2016 IL App (2d) 150926-U
No. 2-15-0926
Order filed March 11, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

ROCK RIVER WATER RECLAMATION DISTRICT, Plaintiff-Appellee, v. DAVID L. DIMKE, JAMIE M. DIMKE AMERICAN BANK AND TRUST COMPANY, N.A., MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., and Unknown Owners, Defendants-Appellants.	)	Appeal from the Circuit Court of Winnebago County. No. 14-ED-9 Honorable Edward J. Prochaska, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Burke and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: In this eminent domain proceeding seeking sanitary sewer easements over defendants' property, the trial court did not err in: granting partial summary judgment to the district; ruling on the parties' motions *in limine*; and entering its final judgment order. Affirmed.

¶ 2 Plaintiff, the Rock River Water Reclamation District (District), filed a condemnation action, seeking to acquire easements over two parcels owned by defendants, David L. and Jamie M. Dimke, American Bank & Trust Company, N.A., and Mortgage Electronic Registration

Systems, Inc. (collectively, the Dimkes), in order to extend an underground sewage pipe from the District's Rockford facility to the Village of Winnebago (Village). The trial court granted the District's motion for partial summary judgment and denied the Dimkes' summary judgment motion. Subsequently, based on the trial court's evidentiary rulings barring the Dimkes' appraiser and allowing the District's appraiser to testify, the parties stipulated to $67,868 as just compensation for the takings. The Dimkes appeal, arguing that: (1) the district did not have statutory authority to exercise eminent domain in this case; (2) the enabling ordinance was ambiguous and did not adequately describe the property being sought; (3) the taking was not necessary; (4) the District did not act in good faith in negotiations; (5) the trial court's evidentiary rulings were erroneous; and (6) in its final judgment order, the trial court impermissibly altered the language of the easements. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Phase C Project

¶ 5 The District is a unit of local government located in Rockford, and its primary purpose is the effective collection and treatment of wastewater. The Dimkes reside at 1300 South Weldon Road in Rockford. The property, which consists of two adjoining parcels[1] spanning 29 acres, is located in rural Winnebago County between Rockford and the Village and is not within the District's boundaries.

¶ 6 In 2011, the District entered into an intergovernmental agreement with the Village, which is within 20 miles of the District's boundaries, that provided, in part, that the Village would transfer its sanitary sewer system to the District and pay for the costs associated with the transfer, including construction of Phase C of the Fuller Creek Project. The Fuller Creek Project, on

[1] Tax I.D. nos. 14-11-476-003 and 14-12-300-005.

which the District was already working, was to serve housing and other developments west of Rockford. The first two phases involved installation of a pumping station at Centerville and Cunningham Roads and extending a gravity trunk sewer west to about 800 feet east of Meridian Road. Phase C would extend a gravity trunk sewer past Meridian to Westfield Road. (The remaining phases, D, E, and F, would involve abandonment of the Village's treatment plant and connection of its existing sewer to the District's planned trunk sewer at Westfield Road.) The Village approved the agreement in December 2011, and, on June 13, 2012, the circuit court approved the District's and Village's joint petition for the District's acquisition of the Village's sanitary sewer system. In their joint petition to the court, the parties cited section 17.1 of the Sanitary District Act of 1917 (Sanitary District Act) (70 ILCS 2405/0.1 *et seq.* (West 2014)), which allows for intergovernmental agreements between sanitary districts and municipalities "regardless of whether that district or municipality is contiguous to the acquiring sanitary district," but so long as they are within 20 miles of each other. 70 ILCS 2405/17.1 (West 2014). In September 2012, the Illinois Environmental Protection Agency assessed the environmental impacts of the projects, which were to be funded by loans, and found them to be technically sound and cost-effective.

¶ 7 B. Negotiations

¶ 8 To complete the Fuller Creek Project, including Phase C, the District needed to obtain temporary and permanent easements along the trunk sewer route. It evaluated four alternative routes and ultimately selected the Kent Creek Drainageway Route based on several factors, including cost, reliability, efficiency, and environmental and construction considerations.

¶ 9 Afterwards, the District began its negotiations with affected property owners, including the Dimkes. From August 2012 to March 2014, the District and the Dimkes communicated on

an almost monthly basis. A summary judgment affidavit by Michael Weber, the District's engineering supervisor, summarized the negotiations as follows. Negotiations began in April 2012. On August 10, 2012, Erik Carlson, the Dimke's attorney, left Weber a voicemail, stating that the Dimke's were opposed to any sewer being constructed on their property. On August 23, 2012, Carlson requested route plans, preliminary cost estimates, and asked whether the sewer route could travel along the Dimkes' north property line, as opposed to the south route reflected on the route maps (in later filings, the Dimkes complained that a southern easement would entail the removal of old growth trees that currently block power lines and a bike path). The Dimkes met with Weber at the District's office on September 5, 2012, along with Carlson, Dana Carroll (the District's engineering manager), and Ken Kelly (the Distirct's land surveyor). On September 7, 2012, Weber and the Dimkes walked the north and south property lines along the proposed northern and southern easements routes. On August 27, 2012, prior to a meeting, Weber emailed to Carlson electronic files containing route plans and preliminary cost estimates. After the meeting, Weber sent the Dimkes an exhibit showing the relative distances from the house of the north and south easements and sewer routes. He informed David Dimke that the northern route would be approximately 60 feet from his house. On September 28, 2012, Dimke emailed the District, stating that he preferred the northern route.

¶ 10 On May 9, 2013, Carlson wrote to the District, stating that he represented the Dimkes and that all further correspondence should go directly to him. On June 19, 2013, at the District's request, the Dimkes gave the District their demands for the easements.

¶ 11 On August 27, 2013, the District sent its first offer to the Dimkes. It agreed to move the easement to the north portion of their property, as they requested, and to pay them $27,015 for the easement, plus other non-monetary considerations, including trenchless excavation for a

portion of the work. The offer, which was valid until September 16, 2013, was based on an internal appraisal. In response, the Dimkes asserted that the District's offer was not made in good faith because it was not from an "expert appraiser." They requested a professional appraisal, and the District hired Matthew Magdziarz, who appraised the easement at $40,000.

