NO. 5-09-0100

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE COUNTY OF ST. CLAIR, ILLINOIS, Plaintiff-Appellant and Cross-Appellee, v. CASEYVILLE RIFLE AND PISTOL CLUB, INC., Defendant-Appellee and Cross-Appellant.	)))))))))	Appeal from the Circuit Court of St. Clair County. No. 05-ED-26 Honorable Ellen A. Dauber, Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Presiding Justice Chapman and Justice Wexstten concurred in the judgment.

RULE 23 ORDER

Held: The circuit court properly dismissed a county's complaint for condemnation because the county did not enact a proper enabling ordinance or resolution prior to filing the lawsuit. The appellate court affirmed in part and reversed in part the circuit court's award of attorney fees to the landowner.

The plaintiff, the County of St. Clair (St. Clair County), filed a complaint for condemnation against the defendant, Caseyville Rifle and Pistol Club, Inc. (the Rifle Club), seeking to obtain the title to a certain parcel of property located near the runway of a United States Air Force base. St. Clair County appeals the judgment of the circuit court of St. Clair County that dismissed the complaint and awarded the Rifle Club $80,263.19 in costs, expenses, and attorney fees. The Rifle Club cross-appeals the amount of the circuit court's award for attorney fees. For the following reasons, we affirm in part and reverse in part.

BACKGROUND

This appeal involves St. Clair County's exercise of eminent domain powers that are granted to it under section 15 of the County Air Corridor Protection Act (620 ILCS 52/1 *et*

seq. (West 2008)) in order to regulate land use around Scott Air Force Base (Scott AFB). A crucial issue we are concerned with on appeal is St. Clair County's failure to manifest its intent to utilize its eminent domain power, on record, by way of an official enabling ordinance or authorizing resolution, prior to filing its complaint.

Scott AFB is a United States Air Force aircraft installation that is operated by the United States Air Force and is located in St. Clair County, Illinois. Scott AFB has one active runway that serves a considerable amount of incoming and outgoing aircraft traffic, both military and civilian, on a day-to-day basis.

In order to coordinate the development of land adjacent to its aircraft installations, in the 1970s, the United States Department of Defense established a program called the Air Installation Compatible Use Zone (AICUZ) Program that addresses the community noise and safety impacts of its military air installations. The program is "an effort to coordinate the requirements of the missions of military air installations, with the development of the surrounding communities." *Branning v. United States*, 228 Ct. Cl. 240, 250, 654 F.2d 88, 95 (1981). "The AICUZ is a concept of identifying compatible and incompatible land use around an air station, the purpose being to guide compatible private development through cooperation with local jurisdictions in order to minimize public exposure to aircraft noise and accident potential, while at the same time maintaining the operational capability of the station." *Branning*, 228 Ct. Cl. at 250, 654 F.2d at 95. AICUZ studies define restrictions on land uses in the vicinity of air installations to ensure the land use is compatible with the installation's operations and to ensure that "people and facilities are not concentrated in areas susceptible to aircraft accidents." 32 C.F.R. §256.1(b)(1) (1995).

In AICUZ studies, the areas surrounding a particular air installation that are impacted by possible aircraft accidents are designated as Accident Potential Zones (APZ). *Branning*, 228 Ct. Cl. at 250, 654 F.2d at 95. The APZs are classified as "Clear Zone," "APZ-I," or

"APZ-II," depending on the area's potential for aircraft accidents. The Clear Zone is the most critical area with respect to aircraft accidents, the APZ-I has a moderate potential for aircraft accidents, and the APZ-II is the least critical zone but still possesses significant potential for aircraft accidents. *Branning*, 228 Ct. Cl. at 251, 654 F.2d at 95. The AICUZ studies are for advisory purposes only, and the authority to permit or restrict the development or use of private lands is left to the local jurisdiction. *Blue v. United States*, 21 Cl. Ct. 359, 362 (1990). In February of 2001, the United States Air Force prepared and issued its most recent AICUZ study for Scott AFB.

On July 11, 2003, the Illinois legislature enacted the County Air Corridor Protection Act (Air Corridor Protection Act) (620 ILCS 52/1 *et seq.* (West 2008)) to address incompatible land use and development issues around Scott AFB. Pub. Act 93-176, §1, eff. July 11, 2003; 93d Gen. Assem., House Proceedings, April 3, 2003, at 196-97 (statements of Representative Hoffman); 93d Gen. Assem., Senate Proceedings, May 9, 2003, at 96-97 (statements of Senator Clayborne). Section 15 of the Air Corridor Protection Act authorizes St. Clair County, under certain circumstances, to acquire land in APZs around Scott AFB by the use of eminent domain powers. 620 ILCS 52/15 (West 2008).

