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IOWA COUNTY ENGINEERS ASSOCIATION

- COUNTY CONDEMNATION MANUAL -

MANUAL OF PRACTICE AND PROCEDURE FOR THE ACQUISITION OF
REAL PROPERTY THROUGH THE EXERCISE OF THE POWER OF
EMINENT DOMAIN.

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This condemnation manual has been developed and prepared at the request of the Iowa County Engineers Association and initiated by the Iowa Highway Research Board as research project HR-371.

Preface

The County Condemnation Manual is intended to assist all county offices and officials in the performance of their condemnation related duties. The manual contains a summary of acquisition policy and makes recommendations to implement law and policy. The manual contains procedural guides and illustrative forms to assist in the preparation of condemnation documents. The manual identifies facts and issues that should be brought to the attention of other professionals to assure compliance with the law, adequate preparation, a valid proceeding and that the county is appropriately represented at the hearing. Case and statutory citations are provided to assist the reader where more detailed research is necessary.

This manual has been written by James E. Graham for the exclusive use of Iowa Counties. Iowa Counties have the unrestricted and unlimited right to use this County Condemnation Manual for any public purpose. No other person nor public authority shall copy, print, reproduce, distribute or use this manual or any part of this manual for any purpose without the express written consent of James E. Graham.

Iowa Department of Transportation Foreword to County Condemnation Manual

In our review of this manual we felt that the content was thorough and substantially accurate. We provided suggestions for change and most of those were incorporated into this manual. Unfortunately we had some concerns which were not injected on these pages and we feel we have an obligation to you, the readers of this manual, to make you aware of these concerns.

- the statement made on p. 34 (second full paragraph) that *"Highway authorities can acquire access easements in the name of landowners where necessary to remove a road from the publicly owned road system. See Jasper County condemnation proceedings, FN-14-2(24)--21-50, Parcel 16, Stewart-Trent, November 1987"* is not an accurate representation of the decisions made by DOT officials. This statement is a theoretical opinion of the author and the DOT has never acquired through condemnation an access easement in the name of a private landowner and does not contemplate or suggest doing so.

- the discussion of p.44 and at other locations in the manual about tree payment is not representative of DOT policy or procedure. The statement that *"...trees are real property, and some payment should be made for them...even though the property might sell for the same amount without the trees"* contradicts the Iowa Supreme Court's valuation rule. The DOT does not endorse the author's contention nor the tree schedule found in Figure 1.4.

Robert L. North, Director
Iowa Department of Transportation, Office of Right of Way

Acknowledgement

The development and preparation of this County Condemnation Manual was initiated through the Iowa Highway Research Board as Highway Research Project HR-371.

This manual and the opinions, findings and conclusions expressed in this publication are solely those of the author.

SUMMARY

COUNTY CONDEMNATION MANUAL

Summary

I. Maintain A Rational Acquisition Policy:

Condemnation case law contains many illustrations of claimed abuses or misuses of the power or process of eminent domain. Many of these situations arise out of a lack of experience in the use of eminent domain process. Most process or power questions could be avoided by implementing rational and fair acquisition policy. The County can not prevent landowners from suing to challenge the validity of condemnation proceedings or to stop or delay public works projects. The object should be to be in a position to win such challenges when they occur. Rational and fair acquisition policies provide a first effective line of legal defense against such challenges.

Part I, *Maintain A Rational Acquisition Policy*, examines the acquisition process as a whole. It's purpose is to identify the concepts and that must be considered in the development of acquisition policy. No landowner has a right to preferential treatment. All are entitled to be treated in a fair and consistent manner. All landowners have a right to a process that will provide reasonable assurance that they will be justly compensated for real property acquired by the county for public purposes. The manual does not propose a single set policy. It recognizes that counties need some flexibility in order to deal with a range of different federal, state and locally funded projects. There are even strictly local projects which require the donation of right of way as a condition for the county's approval of the project.

I. A. Determine the appropriate acquisition process:

This section identifies alternative acquisition processes available to Counties. It discusses appraisal or land valuing systems that have been tested and how they can be applied. It concludes by identifying the importance of scheduling work, so there is time to make it possible to implement a fair acquisition or condemnation policy.

I. B. Uses of power of eminent domain:

This section discusses the source of County eminent domain powers. It explores ways that such powers can be properly used. It contains discussion and recommends how to avoid claims of coercive use of eminent domain powers either by advancing, delaying or refusing to implement condemnation proceedings.

I. C. Defining the eminent domain parcel:

This section provides the general concepts necessary to help the acquiring authority identify the eminent domain parcel. These insights are needed to properly define the property rights to be acquired and to identify damages to

remaining property.

- I. D. The appraisal process:
This section provides standards and discusses procedures that can be used to determine the level of appraisal or land value information needed to appropriately estimate just compensation. The discussion considers a spectrum of situations ranging from complex to simple acquisitions.
- I. E. The appraisal review function:
The purpose of this function is to provide quality control for the compensation determination aspect of the acquisition process. This section identifies and applies appraisal and just compensation computation standards to assure landowners are properly compensated. It provides guidance on how to assure full payment, how to avoid duplicate payments and how to procedurally assure landowners are treated equally.
- I. F. Documenting good faith negotiations:
This section identifies the acquiring authority's responsibilities to provide sufficient information so landowners are able to understand what is being acquired and the impact of the acquisition on their remaining property. Property owners by statute are entitled to notice of their rights and to an opportunity to be heard. This section recommends procedures intended to assist acquiring authorities to develop fair and effective acquisition processes.
- I. G. Providing relocation assistance:
This section explains the relationship between the constitutional requirements to justly compensate landowners for property acquired and related but different relocation assistance payments and benefits. These relationships need to be understood in order to properly exercise eminent domain powers and avoid inappropriate or duplicate payments to landowners.

II. Condemnation Document Standards:

Technical and professional condemnation document preparation requirements include public works administrative work, legal work, engineering work and land survey work. Processes and procedures need to be developed to assure that products which are produced meet the required interprofessional standards. It does not really matter who is producing the condemnation documents so long as they are produced under the direction of the professionals that are responsible for them. Interprofessional team work is necessary to make the process work.

The section discusses title search systems to determine names and addresses of owners and interest holders. It recommends a system for delegating responsibility to produce condemnation documents. Legal descriptions and condemnation plat requirements are

separately considered.

- II. A. Confirmation of title - address - agents:
This section explains what persons are entitled to notice of the condemnation, what their right to share in the proceeds might be and what consideration needs to be given to their interest in the acquisition and condemnation process.
- II. B. Authorization to institute condemnation proceedings:
This section identifies the key concepts and procedural authorizations needed to make an effective and efficient delegation of authority. No one procedure will fit all Counties, and the most experienced professional may be required to provide leadership.
- II. C. Legal description standards:
This section discusses the practical requirements to define what is being acquired to communicate what effect the project will have on remaining property. The description must also meet the technical requirements of the law. Legal requirements are identified and illustrations are provided as drafting guides.
- II. D. Condemnation plat standards:
This section explains the relationship between platting laws and the plat requirements for eminent domain. It contains recommendations and illustrations that can be used to comply with both practical and legal standards for condemnation plats.

III. Condemnation Forms Preparation:

There are only a few forms that are required by Iowa statutes. Substantial compliance with the statutes is all that is necessary. Oversights, omissions and ambiguities that creep into the condemnation process can all be resolved in the appeal process. This, however, does not prevent landowners from filing suits to enjoin the project or, in certiorari, to contest the validity of a condemnation proceeding.

Part III, *Condemnation Forms Preparation*, identifies required and practical data. Failure to meet the information requirements for statutory condemnation documents can be eliminated by applying the principals in this part. The content form and format of most required condemnation forms are largely discretionary. This part illustrates some proven alternatives.

- III. A. Application to the Chief Judge:
This section identifies what must be contained in the County's application for the appointment of a Compensation Commission. This information can be all included as text in the application form. It may also be included by attaching a notice of condemnation and condemnation plat which contain the required

information.

III. B. Notice of condemnation:

This section is, jurisdictionally, the most important form for the condemnation proceeding. A close examination of what the notice should do and a standard process to formulate the notice is a necessary focal point to maintain quality condemnation document drafting standards.

III. C. Selection and appointment of Compensation Commissioners:

This also is a statutory process. There is a process difference between the original selecting of Commissioners and Alternates and the subsequent appointing of a commissioner to fill a vacancy. This process is under direct control of the Chief Judge, and you must comply with the rules or process adopted by the Chief Judge.

III. D. Summon the commissioners:

This section discusses what must be in the form, how to avoid ex parte communications with compensation commissioners and how to resolve qualification and hearing date conflicts for the county and commissioners.

III. E. Les Pendens recording of application for condemnation:

This section discusses the purpose for this initial recording. Instructions and procedural guidance is included to assure coordination with the county recorder and to preserve recorded original condemnation documents.

IV. Serving Notice of Condemnation:

Complying with the serving of notice of condemnation is critical to the convening of a valid condemnation proceeding. Different notice on waiting requirements of the law may control how service must be made in order to maintain construction schedules. In the end, counties must select a service agent and a procedure that is both timely and valid. Service requirements must be complied with and often control the date selected for the condemnation hearing.

Part IV, *Serving Notice of Condemnation*, identifies when personal service is required and how it can be made on individuals and corporations whose residence or place of business is both within and also outside the state. This part identifies special service requirements for public entities and public authorities. It also describes alternatives to obtaining service where owners or interest holders accept service, where they waive notice requirements or through personal appearances.

IV. A. Personal in-state service on owners and tenants:

This section identifies and discusses alternatives in selecting the person who will be making personal service on in-state landowners. It also considers how

personal service may be obtained by serving an agent of the landowner or by acceptance of service.

- IV. B. Personal service on out-of-state owners and non-residents:
This section identifies and discusses procedures to obtain service on out-of-state owners and non-residents both through personal service and by newspaper publication.
- IV. C. Service on corporations:
This section identifies and discusses procedures to obtain service on corporations through registered agents, where there is no registered agent, by newspaper publication and acceptance of service.
- IV. D. Service on public authorities and entities:
This section identifies the need for a special inquiry to insure valid service on public bodies. Special consideration is given to drainage districts, utilities and railroads.
- IV. E. Acceptance of service and waiver of notice:
This section discusses alternative methods to obtain service by the consent of owners or their agents or fiduciaries. Proper use of these procedures can often preserve condemnation proceedings that otherwise may have to be rescheduled.
- IV. F. Serving amendments to condemnations:
This section identifies special problems that arise out of the need to revise or amend condemnation documents. Amendments are needed because of changes in design, ambiguities between condemnation documents and to correct errors or omissions. The problems are discussed and solutions are recommended.
- V. Preparation for the Condemnation Hearing:

There are two aspects to preparing for the condemnation hearing. The person who is to represent the County at the hearing needs to coordinate work with the Sheriff to be assured that all normal hearing related forms are available. Another part of this initial preparation is to anticipate what needs to be done to obtain and file proofs of service when the Sheriff is not the Service Agent. Second, special instructions to the Commission need to be prepared to deal with value or damage issues that need to be considered, or claims you anticipate will be raised at the hearing.

Part V, *Preparation for the Condemnation Hearing*, functions as a check list. It is intended to assist the sheriff who is responsible to convene the Commission, the hearing officer for the County and also Compensation Commissioners. This part contains procedural suggestions and illustrations that can be used as drafting guides to prepare non-standard hearing related forms. Recommendations are made on how to resolve

recurring legal and fairness issues and how to respond to property owner procedural demands.

- V. A. Forms needed the day of the hearing:
This section identifies routine forms that must be available for the hearing, whether they are furnished by the Sheriff or the Hearing Officer. There are also forms that can only be provided by the Hearing Officer including the statutory final offer, IRS forms and exhibits documenting the County's estimate of just compensation.
- V. B. Preliminary hearing requirements:
This section focuses on the service, appearance and title related documents that need to be coordinated to complete the file. It also contains recommendations on considering the Chief Judge's general instructions and transportation for Commissioners.
- V. C. Special instructions to the commission:
This section identifies recurring issues that the hearing officer needs to respond to. Requests for separate awards or allocation of the award between owners and interest holders can be anticipated. Claims for payment of noncompensable damages are frequent and need to be responded to. This section contains recommendations on how to amend condemnation proceedings, to correct ambiguities, to document construction procedures and to reduce or otherwise clarify the taking.

VI. Condemnation Hearing Presentations

Condemnation hearings are not law suits, nor are they trials. They are informal administrative hearings chaired by non-lawyers. The purpose of the hearing is to consider land value related information provided by the County and the landowners to determine the amount that will justly compensate landowners for property acquired for public uses or purposes.

Part VI, *Condemnation Hearing Presentations*, identifies the normal flow of condemnation hearing proceedings. This part provides suggestions on how to make effective presentations and what information, forms and exhibits should be left to aid the Commission on their deliberations. This part also identifies factors that should be considered when deciding to accept an award or to appeal to the District Court.

- VI. A. General hearing procedures:
This section identifies the normal flow of a condemnation hearing. It contains procedural recommendations on what information should be presented to the Compensation Commission. Procedural instructions are provided to assure proper consideration is given to claims for payment of landowner attorney fees and for

the signing and delivery of the awards.

- VI. B. Filing, recording and reporting condemnations:
This section provides procedures and instructions to coordinate the sending of notice of award to the landowner to begin the time limitation for the taking of an appeal to the District Court. This section also includes instructions for the depositing of awards and receipting for their delivery.
- VI. C. Deciding to accept award or appeal:
This section provides a check list of project related circumstances that should be considered in deciding to accept the award or appeal to the District Court. It is intended to be a guide to assist the county to evaluate the case as a whole. Guidance is also provided on how to meet the documentation requirements to be paid or reimbursed for settlement costs on federal and state funded projects.
- VI. D. Appealing from a condemnation award:
This section identifies time limitations on filing an appeal. It identifies what must be done to make proper service of notice of the appeal. Procedural responsibilities must be clearly understood to be assured that the appeal is properly filed.

VII. County Alternative Condemnation Authority for County Roads:

Counties have an alternative condemnation procedure to acquire right of way for county roads. There are basic differences between the State's uniform eminent domain procedures and the alternative condemnation procedures. Form requirements are simpler than those required by the uniform proceedings. The special condemnation proceeding is basically a three person arbitration system. It also gives landowners an opportunity to question the public need to acquire the right of way, and it limits the County's right to access to the District Court to appeal excessive awards.

Part VII, *County Alternative Condemnation Authority for County Roads*, discusses when the special proceeding are useful and when they are inappropriate. The differences in the qualification of "appraisers" (commissioners under the uniform eminent domain system) between systems is considered and procedures are proposed for the presentation of value evidence.

- VII. A. Purpose for the alternative condemnation proceeding hearing:
This section discusses the dual purpose of this proceeding to consider objections to the acquisition of the land and to award damages to the owner. Recommendations are also made on how to select the eminent domain proceeding that is most appropriate for the resolution of the specific acquisition problem.
- VII. B. Forms for alternate county condemnation process:

This section suggests forms of description, plat, notice and other forms to document the taking and the remaining property. This section includes a discussion of questions that may arise if a condemnation plat is not used or where the plat does not meet acquisition plat standards of the platting law.

- VII. C. Selection and qualification of appraisers for alternate condemnation proceeding:
This section makes recommendations on who might be selected by the County. It also considers how value evidence might be presented, what such evidence might consist of and who should present it.
- VII. D. Selecting appropriate condemnation procedures:
This section provides a short, comprehensive analysis to assist in the selection of the most appropriate condemnation procedure.

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Every acquisition authority has a need to evaluate the effectiveness of its appraisal, negotiations, acquisition and condemnation policy. We need to know if it is really working, how we can make the process less time consuming, and how we might obtain more cost-effective results. See article *Maintaining a Rational Acquisition Policy* which follows.

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I. MAINTAINING
A RATIONAL
LAND ACQUISITION
POLICY

**MAINTAINING A RATIONAL LAND ACQUISITION
POLICY**

OCTOBER, 1994

BY

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MAINTAINING A RATIONAL LAND ACQUISITION POLICY

OUTLINE

- I. Acquisition policy must consider appraisal, negotiations and condemnation functions
 - A. Alternate appraisal negotiations and condemnation policy
 - 1. Pay reasonable company costs
 - 2. Negotiate within a range of value
 - 3. Equate offer to assessed value
 - 4. Schedule payment based on market value
 - 5. Appraised fair market value
 - 6. Appraise market value plus scheduled payments damages
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 - 5. Staff salary and consultant costs to implement the policy
 - 6. Delays in construction schedules
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II. Factors to consider when deciding whether to acquire right of way by administrative settlement

- A. Is there a way to resolve apparent differences?
- B. Project planning, design and construction schedule
- C. What is needed to prepare to represent the authority
- D. Avoid condensation at all costs
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III. Factors that must be anticipated to reduce litigation

- A. Design must avoid or reduce damages during construction
- B. Compliance with the standards of Uniform Acquisition policies will discourage secondary lawsuits
- C. Advanced acquisitions may defuse future controversy
- D. Anticipate condemnations and be prepared to proceed promptly

MAINTAINING A RATIONAL LAND ACQUISITION POLICY

I. Acquisition policy must consider appraisal, negotiations and condemnation functions.

All acquisitions are conducted on the basis of the acquiring authority's appraisal, negotiations and condemnation policy. Appraisal policy establishes how acquisition payments are to be determined. It also determines what contribution will be made by the appraiser in administrative settlements and at condemnation proceedings. It is the Acquisition Agent who is typically responsible to add fence payments or other damages which are not included in the appraisal. The negotiator is normally the person who makes the first recommendation that is will be necessary to acquire property by condemnation where negotiations have deadlocked.

The following analyses assumes that the Appraiser and the Acquisition Agent are different persons. This is often not true since both functions may be performed by the same person in minor acquisition situations. When appraisal and negotiation functions are performed by the same person it becomes necessary to consider what market information or sales data is needed in order to be able to make an effective presentation at a condemnation proceedings. A good way to resolve these issues is to think about it in reverse. Obtain the appraisal data you need and the witness you need to be prepared to present your position to the compensation commissioners. The objective is to obtain only what you need and still being able to make an effective presentation at a condemnation proceeding.

A similar analyses needs to be made when you are acquiring large or valuable properties and when the project damages remaining property.

The staff experience and skill and the appraisal format or documentation should be appropriately matched to the complexity or the value of the property to be acquired. This same analyses needs to be made in selecting the Condemnation Hearing Agent. You need to have your acquisition policy thought out so you can provide intelligible instructions to your staff and to right of way consultants. It is also necessary to support an overall strategy to deal with unanticipated or difficult acquisitions, delays and problems.

A. Alternate appraisal negotiations and condemnation policy.

1. Pay reasonable company costs. Offer to pay what the right of way is worth to the acquiring authority. "We have never paid more than \$1.50 or \$5.00 per rod. " Use damage items like fence or crops to sweeten the pot if necessary. Nominal or normal payments are made for the easement on the theory that all property damaged by the project will be replaced or fixed at no cost to the owner and the easement will not interfere with current agricultural, commercial or residential use of the land. Unless

you are acquiring only non-intrusive easements this approach may not justly compensate owners. A reasonable relationship must exist between company costs and market value.

2. Negotiate within a range of value. Offer an amount within a range of values based on market value of real property. The approach is used to acquire permanent easements. This is usually expressed as a specific percentage of market value for the project, e.g.: 40% sewer; 50% gas line; 100% pipeline, per acre. Negotiate all value issues including market value of each parcel. This approach assumes there are no damages caused to remaining property and negotiates all fence, tree, scrub, septic system and other damages.
3. Equate offer to assessed value. This is done by annually reviewing recent market sales to determine current market values for various property. The market value per acre conclusions are compared to assessed values per acre. In Iowa, the county assessor cannot perform the eminent domain appraisal function. See OAG, Olsen to Olesen 7-11-90 # 90-7-7(L) holding it to be a conflict of interest. The difference between these two values is expressed as a factor. This factor is then applied to each property through the property's assessed value, e.g., 1.5 x \$900. per acre assessed value = \$1,350. per acre. This standard is used for minor acreage acquisitions from agricultural property. Fence and crop damage is added to make the total offer.
4. Scheduled payment based on market value. Offer the average of several recent sales of similar property. This sales review process is a simple version of Alternate 3. This is also similar to the compensation estimate and short form appraisal procedures in the Uniform Acquisitions standards. This approach makes it difficult to avoid increasing offers to owners who own highly productive land and may overpay owners of waste or scrub land. The most appropriate way to make this approach work is to match the sales to the property acquired. This is basically what is done in the Iowa DOT's Compensation Estimate Procedures for minor parcels. See Iowa Code, Section 6B.54, **Federally assisted project and displacing activities - acquisition policies**, subsection 2.
5. Appraised fair market value. This alternative would appraise everything and include all items of value in the appraised assignment. Fences may not contribute value. The same may be true of other property damages. The negotiator can pay for no damage until its value is included or documented by the Appraiser. This can waste everyone's time on minor damage items, e.g., cost to haul water to livestock for four weeks.

6. Appraise market value plus scheduled payments damages. Fence, trees and crop payments are paid from schedules. This is the standard used by the Iowa DOT and some cities. Some schedules like fence costs can be updated from market information. This is also true for crops and field preparation costs. Tree payments are based on experience where costs cannot be determined from nursery stock.
7. Pay on basis of highest sale in the community. This policy is based on the theory that right of way costs are a small part of the project or construction contract costs. It doesn't make any difference what is paid per acre for right of way when narrow easement rights of way take few acres. The project is threatened more by litigation delays, and any rational negotiations payment is better than condemnation and litigation.
8. No project until all landowners donate right of way. **Chapter 311, Secondary Road Assessment Districts**, of the Iowa Code, facilitates donation projects. **Section 6B.54, Federally assisted project and displacing activities - acquisition policies**, subsection 9, of the Iowa Code, specifically authorizes and promotes acquisition of right of way through a donation. Social pressure may not succeed in obtaining a donation from all landowners. Payments may be made to holdouts to avoid wasting engineering and design costs. Paying holdouts raises fairness issues that could compromise the whole project.

B. Measuring successful acquisition policy.

Each of the following concepts are used to one degree or another to measure the success of the right of way operation.

1. Percent of parcels acquired without condemnation.
2. Percent of increase in the amount of condemnation award over the contract offer.
3. The number of appeals filed and by whom
4. Percent of increase in the amount of condemnation appeal awards and settlements over the condemnation award.
5. Total landowner payments per mile, rod, acre or project.
6. Staff salary and consultant costs to implement the policy.
7. Delays in construction schedules.

8. Unfair payment or negotiation complaints (expose to adverse legislation).

II. Factors to consider when deciding whether to acquire right of way by administrative settlement.

A. Is there a way to resolve apparent differences?

1. Will a different method of payment help, such as dollars instead of work or vice versa?
2. Can you agree on a cost estimate or lump sum for a damage item or to payment on basis of bills and receipts?
3. Do recent sales in the community support an adjustment or do they support the original offer?
4. Is the difference less than the cost of the condemnation hearing? Administrative costs and fees for condemnation proceedings to a sheriff, commissioner and service and other fees is \$1,100. to \$1,300. If two parcels are condemned the per parcel cost can be reduced.

B. Project planning, design and construction schedules.

Each of the following should be considered in selecting an acquisition policy. You need to know if there will be time to deal with design changes and unexpected contingencies. The focus should be on doing it right the first time when there is too little time.

1. How much time, effort and expense have already gone into the project that will be lost if the project does not proceed to letting?
2. Will delays in construction result in higher construction costs and higher land payments?
3. What effect will administrative settlement policy have on the owners who have already signed up or on future acquisition projects?
4. Will available data provide adequate support for a condemnation proceeding or otherwise how long will it take to prepare and process condemnation?
5. What effect will a substantial increase or loss at a condemnation have on the project or your organizations credibility with landowners or others?

C. What is needed to prepare to represent the authority at the condemnation hearing.

1. How will the acquiring authority present its position at the compensation hearing? The answer to this question depends largely on the complexity of the acquisition problems.
2. The validity of the appraisal and the offer should be verified. Check sales in the area against the factor used to determine what adjustment, if any, the compensation commission might be expected to make.
3. Damage items not to be cured by the acquiring authority should be dollarized by bids or estimates from persons qualified to do the work, e.g., fence, septic, trees.
4. Value judgements should be reduced to writing so that they may be used to explain the offer at the condemnation hearing and to assist in evaluating the case. These analysis are needed to defend against an owner's appeal or for the acquiring authority to appeal in its own right. e.g., proofs of highest and best use, absence of a demand for higher and better use, analysis of key sales, free and convenient remaining access etc.
5. The role of the acquiring authority's attorney should be carefully worked out to assure that the proceeding is kept informal. Landowners should know that they will be talking to their neighbors at the hearing and will not be taken advantage of if they appear without legal counsel. An experienced condemnation hearing agent may be needed for complex or high value or contested parcels.

D. Avoid condemnation at all costs.

This alternative requires paying what is necessary to avoid condemnation. Payment can be made in cash or in construction work or both. This approach can result in the project being delayed or dropped as a result of claims of favoritism and unfairness. There is a better chance to make this policy work when there are viable alternatives to the location of the improvements. It requires flexible design or redesign capabilities.

The cost to acquire real property for public works projects by condemnation proceedings are project costs for all projects regardless of the source of project funding. Property owners can say no. When they do so, they are entitled to have compensation settled through a condemnation proceeding. The cost to convene a Compensation Commission should not, alone, justify any administrative settlements. This is the same rational used by FHWA when they refuse to participate in an administrative settlement based on saving condemnation costs

without additional significant justification.

E. Format for administrative settlement recommendations

All settlements should be based on a written recommendation analyzing the ultimate vulnerability of the agency in litigation. Consideration should be given, where applicable, to:

1. All available appraisals, including the owner's appraisals.
2. The availability and effectiveness of the Appraiser as a witness.
3. The market support for the approved estimate of just compensation. Include the strength and weakness or presence and absence of substantiating market data.
4. Recent compensation commission or court awards for similar type properties.
5. The negotiator's record of property owner contacts information.
6. The range of probable testimony as to fair market value, should condemnation be filed.
7. The estimate of condemnation or trial cost considered in conjunction with other information, but not for this reason alone.
8. The possible impact an unfavorable condemnation award may have on remaining negotiations.
9. The opinion of the authority's legal council on issues of compensability of damages claimed and on the probable outcome of the condemnation.

III. Factors that must be anticipated to reduce litigation.

A. Design must avoid or reduce damages during construction.

The before and after value just compensation formula does not compensate for temporary inconvenience caused during construction. Construction often replaces damaged improvements and puts the property back in its original condition. The before and the after just compensation formula is based on the fiction that the project has already been constructed and would indicate that there were no damages caused by the project. This is often not the case. Failure to recognize and prevent or reduce actual losses and damages caused during construction may

result in litigation and high condemnation awards. This is particularly true if there were common sense steps that would have been taken to reduce such losses, but which were not considered or were not taken:

e.g., slope easements destroying access to an apartment for four months;

e.g., street torn up in front of a business for a year;

e.g., sewer easement 30' deep takes only parking lot of restaurant for twelve months.

- B. Compliance with the standards of Uniform Acquisition policies will discourage secondary lawsuits.

Iowa Code Section **6B.54, Acquisition Policies**, contains 11 specific policies. This Iowa statute codifies the National Acquisition Policies originally contained in Public Law 91-646, 1970. The standards apply to all federally funded projects and to projects that will receive federal funding. Compliance with these policies is the best way to prevent suits based on abuse of eminent domain powers.

- C. Advanced acquisitions may defuse future controversy.

Projects may not start on time and sometimes are stopped pending redesign or awaiting funding. Landowners have the right to be able to make reasonable use of their property in the interim. The acquiring authority needs to analyze the impact that such delays will have. It may be in the best interests of the authority to acquire property in advance to reduce or prevent secondary law suits or demands that the authority acquire property by condemnation.

Key parcels may have to be acquired in advance to assure that there will be a project at all. Parcels that fall into this category include river crossings for pipe lines or property in right of way corridors subject to proposed development.

- D. Anticipate condemnations and be prepared to proceed promptly.

It is better to be able to begin condemnation immediately after negotiations fail. If your negotiations policy requires no appraisal until condemnation, there may be a long delay. The appraisal may support a different offer than what was made to others on the project. The delay will encourage the landowner to litigate the condemnation hearing rather than to use the condemnation hearing as a last change for an informal settlement.

I. A. Determine the Appropriate Acquisition Process.

This section identifies alternative acquisition processes available to counties. It discusses appraisal or land valuing systems that have been tested and how they can be applied. It concludes by identifying the importance of scheduling work, so there is time to make it possible to implement a fair acquisition or condemnation policy.

1. State and Federal Acquisition Standards.

The following basic requirements apply to all federally funded projects and programs. They may be applied at the discretion of the county to any project or to all projects regardless of funding.

The several state highway authorities must certify to the Federal Highway Administration that right of way work has been completed before project construction contract lettings can begin. This Right of Way certificate certifies that all right of way has been acquired, that the right of possession of the property has been obtained, that all persons displaced by the project have been relocated and that all utility relocations have been made. This certification is as required by Federal Policy and rules - see 23 CFR Chapter 1, Section **645.309, Authorization**.

Each state highway authority is responsible to determine if land acquisition organizations of counties, cities, or other state or local governmental agencies are adequately staffed, equipped and organized to provide the services required and to comply with federal laws and rules on federally funded highway projects. If such is not the case, the right of way must be acquired by the state highway authority -- see 23 CFR Chapter 1, and in Iowa, **710.20, Subpart B - State Highway Department Responsibilities**. The states are not relieved of their responsibilities under federal law and rule in the event it utilizes the services of an engineering organization -- see 23 CFR, Section **1.11, Engineering Services**.

In addition, local authorities must also acquire right of way in a manner which complies with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by the Relocation Assistance Act Amendments of 1987, Title IV, Public Law 100-17 as implemented by rules in 49 CFR, Part 25, Subpart B.

Federal Law requires that each State implement federal requirements through state laws and rules. In Iowa, federal land acquisitions standards are implemented through several statutes. These statutes include Chapter

316 - Relocation of Persons Displaced by Highways, of the Code, as amended and retitled **Relocation of Displaced Persons**, by SF 152, 89th Regular Session, 73rd General Assembly, 1989; Revised Code Sections **6B.42, Eminent Domain - Payment to Displace Persons; 6B.54, Federally Assisted Project and Displacing Activities - Acquisition Policies; 6B.55, Buildings, Structures, and Improvements on Federally Assisted Programs and Projects; and Section 310.22, Right of Way - How Acquired.**

Iowa's uniform acquisition process is Iowa Code Section **6B.54, Federally assisted project and displacing activities - acquisition policies**; Section **6B.44, Taking property for highway - buildings and fences moved**; Section **6B.54, Condemnation for road or street - mailing copy of appraisal**; Section **6B.55, Buildings, structures and improvements on federally assisted programs and projects**; and Chapter **316, Relocation of Displaced Persons**. See also the *Uniform Manual - Real Property Acquisition and Relocation Assistance*, promulgated as administrative rules 761 IAC 111, to implement both State and Federal law.

"6B.54 Federally assisted project and displacing activities - acquisition policies.

If a project or displacing activity has received or will receive federal financial assistance as defined in section 316.1, an acquiring agency shall be guided by the following policies:

1. Every reasonable effort shall be made to acquire expeditiously real property by negotiation.
2. Real property shall be appraised as required by section 6B.45 before the initiation of negotiations, and the owner or the owner's designated representative shall be given an opportunity, to accompany at least one appraiser of the acquiring agency during an inspection of the property, except that the state department of transportation may prescribe a procedure to waive the appraisal in cases involving the acquisition of property with a low fair market value.
3. Before the initiation of negotiations for real property, the acquiring agency shall establish an amount which it believes to be just compensation for the real property, and shall make a prompt offer to acquire the property for the full amount established by the agency. In no event shall the amount be less than the agency's approved appraisal of the fair market value of the property.
4. The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling or to move the person's business or farm operation without at least ninety days' written notice of the date by which the move is required.
5. If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination on short notice, the amount of rent required shall not exceed the fair rental value of the property

to a short-term occupier.

6. In no event shall the time of condemnation be advanced, or negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other coercive action be taken to compel an agreement on the price to be paid for the property.

7. If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring agency shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of the owner's real property.

8. If the acquisition of only a portion of property would leave the owner with an uneconomical remnant, the head of the agency concerned shall offer to acquire that remnant. For the purposes of this chapter, an "*uneconomical remnant*" is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, where the head of the agency, concerned determines that the parcel has little or no value or utility, to the owner.

9. A person whose real property is being acquired in accordance with this chapter, after the person has been fully informed of the person's right to receive just compensation for the property, may donate the property, any part of the property, any interest in the property or any compensation paid for it to any agency as the person may determine.

10. As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is earlier, the acquiring agency shall reimburse the owner, to the extent the acquiring agency deems fair and reasonable, for expenses the owner necessarily incurred for all of the following:

- a. Recording fees, transfer taxes, and similar expenses incidental to conveying the real property to the acquiring agency.
- b. Penalty costs for full or partial prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property.

Payments and expenditures under this subsection are incident to and arise out of the program or project for which the acquisition activity takes place. Such payments and expenditures may be made from the funds made available for the program or project.

A person aggrieved by a determination as to the eligibility for or amount of a reimbursement may have the matter reviewed in accordance with section 316-9.

11. An owner shall not be required to surrender possession of real property before the acquiring agency concerned pays the agreed purchase price."

89 Acts, ch 20, §19

CS89, §472.54

C93, §6B.54

Section transferred from §472.54

"6B.44 Taking property for highway - buildings and fences moved.

When real property or an interest therein is purchased or condemned for highway purposes and a fence or building is located on such property, the governmental agency shall be responsible for all costs incurred by the property owner in replacing or moving the fence or moving the building onto property owned by the landowner and abutting the property purchased or condemned for highway purposes, or the governmental agency may replace or move the fence or move the building. Such costs shall not constitute an additional element of damages which would permit, unjust enrichment or a duplication of payments to any condemnee."

[C71, 73, 75, 77, 79, 81, §472.44]

C93, §6B.44

Section transferred from §472.44

"6B.45 Condemnation for road or street mailing copy of appraisal.

When any real property or interest therein is to be purchased, or in lieu thereof to be condemned for highway, street or road purposes, the purchasing state agency, county, or city or their agent shall submit to the person, corporation or entity whose property or interest therein is to be taken, by ordinary mail, at least ten days prior to the date of contact, a copy of the appraisal upon such real property, or interest therein which shall include, at least, an itemization of the appraised value of the real property or interest therein, any, building thereon, all other improvements including fences, severance damages and loss of access."

[C71, 73, 75, 77, 79, 81, §472.45]

C93, §6B.45

Section transferred from §472.45

2. **Compensating for Agricultural Fences and Moving Buildings.**

Occasionally State Legislatures give special treatment to valuing and dealing with improvements. What otherwise would be an appraisal problem changes to require specific payments be made. In Iowa, payments for agricultural fences and the right to move buildings and to be compensated for the cost of moving them are controlled by just such a special statute.

a. **Moving Fences.**

Fences were fighting issues before Section **6B.44, Taking property for highway - buildings and fences moved**, of the Iowa Code, was passed (C71). Every landowner and every acquisition authority treated payment for fences differently. Appraisers often noted that the same type of land sold for just as much without fences as it did fenced. Where fences contributed nothing to the value of the land, the appraisal value contained no payment for fences. Arguments over salvage rights centered on the theory that

the acquiring authority had no obligation to pay for a "new" fence; it was just a question of how much less than the cost of a new fence was going to be paid.

Section 6B.44 ended all the squabbling over what was often a minor element of damage. If the owner wants a new fence, he now gets it by building the fence and sending the bills to the acquiring authority. No fence payment is required where the property wasn't fenced to begin with. This still leads to arguments concerning, "When is an old fence down and in such bad shape, that it really isn't a fence?"

Fence payments can be made by an agreement on a fixed price for moving of a fence. A fixed price agreement avoids the over-reaching and unreasonable cost problems that can arise out of the owner building a fence and billing for its costs. The Iowa DOT has developed a fence payment schedule to support lump sum fence damage payments. (See Figure 1.1, Appendix) Counties and cities have adopted similar schedules for their projects. A schedule assures that all owners are treated alike. Fence payment schedules are based on actual materials and labor costs, and should be reviewed periodically to assure that they are consistent with current market costs. Another alternative is to agree to replace the fence as part of the project's construction. There may be times when this alternative may help to simplify negotiations. Whatever policy is adopted, it should be applied consistently for all properties on the project.

b. Moving Buildings.

Buildings may be a liability where they are unsafe or structurally unsound. Buildings may have some interim profitable use until there is sufficient demand to cause them to be removed so the property can be put to a higher and more profitable use. Buildings may represent the real value of the property, as in the case of a home in a nice residential neighborhood. Buildings may also have sentimental or historic value, as in the case of the original barn on a century farm. Landowners are able to admit evidence of the cost and structural value of buildings, machinery, and other improvements for the purpose of aiding the jury of the present value of the property. Richmond and Jackson v. the D. & S. C. R. Co. and the I. C. R. Co., 40 Iowa 264 (1875); Corcoran v. City of Des Moines, 215 N.W. 948 (1927). From an appraisal point of view, it does not make any sense to talk about the

structural value of functionally and economically obsolete buildings.

While not in themselves the basis or measure for recovery, the courts allow evidence of cost and structural value to explain and support estimates made of the value of the property as it stands. Rank v. City of Cedar Rapids, 111 N.W. 1027 (1907). In light of these principles, courts have consistently refused to set aside large verdicts involving minor acreage takings which damage improvements.

A similar principle underlies Section 6B.55, **Buildings, structures, and improvements on federally assisted programs and projects**, of the Iowa Code. This statute has its federal counterpart in the Federal Uniform Acquisition Policies Act.

Section 6B.55 requires acquiring authorities to recognize cases where tenants own buildings and improvements and to offer to acquire the tenant's interest. Section 6B.55 assumes that buildings have a value in use to the tenant even where the owner will own the buildings when the lease terminates. The acquiring authority must deal with both owners of an interest in the buildings, the landlord and also the tenant.

During negotiations, landowners may request an opportunity to move a building back onto the owner's remaining property. This may be an attractive alternative for a U. S. Fish and Wildlife project where land is being acquired on a voluntary willing buyer, willing seller basis or when there is no deadline for the authority to obtain possession. Where moving costs are significantly less than owners claim as cost or structural values, a moving cost agreement may provide a rational basis for a voluntary sale through an administrative settlement.

When the acquiring authority has a short time within which it must obtain possession of the building, moving agreements may not be feasible. The moving agreement may have the effect of giving the property owner control over when the project will be let for construction. The need for possession can thus prevent the salvaging of buildings that might otherwise be saved.

Iowa Code, Section 6B.44, **Taking property for highway - buildings and fences moved**, provides in the landowner the right to salvage buildings. It also obligates the acquiring authority to

pay all costs incurred by the property owner in moving the buildings.

The acquiring authority must recognize the special nature of the problem and be prepared to negotiate a solution that will justly compensate the landowner for the owner's right to move buildings. This may mean that this parcel is the first property condemned, not the last one. It may make sense to acquire the property a year in advance as an advanced acquisition. It is up to the acquiring authority, not the Appraiser, to determine where just compensation ends and unjust enrichment begins.

3. The Uniform Condemnation System.

Condemnation requirements of state law applies to all public improvement projects regardless of funding.

Counties have the authority to use Iowa's uniform eminent domain laws. See Chapter 6B, Eminent Domain Law (Condemnation), Section 6B.4, Rights conferred, subsection (1), Counties. Section 306.27, Changes for Safety, Economy and Utility, of the Iowa Code, specifically authorizes County Boards of Supervisors to conduct eminent domain proceedings under Chapter 6B, in lieu of those provided in Sections 306.28 through 306.37 for secondary road construction, reconstruction and repair improvements. (See Figure 1.2, Appendix)

4. The Arbitration Condemnation System.

There is an alternate condemnation power that counties may use to acquire right of way for county roads. This alternative power is found in Section 326.28 through 306.37 of the Iowa Code. These code sections are very old and pre-date Eminent Domain Law (Condemnation), Chapter 6B, of the Iowa Code.

Dual condemnation powers for county roads have caused some confusion. It is now clear that the county can use either system to acquire the right of way for local roads. See Section 306.19, Right of Way - Access - Notice, Subsection (4), which authorizes the exercise of the power of this code section through Section 306.28 through 306.37, condemnation procedure. The question thus becomes, "When is it in the county's best interest to use the arbitration system?" Presumably, the alternate system may be procedurally simpler. The alternate system, in some ways, limits the county's power to proceed with the project where a property owner obtains a favorable condemnation award. A condemnation plat may not

have been required under the old arbitration system. However, Section **354.4, Divisions requiring a plat of Survey or Acquisition Plat**, of the Iowa Code requires an acquisition plat for highway right of way acquisitions. This is true whether the highway right of way is acquired by contract or by condemnation. See Section **354.2, Definitions (1) Acquisition Plat**, of the Iowa Code.

For a further discussion of the alternate county condemnation power and process, see Part VII, *County Alternative Condemnation Authority for County Roads*, this manual.

5. Donations and Consent Projects.

The right to accept gifts is usually specifically included in the list of powers granted to public authorities.

For eminent domain definition purposes, a gift of real estate is referred to as a donation. The landowner gives up the owner's right to be justly compensated for the real property conveyed to the acquiring authority for public purposes.

Counties have the power to accept gifts and may accept a donation of real property. Section **6B.54, Federally assisted project and displacing activities - acquisition policies**, subsection (9), of the Iowa Code, specifically authorizes and promotes acquisition of right of way through a donation. Chapter **311, Secondary Road Assessment Districts**, of the Iowa Code, requires that all right of way will be donated before the project can proceed.

There are also cases where the county may have to acquire land by condemnation in order to get good title to the right of way even though the right of way is being donated.

6. Moving Cost Payments - No Relocation Assistance Provided.

Section **6B.14, Appraisement - report**, of the Iowa Code enables Compensation Commissioners to make an additional award of up to \$500.00 to owner's and tenants, sufficient to move personal property from the property acquired a distance not to exceed twenty-five miles. This moving cost payment cannot be awarded where the owner or tenant will be paid moving costs by the Compensation Commission under a relocation assistance program.

The county should recognize and should pay the cost to remove personal

property from the land being acquired when moving costs are not being paid as part of a relocation assistance program. These costs can be estimated either by an officer or agent of the county or paid on the basis of receipted bills. Offer to pay the moving cost estimated both as part of the negotiations process and also as a part of the county's final offer in the condemnation process.

The only way for the county to be able to pay actual reasonable moving costs is to agree to provide relocation assistance moving cost payments as a part of the project. **Section 316.3, Declaration of Policy - Authorization - Divisibility of Application**, of the Iowa Code, empowers counties to provide all, or a part, of the program or payments authorized under Iowa's Relocation Assistance law. This power can be exercised regardless of funding. The only condition is, that to the extent the county elects to provide a relocation assistance program or payment, it must be provided on a uniform basis to all displaced persons on the project.

The \$500.00 payment limitation is not a perfect defense where owners and tenants can reasonably be expected to have to pay considerably more to move personal property. Where greater costs can be anticipated, the county should consider offering to pay actual reasonable moving costs as a means to prevent undue hardships. This is one of the purposes of the Relocation Assistance law.

7. Allowances For Personal Property Damaged or Destroyed or Reduced in Value - No Relocation Assistance Provided.

Section **6B.14, Appraisement - report**, of the Iowa Code, enables Compensation Commissions to make allowance for personal property which is damaged or destroyed or reduced in value.

Section **316.2, Effect on acquisitions and condemnations**, subsection (3), of the Iowa Code, specifically forbids Compensation Commissions to make any allowance for personal property damaged or destroyed or reduced in value by the acquisition of property under Section 6B.14 of the Iowa Code or any other provision of the code under the powers of eminent domain on projects where relocation assistance payments are made under Chapter 316 of the code.

A narrow definition by the acquiring authority of what is personal as opposed to real property may not be effective to prevent Compensation Commissions from making such allowances. The purpose of the constitution is to provide just compensation for property acquired or damaged by the acquisition of real property for public purposes. See

Wilkes v. ISHC, 172 N.W. 790 (Iowa 1969). In Wilkes, the Supreme Court held that rented buildings located on adjacent railroad property but used as a part of a cattle sales business could be considered to be personal property for purposes of determining just compensation. The Supreme Court took the time to note that the two properties were being used as an assembled economic unit. See part I. C. *Defining the eminent domain parcel* this manual.

There are no regulatory standards to implement the personal property damage element of Section 6B.14 of Iowa's Eminent Domain Law. There are regulatory standards to implement Chapter 316 of Iowa's Relocation Assistance Law. The relocation law will provide uniform compensation for personal property damaged, destroyed or reduced in value.

The county needs to recognize when this issue of compensation for damages to personal property will arise. The following are situations that should be thought out to assure productive negotiations and to prepare for a condemnation hearing. e.g. Relocation of an auto salvage yard or to move an inventory or equipment to make pre-stressed concrete beams. See also Des Moines Wet Wash Laundry v. City of Des Moines 198 N.W. 486 (Iowa 1924), which compensated for washing machines and equipment.

Use the relocation assistance law to simplify the eminent domain acquisition. Doing so will help insure that the county is not surprised by claims for compensation for damaged personal property. It will help insure that landowners are made whole but are not unjustly enriched.

8. Alternative Valuation Approaches.

Alternate appraisal and negotiation policies are identified and discussed in the article, *Maintaining a Rational Acquisition Policy*. See Part I of this manual. What must be done, is to adopt uniform appraisal approaches that will consistently and fairly estimate just compensation. The acquisition process, as a whole, must be coordinated to provide assurance to landowners and Compensation Commissions that the offer includes all compensable damages and is just.

Obtain the comparable or market sales data you need to both formulate an offer and also to make an effective presentation to the Compensation Commission. This information needs to be obtained early in the acquisition process, so it can be used to assure all owners of similar property receive the same offer. A system that only appraises land which must be acquired by condemnation can result in unfairly making higher

payments to owners who refuse to sell the right of way than to owners who do agree to sell. A system that appraises even minor acquisitions will increase project costs, wastes appraisal resources and can unnecessarily delay project letting schedules.