¶ 12 Accordingly, on December 10, 2013, the District made a second offer of $34,166 ($23,000 of which was the cash portion and was offered in lieu of restoration of trees removed from the easement area), which included non-monetary considerations concerning the preservation of trees and other items. Alternatively, the District offered to pay $30,000 cash based on the appraisal value of the easement. The District noted that this was its "best and final offer" and noted that the offer was good until December 20, 2013. The Dimkes counter-demanded that they be given additional time to review the documents and obtain their own appraisal. They also asserted that the District was not negotiating in good faith because the District's offer was good for only 10 days and that it noted that it was the District's best and final offer. They also requested certain calculations. On January 8, 2014, the District responded with a summary of its efforts to negotiate in good faith and certain details concerning its calculations. It gave the Dimkes until January 20, 2014, to accept the terms of its latest offer. It also noted that a 10-day deadline after 16 months of negotiations was not unreasonable.

¶ 13 On January 20, 2014, in a 7-page, single-spaced letter, Carlson responded, asserting that the 12-day extension for responding to the District's offer did not provide the Dimkes adequate time to obtain their own appraisal. He also asserted again that the District was not acting in good faith. Carlson proposed an 18-item list of non-monetary considerations, including preservation of trees and landscaping, removal of a septic system, free connection to the sewer system and $10,000 in credits toward future sewer bills, background checks on any workers performing

work on the easement, construction of a one-half-acre landscaped pond on the Dimke's property, 50 years' compensation for any increase in property taxes, the securing of a fiber optic line from Comcast to the Dimkes' home, completion of construction within one week (along with a $500-per-day penalty thereafter), and the securing of approval from the Department of Natural Resources prior to the removal of any tree on the property. He also complained that the District had not been acting in good faith, raising issues concerning allegedly contradictory statements about the extent of the easements and whether the District wanted access rights across the *entire* property.

¶ 14 (Some time prior to February 2014 and after the Dimke's had requested and the District agreed to the northern easement route, the Dimkes installed a concrete slab for a garage or shed where the northern easement was to travel. This concrete slab, Weber averred, would have increased the cost of the northern easement.)

¶ 15 The District referred the matter to outside counsel, and, on February 7, 2014, responded to the allegations of bad faith and stated that it was reverting to the originally-proposed alignment of the sewer line across the *southern* portion of the Dimkes' property. Counsel noted that the sewer line would be 30 to 50 feet below ground and that construction would take about 20 weeks, with the construction easement running one week prior and one week after the project was finished. Counsel also provided a point-by-point response to the Dimkes' demands, renewed its alternative monetary and non-monetary offers, and invited the Dimkes to obtain their own appraisal.

¶ 16 On February 11, 2014, the Dimkes, through Carlson, responded that they were willing to accept $40,000 if the District agreed to: keep the sewer at least 100 yards from the edge of their house (revised down from their previous request of 150 yards); cut and stack all trees; and agree

that all access rights be limited to the dimensions of the easement. Carlson further noted that the Dimkes' primary concern was to keep the sewer as far away as possible from their home.

¶ 17 On March 24, 2014, the District sent the Dimkes an updated appraisal based on the southern easement route. Magdziarz assessed the value of the taking at $21,500. (This was based on a second appraisal and is the only offer based upon a southern route.) Accordingly, the District offered the Dimkes $21,500 in exchange for the permanent easement and temporary construction easement. It also offered to use its best efforts to remove the fewest number of trees and to use a tunneling process for a good portion of the project.

¶ 18 On April 17, 2014, Carlson advised the District that that the Dimkes had not yet obtained their own appraisal and were not in a position to fully evaluate the District's offer. Carlson also stated that he understood that the District would be moving forward with condemnation proceedings, but that this did not close the door on negotiations.

¶ 19 C. Enabling Ordinance

¶ 20 On May 28, 2014, the District passed Ordinance No. 13/14-M-13, authorizing condemnation proceedings. Specifically, it stated that its purpose was to acquire the easements necessary to construct Phase C, including permanent gravity sanitary sewer easements and construction easements through the Dimke's property. The ordinance incorporated by reference: (1) proposed easement agreements that contained legal descriptions of the easements[2]; and (2) a detailed plat.

¶ 21 The easement agreements state that the District would have the perpetual "privilege, right, access and authority to construct, reconstruct, inspect, repair, maintain and operate said

[2] There were four total easement documents: one for each of the properties and for each alignment. The relevant language was identical in each document.

sanitary sewer upon, under and through the premises owned by" the Dimkes. Further, the District "will use only so much of the premises owned by said Grantors as is reasonably necessary for the purpose of constructing said line." Further, after construction, the District would "only use so much of the Grantor's land as is necessary" for inspection, service, maintenance, repair, and replacement. The documents also referred to the "right of access across said premises." Also, paragraph 3 permitted the District to use the property "for such distance on either side of the center line of the sewer as may be reasonable necessary" for transporting materials.

¶ 22 D. Summary Judgment Proceedings

¶ 23 On June 16, 2014, the District filed its initial condemnation complaint. In an amended complaint, it alleged that, pursuant to section 15 of the Sanitary District Act, it may acquire property by condemnation, either within or without its corporate limits, required for its corporate purposes. 70 ILCS 2405/15 (West 2014). It further alleged that the Phase C project constituted such purpose and the project and the two easements were necessary because they are useful to the public and are reasonably convenient means to effectuate the project. The parties, the District argued, could not agree on the compensation to be paid. The Dimkes responded with a traverse that denied the District's allegations concerning its statutory authority, necessity, and good faith.

¶ 24 The District moved for partial summary judgment on the elements of the condemnation action, leaving for a trial the just-compensation issue. It supported its motion with Carroll's affidavit.[3] Carroll averred that the District had authority to condemn pursuant to section 15 of

[3] Carroll stated that gravity trunk sewers serve larger areas called watersheds or basins and that these areas are most economically and reliably served by such sewers, which rely upon

the Sanitary District Act; that the public purpose was to provide sanitary sewer service to the Village; that the project was necessary; and the location of the easements and their construction was a reasonably convenient means in which to effectuate the project. In answers to interrogatories, the District stated that it was not necessary for any corporate purpose for the district to have an easement over the entire Dimke property; it further stated that the easement did not include the entire property and would extend "across a very small portion" of the property.

¶ 25 The Dimkes filed a cross-motion for summary judgment, arguing that the: (1) District lacked authority to condemn their property because it could not acquire property outside its boundaries or tributaries; (2) ordinance did not adequately describe the property because it was unduly broad and vague; (3) easements were not necessary; and (4) District did not act in good faith.

¶ 26 The Dimkes' appraiser, Daniel Currier, prepared two appraisals of the property. The first appraisal, on June 16, 2014, valued the taking at $60,868 and was based on the easements encompassing only a portion of the property. On June 10, 2015, at Carlson's request, Currier prepared a second appraisal, which valued the taking at $650,000[4] and was based on the assumption that the easements encompassed the entire property. At his deposition, he testified

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the natural force of gravity to transport wastewater. The ideal location for a gravity trunk sewer, he averred, is along drainageways because properties on both sides of the drainageway can be served without a pump station, which is less reliable and more expensive than a trunk sewer. He further stated that the Village is a tributary of the District. Based upon these considerations, the District chose the Kent Creek Drainageway.

[4] He explained that a permanent structure cannot be constructed over a utility easement.

that he based the second appraisal on a more thorough review of the actual easement language, which he had questioned in 2014. However, he agreed that, if the easement did not encompass the entire premises, his 2015 appraisal would not contain a correct valuation.

¶ 27 On April 6, 2015, the trial court granted the District's motion for partial summary judgment, denied the Dimkes' motion for summary judgment, and noted that the matter would be set for hearing to determine preliminary just compensation. It found that: (1) sections 8, 15, 17.1, and 7.2 of the Sanitary District Act authorized the District to condemn the property because they allow condemnation outside of its corporate limits for a corporate purpose and improvements (*i.e.*, providing sanitary sewer service to the Village); (2) the enabling ordinance described the property to be acquired and the nature of the interest sought; (3) extending sewer service to the Village is useful to the public and the chosen route is expedient and reasonably convenient; and (4) the District acted in good faith in its negotiations with the Dimkes because its final offer was equal to the amount Magdziarz, the District's appraiser, had determined the easement was worth, specifically, $21,500.

¶ 28 E. Damages

¶ 29 A jury trial on just compensation was set for September 14, 2015. Prior to that date, the District moved *in limine* to bar Currier's testimony concerning his 2015 appraisal at trial. In response, the Dimkes filed three motions *in limine*, all of which sought to bar Magdziarz's, the District's appraiser's, testimony. The first two motions argued that Magdziarz incorrectly assumed that all of the trees near the Dimkes' house would be saved and that the District was not seeking rights across the entire premises. (At his deposition, Magdziarz testified that he assumed that most of the trees would be saved. Currier, in turn, testified that his estimate incorporated the change from a heavily wooded lot to a partially wooded lot.) In the third motion, the Dimkes

argued that Magdziarz was not an arborist and had no expertise in assessing the impact of construction activity on the life of a tree.

¶ 30 The District responded that the value of trees or shrubs was not a factor of just compensation but, rather, the difference in the value of the land with and without the easement. It also argued that the trial court's summary judgment order was clear that the easement did not take the entire property, but only a limited portion of it.

¶ 31 The trial court granted the District's motion *in limine* and denied the Dimkes' motions. It found that Currier's second appraisal disregarded the court's summary judgment findings (because it was based on a taking of the entire property). However, it ordered that Currier could testify on the basis of his earlier, June 16, 2014, appraisal that did not treat the easements as taking the entire property, which they did not do (although there was discussion at the hearing that any challenge they might bring on appeal to the rulings would not be forfeited). The court also offered the Dimkes the opportunity to make an offer of proof through Currier as to the value of an easement across the entire property. Ultimately, the parties stipulated to $67,868 in just compensation. This amount was the value Currier, the *Dimkes'* appraiser, placed on the easements in his June 2014 appraisal that assumed they encompassed only a portion/strip of the property.

¶ 32 The District submitted a proposed judgment order, and, pursuant to the Dimkes' request, omitted any references to the "premises" to address their concerns about the breadth of the taking. The Dimkes objected, arguing that the proposed order contained language that was very different from that in the easements and that the trial court lacked authority to amended the language in the enabling ordinance and easements. The court overruled the Dimkes' objections to the proposed order, noting that the summary judgment ruling clarified that the right of access

was "across the easement area, not across the entire premises" and that the judgment order was consistent with this.

¶ 33 On September 14, 2015, a judgment order was entered containing the stipulated amount and a legal description of the easements and incorporating the summary judgment findings. The Dimkes appeal.

¶ 34 II. ANALYSIS

¶ 35 On appeal, the Dimkes challenge aspects of the trial court's summary judgment ruling, the court's ruling on the motions *in limine*, and the final judgment order. For the following reasons, we reject their claims.

¶ 36 Both the Illinois Constitution and the fifth amendment of the United States Constitution prohibit the taking of private property for a public purpose without payment of just compensation. Ill. Const. 1970, art. I, § 15; U.S. Const., amend. V; see also 735 ILCS 30/10-5-5 (West 2014). In other words, eminent domain is a state's sovereign power to take private property for public use, subject to the constitutional requirement that just compensation be paid. *City of Edwardsville v. County of Madison*, 251 Ill. 265, 266 (1911). "Other corporations or departments of the government, as distinguished from the State or sovereignty, can exercise the power of eminent domain only when such grant is specifically conferred by legislative enactment, and then only in the manner and by the agency so authorized." *Forest Preserve District of Du Page County v. Miller*, 339 Ill. App. 3d 244, 253 (2003). Being in derogation of the common law, conferring statutes and enabling ordinances are strictly construed in order to protect property owners' rights. *Id.* at 254. Also, the Eminent Domain Act is strictly construed. 735 ILCS 30/90-5-15 (West 2014).

