2017 IL App (1st) 160597-U

No. 1-16-0597

FIFTH DIVISION
March 31, 2017

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY, Plaintiff-Appellee, v. CHICAGO TITLE LAND TRUST COMPANY, as Successor Trustee to Mid Town Bank and Trust Company of Chicago, as Trustee Under Trust Agreement Dated April 9, 2001, and Known as Trust Number 2364; VANGUARD ARCHIVES, INC.; UNKNOWN OWNERS and NON-RECORD CLAIMANTS, Defendants, (Chicago Title Land Trust Company, and Vanguard Archives, Inc., Defendants-Appellants).	)	Appeal from the Circuit Court of Cook County. No. 15 L 50372 Honorable Kay M. Hanlon, Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justice Reyes concurred in the judgment.
Presiding Justice Gordon dissented.

O R D E R

¶1 *Held*: In an eminent domain proceeding, we affirm the circuit court's denial of the

landowners' traverse and motion to dismiss and grant of the condemnor's quick-take motion. The evidence supports the circuit court's evidentiary rulings and conclusions that the condemnor (1) complied with necessary statutory and legal requirements and was authorized to condemn the landowners' property, and (2) made a good-faith attempt to reach an agreement with the landowners.

¶2 Plaintiff-appellee, the Illinois State Toll Highway Authority (the Authority), filed the instant suit for condemnation against defendants-appellants, Chicago Title Land Trust Company, successor to Mid Town Bank and Trust Company of Chicago, and Vanguard Archives, Inc., (the owners), and defendants, unknown owners and non-record claimants. The Authority sought to utilize its power of eminent domain to acquire certain interests in two parcels of the owners' property, which were deemed necessary for the project to improve the Elgin-O'Hare expressway – west bypass (the project). The owners filed a traverse and motion to dismiss, raising allegations that challenged the Authority's right to condemn the two parcels.

¶3 The circuit court subsequently entered orders that denied the owners' traverse and motion to dismiss and awarded preliminary compensation. The court found that the Authority had satisfied certain statutory and legal requirements in order to have authority to condemn the two parcels, including giving the owners the requisite reasonable description and notice of the property the Authority sought to acquire and making a good-faith attempt to negotiate an agreement with the owners.

¶4 The owners appealed, contending the Authority failed to satisfy all the statutory and legal requirements for condemnation of the sought property concerning the holding of public hearings, approval of the project map, notice of the condemnation, execution and passage of the Authority's enabling resolution, the inclusion in the resolution of a reasonable description of the

sought property, and making a good faith attempt to reach an agreement with the owners. The owners also contend the trial court erred by admitting documents into evidence in violation of the rule against hearsay and by granting the Authority's quick-take motion.

¶5 For the reasons that follow, we affirm.

¶6 I. BACKGROUND

¶7 This condemnation action affects a portion of the owners' whole property. The whole property was associated with Cook County property index number (PIN) 12-19-400-119 and consisted of an industrial building and parking lots located on 5.009 acres at 3435 Powell Road in Franklin Park.

¶8 Pursuant to the Toll Highway Act (Act), 605 ILCS 10/1 *et seq*. (West 2014), the Authority's board of directors determined that the project was necessary or convenient for its authorized purposes and passed resolutions to authorize the expenditure of funds to acquire the relevant property. The first public meeting for the project was held in November 2007 in an open-house format and was publicized through advertisements in newspapers, on various municipality websites, and in a newsletter. As part of the project, the Authority eventually sought two parcels from the owners' whole property: a fee simple taking of .19 acres (designated in the project as parcel No. WA-1D-12-006) and a five-year temporary easement of .045 acres (designated as parcel No. WA-1D-12-006.T).

¶9 On December 8, 2014, the Authority sent notice to owner/appraisal letters to the owners as indicated in the public records. The letter referenced PIN 12-19-400-119 and parcel No. WA-1D-12-006 and stated the owners' property was in the project area and might be needed for construction of the improvements. The letter informed the owners that assigned appraisers would contact them to inspect the property and determine the fair market value of any property the

Authority was interested in acquiring. The letter also informed the owners to contact the Authority's land acquisition manager, Joanne Fehn, with any questions. The notice included a property layout sheet showing the outline of the subject property, the proposed taking, and the overall construction. The layout sheet included the parcel and PIN numbers and listed the type of impact as partial acquisition and temporary easement.

¶10 On February 12, 2015, the Authority sent the owners by certified mail 60-day notice letters. The notice referenced parcel Nos. "WA-1D-12-006 & .T" and the owners' PIN, and listed the interest to be acquired as "fee simple & temporary construction easement." The Authority offered $110,000 compensation for the two parcels. The Authority included with the notice a legal description and plat of survey, a 41-page appraisal report and review, and an offer to purchase/basis for computing, which showed and legally described by metes and bounds the two sought parcels in an attached plat of survey, legal description and title commitment. The appraisal reviewed and recommended by the Authority listed $100,000 as the fair market value of the property taken, $5,000 as the damage to the remainder, and $5,000 as compensation for the temporary easement. The Authority stated it would consider any materials the owners provided relevant to determining the value of the property. Further, the Authority told the owners to contact the assigned negotiator, J. Steve Santacruz, if they accepted the offer, or to contact either Santacruz or land acquisition manager Fehn with any questions. The Authority informed the owners they had 60 days to consider the offer before the Authority could initiate eminent domain proceedings.

¶11 The Authority received a signed certified mail return receipt for the 60-day notice sent to owner Vanguard Archives, Inc., but the 60-day notice sent to owner Chicago Title Land Trust Company was returned unclaimed. The Authority and the owners engaged in negotiations but did

not reach an agreement regarding compensation for the two sought parcels.

¶12 On March 26, 2015, the Authority's board of directors passed resolution No. 20652, which amended resolution No. 20586, to satisfy the legal requirement to reasonably describe the additional parcels of property the Authority might need to acquire by eminent domain. Resolution No. 20652 included exhibit A, which listed the owners' parcel No. WA-1D-12-006 and PIN 12-19-400-119 in Cook County. Exhibit A neither listed nor described the temporary easement, parcel No. WA-1D-12-006.T.

¶13 On May 20, 2015, the Authority filed a complaint for condemnation regarding the owners' two parcels. The Authority contended that, pursuant to the Act, it was authorized to acquire, construct, relocate, operate, regulate and maintain a system of toll highways within and through Illinois. Moreover, its board of directors had determined that the project was necessary or convenient for its authorized purposes and passed the necessary resolutions to authorize the expenditure of funds to acquire the owners' two parcels. The Authority attached to the complaint legal descriptions for each parcel and the 60-day notice letter.