Care must be taken to recognize those valuation problems that can not be solved by application of your normal valuation approaches. The appraisal or valuation approach must be matched to the nature and complexity of the problem.

9. Scheduling Right of Way and Construction.

Some think of the right of way acquisition process as a part of the engineering or project design process. Others consider right of way acquisition as a separate function that needs to be accomplished sometime between project design and the letting of the project for construction. The Iowa Department of Transportation requires counties to certify that all right of way has been acquired and all persons have been relocated from the project right of way before the project construction letting process can proceed.

In fact, the project design and right of way process needs to proceed simultaneously. Problem parcels need to be identified as soon as possible. The acquiring authority needs to identify special appraisal, relocation assistance and otherwise complex or high acquisition cost parcels as soon as possible. Solutions to problem parcels often require coordination between project designer and right of way personnel. They all take time to work out.

The project production schedule needs to allow sufficient time to properly complete the appraisal, negotiations and condemnation land acquisition functions. A rational acquisition process will prevent the need to commence condemnation procedures to acquire a property before you complete the appraisal function or before you open negotiations to purchase the property.

Project development must also consider the rights of landowners. Obtaining more favorable financing for the project is no justification for depriving landowners of their right to make reasonable use of their property. See Skaff v. City of Sioux City 168 N.W.2d 789 (Iowa 1969).

In Skaff, the City interrupted the right of way acquisition to await additional federal funding. In the mean time, streets were torn up. The owner had no reasonable access to the property, lost tenants and suffered additional damages that the city was responsible for. See also Section 6B.54(8), of the Iowa Code, which forbids the advancing or deferring condemnation in order to compel an agreement.

B. Use of Power of Eminent Domain.

This section discusses the source of county eminent domain powers. It explores ways that such powers can be properly used. It contains discussion on, and recommends how to avoid, claims of coercive use of eminent domain powers either by advancing or delaying or refusing to implement condemnation proceedings.

1. Power to Purchase.

The right to purchase land for public purposes is usually specifically included in the list of powers granted to public authorities. See Section **331.304, Procedural limitation on general county powers**, subsection 8, of the Code of Iowa. The power to take private property for public use includes the power to purchase property. In 1860, the Iowa Legislature authorized public authorities with the power to acquire land by condemnation, and to also acquire such right as would be acquired by condemnation by conveyance. See Iowa Code Section **6A.5, Right to purchase** of the Iowa Code.

The operating principal in Section 6B.5 of the Iowa Code is more of a limitation rather than a grant of power where it purports to limit the acquiring authorities to the purchase of only such rights as would be acquired by condemnation. The general rule is that an easement is all that is needed for a highway or railroad, and an easement is all that can be obtained in a condemnation proceeding. See Clare v. Wogan, 216 N.W. 739 (Iowa 1927); Merritt v. Peet, 24 N.W.2d 757 (Iowa 1946); Smith v. Hall, 72 N.W. 427 (1897) and cases cited in Division VI, Title to highways and the legal rights attached thereto, Section 39, **Condemned Easement a. General Rule, Eminent Domain in Iowa**, Rev. September 1, 1962, by Evan Hultman, Attorney General of Iowa.

These principals apply unless changed by statute. There are special statutes authorizing the county to acquire a fee. See Iowa Code, Sections **306A.5, Acquisition of property and property rights - access control**, which authorizes purchase of land not yet needed and directs acquisition of access property rights by fee; Section **354.19, Dedication of land**, provides that a dedication is equivalent to a deed in fee simple; Section **314.21, Living roadway trust fund**, subsection (2)(d), of the Iowa Code, enables counties to acquire additional right of way, including fee title acquisition, necessary to implement integrated roadside vegetation management program; Section **306.19, Right-of-way - access - notice**, subsection (2)(b), authorizes the purchase of the entire property in the interest of economy.

2. To Promote a Public Purpose.

The legislature must first determine what a public purpose is. The legislature must also determine those public purposes for which the county may acquire land by condemnation. These determinations will be strictly construed. Iowa State Highway Commission v. Hipp, 147 N.W. 2d 195 (Iowa 1966), held the right to enter on private property will not be implied. In Hipp, the state was denied the right to enter on private property before proceedings to acquire it.

Once the public purpose has been declared and the power to condemn for that public purpose has been granted, the county has the right to determine how to implement the public purpose. How much right of way is needed for the project design are engineering questions that absent fraud or arbitrary abuse of power will not be interfered with by the courts. See Carstens v. Clinton County, 94 N.W.2d 734 (Iowa 1959). Carstens held the county could adopt and implement Federal Road maintenance standards and cause removal of trees where required to meet safety related road maintenance standards. Carstens was a particularly difficult question since the road side trees on the highway easement were owned by the adjacent landowner and were to be removed without compensation as safety hazards.

3. Joint Use of Powers - Power Pooling.

Iowa has a long statutory tradition of empowering public authorities to cooperate with one another to promote the public good.

These same power pooling principals are also found in the Iowa Administrative Code, Sections 6B.54, **Federally assisted project and displacing activities - acquisition policies**; Section 6B.55, **Buildings, structures, and improvements on federally assisted programs and projects**; and Iowa's Relocation Assistance law, Chapter 316, of the Iowa Code. See 761 IAC 111, **Uniform Manual, Real Property acquisition and relocation assistance**.

Condemnation authorities may contract to acquire land for one another's uses or purposes on joint projects. Governmental powers may be jointly exercised under Chapter 28E, of the Iowa Code, and are encouraged by land acquisition and relocation assistance administrative rules. By authority of Section 28 E.12, **Contract with other agencies**, one agency can acquire or condemn right of way in the name of another agency. See Section 331.304, **Procedural Limitations on general county powers**, subsection 1.

"1. The power to act jointly with other political subdivisions or public or private agencies shall be exercised in accordance with Chapters 28E or 28I or other applicable state law."

Iowa Administrative Rule 111.9, Administration of Jointly funded projects, appropriately directs that one agency acquire right of way for all agencies.

There is no individual liability for public officials serving on the board of Chapter 28E entities. Individual members of a corporate entity created under 28E.4 and 28E.5 are not jointly and severally liable with the corporate entity upon a written contract entered by the entity with a third party. Allis-Chalmers Corporation v. Emmet County Council of Governments, City of Estherville and Emmet County, 355 N.W.2d 586, (Iowa 1984).

A county or city may condemn highway right of way for the State on a joint intergovernmental project in the name of the city under a 28E contract, and property owners do not have a right to any specific condemnation proceeding (Federal - State - or Local). Halweg v. City of Sioux City, 189 N.W.2d 623 (Iowa 1971). A City can similarly condemn land for a school district under a 28E intergovernmental agreement. Weiss v. City of Denison, Iowa Court of Appeals, filed August 27, 1992, #2-159/91-768.

The State may acquire local streets in the name of the City by condemnation on a joint project under a 28E agreement. Attorney General's Opinion, Turner to Coupal, April 4, 1969, 1970 OAG 92.

Intergovernmental agreements must obligate public authorities to revoke licenses or permits to use or improve public property.

Counties must terminate adjacent landowner licenses or permits to use city streets to prevent the State from being required to compensate landowners for the destruction of a property interest. See A.G. Opinion Peterson to Sweitzer, 4-7-1969, and the case cited therein, In Re Primary Road No. Iowa 141, 114 N.W.2d 290 (Iowa 1962).

State, utility and federal land acquisition and condemnation powers also need to be shared. These are not familiar relationships. Much time and human resource can be saved by one authority acquiring land directly in the name of the authority with ultimate jurisdiction. These agency and joint power exercises need to be explored and implemented. In 1994, the Iowa Legislature considered HF 2362, which added a new subsection to

Section 306.19 of the Code, which authorized road authorities to acquire replacement pipeline right of way on behalf of the pipeline company by condemnation, if necessary. Special legislation like this is not needed to make this work if both parties work together to use their existing powers.

Highway authorities can acquire access easements in the name of landowners where necessary to remove a road from the publicly owned road system. See Jasper County condemnation proceedings, FN-14-4(24)-21-50, Parcel 16, Stewart-Trent, November 1987, and this subject, Volume 2, *Engineering and Legislative Design*, Land Acquisition Design Course by James E. Graham.

4. The Authority to Condemn Public Property.

Counties are empowered, pursuant to Section 306A.5, Code of Iowa, to appropriate public as well as private property in connection with the construction of access-controlled highways, and may acquire those portions of a secondary road or city street, or utility or railroad right of way as described in an application for condemnation and notice of condemnation and plats appended thereto. See Section **306A.5, Acquisition of property and property rights**, Code of Iowa. Harvey v. Iowa State Highway Commission, 130 N.W.2d 725 (Iowa 1964); Warren v. Iowa State Highway Commission, 93 N.W.2d 60 (Iowa 1959).

Section 306A.5, Acquisition of property and property rights, states:

"For the purposes of this chapter, cities, towns, and highway authorities having jurisdiction and control over the highways of the state, as provided by Chapter 306 may acquire private or public property rights for controlled-access facilities and service roads, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation in the same manner as such units are now or hereafter may be authorized by law to acquire such property or property rights in connection with highways and streets within their respective jurisdictions. All property rights acquired under the provisions of this chapter shall be in fee simple. In connection with the acquisition of property or property rights for any controlled-access facility or portion thereof, or service road in connection therewith the said cities, towns and highway authorities, in its discretion, acquire an entire lot, block, or tract of land, if, by so doing, the interests of the public will be best served, even though said entire lot, block, or tract is not immediately needed for the right of way proper."

The Warren case is a case in point. It involved the closure of certain secondary roads in connection with the construction of the interstate highway system. In that case, the court held that Section 306A.1 through

Section 306A.9 governing controlled-access highways are special statutes, and where in conflict with and where they cannot be reconciled with general statutes, such Sections 306.1 through 306.31 dealing with the establishment, alteration, and vacation of highways. Either the Iowa D.O.T. or the county may close off county roads at their intersections with their controlled-access facilities. The county also has the power to establish, alter, or vacate county roads that are not access controlled highways. See Section 306.10, **Power to establish, alter, and vacate**, through Section 306.14, **Objections - claims for damages**.

The physical appropriation of portions of these secondary roads is a necessity in the construction of an access controlled road. Secondary roads, accessways, and driveways may be redesigned, reconstructed, or improved in connection with underpassing, grade separating or overpassing secondary road traffic over and across the access controlled highway. The necessity for such local road improvements, and the scope of the improvement, is a decision within the jurisdiction of the county. See, Harvey v. Iowa State Highway Commission, *supra*, and cases cited therein.

Other Iowa statutes authorizing the condemnation of public property include:

Section 403.7, **Condemnation of property** (urban renewal law);
Section 327G.17, **Hearing - order - railroad and highway crossings**;
Section 327I.7, **Power of the authority**, subsection (4) (railway finance authority - for railroad purposes);
Section 6A.16, **Right to condemn abandoned right-of-way**; and
Section 6B.18, **No double damages**, (for railroad purposes).

State property law is not preempted by federal railroad law. McKinley v. Waterloo Railroad Company, 368 N.W.2d 131 (Iowa 1985).

State eminent domain law is not preempted where railroad line was abandoned. Hayfield N. R. Co. v. Chicago and Northwestern Transportation Company, 467 U.S. 622, 104 S.Ct. 2610, 81 L.Ed.2d 527 (1984).

The trustee for a bankrupt railroad may not refuse to grant a state permission to condemn abandoned railroad right of way as the trustee's interest is fully protected by the just compensation payment process. In Re Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Appeal of the Wisconsin Department of Transportation, 739 F.2d 1169 (7th Cir. 1984).

The trustee for a bankrupt railroad must authorize a city to condemn operating right of way easement and adjacent railroad fee owned land. In the Matter of Chicago, Milwaukee, St. Paul and Pacific Railroad Company v. City of New Hampton, Iowa, 738 F.2d 209 (7th Cir. 1984).

5. The Power to Condemn Property Outside of Jurisdictional Boundary.

The power to condemn property outside of a public authority's boundary is not as critical an issue as it used to be. Two public authorities can accomplish any joint purpose under an intergovernmental agreement.

The Iowa Code provides an alternate solution for drainage and flood control projects. See 1967 OAG 217, **Cities and towns**, citing code section "... specifically authorizing a City or town to cooperate in federal flood control projects, and assign assurances relating thereto, take possession of lands needed therefore prior to final conclusion of condemnation proceedings including appeals ..." Section 364.5, **Joint action league of municipalities**, and Section 384.24, **Definitions, subsection (3)(i), Essential corporate purpose**, of the Iowa Code, are modern versions of the old statutes cited in the 1967 Attorney General's Opinion. Other out of jurisdiction authority statutes empower cities to establish water, sanitary airport and other utility and essential services outside the city.

In the absence of a statute granting the power to condemn public property, the first condemnation authority to condemn has prior right. Unless a statute authorizes a City to condemn railroad property, a City may not acquire private property by condemnation when a railroad has already instituted a condemnation to acquire the same property for railroad purposes. Connolly v. Des Moines & Central Iowa Railway Co., 68 N.W.2d 320 (Iowa 1955). This does not mean that a second condemnation authority cannot acquire or condemn the right to jointly occupy or cross the same property.

The legislature has the power to determine what a public purpose is. Statutes authorizing condemnation for a spur track constitute a legislative determination that the use authorized is for a public purpose even though only one industry or person is primarily served by it.

Owners of landlocked property are sometimes authorized by statute to acquire access to a public highway or street system by condemnation. See Section 6A.4, **Owners of land without a way to the land**, subsection (2), of the Iowa Code; Matter of Luloff, 512 NW2d.267 (Iowa 1994) and Conklin v. Schafer, Iowa Court of Appeals, filed February 22, 1990, #9-

620/89-584, and cases cited therein.

6. Reasonable and Necessary Uses Are Authorized For the Purpose of the Easement - Maintenance Sites.

Highway authorities have always used highway easements for maintenance purposes. A condemnation of a right of way acquires a permanent easement for road purposes and for use as a public highway. It authorizes highway authorities to use the land in any way that is consistent with the operation, use and maintenance of the highway. Recent statutes even enable counties to acquire additional right of way, including fee, in land to implement roadside vegetation management programs. See Section 314.21, **Living roadway trust fund**, subsection (2)(d), of the Iowa Code.

Acquiring authorities are not required to provide assurances that the land will be used for its intended purpose. See, Weiss v. City of Denison, IA. Court of Appeals, filed August 27, 1992, #2-159/91-768. Only where the achievement of the public purpose can not be reasonably expected, should the right to take land by condemnation be denied. In the absence of fraud, oppression, illegality, or abuse of power or discretion, the courts will not interfere.

Section 331.304, **Procedural limitations on general county powers**, subsection (8), of the Iowa Code empowers counties to use eminent domain powers for public purposes which are reasonable and necessary as an incident to the powers and duties conferred on counties. Counties have long had power to expend money to provide road maintenance materials, supplies, garages, and sheds. See Section 331.429, **Secondary road fund**, subsection (2)(g). The definition of public improvement has always including buildings. See Section 331.341, **Contracts**, and Section 384.94, **Definitions**, subsection (1), **Public improvement**, of the Iowa Code. Section 309.24, **Uniform and unified plan required**, of the Iowa Code requires counties to develop a uniform and unified plan "... as to bridges, culverts, tile and grading or other improvements ..."

This discussion points out the positions sometimes taken by property owners at condemnation hearings. A lack of authority to condemn claims can be made to support a claim that the acquiring authority is proceeding to condemn in bad faith. The argument is sometimes used to support a claim for non-market-related or punitive damages. It may be necessary to prepare or obtain a legal opinion in advance of the condemnation hearing which confirms that the acquiring authority has the power claimed. The Compensation Commission is not responsible to determine such legal questions. Such a claim should not distract the Compensation

Commission from performing its real function of determining and awarding just compensation for the property or property rights being acquired in the condemnation hearing.

7. Flexible State - Local Authorities Intergovernmental Right of Way Acquisition Agreement.

Intergovernmental right of way acquisition agreements are entered into years in advance of the time necessary to begin the acquisition of right of way. Such agreements may specify that certain right of way functions such as condemnation or review appraisal shall be performed by the State. Circumstances may change. When it comes time to acquire right of way, it may not be possible for the State to honor its right of way commitments without delaying the scheduled development or construction of the project.

The original intergovernmental ROW acquisition must be revised if any authority other than the State is to provide ROW functions originally reserved to the State. The purpose of this revision is to enable the local public authority to participate in or perform condemnation and other right of way functions where it is necessary to keep the project on schedule. The revision also clarifies that the cost of providing right of way services is a project cost to be reimbursed to the local acquiring authority or credited as a part of the local authority's project cost contribution. (See Figure 1.3a-e, Appendix)

8. No Coercive Condemnations.

Iowa's Uniform Acquisition standards state:

"6. In no event shall the time of condemnation be advance, or negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other coercive action be taken to compel an agreement on the price to be paid for the property."

See Section 6B.54, **Federally assisted project and displacing activities - acquisition policies**, subsection (6), and 761 IAC 111, Rule 111.102 (B).

The best illustration of coercive condemnation practice I am aware of is Osborn v. City of Cedar Rapids, 324 N.W.2d 471 (Iowa 1992). In Osborn the City commenced condemnation four times, abandoned the condemnation proceedings 3 times, changed the nature of property rights acquired and applied different acquisition and zoning standards to neighboring property.

The county may abandon or dismiss a condemnation proceeding for a variety of good reasons but not without incurring responsibility to pay the landowner's costs and attorney fees. See Section **6B.34, Refusal to pay a final award** and Goodwin v. ISHC, 369 N.W.2d 816 (Iowa 1985).

When it is time to institute a condemnation proceeding, the county must be ready to follow through. Design must be final, necessary appraisal data needs to be available, and an effort must have been made to negotiate a settlement. All of this is a necessary function of project scheduling.

9. The Right to a Condemnation Proceeding.

Iowa's Uniform Acquisition Standards state:

"7. If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring agency shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of the owner's real property."

See Section **6B.54, Federally assisted project and displacing activities - acquisition policies**, subsection (7).

This section codifies common law. The public improvement land acquisition process includes the use of condemnation proceedings. Condemnation proceedings are a normal part of the acquisition process and their costs are normal project costs. See Skaff v. Sioux City, 168 N.W.2d 784 (Iowa 1969). In Skaff, the owner received a second trial for damages allegedly caused by long delays in completing the acquisition of land. The Skaff property should not have been left isolated and without access to the street system for an extended period. It should have been acquired before the completion of the acquisition process was postponed.

There are times when owners claim that there has been an uncompensated taking which entitle the owner to a condemnation proceeding. These claims include subjects such as loss of lateral support, illegal zoning, interference with the owner's right to free and convenient access to the road system, or that the project caused new flooding. See Connolly v. Dallas County, 465 N.W.2d 875 (Iowa 1991). In Connolly, the Supreme Court remanded the case to the District Court to determine if the bridge replacement and channel change work caused flooding in an area that would not have flooded in the absence of the channel change. If it did, it would give rise to a constitutional claim for inverse condemnation.

In an inverse condemnation suit, the mandamus court (District Court) is

to determine only if a factual issue exists that would permit a Compensation Commission to find an intrusion that produced a measurable decrease in the property's market value. It is for the Compensation Commission to determine if there has been any such intrusion, or not, and if so, what loss in value has been caused by it. See Fitzgarrold v. City of Iowa City, 492 N.W.2d 659 (Iowa 1992). Absent a physical invasion, a taking does not occur until there has been a substantial interference with investment backed expectations. In Fitzgarrold, the owner could not put his mobile home court to a higher and more valuable use either before or after the acquisition and there was thus no taking.

C. Defining the Eminent Domain Parcel.

This section provides the general concepts necessary to help the acquiring authority identify the eminent domain parcel. These insights are needed to properly define the property rights to be acquired and to identify damages to remaining property.

1. The Survey and Engineering Parcel.

The survey and design engineer's focus is not on the eminent domain parcel but nearly exclusively on the land being acquired. This focus is right, from the point of view of the project design. It is too narrow for purposes of estimating and paying just compensation.

The impact of the loss of the acquired property and of the construction of the project on remaining property needs to be considered. Reduced utility and value of remaining property is compensable severance damage. Landowners are entitled to be compensated for both the land and property acquired and also for damages, if any, that the project causes to the remaining property.

2. The Eminent Domain Parcel.

An eminent domain parcel is/are tract(s) of land, improvement(s), or legal property right(s) owned by a single entity and operated as a single unit and being acquired for right of way or damaged by project construction or maintenance. An eminent domain parcel is an assembled economic unit or the entire property that could be damaged or benefited due to partial acquisition. See article, *An Eminent Domain Parcel is an Assembled Economic Unit*, Volume 9, *Acquiring Land by Condemnation*, Land Acquisition Design Course, April 1994, by James E. Graham.

This concept is well illustrated by two cases. See Crist v. Iowa State Highway Commission, 23 N.W.2d 424 (Iowa 1963) and Wilkes v. Iowa State Highway Commission, 172 N.W.2d 790 (Iowa 1969). Crist operated a car sales business from three nearby non-adjacent lots separated by an alley. Wilkes operated a livestock sales business on his land and on an adjacent railroad property containing buildings and other improvements. Both were entitled to a single condemnation proceedings that considered damages to the entire assembled economic unit.

Some thought should be given to the impact of environmentally protected lands. See Section 314.23, **Environmental protection**, of the Iowa Code, protecting woodlands, wetlands, public parks and prime agricultural lands.

See also 314.24, *Natural and historic preservation*, of the Iowa Code. These special properties may be so regulated as to be unusable for normal public works projects or for development purposes. These use restrictions may be imposed by government, by acquisition easements or through leases with landowners. It may be logical to consider these special properties as a separate parcel so that their remediation or replacement can be worked out early in the project development process.

"Section 314.23 Environmental protection.

It is declared to be in the general public welfare of Iowa and a highway purpose that highway maintenance, construction, reconstruction, and repair shall protect and preserve, by not causing unnecessary destruction, the natural or historic heritage of the state. In order to provide for the protection and preservation, the following shall be accomplished in the design, construction, reconstruction, relocation, repair, or maintenance of roads, streets, and highways:

1. *Woodlands*. Woodland removed shall be replaced by plantings as close as possible to the initial site, or by acquisition of an equal amount of woodland in the general vicinity for public ownership and preservation, or by other mitigation deemed to be comparable to the woodland removed, including, but not limited to, the improvement, development or preservation of woodland under public ownership,
2. *Wetlands*. Wetland removed shall be replaced by acquisition of wetland, in the same general vicinity if possible, for public ownership and preservation, or by other mitigation deemed to be comparable to the wetland removed, including, but not limited to, the improvement, development, or preservation of wetland under public ownership.
3. *Public parks*. Highways, streets, and roads constructed on or through publicly owned lands comprising parks, preserves, or recreation areas, shall be located and designed, in consultation with the public entity owning the land, so as to blend aesthetically with the areas and to minimize noise. When land is taken from the areas for highway construction and if, in consultation with the public entity owning the land, mitigation is deemed necessary, the land shall be replaced by an equal or greater amount for public use, or by other mitigation, undertaken in consultation with the public entity owning the land, and deemed to be appropriate to the amount of land taken, including, but not limited to, the improvement, development, or preservation of the areas.
4. *Prime agricultural lands*. Topsoil removed may be utilized for landscaping and other necessary construction. Excess topsoil shall be made available to the former landowner or other landowners whose land was purchased for the construction or others and if not acquired by one of these parties, it may be disposed."

89 Acts, ch 311, §26

"Section 314.24 Natural and historic preservation.

Cities, counties, and the department shall to the extent practicable preserve and protect the natural and historic heritage of the state in the design, construction, reconstruction, relocation, repair, or maintenance of roads, streets, or highways. Destruction or damage to natural areas, including but not limited to prime agricultural land, parks, preserves, woodlands, wetlands, recreation areas, greenbelts, historical sites, or archaeological sites shall be avoided, if reasonable alternatives are available for the location of roads, streets, or highways at no significantly greater cost. In implementing this section cities, counties, and the department shall make a diligent effort to identify and examine the comparative cost of utilizing alternative locations for roads, streets, or highways."

89 Acts, ch 317, §30

3. Minor Acquisitions and Trees.

Legal descriptions and condemnation plat requirements are the same for all parcels, however simplified appraisal standards may be applied to acquire minor parcels.

Iowa's Uniform Land Acquisition Policies do not apply to temporary construction easements where construction or maintenance of the project will not cause permanent damage to remaining property. See Section 761 IAC 111, "Uniform Manual, Real Property - Acquisition and Relocation Assistance", Section 111.101(2), Less - than - full - fee interest in real property.

Temporary easements grant the acquiring authority possession of the easement to construct the project. All damages are cured by construction or paid for by agreement. You must consider the impact on the remaining property to determine if the Uniform Land Acquisition Policies apply. If a grade change makes improvements inaccessible, damage has been caused to the remaining property.

Permanent easements, and even fee takings, can be minor parcels. See Section 6B.54, **Federally assisted project and displacing activities - acquisition policies**, subsection (2). This subsection empowers the Iowa D.O.T. to "... prescribe procedures to waive the appraisal in cases involving acquisition of property with a low fair market value." By rule, properties that fall into this category include those valued at \$2,500.00, exclusive of fence and the cost to extend driveways. See 761 IAC 111, Rule 111.103(5), **Compensation estimate**.

The key concept in the definition of a minor parcel is that there are no permanent damages to the remaining property. The value or payment

limitation of Rule 111.103(5) **Compensation estimate** must be adhered to on projects with federal or state funding. Counties can apply different standards on local projects.

Crop damages and field preparation costs logically can also be added to this list, since it is a payment for temporary damages.

Trees removed by construction also logically fall into the minor taking category. Trees may have a commercial value (value separate and distinct from the soil) or a value as lumber or firewood. They may also be junk trees that, when removed, would enhance or increase the value of the land or improvements. Trees may have a special or intrinsic value as a windbreak for livestock or residential shade or ornamental. Where trees have a special or intrinsic value in excess of the lumber or firewood value, courts have the discretion to consider payment of additional damages caused by the loss of such special value or to consider payment of replacement costs, or both. See Bangert v. Osceola County, 456 N.W.2d 183 (Iowa 1990); Laube v. Estate of Thomas, 376 N.W.2d 108 (Iowa 1985); and Walters v. Iowa Electric Co., 212 N.W. 886 (Iowa 1927).

From a negotiations and condemnation point of view, trees are real property, and some payment should be made for them. This remains true, even though the property might sell for the same amount without the trees. A minimum payment, or a firewood related value tree payment schedule, would appear to justly compensate for trees that have no lumber value and no intrinsic value. A lumber value tree schedule would be appropriate for trees with timber value. Some form of replacement cost is a proper approach where it is reasonable to replace windbreaks or shade trees being used in a farming operation or to replace ornamental trees. (See Figure 1.4, Appendix)

The county needs to recognize those cases where it may be difficult to value trees and obtain appropriate assistance. In all cases, a rational and uniform approach is needed to calculate reasonable tree payments. There are times when the only appropriate payment is an agreement to remove the tree at no cost to the owner. Other times, it may be appropriate to allow the owner to harvest the trees prior to construction.

4. Joint or Multiple Use Parcels.

It is necessary to separately describe all property and property rights to be acquired from a parcel. In determining what the after parcel is, it is necessary to consider that the before parcel will be reduced by all property

rights acquired. The fact that the county and the state and the city will each succeed to a part of the property acquired is not relevant for purposes of determining the parcel. The focus should be on what permanent damage, if any, has been caused to remaining property by the terms of all property rights acquired by all public authorities.

5. Plot Plans, Acquisition Plats and Staking.

There are no legal requirements for a plat to acquire an easement, unless it is a highway easement. See Part II D, *Condemnation plat standards*. At the same time, it is very difficult to negotiate to acquire right of way or to communicate with lenders without a graphic illustration of what property is being acquired. The Iowa D.O.T. uses a preliminary plat that is called a plot plan to distinguish it from a land surveyor's plat. Counties sometimes use a project plan sheet to show property lines and approximating right of way lines.

There are times when it is necessary to stake a right of way line in order to identify key locations and distances.

How much explanatory work needs to be done as a right of way design standard is a judgment call. Except when the whole property is being acquired, experience indicates that the county needs a reasonable graphic illustration in nearly all cases. Landowners are entitled to know what the project is doing to their remaining property. The county cannot reasonably refuse a landowner's request to identify, illustrate or locate the property being acquired in relation to the landowner's remaining property.

6. Summarizing the Acquisition.

Each property right to be acquired needs to be identified. This identification needs to include enough information to define the use(s) to which the property is to be put. It must also contain restrictions that the landowner will have to live with. If no structure can be built on an easement, this restriction needs to be identified.

Once identified, each property right must be both described by a legal description and also quantified by appropriate area whether by acre or square foot. The Appraiser, negotiator and landowner all need to know what impact the acquisition and the grade of the highway entrances and the like, will have on the present use of the land or the present use of buildings and other improvements.

All this information should be expressed in the form of a construction or

right of way plan and profile, showing property lines and locating buildings adjacent to the land or easement area acquired.

There is another communication issue here. The Appraiser, the negotiator, the property owner and compensation commissioners all may want to, or may need to, know some construction detail. Some landowners may insist on the county reciting construction detail in their right of way offer or contract. This detail may include gates, topsoil, agricultural or chain link fence, residential or decorative wood fence, manholes and open trench and backfill standards. (See Figure 1.5a-b, Appendix) This information should be abstracted and kept in narrative form so it is available when it is needed.

D. The Appraisal Process.

This section provides standards and discusses procedures that can be used to determine the level of appraisal or land value information needed to appropriately estimate just compensation. The discussion considers a spectrum of situations ranging from complex to simple acquisitions.

1. Information Adequate to Provide a Basis For Land Value.

There is no constitutional right to an appraisal. Payment of just compensation is all that is required. Section 6B.54(2), of the Iowa Code, requires real property to be appraised as required by Section **6B.45, Condemnation for road or street - mailing copy of appraisal**, of the Iowa Code. Section 6B.45 states:

"... except that the Iowa D.O.T. may prescribe a procedure to waive the appraisal involving cases of the acquisition of property with a low fair market value."

Section **6B.45, Condemnation for road or street - mailing copy of appraisal**, of the Iowa Code, contains requirements similar to the **Federal Uniform Acquisition Policies Act**. Section 6B.45 applies only to federally financed projects. It doesn't apply where only temporary easements for construction are required, and no permanent damage is caused by the project. It requires only an itemization of the appraised value of real property and buildings and all other improvements, including severance damage and loss of access. It does not require a before and after appraisal. It applies only to highway projects. It does not apply to any non-highway public improvement project, unless there is federal money in the project so that it is necessary to comply with Section 6B.45 in order to comply with the corresponding federal standard.

Section 6B.45 does not require any specific form of an appraisal. Instead, it requires an itemization (allocation) of "appraisal value" (just compensation) of the real property (fee) or interest therein (easement), buildings thereon (acquired), all improvements including fences, severance damages and loss of access. For simple highway widening projects, this list will not go beyond land value and fence payment.

The net effect of this statute is to require the county to itemize its offer of just compensation. It is not necessary that the county and the landowner agree on the amount being offered for each item. All that is required to negotiate a settlement is that both the county and the landowner agree on the total amount of just compensation.

It is necessary to explain the basis for your offer of just compensation. This explanation should relate to the lands fair market value. The county needs to have sufficient information on recent land sales to be able to formulate an offer on a value per acre basis to acquire similar property. The offer can be expressed as an application of land sale information to the subject property. This is a direct appraisal judgment. The offer can also be expressed indirectly as a factor of assessed value. So long as the offer is grounded in land sales, it can be explained as a rational and reasonable basis for determining the offer.

Using the breakdown requirements in Section 6B.45 will provide a procedural standard that will help to explain what is being paid for. This is a good procedure, no matter what the source of project funding might be.

2. Identifying Damage to Remaining Property.

The most fundamental qualification for a person performing the appraisal function is the ability to project the effort of the public improvement on the use of remaining property. This requires the ability to interpret plans, profiles and engineering data. It also requires the application of common sense. You need to ask yourself, "Will the grade of the drive reasonably accommodate the landowner's continued use of the entrance for trucks and farm equipment?" The answer to this and similar questions must be, in part, calculated and, in part, comes from experience. Turning radius of semis may require special design consideration. Buildings that now can not be entered or exited the same way, or only one way, may be less useful or less valuable. The acquisition may also damage a larger aspect of business or farming operation. Residences whose set back from the road is reduced to less than what is typical or reasonable may be damaged by dust and noise etc...

This concept is the first requirement for persons to qualify as an Appraiser under Iowa's Uniform Administrative rules. 761 IAC 111, rule 111.103(10), **Qualification of Appraisers and review Appraisers**, subrule (b)(i):

"111.103(10)(b)(i), An Appraiser and individuals performing the appraisal function shall understand how acquiring a part of a property can cause damage, destroy or reduce in value property which remains."

3. Selecting the Appraisal Format.

The format for the appraisal is controlled by the complexity of the

appraisal problem. State highway authorities and federal funding agencies also have used monetary standards for appraisal format. Iowa has adopted a one-page value report to deal with property of low market value and for the acquisition of limited or minor interests in property. Iowa has identified the minimum value report as a "compensation estimate" and not as an appraisal. See Section 6B.54(2), of the Iowa Code. Basic formats for appraisals have been established by the Iowa Department of Transportation. Individual federal funding authorities may also have appraisal format policy or regulatory requirements.

The appraisal format should comply with the requirements of all the project's funding authorities.

Short form appraisal format procedures are appropriate to estimate just compensation when there is no severance damage caused to remaining property. Where the acquisition of right of way could, or is likely to, cause damage to the remaining property, the property should be appraised by an experienced eminent domain Appraiser.

The county needs to identify when damages may be caused to remaining property in order to properly estimate appraisal fees and to identify an Appraiser(s) with appropriate experience in appraising similar properties.

It is better not to try to reinvent appraisal formats. A great deal of thought has gone into developing the State D.O.T. appraisal formats, including the Compensation Estimate (not an appraisal). When you identify the parcel(s) that should be considered as a parcel that needs to be appraised, seek advice from persons experienced in making such determinations. It is more cost effective to do it right the first time. You must use D.O.T. formats if you are, or will use, federal or state funding for the project.

There are alternatives to appraising each parcel, parcel by parcel. It may be appropriate to ask an experienced eminent domain Appraiser to furnish the county with a land sales data book that establishes a value or range of value for land. e.g. Top agricultural land, pasture land, timber, waste land, etc. The project Land Sales Data Book approach works well for minor widening projects, or where only minor or temporary interests or small acquisitions are being made.

4. Supporting Payment of Damages in Minor Acquisitions.

These are the circumstances that the compensation estimate (not an appraisal) was intended to apply to. A single recent land sale of similar

property will adequately support a land payment. Fence payments can be calculated from the county's fence schedule or, as some county's do, replaced as a part of the construction project. How should payment of other damages be supported? The Iowa D.O.T. authorizes its Right of Way Agents to estimate actual, reasonable moving costs up to \$2,500.00. The negotiator can prepare compensation estimates up to \$2,500.00 exclusive of fence and maintenance cost for accessways. Items that fall into this category include payment to replace septic systems, ornamental trees, shrubs, flowers, board or decorative fence, temporary fencing to restrain livestock, or crop and field preparation cost losses.

You have three choices. You may have the Appraiser identify and value each and every such item. You may have the negotiator identify and value it. Or, you may obtain independent estimates from persons in the business of doing the work. The county needs to have a basic policy that the parcel file shall contain an identification of what items were paid for, and who valued them. Whether this information is in the form of negotiator's notes, or an administrative settlement, or an itemizing signed memo to the file, is not important. Use whatever approach is easiest, but be sure that it is done. This is the kind of data you need to help you monitor the fairness and effectiveness of your acquisition system. You will need the data to respond to questions from landowners and public officials concerned about alleged over payments or of disproportionately low offers.

Whenever it is possible to do so, these costs should be verified by written cost estimates from persons in the business of providing such services for parcels to be acquired by condemnation.

5. The Role of the County Auditor.

The auditor is a valued source of sales data, description, names, addresses and other factual data. The Auditor is not an appropriate person to provide eminent domain appraisals. See OAG, Olsen to Olesen 7-11-90 #90-7-7(1), holding it to be a conflict of interest for the Assessor to do so. See also Vine Street Corporation v. City of Council Bluffs, 220 N.W.2d 860 (1974).

The Assessor should be requested to help by keeping you informed on recent land sales in and near the project. You will need this information while acquiring right of way to respond to landowner's questions, to confirm the validity of your offer or as the basis for considering additional payments or administrative settlements.

The idea behind the use of assessed values plus a factor to estimate just compensation for land is that you are developing a schedule of uniform payments which is then personalized or tied to specific parcels through the assessment data for each parcel. This process can not be explained to landowners that easily. This approach to developing land values is similar to the Appraiser's Project Sales Data Book approach.

It is better to use an Appraiser to accomplish this purpose. Where the Appraiser performs this project appraisal function, the county has a rational analysis of land sales and also an effective appraisal witness where land must be acquired by condemnation. The Assessor can not be the Appraiser. Using the Appraiser to develop a range of land values for farmland, pasture, woods, etc. will assure the county that it will have sufficient information to proceed quickly with a condemnation.

6. Selecting the Appraiser.

The county needs to select an Appraiser who has qualifications that are consistent with the level of difficulty of the appraisal assignment. See 761 IAC 111, Rule 111.103(10), **Qualification of Appraiser and Review Appraisers, subrule (b), Qualification of Appraiser.**

There is no real substitute for eminent domain appraisal education and experience. The question is often, "How can you use your local Appraiser, and what assignments are they able to perform for you?" In turn, the Appraiser is concerned with how to provide the appraisal the county needs in a cost effective and efficient manner. The solution is often to provide the Appraiser with the forms and procedural instructions. Inform the Appraiser what you want. The Appraiser needs to know. The Iowa D.O.T. has persons who can assist in formulating the appraisal assignment as part of their duties as Local Project Monitoring Agents. There are other Right of Way Professionals, experienced Eminent Domain Appraisers and former D.O.T. Review Appraisers who can also provide assistance.

Severance damage parcels should not be assigned to inexperienced eminent domain Appraisers, unless you or your staff have sufficient experience to provide the appraisal review support and guidance necessary to assure successful completion of the appraisal.

If there is a need for a detailed Before and After Appraisal and there is, or will be, federal funds in the project, the Appraiser must be certified by the Iowa Appraisal Board as a "Certified Appraiser". See 49 CFR, Part 24, Rule 24.103(d), **Qualification of Appraisers.** No such certification

is required where a lower level or shorter form of appraisal format is all that is needed.

E. The Appraisal Review Function:

The purpose of this function is to provide quality control for the compensation determination aspect of the acquisition process. This section identifies and applies appraisal and just compensation computation standards to assure landowners are properly compensated. It provides guidance on how to assure full payment, how to avoid duplicate payments and how to procedurally assure landowners are treated equally.

1. Accepting Appraisal as an Adequate Basis for Land Value.

The primary function of the review Appraiser is to determine that there are adequate market and cost facts to support an amount proposed to be offered as just compensation for the acquisition of property for a public works project. This is intended to be a quality control function. The title "Review Appraiser" is historical. The FHWA and other government programs and commercial banks all now use the label "Review Appraiser" to mean basically the same thing. The bank's "Review Appraiser" assures the bank that the Appraiser's land value determinations are adequately supported, and that there is thus adequate value in the land to meet loan security requirements.

The eminent domain Review Appraiser has an additional responsibility to assure the county that the amount is both a just payment to the owner, and that all owners with similar property and similar acquisitions from their property are being offered and paid the same amount. Land acquisitions offers must be consistent in order for the county to maintain a fair and equitable acquisition system.

The ultimate function of the Review Appraiser is to determine if the appraisal is an adequate basis for the land value determination. If the total appraisal contains sufficient market and cost information to enable the county to formulate an offer, it can be accepted for this purpose.

There are times when the county's offer of just compensation needs to be supplemented by adding fence payment, septic replacement costs or tree payments or the like. This happens when the Appraiser either did not consider these costs or where these costs were omitted from the appraisal assignment. If the Review Appraiser is not the person who will be adding omitted items to the offer, the Review Appraiser's approval should instruct that the offer be increased to include payment for such items.

Whether the appraisal meets Federal Aid Reimbursement Standards, or whether the Appraiser is entitled to be paid a fee are secondary issues.

Accepting the appraisal for any purpose before project appraisal documentation standards are met may put acquisition payments, not just appraisal fees, at issue with funding authorities.

2. All and Only Compensable Damages Considered.

Appraisers without eminent domain experience may not be able to distinguish between what is and what is not a compensable element of damage which must be considered in the appraisal of the property. National Appraisal Association materials and recommended appraisal service agreement forms can mislead the Appraiser where they fail to comply with Iowa Constitutional and Statutory requirements. It is the responsibility of the county to define the appraisal assignment and in doing so, to identify what is and what is not compensable. You have a problem after an appraisal has been completed which offers to pay for damages to personal property, or to businesses or which arise out of temporary inconvenience caused by construction, none of which is compensable. The way to avoid this problem is to furnish the Appraiser basic instructions. Where the Appraiser fails to comply with his instructions, you have a reason for not paying him or her for a non-appraisal and for rejecting the appraisal where it is not rewritten.

The Iowa D.O.T. has prepared basic appraisal instructional information as part of the D.O.T.'s Appraisal Policy and Procedures Manual. These instructions include a list of what is and what is not compensable. It also contains constitutional definitional information for key concepts like "Just Compensation", "Fair Market Value", and the like. These materials should be used in reviewing appraisals.

There are only a few effective ways that the acquiring authority can obtain compliance with required eminent domain appraisal standards. Payment of the appraisal fee can be conditional on compliance with contract standards and approval of the Review Appraiser. This will work only if there are eminent domain standards on the appraisal contract, and the county has an informed staff Review Appraiser or an experienced private Review Appraiser. If the appraisal is unacceptable because it does not provide an adequate basis for land value, the county can not force the Appraiser to do more work. The county needs to have the ability to build on the market information contained in the rejected appraisal and complete its own appraisal. This can be done by making the Review Appraiser the Appraiser. See 761 IAC 111, Rule 111.104(2), **The Review Appraiser may become the Appraiser**. For further information and assistance See article, *Overcoming an Ineffective Appraisal Review Process*, Volume 8, *Appraising Partial Acquisitions*, Land Acquisition Design Course, by

James E. Graham. See also, Osborn v. Cedar Rapids, 324 N.W.2d 471 (Iowa 1982). Osborn is better known as a case which defines coercive negotiations and use of condemnation powers. Osborn is also instructive where it illustrates the consequence of an ineffective appraisal review process.

3. Review Appraiser's Recommended Offer of Just Compensation.

Iowa's Uniform Acquisition Standards talk in terms of the acquiring authority establishing an amount which it believes is just compensation for the real property. See 6B.54(3), of the Iowa Code, and 761 IAC 111, Rule 111.102(4), **Establishment and offer of just compensation**. This rule assumes that the acquiring authority has a qualified Appraisal Reviewer on staff. counties usually do not have such persons on their staff. Iowa D.O.T. Review Appraisers may not be available or be able to provide this service in time for the county to meet their project construction schedule.

It is the county that is responsible to establish the amount which it believes to be just compensation. The county may delegate this responsibility internally to the county engineer or another staff person, but it can not delegate this responsibility to a consultant or non-employee.

FHWA has, over time, through correspondence taken the position that the Review Appraiser's approval is an ultimate decision that can not be delegated to a private person.

Except for a final determination on the amount of the offer, the private Review Appraiser can perform all the duties of a Review Appraiser. See, 761 IAC 111, Rule 111.103(10)(c), **Qualifications of review Appraiser** (iii). If a private Appraiser is hired to provide review appraisal services, the offer determinations of the Review Appraiser should be written as a recommended offer. The same form should contain a signature and date provision for the acquiring authority's acceptance of the recommendation of the private review Appraiser.

If the project has or will have Federal funding, use Iowa D.O.T. Review Appraisal forms to document the review Appraiser's work.

4. Resolving Engineering Questions and Assumptions.

There are times when the review Appraiser needs to verify basic factual and engineering related assumptions made by the Appraiser. eg. Is the property so low or so subject to flooding that it is not sewerable and thus

not able to be developed? Has the flood zone been adequately defined as it relates to the property being appraised? Will a property with vertical coal mines be approved by zoning officials for residential development purposes?

The issue of whether there is a present probability that property will be rezoned to a higher and better or more valuable use falls into this category.

Other more normal determinations include whether an entrance or access road will, or will not, function in the manner assumed by the Appraiser. The Review Appraiser may need the assistance of the county engineer to resolve these issues. The answer to these mixed appraisal - engineering issues can provide a basis for the Appraiser to revise the appraisal to reflect actual, rather than assumed, conditions.

Another more typical situation is the reservation of buildings, equipment or machinery to the owner. Salvage back or reservation of rights agreements can result in double or overpayment for the item if the appraisal pays for the item, but it is being salvaged back. This is what is required by federal FHWA rule. (See Figure 1.6, Appendix) Unless the Appraiser anticipates this and includes a salvage value for the item, the review Appraiser may have to make a salvage value estimate so the offer can be reduced by the salvage value. Salvage value estimates require moving cost calculations that may require the assistance of the county Engineer or from other persons in the business of buying, selling or moving the item(s).

Construction concessions that arise out of the negotiation process should be costed by the county engineer to identify any additional construction cost required to grant the concession. The Review Appraiser may be asked to estimate what reduction in the offer, if any, should be made.

5. No Relocation Assistance Payments in Appraisal.

State law forbids compensation commissions from making any allowance for any damages, for any item of damage, or for any cost which is authorized to be paid as a relocation assistance payment in determining just compensation in a condemnation proceeding.

Section 316.2, **Effect on Acquisitions and Condemnations**, subsections (2) and (3), of the 1989 Iowa Code, provide that a claim for personal property damaged or destroyed or reduced in value by the acquisition of real property, or for increases in the cost of doing business, cannot be

considered in a condemnation proceeding. Subsection (2) clarifies that Chapter 316 (Relocation Assistance) shall not be construed to create any new element of value or new damage not already in existence. Subsection (3) states that relocation payments are not to be considered as just compensation either for real property acquired or for damages to remaining property. Subsection (3) prevents unjust enrichment and duplication of payment by prohibiting compensation commissions to consider any damage, item of damage or cost to be paid as a relocation payment.

