STATE OF MICHIGAN
IN THE SUPREME COURT

In the matter of the Complaint of the
CARRIER CREEK DRAIN DRAINAGE DISTRICT
for condemnation of private property for
drainage purposes in Eaton County, Michigan.

SUPPLEMENTAL AUTHORITY

CARRIER CREEK DRAIN DRAINAGE DISTRICT,

Plaintiff-Appellee,

v

LAND ONE, L.L.C.,

Defendant-Appellant.

Supreme Court Docket No. 130125
Court of Appeals Docket No. 255609

Eaton County Circuit Court
Lower Court File No. 03-67-CC
Hon. Thomas S. Eveland

130125 pth
Supp

CARRIER CREEK DRAIN DRAINAGE DISTRICT,

Plaintiff-Appellee,

v

ECHO 45, L.L.C.,

Defendant-Appellant.

Supreme Court Docket No. 130126
Court of Appeals Docket No. 255610

Eaton County Circuit Court
Lower Court File No. 03-68-CC
Hon. Thomas S. Eveland

CARRIER CREEK DRAIN DRAINAGE DISTRICT,

Plaintiff-Appellee,

v

LAND ONE, L.L.C.,

Defendant-Appellant,

and

STANDARD FEDERAL BANK,

Defendant.

Supreme Court Docket No. 130127
Court of Appeals Docket No. 255611

Eaton County Circuit Court
Lower Court File No. 03-69-CC
Hon. Thomas S. Eveland

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CORBIN R. DAVIS
CLERK, SUPREME COURT

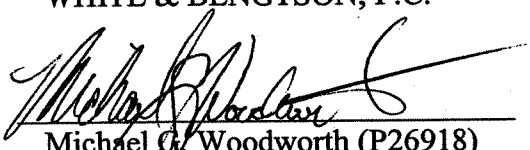
APPELLEE'S SUBMISSION OF SUPPLEMENTAL AUTHORITY

Plaintiff/Appellee Carrier Creek Drain Drainage District, by and through its attorneys, Hubbard, Fox, Thomas, White & Bengtson, P.C., submits for the Court's consideration the supplemental authority of 2006 PA 439. This newly enacted legislation significantly alters the subject language of MCL 213.55(3) to the extent that the Court of Appeals published opinion in this case (at 269 Mich App 324) would have extremely limited applicability, affecting only those cases currently pending.

Respectfully submitted,

HUBBARD, FOX, THOMAS,
WHITE & BENGTSON, P.C.

October 13, 2006

BY: 

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Act No. 439
Public Acts of 2006
Approved by the Governor
October 3, 2006
Filed with the Secretary of State
October 5, 2006
EFFECTIVE DATE: December 23, 2006

STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2006

Introduced by Reps. McConico, Tobocman, Drolet, Green, Gosselin, Stahl, Brandenburg, Baxter, Elsenheimer, Mortimer, Rocca, Huizenga, Lipsey, Acciavatti and Jones

ENROLLED HOUSE BILL No. 5821

AN ACT to amend 1980 PA 87, entitled "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," by amending section 5 (MCL 213.55), as amended by 1996 PA 474.

The People of the State of Michigan enact:

Sec. 5. (1) Before 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. At the same time, if the taking of the property might require relocation, the agency shall provide written notice to the occupants of the property stating that an eminent domain proceeding has commenced and outlining the occupants' basic legal rights in the process, including, but not limited to, the fact that any person who has a leasehold interest of less than 6 months is entitled to a $3,500.00 moving allowance as provided under section 2 of 1965 PA 40, MCL 213.352, and that an individual who is a residential occupant may not be displaced until moving expenses or a moving allowance is paid as provided under 1965 PA 40, MCL 213.351 to 213.355, and the person has had a reasonable opportunity, not to exceed 180 days after the payment date of moving expenses or the moving allowance as provided under 1965 PA 40, MCL 213.351 to 213.355, to relocate to a comparable replacement dwelling. If there is more than 1 owner of a parcel, the agency may make a single, unitary good faith written offer. The good faith offer shall state whether the agency reserves or waives its rights to bring federal or state cost recovery actions against the present owner of the property arising out of a release of hazardous substances at the property and the agency's appraisal of just compensation for the property shall reflect such reservation or waiver. The amount shall not be less than the agency's appraisal of just compensation for the property. If the owner fails to provide documents or information as required by subsection (2), the agency may base its good faith written offer on the information otherwise known to the agency whether or not the agency has sought a court order under subsection (2). The agency shall provide the owner of the property and the owner's attorney with an opportunity to review the written appraisal, if an appraisal has been prepared, or if an appraisal has not been prepared, the agency shall provide the owner or the owner's attorney with a written statement and summary, showing the basis for the amount the agency

established as just compensation for the property. If an agency is unable to agree with the owner for the purchase of the property, after making a good faith written offer to purchase the property, the agency may file a complaint for the acquisition of the property in the circuit court in the county in which the property is located. If a parcel of property is situated in 2 or more counties and an owner resides in 1 of the counties, the complaint shall be filed in the county in which the owner is a resident. If a parcel of property is situated in 2 or more counties and an owner does not reside in 1 of the counties, the complaint may be filed in any of the counties in which the property is situated. The complaint shall ask that the court ascertain and determine just compensation to be made for the acquisition of the described property. As used in this subsection, "comparable replacement dwelling" means any dwelling that is all of the following:

(a) Decent, safe, and sanitary.

(b) Adequate in size to accommodate the occupants.

(c) Within the financial means of the individual.

(d) Functionally equivalent.

(e) In an area not subject to unreasonable adverse environmental conditions.

(f) In a location generally not less desirable than the location of the individual's dwelling with respect to public utilities, facilities, services, and the individual's place of employment.

(2) During the period in which the agency is establishing just compensation for the owner's parcel, the agency has the right to secure tax returns, financial statements, and other relevant financial information for a period not to exceed 5 years before the agency's request. The owner shall produce the information within 21 business days after receipt of a written request from the agency. The agency shall reimburse the owner for actual, reasonable costs incurred in reproducing any requested documents, plus other actual, reasonable costs of not more than $1,000.00 incurred to produce the requested information. Within 45 days after production of the requested documents and other information, the owner shall provide to the agency a detailed invoice for the costs of reproduction and other costs sought. The owner is not entitled to a reimbursement of costs under this subsection if the reimbursement would be duplicative of any other reimbursement to the owner. If the owner fails to provide all documents and other information requested by the agency under this section, the agency may file a complaint and proposed order to show cause in the circuit court in the county specified in subsection (1). The court shall immediately hold a hearing on the agency's proposed order to show cause. The court shall order the owner to provide documents and other information requested by the agency that the court finds to be relevant to a determination of just compensation. An agency shall keep documents and other information that an owner provides to the agency under this section confidential. However, the agency and its experts and representatives may utilize the documents and other information to determine just compensation, may utilize the documents and other information in legal proceedings under this act, and may utilize the documents and other information as provided by court order. If the owner unreasonably fails to timely produce the documents and other information, the owner shall be responsible for all expenses incurred by the agency in obtaining the documents and other information. This section does not affect any right a party may otherwise have to discovery or to require the production of documents and other information upon commencement of an action under this act. A copy of this section shall be provided to the owner with the agency's request.

(3) In determining just compensation, all of the following apply:

(a) If an owner claims that the agency is taking property other than the property described in the good faith written offer or claims a right to compensation for damage caused by the taking, apart from the value of the property taken, and not described in the good faith written offer, the owner shall file a written claim with the agency stating the nature and substance of that property or damage. The owner's written claim shall provide sufficient information and detail to enable the agency to evaluate the validity of the claim and to determine its value. The owner shall file the claim within 90 days after the good faith written offer is made pursuant to section 5(1) or 180 days after the complaint is served, whichever is later, unless a later date is set by the court for reasonable cause. If the appraisal or written estimate of value is provided within the established period for filing written claims, the owner's appraisal or written estimate of value may serve as the written claim under this act. If the owner fails to timely file the written claim under this subsection, the claim is barred.

(b) The parties shall exchange the agency's updated appraisal reports, if any, and the owner's appraisal report within 90 days after the expiration of the period for filing written claims, unless a later date is set by the court in accordance with section 11(1) for reasonable cause. If the agency believes that the information provided by the owner is not sufficient to allow the evaluation of the claim, the agency may request additional information from the owner and, if that information is not provided, may ask the court to compel the owner to provide additional information to enable the agency to evaluate the validity of the claim and to determine its value. If the owner fails to provide sufficient information after being ordered to do so by the court, the court may assess an appropriate sanction in accordance with the Michigan court rules for failing to comply with discovery orders, including, but not limited to, barring the claim. In addition, the court also shall consider any failure to provide timely information when it determines the maximum reimbursable attorney fees under section 16.

