In Re: Quick Take Power of Eminent Domain

Report of Proceeding

Taken on: January 19, 2017

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LONGMEADOW PARKWAY BRIDGE CORRIDOR

PUBLIC HEARING, JANUARY 19, 2017

Report of proceedings had at the public hearing regarding Quick Take Power in Eminent Domain had at the Kane County Government Center, 719 Batavia, 2nd Floor County Board Room, Geneva, Illinois on the 19th day of January, A.D., 2017 commencing at the hour of 4:00 p.m.

APPEARANCES:

MR. STEVE COFFINBARGAR, DIRECTOR
KANE COUNTY DIVISION OF TRANSPORTATION

MR. TIM RICKERT, DEPUTY DIRECTOR OF TRANSPORTATION AT KDOT

MR. COFFINBARGAR: So I am going to explain why we're here today and a little bit about eminent domain, and quick take. This public hearing is being held pursuant to Illinois House Rule 41 in conjunction with and relative to a potential request by the County of Kane to be granted quick take authority by the Illinois General Assembly pursuant to the Illinois compiled statutes, which I have got copies, specifically of the eminent domain statute and of the quick take procedures, if you would like to take those.

Quick take authority is being sought by the County of Kane only for acquisition of necessary right-of-way from various property owners along Longmeadow Parkway Bridge Corridor and the Huntley at Galligan Road intersection improvement, and that's for right of ways that the County of Kane is pursuing that is left for these two roadway improvements.

It is important to note that the State of Illinois is assisting Kane County with right-of-way acquisition for the Longmeadow Parkway project at and near Illinois 31, Illinois 25, and Illinois 62. Again, we are here just for the parcels remaining that Kane County needs to acquire.

The county can't commence construction of the

Huntley and Galligan Road project, which the exhibits are here for that project, and for the Longmeadow Parkway project, which are here, until -- can't commence construction of these projects or continue construction for Longmeadow Parkway, mainly Sections B2, which is east of White Chapel Road to Illinois -- I mean east of White Chapel to east of Illinois 31. Section C, which is from 31, across the river, to east of 25; and Section D, from 25 to 62, until we have title of all the necessary right of ways -- sorry for that long-winded sentence -- but we can't continue acquisition for those remaining sections until we have the necessary right-of-way.

By way of background, the County of Kane is currently authorized by statute to acquire by eminent domain or you might call it condemnation, those are alternate names, for real property for highway purposes. The eminent domain process is relatively simple and can be time consuming.

And to explain the process, the county determines what property we need to acquire to build a roadway improvement. We have that property appraised by State of Illinois approved appraisers. The appraisal is reviewed by a review appraiser, and a state approved

review appraiser, and that appraisal is then sent to IDOT for their approval. So it is sort of appraised and then reviewed twice.

So once the appraisal has been approved by IDOT, we can then begin negotiations with the property owner, and we offer the full appraised value of the property with that property owner. In the event that those proceedings are not successful, the county may file eminent domain proceedings and in the 16th Judicial Circuit Court have the court and/or jury determine the value of the desired property.

Eminent domain proceedings require that the court determine the property's value prior to the county being able to take title. This can take up to a year or more for eminent domain proceedings. In the event the property owner further appeals the eminent domain determination made by the court to a higher court, the process can take substantially longer in some cases, maybe even two years.

So we are going to request quick take authority, and if quick take authority is granted to the county for the eminent domain process, the county would be allowed to take title to acquired property shortly after filing the eminent domain complaint. So in short,

after filing the complaint, a quick take motion is filed in court, and the court makes a determination of the amount of preliminary just compensation to be paid by the county to the property owner for the desired property.

The quick take process has two advantages. The county gets title to required properties shortly after filing the eminent domain complaint enabling commencement of construction of the highway project, and thereby saving the taxpayers from increasing construction costs and delay. The further you delay a project, the costs can increase 2 to 3 percent per year approximately, and on a hundred and fifteen million dollar project, that can add up, or in the case of Longmeadow, obviously it's not that much. It is an intersection improvement.

The property owner -- the second advantage is the property owner has immediate access to the preliminary just compensation which can be no less than the appraised value. So they can use that money -- they can use that money to fund the court case in which they are fighting against the appraised value. So they have access to those funds right away, and if not satisfied with the appraised value, they can continue the eminent

domain process in court to attempt to get a higher price for their property.

Regardless of the grant of quick take authority by the general assembly, it is most important to note this. The county intends to continue to negotiate with all of the remaining property owners on these projects. We prefer to arrive at a mutually satisfied conclusion to the right-of-way acquisition process. It is only in an unlikely event that the negotiations are not successful that the county intends to use quick take authority in conjunction with eminent domain proceedings to acquire title to the necessary right-of-way.

The county used the request that they grant quick take as a belt and suspenders approach to ensure that projects commence and are completed on time. So we have a court reporter here tonight that you can get verbal comments to. We have a place here where you can provide written comments. There is staff here that can give you information on the two projects, and if you have any questions, please ask us.

THE WITNESS: What do the comments go towards?

MR. COFFINBARGAR: Well, we are here this evening specifically for the quick take authority request, and

so the comments were taken in by staff and considered during the process as we go through -- there are certain steps we need to follow with a quick take process. So we gather those comments, you know, take a look at them, and we share something that you are willing to or want to take a look at.

UNIDENTIFIED SPEAKER: Once, you declare a property for eminent domain, whether it is a year, two years, no matter what, the county ends up owning in eminent domain?

MR. COFFINBARGAR: It is a lengthy process.

UNIDENTIFIED SPEAKER: Yeah, once it has been declared -- no matter what, a year, two years.

MR. COFFINBARGAR: Ultimately the county board has decided to go forward with the project so ultimately the county board will continue to take it through the process until it is owned by us.

UNIDENTIFIED SPEAKER: Yeah, so eminent domain it's basically normally one year, two years, whatever.

MR. COFFINBARGAR: Quick take authority allows us to purchase the homes and hang onto the property. With eminent domain they do not have access to those funds immediately. They have to wait until the court renders a decision on the value of the property.

MS. BREHMER: I have a question. Do these comments stay in the KDOT or do they get forwarded to the Kane County board members?

MR. COFFINBARGAR: We will make sure -- the county board will actually take action on the quick take resolution and it will go to the Illinois General Assembly. So we will provide comments received here from the public hearing and provide that to the county board members.

MS. BREHMER: Are you also taking written comments via e-mail or is it just tonight, that hour, and that's it, as far as the public comments?

MR. COFFINBARGAR: Well, the public comments will come primarily from this public hearing, but if we receive some e-mails, I am not going to say that we are not going to include that as part of it. We want to make sure we get as much information as possible. There are about a dozen property owners that are represented here and we ant to make sure that the county board hears from them.

And were those people notified by certified mail about this hearing because really wasn't much information out there about this hearing.

MR. COFFINBARGAR: They were sent certified

letters, the property owners, and we had it on the web site and it was in the paper. That was the public notice.

MS. BREHMER: So this is a two lane highway for 15 years. Why do you keep pursuing a four-lane highway? There is no money. Why wasn't that looked at?

MR. RICKERT: The two lane, there was a financial feasible study that was looked at back in 2009 that considered what are some ways potentially the county can offset some of the initial costs and the further consideration of that ultimately ended up with the project costing even more for the two lane and so as well as the impact to residents along the corridor would be twice, and so it was determined that it would actually save the county money as well as only have one impact instead of two construction impacts, and so it determined that since the Phase 1 hearing that was approved by the federal and state governmental agencies approved the four lane, it was decided it was more prudent to go forward with the four lane because of the cost savings as well as the impacts.

MS. BREHMER: What about the trend in the population with Illinois? I mean, thousands are leaving the state. So, you know, the population is going down.

You know, are they looking into a lot of people aren't commuting. They are working from home. The counts have gone down by 5,000 cars.

It is all these exact numbers are dropping. They are not increasing. So why not fix the existing road. Why not fix Randall Road. You know, more traffic is going to dump on Randall than Algonquin Road. Randall is already not a good situation, and it is four lanes. It just doesn't make sense.

MR. RICKERT: And everybody has a different perspective. I'll kind of explain the social economic value. When we look at it, we look at the population projection. You are correct there has been in some areas of the state a down turn in population growth. This area has actually had growth. We are one of the primary growth areas, Northern Kane County, at this point in time.