The Rifle Club's property in the present case is a 31.87-acre parcel located in St. Clair County, Illinois, and is commonly known as 1359 North County Road, Mascoutah, Illinois. The parcel overlaps into APZ-I and/or APZ-II for Scott AFB as defined in the February 2001 AICUZ. Sometime before January 28, 2005, the Rifle Club made it known that it intended to build a shooting range on its 31.87-acre parcel. On January 28, 2005, Lieutenant Colonel Stephen E. Shea, the commander of the 375th Civil Engineer Squadron at Scott AFB, wrote a letter to the City of Mascoutah, Illinois, stating that the Rifle Club's proposed location for its shooting range was within APZ-I and APZ-II of Scott AFB and was underneath the Scott AFB's "runway's approach-departure glide slope." Lieutenant Colonel

Shea further informed the City of Mascoutah as follows:

> "We have determined that the proposal would subject the [Rifle] Club patrons and visitors to increased risk of aircraft accidents and other hazards given that all land uses below take-off and final approach flight paths, by definition, expose the public to significantly higher danger and noise inconvenience. In addition, at that general location, above-ground firearm/explosive use by the public would constitute additional potential hazards to aircraft safety."

Lieutenant Colonel Shea informed the City of Mascoutah that the proposed location for the Rifle Club "within APZ I & II is not compatible with the current military flight mission at Scott AFB."

On May 31, 2005, during the regular session of the St. Clair County Board, the board entered into executive session to discuss "potential litigation." Upon returning to regular session, the board voted to approve the "recommendation as presented by Council in Executive Session regarding Potential Litigation." The minutes of the May 31, 2005, county board meeting do not mention the exercise of eminent domain powers, the Rifle Club, or a lawsuit against the Rifle Club, and they do not identify the Rifle Club's property. The minutes only describe "potential litigation," and nothing in the minutes indicates that the board discussed litigation against the Rifle Club during its executive session.

On November 18, 2005, St. Clair County filed an action for the condemnation of the Rifle Club's property pursuant to section 15 of the Air Corridor Protection Act (620 ILCS 52/15 (West 2008)). St. Clair County alleged in its complaint that it "by appropriate action of its governing body has determined that the land which is the subject of this action is necessary for the purposes hereinafter described." St. Clair County further alleged that the City of Mascoutah had granted the Rifle Club a permit to operate rifle and handgun ranges on the Rifle Club's property, uses which St. Clair County believed to be incompatible with

Scott AFB's AICUZ study and hazardous to aircraft operations.

On December 2, 2005, attorney Harry J. Sterling entered his appearance on behalf of the Rifle Club by filing a jury demand and a pleading that was captioned as a traverse and motion to dismiss. The Rifle Club's traverse and motion to dismiss alleged that St. Clair County had "no authority" to acquire the Rifle Club's land by eminent domain under the Air Corridor Protection Act because the land's use was not incompatible with Scott AFB's AICUZ study. In addition, the Rifle Club maintained that St. Clair County did not need the land for a proper public purpose and that the amount of the property St. Clair County sought was in excess of its needs.

After the Rifle Club filed its traverse and motion to dismiss, the parties appeared before the circuit court for several pretrial hearings that are irrelevant to the issues on appeal, and the parties conducted considerable discovery, including taking the depositions of several witnesses. On October 11, 2007, the parties appeared in court to begin an evidentiary hearing. At the outset of the hearing, the court asked the parties whether they were ready to proceed with presenting evidence that day or whether there were other matters that the court needed to consider.

The Rifle Club's counsel then presented the circuit court with a copy of the May 31, 2005, county board meeting minutes and argued that the county had furnished the document as its authority for filing the eminent domain proceeding. The Rifle Club maintained that document was inadequate. The Rifle Club argued, therefore, that the county did not have the proper authority to proceed with the condemnation proceeding. The Rifle Club argued that the county failed "to produce a resolution authorizing [it] to proceed with eminent domain and to include the legal description of that which they seek to take." St. Clair County's attorney told the court that the issue was being raised for the first time and that the county needed additional time to address the issue. The court, therefore, established a

briefing schedule on the issue of "lack of resolution/ordinance."

In its reply memorandum, St. Clair County argued that the Rifle Club forfeited the issue with respect to the county's failure to enact an enabling ordinance or resolution by failing to raise the issue in its traverse. In addition, St. Clair County argued that it had produced the May 31, 2005, board meeting minutes to the Rifle Club in June 2006 but that the club had not raised the issue until the eve of trial. Finally, St. Clair County maintained that the County Board's discussion in executive session on May 31, 2005, was sufficient to authorize the eminent domain proceeding.

Before the parties returned to court, the St. Clair County Board, on October 29, 2007, passed resolution No. 1378-07-R. In that resolution, the county board outlined the issues involving the Rifle Club's shooting range and its findings that the shooting range affected the health, safety, and welfare of the county's citizens and guests. The resolution stated that the county board found that it was necessary to acquire the Rifle Club's property "for the protection of the safety of the community and the protection of the public's health, safety, and welfare." The resolution authorized the county's attorneys to take all the steps to acquire the property, including eminent domain. The resolution further stated as follows: "This resolution is in further ratification, amendment, adoption, and/or supplementation to those actions taken by the St. Clair County Board on May 31, 2005 by way of motion and in executive session. This resolution is by no means to be construed as a contradiction of those actions taken by the St. Clair County Board on May 31, 2005."