¶14 The owners filed a traverse and motion to dismiss, arguing, *inter alia*, that the Authority failed to properly describe the sought parcels in the complaint or enabling resolution; failed to comply with requirements concerning holding public hearings and giving public notice of the approval and filing of the project map; retained an engineer, appraisers and a negotiator and sent an offer letter and numerous emails to the owners without the authorization of a proper resolution; improperly advanced the filing date of the complaint for condemnation; and failed to make a good-faith attempt to agree where the Authority's appraiser relied on inaccurate information about the property and failed to consider the value a railroad spur added to the property and the loss of parking the owners would sustain from the taking.

¶15 The hearing on the traverse motion commenced on January 7, 2016. The Authority presented the testimony of Brian Bottomley, a licensed civil engineer with 22 years of experience. He was a senior project engineer with the Authority for 17 years and was the special manager and condemnation engineer of the project. Furthermore, he worked for the Illinois Department of Transportation (IDOT) several years before he worked for the Authority. He explained that IDOT transferred the project to the Authority for completion after IDOT lost the funding. He discussed the public meetings IDOT held before the project was transferred to the Authority and seven public hearings held from November 2007 to April 2012. He also discussed the steps the Authority took prior to filing the complaint for condemnation, the project, the construction as it related to the owners' property, the board of directors' meeting and resolution granting the Authority the authority to condemn the sought property, PINs and legal descriptions of property, the Authority's good-faith offer, the railroad spur, the easement, and the communications and negotiations with the owners.

¶16 Bottomley identified the Authority's exhibits 1 through 11, which were admitted into evidence. These exhibits included resolution No. 20652, the March 26, 2015 meeting minutes of the board of directors of the Authority, and the negotiator's log, which the trial court admitted over the owners' objections as business record exceptions to the hearsay rule.

¶17 Bottomley explained that it was common for the Authority to send out the 60-day notice letter prior to the passage of the resolution for the condemnation of the property. According to Bottomley, the resolution allowed the Authority "to go to court and give that foundational evidence *** first to proceed with a condemnation matter." He also testified that resolution No. 20652 did not list separate parcel numbers for the fee-simple taking and the temporary easement because, in the parlance of the Authority, the taking and the easement were not different parcel

numbers even though they were two separate pieces of land. He testified that the easement was considered an "additional taking from the subject property," and both the taking and the easement were identified in resolution No. 20652 by PIN 12-19-400-119. He explained that the Authority, in order to meet the legal requirement to reasonably describe the subject property, never attached to its resolutions the parcel plats, which showed the takings or easements and contained legal descriptions of the parcels.

¶18 The Authority also presented Sharon Metz-Gohla, a licensed real estate appraiser with over 30 years of experience, who was very familiar with industrial property and was retained by a subcontractor of the Authority. Metz-Gohla explained her appraisal methodology and the factors she considered in forming her opinion that $110,000 was just compensation for the owners of the sought property. She discussed, *inter alia*, the railroad spur, the parking, the barrier curb and access to Powell Street, the variance, the fair market value, the highest and best use of the property, the zoning ordinance, and the value of the whole property and the remainder.

¶19 The trial court found that the Authority met its burden to establish a *prima facie* case for the finding of necessity to acquire the sought property.

¶20 Thereafter, the owners presented the testimony of Al Maiden, a planning and zoning consultant. He was not an appraiser and did not discuss any specific dollar amount concerning the subject property. He testified concerning the railroad spur, the parking and the effect a barrier curb on Powell Street would have on the owners' property access.

¶21 Arthur Sheridan also testified for the owners. Although he was not an appraiser, he had done appraisals before the law was changed to require appraisers to be licensed. He was a real estate broker, developer and consultant. He testified that he was familiar with industrial property, had learned about the valuation of property from his business experiences over the years, and had

been through the "school *** of hard knocks." He testified that the taking and easement would remove the railroad spur, which was an asset to the property, and cause a significant loss of parking. Furthermore, the plans indicated that a barrier curb would take away the owners' driveway and access to the owners' north parking area. Sheridan stated this reduced access and parking would limit the versatility of the property because prospective buyers with a large number of employees would be deterred from buying even though the property contained a large building. Sheridan opined that the damage to the remainder was $630,000, or 10% of the remaining value after the parcels were taken. His opinion was not governed by the uniform standards applicable to the practice of licensed professional appraisers.

¶22 Helmut Mlaker, an accountant and the president of the beneficial owner of the subject property through the trust, testified about the negotiations he had with the Authority's negotiator Santacruz. They discussed Mlaker's concerns that he was not being adequately compensated for the loss of parking and the railroad spur. He testified that the Authority never informed him that a barrier curb would result in a loss of access. When the 60-day negotiation period was about to expire, Mlaker hired an attorney and ended the negotiations.

¶23 In rebuttal, the Authority called Bottomley, who explained that the Authority was not taking the owners' access and Mlaker was never told that the Authority was taking access from him. Bottomley testified that although Mlaker was never told the tendered construction plans, which indicated the existence of a barrier curb without curb cuts, were merely preliminary or concept plans, anyone with experience in the field would have known the plans were preliminary. Moreover, the project improvements concerning access and plans showing curb cuts would be worked on in 2017.

¶24 On January 27, 2016, the trial court denied the owners' traverse and motion to dismiss. The trial court found that the Authority had satisfied the necessary statutory and legal requirements in order to have authority to condemn the two parcels. Specifically, the Authority's sign-in sheets from the open-house public hearings, the Authority's letters dated December 8, 2014 and February 12, 2015, and Bottomley's testimony established that the Authority complied with the requirements concerning public hearings and public notice of the approval of the project map. Bottomley's lengthy explanations concerning resolutions, PINs, parcel numbers, and property descriptions also established the Authority gave the owners reasonable descriptions of the taking and easement. Although exhibit A of the Authority's resolution No. 20652 did not separately list or describe the easement, *i.e.*, parcel No. WA-1D-12-006.T, the documents included in the Authority's February 12, 2015 60-day notice letter to the owners contained legal descriptions of the sought parcels and, thus, gave the owners the requisite reasonable description and notice for both parcel Nos. WA-1D-12-006 and WA-1D-12-006.T. The testimony, the Authority's February 12, 2015 letter and appraisal, and the negotiator's log established that the Authority met the requirements concerning the 60-day notice letter and the good-faith negotiation process.

¶25 The trial court rejected the owners' claim that certain documents were admitted into evidence in violation of the rule against hearsay. Although Santacruz, who wrote the negotiator's log, did not testify, Bottomley testified that he was familiar with the document and it was kept in the ordinary course of business, and owner Mlaker also testified consistent with the log concerning those negotiations. Concerning the owners' challenge to the accuracy of the Authority's appraisal of the subject property, the court found that the owners had the opportunity to cross-examine appraiser Metz-Gohla about her valuation of the property and the issues of the

loss of parking and the railroad spur. The trial court found that Metz-Gohla was more credible than the two witnesses offered by the owners, who were not licensed appraisers. Moreover, Bottomley was "an extremely credible witness" and testified that the project would not include a barrier curb and thus would not affect the owners' parking or access to their property. The court did not specifically address the other allegations raised by the owners because the court found those allegations were wholly without merit and could not serve as a proper basis to dismiss the condemnation action and, thus, the Authority was not required to establish a *prima facie* case concerning those allegations.

