

Downers Grove Village Council
Special Council Meeting
May 22, 2001

Mayor Brian Krajewski called the public hearing of the Village of Downers Grove to order at 10:01 p.m. in the Council Chambers of the Downers Grove Village Hall.

ROLL CALL

Present: Mayor Brian Krajewski; Commissioners Marilyn Schnell, Thomas Sisul, Sue McConnell, Martin Tully, Mark Zabloudil; Acting Village Manager Rick Ginex; Village Attorney Daniel Blondin; Village Clerk April Holden

Absent: Commissioner Michael Gilbert; Village Manager Michael McCurdy

PUBLIC HEARING – Intention to Request Quick Take Authority

The Mayor called the Public Hearing to Order at 10:01 p.m. and reviewed the procedures to be followed. He said the purpose of the hearing is to consider the Village's request for Quick Take Authority for property needed for a proposed parking facility. Notice of this hearing was published in the Downers Grove Reporter. He then called upon Attorney Daniel Blondin to present an overview of the Resolution.

Attorney Blondin said the purpose of the hearing is to comply with Senate Resolution 41. He said the focus of the hearing is to determine whether or not the Village Council wishes to ask the State Legislature, in the event the Council chooses to use its power of eminent domain, whether it can use the form of eminent domain called Quick Take to acquire property needed for the multi-level parking deck. The property would be within the block generally east of Main Street, west of Washington, south of Curtiss and north of Maple. Attorney Blondin said eminent domain is the power of government to acquire property that a governmental entity determines is necessary for some public purpose. There are two issues to be decided: 1) does the condemning authority have the power to do this, and 2) if so, what type of compensation should be paid to the property owners. He said in Illinois there is case law which defines what just compensation is in eminent domain areas. Quick Take is a form of eminent domain used in Illinois. It does not change the two basic determinations that need to be made. Quick Takes provides a mechanism whereby a municipality can ask the Court to conduct a hearing for determining compensation. The Court can require three additional appraisals of the property. The Court then enters a hearing determining the preliminary compensation level. At that time the governmental entity can deposit the money with the County Treasurer's office and seek an order from the Court for Title. The property owner has the option to appeal the decision. Funds would then be withdrawn and the case would proceed as any other eminent domain case whereby a court would make the final determination following a complete evidentiary hearing. The preliminary compensation cannot be mentioned at that hearing, nor can the three appraisal amounts. Quick Take provides the opportunity to take possession more quickly, but does not decide whether or

not the governmental entity wants to use condemnation. It also does not decide the type of project the governmental entity wishes to build.

Attorney Blondin said about 2-1/2 months ago Senate Resolution 41 was adopted, which is a resolution of intent expressing the Illinois Senate's intent to require a governmental municipality to go through certain public information steps before using Quick Take authority.

He noted House Bill 3188 is also pending which is pending Quick Take legislation. About 70 different communities have various forms of Quick Take authority for various public projects. House Bill 3188 would add 29 special Quick Take authorities into State Law. The efforts by the Village in this area began last fall when the Village submitted to the Senate a request to be considered for Quick Take authority. This was before SR 41. He said that a legal description was prepared, and since that time the Village has been successful in obtaining some of the properties in questions. At present there are two residential properties that front on Washington Street, as well as the property north of the Grove Premium building for which Quick Take authority has been sought.

He noted that the Quick Take provision can only be applied under two conditions: 1) that the property is in the boundaries of the legal description provided; and 2) the property must be acquired for the building of the parking deck. The only property eligible for Quick Take is property within the boundary and necessary for the parking deck. He stressed that if the Council chooses to use eminent domain, this provides an opportunity to request Quick Take authority.

Attorney Blondin said he would also ask the Council to consider a Resolution tonight in order to present this while the Legislature is still in session.

Brian Pabst, Director of Redevelopment, provided historical information regarding the parking deck issue. He reviewed some of the parking reports that went back as far as 40 years. In 1962 the Village hired a firm to evaluate parking. In 1972 there was a secondary report. In 1975 a consultant was hired who recommended two decks. In 1997 Walker Parking Consultants recommended that the Village accumulate a large area of parking to the east of Grove Premium, and this would avoid the need for a parking deck. In 1998, the Village approved a recommendation to construct a parking deck.

Mr. Pabst said it is obvious that parking is necessary to develop the downtown area. The proposed parking deck is designed to hold 708-774 vehicles, depending upon how it is striped. This would result in a gain of about 500 additional spaces in the downtown area. To accomplish this goal, the Village needs to acquire additional land in the downtown area. Staff has had discussions with landowners on an on-going basis. He stated that on June 12, Desman & Associates will make a presentation before the Council at the Workshop meeting to discuss specifics of the parking deck further. The public can bring their questions up at that time. The meeting will begin at 6:30 p.m.

