

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DuPAGE COUNTY, WHEATON, ILLINOIS

THE VILLAGE OF WOODRIDGE, ILLINOIS, )  
a municipal corporation, )

Plaintiff, )

vs )

NO. 2005 ED 000064

BOARD OF EDUCATION OF COMMUNITY )  
HIGH SCHOOL DISTRICT 99, a body politic and )  
corporate, *et al.*, )

Defendants. )

**PLAINTIFF'S MOTION *IN LIMINE* NO. 5 REQUESTING THE COURT  
TO READ CERTAIN JURY INSTRUCTIONS AT THE INCEPTION OF THE CASE  
(IN ADDITION TO PRIOR TO CLOSING ARGUMENT) TO ASSIST  
THE JURY IN EVALUATING THE TRIAL TESTIMONY**

NOW COMES the Plaintiff, THE VILLAGE OF WOODRIDGE, ILLINOIS, by and through its attorneys, SCHIROTT & LUETKEHANS, P.C., and moves this Honorable Court for entry of an order granting its motion *in limine* requesting the Court to read certain jury instructions at the inception of the case (in addition to prior to closing argument). In support of said motion, Plaintiff states as follows:

1. This case deals with certain eminent domain issues with which Plaintiff believes the jury will not be familiar at the time trial commences. In order to assist the jury in evaluating the merit and testimony of each party's position as they relate to the rules of law the jury will be required to follow in rendering its verdict, Plaintiff requests that this Court read the following jury instructions, prior to the commencement of opening statements in addition to prior to closing argument:

- A. 1.01 Cautionary Instruction (Modified)
- B. 300.11 Issues Made by the Complaint
- C. 300.80 Just Compensation Definition
- D. 300.81 Fair Cash Market Value - Definition
- E. 300.84 Highest and Best Use - Definition
- F. 2.04 Expert Testifies to Matters Not Admitted in Evidence

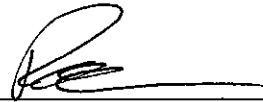
2. A complete set of the instructions that Plaintiff tendered to Defendant are attached hereto as Group Exhibit 1. The jury instructions Plaintiff seeks to read prior to the commencement of opening statements are Plaintiff's Jury Instructions 1 through 6.

3. Instructing the jury on the foregoing matters early in the trial will serve to: (a) inform the jury of its role and duties and the issues in this case; and (b) educate the jury regarding the legal principles and definitions to be applied. *See Worthy v. Norfolk & Western Ry Co.*, 249 Ill. App. 3d 1096, 619 N.E.2d 1371 (5th Dist. 1993). Reading the foregoing instructions at the outset of the trial is the most beneficial time to instruct the jury as to its role and the relevant issues they will encounter during the trial.

4. Pursuant to Illinois Supreme Court Rule 239, a trial court has discretion to instruct the jury regarding certain procedural and substantive matters before opening statements. *See also Best v. Taylor Machine Works*, 179 Ill.2d 367, 689 N.E.2d 1057 (1997); *O'Connell v. St. Francis Hospital*, 112 Ill.2d 273, 492 N.E.2d 1322 (1986).

5. Defendant will in no way be prejudiced by the reading of these instructions at the inception of the case; rather, the instructions will serve to provide the jury assistance in considering and understanding the witness testimony presented by both Plaintiff and Defendant during the trial.

WHEREFORE, Plaintiff, THE VILLAGE OF WOODRIDGE, ILLINOIS, moves this Honorable Court for entry of an order granting its motion *in limine* requesting the Court to read certain jury instructions at the inception of the case (in addition to prior to closing argument) and providing such other and further relief as this Court deems equitable and just.



ROBERT W. FUNK, One of the Attorneys  
for the Plaintiff, VILLAGE OF WOODRIDGE

SCHIROTT & LUETKEHANS, P.C.  
105 East Irving Park Road  
Itasca, IL 60143  
630-773-8500  
Attorney No. 8500

Thomas W. Good  
GORSKI & GOOD  
211 S. Wheaton Ave.  
Wheaton, IL 60187  
630-665-7500  
Attorney No. 75000

The law regarding this case is contained in the instructions I will give to you [now and again] at the conclusion of the evidence. You must consider the court's instructions as a whole; you cannot pick out some instructions and disregard others.

It is your duty to resolve this case by determining the facts and following the law given in these instructions. Your verdict must not be based upon speculation, prejudice, or sympathy. Each party, whether a governmental body or an individual, should receive your same fair consideration.

You will decide what facts have been proven. Facts may be proven by evidence or reasonable inferences drawn from the evidence. Evidence consists of the testimony of witnesses, [stipulations], exhibits admitted by the court [and your view of the property]. You should consider all the evidence without regard to which party produced it. You may use common sense gained from your experiences in life in evaluating what you see and hear during trial.

You are the only judges of the credibility of the witnesses. You will decide the weight to be given to the testimony of each of them. In evaluating the credibility of a witness, you may consider that witness's ability and opportunity to observe, memory, manner, interest, bias, qualifications, experience, and any previous inconsistent statement or act by the witness concerning an issue important to the case.

An opening statement is what an attorney expects the evidence will be. A closing argument is given at the conclusion of the case and is a summary of what an attorney contends the evidence has shown. If any statement or argument of an attorney is not supported by the law or the evidence, you should disregard that statement.