We also, any federal job is done in accordance with social economic value as approved by CMAP. They are the agency that has oversight. The numbers that we utilized were adopted in 2014 and those numbers show continued growth in this area. It actually shows growth of over for the four townships, in Southern Kane -- I mean Northern Kane and Southern McHenry, it actually

shows growth of almost 200,000 people over the next 20 to 30 years.

MS. BREHMER: I know what you are going by, but like lake In The Hills, everybody said the CMAP information was overstated by like 300 percent and the growth area you are talking about is Gilbert and those areas, they can get on 90. 47 opened a new exchange. They are going to take 90 to go east and west. There are six lanes of traffic that are open now. None of that was included in your study.

MR. RICKERT: It is actually all included in the study. When you look at the social economic data, and again, it is a forecast, and, you know, when I started working for the county, the county population has more than doubled. We are looking at a long-term rising.

When we look at the social economic data, we don't say that the economy in Illinois is no good for the next three decades. What we look at is what we anticipate is that there will be another uptrend, and it will occur as it has historically. And so we have to look at the future.

When you look at planning the existing roads, and you look at existing roads, the public has adopted all of these comprehensive plans that said Longmeadow

was one of the ways that any growth would be addressed. To say well, why don't we use existing roads. There is also homes and homeowners that live along those existing roads that they are relying on the public agencies following the comprehensive plans that have been adopted for over the last 30 years.

So we have this balancing act that we have to do as far as where do the improvements go. Do the improvements impact existing residents along roads that were never planned to be upgraded, or do they go towards roads that have been planned since -- I forget the year -- 1970 something to be improved. So it is following the comprehensive plans that the municipalities as well as the county and state have adopted.

UNIDENTIFIED SPEAKER: Can I make another statement? When you and I talked on the phone, we were talking about the sequence of events as to the plans for the Intersections A, B, C and D. The section called D starts at Algonquin Road, Illinois 62, goes across Autumn Trail and ends at the woods prior to the junction of Route 25.

MR. COFFINBARGAR: Right.

UNIDENTIFIED SPEAKER: Section D will not connect

with Route 25 until such time as the critical section, Section B, over the river is completed.

MR. COFFINBARGAR: Section C.

UNIDENTIFIED SPEAKER: C. So the connection between Algonquin Road and Route 25 will not be viable until the bridge is completed; is that correct?

MR. COFFINBARGAR: Not necessarily.

MR. RICKERT: Well, when 25 is built which would be --

MR. COFFINBARGAR: Currently included in C. So what we did was break up the engineering into four different sections. You probably talked to -- you are not the only person that I talked to so I am sorry I don't recall the specific conversation. We break up millions of dollars of engineering to allow more than -- The Section C is from east of 31 to 25 currently, but that doesn't mean in the future if there is a delay in the bridge or those sort of things, we could break out the intersection. Section D is being constructed or has been constructed, there is a potential to break out an intersection and tile it in.

UNIDENTIFIED SPEAKER: But by default Section D will not make it to 25. If you are building a four-lane road from the junction of Algonquin Road to the woods,

just short of 25, and that section will be unused until such time the section is needed.

MR. RICKERT: Well, or a portion of Section C.

MR. COFFINBARGAR: Our intention is to build 62 two intersection as part of Section B, and then C follows up the next season, the next construction season, and at minimum the intersection or build all of Section C. So Section C will come there shortly after. We didn't want to have a disruption of construction on 62 and construction on 25 at the exact same time. Sometimes you have to do that. We will see what happens, but we are really trying to do the two sections, B first, and then C next.

UNIDENTIFIED SPEAKER: It seems to me that it might be two years before C is even started.

MR. COFFINBARGAR: C is targeted for the fall of 2017, but that is dependent upon acquisition. So we will have to see if we meet that target, and then it would be two years worth of construction. When would the intersection of 25 be open to traffic and tie into D to make that end connection could happen before the end of those two years potentially, depending on construction staging, but at the worse it would be two years.

UNIDENTIFIED SPEAKER: So Section C would be --

MR. COFFINBARGAR: Three years from now, yes.

UNIDENTIFIED SPEAKER: How are the sections going?

MR. COFFINBARGAR: D is first. So this map shows the entire alignment. It doesn't show the limits of sections. Section D is along 62 and then headed west it falls just short of Illinois 25.

