

CT+E
BOOK 4298 PAGE 1571

A01962262

STATE OF ILLINOIS
ST. CLAIR COUNTY

06 FEB 21 AM 10:21

Michael T. Costello

RECORDER

MAIL TO:

Old Title & Escrow Service, Inc.

120 W. Main St., Suite 115

Belleville, IL 62220

To

RECORDER OF DEEDS

St. Clair County, Illinois

Attached is an Affidavit which I ask that you record and return to my office.

DO NOT REMOVE THIS PAGE; IT IS NOW PART OF THE DOCUMENT

01/20

25

The Affiant first being duly sworn upon his oath, states that his name is Richard Stein, 10518 Bee Hollow Road, Mascoutah, Illinois, and further states that he was born December 20, 1914 and has lived in the Fayetteville, St. Clair County area since his birth except for a period of four years during World War II.

He is familiar with the course of the Kaskaskia River and how it has changed over the years from 1924 to the present.

That there is a roadway or driveway which runs south from Route 15 to a property now owned by Donald Blue, David Blue, Harry O. Stein and others.

Attached is a description of the property owned by the Blues and Stein. (Exhibit A)

Attached is an affidavit which indicates the center line of that roadway. (Exhibit B)

That roadway has been in existence since prior to 1924. In 1924 I traveled the roadway as it is described on Exhibit B by horse and buggy with my father and continuously over the years used that roadway on a regular active basis. I worked on and watched others work on the bed of the roadway over the years.

In 2001 David C. Blue, Donald F. Blue, Donald A. Blue, Harry O. Stein, Sr. and Richard A. Ward filed suit in the Court of Claims in the State

of Illinois against the State of Illinois, Department of Natural Resources, No. 01 CC 2097.


I testified in a hearing on May 8, 2001, before the commissioner for the Court of Claims and described the use of that roadway in approximately 66 pages of testimony.

Without going into detail, suffice it to say the roadway which is described in the Affidavit was used by people who had club houses along the river. This is mostly at the northern end of the road and by the farmers who had farm fields to the south including the parcels owned by the Blues and Steins. Hunters and people going fishing also used the roadway. Loggers did also on occasion.

Other than the State of Illinois blocking off the access to the property which became the subject of the lawsuit before the Court of Claims, no one has ever denied anyone access along that road at any point or at any time. Use of the roadway as described on Exhibit B has been open, adverse, notorious and under claim of right.

This road was used by David C. Blue, Donald F. Blue, Donald A. Blue, Harry O. Stein, Sr. and Richard A. Ward and their guests and invitees without interruption except while the Court of Claims suit was pending.

Further Affiant sayeth nought.


RICHARD STEIN

STATE OF ILLINOIS)
) SS.
COUNTY OF ST. CLAIR)

Before me this day came RICHARD STEIN, known to me and known to be the person whose signature is affixed above, and acknowledged that he signed the foregoing Affidavit as his free and voluntary act.

SUBSCRIBED and SWORN to before me this 7th day of
February, 2006





Notary Public

SHERBUT-CARSON & ASSOCIATES, P.C.
CIVIL ENGINEERS - LAND SURVEYORS
LAND DEVELOPMENT CONSULTANTS

J.G. Sherbut, P.E., L.S.
Keith G. Carson, L.S.

4 MEADOW HEIGHTS PROFESSIONAL PARK
COLLINSVILLE, ILLINOIS 62234
☎ (618) 345-5454
FAX (618) 345-3017

Michael J. Graminski, L.S.
David B. Claxton, P.E., L.S.

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Land Description for David Blue
Parcel 2

44.00 Plus or Minus Acres

Lot 2 in part of the Northeast Quarter of Section 20 in Township 2 South, Range 6 West of the Third Principal Meridian, St. Clair County, Illinois, reference being had to the plat thereof recorded in the Recorder's Office of St. Clair County, Illinois, in Book of Plats "C" on Page 219 excepting that part of Lot 2 described as follows:

Commencing at the northwest corner of the Northeast Quarter of Section 20; thence South 88 degrees 51 minutes 57 seconds East, along the north line of the Northeast Quarter of Section 20, a distance of 335.00 feet to the Point of Beginning of the tract described herein; thence continuing South 88 degrees 51 minutes 57 seconds East, along said north line, a distance of 786.55 feet to the centerline of Little Mud Creek, formerly known as the Old Okaw River; thence South 31 degrees 59 minutes 48 seconds West, along said centerline, a distance of 79.11 feet; thence South 23 degrees 22 minutes 53 seconds West, continuing along said centerline, a distance of 100.86 feet; thence South 47 degrees 02 minutes 55 seconds West, continuing along said centerline, a distance of 114.01 feet; thence North 67 degrees 51 minutes 48 seconds West, a distance of 671.26 feet to the Point of Beginning and containing 2.24 acres.

Further excepting that part of Lot 2 described as follows:

Commencing at the northwest corner of the Northeast Quarter of Section 20; thence South 0 degrees 02 minutes 12 seconds East, along the west line of the Northeast Quarter of Section 20, a distance of 1154.44 feet to the Point of Beginning of the tract described herein; thence North 89 degrees 01 minutes 44 seconds East, a distance of 319.44 feet to the centerline of Little Mud Creek, formerly known as the Old Okaw River; thence South 26 degrees 51 minutes 22 seconds West, along said centerline, a distance of 140.90 feet; thence South 32 degrees 40 minutes 41 seconds West, continuing along said centerline, a distance of 123.63 feet; thence South 31 degrees 30 minutes 21 seconds West, continuing along said centerline, a distance of 13.96 feet to the south line of the Northwest Quarter of the Northeast Quarter of Section 20; thence North 89 degrees 30 minutes 54 seconds West, along said south line, a distance of 181.55 feet to the southwest corner of said Northwest Quarter of the Northeast Quarter of Section 20; thence North 0 degrees 02 minutes 12 seconds West, along the west line of the Northeast Quarter of Section 20, a distance of 234.71 feet to the Point of Beginning and containing 1.39 acres.

Also, part of Lot 3 in part of the Northwest Quarter of Section 20 in Township 2 South, Range 6 West of the Third Principal Meridian, St. Clair County, Illinois, reference being had to the plat thereof recorded in the Recorder's Office of St. Clair County, Illinois, in Book of Plats "C" on Page 219, said part of Lot 3 being more particularly described as follows:

Beginning at the northeast corner of the Northwest Quarter of Section 20; thence South 88 degrees 12 minutes 43 seconds West, along the north line of the Northwest Quarter of section 20, a distance of 824.10 feet; thence South 01 degrees 47 minutes 47 seconds East, a distance of 550.00 feet; thence South 77 degrees 59 minutes 58 seconds West, a distance of

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David B. Claxton, P.E., L.S.

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620.00 feet; thence South 12 degrees 00 minutes 02 seconds East, a distance 482.90 feet; thence North 89 degrees 01 minutes 44 seconds East, a distance of 1313.43 feet; to the east line of the Northwest Quarter of Section 20; thence North 0 degrees 02 minutes 12 seconds West, along said east line, a distance of 1154.44 feet to the Point of Beginning and containing 28.27 acres.

MJG
10/14/05
Job No. 2351a

Lot 3 in part of the Northwest Quarter of Section 20 in Township 2 South, Range 6 West of the Third Principal Meridian, St. Clair County, Illinois, reference being had to the plat thereof recorded in the Recorder's Office of St. Clair County, Illinois, in Book of Plats C on Page 219 excepting that part of Lot 3 described as follows:

Beginning at a point that is 824.1 feet West and 550 feet South of the Northeast corner of the Northwest Quarter of said Section 20;

Thence North 550 feet to the North line of said Section 20;

Thence West to the Northwest corner of said Section 20;

Thence South on the West line of said Section 20 to the centerline of the Old Channel of the Kaskaskia River;

Thence Southeasterly following the meandering of said centerline 435 feet to a point;

Thence Northeasterly to the Point of Beginning.

Further excepting that part of Lot 3 described as follows:

Beginning at the Northeast corner of the Northwest Quarter of Section 20;

Thence South $88^{\circ} 12' 43''$ West, along the North line of the Northwest Quarter of Section 20, a distance of 824.10 feet;

Thence South $01^{\circ} 47' 47''$ East, a distance of 550.00 feet;

Thence South $77^{\circ} 59' 58''$ West, a distance of 620.00 feet;

Thence South $12^{\circ} 00' 02''$ East, a distance 482.90 feet;

Thence North $89^{\circ} 01' 44''$ East, a distance of 1313.43 feet, to the East line of the Northwest Quarter of Section 20;

Thence North $0^{\circ} 02' 12''$ West, along said East line, a distance of 1154.44 feet to the Point of Beginning.

Also, part of Lot 2 in part of the Northeast Quarter of Section 20 in Township 2 South, Range 6 West of the Third Principal Meridian, St. Clair County, Illinois, reference being had to the plat thereof recorded in the Recorder's Office of St. Clair County, Illinois, in Book of Plats C on Page 219, said part of Lot 2 being more particularly described as follows:

Commencing at the Northwest corner of the Northeast Quarter of Section 20;

Thence South $0^{\circ} 02' 12''$ East, along the West line of the Northeast Quarter of Section 20, a distance of 1154.44 feet to the Point of Beginning of the tract described herein;

Thence North $89^{\circ} 01' 44''$ East, a distance of 319.44 feet to the centerline of Little Mud Creek, formerly known as the Old Okaw River;

Thence South $26^{\circ} 51' 22''$ West, along said centerline, a distance of 140.90 feet;

Thence South $32^{\circ} 40' 41''$ West, continuing along said centerline, a distance of 123.63 feet;

Thence South $31^{\circ} 30' 21''$ West, continuing along said centerline, a distance of 13.96 feet to the South line of the Northwest Quarter of the Northeast Quarter of Section 20;

Thence North $89^{\circ} 30' 54''$ West, along said South line, a distance of 181.55 feet to the Southwest corner of said Northwest Quarter of the Northeast Quarter of Section 20;

Thence North $0^{\circ} 02' 12''$ West, along the West line of the Northeast Quarter of Section 20, a distance of 234.71 feet to the Point of Beginning.

Except the coal, oil, gas and other minerals underlying the premises.

LEGAL DESCRIPTION

Lot number 13 in part of the Southeast Quarter of Section 17 in Township 2 South, Range 6 West of the Third Principal Meridian, St. Clair County, Illinois, reference being had to the plat thereof recorded in the Recorder's Office of St. Clair County, Illinois, in Book of Plats C on Page 217 excepting that part of Lot 13 described as follows:

Beginning at the intersection of the North line of said Lot 13 and the East line of the Southwest Quarter of Section 17;

Thence East on the North line of said Lot 13, a distance of 440 feet;

Thence Southwesterly to a point on the East line of the Southwest Quarter of said Section 17, said point being 515 feet South of the intersection of said East line and the North line of said Lot 13;

Thence North on said East line of the Southwest Quarter of Section 17, a distance of 515 feet to the point of beginning.

Also, part of Lot 2 in part of the Northeast Quarter of Section 20 in Township 2 South, Range 6 West of the Third Principal Meridian, St. Clair County, Illinois, reference being had to the plat thereof recorded in the Recorder's Office of St. Clair County, Illinois in Book of Plats C on Page 219, said part of Lot 2 being more particularly described as follows:

Commencing at the Northwest corner of the Northeast Quarter of Section 20;

Thence South $88^{\circ} 51' 57''$ East, along the North line of the Northeast Quarter of Section 20, a distance of 335.00 feet to the Point of Beginning of the tract described herein;

Thence continuing South $88^{\circ} 51' 57''$ East, along said North line, a distance of 786.55 feet to the centerline of Little Mud Creek, formerly known as the Old Okaw River;

Thence South $31^{\circ} 59' 48''$ West, along said centerline, a distance of 79.11 feet; thence South $23^{\circ} 22' 53''$ West, continuing along said centerline, a distance of 100.86 feet; thence South $47^{\circ} 02' 55''$ West, continuing along said centerline, a distance of 114.01 feet;

Thence North $67^{\circ} 51' 48''$ West, a distance of 671.26 feet to the Point of Beginning.

Except the coal, oil, gas and other minerals underlying the premises.

Reserving to Henry Stein, his heirs, successors and assignees an Easement for ingress and egress over and across that portion of the parcel herein conveyed described in the Affidavit and attachments recorded as Document number A01725937. This Easement shall run with the land and bind Grantees, successors and assigns.

*LeChien
or
LeChien*

BOOK 4298 PAGE 1580

A01725937

BOOK 3771 PAGE 888

STATE OF ILLINOIS
ST. CLAIR COUNTY

03 JAN -7 AM 8:31

Michael T. Coates
RECORDED

51.13

STATE OF ILLINOIS)
)
COUNTY OF ST. CLAIR)

SS

AFFIDAVIT

AFFIANT, first being duly sworn upon his oath, deposes and states:

1. That attached hereto, is a true and correct copy of a Court Of Claims Opinion filed June 21, 2002.
2. Also attached, is a true and correct copy of the Notice Of Filing Legal Description of Easement filed in the Court of Claims October 7, 2002 and an attached legal description.

FURTHER AFFIANT SAYETH NAUGHT:



THOMAS A. LECHIEN

EXHIBIT B

17

Subscribed and sworn to before me, a Notary Public on this 6th day of

January, 2003.

Kathleen Spalding
Notary Public



IN THE
COURT OF CLAIMS
OF THE STATE OF ILLINOIS

FILED
COURT OF CLAIMS

JUN 21 2002

Secretary of State and
Ex-Officio Clerk Court of Claims

DAVID C. BLUE, DONALD F. BLUE,
DONALD A. BLUE, HARRY O. STEIN, SR.
and RICHARD A. WARD,)

Claimants,)

v.)

STATE OF ILLINOIS, DEPARTMENT
OF NATURAL RESOURCES,)

Respondent.)

No. 01 CC 2097

OPINION

Epstein, J. This landowners' claim seeks to declare and enforce a decades-old prescriptive easement over formerly private lands that the State acquired in the 1960s and that now comprise part of the Kaskaskia River State Fish and Wildlife Area, situated on the east side of the Kaskaskia River in Fayetteville Township in St. Clair County. These State lands are now administered by the Illinois Department of Natural Resources ("DNR").

This cause is before us for final determination following trial to Commissioner Stephen R. Clark, who has submitted his findings and recommendations. We consider this claim on the pleadings (the claimant's amended 3-count complaint and the respondent's answer and [five] affirmative defenses thereto) and the extensive trial record, which *inter alia* contains expert testimony as well as direct testimony of the historical use of the claimed easement going back to the 1920s, together with plats, arial photographs, and deeds in the claimants' and the State's chains of title. In addition, the parties submitted post-trial briefs.

Although, unsurprisingly, there are gaps in this 80+ year old land-use story, there are surprisingly few disputed facts in this case despite the wide disparity in the parties' conclusions.

Nature of the Claim

Claimants are landowners who acquired several parcels of farmland near the Kaskaskia River in Fayetteville Township in 1988, 1989 and 1992 from prior landowners who (or whose families) had held the farmlands for many decades. In their amended complaint, claimants seek preliminary and permanent injunctions to restrain the State (DNR) from blocking the claimants' access and use of the claimed easement (Counts I and II), which they allege has been blocked by DNR since late 1996 or 1997 (Am. Compl., Ct. I, ¶3(w), ¶3(x)) and a declaration that the easement (for access to their farmland parcels and other interior parcels) was created by regular and continuous adverse use from 1920 to 1968 and beyond, and that it remains in effect (Count III).

Several claimants obtained keys to the gate by the 1990s, and at least occasionally used the then-gated roadway with the permission of the DNR, which also granted at least one of the claimants a formal permit or license to use the access road to remove timber. However, since late 1996 or 1997 the DNR has barred claimants from using the roadway.

An alternative access road was used by several claimants over land owned by Peabody Coal Company in recent years. However, the company later closed this route to the claimants, whose lands are now landlocked.

The State and some local governments have plans for further changes along this part of the Kaskaskia river, which may not be compatible with the claimed easement. The respondent's brief presents a series of planned or proposed or contemplated projects (which we do not detail here, as they are not relevant to the existence of the claimed easement, as the claimants vigorously point out).

