

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DU PAGE 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, COUNTY BOARD OF SCHOOL)
TRUSTEES OF DU PAGE COUNTY, ILLINOIS,)
a body politic and corporate, for the use and benefit)
of School District Number 99, Du Page County,)
Illinois and UNKNOWN OWNERS,)

Defendants.)

**PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANT'S, COMMUNITY HIGH SCHOOL DISTRICT 99, TRAVERSE**

I. INTRODUCTION

On April 21, 2005, the Village of Woodridge, Illinois ("Woodridge") passed Ordinance No. 2005-28 authorizing the acquisition through negotiation of certain property (the "Subject Property") owned by Community High School District 99 ("District 99"). A copy of Ordinance 2005-28 is attached hereto as Exhibit 1. On May 19, 2005, after it became apparent that further negotiations between Woodridge and District 99 would be futile, Woodridge passed Ordinance No. 2005-36 finding it necessary and desirable to acquire the Subject Property for parks and public ground purposes through condemnation. A copy of Ordinance 2005-36 is attached hereto as Exhibit 2. On May 23, 2005, Woodridge filed its Complaint for Condemnation. On August 15, 2005, District 99 passed a resolution contesting Woodridge's authority to condemn the Subject Property (the "Resolution"), and on September 6, 2006, District 99 filed its Traverse.

District 99's Traverse does not challenge Woodridge's findings that it is necessary to acquire the property or that the acquisition is for a proper public purpose. Rather, District 99's Traverse is predicated on the assertion that Woodridge's acquisition of the Subject Property will materially impair and interfere with the use to which the Subject Property was devoted and will be detrimental to the public. Traverse, ¶ 22. At the Traverse hearing, the evidence will establish that District 99 acquired the bulk of the Subject Property in the late 1960's and since that time, it has never used it for school or educational purposes. Rather, the Subject Property has remained vacant and unimproved used only by the Woodridge Park District and the Village of Woodridge itself. As established below, there is simply no evidence from which District 99 can establish a material interference with an existing use or a detriment to the public by virtue of Woodridge's acquisition of the Subject Property. Therefore, the Traverse must be denied.

II. BURDEN OF PROOF AND PROCEDURES.

In a condemnation proceeding where the defendant files a traverse, the petitioner is required to make a *prima facie* case of the disputed allegations. *City of Oakbrook Terrace v. LaSalle National Bank*, 186 Ill. App. 3d 343, 348, 542 N.E.2d 478, 480-81 (2d Dist. 1989). A *prima facie* case of necessity for purposes of a traverse and motion to dismiss a condemnation complaint is established by introducing a resolution by the authorized public agency that recites public "necessity." *City of DeKalb v. Anderson*, 43 Ill. App. 3d 915, 917, 357 N.E.2d 837, 839 (2d Dist. 1976). "When the condemnor has established a *prima facie* case, the burden shifts to the landowner to show that the governing board abused its discretion." *City of Oakbrook Terrace*, 186 Ill. App. 3d at 348, 542 N.E.2d at 480-81. Accordingly, Woodridge makes its *prima facie* case of authority by admission of its Ordinance authorizing the acquisition of this action. *Department of Transportation of the State of Illinois v. Callender Construction Co.*, 305 Ill. App. 3d 396, 402, 711 N.E.2d 1199, 1203-04 (4th Dist. 1999).

District 99 asserts without authority that Woodridge may not use either Ordinance 2005-28 or 2005-36 to make its burden of proof because neither ordinance references any statute which grants Woodridge the power to condemn public land. Traverse, ¶ 24. However, this assertion is contrary to existing law. In *City of Oakbrook Terrace*, the court held "[u]nder *Goldman [v. Moore]*, 35 Ill.2d 450, 220 N.E.2d 466 (1966)] it is evident that the purpose of the enabling ordinance is to show the necessity for the taking, not the statutory section under which the municipality will proceed." 186 Ill. App. 3d at 350, 542 N.E.2d at 482. The *City of Oakbrook Terrace* court further found that where the statutory authority was alleged in the complaint and the enabling ordinance established necessity, the condemning municipality properly made out a *prima facie* case in a traverse proceeding. *Id.* See also *City of Mound City v. Mason*, 262 Ill. 392, 104 E. 685 (1914); *Trotter v. Spezio*, 349 Ill. App. 3d 959, 963-64, 812 N.E.2d 577, 580 (3d Dist. 2004).

