

OPPONENT: Alaina M. Zanke-Jodway, Esq., POB 82356, Rochester, MI 48308-2356, 586.242.8744, alainazj@aol.com

Opposition to House Bill 4747 and its Amendment to MCL 600.5821 imposing a 15-year statute of limitations on the people's adverse possession claim, but not on the local government, violates the Equal Protection Clause of the United States Const., 14th Amend., because it treats the people and the government differently.

Request Comments be printed in the Senate Journal.

1. Adverse Possession by any branch of government as stated in the statute is both, unconstitutional and illegal.
2. Recognition of Adverse Possession by any governmental agency "without just compensation" to an aggrieved property owner violates:
 - a. Takings Clause, 5th & 14th Amendments of United States Const.,
 - b. Art. 10, § 2, Mich. Const. 1963,
 - c. Uniform Condemnation Procedures Act ("UCPA"), MCL 213.52(2), Exhibit D
 - a. Exclusive means for the exercise of eminent domain
3. Adverse possession is a legal claim.
4. Legal claims have been recognized as property rights which are constitutionally protected. 14th Amend., US Const
5. House Bill 4747 gives a local government unlimited time to perfect its adverse possession in a court of law,
 - a. but seeks to limit the people perfection time to 15 years, in doing so, it
 - b. treats the people differently than the government
 - c. and **violates the Equal Protection Clause, 14th Amend, US Const. which applies to the states.**
 - d. House Bill 4747 is a child of special interest groups, the:
 - i. MI Municipal League testified in support of the bill. (10-27- 15) ,House Fiscal Agency HB 4747 as reported Page 2 of 3
 - ii. MI Association of Municipal Attorneys testified in support of the bill. (10-27-15)
 - iii. MI Townships Association spoke in support of the bill. (10-27-15)
 - e. No Michigan Citizen wants their time to perfect an adverse possession claim limited in litigation wherein the State and local municipality is a party
 - i. it puts the citizen at disadvantage. (The City can stake claim to a citizen's property, but the citizen is barred from claiming the City).
 - ii. Often, City's will hide and conceal information from the Citizen
6. How MCL 600.5821 works in real life? Based on my experience.
 - a. **State Action Requirement**, 2005 Bay Street Improvement Project
 - b. DEQ not only permitting "tainted water to Flint" but municipal property takings in granting water, sewer and other public infrastructure permits.
 - c. DEQ Engineer, Jankowski, ¶ 6, recognizes City proposes infrastructure placement outside of public ROW and no easement, Exhibit A

- i. Upon identifying the issue, a "takings analysis" under the MI Property Preservation Act, was required, MCL 24.421 (Exhibit C) or referral to Attorney General to conduct "takings analysis" required
 - ii. DEQ/ Jankowski issues permit anyway (Exhibits B and C)
- 7. Recent purchase
 - a. FOIA:
 - i. 2 City FOIAs, 1 Appeal, - 2-week onsite inspection
 - ii. 1 DEQ FOIA, 2 onsite locations, Cadillac & Lansing
 - 1. 120 hours for document review to ascertain facts
 - b. Typical Citizen does not have 120 hours of time
 - c. " " will not realize what's happening to their property rights until City seeks to perfect its adverse possession claim and then its will be too late for the Citizen to bring theirs.
- 8. Citizen severely disadvantaged in seeking redress of property rights and House Bill 4747 increases that degree as Litigation is:
 - a. Consumes both time and money for attorneys, investigation, surveyors, etc.
 - b. Government's position covered by insurance policies, thus the Special Interest Groups
 - c. MI Voters trust our Legislators to protect our rights while we
 - i. Work to pay our bills
 - ii. Raise our children
 - iii. Care for our aging parents
 - iv. HOUSE BILL 4747 puts special interests above the MI Voter and treats the Voter differently than the government
 - v. VIOLATING THE EQUAL PROTECTION CLAUSE
- 9. Need to Fix Unconstitutional takings by State and Municipalities,
 - a. amend UCPA to provide for easier Citizen enforcement
 - i. City Bond posted for all Infrastructure Permits
 - ii. Require Certified Surveys
 - iii. Require DEQ to follow the MI Prop Preserv Act
 - iv. Enforce UCPA, make it Illegal for any Government to acquire a Citizen's property rights without bringing a condemnation action
 - v. Condition – availability of State Grants on City's Constitutional Compliance
 - 1. Insult to Injury – Boyne City's taking of my property, 2005 Bay Street Improvement Project was funding by a state grant containing my tax dollars.