¶ 37 Plaintiff is an Illinois unit of local government that is organized under the Sanitary District Act and provides wastewater conveyance and treatment services to certain properties located in and around Rockford. The Sanitary District Act expressly provides condemnation and eminent domain powers to plaintiff, and those powers may be exercised only in accordance with the Eminent Domain Act. 70 ILCS 2405/8.05 (West 2014) (powers under Sanitary District Act to acquire property by condemnation or eminent domain are subject to Eminent Domain Act); see also 70 ILCS 2405/8(a) (West 2014) (a sanitary district may condemn property "either within or without its corporate limits that may be required for its corporate purposes"); 70 ILCS 2405/15 (West 2014) (district board ordinance approving "the making of any improvement" the district is authorized to make and that requires condemnation is subject to Eminent Domain Act); see also 735 ILCS 30/15-1-5 (West 2014).

¶ 38 Where the power to condemn is conferred, a public body may not exercise such power "unless it has manifested its determination to exercise that power by some official action of record." *Id.*; see also *Illinois State Toll Highway Authority v. DiBenedetto*, 275 Ill. App. 3d 400, 405 (1995). This is generally done via an enabling ordinance or resolution. *Miller*, 339 Ill. App. 3d at 253-54.

¶ 39 A condition precedent to the exercise of the power of eminent domain is an attempt to reach an agreement with the property owner on the amount of compensation. *City of Oakbrook Terrace v. LaSalle National Bank*, 186 Ill. App. 3d 343, 351 (1989); see also *Department of Transportation v. 151 Interstate Road Corp.*, 209 Ill. 2d 471, 480 (2004) (implicit requirement of Eminent Domain Act is that condemnor must "negotiate with the landowner in good faith over the amount of compensation to be paid before it initiates proceedings to take the landowner's property through eminent domain"). In this regard, the acquiring authority must make a *bona*

fide attempt to agree, and the attempt must be made in good faith. *Department of Transportation v. Walker*, 80 Ill. App. 3d 1039, 1040 (1980). Where a wide disparity exists between the value placed on the property by the acquiring authority and the property owner and where the circumstances show that no practical solution can be reached, no further negotiations are necessary. *Peoples Gas Light & Coke Co. v. Buckles*, 24 Ill. 2d 520, 527-28 (1962).

¶ 40 A. Summary Judgment Ruling

¶ 41 The Dimkes first argue that the trial court's summary judgment ruling is erroneous. They contend that: (1) the enabling ordinance is ambiguous because it does not reasonably describe the property being condemned and the easements grant rights to the *entire* premises; (2) the District lacked authority to condemn the property; (3) the taking is not necessary; and (4) the District failed to negotiate in good faith.

¶ 42 Summary judgment should only be granted when the pleadings, depositions, affidavits, and admissions show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Largosa v. Ford Motor Co.*, 303 Ill. App. 3d 751, 753 (1999). In ruling on a summary judgment motion, a court must construe the evidence strictly against the movant and liberally in favor of the nonmoving party. *Id.* We review *de novo* the propriety of a summary judgment ruling. *Forest Preserve District of Du Page County v. First National Bank of Franklin Park*, 401 Ill. App. 3d 966, 973 (2010). Similarly, we review *de novo* statutory and contract construction issues. *Department of Transportation v. Hunziker*, 342 Ill. App. 3d 588, 593 (2003); *Village of Palatine v. Palatine Associates, LLC*, 2012 IL App (1st) 102707, ¶ 44.

¶ 43 A condemnation complaint under the Eminent Domain Act must set forth: (1) the complainant's authority in the premises; (2) the purpose for which the property is sought to be

taken or damaged; (3) a description of the property; and (4) the names of all persons interested in the property as owners or otherwise. 735 ILCS 30/10-5-10(a) (West 2014). (The first and third of these elements are at issue here.) Further, if the governmental entity seeks to acquire property for public ownership and control, then it must prove that: (1) the acquisition of the property is necessary for a public purpose; and (2) the acquired property will be owned and controlled by the condemning authority or another governmental entity. 735 ILCS 30/5-5-5 (West 2014). (The first element is also at issue in this case.) Finally, as noted, good faith negotiation is a condition precedent. (The parties also dispute this issue.)

¶ 44 (1) Statutory Authority

¶ 45 The Dimkes argue that the trial court erred in finding that the district possessed statutory authority to exercise eminent domain in this case. For the following reasons, we reject this argument.

¶ 46 We begin by reviewing the relevant statutory provisions. Section 15 of the Sanitary District Act grants eminent domain powers to the District. It provides:

> "Whenever the board of trustees of any sanitary district shall *pass an ordinance for the making of any improvement which such district is authorized to make*, the making of which will require that private property should be taken or damaged, such district may cause compensation therefor to be ascertained, and may condemn and acquire possession thereof in the same manner as nearly as may be as is provided for the exercise of the right of eminent domain under the Eminent Domain Act, as amended, except that (i) proceedings to ascertain the compensation to be paid for taking or damaging private property shall in all cases be instituted in the county where the property sought to be taken or damaged is situated, and (ii) all damages to property, whether determined by

agreement or by final judgment of court, shall be paid prior to the payment of any other debt or obligation." (Emphasis added.) 70 ILCS 2405/15 (West 2014).

¶ 47 Section 17.1(a) of the Sanitary District Act provides, in relevant part:

"After incorporation, any district organized under this Act may, in accordance with this Act and an intergovernmental agreement with the sanitary district being acquired ***, acquire the territory, treatment works, lines, appurtenances, and other property of (i) any sanitary district organized under this Act, the Sanitary District Act of 1907, the North Shore Sanitary District Act, the Sanitary District Act of 1936, or the Metro-East Sanitary District Act of 1974 or (ii) any municipality whose treatment works were established under the Illinois Municipal Code or the Municipal Wastewater Disposal Zones Act, *regardless of whether that district or municipality is contiguous to the acquiring sanitary district*. The distance between the sanitary district being acquired or municipality and the acquiring sanitary district, however, as measured between the points on their corporate boundaries that are nearest to each other, shall not exceed 20 miles. ***." (Emphasis added.) 70 ILCS 2405/17.1(a) (West 2014).

