

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 THE VILLAGE OF WOODRIDGE,)
)
6 Plaintiff,)
)
7 vs.)
)
8 BOARD OF EDUCATION OF COMMUNITY)
HIGH SCHOOL DIST. 99, et al.,)
9)
10 Defendants,)

DUPLICATE

No. 05 ED 64

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

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

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

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

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

8 The statute as drafted by the Legislature
9 provides that even though the property is already
10 devoted to a public purpose -- and both sides state
11 that this property is already devoted to a public --
12 to a public use, rather -- when the taking will not
13 materially impair or interfere with the use already
14 existing and will not be detrimental to the public.

15 The witnesses who have testified, of course,
16 perform a public service.

17 An editorial note seems -- it seems to be
18 difficult for -- it seems to me it would be difficult
19 for the president of the Board and the superintendent
20 of District 99, because all of the witnesses -- all
21 the Board members are performing a public service,
22 they are intelligent, they're committed but they each
23 have a different view of the property and the uses of
24 the property, which would make it difficult for the

1 president and the superintendent.

2 There is no single view by District 99
3 of the use of that property. We know that the public
4 has rejected the use of that property as a third high
5 school.

6 I found that there were three resolutions.
7 I'm not sure all three were directed at the
8 construction of a high school. I think maybe only two
9 were but at least there were three resolutions.

10 The public has rejected the construction of
11 a third high school on that property.

12 For in excess of 30 years that property has
13 been leased to the park district and according to the
14 testimony, never been used by District 99 for an
15 existing educational purpose.

16 The District argues -- and correctly

17 argues -- that the Court should not use its
18 determination as to the best use of that property.

19 The Court is a separate branch of
20 government and that is not the Court's purpose. The
21 Legislature sets the law. The Court follows the law.

22 The Court could agree that the best use of
23 the property is open space and the park uses, the main
24 uses that were described that the Village and the park

1 district have been putting it to or the Court could
2 agree, that the special education needs of the 18
3 districts would be the best use or the bus barn or any
4 other use, but that's not not the purpose of the Court
5 under the separation of powers.

6 We have no opinion as to what the best use
7 of that property is.

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

12 District 99 has not put this property to any
13 already existing use.

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

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

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

24 The use for -- that was testified to by the

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

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

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

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

(Woodridge has the statutory right to take the property for just compensation)