St. Clair County presented resolution No. 1378-07-R to the circuit court as a part of its response to the Rifle Club's request to dismiss the eminent domain proceeding due to the county's failure to pass a proper enabling ordinance or resolution. The parties appeared in court on November 8, 2007, and after considering arguments from counsel, the circuit court found that the May 31, 2005, resolution was inadequate and was fatal to St. Clair County's

eminent domain proceeding.

On November 28, 2007, the circuit court entered a written order granting the Rifle Club's "oral motion to dismiss" St. Clair County's eminent domain proceeding. The circuit court's written dismissal order stated as follows: "The court finds that it lacks subject matter jurisdiction over [St. Clair County's] eminent domain action, and therefore said action is dismissed without prejudice." The order granted the Rifle Club 14 days to file an application for costs, expenses, and reasonable attorney fees.

On December 5, 2007, the Rifle Club filed an application for costs, expenses, and attorney fees. The Rifle Club's application for costs, expenses, and fees requested an award of $111,234.69, which included appraisal services, expert witness fees, and attorney fees from Sterling's law firm and attorney Don Weihl's law firm. St. Clair County objected to the attorney fees of Weihl on the basis that he was a Rifle Club member and a witness and did not charge the Rifle Club for his legal services. St. Clair County also objected to Sterling's attorney fee application on the basis that his bills were not sufficiently detailed, and it argued that the court should not award any costs, expenses, or fees incurred after June 21, 2006, the date it disclosed the May 31, 2005, minutes as its authority for bringing the eminent domain law suit.

On June 26, 2008, the Rifle Club filed a supplemental application for costs, expenses, and fees, requesting an additional $5,408 in attorney fees charged by Sterling and Weihl. On July 22, 2008, the circuit court conducted an evidentiary hearing on the Rifle Club's applications for costs, expenses, and fees. At the hearing, the Rifle Club presented the testimony of Sterling, Weihl, and Randy Seper, who was the Rifle Club's president and treasurer. St. Clair County presented the testimony of Leonard Gross, a professor at Southern Illinois University School of Law and an expert on the issues of legal ethics and attorney fees. Professor Gross testified that, in his opinion, Rule 3.7 of the Illinois Rules of

Professional Conduct (eff. Aug. 1, 1990) prohibited Weihl from serving both as a witness and as counsel in the present case and that, therefore, Weihl and his law firm were not allowed to recover attorney fees for Weihl's legal services.

On February 13, 2009, the circuit court entered an order granting the Rifle Club's applications for costs, expenses, and fees. With respect to Weihl's fees, the circuit court held that his failure to appear as counsel of record did not preclude an award of fees. The court noted that Weihl attended numerous depositions and that St. Clair County's counsel engaged in discussions of the case with Weihl, often without Sterling present. With respect to Rule 3.7 of the Illinois Rules of Professional Conduct, the court noted that the rule required a lawyer not to accept or continue employment if the lawyer knows that he may be called as a witness on behalf of the client. The court also noted that Weihl and Seper maintained that the club would have suffered a substantial hardship if Weihl had discontinued employment as the club's lawyer and that Rule 3.7 contains an exception for cases in which the lawyer's refusal to accept or continue the employment would cause a substantial hardship on the client.

The circuit court did not determine whether the substantial-hardship exception to Rule 3.7 applied but instead held that, if Weihl violated Rule 3.7, the violation was a good-faith violation that did not preclude an award of his attorney fees. The court also found that St. Clair County was aware of Weihl's dual or ambiguous role in the case but failed to timely move to disqualify him as an attorney or bring the potential conflict to the court's attention. The issue was not raised until the county filed its objection to the Rifle Club's application for fees, and St. Clair County had not alleged any harm or prejudice as a result of the alleged violation of Rule 3.7. However, the circuit court reduced Weihl's fee request by $25,873 and awarded the Rifle Club $27,918 in fees for 97.3 hours of legal work performed by Weihl.

With respect to the specificity of Sterling's fee statements, the circuit court noted that Sterling's monthly bills showed the contractual hourly rate but that each bill did not specify the time for each separate action taken for each billing period. However, at the evidentiary hearing on the Rifle Club's fee request, Sterling submitted his time slips, which included the amount of time that had been spent for each legal task performed, the nature of the task, the attorney performing the task, and the hourly rate charged for the task. The court found that the details in the time slips were sufficient for an award of attorney fees and that the fees were reasonable considering Sterling's "skill and experience, the nature of the case, including the novelty and difficulty of issues involved, usual and customary charges for attorney's fees in the community, and the degree of responsibility required of the attorneys in the case." The court awarded the Rifle Club $39,031.92 for Sterling's attorney fees and costs expended by his firm in the case.

After adding in other undisputed costs, expenses, and fees, the circuit court awarded the Rifle Club a total of $80,263.19 in costs, expenses, and fees. St. Clair County appeals the circuit court's dismissal of its eminent domain proceeding and the court's award of costs, expenses, and fees. The Rifle Club cross-appeals the court's decision to reduce the award for Weihl's attorney fees.

ANALYSIS

The first issue we address on appeal is whether the circuit court properly dismissed St. Clair County's complaint due to its failure to pass a proper ordinance or resolution authorizing it to pursue the eminent domain proceeding.