Commissioner Tully asked about the time difference under the normal eminent domain procedure versus the Quick Take. Attorney Blondin said the Quick Take would cut the time by half, and possible by 2/3. It is a prompt process. A hearing can be obtained within one to two months. If the property owners appeal, the appellate process can take four to six additional months. With eminent domain, after the initial 30 day period, discovery would be six to 12 months, and could extend up to 18 months.

Commissioner Tully said that his understanding then is that under the Quick Take procedure it would be approximately six months as opposed to eighteen months. If the Village wanted to take possession immediately the appraisal amount must be deposited with the County Treasurer's Office. Attorney Blondin said that was correct.

Commissioner McConnell said that the Village is continuing to negotiate with residents in the hopes that it will not have to use eminent domain or the Quick Take option.

Commissioner Schnell asked about the original intent of Quick Take. Attorney Blondin said it would allow condemning authorities to acquire property for the purpose of constructing time-sensitive public projects. Commonly it was used for road purposes, convention centers, etc. The State of Illinois has been asked several times to expend the Quick Take authority, and has been reluctant to do so.

Commissioner Schnell asked what would happen if House Bill 3188 passes, and the Village's Resolution did not pass. Attorney Blondin said if HB 3188 passes, it becomes law.

Commissioner Schnell said if HB 3188 has Downers Grove in it and it passes regardless of the Village's resolution, then it would go into law, and the Attorney said that was correct. If the Council did not pass its Resolution, the Illinois House would pull Downers Grove out of the Quick Take law. Commissioner Schnell asked about waiving the one-week waiting period and why they would waive it now. Attorney Blondin said the Council has to make that call, as the Legislature may not still be in session. In further response, he said he did not know if other municipalities were moving forward on this issue right away.

Commissioner Zabloudil asked how often these come up through the year. Attorney Blondin said it came up last year and was vetoed. He said it comes up about one a year or every two years. He said there is no guarantee that it will come up again at all.

Commissioner Sisul said one of the concerns expressed by the public regards owners receiving fair market value for their property. Attorney Blondin said the fair market value is determined the date the eminent domain case is filed.

Commissioner Sisul then said under a normal eminent domain proceeding, it would be a trial before a jury, and Attorney Blondin said probably in 80% of the cases.

Commissioner Sisul continued that in a Quick Take situation there would ultimately be the opportunity to have the hearing before a jury. Attorney Blondin said that was also correct. He said if the amount determined by jury is a different amount than originally stated, the owner could obtain that amount if they chose. There would be two opportunities to determine the value of the property.

The Mayor asked the Attorney what he knew about the status of HB 3188. Attorney Blondin said he spoke to the Senate Leadership office and their representative said it is a possibility, and she encouraged the Village to file the necessary papers. The Mayor said when they attended the DuPage Mayors and Managers Conference they were told it would most likely be made part of a shell bill.

Willis Johnson, 846 Rogers, said he favored moving forward with the recommendation. It is a question of time and money, not whether or not it will happen. He said he felt Mr. Blondin's estimate was optimistic and with Quick Take it would probably take about a year.

Joselyn Kirkegaard, 5200 Brookbank, asked for assurance that the Quick Take was just for the parking deck area. The Mayor said that was correct. The legal description includes the general area, but the Quick Take only refers to the actual land used for the parking deck.

Ken Lerner, 4533 Whiffen Place, said an individual wanting to acquire a piece of property has to negotiate with the owner until, and if, an agreeable price is met. He said that the Village does not have to do that, but can force the sale of a property, as it is already a 500 pound gorilla. Mr. Lerner said in this case the Village is putting in a request to the State for extraordinary powers to expedite the process. To that end the Village is having this public hearing. He does not see that the Village has made a case for this step being necessary. He asked what has been done to convince the public that this needs to be expedited. He asked why there is not time for the normal eminent domain procedures. He understands the original purpose of Quick Take was for roadway construction and other projects which affected larger numbers of properties. He has not heard why the project needs to be conducted in such a quick manner and he thinks they can wait and go through the normal process. Mr. Lerner said he hasn't seen any details of the project. He said the public has not seen why the number of parking spaces is needed or any studies done to determine that need. He would rather see the Village move through the slow and painful method of condemning property.