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
CADILLAC DISTRICT OFFICE



STEVEN E. CHESTER
DIRECTOR

September 8, 2005 **DRAFT**

Mr. James Hirschenberger P.E.
Capital Consultants
123 West Main Street, Suite 200
Gaylord, MI 49734

Dear Mr. Hirschenberger:

SUBJECT: Proposed Boyne City Bay and South Lake Street Sanitary Sewer Replacement, City of Boyne City, Charlevoix County

This office has reviewed the submittal for the above-referenced project.

Based on our review under Part 41 Sewerage Systems, of the Natural Resource and Environmental Protection Act (NREPA) P.A. 451 of 1994 as amended, we have the following comments that need to be addressed before issuance of the construction permit.

1. Specification 02732 (Part 3) must include a reference for installation of plastic flexible pipe in accordance with ASTM D2321. Plastic flexible pipe installation must be in accordance with ASTM D2321. Since you are using PVC gravity sewer pipe this installation standard must be referenced.
2. The maximum allowable infiltration is 100 gallons per inch diameter per mile of sewer per day. Specification 02732-3.10-B must be revised to incorporate this requirement.
3. Infiltration test must have a minimum of 2 feet of head above the crown (top) of pipe, thus specification 02732-3.10-B must be revised to incorporate this requirement.
4. Is there any water main crossing the proposed sanitary main on the Bay Street part of the project?
5. There are at least three places where it appears the water main crosses the proposed sanitary main on the S. Lake Street project. The sanitary sewer as constructed shall maintain 18 inches vertical separation between the proposed sanitary sewer main and any water main where water main/sanitary mains cross. Is it your intent to meet this requirement through the use of note 30 on sheet 3? If so, please note this separation requirement is measured from outside of pipe to outside of pipe.
6. It appears part of the proposed Bay Street sanitary main may be outside the public right of way (ROW), please clarify. All sanitary mains must be in either a public ROW or be in a permanent easement granted to the City for the purpose of construction, operation and servicing of the sanitary sewers.
7. The existing sanitary on Lake Street does not appear to have the correct slope given between existing manholes 3 and 4. The distance and inverts imply a slope steeper than the 1.59 percent given on the plan. This also affects the inverts of proposed manhole 2 and the slope from proposed manhole 2 to proposed manhole 1. Please verify and provide any corrected inverts and slopes.

Exhibit A

... lane street does not appear to have the correct slope given
between existing manholes 3 and 4. The distance and inverts imply a slope steeper than
the 1.59 percent given on the plan. This also affects the inverts of proposed manhole 2
and the slope from proposed manhole 2 to proposed manhole 1. Please verify and
provide any corrected inverts and slopes.

If you have any questions or need further clarification, please contact me.

Sincerely,

Brian W. Jankowski, P.E.
Environmental Engineer
Water Bureau
231-775-3960, Extension 6268

120 WEST CHAPIN STREET • CADILLAC, MICHIGAN 49601-2158
www.michigan.gov • (231) 775-3960



PERMIT APPLICATION FOR WASTEWATER SYSTEMS
(CONSTRUCTION - ALTERATION - ADDITION OR IMPROVEMENT) AS DESCRIBED HEREIN
Required under the Authority of Part 41, Act 451, PA 1994 as amended

This application becomes a Part 41 Permit only when signed and issued by authorized DEQ Staff.
See instructions below for completion of this application.