¶26 On February 10, 2016, the court granted the Authority's quick-take motion, finding that the Authority was vested with the authority to exercise the right of eminent domain and had exercised that right in an approved manner, and a reasonable necessity existed to take the sought property. The court awarded $118,500 in preliminary just compensation and damages for the two sought parcels. The owners filed an interlocutory appeal as of right, pursuant to section 20-5-10(b) of the Eminent Domain Act, 735 ILCS 30/20-5-10(b) (West 2014), and Supreme Court Rule 307(a)(7) (eff. Nov. 1, 2016).

¶27 II. ANALYSIS

¶28 On appeal, the owners argue (1) the Authority could not exercise its power of eminent domain to acquire the sought land because the Authority did not comply with the requirements of the Act concerning holding public hearings, giving notice of approval of the project map, and evaluation of the public hearing testimony; (2) the trial court admitted into evidence uncertified copies of resolution No. 20652, the board of directors' March 26, 2015 meeting minutes, and a negotiator's log in violation of the rule against hearsay; (3) the Authority's enabling resolution No. 20652 to condemn the sought property was not properly signed by the chairman of the board

and did not reasonably describe the sought property; (4) the Authority failed to comply with the requirements of the Eminent Domain Act, 735 ILCS 30/1-1-1 *et seq*. (West 2014), and federal regulations concerning the designation of a person to respond to the owners' questions, notice of the type of facility to be constructed on the property, giving information about basic protections provided to the owners, and the timing of the filing of the complaint for condemnation; (5) the Authority failed to make a good-faith attempt to agree with the owners on the amount of just compensation prior to filing the complaint for condemnation; and (6) the trial court erred in granting the Authority's motion to immediately vest it with fee simple title and a temporary construction easement to the sought property.

¶29 We address these allegations by the owners and resolve the parties' dispute within the legal framework applicable to property condemnation proceedings. The Authority was created by the Act as an "instrumentality and administrative agency of the State of Illinois," and has been granted "all powers necessary or appropriate" to "provide for the construction, operation, regulation and maintenance of a toll highway or a system of toll highways." 605 ILCS 10/1 (West 2014). The Act specifically granted the Authority the power to acquire real property necessary or convenient for its authorized purpose by condemnation or eminent domain subject to the Eminent Domain Act. 605 ILCS 10/9(b), 10/9.7 (West 2014). The Eminent Domain Act generally provides that "[p]rivate property shall not be taken or damaged for public use without just compensation." 735 ILCS 30/10–5–5 (West 2014). The Eminent Domain Act provides procedures to be followed when a property owner refuses to consent to a taking of property or does not agree with the amount of compensation offered by the government, including the filing of a complaint for condemnation in the circuit court and the possibility of a jury trial on the issue of just compensation. See 735 ILCS 30/1–1–1 *et seq.* (West 2014). Courts have recognized that

an attempt to reach an agreement with a property owner regarding compensation is a condition precedent to the exercise of the power of eminent domain, and that such an attempt to agree must be made in good faith. *Department of Transportation ex rel. People v. Hunziker,* 342 Ill. App. 3d 588, 594 (2003), as supplemented on denial of reh'g (Sept. 10, 2003).

¶30 The owners' traverse and motion to dismiss challenged the Authority's right to condemn the owners' property and should be granted if the Authority fails to show its right to condemn by proper proof. See *Village of Cary v. Trout Valley Ass'n,* 282 Ill. App. 3d 165, 169 (1996). When such a motion is filed, the Authority bears the initial burden of establishing a *prima facie* case of the disputed allegations. See *City of Chicago v. Midland Smelting Co.*, 385 Ill. App. 3d 945, 965 (2008). If the Authority fails to sustain its burden, the condemnation action must be dismissed. See *Trout Valley Ass'n,* 282 Ill. App. at 169. If the Authority is successful, the burden shifts to the property owner to prove the Authority lacked the authority to effect the condemnation. See *Alsip Park District v. D & M Partnership,* 252 Ill. App. 3d 277, 285 (1993).

¶31 Generally, a trial court's ruling on a traverse and motion to dismiss is subject to a manifest weight standard of review, while any questions of law or issues of statutory interpretation resolved by the circuit court are reviewed *de novo. Hunziker,* 342 Ill. App. 3d at 593–94. A trial court's finding is not against the manifest weight of the evidence unless an opposite conclusion is clearly evident. *Department of Transportation ex rel. People v. 151 Interstate Road Corp.*, 209 Ill. 2d 471, 488 (2004). However, in situations where the circuit court did not hear testimony and based its decision on documentary evidence, the rationale underlying a deferential standard of review would be inapplicable and review would be *de novo. Townsend v. Sears, Roebuck & Co.,* 227 Ill. 2d 147, 154 (2007).

¶32 A. Compliance with the Act

¶33 The owners contend the Authority lacked the authority to exercise the power of eminent domain because the Authority failed to produce evidence to show it strictly complied with all the provisions of section 9(c-1) of the Act, 605 ILCS 10/9(c-1) (West 2014), concerning public hearings and approval and notice of the project map. Specifically, the owners argue the Authority held only one public hearing on the project on April 18, 2012, the minutes of that hearing did not indicate that an Authority director or officer was present to answer questions, and no specific evidence showed that the Authority's board of directors received and evaluated any of the comments and testimony given at the public hearing. The owners also contend the record of the public hearings does not show the Authority's approval of the project map and the Authority failed to establish that it gave public notice of that approval, filed the project map with the recorder of deeds in all relevant counties, published notice of the approval in any newspaper, or served that notice on all the owners of record of the subject land by registered mail within 60 days after the approval.

¶34 The owners argue that a condemnor's showing of substantial compliance with section 9(c-1) of the Act is insufficient to meet the statutory requirements to exercise eminent domain power because that power can only be exercised in the manner authorized by statute, and a statutory grant of the power of eminent domain must be strictly construed in order to protect the rights of property owners. Citing *Trout Valley Ass'n*, 282 Ill. App. 3d at 169, 173-74, the owners contend the Authority's failure to strictly follow every provision of every portion of section 9(c-1) required the court to grant the owners' traverse and motion to dismiss.