Subsection (3) specifically forbids compensation commissions and district courts from making any allowance for personal property damaged or destroyed or reduced in value by the acquisition of property by Iowa Code, Section 6B.14, or any other provision of the Code under the powers of eminent domain on projects where relocation assistance payments are made under Chapter 316 of the Code.

NONE OF THE FOLLOWING RELOCATION ASSISTANCE COSTS CAN BE CONSIDERED BY A COMPENSATION COMMISSION IN ITS AWARD OF JUST COMPENSATION:

Iowa Code Section 316.4, Moving and Related Expenses

- * Actual, reasonable and necessary costs
- * Payment for actual direct losses of tangible personal property
- * Purchase of substitute personal property, business re-establishment expenses, storage expenses, and expenses incurred in searching for a replacement, business or farm

Iowa Code Section 316.5, Replacement Housing for Homeowners:

- * Amount (in addition to that paid for the acquired house) which equals the reasonable cost of a comparable replacement dwelling
- * For increased interest cost
- * Actual, reasonable and necessary expenses for transfer costs (includes evidence of title, recording fees and other closing costs)

Iowa Code Section 316.6, Replacement Housing for Tenants and Certain Others:

- * Necessary to rent a comparable replacement dwelling for a 3½ year term
- * Or to make a down payment on the purchase for a replacement house

Iowa Code Section 316.7, Advice and Assistance Necessary to Relocate

Iowa Code Section 316.8, Any Additional Replacement Housing Payments Necessary as a Last Resort to Relocate Persons to Reasonable Comparable Replacement Housing

If the county does not provide relocation assistance, the acquisition process should recognize and compensate for moving costs, up to \$500.00, and for personal property damaged or destroyed or reduced in value. See **6B.15, Appraisalment - Report**. The landowner should not have to go to condemnation in order to be paid for these items. The county needs to recognize when these costs or losses may occur. Moving round hay bales or moving stored grain cost estimates could be typically made by the Appraiser, Review Appraiser or the negotiator.

"Section 6B. 14 Appraisalment - report.

The commissioners shall, at the time fixed in the aforesaid notices, view the land sought to be condemned and assess the damages which the owner will sustain by reason of the appropriation; and they shall file their written report with the sheriff. At the request of the condemner or the condemnnee, the commission shall divide the damages into parts to indicate the value of any dwelling, the value of the land and improvements other than a dwelling, and the value of any additional damages. The appraisalment and return may be in parcels larger than forty acres belonging to one person and lying in one tract, unless the agent or attorney of the applicant, or the commissioners, have actual knowledge that the tract does not belong wholly to the person in whose name it appears of record; and in case of such knowledge, the appraisalment shall be made of the different portions as they are known to be owned.

In assessing the damages the owner or tenant will sustain, the commissioners shall consider and make allowance for personal property which is damaged or destroyed or reduced in value.

In addition to all other damages provided by law, except moving expenses paid or required to be paid under relocation assistance programs an owner or tenant occupying land which is proposed to be acquired by condemnation shall be awarded a sum sufficient to remove such owner's or tenant's personal property from the land to be acquired, which sum shall represent reasonable costs of moving said personal property from the said land to be acquired to a point no greater than twenty-five miles therefrom; but in any event, said damages for moving shall not exceed five hundred dollars for each owner or tenant occupying land so proposed to be condemned."

[C73, §1249; C97, §2004, 2029; C24, 27, 31, 35, 39, §7835; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §472.141

C93, §6B.14

Section transferred from §472.14

"Section 316.2 Effect on acquisitions and condemnations.

1. The provisions of this chapter shall not affect the validity of any property acquisitions by purchase or condemnation.
2. Nothing in this chapter shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to the date of this chapter.
3. A payment made or to be made under the authority granted in this chapter shall be for compensating or reimbursing the displaced person or owner of real property in accordance with the requirements of the federal Uniform Relocation Act and this chapter and the payments shall not for any purpose be deemed or considered compensation for real property acquired or compensation for damages to remaining property.

Payments authorized to be made by the federal Uniform Relocation Act and this chapter shall be made as relocation payments, and in order to prevent unjust enrichment or a duplication of payments to any condemnee in any condemnation proceeding or appeal from any condemnation proceeding, an allowance shall not be made in determining just compensation in a condemnation proceeding for any damages, for any item of damage, or any cost, which is authorized to be paid as a relocation payment.

Moving cost payments and allowances for personal property which is damaged or destroyed or reduced in value by an acquisition of property authorized under section 6B.14 or any other provision of the Code under the powers of eminent domain on projects where relocation assistance payments are paid under this chapter shall be those payments and allowances authorized by this chapter and shall not be made or included as part of an award of damages in any condemnation proceeding or appeal from any condemnation proceeding."

[C71, §316.8; C73, 75, 77, 79, 81, §316.2]

89 Acts, ch 20, §6

6. Selecting the Review Appraiser.

Just as in the case of the eminent domain Appraiser, the eminent domain Review Appraiser needs to have qualifications that are consistent with the level of difficulty of the project appraisal problems. See 761 IAC 111, Rule 111.103(10), **Qualification of Appraisers and review Appraisers**. Consider the project as a whole. Are the acquisitions all minor with no damage being caused to remaining property? If so, the county engineer or a staff person could be assigned to perform this function. If these are parcels with more complex acquisitions or where the acquisition raises questions of possible damage to remaining property, select an Appraiser with eminent domain 'review appraisal experience as your Review Appraiser.

Except for a final determination on the amount of the offer, a private

Review Appraiser can perform all the duties of a Review Appraiser. See, 761 IAC 111, Rule 111.103(10)(c)(iii). The same administrative rule clarifies that an officer or employee of the county performing the appraisal review function need not be an Appraiser, but must be generally knowledgeable about real estate valuation.

A few common sense recommendations are needed. The negotiator should never perform appraisal review functions. This violates the whole idea of an independent, informed review that underpins the review appraisal function. Similarly, the county should not perform appraisal review or expert testimony functions for a case the attorney may also defend in litigation. Do not hire an Appraiser with no significant eminent domain appraisal experience at the detailed before and after level to perform review appraisal functions. Do not hire an attorney or an eminent domain Appraiser without eminent domain experience, (Preferably as an employee of an Iowa acquiring authority) to provide appraisal review functions for Detailed Before and After appraisals.

The Iowa D.O.T. and other right of way professionals can help you identify persons known to have appropriate qualifications.

F. Documenting Good Faith Negotiations:

This section identifies the acquiring authority's responsibilities to provide sufficient information so landowners are able to understand what is being acquired and the impact of the acquisition on their remaining property. Property owners, by statute, are entitled to notice of their rights and to an opportunity to be heard. This section recommends procedures intended to assist acquiring authorities to develop fair and effective acquisition processes.

1. Identifying Property Acquired or Damaged.

Landowners are entitled to know what property or property rights are being acquired. Simply providing a legal description may not meet this communication requirement. Many legal descriptions are unintelligible by persons who do not deal with real property or the real property conveyancing system. If county road right of way is being acquired, the acquisition plat requirement of the platting law will provide the owner with a graphic illustration. The acquisition plat illustrates the land being acquired and also identifies the land from which the highway right of way is being acquired. See Part II, *Condemnation Document Standards*, C. *Legal Description Standards*, and D. *Condemnation Plat Standards*.

This communication requirement can be met by a variety of graphic illustrations, from project plans to negotiator sketches.

This requirement becomes more difficult in inverse condemnation cases. Inverse condemnation claims include claims that a landowner has lost lateral support, is subject to more frequent flooding or has lost air, light or view or has suffered damages from the establishment of a grade. Defining what, if anything, has been acquired in these cases, may require a sophisticated engineering study to confirm or deny the claim.

2. Written Appraisal or Estimate of Value.

Whatever method or approach is used to determine offers of just compensation, the offer should always be in writing and it should identify what is being paid for. Section 6B.45, **Condemnation for roads and streets - mailing a copy of appraisal**, of the Iowa Code, provides a good basis for breaking down the offer. See also, 761 IAC 111, Rule 111.102(5), **Acquisition documents and summary appraisal statement**, which requires the county to identify buildings, structures and other improvements which are considered to be part of the property for which the offer of just compensation is made.

These basic acquisition policies as found in the Iowa Administrative Code are good public policy for all projects, not just those with federal or state funding. A written record made in the ordinary course of the business of acquiring real property for a public works project is the best proof that there is a system, and that the system has been administered uniformly and equitably.

Unlike some states, there is no statutory requirement in Iowa that requires the county to prove that it has negotiated in good faith. This doesn't mean that the county has no such burden, they do. You must prove it to the Board of Supervisors, to Compensation Commissioners and more importantly to landowners.

The county is not required to give the county's appraisal to the landowner or to the landowner's attorney.

Appraisal, review appraisal, relocation, negotiation, and condemnation information is confidential and is not public information until the property has been acquired, title has passed, and the parcel is closed. This is defined in Iowa's Uniform Manual, 761 IAC 111, Rule 111.5(2), **Confidentiality of Records**. (See Figure 1.7a-b, Appendix)

The acquiring authority may refuse to disclose appraisal details in addition to the information required by Section **6B.45, Condemnation for road or street - mailing copy of appraisal**, of the Iowa Code. Such a refusal may be made where, in the judgment of the acquiring authority, the information is sought to be used later in litigation to the prejudice of the authority's defense. The rule authorizes further disclosure when necessary to facilitate sincere negotiations. The rule also forbids disclosure of further appraisal details without the written consent of the authority's legal counsel where a condemnation is appealed to the district court.

A 1989 AASHTO survey of all states indicates that a large majority (37) of states do not routinely release appraisal reports to property owners. Seven states are either required by law to make such disclosures or exchange appraisals, or believe such action tends to serve the public and aids in the negotiations process. Six states did not respond.

3. Offering Full Amount of Approved Appraisal.

Horse trading is bad eminent domain public policy. Landowners are entitled to be justly compensated for land acquired for public purposes, not the 90% of fair market value, nor to 110% of fair market value. Iowa's Uniform Acquisition Standards require the offer to be not less than

the approved appraisal of fair market value. See, 6B.54(3) of the Iowa Code and 761 IAC 111, Rule 111.102(4), **Establishment and offer of just compensation.**

A written offer should be used to support compliance with this negotiations standard. This does not mean that the first offer will always be the last offer. The county will need to consider septic systems and any other property being acquired or damaged as a result of the acquisition and not included in the appraisal. Similarly, offers will have to be adjusted where property is reserved or salvaged to the owner, or where the owner will perform salvage or repair work that originally was to be done by the county or the construction contractor.

Once a negotiations policy has been selected, it is helpful to develop a procedural checklist. The checklist provides a method for the quick review of parcel files to determine if acquisition procedures are being uniformly applied. The checklist can be used by the acquisition agent when turning in a signed parcel or a parcel for condemnation. It can be used by the county engineer, the county attorney and also by federal or state monitoring agents for the same purposes. (See Figure 1.8a-b, Appendix)

4. Opportunity For the Owner to Consider the Offer.

Iowa has a public policy which encourages acquisition of property for public improvement projects through good faith negotiations. See, 761 IAC 111, Rule 111.1(10), **Purpose (c) To expedite acquisition through informed good faith negotiations.**

Basic negotiation procedures are itemized in Iowa's Uniform Acquisition Policies. See, 761 IAC 111, Rule 111.102(6), **Basic negotiation procedures.** This rule requires:

- a. A reasonable effort to contact the owner to discuss the offer.
- b. Explanation of the basis for the offer.
- c. Explanation of the county's acquisition policies.
- d. Right to payment of reasonable incidental transfer costs.
- e. Right to renegotiate construction and maintenance damages not apparent at settlement.
- f. Reasonable opportunity to consider the county's offer.
- g. Reasonable opportunity for owner to present materials which the owner believes relevant to determining the value of the property, and to suggest modifications to terms and conditions of the purchase.

h. The county's consideration of the owner's presentation.

Project planning and construction letting scheduling needs to recognize these good faith negotiation requirements and provide both an appropriate staff and sufficient time to be able to comply. Instituting condemnation proceedings before opening negotiations is not good faith negotiations. See, 6B.54(6) of the Iowa Code, and 761 IAC 111, Rule 102(8), **Coercive action**.

5. Valuing Construction Concessions and Determining if There is a Rational Basis for Administrative Settlement.

The concept, finding a rational basis to settle and avoid litigation, is a good one. Administrative settlements are the negotiations element of the acquisition process. See, 761 IAC 111, Rule 111.1(10), **Purpose (c) to expedite acquisition through informed good faith negotiations. Administrative settlements are specifically authorized by Iowa Administrative Rule. See, 761 IAC 111, Rule 111.102(9), Administrative Settlement.** This Administrative Settlement rule also contains a formula or criteria that should be used to decide when to settle and to document or support the basis for the settlement.

The condemning authority needs to consider what negotiation concessions will be honored at condemnation. It is a mistake to say none. The best way to prove to the Compensation Commission that the authority has negotiated in good faith is to preserve all negotiations concessions. The rule needs to be, to preserve all concessions unless there is a good reason for not doing so.

Special design concessions which create additional costs to the acquiring authority should be carefully considered. Landowners will make a claim for payment of the acquiring authority's cost savings by not honoring design concessions made during negotiations. Length of drive, surface of drive, location or grade of entrances, clearance for cattle crossings, and similar features will be fought for at the condemnation hearing. A response that the authority saved money on construction without further explanation, may result in paying the savings to the landowner in the condemnation award.

The idea of an administrative settlement can be an exercise in semantics. Some persons would consider that the acquisition agents working out a payment for a hardwood tree located near a residence is an acquisition payment and not a payment supported by an administrative settlement. They would prefer to view the effort to value the tree as an extension of

the appraisal process. Other persons consider anything offered beyond the amount approved by the Appraiser as a settlement, even when the item was omitted from the appraisal. The landowner is entitled to be paid for everything acquired and damaged. A procedure to valuing the tree, is NOT an administrative settlement. Administrative settlements usually involve payments in addition to the amount offered by the appraisal and as determined by the negotiator for items not considered in the appraisal. An administrative settlement might also arise out of a change in design where the new design reduces the property acquired, and the original offer pays for damages that are going to be avoided by the design change. A distinction should also be made between an administrative settlement and who is responsible to make it and a stipulated or legal settlement. The latter is the responsibility of the county attorney and will occur after a condemnation proceeding has been held and an appeal has been taken to the District Court. Administrative Settlements are a part of the acquisition process and occur before the matter is finally turned over to the county attorney. Administrative settlements that can't be justified as a reasonable compromise over a complex value related appraisal issue or on the basis of a minor difference should be coordinated with the county attorney. (See Figure 1.9, Appendix)

6. Accepting Condemnation as a Project Cost.

Landowners are entitled to say no or to refuse to accept the county's offer. The compensation commission condemnation process is intended to be an informal method for the county to acquire real property and to resolve the question of what just compensation is, without litigation. These condemnation proceedings are not a case or a litigation proceeding.

The cost of convening a compensation commission and to hold the hearing are normal project costs for state and federal funding purposes. All state and federal funding authorities accept these as a necessary process required by our constitutional and statutory eminent domain systems.

7. Selecting the Acquisition Agent.

Some refer to the person who performs this function as the negotiator. Others insist that this title is misleading because this part of the acquisition process is not a negotiating process. In principal, this is a communications function. The objective is to present and explain a good faith offer. At the same time our statutes and administrative rules speak of this as a negotiations process. See Section 316.9(1), of the Iowa Code, and 761 IAC 111, Rule 111.1(10), **Purpose, subrule (c), to expedite acquisition through informed good faith negotiations.**

Negotiation and other skills are needed to accomplish this function. Except for minor acquisitions, this person also needs a working knowledge of eminent domain appraisal principals, of project engineering and of the condemnation process.

County engineer staff persons can successfully function as a negotiator where they are supported by an appropriate appraisal, engineering and legal team.

The Iowa D.O.T. may have Acquisition Agents available to work on county projects. There are private right of way professionals who do have multi-disciplined, experienced and educated Acquisition Agents.

G. Providing Relocation Assistance:

This section explains the relationship between the constitutional requirements to justly compensate landowners for property acquired and related, but different, relocation assistance payments and benefits. These relationships need to be understood in order to properly exercise eminent domain powers and avoid inappropriate or duplicate payments to landowners.

1. The Authority to Provide Relocation Assistance on Local Projects.

The passage of Section **316.3, Declaration of Policy - Authorization - Divisibility of application** (2), of Iowa's Relocation Assistance law, specifically provides the authority to the county to develop special relocation assistance programs for local projects.

The original code section granting this power was Section **316.10, Application to other than Federal-aid highways**. Section 316.10 was repealed when § 316.13(2) was passed in 1989. Section 316.10 could only be implemented by the Iowa D.O.T. through administrative rule. It was never implemented. Section 316.3 makes it purely a Local Decision if a relocation assistance program, or part of a relocation assistance program, will be offered.

Section 316.3(2) states:

(2) "... Displacing agencies may provide all or a part of the programs and payments authorized under this chapter to persons displaced by any program or project regardless of funding source. However, to the extent that a program or payment is provided, the program or payments shall be provided on a uniform basis to all displaced persons."

Displaced persons include persons who move their real property from land acquired, 761 IAC 111, Rule **111.2(7), Displaced persons**. Moving costs include payments for actual reasonable moving costs and also costs for insurance on the move and the replacement value of property lost, stolen or damaged in the process of the move and also for direct losses of tangible personal property. See 761 IAC 111, Rule **111.301(1), eligible costs (f) Lost or stolen property**, for residential moves and Rule **111.303(1), eligible costs (g) Lost or stolen property, and (j), Direct loss of tangible personal property**, for non-residential moves.

The county may provide these moving costs on any local project so long as it is provided to all persons on the project on a uniform basis.

2. Relocation Assistance Procedural Standards.

It is not a good idea to adopt payment or procedural standards for local projects which are different than those established by the Iowa D.O.T. to implement Iowa's Relocation Assistance law, Chapter 316 of the Iowa Code. The Iowa Administrative Rules and the Iowa D.O.T. Relocation Assistance Section, Policy and Procedural Manual and Relocation Assistance payment determination and claim forms will work for the county and should be used.

Most personal property moving cost payments can be made either on the basis of property owner receipts for costs or on a moving cost estimate made by the county's Acquisition Agent. Moving cost claims of \$2,500.00 or less can be made on the basis of a staff prepared moving cost estimate. \$2,500.00 will move almost all personal property that will normally be encountered in county highway projects. Procedurally, you may wish to consider obtaining a moving cost estimate from a person in the business of moving the subject personal property. Select a procedure, use D.O.T. forms and do it with your staff.

On local projects, there is no reason to prevent the county from documenting minor moving cost claims as an element of the acquisition payment. This is what should be done when moving costs are to be paid under Section **6B.14, Appraisalment - Report**. This is also consistent with Administrative Rules. See 761 IAC 111, Rule **111.207(1), Documentation Standards**, that will allow any reasonable proof to document minor moving cost claims.

Where the issue is damage or destruction or reduction in value of personal property, additional consideration should be given to what should be done and who should do it. See Section **6B.14, Appraisalment - Report**, and **IG.1, The authority to provide relocation assistance on local projects**, in this part.

Depending on what the property is, it may be better to pay for damages to personal property as a relocation assistance payment rather than to include personal property valuation in the appraisal assignment. There are payment calculation standards in the relocation program. There may be open ended exposure if compensation commissioners are asked to return an award for personal property damages. You may want to consult with someone familiar with and experienced in providing relocation assistance and also with the eminent domain appraisal and condemnation processes.

3. Coordinating Work With the Acquisition Agent.

The property owner needs to know what total payment will be. The original written offer should include an offer for payment of relocation assistance payments. Whenever possible, both offers should be delivered by the Acquisition Agent. The acquisition agent needs to be sufficiently informed to explain the relocation assistance payment.

Where residential Relocation Assistance payments are to be made, or payments are to be made to business, farm operations or non-profit organizations in lieu of moving costs or for reestablishment costs, the acquisition agent should be a different person than the relocation assistance agent. Both the acquisition program and the relocation assistance program are complex. When acquiring or damaging significantly improved property, it may not be feasible to have one person perform both acquisition and relocation assistance functions. If the project is receiving or will receive federal or state funding, relocation work should also be coordinated with the Iowa D.O.T. Local Systems Monitoring Agent and the D.O.T.'s Relocation Assistance Supervisor.

4. Selecting the Relocation Agent.

On local projects, there is no reason to prevent the county from using the Acquisition Agent to document minor moving cost claims. In fact, the Acquisition Agent can do both jobs. The Acquisition Agent can complete a moving cost estimate on D.O.T. forms, recommend and submit the moving cost claim for payment at the same time the acquisition documents are submitted for the county's acceptance and payment.

The staff required to provide a relocation assistance program for a project depends on the size and complexity of the relocation assistance problems. The Iowa Administrative Code supports the Acquisition Agent providing relocation assistance for minor permanent partial acquisitions. 761 IAC 111, Rule 111.207(1), **Documentation standards**, provides direct support for having the Acquisition Agent estimate minor moving costs where the rule will allow bills, certified prices, appraisals or other evidence of such expenses as documentation for moving cost claims.

The county can tailor make a relocation program to fit the project. The Iowa D.O.T. Local Public Agency Monitoring Agent and Relocation Assistance Section Supervisor may be of assistance in helping the county think through what should be done and how to do it. In the event that D.O.T. resources are not available, there are other private consultants who have appropriate experience to provide assistance. Section 316.13,

Administration, of Iowa's Relocation Assistance Law specifically authorizes the county to retain the services of any individual or firm or corporation having an established organization for services in connection with relocation programs.

II. CONDEMNATION

DOCUMENT

DRAFTING

STANDARDS

COUNTY CONDEMNATION MANUAL

II. Condemnation Document Drafting Standards:

Technical and professional condemnation document preparation requirements include public works administrative work, legal work, engineering work and land survey work. Processes and procedures need to be developed to assure that products meet the required interprofessional standards. It does not really matter who is producing the condemnation documents, so long as they are produced under the direction of the professionals that are responsible for them. Interprofessional team work is necessary to make the process work.

This section discusses title search systems to determine names and addresses of owners and interest holders. It recommends a system for delegating responsibility to produce condemnation documents. Legal descriptions and condemnation plat requirements are separately considered.

Condemnation descriptions, plats and purpose statements will all be construed to benefit the landowner. Condemnation is regarded as total. See Jones v. Iowa State Highway Commission, 144 N.W.2d 277 (Iowa 1966). Even where there are plans to use only a portion of the land described at the present time, the owner is entitled to be compensated for all the land acquired and for all the owner's remaining assets located thereon. See In re State Highway Commission, 239 N.W. 317 (Mich. 1931). The condemnor cannot have damages assessed on the theory that it will in fact use only part of the condemned land, and therefore the possession and occupancy of a building situated on the right of way will not be disturbed. See Cummins v. Des Moines & St. Louis Ry. Co., 19 N.W. 268 (Iowa 1884). The condemnor cannot introduce evidence of the actual precaution taken by the acquiring to preserve a well on the right of way for the use of the adjacent landowner, and damages should be assessed as if the well were taken. See Moran v. Highway Commission, 274 N.W. 59 (1937), in accord, DePenning v. Iowa Power & Light Co., 33 N.W.2d 503 (Iowa 1948).

The preceding case illustrates what happens when the plat or description are not conditioned to reserve property or property rights to the landowner. Where a specific reservation is made for a well or a building or access or other improvement, the condemnor is entitled to have the damages reduced to reflect the reservation of rights. The DePenning case, supra, is a clear statement that the acquiring authority has the right to reduce the taking or to reserve rights or to stipulate against changes and to thereby make the authority liable in a new action, in case the authority later violates the stipulation. Examples of such binding reservations of rights include Bortels v. Woodbury County, 156 N.W. 303 (Iowa 1916), a cattle pass, and Agne v. Seitsinger, 52 N.W. 228 (Iowa 1879), the right to attach a fence to a bridge. In Iowa, the new action referred to in the DePenning case is the right to renegotiate damages not apparent at the time of condemnation. By definition, the damage is not apparent where it is stipulated against.

See Section 6B.52, Renegotiation of damages, of the Iowa Code.

The taking can be reduced, or property rights may be reserved and the acquiring authority may stipulate against changes at any time, even by amendment on appeal. DePenning, supra. Samples of such stipulations might include that a tree or well will not be damaged or that a field will drain, or that an access will be provided or reserved. The latest illustration of this principle is Smith v. City of Sioux City, Iowa Ct. of Appeals, filed September 30, 1987, #7-270/86-1260. In Smith, the City reserved an access easement across the land after the land was acquired by condemnation by a city resolution. The Smith case cites Fanning v. Mapco, Inc., 181 N.W.2d 190 (Iowa 1970), where the condemnor limited the easement taken to one pipeline rather than an easement for an unlimited number of pipelines.

II. A. Confirmation of Title - Address - Agents.

This section explains what persons are entitled to notice of the condemnation, what their right to share in the proceeds might be and what consideration needs to be given to their interest in the acquisition and condemnation process.

Condemnation is by definition the last process in the acquisition of real property. Those parcels which have not been purchased must be acquired through condemnation. The name, address, and other key condemnation information must be available when a parcel is turned in to be acquired by condemnation. The Engineer, Appraiser, and negotiator all contribute to obtaining this information. The form, *Parcel Ownership Information*, can be used by the project manager and also by federal or state monitoring agents for the same purposes. (See Figure 2.1, Appendix)

1. Real Property Owner and Contract Purchaser.

Section 6B.3(3), of the Iowa Code, requires condemning authorities to notify "all record owners". Owners include all fractional owners or partial owners, whether they obtained their ownership interest by deed, through inheritance, or by any other means. Contract purchasers are owners entitled to notice and compensation. Bourjally v. Johnson County, 167 N.W.2d 630 (Iowa 1969). Contract purchasers who have waived their rights to share in the proceeds of a condemnation award are not "adverse parties" and need not be served a notice of appeal. Stalker v. Iowa Department of Transportation, 483 N.W.2d 331 (Iowa 1992). See, Section 6B.18, Notice of appraisal - appeal of award, of the Iowa Code. Contract purchasers who have assigned or contracted away their interest in the property or in the proceeds of a condemnation are not "owners" who must be served with a notice of the condemnation under Section 6B.8, Notice of assessment, of the Iowa Code.

Contract purchasers who have assigned their interest to a third party, are no longer necessary parties to the condemnation. Draft the assignment in a form sufficient to meet the recording requirements of an interest in real estate. It meets this standard if it has a legal description and is duly acknowledged and joined by the spouse, if any, for the purpose of extinguishing dower interests. See Marshall's Iowa Title Opinions and Standards, Second Edition, 1978 Opinion 20.1(H), Assignment of Vendee's Interest.

The holder of an option has been held not to have an interest in the land which will entitle the holder to compensation. 20 C.J. 849; Taggart Paper Co. v. State, 187 App. Div. 843, 176 N.Y.S. 97 (1919). Wolfe

v. Iowa Ry. & Light Co., 155 N.W. 324 (Iowa 1915), discusses the distinction between an option and a contract to purchase:

"It has been decided that an option for the purchase of real property by the optionee may not, before it is exercised, be considered in the assessment of damages caused by condemnation of real estate."

See, Phillips Petroleum Co. v. City of Omaha, 106 N.W.2d 727 (Nebraska 1960). Phillips also states:

"The lessee's rights under such an option are rights which lie in contract and do not create in the lessee any estate in the land."

If property is taken, pursuant to a condemnation proceeding, inchoate dower right is thereby cut off without notice and the spouse is not entitled to compensation. Caldwell v. City of Ottumwa, 200 N.W. 336 (Iowa 1924). Caldwell held even if the husband forged his wife's name on the deed conveying the land to the city for park purposes, the deed was the legal equivalent of a condemnation proceeding.

2. Tenant and Tenant Condemnation Policy.

a. Tenants.

For condemnation purposes, tenants are owners and entitled to notice and to compensation for their interest. Not everyone understands that tenants have a property interest and a right to be compensated for it. Those eminent domain authorities who have taken this position have always regretted it. See Interstate Finance Corporation v. Iowa City, 149 N.W.2d 308 (Iowa 1967). In Interstate Finance, the tenant paid \$1,500.00 to the former tenant for improvements consisting of wall paneling, ceiling tile, recessed diffused lights, a custom built counter, vinyl tile flooring, interview booths, built-in shelves, and toilet facilities. When Interstate Finance Company vacated the building, it took only the business equipment such as desks, typewriters, adding machines, office supplies, and exterior advertising sign.

It is not economically feasible to remove the other improvements. There were 66 months remaining on Interstate's lease when the acquiring authority took possession of the real property. The Supreme Court took the time to note that the city failed to recognize what was really being condemned and upheld an award both for a lost rental advantage and for damages for the tenant-

owned property. The original offer to the tenant was nothing, the condemnation award to the tenant was \$6,000.00, the district court jury awarded the tenant \$8,000.00, and the Supreme Court affirmed the award. I am sure that the lion's share of the tenant's attorney fees were also paid by the city.

The acquiring authority needs to inquire and determine what the tenant owns. In Interstate Finance, the tenant had a bill of sale from the former tenant. The lease itself is not the only source for information concerning who owns what.

The relationship between the landowner and the tenant creates special problems for the condemning authority. Leases are typically entered into without much thought being given to who owns what and who gets what if the lease is frustrated or partially frustrated by condemnation. Even when provisions are made for such contingencies, the terms of such agreements can change between the time the appraiser visits the property and the time the negotiator arrives. Acquiring authorities need to understand how to avoid paying for the same property twice, once to the landowner and the second time to the tenant.

The basic concept behind this policy is that where there is a disagreement between the landlord and the tenant over who owns what, the acquiring authority should not settle separately with either the landlord or the tenant. This position is supported by the concepts contained in Section 6B.55, **Buildings, structures and improvements on federally assisted programs and projects**, 1989 Iowa Code, and Section 302, of Title III, of the Federal Uniform Act of 1970.

b. Consolidating Landlord/Tenant Condemnations.

The county could settle with the owner and acquire the tenant's interest only by condemnation. Damages may be separately assessed in a district court appeal, as was the case in Wilson v. Fleming, 31 N.W.2d 393 (Iowa 1948). The interests of the landlord and the tenant are not joint; they are several and an award to one would in no manner affect or prejudice the rights of the other. Des Moines Wet Wash Laundry v. City of Des Moines, 198 N.W. 486 (Iowa 1924), 34 A.L.R. 1517, City of Des Moines v. McCune, 487 N.W.2d 83 (Iowa 1992).

It is up to the county to decide if it will acquire the property by

one condemnation, naming both the landlord and the tenant in the same proceeding, or to bring separate proceedings to acquire each interest. The condemning authority may have the power to bring separate proceedings, but it is almost never in the condemning authority's best interest to do so. Separate condemnations means separate awards, may mean separate compensation commissioners, and also always creates the potential for substantial increases in the total amount offered for the property by the acquiring authority.

The classic case on how not to deal with this problem is Fritz v. Iowa State Highway Commission, 270 N.W.2d 835 (Iowa 1978). In the Fritz case, the attorney general's office determined it was in the State's best interest to proceed in condemnation separately against an agricultural landlord and tenant. The tenant's father owned the farm and the son had an oral lease with a term of 5.19 years based on his father's life expectancy as his father's only son. The father was awarded \$42,750.00 for the condemnation of the fee interest in the taking of 6.3 acres in fee and 14.7 acres in temporary easement for borrow from a 91.4 acre farm. The son received a \$2,000.00 condemnation award from which the state appealed. The tenant claimed \$125,000 in damages and the District Court jury awarded the tenant \$48,526.00 which was affirmed by the Supreme Court.

The case illustrates that the terms of leases change before trial. The State ironically argued that the landlord and tenant cases should be consolidated and tried as a unit with the tenant's interest allocated from a single award. The Supreme Court rejected the State's argument and noted that the State can't complain because it was the State that brought separate proceedings. You would get the same result if you settled with the fee owner and proceeded against the tenant separately. The fact that there were actually two condemnations in the Fritz case is not important.

Another case factually similar to Fritz is City of Des Moines v. Geller Glass & Upholstery, Inc., 319 N.W.2d 239 (Iowa 1982). In Geller, the City condemned the fee simple interest owned by Jerome and Barbara Geller, and during the pendency of the fee owner's appeal, the City determined that Geller Glass & Upholstery, Inc., a closely-held corporation wholly owned by Jerome and Barbara Geller, also held an oral lease. The City had to institute a second condemnation to acquire the tenant's interest. Both should have been named as condemnees in the first

condemnation where there was any notice that the business was a corporation or partnership or any other entity other than a sole proprietorship.

The Fritz case also contains an illustration on the issue of who owns what. The case involved a question of who owned a liquid manure disposal system. The state took the position that if the tenant owned it, that it was then personal property and the jury was instructed that, if they so found, they could return a separate award for the personal property as authorized by Section **6B.14, Appraisement report**, of the Iowa Code. No separate award was returned. This position is no longer available to the state where Relocation Assistance is provided on the project. See, Section **316.2, Effect on acquisitions and condemnations**, subsections (2) and (3), of the Iowa Code. The county can still make this argument on projects where relocation assistance is not being provided. Once the landlord and tenant cases are separated, the other party is available as a witness against the acquiring authority and the acquiring authority can't play one against the other to arrive at the truth on who owns what.

It is not just condemnation authorities that are troubled by the question of what an agricultural fixture is and who owns it; lenders have the same problem. See First Trust and Savings Bank of Merville v. Guthridge, Iowa Court of Appeals, filed June 15, 1989, #8-700/88-535. The case contains case citations and a good discussion of what an agricultural fixture is. It also involved a family farm tenancy relationship between a mother and her son. Since the mother and the tenant for remainderman both signed the financing statement, the fence line feed bunks remained personal property and could be reached by the son's creditor.

The latest illustration of the penalty paid by an acquiring authority for failure to recognize and give appropriate consideration to a tenant's interest is Lassie's Red Barn, Inc. and Chan v. Iowa Department of Transportation, Iowa Court of Appeals filed March 23, 1988, #8-04/87-91. Both the landlords's and the tenant's interests were condemned in the same proceeding. The compensation commission awarded Lassie's Red Barn (the fee) \$22,000.00, and Chan (the tenant) \$6,000.00. Both the landlord and the tenant appealed the condemnation award and the district court awarded \$24,000.00 to Lassie (the fee), and \$42,000.00 to Chan (the tenant). The Attorney General's office did everything right to consolidate both interests in both the condemnation

proceeding and the District Court appeal.

Two problems complicated the case. The District Court used the wrong measure of damages for a partial taking of a leasehold. The Court of Appeals instructed the District Court that:

"The correct measure of damages for a partial taking of a leasehold is the difference in the value of the use of the premises immediately before and immediately after the condemnation."

The case was remanded for the District Court to re-evaluate damages using the correct formula.

The second problem concerned what evidence can be introduced to support or prove the value of the leasehold interest. The Court of Appeals held evidence of lost profits can be introduced not as an independent element of damages, but as a proper item to be considered in determining the fair and reasonable market value of a leasehold, citing, Twin-State Eng'g & Chem. Co. v. Iowa State Highway Commission, 197 N.W.2d 575 (Iowa 1972).

The State's position was that the court should have determined one award and then apportioned the tenant's interest from the single award. The Court of Appeals noted:

"The Iowa Supreme Court has plainly rejected this argument. See Fritz v. Iowa State Highway Commission, 270 N.W.2d 835 (Iowa 1978). The fee owner and tenant are entitled to have the damage to their respective interests assessed separately. Id. The State's contention is without merit."

In City of Des Moines v. McCune, 487 N.W.2d 83 (Iowa 1992), the City proceeded without joining the tenant (a corporation solely owned by the fee owners). The Supreme Court rejected evidence of the going concern value of the property in the fee owner's appeal. The court refused to consider if such evidence would be admissible in the condemnation of the tenant's interest, but noted the rule that evidence of profits can be considered not as an independent element of value, but as a proper element that can be considered in determining the fair and reasonable market value of the leasehold. An offer of evidence of the going concern value of a business, is improper. It is an attempt to substitute evidence of the value of a real property (the leasehold) and also the value of the business and to use the value of both interests as an

independent element of value or as the measure of value for damages to the tenants interest in the real estate.

In City of Des Moines v. McCune, supra, the City appraised the tenant's interest at zero. The Supreme Court noted that this was the explanation given by the City for not joining the tenant in the original condemnation and that the city will have to proceed separately against the tenant.

The last issue on Lassie's Red Barn involved whether it is an error to admit evidence of a prior contract sale of the subject property. The State argued that the contract sale distorted the market value of the property because of its low interest and low down payment. This evidence cannot be excluded. The D.O.T. made the same unsuccessful argument again in Jordan v. IDOT, 468 N.W.2d 827 (Iowa 1991). In the Jordan case, the landowner's appraiser adjusted two contract sales of the subject property to their cash value. What is needed in these contract sales is to request the court instruct the jury that it is the cash value that is required to be paid. This will enable the acquiring authority to provide evidence and to cross-examine on what the cash value of the contract sale is. See, also, Redfield v. Iowa State Highway Commission, 252 Iowa 1256 (Iowa 1961).

Failure to consolidate landlord and tenant cases invites confusion and double payments. Consolidating landlord and tenant cases makes sense at both the condemnation and the district court level. Having both parties in the same courtroom helps to keep stories straight, but it does not guarantee success.

The nature of the tenant's interest needs to be recognized, considered and, if necessary, appraised separately. The appraiser needs to consider all evidence that might have a bearing on the value of the leasehold, including evidence of income to profits. While it is land that is being condemned, not a business, the jury knows that there is a relationship between the two. The acquiring authority needs to be able to relate all evidence to the value of the land and to distinguish the evidence that is not relevant to the value of the land.

c. Tenant Owned Improvements.

There are several sources of definition to define a tenant-owner improvement. See Section 6B.55, **Buildings, structures and**

improvements on federally assisted programs and projects, of the Iowa Code. This 1989 Iowa Code section also has its counterpart in the 1970 Federal Uniform Acquisition Policies Act. The bill clearly states that tenants have rights and must be dealt with, and it forbids double payments. The one thing it does accomplish is that it identifies a tenant's ownership interest in improvements as a property right that must be dealt with, notwithstanding state law of the language of the lease. The tenant's right to the use of the improvements is compensable, even when ownership will revert to the landlord when the lease ends. The statute applies to all federally funded projects and programs.

The Iowa Supreme Court reached the same conclusion, as required by Section 6B.55 and its corresponding federal statutes. See Wilkes v. Iowa State Highway Commission, 172 N.W.2d 790 (Iowa 1969). The Wilkes case required consideration and compensation for a property owner's interest in improvements that were located on adjacent land owned by a railroad.

The Wilkes court considered an Iowa statute, Section **6B.14, Appraisement - report**, that required compensation commissioners to:

"... consider and make allowance for personal property which is damaged or destroyed or reduced in value."

The court pointed out that the owner's interest in the buildings as the railroad right of way were in the nature of personal property, and compensation for them was consistent with the constitutional mandate to justly compensate property owners for damages caused by the condemnation. See the article, *A Parcel is an Assembled Economic Unit*, Land Acquisition Design Course, April 1991, by James E. Graham.

Section **316.2, Effect of acquisition on condemnations**, of the Iowa Code, now clarifies that compensation commission's awards can not include:

"... allowances for personal property which is damaged or destroyed or reduced in value by an acquisition of property authorized under Section 6B.14 or any other provisions of the Code under the powers of eminent domain on projects where relocation assistance payments are paid under this (Relocation Assistance) chapter shall be those payments and allowances authorized by this (Relocation Assistance) chapter and shall not be made or included as part of an award of

damages in any condemnation proceeding or appeal from any condemnation proceeding."

The buildings and improvements in the Wilkes case were real, not personal, property. The Supreme Court was aware of this distinction. The Wilkes case allowed recovery for damages to the tenant's interest in the building and had a result of implementing Section 6B.55 in advance, or in anticipation of 1989, when Section 6B.55 was passed.

In all cases where there will be no relocation assistance paid, the Wilkes case controls and entitles tenants to be paid for their interest in improvements, even where the improvements are located on someone else's property. In all cases where there is federal funding on the project, Section **6B.55, Buildings, structures and improvements on federally assisted programs and projects**, applies, which accomplishes the same result.

The true explanation for why the tenant is entitled to be compensated for the tenant's interest in buildings lies in understanding the definition of a parcel as an assembled economic unit. It is the whole unit that Wilkes had to sell, and it was the whole unit that Wilkes was entitled to be compensated for. Tenants have the same rights.

3. Personal Property - Fixtures.

Fixtures and equipment owners are entitled to notice of a condemnation proceeding. Forst v. Sioux City, 209 N.W.2d 5 (Iowa 1973). The Supreme Court held that persons holding record title to personal property as security for its purchase must be notified of the condemnation. The Court discussed the notice provisions of Sections **6B.3(3), Application - recording - notice - time for appraisal - new proceeding, 6B.9, Form of notice**, and Section **6B.14, Appraisal report**, of the Iowa Code, which authorized separate payment for personal property damaged by the condemnation but did not decide if any of these statutes applied. The Court decided, instead, that the Iowa Constitution required that notice be given.

The case does not provide guidance as to how the fixture or equipment owner's interest is to be valued. The condemning authority's best position is to ask the compensation commission to return a joint award so the lender's and the borrower's names are on the same award. The parties can then apportion their award between themselves. The problem

is that evidence will be submitted on the remaining balance due on the fixtures and item by item cost information will be introduced. This evidence must be kept in perspective of the value of the fee owner's or tenant's real estate interest as a whole.

Relocation assistance laws were not intended to change the character of property or the question of whether underground gasoline and kerosene tanks along with pipes, cables, wires and pumps buried underground and covered with cement and attached gasoline pumps must be decided on principals of property law. See, Young v. Iowa Department of Transportation, 490 N.W.2d 554 (Iowa 1992). In Young, Young urged that the property was personal property, and it need not be considered as real property in determining just compensation for the real property. The District Court found that the fee owner, two corporate tenants and Amoco intended to make the system a permanent part of the real estate and that they were a part of the real estate. As real property, they had to be appraised and compensated for as just compensation. The Iowa Supreme Court affirmed the District Court's determinations and identified some general rules of thumb or guidelines to consider in making such determinations.

4. Mortgage Holders - Encumbrancers.

Section 6B.3(3) of the Iowa Code requires notice to:

"... all record holders of liens and encumbrancers on such land ..."

Section **6B.9, Form of notice**, of the Iowa Code, requires that notice be directed to:

"... each record lienholder or encumbrancer thereof ..."

Black's Law Dictionary, 1951, defines an encumbrance to be:

"Any right to, or interest in, land which may subsist in another to the diminution of its value, but consistent with the passing of the fee", and cites Harrison v. Railroad Co., 91 Iowa 114, 58 N.W. 1081 (Iowa 1894).

Easements are not encumbrances where the easement is essential to the enjoyment of the property and by which the value of the property is presumably enhanced. See the subject *Easement Holders*, this part.

A building on land belonging to a tenant with a right in the tenant to remove it, and an easement for a stairway, have been determined to be

encumbrances. See, Harrison and cases cited therein.

A mortgagee is both a lienholder and an encumbrancer. Mortgage holders are entitled to notice and compensation in an eminent domain proceedings, and if not joined, the mortgagee may, in the case the mortgagor defaults, assert rights against the condemned land. The mortgagor may also maintain an action prior to default where the condemnor's possession damages the value of the mortgagee's security in the property. See cases cited in Section 17a, **Compensation to Lienholders**, p. 124, *Eminent Domain in Iowa*, Hultman, 1962.

It is settled law in Iowa that failure to serve contract vendors and mortgagees constitutes error and renders the eminent domain proceeding and award a nullity. Bourjally v. Johnson County, 167 N.W.2d 630 (Iowa 1969). The case holds that Section 6B.3, **Application - recording - notice - time for appraisal - new proceedings**, and 6B.9, **Form of notice**, of the Iowa Code, require service on both contract purchasers and mortgagees, and that without such service, the Sheriff's jury had no power to act and was without jurisdiction, and that this question could be raised and determined upon an appeal.

5. Easement Holders.

Easement holders generally hold a separate and distinct interest, are not part of the landowner's parcel, and are not a necessary party to a condemnation proceeding against the servient land. The acquiring authority need not name the county as a condemnee in order to acquire property rights from private property, just because the county holds a county road right of way easement on part of it.

Highway easements have been held not to be an encumbrance and not to be included in a conveyance warranting against encumbrances. Harrison v. Railroad Co., 58 N.W. 1081 (Iowa 1894). Highway easements are considered as generally appreciative rather than depreciative of the value of the land. Easements are not encumbrances where the easement is essential to the enjoyment of the property and by which the value of the property is presumably enhanced. Highways, railroads or other known or notorious rights of a similar character as the right to draw water from a spring, are not intended to be indemnified against and are not encumbrances. See Harrison, supra.

The landowner owns his property subject to the county road right of way easement. The landowner is entitled to be justly compensated for only what the owner owns. Landowners do not own highway easements, they

don't own utility easements, and they don't own easements that provide access to third parties across the landowner's property. The landowner's parcel or assembled economic unit is subject to all easements of record. Where the existence of a servitude (easement) decreases the market value of the fee, the servitude must be taken into consideration in determining the amount of the condemnation award. Wikes v. Iowa State Highway Commission, 119 N.W.2d 781 (Iowa 1963).

The converse of this is also true. The utility is a separate parcel. The utility's assembled economic unit includes all parcels or property affected or damaged by the project. The access easement holder is also a parcel for eminent domain purposes on the assembled economic unit, for the access easement parcel includes the easement and all lands and improvements served and benefitted by the easement.

Where the landowner owns an easement or rights in common with others on lands of a third party that benefits lands being acquired, the easement or common rights are property rights which are a part of the landowner's parcel or assembled economic unit. Examples of similar situations might include wells or accessways or the like. See other illustrations cited in Harrison, supra.