Permit Number (DEQ use only) 1002097		Date of Issuance (DEQ use only) September 9, 2005	
1. Municipality or Organization, and Address which will own the wastewater facilities to be constructed. This permit is to be issued to: City of Boyne City 319 N. Lake Street Boyne City, Michigan 49712		Permit Stamp Area (DEQ use only) WASTEWATER CONSTRUCTION PERMIT AUTHORIZED IN ACCORDANCE WITH ACT 451 PA, 1994, PART 41 PERMIT NUMBER 1002097 SEP 9, 2005	
2. Owner's Contact Person (provide name for questions): Contact: <u>Dan Meads, Water & Wastewater Superintendent</u> Phone: <u>231-582-6656</u>		MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY	
3. Project Name (Provide phase number if project is segmented) City of Boyne City Bay & S. Lake Street Reconstruction Project		4. Project Location City of Boyne City	5. County (location of project) Charlevoix County

ISSUED UNDER THE AUTHORITY OF THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

Enclosed: Plans & Specifications

cc: Charlevoix County Health Dept.
Capital Consultants (w/ enclosures)

Reviewed and

Issued by:


Brian W. Jankowski, P.E.

~~Reviewed by:~~

If this box is marked see attached special conditions.

Instructions: Complete items 1 through 5 below and 6 through 27 on the following pages of this application. Print or type all information except for signatures. Mail completed application, plans and specifications, and any attachments to the Michigan Department of Environmental Quality District Office having jurisdiction in the area of the proposed construction.

Please Note:

- this PERMIT only authorizes the construction, alteration, addition or improvement of the wastewater system described herein and is issued solely under the authority of Part 41 of Act 451, PA 1994, as amended. Depending on the specific conditions of the project other permits from this Department or other governmental agencies may be required.
- this PERMIT expires two (2) years after the date of issuance in accordance with rule 299.2939(2) of the General Rules of Michigan Department of Environmental Quality unless construction has been initiated prior to expiration.
- noncompliance with the conditions of this permit and the requirements of the Act constitutes a violation of the Act.
- applicant must give notice to public utilities in accordance with Act No. 53 of the Public Acts of 1974 (MISS DIG), being Section 460.701 to 460.718 of the Michigan Compiled Laws, and comply with each of the requirements of that Act;
- all earth changing activities must be conducted in accordance with the requirements of the Soil Erosion and Sedimentation Control Act, Part 91 of Act 451, PA 1994, as amended;
- all construction activity impacting wetlands shall be conducted in accordance with the Wetland Protection Act, Part 303 of Act 451, PA 1994, as amended;
- intentionally providing false information in this application constitutes fraud which is punishable by fine and/or imprisonment.

Continue application on following pages

EXHIBIT B



MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER DIVISION

PERMIT APPLICATION FOR WATER SUPPLY SYSTEMS
(CONSTRUCTION - ALTERATION - ADDITION OR IMPROVEMENT) AS DESCRIBED HEREIN
Required under the Authority of 1976 PA 399, as amended

This application becomes an Act 399 Permit only when signed and issued by authorized DEQ Staff.
See instructions below for completion of this application.

1. Municipality or Organization, Address and WSSN that will own the water facilities to be constructed. This permit is to be issued to: City of Boyne City 319 N. Lake Street Boyne City, MI 49712 WSSN: MI 0000800	Permit Stamp Area (DEQ use only) MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY PERMIT NO. W 057067 SEP 12 '05 EXAMINED AND APPROVED FOR COMPLIANCE WITH ACT 399, P.A. 1976	
2. Owner's Contact Person (provide name for questions): Contact: Dan Meads Title: Water and Wastewater Superintendent Phone: 231-582-6656		
3. Project Name (Provide phase number if project is segmented): City of Boyne City Bay & S. Lake Street Reconstruction Project	4. Project Location (City, Village, Township): City of Boyne City	5. County (location of project): Charlevoix County

ISSUED UNDER THE AUTHORITY OF THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

CC: Mr. Michael Cain, City Manager
Mr. James E. Hirschenberger, P.E., Capital Consultants/Design Works A/E
Northwest Michigan Community Health Agency (Charlevoix)

Reviewed & Issued by: Brian E. Thurston
Brian E. Thurston, P.E.

