the notice in the United States mail, . . . addressed *to each person served at the address shown in the petitioner’s affidavit of mailing required by section 117.115, subdivision 2.*” *Id.* (emphasis added). It follows that only those parties who were mailed notice of the commissioners’ report under section 117.115, subdivision 2, must be served with the notice of appeal. *See also id.* (requiring service on “all respondents” and “all *other parties . . . who are shown in the petitioner’s affidavit of mailing . . . as having been mailed a notice of the report of the commissioners*” (emphasis added)). The only respondents who must receive service of the notice of the commissioners’ report and be included in the petitioner’s

affidavit of mailing are those “respondent[s] listed in the petition as having an interest in any parcel described in the report.” Minn. Stat. § 117.115, subd. 2(1).<sup>3</sup>

Our understanding also comports with the broader statutory context surrounding a commissioners’ award and any appeal therefrom. The commissioners are required to “make a separate assessment and award of the damages which in their judgment will result to *each of the owners of the land* by reason of such taking and report the same to the court.” Minn. Stat. § 117.085 (emphasis added). In a case like this, when a condemnation petition addresses many parcels, the commissioners may issue a separate report for each parcel or a subset of parcels. For example, the commissioners’ report at issue here only described and made an award of damages with respect to Parcel 32. In turn, Parcel 32 is the only parcel described in MnDOT’s notice of appeal—the notice does not reference other parcels that were listed the underlying condemnation petition or other awards relating to those distinct parcels. After the report is filed, the condemning authority must mail notices to only those respondents that were “listed in the petition as having an interest in any parcel described in the report,” and not on all other respondents listed in the petition. Minn. Stat.

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<sup>3</sup> Java Moose argues that the language in section 117.115, subdivision 2, supports its reading that section 117.145 requires service on all respondents in the petition. It argues that, because notice in section 117.115, subdivision 2, is limited to “each respondent listed in the petition as having an interest in any parcel described in the report,” the phrase “all respondents” in section 117.145 is broader and requires service on all respondents listed in the petition, regardless of whether they have an interest in the parcel described in the notice of appeal. We are not persuaded. As we have explained, other language in section 117.145 provides that “all respondents” in that provision refers to the respondents who, under section 117.115, subdivision 2, are required to be mailed a notice of filing of the commissioners’ report. Put another way, section 117.145 incorporates section 117.115’s limitation on the class of respondents who must be served a notice of appeal.

§ 117.115, subd. 2. The district court then oversees any appeal in which “the owner or the petitioner shall be entitled to a jury trial,” Minn. Stat. § 117.165, and “[t]he court or jury shall reassess the damages de novo,” Minn. Stat. § 117.175, subd. 1. At each of these steps, the proceedings relate only to the parcel that is subject to the commissioners’ report. Indeed, the filing of a notice of appeal is treated as the commencement of a new civil action for scheduling purposes. *See* Minn. R. Gen. Prac. 141.02 (providing that a notice of appeal from a commissioners’ award is deemed the first document filed for purposes of Minn. R. Gen. Prac. 104 (requiring a civil cover sheet when an action is commenced) and 111 (providing for the scheduling of civil cases)).

In sum, following *Woodhall* and the plain language of the statute, we hold that section 117.145 requires service of a notice of appeal from a commissioners’ award on all respondents who were required to be notified under Minnesota Statutes 117.115, subdivision 2, of the filing of the commissioners’ report that sets forth the award subject to appeal, and not also on all other respondents to the condemnation petition.

**C. MnDOT’s Argument that “Respondent” in Section 117.145 Means “Appellee.”**

Before turning to the next issue on appeal, we address MnDOT’s lead argument that the term “respondents,” as it appears in section 117.145, means “appellees” to the appeal of the commissioners’ award. Although we agree with MnDOT that section 117.145 did not require it to serve its notice of appeal on all respondents listed in the condemnation petition in this case, we are not convinced that “respondents” means “appellees” in this context. Because the parties extensively briefed and argued this issue, we explain why.



