

If this opinion indicates that it is “FOR PUBLICATION,” it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN
COURT OF APPEALS

INDIANA MICHIGAN POWER COMPANY,

Plaintiff-Appellant,

v

COMMUNITY MILLS, INC.,

Defendant-Appellee,

and

GREENSTONE FARM CREDIT SERVICES,
SPRINT COMMUNICATION, CO., also known as
PRENTICE-HALL COR SYSTEM,
CENTURYLINK COMMUNICATIONS, doing
business as QUEST COMMUNICATIONS, CO.,
LEVEL 3 COMMUNICATIONS, LLC, WITEL
COMMUNICATION, INC., NEXTIRAONE, LLC,
and MCI COMMUNICATION SERVICES, INC.,

Defendants.

Before: RONAYNE KRAUSE, P.J., and MARKEY and BORRELLO, JJ.

PER CURIAM.

In this condemnation action, plaintiff Indiana Michigan Power Company (IMPC) appeals by right the trial court’s order granting summary disposition in favor of defendant Community Mills, Inc., under MCR 2.116(C)(4). On appeal, IMPC argues that the trial court erred in its interpretation and application of the Uniform Condemnation Procedures Act (UCPA), MCL 213.51 *et seq.* The trial court ruled that it lacked subject-matter jurisdiction because IMPC failed to tender a good-faith written offer to obtain property interests across land owned by Community Mills. We conclude that the trial court has subject-matter jurisdiction and that the arguments posed by Community Mills assailing the written offer concerned whether IMPC offered an amount that

constituted just compensation and not whether it was made in good faith. Accordingly, we reverse and remand for further proceedings.

IMPC filed an eminent-domain complaint requesting the condemnation of certain real property owned by Community Mills. IMPC sought easements across the land for the purpose of rebuilding and upgrading an existing transmission line. IMPC alleged that it engaged the services of Carlson Appraisal Company to conduct an appraisal of the property. On the basis of the appraisal, IMPC submitted a purported good-faith written offer of \$84,000 as just compensation for obtaining the proposed easements. There is no dispute that Community Mills rejected the offer.¹ Community Mills moved for summary disposition under MCR 2.116(C)(4), arguing that the trial court lacked subject-matter jurisdiction because IMPC “failed to make a good-faith offer for all property rights impacted by its taking,” which is a jurisdictional prerequisite under the UCPA. Community Mills contended that IMPC’s so-called “good-faith” offer was deficient because it did not fully take into consideration the impact of the condemnation on the remaining surrounding property owned by Community Mills. In its supporting brief, Community Mills maintained that IMPC needed to “make a good faith offer as to *all* the property rights impacted by the taking.” This included non-easement property belonging to Community Mills over which IMPC would have unrestricted ingress and egress rights for purposes of accessing the easements, as well as non-easement property that Community Mills could otherwise use to derive income now and in the future. Community Mills argued that “IMPC’s taking destroys these property rights, without making any offer of just compensation.”

Applying a strict-compliance standard, the trial court ruled that the alleged good-faith written offer was woefully inadequate because the appraisal failed to substantively identify and value all of the various property rights and interests held by Community Mills that would be affected by the condemnation. Concluding that it therefore lacked subject-matter jurisdiction, the trial court dismissed the action without prejudice.

We review *de novo* the interpretation and application of the UCPA, as well as the question of whether a trial court has subject-matter jurisdiction. *Washtenaw Co Bd of Co Rd Comm’rs v Shankle*, 327 Mich App 407, 412; 934 NW2d 279 (2019). Similarly, this Court reviews *de novo* a ruling on a motion for summary disposition. *Johnson v Vanderkooi*, 502 Mich 751, 761; 918 NW2d 785 (2018). MCR 2.116(C)(4) provides for summary disposition when “[t]he court lacks jurisdiction of the subject matter.” “When viewing a motion under MCR 2.116(C)(4), this Court must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law, or whether the affidavits and other proofs show that there was no genuine issue of material fact.” *Weishuhn v Catholic Diocese of Lansing*, 279 Mich App 150, 155; 756 NW2d 483 (2008) (quotation marks and citation omitted).

“Private property shall not be taken for public use without just compensation therefore being first made or secured in a manner prescribed by law.” Const 1963, art 10, § 2. “Compensation shall be determined in proceedings in a court of record.” *Id.* The purpose of the UCPA is to ensure that the guarantee of “just compensation” found in the Michigan Constitution

¹ The complaint described the offer as a “single, unitary offer” to all of the named property owners. The other named defendants, who are not parties to this appeal, held various nonfee interests.

is honored. *Shankle*, 327 Mich App at 414. Under Michigan law, “just compensation” means the proper amount of compensation for condemned property after taking into account all the factors relevant to market value. *Silver Creek Drain Dist v Extrusions Div, Inc*, 468 Mich 367, 378-379; 663 NW2d 436 (2003). “Although condemnation results in a ‘forced sale,’ the price the condemning agency is required to pay must approximate that price which a willing buyer would have offered for the property at the time of the taking.” *Mich Dep’t of Transp v Haggerty Corridor Partners Ltd Partnership*, 473 Mich 124, 142; 700 NW2d 380 (2005). The UCPA is to be strictly construed, and its jurisdictional conditions must be established in fact and cannot rest upon technical estoppel and waiver. *Shankle*, 327 Mich App at 412-413.

At issue in this case is the interpretation and application of and interplay between MCL 213.55(1) and (3)(a), which provide in pertinent part as follows:

(1) Before initiating negotiations for the purchase of property, the agency shall establish an amount that it believes to be just compensation for the property and promptly shall submit to the owner a good faith written offer to acquire the property for the full amount so established. . . . If there is more than 1 owner of a parcel, the agency may make a single, unitary good faith written offer. . . . The amount shall not be less than the agency’s appraisal of just compensation for the property. . . . The agency shall provide the owner of the property and the owner’s attorney with an opportunity to review the written appraisal, if an appraisal has been prepared, or if an appraisal has not been prepared, the agency shall provide the owner or the owner’s attorney with a written statement and summary, showing the basis for the amount the agency established as just compensation for the property. If an agency is unable to agree with the owner for the purchase of the property, after making a good faith written offer to purchase the property, the agency may file a complaint for the acquisition of the property in the circuit court in the county in which the property is located. . . . The complaint shall ask that the court ascertain and determine just compensation to be made for the acquisition of the described property. . . .

* * *

(3) In determining just compensation, all of the following apply:

(a) If an owner claims that the agency is taking property other than the property described in the good faith written offer or claims a right to compensation for damage caused by the taking, apart from the value of the property taken, and not described in the good faith written offer, the owner shall file a written claim with the agency stating the nature and substance of that property or damage. The owner’s written claim shall provide sufficient information and detail to enable the agency to evaluate the validity of the claim and to determine its value. The owner shall file the claim within 90 days after the good faith written offer is made pursuant to section 5(1) or 180 days after the complaint is served, whichever is later, unless a later date is set by the court for reasonable cause. If the appraisal or written estimate of value is provided within the established period for filing written claims, the owner’s appraisal or written estimate of value may serve as the written claim

under this act. If the owner fails to timely file the written claim under this subsection, the claim is barred.

“The purpose in requiring that a condemning authority first offer to purchase property for an amount no less than that which it believes to be full and just compensation is to encourage negotiated purchases of property needed for a public purpose and, thereby, avoid condemnation litigation entirely.” *Dep’t of Transp v Frankenlust Lutheran Congregation*, 269 Mich App 570, 577; 711 NW2d 453 (2006). “Where such negotiations fail, however, the UCPA fulfills its constitutional purpose by requiring that just compensation for the property taken be determined by a trier of fact in a court of record.” *Id.*, citing MCL 213.63.²

“In order to initially invoke the trial court's jurisdiction, strict compliance with the statutory language of the UCPA require[s] that the fee owners and any other owners of legal property interests be given a good-faith offer.” *Shankle*, 327 Mich App at 417. “Because a good-faith written offer is a necessary condition precedent to invoking the trial court's jurisdiction in condemnation proceedings under the UCPA, the failure to tender a statutorily compliant good-faith written offer to all fee owners and any other owners of interests in the properties render[s] the trial court without subject-matter jurisdiction over the action.” *Id.* at 418; see also *Lenawee Co v Wagley*, 301 Mich App 134, 160; 836 NW2d 193 (2013) (“In accordance with the UCPA, and specifically MCL 213.55, a governmental agency is required to tender a good-faith offer to acquire private property before initiating litigation.”).³

In this case, the trial court ruled that the offer was deficient because the underlying appraisal purportedly failed to individually address and value several unique aspects of the property that would be impacted by IMPC’s easements. The trial court specifically cited (1) “ingress/egress rights,” (2) the “impact [on Community Mills’s] existing operations,” and (3) the “impact on the ability of Community Mills to expand and improve.”

We conclude that the deficiencies Community Mills complained of and found by the trial court did not reflect a failure to tender a good-faith written offer. Rather, the alleged deficiencies effectively pertained to ascertaining the proper amount of just compensation. We recognize that there can be a fine line between an offer that is so unsubstantiated that it can be characterized as revealing a lack of good faith and an offer that is made in good faith but does not accurately reflect

² MCL 213.63 provides:

The jury or the court shall award in its verdict just compensation for each parcel. After awarding the verdict, on request of any party, the court shall divide the award among the respective parties in interest, whether the interest is that of mortgagee, lessee, lienor, or otherwise, in accordance with proper evidence submitted by the parties in interest.

³ Making “a good-faith offer is a necessary condition precedent to invoking the jurisdiction of the circuit court in a condemnation action.” *Wagley*, 301 Mich App at 160 (quotation marks and citation omitted).

an amount that equates to just compensation. But the means of defining that line for our purposes is found in the language of MCL 213.55(3)(a), which expressly concerns the assessment of “just compensation.” And MCL 213.55(3)(a), as indicated earlier, contemplates a situation where “an owner claims that the agency is taking property other than the property described in the good faith written offer or claims a right to compensation for damage caused by the taking, apart from the value of the property taken, and not described in the good faith written offer[.]” This is the essence of Community Mills’s argument. Moreover, the record does not support a determination that IMPC tendered the written offer in bad faith. Additionally, the trial court ruled that it could not entertain the condemnation action because it lacked subject-matter jurisdiction while at the same time the court effectively concluded that the written offer did not amount to just compensation because all aspects of the loss Community Mills might suffer were not considered. This is part of the determination to be made by the trier of fact during litigation, i.e., when jurisdiction is being exercised.⁴ In sum, we hold that the trial court both has subject-matter jurisdiction and that it erred by granting summary disposition in favor of Community Mills.

We reverse and remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Amy Ronayne Krause
/s/ Jane E. Markey
/s/ Stephen L. Borrello

⁴ MCL 213.59(5)(c) and (d) provide that a “court shall not delay or deny surrender of possession because of . . . [a]n allegation that the agency should have offered a higher amount for the property[,] [or] . . . [a]n allegation that the agency should have included additional property in its good faith written offer.” A court’s determination that it lacks subject-matter jurisdiction because an offer was not high enough or because additional property should have been encompassed by the offer, which reasons were proffered by Community Mills, is wholly inconsistent with MCL 213.59(5)(c) and (d).