UNIDENTIFIED SPEAKER: Okay. So C is the bridge needed --

MR. COFFINBARGAR: No, not the bridge. C is the Illinois 25 intersection, the bridge, and falls just short of 31.

UNIDENTIFIED SPEAKER: C is here is going to be Longmeadow and A --

MR. RICKERT: A we just built. It is done now.

UNIDENTIFIED SPEAKER: It is not tied into Randall.

MR. RICKERT: It is not tied into Randall, but that is the next stage that is being led. So that will be constructed over the next construction season.

UNIDENTIFIED SPEAKER: That's what I am getting at. The bridge could be the last section built, correct?

MR. COFFINBARGAR: Could be.

MR. RICKERT: That's currently the plan. Stearns Road, which is another bridge corridor, that took eight

stages and was done over a period of about two to five years.

MR. COFFINBARGAR: A project of this magnitude breaking it up engineering and for construction contracts because the advantage, too, of having independent construction contracts is that multiple contractors and subcontractors are able to bid on the various sections. Some are, you know, they are already in building a tollway project and may not be able to bid on this one, but the following year they are freed up and they have staff and crews to work on it. So splitting things up engineeringwise and constructionwise is not unusual.

UNIDENTIFIED SPEAKER: My point of view, building a road from Algonquin short of 25, that may be they are disconnected for those three years. It seems to me that should be done after the funds of the bridge are received and the funds for the bridge are still at risk. There is no concrete excess funding for the bridge itself at this point in time. There is a referendum pending in the future to apply for bonds to pay for it; is that correct?

MR. RICKERT: No, no, there is no referendum. It is not required. The funding of the bridge is actually

partially funded already.

UNIDENTIFIED SPEAKER: Partially.

MR. RICKERT: Partially, and there are some funds that we are looking at potentially as through bonds, but there is no referendum required.

UNIDENTIFIED SPEAKER: So there would be bonds for Kane County that taxpayers would pay for?

MR. RICKERT: There possibly could be bonds. It all depends on what funding is --

UNIDENTIFIED SPEAKER: If there was bonds, would they be paid for by Kane County taxpayers?

MR. RICKERT: They will be paid as our current bonds are and the bonds that we did in the past by Kane County taxpayers. It is all existing funds that would pay for it. There would be no new requirements of funding. It would be all existing funds that are currently being received by --

MR. COFFINBARGAR: Bonding by hiring purposes is not unusual. We receive funds, and those can be used to pay back funds. It is not additional taxes on the taxpayers that would pay for these bonds.

MR. RICKERT: We do bonding quite often. Through existing --

UNIDENTIFIED SPEAKER: The quantity of dollars is

gross.

MR. RICKERT: No. We pay them off pretty quickly. We did a $40 million on Stearns Road and paid it off in five years. I mean, the bond fund goes up and down because we receive bonds for various projects.

MR. COFFINBARGAR: We paid off that bond.

MR. RICKERT: Yeah, we just paid off the starting bonds. It was five years ago it was paid off with the existing funds. No new taxes.

UNIDENTIFIED SPEAKER: For the record, my great concern is for the taxpayers of Kane County are in, essence, quote, for the long-term of this project. The taxpayers of our local geography closest to this project have three times at three referendums refused to support this project on a nonbinding referendum each of the three times.

And the most recent referendum was almost 70 percent against this project, and yet the project goes forward regardless of the local population in Northern Kane County, which is opposed to it, even though there are municipal executives who are in favor of it. I would like to state for the record that if the State of Illinois does hearing or reviewed this record and they look into those records and see how much

opposition there really is. It is significant, it is substantial, and it has been long-term against this particular project.

There are other projects that were on the record earlier, 10, 15 years ago, that go in a different direction. It was crazy deals in certain townships -- towns within Northern Kane County, and between those municipal executives there is a record of what transpired.

MS. BREHMER: What type of bonds would they have for the bridge?

MR. RICKERT: There are different options that are available. Until we actually get to that point, there is not a determination that has been made by the county board, but there are different options that are available.

MS. BREHMER: With the forest preserve, have you looked at having culverts or land overpasses for animals to be able to cross?