The term “respondent” is not defined in the relevant statutes, so we may “consult dictionary definitions as part of the inquiry” into its plain meaning. *In re SIRS Appeal by Nobility Home Health Care, Inc.*, 999 N.W.2d 843, 856 (Minn. 2024) (quotation omitted). The parties rely on different definitions of “respondent” from *Black’s Law Dictionary* to support their respective positions. MnDOT invokes one definition: “The party against whom an appeal is taken; APPELLEE.” *Black’s Law Dictionary* 1572 (12th ed. 2024). Java Moose relies on another definition: “The party against whom a motion or petition is filed. Cf. PETITIONER.” *Id.*

“When a word has a variety of meanings, we examine the context in which the word appears” to discern its meaning in a particular statute. *Cocchiarella v. Driggs*, 884 N.W.2d 621, 625 (Minn. 2016). Under the presumption of consistent usage, we presume the plain meaning of “respondent” in section 117.145 has the same meaning as it does in the other parts of the statute. *See Langston v. Wilson McShane Corp.*, 776 N.W.2d 684, 690 (Minn. 2009) (“There is a natural presumption that identical words used in different parts of the same act are intended to have the same meaning.” (quotation omitted)); *State v. Schmid*, 859 N.W.2d 816, 823 (Minn. 2015) (applying the presumption of consistent usage in a plain meaning analysis of a statutory term). Here, the statutory context convinces us that the only reasonable interpretation of “respondent” is “a party against whom a petition is filed.” As we explained above, the question boils down to whether service is required on “all respondents to the condemnation petition” or “all respondents who were required to receive service of the commissioners’ report.” “Respondent” does not mean “appellee” in this context.

Recall that a condemnation proceeding begins when a condemning authority files a petition. Minn. Stat. § 117.055, subd. 1. The condemning authority is then referred to as the “petitioner” in subsequent statutory provisions relating to the proceedings. *See, e.g.*, Minn. Stat. §§ 117.055, subd. 2, .065, .115. Likewise, it is undisputed that, in three provisions of the statute where the term “respondent” appears, that word refers to the statutory owners listed in the condemnation petition (i.e., the parties against whom the petition was filed). *See* Minn. Stat. § 117.105 (2024) (referring to the condemning authority as the “petitioner” and requiring service of an extension request “upon such respondents, or their attorneys, who entered an appearance at the hearing on the petition or noticed the petitioner of their formal appearance”); Minn. Stat. § 117.115 (specifying that “respondent” refers to “each respondent listed in the petition as having an interest in any parcel described in the [commissioners] report”); Minn. Stat. § 117.155 (2024) (using the terms “petitioner” and “respondents” to refer to the condemning authority and parties against whom the condemnation petition was filed, respectively). The parties only dispute the meaning of “respondent” under section 117.145.

MnDOT argues that the term “respondent” in section 117.145 means “appellee,” unlike the other provisions, because it arises in a provision establishing an appeal process. To be sure, the presumption of consistent usage is not rigid and “readily yields to context.” *State v. Thompson*, 950 N.W.2d 65, 70 (Minn. 2020) (quoting *Util. Air Regul. Grp. v. E.P.A.*, 573 U.S. 302, 320 (2014)). But the context here does not rebut the presumption of consistent usage. For one, section 117.145 uses the term “petitioner” to reference the condemning authority, consistent with the legislature’s use of the terms “petitioner” and

“respondent” throughout the rest of the statute. *See* Minn. Stat. § 117.145 (referring to the “petitioner’s affidavit of mailing, required by section 117.115, subdivision 2”). For another, section 117.155 also relates to the appeal process, but the parties agree that “respondent” there refers to statutory owners named in the condemnation petition. *See* Minn. Stat. § 117.155 (“If either the petitioner or any respondent appeals from an award, the respondent or respondents, if there is more than one, . . . may demand of the petitioner a partial payment of the award pending the final determination thereof[.]”).

