

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2017 IL App (4th) 170406-U

NO. 4-17-0406

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

December 29, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE DEPARTMENT OF TRANSPORTATION OF	)	Appeal from
THE STATE OF ILLINOIS,	)	Circuit Court of
Plaintiff-Appellee,	)	Macoupin County
Cross-Appellant,	)	No. 17ED1
v.	)	
TODD A. BAILEY and DONITA BAILEY;	)	
LIBERTY BANK, an Illinois Commercial Banking	)	
Institution; TOWN & COUNTRY BANK	)	
MORTGAGE SERVICES, INC., an Illinois	)	
Corporation; and ANNE BOEHM, Macoupin County	)	
Treasurer,	)	
Defendants	)	
(TODD A. BAILEY and DONITA BAILEY,	)	Honorable
Defendants-Appellants and	)	Joshua Aaron Meyer,
Cross-Appellees).	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.  
Presiding Justice Turner and Justice Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed the trial court's order granting the Department's motion for immediate vesting of title under section 20-5-5 of the Eminent Domain Act (735 ILCS 30/20-5-5 (West 2016)).

¶ 2 In April 2017, the Department of Transportation of the State of Illinois (Department), plaintiff, filed a motion for the immediate vesting of title under the quick-take provision of the Eminent Domain Act (Act) (735 ILCS 30/20-5-5 (West 2016)). The motion sought a permanent easement over a portion of property belonging to defendants, Todd A. Bailey and Donita Bailey, for the purpose of extending an existing highway. Other defendants named in

the trial court action are not parties to this appeal. Following a hearing, the trial court granted the Department's motion for the immediate vesting of title.

¶ 3 Defendants appeal, asserting the trial court erred in granting the Department's motion for the immediate vesting of title because the Department failed to (1) provide the formally adopted schedule or plan of operation for the execution of its project as required under section 20-5-5(b)(2) of the Act, and (2) demonstrate good faith in negotiations. The Department cross-appeals, asserting the trial court improperly limited the admission of the 60-day letter sent pursuant to section 10-5-15(d) of the Act (735 ILCS 30/10-5-15(d) (West 2016)) that demonstrated its good-faith negotiations. However, at oral arguments, defendants withdrew their argument that the Department failed to demonstrate good-faith negotiations and concedes the trial court erred by failing to admit the 60-day letter as substantive evidence. We therefore need not address the second issue of defendants' appeal or plaintiff's cross-appeal. After considering the only remaining issue, we affirm.

¶ 4 I. BACKGROUND

¶ 5 In April 2017, the Department filed a complaint for the condemnation of certain private property owned by defendants known as parcel number 6T1S013PE, asserting it required a permanent easement on the property for a public purpose—to make improvements to a public highway known as Brighton Bunker Hill Road. The Department asserted it had made a good-faith effort to purchase the property, but the parties had been unable to reach an agreement. The Department therefore sought to exercise its powers of eminent domain.

¶ 6 A. Motion for the Immediate Vesting of Title

¶ 7 Along with the complaint, the Department filed a motion for the immediate vesting of title under the quick-take provision of the Act (735 ILCS 30/20-5-5 (West 2016)). It

is this motion that forms the basis for this appeal. The Department asserted it required immediate control over the property—approximately 0.069 acres of defendants' property adjacent to the existing highway—to finish the highway project in 2017, and that further delay could jeopardize the highway project and result in increased costs. The Department attached a legal description of the property as well as a diagram of the proposed permanent roadway easement on defendants' property.

¶ 8 The following month, defendants responded to the Department's motion for the immediate vesting of title. Defendants argued the Department failed to provide a formally adopted schedule or plan of operation for the execution of its project as required by section 20-5-5(b) (2) of Act (735 ILCS 30/20-5-5(b)(2) (West 2016)) and, therefore, the motion should be denied.

¶ 9 B. Evidentiary Hearing

¶ 10 On May 17, 2017, the trial court held an evidentiary hearing on the Department's motion for the immediate vesting of title. In lieu of a transcript, the parties provided a bystander's report of the proceedings. Defendants offered no evidence at the hearing.

¶ 11 Over the objection of defendants, the trial court admitted several exhibits from the Department, including (1) a legal description of defendants' property; (2) proposed construction maps of the area and defendants' property; and (3) an affidavit from Randall Blankenhorn, the secretary of the Department, who certified the construction was part of a federally funded high-speed rail project creating service from St. Louis to Chicago. We now outline the evidence only to the extent necessary to resolve this appeal.

¶ 12 1. *Todd Halfman*

¶ 13 Todd Halfman, a licensed professional engineer, testified he worked for the Lochmueller Group, which had been contracted by the Department to assist with acquiring the land parcels needed to complete the high-speed rail project between St. Louis and Chicago. Halfman's role included assigning workers to negotiate with the landowners. He identified the construction maps and outlined the land improvements necessary to complete the project, which included construction on a portion of defendants' property. A total of seven parcels at Brighton Bunker Hill Road were required to complete the project, and the Department had acquired five of those parcels. Defendants owned one of the remaining parcels. Halfman testified the Department was not seeking fee simple title to the land but a permanent easement.

¶ 14 According to Halfman, the third party responsible for negotiating an agreement with defendants offered compensation consistent with an appraisal commissioned by the Department, but the parties did not reach an agreement for the easement. Due to the unsuccessful negotiations, the Department had no option other than seeking condemnation. Halfman testified defendants' property was necessary to complete the improvement project at Brighton Bunker Hill Road where it crossed a pre-existing Union Pacific rail. Without the permanent easement on defendants' property, the project could not move forward, and further delays would result in delays in completing construction of the high-speed rail, which could in turn endanger the safety of the traveling public.

¶ 15 *2. Jerry Greenwood*

¶ 16 Jerry Greenwood testified he is a certified general appraiser in Illinois, with about 95% of his appraisals involving the exercise of eminent domain. The Department commissioned Greenwood to appraise defendants' property. Greenwood determined the easement would encumber approximately 0.069 acres of defendants' property. The project would require

removing and replacing part of defendants' asphalt driveway. Greenwood testified the encumbrance would diminish defendants' property by a fair market value of \$2700 as of April 27, 2017.

¶ 17

### 3. *The Trial Court's Order*

¶ 18 On May 23, 2017, the trial court entered an order granting the Department's motion for immediate vesting of title and fixing just compensation at a preliminary amount of \$2700.

¶ 19 This appeal followed.

¶ 20

## II. ANALYSIS

¶ 21 On appeal, defendants assert the trial court erred by granting the Department's motion for the immediate vesting of title when the motion failed to comply with section 20-5-5 of the Act (735 ILCS 30/20-5-5 (West 2016)). Where, as here, the parties do not dispute the facts, we are presented with an issue of law that we review *de novo*. See *Illinois State Toll Highway Authority v. South Barrington Office Center*, 2016 IL App (1st) 150960, ¶ 32, 58 N.E.3d 703.

¶ 22 Section 20-5-5 governs quick-take proceedings under the Act. In essence, the quick-take procedure is a proceeding within a proceeding. *Department of Public Works & Buildings v. Vogt*, 51 Ill. App. 3d 770, 776, 366 N.E.2d 310, 314 (1977). During the pendency of a condemnation proceeding, the government may file a quick-take motion—in this case, titled as a motion for immediate vesting of title—to allow the government to take control over a property while the issue of just compensation is still pending. *Id.* "The purpose of the 'quick take' statute is to provide a means to prevent delays to public projects that could result pending the final determination of just compensation, while at the same time protecting the rights of the

landowner." *Forest Preserve District of Du Page County v. West Suburban Bank*, 161 Ill. 2d 448, 453-54, 641 N.E.2d 493, 496 (1994).

¶ 23 For the government to obtain control over the property through a quick-take proceeding, it must include certain information in its motion. The quick-take provision of the Act states:

"Except as otherwise provided in this Article, the motion for taking shall state: (1) an accurate description of the property to which the motion relates and the estate or interest sought to be acquired in that property; (2) the formally adopted schedule or plan of operation for the execution of the plaintiff's project; (3) the situation of the property to which the motion relates, with respect to the schedule or plan; (4) the necessity for taking the property in the manner requested in the motion; and (5) if the property (except property described in Section 3 of the Sports Stadium Act or property described as Site B in Section 2 of the Metropolitan Pier and Exposition Authority Act) to be taken is owned, leased, controlled, or operated and used by, or necessary for the actual operation of, any interstate common carrier or other public utility subject to the jurisdiction of the Illinois Commerce Commission, a statement to the effect that the approval of the proposed taking has been secured from the Commission, and attaching to the motion a certified copy of the order of the Illinois Commerce Commission granting approval. If the schedule or plan of operation is not set

forth fully in the motion, a copy of the schedule or plan shall be attached to the motion." 735 ILCS 30/20-5-5(b) (West 2016).

¶ 24 Defendants assert the Department's motion failed to attach "the formally adopted schedule or plan of operation for the execution of the plaintiff's project" as required under subsection (b)(2). Although we do address defendant's claim, we note the defendants fail to offer authority holding that the appropriate remedy, if we find the Department failed to attach "the formally adopted schedule or plan of operation for the execution of the plaintiff's project" per subsection (b)(2), is denial of the motion for immediate vesting of title.