In this case, Woodridge's Ordinances clearly establish necessity, and its Complaint cites the statutory authority under which Woodridge is proceeding. Complaint, ¶ 2 ("Plaintiff is authorized and empowered by 65 ILCS 5/11-61-1, *et seq.* to exercise the right of eminent domain by condemnation proceedings for the acquisition of property useful, advantageous or desirable for municipal purposes."). Accordingly, by introduction of Woodridge's Ordinance authorizing the acquisition of the Subject Property, Woodridge makes its *prima facie* case and the burden shifts to District 99 to establish that Woodridge has abused its authority.

In an attempt to avoid meeting its burden, District 99 cites *Trustees of Schools v. First National Bank of Blue Island*, 49 Ill.2d 408, 414, 274 N.E.2d 56, 60 (1970); *County of Wabash v. Partee*, 241 Ill. App. 3d 59, 68 608 N.E.2d 674, 680 (5th 1993); *Illinois Medical Center Commission v. United Church of the Medical Center*, 142 Ill. App. 3d 498, 503, 491 N.E.2d 1327, 1331 (1st Dist. 1986) for the proposition that by virtue of passing its Resolution, District

99 discharges its burden. Traverse, ¶ 25. Contrary to District 99's loose interpretation, none of these decisions stand for the proposition that the party seeking to traverse a condemnation petition may discharge its burden by passage of a resolution or ordinance. Rather, each decision stands for the proposition discussed above, that the condemnor may discharge its burden of a *prima facie* case by passage of such documents. Accordingly, District 99's attempt to avoid having to actually demonstrate that Woodridge has abused its discretion by passage of the Resolution is wholly without legal support and must be rejected.

In its Traverse, District 99 also makes much of the distinction between general and specific grants of authority to condemn in the context of acquiring public property. *See* Traverse, ¶¶ 17-22. This argument is a red herring as the legislature has granted municipalities such as Woodridge the specific authority to condemn property owned by school districts and boards of education. 65 ILCS 5/11-61-2. Section 5/11-61-2 of the Municipal Code provides:

The corporate authorities of each municipality may vacate, lay out, establish, open, alter, widen, extend, grade, pave, or otherwise improve streets, alleys, avenues, sidewalks, wharves, parks, and public grounds; and for these purposes or uses, to take real property or portions thereof belonging to the taking municipality, or to counties, **school districts, boards of education**, sanitary districts or sanitary district trustees, forest preserve districts or forest preserve district commissioners, and park districts or park commissioners, even though the property is already devoted to a public use, when the taking will not materially impair or interfere with the use already existing and will not be detrimental to the public. (emphasis added).

Accordingly, District 99's assertions that Woodridge lacks the specific grant of authority to condemn public property must also be rejected.

III. WOODRIDGE'S ACQUISITION OF THE PROPERTY WILL NOT INTERFERE WITH THE EXISTING USE NOR CAUSE A DETRIMENT TO THE PUBLIC.

District 99 argues that § 5/11-61-2 does not authorize Woodridge to acquire the Subject Property because Woodridge's acquisition of the property will interfere with the existing use and be detrimental to the public. Traverse, ¶ 22. In fact, District 99 asserts that by virtue of its

Resolution, it has made a conclusive legislative determination that Woodridge's acquisition of the property will interfere with the existing use of the property and will be detrimental to the public. Traverse, ¶ 27. Notwithstanding District 99's arguments, Woodridge's acquisition of the Subject Property will not interfere with the uses to which the property was devoted nor will the public be harmed as established next. Moreover, District 99 fails to cite any authority for the proposition that its Resolution negates Woodridge's specific authority to condemn the Subject Property or that it should even be considered by the Court. Notwithstanding District 99's contention, "[t]he final determination of whether a use or purpose is within the limits of the legislative discretion is a judicial function, thus it is for the courts to decide whether a use is a public use." *Reel v. City of Freeport*, 61 Ill. App. 3d 448, 455-56, 209 N.E.2d 675, 679 (2d Dist. 1965). Accordingly, a review of the evidence requires that District 99's Traverse be denied.

