State of Minnesota
HOUSE OF REPRESENTATIVES
EIGHTY-SEVENTH SESSION
H. F. No. 2630

03/01/2012 Authored by Drazkowski
The bill was read for the first time and referred to the Committee on Civil Law

A bill for an act
relating to eminent domain; providing for compensation in regulatory takings that do not arise to the level of a taking under constitutional analysis; authorizing payment of attorney fees; proposing coding for new law in Minnesota Statutes, chapter 557.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[557.13] REGULATORY TAKINGS COMPENSATED.**

Subdivision 1. **Definitions.** For the purposes of this section:

(a) "Existing use" means (1) an actual, present use or activity on the real property, including periods of inactivity that are normally associated with or are incidental to the nature or type of use; or

(2) activity or reasonably foreseeable, nonspeculative land uses that are suitable for the real property and compatible with adjacent land uses and that have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property.

(b) "Government action" means a governmental entity's application of a law, ordinance, rule, policy, or guideline that affects real property, including action on an application or permit.

(c) "Governmental entity" means the state or a political subdivision of the state, and any entity that has been granted the power of eminent domain.

(d) "Inordinate burden" or "inordinately burdened" means an action of a governmental entity that has directly restricted or limited the use of real property such that the owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole, or that the owner is left with existing or vested uses that are unreasonable such that the owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large.

"Inordinate burden" or "inordinately burdened" does not mean: (1) temporary impacts on real property other than a moratorium on development under section 462.355, subdivision 4, lasting more than one year; (2) impacts on real property occasioned by governmental abatement, prohibition, prevention, or remediation of a public nuisance at common law or a noxious use of private property; or (3) impacts on real property caused by an action of a governmental entity taken to grant relief to the owner of the real property.

In determining whether reasonable, investment-backed expectations are inordinately burdened, consideration may be given to the factual circumstances leading to the time elapsed between enactment of the law or regulation and its first application to the subject property.

(e) "Owner" includes all persons with any interest in the real property subject to a taking, whether as proprietors, tenants, life estate holders, encumbrancers, beneficial interest holders, or otherwise.

(f) "Vested right" is to be determined by applying the principles of equitable estoppel or substantive due process under the common law or by applying the statutory law of this state.

Subd. 2. **Government action; right to compensation.** When a governmental action inordinately burdens an existing use of real property or a vested right to a specific use of real property, the owner is entitled to relief, which may include compensation for the actual loss to the fair market value of the real property caused by the governmental action. This section provides a cause of action arising out of governmental actions that may not rise to the level of a taking under the state constitution or the Constitution of the United States.

Subd. 3. **Procedure; notice of claim to governmental entity.** Not less than 150 days before filing an action under this section against a governmental entity, an owner who seeks compensation under this section must present the claim in writing to the governmental entity. The owner must submit, along with the claim, a valid appraisal that supports the claim and demonstrates the loss in fair market value to the real property. If the governmental action is the culmination of a process that involves more than one governmental entity, or if a complete resolution of all relevant issues, in the view of the owner or the governmental entity to which a claim is presented, requires the active participation of more than one governmental entity, the owner shall present the claim to each governmental entity. The governmental entity shall provide written notice of the claim to all parties to any administrative action that gave rise to the claim, and to owners of real property contiguous to the owner's property at the addresses listed on the most recent county tax rolls.

Subd. 4. **Procedure; settlement offer required.** During the notice period, unless extended by agreement of the parties, the governmental entity shall make a written settlement offer to effectuate one or more of the following options:

(1) an adjustment of land development or permit standards or other provisions controlling the development or use of land;

(2) increases or modifications in the density, intensity, or use of areas of development;

(3) the transfer of developmental rights;

(4) land swaps or exchanges;

(5) mitigation, including payments in lieu of on-site mitigation;

(6) location on the least sensitive portion of the property;

(7) conditioning the amount of development or use permitted;

(8) a requirement that issues be addressed on a more comprehensive basis than a single proposed use or development;

(9) issuance of the development order, a variance, special exception, or other extraordinary relief;

(10) purchase of the real property, or an interest in the real property, by an appropriate governmental entity or payment of compensation; or

(11) no changes to the action of the governmental entity.