The *Woodhall* court also understood the term “respondents” to mean respondents to a petition and not “appellees.” There is no question that the unserved respondents at issue in that case were not “appellees,” because the appeal was taken against the state and not those parties. *Id.* at 361-62. Yet the supreme court ruled that they were “respondents” within the meaning of section 117.145 and therefore must be served with the notice of appeal. *See id.* at 362.

Considering the whole statute and the *Woodhall* decision, we conclude that the meaning of “respondents” in section 117.145 generally refers to statutory owners listed in the condemnation petition, and not to an “appellee.”<sup>4</sup> But for the reasons discussed above,

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<sup>4</sup> MnDOT argues that if we do not interpret “respondent” in section 117.145 to mean “appellee,” then the statute would not require an appealing owner to serve the notice of appeal on the condemning authority. Java Moose disagrees and maintains that, even if the condemning authority is not a “respondent,” it falls within the second group of parties that are required to receive service of the notice of appeal, i.e., “all other parties to the proceedings having an interest in any parcel described in the appeal.” Minn. Stat. § 117.145. We take no position on that issue because it is not before us.

our resolution of this issue does not affect our bottom-line decision that the district court erred in dismissing MnDOT's appeal for lack of jurisdiction.

## II

MnDOT also appeals from the district court's award of fees and costs under Minnesota Statutes section 117.031(a). That provision states that an owner may receive "reasonable attorney fees, litigation expenses, appraisal fees, other experts fees, and other related costs" if the "final judgment or award for damages, as determined at any level in the eminent domain process, is more than 40 percent greater than the last written offer of compensation made by the condemning authority prior to the filing of the petition." Minn. Stat. § 117.031(a).

MnDOT argues that if we reverse the dismissal for lack of subject-matter jurisdiction and allow its appeal of the commissioners' award to move forward, we must reverse the award of fees and costs.<sup>5</sup> Java Moose disagrees and maintains that it is entitled to fees and costs under Minnesota Statutes section 117.031(a) because "the commissioners' award is from the first level of the eminent domain proceeding, and the statute allows for collecting reasonable fees 'at any level in the eminent domain process.'"

The district court awarded fees and costs to Java Moose under section 117.031(a) based on the reasoning that (1) the district court's dismissal of both the appeal and cross-appeal of the commissioners' award made the award final and (2) the commissioners'

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<sup>5</sup> Because we agree with MnDOT that reversal is appropriate in light of our decision reversing the order on the motion to dismiss, we do not reach MnDOT's alternative argument that the district court abused its discretion in awarding fees and costs.

award of \$127,913 is more than 40% greater than MnDOT's \$84,475 quick-take appraisal. Because we are reversing the district court's dismissal of MnDOT's appeal, one basis for the district court's decision to award fees and costs no longer stands. We therefore also reverse the award of fees and costs.<sup>6</sup>

## **DECISION**

The requirement in Minnesota Statutes section 117.145 that the appealing party must serve "all respondents" with the notice of appeal means that it must serve all respondents who were required under section 117.115, subdivision 2, to have been mailed a copy of the commissioners' report at issue in the appeal, not necessarily all respondents listed in the condemnation petition. Because MnDOT served all respondents who were required to receive notice of filing of the commissioners' report under section 117.115, subdivision 2, the district court erred in dismissing the appeal for lack of subject-matter jurisdiction. We therefore reverse the district court's grant of the motion to dismiss MnDOT's appeal. And, because we reverse the dismissal of the appeal from the commissioners' award, we also reverse the award of fees under section 117.031(a). The case is remanded for further proceedings not inconsistent with this opinion.

### **Reversed and remanded.**

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<sup>6</sup> The parties ask us to address whether the district court can award fees and costs after the commissioners' award has been appealed but before the district court has decided the appeal. MnDOT acknowledges that "whether it is appropriate to award attorney fees in the absence of a final judgment after the commissioner award has been appealed was not decided by the district court." Because the district court dismissed MnDOT's appeal, it did not reach the issue of whether it could have awarded attorney fees and costs while MnDOT's appeal was pending. We decline to decide that issue for the first time on appeal.