¶ 48 Section 8 of the Sanitary District Act provides, in relevant part:

"The sanitary district may acquire by purchase, condemnation, or otherwise all real and personal property, right of way and privilege, *either within or without its corporate limits that may be required for its corporate purposes*." (Emphasis added.) 70 ILCS 2405/8(a) (West 2014).

¶ 49 Section 7.2 of the Sanitary District Act, upon which the Dimkes primarily rely, provides:

"Where any sewer system under the jurisdiction of a city, village or incorporated town *is tributary to a sanitary district sewer system*, and the board of trustees of such

> sanitary district finds that it will conduce to the public health, comfort or convenience, the board shall have the power and authority to regulate, limit, extend, deny or otherwise control any connection to such sewer tributary to the sanitary district sewer system by any person or municipal corporation regardless of whether the sewer into which the connection is made is directly under the jurisdiction of the district or not." (Emphasis added.) 70 ILCS 2405/7.2 (West 2014).

¶ 50 In the enabling ordinance, the District stated that, pursuant to section 15 of the Sanitary District Act and the Eminent Domain Act, it had authority to condemn property within or without its corporate boundaries that may be required for its corporate purposes and that may be owned or controlled by it or another governmental body. It further stated that the Phase C project would provide sanitary sewer service to the Village and it was necessary to acquire easements on and through the Dimkes' property. Negotiations had failed to move forward to resolution. The District stated that it was necessary and desirable for its corporate purpose to provide such service to the Village and required the District's acquisition of the easements.

¶ 51 In its summary judgment order, the trial court found that, pursuant to sections 8, 15, and 17.1, and, separately, 7.2 of the Sanitary District Act, the District had statutory authority to condemn the Dimkes' property. The court found that section 8 allowed the District to expand beyond its territorial limits to pursue a corporate purpose (which it further found that the District had established). As to section 15, the trial court determined that it allowed for improvements to sanitary sewer systems operated by the District and that it would be illogical to interpret the Sanitary District Act to allow the District to acquire the Village's system under section 17.1, but not allow it to improve that system by connecting it to the District's system.

¶ 52 Separately, the trial court found that section 7.2 provided additional authority to the District to condemn the Dimkes' property. It rejected the Dimkes' argument that section 7.2's provision concerning tributaries could be read to invalidate the District's actions because the term "tributary," which is not defined in the statute, is defined as a body of water that contributes its water to another and larger stream or body of water (citing to a waste and water control treatise's glossary). Carroll's affidavit (and deposition testimony), the court noted, reflected that the Village drained toward the District and, therefore, the court found, the Village is a tributary of the District under section 7.2.

¶ 53 On appeal, the Dimkes argue that sections 17.1 and 7.2 do not provide the statutory authority for the District's actions. As to section 17.1, the Dimkes contend that, although that provision authorizes the acquisition of the Village's sewer system, it does not provide express or implicit authority for the District to exercise eminent domain to connect a sewer to the Village. As to section 7.2, the Dimkes argue that only this section could authorize the action, but it does not because the Village is not currently a tributary to the District.

¶ 54 We agree that, on its own, section 17.1(a) does not authorize the District to condemn property within 20 miles of its territory where it acquires, via intergovernmental agreement, a sanitary district or treatment works (*e.g.*, the Village's sanitary sewer system). However, section 8 of the Sanitary District Act authorizes condemnation proceedings outside a district's boundaries, so long as they are required for its corporate purposes. The Dimkes' argument with respect to sections 8 and 15 is that they stand for the proposition that the District's actions must be statutorily authorized (by other provisions in the Sanitary District Act; they do not, they contend, provide independent bases for the District to act). As to corporate purpose, they note that the trial court determined that acquiring and upgrading the Village's sanitary sewer system

via connection to the District's system met the District's corporate purpose. The Dimkes argue that this finding was erroneous and that the District merely recited in the ordinance that the project met its corporate purposes, which does not suffice. We disagree. Section 8 does not refer to other statutory provisions, and the primary condition it contains is that the condemnation be for a corporate purpose. A corporate purpose has been defined as some purpose that is germane to the objects for which the municipal entity was created, or such as has a legitimate connection with that object and a manifest relation to it. *Wetherell v. Devine*, 116 Ill. 631, 637 (1886). Sanitary districts serve a limited and obvious public purpose. They preserve public health (*People ex. rel. Village of South Chicago Heights v. Bergin*, 340 Ill. 20, 25 (1930)), and it is undisputed that the District does so via the effective collection and treatment of wastewater. Clearly, the acquisition of land for assumption of sanitary sewer treatment services for the Village, including connection thereto, furthers the District's purpose of preserving public health. The Dimkes ignore this. They urge that section 17.1 does not expressly or implicitly authorize the project. We disagree and conclude that the statute, along with section 8, authorizes the taking. Section 17.1(a) grants authority to the District to acquire the Village's sanitary sewer treatment service because it allows it to acquire a treatment works or sanitary district within 20 miles of its boundaries. Section 8 provides that a sanitary district may, for its corporate purposes, acquire by condemnation real property within or without its boundaries. This provision authorizes the acquisition of the easements at issue here. Section 8 and 17.1(a) provide sufficient statutory authority for the District's actions.

¶ 55 The trial court found that section 7.2 provides additional authority for the District's taking, a point the Dimkes strongly dispute. Because we have concluded that section 8 and 17.1 provide the necessary authority for the taking, we need not address section 7.2.

¶ 56 In summary, we conclude that the District was statutorily authorized to condemn the property.

¶ 57 (2) Description/Enabling Ordinance Ambiguities

¶ 58 The Dimkes next argue that the trial court erred in finding that the ordinance adequately described the property being sought. We reject this argument.

¶ 59 An "enabling ordinance must *reasonably describe* the property to be taken; the failure of the plaintiff to adequately describe the property is fatal to the petition to condemn." (Emphasis added.) *Miller*, 339 Ill. App. 3d at 254; *DiBenedetto*, 275 Ill. App. 3d at 405; see also *City of Kankakee v. Dunn*, 337 Ill. 391, 395 (1929).