It may sometimes be difficult to determine when an easement is an encumbrance. As a matter of policy, easement holders should be dealt with separately. It is not necessary to name the easement holder as a condemnee when the acquiring authority has negotiated a settlement with the easement holder. The consenting easement holder holds no interest adverse to the interest of the landowner in the proceeds of the condemnation. See Stalker v. Iowa Department of Transportation, 483 N.W.2d 331 (Iowa 1992). In Stalker, the Iowa Supreme Court reached the same conclusion in the context of a fee owner's appeal from a condemnation award, where the fee owner failed to serve the contract purchaser who agreed not to share in any condemnation proceeds prior to the appeal. The interest of the easement holder is clearly severed or separate from the interest of the landowner in much the same way as landlords and tenants are not joint, but severed.

If no settlement has been made with the easement holder, the easement holder should be named as a condemnee to avoid arguing over compliance with the notice requirements of condemnation law. When easement holders are notified and named as condemnees, it is necessary to instruct the compensation commission to enter a separate award for the easement holder. Failure to do so will result in an uncashable condemnation award warrant.

The better practice would be to condemn and compensate for the interest of the easement holder separately or first, and then bring a second condemnation to acquire necessary right of way from the property which is subject to the easement.

6. Judgment and Tax Liens

The general rule is that the holder of a judgment lien has no proprietary interest in the land which would entitle the judgment lienholder to be made a party to the condemnation proceedings or to recover compensation for the condemnor. See Section 17, p. 128, **Compensation to Judgment and Tax Lienholders, Eminent Domain in Iowa**, Hultman, 1962.

In Iowa, judgment lienholders are "record holders of liens" and are entitled to notice of the condemnation proceeding. See Section 6B.3(3) and Section 6B.9, **Form of notice**, of the code of Iowa. Lienholders are entitled to share in the proceeds of the condemnation award, even if they may not hold a sufficient interest to be able to recover compensation from the condemnor.

It has been my practice to include and keep judgment lienholders on condemnation award payments when large judgments are involved and there is question of the adequacy of the value of the security. Where minor judgments or minor takings are involved, the names of judgment lienholders may be omitted from condemnation award payments at the request of the landowner and on receipt of an agreement by the landowner to hold the acquiring authority harmless from any claims from the omitted judgment lienholders.

It is not necessary to name taxing authorities as a condemnor when taxes are paid, and no lien exists. Failure to name a taxing authority does not prevent the condemning authority from obtaining title free of the interests of the taxing authority or its successors in interest. See Ind. School Dist. of Oakland v. Hewitt, 75 N.W. 497 (Iowa 1898). Condemnor quieted title against the holder of a tax deed where the land sold for taxes two months before condemnation and a tax deed was issued two years later.

Taxes and special assessments are cutoff and cannot be asserted against the acquired property by operation of Section 427.2, **Taxable property acquired through eminent domain**.

7. Unrevocable Licenses or Permits.

Cities, counties and state authorities have made reservations of rights to

property owners to use public property. These reservations include cattle passes and entrances, and the right to park, erect signs, gas pumps, and the like. These interests may be permanent interests on property for which the adjacent private landowner is entitled to be compensated for in a condemnation proceeding that damages or destroys them. They may also be revocable privileges that the granting authority can terminate when the privilege becomes detrimental to the public welfare. The granting authority should cancel all such permits before proceeding to acquire new right of way in order to avoid an argument over the compensability of the right. See, Attorney General's Opinion, Peterson to Switzer, April 7, 1969.

If the acquiring authority is different for the authority that granted the permit, the permit is a compensable property right. See, In Re Primary Road No. Iowa 141, 114 N.W.2d 290 (Iowa 1960). This is a project design detail that must be researched so that revocable licenses and permits are cancelled before condemnation proceedings are commenced.

The grantor of the license is not really a condemnee but is an interested party that must be dealt with. Joint project agreements should require all acquiring or benefitting public authorities to cancel or revoke all licenses and permits authorizing landowners the temporary right to use public property.

B. Authorization to Institute Condemnation Proceedings:

This section identifies the key concepts and procedural authorizations needed to make an effective and efficient delegation of authority. No one procedure will fit all counties and the most experienced professional may be required to provide leadership.

1. Notice of Need to Acquire Land by Condemnation.

When negotiations to acquire real property have reached an impasse, the County Engineer needs to notify the County Attorney and the Board of Supervisors that it will be necessary to obtain authorization to institute condemnation proceedings. The county may grant authorization to institute condemnation proceedings on a parcel by parcel basis or on a project basis.

Staff resources necessary to institute condemnation proceedings should be identified and committed to the project as necessary to maintain project construction schedules.

It is good practice to notify the landowner(s) that the Board of Supervisors has authorized the acquisition of their property by condemnation proceedings. This letter should explain the county's need to have possession of the property in a timely manner. The letter should assure the owner that the county remains willing to continue productive negotiations. (See Figure 2.2, Appendix)

2. Temporary Right to Enter to Construct Pending Condemnation.

Landowners are often not against the project. The problem may be money, or the landowner may need more time to consider the offer of the acquiring authority or to obtain an appraisal. There is a way to continue negotiations and get possession for construction without a premature condemnation.

The landowner may agree to authorize the authority to proceed with construction by signing a *Temporary Right-of-Entry for Construction*. A consideration should be paid to compensate the owner for the temporary right of entry. The authority needs to agree to proceed promptly to complete the appraisal and negotiations process and to institute condemnation proceedings, if necessary, by a certain date. It should be agreed that the payment for the temporary right to enter should not be admissible as evidence of a partial payment in any condemnation proceeding. The date of taking for condemnation purposes should be the

day the contractor entered or the date of condemnation of the landowner's option. The authority should agree to indemnify and defend the owner against negligence of the authority, the authority's personnel, or its contractor.

Consideration for the temporary right to enter can be based on a rental value determination over the time period anticipated necessary to complete negotiations or to institute condemnation proceedings. A form of an agreement is attached.

These procedures should not be adopted as a standard policy. A practice of commencing construction before negotiations are begun or completed with landowners invites lawsuits or can stop the project by claiming an abuse of power.

State Uniform Acquisition rules do not support adoption of this procedure as a routine operating acquisition policy. Iowa Administrative Rule 761 IAC 111, Rule 111.102(13), states:

"... In exceptional circumstances, with the prior approval of the owner, the state agency may obtain a right-of-entry for construction purposes before making payment available to an owner."

3. Forms Preparation and Scheduling.

There must be an understanding between the county's land acquisition staff (County Engineer) and the County Attorney on who is responsible to prepare the preliminary or initial condemnation documents. The Land Surveyor needs to complete any Acquisition Plat revisions necessary to show final design and right of way needs for the project. Where acquisition plats are not required, a condemnation plat must be prepared by the County Engineer or the Right of Way Agent or other persons capable of preparing it. The title Information should reflect information acquired in the negotiations effort. If the county has adopted a title standard requiring a current, updated title report, make the request to the abstractor to re-certify the Title Report.

Someone needs to be responsible to prepare a draft of all the initial condemnation documents. These documents should be reviewed by the County Engineer to assure that they are consistent with the project needs and give appropriate consideration to negotiation concessions and offers made to the landowner. The draft condemnation documents should also be reviewed by the County Attorney to determine that they meet statutory condemnation procedural and processing requirements.

Both the engineering (right of way acquisition review) and the legal (procedural and processing review) must be completed quickly. You will need to save as much time as possible to make timely, legal service of the Notice of Condemnation on the owners and interest holders.

A factual check needs to be made to verify that you have the correct names, addresses and service agents of all persons entitled to be notified of the condemnation proceeding. Review your statement of public purpose to determine that the uses you need the property for are included in your statement. Use specific code section references authorizing the county to use the property for that purpose.

Make sure you know what impact the Agricultural Land Classification Notice requirements have on the condemnation. Get the Chief Judge's name, address and title correct. Make arrangements to have someone responsible to have the signed, and Chief Judge approved, Application for Condemnation and attached Notice of Condemnation, with Condemnation Plat, recorded in the Office of the County Recorder.

There are also special parcels that should be considered in scheduling acquisition and condemnation work. Where project needs require the acquisition of an owner occupied house, the county should consider appraising and acquiring the owner occupied house first. The county cannot obtain possession of an owner occupied house until damages have been finally determined and paid. See, **6B.26, Dispossession of owner**, of the Iowa Code. The interests of residential owner occupants are fully protected by the replacement housing supplemental payment and moving cost payment and the assistance provisions of Iowa's Relocation Assistance Law. The county should consider making relocation assistance benefits available to residential owner occupants and then proceed to acquire the property so there is time to try any District Court Appeal from a compensation commission award.

The County Engineer and the County Attorney need to work together to schedule the advanced acquisitions of residential owner occupant parcels. They may have to be acquired one year or perhaps two years in advance.

4. Legal Review of Forms and Process.

One of the purposes of this condemnation manual is to provide an informed basis for the cooperative development of condemnation documents. When the County Engineer and the County Attorney are using the same procedural guide, both offices can combine resources as necessary to assure that condemnations are both valid and timely.

The legal review should be designed to assure the county that all the documents required are prepared, and that their content meets the procedural requirements of the law. The team work necessary to make the condemnation process work requires that the county identify the role each must play. Experience indicates that the right of way acquisition process, through and including recommendations to acquire a property through an administrative settlement, should be under the effective control of the County Engineer. The acquiring authority, not the County Attorney, is responsible to determine what just compensation is. The role of the County Attorney in this phase of the acquisition process should be to provide advice and assistance.

Both offices should cooperate to prepare condemnation documents. The County Engineer may prepare the condemnation documents under the general supervision of the County Attorney's office. The jurisdictional condemnation documents should be reviewed and approved by the signature of the County Attorney or Assistant County Attorney. The signature of the County Attorney should assure the county that all owners and interest holders have been identified, that each will be properly served with notice, and that the form of Application for Condemnation and Notice of Condemnation and Condemnation Plat meet the procedural requirements of the law.

In a county where all jurisdictional condemnation forms are prepared by the County Attorney, the County Engineer should be provided an opportunity to review the draft forms in advance. The County Engineer should determine that the jurisdictional condemnation forms accurately describe and include all of the property and property rights needed to construct and provide future maintenance for the improvement and to identify both the acquired property and the remaining property or property from which it was acquired.

The County Engineer's review should also determine that necessary, negotiated concessions or design changes agreed to with the landowner, if any, have been appropriately incorporated into the condemnation notice.

All construction concessions considered at the request of the property owner shall be reviewed to determine which concessions, if any, should be specifically included as a stipulated condition or as part of the condemnation description. Failure to preserve conditions that have only minor cost impact and which have no detrimental effect on project design can provide a basis for a claim of abuse of authority. This argument is similar to that made by property owners when the acquiring authority has failed to consider or to design or to phase construction in a way to reduce

damages caused to the landowner by lack of parking or other temporary inconvenience which arises out of construction.

Compensation commissions expect the acquiring authority to honor negotiated construction concessions unless there is a good reason for not doing so.

5. Signature Requesting Judicial Approval of Application.

The County Attorney, or other person authorized by the county to institute and conduct the condemnation proceeding, should sign the application requesting the Chief Judge of the Judicial District to approve the county's application for condemnation.

The Chief Judge needs to know who provided the legal review and, thus, is responsible for making the application for condemnation.

6. Appoint Hearing Agent.

The Attorney General, City Attorney or County Attorney may authorize an employee of the acquiring authority or other person to institute and conduct condemnation proceedings. See Section **6B.2, By whom conducted**, of the Iowa Code. Persons responsible either to institute condemnation proceedings or to represent the acquiring authority at a condemnation should be appointed and authorized by the acquiring authority to do so. (See Figure 2.3, Appendix) See, also, Section **6B.10, Signing of notice**, of the Iowa Code, which authorizes "other authorized representatives" to sign condemnation notices.

There is no requirement that the person signing the Application for Condemnation must also represent the acquiring authority at the compensation commission proceeding. Condemnation proceedings are not "contested cases" under Iowa Administrative law. A condemnation is not a "case" until an appeal to the District Court is filed.

The Iowa D.O.T. has, for many years, appointed a Right of Way Agent to represent the State of Iowa at all D.O.T. condemnations. The County Engineer and the County Attorney need to consider who should represent the county at condemnation proceedings. Uncontested condemnations or condemnations for title are best presented by someone familiar with the project as a whole and with the specific property. Alternatively, the County Engineer may not be the most appropriate person to represent the county at a contested condemnation. It is important to match the appraisal or Appraiser with the complexity of the valuation problem. It is also

important to have a person whose condemnation hearing experience is commensurate with the amount being contested or the complexity of the dispute.

7. Continuing Negotiations - Final Offer Before Condemnation.

Negotiations should continue while condemnation documents are being prepared. The landowner should be notified in writing that it was necessary to begin the process to institute condemnation proceedings in order to meet project construction schedules. This letter should also inform the landowner that the county will continue the negotiations process.

Some counties have prepared an acquisition brochure which explains the acquisition process including a general overview of the condemnation process. The landowner needs to be kept informed of the county's progress in the acquisition process. This letter serves this general function. In the absence of such a brochure, the county needs to provide landowners with similar information in the acquisition process. This letter should be sent by the county promptly after it is determined that the county will begin the condemnation process and before a great deal of staff time or work is done to prepare condemnation documents.

It is good practice to send a final written offer to the landowner after jurisdictional condemnation documents have been prepared. This offer should include all acquisition contracts, easements and the like, that the owner will need if the owner decides to accept the final offer and avoid condemnation.

Some condemnation documents will be prepared but not used. This happens when the acquisition is settled prior to the date scheduled for the hearing. A settlement without condemnation is a good thing. The cost to produce unused condemnation documents is a part of the cost of doing the business of acquiring land for a public works project.

C. Defining Property Rights to be Acquired.

This section discusses the practical requirements to define what is being acquired and to communicate what effect the project will have on remaining property. The description must also meet the technical requirements of the law. Legal requirements are identified and illustrations are provided as drafting guides.

1. Drafting Standards for Condemnation Documents.

Condemnation descriptions, plats and purpose statements will all be construed to benefit the landowner. Condemnation is regarded as total. See Section 15.a(6), **Eminent Domain in Iowa**, Hultman, September 1, 1962, and cases cited therein. Even where there are plans to use only a portion of the land described at the present time, the owner is entitled to be compensated for all the land acquired and for all the owner's remaining assets located thereon. See In re State Highway Commission, 239 N.W. 317 (Mich. 1931). The condemnor cannot have damages assessed on the theory that it will in fact use only part of the condemned land, and therefore the possession and occupancy of a building situated on the right of way will not be disturbed. See Cummins v. Des Moines & St. Louis Ry. Co., 19 N.W. 268 (Iowa 1884). The condemnor cannot introduce evidence of the actual precaution taken by the authority to preserve a well on the right of way for the use of the adjacent landowner, and damages should be assessed as if the well were taken. See Moran v. Highway Commission, 274 N.W. 59 (1937), in accord, DePenning v. Iowa Power & Light Co., 33 N.W.2d 503 (Iowa 1948).

The preceding case illustrates what happens when the plat or description are not conditioned to reserve property or property rights to the landowner. Where a specific reservation is made for a well or a building or access or other improvement, the condemnor is entitled to have the damages reduced to reflect the reservation of rights. The DePenning case, *supra*, is a clear statement that the acquiring authority has the right to reduce the taking or to reserve rights or to stipulate against changes and to thereby make the authority liable in a new action in case the authority later violates the stipulation. Examples of such binding reservations of rights include Bortels v. Woodbury County, 156 N.W. 303 (Iowa 1916), a cattle pass, and Agne v. Seitsinger, 52 N.W. 228 (Iowa 1879), the right to attach a fence to a bridge. In Iowa, the new action referred to in the DePenning case is the right to renegotiate damages not apparent at the time of condemnation. By definition, the damage is not apparent where it is stipulated against. See Section 6B.52, **Renegotiation of damages**, of the Iowa Code.

The taking can be reduced by reserving property rights to the landowner. The acquiring authority may stipulate and reduce the taking at any time, even by amendment on appeal. DePenning, supra. Samples of such stipulations might include that a tree or well will not be damaged or that a field will drain, or that an access will be provided or reserved. The latest illustration of this principle is Smith v. City of Sioux City, Iowa Ct. of Appeals, filed September 30, 1987, #7-270/86-1260. In Smith, the City reserved an access easement across the land after the land was acquired by condemnation by a city resolution. The Smith case cites Fanning v. Mapco, Inc., 181 N.W.2d 190 (Iowa 1970), where the condemnor limited the easement taken to one pipeline rather than an easement for an unlimited number of pipelines.

For such a reduction in the taking to be final, as opposed to just evidence of the nature of the taking, it should be recorded or filed as a part of the condemnation proceeding, and it may be filed as late as the appeal trial.

In Hinrichs v. ISHC, 152 N.W.2d 248 (Iowa 1967), the landowner was reserved a qualified right to move farm machinery under interstate highway bridges to and from his land on both sides of the highway by the terms of a right of way agreement. Landowners cannot be compelled to accept rights or privileges, like the Hinrichs accessway or other offers to construct replacement, or cost to cure improvements as a payment to reduce damages. Kemmerer v. Highway Commission, 241 N.W. 693 (Iowa 1932). Just compensation must be paid in money for the land actually appropriated. The acquiring authority can produce evidence of the actual improvements that will be built. The acquiring authority may make appropriate reservations of right to use a cattle pass or access or the like.

The costs of structures or improvements made to reduce damages to the remaining property cannot be used as an offset for the payment of damages. They can, however, be considered by the Compensation Commission as part of the condition that the remaining property is in after the taking. It is the responsibility of the compensation commission or the district court jury to determine what value, if any, the structure or the improvement may contribute to the after value of the property.

2. Drafting Procedures for Condemnation Document.

This should be a two-step process. The first step is to develop a legal description for each of the separate property rights to be acquired. The legal description defines the geography that each property right covers. A separate description is needed for a fee simple taking, another for a

permanent easement, and a third for a temporary or construction easement. Each description should be prefaced by a clear statement of the property rights being acquired, e.g.:

- * a fee simple in the following described tract of land.
- * a permanent easement for highway purposes over the following described tract of land.
- * a temporary easement for the purpose of shaping and sloping a driveway.

Some acquiring authorities also add extensive definitions or statements of the acquiring authority's specific rights to use each and every different kind of easement, e.g., U.S. Corps of Engineers. Airport authorities also have a three-dimensional aspect that must be added to navigation and approach easements.

The second step in defining the property to be acquired involves analyzing what should not be taken. This is the thought process that should develop the reservations of rights or "no damage will be done to the well" stipulations necessary to avoid claims for damages or to reduce payment for damages.

3. Specifying Access Rights Acquired and Reserved.

As a drafting principle, access rights are critical to the value of all property with any residential, commercial or industrial development potential. First, define the restrictions to access that are being imposed by a clear longitudinal description with reference to the highway being controlled along the property line. Second, add a statement that no access rights are being acquired from any portion of the remainder of the frontage. A specific reference should be made to the location of every entrance being reserved to the property owner in the area being controlled. If an entrance is being constructed outside the access control area, it should be identified as a construction feature so it is clear to the Compensation Commission that the entrance will be built and where it will be. Where all access is being acquired, and access to the property is to be obtained from another street, the condemnation notice should state this so that it cannot be argued that the property has no access at all.

It may be necessary to have the City Engineer appear and explain that the owner is entitled to access to another street, and that all that must be done is to make application for an entrance(s). As an alternative, this

procedure could be spelled out in the notice so the notice states the owner will get an entrance as soon as an application for a permit is filed.

Where neither of these procedures is used, the court will interpret the access taking to be a total taking of all access rights even though it may not have been intended. See Jones v. Iowa State Highway Commission, 144 N.W.2d 277, 281 (Iowa 1966). In Jones, all entrances serving as access from the property to the highway were closed by the project, and there were no existing entrances to streets bordering other sides of the property. The court noted that it would be up to the City to determine if the landowner could obtain access to the side streets. There was no affirmative reservation of access rights to the side streets. Based on an inconclusive record that the landowner would get access to the side streets, the Supreme Court approved of the District Court's submitting the question of denial of reasonable and convenient access to the jury.

It is generally a question of fact if the remaining property has reasonable and convenient access. If the remainder does not have reasonable and convenient access, the landowner must be compensated for its loss as a compensable element of damage to be included in the payment of just compensation.

If the remainder has free and convenient access, there has been no damage to this property right, and no compensation is required. The following cases illustrate situations where access to the remainder has been determined to be free and convenient as a matter of law.

Linge v. ISHC, 150 N.W.2d 642 (Iowa 1967). In Linge, the ISHC was entitled to offer evidence that four existing entrances on the subject highway and other entrances along another side of property are reasonably adequate for a 74.6 acre tract. The court also held that a city ordinance limiting access to the highway to the presently existing entrances is not a taking and the ordinance is admissible. P. 647 of 150 N.W.2d.

ISHC v. Smith, 82 N.W.2d 755 (Iowa 1957). Smith held that as a matter of law two 45 foot curb drops are free and convenient.

Wilson v. ISHC, 90 N.W.2d 161 (Iowa 1958). In Wilson, it was held that two entrances were free and convenient access for gas station, and that one entrance was free and convenient access for a residence.

Re Condemnation of Land (Carroll County), 124 N.W.2d 141 (Iowa 1963). The supreme court concluded that there was no compensable taking of access control where existing access was to an alternative street,

and there were no entrances on the highway from which access rights were acquired.

Simkins v. City of Davenport, 232 N.W.2d 561, 566 (Iowa 1975). The denial of business access to a service station may be a compensable taking, even if it occurs as a result of the state's exercise of its police power in establishing a raised median. Simkins involved the question of whether installation of median strips in front of a service station so affected access to the plaintiff's business that it became relevant to the valuation of the property, a part of which was condemned for highway improvements. The case does not hold the establishment of a median, without anything else, can create compensable damages. Earlier cases establish that it cannot. In Simkins, there was also a taking of private property and a reduction in the size and number of entrances at the curb from the service station itself and to two streets. The case holds that, in light of the change in access and of the taking of additional right of way, the median and traffic scheme can be considered by the appraiser in determining the before and after value of the service station.

For a further discussion of access control, what it is, and how it works, see Volume 2, Engineering and Legislative Design, Land Acquisition Design Course, December 1994, by James E. Graham.

4. Centerline Descriptions are Valid.

The land sought to be taken by condemnation is definitely and accurately described if the description, along with the plat as appended to the application for condemnation, and the notice of condemnation, describe all those lands sought to be condemned by their official congressional section survey numbers, in tracts not exceeding quarter-quarter sections, or by lot, or by reference to a centerline which is tied to such congressional quarter-quarter sections or to lots.

Section 6B.3, of the Code of Iowa, states:

"Such proceedings shall be instituted by a written application filed with the chief judge of the judicial district of the county in which the land sought to be condemned is located. Said application shall set forth:

1. A description of all property in the county, affected or sought to be condemned, by its congressional numbers, in tracts not exceeding one-sixteenth of a section, or, if the land consists of lots, by the numbers of the lot and block, and plat designation.

2. A plat showing the location of the right of way or other property sought to be condemned with reference to such description."

The centerline concept has been a useful, familiar, and acceptable method of describing lands both from the standpoint of conveyancing and from the standpoint of eminent domain in the State of Iowa for over one hundred years.

Section 1247, of the 1873 Code of Iowa, required notices for the purpose of condemning land for the use of railroads to be in the following form:

"NOTICE -- For the appropriation of lands for railway purposes. To (here name each person whose land is to be taken or affected), and all other persons having an interest in, or owning any of the following real estate (here describe the land by congressional numbers in tracts not exceeding one-sixteenth of a section ...). You are hereby notified that the . . . has located its railway over the above described real estate, and desires the right of way over the same, to consist of a strip or belt of land . . . feet in width, through the center of which the centerline of said railway will run, together with such other land as may be necessary for the berms, waste banks, and borrowing pits, . . ."

It should be noted that the above notice not only contemplates the use of a centerline description to describe these lands sought to be condemned for railroad purposes, but it makes it a practical necessity to do so by virtue of the requirement that the railroad itself must be finally located in the center of the tract acquired.

The Iowa Supreme Court has on at least three occasions passed upon the sufficiency of centerline descriptions in cases involving the construction of deeds from property owners to railroads. These cases are: Keokuk County v. Reinier, 288 N.W. 676 (Iowa 1939); The Ottumwa, Cedar Falls and St. Paul RR Co. v. McWilliams, 32 N.W.2d 315 (Iowa 1887); and Barlow v. Chicago, Rock Island & Pacific RR Co., 29 Iowa 276 (1870), *supra*.

The issue of whether or not a centerline description was too vague, indefinite, or uncertain, so as to be the subject of an action for specific performance, was raised in Ottumwa, Cedar Falls. In that case, the railroad company demanded specific performance of a written contract entered into by the landowner, which bound the landowner to convey to the railroad right of way for the railroad over certain land owned by the defendant. The instrument recited that, in consideration of One Hundred Twenty Dollars (\$120.00) paid and the benefits to be derived by the location of the railroad, the property owner agreed as follows:

"I do hereby release the said railroad company the right of way through the land owned by me in sections 22 and 28, Tp. 79, R. 13, Poweshiek County, Ia., together with all

necessary width for embankment, excavations, slopes, spoil-banks and borrowing-pits; and I, for myself, and for my heirs, executors and assigns, do hereby covenant and agree to and with said railroad company to convey, by metes and bounds, at any time the said railroad company shall call for the same, by deed in fee-simple, a strip of ground not less than fifty feet in width on each side of the center of the track of said railroad, over and through the above-described land ..."

Counsel for the defendant asserted that the contract was too indefinite and uncertain to be enforced by an action for specific performance. The Court stated:

"It is true, the agreement does not describe the land to be conveyed by metes and bounds. But the evidence shows that the railroad was not constructed when the contract was entered into. The construction of the road had not been then commenced, but the plaintiff had surveyed two lines across the defendant's land, and staked out the center of the lines so surveyed. These lines were nearly over the same ground, being not more than fifteen or twenty feet apart. The road was afterwards constructed over the land upon one of these lines. . . . Contracts are to be construed in the light of facts surrounding the transaction, and known to the parties. The defendants knew, by the surveys and stakes, where the road was to be constructed, and, not knowing the exact width required, they contracted for so much as would be necessary for a right of way."

"We do not understand, however, that counsel makes a specific claim that the contract was too uncertain in the description of the quantity of lands by metes and bounds. His contention, in the main, is that the description of the land owned by defendants, and through which the road was constructed, was too indefinite and uncertain, as to section, township and range, to authorize a decree for specific performance. He claims that the description, 'sections 22 and 28, Tp. 79, R. 13, Poweshiek County, Iowa,' does not describe any land, because 'Tp. 79, R. 13,' does not locate the land anywhere. It appears to us that there is no uncertainty or indefiniteness in these contractions of words. . . . It appears to us that, if we were to hold this description to be too vague, indefinite and uncertain to authorize a decree for specific performance, we would be without the support of any adjudged case. On the other hand, there are many cases where descriptions of land, even more vague than this one, have been sustained." (citations omitted.)

It is noted that, in the Ottumwa, Cedar Falls case, the centerline was not even described, as it is in the instant case, by reference to the center of a section. The Court properly saw nothing vague, indefinite or wrong with the use of the centerline description, despite the fact that the centerline itself was not tied into any of the traditional monuments or calls of the government survey.

The Court even went so far in the Barlow case, *supra*, as to uphold a

conveyance of land to a railroad company when the company had not even located the railroad itself. That description read as follows:

"A strip of land through the south-west quarter of section number six, township number seventy-eight, north of range number twenty-three, one hundred feet in width being fifty feet on either side of the center line of said road of said company, as located or to be located by its engineer, for the construction of said road ..."

In answer to the proposition that the deed was void for uncertainty as a conveyance, the Court stated:

"But, further than this, there is another rule of construction which requires that the contract should be supported rather than defeated; that is, a construction which would make the contract legal is preferred to one having an opposite effect. If, therefore, by construing the deed as a conveyance of the fee, it would be void for uncertainty of description, as appellant's counsel claim, whereas if a conveyance of a right of way it would be valid, the language of the deed admitting of it, we should adopt the latter view, although such construction might not be the most natural or reasonable upon the language alone."

Iowa does have a special statute that applies whenever any public acquiring purchases or condemns title to land in fee simple to use a description that is compatible with the owner's abstract description. See Section **6A.20, Description of land furnished**, of the Iowa Code. The last sentence of this section states:

"... for purposes of this section a centerline description is compatible only when it contains reference points which are a part of and tied to the abstract description."

To meet this standard, there must be a station tie to two property lines or other appropriate reference points.

Section 6A.20 does not apply to the acquisition of easement interests.

5. Only a General Description of Land to be Acquired is Required Under the Iowa Rule.

Lands sought to be condemned under Chapter 6B, Code of Iowa, need not be specifically described, and it is sufficient if it apprises the owner thereof, in general, the extent of those lands sought to be appropriated for public use. Weiss v. City of Denison, Iowa Court of Appeals, Filed August 27, 1992, #2-159/91-768.

The direct question of the sufficiency or adequacy of the description for condemnation purposes has arisen but three times in the State of Iowa. The cases referred to are Gray v. Railway Company, 105 N.W. 359 (Iowa 1905), supra; Hall v. Railway Co., 119 N.W. 927 (Iowa 1909); and Lower v. C. B. & O. R. Co., 13 N.W. 718 (Iowa 1882).

In the Gray case, the railroad made application to the sheriff to condemn the right of way, in response to which pleadings were filed, and an award was made. The railroad company appealed the condemnation award. In his answer, the landowner asserted that the notice was fatally defective, in that it did not fully and accurately describe the real estate; and to this division the demurrer of the railroad was sustained. The Court held:

"We think the ruling was correct. The statute does not require in terms that the real estate taken shall be specifically described. It may be that in cases where it is proposed to take, and the application is the initial step by the would-be taker, an accurate description would be essential to orderly proceeding. But here the company was in possession, and the description given was sufficient to take the sheriff and his jury to the ground occupied, where the whole situation lay open to them; and the written award made, and certified with the other papers to the court, contained a correct description of the lands claimed to have been taken and upon which it was based. Moreover, the company was fully advised of the proceeding, and the right of appeal was an adequate remedy as against any irregularity in the proceedings. Phillips v. Watson, 63 Iowa 28."

The Hall v. Railway Co. case is another case which throws light upon the question of what is a sufficient description of the property sought to be condemned as to confer jurisdiction upon the condemnation commissioners and upon the court hearing an appeal from the decision of said commissioners. The landowner served notice on the sheriff (under then existing statutory procedure) advising him that the railroad had located a line over the property. The facts of the case were as follows:

"The said Wabash Railroad Company having refused to make compensation to John W. Hall, owner of the Northeast $\frac{1}{4}$, section 29, and Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$, section 28, township 71, range 17, in Monroe County, Iowa, upon and over which said railway is located, and the owner of the said real estate and the said Wabash Railroad Company being unable to agree upon the compensation to be paid for said railroad right of way, you are hereby requested by John W. Hall, the owner of the real estate above described, to appoint six freeholders . . . and assess damages to said owner ..."

The same notice was then served upon the defendant railroad the next day and the commissioners assessed damages:

"... to the owner of the northeast quarter, 29 and southwest quarter northwest quarter,

29 - 71 - 17, in Monroe, Iowa, by reason of the location, construction and operation upon and over said land of a certain line ..."

The Railroad Company appealed the \$1,100.00 award by the Commissioners, and the District Court increased the award to \$1,200.00. From this judgment, the defendant again appealed and reversed the judgments because of the error of the District Court in instructing that the plaintiff was entitled to recover for the right of way over the 40 acres in Section 28, which 40 acres the plaintiff did not own under his deed. On remand to the District Court, the railroad moved the case to be dismissed, and the motion was sustained. The landowner then appealed to this court. In reversing the lower court's dismissal, the Court pointed out that the Trial Court:

"... seems to have been of the opinion that, inasmuch as plaintiff might not have had damages assessed for the right of way over the forty acres by the sheriff's jury, the district court acquired no jurisdiction by the appeal from the award of that body, and for this reason dismissed the cause."

The plat, as appended to the description, a copy of which appears at page 252 of the opinion, described both the NE $\frac{1}{4}$ of 29 (160 acres) and also the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ (40 acres) and contained a line running generally northwest to southwest of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and SW $\frac{1}{4}$ of the NW $\frac{1}{4}$. The Court also noted:

"It appeared of record that plaintiff had never acquired the ground from which the right of way over the forty acres was taken, and it is to be presumed that the sheriff's jury, in estimating the damages to the farm, took into account the appropriation of the right of way through the one hundred and sixty acres only. If they did include more, the error was such a one as may be corrected on appeal." (citations omitted.)

It is noted that the description in this case is very sketchy indeed. The railroad had been physically constructed, but no attempt was made to define the limits of the ground appropriated for right of way purposes in the description itself and there was no mention of quantities or measures of land whatsoever. The plat contained nothing more than the barest description. In fact, the plat was at least very misleading wherein it described lands not owned by the plaintiff, yet it was held jurisdictionally sufficient.

The earliest Iowa case broaching this question is the Lower v. C. B. & O. R. Company opinion. In that case, the landowners filed a supplementary petition to their appeal from the condemnation award, alleging that the land contained did not wholly correspond with the land described in the

notice of condemnation. The Court, in reply thereto, stated:

"... But taking the notices as a whole, we think that they were sufficient for the purpose for which they were designed. The land is described as a certain number of feet on each side of the center line of the railroad 'as the same is located, staked and marked.' This, we think, must be deemed the controlling part of the description, and if any other parts differ therefrom, they must be held to yield thereto. The center line of the land condemned corresponds with the center line of the road as it was located, staked and marked. The irregularity, if any, is not such, we think, as to entitle the plaintiffs, or either of them, to any relief. We must hold, therefore, that there was a compliance with forms of law."

6. A Metes and Bounds Description of Land to be Acquired is Not Necessary Unless Required by Statute.

A condemnation description is jurisdictionally sufficient, under the reported cases of those states following the Definite and Accurate Description Rule, where there is no requirement to specifically describe those lands sought to be appropriated to a public purpose.

The Iowa statute, or more specifically what is now Section 6B.3(1), is the same Code Section that has been in existence in Iowa for over one hundred years. The Iowa Supreme Court has never indicated that it is a jurisdictional requirement to describe land sought to be condemned by metes and bounds or by any other specific method. As a matter of law, the statute does not require that the real estate taken be specifically described. It merely requires the owner receive notice sufficient to apprise him of the imminence of the condemnation proceeding and, in general, the extent of those lands sought to be appropriated for public use. Gray v. Railway Company, 105 N.W. 359 (Iowa 1905), also took note of the fact that the other papers filed in the condemnation proceeding were available to the landowner, and the landowner could not maintain that the written application was defective for the reason that the description was vague or uncertain where the other papers contained a correct description of the property.

In support of the rule, See, Freemont E. & M. V. R. Co. v. Matthies, 52 N.W. 698 (Nebr. 1892); Lumberman's Ins. Co. v. City of St. Paul, 88 N.W. 749 (Minn. 1902); Carter Oil Co. v. Walker, 112 F.2d 229 (7th Circuit Illinois 1940).

Under the Iowa rule, and under the authorities of other states following a similar rule, a general condemnation description is adequate to confer condemnation jurisdiction. It is valid if no resort to another instrument

condemnation jurisdiction. It is valid if no resort to another instrument is necessary to locate the exact boundaries of property sought other than the description itself and the appended plat. It is valid when there is no need to resort to earlier surveys, or to rely upon stakes upon the ground, or surveyor's field notes, or further or other documents as contained in the public records of the condemnation file, or anything of this nature. When the required general description and appended plat are sufficient unto themselves to apprise the owner of the tract(s) sought to be condemned, it is valid and the land is not only adequately described but accurately described.

§ 354.4(5), Governmental agencies shall not be required to survey a remaining parcel when land is divided for right-of-way purposes and shall not be required to contact the auditor for approval of parcel designations shown on an acquisition plat.

Chapter 354, Platting - Divisions and subdivisions of land and Chapter 355, Standards for land surveying do not apply to other than highway right of way acquisitions since only highway acquisitions are divisions within the meaning of these two Code Chapters. See, Section 354.2, Definitions (5) "Division", and Section 355.1, Definitions (2) "Division".

To the same effect, See Weiss v. City of Denison, Iowa Court of Appeals, filed August 27, 1992, #2-159/91-768. In Weiss, the City clearly described all the 40 acre property sought to be condemned. The owner contended the land acquired was part of a larger parcel owned by his sister which was not described but which was operated as part of a single farm. The Court of Appeals refused to accept the owner's position that his sister's property was property "affected or sought to be condemned" and held the sister was a party to the condemnation proceeding, and that a description of either the property affected or the property sought to be condemned was sufficient to comply with Iowa Code, Section 6B.3(1).

The real problem behind the landowner's position in Weiss was in defining the eminent domain parcel. For further guidance on this subject, See Part I, *Maintaining A Rational Acquisition Policy*, c., *Defining the eminent domain parcel*.

7. Highway Acquisition Description.

Highway acquisitions which use a metes and bounds description are divisions of land that, and the legal description must, comply with the

See Section 354.2, Definitions, (10), "Metes and bounds description", which states:

"(10) Metes and bounds description "means a description of land that uses distances and angles, uses distances and bearings, or describes boundaries of a parcel by reference to physical features of land."

The only requirement for the description for a highway acquisition using a metes and bounds description is "an accurate description of each parcel." See Section 354.4, **Divisions requiring a plat of survey or acquisition plat** (1)(c), of the Iowa Code.

Chapter 354 requires a plat of survey for a real estate conveyance which creates a parcel bounded by a road or water course. See, Attorney General's Opinion, (Smith to Frisk, May 1, 1991), #91-5-1. A highway acquisition using a similar description would be a metes and bounds description requiring an acquisition plat.

Conversely, a description, "the North 125 feet of the South 455 feet of Lot 1 ...", is an example of a specific quantity description rather than a metes and bounds description, and no plat of survey is required. See, Attorney General's Opinion, (Smith to Rachels, June 4, 1992), #92-6-4(L). For the same reason, a highway acquisition with a similar description is not a metes and bounds description.

8. Identifying the Public Purpose as Part of the Description.

Each separate interest being acquired needs its own specific legal description. Each legal description should be prefaced by a phrase that identifies the nature of the interest to be acquired.

Eg. A fee simple interest in the State of Iowa in the following land (Tract #1) ...

Eg. A permanent easement for sanitary sewer purposes in the City of _____ in the following described land (Tract #2) ...

Eg. A permanent easement for highway purposes in _____ County in the following described land (Tract #3) ...

Eg. A temporary easement in the acquiring authority to reconnect a driveway in the following described land (Tract #4) ...

9. Lands Classified as Agricultural Area.

Section 6B.3(6), of the Iowa Code, states:

"If the damages are to be paid by the state and the land to be condemned is within an agricultural area as provided in Chapter 352, a statement disclosing whether any of that land is classified as Class I or Class II land under the United States Department of Agriculture Soil Conservation Service land capability classification system contained in the agricultural handbook number 210, 1961 edition and, if so classified, stating that the Class I or Class II land is reasonably necessary for the work of internal improvement for which condemnation is sought."

The county should make this determination whenever there is state funding in the project. The needs determination should be made by the County Engineer.

Include the determination as a part of the Notice of Condemnation.

10. Temporary Easement Descriptions.

Temporary easement descriptions should be developed from the description of other permanent interests being acquired. Locate temporary easements as land adjacent to the right of way line. A separate metes and bounds or centerline description must be developed for non-adjacent haul roads and borrow or material sites.

Locate and identify improvements, trees and the like that will be reserved to the landowners and not disturbed as part of the description of the temporary easement.

The only way to eliminate arguments over when a temporary easement will terminate is to put a date certain for its termination in the language of the condemnation. This is such a fruitful property owner damage claim tactic, that the Iowa D.O.T. specifies termination dates whenever it is possible to do so. All condemning authorities state that temporary easements will terminate after the completion of construction. Most jurisdictions also use language that states the acquiring authority will record a notice of termination for temporary easements. The rationale behind this is to assure the landowner that the title to his land (or more specifically, his abstract of title) will not continue to show an unreleased temporary easement. A last minute stipulation at a compensation commission hearing can eliminate this problem and provide the commissioners assurance that only one crop year will be lost, not two.

Time may be even more critical for commercial property which is dependant on access to the highway.

D. Condemnation Plat Standards.

This section explains the relationship between platting laws and the plat requirements for eminent domain. It contains recommendations and illustrations that can be used to comply with both practical and legal standards for condemnation plats.

1. Condemnation Plat Need Only Clearly Identify the Land to be Acquired.

In the absence of a statutory requirement, a condemning authority has no duty to file any map, plan or plat limiting or defining the language of the property to be acquired. Iowa condemnation law requires condemnation plats only to clearly identify the land to be acquired and does not require any map, survey, plat or plan be filed or recorded to identify the station numbers or monuments referred to in the condemnation description. Iowa's platting laws specify additional requirements to show ties and monuments only for highway condemnation acquisition plats.

The principal was established in M. & St. L. Ry. v. C. M. & St. P. Ry., 88 N.W. 1082 (Iowa 1902). That case involved a dispute between two railway companies, both of which sought to appropriate the same ground for purposes of the construction of their respective lines. The case was a suit in equity to enjoin the defendant from crossing plaintiff's right of way and depot grounds in the town of Storm Lake. Both companies had determined to extend their lines into the town of Storm Lake. Plaintiff first surveyed and staked out its line to the town. Thereafter, the defendant staked out a line, which crossed plaintiff's line at a point where the station grounds were to be located. Defendant then contacted the owner of the grounds sought by both railroads and took an option to purchase from him. A deed was drawn, made in escrow and subsequently delivered, but no consideration paid when the preliminary injunction asked for by the plaintiff was issued. Defendant actually entered upon the land and commenced grading. On April 20, the plaintiff instituted proceedings to condemn a strip one hundred feet wide along the line finally staked out and through the lands in question. Notice of appraisal of damage was served upon the owner at which time the records showed legal title to be in him, and plaintiff insisted it had no notice, either actual or constructive, of the option of the deed made by the owner to the defendant. The owner then conveyed, by quit claim deed, the land heretofore conveyed to the defendant for the express consideration of \$2,000.00, which deed was also filed of record on the same day as the defendant filed its deed. After the recording of the deeds, plaintiff then commenced a condemnation proceeding against the defendant. The defendant then secured an injunction restraining these proceedings, but the notice did not reach the

sheriff in time, and the award was made in the amount deposited. The plaintiff then secured a temporary injunction restraining the defendant from constructing its line over plaintiff's station grounds and from interfering with the plaintiff in its exclusive use and occupancy thereof. It was this injunction that a trial was held on the merits, the injunction was dissolved, and the plaintiff appealed. In determining that the defendant was entitled to the possession and enjoyment of the property, the court had occasion to comment upon the plaintiff's surveys and stated:

"... Plaintiffs surveys were not primarily for the purpose of condemnation, but to define the location and limits of the land it sought to acquire. As we shall hereafter show, plaintiff did not commence its condemnation proceedings until after defendant had acquired its option from Metcalf, and had actually entered upon and graded its line over the strip of ground in controversy. ..."

After disposing of the questions of plaintiff's alleged position as a good faith purchaser and his contractual rights with the citizens committee, the court turned to the surveys, stating:

"... The most that can be claimed is that this determination, followed by an actual survey and a staking out of the route selected, is a sufficient appropriation of the land to give plaintiff a prior right thereto. There is really no need to consider this proposition, for we are firmly convinced that this survey was not preliminary to condemnation proceedings, but was had for the purpose of indicating the land plaintiff desired to acquire for depot and station purposes. . . . In many states the staking out and surveying of a line of road is held to be the beginning of condemnation proceedings, and, if followed up, give prior title or right to the line so located over purchasers with notice. ..."

The court, then citing federal cases, quoted with approval the following:

"If the statute does not provide for nor require a survey or location, nor require a map or survey to be recorded, that company which first commences condemnation proceedings will have priority of right to appropriate the land. (citation omitted.) ... In this state no location or survey is necessary; nor does the statute require the filing of any map or survey. ... Until condemnation is had, or at least commenced, the railway company is a trespasser when it enters on the land of the owner. ..."

In Iowa, condemnation proceedings are commenced or instituted by the filing of a written application for condemnation pursuant to Section 6B.3, **Title application - recording - notice time for appraisalment - new proceedings**, Code of Iowa.

Subsection (2), of the application for condemnation, requires only a plat

showing the location of the right of way to be acquired and states:

"2. A plat showing the location of the right of way or other property sought to be condemned with reference to such description."

The description referred to in Subsection (1) requires only general information:

"1. A description of all the property in the county, affected or sought to be condemned, by its congressional numbers, in tracts not exceeding one-sixteenth of a section, or, if the land consists of lots, by the numbers of the lot and block, and plat designation."

2. Iowa Platting Laws Specify Additional Requirements Only for Highway Condemnation Acquisition Plats.

The applicable sections of Chapter 354, Platting laws, effective July 1, 1990, are set out below.

Section 354.2, Definitions:

"1. 'Acquisition plat' means the graphical representation of the division of land or rights in land, created as the result of a conveyance or condemnation for right-of-way purposes by an agency of the government or other persons having the power of eminent domain.

"5. 'Division' means dividing a tract or parcel of land into two parcels of land by conveyance or for tax purposes. The conveyance of an easement, other than a public highway easement, shall not be considered a division for the purpose of this chapter.

"10. 'Metes and bounds' means a description of land that uses distances and angles, uses distances and bearings, or describes the boundaries of the parcel by reference to physical features of the land."

Section 354.4, Divisions requiring a plat of survey or acquisition plat:

"3. When land or rights in land are divided for right-of-way purposes by an agency of the government or other persons having the power of eminent domain and the description of the land or rights acquired is a metes and bounds description then an acquisition plat shall be made and attached to the description when the acquisition instrument is recorded. Acquisition plats shall be clearly marked as an acquisition plat and shall conform to the following:

a. Acquisition plats shall not be required to conform to the provisions of chapter

355.

- b. The information shown on the plat shall be developed from instruments of record together with information developed by field measurements. The unadjusted error of field measurements shall not be greater than one in five thousand.
- c. The plat shall be signed and dated by a surveyor, bear the surveyor's Iowa registration number and legible seal, and shall show a north arrow and bar scale.
- d. The original drawing shall remain the property of the surveyor or the surveyor's agency and shall not be less than eight and one-half by eleven inches in size.
- e. If the right-of-way on an acquisition plat is a portion of lots within an official plat, reference shall be made to both the lots and plat name. If the right-of-way acquisition plat is not within an official plat, reference shall be made to the government lot or quarter-quarter section and to the section, township, range, and county.
- f. The plat shall indicate whether the monuments shown are existing monuments or monuments to be established. Monuments shall be established as necessary to construct or maintain the right-of-way project.
- g. The acquisition plat shall identify the project for which the right-of-way was acquired and a parcel designation shall be assigned to each right-of-way parcel.
- h. The acreage shown for each parcel included in a plat of survey or acquisition plat shall be the nearest one-hundredth acre. If a parcel described as part of the United States public land survey system and not entirely within an official plat, lies within more than one forty-acre aliquot part of a section, the acreage shall be shown only for assessment and taxation purposes for each portion of the parcel that lies within each forty-acre aliquot part. The surveyor shall not be required to establish the location of the forty-acre aliquot line by survey but is required to use reasonable assumptions in determining its approximate location for assessment and taxation purposes.
- i. Governmental agencies shall not be required to survey a remaining parcel when land is divided for right-of-way purposes and shall not be required to contact the auditor for approval of parcel designations shown on an acquisition plat."

**Section 354.5, Descriptions and conveyance according to plat of survey
or acquisition plat.**

"2. A conveyance of a parcel shown on a recorded acquisition plat shall describe the parcel by using the description provided on the acquisition instrument or by reference to the acquisition plat, which reference shall include all of the following:

- a. The parcel designation and reference to the project for which the right-of-way was acquired.
- b. The book and page number of the recorded acquisition plat.

- b. The book and page number of the recorded acquisition plat.
- c. The lot number or letter and name of the official plat, if the parcel lies within an official plat.
- d. The section, township, and range number and reference to the aliquot part of the section, if the parcel lies outside of an official plat.
- e. A description by reference to the recorded acquisition plat, in compliance with subsection 2, is valid."

The plat of survey requirements of the platting law do not apply to eminent domain conveyances or to condemnation plats or proceedings.

3. Showing the Remaining Property on the Condemnation Plat.

A plat that does not contain calls to adjoinders or which does not show the landowner's property lines has little communication value for the landowner and the compensation commission. The plat should follow the basic communication standard required by Iowa Code, Section 6A.20, **Description of land furnished**. Show the tract being acquired tied to the landowner's abstract description (property lines). Think in terms of also showing the land from which your acquisition is being acquired.

The description by exception standards used to implement Section 6A.20, work well to accomplish this. Show the whole property less the part acquired. The plat should show the whole property and also the part acquired.

There is no requirement to survey the remainder. See Section 354, **Divisions requiring a plat of survey or acquisition plat**, subsection (5), of the Iowa Code.

4. Condemnation Plat Acreage or Area Calculations.

The landowner, appraiser, compensation commission and taxing authority all need as acreage or area calculation to be able to understand what is being acquired. Each separate interest being acquired should be calculated separately.

Use the acreage calculation standards required for highway project acquisition plats. See Section 354.4, **Divisions requiring a plat of survey or acquisition plat**, subsection (4), of the Iowa Code. Calculate acreage to the nearest one-hundredth acre or square foot.

III. CONDEMNATION

FORMS

PREPARATION

COUNTY CONDEMNATION MANUAL

III. Condemnation Forms Preparation

There are only a few forms that are required by Iowa statutes. Substantial compliance with the statutes is all that is necessary. Oversights, omissions and ambiguities that creep into the condemnation process can all be resolved in the appeal process. This, however, does not prevent landowners from filing suits to enjoin the project, or in certiorari, to contest the validity of a condemnation proceeding.

Part III, *Condemnation Forms Preparation*, identifies required and practical data required. Failure to meet the information requirements for statutory condemnation documents can be eliminated by applying the principals in this part. The content form and format of most required condemnation forms is largely discretionary. This part illustrates some proven alternatives.

III. A. Application to the Chief Judge:

This section identifies what must be contained in the county's application for the appointment of a Compensation Commission. This information can be all included as text in the application form. It may also be included by attaching a notice of condemnation and condemnation plat which contain the required information.

Statutory Requirements for the application to the Chief Judge are contained in Section 6B.3, of the Code of Iowa.

"6B.3 Application - recording - notice - time for appraisalment - new proceedings.

Such proceedings shall be instituted by a written application filed with the chief judge of the judicial district of the county in which the land sought to be condemned is located. Said application shall set forth:

1. A description of all the property in the county, affected or sought to be condemned, by its congressional numbers, in tracts not exceeding one-sixteenth of a section, or, if the land consists of lots, by the numbers of the lot and block, and plat designation.
2. A plat showing the location of the right of way or other property sought to be condemned with reference to such description.
3. The names of all record owners of the different tracts of land sought to be condemned, or otherwise affected by such proceedings, and of all record holders of liens and encumbrances on such lands; also the place of residence of all such persons so far as known to the applicant.
4. The purpose for which condemnation is sought.
5. A request for the appointment of a commission to appraise the damages.
6. If the damages are to be paid by the state and the land to be condemned is within an agricultural area as provided in chapter 352, a statement disclosing whether any of that land is classified as class I or class II land under the United States department of agriculture soil conservation service land capability classification system contained in the agriculture handbook number 210, 1961 edition and, if so classified, stating that the class I or class II land is reasonably necessary for the work of internal improvement for which condemnation is sought."

See Figure 3.1a-e, Appendix.

B. Notice of Condemnation:

This section is the, jurisdictionally, most important form for the condemnation proceeding. A close examination of what the notice should do, and a standard process to formulate the notice is a necessary focal point to maintain quality condemnation document drafting standards.

The condemnation notice should contain a clear statement of the property rights being acquired. The condemnation notice should also contain a reference to property rights reserved to the owner. The condemnation notice should also state what remedial work will be performed by the acquiring authority to reduce or mitigate either permanent or temporary damages. See Part II Condemnation Document Drafting Standards.

Section 6B.9, Form of notice, Code of Iowa, states:

"Said notice shall be in substantially the following form, with such changes therein as will render it applicable to the party giving and receiving the notice, and to the particular case pending, to-wit:"

'To _____ (here name each person whose land is to be taken or affected and each record lienholder or encumbrancer thereof) and all other persons, companies, or corporations having any interest in or owning any of the following described real estate:

'(Here describe the land as in the application.)

'You are hereby notified that _____ (here enter the name of the applicant) desires the condemnation of the following described land: (Here describe the particular land or portion thereof sought to be condemned, in such manner that it will be clearly identified.)

'That such condemnation is sought for the following purpose: (Here clearly specify the purpose.)

'That a commission has been as provided by law for the purpose of appraising the damages which will be caused by said condemnation.

'That said commissioners will, on the _____ day of _____, 19____, at _____ o'clock ____m., view said premises and proceed to appraise said damages, at which time you may appear before the commissioners if you care to do so.

Applicant.'"

See Figure 3.2a-f, Appendix.

C. Selection and Appointment of Compensation Commissioners:

This also is a statutory process. There is a process difference between the original selecting of commissioners and alternatives and the subsequent appointing of a commissioner to fill a vacancy. This process is under the direct control of the Chief Judge, and you must comply with the rules or process adopted by the Chief Judge.

1. Qualification of Compensation Commissioners.

Section **6B.4, Commission to assess damages**, of the Iowa Code, sets out the qualification of commissioners.

"6B.4 Commission to assess damages.

Annually the board of supervisors of a county shall appoint not less than twenty-eight residents of the county and the names of such persons shall be placed on a list and they shall be eligible to serve as members of a compensation commission. One-fourth of the persons appointed shall be owner-operators of agricultural property, one-fourth of the persons appointed shall be owners of city property, one-fourth shall be licensed real estate salespersons or real estate brokers, and one-fourth shall be persons having knowledge of property values in the county by reason of their occupation, such as bankers, auctioneers, property managers, property appraisers, and persons responsible for making loans on property. The chief judge of the judicial district shall select by lot six persons from the list, two persons who are owner-operators of agricultural property when the property to be condemned is agricultural property; two persons who are owners of city property when the property to be condemned is other than agricultural property; and two persons from each of the remaining two representative groups, who shall constitute a compensation commission to assess the damages to all property to be taken by the applicant and located in the county, and shall name a chairperson from the persons selected. No member of the compensation commission selected shall possess any interest in the proceeding which would cause such person to render a biased decision."

The county must request commissioners that are appropriate to the property being acquired.

For Agricultural Property:

2 persons who are owner-operators of agricultural property.

For other than Agricultural Property:

2 persons who are owners of city property.

For all condemnations:

2 persons who are licensed real estate salespersons or real estate brokers.

2 persons who have knowledge of property values in the county by virtue of their occupation.

2. Request to the Chief Judge to Appoint the Commission and Name A Chairperson. (See Figure 3.3a-b, Appendix)
3. Appointing Alternate Compensation Commissioners.

There are times of the year, and in certain counties, that the number of Commissioners who decline to serve increases. Both the original list and the alternate list of Commissioners may be exhausted without a full Commission agreeing to serve. Where you can anticipate this, ask the Chief Judge to select a third alternate for each category in your original request. Otherwise, you must request the chief judge to resupply the list. (See Figure 3.4a-c, Appendix)

4. Filling Vacancies on the Compensation Commission, and Setting the Hearing Date.

Section **6B.5, Vacancies**, of the Iowa Code, authorizes the Chief Judge to appoint another person where an appointee fails to act.

"6B.5 Vacancies.

In case any appointee under section 6B.4 fails to act, the chief judge of the judicial district shall appoint another person from the list, possessing the same qualifications as the person who is being replaced to complete the membership of the commission."

There is no requirement that this person shall be selected by lot as required for the original appointment of the commission. See Section **6B.4, Commission to Assess Damages**.

The acquiring authority must work through the Sheriff to fill vacancies of commissioners who can not serve on the date scheduled for the hearing. If a poll of commissioners is required to find a person(s) available to serve, the Sheriff should make the poll and the Sheriff should inform the Chief Judge who is available to be selected. The Chief Judge's Clerk is often able to work with the Sheriff and fill the vacancy, sometimes on short notice.

A last minute appointment to fill a vacancy must be supported by an order

of the Chief Judge. Use form ORDER CONFIRMING THE APPOINTMENT OF SUBSTITUTE COMPENSATION COMMISSIONER. (See Figure 3.5a-b, Appendix)

It is not necessary that the order appointing a substitute commissioner be physically available the day of the hearing. The order will be sent by the Chief Judge to the Sheriff who will file it when it is received.

Work through the Sheriff when it is necessary to contact an alternate or substitute commissioner to fill a vacancy. The county should avoid direct communication with compensation commissioners. There are cases when the Sheriff is in need of assistance, and it may be necessary to furnish help. If you are assisting the Sheriff, inform the commissioners or prospective commissioner that you are assisting the Sheriff.

D. Summon the Commissioners:

This section discusses what must be in the form, how to avoid exparte communications with Compensation Commissioners and how to resolve qualification and hearing date conflicts for the county and commissioners.

1. Setting the Date for the Condemnation - Avoid Exparte Communications.

Setting a hearing date and the last minute filling of a vacancy on a Compensation Commission can cause special problems. While the county prepares condemnation forms, the county's Condemnation Hearing Officer must avoid all appearance of direct (exparte) communication with Compensation Commissioners throughout the selection process. See Rodine v. Zoning Board of Adjustment of Polk County, 434 N.W.2d.124 (Iowa 1988).

In setting the hearing date, give consideration to the county's need for possession of the property and the availability of necessary witnesses for the county.

It is not proper for the county's Hearing Agent, or other officer, to solicit a date for the hearing that will be convenient to the Commission's Chairperson or Commissioners.

There is no requirement nor obligation to obtain prior approval of a hearing date, to delay scheduling a hearing nor to reschedule a hearing at the request of either the landowner or the landowner's legal council.

2. Confirm Commissioner Qualifications and no Conflict of Interest.

The county maintains a list of persons by their qualifications as required by Section **6B.4, Commission to assess damages**. When you receive the lists of persons selected as Commissioner and as alternate Commissioners, review the list to determine that the persons appointed do have the required qualifications.

The last sentence of Section **6B.4, Commission to assess damages**, of the Code of Iowa, states:

"... No member of the compensation commission selected shall possess any interest in the proceeding which would cause such person to render a biased decision."

The names of relatives by blood or marriage or of business, employees,

officers or associates of the landowner(s) who have been, or would be, appointed as an alternate or substitute Compensation Commissioner should be brought to the attention of the Sheriff.

The Sheriff may make this information available to the Chief Judge either on the Sheriff's personal initiative or at the request of the county's Condemnation Hearing Officer. The Chief Judge will determine if a different person shall be selected or appointed to serve.

This information is sometimes reported by persons appointed as Compensation Commissioners in response to the Sheriff sending them a summons to serve. Where an interest is reported, this information is used by the Sheriff to select an alternate. If this information is not reported on the summons, it should be reported when the Commissioner is requested to take an oath to serve and an alternate Commissioner should be called and asked to serve.

3. Form of Summons of Commissioners

See Figure 3.6a-b, Appendix.

4. Filing of Orders Appointing Commissioners

The original, of all of the orders of the Chief Judge and all Summons which have been accepted by Commissioners, should be filed with the Sheriff as part of the Sheriff's Condemnation file.

These original documents, along with the notices and proof or returns of Service, constitute the initial condemnation file. The last sentence of Section 6B.11, **Filing of notices and returns of service**, of the Iowa Code, states:

"... the Sheriff shall at once cause the Commissioners to be notified of the day and hour when they will be required to proceed with the assessment."

It is the service of notice of condemnation to owners, tenants, lienholders and encumbrancers that establishes jurisdiction over the property to be acquired. Section 6B.11 notes this. As a practical matter, the Commissioners need to be summoned as soon as when the application for condemnation is signed in order to determine who will be available to serve as Commissioners.

Once Service has been made, the Commissioners should be reminded of the day and hour for the assessment. There are times when physical

possession of the original return of Service, say from an out of state interest holder, will not be received on the date set for the condemnation. A facsimile copy is sufficient proof of service to convene the Commission.

5. Proceeding with Commissioner Appointed on the Day of the Hearing.

There are times when an appointed Commissioner is unable to appear and serve on the morning scheduled for the hearing. When an alternate Commissioner is still available, the Sheriff will call the alternate and request that he or she appear and serve. If an alternate Commissioner is not available or cannot serve, the Sheriff will call the Clerk of the Chief Judge and request that the Chief Judge appoint a substitute Commissioner. If the Clerk does not have a form for an *Order Confirming Appointment of Substitute Compensation Commission*, the Sheriff may have to fax the form to the Clerk.

The Commission should be convened with substitute Commissioner as soon as the Sheriff has been informed that the Chief Judge has appointed the Substitute Commissioner. The signed original order should be filed by the Sheriff in the Condemnation file when it is received.

6. Proceeding With Less Than Six or an Irregular Commission.

In Iowa, Certiorari is a remedy for errors that go to the jurisdiction of the Condemnation proceeding. The concept in "certiorari" is based on the idea that there was a jurisdictional or other proceeding, and that the owner is entitled to a second condemnation proceeding. See Miller v. Palo Alto Board of Supervisors, 94N.W.2d.38 (Iowa 1957) - Failure to properly swear Commissioners in. Abney v. Clark, 55N.W.6 (Iowa 1893) - Failure to appoint Commissioners at the proper time.

Service of notice must be made on owner(s), tenant(s), lienholder(s) or encumbrancer(s) in order to have a valid condemnation proceeding. An exception to this rule is where the owner voluntarily appears and has an interest in the result. See Cedar Rapids, etc. R. Co. v. Chicago etc. R. Co., 14N.W.76 (Iowa 1882). To the same effect, see Section **6B.49, Notice of Service**, of the Iowa Code. This Section requires notice to all persons, except persons who voluntarily appear. Where there is a failure of service of notice, the proceeding must be rescheduled, and the notices must be reserved.

Contested condemnations with Commissioner related irregularities should be rescheduled or postponed to enable the county to cure the irregularity.

You may wish to proceed with the condemnation hearing in uncontested condemnations where there has been valid service of notice on all interested persons even though there may be an irregular Compensation Commission. There is case authority in Iowa that procedural errors in improperly picking Commissioners, bias of Commissioners or influence exercised in the proceeding does not affect the validity of the proceeding. See Cedar Rapids, I.F. & N.W. R. Co. v. Whelan, 21N.W.141 (Iowa 1884) - Jury met at improper time, Phillips v. Watson, 18N.W.659 (Iowa 1884) - Alleged partiality of appraisers (Commissioners) and undue influence on them, and the M. & M. R. Co. v. Rosseau, Iowa 373 (1859) - Improper selection of jury members and bias of members.

Condemnations which could be considered uncontested include cases where local owners have agreed to the acquisition, but other owner(s) cannot be found. Minor acquisitions acquired by condemnation as a means to quiet title to the right of way being acquired also fall into this category. It probably doesn't make any difference if the remainder is adequate security for liens of record or not. There is no identifiable risk in those cases where the real interest holders are paid and accept the award. See Hayes v. Chicago, R.I. & P. R. Co., 30 N.W.2d,743 (Iowa 1948), Marling v. Burlington etc. Ry. Co., 25N.W., 268 (Iowa 1885) - An owner who accepts compensation awarded can not object to the amount of the award or claim that the condemnation proceedings were irregular.

Once the thirty days to appeal has run, the award deposited and accepted, there is no probability of any additional claim being made. You might also consider taking an agreement from the owner to indemnify the county against any claim that may be filed against the county by any interest holder. An indemnification agreement may support a request for the award to be made to named individuals or to remove an interest holder from the warrant to pay the award.

E. Notice to Third Parties of a Pending Condemnation Proceeding (Les Pendens)

This section discusses the purpose for this initial recording. Instructions and procedural guidance is included to assure coordination with the County Recorder and to preserve recorded original condemnation documents.

1. Iowa's Notice to Third Parties of a Pending Condemnation Statute.

Iowa's Notice to third parties of a pending condemnation (Les Pendens) statute is Subsection (7), of Section **6B.3, Application - Recording - Notice - Time for appraisalment - New Proceeding.**

"7. The applicant shall promptly certify that its application for condemnation has been approved by the chief judge and shall file the original approved application with the county recorder in the manner required under section 6B.37. The county recorder shall file and index the application in the record of deeds and preserve the application as required by sections 6B.38 and 558.55. The filing and indexing constitute constructive notice to all parties that a proceeding to condemn the property is pending and that the applicant has the right to acquire the property from all owners, lienholders, and encumbrancers whose interests are of record at the time of the filing. When indexed, the proceeding is considered pending so as to charge all persons not having an interest in the property with notice of its pendency, and while pending no interest can be acquired by the third parties on the property against the rights of the applicant. If the appraisalment of damages is not made within one hundred twenty days, the proceedings instituted under this section are terminated and all rights and interests of the applicant arising out of the application for condemnation terminate. The applicant may reinstitute a new condemnation proceeding at any time. The reinstituted proceedings are entirely new proceedings and not a revival of the terminated proceeding."

This statute was passed to remedy a situation where a sale of the property after Notice of Condemnation, but before the condemnation was completed, would invalidate the proceeding for failure to serve all owners. Under this statute, the recording of the application for condemnation with the County Recorder will preserve the validity of the proceeding against third parties who obtain an interest in the property while the condemnation is pending.

A condemnation proceeding held without such a filing will be valid against all persons except those that intervene after notice and before completion of the condemnation. Compliance with this subsection is not jurisdictional.

2. What Should be Filed With the Recorder to Constitute Notice to Third Parties.

The county (the applicant) is responsible to file the original approved application for condemnation with the recorder. Attach both the Notice of Condemnation and the condemnation plat to the application, in that order, and securely fasten them together.

The county's certificate that the application for condemnation was filed with the Chief Judge reads:

"In accordance with Section 6B.3(7) of the Iowa Code, I, the undersigned, certify that this is the original application for condemnation which has been approved by the Chief Judge of the _____ Judicial District and that the Notice of Condemnation and Condemnation Plat attached thereto are true and correct copies of the original files in the proceeding.

Authority - County Attorney - Authorized Representative
Title
Address"

This certificate can be used as a part of a cover letter requesting the County Recorder to record the application for condemnation, or it can be built into the Application for Condemnation itself. Build it into the Application for Condemnation as procedural assurance that the certification is in correct form. (See Figure 3.7, Appendix) The transmittal letter provides instructions to the recorder, provides proof of recording, furnishes recording data and also serves as a bill for recording fees.

3. Payment of Fees to Record Condemnation Application.

The general rule for collecting recording fees is found in Section **6B.39, Fee for recording**, of the Iowa Code. Under 6B.39, the Sheriff is to collect the recording fee from the condemnor, and pay the fee to the recorder upon presenting the papers for recording. It is good practice to have the recorder review the application for condemnation and compute the fees in advance of delivering the documents for recording.

Section **558.58, Recorder to collect and deliver to auditor**, Subsection (2), of the Iowa Code, states the rule for payment of recording fees when the condemnor is a governmental subdivision or agency.

Section 558.58(2), states:

"When the person required to pay the fee relating to a real estate transaction is a governmental subdivision or agency, the recorder, at the request of the governmental subdivision or agency, shall bill the governmental subdivision or agency for the fees required to be paid. The governmental subdivision or agency shall pay the fees and taxes due within thirty days after the date of filing."

Note: Section 331.604, subsection 2, **General Recording and Filing Fee**, of the Iowa Code, states a county shall not be required to pay a fee to the recorder for filing or recording instruments.

County Recorders who fail to record condemnation documents are liable for all damages caused by such failure. See Section 6B.40, **Failure to Record - Liability**.

4. Requesting Return of the Original Recorded Application for Condemnation.

The county should always request the recorder, in writing, to return the original Application for Condemnation.

The original condemnation documents, or the record thereof, are presumptive evidence of title in the condemnor and shall constitute constructive notice of the right of the county to the lands condemned. See Section 6B.41, **Presumption**, of the Iowa Code. The Recorder has the power to dispose of the county's condemnation documents if the county does not request the condemnor return the documents to the county. See Section 6B.38, **Record of proceedings**, of the Iowa Code.

Where there is no appeal taken, the original Application for Condemnation could just sit there in the recorders office and ultimately be lost.

If the Recorder does not record the Application for Condemnation and the originals themselves are disposed of by the recorder, the county may have to resort to other regularly kept public records or files to prove its title and right to the land condemned.

IV. SERVING
NOTICE OF
CONDEMNATION

COUNTY CONDEMNATION MANUAL

IV. Serving Notice of Condemnation:

Complying with the serving of Notice of Condemnation is critical to the convening of a valid condemnation proceeding. Different notice on waiting requirements of the law may control how service must be made in order to maintain construction schedules. In the end, counties must select a service agent and a procedure that is both timely and valid. Service requirements must be complied with and often control the date selected for the condemnation hearing.

Part IV, *Serving Notice of Condemnation*, identifies when personal service is required and how it can be made on individuals and corporations whose residence or place of business is both within, and also, outside the state. This part identifies special service requirements for public entities and public authorities. It also describes alternatives to obtaining service where owners or interest holders accept service, where they waive notice requirements or through personal appearances.

All owners, lienholders and encumbrancers are entitled to notice of the condemnation.

The Notice of Condemnation need not include a copy of the Application of Condemnation, but it must include both the legal description and the Acquisition Plat or Condemnation Plat. These attachments meet the description and purpose statement requirements of Section 6B.9, **Form of Notice**, of the Iowa Code. The attachments also meet the general requirements for the service of original notices of the Iowa Rules of Civil Procedure. See IRCP, Rule 50, **Serving copies of the original notice and petition**.

Where the county can make personal service of the Notice of Condemnation on non-residents and foreign corporations, the notice period is ten days. Service by publication requires publication at least 4 consecutive weeks. In theory, personal service of non-residents and foreign corporations is quicker. In fact, this is often not the case. There are delays or failures to locate the person to be served or a failure to make timely service. Whenever personal service fails, the whole date setting and service process has to start over.

As a matter of policy, avoid reliance on out of state direct service unless the owner or attorney has agreed to sign the Notice of Condemnation and thereby accepts service. Unless a foreign corporation can be served by certified or registered mail return receipt requested, avoid relying on direct personal service.

In all of these, it is best to serve the out of state owner or interest holder by publication as the primary method of service. Consider personal service options as a tool to preserve letting dates. Direct personal service can serve as an expedient backup method to be

used if there are problems with proper publication of notices.

IV. A. General Rules for Personal Service

This section identifies and discusses alternatives in selecting the person who will be making personal service on landowners. It also considers how personal service may be obtained by serving an agent of the landowner or by acceptance of service.

The general rules for making personal service by delivering a copy of the notice to the proper person are contained in IRCP, Rule **56.1, Personal Service**, subsection (a) through (n).

- a. Upon persons not minors nor under legal disability.
Contains rules to save an individuals dwelling house in place of abode, any person residing there in who is at least 18 years old, or to members of the persons family or the manager, clerk, proprietor or custodian of such place or with good cause on a spouse at a place other than the individual dwelling house.
- b. Upon minors. Chapter 599 Minors, Sections **613.16, Parent Responsible**, 633.574, in lieu of Guardian
- c. Upon persons judicially judged incompetent but not confined in a state hospital for the mentally ill.
- d. Upon persons confined to a county facility.
- e. Upon persons a patient in any state or federal hospital for the mentally ill.
- f. Upon a partnership, or association suable under a common name or a domestic or foreign corporation.
- g. Upon individuals, corporation, partnership or other association suable under a common name whose office or agency is maintained in a county other than where the principal reside by serving any agent or clerk employed in such office or agency.
- h. Upon any city.
- i. Upon any county.
- j. Upon any School District, School Township, or School Corporation.
- k. Upon the State of Iowa.
- l. Upon persons, corporations, partnerships or association suable under a common name who have filed a consent to service in Iowa.
- m. Upon a governmental board, commission or agency.
- n. Otherwise as required by Court Order.

Personal Service can be made on in-state owners, lienholders or encumbrancers with 10 days written notice. See Section **6B.8, Notice of Assessment**, of the Iowa Code. The notice must specify both the day and the hour when the Commissioners will view the premises. The notice must also be served in the same manner as original notices.

1. No Service by the Acquiring Authority.

It is not proper to have original notices served by a party or by an attorney for a party to the proceeding. See IRCP, Rule 52, **By Whom Served**.

No county officer, employee, or their agent or representative and no elected nor appointed county official, except the County Sheriff, should personally serve Notices of Condemnation.

2. Service by a Sheriff.

Sheriffs are proper persons to serve Notices of Condemnation. Where an owner or interest holder resides in a county other than where the land to be acquired is located, service can be made by the Sheriff of the county where the owner or interest holder resides.

In accordance with Iowa Rules of Civil Procedure, the Sheriff or Deputy Sheriff may make service in the Sheriff's own county and in contiguous counties, and the court will take Judicial Notice of the Sheriff's signature. See IRCP, Rule 59, **Returns of Service**, sub rule (a), **Signature: Fees**.

3. Service on Owners Legal Council.

It may be possible to obtain service on an owner or interest holder by serving their legal council. The person making such service should be instructed to request the attorney to verify that the attorney does represent the owner or interest holder and has the authority to accept service on their behalf. Request the attorney to sign an acceptance of service. If the attorney refuses to sign the acceptance of service, the return of service must contain a notation that the attorney did verify the attorney does represent the owner or interest holder, and that service of the Notice of Condemnation was made on the attorney. If the attorney refuses to verify representation or the authority to accept service for the owner or interest holder, the Sheriff, or Service Agent, should immediately report this fact to the county so that other service can be arranged.

4. Service on Persons Holding a Power of Attorney.

Valid personal service can be made on owners and interest holders by serving persons whom they have granted an appropriate Power of Attorney. Do not attempt such service unless the Power of Attorney empowers its holder either to accept service of legal notices or empowers its holder to sell and convey real property without court approval.

Where the Power of Attorney is not sufficient for its holder to be served, Notice of Condemnation service must be made either directly on the owner or interest holder, or by publication or where appropriate by guardian.

5. Service on Guardian.

The county has the power to obtain the appointment of guardian where the land sought to be condemned is owned by a person under legal disability who has no guardian of the person's property. See Section **6B.15, Guardianship**, of the Iowa Code. The person proposed as a guardian may be the person's attorney or a relative or a person who holds a limited power of attorney. Where the landowner or the family refuse to nominate a person, the county can ask the District Court to make an appointment of a suitable person to act as guardian.

This process requires that a petition for application for the appointment of a guardian be filed with the District Court. This process requires the assistance of either the County Attorney or of legal council representing the owner or interest holder. If these legal services are to be provided by private legal council, the county will be required to pay reasonable attorney fees to do so. See Section 6B.54 (10)(a), of the Iowa Code.

These legal fees are expenses similar to recording fees and transfer taxes which are incidental to conveying real property to the county. They are incident to, and arise out of, the project for which condemnation is sought and may be made from any funds available for the program or project.

Once appointed, the guardian may settle with the county, under the direction of the District Court, for all damages and may make a valid conveyance of the land or interest therein needed. See Section **6B.16, Power of Guardian**, of the Iowa Code. If settlement is not possible, valid service of Notice of Condemnation can be made by serving the guardian.

There is a method to pay up to \$4,000 due a minor to a parent. See Section **633.574, Procedure in lieu of conservatorship**. This procedure does not establish the parent as a guardian for purposes of making valid service of Notice of Condemnation. A conservator may be appointed to serve this purpose. See Section **633.573, Appointment of a Temporary Conservator**; Section **633.570, Appointment of a Conservator**; and Section **633.571, Preference as to Appointment of Conservator (Parents Preferred)**, of the Iowa Code.

B. Personal Service on Out of State and Unknown Owners and Non-Residents.

This section identifies and discusses procedures to obtain service on out of state owners and non-residents both through personal service and by newspaper publication.

1. Service by Out of State Service Agent or Sheriff.

Section **6B.13, Service outside state**, of the Iowa Code, states:

"Personal service outside the state on nonresidents in the time and manner provided for the service of original notices shall have the same force and effect as publication service within the state."

There are times when it may be necessary to retain the services of a private service agent to locate and make service on an owner or interest holder. There is a national organization of service agents. Work directly through the Iowa Private service agent who will be making the service.

For this purpose, out of state Sheriffs or Deputy Sheriffs should also be considered to be out of state service agents. Any other peace officer, bailiff or marshall may make service in his or her own territorial jurisdiction. The court will take judicial notice of the peace officer's signature, but all returns of service made by out of state private service agents must be proved by the affidavit of the person making the service. See IRCP, Rule 59, Return of Service, sub rule (a), Signatures; Fees, and (c), Contents.

Always request private service agents to request the person being served to sign the acceptance of service portion of the Notice of Condemnation. The owner's signature accepts service and also waives notice requirements. In the absence of such a request, you will receive only the service agents return of service and, if service has not been timely, the condemnation will have to be postponed and notices reserved.

It takes more time to make direct personal service out of state than it takes to make personal service in the state. In setting the date for the condemnation hearing, it is necessary to allow for mailing and locating time to be sure that the service will be timely.

An appropriate form for a return of service also serves as an affidavit. (See Figure 4.1, Appendix)

2. Service by Publication on Out of State Owner or Where Residence is Unknown.

Section 6B.12, Notice to nonresidents, of the Iowa Code, states:

"6B.12 Notice to nonresidents.

If the owner of such lands or any person interested therein is a nonresident of this state, or if the person's residence is unknown, no demand for the land for the purposes sought shall be necessary, but the notice aforesaid shall be published in some newspaper of the county and of general circulation therein, once each week for at least four successive weeks prior to the day fixed for the appraisalment, which day shall be at least thirty days after the first publication of the notice."

Procedures for service of notice of publication are found in the Iowa Rules of Civil Procedure. See IRCP, Rule 60, **Service by publication what cases.**

IRCP, Rule 60.1, **Known Defendant**, requires the county to send the condemnation notice by ordinary mail addressed to the owner or interest holder at his or her last known address.

This mailing must be made at least 20 days before the date set for the hearing, and the county shall prove that the mailing was made by affidavit to be filed in the condemnation file as a part of the record of the service by publication.

Where the name, but not the address, of the owner or interest holder is known, no mailing is required, but the county must affirm that a diligent inquiry was made to ascertain the mailing address. This affidavit can be proven by stating that the other owners or interest holders and their attorney's who may know, were asked but did not or would not provide the address to the county. This affidavit should be made by the person preparing and sending the notice or by the County Attorney or authorized representative and should be filed in the condemnation file as part of the record of the service of publication.

The newspaper must also provide the county with proof of publication. The newspaper's proof of publication shall state when and in what papers the notice was published, shall attach a copy of the notice(s) as it appeared in the newspaper and shall be signed by the publisher or an employee of the newspaper. See IRCP, Rule 63, **Proof of Publication**. File the proof of publication in the condemnation file as a part of the record of the service of publication. In addition, the County Condemnation Hearing Agent must also file an affidavit of publication. (See Figure 4.2,

Appendix) This affidavit recites the facts of publication, affirms that personal service can not be made within the State of Iowa upon named condemnees and that an attempt of personal service will be made on named condemnees residing within the state. Actual service of original notice in or out of Iowa, according to IRCP, Rule 56.1, supersedes the need of its publication. See Iowa Rules of Civil Procedure, IRCP, Rule 64, Actual Service.

3. Service on Unknown Owners and Interest Holders.

This circumstance arises when you are trying to identify heirs of a deceased owner or interest holder. It may also occur when you are trying to identify successors in interest to a defunct corporation or partnership.

Service can be made on unknown owners and interest holders by directing service of Notice of Condemnation to unknown claimants of the property involved. See IRCP, Rule 61, **Unknown Defendants**. Service itself shall be made by publication in the same manner as service by publication against known nonresidents or known persons whose address is unknown. Use the same form of affidavit to prove the county made a diligent inquiry to identify the name(s) and address(s) of the unknown owners and interest holders. Use the same form of proof of publication.

C. Service on Corporations:

This section identifies and discusses procedures to obtain service on corporations through Registered Agents, where there is no registered agent, by registered or certified mail with Return Receipt Requested.

Section 490.501, **Registered office and registered agent**, of the Iowa Code, requires corporations to continuously maintain a record of the corporation's registered office and Registered Agent. This information is available by calling the Secretary of State Office.

Where the corporation has a Registered Agent, serve the Notice of Condemnation on the Registered Agent, as authorized by Section 490.504, **Service on Corporation**, subsection (1), of the Iowa Code.

Where the corporation has no Registered Agent or the Registered Agent cannot with reasonable diligence be served, serve the corporation by registered or certified mail with return receipt requested as authorized by Section 490.504, subsection (2), of the Iowa Code. Section 490.504 states:

"490.504 Service on corporation.

1. A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.
2. If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service is perfected under this subsection at the earliest of:
 - a. The date the corporation receives the mail.
 - b. The date shown on the return receipt, if signed on behalf of the corporation.
 - c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.
3. This section does not prescribe the only means, or necessarily the required means, of serving a corporation."

It is possible to serve domestic or foreign corporations by personal service by serving any present or acting or last known officer of the corporation. Corporations may also accept service by the signature of an officer or by the corporations legal council. See Iowa Rules of Civil Procedure, IRCP, Rule 56.1(f).

It is possible to serve foreign corporation by publication. See Iowa Rules of Civil Procedure, IRCP, Rule 60(g).

D. Service on Public Authorities and Fiduciaries.

This section identifies the need for a special inquiry to insure valid service on some public bodies.

Service may be made on a city by serving its mayor or clerk.

Service may be made on a county by serving its auditor or chairperson of the Board of Directors.

Service may be made on a school district, school township or school corporation by serving its president or secretary.

Service may be made upon the state as authorized by statute. See the Code Chapter for the commission or agency. See Iowa Rules of Civil Procedure, IRCP, Rule 56.1, Personal Service subsection (h), city, (i), county, (j), schools and (k), state.

Service may be made on a fiduciary by serving the Fiduciary. See Section 633.81, Suit by and against Fiduciary, of the Iowa Code. Where there is more than one fiduciary, it is sufficient to serve only one fiduciary. See Section 633.81, Fiduciaries considered as one, of the Code of Iowa.

E. Service on Railroads and Utilities.

This section identifies the need to acquire property rights in a manner which will not interfere with railroad operations. Federal condemnation approval procedures are noted. Design and construction of both the county's project and the railroad or utility accommodation work needs to be coordinated.

Railroads and utilities are private corporations that have the right to exercise the power of eminent domain. They may be served Notice of Condemnation in the same manner as any other corporation. The issue with railroads is not usually one of proper service. The issue is usually the process to obtain approval to condemn railroad property on Interstate Railroad Lines. It may be necessary to obtain State or Federal approval to acquire property rights from railroads by condemnation.

If the county needs to acquire property rights from mainline right of way by condemnation, the acquiring authority must demonstrate that the acquisition, and construction will not unduly interfere with interstate rail commerce. The project must be designed to enable the Federal Interstate Commerce Commission to determine what effect the project or crossing will have.

The Federal ICC does not have authority over the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks located or intended to be located entirely in one state. A street, suburban, or interurban electric railway that is not operated as a part of a general system of rail transportation is solely the responsibility of the states. See 49 U.S.C. 10907(b).

States may require a similar approval of a state railroad regulatory authority. Iowa does not require state approval of railroad crossings. See Iowa Code, sections 327G.15-.17.

Utility companies are subject to the jurisdiction and control of both Federal and State regulatory authorities. Depending on the scope and complexity of the utility relocation project, the utility may be required to obtain a permit or approval to cross or relocate their facility or to acquire land by condemnation. See Iowa Code, sections 6B.24-.25, for pipelines, sections 478.6 and .15, for electric transmission lines and sections 477.1-.5, for telegraph and telephone companies.

Successful railroad, utility, and other "publicly" owned property acquisition requires early notice. Railroad and utility improvements must be redesigned to accommodate the new public improvement. It takes time to coordinate relocation of the other public improvements and to accomplish the work necessary to relocate them.

The acquiring authority normally obtains title or control over land owned by another governmental authority by some sort of a joint project agreement. These intergovernmental agreements agree on project design, make provisions for the donation or transfer of title to land from one authority to another and may provide for the acquisition of right of way for all authorities in a single condemnation proceeding. See Iowa Code, Chapter 28E, **Joint Exercises of Governmental Powers**, Section 12, **Contract with other agencies**.

Without special statutory authority, one public authority with the power of eminent domain cannot condemn an exclusive right to property owned and used for a public purpose by another public authority. See Connolly v. Des Moines and Central Iowa Railway co., 69 N.W.2d 320 (Iowa 1955). Railroads and utilities have, or can obtain, condemnation authority, and thus property used for their public purpose is subject to the same rule.

No special statute is needed for the county to acquire the right to jointly occupy railroad property. See C.M.&St.P. Ry. Co. v. Starkweather, 97 Iowa (1896), and Town v. Great Northern R. Co., 179 Iowa 466 (1917). In this context, care should be taken to acquire only easement rights needed by the county, and that the interests of the railroad are protected during construction of the county's project.

Federal and Iowa statutes which grant authority to condemn "public", as well as private, property include:

- 23 U.S.C. 107 Acquisition of Right of Way Interstate System (Railroad ROW)
- 306A.5 Acquisition of Property and property rights for controlled access highways (Iowa - Highway Authorities)
- 403.7 Condemnation of Property - Urban Renewal Law (cities)
- 327G.15-.17 Railroad crossings (Iowa highway authorities)

F. Acceptance of Service and Waiver of Notice:

This section discusses alternative methods to obtain service by the consent of owners or their agents or fiduciaries. Proper use of these procedures can often preserve condemnation proceedings that otherwise may have to be rescheduled.

Any landowner or interest holder can accept service in lieu of being personally served by a Sheriff or service agent. When service is accepted, the landowner thereby waives notice requirements. Acceptance of service can thus validate an untimely or late service and preserve a scheduled condemnation proceeding.

It is good policy to add the following acceptance of service language to all condemnation notices:

ACCEPTANCE OF SERVICE AND WAIVER OF NOTICE

I hereby acknowledge receipt of the notice and by my signature accept service and waive notice.

NAME

TITLE

DATE

Procedurally the Sheriff, or Service Agent, should be instructed to request the person being served sign the acceptance of service, in every case. Where the owner refuses to sign, the Service Agents return of service must be relied upon to prove timely service. Instruct the service agent to complete the return and proof of service in all cases, even when the acceptance of service has been signed. The return of service is necessary to identify the person who signed and who was served.

NOTE - It is possible to obtain an acceptance of service by FAX on the morning scheduled for the condemnation.

The person being served may accept service. Service may also be accepted by the person's attorney. Any person that service can be made upon by statute can accept service.

G. Voluntary Appearance by Owner or Agent.

No service of Notice of Condemnation need be served on persons who voluntarily appear. This principal is incorporated into Section **6B.49, Notice - Service**, of the Iowa Code, which requires notice to all persons not voluntarily appearing.

All that is required is that an owner or interest holder voluntarily appear at the condemnation proceeding and be identified or make himself or herself known. It is not necessary that the person appearing make a presentation or ask or answer questions.

It is necessary for the county's Hearing Agent to prepare a notice to identify the person who did voluntarily appear. This notice should recite the facts of the appearance. (See Figure 4.3, Appendix)

If the person appearing is an agent or attorney or representative (attorney-in-fact) of the owner or interest holder, the hearing agent should identify who is appearing and on whose behalf the appearance is being made. Identify the relationship of the agent. If the Compensation Commission does not invite the person appearing to participate and to make a statement, the county's Hearing Officer should do so.

The sample form of Notice of Personal Appearance of Condemnee provides space to record necessary basic facts and should be signed by the county's Hearing Agent. The Notice of Personal Appearance should be filed in the condemnation file as part of the title record for the property.

H. Serving Amendments to Condemnations:

This section identifies special problems that arise out of the need to revise or amend condemnation documents. Amendments are needed because of changes in design, ambiguities between condemnation documents and to correct errors or omissions. The problems are discussed, and solutions are recommended.

1. Adding and Dismissing Tenants and Other Necessary Parties.

Persons may be added to the list of owners, tenants, lienholders and encumbrancers by making a proper and timely service of Notice of Condemnation on the person(s) to be added. If it is not possible to make timely service, and the person to be added to the proceeding does not accept service and waive notice, the condemnation needs to be postponed, and all Notices of Condemnation must be reserved.

Persons who no longer have an interest in the proceeding may be dismissed at any time. Usually, this is done on the day of, and prior to, the hearing. In such a situation, use a form of dismissal. (See Figure 4.4, Appendix)

There is a potential for having to initiate a separate condemnation proceeding to extinguish the interests of tenants. Before initiating condemnation proceeding, take care to obtain the name, address and telephone number for all agricultural tenants. Talk to the tenant personally. Confirm that he or she is a tenant of the property. Confirm the terms of the lease with the tenant, and ask if there are any other tenant(s) on the property.

It is good policy to join tenants as named condemnees in the same condemnation proceeding filed to acquire property rights from the landowner.

2. Amendments to Correct Scrivener's and Surveyor's Errors and Explain Ambiguities.

Amendments can be filed without notice to correct scrivener's or surveyor's errors and ambiguities between data on the condemnation plat and in the legal description that does not acquire any additional property or property rights.

3. Amendments to Reduce the Acquisition to Correspond with Project Needs.

- Reducing the Acquisition

The county has no obligation to acquire more property or property rights than are necessary to accomplish the public purposes for the project. Amendments that reduce the amount of property or property rights acquired or which reserve rights to the condemnee or which document construction procedure or standards may be filed at any time without notice either before, during or after the condemnation hearing and even as late as at the trial of an appeal in the District Court. See cases cited in Part II, *Condemnation Document Drafting Standards*.

Legal descriptions that inadvertently include more property than owned by the landowner can be revised to reduce the taking or correct the description. Access rights acquired can be reduced to authorize an entrance. Easement rights can be reduced to authorize the construction of only one pipeline. A well can be reserved to the landowner.

Where the reduction is caused by an engineering design revision, the county should provide the owner(s) with a copy of the amendments and where appropriate, make and communicate the terms of a revised offer to the owner and the owner's attorney. A form of stipulation is attached.

- Avoid payment of speculative construction damages.

It is sometimes necessary to stipulate facts to prevent payment of speculative damages.

Construction features in the plans are not normally spelled out in the language of a condemnation application or Notice of Condemnation. When they become a fighting issue at the condemnation, the issue should be resolved by the county's Hearing Agent filing a stipulation. This assures the owner that the project will be constructed as planned. A form of construction stipulation is attached.

- To avoid payment of damages for alleged defects in design.

The argument is often made: "But what if the project doesn't work as designed?" The Iowa Code provides an answer. See Section 6.52, **Renegotiation of damages**. If there is a question about what the project is designed to do, the acquiring authority can stipulate water levels, flooding frequencies, ponding storage, septic tank repair, or other design or construction standards for the project. Damages which exceed the stipulated facts or standards can then become the basis for a future claim to renegotiate damages. Such stipulations, along with the landowner's

clear right to renegotiate damages not apparent at the time of condemnation, should provide the assurances needed to prevent payment of speculative "what if" damages. (See Figure 4.5a-b, Appendix)

- Relocation payments are being offered.

It may be necessary to stipulate that relocation assistance payments are being offered to owners and tenants required to move, or to move personal property from land required as right of way for the project. Section 6.14, **Appraisement - report**, of the Iowa Code, authorizes a separate award for personal property which is damaged or destroyed or reduced in value. When relocation benefits are paid, the compensation commission cannot return a separate award for personal property, and such payments must be made as relocation assistance payments. See Section 316.2, **Effect of acquisition on condemnation**, of the Iowa Code.

The stipulation should state:

"The Compensation Commission shall return no award for damages to personal property damaged or destroyed or reduced in value or for moving costs, and such payments will instead be made as relocation assistance payments as required by Section 316.2, **Effect of acquisition on condemnation**, of the Iowa Code."

4. Amendments That Increase Property or Property Rights Acquired.

Amendments that expand the rights acquired are not effective to change the proceeding until Notice of the Amended Condemnation notice is properly and timely served. If it is not possible to make timely service of notice of the amendment, and the owner(s) and interest holder(s) do not accept service and waive notice, the condemnation needs to be postponed, and the amended Notice of Condemnation must be reserved.

