117.186 COMPENSATION FOR LOSS OF GOING CONCERN.

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

(1) "going concern" means the benefits that accrue to a business or trade as a result of its location, reputation for dependability, skill or quality, customer base, good will, or any other circumstances resulting in the probable retention of old or acquisition of new patronage; and

(2) "owner" has the meaning given in section 117.025 and includes a lessee who operates a business on real property that is the subject of an eminent domain proceeding.

Subd. 2. **Compensation for loss of going concern.** If a business or trade is destroyed by a taking, the owner shall be compensated for loss of going concern, unless the condemning authority establishes any of the following by a preponderance of the evidence:

(1) the loss is not caused by the taking of the property or the injury to the remainder;

(2) the loss can be reasonably prevented by relocating the business or trade in the same or a similar and reasonably suitable location as the property that was taken, or by taking steps and adopting procedures that a reasonably prudent person of a similar age and under similar conditions as the owner, would take and adopt in preserving the going concern of the business or trade; or

(3) compensation for the loss of going concern will be duplicated in the compensation otherwise awarded to the owner.

Subd. 3. **Procedure.** In all cases where an owner will seek compensation for loss of a going concern, the damages, if any, shall in the first instance be determined by the commissioners under section 117.105 as part of the compensation due to the owner. The owner shall notify the condemning authority of the owner's intent to claim compensation for loss of going concern within 60 days of the first hearing before the court, as provided in section 117.075. The commissioner's decision regarding any award for loss of going concern may be appealed by any party, in accordance with section 117.145.

Subd. 4. **Driveway access.** A business owner is entitled to reasonable compensation, not to exceed the three previous years' revenues minus the cost of goods sold, if the owner establishes that the actions of a government entity permanently eliminated 51 percent or greater of the driveway access into and out of a business and as a result of the loss of driveway access, revenue at the business was reduced by 51 percent or greater. Determination of whether the revenue at the business was reduced by 51 percent or greater must be based on a comparison of the average revenues minus the average costs of goods sold for the three years prior to commencement of the project, with the revenues minus the costs of goods sold for the year following completion of the project. A claim for compensation under this section must be made no later than one year after completion of the project which eliminated the driveway access. The installation of a median does not constitute elimination of driveway access.

History: *2006 c 214 s 11*