

STATE OF INDIANA
COUNTY OF MARSHALL

IN THE MARSHALL CIRCUIT COURT
CALENDAR TERM 2026

CITY of SOUTH BEND
Plaintiff

CAUSE NO:

FILED
February 16, 2026
IN OPEN COURT
MARSHALL CIRCUIT COURT
RE

50C01-2501-PL-000004

v.

ARGOS 316, LLC.; FIRST
STATE BANK of
MIDDLEBURY INDIANA; &
ST. JOSEPH COUNTY,
INDIANA, et.al.
Defendants

PORTAGE TOWNSHIP
Of ST. JOSEPH COUNTY,
INDIANA and
350 COLUMBIA STREET,
LLC.
Intervenor-Defendants.

ORDER OVERRULING OBJECTIONS

On January 9, 2026, this Court held an evidentiary hearing on Defendants' Objections to Plaintiff, City of South Bend, Indiana's Complaint for Condemnation. Plaintiff appeared by counsel Andrew J. Miroff, John D. French, Matthew J. Anderson, and John Dorbin. Intervenor Defendants

Portage Township of St. Joseph County, Indiana and 350 Columbia Street, LLC appeared by counsel James A. Masters.

THE BACKGROUND AND THE DISPUTE

In September of 2022, the City of South Bend (“City”) began preliminary planning for a project, that if implemented, would require the condemnation of certain property at 340 Columbia Street South Bend, Indiana, which was used and acquired, after September 2022, by Portage Township of St. Joseph County, Indiana, (“Township”). The City’s action of eminent domain also requires the taking of the easements on the 340 Columbia property owned by a separate entity named 350 Columbia Street, LLC (“350 Columbia”). The Township and 350 Columbia are proper Intervenor Defendants in the eminent domain action.

The timing and planning of the acquisition regarding the disputed property by the City and the Township leads the parties to make interesting arguments about the prior public use doctrine – a doctrine that is supposed to serve the purpose of keeping two warring public entities from endlessly instigating lawsuits to condemn property back and forth from each other.

The Intervenor Defendants filed the following four objections: (1) that the filing of this action has not been authorized by the South Bend Common Council as required by the statute that governs the use of eminent domain by a city redevelopment department; (2) the property owned by Portage Township that the City of South Bend is attempting to take is already being used by Portage Township for a public purpose; (3) the Portage Township Trustee and Portage Township Advisory Board have not consented to the City of South Bend's acquisition of the property owned by Portage Township; and (4) the doctrine of "prior public use" bars the City of South Bend the power of eminent domain to take property owned by Portage Township that is already being used by Portage Township for a public purpose.

The Intervenor Defendants also sought leave to amend their Objections to add a fifth objection that if the "City itself" were exercising the power of eminent domain to take Intervenor Defendants' property – other than by its Common Council – the City Board of Public Works and not the Mayor

would had to have initiated the taking. This Court denied Intervenor Defendant's request for leave to amend their objections.

Thus – the crux of the Intervenor Defendants' objections are restated as: (1) the City can **only** acquire property by eminent domain through action of the Common Council if the property sought is situated in a redevelopment area; and (2) the Township's use of the disputed property establishes a prior public use which bars any eminent domain action by the City.

At the hearing, the Court admitted without objection the parties' designated evidence—materials specifically cited in Intervenor Defendants' Memoranda in Support of its Objections to the Complaint for Condemnation (July 25, 2025); Plaintiff's Consolidated Response in Opposition to Intervenor Defendants' Objections (September 4, 2025); Intervenor Defendants' Memorandum in Support of Motion for Leave to Amend Objections (September 16, 2025); and Intervenor Defendants' Reply in Support of its Objections (November 4, 2025).

The Court notes that a recent opinion of the Indiana Court of Appeals, *Metropolitan School District of Southwest Allen County, Indiana v. Crown*

Enterprises, 25A-PL-290, N.E.3d 2025 Ind. Ct. App. (Dec. 31, 2025), has discussion and dissent on whether or not, at the objection phase of the condemnation proceedings, a trial court should hear and decide evidentiary issues or stick solely to legal issues. The parties, in this case, requested the Court to make findings of fact and conclusions of law at the objection phase and both sides submitted their own findings. The record of evidence in this matter was submitted by the parties solely on paper.

After considering all evidence – the Court makes the following

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The Court has personal jurisdiction over the parties and subject matter jurisdiction of the proceedings. The Court has proper venue having accepted the case on a transfer of venue by agreement of the parties.
2. In October 2023, the Township entered into a lease agreement for property and a building at 340 Columbia Street. No, it's not a typo. 340 Columbia is the location of the Township's property, and 350 Columbia (one numerical digit different) is the name of

the other Intervenor Defendant in this cause.

3. 350 Columbia owns an office building located at 350 Columbia Street on the west side of the parking lots owned by Portage Township. The 350 Columbia property is shown on Intervenor Defendants' Exhibit C identified as Key No. 018-3090 3484. The property at 350 Columbia Street is benefitted by ingress and egress easements and cross-easements for parking on the Township's 340 Columbia property.
4. The Township purchased its 340 Columbia parcels from Defendant Argos 316, LLC ("Argos 316").
5. 340 Columbia consists of three parcels – a building on one parcel (not involved in this action) and two other parcels consisting of the remaining property including parking lots and a strip of land on the east side of the building near to the St. Joseph River.
6. All three parcels at 340 Columbia were and are in a City redevelopment area. The parcels also became part of a City neighborhood redevelopment plan that was adopted by the City as

an amendment to the City's Comprehensive Plan. The parties agree the subject property is in a redevelopment area.

7. The City's ultimate plan is that the entirety of 340 Columbia is to be demolished and replaced with green space, streets, and a portion of another building. The Plan has two phases. The first phase (at issue here) deals with the lots not containing a building. The second phase (not at issue here) deals with the City's Plan to condemn the Township's building.

THE TIMELINE

8. In 2022, the City, the City's Redevelopment Commission and the South Bend Common Council began developing a comprehensive neighborhood redevelopment plan for the Monroe Park-Edgewater Neighborhood in Downtown South Bend. This Plan includes the parcels at 340 Columbia.
9. The planning area is bounded to the north, by Jefferson Boulevard; to the east, by the St. Joseph River; to the west, by Dr. Martin Luther King Jr. Boulevard; and to the south, by Sample Street.

10. From September 2022 to August 2023, the City developed the Plan through a process that engaged residents, businesses, institutions, government agencies, and other neighborhood stakeholders. The planning process included public notices, public meetings, soliciting input, and mailing homes and businesses in the affected areas.
11. The Plan was presented to the City's Common Council for approval in August 2023.
12. In October of 2023, the Township signed a lease agreement for the 340 Columbia address and in January 1, 2024, the Township moved into the 340 Columbia property.
13. On March 19, 2024, the Township adopted a resolution to explore the purchase of 340 Columbia. The Township was aware of the City's Plan prior to adopting the resolution.
14. On June 2024, the City ordered appraisals for the two 340 Columbia parcels at issue in this cause.
15. In July of 2024, the Township entered into a purchase agreement with Argos 316 for the 340 Columbia parcels. The Purchase

Agreement had a 90-day due diligence period during which the Township could terminate the Purchase Agreement.

16. In August of 2024, the City and Township had discussions about the City's intended eminent domain of the 340 Columbia parcels.
17. On September 4, 2024, the City sent its required Uniform Property Acquisition Offer for the subject 340 Columbia Parcels to Argos 316 (still the legal owner of the parcels at the time).
18. On September 20, 2024, the City's Mayor and the Township's Trustee met. The City reiterated that the long-term presence of anyone at 340 Columbia did not fit the vision of the Plan and that the condemnation process was underway.
19. On October 11, 2024, the City, acting through its Mayor and using the law department, commenced this action.
20. The Township continued to move forward with the acquisition of 340 Columbia and the purchase agreement between Argos 316 and the Township was amended to reflect that the Township was acquiring 340 Columbia with full knowledge of the City's condemnation action.

21. On October 29, 2024, the Township closed on the purchase of 340 Columbia.
22. On September 23, 2025, the City Board of Public Works unanimously adopted Resolution No. 22-2025, which authorized the Mayor's past, present, and future actions with respect to taking property under Ind. Code § 34-24-1-1 *et seq.* for any public improvement allowable in the name of the Civil City of South Bend, Indiana, for the use and benefit of its Board of Public Works.

THE DECISION

23. In reviewing the propriety of an eminent domain action, a trial court's review is limited to: (1) whether the condemnation proceedings were legal, (2) whether the condemning authority had authority to condemn the property in question, and (3) whether the property was to be taken for a public purpose. *Knott v. State*, 973 N.E.2d 1259, 1262 (Ind. Ct. App. 2012) (citing *City of Evansville ex rel. Dep't of Redevelopment v. Reising*, 547 N.E.2d 1106, 1111 (Ind. Ct. App. 1989)).

24. The Intervenor Defendants argue that the Township property to be condemned is undisputedly in a redevelopment area and thus the only way for the City to condemn the disputed property is for it to act under Ind. Code § 36-7-14-20(a).

25. Ind. Code § 36-7-14-20(a) states that:

If the legislative body of the unit that established the department of redevelopment considers it necessary to acquire real property in a redevelopment project area by the exercise of the power of eminent domain, the legislative body shall adopt a resolution setting out its determination to exercise that power and directing its attorney to file a petition in the name of the unit on behalf of the department of redevelopment, in the circuit or superior court of the county in which the property is situated.

26. Intervenor Defendants want the Court to read the statute as mandating that all eminent domain actions of property in a redevelopment area must be brought and approved by the legislative body that established the department of redevelopment. The text of Ind. Code § 36-7-14-20(a) and other related statutes do not support Intervenor Defendants' narrow reading.

27. First – it is undisputed that the South Bend Common Council is the legislative body that established the department of redevelopment for the City and that the property subject to this action is in a City redevelopment area. And – it is also undisputed that the Common Council did not act to approve or initiate the pending eminent domain action against the Township. In Intervenor Defendants' view that's the end of the story and game over – they win.
28. The language of Ind. Code § 36-7-14-20(a) only works to bind the hands of the legislative body, the South Bend Common Council, "If" the South Bend Common Council considers it necessary to use eminent domain power to acquire property in a redevelopment area.
29. Ind. Code § 36-7-14-20(a) is not applicable here because the City's Common Council did not act to bring the eminent domain action. Instead – the City itself acted under the General Eminent Domain Statute, Ind. Code §§ 32-24-1-1 *et seq.*

30. Ind. Code §§ 32-24-1-1 *et seq.* does not require the South Bend Common Council's approval for the City to institute eminent domain proceedings.
31. The Court finds that the City can use the General Eminent Domain Statute to bring an eminent domain action against property already in a redevelopment area.
32. The Intervenor Defendants also contend that Ind. Code § 36-7-14-20(b) precludes the City from condemning the subject 340 Columbia Parcels because the Township bought the disputed property before the City condemned. That statute reads that "property already devoted to a public use may be acquired . . . but property belonging to the state or any political subdivision may not be acquired without its consent." However, in making this argument, Intervenor Defendants overlook the plain language of Section 20(b), which makes it clear it only applies to property "being acquired under this section." As the City was not acquiring, and is not required to acquire, the disputed property under Section 20(b), it is inapplicable

because the City is operating under the General Eminent Domain Statute.

33. Indiana cities have more than one statutory option in exercising eminent domain. *Michael v. City of Bloomington*, 804 N.E.2d 1225, 1230 (Ind. Ct. App. 2004). In addition to the statute cited by Intervenor Defendants – a city may proceed in bringing an action under the General Eminent Domain Statute at Ind. Code § 32-24-1 *et seq.* or under Ind. Code § 32-24-2 *et seq.* the eminent domain proceedings chapter for cities and towns. *Id.*
34. The Mayor can act on behalf of the City to bring lawsuits including eminent domain actions.
35. The Intervenor Defendants sought to amend their objections to add a fifth objection that if the “City itself” were exercising the power of eminent domain to take Intervenor Defendants’ property – other than by its Common Council – the City Board of Public Works and not the Mayor would had to have initiated the taking. This Court denied the amendment and the Intervenor Defendants, now, invite

the Court to reconsider its decision in the proposed findings of fact they submitted.

36. The Court continues to deny leave to the Intervenor Defendants' proposed objection that if the "City itself" were exercising the power of eminent domain to take Intervenor Defendants' property – other than by its Common Council – the City Board of Public Works and not the Mayor would had to have initiated the taking.
37. First – the Intervenor Defendants objection was untimely as they brought the matter of leave to amend up to the Court on or about September 4, 2025, in a general fashion and then by more specific objection on September 16, 2025. The specific objection being that the Board of Public Works had to bring the action not the Mayor. The objection is untimely as it is clear in the City's complaint filed October 11, 2024, that it was proceeding under the General Eminent Domain Statute at Ind. Code § 32-24-1 *et seq.* To the extent that the Intervenor Defendants believe that the General Eminent Domain Statute at Ind. Code § 32-24-1 *et seq.* can only be exercised by

power of the Board of Public Works that argument and objection was untimely.

38. Second – this Court believes that the General Eminent Domain Statute at Ind. Code § 32-24-1 *et seq.* is very broadly written. There are several ways a City can condemn property. It can condemn property through its Board of Public Works under the General Eminent Domain Statute at Ind. Code § 32-24-1 *et seq.* or under Ind. Code § 32-24-2 *et seq.* the eminent domain proceedings chapter for cities and towns. The City can condemn property in redevelopment areas through its common council, if it so elects the option to proceed, under Ind. Code § 36-7-14-20(a). And – the Court sees no reason why the Mayor cannot proceed with condemnation under the General Eminent Domain Statute at Ind. Code § 32-24-1 *et seq.*
39. Here, the City exercised the power of eminent domain by filing a complaint under Indiana Code §§ 32-24-1-1 *et seq.* at the direction of the City's Mayor.

40. Indiana Code § 36-1-4-5(a) provides: "A unit may acquire by eminent domain or other means, and own interests in real and personal property." Indiana Code §§ 36-1-2-11 & 23 provide that a "Unit" is a "county, municipality, or township," and a "municipality" is a "city or town." Taken together, a city "may acquire by eminent domain or other means, and own interests in real and personal property."
41. The executive authority of a city is vested in its Mayor, and the legislative authority is vested in its legislature. Ind. Code §§ 36-4-5-1 *et seq.*; 36-4-6-0.1 *et seq.* A mayor is entrusted with broad unitary executive power. See generally *City of Marion v. London Witte*, 169 N.E.3d 382, 396 (Ind. 2021). That power includes the ability to use the City's law department to initiate suits on behalf of the City. *Id.*
42. The General Eminent Domain Statute merely requires the person seeking to acquire property to file a complaint for eminent domain with the circuit court of the county where the property is located. Ind. Code § 32-24-1-4(a). That general statute does not specify that approval from any particular municipal board must occur prior to the

filing of a complaint. An eminent domain action is just a lawsuit, and the Mayor has the power to initiate litigation on behalf of the City.

43. And - there are no facts in the record that indicate any board or official associated with the City disagree with the actions of the Mayor commencing a condemnation suit on behalf of the City.

44. In fact, the City at least appears to be paying to continue this litigation, and the Board of Public Works subsequently expressly ratified the actions of the Mayor in instituting this condemnation action by official unanimous resolution adopted September 23, 2025.

45. Even if the Court decided that the Mayor could not initiate eminent domain actions on behalf of the City – the City Board of Public works can ratify any prior alleged *ultra vires* action of the Mayor in initiating the eminent domain process. Ind. Code § 36-1-4-16.

46. Ind. Code § 36-1-4-16 provides that “[a] unit may ratify any action of the unit or its officers or employees if that action could have been approved in advance. Ratification of an action under this section

must be made by the same procedure that would have been required for approval of the action in advance.”

47. The City through the Board of Public Works can clearly bring a condemnation action under the General Eminent Domain Statute. *Michael v. City of Bloomington*, 804 N.E.2d 1225, 1230 (Ind. Ct. App. 2004). And – the Court finds that the City can use the General Eminent Domain Statute to acquire property in a redevelopment area.
48. By resolution adopted September 23, 2025, the City through the Board of Public works did in fact ratify the actions of the Mayor in bringing this eminent domain action. The eminent domain action is legal and properly before the Court and the City has authority to bring the action under the General Eminent Domain Statute.
49. Neither Ind. Code § 36-7-14-20(b) nor the doctrine of prior public use bar the taking of the Township’s property.
50. Intervenor Defendants’ Objections based on the “prior public use” doctrine cannot prevail because the doctrine does not apply here

where the City and Township do not have coequal condemnation powers over the disputed 340 Columbia Parcels and, even if they did, the City had the prior public use under Indiana law.

51. The prior public use doctrine stands for the proposition that when two entities have coequal powers of condemnation, lands already appropriated to one public use are not subject to condemnation for another conflicting public use.

52. But when the entities do not have coequal condemnation powers under Indiana law, the prior public use doctrine does not apply.

53. The City and Township do not have coequal eminent domain powers under Indiana law. Specifically, the Indiana Home Rule Statute precludes the Township from exercising any power if the City "exercises that same power." Ind. Code § 36-1-3-5(b).

54. The City has the power of eminent domain, and the Township has the power of eminent domain, however, the Township is precluded from exercising eminent domain if the City is exercising its eminent domain power in an area sought.

55. Additionally – even if the prior public use doctrine were applicable, the evidence demonstrates that under Indiana law, it was the City that had the prior public use.
56. The City put the disputed 340 Columbia parcels into public use before the Township leased the building and well before the Township purchased the building. When the Township acquired the building, this action had already been filed, and the Township was aware of it.
57. Indiana law recognizes that a city or town need not own, lease or have actual possession of a property to have established a public use. See, e.g., *Greater Clark County School Corp. v. Pub. Serv. Co., Indiana, Inc.*, 385 N.E.2d 952, 955 (Ind. Ct. App. 1979) (finding that the Town, not the School Corporation, had the prior public use when the Town had been publicly planning the roadway for some time and the School Board was aware of it).
58. As with the School Corporation in *Greater Clark County*, when the Township made the decision to investigate purchasing 340 Columbia

in March 2024, it was aware of the Plan and the City's intended use of the 340 Columbia Parcels for a public street and green space. The evidence shows that the Township Board discussed the City's Plan at its March 19, 2024, Board meeting.

59. The evidence shows that the Township entered into the Purchase Agreement for 340 Columbia, not only with knowledge of the City plans, but also after the City had begun its condemnation process.

60. The evidence demonstrates that it was the City that had the prior public use. As such, even if the prior public use doctrine were applicable, which the Court finds it is not, the City would have the prior public use and the Township's prior public use objection is overruled.


61. Based upon the law and evidence presented to the Court -
Intervenor Defendants' Objections are overruled.

Accordingly – the Court hereby AJUDGES, ORDERS, and DECREES that:

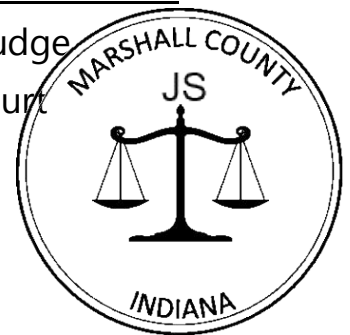
1. The City may proceed with its eminent domain action against the Intervenor Defendants' property.

2. The Intervenor Defendants' Objections are overruled in their entirety.
3. The Court's Order appointing disinterested appraisers is forthcoming.

SO ORDERED, as of the date
file-stamped on page 1.



Janette E. Surrisi, Judge
Marshall Circuit Court



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