5. Waiving Service of Amendments.

This can be done by mailing of amended notices with acceptance of service without being required to postpone the condemnation hearing. Through the use of FAX, this should be done as late as the day of the hearing by persons who do not intend to appear. Any failure to obtain acceptance of service and waiver of notice of the amended Notice of Condemnation will require the hearing be postponed and all notices to be reserved.

There may be times when acceptance of service is conditioned on an agreement to reschedule the condemnation hearing. Where this is agreeable, the hearing should be rescheduled. Notify the Sheriff immediately, so the Compensation Commission can be resummoned for the new hearing date.

V. PREPARATION
FOR THE
CONDEMNATION
HEARING

COUNTY CONDEMNATION MANUAL

V. Preparation For the Condemnation Hearing:

There are two aspects to preparing for the condemnation hearing. The person who is to represent the county at the hearing needs to coordinate work with the Sheriff to be assured that all normal hearing related forms are available. Another part of this initial preparation is to anticipate what needs to be done to obtain and file proofs of service when the Sheriff is not the Service Agent. Second, special instructions to the Commission need to be prepared to deal with value or damage issues that need to be considered, or claims you anticipate will be raised at the hearing.

Part V, *Preparation for the Condemnation Hearing*, functions as a check list. It is intended to assist the Sheriff who is responsible to convene the Commission, the Hearing Officer for the county and also Compensation Commissioners. This part contains procedural suggestions and illustrations that can be used as drafting guides to prepare non-standard hearing related forms. Recommendations are made on how to resolve recurring legal and fairness issues and how to respond to property owner procedural demands.

V. A. Forms Needed the Day of the Hearing.

This section identifies routine forms that must be available for the hearing, whether they are furnished by the Sheriff or the Hearing Officer. There are also forms that can only be provided by the hearing officer including the statutory final offer, IRS forms and exhibits documenting the county's estimate of just compensation.

1. Forms to Replace Compensation Commissioner.

Be prepared to assist the Sheriff by furnishing blank forms needed to replace commissioners who at the last minute are unable to serve.

There may not be time to mail an alternate Commissioner a Summons to the Commissioners. The Sheriff may call alternate(s) and obtain their verbal acceptance. The Sheriff should inform the alternate who the land owner, tenant and interest holders are and where the real property is located, and ask if he or she has any interest in the proceeding which would cause the person to render a biased decision. The replacement Commissioner will then sign the acceptance on the Summons to Commissioners before the Compensation Commission convenes.

Have a blank for Order Confirming Appointment of Substitute Compensation Commissioner. The Sheriff may need to FAX the form to the Chief Judge so the Judge can fill the vacancy where alternate Compensation Commissioners are not able to serve. The Sheriff will contact the Chief Judge and request appointment of a substitute Commissioner. It may be necessary for the Sheriff to canvas remaining appropriately qualified persons on the county's list of persons selected to serve to determine who is available to serve.

The Oath of Commissioners should be completed and brought to the hearing so that it can be signed by the Commissioners.

A separate blank form, Oath of Commissioners, may be useful if there is a need to make extensive changes on the pre-prepared form of oath. (See Figure 5.1a-b, Appendix)

2. Instructions of the Chief Judge:

The Sheriff will provide 7 copies of the Instructions to Compensation Commissioners from the Iowa Chief Judge to be read after the commissioners take their oath. (See Figure 5.2a-b, Appendix) The current instructions are filed March 24, 1992 with the Clerk of the

Supreme Court.

3. Special Instructions to Commissioners.

These are times when specialized instructions to commissioners are necessary. The county's Condemnation Hearing Agent must anticipate the need for special instructions.

a. Personal Property Without Relocation Assistance.

Section **6B.14, Appraisalment - report**, of the Iowa Code provides for an allowance for personal property which is damaged or reduced in value and for payment of the reasonable cost of moving personal property up to \$500.00. The Instructions of the Chief Justice specifically mentions that these personal property claims can be paid. These personal property provisions of 6B.14 and the Instructions of the Chief Justice apply only to projects which do not provide relocation assistance. Section **316.2, Effect on acquisition and condemnation**, subsection (2), specifically forbids compensation commissioners from considering or making any award for these personal property claims where relocation assistance is being offered.

b. Personal Property With Relocation Assistance.

Where relocation assistance is being provided and personal property is involved, the county's Condemnation Hearing Agent should instruct the Compensation Commission not to make allowances for moving personal property where the actual cost of moving such personal property will be paid through relocation assistance. Similarly, personal property which is damaged or destroyed or reduced in value will be compensated for by relocation assistance where relocation assistance is provided, and the commissioners should be instructed not to make any allowance for such damage. This is true, even though the Instruction of the Chief Justice instructs the commissioners that an allowance can be made for such personal property claims. Pass out copies of Section **316.2, Effect on acquisition and condemnation**, subsection (2). This should be done right after the reading of the Instructions of the Chief Justice.

c. Moving Buildings.

Claims for payment of the cost to move buildings can create a

need for a special instruction. Section **6B.44, Taking property for highway - buildings and fences moved**, of the Iowa Code, enables Compensation Commissioners to pay costs incurred by the owner to move buildings to remaining adjacent property.

If the owner has moved a building and there is a dispute over the cost of doing it, it will be the responsibility of the Compensation Commission to determine what the fair and reasonable cost to move the building is.

If the county intends to acquire the building, the Compensation Commission should be instructed that it is the county's policy to acquire the building unless otherwise reserved in the notice.

It may be necessary to provide an additional explanation on what the county did to provide the owner an opportunity to move buildings.

d. Moving Fence.

The landowner is entitled to the actual cost to replace or move fence. If the owner insists on the right to move fence, the county should give the owner the right to do so and then pay the owner for receipted bills. If this is done, the Compensation Commission needs to be instructed NOT to consider fence in assessing damages. Otherwise, fence is an item to be considered by the Compensation Commission in assessing damages. The county can also remove fence from the assessment problem by having the fence replaced by the county as part of the construction project.

e. Value Evidence.

Consideration should be given to provide instructions to explain and support the value evidence of the acquiring authority. Consideration should be given to furnishing cost estimates for damage as value evidence to support the offer.

Other special claims can be anticipated and countered by special instructions. It is often wise to wait until the issue arises, if it does, to distribute this type of special instruction. Have enough copies to be able to provide the special instruction to the Compensation Commissioners and also to the landowner and, if represented by legal counsel, to the owner's attorney.

4. County's Affidavit of Final Offer.

The county is responsible to file an Affidavit of Final Offer. (See Figure 5.3, Appendix) Also, see Section **6B.33, Costs and attorneys fees**, of the Iowa Code.

The Sheriff's instructions direct the Sheriff not to disclose the "Affidavit of Final Offer" to the Compensation Commission until after the Commission has returned its award. At the same time, it is good practice to furnish the Compensation Commission with a copy of the appraisal, a written breakdown of the appraisal, or a written statement summarizing the county's offer. The purpose for furnishing this information in writing is so there can be no confusion concerning what the county is offering to pay as just compensation. Care should be taken not to call or identify any written "Summary of the county's offer" as a "Final Offer".

If the condemnation award exceeds the acquiring authority's final offer by 110%, the Compensation Commission is required to reconvene and consider payment of attorney fees. It is accepted practice that the landowner's attorney may file a request for attorney fees with the Sheriff. There is no statutory requirement that attorneys must file a written request for attorney fees, and the Compensation Commission may consider oral requests to do so.

As a general policy, all offers should be written, signed and dated.

The "Final Offer" requirements of Section **6B.33, Costs and attorney fees**, of the Iowa Code, serves the same function as an offer to confess judgment in a district court appeal.

In order to comply with Section **6B.33, Affidavit of Final Offer** requirements, the county must set forth the "most recent offer" made to the person whose property is sought. The "Final Offer" will be the same as the "Appraised Offer" made during negotiations unless an offer has been made to administratively settle the parcel at a higher amount. Use the higher amount of the offered administrative settlement as the amount of the "Final Offer" if the administrative settlement offer is still available. If the administrative settlement offer has been withdrawn or is no longer available, a revised offer should be made to reflect the changed and reduced offer.

Offers of construction or design concessions may have an effect on the "Final Offer". Consider the cost to provide offered construction or design concessions. Consider what impact failure to provide them will

have on the property. Consider if failure to provide them will create the appearance of arbitrary rather than good faith negotiations.

Settlement negotiations that may take place on the day of the hearing have nothing to do with complying with Affidavit of Final Offer requirements. ~~The terms of hearing date oral negotiations, including any proposed increase in the offer, are all contingent upon immediate settlement and will either result in a settlement or not.~~ If hearing date negotiations do not settle the condemnation, the county's final offer remains the amount of your unconditional written, most recent offer.

5. Requests for Separate Awards.

Landlords and tenants own separate interests in the real property. The acquiring authority has the right to proceed to acquire both the interest of the landlord and the interest of the tenant in one consolidated condemnation proceeding.

Section 6B.14, Appraisalment - report, of the Iowa Code, makes some provisions for dividing damages and for separate awards:

"6B.14 Appraisalment - report.

The commissioners shall, at the time fixed in the aforesaid notices, view the land sought to be condemned and assess the damages which the owner will sustain by reason of the appropriation; and they shall file their written report with the Sheriff. At the request of the condemnor or the condemnee, the commission shall divide the damages into parts to indicate the value of any dwelling, the value of the land and improvements other than a dwelling, and the value of any additional damages. The appraisalment and return may be in parcels larger than forty acres belonging to one person and lying in one tract, unless the agent or attorney of the applicant, or the commissioners, have actual knowledge that the tract does not belong wholly to the person in whose name it appears of record; and in case of such knowledge, the appraisalment shall be made of the different portions as they are known to be owned.

In assessing the damages the owner or tenant will sustain, the commissioners shall consider and make allowance for personal property which is damaged or destroyed or reduced in value.

In addition to all other damages provided by law, except moving expenses paid or required to be paid under relocation assistance programs, an owner or tenant occupying land which is proposed to be acquired by condemnation shall be awarded a sum sufficient to remove such owner's or tenant's personal property from the land to be acquired, which sum shall represent reasonable costs of moving said personal property from the said land to be acquired to a point no greater than twenty-five miles therefrom; but in any event, said damages for

moving shall not exceed five hundred dollars for each owner or tenant occupying land so proposed to be condemned."

This statute authorizes either the acquiring authority (condemnor) or the landowner or tenant (condemnee) to request a division of damages. The Commission has a positive duty to make separate appraisements for ... The different portions as they are known to be owned ..." It is this portion of the statute that empowers, but does not require, the compensation commission to return a separate award for easement holders or encumbrancers or tenants.

Iowa case law also authorizes the Compensation Commission to return separate awards. The reference to "owner or tenant" in the second and third paragraphs recognizes that both have a right to an award.

The appraiser may not have been provided sufficient information by the landowner or tenant to determine the terms of the lease, and who owns what. Where this is the case, the appraisal of the tenant's interest or the appraiser's allocation of damages to the tenant should be explained as based on normal market rates and terms. A joint award should be requested. Where both the landlord and tenant claim ownership of the same property, only one is entitled to be paid for it, unless they both have an ownership interest in it. The appraisal should be reviewed so offers can be adjusted to pay the real owner. The ownership assumptions of the appraiser may need to be revised. Where it appears that the "who owns what" exercise is designed to create confusion rather than to justify compensation, the county can make a strong argument that the Compensation Commission should return one award instead of separate awards as requested by the landlord or the tenant. The Compensation Commission has no duty to straighten out ownership disputes. There is no statute clearly requiring the Compensation Commission to return separate awards to landlords and tenants. In the absence of being mandated to return separate awards to landlords and tenants, Compensation Commissions have discretion in determining when to do or not to do so.

Where a request for a separate award should be difficult to resist, there is an agreement between the landlord and tenant on the question of who owns what or on the terms of the lease, and this information has been fully provided to the acquiring authority's appraiser. Where there has been a full disclosure and agreement, the Compensation Commission should honor a request for separate awards. (See Figure 5.4, Appendix)

In the absence of such an agreement, the Compensation Commission has

no authority to make a final determination on what rights and property is owned by the landlord and which by the tenant, and should return a single award instead of separate awards.

6. Report of Compensation Commission.

The form of Report of the Compensation Commission must comply with the requirements of **6B.14, Appraisalment - report**, of the Iowa Code. Section 6B.14 states:

"6B.14 Appraisalment - report.

The commissioners shall, at the time fixed in the aforesaid notices, view the land sought to be condemned and assess the damages which the owner will sustain by reason of the appropriation; and they shall file their written report with the sheriff. At the request of the condemnor or the condemnee, the commission shall divide the damages into parts to indicate the value of any dwelling, the value of the land and improvements other than a dwelling, and the value of any additional damages. The appraisalment and return may be in parcels larger than forty acres belonging to one person and lying in one tract, unless the agent or attorney of the applicant, or the commissioners, have actual knowledge that the tract does not belong wholly to the person in whose name it appears of record; and in case of such knowledge, the appraisalment shall be made of the different portions as they are known to be owned.

In assessing the damages the owner or tenant will sustain, the commissioners shall consider and make allowance for personal property which is damaged or destroyed or reduced in value.

In addition to all other damages provided by law, except moving expenses paid or required to be paid under relocation assistance programs, an owner or tenant occupying land which is proposed to be acquired by condemnation shall be awarded a sum sufficient to remove such owner's or tenant's personal property from the land to be acquired, which sum shall represent reasonable costs of moving said personal property from the said land to be acquired to a point no greater than twenty-five miles therefrom; but in any event, said damages for moving shall not exceed five hundred dollars for each owner or tenant occupying land so proposed to be condemned."

There are two forms of the Report of Compensation Commission. (See Figure 5.5a-c, Appendix) The county's Condemnation Hearing Agent needs to select and prepare the appropriate form.

The first report form can be best used where there are few condemnees and no dispute over separate awards. It works best when there are no tenants. The first report form facilitates a land and consequential damage breakdown for income tax purposes. The first report form also

accommodates the three part division of the award authorized by Section 6B.18, of the Iowa Code.

The second report form facilitates separation of awards by specifically identifying all condemnees. Compensation Commissioners can use the second report form to make separate awards to separate interest holders. It is also the form to use when condemning for title purposes. The commission may honor a request to make the award only to real parties in interest, as opposed to the unknown heirs of a decedent person or the like.

If you are using the second form of report, and a party also requests the compensation commission to provide the division of the award authorized by Section **6B.14, Appraisalment - report**, the county's Condemnation Agent will have to modify the form to show the three-part division. Use the format shown on the first form of Report of Compensation Commission.

7. Notice of Appraisalment of Damages and Time for Appeal.

The Sheriff is responsible to notify all parties to the condemnation that the compensation commission's appraisalment of damages and of the time limitation on their right to appeal. Section **6B.18, Notice of appraisalment - appeal of award**, of the Iowa Code, states:

"6B.18 Notice of appraisalment - appeal of award.

After the appraisalment of damages has been delivered to the sheriff by the compensation commission, the sheriff shall give written notice, by ordinary mail, to the condemnor and the condemnee of the date on which the appraisalment of damages was made, the amount of the appraisalment, and that any interested party may, within thirty days from the date of mailing the notice of the appraisalment of damages, appeal to the district court. The sheriff shall endorse the date of mailing of notice upon the original appraisalment of damages. At the time of appeal, the appellant shall give written notice that the appeal has been taken to the adverse party, or the adverse party's agent or attorney, lienholders, and the sheriff."

There are also two forms of Notice of Appraisalment of Damages and Time for Appeal. (See Figure 5.6a-d, Appendix) The Sheriff should use the form with the information and format that corresponds with form of Report of Compensation Commission used by the Commissioners. If you use the second form, which is designed to facilitate separate awards, it will be necessary for the Sheriff to modify the form to show any three part division of the award made by the Commissioners. Use the format

shown on the first form of Notice of Appraisal of damages and time for appeal.

8. IRS Report and Filing Requirements.

The county is a person responsible to implement the Internal Revenue Services IRS 1099 reporting requirements for all land acquired. The county is a closing agent responsible to report 1099 form information both to the IRS and to the landowners.

There are two reportings required; The information return (Form 1099-S) to the IRS and a statement to each landowner (transferor) of this information supplied to the IRS. The form 1099-S must be filed for each landowner (transferor) on magnetic media to the IRS on or before February 28 of the calendar year, following the completion of the transaction. The statement to each landowner (transferor) will be satisfied by furnishing them a paper copy of the form 1099-S before February 1 of the following calendar year.

The county is required to request landowner(s) to complete IRS W-9's to identify individual landowners by their Social Security Number and other landowners by their Taxpayer Identification (ID) Number. W-9 forms should be requested on all tracts. The county should furnish the landowner with Form W-9 and identify the county, Parcel Number and Project Number at the top of the form and a general location for the property either the address or Section, Township, Range or Lot Number and Block and Subdivision Name.

As procedural guidelines IRS form W-9's are not required when the total acquisition price is less than \$600.00. Ask for a W-9 in all cases, since the award of the Compensation Commission may be \$600.00 or more.

A W-9 is not required from sign owners, mortgagees, lienholders, tenants, easement holders or judgement holders. If the transaction involves a purchaser under contract, you will not need a W-9 from the owner of record, only the contract buyer.

When there is more than one transferor, landowners are required to furnish a breakdown of the proceeds to verify what portion of the proceeds go to each landowner. Landowners should be advised that failure to furnish a breakdown of proceeds statement will result in the gross amount of the purchase price or condemnation award being credited to all parties involved. A husband and wife are considered to be one transferor for the purpose, regardless of how they own it.

Where landowners have not been furnished and requested to complete and return a IRS form W-9 in the negotiations process, make the request in writing in the condemnation process. Where appropriate, include a breakdown of proceeds statement, and request that it be completed and returned to the county.

Where land must be acquired by condemnation, landowners may refuse to complete a IRS W-9 form and may refuse any breakdown of proceeds statement prior to the condemnation hearing.

Where the landowner refuses to respond to a written request to sign a W-9 or to furnish an allocation of proceeds statement, prior to the hearing, a second attempt should be made through the condemnation process. Furnish the sheriff an appropriate, partially completed form W-9 and allocation of proceeds statement. Request the sheriff include a cover letter and the forms as a part of the sheriff's mailing of the Notice of Appraisal of Damage and time for appeal. a form of instruction letter to sheriff is attached. This will provide the county with two written requests for this information.

The County Attorney may need this factual support to defend the county against fines and assessments being enforced against the county by the IRS. See Internal Revenue Service 1994 Instructions for Forms 1099, 1098, 5498 and W-2G, Cat. No. 11409F, for additional guidance on compiling with IRS reporting requirements.

The involuntary nature of a condemnation procedure should provide a realistic explanation and defense against IRS Assessments where the county has a system to request and report this information, and the system was followed. As a matter of information, the Iowa Department of Transportation has had to respond to an IRS Assessment. The Department of Transportation has correspondence and information that may assist the County Attorney.

Sample forms can be found in the Appendix, and include:

- IRS reporting form 1099-S with instructions for Copy B and Copy C. (Figure 5.7a-b)
- IRS W-9 partially completed. (Figure 5.8a-b)
- Allocation of proceeds Statement. (Figure 5.9)
- Short instruction requesting landowners to sign and return these forms to the County. (Figure 5.10)
- Sample letter to Sheriff requesting the Sheriff to send IRS forms to landowner(s). (Figure 5.11)

9. Sheriff's Certification of Awards and Costs.

The statutory function of the form, Sheriff's Certification of Awards and Costs, is to bill the applicant for the costs of the assessment, which include the Sheriff's cost to serve notices and to summons the Compensation Commissioners and to pay the Compensation Commissioner's costs as required by Section 6B.33, **Costs and Attorney fees**, of the Iowa Code. It serves the additional purpose of summarizing all the costs of the condemnation by including the award(s) made to land owners and interest holders and also for condemnee attorney fees. (See Figure 5.12a-c, Appendix)

The record of the award of the Compensation Commission should be included on the form, Sheriff's Certification of Awards and Costs. This information should be taken directly from the completed original form Report of Compensation Commission.

Condemnee attorney fees, if awarded, are also costs to be paid under Section 6B.33, and are billed to the condemnor through the Sheriff's Certification of Awards and Costs.

The Sheriff will identify the Sheriff's fees for the service of notices of condemnation and for summoning and attending to Compensation Commissioners. Use the breakdown shown on the form, Sheriff's Certification of Awards and Costs.

Each Commissioner will bill for his or her costs on a signed form, Condemnation Commissioners Statement. This statement pays each commissioner \$50.00 per day as a statutory fee and actual and necessary expenses incurred in the performance of their official duties.

Individual Commissioner costs are summarized by the Sheriff on form, Commissioner's Cost Itemization. The Sheriff will total the \$50.00 per day per Commissioner service fees and mileage and meal costs of all Commissioners on the Sheriff Certification of Awards and Costs, and attach a copy of the Commissioner's Cost Itemization as supporting detail.

B. Sheriff's Precondemnation Hearing Procedures.

This section focuses on providing hearing related procedural forms and records. It contains recommendations on service and records of service of notice, obtaining replacement Commissioners and Sheriff's Condemnation Hearing instructions.

1. Providing Hearing Related Condemnation Forms.

Some, but not all, acquiring authorities provide all forms and instructions needed by the Sheriff to perform the Sheriff's duties. The Iowa Department of Transportation will furnish all forms, along with instructions. Many cities, public utilities and the county may need the assistance of the Sheriff and may request the Sheriff to supply the necessary forms. The Sheriff should not prepare the application for condemnation nor the notice of condemnation forms for the applicant. Other hearing related forms may be prepared by the applicant, or the Sheriff may furnish and use the form. The Sheriff may use the forms contained in this condemnation manual.

The following forms should be prepared in advance and available the day of the hearing:

- A manilla folder for each parcel. Title the folder using State or County or City of _____ or Public Utility Name vs. the first property owner on each parcel. It may be helpful to list the Compensation Commissioner's names, addresses and category of their qualification on the inside front cover.
- Instructions to Compensation Commissioners from the Iowa Chief Justice. (7 copies)
- Oath of Commissioners
- Sheriff's Certification of Awards and Costs. (2 copies)
- Condemnation Commissioner's Statement. (6 copies)
- Report of Compensation Commission. (2 copies)

Figure 5.13a-d, found in the Appendix, is a procedural letter which identifies all of the documents that make up the condemnation parcel file and provides the Sheriff with procedural guidance and instructions. The Sheriff can use this same letter as a check list or assistance to help assure proper completion of the condemnation proceeding.

2. Sheriff Obtaining Alternate or Replacement Commissioners.

The Sheriff is the person primarily responsible to work directly with the Chief Judge. The Chief Judge of the judicial district in which the land

sought to be condemned is located, will have drawn by lot, the names of six commissioners from a list of not less than 28 residents to serve as Compensation Commissioners appointed by the Board of Supervisors.

This list is divided into four categories:

1. Owner - operators of agricultural property
 2. Owners of City property
 3. Licensed real estate sales persons or brokers
 4. Persons knowledgeable of property values by virtue of their occupation
- One of six is designated by the Chief Judge as the Chairman of the Commission. In addition, the Chief Judge usually names one or as many as 3 alternate commissioners in each category.

Mail two copies of the summons to each Commissioner. The summons will notify each Commissioner of their selection and of the day and hour that they will be required to proceed with the appraisalment.

The Commissioner is to sign and return one copy of the summons for your records prior to the hearing, stating acceptance to serve or explaining that he or she cannot attend on that date. If you should receive a negative response, it is the Sheriff's responsibility to immediately send a summons to the next alternate in the same category.

The form of summons to Commissioners also requests that the person summoned determine if they possess any interest in the proceeding which would cause such person to render a biased decision. Those persons who state that they do have such an interest also need to be replaced.

IMPORTANT: If for a particular reason, neither the Commissioner or the alternate can attend, it is imperative that the Sheriff immediately contact the condemnor or their attorney and advise them of the situation. It will be necessary for the Sheriff to contact the Chief Judge and request the Chief Judge to appoint another person to fill the vacancy from the county's list of 28 residents appointed to serve as Compensation Commissioners. See Section 6B.5, **Vacancies**, of the Iowa Code. An appointment to fill a vacancy can be made on a form, Order Confirming Appointment of Substitute Commissioners. On the instruction of the Chief Judge, the sheriff should prepare the order filling the vacancy, and send or FAX it to the Chief Judge so the Judge can sign the order and send it or FAX it to the Sheriff.

Should time be too short to mail a summons to the alternate, or person appointed to fill a vacancy, and obtain his/her acceptance, it will be necessary for the Sheriff to call the replacement Commissioner by phone,

and then have the Commissioner sign the acceptance before the Commission convenes.

If the list of 28 residents is not current or all persons in a necessary category are unable to or refuse to serve, it may be necessary to request the Board of Supervisors to update or to supplement the list so the Chief Judge will be able to select the required six Compensation Commissioners.

The Sheriff should keep the county informed of the need to select alternate Commissioners or to appoint a Commissioner(s) to fill a vacancy. The county may be able to furnish the Sheriff with forms or assistance. Care should be taken, however, to assure that the Sheriff and the Chief Judge locate and contact prospective Commissioners. The county should have no direct communication with Commissioners and should not participate in the selection process.

This does not mean that the county can not raise questions about Commissioners who have been selected or agreed to serve but who appear to have an interest in the proceeding. The facts of these circumstances and questions should be communicated to the Chief Judge by the Sheriff. The Sheriff may recommend that the Chief Judge authorize the Sheriff summons an alternate Commissioner. The Sheriff should do so only after obtaining the consent of the Chief Judge.

If there is not sufficient time to replace a Commissioner who appears to have an interest in the proceeding, the Sheriff should notify the county so the county can consider whether to cancel the hearing or proceeding with the existing Commission.

3. Maintain a Record of Service of Notice and Returns of Service.

The Sheriff shall maintain a Record of Service and Return of Service made on condemnees in the condemnation file. The Sheriff should mark on the notice the date notices were filed in the office of the Sheriff. See Section 6B.11, **Filing of notices and returns of service**, of the Iowa Code.

Acceptances of services, appearances, and statements documenting personal appearances, appearances by attorneys, or appearances by attorneys, in fact, shall all be filed with the Sheriff. If the attorney for the county has received returns of service from out of state Sheriffs or Service Agents or from other counties, he or she should give them to the Sheriff to be placed in the condemnation file with all of the other returns,

to document completion of service on all persons having an interest in the property.

It is the acquiring authority (county), and not the Sheriff, who is responsible to give proper notice to all condemnees whether by personal service or by publication or otherwise.

When the Sheriff is requested to serve notices of condemnation, the Sheriff should confirm when, or by what date, the notice must be served. If this information is not contained in the request to serve the notice, ask and note the response. Do not assume you know when it must be served.

Note: It is possible to meet service requirements, even with a late service, if the condemnee signs an acceptance of service and waives notice. This acceptance of service form should be a part of all Notices of Condemnation, even where there is no present plan or known need to use it. When the acceptance of service is signed the Sheriff's return of service documents the acceptance, and service is valid. It is a good practice to request the owner sign and accept service in all cases. An extra signature does not hurt anything, and timely service is valid without the owner's signature accepting service.

Serve each listed condemnee with a complete notice. It is a good practice for the Sheriff to time stamp the notices when they are received. Insert the time and date the property will be viewed if the attorney has not already done so.

Serve all notices as directed by the attorney, and prepare the returns of service. The Notices of Condemnation are served on the condemnees in the same manner as an original notice, and the fees are the same.

The Sheriff will not have to send a statement for the Sheriff's service fees, as they will be included in the final Sheriff's Certification of Awards and Costs.

Attach the returns of service to the original Notice of Condemnation, and file the whole notice in the folder containing the other condemnation materials.

4. Sheriff's Condemnation Hearing Instructions.

a. Prior to Hearing.

Make arrangements beforehand to secure a room for the

condemnation hearing to be held. It is also a good policy to notify the Commissioners the day before the hearing to remind them of the time to be at the Courthouse.

b. Day of the Hearing.

1. Take the following papers to the room where the hearing will be held (required documents):
The "Oath of Commissioners"
Seven "Instructions to Compensation Commissioners from Iowa Chief Justice"
Six "Compensation Commissioner Statements"
Two "Reports of Compensation Commission"

A Notary Public should be present when the Commissioners take their oath.

2. Administering the Oath and Reading Chief Judge's Instructions:

When the Commissioners have assembled and the attorneys for both sides are present, the instructions to Compensation Commissioners from Iowa Chief Justice are read verbatim from the forms prepared and signed by the Chief Justice of the Supreme Court of Iowa. Then, the Oath of Commissioners is taken by having the Commissioners raise their right hands and repeating the oath, or the Sheriff or Deputy may read the oath aloud. A Notary Public should be present to witness the taking of the oath and signatures of the Commissioners. Each Commissioner is given a sheet of the instructions for his or her own use. Place the signed "Oath of Commissioners" in the Sheriff's file folder.

These instructions of the Chief Justice are a general overview of matters that should be considered by the Compensation Commissioners. They are designed to implement **Section 6B.14, Appraisement - report**, of the Iowa Code. The instructions assume that no relocation assistance is being provided. Where relocation assistance is provided, **Section 316.2, Effect on acquisition and condemnation**, subsection (2), of the Iowa Code, specifically forbids compensation commissions from making any award or allowance for personal property as

would otherwise be authorized by Section 6B.14. If relocation assistance is provided and personal property is involved, the county's Condemnation Hearing Officer should instruct the Commissioners not to make allowance for personal property damaged or destroyed, as referred to in Judicial instruction 3, as payment for such damages will be made as a relocation assistance payment; and not to make any allowance for moving personal property, as referred to in Judicial instruction 4, as the actual costs of moving personal property shall be paid as a relocation assistance payment.

If any of the acquisitions involve purchasing buildings, the county should make special reference to Judicial instruction 3 (pertaining to removing buildings onto abutting land of the property owner) and inform the commissioners how the county has implemented Section **6B.44, Taking property for highways - buildings and fences moved.**

3. Viewing the Property:

After the oath has been taken, the condemnor then explains the purpose of the condemnation and describes, in detail, the property that will be condemned. This must be kept short in order for the Commissioners to view the property at the time given on the notices. The six Commissioners are then transported to the condemnation site. The Sheriff will need two vehicles, unless there is a van. Do not allow the attorneys for either side to ride with the Commissioners. The designated Chairman of the Commission presides from this time on, and all Commissioners are urged to ask questions pertaining to the property that is being condemned. The owners are usually present to point out pertinent facts. When the Commissioners have satisfied themselves in seeing all of the property to be condemned, they are then transported back to the Courthouse and the hearing room.

4. Reconvening at the Courthouse:

After the property has been viewed, the Commissioners are returned to the hearing room at the Courthouse. Both the county and the condemnee, or the condemnee's attorney, present their facts. Appraisers are usually present to explain how they reached the value of the property they

appraised. When the hearing is complete, the Commissioners are then left in the room by themselves to deliberate. The Sheriff or Deputy must see that they are not interrupted by anyone. At this time, the county's condemnation Hearing Officer gives the "Affidavit of Final Offer" to the Sheriff (in writing), which states what the last offer was before the hearing. Do not advise the Commissioners what the county's final offer was. The Sheriff retains the Affidavit of Final Offer and, when the Commissioners have determined an award, if the award exceeds 110% of the final offer and the condemnee is represented by an attorney, the Commissioners shall then go into seclusion again and may set a reasonable amount for condemnee's attorney fees. Occasionally, the condemnee's attorney will give to the Sheriff a request for or a statement of fees. This request or statement can be given to the Commissioners to help in establishing what they feel is a reasonable amount for condemnee's attorney fees.

Although attorney fees are requested, the Commission is not required to award attorney fees and may decline to do so where the Commission feels that the condemnee has not been represented sufficiently.

5. Report of the Commissioners:

Both copies of the Report of the Compensation Commissioners are to be completed by the Commissioners. The Chairman fills out the amounts, then each Commissioner signs his name. This report form is completed by the Sheriff or Deputy by endorsing the date of mailing of the Notice of Appraisement of Damages and Time for Appeal to all condemnees by regular mail. The Sheriff keeps the first original in the Sheriff's file folder and sends the second original to the county.

The Notice of Appraisement of Damages and Time for Appeal must be mailed to ALL interested parties, showing that they may, within thirty (30) days from the date of mailing, appeal to the District Court. Attach a copy of the Report of Compensation Commissioners to this notice if the form of notice does not report the awards made for the property rights acquired and condemnee attorney fees

awarded.

The Commissioners will complete and sign their cost statements and give them to the Sheriff.

6. Return of Information and Dismissal of Commission:

The Sheriff shall gather appraisal(s), engineering drawing, plans and other information that the county left with the compensation commission to aid the commission in its deliberation so that all such information can be returned to the county.

The Sheriff then dismisses the Commissioners.

C. Procedure Instructions to the Commission:

This section identifies recurring issues that the hearing officer needs to respond to. Requests for separate awards or allocation of the award between owners and interest holders can be anticipated. Claims for payment for noncompensable damages are frequent and need to be responded to. This section contains recommendations on how to amend condemnation proceedings to correct ambiguities, to document construction procedures and to reduce or otherwise clarify the taking.

1. Requests for Separate Awards

Section **6B.14, Appraisement-Report**, of the Iowa code, states:

"... at the request of the condemnor or the condemnee, the commission shall divide the damages into parts to indicate the value of any dwelling, the value of the land and improvements other than the dwelling and the value of any additional damages ..."

This language authorizes the Commission to break down or allocate a single award into their three identified parts. It does not require the Commissioners to make separate awards to separate persons or interest holders.

Section 6B.14 goes on to state:

"... the appraisement and return may be in parcels larger than forty acres belonging to one person and lying in one tract, unless the agent or attorney of the applicant, or the commissioners, have actual knowledge that the tract does not belong wholly to the person in whose name it appears of record; and in case of such knowledge, the appraisement shall be made of the different proportion as they are known to be owned ..."

It is the responsibility of the agent or attorney for the county/applicant to request the Commissioners to return awards to be made (of the different portions as they are known to be owned) to the persons who own them.

This responsibility is performed by the county in part by determining ownerships by searching title records or obtaining title reports, by observing use of land needed for the projects and by defining the Eminent Domain parcel as an assembled economic unit. Separate award should not be made between a husband and a wife, nor between a contract buyer and seller nor to a fractional interest holder nor to a life estate holder and persons holding remainder interests in property.

Mineral interest holders are entitled to a separate award where they hold a separate ownership interest in the minerals, and their interest is affected by the acquisition.

Iowa case law has always recognized tenants as persons who have an interest which is entitled to an award separate from that of the land owner. Similarly, if there are two tenants but they are on separate parts of the the farm, or property, each tenant is entitled to be compensated for his separate interest.

The county has the right to acquire both the landowner's and all tenant interests in a property in a single, or the same, condemnation proceeding. Based on the county's understanding of the tenants interest, the county will make a separate offer to acquire the tenant interest and will also ask the Compensation Commission to return a separate award for the acquisition of the tenant interest.

When it is not possible to determine what the tenants interest is, there is no basis to have the tenant's interest separately considered or appraised. In the absence of an agreement between the landlord and the tenant on what the tenant owns or what the tenants interest is, there is no basis to make separate awards, and Compensation Commissions should be requested to return a single award in the name of both the landlord and the tenant.

2. Title Related Award Recommendations

There are times when remote or contingent or speculative or unknown persons (eg. the unknown heirs of an interest holder) are named as condemnees to enable the county to obtain good title to the property rights needed. This may occur even when the person whoso has a deed to the property, and is the real person in interest, has agreed to the terms of a sale to the county.

In such cases, either the landowner or the county could request the Compensation Commission return an award only to the name of the real party in interest. **Section 6B.14, Appraisement-Report of the Iowa Code**, empowers the compensation commission to honor such title related award requests.

3. Using Report of Compensation Commission to Make Awards.

Forms of Report of Compensation Commission are designed to assist the Commission. The forms will break down or allocate a single award into

the statutory parts required by Section **6b.14, Appraisement-Report**, of the Iowa Code. They will also facilitate a more appropriate break down for Internal Revenue Purpose between land and improvements and consequential damages.

These same forms facilitate making separate awards for the owner and tenant and mineral interest holder, or for excluding theoretical contingent or unknown interest holders from sharing in any award.

4. Explaining What Is and What Is Not Compensable.

This must be done on a case by case basis and, as necessary, to preserve fairness in the condemnation proceeding. Otherwise, the condemnation proceeding is not the place to make this kind of an explanation as part of a presentation. When necessary, this kind of instruction should be a clearly stated, single page handout. Do not create a problem by giving such an instruction in advance of a claim being made.

5. Legal Questions Resolved by Others.

The Compensation Commission's responsibility is to assess damages. The Commissioners are not responsible to resolve legal questions. There are times when the county may be accused of some form of failure to comply with the law, or of abusing powers entrusted to them, or it may be claimed that the county lacks the authority to acquire the property for the purpose intended. None of these questions are relevant to the Commissioners responsibility to determine just compensation. All such questions will be resolved in the District Court, which is the proper forum for their resolution.

There are times when such issues can be simply refuted by a copy of a code section or an opinion of the Iowa Supreme Court that refutes the claim.

Where rebuttal information exists, submit it to the commission, and request that they proceed to accomplish their purpose of assessing damages.

6. Owners Right to Renegotiate Damages Not Apparent at Condemnation.

Landowners have 5 years to renegotiate construction or maintenance damages not apparent at the time of the condemnation. See Section **6B.52, Renegotiation of Damages**, of the Iowa Code. This is the best response to claims that the project will not work as it was designed to

work or other "what if" claims. Provide the Compensation Commission with a copy of Section 6B. 52 as a supplemental instruction.

7. Reducing Property Acquired to What is Intended or Needed For the Project

The county is not required to take more property, or more property rights, than what is needed for the project. Where claims are made that a legal description is over-broad, or that an entrance has been taken that was not intended to be taken, the county can reduce the taking to eliminate the problem.

This can be done at the hearing and without notice to the landowner, even as late as in an appeal in the District Court. In fact, it is often in response to a landowner's demand that the rights be reserved. The county's Hearing Agent should prepare and furnish a handwritten reduction in the Acquisition to the Commissioners for the deliberation.

8. Special Stipulation to Assure Construction Details or Conditions

There are times when a landowner may refuse to accept what the terms of construction are because they are not in writing. They are in writing in the form of the construction contract specifications. They may not be repeated or included in the Application for Condemnation or Notice of Condemnation documents. The county's Condemnation Hearing Agent should file a written stipulation that specifies the work will be done as specified in the plan, and also recite the details as "will be sodded", "tree will be acquired", "fence will be built by the contractor" etc.. Furnish the stipulation to the Commissioners for their deliberations.

9. Implementing Settlement Through Condemnation.

It may not be possible to agree to, and implement, an administrative settlement and still meet construction possession commitments on the day of the condemnation. If all owners are represented by legal counsel, the signature of their legal counsel will obligate the owners to transfer possession and title. If the settlement is binding on all owners and there is time to use the normal contract title and closing procedures to implement it, the condemnation proceeding should be dismissed.

If all owners are not represented or are not available, a settlement agreement may not be implementable, and the Compensation Commission needs to proceed and return an award in order to implement the settlement agreement. A condemnation proceeding may also be the quickest way to

transfer title and to pay owners when a closing must otherwise be made by a continued abstract and an attorney's opinion of title.

Where it is necessary for the condemnation to proceed to implement settlement through condemnation, report to the Compensation Commission that a settlement has been reached and why it is still necessary to proceed. The signed agreement should be produced, or the owner should appear. The condemning authority should request the Compensation Commission to return an award in the amount agreed to between the authority and the landowner(s).

VI. CONDEMNATION
HEARING
PRESENTATIONS

COUNTY CONDEMNATION MANUAL

VI. Condemnation Hearing Presentations

Condemnation hearings are not law suits, nor are they trials. They are informal administrative hearings chaired by non-lawyers. The purpose of the hearing is to consider land value related information provided by the county and the landowners to determine the amount that will justly compensate landowners for property acquired for public uses or purposes.

Part IV, *Condemnation Hearing Presentations*, identifies the normal flow of a condemnation hearing proceedings. This part provides suggestions on how to make effective presentations and what information, forms and exhibits should be left to aid the commission on their deliberations. This part also identifies factors that should be considered when deciding to accept an award or to appeal to the District Court.

VI. A. The Responsibility and Authority of the Commission's Chairperson.

This section identifies the normal flow of a condemnation hearing. It contains procedural recommendations on when and what information should be presented to the Compensation Commission. Procedural instructions are provided to assure proper consideration is given to claims for payment of landowner attorney fees and for the signing and delivery of the awards.

1. A Condemnation is an Informal Fact Finding Proceeding.

A condemnation is an informal fact finding proceeding. It is not a district court case or trial, and it is not an administrative law contested case or controversy. The rules of evidence and trial procedures do not apply to condemnation proceedings. It is not a grand jury proceeding to be controlled by the county's Condemnation Hearing Agent, nor by the attorney for the condemnee. A condemnation proceeding is under the control of the person selected by the Chief Justice as its Chairperson.

2. The Chairperson Presides.

The Chairperson has a duty to provide a fair and impartial opportunity to both sides to be heard and to provide all Compensation Commissioners with opportunities to ask and to obtain answers to their questions.

Both the county and the property owner and their attorney have equal rights to be heard. Neither party has a right to monopolize a proceeding or to have the last word. Neither party should attempt to present duplicative or redundant testimony, whether through a series of witnesses or by way of extended arguments.

3. Evidence of Prior Negotiations is Improper.

The Chairperson should keep in mind that the Compensation Commissions only responsibility is to arrive at the fair market value of the property and to assess damages to real property. Testimony that attempts to berate or disparage the persons who represent the county or the landowner or the landowner's representative is improper.

A condemnation proceeding is not the place for either the county or the landowner or their attorney to present evidence or information regarding prior negotiations. The Chief Justice's instruction 5 states:

"In arriving at the fair market value of the property you shall not consider evidence or information regarding prior negotiations between the parties."

4. Introduction of Persons and Statement of Property Rights to be Acquired.

The Chairperson should ask for introductions from persons present. Landowners may be waiting to meet the Commission at the viewing of the property, and their legal council may not be present until later in the proceeding. It may be necessary to request introductions after the Commission is sworn in, at the viewing and, later, at the place designated for the presentations.

The county is responsible to explain the purpose for the proceeding and should identify what property and property rights are being acquired. This explanation should be kept short so the viewing can be made on time. The county will normally use project design plans and condemnation plats to help make these explanations.

5. Commissions Viewing of the Property.

Both the landowner and the county should be specifically asked to point out what is being acquired, and what property will be lost or damaged. The county may provide reasonable markers or lath or stakes necessary to enable the Commission to determine where the right of way line is on the ground.

If the landowner refuses to allow the Compensation Commission the right to enter on the property, the Commission should not attempt to do so. In such a case, the commission will rely on whatever viewing is possible without entering the property, and on maps, aerial photos and the like to show what is being acquired and what effect, if any, the acquisition will have on remaining property.

Some effort should be made to stay together sufficiently so that all commissioners can see and hear what is being said by the landowner and the county.

6. Presentation of the County's Offer.

This presentation may consist of engineering and property data, general land sales data, and an appraisal or other estimate of value used as the basis for the county's offer to acquire the property.

Any Commissioner may ask questions.

At the discretion of the Chairperson, property owners questions, or objectives or challenges should be reserved and made as a part of the

property owner's presentation.

7. Presentation of the Landowner's Request for Payment.

The landowner shall be given the same opportunity to present whatever data felt to be appropriate. The landowner may challenge or attempt to disparage information provided by the county which relates to the effect of the acquisition on remaining property or to the value of the property itself.

Any Commissioner may ask questions.

8. Chairperson May Control and Limit Responses.

Engineering or property location or legal description or acreage or area or project design issues or questions raised by condemnees should be responded to by the county's engineer if the engineer is present, otherwise by the county's Hearing Agent.

It is not necessary that all matters and questions be responded to either by the county or by the landowner or their legal council. However, the county or the condemnee may be given an opportunity to respond to questions or issues that are raised when the Chairperson determines that fairness requires it.

Where the Chairperson determines it to be appropriate, the Chairperson may deny requests for an opportunity to continue a presentation or to make a response or to continue making a response.

9. Commission Deliberations.

Deliberations should be made by the Commissioners alone and outside of the presence of the sheriff and both parties and their attorneys. The Sheriff will remain available to provide procedural assistance. The Commissioners shall all sign, and the Chairperson shall deliver the Report of Compensation Commission and Compensation Commissioner statements to the Sheriff.

10. Safeguarding Documents Presented to the Commission.

The Compensation Commission shall safeguard all documents presented to the Commission. The Chairperson should deliver all documents received to the Sheriff so they can be returned to the party that presented them.

11. Reconvening to Consider Attorney Fees for Landowner.

The Sheriff will inform the Chairperson if the award of the Compensation Commission was the 110% of the county's final offer. If so, the Commission shall reconvene to determine what award, if any, should be made for attorney fees.

B. Sheriff's Filing, Reporting and Recording Procedures.

This section provides procedures and instructions to coordinate the sending of notice of the award to the landowner to begin the time limitation for the taking of an appeal to the District Court. This section also includes instructions for reporting awards and costs, depositing of awards and receipting for their delivery, paying costs and for the management of condemnation funds.

1. Reporting and Paying Awards and Costs.

The Sheriff is responsible to report the award(s) or assessment of damages for the property rights acquired to the county. The Sheriff is also responsible to request the county pay the condemnee's attorney fee awarded and for the Sheriff's costs to serve notices of condemnation and to summons and attend to the Compensation Commission. The Sheriff is also responsible to pay Commissioner's \$50.00 per day fee, mileage and meals.

All of this is accomplished by using form Sheriff's Certification of Awards and Costs. See Section **6B.33, Costs and Attorney Fees**, of the Iowa Code. This form should be completed by the sheriff promptly after the Commissioners are gone.

Report the awards, including any condemnee attorney fees exactly as made and shown on the Report of Compensation Commission.

Itemize the Sheriff's costs and expenses, which include \$60.00 for attending the jury and costs for serving notices, mileage, postage and mailing the summonses, postage for the mailing of the Report of the Commissioner's forms, fees and meals for the Commissioners and copy fees. See Section **331.655, Fees - mileage - expenses**, subsection (g), of the Iowa Code. A copy of this form should be kept in the sheriff's file. Mail the original to the attorney representing the county.

