

BATAVIA PARK DISTRICT

ORDINANCE NO. 289

**AN ORDINANCE AUTHORIZING AND RATIFYING
THE EXECUTION OF AN AGREED
STIPULATION AND DISMISSAL ORDER**

**ADOPTED BY THE PRESIDENT AND BOARD OF COMMISSIONERS OF THE
BATAVIA PARK DISTRICT, KANE COUNTY ILLINOIS THIS 16 DAY OF
February, 2010**

**PUBLISHED IN PAMPHLET FORM BY AUTHORITY OF THE BOARD OF
COMMISSIONERS OF THE BATAVIA PARK DISTRICT, KANE COUNTY, ILLINOIS
AS PROVIDED BY LAW THIS 16 DAY OF February, 2010**

ORDINANCE NO. 289

**AN ORDINANCE AUTHORIZING AND RATIFYING
THE EXECUTION OF AN AGREED
STIPULATION AND DISMISSAL ORDER**

WHEREAS, The Batavia Park District, County of Kane, State of Illinois has the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs to protect the public health, safety and welfare of its citizens; and

WHEREAS, The Illinois Constitution of 1970 and Section 1205/8-1 of the Illinois Park District Code authorize the Park District to exercise the right of eminent domain by condemnation proceedings to acquire property that is useful, advantageous or desirable for park purposes or the public welfare, including building recreational park facilities; and

WHEREAS, the Park District has determined that certain property located at 103 South River Street is useful, advantageous and desirable for parks, recreational facilities and amenities and, accordingly, filed a suit in the Circuit Court of Kane County pursuant to its eminent domain powers to acquire said property, said case being styled 08 ED 5 (the "Litigation"); and,

WHEREAS, the Park District has defaulted various defendants and obtained judgment against them and has reached a settlement with the owners of record concerning the amount to be paid in fair compensation, said Agreed Stipulation and Order being attached hereto as Exhibit 1; and

WHEREAS, the Board of Commissioners has previously authorized corporate counsel to take action in Court proceedings to achieve this settlement and counsel executed said Stipulation on behalf of the Park District and presented same to the Court; and

WHEREAS, the Board of Commissioners of the Batavia Park District desire to ratify that act and make it their own, *nunc pro tunc*.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF COMMISSIONERS OF THE BATAVIA PARK DISTRICT, COUNTY OF KANE, STATE OF ILLINOIS, AS FOLLOWS:

SECTION ONE: The facts and statements contained in the preambles to this Ordinance are found to be true and correct and are hereby adopted as part of this Ordinance.

SECTION TWO: The terms of the Agreed Stipulation and Dismissal Order are hereby approved and the act of counsel executing the same is hereby ratified and approved, *nunc pro tunc*, and made the act of the Board of Commissioners. The Executive Director is further authorized and directed to pay such amounts and take such actions as ordered by the Court in the Litigation to secure title to the Property and take possession of same.

SECTION THREE: This Ordinance shall be in effect immediately from and after its passage and approval.

SECTION FOUR: REPEAL OF PRIOR ORDINANCES. All prior Resolutions and

Ordinances in conflict or inconsistent herewith are hereby expressly repealed to the extent of such conflict or inconsistency.

APPROVED and ADOPTED by the Park District President and Board of Commissioners of the Batavia Park District this 16 day of February, 2010 pursuant to roll call vote as follows:

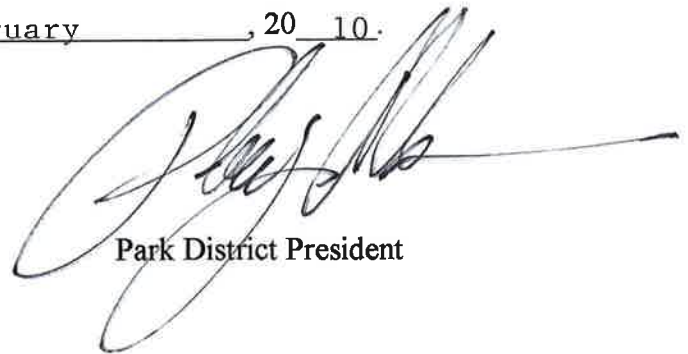
AYES: Behmer, Tilmon, Corken, Foiles, Callahan

NAYS: _____

ABSENT: _____

ABSTAIN: _____

APPROVED this 16 day of February, 2010.



Park District President

ATTEST:



Park District Secretary

CERTIFICATION

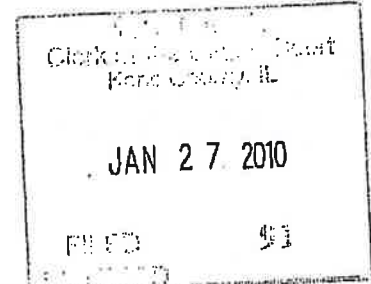
I, the undersigned, do hereby certify that I am the Park District Secretary of the Batavia Park District, Kane County, Illinois, and that the foregoing is a true, complete, and exact copy of Ordinance 2010 - 289 enacted on February 16, 2010, and approved on February 16, 2010, as the same appears from the official records of the Batavia Park District.



Park District Secretary

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL DISTRICT
KANE COUNTY, STATE OF ILLINOIS

BATAVIA PARK DISTRICT,)
an Illinois municipal corporation,) No. 08 ED 5
Plaintiff,)
) Judge Colwell
v.)
) Common Address:
PAUL AND KAREN DUCOFF, et al.,) 103 S. River Street
Defendants.) Batavia, IL 60510



AGREED STIPULATION AND DISMISSAL ORDER

This cause having come before the Court for entry of certain stipulations and a final judgment order ("Order") resolving all issues in this matter, the Court being advised in the premises, THE COURT HEREBY ORDERS AS FOLLOWS:

A. Plaintiff Batavia Park District ("District"), a home rule municipal corporation, brought this action pursuant to its power of eminent domain, to take title to that certain real property hereinafter described in **Exhibit A** attached hereto, commonly known as 103 South River Street, Batavia, Illinois 60510 ("the Property"), for public purposes. Defendants Paul and Karen Ducoff ("Owners") are the legal owners of record of the Property; Defendant Mortgage Electronic Registration Systems, Inc. ("MERS"), as nominee for Old Second Mortgage Co., purports to hold a mortgage interest; Defendants Jessi De Martini ("De Martini") and Mary and William Coleman ("Coleman") have purported leasehold interests; and Defendants Unknown Owners are all others who may have any interest in the Property (collectively Owners, MERS, De Martini, Coleman and Unknown Owners are referred to hereafter as "Defendants".)

B. All Defendants were served with process, personal or by publication, and the Court has jurisdiction of the parties and of the subject matter of these proceedings. The Defendants constitute all parties having any legal or beneficial interest in the Property. A default judgment has been entered against Defendants De Martini and Coleman and against all Unknown Owners.

C. The District and Owners have exchanged information and appraisals and with the assistance of their respective legal counsel, being fully informed of all of their rights under the law, including the right to have the amount of compensation determined by a jury, and in the interest of resolving this matter by settlement without the need for further litigation, the District and Owners hereby stipulate and agree, as approved and as hereby ORDERED by this Court, as follows:

1. The District and Owners hereby stipulate that the fair market value of the Property is Two Hundred Forty Thousand Dollars (\$240,000.00) and therefore the District shall pay, and Defendants shall accept said amount as full and fair compensation for all the Property taken in this action. The Court makes no assignment or allocation of value as among Defendants, but rather, awards the foregoing amount in gross, to be allocated among Defendants as they may agree among themselves or as determined by separate causes of action.

2. The just compensation to be paid by the District is full and final satisfaction of all takings, damages, costs and claims of all Defendants and any other person claiming any right, title or interest in the Property, arising out of or resulting from the District's Complaint for Condemnation (as amended), acquisition and use of the Property, and judgment is entered accordingly vesting all title and rights solely in the District upon payment of the Deposit as defined in paragraph 5 herein.

3. In addition to the compensation provided for in paragraph 5, the District also agrees to pay to Owners, and Owners agree to accept, the initial sum of \$ 11,100 which represents the amount of legal expenses, costs and fees incurred by Owners as of the entry of this Agreed Stipulation and Dismissal Order. Payment shall be made to Owners' legal counsel, Day & Robert, P.C. and shall be sent on or within thirty (30) days after entry of this Agreed Stipulation and Dismissal Order. The balance of any additional fees incurred until the just compensation proceeds are withdrawn shall be paid on or within thirty (30) days after entry of the final withdrawal order, and directed to Day & Robert, P.C..

4. Owners shall be responsible for ensuring that any tenant, licensee or other occupant of any part of the Property fully vacates the Property no later than June 15, 2010. The District shall be entitled to a writ of assistance, if necessary.

5. On July 1, 2010 ("Deposit Date"), the District shall deposit with the Treasurer of Kane County the sum of Two Hundred Forty Thousand Dollars (\$240,000.00) ("the Deposit") for the benefit of Defendants, as full and just compensation for the Property taken.

6. Upon making the Deposit, the District shall be thereby vested with the fee simple title to the Property, by operation of law, and the exclusive right to possess the Property. Upon the Deposit with the Treasurer of Kane County, Owners shall deliver exclusive and actual possession and control of the Property to the District.

7. Prior to the Deposit Date, Owners shall have the right to remove any and all improvements and fixtures from the Property, at Owners' respective sole cost and risk.

8. Following delivery of actual possession and control of the Property, Owners shall be entitled to petition the Court for leave to withdraw the Deposit, subject to reduction for accrued real estate taxes or other liens, if any. The District and Owners acknowledge that under 35 ILCS 200/9-185, the Property shall be deemed exempt from real estate taxes as of the date the Complaint for Condemnation was filed on June 11, 2008.

9. The Court shall have and retain jurisdiction over this cause to enforce all of the terms, provisions and conditions of this Order for the purpose of awarding the District or Defendants any writ of assistance with regard to the Property or the Deposit, and for the purpose of entering an order that the Treasurer of Kane County disburse the Deposit.

10. The District hereby represents and warrants to Defendants as follows:

a. The performance by the District of its obligations hereunder will not violate any other agreement to which the District is a party or any court order or decree by which the District is bound.

b. There is no litigation pending against the District that could prevent the District from performing its obligations in accordance with the terms of this Order.

11. Each party waives its rights of appeal in this cause.

12. Owners represent and warrant that:

a. No litigation or proceedings are pending or, to Owners' actual knowledge, threatened against Owners that could affect the ability of Owners to perform their obligations in accordance with the terms of this Order.

b. The execution of the Order by Owners does not constitute or will not, upon the giving of notice or lapse of time, or both, constitute a breach or default under any other agreement which may affect the Property, to which Owners are a party or may be bound or affected, or a violation of any law or court order which may affect the Property, any part thereof, or any interest therein or the use thereof.

c. Owners have full power and authority to execute and deliver this Order and to perform their obligations set forth herein.

d. Except for mortgages and other liens, if any, which can and shall be satisfied by the Owners' payment of money, and except for real estate taxes and assessments not due and payable, Owners have not (i) granted, suffered or permitted any lien, claim or encumbrance upon the Property or any portion thereof; (ii) permitted or suffered any levy, attachment, claim or restraint to be made affecting the Property; or (iii) executed any leases, licenses or other occupancy or use agreements affecting the property which will not be terminated or end before the Deposit Date.

13. This Order is final and disposes of all issues which have been raised or which could have been raised in this action. There is no just cause to delay entry or enforcement of this Order.

[SIGNATURES TO FOLLOW ON NEXT PAGES]

ENTERED:

JUDGE

Date

AGREED:

Plaintiff:

BATAVIA PARK DISTRICT, an Illinois municipal
corporation

BY: _____

ITS: President of the Board of Commissioners

Date

Defendants:

PAUL DUCOFF

KAREN DUCOFF

Date

Prepared by:
Derke J. Price
Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C.
1111 E. Warrenville Road
Naperville, IL 60563
630-596-4612

ENTERED:

JAN 27 2010

JUDGE

MICHAEL J. COLWELL

Date

AGREED:

Plaintiff:

BATAVIA PARK DISTRICT, an Illinois municipal corporation

BY:

[Signature]
Attorney in Fact

ITS:

[Signature]
Attorney

1-27-10

Date

Defendants:

[Signature]
PAUL DUCOFF

[Signature]
KAREN DUCOFF

1/27/10

Date

Prepared by:
Derke J. Price
Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C.
1111 E. Warrenville Road
Naperville, IL 60563
630-596-4612

EXHIBIT A

Legal Description

Common Address: 103 South River Street, Batavia, Illinois 60510

Permanent Index Number: 12-22-259-001

Legal Description:

THE NORTH 80 FEET MEASURED ALONG THE EAST LINE OF THAT PART OF BLOCK 4 OF WILSON'S ADDITION TO BATAVIA LYING EASTERLY OF A LINE DRAWN FROM A POINT ON THE NORTH LINE OF SAID BLOCK, 140.5 FEET WEST OF THE NORTHEAST CORNER THEREOF TO A POINT ON THE SOUTH LINE OF THE NORTH 198 FEET MEASURED ALONG THE EAST LINE OF SAID BLOCK, 126.5 FEET WEST OF THE EAST LINE OF SAID BLOCK, IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS.