

County of Kane
Office of County Board
Kane County Government Center

Karen McConnaughay
Chairman
630-232-5930



719 Batavia Avenue
Geneva, Illinois 60134
Fax 630-232-9188

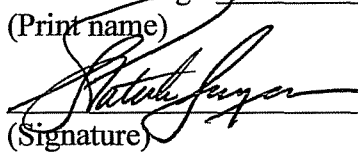
DOCUMENT VET SHEET
for
Karen McConnaughay
Chairman, Kane County Board

Name of Document: Real Estate Acquisition Agreement

Submitted by: J. Patrick Jaeger

Date Submitted: April 19, 2011

Examined by: J. Patrick Jaeger
(Print name)


(Signature)

April 19, 2011
(Date)

Post on Web: Yes No Atty. Initials 

Comments: Orchard Road right of way Acquisition for Jerciho to Bypass 30

Road Widening

Chairman signed: Yes No 5.5.11
(Date)

Document returned to: PAT JAEGER

HIGHWAY RIGHT OF WAY ACQUISITION AGREEMENT

This Agreement entered into this ___ day of March 2011 by and between Donald J. Hamman and Carol S. Hamman (hereinafter collectively referred to as the "Sellers") and the County of Kane, a body corporate and politic of the State of Illinois (hereinafter referred to as the "Buyer"). The Sellers and the Buyer are hereinafter collectively referred to as the "Parties" and are individually sometimes referred to as a "Party".

WITNESSETH

Whereas, the Sellers own certain Real Estate located adjacent to Kane County Highway No.: 83 (also known as Orchard Road) within the limits of the proposed widening improvement of Orchard Road between its intersections with County Highway No. 24 (also known as Jericho Road) and Illinois State Route 30 (hereinafter the "Improvement") which Real Estate is located on the west side of Orchard Road at its intersection with Aucutt Road in Sugar Grove Township (P.I.N. 14-36-200-001 and 14-36-479-001) in the County of Kane, State of Illinois. Said Real Estate is legally described in Exhibit "A" which is attached hereto incorporated herein and made a part hereof. The Sellers also own certain Real Estate located adjacent to Orchard Road within the limits of the Improvement which Real Estate is located on the east side of Orchard Road northeast of the its intersection with Aucutt Road in the Village of Montgomery, Sugar Grove Township (P.I.N. 15-31-100-008) in the County of Kane, State of Illinois. The property identified by the P.I.N.s. 14-36-200-001, 14-36-479-001 and 15-31-100-008 are hereinafter collectively referred to as the "Real Estate"; and,

Whereas, the Buyer desires to acquire, in fee simple from the Seller, part of the Real Estate for highway right of way purposes. That part of the Real Estate that the Buyer desires to acquire from the Seller in fee simple for right of way purposes is legally described in Exhibit "B" which is attached hereto, incorporated herein and made a part hereof and is hereinafter referred to as the "Right of Way". The Real Estate minus the Right of Way is hereinafter referred to as the "Remainder"; and,

Whereas, the Buyer desires to acquire from the Seller and the Seller desires to grant a temporary easement for highway construction purposes over, upon, across, under and through that part of the Real Estate legally described in Exhibit "C" which Exhibit is attached hereto and incorporated herein. That part of the Real Estate described in Exhibit "C" is hereinafter referred to as the "Temporary Easement Premises"; and,

NOW THEREFORE in consideration of the preambles set forth hereinabove and for good and valuable consideration, the sufficiency of which is agreed to by the Parties, both the Buyer and the Seller covenant, agree and bind themselves as follows, to wit:

1. The parties hereto acknowledge and agree that the preambles as set forth hereinabove are made a part of and incorporated into this Agreement.
2. The Buyer agrees to purchase and the Seller agrees to sell and convey the Right of Way and all improvements thereon, on the terms and conditions contained herein.

3. The total purchase price for the Right of Way, any damages, including damage to the Remainder and the Temporary Easement shall be Seven Hundred Forty Six Thousand Three Hundred Fifty Six Thousand Dollars (\$746,356.00) (hereinafter purchase price) and shall be tendered by County of Kane check from the Buyer to the Seller at closing minus any applicable prorations, (if any).
4. Closing and possession shall be held at 1:00 p.m. on or before the 31st day of March 2011 at the offices of the Buyer in Geneva, Illinois or as otherwise may be agreed to by the Parties (hereinafter "closing"). Both the closing and possession date is legally significant to both the Buyer and the Seller. The Parties understand that when this Agreement is signed by both the Buyer and the Seller, the closing and possession may only be changed by mutual agreement of the parties hereto.
5. In the event that any personal or real property is not removed from the Right of Way or the Temporary Easement at the time of closing, the Buyer shall be entitled to demolish and/or dispose of the same without reimbursement to the Seller for the value thereof.
6. The Buyer shall prepare a plat of survey for the Right of Way, and the Temporary Easement, and shall also prepare for the signature of the Seller, which will be executed by the Seller at closing, the Warranty Deed, the Temporary Easement documents, the affidavit of title and any documents as required by the Buyer and the Internal Revenue Code. The Buyer shall also be responsible for obtaining a commitment for title insurance at the Buyer's cost.
7. The Seller shall convey to the Buyer, by a recordable warranty deed, with release of homestead rights (if any), conveying good, marketable and merchantable title to the Right of Way as described in Exhibit "B" and subject only to the following described exceptions: covenants conditions and restrictions of record provided they are not violated nor contain a reverter or right of re-entry, zoning laws and ordinances, easement for public utilities, drainage ditches, feeders, laterals, drainpipe tile or other conduit, and if applicable installments or assessments due after the date of closing. At closing the Seller shall grant to the Buyer the Temporary Easement by executing duplicate originals of Exhibit "D" on the terms and conditions and in the same form as contained in said Exhibit "D". Said Temporary Easement Agreement shall be tendered to the Buyer from the Seller at closing.
8. In the event that the Buyer can not obtain title insurance over any Schedule "B" exceptions (except those provided in Paragraph No. 7 above), any amount sufficient to secure the release of said exceptions shall be deducted from the proceeds of the sale at closing. However, the Seller shall have an opportunity to cure said exceptions prior to the date of closing. In the event that the title commitment shows encroachments or exceptions not acceptable to the Buyer, the Seller shall have said exceptions removed prior to closing, or alternatively obtain a policy of insurance to insure over said exceptions. If the Seller is unable to either remove said exceptions or have said exceptions insured over, the Buyer may terminate this contract at no expense to either the Buyer or the Seller.

9. General real estate taxes and any rents, deposits or other assessments shall be prorated up to and including the date of closing.
10. If prior to the delivery of the deed hereunder, the Right of Way and/or the Temporary Easement or any part thereof is materially damaged by any casualty, the Buyer shall have the option of terminating this Agreement with no liability therefor accruing to the Buyer.
11. Seller agrees to leave the Right of Way and the Temporary Easement Premises in clean and orderly condition. All refuse, personal property and personal matter shall be removed at the Seller's expense prior to the date of possession.
12. Seller represents that no notice has been received of any zoning, building, fire or health code violations, environmental regulation or of any pending special assessment proceedings affecting the Real Estate.
13. Any and all notices given pursuant to this Agreement shall be in writing and signed by the Seller and the attorney for the Buyer and shall be given by certified mail or in person at the addresses hereinbelow. Notice to any one of a multiple person party shall be notice to all.
14. The date of this Agreement shall be the last date of acceptance of this contract as provided herein below.
15. If this Agreement is terminated without Buyer's fault, or if Seller defaults hereunder, Buyer may elect either to (i) terminate Buyer's obligations under this Contract by written notice to Seller, or alternatively (ii) Buyer may file an action for specific performance of this Contract to compel Seller to convey subject to the Permitted Exceptions and Survey Matters with a set off for liens of a definite and ascertainable amount and with Seller being liable for all litigation costs, fees and expenses incurred by Buyer in pursuing that remedy, if Buyer prevails in such action. If Buyer defaults hereunder, then Seller may terminate this Agreement or at the option of the Seller pursue the remedy of specific performance with Buyer being liable for all costs, fees and expenses incurred by Seller in pursuing that remedy, if Seller prevails in such action.
16. Seller hereby represents, to the best of the Seller's to Buyer as follows, which representations and warranties shall be deemed remade by Seller to Buyer at the closing, and which shall survive the closing:
 - (a) To Seller's knowledge, there is no pending or threatened litigation affecting the Right of Way or the Temporary Easement Premises, nor to the best knowledge and belief of Seller is any such litigation contemplated by any party with the exception of the Buyer to acquire the Right of Way and the Temporary Easement Premises for purposes of the Improvement;
 - (b) Seller has received no notice of, and has no actual knowledge of, any change that is contemplated with respect to the zoning of the Right of Way or the Temporary Easement

Premises, the availability of utility services to the Right of Way and the Temporary Easement violation of any existing law, municipal ordinance or other governmental regulation, contemplated or threatened condemnation, or any other matter which would affect the Right of Way and or the Temporary Easement;

- (c) Seller has the authority to execute and perform the terms of this Agreement; and,
- (d) Seller has not received notice of any violations of local, state or federal laws including environmental laws, rules or regulations concerning the Right of Way and/or the Temporary Easement.

19. From and after the date hereof and so long as this Agreement is in effect, Seller shall not, without Buyer's prior written consent, execute any lease, license, contract, easement or other agreement affecting the Right of Way or the Temporary Easement Premises that will survive the Closing.

20. The Parties hereto acknowledge and agree that the existing ingress and egress locations (hereinafter collectively "access points") and more particularly described as the access point:

a) on the west side of Orchard Road at its intersection with Aucutt Road as depicted in Exhibit "E",

b) on the north side of that part of the Remainder, immediately west of Orchard Road as depicted on Exhibit "E";

shall remain upon the completion of the construction of the Improvement but shall be located adjacent to the property line between the Remainder and the Right of Way. The Parties further acknowledge and agree that as long as the Seller maintains the current zoning use of the Remainder, the above described access points shall not be eliminated by the Buyer. However, nothing contained herein shall be construed to limit or waive the Buyer's or the Kane County Engineer's right to control or restrict access pursuant to its police power as it relates to the access points. Both of the access points may be temporarily closed for periods of time less than twenty four (24) consecutive hours during the construction of the Improvement but shall otherwise remain open during said construction.

21. The Seller desires, during the construction of the Improvement to install a metal "casing" under the right of way of Orchard Road and the Right of Way for purposes of future installation of a water main traveling in an east-west direction between the Seller's property on the east side of Orchard Road to the Seller's property on the west side of Orchard Road to accommodate the water needs of the property west of Orchard Road. The location of said casing is generally depicted on Exhibit "F" as "Water Main Casing". Any vaults located on either side of the casing shall not be located in the Right of Way or in the right of way of Orchard Road. Notwithstanding anything herein to the contrary, the design and installation of the casing shall be:

a) pursuant to a Right of Way Alteration Permit and as may be otherwise be required by the KDOT-TPR which are in effect as of the date of the execution of this Agreement.

b) let for bid by the Buyer as part of the Buyer's Improvement construction contract only if the Seller has the casing design and installation coordinated with and approved by the Buyer's consulting engineer in writing in time for the Buyer to let the contract for the Improvement. In the event that the casing design and installation is not approved by the Buyer's consulting engineer by _____, 2011, the Seller waives it right to have the casing installed during the construction of the Improvement

c) designed and installed at absolutely no expense of the Buyer and at the sole cost and expense of the Seller.

22. The Seller desires, during the construction of the Improvement to install a "return" for Aucutt Road on the west side of Orchard Road for the purpose of future access to Orchard Road from the Remainder. The location and configuration of the return shall be as generally depicted on "F" as the "Aucutt Road Return". Notwithstanding anything herein to the contrary, the design and installation of the return shall be:

a) pursuant to a Right of Way Alteration Permit (see Paragraph No. 21 (a) hereinabove) and as may be otherwise be required by the KDOT-TPR which are in effect as of the date of the execution of this Agreement.

b) let for bid by the Buyer as part of the Buyer's Improvement construction contract only if the Seller has the return design and installation coordinated with and approved by the Buyer's consulting engineer in writing in time for the Buyer to let the contract for the Improvement. In the event that the return design and installation is not approved by the Buyer's consulting engineer by _____, 2011, the Seller waives it right to have the casing installed during the construction of the Improvement

c) designed and installed at absolutely no expense of the Buyer and at the sole cost and expense of the Seller.

23. The Parties acknowledge and agree that the grant of, or the future permitting by the County of the Access Points or any access point does not in any manner or fashion commit or otherwise require the County to either pay for in whole or in part or to otherwise contribute in whole or in part for any highway improvement required or otherwise associated with the granting, permitting and construction of any Access Points or any access point.

24. The Buyer agrees that the Seller, its successors, heirs and assigns and others may, upon proper application to the Buyer pursuant to a Right of Way Alteration Permit (see Paragraph

No. 21 (a) hereinabove) and as may be otherwise be required by the KDOT-TPR which are in effect as of the date of the application, seek to utilize any storm water detention or retention area that is constructed by the Buyer on that part of the Right of Way as depicted in Exhibit "G". The Seller acknowledges and agrees that in order to utilize any of the detention/retention area as aforesaid, the Seller, its successors, heirs and assigns shall be required at their sole cost and expense to design and construct any detention or retention capacity desired by the Seller, its successors, heirs and assigns and shall thereafter maintain at the sole cost and expense of the Seller, its successors, heirs and assigns the entire storm water detention / retention area and the Buyer shall have no longer have any maintenance responsibility therefor. Maintenance of the detention/retention area shall be to standards as established by the Buyer.

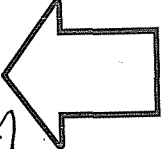
- 24. The Buyer agrees to provide to the Seller a form of written documentation evidencing that the Buyer has acquired the Right of Way and the Temporary Easements from the Seller under threat of eminent domain.
- 25. This Agreement may be amended only in writing upon the signatures of all the parties hereto.
- 26. This Agreement is executed and submitted by the Seller to the Buyer as of the date set forth below. A duplicate original of this Agreement, duly executed by the Seller shall be delivered to the Buyer not later than 10 business days from such date.

IN WITNESS WHEREOF, the Seller has executed this Agreement as of the ___ day of February 2011.

Date of Offer: February 23, 2011

Date of Acceptance: March __, 2011

Seller: Donald J. Hamman
Donald J. Hamman *by JP Duggan*

Buyer: Kare McComaugh 
Chairman, County Board
of Kane County
719 South Batavia Avenue
Geneva, Illinois 60134

Seller: Carol S. Hamman
Carol S. Hamman *by JP Duggan*

Address: 13351 Faxon Road
Plano, Illinois 60545

Fed. Tax I. D. No. _____

EXHIBIT "A"

Hamman Real Estate Holdings on Orchard Road near Aucutt Rd.

EXHIBIT "B"

Right of Way

EXHIBIT "C"

Temporary Easement Premises

EXHIBIT "D"

Temporary Easement Agreement

EXHIBIT "E"

Existing Access Points

EXHIBIT "F"

**General Casing Location
Return Configuration and Location**

EXHIBIT "G"

Detention/Retention Area Location

