



Report on Public Policy Position

Name of Section or Committee:

Real Property Law Section

Contact Person:

Lawrence Shoffner

Email:

lshoffner@comcast.net

Other:

Carrier Creek Drainage Dist. v. Land One, L.L.C.

Date position was adopted:

February 8, 2006

Process used to take the ideological position:

Vote of the Council of the Section

Number of members in the decision-making body:

19

Number who voted in favor and opposed to the position:

Of the 19 voting members, 14 voted. All 14 voted in favor of the position.

FOR SECTIONS ONLY:

- ✓ This subject matter of this position is within the jurisdiction of the section.
- ✓ The position was adopted in accordance with the Section's bylaws.
- ✓ The requirements of SBM Bylaw Article VIII have been satisfied.

If the boxes above are checked, SBM will notify the Section when this notice is received, at which time the Section may advocate the position.

Position:

The only dispute in Carrier Creek was the amount that the drain district was required to pay as “just compensation” for taking defendant’s property. Just compensation is based on the taken property’s value, and defendant argued that the property’s value must be determined taking into account the reasonable possibility that the property would be rezoned. The drain district argued that the possibility of rezoning could not be considered because defendant had not filed a “written claim” for the possibility. Under MCL 213.55(3), a property owner has until 60 days after the condemning agency files its condemnation complaint to file written claims for “items of property or damage” that the condemning agency omitted from its good faith offer. The drain district had not considered the possibility of rezoning in its valuation analysis, so it argued that the property owner’s failure to file a written claim for that “item” foreclosed any compensation.

The Court of Appeals agreed, and now the property owner has filed an application for leave in the Supreme Court.

There are several problems with the Court of Appeals decision. Foremost, it treats the possibility of rezoning as a separate “item” of compensation in a condemnation action. That is at odds with years of Michigan law explaining that the possibility of rezoning is merely a factor to consider in determining value, rather than a separate “item” for which a property owner may be compensated. See *State Hwy Comm'r v Eilender*, 362 Mich 697, 699, 108 NW2d 755 (1961) (stating that the possibility of rezoning may affect the price for which property would sell). In other words, the only “item” involved in Carrier Creek was real estate. Whether real estate can be rezoned for a different use is a means to determine the value of real estate, rather than something that is independently compensable.

By requiring condemned property owners to treat the possibility of rezoning as an independent claim for compensation, the Carrier Creek decision also conflicts with other provisions in the Uniform Condemnation Procedures Act (the “UCPA”), MCL 213.51 et seq. First, the decision arguably requires property owners to have a completed appraisal analysis 60 days after a condemnation action is filed, instead of when the court presiding over the action orders appraisals to be completed under UCPA §11, MCL 213.61. This both undermines the UCPA’s provisions and imposes unreasonable burdens on condemned property owners without corresponding burdens on condemning agencies.

Decisions like Carrier Creek also lead to a proliferation of motions before courts presiding over condemnation actions. The Supreme Court recently explained that all factors that contribute to a property’s value must be taken into account in determining the property’s value for purposes of establishing just compensation. See *Silver Creek Drain Dist v Extrusions Div, Inc*, 468 Mich 367, 371; 663 NW2d 436 (2004). Carrier Creek essentially stands for the proposition that, if each such factor is not included in a condemning agency’s offer, then each such factor must be the subject of a written claim from a property owner. Needless to say, innumerable factors may contribute to a property’s value. The expectation that property owners must file written claims for each one, in addition to demonstrating the Carrier Creek court’s error, would lead both property owners and condemning agencies to file innumerable motions on this matter in condemnation actions.

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report: