

NONCOMPENSABLE ITEMS OF DAMAGE IN EMINENT DOMAIN PROCEEDINGS AND MICHIGAN LAW REGARDING BENEFITS

Following is a list of some of the noncompensable items under the law of eminent domain with supporting cases. This list does not cover all possible sources of noncompensable damage but does cover those most commonly encountered. It is the appraiser's duty to be completely familiar with the situations covered and should be fully cognizant not to include damage that would arise from such noncompensable sources. There will undoubtedly be occasions when it is very difficult for the appraiser to determine whether an item of damage is compensable or noncompensable. When such situations arise it is the duty of the appraisers to request assistance from the District Appraiser who will then refer the matter to the Assistant Attorney General in Charge or his First Assistant. Also following is a statement concerned with Michigan law regarding benefits.

A. LOSS OF PROFITS

Loss of profits is speculative and should not be considered in determining damages when the operation of a business is interrupted by condemnation.

In re Condemnation for Battle Creek Park, 341 Mich 412, 422

In re Slum Clearance, 332 Mich 485, 496

B. GOODWILL

The loss of a goodwill should not be considered in determining damages when the operation of a business is interrupted by condemnation.

In re Jeffries Homes Housin Project, 306 Mich 638, 651

C. LOSS OF SENTIMENTAL VALUE

The law provides no compensation for the sentimental value of property.

In re Jeffries Homes Housing Project, 306 Mich 638, 651, 652

D. COST OF MOVING PERSONAL PROPERTY

The expense of moving personal property should not be considered in determining the damages arising from a condemnation of real property. (This should not be confused with damages arising from fixtures or trade fixtures.)

In re Slum Clearance, 332 Mich 485

In re Condemnation for Battle Creek Park, 341 Mich 412, 422

E. CIRCUITY OF TRAVEL AFTER CONSTRUCTION COMPLETED

The inconvenience caused by the necessity of using a more indirect route to travel in certain directions is not a deprivation of access and such a result is not compensable in a condemnation action.

Houghs v. State Highway Commissioner, 1 Mich App 554, 556

Friskhorn Investment Co. v. City of Detroit, 257 Mich 546, 555

F. LOSS OF USE OF PUBLIC STREETS FOR PRIVATE BUSINESS

An adjoining property owner does not have a vested or constitutional right to use the public streets as a place of business.

Fostini v. City of Grand Rapids, 348 Mich 36, 40

G. EXPENSES AND INCONVENIENCE DURING CONSTRUCTION

Losses caused by expenses and inconvenience during the progress of construction work is not recoverable.

In re City of Detroit, 261 Mich 278, 281

City of Detroit v. Detroit United Railway, 156 Mich 106, 116

H. VALUE TO OWNER

In condemnation proceedings the standard of valuation is market value and not use value to the owner.

In re Jeffries Homes Housing Project, 306 Mich 638, 650

I. SPECULATIVE FUTURE USE

In determining just compensation due a property owner in a condemnation situation, property should be valued on the basis of what a present purchaser would be willing to pay at present and not on the profit a speculator might be able to realize in the future.

In re City of Detroit for a Park Site, 227 Mich 132, 138

J. INTENDED FUTURE USE OF PROPERTY

If a property has a market value, nothing more than that can be recovered in a condemnation action. The fact that a property owner may have contemplated a future use of this property which might, in the future, have made it more valuable does not justify an assessment of damages in excess of its present market value.

Department of Conservation v. Connor, 316 Mich 565, 588

K. FAILURE TO PROVIDE ACCESS WHERE NONE PREVIOUSLY EXISTED

A property owner is not entitled to damages in a condemnation action because he has not been given access where none previously existed, such as access to a newly created highway.

26 Am Jur 2d, Eminent Domain §302

L. DIVERSION OF TRAFFIC

In a condemnation action, damages attributable to diversion of traffic are not compensable.

Houghs v. State Highway Commissioner, 1 Mich App 554, 556

M. ADDING TOGETHER COMPONENTS OF LAND

In a condemnation action, the market value of land cannot be determined by adding together several values the land might have for each one of several different uses or purposes.

In re condemnation for Battle Creek Park, 341 Mich 412, 422

N. DIVIDER STRIP

Construction of a divider strip for traffic control is an exercise of the police power, damages arising from such construction are not compensable.

81 ALR2d 1436

26 Am Jur 2d, Eminent Domain §210

MICHIGAN LAW REGARDING BENEFITS

Act 87, PA 1980, as amended, the statute used for all condemnation actions brought by the Attorney General on behalf of the Michigan Department of Transportation, provides with regard to benefits:

“Enhancement in value of the remainder of a parcel, by laying out, altering, widening, or other types of improvements; by changing the scope or location of the improvement; or by either action in combination with discontinuing an improvement, shall be considered in determining compensation for the taking.”

Michigan’s appellate courts have not had occasion to consider this section.