The Contested Issues

The respondent does not dispute the continuous adverse use of the claimed easement roadway down to the river from the early 1920s (before 1924) until approximately 1968 -- clearly sufficient to establish an easement by prescription under Illinois' 20-year prescription period. Instead, the respondent contests the easement claim on four overall grounds, asserting:

- (1) jurisdictionally: that this claim is barred by the 20-year statute of limitations (735 ILCS 5/13-101), as it was not filed within 20 years of (a) its original acquisition, nor (b) the 1967 conveyances to the State [that allegedly extinguished the easements] nor (c) the last regular use of the easement [which ceased about 1967]; and that this claim is barred by the 40 year limitation (735 ILCS 5/13-118) as it was not filed within 40 years of claimants' predecessors' acquisition of the easement;
- (2) procedurally: that these claims are barred by claimants' failure to exhaust remedies (alternative sources of recovery) (*see*, §25, Court of Claims Act; 705 ILCS 505/25; *see*, Rule 60; 74 Ill.Admin.Code. 792.60) by (a) seeking a judicial declaration of an alternative easement to their parcels over private lands (of Peabody Coal Company), and (b) by failing to obtain compensation under their title insurance policies.
- (3) on the merits: that the easement was extinguished by a series of conveyances to the State of lands east of the Kaskaskia River in 1967, including conveyances of other parcels by some of the claimants' predecessors-in-title, which deeds expressly conveyed all appurtenant rights; and
- (4) on the merits: that there is no "present easement" because the easement (a) did not continue after 1968 by ongoing adverse use of the roadway, or (b) was abandoned by non-use and/or by non-adverse, permissive use under license from DNR after 1968, and by some claimants' use of an alternative access route to their land.

easement (*i.e.*, an easement created by deed). *Evans v. Department of Transportation*, 52 Ill.Ct.Cl. 300 (1996)(claim of reverter of express State easement). An express easement is analogous to a contract although land-use agreements in deeds are usually classified by the law as “property” and commonly run with the land. We now affirm and extend that reasoning to prescriptive easements, which under the traditional lost grant theory (*see, e.g., Peterson v. Corrubia*, 21 Ill.2d 525, 531, 173 N.E.2d 499, 502 (1961); *Rush v. Collins*, 366 Ill. 307, 8 N.E.2d 659 (1937); *Burrows v. Dintlemann*, 41 Ill.App. 3d 83, 353 N.E.2d 708 (5th Dist. 1976)) are also, albeit constructively, a species of express easement in the eyes of the law under the legally presumed ancient “lost grant.” We find no good reason for claims involving express easements to be subject to a 5-year limitation (under §22(a)) while claims involving prescriptive easements would be subject to a 2-year limitation (under the residual §22(g)) if we were to adopt a narrower application of §22(a).

Accordingly, under the applicable 5-year limitation of §22(a) of the Court of Claims Act, we reject the respondent’s limitations defense. This claim was filed within five years of the DNR’s blocking of the claimants’ use of the claimed easement, when this easement dispute thus accrued (*see*, 735 ILCS 5/13-106(a) (“... right of entry or of action shall be deemed to have accrued at the time of such wrongful ouster [from possession]”), which is *in pari materia* with our §22 limitations).

Exhaustion of Remedies (Alternative Sources of Recovery)

The two exhaustion defenses in this case appear to present applications of first impression of the statutory requirement that, before final determination of a claim by this court, claimants must “exhaust all other ... sources of recovery” (§25, Court of Claims Act; 705 ILCS. 505/25) “for the injury or damages sought to be recovered by the claim” (Rule 60; 74 Ill.Admin.Code 790.60).

Respondent urges that claimant must pursue recovery of available insurance proceeds (*i.e.*, monetary compensation for the easement or access rights) under its title policy and, implicitly, if full recovery of the value of the easement is had by the claimants then their easement claim would be satisfied and extinguished. This contention suffers three conceptual defects.

First, recovery of money is not the same and is not equivalent, and is thus not an “alternative” for an interest in land. “It is hornbook law that real property is unique, and thus ... monetary damages[] are insufficient to compensate ... for its loss.” *McKenzie v. City of Chicago*, 964 F.Supp. 1183, 1204 (N.D. Ill. 1997)(Castillo, J.). As the Seventh Circuit forcefully stated in *United Church of the Medical Center v. Medical Center Comm’n.*, 689 F.2d 693, 701 (7th Cir. 1982):

It is settled beyond the need for citation ... that a given piece of property is considered to be unique, and its loss is always an irreparable injury. Substitution of another piece of property cannot cure the loss of one’s property

Second, and similarly, this court has held that a claimant’s recovery of insurance proceeds (*i.e.*, a contingent contractual benefit that the claimant purchased) is not a recovery that is subject

Second, the recovery of “alternative” land rights from an “alternative [non-State] source” is not here (and is almost never) an alternative recovery for the *same injury* for which the State is sued, which is the gist of the §25 requirement, *see* Rule 60. It is difficult to imagine a right to land from a third party that arises because of the State’s action (or inaction) that injures the claimant’s rights to a different parcel. That surely is not the case here: The supposed easement over Peabody Coal land that the respondent suggests as an “alternative” remedy has no legal or causal connection to the claimed easement over the State property. The respondent does not allege that the coal company is responsible for blocking the claimed easement or is somehow liable because of the State’s blockade. The proposed “alternative” land recovery is outside the scope of §25.

Third, like the insurance in the respondent’s first exhaustion argument, the potential recovery of an *independent* land remedy (*i.e.*, one that does not arise out of the same injury for which the State is sued, and to which claimant’s right is independent) cannot be treated as an “alternative recovery” for a more fundamental reason: that application of §25 would nullify the State’s liability by depriving the claimant of relief. That would use the claimant’s own property to satisfy the State’s liability. If it is wrong to rob Peter to pay Paul, it is even worse to rob Peter to pay Peter.

Even if we look solely to the functional aspect of this land claim, *i.e.*, the right of *access* to claimants’ parcels, it would still be wrong to use the §25 exhaustion rule to extinguish one access easement that runs over State lands because the claimants can (*arguendo*) obtain another access easement over private land -- or, equivalently, because the claimants already have other access. The respondent’s argument here, focusing on access, is that a claimant cannot recover or enforce an access easement against the State if another access route is available. We do not perceive that to be the law of Illinois. We must reject the notion that “substitution of another ... property” right can cure the loss of another (paraphrasing *United Church of the Medical Center, supra*). Finally, since two access easements are inherently better than one -- and almost surely affects the value of the property -- it would be perilously close to a taking of the first easement for the State to force its abandonment merely because other access is available.

There may someday be a case where §25 mandates alternative source exhaustion of a *property right* claim; but this is clearly not that case if there is one. The insurance-for-land and land-for-land exhaustion defenses are rejected.

Analysis: The merits.

The Easement: Creation

The respondent does not seriously dispute the creation of the claimed easement by continuous adverse possession and use by claimants’ predecessors-in-title (and by others, as well) for far more than the requisite 20 years prior to 1968. The evidence convincingly shows that the roadway was used for access to what is now the claimants’ lands, as well as by others for access to the various “clubhouses” which were apparently used for fishing. In this record there is no evidence of non-adverse, permissive use of the roadway for access to claimants’s farm parcels during the 40+ years

Also embedded in the respondents' extinguishment-by-deed argument is a second variation. Respondent urges that the 1967-68 deeds to the State by those grantors who *also* then owned some of the *dominant* parcels had conveyed to the State the formerly-appurtenant easement rights that are now asserted here by some of the claimants (who later obtained their land from the same grantors). This is a cogent argument. If the conveyances of the *servient* lands to the State also included conveyances of the easement rights of other *dominant* parcels (as respondent maintains), then there were no remaining appurtenant rights in those formerly-*dominant* parcels that could later be conveyed to the claimants, who now cannot assert them because they do not own them.

This issue turns on two points: (1) whether appurtenant easement rights, particularly access easement rights, are independently alienable, *i.e.*, whether they may be conveyed apart from a conveyance of (all or part of) the dominant parcel to which the easement is appurtenant; and (2) if so, the language of the common grantors' deeds to the State, *i.e.*, whether the "adjoining street or roadways" language in those 1967-68 deeds to the State conveyed the easement rights that were appurtenant to *other (dominant)* parcels that were then also owned by those grantors but which were not themselves conveyed.

The respondent cites no authority supporting the validity of an independent conveyance of appurtenant easement rights; the claimant cites *Cleveland, C., C. & S. L. R. Co. v. Munsell*, 94 Ill.App. 10 (3d Dist. 1900), for the proposition that appurtenant easement rights are "indivisible" from the dominant land. However, the *Munsell* case did not involve an attempted alienation of easement rights apart from appurtenant land, and in any event was not a decision on the merits (the appellate court held that it lacked jurisdiction). Our own research did not find a clear precedent in Illinois law. For present purposes, the court assumes without deciding that an independent conveyance of a prescriptive easement is valid.

The respondent asks us to read the conveyance language in the deeds to the State broadly, so as to encompass easement rights that were appurtenant to *other* parcels that the grantors also owned, where the deed is silent as to an easement and contains no reference or description of the land to which the easement was appurtenant. Respondent asks this court not only to read "easement" into the "adjoining street or roadways" clause but also to read "easement belonging to another parcel" into this conveyance. Respondent cites no precedent for such a broad construction of a deed.

The respondent stretches way too far. There is no language in these deeds that indicates any intent by the grantors to convey any interest in land other than those specifically described in the deeds. Nor is there any indication that those grantors executed those conveyances in any capacity other than as owners of the lands described. The court will not supply the missing links that the scribes of those deeds could have but did not provide. This court will not indulge an *implied* conveyance of rights appurtenant to unmentioned parcels. We reject the respondent's spandex approach to these conveyances.

cognizable period of total non-use by these claimants is from 1996 (or 1997) to the filing of this claim, which falls short. Some sporadic use of the easement road until 1996-97 is conceded. Despite respondent's insistence, it does not matter for abandonment purposes that claimants' use during some of that time was with DNR's acquiescence.

Second, respondent has not established the requisite adversity during the alleged non-use period, at least before the ultimate closure of the easement roadway to the claimants in late 1996 or 1997. As stated by our Supreme Court in *Karz v. Blume*, *supra*, 407 Ill. at 389-390:

To constitute a bar to the dominant estate, the possession by the owner of the servient estate must be inconsistent with the right to the easement. The owner of the servient estate has the right to use the land for any purpose ... so long as such use does not interfere with the proper enjoyment of the easement. [citation omitted.] The use of the easement by the occupants of the servient estate for hauling coal [etc.] ... was in no way antagonistic to the right of passage accruing to the dominant estate and in no way altered or limited the use which could be made of the alley by the original grant [of easement].

There is no evidence of alteration or use of the roadway by DNR or any other State agency that was physically incompatible with its use by the claimants. Thus claimants' continued if irregular use of the easement roadway during State ownership from 1967-1996 with DNR permission or acquiescence is not non-use, nor was the State's posture then antagonistic within the caselaw. DNR's ultimate blocking of the roadway to the claimants by 1997 arguably created a true physical adversity between these parties as to the easement – although the blockade gate is not an incompatible *use* or alteration of the roadway itself. We need not decide that fine point to conclude that the respondent has not made out a *prima facie* case of abandonment.

Conclusion

For the foregoing reasons, it is hereby ORDERED:

1. The court finds and declares:
 - A. An easement for access to the claimants' parcels has been established by prescription over the existing unimproved and improved roadway running southward and eastward from Illinois Route 4 (U.S. Route 15) in Fayetteville Township, St. Clair County, parallel generally to the Kaskaskia River and over both its south and east branches to the current terminus of each such branch;
 - B. The easement is appurtenant to the claimants' parcels of land, and is solely for access to those parcels from Illinois Route 4 (U.S. Route 15);

IN THE COURT OF CLAIMS
STATE OF ILLINOIS

FILED
COURT OF CLAIMS

OCT 07 2002

Secretary of State and
Ex-Officio Clerk Court of Claims

DAVID C. BLUE, DONALD F. BLUE,)
DONALD A. BLUE,)
HARRY O. STEIN, SR., and)
RICHARD A. WARD,)

Claimants,)

vs.)

STATE OF ILLINOIS, DEPARTMENT)
OF CONSERVATION,)

Respondent.)

NO. 01-CC-2097

NOTICE OF FILING LEGAL DESCRIPTION
OF EASEMENT

Now come the Claimants, David C. Blue, Donald F. Blue, Donald A. Blue,
Harry O. Stein, Sr., and Richard A. Ward, by and through Thomas A. LeChien of
LeChien & LeChien, Ltd., and file the attached Legal Description of the Easement, being
the subject mater of this cause.



THOMAS A. LECHIEN - #-0162616
LECHIEN & LECHIEN, LTD.
120 West Main Street, Suite 110
Belleville, IL 62220
(618) 235-1637
Attorney for Claimants

BOOK 3771 PAGE 903

BOOK 4298 PAGE 1589

PROOF OF SERVICE

I, the undersigned, do hereby certify that a copy of the foregoing instrument was mailed to:

Warren E. Benning, Esq.
Assistant Attorney General
State of Illinois, Department of Natural Resources
500 Second Street
Springfield, IL 62706

by placing same in an envelope, postage fully paid, and depositing said envelope in a U.S. Postal Service Mail Box, in Belleville, Illinois, on this 5th day of Oct, 2002.

EdC

DESCRIPTION:

A 25 foot wide Roadway Easement lying in part of Sections 8 and 17 in Township 2 South, Range 6 West of the Third Principal Meridian, St. Clair County, Illinois, the centerline of which is described as follows:

Commencing at the Northwest corner of Lot 1 of Grandcolas Tracts Assessment Plat, a subdivision recorded in Bk. 43, page 101 of the St. Clair County, Illinois, records; thence, N.82 57'14"W., along the South R.O.W. line of IL Rte. 4/U.S. Rte. 15, 12.62 feet to the point of beginning, said point bears state plane coordinates of N.6222820.12, E.2405059.59 (IL WEST NAD83); thence, S.00 54'08"E., 211.78 feet; thence, S.19 52'10"W., 53.86 feet; thence, S.34 37'16"W., 62.65 feet; thence, S.44 23'59"W., 291.53 feet; thence, S.49 35'48"W., 93.21 feet, to a point that bears state plane coordinates of N.622237.45, E.2404734.07; thence, S.04 24'41"E., 507.24 feet; thence, S.07 23'12"E., 918.44 feet; thence, S.05 53'56"E., 567.33 feet; thence, S.08 16'41"E., 577.11 feet; thence, S.06 27'15"E., 879.80 feet to a point on the South line of said Section 8, said point bears state plane coordinates of N.619008.05, E.2405109.20; thence, S.07 05'10"E., 606.81 feet; thence, S.05 25'28"E., 673.40 feet; thence, S.13 59'11"E., 140.52 feet, to a point that bears state plane coordinates of N.617402.33, E.2405303.94; thence, S.24 00'36"E., 169.04 feet; thence, S.30 28'50"E., 1255.38 feet; thence, S.22 31'17"E., 116.57 feet, to a point that bears state plane coordinates of N.616058.35, E.2406054.16; thence, S.06 56'45"E., 68.72 feet; thence, S.33 46'53"W., 65.23 feet; thence, S.22 27'24"W., 243.88 feet; thence, S.44 57'40"W., 105.49 feet; thence, S.30 27'14"W., 145.53 feet; thence, S.46 04'18"W., 173.87 feet; thence, S.59 47'00"W., 130.12 feet; thence, S.80 07'54"W., 263.59 feet; thence, S.59 52'37"W., 64.56 feet, to a point that bears state plane coordinates of N.615246.75, E.2405231.54; thence, S.37 33'36"W., 1069.69 feet, to a point that bears state plane coordinates of N.614398.79, E.2404579.47; thence, S.04 24'04"E., 22.26 feet; thence, S.52 05'21"E., 39.86 feet; thence, S.77 18'42"E., 100.37 feet; thence, S.66 46'40"E., 104.18 feet; thence, N.83 43'40"E., 108.08 feet; thence, S.69 39'42"E., 52.00 feet; thence, S.51 37'40"E., 192.87 feet; thence, S.30 59'17"E., 189.01 feet; thence, S.61 07'39"E., 122.37 feet; thence, S.35 50'55"E., 52.73 feet; thence, S.13 11'38"E., 151.00 feet, to a point that bears state plane coordinates of N.613752.11, E.2405383.50, and lies on the South line of said Section 17, which is the North line of a tract of land deeded to Henry O. Stein, Sr., David C. Blue, Richard A. Ward, and Donald A. Blue and recorded in Dd. Bk. 2854, pg. 2318 of said St. Clair County, Illinois, records, said point being the endpoint of said easement.

1 COMMISSIONER CLARK: Okay. No pretrial
 2 motions in limine or anything else?
 3 MR. LECHIEN: No.
 4 MR. BENNING: No.
 5 COMMISSIONER CLARK: Mr. LeChien, do you
 6 care to do an opening statement?
 7 MR. LECHIEN: Yes, just very, very
 8 briefly. I represent parties who own pieces of property
 9 near Fayetteville, Illinois, and just by way of
 10 illustration, to show the Court what we're talking about
 11 here, Kaskaskia River flows basically north/south
 12 through the village of Fayetteville and goes on to the
 13 south and turns. Back in the 1960s and prior thereto,
 14 it had lots of zigs and zags to it. The State of
 15 Illinois acquired certain pieces of property for the
 16 purpose of straightening out the channel of the river,
 17 and that was done in the period of time roughly 1965,
 18 '67, in that time frame.
 19 Prior to the acquisition by the State of
 20 Illinois of these properties-- and those are primarily
 21 what we've marked on the plat here-- there were a series
 22 of clubhouses that were along the old river frontage,
 23 and south of that were the two tracts of land that we're
 24 involved with here. They're owned by the Blues and the

1 Steins. These were partially agricultural tracts. They
 2 were regularly plowed and used as fields and crops
 3 grown.
 4 The State acquired this property, as I
 5 said, in about 1965 to '67 and thereafter straightened
 6 the channel of the river. They took-- or they
 7 purchased-- I'm not-- I don't know that any of this was
 8 done by eminent domain-- they purchased these properties
 9 along there with-- did not buy my clients' properties,
 10 obviously, and the clubhouses that were facing the river
 11 and the agricultural tracts to the south were served by
 12 a road that ran from Route 15 south and came down and
 13 branched off to both of the parcels of property that are
 14 involved here.
 15 Now, from 1965 until roughly 1995 or 1996,
 16 these property owners were free to travel this road that
 17 had been developed over-- and I think the testimony will
 18 go back as far as Mr. Stein can remember, back into the
 19 30s and maybe even before that; that this had always
 20 been a road which served those clubhouses, which served
 21 the agricultural needs of those properties to the
 22 south. After the State bought the property, they
 23 continued to allow people to use that road; up and in
 24 about 1995 or so, put up a gate and denied access by

1 motor vehicle to these tracts to the south.
 2 It's basically our contention that a
 3 roadway or an easement existed for the benefits of this
 4 tract for many years, for many years prior to the
 5 acquisition of the property by the State; that the mere
 6 fact that the State acquired the property did not do
 7 away with the roadway; it would take such title as the
 8 titleholders could give; if it was subject to an
 9 easement or to a roadway, that the State would likewise
 10 take subject to that roadway.
 11 So that's basically the case. We're asking
 12 the Court of Claims to determine that this is a public
 13 road and to allow us access to it, so that's basically
 14 the gist of the-- our position.
 15 COMMISSIONER CLARK: Can we mark this?
 16 MR. LECHIEN: I will mark all of those as
 17 we go through, but I--
 18 COMMISSIONER CLARK: Okay.
 19 MR. LECHIEN: If you want, we can call it--
 20 COMMISSIONER CLARK: Yeah, just so we can--
 21 MR. LECHIEN: -- Plaintiffs' Exhibit 1.
 22 COMMISSIONER CLARK: Let the record show
 23 that Mr.-- In Mr. LeChien's opening remarks, when he
 24 referred to a map, he was referencing what's now been

1 marked as Claimants' Exhibit 1. Mr. Benning, do you
 2 wish to give any remarks at this time?
 3 MR. BENNING: Just briefly. Basically,
 4 Commissioner, we believe that our answer and our
 5 affirmative defenses pretty much state our case, and we
 6 will be proving up our affirmative defenses certainly
 7 with our witnesses and testimony, and at this time,
 8 that's-- will be my opening remark.
 9 COMMISSIONER CLARK: Okay. Would you like
 10 to call your first witness?
 11 MR. LECHIEN: Mr. Stein, you want to come
 12 and sit here so the lady can hear you and take down what
 13 you say?
 14 RICHARD STEIN, produced, sworn and examined
 15 on behalf of the Plaintiffs, testified as follows:
 16 COMMISSIONER CLARK: Would you please state
 17 your name, spell your last name and give us your
 18 address?
 19 THE WITNESS: Richard Stein, S-T-E-I-N,
 20 10518 Bee Hollow Road.
 21 COMMISSIONER CLARK: And where is Bee Hall
 22 Road?
 23 THE WITNESS: Route 2, Mascoutah, around
 24 Mascoutah, but it's in Fayetteville.

1 COMMISSIONER CLARK: Okay.
 2 THE WITNESS: We got no post office in
 3 Fayetteville. We get our mail through Mascoutah.
 4 COMMISSIONER CLARK: Mr. LeChien?
 5 MR. LECHIEN: It's Bee Hollow, B-E-E-
 6 THE WITNESS: Yeah.
 7 MR. LECHIEN: -- and then separate word,
 8 H-O-L-L-O-W.
 9 DIRECT EXAMINATION
 10 BY MR. LECHIEN:
 11 Q. Tell us your date of birth, please.
 12 A. Born in 1914, December the 20th.
 13 Q. And where were you born?
 14 A. In the place I lived, in Fayetteville
 15 Township, or where I live today. Never lived any other
 16 place but there. Four years in World War II, that's the
 17 only time I wasn't there.
 18 Q. Now, let me show you what I'm about to mark
 19 here as Plaintiff or Claimants' Exhibit No. 3 and ask
 20 you if you recognize that.
 21 A. This is north. No, that's north.
 22 COMMISSIONER CLARK: I can't help you. You
 23 can ask--
 24 THE WITNESS: Oh, I'm sorry.

10

1 COMMISSIONER CLARK: -- your counsel a
 2 question. He's asking which is-- I would assume the top
 3 of this page is north.
 4 Q. (By Mr. LeChien) Okay. Are you able to
 5 read this? Are you able to see the things that are on
 6 it?
 7 A. Yeah.
 8 Q. Does it show Fayetteville, Illinois?
 9 A. Yeah, right there.
 10 Q. Okay. And does it show Route 15 as it goes
 11 east and west?
 12 A. Yeah.
 13 Q. Does it show the Bee Hollow Road where you
 14 live?
 15 A. Yeah.
 16 Q. And where on the Bee Hollow Road do you
 17 live?
 18 A. Right here.
 19 Q. Okay. Now, let me ask you to take a pink
 20 marker here, and you're pointing to a part on the east
 21 side of the Bee Hollow Road approximately a quarter mile
 22 or a little more than a quarter mile south of Route 15;
 23 would that be correct?
 24 A. Yeah.

11

1 Q. Okay. So let me put a pink circle there
 2 where your house is. Do you also own property on the
 3 opposite side of Bee Hollow Road?
 4 A. Yeah, on the east side, yes.
 5 Q. Okay. And how many total acres do you own
 6 there?
 7 A. I still own about 93.
 8 Q. Now, what was the largest tract that you
 9 had in that area since you've been living there?
 10 A. Well, the largest one's 118.
 11 Q. And did you sell or gift off portions of
 12 this property to members of your family?
 13 A. Well, the first-- Illinois Power took five
 14 acres for a substation, and then I sold five acres to
 15 Roger Trentman that was along the Peabody woods. I
 16 couldn't raise nothing there. I sold five acres to my
 17 son-- or I give him three acres. I give my son three
 18 acres, Robert, and he bought two more. He wanted five
 19 to build a house and he wanted five acres, so I sold him
 20 two acres. And then I give three acres to Harry, my son
 21 over there. He put a house on there. And here lately I
 22 give three acres to my youngest son, Gene.
 23 Q. Okay. So that's where you've lived all
 24 your life; is that right?

12

1 A. All my life. No other place but the four
 2 years I was in World War II.
 3 Q. Okay. Now, are you familiar with the area
 4 along the Kaskaskia River?
 5 A. Yeah, I've been with-- ever since I was ten
 6 years old. I remember going down there with my dad,
 7 horse and buggy, just to see the crops growing in that
 8 area, and then later on clubhouses come. There was a
 9 strip of ground between the road and the riverbed.
 10 That's where the clubhouses were built on.
 11 Q. Okay. Well, let's-- let me take this just
 12 kind of, like, a step at a time. The first time that
 13 you remember being down along the river here was with
 14 your dad; is that right?
 15 A. Yeah.
 16 Q. And did you say that was when you were
 17 about ten years old?
 18 A. Ten, twelve years old, in that
 19 neighborhood.
 20 Q. So that would have made it in, like, the
 21 mid 1920s; would that be right?
 22 A. Yeah. I was born in '14, yeah.
 23 Q. And you traveled by horse and buggy then?
 24 A. Horse and buggy. We had an automobile.

13

1 First automobile we had was in 1918, but the roads
 2 wasn't always travelable by automobile, but travelable
 3 by horse and buggy.

4 Q. Okay. Now, let me ask you this: From the
 5 very first times, like 1924, when you were a child, when
 6 you were with your father, were you able to come by
 7 horse and buggy all the way along the riverfront and
 8 down to the two properties that are now owned by the
 9 Steins and the Blues?

10 A. Yeah. I- We could drive down with horse
 11 and buggy. There was an old iron bridge there made by
 12 the farmers. It was I beams that they collected from
 13 different parts and set them in concrete, put girders
 14 across there and drove across the old riverbed, which
 15 has now been replaced by an old boiler.

16 Q. Okay. Let me show you what's been marked
 17 as Plaintiffs' Exhibit 2, which is a blowup of this area
 18 along the river. Does that give you a better
 19 perspective of the area?

20 A. Yeah.

21 Q. A little larger?

22 A. Well, see, you can see here, this was
 23 mostly timber ground and this was open fields, and--

24 Q. Okay. Now, so that we're able to tell

1 what- when they read this they're able to tell what
 2 we're talking about, we need to refer to this by the
 3 names on the plat here. Now, you pointed to the Anna
 4 Baumgarte tract, 63.43 acres. Your earliest
 5 recollection, what was that tract used for?

6 A. Well, farming. That's all it was- ever
 7 was.

8 Q. Okay. Now, the parts that seem to be
 9 smaller here, what was that when you first knew the
 10 area?

11 A. Well, it was timber ground, timber and
 12 then- well, it wasn't- grew up along the riverbed,
 13 and then they cut places out and put a little clubhouse
 14 shanty there, and the people along there- there was- I
 15 remember there was 29 clubhouses along that river from
 16 Fayetteville up to the end.

17 Q. All right. Now, the clubhouses started to
 18 appear in approximately what time?

19 A. Oh, some of them- some of the first ones
 20 right close to the river was- hell, I was going to
 21 school, and they- one particular clubhouse that stood
 22 out, or house, they built it around a big sycamore
 23 tree. The sycamore tree was right in the middle of the
 24 house. There was a roof around it.

1 Q. Okay. And about how old were you then?

2 A. Well, seven, eight years. Going to grade
 3 school. We walked across the riverbeds to go to
 4 parochial school in Fayetteville.

5 Q. Okay. Now, do you see on Plaintiffs'
 6 Exhibit 2 a roadway coming down from Route 15? You see
 7 a roadway coming down this way?

8 A. Yeah, right there. That--

9 Q. Okay. Now, did that roadway also serve the
 10 farming properties to the east and to the south of the
 11 clubhouses?

12 A. Oh, yeah. That's the only road that- It
 13 goes off- as soon as you get across the bridge,
 14 Kaskaskia River, you go down to the right. That goes
 15 down, and that's what this road is--

16 COMMISSIONER CLARK: Why don't we mark
 17 this.

18 A. This is--

19 COMMISSIONER CLARK: Why don't we mark the
 20 roadway you're referring to here somehow.

21 Q. Okay. Now, tell me if this is the roadway
 22 that you're referring to that comes along here and then
 23 goes down to the south. It comes off of the highway?
 24 Now, first of all, let me back up here a little bit.

1 This plat, which is marked as Plaintiffs' Exhibit 3, is
 2 dated 1935. Is that- Can you see that?

3 A. Yeah.

4 Q. Okay. Now, in 1935, was Highway 15 where
 5 it is now?

6 A. No. It was further south. The old levee's
 7 still there. It was 460 then.

8 Q. Okay. When was new Route 15 or new 460
 9 built?

10 A. That was built in 19- They rebuilt the
 11 river bridge in 19- or wait a minute. I got married in
 12 '46, in May, and then right after that, a year after
 13 that, in May- In- July the 31st, they started on the
 14 river bridge.

15 Q. Okay.

16 A. They replaced- The bridge that's there
 17 now, they put that on the south side of the old bridge.
 18 On the south side they put a new bridge. That present
 19 bridge is there. And then they rebuilt the highway
 20 too. They made it straight instead of going on a
 21 curve. Past our lane, it went kind of more straight.
 22 We had to go another- a big city block further north to
 23 get to 460, which is now 15.

24 Q. Okay. Well, my point in asking you that is

1 First automobile we had was in 1918, but the roads
 2 wasn't always travelable by automobile, but travelable
 3 by horse and buggy.
 4 Q. Okay. Now, let me ask you this: From the
 5 very first times, like 1924, when you were a child, when
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 12 then- well, it wasn't- grew up along the riverbed,
 13 and then they cut places out and put a little clubhouse
 14 shanty there, and the people along there- there was- I
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 16 Fayetteville up to the end.
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 18 appear in approximately what time?
 19 A. Oh, some of them- some of the first ones
 20 right close to the river was- hell, I was going to
 21 school, and they- one particular clubhouse that stood
 22 out, or house, they built it around a big sycamore
 23 tree. The sycamore tree was right in the middle of the
 24 house. There was a roof around it.

1 Q. Okay. And about how old were you then?
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 3 school. We walked across the riverbeds to go to
 4 parochial school in Fayetteville.
 5 Q. Okay. Now, do you see on Plaintiffs'
 6 Exhibit 2 a roadway coming down from Route 15? You see
 7 a roadway coming down this way?
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 9 Q. Okay. Now, did that roadway also serve the
 10 farming properties to the east and to the south of the
 11 clubhouses?
 12 A. Oh, yeah. That's the only road that- It
 13 goes off- as soon as you get across the bridge,
 14 Kaskaskia River, you go down to the right. That goes
 15 down, and that's what this road is-
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 17 this.
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 10 A. That was built in 19- They rebuilt the
 11 river bridge in 19- or wait a minute. I got married in
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 13 that, in May- in- July the 31st, they started on the
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 18 On the south side they put a new bridge. That present
 19 bridge is there. And then they rebuilt the highway
 20 too. They made it straight instead of going on a
 21 curve. Past our lane, it went kind of more straight.
 22 We had to go another- a big city block further north to
 23 get to 460, which is now 15.
 24 Q. Okay. Well, my point in asking you that is

1 Q. Okay. Now, there's some properties marked
 2 in the portion just south of Route 15 as Anton Stein,
 3 and then-- that's a 20.40-acre tract, and then there's
 4 an 80.17-acre tract to the south of that. Is this where
 5 you live?
 6 A. Yeah.
 7 Q. Okay. And who is Anton Stein?
 8 A. That was my dad's brother.
 9 Q. And who is Gerhardt Stein?
 10 A. That was my dad.
 11 Q. Okay. Now, the one plat, the 80-acre part,
 12 just says Anton and Garrett-- or Gerhardt, rather.
 13 A. Yeah.
 14 Q. But that's Gerhardt-- Anton and Gerhardt
 15 Stein; is that correct?
 16 A. Uh-huh. That was my dad. They accumulated
 17 that farm after my grandparents died. That was Herman
 18 and Elizabeth Stein.
 19 Q. And let me also put the circle where you
 20 had on the other map. Would this be approximately it
 21 here where the house shows?
 22 A. Yeah, that's the spot where the house is.
 23 Q. Okay. And there's-- marked on the map,
 24 there is the actual house site; is that correct?

22

1 A. Yeah.
 2 Q. And that's where you lived from your birth
 3 in 1914 until today.
 4 A. I was born in that house.
 5 Q. And would it be fair to say that over those
 6 years, you were familiar with how this property was used
 7 to the east toward the river and to the south?
 8 A. Yeah.
 9 Q. And were-- tell us, if you would, what
 10 other uses were made of this roadway besides access to
 11 the clubhouses. What other purposes was this roadway
 12 used for?
 13 A. Farming, and farmers, they-- whoever owned
 14 property, they'd go in the wintertime and cut firewood,
 15 firewood, haul it out of there and bring it home for
 16 firewood, and then-- well, you had to buy-- they bought
 17 coal in places, but that coal they didn't get out
 18 there. They got it out of Freeburg or Darmstadt.
 19 Q. Was this road-- from its, like, early,
 20 early days and down to let's say the-- 1965, were they
 21 making improvements to that road from time to time?
 22 A. Oh, down this road?
 23 Q. Yeah, and all the way down to the south.
 24 Would they maintain it and keep it up or make

23

1 improvements to it?
 2 A. Well, when oil come out in 1937 for road
 3 oiling out in our area, we all had a-- my dad paid for
 4 oiling the-- half of that-- the Bee Hollow Road so we
 5 could get out. We paid for half of it. The township
 6 paid for the other half. Then the people started
 7 getting oil on these roads, but it wouldn't hold in that
 8 sandy ground. The oil wouldn't hold, so they got rock
 9 and-- wherever they-- whoever got it-- whoever had a
 10 clubhouse there brought a load of rock in there, where
 11 they couldn't haul much on a truck. Maybe three ton,
 12 that's all they could haul. They'd scatter it in there,
 13 then after they got a little footing on that foundation,
 14 then the oil held. They had part of it oiled, the
 15 road. Right past Bauchers' ground, the road was oiled.
 16 Where's Bauchers' at here? Here.
 17 Q. Okay. And, now, let me just take you along
 18 to the south here. Was there property owned by
 19 Vahlkamp?
 20 A. Yeah. Henry and John, yeah.
 21 Q. And what was that used for in this time
 22 frame from, like, say, 1924 to 1965?
 23 A. It was all farmed.
 24 Q. And how would you get to that farm?

24

1 A. From this road here.
 2 Q. You'd come on over, then, to this part?
 3 A. Yeah. You'd shift over here. One road
 4 went straight and one shifted over, and worked it here.
 5 Al Dressler, he used to farm that. He died just about a
 6 month ago, Al Dressler. He was a big trucker and a
 7 farmer in St. Libory. He died. I went to school with
 8 him.
 9 Q. Okay. Now, was there a Lena or Lena Erb
 10 tract close to the river?
 11 A. Yeah.
 12 Q. Was that farmed, or what was done with
 13 that?
 14 A. Arkell farms it. Where is-- Did you farm
 15 Erbs'?
 16 MR. VAHLKAMP: Well, I didn't know it as
 17 Erbs' at the time.
 18 COMMISSIONER CLARK: We can't really have a
 19 conversation. She can't-- She's got to take down
 20 whatever's said.
 21 Q. (By Mr. LeChien) We're going to have
 22 Arkell tell his story too in a minute, but we're just--
 23 you're just telling her what's going on here.
 24 A. Oh, okay.

25

1 Q. Because they don't know the story, okay?
 2 Now, how about Hutchison? Was there an F.W. Hutchison
 3 tract in that area?
 4 A. That name don't sound familiar. There
 5 might have been, because I wasn't acquainted- that's
 6 Spice Lake.
 7 Q. Uh-huh. There was a lake down in there?
 8 A. Yeah.
 9 Q. Would people come down to that lake for
 10 fishing or-
 11 A. Yeah. There's still part of it there.
 12 Q. Okay. Do you recall the name Vahkamp?
 13 A. Yeah, Henry D.
 14 Q. Was- Any of his property that's shown on
 15 the plat here as 42 acres, 42.47, and 26 acres, was any
 16 of his farmed?
 17 A. Oh, yeah. That was all farmed, outside of
 18 corners where the brush come out or where there was a
 19 gully or a mud hole, the brush grew up, but that was all
 20 farmed here.
 21 Q. Okay. And how did you get to the Vahkamp
 22 property to farm?
 23 A. This road on the river, along the river
 24 here.

26

1 A. Well, the bridge is- the old bridge is
 2 over here yet and the boiler's just west of it.
 3 Q. Okay. And the boiler, like, if you took a
 4 big tank type-
 5 A. Yeah.
 6 Q. - train car and you cut the ends out of
 7 it.
 8 A. That's right.
 9 Q. And you'd use that, then, as a culvert for
 10 the water to flow into?
 11 A. That's in the old riverbed.
 12 Q. Okay. Now, moving south and from Vahkamp
 13 down to Perrin, was that property also farmed?
 14 A. That was farmed, but it's not farmable now
 15 anymore. It's all growed up.
 16 Q. Okay. And how about what's shown here as
 17 Huber, Nold and Hamill?
 18 A. Most of that is in- all growed up.
 19 Q. Okay. And is that the property that the
 20 Blues and the Steins own now, the Perrin and the Huber,
 21 Nold-
 22 A. No, they own Nold and Eckert.
 23 Q. Okay.
 24 A. That's up here.

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1 Q. All right. Now, was there a part which was
 2 called the old riverbed that kind of ran east from the
 3 river?
 4 A. Yeah. That's still there.
 5 Q. Okay. Now, you mentioned a little bit
 6 earlier about a bridge?
 7 A. Yeah.
 8 Q. Can you point out for the Commissioner
 9 where the bridge was?
 10 A. That's right there. That's- They had a
 11 bridge made out of I beams set in concrete and I beams
 12 across it. The farmers and the clubhouse people made
 13 that, then when the river project started and they come
 14 down, they put a- there's an old steam boiler or
 15 whatever it is, railroad boiler in there- that's in
 16 there now, and they use it as a culvert.
 17 Q. Okay. So let me mark here with an arrow
 18 here the bridge.
 19 A. That's still there, the culvert, so-
 20 Q. Okay. So I've marked bridge and then put
 21 an arrow to where it was; is that right?
 22 A. Yeah.
 23 Q. And you talked about a- the bridge being
 24 taken out and then a boiler put in; is that right?

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1 Q. All right. Well, we'll straighten that out
 2 here in a second. Let me get the right names in. But
 3 this shows the road coming down and going over to a Ben
 4 Vahkamp and Fred Vahkamp piece. Do you recall the
 5 road running from, like, the fork where the bridge was
 6 and then on the south side of the river over to the
 7 Vahkamp property?
 8 A. Yeah. That's a dead end now. It's farmed
 9 now.
 10 Q. Okay. And was this road used for farming
 11 through those years from-
 12 A. Right, farming.
 13 Q. - 1924 to '65?
 14 A. Right here at this fork was a big
 15 clubhouse. They called it the Knee HI Club. The
 16 foundations and the old well top- they drove a sand
 17 point so they got a well- that's still there. The old
 18 Knee HI Club, that was a-
 19 Q. Okay. And so that we can spot this on the
 20 map, then, the Knee HI Club was at the- way at the
 21 south end of the road where it forked?
 22 A. Yeah, right about there someplace.
 23 Q. Okay. So let me see if I can- you got
 24 another color or something? Here we go. I'll use

29

1 blue. Okay. So that's about where the Knee HI Club
 2 was?
 3 A. Uh-huh.
 4 Q. And Knee HI, is that like the Nehi root
 5 beer or whatever, N-E-H-I, or how-
 6 A. H-I, K-N-E-E, Knee HI. Nehi for a nickel,
 7 Griesedleck for a dime.
 8 Q. All right. So I'll put in here K-N-E-E,
 9 H-I, Knee HI, all right?
 10 A. Yeah.
 11 Q. And that shows on the map where that was.
 12 A. Yeah.
 13 Q. Where the Knee HI was.
 14 A. Yeah.
 15 Q. Okay. Now, what's your first recollection
 16 of the Knee HI being there? What- About what year
 17 would that be?
 18 A. Oh, hell, I was home then. Before I went
 19 to the war, they- you could hear them- there was no
 20 electric down there, but you could hear them Saturday
 21 nights, party. Our dogs would be barking. You could
 22 hear the party through the woods. They had parties
 23 there. It was a big building set up about five, six
 24 feet from the ground level so the river wouldn't- the

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1 river bank was right close by, and they had parties and
 2 firecrackers. It seemed like they bombed Germany.
 3 Q. Okay. Well, time frame now. When would
 4 that have been, do you think? In what years? It was
 5 before the war, you said.
 6 A. Yeah, in '35, '36, '37. In '42 I went in
 7 the war.
 8 Q. And so this roadway would have been in
 9 existence down to the Knee HI in 1935.
 10 A. Oh, yeah, yeah.
 11 Q. And before that? Before 19- Before the
 12 Knee HI was there?
 13 A. Well, before it was- well, it was just a-
 14 they just made a clear spot where they built it, but, I
 15 mean, there was- it was- it run out here on this
 16 ground, and then there was a patch of ground here and-
 17 Q. Okay. And you- when you say a patch of
 18 ground, you're indicating both sides of the roadway.
 19 A. Yeah.
 20 Q. Right?
 21 A. There was a patch of ground that's- part
 22 of it's now conservation ground, and then what Harry and
 23 these guys own.
 24 Q. Now, you said that you farmed two of these

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1 properties along the roadway.
 2 A. Yeah.
 3 Q. Did you ever go, like, hunting down in that
 4 area?
 5 A. We wasn't allowed to go that far, because
 6 those clubhouse people, they leased the ground from
 7 different farmers. You wasn't allowed to go on there
 8 where- and we hunted right south of our place.
 9 Q. Did other hunters go down this road for
 10 hunting purposes, other people go down there to hunt?
 11 A. Well, there was nothing to hunt but rabbit
 12 and quail and squirrel.
 13 Q. How about for other recreational purposes,
 14 for fishing or just for walking around?
 15 A. Fishing, they go down that road. Wherever
 16 there's a spot, they knew these clubhouse people, they'd
 17 sit and fish off the bank there or go fishing in there.
 18 Q. Now, you indicated that originally when
 19 these clubhouses were built, they- there was no
 20 electricity; is that right?
 21 A. No, not until after '53, when we got
 22 electric, then they- '53 we got electric down Bee
 23 Hollow Road up to our place. Then they got a whiff of
 24 that, so they had the power company build down there.

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1 Q. And the power company bring trucks in there
 2 to construct the stuff and-
 3 A. Oh, yeah. They put poles and electric and
 4 transformers. There were- Three or four of those sets
 5 were hooked up to one transformers. Well, that was all
 6 torn down when the river project come along.
 7 Q. Okay. Well, now, tell me this about the
 8 clubhouse season. Was there a time when it was, like,
 9 too cold or not- when people didn't use them?
 10 A. Oh, that was only summer. Say, early in
 11 the spring, as soon as it got warm, they were out there,
 12 and all summer, and when it was the 4th of July or
 13 Declaration Day, that was- our church was packed with
 14 people from Belleville or wherever they had their
 15 clubhouse. They'd come to church in Fayetteville. Our
 16 little shack was packed, and they'd come to church
 17 there, and then the taverns had business, and they come
 18 in and out.
 19 Q. Can you give me the names of some of the
 20 people that owned clubhouses along there? Do you
 21 remember any of those names?
 22 A. Oh, man. There was one particular one, the
 23 first one. His name was Mike Capone. He died a while
 24 back. He was 93 or 98 years old. His place is still

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1 there, right-- that's right before you get to the gate.
 2 Q. Okay.
 3 A. And then there was-- Haddock had a
 4 clubhouse there, Bill Haddock, and on the other side of
 5 the road was-- they lived in Belleville here. What the
 6 heck was that name? They lived in Belleville. What was
 7 them people's name?
 8 Q. We'll ask him in a minute here. Okay.
 9 Now, let's see. We marked-- This was Exhibit 1, wasn't
 10 it?
 11 MR. BENNING: Yes.
 12 COMMISSIONER CLARK: Yeah.
 13 MR. LECHIEN: This one's 2. This one's 3.
 14 Let's mark this as Exhibit 4.
 15 Q. Okay. Let me ask you to take a look at
 16 this now, and do you see the village of Fayetteville,
 17 the town of Fayetteville here?
 18 A. This is north.
 19 Q. Right. And Main Street in Fayetteville
 20 would be along in here; would that be right?
 21 A. This is-- Here's where it comes in on 460
 22 or 15--
 23 Q. Right.
 24 A. -- across the bridge and goes into Main

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1 Street. That's the park, the village park.
 2 Q. Okay. Now, was there a railroad that ran,
 3 like, to the south of Route 460 or Route 15?
 4 A. Yeah.
 5 Q. And does this show the railroad right of
 6 way here?
 7 A. Oh, yeah, that's it. That's the old St.
 8 Libory-- or St. Louis-St. Libory Railroad.
 9 Q. Did that kind of, like, cut across the
 10 clubhouse area?
 11 A. No, it cut-- It come in there before the
 12 clubhouse area. There's some clubhouses right around it
 13 now yet.
 14 Q. Okay.
 15 A. Right in here.
 16 Q. Is that railroad in operation?
 17 A. Oh, God, no. There was nothing there.
 18 They just built the levee, and they had a levee or a
 19 bridge across the-- trestle across the river, and that
 20 blocked all of the wood and stuff that come down the
 21 Kaskaskia River, piled up in front of it. They
 22 dynamited that. Then the bridge went, then they come up
 23 to--
 24 Q. About when was that?

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1 A. Oh, hell. When I was going to school in
 2 the--
 3 Q. In the 20s?
 4 A. Yeah.
 5 Q. What-- Did this railroad ever operate, to
 6 your knowledge?
 7 A. No. There was-- They never even got the
 8 highway or the grade done for it. They got it built,
 9 but they-- right there by our place they had them piles
 10 drove in the ground for overflow for the river.
 11 Q. All right. Well, let me mark with an arrow
 12 here the railroad, just RR. But the railroad never
 13 actually operated.
 14 A. No.
 15 Q. It was just that it had the rail bed there
 16 and the trestle across the river.
 17 A. That was come-- That come there in 1918
 18 they built that, 1918, and they started building the
 19 trestles and--
 20 Q. Now, does Exhibit 4 show some of these
 21 clubhouse strips along the river?
 22 A. Oh, yeah, here. Yeah, this is all them
 23 little plots along the river there. This is where the
 24 farm ground was.

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1 Q. Okay.
 2 A. Baumgarte, Fred Vahkamp.
 3 Q. And just to kind of connect up the two
 4 pictures that we were looking at here, Exhibit 2 shows
 5 the small strips, and then as you're moving south, it
 6 stops with a 10-acre tract here; is that correct?
 7 A. Yeah.
 8 Q. That this one is a 10-acre tract here?
 9 A. Yeah. That was probably washed out, so
 10 they couldn't do nothing to it.
 11 Q. And is that 10-acre tract, like, the last
 12 part on the south end of this strip of lots on the east
 13 side of the Kaskaskia? Is that 10 acres-- I'm trying to
 14 tie these two maps together. This 10 acres in this spot
 15 and this spot are the same; is that correct?
 16 A. Yeah.
 17 Q. Okay. And let me put--
 18 COMMISSIONER CLARK: He's referring to--
 19 MR. LECHIEN: Exhibit 2.
 20 COMMISSIONER CLARK: -- Exhibit-- the
 21 10-acre lot on Exhibit 2, on the very bottom right side
 22 of the riverbed on Exhibit 3-- 4.
 23 Q. (By Mr. LeChien) Okay. So that we can tie
 24 these two pieces together, let me draw on Exhibit 2 a

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1 circle around where it says 10 acres, and the same point
 2 here, this would be same tract of ground here, the 10
 3 acres; is that right?
 4 A. Yeah.
 5 Q. So that we got- this is a- shows the part
 6 to the north here, but it doesn't show the part to the
 7 south; is that right?
 8 A. I understand.
 9 Q. Now, when we're looking at Exhibit 4, it
 10 ends with the 10-acre tract; is that correct?
 11 COMMISSIONER CLARK: Your testimony is yes,
 12 that's right?
 13 THE WITNESS: Ma'am?
 14 COMMISSIONER CLARK: What he said is right?
 15 THE WITNESS: I didn't hear you.
 16 COMMISSIONER CLARK: I didn't hear your
 17 answer. I think you were asked if that was correct.
 18 A. Oh, yeah, as far as I understand. Fred W.
 19 Vahlkamp, that was a- that guy lived in Freeburg.
 20 Q. (By Mr. LeChien) And that 10 acres that is
 21 shown as the south- most southerly piece on Exhibit 4
 22 is the same as we marked as 10 acres on Exhibit 2.
 23 A. Yeah.
 24 Q. Okay. In the time frame before the war,

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1 did you or your father or any part of your family or did
 2 you have any occasion to go down to any of these
 3 properties south of the clubhouses to do farm work?
 4 A. No, we didn't farm work, but we farmed
 5 ground down there, used to be Rudolph Dressler's,
 6 Rudolph Dressler, and we farmed that, oh, Christ, since
 7 I was a ten-year-old boy, and now- then Peabody got a
 8 hold of it. Now we got- ain't got it no more. But we
 9 used to go down, and then half the time we'd take a
 10 horse and buggy or drive around, see the-
 11 Q. Okay. Now, the Dressler property, in
 12 looking at Exhibit 2- that's this page here- does the
 13 Dressler property show on this exhibit, or is it-
 14 A. No. That'd be further this way.
 15 Q. Okay. Did you use this roadway to get to
 16 the Dressler property?
 17 A. No, we didn't use that then, but when- we
 18 go down the roadway past our place into the woods, and
 19 then we come out on this roadway and come out on the
 20 highway with a horse and-
 21 Q. Okay. So you could connect up and come
 22 back out on that-
 23 A. Yeah, you could come- connect up through
 24 here and come back out this way.

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1 Q. And you did that in this early childhood
 2 times when you-
 3 A. That was in the 30s. Didn't have nothing
 4 to do, we'd hook up horse and buggy and go ride around
 5 in the woods or- we wasn't allowed horseback. My dad
 6 wouldn't let us, because our horses had to work during
 7 the week and they wouldn't allow us to ride them, but we
 8 could hook them up to a buggy and ride around in the
 9 woods with them.
 10 Q. Okay. And when you would do that, you'd
 11 end up by taking the road back out to-
 12 A. Yeah.
 13 Q. - Route 50?
 14 A. Back in here somewhere by the Spice Lake,
 15 come in here some- I don't know where that road- yeah,
 16 that's probably here. We come in there and come back
 17 out, and then there was a couple clubhouses there.
 18 Q. Do you know if the County or the Township
 19 or any- or the City, any government ever did anything
 20 about maintaining the road you had mentioned earlier,
 21 oiling the road? Was that always done privately or was
 22 that ever done by-
 23 A. No, that was all- it was done privately.
 24 Q. Okay.

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1 A. The clubhouse people that pitched in some
 2 with the oil and pitched in so much money, and the
 3 farmers, when there was a mud hole in the road, they'd
 4 come with a slip scraper and fill them up and get it
 5 ready for them. The farmers used the road and the
 6 clubhouse people used that same highway or road.
 7 Q. Would it be fair to say that there wasn't
 8 any other way to get to, like, Vahlkamp or Albers or
 9 Baucher except along that road?
 10 A. No, you couldn't get no other way. You'd
 11 have to cross the Mud Creek, and that was a big deal
 12 there.
 13 Q. Okay.
 14 A. Come in from the south, you'd have to cross
 15 the Mud Creek, and there was no bridge there then.
 16 Q. Okay. Is there anything else you can tell
 17 us about the use of that road and who used it and what
 18 for?
 19 A. Well, whenever the loggers logged it out,
 20 they used that road, hauled the logs out, cut the
 21 timber. Whoever had timber, they logged it out and they
 22 used that road. It was there. It-
 23 Q. About- Go ahead.
 24 A. Only way they could do it. Only way they

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1 could get down there.
 2 Q. About how often would that be used for
 3 logging?
 4 A. Well, maybe-- the last logging that I know
 5 on that road was while I was gone in the war, then the
 6 water in 1943 was so high that it washed the ground up
 7 so soft, it broke a bunch of trees, roots and all out,
 8 then they got the loggers that take the log off, leave
 9 the stump and haul the logs out. Later on, when I come
 10 back, they logged out Rudolph Dressler's, but then they
 11 come past our place. They didn't come through that
 12 road.
 13 MR. LECHIEN: Okay. I would offer
 14 Plaintiffs' Exhibit No. 1, No. 2, No. 3 and No. 4.
 15 MR. BENNING: No objection.
 16 COMMISSIONER CLARK: Plaintiffs' 1 through
 17 4 is admitted without objection.
 18 Q. (By Mr. LeChien) I think when we looked at
 19 Plaintiffs' Exhibit 3, we saw that the date was 1935.
 20 A. '35.
 21 Q. Right. Now, let me show you what's marked
 22 as Plaintiffs' Exhibit 5 and ask you if that's the same
 23 picture of Fayetteville Township or same map of
 24 Fayetteville Township but dated 1956.

1 roofing around the outside. They weren't even boxed
 2 out, some of them, on the inside.
 3 Q. Did anybody live there full time, full year
 4 round?
 5 A. No. Well, outside of one lady. She was
 6 blind. She had-- They brought six street cars down
 7 there, Hazel Schneider's dad. Bills was his name. He
 8 hauled them out of Belleville here on a truck, and that
 9 was in 1936, because he had a-- he had bought a new
 10 Chevrolet truck tractor, and he had put a bolster on the
 11 back, and he took the wheels off of them cars and laid
 12 them on the back bolster and he made a trailer, long
 13 trailer that fit onto the back end of that street car,
 14 and he towed them down to Fayetteville for \$50.
 15 Q. And this lady bought one of those street
 16 cars and moved it out there?
 17 A. This lady, her name was Harry Simon. She
 18 was blind and she lived in that street car, which she
 19 was--
 20 Q. In regards to the clubhouses, were they
 21 built up for flooding purposes?
 22 A. Well, about four foot off the ground, but
 23 when the river come up, like, 1929 or 19-- heck, they
 24 went in the water three, four feet.

1 A. Well, probably the names have-- Yeah, this
 2 here part's all the same, but the names will probably be
 3 changed.
 4 Q. But it does cover the same area; is that
 5 right?
 6 A. Yeah.
 7 (Discussion held off the record.)
 8 MR. LECHIEN: I would also offer
 9 Plaintiffs' Exhibit 5, then.
 10 MR. BENNING: No objection.
 11 COMMISSIONER CLARK: Plaintiffs' 5 is
 12 admitted without objection.
 13 MR. LECHIEN: I have no other questions,
 14 then, of this witness.
 15 COMMISSIONER CLARK: Mr. Benning?
 16 MR. BENNING: Yes. Thank you.
 17 CROSS EXAMINATION
 18 BY MR. BENNING:
 19 Q. Sir, it's my understanding that these
 20 were-- these clubhouses, they were not permanent
 21 residences; is that correct?
 22 A. Well, they built them-- we called them
 23 cracker boxes. They build them and they're just summer
 24 cottages, they called them, two-by-fours and brick-- or

1 Q. Was it just those two or three years that
 2 there was flooding in that area, or was it three--
 3 A. Oh, in 1929 it was high. In 1950, that was
 4 before-- I didn't remember that. My dad told me. And
 5 then the highest water I first seen was in '29, then in
 6 '29 or '30-- no, we didn't have any real high water.
 7 We had high water. Our road was under then, but we had
 8 to go around or go over with a boat to get to
 9 Fayetteville. Then in 1943 I wasn't here. I was in
 10 World War II. Then it come up so high that it went over
 11 the railroad levee, and there were ten hogs on-- right
 12 there by our house. Ten hogs come swimming down the
 13 high water and they ended up on that levee, and then my
 14 dad fed them corn, basket corn, on that levee, then
 15 after the water went down, we got the hogs. I don't
 16 know whose they were. And then in '46 it come up again,
 17 but not quite that high. In '46 it stayed under the
 18 bridge. In 1943 it went over the bridge, the river
 19 bridge.
 20 Q. How long did it stay up in '43?
 21 A. Well, it was up about three weeks there
 22 that it was really flooded high.
 23 Q. How long did it take for that road to dry
 24 out that you could use it?

1 A. That clubhouse road?
 2 Q. Yeah.
 3 A. Oh, that was- that time they had- well,
 4 it had holes washed in it where the sand washed away.
 5 It was quite a while. I wasn't here then. I wasn't
 6 in- I was in World War II in '43. In '46 I was home,
 7 and I was married. We got married in May of '46, and
 8 then in August of '46 it went up. I had corn planted
 9 and I lost it all on the- on this here Haas property.
 10 That wasn't in the clubhouse roads, though. I lost
 11 that. And then in '46- '49, it went up again, but not
 12 quite that high. Then they started doing something
 13 about the floods up north.
 14 Q. When was that that they worked on the
 15 floods up north?
 16 A. Well, they started on that Carlyle dam
 17 there to hold the water up. I don't know exactly the
 18 date where that was done, but that held up the water by
 19 us quite a bit.
 20 Q. Now, in the 60s, was the river widened
 21 quite a bit?
 22 A. Well, the contract read it had to be a-
 23 had a 9-foot depth and 200 feet wide.
 24 Q. How wide was it before the river was

1 Q. And where was this other road that you're
 2 talking about?
 3 A. That's on our Bee Hollow Road, where I
 4 lived.
 5 Q. Okay. Did that also go down into some farm
 6 property?
 7 A. That goes down through the farm property.
 8 That's got a God-damn gate locked on it.
 9 Q. That's- Now, is that a mile east of what
 10 we're talking about? Is that what you're talking about?
 11 A. Yeah, further east.
 12 Q. And where does this road go to?
 13 A. Down to farm some of that ground that we
 14 used to farm, Dresslers' and- well, the only ones that
 15 used it was Alvin Dressler to farm Dresslers' ground.
 16 Q. How long has that road been around?
 17 A. As long as I can remember.
 18 Q. Now, did it eventually connect up with
 19 another road that went along the river? Is that what
 20 you said?
 21 A. Yeah. It connected up to this here
 22 clubhouse road, but it was mud road. It was- Only way
 23 you could travel it was a horse and buggy or a wagon.
 24 Q. Now, getting back to the one along the

1 widened?
 2 A. Oh, I don't know. I never had any idea,
 3 but it was made- they went up to the bridge, so they
 4 couldn't go across the bridge. Well, the span is 200
 5 feet wide across the bridge, the main span.
 6 Q. Now?
 7 A. Yeah. That's 200 feet wide, so they went
 8 across the other side of the bridge to- and dredged the
 9 river.
 10 Q. Now, you mentioned that there was a road
 11 that loggers used to get around? Is that my
 12 recollection? Did I hear you right, that there was
 13 another road that came onto your property?
 14 A. Oh, that's past my place. You're a mile
 15 further east from the river. We lived along the river
 16 bottoms there too, the Bee Hollow Road, and then they
 17 hauled logs out of there, but whenever they hauled them
 18 out of the thoroughfare- they called that thoroughfare,
 19 the clubhouse area- they hauled them out there on
 20 trucks on a- oh, hell, whatever the- whoever sold
 21 their tract of ground, they logged it out and- I never
 22 paid any attention, but they hauled them out on this
 23 road, along the clubhouse roads, and if they done
 24 damage, they repaired it, with the heavy loads.

1 river, was that road paved or did it have rock on it all
 2 the way down to the very end?
 3 A. No, not- wherever the good places were in
 4 the road, it was solid, it was just that oil on it, but
 5 wherever it was bad, they had rock, brick, all kinds of
 6 scrap rock and stuff dumped in it to cover it up. Then
 7 they put sand over it so they could drive over it.
 8 Q. Now, did that go past the clubhouses, where
 9 there was rock and brick?
 10 A. Yeah, as far as farmers went down there.
 11 They couldn't go any further because the Mud Creek run
 12 into the old river- I mean run into the Kaskaskia
 13 River.
 14 Q. But the Township never did pave this road;
 15 is that-
 16 A. No, there was no township road. That was a
 17 private road. No township had anything to do with it.
 18 Q. I noticed that there was a lady that you
 19 mentioned by the name of Anna Baumgarte?
 20 A. Baumgarte.
 21 Q. Okay. And she owned looks like some of
 22 these tracts along with some farm property next to that?
 23 A. Yeah. Well, this- they sold strips to
 24 these clubhouse people.

1 Q. Mrs. Baumgarte did?
 2 A. I guess there's some along- well, I don't
 3 know either if she sold any or not, but that property
 4 is- property was right next to the clubhouses, farm
 5 property.
 6 Q. Did she also lease some of those spots
 7 along the river?
 8 A. What? Would she lease-
 9 Q. Did she ever lease any of those clubhouses
 10 along the river? Did she own any of those clubhouses?
 11 A. No, not that I know of. The people that
 12 bought that tract of ground, they put up a- they had
 13 telephone poles about that big around, stuck them in the
 14 ground. About six feet, seven feet off the ground,
 15 they'd build their little cracker box on top of there,
 16 and they had a ball.
 17 Q. Did Peabody buy some property sometime in-
 18 behind you, where you're living now?
 19 A. Yeah. They bought everything they could
 20 get a hold of.
 21 Q. Now, did they have some roads across their
 22 property as well?
 23 A. Yeah, there's a road across their property,
 24 but they were fighting for a lease or right of way down

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1 there through that road that we used to go farming, and
 2 that belonged to Sporleder, and then Sporleder sold it
 3 to a fellow by the name of Harry Luchtefeld. He's
 4 building a house on it now. And then John Rueter farmed
 5 ground down there. Fred Vahlkamp from- the one that
 6 was from Freeburg, he bought 104 acres. Well, he got a
 7 hold of that road and he messed the whole world up.
 8 Q. Now, does that road go down to the
 9 farmland? Can you take that road down to the farmland?
 10 A. Yeah. You got to go over Peabody's
 11 property to get to it.
 12 Q. Now, when you were growing up, did you use
 13 that road quite a bit in order to get to your farming?
 14 A. Yeah. We went- It was just 40- 60-acre
 15 lane from our house when we was down on that farm
 16 ground. We went straight down and through the woods.
 17 There was a road there all the time, just an old mud
 18 road.
 19 Q. I see that the roads that- along the
 20 river, they kind of just end at a spot; is that
 21 correct? They didn't connect with any other road, did
 22 they?
 23 A. Unless they crawl along the edge of some
 24 farmer or some fields to get- connect with the other

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1 one, to get to the one along the clubhouse road there.
 2 That's the only way. Then they had a- where they go
 3 down my place, where they go down in there, you had a
 4 steep hill to climb. That was a job, with corn up
 5 there.
 6 Q. When- Now, as far as this clubhouse,
 7 you're saying that that was built in the 30s, the one at
 8 the T road down at the south? That was built in the
 9 30s; is that-
 10 A. Well, wherever there was a bad spot in the
 11 road- like I said before, wherever there's a bad spot
 12 in the road, they filled it- the farmers filled it up
 13 with scrapers and then put brick in it, whatever they
 14 could get here, all from places in Belleville here or
 15 wherever they had their- lived, wherever they could get
 16 some scrap rock or brick or anything that they could put
 17 in a mud hole.
 18 Q. Now, when did this clubhouse go out of
 19 business?
 20 A. Well, when the State bought that river or
 21 State- that river out. That was in- oh, hell, in-
 22 no, Bobby was- my oldest son, was in the Army. '65 he
 23 was in the Army, my oldest son, then that river project
 24 come, then they- well, the State bought all the

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1 property, the clubhouse grounds, and they were
 2 demolished. They took a bulldozer and just pushed them
 3 on a pile and burned them.
 4 Q. What about the road at- that led to these
 5 clubhouses?
 6 A. That was there.
 7 Q. And was that also destroyed as well?
 8 A. Yeah, that was- I guess it's all put in a
 9 bar pit now, some of it. Some places it's still out.
 10 Q. As far as at the beginning of this road,
 11 would it be accurate to say that the river was widened
 12 to the point where this road is no longer- this
 13 original road is no longer in existence?
 14 A. There's still some of it that connects
 15 this. There's a length there, maybe an 80-acre length
 16 where the bar pit, but the road still alongside that was
 17 here, they moved it further south, or west.
 18 Q. So the original road is no longer there; is
 19 that-
 20 A. Not there.
 21 Q. Okay.
 22 A. But back further it's still in the original
 23 place.
 24 MR. BENNING: I believe that's all I have,

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1 Commissioner.
 2 REDIRECT EXAMINATION
 3 BY MR. LECHIEN:
 4 Q. Just one or two questions here for
 5 clarification, Mr. Stein. What you mentioned as the
 6 Luchtefeld property, is that— and I can't see all of
 7 the name here— but is that the 42.5-acre tract here at
 8 the bend in the Bee Hollow?
 9 A. Yeah, that's—
 10 Q. Half of that?
 11 A. Yeah, half of that is Harry Luchtefeld.
 12 He's building a house on it.
 13 Q. Okay. So it would be, like, the east half
 14 of this 42-acre tract that's shown William and then it
 15 says M-A-S-S and then—
 16 A. That was Massmann. That was William
 17 Massmann.
 18 Q. Massmann?
 19 A. Yeah.
 20 Q. Okay. That part's cut off of— to the
 21 side—
 22 A. Yeah.
 23 Q. — and you can only see M-A-S-S; is that
 24 right?

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1 A. That's right.
 2 Q. But the 42.5 was divided in half east/west,
 3 and the east half of that is Luchtefeld. I'm sorry.
 4 West half of that. West half of that.
 5 A. Yeah. I was kind of wondering what you—
 6 MR. LECHIEN: Sorry. Okay. I have no
 7 other questions.
 8 RECROSS EXAMINATION
 9 BY MR. BENNING:
 10 Q. If I may just ask, when was the last year
 11 that you farmed these properties or— down to the south?
 12 A. Down in the— where this clubhouse are?
 13 Q. Yes.
 14 A. Oh, it must have been '67, '66, because my
 15 son was in the Army. My oldest son was in the Army, and
 16 he come back out of the Army and he helped me— in the
 17 fall of the year he helped me get the corn. Well, he
 18 helped too over there.
 19 MR. BENNING: That's all I have.
 20 MR. LECHIEN: Okay. Thank you, Mr. Stein.
 21 Now, why don't I ask you to trade places with Arkell,
 22 please.
 23 ARKELL VAHLKAMP, produced, sworn and examined
 24 on behalf of the Plaintiffs, testified as follows:

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1 COMMISSIONER CLARK: You'll have to speak
 2 up so she can get down, and if you'd state your full
 3 name, spell your last name and give us your address,
 4 please.
 5 THE WITNESS: Arkell Vahlkamp, A-R-K-E-L-L,
 6 Vahlkamp, V-A-H-L-K-A-M-P, 9764 Drum Hill Road,
 7 Mascoutah, Illinois.
 8 DIRECT EXAMINATION
 9 BY MR. LECHIEN:
 10 Q. And what is your date of birth, sir?
 11 A. September the 29th, 1923.
 12 Q. Now, you have not had occasion, have you,
 13 to look at these plats—
 14 A. No, I haven't.
 15 Q. — that are marked here? And would you
 16 take a minute, then, to study Plaintiffs' Exhibit 2 and
 17 to get yourself oriented here with Fayetteville and the
 18 old river and the road?
 19 A. This is 15?
 20 Q. Yeah.
 21 A. Turn this around. Now, this is the road in
 22 question here? Yeah, uh-huh. That's the one that goes
 23 down to the clubhouses.
 24 Q. Now, looking at Exhibit 2, can you orient

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1 yourself as to where the river is and where Fayetteville
 2 is and where the road is?
 3 A. Yes.
 4 Q. Okay. Did you or your family ever own
 5 property in the area of Fayetteville?
 6 A. In this area, no. We rented down there,
 7 though.
 8 Q. Okay. What did you rent? Can you show us
 9 approximately where that property was?
 10 A. Well, I rented one of the first pieces that
 11 you come to as you come down this road.
 12 Q. Did you— Was that rented as a clubhouse?
 13 A. No, it was rented as farm ground.
 14 Q. And how large a tract of ground was that?
 15 A. Well, let's see. I guess I rented about 20
 16 acres down there. I rented 10 acres here and this 10
 17 acres here, probably.
 18 Q. Okay. Now, you're indicating 10 acres
 19 from— was it from Lena Erb?
 20 A. No. It was Piffner when I rented it.
 21 Q. Are the Piffners and the Erbs related in
 22 any way?
 23 A. That I don't know.
 24 Q. Okay. And was this 10 acres that you

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1 rented- did it front on the river?
 2 A. Uh-huh.
 3 Q. And then there was another piece-
 4 A. A piece something like this here, but at
 5 the time I rented it, it was from Wisneski.
 6 Q. Okay. And you just pointed to a portion in
 7 the Anna Baumgarte tract, what's marked as Anna
 8 Baumgarte there, somewhere in this area?
 9 A. Yeah.
 10 Q. Okay. And when you would take the road and
 11 go down and run alongside the river, would there be-
 12 was there a point where the road would curve to the-
 13 A. Right.
 14 Q. - left or the east?
 15 A. Curve to the east here.
 16 Q. Okay. And were there then two pieces that
 17 kind of- or two little other roads that went off of
 18 that?
 19 A. Right.
 20 Q. And in what time frame did you rent this
 21 property?
 22 A. Well, I rented it until the river project
 23 went in. That was 1965, in that area.
 24 Q. When did you start renting the property?

1 A. I'll guess on this. In the 50s.
 2 Q. Would it have been that you rented it for
 3 ten years or more?
 4 A. At least, yeah.
 5 Q. Okay. Now, let me mark here in some
 6 fashion, then, the pieces that you're talking about
 7 here. It would be Erb here.
 8 A. Right.
 9 Q. Okay. And why don't I mark that with your
 10 name.
 11 A. Okay.
 12 Q. And then this is the approximate area,
 13 then, that you farmed-
 14 A. Yes.
 15 Q. - is that right?
 16 A. Uh-huh.
 17 Q. And what kind of crops did you grow in
 18 there?
 19 A. Corn. Mostly corn at that time.
 20 Q. And how did you get to this property?
 21 A. By this road here.
 22 Q. Was that road always open and passable in
 23 those years, from, like, the mid 50s to the mid 60s?
 24 A. Always, always, always. I-

1 Q. What kind of- I'm sorry.
 2 A. My first recollection of coming down here
 3 was my father used to rent down here at Nold, Hamill and
 4 Huber's ground.
 5 Q. Okay. Nold, Hamill and Huber-
 6 A. That was my first time down there in this
 7 area.
 8 Q. And that's-
 9 A. That was when I was a boy.
 10 Q. Okay. What- Approximately what age?
 11 A. Oh, hell. I guess I was ten years old.
 12 Q. So sometime in the early 1930s; would that
 13 be right?
 14 A. Yeah.
 15 Q. And the Nold tract, do you know whether
 16 that is now the tract owned by the Blues and the Steins?
 17 A. That I don't know.
 18 Q. Okay. Now, what was your father doing down
 19 there in the 30s?
 20 A. He farmed the Nold ground.
 21 Q. And was that road open to traffic for
 22 farming purposes all the way down to the south end of
 23 it?
 24 A. Yes.

1 Q. And was he able to get his machinery in and
 2 out of there whenever he wanted?
 3 A. Well, yeah, such as we had in them old
 4 days.
 5 Q. Such as you had? Was it originally
 6 horse-drawn type?
 7 A. Yes, yes.
 8 Q. Did anybody ever stop you from using the
 9 road to go down there and farm?
 10 A. No, no.
 11 Q. Did anybody ever stop your father, to your
 12 knowledge, when he'd go up or down the road?
 13 A. We just figured we had as much business
 14 down there as anybody. Nobody ever said anything. It
 15 was just common.
 16 Q. And did other farmers use this roadway too?
 17 A. Uh-huh.
 18 Q. And did other-
 19 COMMISSIONER CLARK: You have to say yes or
 20 no.
 21 A. Yes.
 22 Q. Did other people use it for recreational
 23 purposes, just like for hunting or fishing or whatever?
 24 A. Well, they may have, but I wouldn't know

1 about that.
 2 Q. Okay. Do you recall there being clubhouses
 3 along the portion as you just come off of Route 15?
 4 A. Very much so.
 5 Q. Now, have you been out there any time in
 6 the recent past?
 7 A. No. I went down there once and I couldn't
 8 recognize anything, so--
 9 Q. Because of the change in the river?
 10 A. Right.
 11 Q. Okay. Do you recall clubhouses being
 12 located along--
 13 A. Clubhouses were on both sides of this road
 14 at times.
 15 Q. Was this true in the 1950s when you were
 16 there too, that there were clubhouses on-- even on both
 17 sides of the road?
 18 A. Oh, yeah, yes. I don't think there's been
 19 any new clubhouses-- there was any new clubhouses built
 20 lately.
 21 Q. Okay. When your dad was farming down here
 22 in the 20s and in the 30s, were there clubhouses along
 23 in here then too?
 24 A. Yeah.

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1 paid for that?
 2 A. Well, in the early part, I don't think so.
 3 Q. But later on?
 4 A. Yeah.
 5 Q. Any other use that you personally made of
 6 the road except to get access for farming these two
 7 tracts?
 8 A. That's the only use I made of it.
 9 Q. Did you ever have a building of any kind--
 10 A. No.
 11 Q. -- on this property that you rented?
 12 A. No.
 13 Q. Now, in the 50s, then, would you have--
 14 would have-- as far as the machinery that you would have
 15 used, would this be, like, for example, a tractor?
 16 A. Tractors and combines.
 17 Q. And you'd be able to drive the tractor and
 18 the combine down in there?
 19 A. Uh-huh.
 20 Q. The surface here was sufficient to be able
 21 to drive a combine on it?
 22 A. Yes. It was-- would have been-- The only
 23 reason that would have been close quarters would be the
 24 brush growing up on the side, but otherwise, the road

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1 Q. As far as the surface of the road as it
 2 went-- let's just take it right off of Route 15 and go
 3 south-- was there ever any kind of a-- like, a formal
 4 type surface--
 5 A. No.
 6 Q. -- put on the road?
 7 A. Well, once-- occasionally it was oiled, the
 8 pieces that were good.
 9 Q. When you say pieces that were good--
 10 A. Portions of it. Some places where the
 11 water would come across-- and the water would almost
 12 come up every year before the Carlyle Lake was in-- it
 13 would wash some of the road out, but up here in the top
 14 part up here, there was-- that seemed to be pretty well
 15 protected. The banks of the river might have been
 16 higher, didn't seem to wash as much there, and they
 17 might have oiled it, and the rest of the road, the
 18 farmers and the clubhouse people took care of it. They
 19 would-- They had a fund for it.
 20 Q. They put together money to buy--
 21 A. The landowners and the clubhouse people.
 22 Q. Did you pay any assessments toward that?
 23 A. Not I myself, no.
 24 Q. In your father's time, were assessments

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1 and everything was passable.
 2 Q. In the 50s, when you were doing this
 3 farming, what size combine did you use?
 4 A. Well, it was one of the smaller ones, about
 5 a 12-foot combine.
 6 Q. And tractor?
 7 A. Well, the tractor's the same-- tractors are
 8 about the same size. They're more horsepower now, but
 9 they're about the same size as they were then, take up
 10 the same amount of roadway.
 11 Q. Did you go down there, like, with grain
 12 wagons or whatever to take off the corn or whatever
 13 after it had been combined?
 14 A. Yes. I--
 15 Q. And-- Go ahead.
 16 A. Go ahead. That was all I had to add.
 17 Q. Okay. And would you typically use, like, a
 18 wagon to take the corn out?
 19 A. Wagons or trucks, farm truck.
 20 Q. Were you able to get wagons and trucks in
 21 and out of there without any problem--
 22 A. Yes.
 23 Q. -- across this road?
 24 A. Uh-huh.

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BOOK 4286 PAGE 8

A01956282

STATE OF ILLINOIS
ST. CLAIR COUNTY

06 JAN 13 PM 12: 00

Michael T. Costello

RECORDER

State Imposed
Surcharge
Rental Housing surcharge: \$10.00

EASEMENT

This Easement is made this 30th, day of December, 2005,

by and between Henry O. Stein, herein called "Grantor", and David C. Blue,
Donald A. Blue, Dana Blue and Celia Gast, herein called "Grantees".

WHEREAS, Grantees are the owners of certain premises described on
Exhibit A, attached hereto; and

WHEREAS, it is necessary and appropriate that Grantor grant to
Grantees, an Easement for ingress and egress to Grantees' premises,
described on the attachment hereto.

NOW, THEREFORE, in consideration of the mutual covenants and
conditions hereof; Grantor hereby grants to Grantees, an Easement for
ingress, egress and access to and from Grantees' premises, over and across
the parcel described on Exhibit B, attached hereto.

Grantees will maintain the Easement in such condition as Grantees
deem necessary for access, at their expense.

30-

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This Easement shall run with the land, and bind and inure to the benefit of the parties, their heirs, successors and assigns.

IN WITNESS WHEREOF, Grantor has hereunto set his hand and seal this 30th day of December, 2005.

Henry O. Stein
HARRY O. STEIN

STATE OF ILLINOIS)
) SS
COUNTY OF ST. CLAIR)

I, the undersigned Notary Public in and for said County in the said State, DO HEREBY CERTIFY that HARRY O. STEIN is personally known to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered said foregoing instrument as his free and voluntary act, for the purposes therein set forth.

S SUBSCRIBED and SWORN to before me this 30th day of December, 2005.

D. Devine
NOTARY PUBLIC

Prepared By:

Thomas A. LeChien, #01602616
Attorney and Counselor
120 West Main Street, Ste. 120
Belleville, IL 62220
(618) 236-6400



SHERBUT-CARSON & ASSOCIATES, P.C.
CIVIL ENGINEERS - LAND SURVEYORS
LAND DEVELOPMENT CONSULTANTS

J.G Sherbut, P.E., L.S.
Keith G. Carson, L.S.

4 MEADOW HEIGHTS PROFESSIONAL PARK
COLLINSVILLE, ILLINOIS 62234
☎ (618) 345-5454
FAX (618) 345-3017

Michael J. Graminski, L.S.
David B. Claxton, P.E., L.S.

Easement Description for David Blue
25 Foot Wide Roadway Easement Across Parcel 2
for the Benefit of Parcel 3

A roadway easement for ingress and egress being 25 feet in width over, through, and across part of the Northeast Quarter of Section 20, Township 2 South, Range 6 West of the Third Principal Meridian, St. Clair County, Illinois, the center line of which being more particularly described as follows:

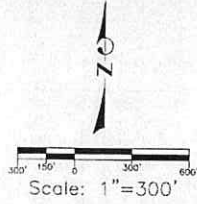
Beginning at a point on a line lying 12.5 feet southerly of and parallel with the north line of the Northeast Quarter of Section 20 and 200.00 feet easterly of the concrete monument found at the northwest corner of the Northeast Quarter of Section 20 as measured along said north line of the Northeast Quarter of Section 20; thence South 88 degrees 51 minutes 57 seconds East, along said line lying 12.50 feet southerly of and parallel with the north line of the Northeast Quarter of Section 20, a distance of 132.68 feet; thence South 67 degrees 51 minutes 48 seconds East, a distance of 392.57 feet; thence South 33 degrees 21 minutes 22 seconds West, a distance of 1264.40 feet to a point on the west line of the Northeast Quarter of Section 20, bearing South 0 degrees 02 minutes 12 seconds East, a distance of 1223.13 feet from the northwest corner of the Northeast Quarter of Section 20 and being the Point of Ending of said centerline of the 25 foot wide easement.

MJG
10/25/05
Job No. 2351



PLAT OF SURVEY

PART OF THE SOUTHEAST QUARTER OF SECTION 17 & PART OF THE NORTH HALF OF SECTION 20 ALL IN TOWNSHIP 2 SOUTH, RANGE 6 WEST OF THE THIRD PRINCIPAL MERIDIAN, ST. CLAIR COUNTY, ILLINOIS.

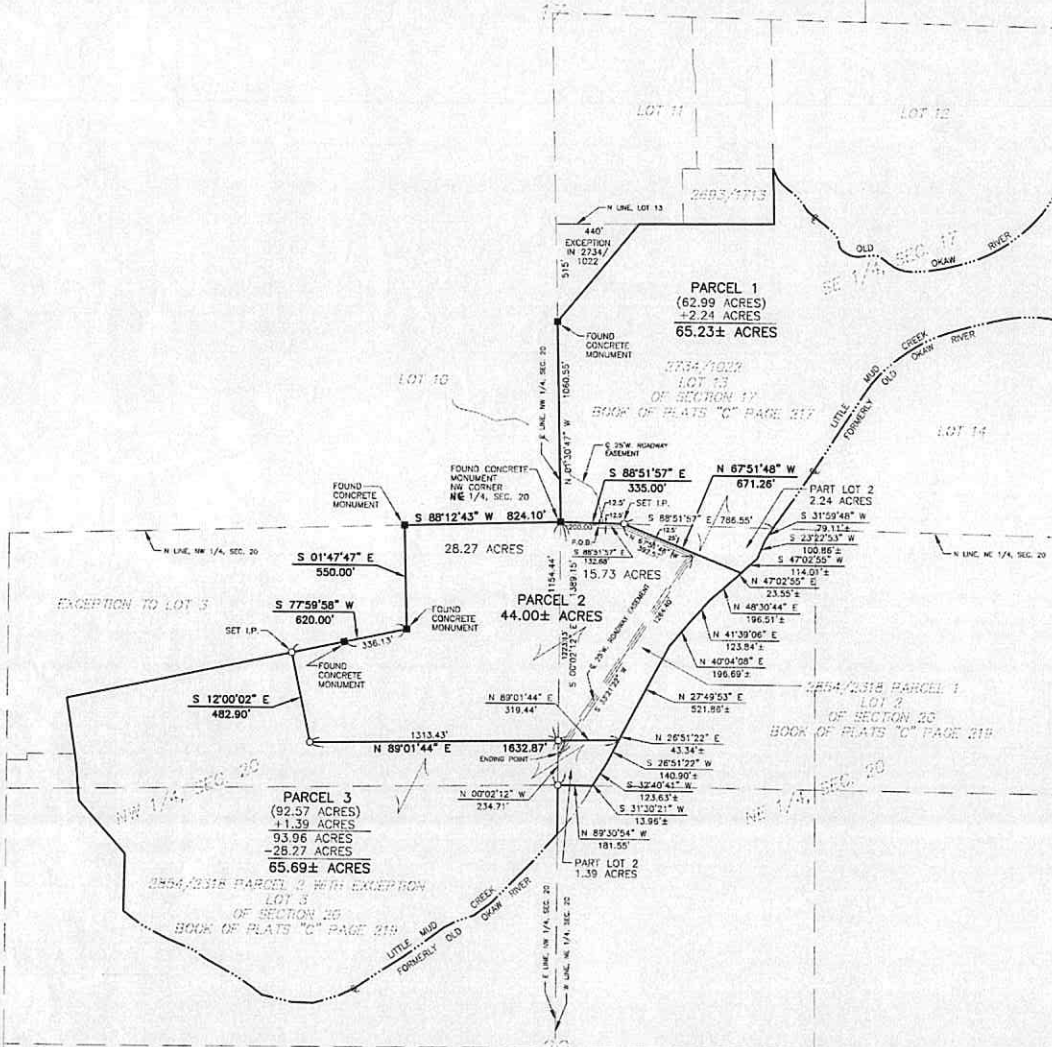


LEGEND

- Denotes found I.P.
- Denotes set I.P.
- Denotes found conc. monument

Notes:

1. (62.99 ACRES) & (92.57 ACRES) are areas obtained from Sidwell Mapping & current tax maps.
2. Bearings shown herein are assumed.



This is to certify that we, Sherbut-Carson & Associates, P.C., have, at the request of and for the exclusive use of the owner, performed a survey of the tract shown hereon, and that this plat is a true representation of that survey.

Sherbut-Carson & Associates, P.C.
 Michael J. Sherbut (P.L.S.) 2901 Date: 11/30/2006
 Expires: 11/30/2006



A.C.S. International, Inc. and its subsidiaries are not responsible for the accuracy or completeness of the information shown on this drawing. The user of this drawing is advised to verify the accuracy and completeness of the information shown on this drawing before using it for any purpose.

SHEET: 1 OF 1	PROJECT NO.: 2351 SHEET NUMBER:	DRAWING: PLAT OF SURVEY	DATE: OCT 2006	REVISIONS:	Sherbut-Carson & Associates, P.C. #4 Meadow Heights Professional Park Collinsville, Illinois 62234 Phone: 618-345-5454 Fax: 618-345-3017
		BLUE PROPERTY	DRAWN: KMG	NO. DATE REMARKS	
			TRACE:		
			CHECK:		

*LeChien
LeChien*

A01725937

BOOK 3771 PAGE 888

STATE OF ILLINOIS
ST. CLAIR COUNTY

03 JAN -7 AM 8:31

Michael T. Costello
RECORDER

31.75-

STATE OF ILLINOIS)
)
COUNTY OF ST. CLAIR") SS

AFFIDAVIT

AFFIANT, first being duly sworn upon his oath, deposes and states:

1. That attached hereto, is a true and correct copy of a Court Of Claims Opinion filed June 21, 2002.
2. Also attached, is a true and correct copy of the Notice Of Filing Legal Description of Easement filed in the Court of Claims October 7, 2002 and an attached legal description.