(c) For any claim that has not fully accrued or is continuing in nature when the claim is filed, the owner shall provide information then reasonably available that would enable the agency to evaluate the claim, subject to the owner's

continuing duty to supplement that information as it becomes available. The owner shall provide all supplementary information at least 90 days before trial, and the court shall afford the agency a reasonable opportunity for discovery once all supplementary information is provided and allow that discovery to proceed until 30 days before trial. For reasonable cause, the court may extend the time for the owner to provide information to the agency and for the agency to complete discovery. If the owner fails to provide supplementary information as required under this subdivision, the court may assess an appropriate sanction in accordance with the Michigan court rules for failing to comply with discovery orders, including, but not limited to, barring the claim. In addition, the court also shall consider any failure to provide timely supplemental information when it determines the maximum reimbursable attorney fees under section 16.

(d) After receiving a written claim from an owner, the agency may provide written notice that it contests the compensability of the claim, establish an amount that it believes to be just compensation for the claim, or reject the claim. If the agency establishes an amount it believes to be just compensation for the claim, the agency shall submit a good faith written offer for the claim. The sum of the good faith written offer for all claims submitted under this subsection or otherwise disclosed in discovery for all items of property or damage plus the original good faith written offer constitutes the good faith written offer for purposes of determining the maximum reimbursable attorney fees under section 16.

(e) If the owner files a claim that is frivolous or in bad faith, the agency is entitled to recover from the owner its actual and reasonable expenses incurred to evaluate the validity and to determine the value of the claim.

(f) A residential tenant's leasehold interest of less than 6 months in the property is not a compensable claim under this act.

(4) In addition to other allegations required or permitted by law, the complaint shall contain or have annexed to it all of the following:

(a) A plan showing the property to be taken.

(b) A statement of purpose for which the property is being acquired, and a request for other relief to which the agency is entitled by law.

(c) The name of each known owner of the property being taken.

(d) A statement setting forth the time within which motions for review under section 6 shall be filed; the amount that will be awarded and the persons to whom the amount will be paid in the event of a default; and the deposit and escrow arrangements made under subsection (5).

(e) A declaration signed by an authorized official of the agency declaring that the property is being taken by the agency. The declaration shall be recorded with the register of deeds of each county within which the property is situated. The declaration shall include all of the following:

(*i*) A description of the property to be acquired sufficient for its identification and the name of each known owner.

(*ii*) A statement of the estate or interest in the property being taken. Fluid mineral and gas rights and rights of access to and over the highway are excluded from the rights acquired unless the rights are specifically included.

(*iii*) A statement of the sum of money estimated by the agency to be just compensation for each parcel of property being acquired.

(*iv*) Whether the agency reserves or waives its rights to bring federal or state cost recovery actions against the present owner of the property.

(5) When the complaint is filed, the agency shall deposit the amount estimated to be just compensation with a bank, trust company, or title company in the business of handling real estate escrows, or with the state treasurer, municipal treasurer, or county treasurer. The deposit shall be set aside and held for the benefit of the owners, to be disbursed upon order of the court under section 8.

(6) If the property being taken is a principal residence for which an exemption from certain local taxation is granted under section 7cc of the general property tax act, 1893 PA 206, MCL 211.7cc, the agency is obligated to pay an additional amount to the owner or owners, which shall be deposited along with the amount estimated to be just compensation as provided in subsection (5). The additional amount shall be determined by subtracting the taxable value from the state equalized value, multiplying that amount by the total property tax millage rate applicable to the property taken, and multiplying that result by the number of years the owner or owners have owned the principal residence, but not more than 5 years.

(7) As used in this section, "taxable value" means that value determined under section 27a of the general property tax act, 1893 PA 206, MCL 211.27a.

Enacting section 1. This amendatory act takes effect December 23, 2006.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 5820 of the 93rd Legislature is enacted into law.

This act is ordered to take immediate effect.

Larry E Randall

Clerk of the House of Representatives

Carol Morey Viventi

Secretary of the Senate

Approved _____

_____

Governor