St. Clair County's complaint sought to acquire the title to the Rifle Club's property through eminent domain powers granted to the county by section 15 of the Air Corridor Protection Act. Section 15 of the Air Corridor Protection Act gives the county express power to acquire, by eminent domain, land that is used in a manner that is incompatible with

an AICUZ study. Section 15 specifically provides as follows:

> "If a land use exists or a municipality approves a land use that is incompatible with the Air Installation Compatible Use Zone Study, and any portion of the affected land is within areas designated in the Air Installation Compatible Use Zone Study as clear zones and runway protection zones, accident potential zones I, or accident potential zones II, *** the county may use eminent domain to acquire either the fee simple title to that portion of the affected land or the easement rights in that portion of the affected land that are necessary for the compatible land use defined under the Air Installation Compatible Use Zone Study. If a municipality within those zones controls the use of land in a manner compatible with the Air Installation Compatible Use Zone Study, the county does not have eminent domain authority." 620 ILCS 52/15 (West 2008).

Section 20 of the Air Corridor Protection Act requires the county to exercise the eminent domain power in accordance with the Eminent Domain Act (735 ILCS 30/1-1-1 *et seq.* (West 2008)). 620 ILCS 52/20 (West 2008). The Eminent Domain Act requires the condemnor's petition to set forth, among other things, "his or their authority in the premises," but this "authority" refers to statutory authority, not a resolution adopted by the condemnor. *Goldman v. Moore*, 35 Ill. 2d 450, 452, 220 N.E.2d 466, 468 (1966). "There is thus no explicit statutory requirement that the board make a formal finding with respect to the necessity of acquiring land which it seeks to acquire by eminent domain." *Goldman*, 35 Ill. 2d at 453, 220 N.E.2d at 468. However, the supreme court has observed as follows: "It has been held that while a condemnor is not required to offer into evidence the ordinance or resolution under which it is proceeding, the property owner has the right to have it produced, and where none was forthcoming, the proceeding failed." *Goldman*, 35 Ill. 2d at 453, 220 N.E.2d at 468.

In *Goldman*, a school board filed an eminent domain proceeding, but at the time the petition was filed, the board had not adopted a formal resolution concerning the acquisition of the land. *Goldman*, 35 Ill. 2d at 451, 220 N.E.2d at 467. Nearly nine months after the board filed the eminent domain petition, it adopted a resolution that stated that the board had discussed the acquisition of the land in an "executive conference" prior to the filing of the eminent domain proceeding. The resolution further stated that the board "ratified and accepted officially" the actions of its attorney in the condemnation proceeding "as if this technicality had been complied with prior to the filing of said proceeding." *Goldman*, 35 Ill. 2d at 451-52, 220 N.E.2d at 467.

The supreme court held that the trial court properly dismissed the eminent domain proceeding. *Goldman*, 35 Ill. 2d at 454, 220 N.E.2d at 468. The supreme court held that the action taken by the board in "executive session" was an ineffective exercise of the power of eminent domain. *Goldman*, 35 Ill. 2d at 454, 220 N.E.2d at 468. The school board in *Goldman* argued that the resolution that was passed nine months later amended the records of the board. *Goldman*, 35 Ill. 2d at 454, 220 N.E.2d at 468-69. The supreme court, however, held as follows: "[T]he resolution did not purport to amend the records of the board, and it is undisputed that there were no records of the 'executive session' which would have provided a basis for amendment." *Goldman*, 35 Ill. 2d at 454, 220 N.E.2d at 469. The supreme court noted, "Until about nine months after the filing of the petition, no record existed by which any property owner or interested citizen could determine the position of the board with respect to the acquisition of the property in question." *Goldman*, 35 Ill. 2d at 453-54, 220 N.E.2d at 468. The court concluded that this procedure "obviously lends itself to improper conduct on the part of public officials." *Goldman*, 35 Ill. 2d at 454, 220 N.E.2d at 468.

Likewise, in *Forest Preserve District of Du Page County v. Miller*, 339 Ill. App. 3d

244, 246, 789 N.E.2d 916, 918 (2003), a forest preserve district filed an eminent domain complaint. The forest preserve district's complaint included a copy of an ordinance which it had adopted the day before and which stated that the board had authorized the eminent domain proceeding. *Miller*, 339 Ill. App. 3d at 246, 789 N.E.2d at 918. The ordinance, however, provided an incorrect legal description of the property that the forest preserve district sought to obtain. *Miller*, 339 Ill. App. 3d at 246, 789 N.E.2d at 918. Two months after it filed its condemnation complaint, the forest preserve district filed an amended complaint that set forth the correct legal description of the property but included the prior ordinance with the incorrect legal description as its authority to bring the proceeding. *Miller*, 339 Ill. App. 3d at 246-47, 789 N.E.2d at 918-9.