~~Reviewed by~~ _____

If this box is marked see attached special conditions.

Instructions: Complete items 1 through 5 above and 6 through 21 on the following pages of this application. Print or type all information except for signatures. Mail completed application, plans and specifications, and any attachments to the Michigan Department of Environmental Quality District Office having jurisdiction in the area of the proposed construction.

Please Note:

- This PERMIT only authorizes the construction, alteration, addition or improvement of the water system described herein and is issued solely under the authority of 1976 PA 399, as amended. Depending on the specific conditions of the project, other permits from this Department or other governmental agencies may be required.
- This PERMIT expires two (2) years after the date of issuance in accordance with R 325.11306, 1976 PA 399, administrative rules, unless construction has been initiated prior to expiration.
- Noncompliance with the conditions of this permit and the requirements of the Act constitutes a violation of the Act.
- Applicant must give notice to public utilities in accordance with 1974 PA 53, (MISS DIG), being Section 460.701 to 460.718 of the Michigan Compiled Laws, and comply with each of the requirements of that Act.
- All earth changing activities must be conducted in accordance with the requirements of the Soil Erosion and Sedimentation Control Act, Part 91, 1994 PA 451, as amended.
- All construction activity impacting wetlands must be conducted in accordance with the Wetland Protection Act, Part 303, 1994 PA 451, as amended.
- Intentionally providing false information in this application constitutes fraud which is punishable by fine and/or imprisonment.

Continue application on following pages

EXHIBIT C



Michigan Department of Environmental Quality
Permit Application for Water Systems (Continued)

6. **Facilities Description** – In the space below provide a detailed description of the proposed project. Applications without adequate facilities descriptions will be returned. SEE EXAMPLES BELOW. Use additional sheets if needed.

853 feet of new 8-inch water main along the east side of S. Lake Street, between Franklin St. and Lincoln St. to replace existing water main. Connect to existing water main in four locations: at Franklin St., at Morgan St. (E&W) and at Lincoln St.

601 feet of new 8 inch water main along the north side of Bay Street, between John Street and Addis Street to make a loop of existing water main. Connect to existing water main in two : at John St. and Addis St.. This is a new section of main, but it will not add any new services to the system.

EXAMPLES – EXAMPLES – EXAMPLES – EXAMPLES – EXAMPLES – EXAMPLES

Water Mains	500 feet of 8-inch water main in First Street from Main Street north to State Street. OR 250 feet of 12-inch water main in Clark Road from an existing 8-inch main in Third Avenue north to a hydrant.
Booster Stations	A booster station located at the southwest corner of Third Avenue and Main Street, and equipped with two, 15 Hp pumps each rated 150 gpm @ 200 feet TDH. Station includes backup power and all other equipment as required for proper operation.
Elevated Storage Tank	A 300,000 gallon elevated storage tank located in City Park. The proposed tank shall be spherical, all welded construction and supported on a single pedestal. The tank shall be 150 feet in height, 40 feet in diameter with a normal operating range of 130 – 145 feet. The interior coating system shall be ANSI/NSF Standard 61 approved or equivalent. The tank will be equipped with a cathodic protection system, and includes a tank level control system with telemetry.
Chemical Feed	A positive displacement chemical feed pump, rated at 24 gpd @ 110 psi to apply a chlorine solution for Well No. 1. Chlorine is 12.5% NaOCL, ANSI/NSF Standard 60 approved and will be applied at a rate of 1.0 mg/l of actual chlorine.
Water Supply Well	Well No. 3, a 200 foot deep well with 170 feet of 8-inch casing and 30 feet of 8-inch, 10 slot screen. The well will be equipped with a 20 Hp submersible pump and motor rated 200 gpm @ 225 feet TDH, set at 160 feet below land surface.
Treatment Facilities	A 5 million gpd water treatment plant located at the north end of Second Avenue. The facility will include 6 low service pumps, 2 rapid mix basins, 4 flocculation/sedimentation basins, 8 dual media filters, 3 million gallon water storage reservoir and 6 high service pumps. Also included are chemical feed pumps and related appurtenances for the addition of alum, fluoride, phosphate and chlorine.



