

1 MR. FUNK: To the extent the Village rests, your
2 Honor, we are.

3 THE COURT: Is the Board of Education ready to
4 proceed?

5 MR. GESELBRACHT: Yes, your Honor.

6 Before we move any further, we'd like to
7 make a motion for a finding at the close of the
8 plaintiffs' case.

9 THE COURT: Okay.

10 MR. GESELBRACHT: Just extremely briefly, your
11 Honor, as I indicated before, given the conflicting
12 legislative resolutions, it is our belief that the
13 village in order to proceed would have to show that
14 there was -- that the school district's resolution was
15 completely unreasonable, arbitrary and capricious,
16 without any support or evidence.

17 I think they have failed to do so and as a
18 result I believe that the legislative -- that the
19 resolution by the high school district stands, is
20 presumptively valid and requiring deference from the
21 Court and in that situation with a conflict in the
22 legislative, determinations as to the public need, the
23 statutory prerequisites under 11-61-2 are not met and
24 therefore, the authority to use eminent domain has not

1 been established.

2 And for those reasons we would ask for a
3 finding at the close of the plaintiffs' case.

4 THE COURT: Okay.

5 MR. FUNK: Your Honor, this traverse is not
6 about public need. It's about whether the
7 acquisition of the property will materially interfere
8 with the existing uses or be detrimental to the
9 public.

10 Accordingly there is no conflict that is
11 relevant. There's no conflict with respect to this
12 Court's determination as to whether the village has
13 the authority under the ordinance.

14 Second of all, I believe that we have shown
15 at great length already in this proceeding that there
16 is no factual basis for many of the components of the
17 resolution and therefore, we'd ask that the District
18 99's motion for directed verdict be denied.

19 THE COURT: You have last say.

20 MR. GESELBRACHT: Last say. This case is
21 exactly about public need and the conflicting
22 determinations and conceptions thereof.

23 And I stand on what I said before, your
24 Honor.

1 THE COURT: The Board of Education Community
2 High School District 99 acquired certain property in
3 Woodridge in 1967.

4 The parcel was enlarged in 1993 when
5 District 99 acquired additional property from the
6 Village of Woodridge.

7 The subject property has been leased to the
8 Woodridge Park District from 1971 until the present.

9 The subject property has always been vacant.

10 There is no evidence that for more than 30 years
11 there was a single activity conducted by District 99
12 on the subject property.

13 The subject property has been under the
14 control of the park district during this time period.

15 The park district and the village have used
16 the subject property for many and varied activities.

17 The voters in District 99 must approve a
18 referendum for there to be funds to construct a new
19 facility like a third high school.

20 District 99 twice sought approval in the
21 form of a referendum from the voters for a
22 third high school. Twice the referendum failed.

23 District 99 then sought and obtained approval to
24 expand the two existing high schools

1 to meet the increased high school population. The
2 expansion apparently has been completed.

3 There is no evidence that a further
4 referendum is being contemplated by the Board of
5 Education Community High School District 99.

6 The population of the high school district
7 has leveled off and may be in decline.

8 District 99 solicited bids for the sale of
9 the subject property. This caused the corporate
10 authorities for the Village of Woodridge to meet and
11 resolve to acquire the property through a negotiation
12 or eminent domain.

13 When the property could not be acquired
14 through negotiation, this case was filed.

15 On August 15th, an open session of the
16 trustees were presented with a resolution affirming
17 Community High School District 99's need for certain
18 property located in the Village of Woodridge.

19 The sole trustee -- and I don't count the
20 president as a Trustee of the Board. I don't know if
21 I'm correct in the designations, but the sole trustee
22 to testify, testified that there was no debate or
23 discussion prior to voting on that resolution.

24 The resolution passed. Resolution had four

1 general findings.

2 The crux of the resolution is that the
3 subject property has an already existing educational
4 use.

5 The Board, according to the testimony of the
6 board member and perhaps the president, is not of one
7 mind. The Board doesn't know what the property
8 should be used for.

9 The resolution is inherently at conflict
10 with itself.

11 By way of example, I see puzzled eyebrows,
12 so I'll point out in what manner.

13 The property has an existing use for a third
14 high school as is part of the testimony.

15 The resolution says that the existing future
16 use is for the property to be taxed had and therefore,
17 be owned by a non-governmental entity like a school
18 board and a non-charitable or religious entity. So
19 that's what I mean by an internal conflict.

20 You can't say an existing use is for a third
21 high school or to put it on the tax rolls.

22 The resolution goes on to say that the
23 District will not realize the full value of the
24 property as compensation in the lawsuit.

1 The law is the District will receive full
2 compensation. The fact that the Board might not
3 agree with the laws of the State of Illinois is
4 irrelevant. The state law controls, and the state
5 law is they will receive full value as of the date of
6 filing. That will be determined by our residents,
7 that we have full faith in the ability to follow the
8 law.

9 Next the argument is that there will be
10 interference with the existing use of the property and
11 it will be detrimental to the public.

12 The expressed use under the testimony today
13 by the village would be to extend and not extinguish
14 the existing use.

15 Finally, the traverse suggests that a
16 municipality can never condemn a property owned by
17 another unit of government, based upon a 1911 case,
18 City of Edwardsville vs. County of Madison.
19 In the early 1900's the Legislature gave
20 municipalities the power to condemn only private
21 property.

22 Since then Illinois has revised the
23 condemnation statutes over the past hundred years and
24 their express authority to condemn school district

1 property.

2 For these reasons, the motion's denied.

3 MR. GESELBRACHT: Okay.

4 Your Honor, the Village -- I'm sorry -- the
5 high school district would then call Robert Lemke to
6 the stand.

7 THE COURT: Okay.

8 (WHEREUPON, the oath was
9 duly administered to
10 the witness by the
11 Court.)

12 THE COURT: If you would please have a seat and
13 speak into the microphone.

14 R O B E R T W. L E M K E

15 called as a witness on behalf of the Defendant, having
16 been first duly sworn, was examined and testified as
17 follows:

18 DIRECT EXAMINATION

19 By: Mr. Geselbracht

20 Q Could you state your name and spell it for
21 the record, please?

22 A Robert W. Lemke, R-o-b-e-r-t W. L-e-m-k-e.

23 Q Mr. Lemke, where do you reside?

24 A 1289 Candlewood Drive in Downers Grove,