

1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF DU PAGE)

3
4 IN THE CIRCUIT COURT OF DU PAGE COUNTY
FOR THE EIGHTEENTH JUDICIAL CIRCUIT OF ILLINOIS

5 VILLAGE OF WOODRIDGE,)
)
6 Plaintiff,) **DUPLICATE**
)
7 vs.) No. 05 ED 64
)
8 COMMUNITY HIGH SCHOOL)
)
9 DISTRICT 99, et al.,)
)
10 Defendants.)

11 PARTIAL PROCEEDINGS had at the
12 hearing of the above-entitled cause, before Hon.
13 JOHN ELSNER, recorded on the DuPage County
14 recording system, DuPage County, Ill.,
15 transcribed by Sandra Gorajczyk, Friday,
16 the 25th day of May, A. D., 2007, at the hour
17 of 12:00 o'clock p.m.

18 PRESENT:

19 MR. ROBERT FUNK,
20 appeared on behalf of Plaintiff.

21 MR. THOMAS GESELBRACHT,
22 appeared on behalf of Defendants.

23 Sandra Gorajczyk 084-000455
24 DuPage County Courthouse-Room 366

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THE COURT: I've heard the testimony of each of the witnesses, as well as the transcript of Mr. McCarthy that's evidence of a witness in this case, observed the exhibits, read the statute.

Prior to today both parties have provided Memorandum of Law and cited cases and I've read those cases.

I incorporate my statements made at the motion for directed pending here in the final finding.

In addition, the statute -- which both sides are referring to -- is clear and unambiguous.

Because the statute is clear and unambiguous, I must apply the statute as drafted by the Legislature and not -- and there's no need for interpretation other than the plain meaning of the words.

The statute as drafted by the Legislature provides that even though the property is already devoted to a public purpose -- and both sides state that this

1 property is already devoted to a public -- to a
2 public use, rather -- when the taking will not
3 materially impair or interfere with the use
4 already existing and will not be detrimental to
5 the public.

6 The witnesses who have testified, of
7 course, perform a public service.

8 An editorial note seems -- it seems to
9 be difficult for -- it seems to me it would be
10 difficult for the president of the Board and the
11 superintendent of District 99, because all of the
12 witnesses -- all the Board members are performing
13 a public service, they are intelligent, they're
14 committed but they each have a different view of
15 the property and the uses of the property, which
16 would make it difficult for the president and the
17 superintendent.

18 There is no single view by District 99
19 of the use of that property. We know that the
20 public has rejected the use of that property as a
21 third high school.

22 I found that there were three
23 resolutions. I'm not sure all three were
24 directed at the construction of a high school. I

1 think maybe only two were but at least there were
2 three resolutions.

3 The public has rejected the
4 construction of a third high school on that
5 property.

6 For in excess of 30 years that
7 property has been leased to the park district and
8 according to the testimony, never been used by
9 District 99 for an existing educational purpose.

10 The District argues -- and correctly
11 argues -- that the Court should not use its
12 determination as to the best use of that
13 property.

14 The Court is a separate branch of
15 government and that is not the Court's purpose.
16 The Legislature sets the law. The Court follows
17 the law.

18 The Court could agree that the best use
19 of the property is open space and the park uses,
20 the main uses that were described that the
21 Village and the park district have been putting
22 it to or the Court could agree, that the special
23 education needs of the 18 districts would be the
24 best use or the bus barn or any other use, but

1 that's not not the purpose of the Court under the
2 separation of powers.

3 We have no opinion as to what the best
4 use of that property is.

5 The Legislature in this case tells us
6 to focus upon -- when the taking will not
7 materially impair or interfere with the use of
8 already -- the use already existing.

9 District 99 has not put this property
10 to any already existing use.

11 There may be future use and each of the
12 Board members may have a different view of that
13 future use, but there's no present use of that
14 property.

15 I make that as a factual determination.
16 Applying the testimony to the statute, I make a
17 factual determination that there is -- the taking
18 will not materially impair or interfere with the
19 use already existing.

20 The second point the Court must
21 consider is whether the taking will be
22 detrimental to the public.

23 The use for -- that was testified to by
24 the park district and by the Village is in the

1 record, and I take into account one of the uses
2 advanced by District 99 as for a bus barn by a
3 private bus company. I think it was -- Laidlaw
4 was testified to or at least considered. That's
5 a consideration.

6 Another would be the sale of the
7 property for a development.

8 The taking by the Village will not be
9 detrimental to the public.

10 Having applied the statute to the
11 facts, the traverse is denied.

12 I think it would be appropriate for the
13 Village to comply with Supreme Court Rule 213
14 within 30 days, that the District comply with
15 Supreme Court Rule 213 within 60 days thereafter
16 and the case be set for trial on October 26 at
17 10:00 a.m.

18 Being the prevailing party, the Village
19 will draft the order.

20 * * * *

21 (WHICH were all of the
22 proceedings had.)

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I, SANDRA GORAJCZYK, hereby certify that I am an Official Court Reporter assigned to transcribe the computer based digital recording of proceedings had of the above-entitled cause by Administrative Order No. 99-12 and Local Rule 1.01(d). I further certify that the foregoing, Pages 1 to 6, is an accurate transcript to the best of my ability to hear said proceedings and distinguish speakers.



Official Court Reporter - Lic. #084-000455
Eighteenth Judicial Circuit of Illinois
DuPage County.