

INTERNATIONAL RIGHT OF WAY ASSOCIATION
CHAPTER 12
LEGAL SYMPOSIUM
APRIL 20, 2016

EMINENT DOMAIN
CONDEMNATION
REPRESENTING THE GOVERNMENT







INTERNATIONAL RIGHT OF WAY ASSOCIATION LEGAL SYMPOSIUM





INTERNATIONAL RIGHT OF WAY ASSOCIATION LEGAL SYMPOSIUM



INTERNATIONAL RIGHT OF WAY ASSOCIATION LEGAL SYMPOSIUM



INTERNATIONAL RIGHT OF WAY ASSOCIATION LEGAL SYMPOSIUM

I. INTRODUCTION

A. Power of Eminent Domain

B. Authority to Exercise Power

1. Statutory Enabling
2. Home Rule-Local Govt.

C. Quasi-Public



Illinois Constitution – Article I, Section 15 provides “[p]rivate property shall not be taken or damaged for public use without just compensation”

INTERNATIONAL RIGHT OF WAY ASSOCIATION LEGAL SYMPOSIUM



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I. INTRODUCTION

A. Power of Eminent Domain

B. Authority to Exercise Power

1. Statutory Enabling
2. Home Rule-Local Govt.

C. Quasi-Public

1. Railroads
2. Utilities



Illinois Constitution – Article I, Section 15 provides “[p]rivate property shall not be taken or damaged for public use without just compensation”

INTERNATIONAL RIGHT OF WAY ASSOCIATION

CHAPTER 12 LEGAL SYMPOSIUM

II. UNDERSTANDING THE PROJECT AND PROPERTY

A. Know Timeline & Statutes

1. Condemnor: Notice requirements, negotiation and acquisition activities, court challenges
2. Owner's right-to-take challenges, valuation litigation, other administrative delays

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CHAPTER 12 LEGAL SYMPOSIUM

II. UNDERSTANDING THE PROJECT AND PROPERTY

B. Project Scope

1. What is the “project” definition?
2. Is the project phased?
3. Is there “project influence”?
4. Is the proposed use a public use?

CHIEF JUSTICE JOHN ROBERTS CONFIRMATION HEARING

DISCUSSING *KELO* DECISION



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CHAPTER 12 LEGAL SYMPOSIUM

II. UNDERSTANDING THE PROJECT AND PROPERTY

B. Project Scope

1. What is the “project” definition?
2. Is the project phased?
3. Is there “project influence”?
4. Is the proposed use a public use?
5. Review project route and impacted properties
6. Federal funds involved?

INTERNATIONAL RIGHT OF WAY ASSOCIATION LEGAL SYMPOSIUM

II. UNDERSTANDING THE PROJECT AND PROPERTY

C. Project Timeline

1. When must title be acquired?
2. When must possession be obtained?
3. Is there legal authority (quick take) to acquire property timely?
4. When will Construction commence?
5. Avoid the “Holdout” Problem

THE LAST HOLDOUT



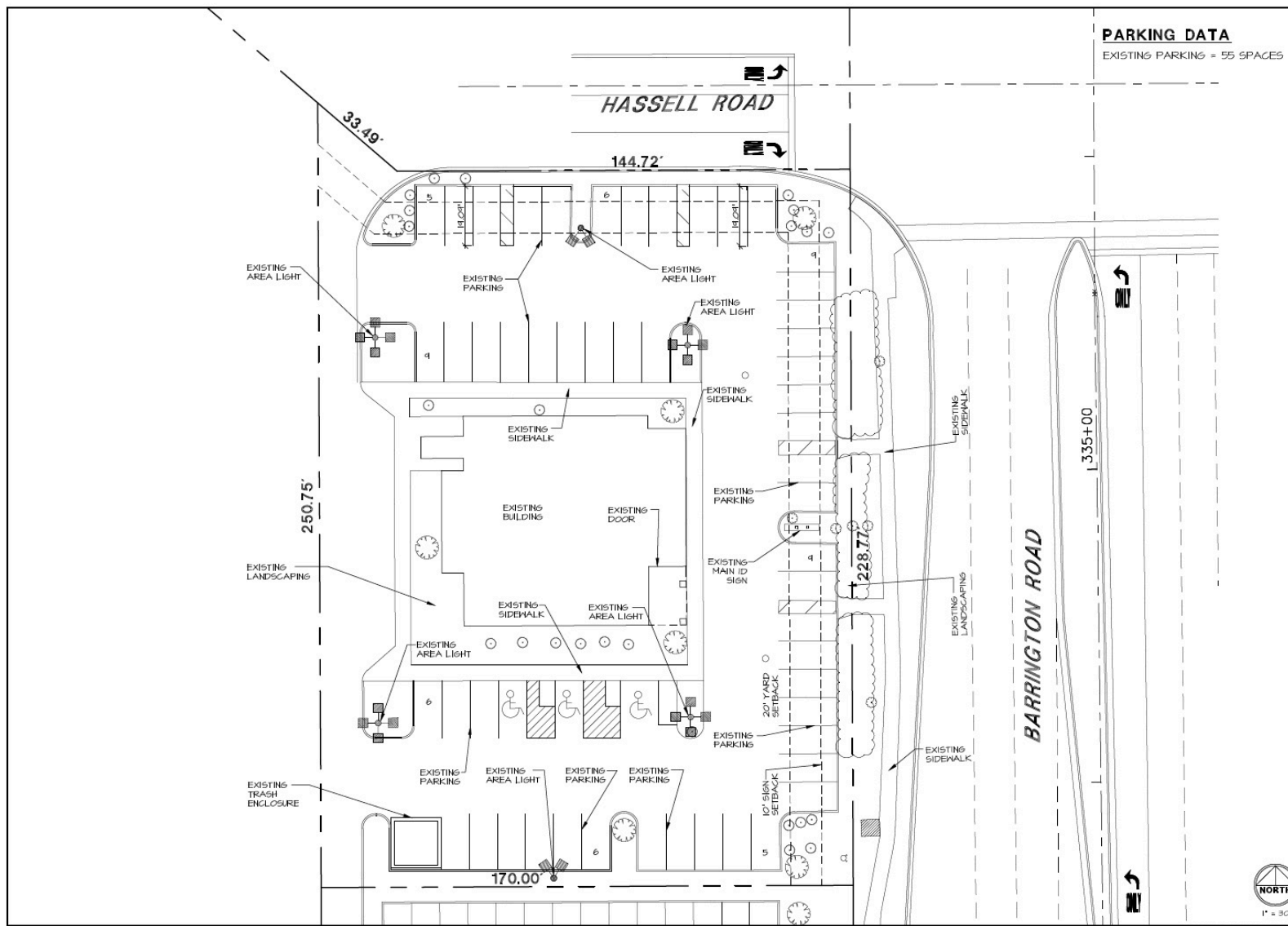
INTERNATIONAL RIGHT OF WAY ASSOCIATION LEGAL SYMPOSIUM

II. UNDERSTANDING THE PROJECT AND PROPERTY

E. Identify Problem Areas or High-Risk Issues Early

1. Communicate with engineers and acquisition staff





PARKING DATA
EXISTING PARKING = 55 SPACES

DATE	BY

W-T CIVIL ENGINEERING, LLC
SINCE 1988
2250 BARRINGTON ROAD
HOFFMAN ESTATES, ILLINOIS 60130
TEL: 847.836.1100
WWW.WTENGINEERING.COM
ILL. LICENSE NO. 18-0000002 Exp. 6/30/18

W-T

PARCEL 0K70002
2250 BARRINGTON ROAD
HOFFMAN ESTATES, ILLINOIS

EXISTING
SITE
PLAN

DATE: 10-4-14
SCALE: 1" = 30'
DRAWN: JEP
CHECKED: JDA
JOB: CE14024
SHEET



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EX-1

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II. UNDERSTANDING THE PROJECT AND PROPERTY

E. Identify Problem Areas or High-Risk Issues Early

1. Communicate with engineers, acquisition staff, and owners
2. Can the condemnor modify the project design to avoid or mitigate a high-risk issue?

F. Title Review

1. Obtain and examine title report for property to be acquired
2. Determine property interests to be extinguished or acquired
3. Perform a conflicts check for all parties

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III. REVIEW THE APPRAISAL PROCESS

A. Has an appraiser been selected?

1. If not, help with or direct the choice of appraiser.
2. If so, learn what you can about him/her and consider your options.

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III. REVIEW THE APPRAISAL PROCESS

B. Has an appraisal been done?

1. If yes, review and meet with appraiser to discuss any issues raised by owner.
2. If not, meet with appraiser and review legal and valuation issues, i.e....

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III. REVIEW THE APPRAISAL PROCESS

B. Has an Appraisal Been Done? (Cont'd)

1. Highest and best use
2. Damages
3. Benefits
4. Project Influence Issues

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III. REVIEW THE APPRAISAL PROCESS

C. Consider and Discuss all potential damages issues

D. Do you need a non-valuation expert?

1. Traffic Engineer
2. Land Planner/Zoning
3. Cost Estimator
4. Civil Engineer

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III. REVIEW THE APPRAISAL PROCESS

- E. Meet with sub experts and give them assignments

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IV. INITIATING PROCEEDINGS GENERAL CONSIDERATIONS

A. State Acquisitions

1. Appraised value offered
2. Appraisal produced
3. 60-day Notice before filing

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IV. INITIATING PROCEEDINGS GENERAL CONSIDERATIONS

B. Local Government and Municipalities

1. Enabling Ordinance

2. Good Faith Negotiations

a. *City of Naperville v. Old Second National Bank*, 763 N.E.2d 951, 327 Ill. App.3d 734 261 Ill.Dec 702 (Ill. App. 2002)

i. Offers significantly lower than appraised value likely bad faith

ii. App ct. noted the gov't obligation to protect taxpayer funds was outweighed by owner's constitutional right to just compensation

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IV. INITIATING PROCEEDINGS GENERAL CONSIDERATIONS

B. Local Government and Municipalities

1. Enabling Ordinance

2. Good Faith Negotiations

*b. Forest Preserve District of DuPage County v.
First National Bank of Franklin Park, 961 N.E.
2d 775 (2011)*

*i. Offer 10% less than appraised value not
bad faith negotiations (an appraisal lower
than offer was obtained after offer made)*

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V. INITIATING PROCEEDINGS SPECIFIC CONSIDERATIONS

A. Subject Property

1. Inspect

a. Google Maps

b. Visit the Site

2. Read Appraisal Report

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V. INITIATING PROCEEDINGS SPECIFIC CONSIDERATIONS

A. Subject Property (Cont'd)

3. Quick Take Preparation

1. Begin Expert Assembly Early
2. To Acquire Property Timely

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V. INITIATING PROCEEDINGS SPECIFIC CONSIDERATIONS

C. Pleadings

1. Complaint for Condemnation
2. Quick Take Proceedings

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V. INITIATING PROCEEDINGS SPECIFIC CONSIDERATIONS

C. Pleadings (Cont'd)

2. Quick Take Proceedings (Cont'd)

a. Motion for Immediate Vesting of Title

- i. Right to use Quick-Take Power
- ii. Property Sought Subject to that Power
- iii. Necessary to use Quick Take Authority
- iv. Amount

THE HOLDOUT VS. CONTRACTORS

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V. INITIATING PROCEEDINGS SPECIFIC CONSIDERATIONS

C. Pleadings (Cont'd)

3. Defense Motions

a. Challenge to State Takings

- i. Statutory Requirements
- ii. Agency Policy Procedure

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V. INITIATING PROCEEDINGS SPECIFIC CONSIDERATIONS

D. Amendment to Complaint

1. Right to Amend

2. Amendment Raises Potential Issues

- a. *Dept. of Trans. v. Northern Trust Co.*, 59 Ill.App. 3d 1053, 376 N.E. 2d 286, 17 Ill.Dec. 28, (1978).
- b. *Dept. Public Works and Buildings v. Lanter* 15 Ill. 2d 33, 153 N.E. 2d 552, (1958)

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V. INITIATING PROCEEDINGS SPECIFIC CONSIDERATIONS

D. Amendment to Complaint (cont.)

3. New Valuation Date

- a. *Dept. of Trans. of the State of Illinois v. LaSalle National Bank*, 430 N.E. 2d 286, 102 Ill.App. 3d 1093, 58 Ill. Dec. 344 (Ill.App. 2 Dist., 1981).

4. Abandonment Claim

- a. *For. Pres. Dist. of DuPage Co., v. First National Bk of Franklin Park,* 356 Ill.Dec. 386, 961 N.E. 2d 775, 2011 IL 110759 (Ill., 2012)

5. Attorney's Fees and Costs

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V. INITIATING PROCEEDINGS SPECIFIC CONSIDERATIONS

E. Abandonment

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V. INITIATING PROCEEDINGS SPECIFIC CONSIDERATIONS

(735 ILCS 30/20-5-40) (was 735 ILCS 5/7-110)

Sec. 20-5-40. Dismissal; abandonment. After the plaintiff has taken possession of the property pursuant to the order of taking, the plaintiff shall have no right to dismiss the complaint or to abandon the proceeding, as to all or any part of the property so taken, except upon the consent of all parties to the proceeding whose interests would be affected by the dismissal or abandonment.

(Source: P.A. 94-1055, eff. 1-1-07.)

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V. INITIATING PROCEEDINGS SPECIFIC CONSIDERATIONS

E. Abandonment

1. Right to Abandon Prior to Taking Possession/Paying Award

a. Pay Attorney's Fees and Costs

- i. *City of Chicago v. Harris Trust & Savings Bank*, 346 Ill.App.3d 609 (1st Dist. 2004) Abandonment after deposit of award but prior to taking possession

b. Future Condemnation

c. Potential Temporary Takings Claim

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V. INITIATING PROCEEDINGS SPECIFIC CONSIDERATIONS

E. Abandonment (Cont'd)

2. After Quick Take and Possession

a. Only with Consent of the Parties

i. 735 ILCS 30/20-5-40

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VI. VALUATION

A. Generally

1. Just Compensation – IPI 300.80

- a. “Just Compensation” means the fair cash market value of the property at its highest and best use on the date of Valuation

INTERNATIONAL RIGHT OF WAY ASSOCIATION LEGAL SYMPOSIUM

VI. VALUATION

1. Just Compensation – IPI 300.80 (Cont'd)

- a. “Fair Cash Market Value” means that price which a willing buyer would pay in cash and a willing seller would accept, when the buyer is not compelled to buy and the seller is not compelled to sell – IPI 300.81

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VI. VALUATION

2. Highest and Best Use – IPI 300.84 (Cont'd)

a. “Highest and best use” means that use which would give the property its highest cash market value of the date of valuation. This may be the actual use of the property on that date or a use to which it was then adaptable and which would be anticipated with such reasonable certainty that it would enhance the market value on that date – IPI 300.84

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VI. VALUATION

B. Appraisals - Considerations

1. What are major differences/discrepancies in Condemnor/Condemnee Appraisals?
 - a. Approach – Income/Comparable Sales/Market
 - b. Comparable Sales
 - c. Highest and Best Use Analysis

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VI. VALUATION

B. Appraisals - Considerations

2. Drive All Comparable Sales
3. Talk to Listing/Selling Brokers
4. Get Conveyance/Transactional Documents

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VI. VALUATION

C. Considerations To Challenging Appraisal Experts

1. “Smoking Gun” – Ready to File Motion to Bar
2. But First Consider... If You Win
 - a. Will Court Allow Expert to Rehabilitate Opinion?
 - b. Or a New Expert Altogether?

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VI. VALUATION

C. Considerations To Challenging Appraisal Experts (Cont'd)

3. Are You Just Educating Your Opponent Who Can Recover and Regroup?
 - a. Save for Trial – May Be No Time to Recover/Rehabilitate

INTERNATIONAL RIGHT OF WAY ASSOCIATION LEGAL SYMPOSIUM

VI. VALUATION

C. Considerations To Challenging Appraisal Experts (Cont'd)

4. Will Your Opponent File Same or Other Challenge to Bar Your Expert?

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VII. EXHIBITS/TRIAL PREPARATION

- A. Develop Your Theme Early – Exhibits Tell Story Focusing on Theme
- B. Seek Stipulation Before Trial on Admission/Use At Trial
- C. Consider Use of Electronic Exhibits
 - 1. Spend Time and \$\$\$\$ on Demonstrative Exhibits
 - 2. Maps
 - 3. Aerial Photos with Overlays

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VII. EXHIBITS/TRIAL PREPARATION (Cont'd)

D. Mount Important Exhibits on Boards

E. Review Carefully with All Experts for Accuracy

1. Avoid Surprises

F. Legal Issues

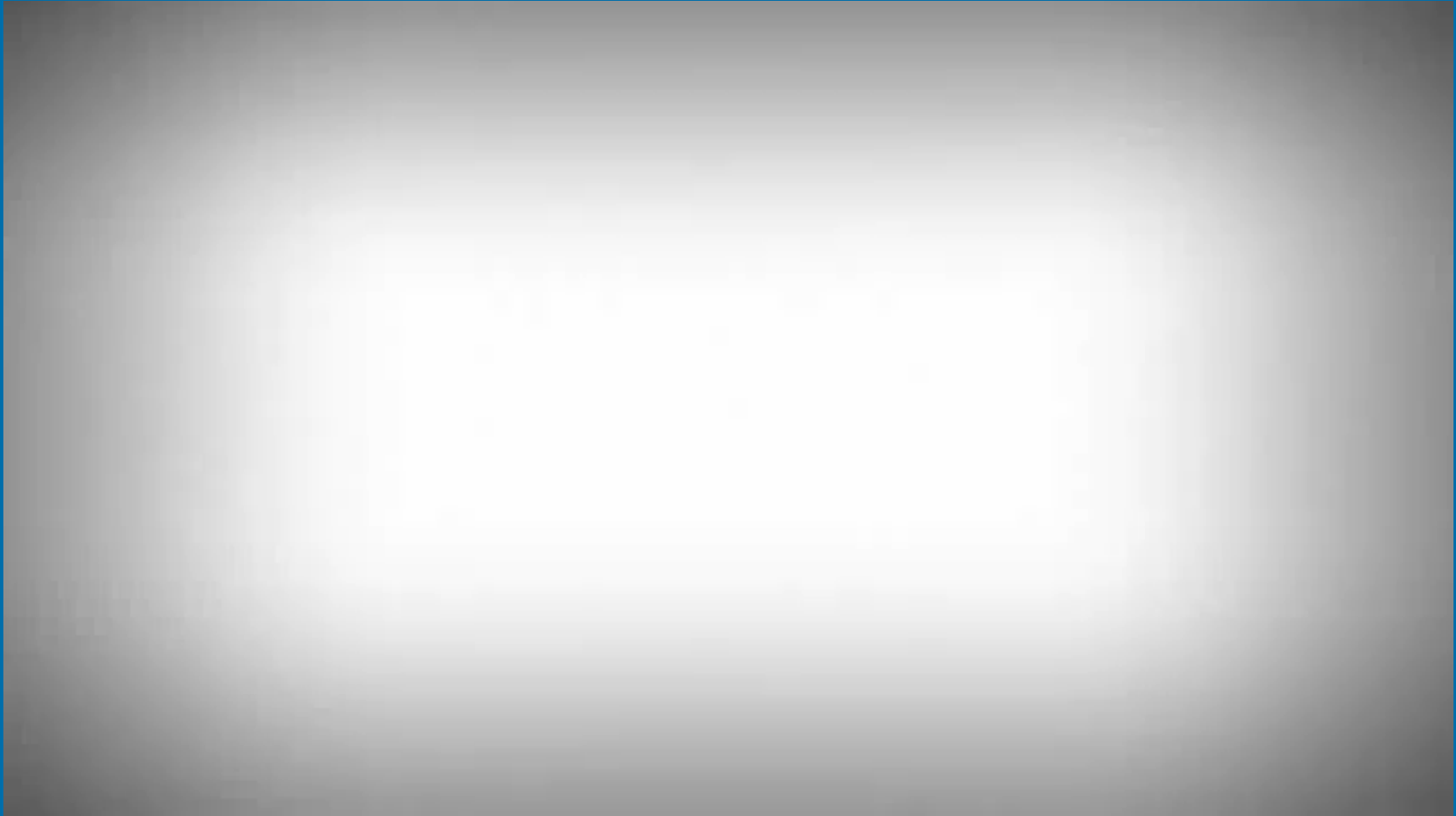
1. Copies of Decisions to Support or Resist Objections to Evidence/Witness

2. Illinois Eminent Domain Act

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VIII. CASE STUDY – RAILROAD CORRIDOR

HOUSE IN ROADWAY KNOCKED DOWN



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