¶35 In *Trout Valley Ass'n*, the village attempted to acquire sewer easements outside its municipal boundaries and sought a 20-foot wide permanent easement and a temporary easement

from the property owner. *Id*. at 167. The owner argued the village failed to meet the statutory requirements to exercise eminent domain. *Id*. at 169. The village asserted that it did not need to comply with sections 11-139-5 and -6 of the Illinois Municipal Code (65 ILCS 5/11-139-5, -6 (West 1994)) concerning adopting a descriptive ordinance of the contemplated project and publishing the ordinance within 10 days of its passage in a newspaper. *Id*. at 173. The court found the village's ordinance failed to comply with section 11-139-5 because the ordinance did not set out the estimated cost of the contemplated project, determine the period of usefulness of the project, and prescribe the method of defraying the cost of the project. *Id*. at 172. The court also found the village failed to comply with section 11-139-6 because the village did not present any evidence to show the ordinance was published at least once in a newspaper within 10 days after the ordinance was passed. *Id*.

¶36 The court believed that the phrase "[t]he corporate authorities of any municipality availing itself of the provisions of this Division 139 shall," which preceded the various procedural provisions of sections 11-139-5 and -6, meant that the clear and unambiguous language of sections 11-139-5 and -6 required the village to first pass and publish an ordinance in conformity with sections 11-139-5 and -6 before the village could avail itself of the statutory provision authorizing it to exercise the right of eminent domain. *Id*. at 174. Because the Village failed to comply with the "mandatory requirements" of sections 11-139-5 and -6, the Village failed to meet its burden of presenting a *prima facie* case and, thus, the owner's traverse and motion to dismiss should have been granted. *Id*.

¶37 Here, the Authority contends that it met its *prima facie* burden and established its compliance with all necessary statutory and legal requirements. The Authority argues that any failure to show its strict compliance with every procedure listed in section 9(c-1) of the Act

cannot form a proper basis to grant the owners' traverse and motion to dismiss because the 9(c-1) procedures are not conditions precedent to the Authority's exercise of the power of eminent domain. We agree.

¶38 In interpreting a statute, the primary rule of statutory construction is to ascertain and give effect to the intent and meaning of the legislature. *Trout Valley Ass'n*, 282 Ill. App. 3d at 169. Courts must read the statute as a whole, consider all relevant parts, and construe each section in connection with every other section. *Id*. The language of the statute is the best indication of legislative intent, and the terms of the statute are given their ordinary meaning. *Id*. Where the statutory language is clear, courts give effect to the statute as enacted without considering extrinsic aids for construction. *Id*. The law conferring the authority to exercise the power of eminent domain must be strictly construed. *Department of Transportation v. First Galesburg National Bank & Trust Co*, 141 Ill. 2d 462, 469 (1990). "While eminent domain statutes are to be construed in favor of the property owner [citation], it must be noted that rules of construction are used only for resolving ambiguities [citation]." *City of Oakbrook Terrace v. LaSalle National Bank*, 186 Ill. App. 3d 343, 348 (1989).

¶39 Section 9 of the Act gives the Authority the power to establish "the approximate locations and widths of rights of way for future additions to the toll highway system to inform the public and prevent costly and conflicting development of the land involved." 605 ILCS 10/9(c-1) (West 2014). Whenever these approximate locations and widths for future highway additions are to be established, the Authority shall hold a public hearing in or near the county of the affected property, notice of the hearing shall be published in a newspaper, interested persons may be heard and the Authority shall evaluate the testimony given at the hearing. *Id*. The Authority shall make a survey and prepare a map of the project, and approval of the project map:

> "shall be indicated in the record of the hearing and a notice of the approval and a copy of the map shall be filed in the office of the recorder for all counties in which the land needed for future additions is located.
>
> Public notice of the approval and filing shall be given in newspapers of general circulation in all counties in which the land is located and shall be served by registered mail within 60 days thereafter on all owners of record of the land needed for future additions." 605 ILCS 10/9(c-1) (West 2014).

¶40 The focus in a traverse and motion to dismiss is whether the condemnor had a right to condemn the property for a statutorily authorized purpose. *Id*. The language of sections 9(b) and 9.7 of the Act are clear and unambiguous; the Authority may acquire real property necessary or convenient for its authorized purposes by condemnation or eminent domain subject to the Eminent Domain Act. The Eminent Domain Act provides that private property shall not be taken without just compensation and provides general procedures to be followed, including the possibility of a jury trial on the issue of just compensation, when the property owner does not agree with the amount of compensation offered. 735 ILCS 30/10-5-5 (West 2014). Neither the general procedures of sections 10-5-5 through 10-5-115 of the Eminent Domain Act (735 ILCS 30/10-5-5–115 (West 2014)), nor sections 9(b) and 9.7 of the Act require the procedures of section 9(c-1) of the Act concerning the holding of public hearings and the approval and notice of the project map as conditions precedent to condemnation or the exercise of the power of eminent domain. *Cf. Hunziker*, 342 Ill. App. 3d at 594 (a good-faith attempt to reach an agreement with a property owner regarding just compensation is a condition precedent to the exercise of the power of eminent domain).

¶41 Accordingly, we reject the owners' assertion that the trial court should have granted the traverse and motion to dismiss on the basis that the Authority lacked the power to exercise eminent domain due to its alleged failure to strictly follow every procedural provision of section 9(c-1) of the Act concerning the holding of public hearings and the filing and giving of notice of the approval of the project map. Moreover, the clear language of section 9(c-1) indicates that the purpose of filing a preliminary project map with the office of the recorder for all the counties in which land subject to the project is located is to inform the public of the approximate locations of the project and thereby prevent parties from engaging in costly and conflicting development of the land. Here, the parties do not dispute the fact that the owners did not engage in costly development of the subject property during the relevant time period. Accordingly, we fail to see how any alleged failure by the Authority to comply with the section 9(c-1) procedures for the filing of the preliminary project map with the Office of the Cook County Recorder resulted in any prejudice to the owners. To the extent that our ruling based on the clear and unambiguous language of the relevant provisions of the Act conflicts with the ruling in *Trout Valley Ass'n*, which found that the relevant procedural provisions of the Illinois Municipal Code were mandatory and thus necessary for a condemnor's *prima facie* showing of authority to exercise the power of eminent domain, we decline to follow *Trout Valley Ass'n*.

¶42 Our review of the record supports the trial court's findings, which were not against the manifest weight of the evidence, that the Authority established its *prima facie* case and satisfied the necessary statutory and legal requirements before filing the condemnation action. IDOT, before it transferred the project to the Authority, and the Authority held public hearings on the project on November 14, 2007; September 3, 2008; March 11, 2009; October 8, 2009; September 22, 2010; April 5, 2011; and April 18, 2012. Court reporters were present at the hearings, and the

record shows that IDOT and the Authority made presentations of the project, solicited public input, were available to answer the public's questions, and displayed the improvements and detailed maps depicting the properties potentially affected by the project so that impacted property owners or interested parties could review the plans and give input. The format of the hearings was open house, *i.e.*, held in a public space where a presentation of the project was made, various plans and exhibits were on display, and engineers involved in the design and other members of IDOT and the Authority were available for questions.

