

community watch

MONITORING LEGAL ISSUES THAT AFFECT MICHIGAN MUNICIPALITIES

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Low Ball Offer For The “Taking” Ends Up In Higher Court

By Mark S. Roberts

In 2002, St. Clair County purchased a 16-acre property indicating an interest to construct a county park on the land. The purchase was subject to a private road and beachfront easement. The County obtained a land acquisition grant from the Michigan Department of Natural Resources with the condition that the County would acquire the easement.

The case of *County of St. Clair v Skotcher, et al* began with a January 12, 2005 letter sent to Defendants by St. Clair County’s Parks and Recreation Commission Director. The letter indicated that the Director had been “authorized to offer” \$100,000 as a “formal offer” for the purchase of Defendants’ easement. The letter did not meet the statutory requirements for a written good faith offer under the Uniform Condemnation Procedures Act (UCPA).

The Defendant rejected the offer and retained condemnation counsel with the intent to seek reimbursement of attorney fees which are typically one third of the difference between the verdict and the good faith offer.

The County obtained an appraisal for the property which valued the easement at \$240,000. On September 21, 2005 a resolution was adopted authorizing the county administrator to make a good faith offer in the amount of the appraisal and, if not accepted, to commence condemnation proceedings. The County sent a second written offer to Defendants which met the UCPA requirements of a written good faith offer.

A dispute arose over which offer was to be used for the calculation of attorney fees. The County argued that the second offer, based upon the appraisal, was the only offer that met the UCPA requirements of a good faith offer and thus, should be used in calculating attorney fees. Defendants argued that the negotiations commenced based upon the initial \$100,000 offer and that they retained counsel based upon that offer and therefore, the attorney fees should be calculated based upon the initial offer.

The case went to trial and the trial court concluded that the initial offer should not be considered as a good faith

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In this era of shrinking municipal revenues and belt tightening at all levels of government, the need to cut costs is accentuated. The competing interests of reducing costs while still providing necessary infrastructure and services results in an uncomfortable balancing act. Despite the current challenging economic conditions, municipalities are still undertaking public projects which necessitate the acquisition of private property through eminent domain proceedings. In the course of undertaking these projects, for the reasons stated in the County of *St. Clair v Skotcher* decision, municipalities must avoid the temptation to try to save property acquisition costs by making so-called “low-ball” offers initially.

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offer but rather the second offer of \$240,000, based upon the appraisal, should be used to calculate the amount of attorney fees to be awarded. An April 4, 2008 verdict resulted in just compensation in the amount of \$375,000, plus statutory interest in favor of Plaintiff.

The case moved to the Court of Appeals. This Court found that the County Director's initial offer for the purchase of the easement constituted a good faith written offer although it lacked the statutory elements required under the UCPA. The Court rejected the County's argument that its initial offer should not be considered a good faith written offer because it omitted many of the UCPA requirements and that the County's failure to strictly comply with the Act in making its initial offer was not determinative of the issue. The Court stated that "to hold otherwise would encourage condemning authorities to make incomplete offers to the unwary, which contravenes the legislative aim of placing property owners in as good a position as they occupied before the taking." The attorney fee award more than doubled.

This result was consistent with the Court's understanding of the purposes of the attorney fee provision under the UCPA, which it listed as: 1) the provision assures property owners are placed in as good a position as they occupied before the taking; 2) the provision serves to penalize the condemnor for deliberately low offers because a low offer may result in the condemnor paying the owner's litigation expense; 3) the provision provides an incentive to the owner's attorney as the fee is proportional to the result achieved.

The Court noted that these cases are highly fact specific and it did not intend by its opinion to state a hard and fast rule in cases involving multiple offers regarding whether an offer made first in time always constitutes the basis for the calculation of attorneys fees.

Communities in this era of increased cost-cutting pressure must be careful when initiating negotiations for the acquisition of property with private property owners. The UCPA states that before filing a complaint and before initiating negotiations the agency must submit to the owner a good faith written offer which shall not be less than the agency's appraisal of just compensation. Care should be taken to ensure that the initial offer is realistic so that it will not result in a dramatically increased attorney fee award should the case go to trial.

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