

Comment

State needs real reform in takings law

By Donald J. Kochan

Russell and Lois Volkema are among the latest victims of Michigan's failure to protect the rights of property owners. A wetlands regulation passed years after they purchased land in Kent County robbed them of \$212,000 in property value and partly destroyed their plans for retirement.

The Michigan Court of Appeals, in a decision last October, conceded that the regulation interfered with the Volkemas' investment plans. But the court ruled that the couple were not due one penny of compensation for the "taking" of the property's value by the government regulation. The reason? The law deprived the Volkemas of only some of their property's value, not all of it.

Relief may be on the way. Under consideration in the U.S. Congress is a measure that would require the federal government to pay owners of private property whenever a federal action reduces their property values by more than 33 percent. Legislatures in 23 states introduced compensation reform bills in 1995, and at least five states have successfully passed laws similar to, and some even more protective than, the federal bill.

In Michigan, weak but helpful reforms are getting attention in the Legislature. One bill requires that two departments, the Department of Natural Resources (DNR) and the Department of Environmental Quality (DEQ), conduct impact assessments to recognize potential takings and evaluate the effect of their actions on property rights. Unfortunately, this type of "look before you leap" reform makes officials look but does little to prevent them from leaping at the expense of property owners. Another bill would require property rights sensitivity training for employees of the DNR and the DEQ — again, a helpful but modest reform.

These proposals do not address the flaws in the current system of compensation or provide a substantive increase in the amount of protection afforded property owners. The greatest flaw is their mandating of assessments and training based on the current judicial takings standards. It is those very standards that cry out for fundamental change.

Both the U.S. Constitution and Michigan Constitution say property shall not be taken for public use "without just compensation." Court interpretations of various laws and regulations have undermined that principle. Owners usually are awarded compensation in the courts only if all economically viable uses of their property are destroyed by a governmental action. Even if a regulation decreases the value of a person's property by



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half, for instance, so long as one use or some value of the property remains, the owner is left without a remedy. The Michigan Supreme Court, if it chooses to review the Volkema case, will have an opportunity to re-evaluate this incorrect, but prevailing interpretation.

The congressional measure cited above would establish a "trigger point," requiring compensation by the federal government only when its regulations deprive a citizen of more than 33 percent of his property's value. But fundamental fairness and justice dictate that one citizen should not be forced to bear the full costs of a taking that is supposed to benefit the public as a whole. This goal can truly be achieved, however, only if the public is forced to compensate property owners for any reduction, not just those above a certain point. That means both federal and state standards should be beefed up.

Florida and South Carolina have passed compensation legislation with no trigger point. The governments in these states must compensate for any non-negligible reduction in a property's value resulting from their actions. A forthcoming study from the Mackinac Center for Public Policy argues strongly that the adoption of a similar standard in Michigan should be a high priority for the

Legislature.

Opponents will argue that reform of this sort would be too costly to the public treasury. They want governments to have freer reign to do what they want without having to worry about the bills. They see little harm or injustice in foisting tremendous burdens on a few innocent, property-owning individuals if others in society derive some benefit. No free society, however, should put the whims of regulators ahead of the rights of individuals. When those rights are respected through full compensation for "takings," a better-informed public, like any consumer, will be able to evaluate the real costs of government actions that are now hidden in the losses imposed on families like the Volkemas.

Key legislators such as Rep. Ken Sikkema, R-Grandville, have said that "more needs to be done" on the takings question and have promised "additional measures in the weeks to come."

This opportunity for reform in Michigan is encouraging, but the end goal of reform must be clear. Property rights form the foundation of individual liberty and deserve no less.

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