¶43 The Authority's voluminous public meetings file and newspaper advertisements were entered into evidence and, along with Bottomley's testimony, established that the public was properly notified of the hearings. In addition, the Authority's December 8, 2014 notice to owner letter informed the owners of the Authority's approved project and that the owners' property was in the project area. This notice also included the December 8, 2014 project land acquisition property layout, which showed the partial acquisition, easements and right-of-ways for both the owners' subject property and the project overview. Furthermore, the Authority's January 12, 2015 60-day notice letter was sent to the owners by certified mail and notified them that the authority would acquire a fee simple and temporary construction easement on the subject property pursuant to the project. Enclosed with the 60-day notice letter were legal descriptions and a plat of survey for the two designated parcels, the appraisal and review, the offer to purchase/basis for computing, a sales contract/disclosure of ownership, a title commitment, a W-9 form, and a copy of 49 C.F.R § 24.102.

¶44 The dissent misconstrues our analysis and ruling concerning section 9(c-1), conditions precedent, and the evidence concerning the approved project map. The testimony of Bottomley and the voluminous public hearings file, which documented the multiple public hearings held

from November 2007 to April 2012, established that IDOT and the Authority made a survey, prepared a map showing the approximate locations of the project and affected property, and gave the public notice by placing advertisements in various newspapers and holding multiple public hearings in or near the communities affected by project. At the public hearings, presentations of the project were made and project maps were displayed. In addition, the Authority's December 8, 2014 letter informed the owners of the approved project and included the project map, which was dated December 8, 2014. Furthermore, the Authority's January 12, 2015 letter, sent by certified mail, included additional documents, listed above, that gave the owners notice of the approved project and project map.

¶45 According to the public records, the Authority executed and recorded with the Cook County Recorder of Deeds a *lis pendens* on the owners' property on May 20, 2015, which was the date the Authority filed the complaint for condemnation in this matter. See *Muller v. Zollar*, 267 Ill. App. 3d 339, 341 (1994) (documents containing readily verifiable facts capable of instant and unquestionable demonstration may be judicially noticed, and judicial notice is proper where the document in question is part of the public record and such notice will aid in the efficient disposition of a case regardless of whether such notice was sought at the trial court level). The dissent fails to consider or explain how the Authority, prior to the filing of the complaint for condemnation, could properly file with the county recorder some kind of notice or document that could cloud the owners' title of the property. Furthermore, the plain language of section 9(c-1) does not indicate *when* the notice of the map approval and copy of the project map "shall be filed in the office of the recorder for all counties in which the land needed for future additions is located." Contrary to the plain language of the statute, the dissent would like to make new law by engrafting onto sections 10-5-5 through 10-5-115 of the Eminent Domain Act and sections 9(b)

and 9.7 of the Act the procedural provision of section 9(c-1) of the Act concerning filing the approved project map in the county recorder's office as a condition precedent to condemnation or the exercise of the power of eminent domain. See *City of Oakbrook Terrace*, 186 Ill. App. 3d at 349 (reversing, based on clear and unambiguous statutory language, the trial court's ruling that the municipality was required to hold a referendum as a condition precedent to condemnation).

¶46 We conclude that the trial court's findings that the Authority established its *prima facie* case and satisfied the necessary statutory and legal requirements before commencing the condemnation action were not against the manifest weight of the evidence.

¶47 B. Evidentiary Rulings

¶48 The owners contend the trial court abused its discretion by admitting into evidence uncertified copies of resolution No. 20652, the minutes of the board of directors' March 26, 2015 meeting, and the negotiator's log.

¶49 We review a trial court's evidentiary rulings for an abuse of discretion. *Boyd v. City of Chicago*, 378 Ill. App. 3d 57, 67 (2007). An abuse of discretion may be found only where the trial court's decision is arbitrary, fanciful or unreasonable, or where no reasonable person would take the view adopted by the trial judge. *People v. Illgen*, 145 Ill. 2d 353, 364 (1991). Supreme Court Rule 236 (eff. Aug. 1, 1992) provides in pertinent part that any writing or record made as a record of any act or occurrence shall be admissible as evidence of the act or occurrence if it was made in the regular course of any business, and if it was the regular course of the business to make such a record at the time of such an act or occurrence. "Records made with a view towards possible litigation do not qualify as business records since they are not made in the ordinary course of business, but documents routinely prepared under a statutory duty are not rendered inadmissible because they are to be used in adversarial proceedings." *In re Joseph S.*, 339 Ill. App. 3d 599, 608

(2003).

¶50 Bottomley testified that he was the senior project engineer charged with oversight of the project and employed by the Authority during all the relevant events at issue in this matter. He testified that he was familiar with each of the three challenged documents, that each document was kept by the Authority in the ordinary course of its business in relation to the condemnation of real property for the construction of road projects, and that it was the ordinary course of business of the Authority to maintain such records. Bottomley was familiar with the Authority's condemnation process and the purpose and content of each of the challenged documents. His knowledge included the date the document was created or approved, the content of the document, and the process by which the document was created or executed. In addition, owner Mlakar testified consistent with the contents of the challenged negotiator's log, offering further independent corroboration of the authenticity of that document.

¶51 Finally, there is no merit to the owners' argument that, pursuant to section 8-1203 of the Code of Civil Procedure (735 ILCS 5/8-1203(West 2014)), the three challenged documents should not have been admitted into evidence because they were non-certified copies. Section 8-1203 applies to the municipal records of a city, village, town or county and thus is not relevant in this litigation involving the Authority.

¶52 We see no abuse of discretion in concluding that the three challenged documents were admissible as business records.

¶53 C. Enabling Resolution

¶54 The owners argue the Authority failed to adopt a proper enabling resolution and thus was not authorized to exercise the power of eminent domain. First, the owners contend resolution No. 20652 does not meet the requirement of section 4 of the Act, 605 ILCS 10/4 (West 2014), that the

chairperson of the board of directors shall sign all resolutions she approves. Specifically, the owners argue that the signature on resolution No. 20652 was merely a stamp of the chairman's signature and the minutes of the March 26, 2015 board of directors' meeting do not show that the chairperson approved resolution No. 20652. We disagree.

¶55 The owners fail to cite any authority to support the notion that the use of the chairperson's signature stamp to indicate her approval of the resolution somehow rendered it invalid. A reviewing court deserves the benefit of cohesive argument and is not a depository into which a party may dump the burden of argument and research. *People ex rel. Illinois Department of Labor v. E.R.H. Enterprises, Inc.*, 2013 IL 115106, ¶ 56. Furthermore, the minutes of the March 26, 2015 meeting specifically show that Chairperson Paula Wolffe called for approval of "Engineering Item 20," which was resolution No. 20652, and that item was unanimously approved.