A. Woodridge's Acquisition Of The Property Will Not Interfere With The Existing Use To Which The Property Was Devoted.

At the Traverse hearing, the evidence will establish that the only public uses to which the property was devoted were as follows: since 1971, the Woodridge Park District has leased the Subject Property from District 99 and has used the property for garden plots and as a location to store garden mulch for Woodridge residents. The other use of the property was by Woodridge itself for its annual summertime jubilee which consists of concerts, picnics, etc. There is simply no evidence that either of these uses will be materially interfered with or impaired by virtue of Woodridge's acquisition of the Subject Property. Accordingly, District 99's Traverse on this basis must be denied.

Knowing that Woodridge's acquisition of the Subject Property will not materially impair or interfere with the uses to which the property was actually devoted, District 99 conjures uses of the Subject Property which simply did not and do not exist. For example, District 99 claims that Woodridge's acquisition of the property will interfere with its ability to provide for outdoor educational opportunities. Traverse, ¶ 13(b). However, District 99 has

been unable to identify any class or educational activity that was ever conducted on the Subject Property despite Woodridge's requests that it do so.

Woodridge believes that District 99 will attempt to claim that Woodridge's acquisition of the property will interfere with potential future uses of the property to which District 99 could put the property. However, such an argument ignores the "devoted to a public use" language of § 11-61-2, *supra*. By definition, "devote" means "to give up or apply to a particular pursuit, purpose, cause, etc." Random House Webster's College Dictionary, 2d ed. 1997. Although it need not do so pursuant to *Reel, supra*, to the extent the Court considers District 99's Resolution, said Resolution establishes that the Subject Property was not devoted to any particular purpose. The Resolution provides:

WHEREAS, the District acquired and continues to own the Property for the purpose of promoting school purposes, including but not limited to providing outdoor educational opportunities, providing for future District real estate needs such as a third high school, athletic fields, and/or auxiliary school facilities, and providing for the revenue necessary to maintain schools in the District.

* * *

WHEREAS, the defeated 3rd High School Referenda, the District's rapidly changing needs, and the recent rejection by District residents of a referendum to increase property taxes require the District to assess its existing facilities configuration and face the possibilities of using the Property for specific school facilities, retaining the Property for future needs, or liquidating this asset and using the proceeds for District School purposes.

On its face, the Resolution establishes that there is no particular purpose for which the property has been used historically or that District 99 contemplated in the future. Simply stated, the uses to which the Subject Property was devoted had nothing to do with District 99's use; accordingly, there is no basis to find that Woodridge's acquisition of the Subject Property will interfere with the uses existing on the property at the time this action was filed.

Further, such "potential use" arguments have been rejected in the context of eminent domain. For instance, a line of cases in Illinois dealing with the right of one railroad to condemn the land of another railroad hold that property not in actual use for railroad purposes may be condemned by another railroad. *See St. Louis, A & T. H. R. Co. v. Bellville City Ry.*

Co., 158 Ill. 390, 41 N.E. 916 (1895); *The Peoria, Pekin and Jacksonville R.R. Co. v. The Peoria and Springfield R.R. Co.*, 66 Ill. 174 (1872); and *Chicago & M. Electric R. Co. v. Chicago & N.W. Ry. Co.*, 211 Ill. 352, 71 N.E. 1017 (1904). In *St. Louis, A & T. H. R. Co.*, the defendant railroad company leased a strip of its land to an iron works facility and the plaintiff railroad company sought to acquire the leased property through condemnation for railroad purposes. 158 Ill. at 392. The defendant railroad company objected on the basis that the leased property was already used for railroad purposes. *Id.* at 393. In rejecting the defendant railroad company's objection, the Illinois Supreme Court held that while the defendant railroad company had contemplated using the leased property to connect its tracks to the iron works facility, the fact remained that the leased property was not in "actual use" by the defendant railroad company for "railroad purposes." *Id.* at 394.

Similarly, in *City of Chicago v. Sanitary Dist. of Chicago*, 272 Ill. 37, 41, 111 N.E. 491, 493 (1916), the court held that the City of Chicago could condemn certain land of the sanitary district where the land sought to be acquired was not devoted to the necessities of the district. *See also City of East Peoria v. Group Five Development Co.*, 87 Ill.2d 42, 46, 429 N.E.2d 492, 494 (1981) (permitting the city to acquire property owned by community college district for purposes of road construction); *Metropolitan Sanitary Dist. of Greater Chicago v. City of Des Plaines*, 36 Ill. App. 3d 726, 344 N.E.2d 729 (1st Dist. 1976) (finding that the Metropolitan Water Reclamation District Act, previously part of the Drainage Code, authorized sanitary district to acquire easement under city owned roadway).