Michigan Department of Environmental Quality
Permit Application for Water Systems (Continued)

General Project Information – Complete all boxes below.	
7. Design engineer's name, engineering firm, address, phone number, and email address: Capital Consultants/DesignWorks A/E Jim Hirschenberger, P.E. 123 West Main Street, Suite 200, Gaylord, MI 49735 989-732-8131 Fax 989-732-2714 jhirschenberger@ccdwaec.com	8. Indicate who will provide project construction inspection: <input type="checkbox"/> Organization listed in Box 1. <input checked="" type="checkbox"/> Engineering firm listed in Box 7. <input type="checkbox"/> Other - name, address, and phone number listed below.
9. Is a basis of design attached? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If no, briefly explain why a basis of design is not needed. The proposed water main will not service any new customers. Therefore there is no increase in demand. The existing section of water main to be replaced is in poor condition and therefore the City has chosen to replace it.	
10. Are sealed engineering plans attached? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO If no, briefly explain why engineering plans are not needed.	
11. Are construction specifications attached? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO If specifications are not attached, they need to be on file at DEQ.	
12. Were Recommended Standards for Water Works, AWWA guidelines, and the requirements of Act 399 and its administrative rules followed? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO If no, explain which deviations were made and why.	
13. Are all coatings, chemical additives and construction materials ANSI/NSF or other adequate 3 rd party approved? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO If no, describe what coatings, additives or materials did not meet the standard and why.	
14. Are all water system facilities being installed in the public right-of-way or a dedicated utility easement? (For projects not located in the public right-of-way, utility easements must be shown on the plans.) <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO If no, explain how access will be obtained.	
15. Is the project construction activity within a wetland (as defined by Section 324.30301(d) of Part 303, 1994 PA 451)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If yes, a wetland permit must be obtained.	
16. Is the project construction activity within a 100-year floodplain (as defined by R 323.1311(e) of Part 31, 1994 PA 451, administrative rules)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If yes, a flood plain permit must be obtained.	
17. Is the project construction activity within 500 feet of a lake, reservoir, or stream? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO If yes, a Soil and Erosion Control Permit must be obtained <u>or</u> indicate if the owner listed in box 2 of this application is an Authorized Public Agency (Section 10 of Part 91, 1994 PA 451) <input checked="" type="checkbox"/> Owner is APA.	



Michigan Department of Environmental Quality
Permit Application for Water Systems (Continued)

18. Will the proposed construction activity be part of a project involving the disturbance of five (5) or more acres of land?
 YES NO

If yes, is this activity regulated by the National Pollutant Discharge Elimination System storm water regulations?
 YES: NPDES Authorization to discharge storm water from construction activities must be obtained.

NO: Describe why activity is not regulated:

Please call 517-241-8993 with questions regarding the applicability of the storm water regulations.

19. Is the project in or adjacent to a site of suspected or known soil or groundwater contamination?
 YES NO

If yes, attach a copy of a plan acceptable to the DEQ for handling contaminated soils and/or groundwater disturbed during construction. Contact the local DEQ district office for listings of Michigan sites of environmental contamination.