MR. RICKERT: That was part of the earlier considerations. Everything has been designed and there is openings that have been accommodated for the forest preserve area.

MS. BREHMER: So is there culverts there or is

there land where they can go over the roadway?

MR. RICKERT: It is mainly in the frontages along the river, there is openings that are available across the land.

MS. BREHMER: So they are not --

MR. RICKERT: It is grade separation because they go underneath the road.

UNIDENTIFIED SPEAKER: Where the abutments would meet the bridge?

MR. RICKERT: Where the abutments would meet the bridge.

UNIDENTIFIED SPEAKER: No other special other than the bridge abutments?

MR. RICKERT: I think there were some improvements that were done for one of the species that the environmental agencies had us put in on the west side of the river.

MR. COFFINBARGAR: There is the bike path that is primarily for us, you know, to use that goes through the forest preserve.

MS. BREHMER: Other states use them. Why can't they do something like that?

MR. COFFINBARGAR: Well, additional improvements such as that cost more money too. You know, there is

some folks who are worrying about us pursuing the bonds while at the same time there is folks requesting to add additional costs to the project, and when we did the Wilber Smith Study, it was to see it's a totally viable option. In fact, at that time we determined that it is. If we did a four-lane roadway, we could charge $1.50 toll, peek period and we could bond up to $75 million. That was sort of a feasibility on the toll option.

Since then we have been fortunate to get funds from the State of Illinois and from the federal government, tens of millions of dollars which has brought down the necessity of the toll amount that would currently have been the 30 million as I mentioned. So we will keep pursuing those outside fund sources, and even though I think we are tapped out, we will still keep doing it to try to get that bond amount down even further, and that reduces the toll. The toll is currently a 50 cent peek period toll from the $30 million bond.

MS. BREHMER: But you are putting a four-lane roadway through a forest preserve. It seems like common sense that you need to have culverts or areas that animals can safely cross. Other states do it.

MR. COFFINBARGAR: There is a large box culvert

going in near just west of Forest Drive which will be adequate for animals to cross through. I don't have the dimensions memorized. I can look it up. It is a sizable box.

MS. BREHMER: Where would I find that on the web site so I can read about it?

MR. COFFINBARGAR: Well, the contract plans, preliminary, pre-final, and final plans are all available on the web side, I verified that yesterday, and it includes -- now the documents are somewhat large, 4 to 500 pages, but on page 2 of the documents is an index to the sheets that shows what sheet number it is, and punch it in on the PDF and go to sheet No. 302 or whatever it is for the drainage plans, and it will show that box culverts.

If you need, you know, Karen Drive is within Section B2, and I put all of the plans altogether and they are halfway down the other documents section of the web site. I can help you find them too. If you have trouble, give me a call.

MR. RICKERT: The primary areas where the environmental agencies have been involved with engineering aspects, we do have land crossings underneath the roadway, and we put that in to

accommodate these types of concerns. So in the forest preserve there is along the river area where it is wooded, not the farm wood area, but along the river area where it is wooded there is open crossing areas, but not the farm area.

MS. BREHMER: I will have to read about it.

MR. RICKERT: Most of the lunar property, close to 80, 85 percent is farm area. It is not a wooded environmental area.

MS. BREHMER: Except for the.

MR. RICKERT: That's down by the river where the old swallow river.

MS. BREHMER: Right they are all targeted to get wiped out.

MR. RICKERT: No, only a few of them are. We are not targeting --

UNIDENTIFIED SPEAKER: It has all the trees on it. It's amazing how --

MR. RICKERT: The trees that are within the roadway, those are the ones being removed. There is also a number of trees that we are also protecting along the corridor.

UNIDENTIFIED SPEAKER: Well, if we have an eminent domain offering, what the cost are how much you are

buying them --

MR. RICKERT: If you are one of the property owners that if you are one of these properties, we are discussing negotiations right now.

UNIDENTIFIED SPEAKER: I mean --

MR. RICKERT: When everything is final in accordance with the law, that information is released. It is all in the resolution is approved by the county board to pay the property owner. The amount is right in the resolution. So you can look up the federal acquisition resolution and it will show the amount.

UNIDENTIFIED SPEAKER: Whet is the amount of money that has been spent up until this point in time?

MR. COFFINBARGAR: 35 million on engineering, land acquisition, construction.