Assuming *arguendo* that the Court entertains District 99's potential use argument, the decision in *Marple Township v Marple Newtown School District*, 856 A.2d 225 (Pa. Cmmw. 2004) demonstrates why the Court should reject such an argument. In *Marple Township*, the township sought to condemn the school district's land under a statute which provided:

Townships may enter upon an appropriate private property and also land heretofore granted or dedicated to public use or other use within the limits of such township, and which is no longer used for the purpose for which the same was granted or dedicated, for the erection thereon of a town hall, fire house, lockup, and such other public buildings as are necessary for public purposes.

No land or property used for any cemetery, burying ground, public or parochial school, educational or charitable institution, seminary, or place of public worship shall be taken or appropriated by virtue of any power contained in the preceding paragraph.

856 A.2d at 227-28 citing 53 PS § 57803. In permitting the condemnation, the trial court found that the property had not been used for any educational purposes for more than twenty years and at the time of the proceeding, the school district used the two buildings located on the premises for the storage of vehicles, snow and ice removal supplies and oil for school buses. *Id.* at 228. In opposition to the township's condemnation action, the school district argued that "property devoted to one public use may be taken for another public use only if the taking will not materially impair or interfere or is not inconsistent with the use already existing and is not detrimental to the public." *Id.* at 229. While the court agreed with the school district's statement of the law, it held that "due to the fact that the School District had listed the property for sale through a real estate broker prior to the filing of the Township's declaration of taking, the School District's contentions [were] disingenuous at best." Given the striking similarities between the *Marple* decision and this case, a similar result is clearly warranted.

District 99 also contends that the Court should not permit Woodridge to acquire the property because of the possibility of multiple takings of the same parcel of land. *Traverse*, ¶ 19. In support, District 99 cites *City of Edwardsville v. County of Madison*, 251 Ill. 265, 96 N.E. 238 (1911) for the proposition that "otherwise the city might condemn the courthouse square for an enginehouse, the school district might condemn the enginehouse for a schoolhouse, the county might condemn the schoolhouse for a courthouse, and an endless chain of condemnations by various municipalities might be set in operation." However, this contention was subsequently rejected by the Illinois Supreme Court in *City of East Peoria v. Group Five Development Co.*, 87 Ill.2d 42, 47, 429 N.E.2d 492, 494 (1981) where the court interpreted the Local Improvements Act, 65 ILCS 5/9-2-1 *et seq.* and stated:

The District contends that allowing one public body to condemn the property of another will lead to abuses of the power granted, for which the relevant Code sections provide no remedy. This argument is without merit. When a public body seeks to take property already devoted to a public use, courts are

empowered to consider the reasonableness of the taking [citation omitted] and to correct any clear abuses of discretion. [citations omitted].

In addition, District 99's argument contemplates that all legislative bodies are on equal footing with respect to eminent domain. They are not. Rather, a hierarchy exists whereby the state, municipalities and certain other legislative bodies such as sanitary districts are authorized to condemn public land. However, District 99 does not cite any authority for the proposition that it has the power to condemn public property and the undersigned is aware of no such authority. *See Trustees of Schools of Tp. No. 44 v. Kirane*, 5 Ill.2d 64, 67, 124 N.E.2d 886, 887 (1955). Accordingly, the legislature has created a hierarchy with respect to eminent domain by granting certain political subdivisions such as Woodridge the authority to condemn public property and denying others such as District 99 the authority to condemn public property.

In sum, District 99 cannot meet its burden of demonstrating that Woodridge's acquisition of the Subject Property will materially interfere or impair any use to which the property was devoted. Therefore, District 99's Traverse on this basis must be denied.

B. The Public Will Suffer No Detriment If Woodridge Acquires The Property.

District 99 also claims that the public will suffer a detriment for four (4) reasons if Woodridge acquires the property. However, as demonstrated below, District 99's assertions are meritless. Before addressing District 99's erroneous claims, it must be noted that District 99 misconstrues the term "public." According to District 99 board members who voted in favor of the Resolution, the "public" referred to therein is only District 99's constituents. Contrary to District 99's limited interpretation, the term "public" as used in the Municipal Code is intended to mean something much broader. *See Martens v. Brady*, 264 Ill. 178, 187, 106 N.E. 266, 270 (1914) ("In the distribution of governmental powers the state delegated to municipalities,

as governmental agencies of the state, authority and control over the public highways within their respective limits for the use and benefit not merely of the citizens of the municipality, but of all the people of the state."). Accordingly, the Court, in considering the evidence, should consider the benefits of Woodridge's acquisition of the property to not only District 99's constituents, but to the community at large and the people of Illinois.