¶ 60 Here, the enabling ordinance stated that, to provide sanitary sewer services to the Village as part of the Phase C project, the District authorized condemnation proceedings through the Dimkes' property; specifically, permanent gravity sanitary sewer easements and construction easements (labeled "Easements"). It noted the "Subject Properties" were commonly known by their tax I.D. numbers (that were specified therein) and further noted that they were described in two attached exhibits, which consisted of the proposed easement agreements, which, in turn, contained the legal descriptions of the Subject Properties. Additionally, the ordinance stated that plat maps were attached to the easement agreements. The easement agreements state that the District sought a permanent easement "through the premises as hereinafter described, as shown upon the plat hereto attached." The agreements next contain a metes and bounds description of the easements (and the Dimkes do not dispute that they describe only a portion/strip of the premises, not the entire premises), followed by several paragraphs, the language of which the parties address on appeal. Paragraph 1 states in part that, during construction, the District will use "only so much of the premises" or "Grantors' land" as is

"reasonably necessary" for construction, inspection, maintenance, etc. Paragraph 3 states that materials used in construction will be transported to the work site "only along the line where said sanitary sewer is being placed, and only for such distance on either side of the center line of the sewer as may be reasonably necessary for the purposes of such construction, and all other portions of the premises *** shall not be used except by permission of the owner." Paragraph 5 states that the grantors "agree that the District shall have the right of access across said premises for the purpose of construction, reconstruction, inspection, repairing, maintaining, and operating said sanitary sewer." The plat maps depict the portion/strip that consists of the sanitary sewer easement and broader "temporary construction easement."

¶ 61 Here, the trial court found that the enabling ordinance reasonably and sufficiently informed the Dimkes that the District sought an easement to construct an underground sanitary sewer extension under a specifically-designated portion of their property. Specifically, it found that: (1) at pages 2 and 3 of the easement agreements (the metes and bounds descriptions), the District described the property to be taken with reasonable certainty; (2) the ordinance described the nature of the interest it sought (*i.e.*, "permanent gravity sanitary sewer easements and construction easements for construction of segments of gravity sanitary sewer"); and (3) the plat attached to the ordinance specifically outlined the route of the proposed easement. The court further found that the Dimkes should have been able to ascertain from the description of the nature of the interest sought that the District was not seeking a fee simple right to their property, but, rather sanitary sewer easements. They further should also have been aware that a construction easement would be necessary. The court also noted that the ordinance contained a legal description of the easements and a map showing where they were to cross the Dimkes' property. This was adequate under the law, the court found.

¶ 62 The trial court rejected the Dimkes' argument that the ordinance was overly broad and granted rights to the entire premises, finding that their reliance on certain language in the easement agreements was misplaced. As relevant to the Dimkes' primary argument on appeal, it explained that the agreements were proposed agreements for the property owners' consideration, setting forth the terms of the undertaking, but only if an agreement was reached. "In this case, no easement agreement was entered into and, therefore, the terms contained therein have no legal significance." The court also rejected the Dimkes' argument that the easement must contain specific details concerning, for example, "what will occur, when it will occur, how it will occur and how long it will take."

¶ 63 On appeal, the Dimkes contend that the enabling ordinance is ambiguous and does not reasonably describe the taking, which is fatal to the District's condemnation petition. In addition to quoting the trial court's hearing comments that certain language was confusing or ambiguous and its summary judgment finding that the easement agreements had "no legal significance," the Dimkes complain that easement agreements (pointing to the language in the paragraphs quoted above) are overbroad in that they grant rights in the *entire* premises. We disagree.

¶ 64 In *Miller*, upon which the Dimkes rely, the forest preserve district's enabling ordinance authorized the condemnation of land as depicted in two exhibits. One of the exhibits described one parcel of land, while the second exhibit, a plat map, depicted a different, larger parcel. The reviewing court upheld the dismissal of the condemnation action, holding that the enabling ordinance contained two inconsistent descriptions and, thus, "the ordinance failed to reasonably describe the property to be taken." *Miller*, 339 Ill. App. 3d at 255. It further held that the subsequent passage, two years after the filing of the complaint, of another ordinance did not cure the insufficiencies in the first ordinance upon which the complaint was founded. *Id.* Similarly,

in an earlier case upon which the Dimkes also rely, *Department of Public Works & Buildings v. Finks*, 10 Ill. 2d 20, 25-28 (1956), the supreme court held that the condemnor had failed to adequately describe the access it sought in the premises. In *Finks*, a state agency designated a road as a freeway and instituted eminent domain proceedings to acquire land to limit or extinguish rights of access of owners of certain abutting property. The court held that a reference to rights of access for "residential or farming purposes" was unclear as to whether it referred to farm residences or residential subdivisions; counsel's statement at oral argument raised this ambiguity, which was not resolved in the jury instructions. *Id.* at 26. A second issue involved the terms of access to the highway along the west line of the defendants' property and whether the agency intended to construct a road. *Id.* at 26-27.

¶ 65 We find the foregoing cases distinguishable because they involved circumstances that clearly did not accurately apprise the property owners of the desired taking. *Miller* involved documents depicting two different properties, and *Fink* involved admissions or testimony outside the ordinances that rendered them ambiguous. Although the enabling ordinance here is not entirely clear in every respect, an overall reading of the document and its attachments clearly reflects, as the trial court found, that the District sought an easement and access over only a portion/strip of the Dimkes' property (as precisely described in the metes and bounds section of the ordinance) and not the entire premises. The references to premises in the quoted paragraphs do not, in our view, reflect rights of access to anything other than the precisely described portion/strip constitution the easement on each parcel.

¶ 66 In summary, we conclude that the ordinance reasonably describes the property being sought.

¶ 67 (3) Necessity

¶ 68 The Dimkes next argue that the taking is not necessary because the District admits that it is not *necessary* for it to have a perpetual right of access across the entire Dimke property for purposes of constructing, reconstructing, inspecting, repairing, maintaining, and operating a sanitary sewer. The easements grant these rights across the entire premises and, as such, are "massively overbroad and unnecessary." For the following reasons, we reject the Dimkes' claims.

¶ 69 In *Rock River Water Reclamation District v. Sanctuary Condominiums of Rock Cut*, 2014 IL App (2d) 130813, this court recited the parameters for determining necessity, noting that, in a condemnation action, the term does not mean indispensible or an absolute necessity; rather, it means expedient, reasonably convenient, or useful to the public. *Id.* at ¶ 63. This court held that, although the ordinance in that case did not explicitly state that the subject project was necessary, it did to "tacitly" by authorizing the extension of sanitary sewer service, "which is clearly useful to the public." *Id.* Because the defendant did not produce evidence to meet its burden of production, the assertion of necessity was not rebutted. *Id.* The court also held in the alternative that, even if the ordinance was not read to contain a statement of necessity, there was evidence at the hearing on this issue by the condemning authority and the defendant presented no evidence to the contrary. *Id.* at ¶ 64. Thus, the court upheld the trial court's finding, after a bench trial, that the project was necessary. *Id.*

¶ 70 Here, the trial court found that the enabling ordinance contained a specific finding of necessity, to which it deferred as *prima facie* evidence on the issue. Next, the court determined that the evidence that the District submitted supported a finding that the Fuller Creek Project involved a legitimate public purpose. The court noted that: the Village had approached the District about providing sewer service; a feasibility study was conducted; an intergovernmental

agreement was negotiated; and the District evaluated four alternative routes to extend sewer services to the Village. Based on this evidence, the trial court found that the public necessity element was established. Based on the record, these findings were not erroneous.

¶ 71 The trial court also rejected the Dimkes' argument that alternative routes were appropriate because they would not have involved the taking of private property, as this was not an area of judicial review. The trial court relied on *City of Chicago v. St. John's United Church of Christ*, 404 Ill. App. 3d 505 (2010), a case that we also find instructive. In *St. John's*, the City of Chicago, in the course of expanding O'Hare Airport, sought to condemn 433 acres of land, which included certain cemetery land. The defendants (the church that owned the cemetery site and two parishioners) appealed the denial of their motion to compel discovery of additional documents concerning the issue of necessity. The reviewing court held that there was no abuse of discretion. *Id.* at 517. It rejected the defendants' argument that it was not necessary to destroy the cemetery because there were alternative locations for the runways. *Id.* The court noted that resolution of the necessity issue did not involve assessment of:

> "whether it is necessary to use each parcel of land specifically for the exact purpose originally planned, nor is it a question of whether the planned use could be reconfigured such that a particular parcel would no longer be required for the project. These are questions of a technical nature that are not appropriate for judicial review. The issue of necessity relates to whether the airport expansion is a legitimate public necessity.
>
> Judicial interference in the actual plan to be implemented would lead to interminable delays, as there is always a different way to configure the use of land, especially a plan as massive as the expansion of an airport. Even if the overall expansion plan has changed such that the planned runway could be built on land other than the

> cemetery land, the fact remains that the runway is planned to be built there, and the trial court would have no authority to scuttle the plan or require the City to redraw the plan to place the runway elsewhere." *Id.*

¶ 72 To the extent that the Dimkes argue that alternative routes were preferable to an easement over their property and, thus, the easements over their own land were not necessary, we reject this claim. The central inquiry here is whether providing sanitary sewer service to the Village is a legitimate public necessity, not the specific route that the sewer should follow. *Id.* Providing such service is clearly a public necessity.

¶ 73 (4) Good Faith

¶ 74 The Dimkes next argue that the trial court erred in finding that the District negotiated in good faith, where its final offer was equal to the amount Magdziarz, the District's appraiser, had determined the easement was worth—$ 21,500. We reject this argument.

¶ 75 The Eminent Domain Act provides that a governmental body may exercise the power of eminent domain through a condemnation proceeding only where, among others, the compensation to be paid cannot be agreed upon by the parties. 735 ILCS 30/10-5-10(a) (West 2014). Implicit in the statute is the requirement that the condemnor "negotiate with the landowner in good faith over the amount of compensation to be paid before it initiates proceedings to take the landowner's property through eminent domain." *151 Interstate Road Corp.*, 209 Ill. 2d at 480. Our supreme court has stated that "[a]n offer made by a governmental body based on the advice of an experienced appraisal consultant is normally sufficient to establish a good-faith attempt to agree." *Forest Preserve District of Du Page County v. First National Bank of Franklin Park*, 2011 IL 110759, ¶ 63.

¶ 76 The trial court thoroughly addressed the Dimkes' assertions on this issue and found that the District negotiated in good faith. As to the Dimkes, the trial court found that it was "readily apparent *** that the Dimkes, while paying lip service to continued negotiations, ha[d] no intention to amicably settle with the District." Specifically, the court found that the easement alignment was changed at the Dimkes' request and that the District obtained a certified appraisal at their request. During negotiations, the court noted, Carlson, the Dimkes' attorney, sent a "scorching" letter to the District on January 20, 2014, accusing the District of bad faith and making detailed demands concerning the scope of the project and requesting environmental and natural resource impact studies. The court further noted that the Dimkes had not obtained their own appraisal or made a monetary counteroffer to the District. Also, they installed a concrete slab over the northern easement route *after* the District agreed to their request for a northern alignment. Afterwards, the District reverted to its preferred southern alignment (caused in part by the addition of the concrete slab over the northern alignment) and made a final offer to the Dimkes for $21,500, which was based on a certified appraisal by Magdziarz. Furthermore, the trial court rejected the Dimkes' claims concerning notice and found that the District provided the Dimkes with all of the information to which they were entitled and made no false statements in their offers.

¶ 77 The Dimkes complain that the District made earlier offers that were less than the property's appraised value, limited its offers to the value of the easements as shown on the plat maps, refused to promise to save certain trees, relocated the easement from a northern to a southern alignment, and lied about the cost of a septic tank removal. We find these claims of little import. As the District notes, these actions occurred between April 2012 and February

2014 and the District offered the Dimkes the full amount of the certified appraisal ($21,500) on March 24, 2014, prior to filing suit in June 2014.

¶ 78 As the trial court noted, it was the Dimkes who complicated the process, specifically noting that a January 20, 2014, letter from Carlson was "scorching." The evidence showed that negotiations encompassed over two years, with the Dimkes requesting that the alignment be changed and adding numerous requirements as the process continued and became more complex, including the addition of a concrete slab over the path of the northern alignment.