Usually, the costs warrant is received the same time as the condemnation award warrant(s). The costs should NEVER be included in the check payable to the condemnees. If this should happen, you should return it to whomever issued it for correction. The costs warrant must be payable to the Sheriff, who can then retain the fees and mileage, and pay out to each Commissioner his or her fees.

The condemnation file is now complete, unless an appeal is received within 30 days.

2. Security and Distribution of Condemnation Award Warrants.

The county can take possession of property acquired by condemnation as soon as this amount assessed is awarded to condemnees. See Section **6B.25, Right to take possession of land - title**, except as provided by Section **6B.26, Dispossession of owner**, of the Iowa Code.

An award warrant(s) will be received from the condemner, made payable to condemnees. A second warrant will be made payable to the Sheriff for the costs of the condemnation. When the warrant to pay costs of the condemnation is received, the transaction should be entered in the Sheriff's cash book, and checks should be issued payable to each Commissioner. The Sheriff is responsible to provide security for condemnation warrants.

Prepare receipts for the award warrant(s). Send a notice to each condemnee advising that the warrant(s) may be picked up at the Sheriff's office either by the condemnee or their design. Have the receipt signed by the person accepting the warrant, and retain the same in your file. The warrants should be kept in the Sheriff's department safe until disposed of.

Under no circumstances should the Sheriff cash award warrants deposited in the Sheriff's office. It is best to wait until the 30 days have passed before paying out any of the awards in case of an appeal by either side.

NOTE: NEVER RELEASE A CONDEMNATION CHECK TO THE CONDEMNEDS AFTER AN APPEAL WITHOUT A COURT ORDER DIRECTING YOU TO DO SO.

After an appeal is taken, all payments or disbursements of the award, or any part of the award, must be by Court Order. See Section **6B.25, Right to Take Possession of Lands - Title**, of the Iowa Code.

The Compensation Commissioners appraisal of damages is final, unless appealed. See Section **6B.17, When Appraisal Final**, of the Iowa Code.

The Sheriff is given notice of the appeal in writing as well as the adverse party, his agent or attorney and lienholders. See Section **6B.18, Notice of Assessment - Appeal of Award**, of the Iowa Code.

When an appeal is taken, the Sheriff shall, AT ONCE, file with the Clerk of the District Court a certified copy of as much of the assessment as applies to the part for which the appeal is taken as required by Section

6B.20, Sheriff to file Certified Copy, of the Iowa Code.

3. Sheriff's Management of Condemnation Funds.

Section 331.656, Management of Condemnation Funds, of the Iowa Code, establishes procedures to accomplish this. Section 331.656 states:

"331.656 Management of condemnation funds.

1. A sheriff receiving funds from a condemnation proceeding shall list the funds in detail in a book kept for that purpose. The sheriff shall pay the funds to the persons entitled to them upon final adjudication of a condemnation case. If the funds are held after final adjudication of the case until the end of the fiscal year, the funds shall be paid to the treasurer as provided in subsection 2.
2. Not later than July 1 of each year, the sheriff shall make a detailed report under oath of all funds received and in the sheriff's possession from condemnation proceedings which have been finally adjudicated. The report shall include the names of the parties to whom the funds belong, when the funds were received, and a description of the property condemned. The report shall be filed with the treasurer and the amount of the condemnation funds specified in the report shall be paid to the treasurer. The sheriff shall be given a detailed receipt for the funds.
3. If the sheriff possesses condemnation funds which have not been finally adjudicated, the sheriff shall prepare a detailed report of those funds, including the same information as required in subsection 2, which report shall be filed with the auditor for examination and audit by the board. When a sheriff's term of office expires, the sheriff shall pay the condemnation funds which are not finally adjudicated to the sheriff's successor. The outgoing sheriff shall receive a detailed receipt for the funds.
4. The treasurer shall keep a record of the condemnation funds received from the sheriff in a book kept for that purpose. The book shall include a list of the names of persons to whom the funds are due, a description of the property condemned, and the amount due for each property item. The treasurer shall pay the amount due to each person from the condemnation fund on warrants ordered by the board and issued by the auditor. The treasurer and the bond sureties of the treasurer are liable for the condemnation funds in the same manner as for other funds received by the treasurer in an official capacity.
5. The sheriff and the bond sureties of the sheriff are liable for the condemnation funds received by the sheriff until the funds are paid to the persons to which the funds are due, the treasurer, or the sheriff's successor as provided in this section."

4. Final Recording of Condemnation Documents.

See Section 6B.40, Failure to record liability, of the Iowa Code. The

Sheriff must assemble, fasten together and certify the papers as true and correct copies of the originals and that the statements of the sherriff, as contained in the papers are true. See Section 6B.37, **Form of record - certificate**, of the Iowa Code. The recorded condemnation file is presumptive evidence of title in the county and shall constitute constructive notice of the county's property rights to the land condemned. See Section 6B.41, **Presumption**, of the Iowa Code.

Any Sheriff, or clerk in the District Court, as the case may be, who fails to present said papers, statements, and certificate for record, and any recorder who fails to record the same, as above provided, is liable for all damages caused by such failure.

The Sheriff is responsible to file the record of the condemnation and to account for all money received when no appeal is filed. This should be done promptly after all the papers required for the condemnation are assembled. Section 6B.35, of the Iowa Code, states:

"6B.35 Sheriff to file record.

Thirty days after the date of mailing the notice of appraisalment of damages, the sheriff shall file with the county recorder of the county in which the condemned land is situated, the following papers:

1. A certified copy of the application for condemnation.
2. All notices, together with all returns of service endorsed on the returns or attached to the returns.
3. The report of the commissioners.
4. All other papers filed with the sheriff in the proceedings.
5. A written statement by the sheriff of all money received in payment of damages, from who received, to whom paid, and the amount paid to each claimant and reference to the application for condemnation by book and page or instrument number and the date the application was filed with the county recorder."

The following papers must be retained by the Sheriff in a separate file for recording:

1. "Certified True Copy" of the APPLICATION TO CHIEF JUSTICE
2. SELECTION AND APPOINTMENT OF CONDEMNATION COMMISSIONERS.
3. SUPPLEMENTARY ORDER APPOINTING ALTERNATE CONDEMNATION COMMISSIONERS or substitute Condemnation Commissioners (if any), including all orders from the Chief Judge

appointing them and summons served on them.

4. The signed copy of the SUMMONS TO COMMISSIONERS for each original, alternate or substitute Commissioner.

5. OATH OF COMMISSIONERS signed by all six Commissioners. Their signatures must be acknowledged by a Notary Public or Clerk of District Court (Section 6B.7 of the Code of Iowa).

6. ALL NOTICES OF CONDEMNATION with returns of service in the condemnation, including any record of voluntary appearance of partys and NOTICES OF APPEAL.

7. PROOF OF PUBLICATION (if there have been any publications), as well as all AFFIDAVITS in connection therewith.

8. The original of the REPORT OF CONDEMNATION COMMISSION signed by each Commissioner and certified by the Sheriff (Section 6B.14 of the Code of Iowa). Two copies shall be returned to the Department of Transportation representatives. The original of the ENDORSEMENT OF SHERIFF OF MAILING OF NOTICE OF APPRAISEMENT OF DAMAGES AND TIME FOR APPEAL is contained on the reverse side of the REPORT OF CONDEMNATION COMMISSION. It must be endorsed and certified by the Sheriff at the time of mailing (Section 6B.18 of the Code of Iowa).

9. The signed copy of the SHERIFF'S CERTIFICATION AS TO AWARDS AND COSTS (Section 6B.33 of the Code of Iowa).

10. CONDEMNATION COMMISSIONER'S STATEMENT, one signed statement from each Commissioner.

11. AFFIDAVIT OF FINAL OFFER (Section 6B.33 of the Code of Iowa).

12. The original of the NOTICE OF APPRAISEMENT OF DAMAGES AND TIME FOR APPEAL endorsed by the Sheriff. A written notice in the form of a copy of the original NOTICE OF APPRAISEMENT OF DAMAGES AND TIME FOR APPEAL must be mailed to each condemnee (Section 6B.18 of the Code of Iowa).

13. Stipulation and amendments files as part of the proceeding by the county.

14. You will also be required to record all other papers filed in connection with said condemnation proceedings.

15. Provide a written statement by the Sheriff of all monies received in payment of damages, from whom received, and to whom paid, and the amount paid to each claimant.

When an appeal is taken, the Sheriff is to at once file a certified copy of the condemnation assessment being appealed. See Section **6B.20, Sheriff to file certified copy**, of the Iowa Code.

When an appeal is taken the Clerk of the District Court also has recording responsibilities. See Section **6B.36, Clerk to file record**, of the Iowa Code, which states:

"B.36 Clerk to file record.

The clerk of the district court, in case an appeal is taken in condemnation proceedings, shall file with the county recorder:

1. A copy of the final judgement entry of the court showing the amount of damages determined on appeal.
2. A written statement by the clerk of all money received by the clerk in payment of damages, from whom received, to whom paid, and the amount paid to each claimant.
3. A Copy of the description of the property condemned and the interest acquired in the property."

The Sheriff is generally responsible to collect recording fees that the recorder has a legal right to.

See Section **6B.39, Fee for recording**, of the Iowa Code, which states:

"6B.39 Fee for recording

The sheriff or clerk, as the case may be, shall collect from the condemner such fee as the county recorder would have legal right to demand for making such record, and pay such fee to the recorder upon presenting the papers for record."

If the condemnor is a governmental subdivision or agency, recording fees may be collected by the recorder through a billing process as authorized by Section **558.58, Recorder to Collect and deliver to Auditor**, subsection (2), which states:

"2. When the person required to pay a fee relating to a real estate transaction is a governmental subdivision or agency, the recorder, at the request of the governmental subdivision or agency for the fees required to be paid. The

governmental subdivision or agency shall pay the fees and taxes due within thirty days after the date of filing."

C. Deciding to Accept Award or Appeal.

This section provides a checklist of project related circumstances that should be considered in deciding to accept the award or appeal to the District Court. It is intended to be a guide to assist the County to evaluate the case as a whole. Guidance is also provided on how to meet the documentation requirements to be paid or reimbursed for settlement costs on Federal and State funded projects.

1. Procedure to Obtain Approval to Appeal.

The decision to appeal from an award of a compensation Commission has both engineering and legal ramifications and consequences. The Condemnation Hearing Agent should prepare a report to summarize what happened at the hearing. This report should identify positions taken by landowner and their attorneys and evidence and arguments used to support their positions. It should summarize the county's presentations and both its strengths and weaknesses. It should identify value evidence witnesses for both parties and should recommend whether the award should be accepted or appealed. Both the County Engineer and the County Attorney should review the condemnation file, the Hearing Agent's report and make their own recommendations.

This review can be best performed at an informal meeting. In the event of a conflict in recommendations, the function should be submitted to the Board of Supervisors for their decision.

The following factors should be considered in deciding to accept or appeal an award of a Compensation Commission.

2. Possession and Construction Needs.

Iowa has an old code section designed to protect property owners in the days before relocation assistance. Section 6B.26, of the Iowa Code, states:

"6B.26 Dispossession of owner

A landowner shall not be dispossessed, under condemnation proceedings, of the landowner's residence, dwelling house, outhouse, orchard, or garden, until the damages thereto have been finally determined and paid. However, if the property described in this section is condemned for highway purposes by the state department of transportation, the condemning authority may take possession of the property either after the damages have been finally determined and paid or one hundred eighty days after the compensation commission has determined and filed its award, in which event all of the appraisement of damages shall be paid

to the property owner before the dispossession can take place. This section shall not apply to condemnation proceedings for drainage or levee improvements, or for public school purposes."

Several years ago, the Iowa DOT succeeded in amending this code section to enable the state to obtain possession of a residence on land needed for a state highway project in six months. The section had been previously amended so that it did not apply to condemnation for drainage or levee projects or for public schools. It needs to be further amended to also allow all other public authorities to be able to obtain possession of a residence within six months. Denying possession indefinitely promotes no public purpose not already fully protected by relocation assistance payments and benefits. See Chapter 316, **Relocation of persons displaced**, of the Iowa Code.

No persons can be required to move from his or her dwelling without 90 days notice to move and unless at least one comparable replacement dwelling has been made available to the person under relocation assistance law and rule. See *Iowa Uniform Manual*, Section 111.204(1), General, and CFR 24.204. Supplemental housing payments are also available to assure that the relocatee can afford to purchase, or in the case of tenants, to rent, the replacement housing.

The first issue is possession, where the no-possession of a residence rule applies. This issue may be the overriding and perhaps the only consideration where the county can anticipate substantial liquidated damage claims from the contractor for failure to furnish the right of way for construction where there is a likelihood that the owner will contest possession.

It may be necessary to obtain a court order granting the acquiring authority possession of the non-residence of the property. The county should evaluate the adequacy of the condemnation award and make an immediate attempt to finally settle the just compensation question. If the case won't promptly settle, the authority needs to appeal from the Compensation Commission proceeding and file an immediate application for a court order to obtain possession of the non-residential property. It is better for the county to be the moving party on this question than to be a defendant in an injunction proceeding based on a claim that the authority wrongfully took possession of the landowner's property in violation of the law.

Possession can be obtained of all remaining property, or property other than the residence or outhouse or orchard, with the deposit of the award.

The condemnation documents should indicate what land will be entered on and reserve possession to the property protected by Section 472.26, **Dispossession of owner**. In the case of an appeal, the Acquiring Authority should apply for a court order granting possession to the unprotected portion of the property. Without such an order granting possession, the acquiring authority runs the risk or is subject to a threat of an injunction to stop construction on the property.

3. Considering the Amount in Controversy.

A 100% increase in a \$500.00 offer is history. It should be accepted and is not appealable. Such an appeal will create enemies in the judicial system for clogging case dockets with frivolous proceedings.

Minor acquisitions are nearly always valued by a compensation estimate procedure as authorized by Section 472.54, **Federally assisted project and displacing activities**, subsection (2), of the Iowa Code:

"... The department of transportation may prescribe a procedure to waive the appraisal in cases involving the acquisition of property with a low fair market value."

By "administrative rule", this means cases when the value of land or right in land do not exceed \$2,500.00 exclusive of fences and drives.

One of the underlying concepts for compensation estimates is that there is no identifiable or measurable damage caused to the remaining property by the acquisition of easement rights or minor acquisitions. Where this assumption is true, it will be difficult for a landowner to support a condemnation award that exceeds the fair market value of the land from which the easement right was acquired.

You may conclude, after considering all market data and information obtained in the negotiations process, that the minor taking may cause some damage to the present use or to future development potential of remaining land. Such a conclusion cannot be dispelled or documented without an appraisal of the property. The cost of obtaining such an appraisal should be considered in deciding whether to appeal. Where no savings can be anticipated, the award should normally be accepted.

Some consideration should be given to the effect that accepting a higher than normal condemnation award will have on negotiations in progress on other parcels or on persons who have accepted the original offer. When an appeal is necessary for this reason, it should be made only after the

County has committed the resources necessary to effectively prosecute the appeal. The cost of obtaining a new or original appraisal should be considered a necessary project cost, and the case should be assigned to an attorney to prosecute the appeal.

The compensation issue at the condemnation award acceptance stage is keyed primarily to the Acquiring Authority's value evidence. At this stage, little is normally known of the landowner's value evidence, or the owner may have none. Recommendations at this stage are also based on the experience of the Acquiring Authority's Hearing Agent. The question becomes, "Can the landowner make a case to support the owner's higher demand?" There may be under-explored or unexplored questions on damages or highest and best use or the like which create the potential for such a case. An appeal of such a case will require the landowner to obtain the appraisal evidence necessary to claim and assert a higher level damage issue. Acceptance of a higher than normal condemnation award may prevent the escalation of the case and result in an ultimate effort and cost savings to the county.

These issues may also provide a basis to settle condemnation appeals before both sides are committed to the effort and expense necessary to prosecute the appeal.

The compensation issue at the District Court appeal state is more keyed to a comparative evaluation of the landowner's valuation case. At least three factors should be considered. They include the amount in controversy, the eminent domain experience, or lack of experience, of legal counsel on both sides, a critical evaluation of the acquiring authority's valuation evidence and an appropriate and effective discovery of the landowner's valuation case.

4. Additional Value or Engineering Evidence Required.

The County Attorney should read the county's appraisals, the condemnation hearing report, and the parcel file to identify the nature and complexity of the engineering and value related issue in the case. The County Attorney and the County Engineer and the Appraiser should meet and discuss the strengths and weaknesses of the case. The County Attorney must explore alternatives on how to best present or to defend the case.

When it is determined that additional appraisal information is needed, the County Attorney should participate in determining who the appraiser(s) will be. The County Attorney should also participate in making the

appraisal assignment. Make sure that the new appraiser is informed of all issues that must be considered. Be sure that all appraisers have received the same factual information and also that all the factual information available has been sent to assist them.

It may also be necessary to prepare special engineering charts, graphs or exhibits to illustrate how the project drainage or traffic or access features work. This information should be agreed upon and requested as early as possible. This type of information may also be helpful in advance of trial in efforts to settle the case.

5. Preserving or Avoiding Precedent.

There is precedent that should be preserved. Temporary inconvenience arising out of construction is a most valuable common sense rule of law. Acquiring Authorities cannot control nature and cannot guarantee or insure landowners that temporary access will always be convenient or reasonable. Loss of profits is not compensable either under case law or by statute. It may be in the Acquiring Authority's best interest to accept and pay a larger than normal condemnation award to an owner who may suffer significant non-compensable losses during construction. It may be prudent not to appeal or to settle an appeal without exposing either the temporary inconvenience or no loss of profits compensation rules to a factual attack. A factually bad case can encourage the courts to carve out an exception to the rule to benefit a severely damaged landowner. A factually bad case can also be used as the basis for a legislative attempt to create new items of compensable damage.

The Condemnation Hearing Agent, the engineer and the County Attorney should work together in order to assure that construction related damage issues are properly evaluated.

6. Items Reimbursable by State and Federal Funding Authorities.

State and Federal authorities will reimburse the county for those settlement costs and items of damage that are generally compensable in eminent domain. A landowner's attorney fees are not reimbursable by Federal authorities. This does not mean that a settlement agreement should not include a settlement on the landowner's attorney. It should be considered. Identify the landowner's attorney fees in the settlement agreement, then do not bill the Federal authority for them. Landowner's attorney fees are reimbursable by State funding authorities since these costs arise directly out of State eminent domain statutes. See Section 6B.33, **Costs and attorney fees**, of the Iowa Code.

Lost profits are not a generally recognized compensable item of eminent domain damage, and Federal authorities should not be billed for any payment made to compensate a landowner for lost profits. The settlement recommendation may include a payment in excess of that supported by all evidence of compensable items of value, in part to avoid exposing a valuable precedent to a factual test. You are not paying for lost profits; you are preventing an unfavorable factual situation from being litigated. The whole case must be evaluated, and this factor can be considered in arriving at a final recommendation for settlement.

7. Formulating an Offer to Settle.

Some consideration should be given to making an early offer of settlement before either side invests a great deal of time and expense in preparing for trial. This offer should not be made until after the County Attorney, the County Engineer and the Appraiser have met to evaluate the case and determine what additional evaluation or engineering evidence, if any, will be needed to defend the case.

A second attempt to settle should be considered after your basic case preparation is completed and all appraisals have been received, or update to the date of condemnation and the review appraisal function has been completed. It is at this point that a more factually supported evaluation of the case can be made. If discovery is complete, you can make a preliminary evaluation of the whole case, yours and the landowner's.

Two weeks or ten days before trial, an effort should be made to reduce the acquiring authority's exposure to having to pay the landowner's attorney fees and costs. File an offer to confess judgement as authorized by statute or Rules of Civil Procedure. See Section 677.10, **Offer to confess judgement - costs**, of the Iowa Code. Where the final award is less than the offer to confess judgement, the landowner cannot recover the owner's costs or attorney fees, and the landowner must pay the acquiring authority's costs from the time of the offer. See Brockhouse v. State of Iowa, DOT, 449 N.W.2d 380 (Iowa 1989).

D. Appealing From a Condemnation Award:

This section identifies limitations on filing an appeal. It identifies what must be done to make proper service of notice of the appeal. Procedural responsibilities must be clearly understood to be assured that the appeal is properly filed.

1. Complying With Time Limitations on Right to Appeal.

Either the county or the landowner (condemnee) may appeal from an assessment of damages by a compensation commission. The party appealing must serve notice of appeal to all other parties. Notice of appeal must either be served on the party, or the party may accept service within 30 days from the date of the Sheriff's mailing of the notice of the appraisal of damages. See Section **6B.18, Notice of appraisal - appeal of award**, of the Iowa Code. As Section 6B.18 indicated, service can be made on the adverse party or the adverse party's agent or attorney, lienholders, and also you must serve the Sheriff.

It is imperative that a person be designated to obtain proper service of the notice of appeal. It is the responsibility of the County Attorney to provide procedural instructions on how to make service on out of state owners or other persons originally served for the condemnation proceeding by publication. It may be necessary to have the District Court direct how such service should be made. See Section **6B.19, Service of notice - highway matters**, of the Iowa Code, which illustrates potential service problems.

2. Preserving the Taxing Authority's Right to Share in the Proceeds of the Award.

The county is responsible to assist the county's taxing authorities to collect real property taxes and special assessments. See Section **327.2, Taxable property acquired through eminent domain**, of the Iowa Code, and the brochure, *Real Estate Tax and Special Assessment Collection Assistance Where Land is Acquired Through Eminent Domain*, Right of Way Office of the Iowa DOT, July 1987, by James E. Graham.

The County Attorney should notify the taxing authority of the condemnation award in any case where there is any doubt about being able to successfully collect real estate taxes and special assessments against the remainder.

The County Auditor will be served notice of appeal as a lienholder if either the county or the condemnee appeals from the assessment of the

Compensation Commission. If you represent the taxing authority, you must appear in the appeal on behalf of the taxing authority and file a claim for the unpaid taxes in the condemnation appeal. Suggested application and order forms for such a claim are incorporated in the 1987 Right of Way Office brochure, *supra*. (See Figure 6.1a-e, Appendix)

3. Limiting the County's Obligation to Pay Interest on the Condemnation Award.

The deposit of the award does not stop interest payment obligations. The landowner is entitled to either possession of the land or receipt of the money. The fact that the payment is deposited or assured is not enough; the owner must receive it.

The acquiring authority must file an application for a court order to disburse the deposited funds. See Section 6B.25, **Right to take possession of lands - title**, of the Iowa Code, which states:

"... Upon appeal from the commissioners' award of damages the district court may direct that the part of the amount of damages deposited with the sheriff, as it finds just and proper, to be paid to the claimant."

You may not wish to disburse an amount in excess of the acquiring authority's value evidence. It may also be necessary to resist a landowner's application for the disbursement of all of the funds in order to avoid the problem of trying to obtain a refund where the final award is less than the Compensation Commission award. See Section 6B.25, *supra*, which states:

"... If upon trial of the appeal a lesser amount is awarded the difference between the amount so awarded and the amount paid shall be repaid by the person to whom it was paid and upon failure to make the repayment the party shall have judgement entered against the person who received the excess payment."

When dockets are full and the amount of the award is significant, disbursing the award can affect a significant reduction in total payment to the landowner. Where project funds are not invested, such disbursements can affect significant project cost savings.

The County Attorney and the County Engineer should confer and determine what disbursements should be made.

VII. ALTERNATIVE
CONDEMNATION
AUTHORITY FOR
COUNTY ROADS

COUNTY CONDEMNATION MANUAL

VII. Alternative Condemnation Authority for County Roads:

Counties have an alternative condemnation procedure to acquire right of way for county roads. There are basic differences between the state's uniform eminent domain procedures and the alternative condemnation procedures. Form requirements are simpler than those required by the uniform proceedings. The special condemnation proceeding is basically a three person arbitration system. It also gives landowners an opportunity to question the public need to acquire the right of way, and it limits the county's right to access to the District Court to appeal excessive awards.

Part VII, *Alternative Condemnation Authority for County Roads*, discusses when the special proceedings are useful and when they are inappropriate. The differences in the qualification of "appraisers" (Commissioners under the uniform eminent domain system) between systems is considered, and procedures are proposed for the presentation of value evidence.

VII. A. Alternative Condemnation Proceeding Hearing:

This section discusses the dual purpose of this proceeding to consider objections to the acquisition of the land and to award damages to the owner. Recommendations are also made on how to select the eminent domain proceeding that is the most appropriate for the resolution of the specific acquisition problem. Purpose for alternate condemnation proceeding hearing.

There is an alternative condemnation process to acquire highway right of way. This alternative procedure is now Iowa Code Sections:

306.28 Appraisers

306.29 Notice

306.30 Service of notice

306.31 Qualifications and assessment

306.32 Hearing - adjournment

306.33 Hearing on objections

306.34 Hearing on claims for damages

306.35 Appeals

306.36 Damages on appeal - recession of order

306.37 Tender of damages

331.304 Procedural limitation on general County powers subsection (9)

These Code sections date back more than 100 years. This procedure is not a modern expedited condemnation procedure, as the Federal District Court surmised. See Cahill v. Cedar County, Iowa, 367F. Supp. 39, 42 (1973). These Code sections are an original version of an old condemnation procedure. This alternative condemnation proceeding applies only to the acquisition of highway right of way. It may be useful in settling minor disputes on highway projects where improved have been requested by the property owner(s).

1. Determining Damages to be Awarded to the Owner.

Section 306.28, **Appraisers**, requires that persons serving as appraisers only be freeholders (property owners). The Board of Supervisors selects an appraiser, the owner selects an appraiser, and the appraisers select a third appraiser. It also provides for the case where the owner may fail to select an appraiser, or the two appraisers are unable to agree on the third, or where an appraiser fails to appear or to qualify or to serve.

Ultimately, the Board of Supervisors must determine what damages are to be paid and will hold a hearing to make the determination. See Section 306.32, **Hearing - adjournment**, and Section 306.34, **Hearing on claims for damages**. The Board may increase damages, but it may not decrease

them. Daniel v. Clark County, 190 N.W.25 (Iowa 1922), Brown v. Davis County, 195 N.W.364.365 (Iowa 1923) and Burrow v. Woodbury County, 205 N.W. 460, 461 (Iowa 1925).

If the Board determines damages to be excessive, its only remedy is to dismiss the condemnation proceeding. Only the landowner (claimants for damages) can appeal from the assessment of damages. See Section 306.35, Appeals.

2. Hearing Objections to the Use of the Land to be Acquired.

Section 306.33, Hearing on objections, requires the Board to consider the landowner's objections to the proposed use of the land. These objections can range from no project is needed, to recommendations for a design change. The Board may adjourn and obtain assistance from other persons to help them make their decision.

3. When the Use of Alternate Procedure is Appropriate.

This process may be an appropriate means to arrive at an arbitrated decision of what just compensation is for minor acquisitions. There is a high probability that all appraisers will pick a number and then divide all numbers by three. This would be an improper quotient verdict if this process were used by a District Court jury. In the context of a minor acquisition, a 50% increase over the amount determined by the Appraiser appointed by the county may be a good settlement where the appraisal is \$500.00 to \$700.00.

This process will work where the integrity of the road itself will not be compromised if the Board determines to abandon the condemnation. It may be appropriate to use this process to move an entrance or improve an access way or to straighten a right of way line. See Section 306.19, **Right of way - access - notice**, subsection (4), which authorizes the exercise of the powers of Section 306.28 through 306.37 to acquire access ways.

4. When Use of Alternate Process is Not Appropriate.

Where safety related design engineering standards are not negotiable, do not use the alternate process. Where there is a significant acquisition cost at stake, the alternate process should not be used. The uniform condemnation statutes of Chapter 6A and 6B, of the Code, are designed to assure a fair hearing by six specially qualified, knowledgeable and disinterested persons selected by the Chief Judge of the District where the

property to be acquired is located.

These six persons do not represent either the county or the landowner. They are selected by a Judge, not the parties. There is far less likelihood of an exorbitant award, or an award based on passion or prejudice, under the uniform condemnation system.

If the project is funded by Federal or State funds, the county may find itself obligated to pay an exorbitant award from county funds only. This could happen if the funding authorities insist that they are entitled to the procedural protections of the uniform condemnation procedures. This could be true where there is not enough time to abandon the alternate condemnation proceeding and then start over.

B. Forms for Alternate County Condemnation Process.

This section suggests forms of description, plat, notice and other forms to document the taking and the remaining property. This section includes a discussion of questions that may arise if a condemnation plat is not used or where the plat does not meet acquisition plat standards of the platting law.

1. Description of land sought to be acquired.

Section 306.29, Notice, states:

"... (Here describe the right of way, the tract or tracts from which such right of way will be taken) ..."

All that this requires is a valid legal description or a description which contains information sufficient to enable a competent land surveyor to identify the land on the ground.

2. Plat of Land Acquired or Damaged.

These old code sections do not contain a requirement for a condemnation plat. A plat may now be required by operation of Section 354.4, **Division requiring a plat of survey or acquisition plat**, of the Iowa Code. This platting statute requires acquisition plats for the acquisition of highway easement right of way. These alternate condemnation proceedings were known and were not exempted from the application of acquisition plat requirements of Section 354.4.

I believe that an acquisition plat will be required for alternate condemnations if the question is litigated and recommend that an acquisition plat be used.

3. Notice to Owner Stating Purpose and Providing Instruction.

The service of notice required for the alternate condemnation process is the same as under the uniform eminent domain procedures. See Section 306.29, Notice, and Section 306.30, **Service of notice**. All owners, mortgagees, tenants and other interest holders, both in and out of state, must be served by publication and can not be directly served with shorter notice, as is the case for condemnation under the uniform eminent domain procedures. See Section 6B.12, **Notice to non-residents**, and 6B.13, **Service outside of state**, of the Iowa Code. Section 306.30 provides that no service needs to be made on owners who have exercised the right to select an appraiser. Selecting an appraiser is voluntarily participating in

the process and thus consent.

The notice for the alternate proceeding is the only form needed to institute the proceeding. (See Figure 7.1, Appendix) There are no required written procedures or forms to document the appointment of the appraisers. I recommend that appraisal appointments be confirmed in writing by the County. If the appraiser(s) don't show up, use the replacement powers of Section 306.28, Appraisers.

4. Oath of Appraisers

The form, Oath of Appraisers, complies with the requirements of Section 306.31, **Qualifications and assessment**, in that the oath is taken before the County Auditor. (See Figure 7.2, Appendix)

5. Report of Condemnation Appraisers.

See Figure 7.3 in the Appendix.

6. Recording Alternate County Condemnation Proceedings.

There are no specific recording requirements for alternate condemnation proceedings. Records will apply the same standards that they use to record condemnation proceedings under uniform condemnation procedures. If the county wants the original documents returned, it must ask the recorder to return them. See 6B.38, **Record of proceedings**, of the Iowa Code.

C. Selection and Qualification of Appraisers for Alternate Condemnation Proceedings:

This section makes recommendations on who might be selected by the county. It also considers how value evidence might be presented, what such evidence might consist of, and who should present it.

The Board of Supervisors might consider appointing a real estate Appraiser as their condemnation Appraiser. An Iowa certified real estate Appraiser would have appropriate background to assure that land sales and land value information are available. As an alternative, perhaps both the county and the owner can agree on a licensed real estate Appraiser as the third condemnation appraiser.

There is nothing that requires these condemnation Appraisers to consider any evidence in arriving at their decision. The absence of any formal process makes it necessary that either the appraisers or the owners themselves provide evidence of value to support their determinations.

The owner and the county should be given an opportunity to explain the basis for their respective positions, but there is no requirement that the Appraisers do so.

D. Selecting Appropriate Condemnation Procedures.

This section provides a short comparative analysis to assist in the selection of the most appropriate condemnation procedure.

1. Alternative Proceeding, Chapter 306, of the Code of Iowa.

- Three appraisers instead of six compensation commissioners.
- If can't agree on third appraiser in 10 days, Board selects third.
- No proceedings or hearing required.
- If damages are excessive, proceeding shall be dismissed. Section 306.34.
- Landowner may still appeal.
- This is an arbitration procedure, not really an objective hearing on value.
- On appeal, new value evidence (appraisals) must be purchased.
- Probable outcome is a quotient verdict (average of 3 positions - always higher than final offer).
- Can create local animosities since appraisers are advocates.
- Process all secret and behind closed doors.
- No public hearing, neither party appears nor is heard.

2. Uniform Proceedings, Chapter 6B, of the Code of Iowa.

- Six compensation commissioners.
- Informal proceedings with a chairman.
- Provides acquiring authority opportunity to explain offer.
- Fairness of system with identifiable methods used to determine value.
- If award of Compensation Commission exceeds final offer by 10%, may have to pay reasonable attorney fees and costs.
- On appeal, the county may use existing value evidence.
- Best opportunity to avoid quotient verdict (final offer may be accepted with no increase).
- Most objective determination of value (compensation commissioners are neutral and represent neither side).
- Compensation hearing is public.
- Both parties may appear and be heard.

3. Comparative Observations and Conclusions.

Narrow strip takings of undeveloped agricultural land are not difficult appraisal problems.

The law supports giving separate consideration to fence as a damage

factor, thus eliminating fence as a real estate appraisal problem. Iowa Law Section 6B.44.

Tile drains and surface water drainage maintenance are the legal responsibility of the county. Iowa Law Section 314.7. The law will presume that the county will perform its duty to maintain field tile and surface water drainage and will not destroy or injure reasonable access to the road. None of these factors should complicate a condemnation proceeding.

The Chapter 6B Uniform Condemnation Proceedings provide a fair and tested method to obtain an objective determination of value. When you consider that most county right of way acquisitions involve small and regular strip takings, counties using Chapter 6B should experience generally better success than the State.

APPENDIX

FORMS

DOT FENCE PAYMENT SCHEDULE

Woven wire fencing	
material and labor	\$18.00 per rod
Barbed wire	
material and labor	\$13.50 per rod
Temporary Fencing	
Electric	\$5.00 per rod
Barbed wire	\$8.25 per rod
Woven wire	\$10.00 per rod

S.F. _____ H.F. _____

1 Section 1. Section 306.27, Code 1987, is amended to read
2 as follows:

3 306.27 CHANGES FOR SAFETY, ECONOMY, AND UTILITY.

4 The state department of transportation as to primary roads
5 and the boards of supervisors as to secondary roads on their
6 own motion may change the course of any part of any road or
7 stream, watercourse or dry run and may pond water in order to
8 avoid the construction and maintenance of bridges, or to avoid
9 grades, or railroad crossings, or to straighten a road, or to
10 cut off dangerous corners, turns or intersections on the
11 highway, or to widen a road above statutory width, or for the
12 purpose of preventing the encroachment of a stream,
13 watercourse or dry run upon the highway. The department shall
14 conduct its proceedings in the manner and form prescribed in
15 chapter 472, and the board of supervisors shall use the form
16 prescribed in sections 306.28 to 306.37 or as provided in
17 chapter 472. Changes are subject to chapter 455B.

18 EXPLANATION

19 This bill authorizes the board of supervisors of a county
20 the option of using eminent domain procedures provided in
21 chapter 472 in lieu of those provided in sections 306.28
22 through 306.37 when carrying out construction, reconstruction,
23 or repair activities on secondary roads. This is intended to
24 make section 306.27 consistent with section 306.17.

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LSB 2259HC 72
tj/cf/24

INTERGOVERNMENTAL RIGHT OF WAY AGREEMENT
(City - County)

City _____	County _____
Project _____	Project _____
Project No. _____	Project No. _____
City Agreement No. _____	Co. Agreement No. _____

The City of _____, Iowa and the Board of Supervisors of _____ County, Iowa on this _____ day of _____, 19____, hereby agree that right of way for these two public improvement projects to be acquired from parcel(s) _____

_____ within the City and the County shall be acquired by the City.

In connection with this project all real estate and rights to real estate necessary for right of way for both the city and the county project may be acquired by the city for and in the name of the County. Where acquired by contract the county shall receive title from the contract seller and the county does hereby agree to accept title thereto. Where acquired by condemnation, a single joint condemnation proceeding shall be instituted by the city to acquire real estate or rights in real estate needed by the county for the county project in the name of the county and to acquire real estate or rights in real estate needed by the city for the city, all in accord with Section 28E.12, Code of Iowa.

This Agreement may be executed in two counterparts, each of which so executed shall be deemed to be an original, and both shall constitute but one and the same instrument.

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement as of the date shown opposite its signature below:

CITY OF _____, IOWA	BOARD OF SUPERVISORS OF _____ COUNTY, IOWA
---------------------	---

By _____
Mayor Date

By _____
Date

ATTEST:

ATTEST:

By _____
City Clerk

By _____
County Auditor

Staff Action S-89-436

AMENDMENT TO
PREDESIGN AGREEMENT
City of Columbus Junction
Project No. FR-70(l)
Iowa DOT Agreement No. 88-4-173a
Dated September 27, 1988

It is agreed between the State of Iowa, the Iowa Department of Transportation (hereinafter referred to as the "DOT"), the Highway Division, and the City of Columbus Junction in Louisa County, Iowa (hereinafter referred to as the "City"), that the Predesign Agreement entered into between the DOT and the City dated September 27, 1988, is amended as follows:

1. Paragraph No. 2 is amended, by revising the last sentence of this paragraph to state that the City shall acquire right of way for the Project, to read as follows:

"2. The DOT shall construct the project, as described, in accordance with the project plans and current safety practices, and shall initially bear all costs except those allocated to the CITY under other terms of this Agreement. To facilitate scheduling, project design and inspection may be accomplished by the CITY. All City costs incurred previous to this Agreement that are specific to the design and/or inspection shall be considered as reimbursable under this Agreement. The CITY shall submit a detailed accounting of all such costs. It is understood that the ~~DOT~~ CITY will be responsible for all land and/or right of way acquisitions, *except that the DOT shall provide appraisal review services and land surveyor's property descriptions and acquisition plats for the right of way Project.*"

2. Paragraph No. 10 is amended to state that the City shall be reimbursed for the costs to acquire right of way, to read as follows:

"10. *Except as otherwise provided by the terms of the Agreement, any costs incurred by the City in performing its obligations hereunder shall be borne exclusively by the City without reimbursement by the DOT. The DOT shall reimburse the City for all right of way acquisition and appraisal consultant costs, and all acquisition, relocation and incidental costs to acquire right of way for the Project.*"

3. Paragraph No. 17 is hereby amended by adding language to clarify that the City shall acquire and be reimbursed for right of way acquired by the City for the Project, to read as follows:

"17. The CITY shall be responsible for providing without cost to the DOT all

right of way which involves: (a) dedicated streets or alleys; and (b) other city-owned lands, easements and rights in land except park lands *and except right of way to be acquired for the project* subject to the condition that the DOT shall reimburse the CITY for the value of improvements situated on said city-owned lands, if any. The CITY has appraised itself of the value of these lands and, as a portion of their participation in the project, voluntarily agrees to make such lands available without further compensation. ~~The DOT shall be responsible for acquisition of all other right of way."~~

4. Paragraph No. 18 is hereby amended to authorize the City to acquire land by condemnation, if requested to do so by the DOT, to read:

"18. In connection with this project all real estate and rights to real estate necessary for right of way *for the Project or for right of way* at the connection of any city street or alley and a primary highway relocation or reconstruction project, any access road or frontage road right of way, if any, and any permanent utility easements which are or which shall be under the jurisdiction of the ~~city may be acquired by the DOT, for and in the name of the city~~ DOT shall be acquired in the name of the State of Iowa, and the right of way which is or which shall be under the jurisdiction of the City shall be acquired in the name of the City. Where acquired by contract ~~the DOT and the CITY~~ shall receive title from the contract seller and the DOT and the CITY shall accept title ~~thereto to right of way under their respective jurisdictions.~~ Where acquired by condemnation, a single joint condemnation proceeding ~~shall may~~ be instituted ~~by the DOT either by the DOT or by the City~~ to acquire real estate or rights in real estate needed by the city for the city and to acquire real estate or rights in real estate needed by the DOT for the DOT, all in accord with Section 28E.12, Code of Iowa."

5. Except as provided by this Amendment, all other provisions of the September 27, 1988, Predesign Agreement remain in full force and effect.

IN WITNESS WHEREOF, each of the parties hereto has executed the Amendment to Predesign Agreement No. 88-4-173 as of the date shown opposite its signature below.

CITY OF COLUMBUS JUNCTION

By: _____
Donald F. Orr, Mayor

Date: _____

I, Earlene Lekwa, certify that I am the Clerk of the CITY, and that Donald F. Orr, Mayor, who signed said Amendment to Agreement for and on behalf of the CITY, was duly

authorized to execute the same by virtue of a formal Resolution, Resolution No. _____,
duly passed and adopted by the CITY, on the ____ day of _____, 19__.

Earlene Lekwa, City Clerk of
Columbus Junction, Iowa

Date: _____

IOWA DEPARTMENT OF TRANSPORTATION

By: _____
_____, Director

Date: _____

ATTEST:

By: _____

FR-24.6
 I.C. 316.3(2)
 I.C. 316.7(5)
 I.C. 316.9
 I.C. 316.13
 I.C. 316.14
 I.C. 316.15
 I.C. 6B.42
 I.C. 6B.54
 I.C. 310.22
 I.C. 306.42

111.9 Administration of jointly funded projects.

111.9(1) Cognizant agency.

Whenever two or more state agencies (see subrule 111.2(24) for definition) jointly agree to carry out functionally or geographically related activities which will result in the acquisition of property or the displacement of a person on a federally financially assisted program or project, the state agencies shall designate by agreement one agency as the cognizant agency. All federal financially assisted activities under the agreement shall be deemed a project for the purpose of these rules. In the unlikely event that agreement among the agencies cannot be reached as to which state agency shall be the cognizant agency, the department shall designate one of the agencies to assume the cognizant role.

111.9(2) Terms of joint agreements. At a minimum, such joint project agreements shall set forth federally assisted activities that are subject to its terms and cite any policies or procedures in addition to these rules that are applicable to the activities under the agreement. Joint project agreements shall specify which state agency shall be responsible for acquisition of property (title to be in the name of the agency which is functionally responsible for the improvement) and which agency shall be responsible for performing any relocation assistance functions. Under the agreement, the cognizant state agency shall assure that the project is accomplished in compliance with the provisions of the federal Uniform Relocation Act, Iowa Code chapter 316 and sections 472.42, 472.54 and 472.55, and these rules. The value of land, buildings or other property acquired by donation and contributed to a joint project shall be the amount determined by a reviewed and approved appraisal in accord with these rules. See Appendix A. (1)

(1) See also - 23 CFR 710.301(o), Reimbursement Provisions for acquisition in connection with other federal or federally funded programs.

TREE PAYMENT SCHEDULE

1. Hardwood trees such as oak, walnut, hard maple or ash, including pine and evergreen trees:

6 inch:	\$125.00
8 inch:	\$170.00
10 inch:	\$210.00
12 inch:	\$250.00
14 inch:	\$290.00
16 inch:	\$330.00
17 inch:	\$370.00
18 inch:	\$410.00

2. Scrub, volunteer, split, etc., 5 inches or more in diameter: \$65.00
3. Trees under 5 inches in diameter, volunteer growth: no value
4. Special conditions - Trees planted by owner in easement area, depending on size: \$40.00 to \$175.00

NOTE: The above schedule will pay for trees marked to come out on the construction plans or be identified by a mark on said tree that meets the above standards. These trees shall be on the permanent or temporary easement.

SEWER PROJECT CONSTRUCTION AND NEGOTIATION STANDARDS

1. Top Soil
 - 16' will be removed
 - 10% to 20% shrink is normal
 - 12' are actually replaced

2. Agricultural and Chain Link Fence
 - Option (1)
 - * The contractor will remove and replace permanent fence.
 - * The contractor will provide temporary fence.
 - * The negotiator should offer temporary fence. Mark with lath, etc. where temporary fence begins and ends.
 - * The negotiator to provide temporary fence measurements to city.

 - Option (2)
 - * Pay the owner damages for permanent and temporary fence.
 - * Use city fence schedule or develop project fence schedule based on material costs and installation estimates.

 - Option (3)
 - * Agree owner builds fence and sends city bills for reasonable cost to do so as authorized by Section 472.44 of the Iowa Code.

3. Residential or decorative wood fence
 - * ROW pays to put back
 - * Negotiation to estimate
 - * Assume 1/3 of posts are rotted and can not be replaced so figure new
 - * Assume some breakage or splintering damage (1/4 to 1/3) so add new
 - * Add extra poles for braces where appropriate
 - * Include a gallon of paint

4. Manholes
 - * will be constructed 18' below surface in agricultural areas.

5. Open trench and back filling standards
 - * An initial 10 feet deep shelf will be opened for a long distance. This trench will be open for a week to a month.
 - * The final excavation will be made by uncovering a 200 foot distance at a time, for the pipe laying operation.

Figure 1.5b

PROJECT NAME _____		ESTIMATE NO _____	
QUALITY REPORTING FORM FENCES OR GATES - INSTALLATION/REMOVAL			
DATE _____	STATION _____	WIDTH _____	TYPE _____
PERMANENT <input type="checkbox"/>		TEMPORARY <input type="checkbox"/>	
CONDITION OF EXISTING FENCE _____			
TEMPORARY GATE REMOVAL : DATE _____			
LANDOWNER INSPECTED		YES <input type="checkbox"/>	NO <input type="checkbox"/>
LANDOWNER ACCEPTED FENCE REBUILD		YES <input type="checkbox"/>	NO <input type="checkbox"/>
DATE _____	STATION _____	WIDTH _____	TYPE _____
PERMANENT <input type="checkbox"/>		TEMPORARY <input type="checkbox"/>	
CONDITION OF EXISTING FENCE _____			
TEMPORARY GATE REMOVAL : DATE _____			
LANDOWNER INSPECTED		YES <input type="checkbox"/>	NO <input type="checkbox"/>
LANDOWNER ACCEPTED FENCE REBUILD		YES <input type="checkbox"/>	NO <input type="checkbox"/>
DATE _____	STATION _____	WIDTH _____	TYPE _____
PERMANENT <input type="checkbox"/>		TEMPORARY <input type="checkbox"/>	
CONDITION OF EXISTING FENCE _____			
TEMPORARY GATE REMOVAL : DATE _____			
LANDOWNER INSPECTED		YES <input type="checkbox"/>	NO <input type="checkbox"/>
LANDOWNER ACCEPTED FENCE REBUILD		YES <input type="checkbox"/>	NO <input type="checkbox"/>
DATE _____	STATION _____	WIDTH _____	TYPE _____
PERMANENT <input type="checkbox"/>		TEMPORARY <input type="checkbox"/>	
CONDITION OF EXISTING FENCE _____			
TEMPORARY GATE REMOVAL : DATE _____			
LANDOWNER INSPECTED		YES <input type="checkbox"/>	NO <input type="checkbox"/>
LANDOWNER ACCEPTED FENCE REBUILD		YES <input type="checkbox"/>	NO <input type="checkbox"/>
CONTRACTOR _____		SUB CONTRACTOR _____	
INSPECTOR'S NAME _____		DATE _____	

Form FHWA - 281
(Rev. 11-67)U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
MINUTE - MEMO

Use this form in lieu of transmittal slips within Dept. of Trans. when message comment is to be retained as file material. Do not prepare carbons. Not to be used in lieu of Form FHWA-121 for informal correspondence.