¶56 Next, the owners argue that resolution No. 20652 failed to meet the common law requirement to reasonably describe the real property that may need to be acquired by eminent domain. The owners contend the description was not reasonable because the resolution (1) does not include legal descriptions or parcel plats of parcel Nos. WA-1D-12-006 and WA-1D-12-006.T, (2) merely describes the taking—parcel No. WA-1D-12-006—by listing the PIN, and (3) fails to even list the temporary easement—parcel No. WA-1D-12-006.T. We disagree.

¶57 A public body may not exercise the power of eminent domain unless it has manifested its determination to exercise that power by some official action of record, and an enabling ordinance is the foundation of an eminent domain action. *Illinois State Toll Highway Authority v. DiBenedetto*, 275 Ill. App. 3d 400, 405 (1995). The property to be condemned must be reasonably

described in the enabling action of the condemnor, and the failure to so describe the property is fatal to the petition to condemn. *Id*.

¶58 According to the record, the Authority's board of directors passed resolution No. 20652 on March 26, 2015. Therein, the board specifically stated that it had previously passed other resolutions that authorized the acquisition of necessary parcels of property and expenditures for land acquisition fees and costs for the project. Resolution No. 20652 amended those prior resolutions and stated that the project would require the expenditure of up to $160,000,000 to acquire certain property interests in numerous additional parcels of land. The resolution identified numerous additional parcels necessary for the project and authorized the Authority to acquire the necessary real estate interests in those parcels. The resolution recognized that an agreement to purchase all or part of the additional parcels might not be reached and granted the Authority the power to acquire the necessary additional property by eminent domain. The resolution cited the *DiBenedetto* decision, indicating that the board of director's intent was to "reasonably describe the real property that may need to be acquired by eminent domain." The exhibit attached to the resolution listed the numerous properties the Authority was authorized to acquire and identified those properties by a parcel number, PIN or legal description, and county.

¶59 Among the properties listed in the exhibit was the owners' property identified as parcel No. WA-1D-12-006, PIN 12-19-400-119, in Cook County. This description identified the owners' entire 5.009–acre property and authorized the Authority to condemn that entire property if it could not be purchased. However, the Authority's complaint in this matter sought condemnation of a small portion of that entire property, *i.e.*, the acquisition of a fee simple interest in the 0.19–acre first parcel and a five-year temporary easement in the 0.045–acre second parcel.

¶60 The owners complain that the description of their entire property in the resolution did not amount to a reasonable description of the specific, small subsections of property the Authority ultimately sought to acquire by eminent domain. According to the owners, this flaw was fatal to the Authority's condemnation suit.

¶61 We disagree. This same argument was rejected in *Illinois State Toll Highway Authority v. South Barrington Office Center,* 2016 IL App (1st) 150960, ¶ 43, which found that the "law requires a *reasonable* description, not an exact one." Resolution No. 20652 satisfied the requirement for a reasonable description of the parcels subject to condemnation in this case by listing the PIN of the entire property inside of which the two sought parcels were contained, by providing for the acquisition of the fee title and temporary easement property interests sought by the Authority in this case, and by specifically authorizing a condemnation proceeding if no agreement could be reached with respect to all or part of each of the sought parcels. *Id*. ¶ 43-44

¶62 The owners' citation to *DiBenedetto* does not mandate a different result. In *DiBenedetto,* the resolution contained a deficient description of the condemned property because the description merely referenced an intersection of two roads which contained other properties in addition to the sought property. *DiBenedetto,* 275 Ill. App. 3d at 405. Here, in contrast, the Authority specifically identified the owners' property by a parcel number, PIN, and county. Similarly misplaced is the owners' reliance on *City of Rockford v. Rockford Life Insurance Co.*, 16 Ill. 2d 287, 288 (1959), where the court found the ordinance failed to reasonably describe the property because there were extensive distinctions between the property described in the ordinance and the property actually sought in the condemnation suit, which was larger than and different from property described in the ordinance. Here, in contrast, the Authority is seeking

condemnation of a small portion of the property explicitly described in resolution No. 20652. *South Barrington Office Center*, 2016 IL App (1st) 150960, ¶ 48.

¶63 We conclude that the trial court's findings—that the Authority's board of directors adopted resolution No. 20652, which included a reasonable description of the parcels to be condemned—were consistent with the law and were not against the manifest weight of the evidence.

¶64 D. Compliance with the Eminent Domain Act

¶65 The owners raise several arguments challenging the Authority's compliance with the Eminent Domain Act concerning the issues of notices, content of the notices, and the communications between the owners and the authority. We review any arguments raising issues of statutory construction *de novo* and any arguments raising questions of fact under the manifest weight standard of review.

¶66 First, the owners contend the Authority failed to comply with section 10-5-15(b) of the Eminent Domain Act, 735 ILCS 30/10-5-15(b) (West 2014), by failing to designate and provide an appropriate person, *i.e.*, an employee of the Authority or any other State agency, to respond to the owners' requests or questions. The owners complain that the Authority's February 12, 2015 60-day notice letter directed them to contact Santacruz, who was not an employee of the Authority or any State agency. This argument lacks merit. Fehn was employed as the Authority's land acquisition manager, and the Authority's December 8, 2014 letter directed owners to contact her with questions. Moreover, the February 12, 2015 60-day notice letter directed the owners to contact either her or Santacruz.

¶67 Next, the owners contend the Authority, upon its first contact with the owners, failed to advise them in writing of the type of facility to be constructed on the acquired property, in

violation of section 10-5-15(c) of the Eminent Domain Act, 735 ILCS 30/10-5-15(c) (West 2014). We disagree. The Authority's December 8, 2014 letter clearly indicated that the property was being acquired for the construction of Elgin-O'Hare expressway west access project and included a property layout sheet. The owners also assert that the letter failed to include a statement of basic protections provided to owners, in violation of 49 C.F.R. § 24.102(b). This assertion also lacks merit because that regulation pertains to relocation options, which were irrelevant in the instant case because the acquisition was not a total taking.

¶68 Next, the owners contend the Authority, in violation of 49 C.F.R. § 24.102(f), failed to consider owner Mlakar's concerns about the loss of parking in the take area and his request to move the rail switch to the northeast corner of the whole property. We disagree. According to the record, Mlakar had a meeting with Santacruz and presented information and suggestions regarding the railroad spur, which was covered in gravel and non-operational as of the date of the appraisal and the filing of the complaint for condemnation. The negotiator's log shows that there was much discussion between Mlakar, Santacruz and the Authority regarding the condition of the railroad spur and the cost to cure. Furthermore, appraiser Metz-Gohla's testimony indicated that she looked at the spur twice in terms of valuation and determined that the spur, whether intact or not, provided zero value to the whole property. Concerning the alleged failure to consider the potential loss of parking in the fee taking area, that area had no parking spots as of the date of valuation, and the Authority maintained that there would be no loss of parking based on the conclusions of Metz-Gohla and the special engineering report.

