

What is eminent domain?

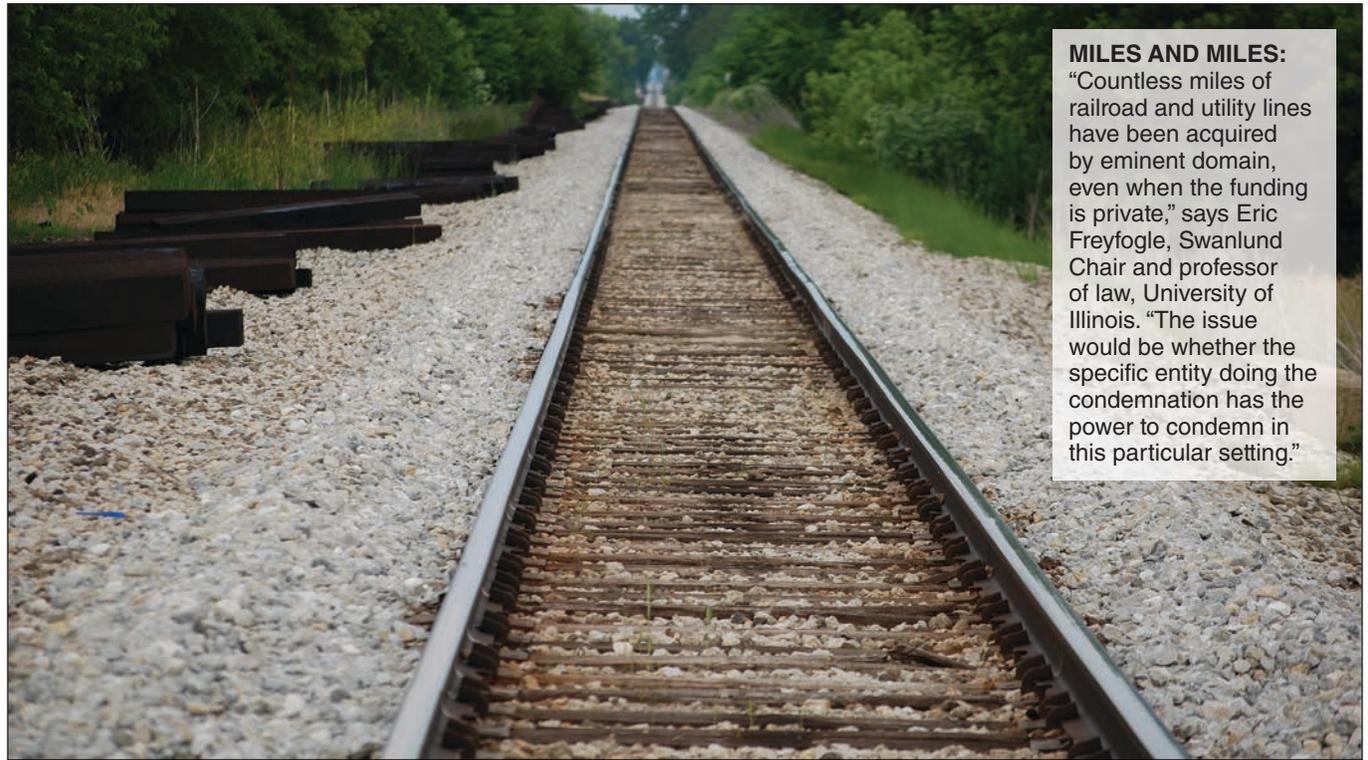
BY JILL LOEHR

THE Great Lakes Basin rail line, a private railroad project proposed to bypass rail congestion in Chicago, has raised questions and concerns regarding eminent domain. The project would cross 278 miles with a 150-foot-wide right of way, plus a 50-foot utility corridor, through six counties in north-eastern Illinois.

Laura Harmon, Illinois Farm Bureau senior counsel, says the GLB rail line does not have “quick take” authority and would have to follow the full eminent domain process. In addition, Harmon explains eminent domain wouldn’t apply to the additional 50-foot corridor Frank Patton, GLB managing partner, has requested for potential use by utility companies.

“One of the issues we see with eminent domain is the extra right of way he [Patton] wants to purchase that has nothing to do with the railroad. Under eminent domain law, you’re only entitled to condemn the land you need. Another battle in the future is to ensure landowners know they only need to give land for the purposes of a railroad only, not a [utility] easement,” she explains.

With questions surrounding the eminent domain process, Prairie Farmer asked Eric Freyfogle, Swanlund Chair and professor of law, University of Illinois, to explain eminent domain.



MILES AND MILES: “Countless miles of railroad and utility lines have been acquired by eminent domain, even when the funding is private,” says Eric Freyfogle, Swanlund Chair and professor of law, University of Illinois. “The issue would be whether the specific entity doing the condemnation has the power to condemn in this particular setting.”

What is the legal definition of eminent domain?

Freyfogle: Eminent domain is the longstanding inherent power of sovereign governments to acquire private property from owners upon payment of fair market value when the property will be used for a public use or to serve a public purpose.

Who has the power to use eminent domain?

Freyfogle: Governments at all levels commonly possess this power: federal, state, county and city, and some, but by no means all, separate units of local government such as school districts and park districts. Outside the United States, this sovereign power is known as expropriation. The power is also often termed the “power of condemnation.” Governments have held and exercised this power for many hundreds of years.

How has eminent domain changed over time?

Freyfogle: Only within the past 200 years has it become common for governments to pay landowners for property that is taken. Before then — and well into the 19th century in some states — land was sometimes taken without compensation.

In some specific settings, state Legislatures have authorized private entities such as railroads, utilities, and oil and gas commissions to exercise eminent domain under circumstances in which the Legislature believes the condemnation would serve a public interest and not simply be for the private benefit of a company or individual. On the other hand, Illinois law expressly authorizes a farmer to condemn a drainage easement across neighboring land under certain circumstances, even if the drainage would only

benefit one farmer — arguably a case of condemnation that is for private benefit.

How frequently does the government use eminent domain?

Freyfogle: Governments decades ago exercised eminent domain more often and more readily than they do today. One only needs to think about the interstate highway system to get a sense of the massive amount of condemnation that occurred in the post-World War II era. For various cultural reasons, eminent domain has become more troubling to some citizens, but its legal basis is beyond question. The purpose of eminent domain was to avoid giving to private landowners the power to extort excessive amounts of money when selling land to government that was needed for a particular project.

How are landowners compensated?

Freyfogle: It is the general legal rule

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