¶ 79 The Dimkes note that the District ultimately stipulated to $67,868, which is over three times their final offer of $21,500 (based on Magdziarz's appraisal for the southern alignment). They contend that this shows lack of good faith on the District's part. On its own, a stipulation (to avoid further litigation) to an amount in excess of an appraisal is not unusual. Further, the Dimkes do not argue that Magdziarz's appraisal was based on unsound calculations or that he was biased. Because the Dimkes do not challenge the appraiser's basic assumptions or professionalism, we find their argument unavailing. *Cf. 151 Interstate Road Corp*, 209 Ill. 2d at 490 (holding that agency's reliance on its appraiser's valuation did not demonstrate lack of good faith; court ultimately fixed compensation at $9,940; although value by the agency's appraiser was "substantially lower"—$8,000—than the value by the property owners' appraiser—$11,305—agency's appraiser's valuation was based on an accepted methodology and nothing in the record suggested that the appraiser deviated from professional standards; fact that the agency's appraiser did substantial business with the department was a factor for the court to weigh in fashioning compensation and did not render his appraisal inherently unreliable).

¶ 80 In summary, we conclude that the District negotiated in good faith.

¶ 81 B. Motions *in Limine*

¶ 82 Next, the Dimkes argue that the trial court erred in ruling on the motions *in limine*. As part of its inherent power to admit or exclude evidence, a trial court has broad discretion in ruling on a motion *in limine*. *City of Quincy v. Diamond Construction Co.*, 327 Ill. App. 3d 338, 342-43 (2002). Accordingly, we will not reverse the trial court's ruling on a motion *in limine* absent a clear abuse of discretion. *Id.* at 343.

¶ 83 The Dimkes argue that their appraiser, Currier, should have been allowed to testify concerning the amount of just compensation based on his understanding that the easements provided rights of access across the entire Dimke property. They further argue that Madgziarz, the District's appraiser, should have been barred from testifying because he incorrectly assumed that: (1) the taking did not encompass the entire property; and (2) most of the trees on the property would be saved (and this testimony lacked a proper foundation).

¶ 84 We conclude that the Dimkes forfeited this argument. Generally, a party cannot challenge on appeal matters to which it has stipulated. *Charter Bank & Trust of Illinois v. Edward Hines Lumber Co.*, 233 Ill. App. 3d 574, 580 (1992) (where there was no contention that the stipulation was unreasonable, was obtained by fraud, or otherwise violated public policy, the bank had no grounds upon which it could dispute the amount of a mechanic's lien). The Dimkes stipulated to the amount of just compensation. Although there was discussion during the hearing on the motions that the claims would not be forfeited for appeal purposes, the trial court's order, to the extent it would drive our decision, contains no such language. As the District notes, if the Dimkes wanted to preserve the issue for appeal, they should have proceeded to trial, made an offer of proof as to Currier's testimony, and cross-examined Magdziarz. They did not do this. Accordingly, the Dimkes forfeited any arguments concerning the evidentiary basis for the order concerning the amount of just compensation.

¶ 85 Forfeiture aside, we conclude that the Dimkes' arguments are unavailing. As to their claim that Magdziarz's valuation should have included the value of the trees that would be removed, we note that the proper measure of damages is the value of the property before the taking and the value after the taking. *Sanctuary Condominiums*, 2014 IL App (2d) 130813, ¶ 68; see also Illinois Pattern Jury Instructions, Civil, No. 300.54 (Supp. 2016) ("[t]he measure of damages to the property within the easement strip is the difference between the fair cash market value of the property immediately before the easement is imposed and the fair cash market value of the property immediately after the easement is imposed.") It is not to be based on a specific expense or condition. *City of Freeport v. Fullerton Lumber Co.*, 98 Ill. App. 3d 218, 223 (1981) (certain expenses "cannot be recovered specifically and are not the measure of damages but are factors that can be considered in determining a reduction of the market value of the whole"). As the District notes, the Dimkes could have cross-examined the appraiser on this issue (including his opinion that the impact of being able to see the power lines if the trees were removed would not have an overall impact on the value of the taking); the value of the trees is relevant to the weight of his testimony, not its admissibility.

¶ 86 We further reject their argument that takes issue with Magdziarz's testimony because it was based on a narrow strip of the Dimkes' property instead of the entire premises. This testimony, unlike Currier's (who admitted that his opinion was only relevant to a taking of the *entire* property) was consistent with the trial court's summary judgment findings, and, thus, we conclude that the trial court's evidentiary rulings, denying the Dimkes' motions *in limine* and granting the District's motion *in limine*, were not unreasonable.

¶ 87 C. Final Judgment Order

¶ 88 The Dimkes' final argument is related to their claim that the enabling ordinance was ambiguous. Here, they contend that the trial court's final judgment order impermissibly altered the takings because it contains language that is very different from that in the easements/ordinance, which they contend are overbroad. (For example, the judgment order substitutes the word "easements" where the term "premises" was used in the enabling ordinance.) See *City of Chicago v. Midland Smelting Co.*, 385 Ill. App. 3d 945, 962-63 (2008) (where enabling ordinance authorized taking of entire property, court had no authority to permit municipality to acquire half the land that the ordinance authorized it to acquire; court could not amend and add language to ordinance). By the Dimkes' reading, the easements grant rights of access across the entire premises, whereas the judgment order grants access to only a portion/strip of the property. According to the Dimkes, although the judgment order reflects changes that address concerns they had raised, the changes are not permissible in an eminent domain case because the enabling ordinance itself must reasonably describe the property to be taken. We find their arguments unavailing because they are premised on their earlier argument, which we rejected above, that the easements reflect a taking of the entire property. We determined that the enabling ordinance was not ambiguous and reasonably described the property to be taken: a portion/strip of the Dimkes' property, not the entire premises. As the Dimkes concede, the final judgment order reflects this narrower taking; therefore, we find no error in the trial court's ruling.

¶ 89 III. CONCLUSION

¶ 90 For the reasons stated, the judgment of the circuit court of Winnebago County is affirmed.

¶ 91 Affirmed.