¶ 25 In support of their argument that the Department failed to provide a specific timeline for completion of its project, defendants distinguish the present case from *City of Chicago v. St. John's United Church of Christ*, 404 Ill. App. 3d 505, 935 N.E.2d 1158 (2010). In *St. John's*, the City of Chicago (City) sought the immediate vesting of title pursuant to section 20-5-5 to obtain title to cemetery property for purposes of extending O'Hare Airport. *Id.* at 507-08, 935 N.E.2d at 1163. In its motion, the City generally listed the entire O'Hare modernization program as the project for which the cemetery was to be taken. *Id.* at 519, 935 N.E.2d at 1173. The motion included a proposed schedule for completing the construction, beginning in July 2010 and ending in 2012, which included the process for removal and reinterment of the deceased buried in the cemetery. *Id.*

¶ 26 St. John's argued the City's motion failed to comply with section 20-5-5(b) because it did not include a formally adopted schedule or plan of operation for the execution of the City's project. *Id.* at 519, 935 N.E.2d at 1172. The trial court granted the City's motion for immediate vesting of title, and the appellate court affirmed. *Id.* at 507-08, 520, 935 N.E.2d at 1163, 1173. In affirming the trial court, the appellate court noted the language of section 20-5-5

"is unambiguous and apparently mandatory." *Id.* at 519, 935 N.E.2d at 1173. The appellate court concluded the City set forth a sufficient timeline for the project that affected the cemetery, and that the plan was sufficiently finalized considering the massive undertaking of the construction project. *Id.* at 520, 935 N.E.2d at 1173.

¶ 27 Defendants argue, unlike in *St. John's*, the Department failed to provide a formally adopted plan and a specific timeline for completing the construction work. We disagree. As to the specific timeline, the Department's motion stated it "has adopted a schedule which calls for the acquisition of these and other parcels of land in Macoupin County, Illinois, in the construction of the proposed improvement in calendar year 2017." As the Department filed its motion at the end of April 2017, the Department provided a timeline for completing the project within eight months. Given that the appellate court found a two-year time span acceptable for the project impacting the cemetery in *St. John's*, we conclude an eight-month time estimate is a sufficiently specific timeline for the execution of the project.

¶ 28 Defendants next argue the Department failed to provide a formally adopted plan of its project. The Department attached a diagram to its motion showing the scope of construction of the proposed roadway easement on defendants' property. Defendants argue the motion mentions nothing about the overall scope of the project, thus rendering the motion insufficient.

¶ 29 Contrary to defendants' assertion, the Department provided specific details as to the construction on defendants' property. The diagram attached to the motion indicates that the Department sought a permanent roadway easement on 0.069 acres of defendants' property for the extension of the highway. The portion of the property at issue was highlighted with "proposed



permanent roadway easement" written beneath it. Thus, the scope of the project as it related to defendants' property was specific.

¶ 30 To the extent defendants were unsatisfied with the details provided in the diagram, during the hearing on the Department's motion, the trial court admitted an affidavit from Blankenhorn outlining the general scope of the entire project, which was to include construction of tracks, roadways, safety features, and other structures to complete the high-speed rail project from St. Louis to Chicago. The court also admitted the 26 pages of detailed plans for the project on Brighton Bunker Hill Road, which included the construction on defendants' property. Defendants argue, without knowledge of a specific plan or schedule of operation, they are left without adequate information to defend themselves in an eminent-domain proceeding or to understand the damages that may result from a government taking. At no time during the hearing did defendants express surprise or ask for more time when presented with the scope and nature of the project. Moreover, the motion and evidence presented at the hearing provided the court with the necessary information to determine defendants' property would be used for a public use or purpose.

¶ 31 Similar to the airport construction work in *St. John's*, the highway improvement and high-speed rail project is a massive undertaking that will take years to complete and the plans for the extensive project were not necessarily finalized. As defendants concede, the Department could exercise its powers of eminent domain, even if the proposed plans were subject to later finalization. See *Department of Transportation v. Keller*, 127 Ill. App. 3d 976, 979, 469 N.E.2d 262, 265 (1984).

¶ 32 In this case, the Department provided defendants with a specific plan or schedule of operation for the construction on defendants' property. Accordingly, we conclude the trial

court did not err in finding the Department's motion for immediate vesting of title complied with section 20-5-5 of the Act.

¶ 33

### III. CONCLUSION

¶ 34           Based on the foregoing, we affirm the trial court's order granting the Department's motion for immediate vesting of title.

¶ 35           Affirmed.