Subd. 5. **Procedure; statement of allowable uses.** During the notice period, unless a settlement offer is accepted by the owner, each governmental entity provided notice pursuant to subdivision 3 shall issue a written statement of allowable uses identifying the allowable uses to which the property may be put. The failure of the governmental entity to issue a statement of allowable uses during the notice period shall be deemed a denial for purposes of allowing an owner to file an action in the district court under this section. If a written statement of allowable uses is issued, it constitutes the last prerequisite to judicial review for the purposes of the judicial proceeding created by this section, notwithstanding the availability of other administrative remedies.

Subd. 6. **Procedure; if settlement reached.** If the property owner accepts the settlement offer, the governmental entity may enter into a settlement agreement with the owner. The settlement agreement must protect the public interest served by the regulations at issue and be the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property. Whenever a governmental entity enters into a settlement agreement under this section that would have the effect of contravening the application of a statute as it would otherwise apply to the real property, the governmental entity and the property owner shall jointly file an action in the district court for the county in which the real property is located for approval of the settlement agreement by the court to ensure that the relief granted protects the public interest served by the statute at issue and is the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property.

Subd. 7. **Procedure; if settlement rejected.** If the owner rejects the governmental entity's settlement offer and statement of allowable uses, the owner may file a claim for compensation in the district court for the county in which the property is located, a copy of which shall be served contemporaneously on each governmental entity that made a settlement offer and a statement of allowable uses that was rejected by the owner.

Subd. 8. **District court determination of inordinate burden.** (a) The district court shall determine whether an existing use of the real property or a vested right to a specific use of the real property existed and, if so, whether, considering the settlement offer and statement of allowable uses, the governmental entity or entities have inordinately burdened the real property. If the actions of more than one governmental entity, considering any settlement offers and statement of allowable uses, are responsible for the action that imposed the inordinate burden on the real property of the owner, the court shall determine the percentage of responsibility each governmental entity bears with respect to the inordinate burden.

(b) A governmental entity may take an interlocutory appeal of the court's determination that the governmental action resulted in an inordinate burden. An interlocutory appeal does not automatically stay the proceedings; however, the court may stay the proceedings during the pendency of the interlocutory appeal. The district court's determination is not final until any interlocutory appeal is concluded. If the governmental entity does not prevail in the interlocutory appeal, the court shall award to the owner costs and reasonable attorney fees incurred by the owner in the interlocutory appeal.

Subd. 9. **Jury trial on compensation.** If the court determines that governmental action resulted in an inordinate burden on the private property, and has determined the percentage of responsibility of each governmental entity, the court shall impanel a jury to determine the total amount of compensation due to the owner for the loss in value due to the inordinate burden to the real property. The compensation award shall be determined by calculating the difference in the fair market value of the real property, as it existed at the time of the governmental action at issue, as though the owner had the ability to attain the reasonable investment-backed expectation or was not left with uses that are unreasonable, whichever the case may be, and the fair market value of the real property, as it existed at the time of the governmental action at issue, as inordinately burdened, considering the settlement offer together with the statement of allowable uses, of the governmental entity or entities. In determining the award of compensation, consideration may not be given to business damages relative to any development, activity, or use that the governmental action, considering the settlement offer together with the statement of allowable uses has restricted, limited, or prohibited. The award of compensation shall include a reasonable award of prejudgment interest from the date the claim was presented to the governmental entity.

Subd. 10. **Attorney fees.** The court may award costs and reasonable attorney fees to an owner who prevails in an action brought in district court under this section and incurred by the owner from the date of filing the district court action if the court determines that the governmental entity's settlement offer did not constitute a bona fide offer to the owner that reasonably would have resolved the claim, based upon the knowledge available to the governmental entity and the owner during the notice period. The court may award costs and reasonable attorney fees to the governmental entity that prevails in an action brought under this section and incurred by the governmental entity from the date of filing the district court action if the court determines that the owner did not accept a bona fide settlement offer that reasonably would have resolved the claim, based upon the knowledge available to the governmental entity and the owner during the notice period. Any proposed settlement offer or any proposed decision, except for the final written settlement offer or the final written statement of allowable uses, and any negotiation or rejection in regard to the formulation, either of the settlement offer or the statement of allowable uses, is inadmissible in the subsequent proceeding established by this section except for the purposes of the determination pursuant to this paragraph.

Subd. 11. **Alternative dispute resolution.** This section does not supplant methods agreed to by the parties and lawfully available for arbitration, mediation, or other forms of alternative dispute resolution, and governmental entities are encouraged to utilize methods to augment or facilitate the processes and actions contemplated by this section.

Subd. 12. **Section 15.99 does not apply.** A claim brought under this section is not a request subject to section 15.99.