Woodridge expects that the evidence at the hearing on District 99's Traverse will demonstrate that Woodridge's use of the Subject Property for the stated purpose of public parks and grounds will not be detrimental to the public, but rather, be a benefit. The benefit will inure not only to Woodridge's residents but to all of District 99 constituents and to the citizens of the State of Illinois.

1. There Is No Evidence That District 99 Will Ever Use The Property For Any Purpose.

Initially, District 99 asserts that it will be deprived of the ability to use the property in the future. Traverse, ¶ 13(c). However, District 99's conclusion in this regard is unsupported by any factual basis. Woodridge expects the evidence at the Traverse hearing to demonstrate that there is not, nor has there ever been, any actual plan by District 99 to use the property for any educational, athletic or other school purpose. Rather, the evidence will show that from time to time during the past thirty plus years, District 99 has considered using the Subject Property for a third high school site or for athletic fields but has repeatedly decided to leave the property vacant and unutilized for any school purpose.

Further, it was District 99's marketing of the Subject Property for sale that was the genesis of this eminent domain action in the first instance. Moreover, the Resolution, to the extent it is considered by the Court, indicates that District 99's "future facilities needs are uncertain" and the Subject Property may need to be liquidated for school purposes. Traverse,

Ex. A, p. 2. Accordingly, any claim of detriment to the public based on an inability to use the property in the future is nothing more than speculation and is inconsistent with the past thirty plus years of District 99's history.

2. The Jury Will Award District 99 the Compensation it is Due.

District 99 also asserts that the District will not be able to realize the full value of the Subject Property in this eminent domain proceeding. Traverse, ¶ 13(c). This contention is contrary to law. "In an eminent domain proceeding, the only question for the jury to decide is the just compensation to be paid to the owner of the property that is to be condemned." *Illinois Dept. of Natural Resources v. Pedigo*, 348 Ill. App. 3d 1044, 1048, 811 N.E.2d 761, 765 (4th Dist. 2004). "'Just compensation' is the fair-market value of the property at its highest and best use on the date of the filing of the complaint to condemn." *Id.* Accordingly, District 99 and its constituents will receive fair market value for the property, and there is no authority for the proposition that District 99 is entitled to more than this amount. Accordingly, District 99's contention in this regard is without legal authority or factual support.

3. District 99 Cannot Establish The Lack Of Comparable Real Estate.

District 99 asserts the public will suffer a detriment because it will not be able to purchase comparable replacement real estate with the proceeds likely awarded in an eminent domain lawsuit. Traverse, ¶ 13(c). As already established, District 99 has not established a need for the Subject Property in the first instance and moreover, its protestations about the jury award of just compensation are contrary to law. Further, the evidence will demonstrate that District 99 has never conducted any analysis of other potential sites on which it could construct whatever school facilities its needs or what the cost of such property would be. Accordingly, District 99's proffered detriment to the public in this regard is nothing more than conclusory

speculation and is not predicated on any competent evidence. Therefore, District 99's Traverse on this basis must be denied.

4. There Is No Taxable Value Of The Property And Therefore, There Will Be No Detriment To The Public.

Finally, District 99 claims that it will lose the future taxable value of the property to the detriment of the public. *Id.* Although the evidence will demonstrate that some of District 99's Board members did not even know what was meant by this statement, some opined that this statement referred to the fact that if the Subject Property was sold to a private party that the property could then be taxed and District 99 could realize revenue. As with all of District 99's claims of detriment to the public, this assertion is based upon nothing more than speculation and does not establish a detriment to the public. Because the property is currently owned by a school district, it is exempt from taxation. *See* 35 ILCS 200/15-135. Upon acquisition of the Subject Property by Woodridge, the property will remain exempt. *See* 35 ILCS 200/15-75. Moreover, to the extent District 99's speculates as to the identity of a potential purchaser, District 99's claim is counter-intuitive as such a claim could be made any time a municipality condemned public property pursuant to the authority granted by § 5/11-61-2 of the Municipal Code. Moreover, there is nothing to prevent Woodridge from condemning the Subject Property if District 99 sold it to a private party thereby rendering the property exempt. Accordingly, if Woodridge acquires the property, District 99's constituents and all citizens of Illinois are situated as they were during the ownership of the property by District 99. Therefore, there is no detriment to the public by virtue of Woodridge's acquisition and the Subject Property remaining exempt from property taxes.

