

STATE OF ILLINOIS, COUNTY OF DUPAGE  
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

VILLAGE OF WOODRIDGE )

Plaintiff )

vs. )

05 ED 64 )

BOARD OF EDUCATION OF COMMUNITY )  
HIGH SCHOOL DISTRICT 99 )

ORDER

The Board of Education of Community School District 99 (District 99) owned 44 acres of property, ("property") immediately adjacent to the village hall property of the Village of Woodridge. Woodridge leased the "property" from District 99 from 1971 until the present. During that time the "property" was used for parks and/or public grounds. District 99 sought bids from the public for the sale of the "property". To preserve the use of the property as a park or public ground, Woodridge filed this eminent domain suit on May 23, 2005.

District 99 filed a traverse. There were two issues raised in that pleading:

First, the Village has no authority to condemn public land; and,

Second, the Village's authority to condemn school district property already devoted to the public use is limited to takings which will not materially impair or interfere with the use already existing and will not be detrimental to the public and this taking violates this standard due to uses already existing of:

- A) Ability to use property for future school facilities;
- B) School will not realize full value of the property
- C) District will not be able to purchase replacement property; and,

D) Future taxable value of the property will be lost.

The Village and District 99 conducted extensive discovery regarding the authority of the Plaintiff to take the subject property. After the discovery, District 99 did not seek to amend the Traverse and a hearing was set for the two issues raised by the Traverse.

On May 24, 2007, two years after this case was filed, a hearing was held on the two issues presented in the Traverse. District 99 limited its opening statement to whether the Village had the authority to take school district property since that taking "... will foreclose the option of using that property in the future."

The parties entered stipulations, an ordinance, a resolution, transcripts of testimony and presented witnesses. District 99 did not present convincing evidence that the municipality's purpose in taking the land was for other than the reasons set forth in the ordinance. The property had been used for decades for the purpose that it is now being taken, for parks and/or public grounds. There is no evidence that a single student or faculty member ever set a foot on the property.

The Superintendent, members of the Board of Trustees and Financial officer for the district testified. No decision has ever been reached as to the future use of the "property". Each testified as the possible options for the future of the property. The possible uses were both speculative and contradictory. Speculative in that the trustees did not know nor could they agree on the future use of that property. Contradictory in that it may be sold and developed, it may be leased to store busses; it may be used as athletic fields; or it may be the site of a school.

District 99 did not call witnesses or present evidence from other school districts. The evidence was closed and the parties were allowed to sum up the evidence. In closing

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arguments District 99 the parties submitted memorandum of law. They also gave oral closing arguments. The court then considered the statute, memorandum, cases cited the evidence received by the court and the arguments of counsel.

The court found:

The doctrine of separation of powers provides for the legislature to enact the laws and for the units of government to establish the best use of the property. The court is not to perform either of these functions;

The statute is clear and unambiguous;

Woodridge has the authority to condemn public lands;

District 99 has not put the property to any already existing use;

The taking will not materially impair or interfere with the use already existing;

and,

The taking by Woodridge will not be detrimental to the public.

More than 90 days after the Traverse was denied District 99 filed a motion to reconsider. There has been no change in the law nor has there been a change in the facts.

The motion to reconsider attempts to raise four issues:

First, for the first time District 99 argues that the taking is for Woodridge is for a reason other than the reason set forth in the ordinance. This contention is factually wrong.

The "property" has been used for 30 years for a park and public grounds and those uses will continue.

Second, the court did not give proper consideration to District 99's resolution in part due to its being in conflict with itself. The uses do not exist. The uses are speculative.

The uses are at odds with each other in that most uses exclude the other uses. This is the overwhelming evidence given by the Superintendent and Trustees of the District.

Third, District 99 now asks the court to consider hearsay statements. It is wrong because the evidence is closed. It is wrong because it is hearsay. It is wrong because these witnesses and testimony <sup>were</sup> was available for the hearing and not put into evidence as a trial tactic.

Finally, it was the court that recognized the separation of powers. It did not decide which use is better for the public. The court applied the fact to the law to decide the case. The court made a specific factual finding that "...The taking by the Village will not be detrimental to the public." The public's use of the facility for 30 years is evidence of that fact. The park and public grounds are open to the entire public.

The motion to reconsider is denied.

ENTERED: 9/13/07

Judge John T. Elsner