20. IF YOU ARE A CUSTOMER/WHOLESALE/BULK PURCHASER, COMPLETE THE FOLLOWING

1) Name and WSSN of source water supply system (seller) _____

2) Does the water service contract require water producer/seller to review and approve customer/wholesale/bulk purchaser water system construction plans?
 YES NO

3) If yes, is the producer/seller approval letter attached?
 YES NO

If no to #3, explain why approval letter is not attached. _____

21. **Owner's Certification** The owner of the proposed facilities or the owner's authorized representative shall complete the owner's certification. It is anticipated that the owner will either be a governmental agency (city, village, township, county, etc.) or a private owner (individual, company, association, etc.) of a Type I public water supply.

OWNER'S CERTIFICATION

I, Dan Meads (name), acting as the water & wastewater Superintendent (title/position) for
(print) (print)

City of Royne City (entity owning proposed facilities) certify that this project has
(print)

been reviewed and approved as detailed by the Plans and Specifications submitted under this application, and is in compliance with the requirements of 1976 PA 399, as amended, and its administrative rules.

Dan Meads
Signature

8-18-05
Date

231-532-6654
Phone

SPECIAL CONDITIONS:

The following are conditions of this permit:

1. The City of Boyne City (City) shall retain a qualified construction inspector to oversee all construction activities. This inspector shall be on-site during all water main installation activities.
2. All water mains shall be constructed in accordance with the City's standard specifications, where applicable.
3. The City shall ensure that all crossings of water main and sewers maintain at least 18-inches of clear vertical separation.
4. The City shall submit to our office an inspection/certification report within 90 days of project completion. This report shall include relevant field notes, verification that all conditions of this permit have been met, and that the project has been constructed in accordance with plans and standard specifications submitted to this office. Please include a set of as-built drawings as part of this report.

PERMIT NUMBER W057067	DATE September 12, 2005	ISSUED TO: City of Boyne City WSSN: 00800
--------------------------	----------------------------	-------------------------------------------------

PROPERTY RIGHTS PRESERVATION ACT
Act 101 of 1996

AN ACT to provide for a process of evaluating certain governmental actions that may result in constitutional takings of private property; and to prescribe the powers and duties of certain state agencies and officials.

History: 1996, Act 101, Imd. Eff. Mar. 5, 1996.

The People of the State of Michigan enact:

24.421 Short title.

Sec. 1. This act shall be known and may be cited as the "property rights preservation act".

History: 1996, Act 101, Imd. Eff. Mar. 5, 1996.

24.422 Definitions.

Sec. 2. As used in this act:

(a) "Constitutional taking" or "taking" means the taking of private property by government action such that compensation to the owner of that property is required by either of the following:

(i) Amendment V or XIV of the constitution of the United States.

(ii) Section 23 of article I and section 2 of article X of the state constitution of 1963.

(b) "Departments" means the departments of natural resources, environmental quality, and transportation.

(c) "Government action" means any of the following:

(i) A decision on an application for a permit or license.

(ii) Proposed rules that if promulgated or enforced may limit the use of private property.

(iii) Required dedications or exactions of private property.

(iv) The enforcement of a statute or rule, including the issuance of an order.

(d) "Government action" does not include any of the following:

(i) The formal exercise of the power of eminent domain.

(ii) The forfeiture or seizure of private property by law enforcement agencies as evidence of a crime or for violations of law.

(iii) The discontinuance of government programs.

(e) "Rule" means a rule promulgated pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

History: 1996, Act 101, Imd. Eff. Mar. 5, 1996.

24.423 Takings assessment guidelines; development by attorney general and departments.

Sec. 3. The attorney general, in conjunction with the departments, shall develop takings assessment guidelines pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, that will assist the departments in the identification and evaluation of government actions that may result in a constitutional taking. The attorney general and the departments shall base the guidelines on current law as articulated by the United States supreme court and the supreme court of this state and shall update the guidelines at least on an annual basis to reflect changes in the law.

History: 1996, Act 101, Imd. Eff. Mar. 5, 1996.

