

City Council of The City of Carbondale, Illinois  
Public Hearing on Authorization for the City of Carbondale to Acquire  
Certain Property Located Within the Enterprise Zone  
Through the Use of Eminent Domain  
May 4, 2004

The City Council of the City of Carbondale, Illinois, held a public hearing on Tuesday, May 4, 2004, in the Civic Center, 200 South Illinois Avenue, for the purpose of soliciting comments on authorization for the City of Carbondale to acquire certain property located within the Enterprise Zone through the use of eminent domain. Mayor Cole called the public hearing to order at 7:20 p.m. with the following-named members of the City Council present/absent:

Present: Councilwoman Corene McDaniel, Councilwoman Margaret Flanagan, Councilman Chris Wissmann, Councilman Steven Haynes, Councilman Lance Jack, Councilwoman Sheila Simon and Mayor Brad Cole

Absent: None

Also present were City Clerk Janet M. Vaught, City Manager Jeff Doherty and various members of the City's administrative staff.

In opening remarks, City Manager Doherty noted that the City of Carbondale has created the Tax Increment Redevelopment Project Area No. 1 for the purpose of encouraging the redevelopment of the properties that were designated to be in the redevelopment district. In addition, the City, in association with Jackson County Government and the City of Murphysboro, has created the Jackson County-Murphysboro-Carbondale Enterprise Zone to encourage development and redevelopment of properties included in the Enterprise Zone.

Mr. Doherty stated that the City is working with a private developer to redevelop certain property within both the Tax Increment Redevelopment District Area No. 1 and the Enterprise Zone. The proposed development requires the acquisition of seven parcels of land that are located at or near the southeast corner of East Walnut Street and South Marion Street in Carbondale. The acquisition of these parcels requires the assistance of the City of Carbondale in order for the redevelopment project to proceed. In order for the redevelopment project to occur, acquisition of the properties must occur in a timely fashion.

Mr. Doherty said the City of Carbondale possesses eminent domain authority to acquire property for a public purpose. Illinois courts have upheld the constitutionality of municipalities using eminent domain authority to acquire blighted properties for redevelopment purposes. State law specifically grants the City the authority to use eminent domain in both the Tax Increment Redevelopment District and the Enterprise Zone. Further, the City has Quick Take authority by virtue of the Enterprise Zone. Quick Take authority allows the City to petition the court, following the filing of the condemnation suit, to have the property conveyed to the City prior to the complete court condemnation case being tried. At a hearing, the court receives evidence and determines the preliminary fair market value of the property. After the hearing, if the court rules to give the City title to the property, the City deposits the amount determined by the court with the County Treasurer and then receives title to the property. The owners of the property may petition the court to receive the deposited money. At the end of the complete trial (which may be a jury trial), if additional compensation is awarded, the City must pay the

additional amount. If the trial finds that the preliminary determination of fair market value was too high, then the excess amount is returned to the City. This procedure will allow the City to acquire the properties in a timely fashion in order for the redevelopment project to occur, while at the same time protecting the rights of the property owners to fair compensation for their property.

City Manager Doherty noted that on April 20, 2004, the City Council adopted an ordinance authorizing eminent domain for the acquisition of seven parcels of real property within the redevelopment district. Subsequently, the City initiated negotiations with the property owner of two parcels by submitting offers to purchase in writing. The City Manager has had three contacts with the property owners or their representatives and negotiations are ongoing. The owner of the remaining parcels is negotiating directly with the developer at the present time.

Mr. Doherty noted that State law requires the City to conduct a public hearing prior to the adoption of an ordinance authorizing the acquisition of real property through Quick Take. A Notice of Public Hearing on May 4, 2004, regarding the City's intent to adopt an ordinance authorizing the use of Quick Take authority was published in *The Southern Illinoisan* newspaper on April 20, 2004. In addition, a notice of the public hearing was posted in City Hall. The proposed ordinance that would authorize the use of Quick Take authority is presented for adoption later on the May 4, 2004, agenda. The properties affected are described as:

Lots 498, 499, 500 and 501 of Ezra Ferrell Subdivision of Outlot 51, all in the City of Carbondale, Jackson County, Illinois, as recorded on Page 553 of Book "K" in the Office of the Recorder, Jackson County, Illinois.

Mr. Doherty added that the street addresses are 301, 305 and 307 East Walnut Street and 303, 305 and 307 South Marion Street. The property owners have been notified of the public hearing and the proposed ordinance. Mr. Doherty corrected his earlier statement by noting that there are six properties involved in this proposal, not seven properties.

Mayor Cole thanked Mr. Doherty for his introductory remarks and noted that the Council is in a public hearing on authorization for the City of Carbondale to acquire certain property located within the Enterprise Zone through the use of Quick Take Eminent Domain. He noted that this matter would be heard on agenda item 6.5, which requests Council action. At this time, no action by the Council is requested other than to hold the public hearing. Mayor Cole then invited comments or questions from the audience.

Cornelius Crane, 1376 Cedar Creek Road, asked if quick take means the taking of private peoples' property and giving it to another private individual or just for the use of the City to use for City uses. City Manager Doherty responded that in this particular case the City would be acquiring property for redevelopment by a private developer. Mr. Crane asked if this would be taking property from one person and giving it to another person. Mr. Doherty noted that the property would not be *given* to another person, it would be *sold* to the developer.