The circuit court dismissed the forest preserve district's eminent domain proceeding, finding that its enabling ordinance did not adequately describe the property. *Miller*, 339 Ill. App. 3d at 249, 789 N.E.2d at 923. In affirming the circuit court's dismissal of the condemnation proceeding, the *Miller* court noted that a public body, even when conferred the power to condemn, "may not exercise its eminent domain power unless it has manifested its determination to exercise that power by some official action of record." *Miller*, 339 Ill. App. 3d at 253, 789 N.E.2d at 924. The court stated that, as a general rule, a public body "manifests its determination to exercise its power in an enabling ordinance or resolution" and that an enabling ordinance is "the foundation of an eminent domain action." *Miller*, 339 Ill. App. 3d at 254-55, 789 N.E.2d at 924. The court stated that enabling ordinances must reasonably describe the property to be taken and that the failure of the ordinance to adequately describe the property is fatal to a condemnation petition. *Miller*, 339 Ill. App. 3d at 254, 789 N.E.2d at 924.

The *Miller* court held that the complaint filed in that case was an ineffective exercise of eminent domain power because the enabling ordinance included an inadequate legal

description of the property. Accordingly, the ordinance was not a proper manifestation of the forest preserve district's determination to exercise condemnation authority over the property since the ordinance contained inconsistent descriptions of the property to be taken. *Miller*, 339 Ill. App. 3d at 254-55, 789 N.E.2d at 925.

The forest preserve district in *Miller* adopted a subsequent ordinance with the correct legal descriptions of the property nearly two years after the eminent domain complaint had been filed. *Miller*, 339 Ill. App. 3d at 255, 789 N.E.2d at 925. The court, however, held that the new ordinance did not "cure the insufficiencies of the first ordinance upon which the complaint was founded." *Miller*, 339 Ill. App. 3d at 255, 789 N.E.2d at 924 (citing *Goldman*, 35 Ill. 2d at 454, 220 N.E.2d at 469, and *City of Rockford v. Rockford Life Insurance Co.*, 16 Ill. 2d 287, 157 N.E.2d 21 (1959)).

Likewise, in the present case, St. Clair County did not pass or adopt an adequate enabling ordinance or resolution prior to filing its eminent domain complaint. As its authority to file the condemnation action, St. Clair County produced the minutes of the county board meeting that took place on May 31, 2005. The minutes stated that the board went into executive session to discuss "potential litigation." When the board returned to regular session, the board voted to "approve the recommendation as presented by Council in Executive Session regarding Potential Litigation."

The minutes of the May 31, 2005, county board meeting fall far short of an official determination of record to exercise eminent domain power over the Rifle Club's property. The board meeting minutes do not mention eminent domain proceedings, do not reasonably describe the Rifle Club's property, and do not even mention the Rifle Club. As in *Goldman*, the action taken by the board in executive session was an ineffective exercise of the power of eminent domain. *Goldman*, 35 Ill. 2d at 454, 220 N.E.2d at 468. In the present case, there is no record of anything the county board discussed during the executive session on

May 31, 2005. Therefore, St. Clair County did not properly manifest, on record, its determination to exercise eminent domain authority with respect to the Rifle Club's property prior to the initiation of the condemnation action. This oversight is fatal to the eminent domain proceeding.

Furthermore, resolution No. 1378-07-R that the county board adopted nearly two years after the county filed its eminent domain complaint did not cure the lack of a proper enabling resolution. We believe that the facts of *Goldman*, *City of Rockford*, and *Miller*, cited above, are substantially similar to the facts of the present case. We apply the same stringent standards established by the supreme court in *Goldman* and *City of Rockford* and find that the subsequent resolution did not cure the insufficiencies of the May 31, 2005, executive session upon which St. Clair County's complaint was founded. See *Miller*, 339 Ill. App. 3d at 255, 789 N.E.2d at 926. Accordingly, the circuit court correctly dismissed St. Clair County's complaint.

In support of its argument, St. Clair County cites *City of Oakbrook Terrace v. La Salle National Bank*, 186 Ill. App. 3d 343, 542 N.E.2d 478 (1989). In that case, however, a little more than two months before the condemnor filed its eminent domain complaint, it had passed a proper ordinance to expressly acquire the title to and possession of the property through condemnation. *City of Oakbrook Terrace*, 186 Ill. App. 3d at 346, 542 N.E.2d at 479. *City of Oakbrook Terrace*, therefore, is irrelevant in addressing the supreme court's holding in *Goldman* that the condemnor must make a formal finding on record concerning the exercise of its condemnation powers prior to filing its condemnation petition. *Goldman*, 35 Ill. 2d at 454, 220 N.E.2d at 469.

St. Clair County argues, alternatively, that the Rifle Club forfeited the issue of a proper enabling ordinance or resolution by failing to timely raise the issue in a traverse and motion to dismiss. We disagree.

The proper method for challenging a condemning entity's authority to condemn is a traverse. *Forest Preserve District of Du Page County v. Miller*, 339 Ill. App. 3d 244, 250, 789 N.E.2d 916, 921 (2003). In eminent domain proceedings, the property owner can file a general traverse, which is a blanket denial of all the factual allegations contained in the complaint. *Miller*, 339 Ill. App. 3d at 250, 789 N.E.2d at 921. "When a complaint to condemn is traversed, the trial court may determine all questions raised regarding the condemnor's right to condemn the property." *Miller*, 339 Ill. App. 3d at 250, 789 N.E.2d at 921. The condemnor has the burden to prove the disputed allegations, and its failure to sustain its burden results in the dismissal of the action. *Miller*, 339 Ill. App. 3d at 250, 789 N.E.2d at 922.