IV. THE COURT SHOULD NOT CONSIDER DISTRICT 99'S RESOLUTION.

District 99 contends that the legislative findings in the Resolution require the deference

of this Court, *Traverse*, ¶ 14, and that the Court has no basis in law to favor one determination of public need over another public body's similar determination. *Id.*, ¶ 29. In support of this theory, District 99 cites *Chicago Rock Island and Pacific R.R. v. Town of Lake*, 71 Ill. 333, 336, 1874 WL 8668 (1874). In making this argument, District 99 attempts to bootstrap the requirement that property acquired through eminent domain be necessary for a public use. *Id.* However, District 99's resolution is not directed at necessity but rather, is directed at the requirements of § 5/11-61-2. Moreover, District 99 continues to assert that its standing as another legislative body is equal to that of Woodridge in the context of this condemnation proceeding. However, none of the cases cited by District 99 stand for the proposition that as a condemnee, it has such equal footing. Rather, the decision in *Chicago Rock Island* only discusses the deference to be paid to the condemnor by virtue of the authority vested by the legislature in the context of taking private property for a public use. Specifically, the *Chicago Rock Island* Court stated:

Of the necessity or expediency of exercising the right of eminent domain in the appropriation of private property to public uses, the opinion of the legislature or of the corporate body or tribunal upon which it has conferred the power to determine the question, is conclusive upon the courts, since such a question is essentially political in its nature, and not judicial; but the question whether the specified use is a public use or purpose, or such use or purpose as will justify or sustain the compulsory taking of private property, is perhaps ultimately a judicial question, and if so, the courts can not be absolutely concluded by the action or opinion of the legislative department. But if the use is public, or if it be so doubtful that the courts can not pronounce it to be such as not to justify the compulsory taking, the decision of the legislature, embodied in the enactment giving the power, that a necessity exists to take the property, is final and conclusive.

1874 WL 8668 at *2.

This issue was previously briefed and argued by the parties in connection with District 99's Motion to Compel filed in response to Woodridge's refusal to tender documents because District 99 had not challenged Woodridge's proffered need for the

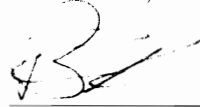
property as set forth in Ordinances 2005-28 and 2005-36. Rather, as plainly set forth in its Resolution and Traverse, District 99 is challenging whether Woodridge's acquisition of the Subject Property will materially interfere with the existing use to which the property was devoted and that said acquisition will be detrimental to the public.

Moreover, not only is District 99's "competing resolution" theory without legal support, it leads to absurd results – as any public body whose property a municipality sought to condemn, could simply pass a resolution thereby completely vitiating the authority granted to municipalities by § 5/11-61-2 of the Municipal Code. District 99's theory would permit any public body to block the condemnation of its property by simply passing a resolution contradicting the condemning municipality's findings of legitimate need and purpose. Clearly, the legislature did not intend § 5/11-61-2 be such a meaningless grant of power.

Accordingly, at the Traverse hearing, the Court should consider competent evidence as to: (1) what was the existing use of the Subject Property at the time this action was filed; (2) whether the acquisition of the Subject Property by Woodridge will interfere with that use; and (3) whether the acquisition of the Subject Property will be detrimental to the public. Further, pursuant to the holding in *Reel, supra*, the Court itself must make a determination as to whether Woodridge's acquisition of the Subject Property will materially interfere or impair the existing use and whether Woodridge has abused its authority to the detriment of the public. 61 Ill. App. 3d at 455-56, 209 N.E.2d at 679. For the reasons stated herein, Woodridge respectfully submits that based upon the evidence expected to be presented at the Traverse hearing, the Court should deny District 99's Traverse.

CONCLUSION

Against this backdrop, it is evident that District 99 cannot meet its burden to establish that Woodridge's acquisition of the Subject Property will interfere with the existing use of the property or will be detrimental to the public. Therefore, District 99's Traverse must be denied.



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

Phillip A. Luetkehans
Robert W. Funk
SCHIROTT & LUETKEHANS, P.C.
105 E. Irving Park Road
Itasca, IL 60143
(630) 773-8500
Attorney No. 8500

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