Darrell Dunham, 2903 W. Kent Drive, indicated he was an attorney representing Robert and Laura Irvin who have been described in the proposal as owning 301 and 307 East Walnut. He said it would not be a fair description to describe 307 as blighted property under anybody's standard. He said the Irvin's have owned real estate in the City of Carbondale for a number of years and they would have to be considered solid citizens and an asset to the community. He thinks they have not been in the past

and are not now opposed to community development and he thinks they have been strong supporters of any proposals that would strengthen the tax base or strengthen Carbondale in any way it could be defined. He thinks what is probably their major concern at this point is the rapidity at which all of this seems to be happening. He understands what the statutes permit and perhaps it wasn't necessary under Illinois law to get some formal notice of the events of last month, but the simple fact is that they didn't. He said they were not aware at that time the nature of the private development. He added that they have owned this property for a number of years and have planned on developing it themselves. He said that keeping that in mind, the house, particularly at 307, is a fine facility and has undergone substantial improvements. They were planning on developing it further and there have been discussions between the City Manager and the Irvins in regard to developing that piece of property. He thinks some kind of development plan was presented to the City Manager this morning.

Attorney Dunham continued by saying that the timing of this has caused some concern in that the first real notice the Irvins got about the fact that their property might be acquired was when they were approached by the private developer. There were negotiations taking place between the Irvins and the private developer. There were offers and counteroffers being exchanged and the Irvins had made a counteroffer and the next thing they received was a notice from the City that their property was on the log for quick take. He said that it is true that the City, as a home rule entity, has the power to take by eminent domain in a quick take basis, but he thinks a showing has to be made that there is an inability to come to an agreement with the owner of the property. As far as they are concerned, they thought negotiations were ongoing. It does seem that the City has intervened in a way that has disrupted those negotiations. Attorney Dunham said that he is optimistic that a settlement or agreement could be reached. An idea has been proposed which would allow the Irvins to keep the improved property, which is not blighted property, at 307. He added that he does not think there is going to be any substantial objection to taking the unimproved lot at 301. He said that he thinks, too, that by allowing them to keep the improved property at 307, it is not going to, in his opinion, frustrate or do violence with the overall scheme or plan that they understand is being proposed.

Attorney Dunham said what they would ask is that perhaps this could be slowed down a bit and give them a little more time to negotiate in good faith and reach an agreement. He added that he knows for sure that the proposal, the offer that was received in the mail, is not going to be an offer that they're going to accept because apparently the appraisal that was offered was below what the private developer offered the Irvins directly. That seemed to be a good-faith negotiation so even if they were to accept the offer at that point, that would be more money than is being offered at this point so there is no way that the offer that is on the table can be the fairest fair market value for the property. Attorney Dunham said that the way he understands the procedures is that the Irvins are entitled to some information before they decide to accept or reject the offer. Presently, they have not had the benefit of the appraisal and they do not know exactly what the appraisal was based on, what the comparables were, and they haven't had the opportunity to have the property appraised themselves. He said that just because of the timing of the thing, they have just been able to let the City know what their plans are for the property. He said they would ask that they be given a little more time before they "move the machinery along" and allow them to see if they can have a meeting of the minds and reach an agreement which anyone can be happy with without taking the process to the next step so that people are forced to let some judge decide, adding that sometimes no one is happy in those situations.

Attorney Dunham offered to take any questions from the Council. Mayor Cole reminded Attorney Dunham that the Council is in a public hearing at this time, adding that during discussion on this item during the general business portion of the agenda, there will be an opportunity for discussion between

the Council and the audience. Attorney Dunham asked if he would have the opportunity to “weigh in” later; Mayor Cole responded that he would.

Mayor Cole invited additional comments or questions from the public.

Jim Jarvis said his business is at 220 S. Washington which is in the TIF district and that he is moving his business to 104 S. Marion which is also in the TIF district. Mr. Jarvis said that he is moving into an older building, the old Global Auto. He noted that he is investing thousands of dollars into the building to move his business there and his concern is if he invests thousands of dollars and hires some additional employees, will 104 S. Marion also be on the chopping block. Mayor Cole noted that the Council is talking about authorization for certain property to be acquired, specifically 301, 305 and 307 E. Walnut Street and 303, 305 and 307 S. Marion Street. City Manager Doherty added that the specific property that Mr. Jarvis has moved into is not among the properties under consideration tonight. Mr. Jarvis said that before he invests his livelihood and savings and potential other costs, he would like to know how safe he is. He asked if his property would be on any agenda the City might have, adding that he is located just south of Holt Tire. Jarvis said that Mark Holt has said he is “safe”, but he is not a relative of Mark Holt and asked again if there are any plans about his property. City Manager Doherty said at this time there are no plans, no proposals, no discussion whatsoever about the particular building that Mr. Jarvis is occupying. Mr. Jarvis said that this was his main question, but said that he is currently in the TIF district and is moving to another section of the TIF district and wanted to know if he was on solid ground or on thin ice. Mr. Doherty said that right now with the best information they have, there are no plans for the other location. Mr. Jarvis said that they were negotiating to buy the other property they were in, the old Prairie Farms dairy, and the price was good. But suddenly his landlord realized that the property was worth three times the amount to demolish, so he said it was foolish to sell it at bargain price and that has forced three business from that property. Mr. Jarvis said that one of the businesses was Fresh Foods which has moved next to the Mississippi Flyway for ten times the rent. Gasoline Alley is also moving out of town. They have four or five employees and they are moving south to Makanda because they could not find anything quick enough to relocate that was feasible within their economic means. Mr. Jarvis said he just wanted to make sure he was not on the chopping block in the next year or so, or five. City Manager Doherty said that he would contact Mr. Jarvis in the next day or so and provide him with additional information and answer more of his questions.

Mayor Cole said the Council is in a public hearing to discuss the quick take of property in the 300 block of East Walnut Street and East Marion Street. He invited other comments or questions from the audience. There were none. Noting that he had invited comments or questions four times and there appeared to be no one else who wanted to speak, Mayor Cole declared the hearing closed at 7:35 p.m..

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Janet M. Vaught, City Clerk

Approved by the City Council on:

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