In the present case, St. Clair County filed the condemnation proceeding on November 18, 2005. The Rifle Club filed a pleading captioned as a traverse and motion to dismiss on December 2, 2005. The Rifle Club's traverse alleged that St. Clair County had no authority to acquire the land by eminent domain under the Air Corridor Protection Act because the Rifle Club's land use was not incompatible with Scott AFB's AICUZ study. In addition, the Rifle Club's pleading maintained that St. Clair County did not need the land for a proper public purpose and that the amount of the property St. Clair County sought was in excess of its needs. In its traverse, the Rifle Club also denied certain allegations contained in specified paragraphs of the complaint. The traverse did not specifically raise the May 31, 2005, minutes as being an inadequate ordinance or resolution to authorize the eminent domain proceeding and did not otherwise question whether the county board had properly manifested, on record, its intent to exercise eminent domain power.

The issue was first raised when the parties appeared in court on October 11, 2007, to begin presenting evidence. Prior to the hearing, the Rifle Club's attorney presented the court with the minutes of the May 31, 2005, board meeting and told the court that the

minutes were furnished to the Rifle Club by St. Clair County in response to the Rifle Club's discovery request concerning the county's authority for filing the eminent domain complaint. When asked why the issue had not been raised sooner, the Rifle Club's attorney stated that as he was "looking over evidentiary issues" in preparation for the hearing, he discovered that the resolution that the county had furnished as the basis for its authority had come out of executive session, did not describe the property, and was inadequate. The circuit court continued the proceedings to allow the county time to address the issue.

On October 26, 2007, St. Clair County filed a reply to the Rifle Club's "purported oral motion." St. Clair County offered several counterarguments to the Rifle Club's "oral motion" but did not provide any further documentation or evidence concerning the specific discussions that had taken place in executive session at the county board meeting on May 31, 2005. The parties returned to court on November 8, 2007, and after considering additional arguments of counsel, the circuit court dismissed St. Clair County's complaint on the Rifle Club's "oral motion."

Under these facts, we do not believe that the Rifle Club forfeited its right to challenge St. Clair County's authority to exercise its eminent domain powers. For example, *Village of Skokie v. Gianoulis*, 260 Ill. App. 3d 287, 632 N.E.2d 106 (1994), involved a condemnation proceeding in which the defendants filed motions to dismiss and traverse prior to the trial. *Gianoulis*, 260 Ill. App. 3d at 295, 632 N.E.2d at 111. The trial court conducted an evidentiary hearing, and at the close of the condemnor's evidence, the circuit court granted the defendants' motion for a directed verdict with respect to three properties because they were not included in the ordinance authorizing the condemnation action. *Gianoulis*, 260 Ill. App. 3d at 295, 632 N.E.2d at 111. On appeal, the condemnor argued that the defendants waived their argument concerning its authority to condemn the three properties because they had not raised the issue prior to the close of the condemnor's

evidence at the hearing. *Gianoulis*, 260 Ill. App. 3d at 297, 632 N.E.2d at 113. The court disagreed, noting that the defendants had filed a traverse and that "the traverse acts as an inquiry into the necessity for the taking and the burden is upon the petitioner to maintain its right to condemn by proper proof." *Gianoulis*, 260 Ill. App. 3d at 297, 632 N.E.2d at 113. The court held that the defendants had raised their specific contention regarding necessity through the filing of their traverse. *Gianoulis*, 260 Ill. App. 3d at 297, 632 N.E.2d at 113.

Likewise, in the present case, we find no waiver. The Rifle Club not only filed a traverse but also specifically raised the issue before any trial began. While Illinois courts have not "specifically addressed what constitutes a sufficient traverse," the courts have noted that the pleading requirements for a traverse "appear to be quite minimal." *Miller*, 339 Ill. App. 3d at 252, 789 N.E.2d at 923. Although the traverse that the Rifle Club filed did not specifically raise the May 31, 2005, minutes as a challenge to St. Clair County's authority, the traverse did challenge St. Clair County's "authority to acquire the land in question inasmuch as the current land is not incompatible with the Air Installation Compatible Use Zone Study (AICUZ) claimed in the Complaint."

In *Gianoulis*, the defendant's traverse apparently did not specify the exact grounds upon which the condemning entity's authority was being challenged, but the court, nonetheless, found the defendant's traverse to be sufficient to preserve the issue. *Gianoulis*, 260 Ill. App. 3d at 297, 632 N.E.2d at 113; see also *Miller*, 339 Ill. App. 3d at 252-53, 789 N.E.2d at 923-24. Applying the same reasoning, we conclude that the Rifle Club's traverse was sufficient to preserve the issue, particularly considering that, prior to the start of a hearing, the Rifle Club specifically raised the issue concerning whether the May 31, 2005, executive meeting was an inadequate exercise of eminent domain authority. *Board of Trustees of the University of Illinois v. Shapiro*, 343 Ill. App. 3d 943, 799 N.E.2d 383

(2003), cited by St. Clair County, is distinguishable because the defendant in that case failed to file any traverse or motion to dismiss prior to the trial or otherwise raise the issue in the trial court proceeding. *Shapiro*, 343 Ill. App. 3d at 951, 799 N.E.2d at 389.