MR. RICKERT: And that's the primary stuff that we have been doing over the last five or so years. There were improvements that were done in the town 2000 to about 2010 where there is probably about another 5 to 10 million dollars worth of improvements that were done. And all that information is available, the total costs, everything.

UNIDENTIFIED SPEAKER: On KDOT or --

MR. COFFINBARGAR: The Longmeadow Parkway portion

of the Kane County DOT web site.

UNIDENTIFIED SPEAKER: Thank you.

MS. BREHMER: So if we have any comments, do we write them down or do we tell the court reporter?

MR. RICKERT: Yeah, there is a place over there to write them down and there is a court reporter. We specifically brought all the parcels. So you can see all the other parcels that have been acquired. On Longmeadow we have acquired about 80 to 90 percent of the land. This is the remaining portion, and we can see where the remaining portions generally are. The Karen Drive area on Longmeadow is, that's the portion. The quarry sites areas, has a number of sites there that we have to acquire, and then the Autumn Trail sites. So these are the sites that are remaining and that the county is pushing forward with acquisition.

The Autumn Trial site, again, the State of Illinois is the lead agency for Section D. This is something that because of the statements of the Village of Barrington Hills, this is something we recently added in order to have all processes being considered. Right now again IDOT is the lead agency for the land acquisition in between 25 and 62.

MS. BREHMER: Now, has the State of Illinois given

the money for this project or is it just earmarked?

MR. RICKERT: They continue to give money. It is programmed. We probably to date have received maybe 10 million or so to date. We receive the monies as we progress. So we have not received all the funding, but it is within their approved program. So those monies are transportation funds that can only be used for Longmeadow Parkway.

MR. COFFINBARGAR: There are larger costs participation in than the construction portion and so we fill out funding agreements with them to utilize federal and/or state funds to fund portions of the construction phases, and so those agreements are pursued right before they go to construction. So within that Section A to B1, utilize the federal funds, and then Sections B2, C and D, we will be pursuing those agreements when they are ready to go with construction. So we have already submitted D for their consideration.

UNIDENTIFIED SPEAKER: Is it for Powell Road?

MR. COFFINBARGAR: Let me ask a question, because I just want to make sure. It might be appropriate to close out the hearing. The staff will still stick around to answer questions, but I want to make sure that everybody's time is honored. So if you want to write

something down or you want to talk to the court reporter, we can do that. So my recommendation is that we close out the hearing, and then, again, you can take your opportunity as well as we remain until? Everyone is gone.

MS. BREHMER: My name is Laura, L A U R A, Brehmer, B R E H M E R. So my comments are the Long Meadows Tollroad no longer makes sense. The traffic needs and growth of the mid 1990s are long gone. This graceful project is a prime example of the sunk cost fallacy, throwing good money after bad. The sunk cost fallacy is a mistake in reasoning in which the sunk cost of an activity, instead of the future costs and benefits, are considered when deciding whether to continue the project.

So many millions have been spent, and you are going to do whatever it takes to finish it even though your own commission study shows it isn't needed and it won't help ease congestion. It is easier to continue the project than to explain the past costs that keeps you trapped with this toll bridge project. Abandoning a sunk cost that the money spent on Long Meadows Tollway would be a sign of good decision making. Most of us have made a decision sometime in our life that didn't

work out, but a key element in good decision making is in knowing when to quit.

That's all. Thank you.

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

Sharon A. Jerndt, being first duly sworn, on oath says that she is a Certified Shorthand Reporter and Registered Professional Reporter doing business in the City of Chicago, County of Cook and the State of Illinois;

That she reported in shorthand proceedings had at the foregoing Longmeadow Parkway Bridge Corridor Project Public Hearing;

And that the foregoing is a true and correct transcript of her shorthand notes so taken as aforesaid and contains proceedings had at the said Longmeadow Parkway Bridge Corridor Project Public Hearing.

Sharon A. Jerndt

SHARON A. JERNDT, CSR, RPR

SUBSCRIBED AND SWORN TO
before me this 7th day
of February, 2017.

Mary B. Ciezadlo

MARY B CIEZADLO
Official Seal
Notary Public - State of Illinois
My Commission Expires Sep 9, 2019

NOTARY PUBLIC

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