Plaintiff's Jury Instruction No. 1

I.P.I. Civil No. 1.01, as Modified in part by I.P.I. Civil No. 300.01. Modified text indicated by brackets.

\_\_\_\_\_ Given

\_\_\_\_\_ Given as Modified

\_\_\_\_\_ Refused

\_\_\_\_\_ Withdrawn



This is a proceeding in which the plaintiff, The Village of Woodridge, Illinois, has filed a complaint to take certain property of the defendant, Board of Education of Community High School District 99, by exercising the power of eminent domain. Eminent domain is the power given by law to a public body to take property for a public use. The Constitution of the State of Illinois provides that property shall not be taken or damaged for public use without just compensation.

[At the conclusion of this trial,] you are to decide the following question:

What is the amount of just compensation to be paid the defendant for the property which will be taken?

You must not concern yourselves with the right of plaintiff to take the property or the need for the property or the wisdom of locating the proposed public use on defendant's property.

Plaintiff's Jury Instruction No. 2

I.P.I. Civil No. 300.11 as modified by bracketed text.

\_\_\_\_\_ Given

\_\_\_\_\_ Given as Modified

\_\_\_\_\_ Refused

\_\_\_\_\_ Withdrawn

When I use the words "just compensation" for the defendant's property which will be taken, I mean the fair cash market value of the property at its highest and best use on May 23, 2005.

Plaintiff's Jury Instruction No. 3

I.P.I. Civil No. 300.80

\_\_\_\_\_ Given

\_\_\_\_\_ Given as Modified

\_\_\_\_\_ Refused

\_\_\_\_\_ Withdrawn

When I use the words "fair cash market value," I mean that price which a willing buyer would pay in cash and a willing seller would accept, when the buyer is not compelled to buy and the seller is not compelled to sell.

Plaintiff's Jury Instruction No. 4

I.P.I. Civil No. 300.81

\_\_\_\_\_ Given

\_\_\_\_\_ Given as Modified

\_\_\_\_\_ Refused

\_\_\_\_\_ Withdrawn

When I use the expression "highest and best use" of property, I mean that use which would give the property its highest fair cash market value on May 23, 2005.

This may be the actual use of the property on that date or a use to which it was then adaptable and which would be anticipated with such reasonable certainty that it would enhance the market value on that date.

Plaintiff's Jury Instruction No. 5

I.P.I. Civil No. 300.84

\_\_\_\_\_ Given

\_\_\_\_\_ Given as Modified

\_\_\_\_\_ Refused

\_\_\_\_\_ Withdrawn

I am allowing the witnesses to testify in part to documents and statements that have not been admitted in evidence. This testimony is allowed for a limited purpose. It is allowed so that the witnesses may tell you what they relied on to form their opinions. The material being referred to is not evidence in this case and may not be considered by you as evidence. You may consider the material for the purpose of deciding what weight, if any, you will give the opinions testified to by these witnesses.

Plaintiff's Jury Instruction No. 6

I.P.I. Civil No. 2.04

\_\_\_\_\_ Given

\_\_\_\_\_ Given as Modified

\_\_\_\_\_ Refused

\_\_\_\_\_ Withdrawn

Now that the evidence has concluded, I will further instruct you as to the law and your duties. I have not meant to indicate any opinion as to the facts of this case by any of my rulings, remarks or instructions.

Plaintiff's Jury Instruction No. 7

I.P.I. Civil No. 3.01

\_\_\_\_\_ Given

\_\_\_\_\_ Given as Modified

\_\_\_\_\_ Refused

\_\_\_\_\_ Withdrawn

If you find that on May 23, 2005, there was a reasonable probability of rezoning the property, then you may consider the effect of such rezoning in determining just compensation in this case.

Plaintiff's Jury Instruction No. 8

I.P.I. Civil No. 300.85

\_\_\_\_\_ Given

\_\_\_\_\_ Given as Modified

\_\_\_\_\_ Refused

\_\_\_\_\_ Withdrawn

The amount of your verdict must be within the range of the evidence. It cannot be more than the highest figure nor less than the lowest figure testified to by the witnesses.

Plaintiff's Jury Instruction No. 9

I.P.I. Civil No. 300.61

\_\_\_\_\_ Given

\_\_\_\_\_ Given as Modified

\_\_\_\_\_ Refused

\_\_\_\_\_ Withdrawn

When you retire to the jury room, you will first select a foreperson. He or she will preside during your deliberations.

Your verdict must be unanimous.

A Verdict Form is supplied with these instructions. After you have reached your verdict, fill in and sign the appropriate form, and return it into court. Your verdict must be signed by each of you. You should not write or mark upon this or any of the other instructions given to you by the court.

When you have determined the just compensation to be paid for the property taken, you will complete the Verdict Form.

Plaintiff's Jury Instruction No. 10

I.P.I. Civil No. 300.70

\_\_\_\_\_ Given

\_\_\_\_\_ Given as Modified

\_\_\_\_\_ Refused

\_\_\_\_\_ Withdrawn

**Verdict Form**

We, the jury, find the just compensation to be paid to the defendant for the taking of its property to be \$ \_\_\_\_\_.

_____	_____
Foreperson	
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Plaintiff's Jury Instruction No. 11

I.P.I. Civil No. 300.70

\_\_\_\_\_ Given

\_\_\_\_\_ Given as Modified

\_\_\_\_\_ Refused

\_\_\_\_\_ Withdrawn