The next issue St. Clair County raises on appeal is the circuit court's award of costs, expenses, and attorney fees to the Rifle Club upon the dismissal of the eminent domain proceeding. The Rifle Club cross-appealed the amount the circuit court awarded for Weihl's fees.

On the issue of attorney fees, section 10-5-70(a) of the Eminent Domain Act (735 ILCS 30/10-5-70(a) (West 2008)) provides as follows: "[I]f the final judgment is that the plaintiff cannot acquire the property by condemnation, the court shall, upon the application of the defendants or any of them, enter an order in the action for the payment by the plaintiff of all costs, expenses, and reasonable attorney fees paid or incurred by the defendant or defendants in defense of the complaint, as upon the hearing of the application shall be right and just, and also for the payment of the taxable costs." The determination of the amount of reasonable attorney fees is within the sound discretion of the circuit court. *In re Marriage of Pitulla*, 202 Ill. App. 3d 103, 111, 559 N.E.2d 819, 826 (1990).

In challenging the circuit court's award of costs, expenses, and attorney fees, St. Clair County raises three issues: (1) that the Rifle Club is not entitled to fees for Weihl's legal services because it did not retain Weihl as its attorney, he did not charge the club for any of the legal services he provided, and a recovery of Weihl's fees would violate Rule 3.7 of the Illinois Rules of Professional Conduct, (2) that the Rifle Club is not entitled to fees for Sterling's legal services because his billing statements failed to present sufficient detailed records, and (3) that the Rifle Club is not entitled to any fees it incurred after June 21, 2006, the date on which the county furnished the Rifle Club a copy of the May 31, 2005, minutes as its authority to proceed with the eminent domain action. We will first address St. Clair

County's objections to Weihl's fees along with the Rifle Club's cross-appeal of Weihl's fee award.

With respect to Weihl's fees, St. Clair County maintains that the fees are not recoverable because, among other reasons, Weihl did not charge the Rifle Club for his services. At his deposition on June 7, 2007, Weihl testified that he did not bill the Rifle Club for his time. He testified as follows:

> Q. *** Have you ever–Does Caseyville Rifle and Pistol Club pay you a retainer or anything?
>
> A. They do not.
>
> Q. Okay. So your services are for free, then, to the club?
>
> A. Well, my personal services, yes. The services of this firm, no.
>
> Q. Okay. Your personal services to the club as an attorney and as you sit as the advisor are free to the club.
>
> A. That's correct."

At the hearing on the Rifle Club's petition for attorney fees, the Rifle Club's president and treasurer, Seper, testified that the club "hoped" to pay Weihl at some point. He further testified as follows: "Oh I didn't really assume he was doing it for free. I've been fairly confident in this case since it started and it had been my intention that once the County paid our attorney's fees we would pay Don [Weihl's] firm."

The circuit court made the following determination with respect to Weihl's fees:

> "Mr. Weihl is precluded from recovering any of his legal fees up to and including the date of his deposition, June 7, 2007, as he testified in his deposition that he had not billed [the Rifle Club] for his time. While this Court understands that [a] decision about whether to charge a client or perform pro bono may change at some point in a case given the amount of time required, this Court will not apply a

retroactive change to the detriment of [St. Clair County]."

The circuit court reduced the award for Weihl's fees by $25,873 for fees he incurred up to the date of his deposition, and the Rifle Club takes issue with this fee reduction on cross-appeal. It maintains that Weihl's entire fee request should have been awarded to the Rifle Club. We disagree. We find that the circuit court abused its discretion in awarding the Rifle Club any amount for Weihl's attorney fees because the club has not "paid or incurred" his fees for purposes of a fee recovery under the Eminent Domain Act.

The purpose of the attorney fee provision in section 10-5-70(a) of the Eminent Domain Act is " 'to reimburse a defendant for attorney's fees which he has paid, or to indemnify him for such fees for which he has become liable, provided the fees so paid or incurred are reasonable.' " *Trustees of Schools of Township No. 42 v. Herrmann*, 21 Ill. 2d 477, 478-79, 173 N.E.2d 472, 473 (1961) (quoting *Chicago & Southern Traction Co. v. Flaherty*, 222 Ill. 67, 68, 78 N.E. 29, 30 (1906)). "Thus, before a defendant is entitled to be allowed attorney fees, two requirements must be fulfilled: (1) the defendant must have paid or have incurred a *legal obligation* to pay the fees, and (2) the fees so paid or incurred must be reasonable." (Emphasis added.) *Herrmann*, 21 Ill. 2d at 479, 173 N.E.2d at 473.

In the present case, the Rifle Club has not paid any of Weihl's fees, so the issue is what amount of Weihl's fees, if any, the rifle club is under a "legal obligation" to pay. The circuit court stated in its order, "Mr. Sterling argued that Weihl decided to charge [the Rifle Club] for his time when he began to do the majority of the work, as the case became lengthier and more complex than anticipated." However, there was no such testimony presented at the hearing. Sterling testified at the hearing that, as the case became complex, he asked Weihl, an experienced eminent domain attorney, to assist him with the litigation, including preparing "many of the pleadings and doing much of the research, much of the drafting." The record established that Weihl is a charter member of the club, and he testified

at his deposition that he did not bill or charge the club for his legal services but performed the services for free. Neither Weihl nor Sterling testified that Weihl's fee arrangement with the club ever changed at any time after Weihl's deposition. Seper testified that he "hoped" the club would pay Weihl's attorney fees, but his hope was couched in terms of collecting fees from St. Clair County, not based on a legal obligation or contract between the club and Weihl.

Accordingly, based on the record before us, we reverse that portion of the circuit court's attorney fee award that directed St. Clair County to pay the Rifle Club $27,918 for Weihl's fees. Because we find that the Rifle Club failed to establish its legal obligation to pay Weihl's fees, we need not determine whether Weihl violated Rule 3.7 of the Illinois Rules of Professional Conduct or whether such a violation, if it occurred, barred the Rifle Club from recovering for Weihl's fees. In addition, St. Clair County did not challenge the $3,189.27 of costs and expenses awarded to Weihl's law firm, Greensfelder, Hemker & Gale, P.C. Accordingly, we affirm that portion of the circuit court's fee award.

Next, St. Clair County takes issue with Sterling's attorney fees, arguing that his billing statements fail to present sufficiently detailed records. The circuit court granted the Rifle Club an award of $39,031.92 for Sterling's fees. With respect to the sufficiency of Sterling's billing records, the court noted that Sterling's billing records showed his hourly rate from his legal representation agreement but that his monthly bills did not specify the time for each separate action he performed. The court held, however, that the information necessary to evaluate Sterling's fees was contained within his time slips that were introduced at the fee application hearing. The circuit court ruled as follows:

> "Mr. Sterling's time slips, prepared contemporaneously, explained the nature of the task and the parties involved (for example, 'phone call to Randy'); the attorney working on the matter, the amount of time expended, and the hourly rate charged.

These details are sufficient for an award of attorney's fees."

The circuit court did not abuse its discretion in awarding Sterling's fees. "It is well established that a party seeking to recover attorney fees from another party bears the burden of presenting sufficient evidence from which the trial court can render a decision as to their reasonableness." *Harris Trust & Savings Bank v. American National Bank & Trust Co. of Chicago*, 230 Ill. App. 3d 591, 595, 594 N.E.2d 1308, 1312 (1992). "A petition for fees must present the court with detailed records containing facts and computations upon which the charges are predicated specifying the services performed, by whom they were performed, the time expended[,] and the hourly rate charged." *Harris Trust & Savings Bank*, 230 Ill. App. 3d at 595, 594 N.E.2d at 1312.

The Rifle Club's exhibits G, H, and I contain Sterling's monthly bills, along with the time slips that detail the work Sterling performed in this case and the time expended for each task. Sterling testified at the hearing and was available for cross-examination regarding any particular task St. Clair County found questionable or unreasonable. We have reviewed the Rifle Club's exhibits G, H, and I, and we also find them sufficiently detailed to support the circuit court's attorney fee award. Accordingly, we affirm that portion of the circuit court's judgment that awarded the Rifle Club $39,031.92 for Sterling's attorney fees.

Finally, St. Clair County argues that it should not be responsible for any attorney fees after June 21, 2006, the day it furnished the minutes of the May 31, 2005, county board meeting as its authority for bringing the eminent domain case. The circuit court, however, found that St. Clair County failed to prove that the Rifle Club "sat on its defenses" or intentionally failed to timely raise an objection to the county's authority to proceed with the condemnation proceeding.

In its response to St. Clair County's objection to its attorney fee application, the Rifle Club stated that it did not know if the May 31, 2005, minutes would be the only document

St. Clair County would rely on at a hearing on its traverse. In addition, as the circuit court stated in its order awarding attorney fees, St. Clair County argued that the minutes of the May 31, 2005, county board meeting were sufficient to establish its authority for filing the condemnation complaint or, alternatively, that no ordinance or resolution was required. Under the facts of this case, the circuit court did not abuse its discretion in finding as follows: "Plaintiff cannot now turn around and argue that Defendant should have known that Plaintiff had no jurisdiction when Plaintiff itself apparently believed it had jurisdiction and was actively participating in discovery and the preparation of this case for trial."

CONCLUSION

For the foregoing reasons, we affirm the circuit court's judgment dismissing St. Clair County's eminent domain proceeding, and we affirm the circuit court's award of costs, expenses, and attorney fees, except we reverse that portion of the attorney fees award that granted the Rifle Club $27,918 for Weihl's attorney fees.

Affirmed in part and reversed in part.