

MEMORANDUM DECISION ON REHEARING

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Lila Ruth Meyer as Trustee and
Other Named Successor Trustees
of the Lila Ruth Meyer
Revocable Trust Dated
March 27, 2017,

Appellants-Defendants,

v.

City of Rushville,

Appellee-Plaintiff.

November 4, 2021

Court of Appeals Case No.
21A-PL-277

Appeal from the Rush Circuit
Court

The Honorable J. Steven Cox,
Special Judge

Trial Court Cause No.
70C01-1912-PL-503

Jeffery L. Meyer,
Appellant-Defendant,

v.

City of Rushville,
Appellee-Plaintiff.

Court of Appeals Case No.
21A-PL-278

Appeal from the Rush Circuit
Court

The Honorable J. Steven Cox,
Special Judge

Trial Court Cause No.
70C01-1912-PL-501

Weissmann, Judge.

[1] The City of Rushville (City) has petitioned for rehearing in these two appeals. City correctly asserts that our original decisions applied an amended version of Indiana Code § 32-24-1-6 not yet in effect when notices of the condemnation complaint were issued and received. Although we grant rehearing to address this issue, we agree with Appellees—Jeffery Meyer, Lila Ruth Meyer as trustee of the Lila Ruth Meyer Revocable Trust, and other successor trustees (collectively, Meyer)—that applying the correct version of the statute does not change the result.

[2] The statute in effect at the time of service required that notice of a condemnation complaint “be substantially in the following form:

. . . You are hereby commanded to notify _____,
defendants, to appear before the _____ Court of
_____ County, Indiana on the ____ day of _____,
20_____, at _____ o’clock, ____ M. to show cause, if
any, they have why the property sought to be acquired in the
complaint of _____ should not be acquired

I.C. § 32-24-1-6 (2019) (amended by P.L. 80-2020 § 2, effective July 1, 2020).

[3] The notices served on Meyer provided:

You are hereby notified that you have been sued by the person named as plaintiff and in the Court indicated above.

The nature of the suit against you is stated in the complaint which is attached to this Summons. It also states the relief sought or the demand made against you be (sic) the plaintiff.

An answer or other appropriate response in writing to the complaint must be filed either by you or your attorney within THIRTY (30) days, commencing the day after you receive this Summons, (or thirty-three (33) days if this Summons was received by mail), or a judgment by default may be rendered against you for the relief demanded by plaintiff.

If you have a claim for relief against the plaintiff arising from the same transaction or occurrence, you must assert it in your written answer.

Jeffery Meyer App. Vol. II, p. 89; Trust App. Vol. II, p. 186.

[4] The first page of the *Complaint for Condemnation*, served with the notices, provided: “Pursuant to Ind. Code § 34-24-1-6, a hearing is scheduled at the Rush County Circuit Court on February 25, 2020, at 9:00 o'clock A.M. for Defendants to show cause, if any, as to why the property which is the subject of this Complaint should not be acquired.” Jeffery Meyer App. Vol. II, p. 49; Trust App. Vol. II, p. 93.

[5] Those notices were defective because they contained additional, misleading language not contemplated by the applicable version of Indiana Code § 32-24-1-

6(a). That surplus language misrepresented Meyer’s deadline for filing written objections to the taking of the property by City by suggesting an “answer or other appropriate response” was due in 33 days if mailed, although the objections actually were due 30 days after service. *See* Ind. Code §32-24-1-8(b)(3) (2019) (amended by P.L. 80-2020 § 3, effective July 1, 2020). The obvious purpose of the notice under the applicable version of Indiana Code § 32-24-1-6(a)—as well as the current, amended version of that statute—is to alert defendants to the opportunity to oppose the taking. We remain convinced that accepting the defective notice here would frustrate the statute’s clear purpose and violate our own precedent requiring strict construction of eminent domain statutes. *See, e.g., Utility Ctr., Inc. v. City of Fort Wayne*, 985 N.E.2d 731, 735 (Ind. 2013); *Cemetery Co. v. Warren Sch. Twp., et al.*, 236 Ind. 171, 139 N.E.2d 538, 544 (1957).

[6] The legislature’s amendment of Indiana Code § 32-24-1-6(a), effective July 1, 2020, cements our view of the importance of accurate notice in any eminent domain action brought by a municipality. Through that amendment, the Indiana General Assembly imposed additional requirements for such notice. Under the amended statute, the notice must inform defendants of their right to object under Indiana Code §32-24-1-8 within 30 days from that notice. I.C. § 32-24-1-6(a) (2020) (as amended by P.L. 80-2020 § 2).

[7] The notice also must include, “either as an attachment or as part of the language of the notice, the full text of” Indiana Code § 32-24-1-8. *Id.* Although City is correct that the notice here was not defective for violating those new

requirements, the notice still could not blatantly misstate the deadline for objections without breaching the applicable version of Indiana Code § 32-24-1-6(a). *See Derloshon v. City of Fort Wayne*, 250 Ind. 163, 234 N.E.2d 269, 272 (Ind. 1968) (landowners are entitled to due process in eminent domain actions).

- [8] Our original decision stands except as amended here. Thus, we reverse the trial court's order of condemnation and remand for further proceedings consistent with our opinions.

Mathias, J., and Tavitas, J., concur.