FURTHER AFFIANT SAYETH NAUGHT:



 THOMAS A. LECHIEN

Subscribed and sworn to before me, a Notary Public on this 6th day of

January, 2003.

Kathleen J. Spalding
Notary Public



IN THE COURT OF CLAIMS OF THE STATE OF ILLINOIS

FILED COURT OF CLAIMS

JUN 21 2002

Secretary of State and Ex-Officio Clerk Court of Claims

DAVID C. BLUE, DONALD F. BLUE, DONALD A. BLUE, HARRY O. STEIN, SR. and RICHARD A. WARD,

Claimants,

v.

No. 01 CC 2097

STATE OF ILLINOIS, DEPARTMENT OF NATURAL RESOURCES,

Respondent.

OPINION

Epstein, J. This landowners' claim seeks to declare and enforce a decades-old prescriptive easement over formerly private lands that the State acquired in the 1960s and that now comprise part of the Kaskaskia River State Fish and Wildlife Area, situated on the east side of the Kaskaskia River in Fayetteville Township in St. Clair County. These State lands are now administered by the Illinois Department of Natural Resources ("DNR").

This cause is before us for final determination following trial to Commissioner Stephen R. Clark, who has submitted his findings and recommendations. We consider this claim on the pleadings (the claimant's amended 3-count complaint and the respondent's answer and [five] affirmative defenses thereto) and the extensive trial record, which inter alia contains expert testimony as well as direct testimony of the historical use of the claimed easement going back to the 1920s, together with plats, arial photographs, and deeds in the claimants' and the State's chains of title. In addition, the parties submitted post-trial briefs.

Although, unsurprisingly, there are gaps in this 80+ year old land-use story, there are surprisingly few disputed facts in this case despite the wide disparity in the parties' conclusions.

Nature of the Claim

Claimants are landowners who acquired several parcels of farmland near the Kaskaskia River in Fayetteville Township in 1988, 1989 and 1992 from prior landowners who (or whose families) had held the farmlands for many decades. In their amended complaint, claimants seek preliminary and permanent injunctions to restrain the State (DNR) from blocking the claimants' access and use of the claimed easement (Counts I and II), which they allege has been blocked by DNR since late 1996 or 1997 (Am. Compl., Ct. I, ¶3(w), ¶3(x)) and a declaration that the easement (for access to their farmland parcels and other interior parcels) was created by regular and continuous adverse use from 1920 to 1968 and beyond, and that it remains in effect (Count III).

The Claimed Easement – The Facts

The claimed easement lies south of Illinois Route 4 (which is also U.S. Route 15) and just east of the Kaskaskia river. It originally consisted of an unimproved or partly graveled (and sometimes partly flooded) roadway leading off of Route 4/15 extending south along the Kaskaskia and eventually splitting into two roads, one heading south and the other heading east, both of which lead to agricultural tracts, including the claimants' properties, and to a number of fishing "clubhouses" on the land between the river and the roadway that were built in the 1920s (most of which no longer exist).

In unrebutted testimony, Richard Stein (father of one of the claimants) recalled personally traveling the unimproved road by horse and buggy with his father as early as the mid-1920s to access their farm fields. Around the same time, numerous clubhouses began to spring up along the river, whose owners used the road to access the clubhouses and the river for fishing. Mr. Stein also recalled that farmers and clubhouse owners would repair holes in the road and do other maintenance needed due to washouts. (The roadway was never repaired or maintained by the township, nor by any other local government.)

Starting in the 1960s, the State acquired riparian lands in the area, and paid "additional compensation as a result of ... [some] parcels being landlocked." (R. 301-302). (It is not clear whether the State's purchases were pursuant to threat of condemnation.) The warranty deeds to the State in 1967 and 1968 (Respondent's Exhs. 8-11) (*see also*, Grp. Exh. B to Amended Answer and Affirmative Defenses) each contained the following clause following the legal description of the lands conveyed:

Also conveys rights, title and interest in and to the bed and banks of the Kaskaskia River, and any and all rights in and to the adjoining street or roadways.

The State acquired the lands underlying most of the claimed easement from several landowners, some of whom later sold other parcels in the area to some of the claimants.

Following its acquisitions, the State (and the U.S. Army Corps of Engineers) widened the river, which submerged part of the claimed easement road; a berm was built along part of the Kaskaskia and a new access road was constructed adjacent and generally parallel to the berm, which replaced part of the prior access roadway (*i.e.*, the claimed easement). In addition to the claimants' farmland, some other nearby or adjacent lands remain in private ownership, including property owned by the Peabody Coal Company, which also has a private access road into this area.

In the early 1970s, the State placed a cable across the "easement" road; and in the 1980s a fence was erected across it; but one of the Blue claimants (who had then recently acquired their lots) contacted the DNR official in charge of these State lands (Mr. Vic Hammer, Director of the Kaskaskia River State Fish and Wildlife Area), who agreed to provide the Blue claimants with a key to the fence gate "with the understanding that [they] will have to seek other access" to their farmland.

Several claimants obtained keys to the gate by the 1990s, and at least occasionally used the then-gated roadway with the permission of the DNR, which also granted at least one of the claimants a formal permit or license to use the access road to remove timber. However, since late 1996 or 1997 the DNR has barred claimants from using the roadway.

An alternative access road was used by several claimants over land owned by Peabody Coal Company in recent years. However, the company later closed this route to the claimants, whose lands are now landlocked.

The State and some local governments have plans for further changes along this part of the Kaskaskia river, which may not be compatible with the claimed easement. The respondent's brief presents a series of planned or proposed or contemplated projects (which we do not detail here, as they are not relevant to the existence of the claimed easement, as the claimants vigorously point out).

The Contested Issues

The respondent does not dispute the continuous adverse use of the claimed easement roadway down to the river from the early 1920s (before 1924) until approximately 1968 -- clearly sufficient to establish an easement by prescription under Illinois' 20-year prescription period. Instead, the respondent contests the easement claim on four overall grounds, asserting:

- (1) jurisdictionally: that this claim is barred by the 20-year statute of limitations (735 ILCS 5/13-101), as it was not filed within 20 years of (a) its original acquisition, nor (b) the 1967 conveyances to the State [that allegedly extinguished the easements] nor (c) the last regular use of the easement [which ceased about 1967]; and that this claim is barred by the 40 year limitation (735 ILCS 5/13-118) as it was not filed within 40 years of claimants' predecessors' acquisition of the easement;
- (2) procedurally: that these claims are barred by claimants' failure to exhaust remedies (alternative sources of recovery) (*see*, §25, Court of Claims Act; 705 ILCS 505/25; *see*, Rule 60; 74 Ill.Admin.Code. 792.60) by (a) seeking a judicial declaration of an alternative easement to their parcels over private lands (of Peabody Coal Company), and (b) by failing to obtain compensation under their title insurance policies.
- (3) on the merits: that the easement was extinguished by a series of conveyances to the State of lands east of the Kaskaskia River in 1967, including conveyances of other parcels by some of the claimants' predecessors-in-title, which deeds expressly conveyed all appurtenant rights; and
- (4) on the merits: that there is no "present easement" because the easement (a) did not continue after 1968 by ongoing adverse use of the roadway, or (b) was abandoned by non-use and/or by non-adverse, permissive use under license from DNR after 1968, and by some claimants' use of an alternative access route to their land.

Analysis: Jurisdiction and Procedural Issues

The analysis necessarily commences with the jurisdictional and procedural issues, the first of which the court must raise on its own motion.

The Injunction Claim - Jurisdiction

We must dismiss the Count I and II injunction claims for want of jurisdiction to grant injunctive relief, which is beyond the statutorily delegated powers of this statutory court. *Garimella v. Board of Trustees of the University of Illinois*, 50 Ill.Ct.Cl. 350 (1996). This is jurisdictional: the court cannot provide relief that it is not empowered to grant.

We can, however, adjudicate the claimants' land claim against the State by means, *inter alia*, of declaratory judgment, as is presented here by Count III. *See, Ace Coffee Bar v. University of Illinois*, 51 Ill.Ct.Cl. 395 (1999), and cases cited therein.

The Statute of Limitations.

The respondent's 20-year and 40-year limitation arguments (Affirmative Defenses 3, 5) based on §13-101 and §13-118 of the Code of Civil Procedure, are off point. Those limitations, which have long governed Illinois land litigation in the circuit court (generally, Code of Civil Procedure, Art. XIII, §§13-101 *et seq.*; 705 ILCS 5/13-101 *et seq.* [the "Code limitations"]), do not ultimately apply to claims *against State-claimed land* in this court.

In this court, claims are subject to the limitations of §22 of the Court of Claims Act (705 ILCS 505/22). Section 22 provides that the *shorter* of the applicable §22 limitation or the otherwise-applicable statute of limitations ("not otherwise sooner barred by law") applies. The §22 limitations are dramatically shorter than the Code limitations for land disputes, but expressly supersede the Code limitations in this court.¹ This is a significant asymmetry in Illinois real estate law.

This huge discrepancy in the limitation periods for virtually identical situations (which differ only in that the State has or claims title and is respondent rather than claimant), without any perceivable purpose of giving special time protection to the State for land claims, appears to be a legislative anomaly. Nevertheless, we must enforce the §22 limitations, which are jurisdictional here (705 ILCS 505/22(h)). This favors the respondent even though it did not argue the §22 limitations.

To this (Count III) easement claim, we apply the 5-year limitation of §22(a) (705 Ill.Comp.Stat. 505/22(a)) by analogy as the most appropriate provision of §22 in the absence of a provision specifically applicable to easement claims or land title claims. Directed at "claims arising out of ... contract", we have previously applied §22(a), at least alternatively, to a claim on an express

¹ On its face (without regard for the superseding Court of Claims Act), it appears that the Code intended that at least §13-118 - §13-121 (relating to the 40-year limitation on certain land claims) would apply to the State, *see* §13-121 (735 ILCS 5/13-121).

easement (*i.e.*, an easement created by deed). *Evans v. Department of Transportation*, 52 Ill.Ct.Cl. 300 (1996)(claim of reverter of express State easement). An express easement is analogous to a contract although land-use agreements in deeds are usually classified by the law as “property” and commonly run with the land. We now affirm and extend that reasoning to prescriptive easements, which under the traditional lost grant theory (*see, e.g., Peterson v. Corrubia*, 21 Ill.2d 525, 531, 173 N.E.2d 499, 502 (1961); *Rush v. Collins*, 366 Ill. 307, 8 N.E.2d 659 (1937); *Burrows v. Dintle*, 41 Ill.App. 3d 83, 353 N.E.2d 708 (5th Dist. 1976)) are also, albeit constructively, a species of express easement in the eyes of the law under the legally presumed ancient “lost grant.” We find no good reason for claims involving express easements to be subject to a 5-year limitation (under §22(a)) while claims involving prescriptive easements would be subject to a 2-year limitation (under the residual §22(g)) if we were to adopt a narrower application of §22(a).

Accordingly, under the applicable 5-year limitation of §22(a) of the Court of Claims Act, we reject the respondent’s limitations defense. This claim was filed within five years of the DNR’s blocking of the claimants’ use of the claimed easement, when this easement dispute thus accrued (*see, 735 ILCS 5/13-106(a)* (“... right of entry or of action shall be deemed to have accrued at the time of such wrongful ouster [from possession]”), which is *in pari materia* with our §22 limitations).

Exhaustion of Remedies (Alternative Sources of Recovery)

The two exhaustion defenses in this case appear to present applications of first impression of the statutory requirement that, before final determination of a claim by this court, claimants must “exhaust all other ... sources of recovery” (§25, Court of Claims Act; 705 ILCS. 505/25) “for the injury or damages sought to be recovered by the claim” (Rule 60; 74 Ill.Admin.Code 790.60).

Respondent urges that claimant must pursue recovery of available insurance proceeds (*i.e.*, monetary compensation for the easement or access rights) under its title policy and, implicitly, if full recovery of the value of the easement is had by the claimants then their easement claim would be satisfied and extinguished. This contention suffers three conceptual defects.

First, recovery of money is not the same and is not equivalent, and is thus not an “alternative” for an interest in land. “It is hornbook law that real property is unique, and thus ... monetary damages[] are insufficient to compensate ... for its loss.” *McKenzie v. City of Chicago*, 964 F.Supp. 1183, 1204 (N.D. Ill. 1997)(Castillo, J.). As the Seventh Circuit forcefully stated in *United Church of the Medical Center v. Medical Center Comm’n.*, 689 F.2d 693, 701 (7th Cir. 1982):

It is settled beyond the need for citation ... that a given piece of property is considered to be unique, and its loss is always an irreparable injury. Substitution of another piece of property cannot cure the loss of one’s property

Second, and similarly, this court has held that a claimant’s recovery of insurance proceeds (*i.e.*, a contingent contractual benefit that the claimant purchased) is not a recovery that is subject

to set-off against a claim against the State. (*Continental Ins. Co. v. State of Illinois*, 46 Ill.Ct.Cl 26 (1992); *Scott v. State of Illinois*, 43 Ill.Ct.Cl. 85 (1990); *Bellamy v. State of Illinois*, 43 Ill.Ct.Cl 337 (1990); *Sallee v. State of Illinois*, 43 Ill.Ct.Cl. 41 (1990).) That mandates the corresponding conclusion that insurance proceeds cannot be “alternative sources of recovery” under §25: insurance is not a substitute for the State’s liability because it is an *additional and independent* recovery, rather than alternative recovery of a shared liability for the same “injury or damages” (Rule 60).

Third, the application of the §25 exhaustion rule to convert the claimant’s possessory claim to land into a damages claim against an insurer – which would, almost invariably, have a subrogation claim back against the State if it paid the claimant – would not serve the purposes of the §25 requirement: to make the State the payor of last resort and the payor of the smallest portion of damages where others share liability for the same injury or damages.² Forcing this land claim into a damages-exhaustion mode would ensure that the State pays money to the claimant(s) *in lieu* of a disputed property interest (assuming *arguendo* that it is a valid claim, of course). That would increase rather than decrease the State’s pecuniary liability – the opposite of the statutory purpose.

More egregiously, application of §25 exhaustion to force the claimants to pursue and accept a monetary payment *in lieu* of the possessory easement that they seek here (by declaration) would penalize the claimants and effectively extinguish their real property rights – and in this case could landlock interior farmland – solely because it is the State rather than a private party or a local government that (allegedly) interfered with their land rights. (This is because the §25 alternative source exhaustion rule applies only to claims against the State in this court.) To extinguish land rights in favor of cash recovery is not the purpose of §25. This court will not apply the §25 exhaustion requirement to penalize claimants and to eliminate private property rights as a condition of pursuing a remedy against the State in this court to enforce such rights -- which are then lost by a successful “exhaustion.” That would be a catch-22 worthy of Ken Kesey.

We now turn to the more subtle land-for-land exhaustion argument: that claimants must pursue an “alternative” access easement (over private land owned by a coal company that they had used) before this court may award them a declaration that they own easement rights over State land and, implicitly, that if claimants successfully “recover” the alternative easement, then their easement claim against the State would be satisfied and extinguished. We reject this argument for some of the same reasons discussed above.

First, it is repugnant to the doctrine of uniqueness of real property to equate different lands or different rights in land.

² Although the alternative source exhaustion rule is aimed at monetary claims – which constitute the overwhelming majority of this court’s docket, to which the rule is solely applicable – §25 is not by its terms limited to pecuniary relief claims. We cannot say that §25 “alternative source” exhaustion can never apply to a property claim, but such application obviously generates unusual considerations as this case shows.

Second, the recovery of “alternative” land rights from an “alternative [non-State] source” is not here (and is almost never) an alternative recovery for the *same injury* for which the State is sued, which is the gist of the §25 requirement, *see* Rule 60. It is difficult to imagine a right to land from a third party that arises because of the State’s action (or inaction) that injures the claimant’s rights to a different parcel. That surely is not the case here: The supposed easement over Peabody Coal land that the respondent suggests as an “alternative” remedy has no legal or causal connection to the claimed easement over the State property. The respondent does not allege that the coal company is responsible for blocking the claimed easement or is somehow liable because of the State’s blockade. The proposed “alternative” land recovery is outside the scope of §25.

Third, like the insurance in the respondent’s first exhaustion argument, the potential recovery of an *independent* land remedy (*i.e.*, one that does not arise out of the same injury for which the State is sued, and to which claimant’s right is independent) cannot be treated as an “alternative recovery” for a more fundamental reason: that application of §25 would nullify the State’s liability by depriving the claimant of relief. That would use the claimant’s own property to satisfy the State’s liability. If it is wrong to rob Peter to pay Paul, it is even worse to rob Peter to pay Peter.

Even if we look solely to the functional aspect of this land claim, *i.e.*, the right of *access* to claimants’ parcels, it would still be wrong to use the §25 exhaustion rule to extinguish one access easement that runs over State lands because the claimants can (*arguendo*) obtain another access easement over private land -- or, equivalently, because the claimants already have other access. The respondent’s argument here, focusing on access, is that a claimant cannot recover or enforce an access easement against the State if another access route is available. We do not perceive that to be the law of Illinois. We must reject the notion that “substitution of another ... property” right can cure the loss of another (paraphrasing *United Church of the Medical Center, supra*). Finally, since two access easements are inherently better than one -- and almost surely affects the value of the property -- it would be perilously close to a taking of the first easement for the State to force its abandonment merely because other access is available.

There may someday be a case where §25 mandates alternative source exhaustion of a *property right* claim; but this is clearly not that case if there is one. The insurance-for-land and land-for-land exhaustion defenses are rejected.

Analysis: The merits.

The Easement: Creation

The respondent does not seriously dispute the creation of the claimed easement by continuous adverse possession and use by claimants’ predecessors-in-title (and by others, as well) for far more than the requisite 20 years prior to 1968. The evidence convincingly shows that the roadway was used for access to what is now the claimants’ lands, as well as by others for access to the various “clubhouses” which were apparently used for fishing. In this record there is no evidence of non-adverse, permissive use of the roadway for access to claimants’ farm parcels during the 40+ years

prior to the State's purchase of these parcels, nor has the respondent disputed adversity.²

There is only one contested issue concerning "creation" of the disputed easement. The respondent argues, without authority, that the easement must continue to be used adversely in order to preserve its creation even after the statutory 20-year period (of continuous adverse use) has run. We disagree.

Once a prescriptive easement is duly created, it becomes a recognized interest in land that receives judicial protection, *see e.g., Beloit Foundry Co. v. Ryan*, 28 Ill.2d 379, 192 N.E.2d 384 (1963). As even the respondent observes, a prescriptive easement is equally enforceable and permanent in the eyes of the law as any other interest in land. We do not perceive the issue urged by respondent – concerning the post-1968 and post-1996 periods -- to be an issue of "creation" or "re-creation" or "renewal" of the easement. The issue is instead a question of abandonment or extinguishment, which we address below.

The Easement: The Extinguishment by Deed Issue

Respondent's extinguishment-by-deed argument has two components. Respondent principally contends that the 1967-68 deeds, which conveyed fee title in the parcels underlying (or adjacent to) the easement, also conveyed the easement rights by operation of the deed language conveying "rights, title and interest in and to the bed and banks of the Kaskaskia River, and any and all rights in and to the adjoining street or roadways." This argument focuses on the "adjoining street or roadways" clause which, respondent maintains, conveyed the easement rights to the State.

That argument is meritless. Even assuming *arguendo* that the "adjoining street or roadways" language could encompass a non-public easement – which is far from obvious – it is clear that the conveyances of the underlying lands over which the easement runs could not convey the easement for the simple reason that the grantors (*i.e.*, the fee owners of the conveyed parcels) did not own the easement rights. The easement was not appurtenant to their parcels (which were *servient* land as to this easement). The easement rights were appurtenant to the claimants' parcels (the *dominant* land), which those grantors did not own nor convey. *See, e.g., McMahon v. Hines*, 298 Ill.App.3d 231, 697 N.E.2d 1199 (2nd Dist. 1998)). It is a fairly fundamental principal of property law that only owner(s) can convey an interest in land.

² For clarity, we qualify our easement finding. First, we find only an easement for access to the claimants' property appurtenant to their lands. We do not address or make any findings as to other parcels or as to other prior or current users of the roadway, who are not claimants here and whose rights, if any, are not asserted by the claimants before us. Second, we find a prescriptive easement, and not an easement implied by necessity, nor a "public" easement, neither of which have been advanced in this case. Finally, because the easement in this case was created while the underlying fee was owned privately, our opinion does not address adverse possession running against the State.

Also embedded in the respondents' extinguishment-by-deed argument is a second variation. Respondent urges that the 1967-68 deeds to the State by those grantors who *also* then owned some of the *dominant* parcels had conveyed to the State the formerly-appurtenant easement rights that are now asserted here by some of the claimants (who later obtained their land from the same grantors). This is a cogent argument. If the conveyances of the *servient* lands to the State also included conveyances of the easement rights of other *dominant* parcels (as respondent maintains), then there were no remaining appurtenant rights in those formerly-*dominant* parcels that could later be conveyed to the claimants, who now cannot assert them because they do not own them.

This issue turns on two points: (1) whether appurtenant easement rights, particularly access easement rights, are independently alienable, *i.e.*, whether they may be conveyed apart from a conveyance of (all or part of) the dominant parcel to which the easement is appurtenant; and (2) if so, the language of the common grantors' deeds to the State, *i.e.*, whether the "adjoining street or roadways" language in those 1967-68 deeds to the State conveyed the easement rights that were appurtenant to *other* (*dominant*) parcels that were then also owned by those grantors but which were not themselves conveyed.

The respondent cites no authority supporting the validity of an independent conveyance of appurtenant easement rights; the claimant cites *Cleveland, C., C. & S. L. R. Co. v. Munsell*, 94 Ill.App. 10 (3d Dist. 1900), for the proposition that appurtenant easement rights are "indivisible" from the dominant land. However, the *Munsell* case did not involve an attempted alienation of easement rights apart from appurtenant land, and in any event was not a decision on the merits (the appellate court held that it lacked jurisdiction). Our own research did not find a clear precedent in Illinois law. For present purposes, the court assumes without deciding that an independent conveyance of a prescriptive easement is valid.

The respondent asks us to read the conveyance language in the deeds to the State broadly, so as to encompass easement rights that were appurtenant to *other* parcels that the grantors also owned, where the deed is silent as to an easement and contains no reference or description of the land to which the easement was appurtenant. Respondent asks this court not only to read "easement" into the "adjoining street or roadways" clause but also to read "easement belonging to another parcel" into this conveyance. Respondent cites no precedent for such a broad construction of a deed.

The respondent stretches way too far. There is no language in these deeds that indicates any intent by the grantors to convey any interest in land other than those specifically described in the deeds. Nor is there any indication that those grantors executed those conveyances in any capacity other than as owners of the lands described. The court will not supply the missing links that the scribes of those deeds could have but did not provide. This court will not indulge an *implied* conveyance of rights appurtenant to unmentioned parcels. We reject the respondent's spandex approach to these conveyances.

The Easement: The Abandonment Issue

Respondent's abandonment argument asks this court to apply the standard of abandonment of easements stated in *Beloit Foundry Co. v. Ryan*, 28 Ill.2d 379, 192 N.E.2d 384 (1963); *Karz v. Blume* 407 Ill. 383 (1950); and *Egidi v. Town of Libertyville* 251 Ill.App.3d 224 (2d Dist. 1993) to the post-1968 and post-1996 facts of this case concerning the claimants' and their predecessors' use and non-use of the easement road to find an "abandonment" or "extinguishment" of the easement. In effect, the respondent is contending for a prescriptive abandonment of the prescriptive easement.³

Beloit and *Karz* state the common law legal standard for abandonment of *express* easements – easements created by written instrument (*e.g.*, deed, plat or will) – to which the language of those opinions explicitly limits them.⁴ Those cases do not appear to provide the rule of decision for a claimed abandonment of a prescriptive easement, as is before us in this case. Those decisions suggest that the abandonment standard for express easements is different. Neither party has found a case, nor has the court, reporting an Illinois legal standard for abandonment of prescriptive easements.

With some irony, the respondent nevertheless urges us to follow the 3-prong test set forth in *Beloit, supra*, and *Karz, supra* (complete nonuse of the easement for the prescriptive 20-year period, open and notorious and physically incompatible use or alteration by the fee owner, and intent to abandon by the easement owner) even though they include an "intent" element for abandonment of express easements. If an "intentional" abandonment or relinquishment is a requirement for extinguishment of the *prescriptive* easement in this case, then the respondent would fail to make a *prima facie* case of abandonment, as there is no evidence of any intentional abandonment of the easement by any of the claimants or their predecessors in title. However, in light of the absence of guiding authority, the court declines to reach the issue of whether or not "intent" is an element of abandonment of non-intentional easements-by-prescription, as we need not do so in this case.

It is clear that the other two elements of abandonment of easements, which we do take as presumptively applicable to abandonment of all easements, are not met in this case. First, respondent would have to establish a continuous total non-use of the easement road for the prescriptive 20-year period (as, again, respondent concedes). However, despite the respondent's effort to reach back and construct a 20-year non-use period, it is clear on this record that the longest

³ Because an access easement appurtenant to land is not extinguished and does not terminate due to the relocation or alternation of the easement route over the *servient* land, *Weihl v. Wagner*, 210 Ill.App. 3d 894, 569 N.E.2d 297 (5th Dist. 1991), insofar as the respondent suggests that the easement no longer exists due to the widening of the Kaskaskia River, which submerged part of the original route, or due to DNR's construction of a new partially relocated roadway, that suggestion must also be rejected.

⁴ *Egidi* is inapposite here, as the issue there was governed by statute [The Township Open Space Act], inapplicable here, and not by common law abandonment principles.

cognizable period of total non-use by these claimants is from 1996 (or 1997) to the filing of this claim, which falls short. Some sporadic use of the easement road until 1996-97 is conceded. Despite respondent's insistence, it does not matter for abandonment purposes that claimants' use during some of that time was with DNR's acquiescence.

Second, respondent has not established the requisite adversity during the alleged non-use period, at least before the ultimate closure of the easement roadway to the claimants in late 1996 or 1997. As stated by our Supreme Court in *Karz v. Blume, supra*, 407 Ill. at 389-390:

To constitute a bar to the dominant estate, the possession by the owner of the servient estate must be inconsistent with the right to the easement. The owner of the servient estate has the right to use the land for any purpose ... so long as such use does not interfere with the proper enjoyment of the easement. [citation omitted.] The use of the easement by the occupants of the servient estate for hauling coal [etc.] ... was in no way antagonistic to the right of passage accruing to the dominant estate and in no way altered or limited the use which could be made of the alley by the original grant [of easement].

There is no evidence of alteration or use of the roadway by DNR or any other State agency that was physically incompatible with its use by the claimants. Thus claimants' continued if irregular use of the easement roadway during State ownership from 1967-1996 with DNR permission or acquiescence is not non-use, nor was the State's posture then antagonistic within the caselaw. DNR's ultimate blocking of the roadway to the claimants by 1997 arguably created a true physical adversity between these parties as to the easement – although the blockade gate is not an incompatible *use* or alteration of the roadway itself. We need not decide that fine point to conclude that the respondent has not made out a *prima facie* case of abandonment.

Conclusion

For the foregoing reasons, it is hereby ORDERED:

1. The court finds and declares:
 - A. An easement for access to the claimants' parcels has been established by prescription over the existing unimproved and improved roadway running southward and eastward from Illinois Route 4 (U.S. Route 15) in Fayetteville Township, St. Clair County, parallel generally to the Kaskaskia River and over both its south and east branches to the current terminus of each such branch;
 - B. The easement is appurtenant to the claimants' parcels of land, and is solely for access to those parcels from Illinois Route 4 (U.S. Route 15);

2. Within 28 days after the date of this order, the claimants shall file with the clerk of this court a notice of whether or not they intend to file a submission pursuant to paragraph 3 of this order;
3. If claimants give notice of their intent to do so in accordance with paragraph 2, the claimants may submit to the court a survey or plat or other legal description of the easement suitable for recording within 90 days after the date of this order; and respondent may submit any objections or proposed corrections or alterations to the claimant's submission within 60 days thereafter; the claimants may reply to the respondent's objections or proposals, if any, within 30 days thereafter;
4. If the parties are not in agreement as to the description of the easement, the court will determine the same, or will set a hearing to aid in such determination, and issue a supplementary order approving a description of the easement, unless the court finds that such a supplementary order is improvident.

ENTER:

Judge

CONCUR:

Judge

Judge

Judge

(The date stamped above is the date of this order.)

IN THE COURT OF CLAIMS
STATE OF ILLINOIS

FILED
COURT OF CLAIMS

OCT 07 2002

Secretary of State and
Ex-Officio Clerk Court of Claims

DAVID C. BLUE, DONALD F. BLUE,)
DONALD A. BLUE,)
HARRY O. STEIN, SR., and)
RICHARD A. WARD,)

Claimants,)

vs.)

NO. 01-CC-2097

STATE OF ILLINOIS, DEPARTMENT)
OF CONSERVATION,)

Respondent.)

NOTICE OF FILING LEGAL DESCRIPTION
OF EASEMENT

Now come the Claimants, David C. Blue, Donald F. Blue, Donald A. Blue,
Harry O. Stein, Sr., and Richard A. Ward, by and through Thomas A. LeChien of
LeChien & LeChien, Ltd., and file the attached Legal Description of the Easement, being
the subject mater of this cause.



THOMAS A. LECHIEN - #-0162616
LECHIEN & LECHIEN, LTD.
120 West Main Street, Suite 110
Belleville, IL 62220
(618) 235-1637
Attorney for Claimants

PROOF OF SERVICE

I, the undersigned, do hereby certify that a copy of the foregoing instrument was mailed to:

Warren E. Benning, Esq.
Assistant Attorney General
State of Illinois, Department of Natural Resources
500 Second Street
Springfield, IL 62706

by placing same in an envelope, postage fully paid, and depositing said envelope in a

U.S. Postal Service Mail Box, in Belleville, Illinois, on this 5th day of Oct,

2002.

EDC

DESCRIPTION:

A 25 foot wide Roadway Easement lying in part of Sections 8 and 17 in Township 2 South, Range 6 West of the Third Principal Meridian, St. Clair County, Illinois, the centerline of which is described as follows:

Commencing at the Northwest corner of Lot 1 of Grandcolas Tracts Assessment Plat, a subdivision recorded in Bk. 43, page 101 of the St. Clair County, Illinois, records; thence, N.82 57'14"W., along the South R.O.W. line of IL Rte. 4/U.S. Rte. 15, 12.62 feet to the point of beginning, said point bears state plane coordinates of N.622820.12, E.2405059.59 (IL WEST NAD83); thence, S.00 54'08"E., 211.78 feet; thence, S.19 52'10"W., 53.86 feet; thence, S.34 37'16"W., 62.65 feet; thence, S.44 23'59"W., 291.53 feet; thence, S.49 35'48"W., 93.21 feet, to a point that bears state plane coordinates of N.622237.45, E.2404734.07; thence, S.04 24'41"E., 507.24 feet; thence, S.07 23'12"E., 918.44 feet; thence, S.05 53'56"E., 567.33 feet; thence, S.08 16'41"E., 577.11 feet; thence, S.06 27'15"E., 879.80 feet to a point on the South line of said Section 8, said point bears state plane coordinates of N.619008.05, E.2405109.20; thence, S.07 05'10"E., 606.81 feet; thence, S.05 25'28"E., 673.40 feet; thence, S.13 59'11"E., 140.52 feet, to a point that bears state plane coordinates of N.617402.33, E.2405303.94; thence, S.24 00'36"E., 169.04 feet; thence, S.30 28'50"E., 1255.38 feet; thence, S.22 31'17"E., 116.57 feet, to a point that bears state plane coordinates of N.616058.35, E.2406054.16; thence, S.06 56'45"E., 68.72 feet; thence, S.33 46'53"W., 65.23 feet; thence, S.22 27'24"W., 243.88 feet; thence, S.44 57'40"W., 105.49 feet; thence, S.30 27'14"W., 145.53 feet; thence, S.46 04'18"W., 173.87 feet; thence, S.59 47'00"W., 130.12 feet; thence, S.80 07'54"W., 263.59 feet; thence, S.59 52'37"W., 64.56 feet, to a point that bears state plane coordinates of N.615246.75, E.2405231.54; thence, S.37 33'36"W., 1069.69 feet, to a point that bears state plane coordinates of N.614398.79, E.2404579.47; thence, S.04 24'04"E., 22.26 feet; thence, S.52 05'21"E., 39.86 feet; thence, S.77 18'42"E., 100.37 feet; thence, S.66 46'40"E., 104.18 feet; thence, N.83 43'40"E., 108.08 feet; thence, S.69 39'42"E., 52.00 feet; thence, S.51 37'40"E., 192.87 feet; thence, S.30 59'17"E., 189.01 feet; thence, S.61 07'39"E., 122.37 feet; thence, S.35 50'55"E., 52.73 feet; thence, S.13 11'38"E., 151.00 feet, to a point that bears state plane coordinates of N.613752.11, E.2405383.50, and lies on the South line of said Section 17, which is the North line of a tract of land deeded to Henry O. Stein, Sr., David C. Blue, Richard A. Ward, and Donald A. Blue and recorded in Dd. Bk. 2854, pg. 2318 of said St. Clair County, Illinois, records, said point being the endpoint of said easement.

[Handwritten signature]