
Michigan Court of Appeals Confirms that Agencies Must Strictly Comply with Procedural Requirements

By Stephon B. Bagne / Mar 22, 2019

In a published decision, the Court of Appeals dismissed a condemnation for lack of jurisdiction because the agency failed to make a proper good faith offer that included all owners.

This week, the Michigan Court of Appeals issued its opinion in *Board of County Road Commissioners for the County of Washtenaw v Shankle, et al.*

In *Shankle*, the issue was whether the Road Commission had properly invoked the jurisdiction of the trial court. The trial court had declined to dismiss the lawsuit for lack of jurisdiction, finding that the procedures were not “materially defective.”

The Court of Appeals recognized that, “[a]s early as 1876, our Supreme Court stated... [that] *the laws which regulate such [condemnation proceedings] must be strictly followed*, and especially that every jurisdictional step, and every requirement shaped to guard the rights and interests of parties whose property is meant to be taken, *must be observed with much exactness.*” *Detroit Sharpshooters v Hamtramck*, 34 Mich 36, 37-38 (1876)(emphasis in original). The Court of Appeals then cited multiple decisions reiterating this requirement and went outside the briefs to identify decisions from other states that are consistent.

While not discussed in the opinion, the Court did not accept the Road Commission’s attempts to confuse the issue. The Road Commission claimed that the strict compliance standard did not apply because the Supreme Court had required that statutes be read based upon their plain meaning. However, this argument was a red herring. Nobody questioned that the plain meaning of the statutes be implemented to determine what steps were required. The key point was that if the requirements, as defined by their plain meaning, were not followed, then the strict compliance cases established the ramification, dismissal.

While there were multiple defects in the filing, the decision focused primarily on the failure to include all owners of the property as recipients of the good faith offer. Pursuant to MCL 213.55, “[b]efore 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.” “Owner” and “property” are statutory terms of art. The Court of Appeals focused upon their definitions. “Reading these definitions together, for purposes of the [Uniform Condemnation Procedures Act], an ‘owner’ is a person or entity having an interest in the property sought to be condemned, and ‘property’ includes land and other property rights.” The Road Commission argued that the owners that it excluded did not enjoy compensable interests. The owners argued that it was not for the agency to make that decision. Rather, all owners must receive notice of the proceedings and enjoy the opportunity to have the court undertake that analysis. The Court of Appeals agreed with the owners. “Whether and to what extent the interest of those owners may (or may not) be affected is a matter that may properly be considered by the trial court, but only after the trial court’s jurisdiction is properly invoked.”

This case is important for a number of reasons. First, it clarifies one important procedural issue by confirming that all owners, as broadly defined, must be tendered a good faith offer. The agency may not unilaterally decide that an owner’s interest is not substantial enough to warrant inclusion. Second, it confirms that all of the procedural requirements contained in the UCPA must be strictly followed. Third, it expressly rejects the trial court’s determination that the defects must be material. A defect of any kind requires dismissal.