



## Eminent domain

### Basic points all property owners should know

By Jerome P. Pesick and H. Adam Cohen

**M**ichigan's Constitution permits many governmental agencies to take property by power of eminent domain, without the owner's consent, for public use. This process is also known as "condemnation." When this occurs, the property owner is entitled to receive "just compensation" for the taking. Here are some fundamental legal issues you should know as a property owner.

#### Public use

The federal government, the state of Michigan, municipalities, road and drain commissions and other governmental agencies all have the power of eminent domain. Government may not, however, employ eminent domain for primarily private use. In recent cases, for example, condemned landowners successfully sued to block an attempted taking for an "industrial spur" driveway, on grounds that private third parties, rather than the public, stood to primarily benefit from the project. Other attempted takings also have been successfully challenged, based on lack of good faith in governmental offers of just compensation, lack of jurisdiction and lack of necessity for condemnation.

Recently, in a far-reaching opinion, the Michigan Supreme Court held that a governmental agency may not utilize eminent domain for the purpose of conveying taken property to a private third party for economic development. Ultimately, questions of public use and public necessity are highly fact-driven. All real estate developers and property owners are encouraged to coordinate with experienced condemnation counsel prior to asserting such constitutional challenges.

#### Just compensation

In the vast majority of condemnation actions, the primary issue is the amount of just compensation to which the property owner is entitled. Under Michigan law, upon filing a condemnation action the governmental agency is required to tender a check equal to the agency's own good faith estimate of just compensation. The property owner is then entitled to accept those funds and proceed to seek additional just compensation for the acquisition.

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For purposes of estimating the value of the land physically taken, just compensation is often based on the property's "market value," which is equal to the amount that a willing, knowledgeable and informed purchaser would pay to an equally knowledgeable and informed seller on a particular date, known as the "date of taking." However, many condemnation actions are not limited to questions of land value alone. For example, Michigan condemnation law permits recovery for damages

incurred to avoid business interruption, damages for going out of business as a result of a taking and damages to property remaining after a partial taking.

Professional analysis of such issues will ultimately make the difference between receiving true just compensation and merely the amount that the government wishes to pay for its taking. In a recent landmark case, a municipality offered \$13.7 million for a 6.3-acre tract of riverfront property. A jury, however, returned a verdict for \$25 million, the largest eminent domain jury verdict rendered in Michigan's history.

The field of eminent domain, or condemnation, is complicated and technical, requiring coordination among the property owner, expert witnesses and experienced condemnation counsel.



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