24.424 Takings assessment guidelines; review.

Sec. 4. Prior to taking a governmental action, the department of natural resources, the department of environmental quality, or the state transportation department, as appropriate, shall review the takings assessment guidelines prepared under section 3 and shall consider the likelihood that the governmental action may result in a constitutional taking.

History: 1996, Act 101, Imd. Eff. Mar. 5, 1996.

Compiler's note: For transfer of powers and duties of department of natural resources to department of natural resources and environment, and abolishment of department of natural resources, see E.R.O. No. 2009-31, compiled at MCL 324.99919.

24.425 Immediate response required.

Sec. 5. If there is an immediate threat to public health and safety that constitutes an emergency and requires an immediate response, the review of the takings assessment guidelines required by section 4 may be made when the response is completed.

History: 1996, Act 101, Imd. Eff. Mar. 5, 1996.
Rendered Friday, June 20, 2014

Exhibit D

THE UNIFORM CONDEMNATION PROCEDURES ACT
Act 87 of 1980

AN ACT to provide procedures for the condemnation, acquisition, or exercise of eminent domain of real or personal property by public agencies or private agencies; to provide for an agency's entry upon land for certain purposes; to provide for damages; to prescribe remedies; and to repeal certain acts and parts of acts.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980;—Am. 1988, Act 189, Eff. July 1, 1988.

The People of the State of Michigan enact:

213.51 Definitions.

Sec. 1. As used in this act:

(a) "Acquire" or "take" means to secure transfer of ownership of property to an agency by involuntary expropriation.

(b) "Acquisition" or "taking" means the transfer of ownership of property to an agency by involuntary expropriation.

(c) "Agency" means a public agency or private agency.

(d) "Appraisal" means an expert opinion of the value of property taken or damaged, or other expert opinion pertaining to the amount of just compensation.

(e) "Constructive taking" or "de facto taking" means conduct, other than regularly established judicial proceedings, sufficient to constitute a taking of property within the meaning of section 2 of article X of the state constitution of 1963.

(f) "Owner" means a person, fiduciary, partnership, association, corporation, or a governmental unit or agency having an estate, title, or interest, including beneficial, possessory, and security interest, in a property sought to be condemned.

(g) "Parcel" means an identifiable unit of land, whether physically contiguous or not, having substantially common beneficial ownership, all or part of which is being acquired, and treated as separate for valuation purposes.

(h) "Private agency" means a person, partnership, association, corporation, or entity, other than a public agency, authorized by law to condemn property.

(i) "Property" means land, buildings, structures, tenements, hereditaments, easements, tangible and intangible property, and property rights whether real, personal, or mixed, including fluid mineral and gas rights.

(j) "Public agency" means a governmental unit, officer, or subdivision authorized by law to condemn property.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980;—Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996.

213.51a Short title.

Sec. 1a. This act shall be known and may be cited as "the uniform condemnation procedures act".

History: Add. 1980, Act 309, Imd. Eff. Dec. 4, 1980.

213.52 Standards provided; limitations; applicable laws and court rules; commencement of condemnation action; proof of taking of property; certificate of public necessity as condition of instituting judicial proceedings.

Sec. 2. (1) This act provides standards for the acquisition of property by an agency, the conduct of condemnation actions, and the determination of just compensation. It does not confer the power of eminent domain, and does not prescribe or restrict the purposes for which or the persons by whom that power may be exercised. All laws and court rules applicable to civil actions shall apply to condemnation proceedings except as otherwise provided in this act.

(2) If property is to be acquired by an agency through the exercise of its power of eminent domain, the agency shall commence a condemnation action for that purpose. An agency shall not intentionally make it necessary for an owner of property to commence an action, including an action for constructive taking or de facto taking, to prove the fact of the taking of the property.

(3) If a private agency is required by law to secure a certificate of public necessity from the public service commission or other public agency before it may acquire property, the private agency shall not institute judicial proceedings to acquire the property until it has secured the required certificate.

History: 1980, Act 87, Imd. Eff. Apr. 8, 1980.

Exhibit E