¶69 Next, the owners contend the Authority failed to comply with section 10-5-15(d) of the Eminent Domain Act, 735 ILCS 30/10-5-15(d) (West 2014), to send a 60-day notice to the proper owners of record. The owners complain that the 60-day notice letter sent to Mr. Sochacki of

Chicago Title Land Trust Company, which was returned unclaimed, did not list the trustee of the land trust or the date or number of the trust as shown on the February 12, 2015 title commitment. Furthermore, the 60-day notice letter sent to Mlakar of Vanguard Archives Holdings, Inc., merely constituted notice to the beneficiary of the land trust that owned the subject property rather than the proper owners of record.

¶70 The record establishes that Mlakar was the president of the entity that was the owner of the trust, and he was actively negotiating with the Authority prior to the date of the 60-day letter. Moreover, he received the 60-day letter and all its attachments by certified mail in a timely manner. Consequently, the owners do not show any prejudice by the Authority's failure to include the land trust trustee, date and number of the trust on the envelope sent to Chicago Title Land Trust Company.

¶71 Next, the owners state that section 10-5-15(d) of the Eminent Domain Act requires that at least 60 days before an agency files a complaint for condemnation, the agency shall give the owners certain information about the compensation for the taking, the seeking of a negotiated agreement, and the agency's intent to initiate an eminent domain action. Furthermore, 49 C.F.R. § 24.102(h) provides that an agency seeking to exercise the power of eminent domain shall not advance the time of condemnation. The owners argue that, assuming the passage of resolution No. 20652 on March 26, 2015 was valid, the Authority's actions prior to that date, including authorizing its employees, vendors or agents to conduct appraisals and negotiate just compensation to acquire the sought parcels, were unauthorized. Consequently, according to the owners, the Authority lacked the authority to send the 60-day notice letter on February 12, 2015, and thus could not file the May 20, 2015 complaint for condemnation, which was less than 60 days from the March 26, 2015 passage of resolution No. 20652.

¶72 We disagree. The clear language of the statute requires in terms of timing that the notice letter must be sent at least 60 days prior to the filing of the complaint. The timing of the authorizing resolution, if filed prior to the filing of the complaint for condemnation, is immaterial to section 10-5-15(d). The Authority satisfied the 60-day notice requirement with the February 12, 2015 letter, which was sent to Mlakar 97 days before the Authority filed the complaint on May 20, 2015.

¶73 We conclude that the owners' challenges to the Authority's compliance with the requirements of the Eminent Domain Act lack merit.

¶74 E. Good-Faith Negotiation

¶75 The owners argue the Authority failed to make a good-faith attempt to agree on the amount of just compensation prior to filing the complaint for condemnation because Metz-Gohla's appraisal failed to consider the loss of potential for the railroad spur, the loss of potential parking, and the loss of access to the owners' north parking lot. The owners also argue that the testimony of its witness Sheridan concerning the $630,000 value of the damage to the remainder was credible.

¶76 Section 10-5-10 of the Eminent Domain Act requires that an effort must be made to agree on compensation before an eminent domain action can be filed. 735 ILCS 30/10-5-10 (West 2014). See also *Lake County Forest Preserve District v. First National Bank of Waukegan*, 200 Ill. App. 3d 354 (1990) (a condemning authority's good-faith attempt to reach an agreement on compensation is a condition precedent to its exercise of the power of eminent domain). An offer based on a competent appraisal performed by an experienced appraiser which utilized accepted methodology meets the standard of good faith. *151 Interstate Road Corp.*, 209 Ill. 2d at 489-90. Factors such as the experience, credentials and possible bias of an appraiser and weaknesses in an

appraisal are matters for the trial court to weigh when determining an appropriate amount to award the owners in preliminary compensation. *Id*.

¶77 Appraiser Metz-Gohla testified concerning her 37 years of experience as a licensed appraiser and the methodology and procedures she used to reach her opinion of the value of the taking and easement in this matter. She, *inter alia*, inspected the property on three dates in December 2014, spoke with Mlakar, utilized the sales comparison approach to determine the fair market value of the subject property, and determined the highest value the property could obtain. Our review of the record supports the trial court's conclusion that Metz-Gohla was a credible witness whereas the owners' valuation witness, Sheridan, who was not a licensed appraiser and whose opinion was not governed by the uniform standards applicable to the practice of professional appraisers, was not credible.

¶78 The owners argue that Metz-Gohla's appraisal opinion was based on an incorrect assumption that the railroad spur was not connected to the owners' building. We disagree. The issue of whether the buried and non-functioning spur was connected to the building was immaterial to Metz-Gohla's opinion of value. Based on her comparable sales methodology, she reviewed a large grouping of sales and determined that the existence of the spur, whether connected or unconnected, functioning of dilapidated, had no effect on the property value in the O'Hare industrial sector generally and the subject property specifically.

¶79 The owners also argue that Metz-Gohla failed to consider the effect of the taking's loss of parking in the owners' north parking lot. This challenge, however, arises from the erroneous assumptions of the owners' valuation witness and land planning/zoning consultant witness that the Authority's proposed fee taking included curb barriers that would take the owners' access to their north parking lot. Contrary to the owners' argument, Bottomley's testimony established that

the Authority's project would not take away access to the north parking lot and curb cuts to the barriers were part of the project and would be done at a later date. Furthermore, Metz-Gohla understood at the time she conducted her appraisal that access points to the owners' north parking lot would be restored post-construction. Consequently, Metz-Gohla appropriately did not consider any loss of parking as a result of any loss of access to the north lot in reaching her opinions of just compensation for the acquisition of the fee taking and temporary easement.

¶80 Finally, the owners' assertion that Metz-Gohla's appraisal failed to consider the loss of potential parking in the area of the fee taking lacks merit. The photographs of the fee taking and aerials in the record show that the area was not utilized as a parking lot as of the date of valuation. It was not paved and was covered with dirt, loose gravel, overgrown weeds and high grass. It contained the dilapidated railroad spur and in no way resembled a parking lot. No parking spot tire spots were located in this area. Accordingly, Metz-Gohla appropriately did not consider this area as a parking lot as it existed as of the date of valuation or the effective date of her appraisal.

¶81 We conclude that the determinations of just compensation contained in Metz-Gohla's appraisal were reliable and constituted a good-faith offer in order to satisfy the good-faith negotiation requirements of the law.

¶82 F. Quick-Take Motion

¶83 The owners argue the trial court should have denied the Authority's quick-take motion because the owners' traverse and motion to dismiss should have been granted based on any one of the above-referenced numerous allegations raised by the owners.

¶84 In addition to the legal framework generally applicable to condemnation proceedings under the Eminent Domain Act, the Authority is also authorized to employ a statutory "quick-take" condemnation procedure "for the acquisition of land or interests therein for highway

purposes." 735 ILCS 30/25–7–103.1 (West 2014). The Authority, at any time after the complaint for condemnation has been filed and before judgment is entered in the proceeding, may file a written motion requesting that, immediately or at some specified later date, it "be vested with the fee simple title (or such lesser estate, interest, or easement, as may be required) to the real property, or a specified portion of that property, which is the subject of the proceeding, and be authorized to take possession of and use the property." 735 ILCS 30/20–5–5(b) (West 2014). The circuit court shall schedule a timely hearing on such a motion and, if the court has not previously done so, shall determine that the condemnor "has authority to exercise the right of eminent domain, that the property sought to be taken is subject to the exercise of that right, and that the right of eminent domain is not being improperly exercised in the particular proceeding." 735 ILCS 30/20–5–10(b) (West 2014). If those issues are resolved in favor of the condemnor, the court then hears the issues raised by the condemnor's motion for taking, including whether a reasonable necessity existed for taking the property in the manner requested in the motion. 735 ILCS 30/20–5–10(c) (West 2014). If all those issues are resolved in favor of the condemnor, the court then makes a preliminary finding of the amount constituting just compensation. *Id.*

¶85 We have addressed in detail above and rejected the owners' arguments challenging the Authority's complaint for condemnation. Accordingly, we reject these same arguments again in the context of the circuit court's order granting the Authority's quick-take motion.

¶86 III. CONCLUSION

¶87 For the foregoing reasons, we conclude the trial court properly ruled that the Authority complied with necessary statutory and legal requirements and thus was authorized to exercise the powers of eminent domain, and the Authority made a good-faith attempt to reach a negotiated agreement with the owners. We also find no abuse of discretion concerning the trial court's

evidentiary rulings. Accordingly, we affirm the judgment of the trial court that denied the owner's traverse and motion to dismiss and granted the Authority's quick-take motion.

¶88 Affirmed.

¶89 PRESIDING JUSTICE GORDON, dissenting.

¶90 I must respectfully dissent as to the issue of the filing of the project map in the office of the Cook County Recorder.

¶91 The majority agrees in ¶ 38 that in interpreting a statute, the primary rule of statutory construction is to ascertain and give effect to the intent and meaning of the legislature. *Trout Valley Ass'n*, 282 Ill. App. 3d at 169. The majority also agrees in ¶ 38 that the Illinois Supreme Court instructed us that "the law conferring the authority to exercise the power of eminent domain must be strictly construed." *First Galesburg National Bank & Trust Co.*, 141 Ill. 2d at 469. Yet, the majority rejects the property owners' assertion that the trial court should have granted the traverse and motion to dismiss on the basis that the Authority lacked the power to exercise eminent domain in this case because the Authority failed to strictly follow section 9(c-1) of the Act when it failed to comply with the procedures for the filing of the preliminary project map with the office of the Cook County Recorder.

¶92 The dissent did not ignore the evidence concerning the approval of the project map, the testimony of Bottomley, and the voluminous public hearings file that documented the multiple public hearings, the preparation of the map showing the approximate locations of the project and affected property, and the public notice. I find that there is evidence supporting everything that was done except the filing of the map with the Cook County Recorder, and I find it to be fatal to taking title until it is filed.

¶93 The majority believes in ¶ 37 that the procedures set forth in section 9(c-1) "are not conditions precedent to the Authority's exercise of the power of eminent domain," yet they cite no authority for that proposition. They find that the owners were not prejudiced by the failure to comply with the map provisions and, therefore, the denial of the motion to dismiss was proper, again, without any citation to authority. In ¶ 44 of the majority opinion, the majority states, "The dissent misconstrues our analysis and ruling concerning section 9(c-1) and conditions precedent, and ignores the evidence concerning the approved project map." The majority does not explain how the dissent misconstrues its analysis or its conclusions concerning "conditions precedent," and further states that the dissent ignores the evidence approving the project map, when the dissent only refers to its filing, not its approval. The majority states that, "[a]ccording to the public records" (not the evidence in this case), "the Authority executed and recorded with the Cook County Recorder of Deeds a *lis pendens* on the owners' property" and states that "[t]he dissent fails to consider or explain how the Authority, prior to filing the complaint for condemnation, could properly file with the county recorder some kind of notice or document that could put a cloud on the owners' title of the property." The dissent cannot respond to such a statement because, even if it is true, it has nothing whatsoever to do with the Authority's failure to file the project map in the office of the Cook County Recorder.

¶94 The majority cites *Trout Valley Ass'n*, 282 Ill. App. 3d 165, which they state they "decline to follow." In *Trout Valley Ass'n*, the village commenced condemnation proceedings to require a 20-foot-wide permanent easement and a 20-foot-wide temporary construction easement from the defendant homeowner association for the construction and installation of a sewer pipe to be constructed underground. *Trout Valley Ass'n*, 282 Ill. App. 3d at 167. The village did most of the important things in the statute, but in its ordinance to condemn the property did not set out the

estimated cost of the contemplated project, did not prescribe the method of defraying the costs, and did not properly publish the required notice. *Trout Valley Ass'n*, 282 Ill. App. 3d at 172. The appellate court found that, as a result of not strictly following the statute, the village did not have the authority to condemn the property. *Trout Valley Ass'n*, 282 Ill. App. 3d at 174.

¶95 A governmental body can only exercise the power of eminent domain when it has been specifically conferred by legislative enactment (*City of Oakbrook Terrace*, 186 Ill. App. 3d at 348), and it can only be exercised in the manner authorized by statute (*Village of Skokie v. Gianoulis*, 260 Ill. App. 3d 287, 295 (1994)).

¶96 The provision of the Act that is applicable here is section 9(c-1), which states:

> "The Authority shall make a survey and prepare a map showing the location and approximate widths of the rights of way needed for future additions to the toll highway system. The map shall show existing highways in the area involved and the property lines and owners of record of all land that will be needed for the future additions and all other pertinent information. Approval of the map with any changes resulting from the hearing shall be indicated in the record of the hearing and a notice of the approval *and a copy of the map shall be filed in the office of the recorder for all counties in which the land needed for future additions is located*." (Emphasis added.) 605 ILCS 10/9(c-1) (West 2014).

¶97 This section of the map requirements was first placed in the Act in 1998, and there is no Illinois case law exactly on the subject of the map. The purpose of the provision is to inform the public of the approximate locations of the project and thereby prevent parties from engaging in costly and conflicting development of the land and to give the public a heads-up about possible traffic congestion that may occur for a period of time in any certain location.

¶98 I decline to follow the majority opinion in this case because there is no law to support its position, nor do they cite any law. The words of our supreme court that the law in eminent domain proceedings must be strictly construed was not followed in this case. As a result, I would reverse and remand to the circuit court to vacate its judgment and to reenter the judgment when the map has been filed with the Cook County Recorder.