Injustice remedied: Notice of claims in condemnation

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The Uniform Condemnation Procedures Act (UCPA), MCL 213.55(3)(a) requires condemning agencies to submit "good faith offers" to purchase before initiating lawsuits to acquire property. In these offers, agencies often fail to consider key information that should increase compensation, such as losses to the business or remainder of the property.

In 1996, legislation placed a heavy burden on owners to correct the agencies' omissions of such information. If owners could not produce detailed writings explaining additional claims by strict statutory deadlines, the claims were barred.

Because business losses, partial taking and other just compensation issues are difficult to calculate in the prescribed period, many owners never received compensation they justly deserved. To create a more level field, the 2006 amendment to the statute and Court of Appeals opinion have restored fairness to this process.

The valuation process is difficult and complex. The UCPA requires that even a valuation of a vacant lot must include a full appraisal conforming to the Uniform Standards of Professional Appraisal Practice. If an agency needs to take a business's entire parcel, the solution is relatively simple: pay to relocate the business or purchase it in its entirety.

For instance, if the Michigan Department of Transportation (MDOT) needs only a small strip of land to expand a road, it may offer a price based on acreage alone, not realizing that strip has value to the business as its primary means of ingress and egress.

An agency must submit a good faith offer to purchase an owners' property before resorting to judicial condemnation (MCL 213.55(1)). If the offer leaves out "items of compensable property or damage," an owner must submit additional claims in writing to the agency or compensation for those damages is barred forever (MCL 213.55(3)).

The original MCL 213.55(3) oppressed owners in three ways (1996 PA 474, §5, as amended by 2006 PA 439). First, it had strict deadlines, requiring an owner to file additional claims 90 days after receiving a good faith offer or 60 days after service of the condemnation complaint.

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Second, the court could extend these deadlines, but only once, and only if the "rights of the agency are not prejudiced by the delay" (Id).

Third, and most salient, the owner's claim had to "provide sufficient information and detail to enable the agency to evaluate the validity of the claim and to determine its value" (Id).

Because it takes time and money to compile "sufficient information and detail," businesses often failed to meet these deadlines. In *Novi v. Woodson*, 251 Mich App 614; 651 NW2d 448 (2002), the court barred owners' claims for business interruption because their writing only claimed "compensation for … 2. Business interruption avoidance damages and/or going concern damages."

Barring this claim reduced Woodson's compensation by more than a third. They argued that the deadlines were impossible to meet, but the court gratingly stated they should have negotiated with the city for an extension (see also *Carrier Creek Drain Drainage Dist v. Land One, LLC*, 269 Mich App 324, 327-329; 712 NW2d 168 (2005)).

In 2006, as eminent domain reform fever gripped Michigan, voters amended the Constitution to limit "economic development" takings (Const 1963, art 10, §2). On Dec. 23, 2006, the Michigan Legislature, possibly spurned on by voter sentiment, amended MCL 213.55(3) (2006 PA 439).

The new section extended the deadline for filing claims to 180 days after service of the complaint and allowed unlimited extensions for "reasonable cause" (MCL 213.55(a), (c)). Most importantly, while the statute still required "sufficient information and detail" for supplemental claims:

> "For any claim that has not fully accrued or is continuing in nature when the claim is filed, the owner shall provide information then reasonably available that would enable the agency to evaluate the claim, subject to the owner's continuing duty to supplement that information as it becomes available" (MCL 213.55(3)(c)).

This new standard evenly distributed the burden between condemnor and owner. No longer did owners have to produce detailed assessments on short notice.

The statute also implemented a discovery process, under which the parties would exchange appraisals and the court would manage the process like discovery in any civil litigation (MCL 213.55(b), (d)). Further, the statute protected agencies by requiring owners file supplemental claims at least 90 days before trial (MCL 213.55(c)).

The Court of Appeals recently applied the amended MCL 213.55(3) in *Dept of Transp v Pavlov Properties* (unpublished opinion per curiam of the Court of Appeals, decided Dec. 16, 2010 (No 286926)).

In 2006, MDOT needed a 10-foot-wide strip of land from the owner to build a freeway interchange. MDOT's good faith offer was $75,000 for the strip and did not consider relocation and business interruption. However, taking this strip would have cut off one of two driveways leading to the owners' truck equipment business.

With no room for trucks to turn around, using one driveway for ingress and egress forced the owners to relocate. The owners bought a new parcel for $145,000 and notified MDOT of additional losses of "access, and damages due to business interruption, loss of business value, compensation for fixtures, cost to cure and related damages"

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and "damages related to acquisition of the second site in an attempt to continue their business activities uninterrupted."

MDOT alleged these written notices did not provide "sufficient information and detail" under the old MCL 213.55(3), which it argued still applied given the timing of its lawsuit. However, the Court of Appeals applied the statute retroactively, because the Legislature specifically intended to "remedy a perceived injustice" created by *Woodson* and *Carrier Creek*. The appellate court held the owners' claim met the new standard and allowed their additional claim for relocation and interruption.

Producing a detailed assessment of business value and the effect of a taking is an expensive, time-consuming process. The amended MCL 213.55(3) redistributes the burden in a more balanced fashion between the parties and provides the court with broader discretion to oversee a fair process.

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