

that government officials are forbidden to pay above fair market value for purchases. Fair market value means value set by the market, not the price negotiated by private landowners who insist on getting paid far more than the land is worth. Thus, negotiated sales at above fair market value are legally problematic.

**What is the eminent domain process?**

**Freyfogle:** The process for undertaking eminent domain varies considerably based on the unit of government or other entity undertaking the condemnation. The state has inherent power to condemn. All other entities, including units of local government, need to comply with the specific state statute that grants them the power of eminent domain. Such statutes often set forth processes that must be followed and set specific standards that must be met before the condemnation can take place.

Often units of local government — a county or city — will exercise eminent domain to acquire land that will then be turned over to some nongovernmental entity when the local government unit believes the project will serve a public purpose. The only constitutional requirement is that the eminent domain be undertaken to support a “public use,” which has long been interpreted as “for a public purpose,” and that fair market value, or “just compensation,” be paid to the owner. All other requirements are based on statutes applicable in particular settings.

**What are some examples where eminent domain is used in Illinois?**

**Freyfogle:** Many thousands of land parcels have been acquired in Illinois through eminent domain. As noted, governments of late have been more reluctant to exercise the power — they prefer to overpay for land, despite the waste of taxpayer money involved. Many parks, schools, airports, rail and utility lines, public buildings, drainage ditches, and more have been acquired by eminent domain.

**Does eminent domain apply to privately funded projects, such as a railway?**

**Freyfogle:** Countless miles of railroad and utility lines have been acquired by eminent domain, even when the funding is private. There is no constitutional problem with this. The issue would be whether the specific entity doing the condemnation has the power to condemn in this particular setting. One possibility often available is for a county to condemn the land and then lease it long term to a private entity, although sale to the private entity might also be perfectly legal. This assumes the private entity does not possess the power to condemn acting on its own behalf — much like the private farmer who goes to court to condemn a drainage easement on neighboring lands.

**What is “quick take”?**

**Freyfogle:** “Quick take” is a method by which the railroad could get control quickly even while disputes continue about the amount that must be paid.

**What type of legal interest in property could be acquired for a railroad?**

**Freyfogle:** Railroads that purchased their corridors decades or generations ago sometimes bought the strips of land outright, gaining what the law terms “fee

simple ownership.” When that happened, they could use the land for any purpose. In contrast, when routes were acquired through eminent domain, the railroads almost always obtained an easement on the land, often termed a right of way rather than fee simple title. Easements are perpetual rights to make use of property [long corridor, in this instance] that remains owned by someone else. The easement is said to be the “dominant estate,” in that

the easement holder’s needs and activities come first, and the landowner can only use the land in a way that does not interfere with the use of the easement. The easement document will specify the ways the easement holder can use the land [“scope of the easement”]. Provisions specifying the scope of an easement can be written in a wide variety of ways, authorizing greater or lesser uses of the easement corridor by the easement holder.

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**Meet the Farmer:**  
**Ken Dalenberg**  
Illinois Farmer

Ken has been farming near Champaign, Illinois, for over 30 years, where he grows corn and soybeans.

**Q: What makes you decide to try out a new technology on your farm?**

**A:** I’ve always tried to stay ahead of the curve by integrating new technology into my operation. In the early ‘90s when precision technology was just getting started for agriculture, we came to view the data it provided as essential to improving the way we made decisions.

**Q: What convinced you to begin using Climate FieldView™?**

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**Q: What additional benefits have you gained using Climate FieldView™?**

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