Dave Brown, 1508 Gilbert, asked Mr. Pabst if there is a circle of property the Village doesn't intend to own downtown. He thinks the Village has become massively involved in the real estate business. He is reeling with the cavalier manner in which zoning issues were abandoned in reviewing the property on the Curtiss lot. He said the Village wants Quick Take because they want to expand the development process downtown. He believes the deck has become the tail that is wagging the dog in this process. As far as Quick Take and condemnation in general, he believes it is the most odious thing a government can do. He has not seen a convincing argument to expedite this. He is not

convinced this is where the deck is needed, and how much of a deck that is needed. If they followed the plans of two years ago they would not need a deck this size. He would recommend not approving the Quick Take. The result of normal condemnation allows the public to have more time to think about this and review the deck plans.

Robin Tryloff, 1217 Parkway, said she thought that government authority to accelerate property acquisition should be very limited. It should only be used in cases of urgencies, such as utility needs. She said she is lacking a compelling reason as to why this should be enacted now. The building of a parking structure has been under consideration for decades, and although the Village has now decided to move forward, she does not think the property owners should have to undergo a compressed due process because of that decision. She disagrees that the question is all about time and money. She hopes it is not. Ms. Tryloff believes it is about the good government bargaining in good faith, fairness and demonstration of the Village's attitude towards property owners.

Mike Flynn, 936 Maple Avenue, said he is personally familiar with the Village's tactics regarding eminent domain as he one time owned the property at 5522 Main Street. Eminent domain was filed against that property to expedite the Fire Department and water tank. Seven years later his old residence is still used as rental property. He is suspicious of the Village's motives in moving on a Quick Take basis. He is familiar that the Village has strong-arm tactics in obtaining property. He asked if the Council has considered the effect of this on families if they are required to move on short notice. He asked whether the Village has considered the effect on businesses that might be forced out on short notice. This is a serious question. He cautioned the Council that they are using a powerful weapon with the Quick Take, in addition to the eminent domain authority it already has. Mr. Flynn said he believes that a parking deck is necessary, and the Village has known this for more than three decades. To file eminent domain and to seek Quick Take authority is not in the best interest of the public and does not give confidence to the public at large.

Joyce Allers said they own two building in the Village's historic area. She said as a property owner she feels it is necessary to make her statement. She said if the people present had read the information provided they might not have made some of the statements they made. As a property owners in one of the Quick Take areas, she said they have been given as much time and understanding as necessary. She understands what she is hearing and doing. Ms. Allers said the Village has been incredibly honest, up front and fair with the property owners involved. She does not feel it is fair because someone does not want the parking lot to make negative comments that are out of context with the Quick Take issue.

Susan Brown, 1058 Gilbert, said she is confused because she thought Quick Take would be used as a last resort after other options were attempted and failed. She asked about the exact location of the deck and which property the Village owns, in terms of what property can be acquired through normal channels.

The Mayor said that HB 3188 gives the Village authority to use Quick Take, but does not mean the Village will use it. Attorney Blondin said that under any condemnation, by law, the Village is required to enter into good faith negotiations to resolve the matter. He has done about 20 condemnations and about 17 have been resolved during the negotiations. He showed the area they are considering. He then pointed out which properties are owned including Parcels 021, 028, 022, and 022, which are already under Village control.

Mary Ellen Young, 1821 Elmore, said she does not have strong opinions on the issue, but came to learn more. She said it seems suspect to be here literally at the 11th hour, as the public hearing convened at 10:05 p.m. She asked how long the Village has known of the requirements of having a public meeting. Attorney Blondin said it was in April. The Mayor said the public hearing regulation applies only to those communities added since last year.

Ms. Young asked about incentive and relocation packages being offered over and above the fair market value. The Mayor said the meeting was focus on Quick Take; however, some of the parcels are only for the back portions of a lot. In others, the EDC is looking at the entire package. Mr. Pabst added that all property owners have been contacted numerous times by various staff members and EDC representatives.

Ms. Young asked for clarification of the rights of appeal. Attorney Blondin said if someone is dissatisfied with the Judge's ruling in the preliminary stage, they can appeal to the 2nd District Appellate Court. Either party can also appeal the final determination for further review.

Dave Tatterson, 1240 Gilbert Avenue, said he wanted to reinforce Mr. Lerner's comments. He said they don't know where the deck will be, and there appears to be a great deal of uncertainty. He said he thought a consultant was hired tonight to advise the Village as to what will be in the downtown area, so he does not see what the rush is to avoid the normal condemnation procedures.

Dave Reynolds, 4919 Bryan Place, said he is opposed to Quick Take as well. He questions the wisdom of the timing. Three hours ago they discussed paying the Friedman group to discuss the proposal for the other block. He said building the deck would influence whatever plan Friedman would come up with. He said they are moving on this very fast. If it will take fourteen months for Friedman to come up with a proposal, the Village should wait to see what he comes up with as the deck will affect whatever else is decided for the downtown area. The Quick Take is too quick.

Ken Kardynalski, 5212 Washington, asked who is paying the mortgage and insurance while the property is in litigation. The Mayor said this is just a tool to use and does not mean it will be used. Attorney Blondin said the property owner has the right to withdraw the funds, as does the mortgage company, of money deposited.

Commissioner Tully emphasized that this is a serious question. He said that this is simply a resolution to authorize the Village to have Quick Take authority, or to put a tool

in the box. He is in favor of it. He believes this is a necessary and desirable project, needed for at least forty years. He has a problem with waiting another two years. Between November of 2000 and April of 2001 he has spoken over and over again about his desire to solve parking issues in the Village. Residents have elected him to a position to do something about that. This should have been solved decades ago. He agreed that eminent domain is something to be used as a last resort. He prefers negotiation with property owners. Commissioner Tully said that the need is driven by 50,000 residents, not the 500 pound gorilla. This issue is limited solely to the purpose of the parking deck. He stated that many communities have used the Quick Take process, and the Village is seeking a very limited use of the Quick Take powers. He stressed that this is focused on the parking deck. They are not requesting Quick Take powers for undefined redevelopment purposes. The Village has had discussions with the property owners involved, and there will be due process and fair compensation as decided by a jury of peers if necessary. He is in support of having the Quick Take powers available to the Village.

Commissioner McConnell reiterated that she would prefer not to have to go to Quick Take or eminent domain. She does, however, favor Quick Take for the parking deck. She said the people who are directly involved with this have been in communication with Mr. Pabst and others in the Village for some time. This is not a new concept to them. She said some have already indicated their appreciation of the Village's efforts so far. She said she believed this can be done in a way to use the parking deck as a fundamental resource to increase the vitality of the downtown.

Commissioner Schnell said she believes the parking deck is necessary and that this particular area is the best place. She is uncomfortable with the concept of Quick Take and eminent domain, but particularly with Quick Take. She said she thinks they are moving at a speed she is uncomfortable with, although she realizes some of this is regulated by the General Assembly. She does not like, traditionally, waiving the one-week waiting period. They have always made a few weeks available to solicit citizens' input. In this case she considers citizen input important. She indicated there is a good chance that HB 3188 will become a shell bill and won't be voted upon anyway. Commissioner Schnell said she considers this a very serious matter and she thinks the Council and community need to think about it.

Commissioner Zabloudil said there have been comments for the residents and there has been good input in terms of how they feel. The need has been studied for many years. He said the Quick Take is a tool. The Village is working with the property owners, and needs to move forward to make this happen. If this had been examined years ago it would not cost as much as it is at this time. He is in support of moving forward with the Resolution on this issue.

Commissioner Sisul said he believes this is an exercise of power for the common good. He supports this issue.

The Mayor said this is a tool for the Council to use. The Village already owns a couple of properties in the area and is in negotiation with others. He said the House Bill will probably be shelved, but if it is not, the Council will have the opportunity to use this.

Commissioner Sisul moved to close the Public Hearing. Commissioner Zabloudil seconded.

AYES: Commissioners Sisul, Zabloudil, Tully, McConnell, Schnell,
Mayor Krajewski

NAYS: None

The Mayor declared the Motion carried and closed the public hearing at 11:16 p.m.

ACTIVE AGENDA

Commissioner Sisul moved to waive the one week waiting period to discuss new business. Commissioner Zabloudil seconded the Motion.

AYES: Commissioners Sisul, Zabloudil, Tully, McConnell, Mayor
Krajewski

NAYS: Commissioner Schnell

The Mayor declared the Motion carried 5:1.

The Village Clerk read a Resolution requesting Quick Take Legislation.

A RESOLUTION REQUESTING QUICK TAKE LEGISLATION

Resolution 2001-49

Commissioner Sisul moved to approve the Resolution requesting Quick Take legislation. Commissioner Zabloudil seconded the Motion.

AYES: Commissioners Sisul, Zabloudil, Tully, McConnell, Mayor
Krajewski

NAYS: Commissioner Schnell

The Mayor declared the Motion carried 5:1.

Commissioner Sisul moved adjourn. Commissioner Zabloudil seconded the Motion.

AYES: Commissioners Sisul, Zabloudil, Tully, McConnell, Schnell,
Mayor Krajewski

NAYS: None

The Mayor declared the Motion carried and adjourned the meeting at 11:22 p.m.

April K. Holden
Village Clerk

/tmh