SUBJECT

Owner Retention of Improvements - 49 CFR 103(c)

TO	MESSAGE/COMMENT	FROM/DATE
<p>Roger Facer</p> <p>cy: Gerry Kennedy, HRW-IA</p>	<p>In response to Gerry Kennedy's inquiry, I discussed the question of ownership of owner-retained improvements with our Regional Counsel.</p> <p>49 CFR 103(c) reads as follows:</p> <p style="padding-left: 40px;">(c) <u>Owner retention of improvements.</u> If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at § 24.2(s)) of the retained improvement.</p> <p>The use of the word "retain" in the third line, above, is interpreted to mean the property owner <i>never</i> surrenders ownership of the improvement to be retained, and the acquiring agency <i>never</i> has ownership of the improvement to be retained. The remainder of the above provision specifies that, regardless of ownership of the retained improvement, the valuation is to include the retained improvement <u>as if it were being acquired</u>, and the <u>salvage value</u> of the retained improvement is to be deducted from the full valuation.</p>	<p>Reginald K. Bessmer June 20, 19</p>

FR-24.9(b)

111.5(2) Confidentiality of records. Except as required by Iowa Code section 472.45 and this subrule, appraisal, review appraisal, relocation, negotiation and condemnation information in parcel and project files is confidential and is not public information until the property has been acquired, title has passed, and the parcel is closed.

A parcel is not closed until all acquisition and relocation claims have been paid. Once closed, a property owner may examine and copy his or her parcel file in its entirety. The general public may also examine any or all closed parcel files except that no examination shall be made of any copy of another person's income tax form(s) or statement(s) of income made by the owner or claimant or by his or her attorney, accountant or agent, or by an employee of the agency, without the written consent of the owner or claimant or the written approval of the agency's legal counsel.

Details, in addition to the information required by Iowa Code Section 472.45, of an acquisition appraisal may be disclosed in the negotiation process, when, In the judgment of the state agency, it will assist in a sincere and honest effort to obtain a negotiated contract. The state agency shall refuse disclosure of additional appraisal detail when in its judgment the request or demand is made to obtain information to be used later in litigation to the prejudice of the state agency's defense.

Where the state agency is involved in litigation, whether it is an appeal from the award of a compensation commission or a dispute over the specific performance of a right of way contract, all appraisal and parcel file information shall be disclosed only by or at the written direction of the state agency's legal counsel. **See Appendix A.**

- | | |
|----------------|--|
| FR-24.9(c) | 111.5(3) Reports. Acquiring and displacing agencies shall submit reports of their real property acquisition and displacement activities under these rules if required by the federal agency funding the project. A report will not be required more frequently than every three years, or as the federal Uniform Relocation Act provides, unless the federal funding agency shows good cause. The report shall be prepared and submitted in the format prescribed by the federal agency funding the project. See Appendix A. |
| 23 CFR 1.4 | Cities and counties shall submit a report on their federal financially assisted road and street programs and projects as required by the department on forms furnished by the department. |
| 23 CFR 710.203 | |
| I.C. 310.22 | |

Figure 1.8a

**CERTIFICATION OF NEGOTIATOR
AND PARCEL CHECK SHEET**

COUNTY _____ PROJECT _____ PARCEL NO. _____

OWNER _____ ADDRESS _____

I certify the following information to be correct.

1. The written agreement secured embodies all of the considerations agreed upon between the property owner and myself.
2. The agreement was reached without coercion, premises other than those shown in the agreement, or threats of any kind whatsoever by or to either of us.
3. I have no direct or indirect present or contemplated future personal interest in this parcel or in any benefit from the acquisition of this property.
4. I am aware this parcel may be used in connection with a highway project which is Federally funded.

FILE CONTAINS

FILE MAY ALSO CONTAIN

<input type="checkbox"/>	Owner Contract	<input type="checkbox"/>	Borrow Agreement
<input type="checkbox"/>	Acquisition Breakdown Sheet	<input type="checkbox"/>	Supplemental Agreement
<input type="checkbox"/>	Tenant Contract	<input type="checkbox"/>	Building Removal Agreement
<input type="checkbox"/>	Tenant Breakdown Sheet	<input type="checkbox"/>	Estimates
<input type="checkbox"/>	Written Offer (<i>Owner</i>)	<input type="checkbox"/>	Administrative Settlement
<input type="checkbox"/>	Written Offer (<i>Tenant</i>)	<input type="checkbox"/>	Information for Condemnation
<input type="checkbox"/>	Property Plat	<input type="checkbox"/>	Request for Design Revision
<input type="checkbox"/>	Agents Notes		
<input type="checkbox"/>	Report of Liens		
<input type="checkbox"/>	Copy Relocation Assistance Notice		
<input type="checkbox"/>	Number of Tenants		
<input type="checkbox"/>	Number of Tenants Signed		

Certified by _____
Acquisition Agent

(Date)

Approved by _____
Project Agent

(Date)

INFORMATION FOR CONDEMNATION PROCEEDINGS

Figure 1.8b

COUNTY _____ PROJECT _____ PARCEL NO. _____

Owner Contract	Address	Type of Ownership (include dower)	Contacted (yes or no)

Tenant Contract (if signed, so state)	Address	Contacted (yes or no)

Occupant of Land	Occupant of House

Possessory Interests Claimed by	Address

Type of Property: ☐ rural ☐ residential ☐ commercial ☐ other _____

Includes:

OFFER \$ _____ ☐ ROW ☐ Borrow ☐ Fence ☐ Damages ☐ Buildings
☐ Access Control ☐ Temp. Easement

ASK \$ _____ ☐ Owner Appraisal ☐ Other _____

Reason for Condemnation: ☐ Title ☐ Design ☐ Access ☐ Monetary ☐ Other _____

Other known information not shown in title documents or file: _____

Attorney or Agent of record (specify if Agent)

Which
Owner

Name:	Address:	Phone:	

Instructions to Acquisition Secretary

Mail Condemnation Letter & Contract to: <input type="checkbox"/> Owner <input type="checkbox"/> Owner with cc's to Attorney <input type="checkbox"/> Attorney only <input type="checkbox"/> Attorney with cc's to Owner
<input type="checkbox"/> OK to mail condemnation letter now <input type="checkbox"/> No condemnation letter required on this parcel <input type="checkbox"/> Hold condemnation letter until: _____

RECOMMENDED BY:

APPROVED BY:

**ADMINISTRATIVE SETTLEMENT
DETERMINATION**

Figure 1.9

County _____
Negotiator _____
Name _____

Project No. _____
Parcel No. _____

Original Offer to
Purchase (Review
plus Fence)

\$ _____

Proposed
Settlement

\$ _____

Variance \$ _____
% _____

APPRAISALS:

Appraiser	Date	Before	After	Acquisition	Add'l. by Negotiator (Fence, etc.)	Offer to Purchase
1. _____						
2. _____						
3. _____						
4. _____						

REASONS FOR SETTLEMENT: (check those applicable)

1. ☐ The variance is based upon scheduled payments (Director's approval not necessary).
2. ☐ The variance is based upon detailed estimates from outside sources (cc's attached).
3. ☐ The variance is substantial. Settlement is justified as follows:
4. ☐ Items of damage not considered in approved appraisal.
5. ☐ Appraisal adjusted for time in accord with instruction from reviewer.
6. ☐ Recent experience in eminent domain actions.
7. ☐ All available appraisals (including landowner's).
8. ☐ Difference of opinion as to highest and best use.
9. ☐ Extremely complex valuation problem.
10. ☐ Effect of economic or physical status of owner on compensation commission and jury.
11. ☐ Range of probable testimony should the property be condemned.
12. ☐ Estimate of condemnation cost considered in conjunction with above items.
13. ☐ The ability of the Appraiser as a witness.
 - A. ☐ His or her ability, experience, and ability to explain the opinion of value.
 - B. ☐ His or her ability under cross-examination.
14. ☐ Other

DETAILED EXPLANATION OF ALL ITEMS CHECKED:

(Continue on reverse side if necessary).

Submitted By:

Acquisition Agent Date

Approved By:

Right of Way Director Date

Acquiring Authority Date

Figure 2.1

PARCEL OWNERSHIP INFORMATION

COUNTY _____ PROJECT _____ PARCEL NO. _____ PHASE _____ SEGMENT _____

OWNER CONTRACT	ADDRESS	TYPE OF OWNERSHIP (include dower)	CONTACTED (yes or no)
----------------	---------	--------------------------------------	--------------------------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

TENANT CONTRACT (if signed, so state)	ADDRESS	CONTACTED (yes or no)
---------------------------------------	---------	--------------------------

_____	_____	_____
_____	_____	_____
_____	_____	_____

OCCUPANT OF LAND	OCCUPANT OF HOUSE
------------------	-------------------

_____	_____
_____	_____
_____	_____

TYPE OF PROPERTY: ☐ RURAL ☐ RESIDENTIAL ☐ COMMERCIAL ☐ OTHER _____
 INCLUDES
 OFFER \$ _____ ☐ ROW ☐ BORROW ☐ FENCE ☐ DAMAGES ☐ BUILDINGS
☐ ACCESS CONTROL ☐ TEMP. EASEMENT

ASK \$ _____ ☐ OWNER APPRAISAL ☐ OTHER _____

REASON FOR CONDEMNATION: ☐ TITLE ☐ DESIGN ☐ ACCESS ☐ MONETARY ☐ OTHER _____

OTHER KNOWN INFORMATION NOT SHOWN IN TITLE DOCUMENTS OR FILE: _____

ATTORNEY OR AGENT OF RECORD (SPECIFY IF AGENT)

WHICH
OWNER

NAME:	ADDRESS:	PHONE:
-------	----------	--------

Instructions to Acquisition Secretary

Mail Condemnation Letter & Contract to:

- | | | | |
|--|---|--|--|
| <input type="checkbox"/> Owner | <input type="checkbox"/> Owner with cc's to Attorney | <input type="checkbox"/> Attorney only | <input type="checkbox"/> Attorney with cc's to Owner |
| <input type="checkbox"/> OK to mail condemnation letter now | <input type="checkbox"/> No condemnation letter required on this parcel | | |
| <input type="checkbox"/> Hold condemnation letter until: _____ | | | |

RECOMMENDED BY:

APPROVED BY:

(date)

(date)

[DATE]

[OWNER]

[ADDRESS]

[CITY, STATE ZIP]

Figure 2.2

RE: _____ County
Project No. _____
Parcel _____

Dear _____:

We understand our negotiator was unable to reach an agreement with you for the sale of the right of way required for the above referenced public improvement. To insure timely possession of the right of way it has been necessary for us to institute condemnation proceedings for this parcel. This action is an expediency to maintain the right of way schedule and is not an expression of unwillingness to continue productive negotiations.

The following is a summary of the property rights being acquired:

_____ acres Permanent Easement for _____	.....	\$ _____
_____ acres Temporary Easement for _____	.....	\$ _____
TOTAL		\$ _____

You have received two originals of the proposed Land Transfer documents indicating all parties of interest in the parcel. If you consider this matter and desire to conclude settlement, please sign both originals of the enclosed Land Transfer documents, having your signatures notarized by a Notary Public. Return on original of each Land Transfer document to this office and keep the second original for your records.

Should you have questions or desire additional discussion with our negotiator, please feel free to contact us. If our acquisition agent is not available, _____ will be glad to be of assistance.

Your cooperation with this public improvement is appreciated.

Sincerely,

Condemnation Agent

cc: _____, County Attorney
_____, County Engineer
_____, Acquisition Agent

RESOLUTION OF THE BOARD OF SUPERVISORS
_____ COUNTY, IOWA

Figure 2.3

Authorizing _____ to institute and conduct condemnation proceedings for

1. The County of _____ and the _____ have entered into a joint public improvement agreement to _____ which agreement requires the County of _____ to acquire all the right of way and property rights necessary to construct and maintain the public improvements.
2. Pursuant to the terms of a _____ dated _____, between the County of _____ and _____, has agreed to provide right of way services and to institute and represent the County of _____ at condemnation proceedings.
3. It is necessary to institute condemnation on those parcels where negotiations have been completed to obtain possession of properties and to construct this public improvement project _____.
4. Section 6B.2 of the Iowa Code empowers and thereby authorizes the County of _____ to appoint a person to represent and to conduct condemnation proceedings for the County of _____.

NOW THEREFORE BE IT RESOLVED:

That by action of the Board of Supervisors of _____ County, Iowa, _____, is hereby appointed as the authorized representative of the County of _____, and is hereby directed, authorized and empowered to institute and conduct all condemnation proceedings necessary to obtain possession of property for the construction of this _____ project for and on behalf of the County of _____, Iowa.

Passes by the Board of Supervisors this _____ day of _____, 19____, and approved this _____ day of _____, 19____.

_____, Chairperson

ATTEST:

_____, County Official

STATE OF IOWA, COUNTY OF _____, ss:

On this _____ day of _____, 19____, before me _____, a Notary Public in and for the State of Iowa, personally appeared _____ and _____, to me personally known, who, being by me duly sworn, that they are the _____ and _____, respectively of the County of _____, Iowa. The Resolution adopted was signed and sealed by authority of its Board of Supervisors. The Resolution was moved by _____ and seconded by _____, the motion carried on the _____ day of _____, 19____.

Notary Public in and for the State of Iowa

Figure 3.1a

LANDOWNER'S NAME _____ PARCEL _____

IN THE SHERIFF'S OFFICE OF _____ COUNTY, IOWA

1. IDENTIFY THE ACQUIRING AUTHORITY

IN THE MATTER OF THE CONDEMNATION
OF CERTAIN RIGHTS IN LAND BY
_____ COUNTY FOR THE
IMPROVEMENT OF COUNTY ROAD NO. ____

LOCATED IN _____ COUNTY, IOWA
PROJECT NO. _____ APPLICANT.

APPLICATION TO THE CHIEF JUDGE OF
THE _____ JUDICIAL DISTRICT FOR THE
APPOINTMENT OF A COMMISSION TO
APPRAISE DAMAGES

TO: _____, CHIEF JUDGE, _____ JUDICIAL DISTRICT

2. IDENTIFY PROPERTY OR PROPERTY RIGHTS SOUGHT TO BE ACQUIRED

YOU ARE HEREBY NOTIFIED that the Applicant _____ County, Iowa,
has been unable to obtain this property or property rights by purchase and conveyance, _____

_____, desires to take and acquire by condemnation a Fee Title to
_____ and a permanent easement for _____, and a
temporary easement for _____, to be used in connection with the public improvement
project known as _____.

3. DESCRIPTION OF ALL PROPERTY AFFECTED OR SOUGHT TO BE CONDEMNED

The property affected or sought to be acquired by this condemnation of a Fee Title to _____
and a permanent easement for _____, and a temporary easement for _____
in land as shown on the attached Condemnation Plat which is marked Exhibit "A" Condemnation Plat,
and by this reference is made a part thereof and legally described as follows:

(INSERT DESCRIPTION(S) OR ATTACH AS EXHIBIT "A")

LANDOWNER'S NAME _____ PARCEL _____

FEE TITLE TO PERMANENT EASEMENT FOR

TEMPORARY EASEMENT FOR

(See Attached Exhibit "A" (Legal Description) which is a part hereof.)

(See Attached Exhibit "B" (Legal Description) which is a part hereof.)

4. **ACQUISITION OR CONDEMNATION PLAT SHOWING LOCATION OF RIGHT-OF-WAY OR OTHER PROPERTY SOUGHT TO BE CONDEMNED.** The location of the right-of-way or other property sought to be acquired by condemnation is described and shown on the attached condemnation plat which is attached and marked Exhibit "B" which is a part hereof.

5. **NAMES AND ADDRESSES OF CONDEMNNEES.**

The name and addresses of all record owners and holders of liens and encumbrancers, as far as known, are as follows:

PROPERTY ADDRESS:

Titleholders:

Tenant:

Lienholders and
Encumbrancers:

6. **AGRICULTURAL LAND CLASSIFICATION STATEMENT**

The public interest requires that certain rights are to be acquired by condemnation proceedings in agricultural land and in other than agricultural land as authorized and provided by law. A portion of the lands sought to be acquired by condemnation may be classified as Class I or Class II within an agricultural area (as authorized and defined by Chapter 473A of the Iowa Code), and if so classified is reasonably necessary for this public improvement.

7. **IDENTIFY TERMS AND CONDITIONS:**

PERMANENT EASEMENT

LANDOWNER'S NAME _____ PARCEL _____

Said permanent easement is a perpetual easement for the public purpose of _____

and no structure shall be placed or constructed and no fence shall be erected, over, on, under or within the Easement Area, nor shall the grade, elevation or contour of any part of the easement area be changed without the written consent of the County Engineer. The County shall have the right of access to the Easement Area and have all rights of ingress and egress reasonably necessary for the use of and enjoyment of the Easement Area, including but not limited to the right to remove any unauthorized obstructions or structures placed, constructed, or erected on the Easement Area.

TEMPORARY EASEMENT

This temporary easement for construction is for the public purposes of allowing the County, its agents, contractors and employees a right of entry in, upon and onto the above-described property for the purpose of hauling, transporting and storage of materials and equipment during the construction of _____. Said temporary construction easement shall terminate when all construction work on the project is completed and accepted by the County.

CONSTRUCTION

The _____ shall be constructed in accord with the following terms and conditions contained in the Construction Specifications. (See Exhibit "C").

8. REQUEST FOR APPOINTMENT OF A COMMISSION TO APPRAISE DAMAGES PURSUANT TO A REGULARLY ADOPTED RESOLUTION BY THE BOARD OF SUPERVISORS OF _____ COUNTY, IOWA.

NOW, THEREFORE, _____ County, Iowa, hereby requests the appointment of a compensation commission of six persons qualified as prescribed in Section 6B.4, Code of Iowa, not interested in the same or a like question, to view the real estate involved and appraise the damages which

LANDOWNER'S NAME _____ PARCEL _____

the owners thereof, lienholders, encumbrances, or other persons interested therein will sustain by reason of the appropriation herein sought to be acquired by condemnation for the purpose herein stated, and make their report in writing to the Sheriff as provided by law.

9. MAILING INSTRUCTIONS

Please send the Notice of Selection to _____

_____, % (THE HEARING AGENT), _____ County, Iowa.

Dated this _____ day of _____, 19____.

10. IDENTIFY PERSON WHO SIGNED THE APPLICATION FOR THE CONDEMNOR

_____, COUNTY, IOWA

Signed by: _____

(County Attorney or Authorized Representative)

Address: _____

Telephone: _____ () - _____

11. CHIEF JUDGE'S RECEIPT OF APPLICATION AND SIGNATURE APPROVAL

Received in my office this _____ day of _____, 19____.

CHIEF JUDGE OF THE _____ JUDICIAL
DISTRICT OF IOWA

12. COUNTY'S CERTIFICATION THAT APPLICATION WAS APPROVED BY CHIEF JUDGE

In accord with Section 6B.3(7) of the Iowa Code, I, the undersigned, certify that this is the Original

Figure 3.1e

LANDOWNER'S NAME _____ PARCEL _____

Application for Condemnation which has been approved by the Chief Judge of the _____ Judicial District and that the Notice of Condemnation and condemnation attached thereto are true and correct copies of the original files in the proceeding.

Signed by: _____
(County Attorney or Authorized Representative)
Title: _____
Address: _____

13. SHERIFF'S STATEMENT OF FILING

Filed in my office at _____, Iowa, this _____ day of _____
_____, 19____.

Sheriff of _____ County, Iowa

LANDOWNER'S NAME _____ PARCEL _____

1. Heading identifying the Acquiring Authority and Project.

In the Matter of the Condemnation of
Certain Rights in Land by _____
County, Iowa for the Improvement of

NOTICE OF
CONDEMNATION

County Road No. _____ located in
_____ County, Iowa

Project No. _____

2. Direct notice to all owners, tenants, lienholders and encumbrancers.

TO:

John E. Landowner, (Address)

Mark T. McGuire, individually and doing business as _____, _____ Address

Carol A. McGuire, individually and doing business as _____, _____ Address

The Security State Bank (now known as United Central Bank and Trust), _____ Address

Hawkeye Bank and Trust of Des Moines (formerly known as First Federal State Bank) _____ Address

American Homestead Corporation (also known as American Homestead Corp.) a defunct corporation,

% _____ Name _____, _____ Address _____

McAninch Corporation (also known as McAnich Corporation), % _____ Name _____,

Registered Agent, _____ Address _____

Mary Anna Collins, also known as Mary A. Collins, % Marvin Collins, _____ Address

Estate of Fred K. Collins, deceased, % Marvin Collins, Executor, _____ Address

Larry Brown, % David E. Green, Attorney, _____ Address

APT Joint Venture, % Paul R. Larson, _____ Address

Al & Jerry's Car Wash Co., % John Doe, Registered Agent, _____ Address

American Food Industries, a limited partnership (doing business as Kentucky Fried Chicken)

% William E. Allen (also known as Bill Allen), general partner, _____ Address

Socony-Vacuum Oil Company, address unknown

Chicago and Northwestern Transportation Company, % Richard Taylor, Real Estate Development

for Railroad Interests, 1 Northwestern Center, Chicago, Illinois

United States of America, % _____, United States Attorney, Federal Building,

Cedar Rapids, Iowa

United States of America, % _____, U.S. Attorney General, Department of Justice,

Tenth and Constitution Avenue, Washington D.C.

City of _____, Iowa, % City Clerk, _____, Iowa

_____ County, Iowa, % County Auditor, _____, Iowa

to all other persons, companies or corporations having any interest in or owning any of the following described real estate:

3. Description of the land affected or sought to be condemned.

You and each of you, are hereby notified that _____ County, Iowa,
desires the following land or rights in land:

LANDOWNER'S NAME _____ PARCEL _____

a Fee Simple Title, a Fee Simple Title to Access Rights, a Permanent Easement for _____ purposes and a Temporary Easement for _____ purposes or to reconnect an entrance at Station _____, N,E,S,W side, which land or portion thereof affected or sought to be condemned

OPTION 1

is more specifically described as follows:

- the title to the fee simple sought to be appropriated for the use and benefit of _____ County, Iowa, is in land described as follows: (Include legal description and acreage)
- the access rights in fee simple title sought to be appropriated are described as follows: (Include legal description and acreage)
- the permanent easement for highway purposes sought to be appropriated is in land described as follows: (Include legal description and acreage)
- the permanent easement for the purpose of constructing and maintaining a storm sewer in the name of and for the use and benefit of the City of _____, Iowa. (Include legal description and acreage)
- the right of temporary easement sought to be appropriated for the specific purpose of securing borrow materials, is in land described as follows: (Include legal description and acreage and termination date or terms)

OPTION 2

is more particularly described in Exhibit "A" and shown with reference to their location to lands affected on plats Exhibit "B" attached hereto.

4. Attach the Acquisition Plat or Condemnation Plat.
5. Special Terms, Restrictions or Rights Reserved to the Landowner.

In connection with this condemnation proceeding it is specifically provided as follows:

- Any and all improvements, including fences, and advertising devices, if any, located wholly within the land sought by easement for highway purposes are condemned in their entirety.
- The County shall have a right of temporary easement, for the specific purpose of securing borrow material, in land described as follows and as shown on the plat Exhibit "B" attached hereto and by reference made a part hereof:

Beginning at the SW Corner of said Section __; thence N 00°00' E, 597.00 feet along the west line of said Section __; thence N 90°00' E, 98.60 feet; thence S 00°00' W, 597.00 feet; thence S 90°00' W, 98.60 feet to the Point of Beginning; containing 1.35 acres, more or less.

The limits of the above described borrow area are in accord with the plans for the project.

LANDOWNER'S NAME _____ PARCEL _____

- Eight inches of topsoil shall be removed and replaced on the land to be acquired by said temporary easement to secure borrow material.
- The County shall have a right of temporary easement, for the purpose of stockpiling topsoil, in land described as follows and as shown on said plat Exhibit "B":
- Any drain tile lines, or outlets, which are located within the land being acquired under this proceeding (except the area sought for securing borrow material) and are damaged or destroyed by highway construction, shall be relocated, replaced or restored by condemnor outside of said land being acquired under this proceeding, and at no expense to the condemnees, and the County shall have a right of temporary easement as necessary over condemnee's remaining property for the specific purpose of effecting such relocation, replacement or restoration. The County will leave the surface of the borrow area sloped to drain and will not repair or replace any tile lines within the borrow area.
- The areas sought to be appropriated by temporary easement, for the specific purpose of securing borrow material, stockpiling topsoil, and relocating, replacing, or restoring tile, if any, are reserved to the condemnees until the actual date said areas are required for construction of this public improvement. Also, said temporary easement rights shall terminate immediately upon completion of the operations for which said rights are sought and in no event later than the completion of this public improvement.
- The County shall have a right of temporary easement, for the specific purpose of shaping slopes, in land described as follows and as shown on said plat Exhibit "B":

Commencing at the N $\frac{1}{4}$ Corner of said Section __; thence S $89^{\circ}44\frac{1}{2}'$ W, 1142.9 feet along the north line of said Section __; thence S $00^{\circ}16'$ E, 62.4 feet to a point on said south line of _____ Road, the Point of Beginning; thence N $89^{\circ}53\frac{1}{2}'$ W, 161.8 feet along said south line; thence S $00^{\circ}00'$ E, 24.7 feet; thence N $81^{\circ}25\frac{1}{2}'$ E, 163.6 feet to the Point of Beginning.

- The areas sought to be appropriated by temporary easement, for the specific purpose of constructing an entrance and shaping slopes, are reserved to the condemnees until the actual date said area are required for construction of the highway improvement. Also, said temporary easement rights shall terminate immediately upon completion of the operations for which said rights are sought and in no event later than the completion of this highway improvement.
- The leasehold interest sought to be appropriated is in one outdoor advertising device located on the land described as follows and as shown on the plat Exhibit "B" attached hereto and by reference made a part hereof.

Lot 747 in _____ County, according to the United States Commissioners map thereof.

The one 12' x 25' illuminated outdoor advertising device, owned by _____, and located on the above described parcel of land is condemned in its entirety.

- The artesian well located on the north side of said shop building in the above described temporary easement area will not be disturbed.
- The shop building lying particularly within the land sought in fee simple title is condemned in its entirety. The use of said shop building is reserved to the condemnee until _____, 19.

LANDOWNER'S NAME _____ PARCEL _____

- 1. Any and all improvements, including fences, and advertising devices, if any, located wholly within the land sought in fee simple title and by easement for constructing and maintaining a storm sewer are condemned in their entirety.
- 2. The commercial car wash building, including its fixtures and equipment, which lies wholly within the following described area is condemned in its entirety, and the County shall have a right of temporary easement, for the specific purpose of removing said building and constructing an entrance, in land described as follows and as shown on the plat Exhibit "B" attached hereto and by reference made a part hereof.

Beginning at the SW Corner of said Lot 2, which point is also the SE Corner of Lot 1 of said Block A; ...

- 3. The area sought to be appropriated by temporary easement, for the specific purpose of constructing an entrance and removing a building, is reserved to the condemnees until the actual date said area is required for construction of this highway improvement. Also, said temporary easement right shall terminate immediately upon completion of the operations for which said right is sought and in no event later than the completion of this highway improvement.
- Any and all improvements, including fences, and advertising devices, if any, including the following fixtures and equipment, located wholly within the land sought in fee simple title are condemned in their entirety.

- | | |
|----------------------------------|-------------------------------------|
| 1. 10 plywood booths | 21. Freezer, Wards |
| 2. 7 window drapes | 22. Marinator, Chix |
| 3. Waste can, Lobby | 23. Biscuit oven, Bladgett |
| 4. Settee, 7 foot | 24. Table, 5 foot Stainless Steel |
| 5. Salad Case, 5 foot Hockenberg | 25. Breeding Table, 6 foot |
| 6. Cash register, NCR 250 | 26. Breeding Table, 4 foot |
| 7. Coffee Maker, Bunn | 27. Filter Machine, Collectmatic |
| 8. Pepsi Cola Post Mix Machine | 28. French Fryer, Frymaster, 35 lb. |
| 9. Menu Board - 10 foot lighted | 29. 6 Burner Stove, Vulcan |
| 10. 4 Light Chandelier | 30. 4 Cookers, Collectmatic #720 |
| 11. Safe (in floor) | 31. Exhaust Hood, 13 foot, 2 fans |
| 12. Music System | 32. Fire Extinguisher System, Ansul |
| 13. Amana Radar Range | 33. Cooler, Walk-in, 8' x 10' |
| 14. G.E. Warming Unit | 34. Freezer, Walk-in, 8' x 10' |
| 15. 2 Bun Warmers, Toastmaster | 35. Sink, 3 compartment |
| 16. Refrigerator (under counter) | 36. Grease Trap |
| 17. Packing Table, 8.5 foot | 37. Sink, Hand |
| 18. Mixer, Hobart, A-200 | 38. 2 Warming Cabinets, Cres Col |
| 19. Mixer Table, 3' x 3' | 39. Crate Rack, Chix |
| 20. Ice Machine, Ross Temp | 40. Storage Rack, 5 foot |
| | 41. Kentucky Fried Chicken Sign |

- 6. Specify the Public Purpose(s) and Identify Statutory Authority to Condemn for the Purpose(s).

This condemnation is sought for the improvement and/or the maintenance of roads and streets in the State of Iowa in the matter prescribed in Chapter 28E, 306, 306A, 306B, 306C, 313, 331, 6A, and 6B of the Code of Iowa and all amendments thereto.

LANDOWNER'S NAME _____ PARCEL _____

Confirm that these Code Chapters do authorize the condemnation for the purpose stated. If there is doubt, ask for legal assistance.

There are many sections of the code, not a part of Chapters 6A or 6B, that grant Condemnation rights to counties and cities. Usually, they authorize condemnation for particular or special purposes, but they should be read to be sure that they do not also contain limitations on the right to condemn that could effect the validity of a Condemnation proceedings. These special statutes include:

Special Statutes for Counties

- | | |
|-----------------------------|---|
| Section 161A.21 | - Soil Conservation Subdistricts; |
| Section 314.7 | - Trees - ingress or egress - Drainage; |
| Section 330A.8(11) | - Aviation Authorities; |
| Section 331.304(1) and (8) | - County Home Rule; |
| Section 347.13(1) | - Hospitals; |
| Section 358.17 | - Sanitary Districts; |
| Section 468.344 and 468.346 | - Highway Drainage Ditches and Trees; |

Special Statutes for Cities for joint projects

- | | |
|--------------------|--------------------------------|
| Section 330A.8(11) | - Aviation Authorities; |
| Section 347.13(1) | - Hospitals; |
| Chapter 364 | - Powers and Duties of Cities; |
| Section 403.7 | - Urban Renewal; |
| Section 403A.20 | - Municipal Housing Projects; |
| Section 461A.75 | - Water Recreational Area; |
| Chapter 477.4 | - Telephone Utilities; |
| Chapter 478.15 | - Electric Transmission; |

7. State Time, Place and Date of Viewing and Hearing.

A commission has been appointed as provided by law for the purpose of appraising the damages which will be caused by this condemnation.

You are further notified that the Commissioners will report to the Sheriff's Office in _____, Iowa, at _____ o'clock a.m., on the _____ day of _____, 19____ and will view your property at approximately _____ o'clock a.m. on the same day. They will then return to the Sheriff's Office and proceed to appraise said damages. You may participate in these proceedings if you care to do so.

_____ County, Iowa

LANDOWNER'S NAME _____ PARCEL _____

8. Signature of Authorized Representative.

BY: _____
The Applicant, County Attorney or Authorized Representative

9. Acceptance of Service Statement.

ACCEPTANCE OF SERVICE AND WAIVER OF NOTICE

I hereby acknowledge receipt of the notice and by my signature accept service and waive notice.

NAME

TITLE

DATE

It is possible to obtain an acceptance of service by FAX on the morning scheduled for the condemnation.

Figure 3.3a

IN THE SHERIFF'S OFFICE OF _____ COUNTY, IOWA	
IN THE MATTER OF THE CONDEMNATION OF CERTAIN RIGHTS IN LAND FOR _____ PURPOSES by _____ COUNTY, IOWA Applicant.	SELECTION AND APPOINTMENT OF COMPENSATION COMMISSIONERS BY THE CHIEF JUDGE OF THE _____ JUDICIAL DISTRICT

An Application for Condemnation having been filed with me by _____ County, Iowa for the selection and appointment, by lot, of six suitable persons as the law provides to act as a compensation commission to assess and appraise the damages sustained by reason of the condemnation of certain specified rights in certain land described by Applicant, in its application filed in the above entitled matter, I hereby designate, select and appoint as the members of said compensation commission required in this matter the following persons:

NAME	ADDRESS	QUALIFICATIONS
Name	City or Rural Route	LICENSED REAL ESTATE SALESPERSON OR BROKER
Name	City or Rural Route	
Name	City or Rural Route	KNOWLEDGEABLE OF PROPERTY VALUES BY VIRTUE OF OCCUPATION
Name	City or Rural Route	
Name	City or Rural Route	OTHER THAN AGRICULTURAL

Name _____ City or Rural Route _____

Name _____ City or Rural Route _____ AGRICULTURAL

Name _____ City or Rural Route _____

I further designate, select and appoint the above named _____
_____ to act as Chairperson of said commission.

Some county lists of appointed residents are not current or complete.

It is not always possible for the Chairperson to serve as planned. To avoid having to request a new Chairperson under hurried or last minute circumstances request the Chief Judge to appoint an alternate Chairperson.

I further designate _____ as Alternate Chairperson of said Commission.

TO THE SHERIFF OF _____ COUNTY, IOWA: Attached hereto please find a duplicate of the Application for Condemnation in the above matter.

Dated at _____, Iowa this _____ day of _____, 19__.

Judge
Chief Judge of the _____
Judicial District of Iowa including
_____ County

Sheriff's Filing Statement

Filed in my office at _____, Iowa, this _____ day of _____, 19__.

Sheriff of _____ County,
Iowa

MEMORANDA TO CHIEF JUDGE:

Judge _____
 Chief Judge of the _____ Judicial District of Iowa
 including _____ County

Dear Judge _____ :

_____ County, Iowa, needs these property rights for this public improvement project. Our efforts to acquire these property rights by conveyance have been unsuccessful and it is necessary that the county institute condemnation proceedings to be assured that the county will be able to obtain possession of this property in time to meet construction schedules for this project.

Enclosed find three originals of (1) an Application to the Chief Judge of the _____ Judicial District for the Appointment of a Commission to Appraise Damages, (2) Selection and Appointment of a Compensation Commission, and (3) Supplementary Order Appointing Alternate Compensation Commissioners. At this time of year the lists of Selected and Alternate Commissioners have been exhausted without being able to seat a full Compensation Commission. Therefore, we are requestng that you select two or three alternates in each category instead of one.

Please return two originals to this office and retain one original in your office.

We will forward a "Certified True Copy" of the Application and originals of the Selection and Appointment of a Compensation Commission and the Supplementary Order Appointing Alternate Compensation Commissioners to the Sheriff, who will summon the original six appointees. If any of the original six appointees are unable to serve, the Sheriff will contact an alternate compensation commissioner with the same qualification. We will request substitute commissioners from you in the event that the alternate compensation commissioners are unable to serve.

No alternate compensation commissioners will be contacted unless one of the original six appointees is unable to serve.

Should you require any additional information regarding the enclosed Application, please contact this office at (____) ____-____.

Sincerely,

 Name
 County Attorney or Authorized Representative

Enclosures

Figure 3.4b

IN THE SHERIFF'S OFFICE OF _____ COUNTY, IOWA	
IN THE MATTER OF THE CONDEMNATION OF CERTAIN RIGHTS IN LAND FOR _____ PURPOSES <div style="text-align: right; margin-right: 50px;">by</div> _____ COUNTY, IOWA <div style="text-align: right;">Applicant,</div>	SUPPLEMENTARY ORDER APPOINTING ALTERNATE COMPENSATION COMMISSIONERS

An Application for Condemnation having been filed with me by _____ County, Iowa for the selection and appointment, by lot, of a duly constituted compensation commission, and said selection and appointment having been made by me, I further, DESIGNATE, SELECT AND APPOINT the following persons to serve as alternate members of said compensation commission, in the event that any of the said members having the same qualifications are unable to serve for any reason:

NAME	ADDRESS	QUALIFICATIONS
Name	City or Rural Route	LICENSED REAL ESTATE SALESPERSON OR BROKER
Name	City or Rural Route	
Name	City or Rural Route	KNOWLEDGEABLE OF PROPERTY VALUES BY VIRTUE OF OCCUPATION
Name	City or Rural Route	

Name _____ City or Rural Route _____
OTHER THAN AGRICULTURAL

Name _____ City or Rural Route _____

Name _____ City or Rural Route _____
AGRICULTURAL

Name _____ City or Rural Route _____

Dated at _____, Iowa this _____ day of _____, 19__.

Judge
Chief Judge of the _____
Judicial District of Iowa including
_____ County

Filed in my office at _____, Iowa, this _____ day of _____, 19__.

Sheriff of _____ County, Iowa

Figure 3.5a

IN THE MATTER OF THE CONDEMNATION OF
CERTAIN RIGHTS IN LAND FOR _____ PURPOSES
by the

_____ COUNTY, IOWA,
Applicant

ORDER CONFIRMING APPOINTMENT
OF SUBSTITUTE COMPENSATION
COMMISSIONER(S)

_____ County, Iowa

NOW on this ____ day of _____, 19____, an Order Confirming Appointment of
Substitute Compensation Commissioner(s) having been presented to me due to the inability of

_____ and _____ having,
Name of unavailable commissioner Name of unavailable commissioner

qualifications as being _____, to serve as a
Compensation Commissioner in the condemnation referenced above, this Order confirms that
it was ordered that the vacancy be filled by the following Commissioner(s).

NAME	ADDRESS	QUALIFICATIONS
------	---------	----------------

The Sheriff of _____ County, Iowa, shall notify the Substitute Commissioner(s)

in the same manner as the original commissioners were notified.

Dated at _____, Iowa this ____ day of _____, 19____.

CHIEF JUDGE OF THE _____

JUDICIAL DISTRICT OF IOWA

Filed in my office at _____, Iowa, this ____ day of _____, 19__.

Sheriff of _____ County, Iowa

1. Statement of Public Purpose for Condemnation.

IN THE SHERIFF'S OFFICE OF _____ COUNTY, IOWA	
IN THE MATTER OF THE CONDEMNATION OF CERTAIN RIGHTS IN LAND FOR <div style="text-align: right;">by the</div> <div style="text-align: right;">Applicant.</div>	SUMMONS OF COMMISSIONERS

TO:

2. Attach Application for Condemnation and Notice of Condemnation.

The Notice of Condemnation may be omitted if the Application for Condemnation identifies all owners, tenants, lienholders, and encumbrancers.

The _____ has filed with the Chief Judge of the _____ Judicial District, including _____ County, an application for Condemnation, Notice of Condemnation and Appointment of Commissioners to appraise damages, asking for the selection and appointment of a Compensation Commission to assess the damages which the owners, encumbrancers, lienholders and other persons interested in the land sought to be appropriated or condemned in these proceedings, will sustain by reason of such condemnation of the property.

WHEREAS, pursuant to Iowa law, you have been selected and appointed by the Chief Judge of the _____ Judicial District for _____ County as a member of such Condemnation Commission, and _____ has been designated as Chairperson of the Commission and _____ has been designated as Alternate Chairperson of said Commission.

3. Command to Appear

NOW, THEREFORE, you are commanded to be and appear before the undersigned in the Office of the Sheriff of _____ County, Iowa, _____ County Courthouse, _____, Iowa on the _____ day of _____, 19____, at _____ a.m. for the purpose of qualifying as a Commissioner and to proceed to view said premises and make an award of damages.

4. Request to identify any interest Commissioner may have in the property

The attached Application for Condemnation Notice of Condemnation to Assess Damages

Figure 3.6b

identifies the persons and real estate affected by the condemnation. You should examine it in order to determine if you possess any interest in the proceeding which would cause you to render a biased decision.

_____, SHERIFF
_____, COUNTY, IOWA

BY _____
Deputy

5. Acceptance of Service by Commissioner

ACCEPTANCE OF SERVICE

Legal Service of the Above Summons with Notice attached is hereby accepted and acknowledged at _____, this ____ day of _____, 19____. The undersigned further certifies that he/she does not possess any interest in the proceeding which would cause a biased judgement.

signed,

6. Refusal to Serve as Commissioner

REFUSAL TO SERVE

The undersigned is unable to serve for the reason that he/she possesses an interest in the proceeding which may cause a biased decision or for the reason that _____
_____.

signed,

_____, 19__

County Recorder

County Courthouse
_____, Iowa _____

RE: _____ County Condemnation _____
project number

Dear _____:

Enclosed is the original Certified Application for Condemnation which has been approved by the Chief Judge. In accord with Section 6B.3(7), _____ County is to file the original approved Application with the County Recorder in the manner required under Section 6B.37.

Please file and index this Application in the Grantor/Grantee index record of deeds as follows:

Grantor: All condemnee's name(s) - owners, tenants, lienholders and encumbrancers.

Grantee: _____ County, Iowa - the acquiring authority.

Legal: Enter all legal descriptions.

Notes: • See documents for property ownership.

• Abstractor will not search the "Grantee" for the owners name.

Please return the original filed and indexed Certified Application for Condemnation and also, please complete and sign the following statement and promptly return this letter to the undersigned in the self addresses stamped envelope provided.

I, _____, Recorder of _____
County, do hereby certify that the original certified approved Application for Condemnation was filed in my office on the ____ day of _____, 19__, and is RECORDED IN BOOK/PAGE-DOC. # _____, # _____ of the records of said county, as provided by law.

I certify that the fee for recording of these papers is in the amount of _____
and that said amount is legally payable, and that the claim is correct and that payment has not been received.

County Recorder, _____ County, Iowa

If you have any questions regarding the above, please contact this office at (____)____-_____.
Thank you for your cooperation in this matter.

Sincerely,

Authorized Representative
Address

Enclosures

Figure 4.1

"I _____ hady
state and

affirm that I made personal service on _____

_____that service was made at _____ o'clock AM - PM on the
name and address of person to be served

_____ day of _____, 19_____ by serving

_____ at _____
identify person served

_____. I did deliver a copy of the Notice of
address

Condemnation with attached Acquisition or Condemnation plat to _____
name of person to whom copy was

delivered

Signed and affirmed by:

Name of Service Agent
Title
Address

Figure 4.2

by _____ County, Iowa, Condemnor

Project No. _____

_____ County, Iowa, Applicant

I, _____, being duly sworn state that I am the Condemnation _____
for _____ County, Iowa in the above-entitled matter.

Name, Address

I further state that an attempt of personal service will be made on the condemnees named below:

Name, Address

Name - Title

STATE OF _____,
COUNTY OF _____, ss:

Notary Public in and for the State of _____

Figure 4.3

IN THE SHERIFF'S OFFICE OF _____ COUNTY, IOWA

IN THE MATTER OF THE CONDEM-
NATION OF CERTAIN RIGHTS IN LAND
FOR _____
IMPROVEMENT

(_____
_____),

by the

Applicant - Condemnor

NOTICE OF PERSONAL APPEARANCE
OF CONDEMNEE

On the ____ day of _____, 19____, the condemnee(s): _____

(Name(s) of Condemnee(s) who personally appeared)

Said Condemnee(s) being:

(Identify the interest in the land held by the condemnee(s): owner, tenant, lienholder, encumbrancer.)

Said Condemnee(s) did personally appear at this condemnation proceeding, asserted a claim for compensation, and did thereby submit themselves to the jurisdiction of this compensation commission.

Signature of Condemnor's
Hearing Agent

Date Signed & Filed with Sheriff

Figure 4.4

IN THE SHERIFF'S OFFICE OF _____ COUNTY, IOWA	
IN THE MATTER OF THE CONDEMNATION OF CERTAIN RIGHTS IN LAND FOR _____ IMPROVEMENT (_____ _____), by the _____, Applicant - Condemnor	DISMISSAL

On the _____ day of _____, 19____, the condemnor hereby dismisses these condemnation proceedings against

(Name of Condemnee(s) being dismissed from this proceeding)

Said Condemnees being:

(Identify the interest in the land held by the condemnee(s): owner, tenant, lienholder, encumbrancer.)

on the property subject of these proceedings.

 Signature of Condemnor's
 Hearing Agent

 Date Signed & Filed with Sheriff

Figure 4.5a

IN THE SHERIFF'S OFFICE OF _____ COUNTY, IOWA	
IN THE MATTER OF THE CONDEM- NATION OF CERTAIN RIGHTS IN LAND FOR _____ IMPROVEMENT (_____ _____ _____) , by the _____, Applicant - Condemnor	STIPULATION

On the _____ day of _____, 19____, the condemnor hereby stipulates the following:

On the property of:

(the parcel and the condemnees)

Signature of Condemnor's
Hearing Agent

Date Signed & Filed with Sheriff

Figure 4.5b

IN THE SHERIFF'S OFFICE OF _____ COUNTY, IOWA

IN THE MATTER OF CONDEMNATION OF
CERTAIN RIGHTS IN LAND FOR

_____,

by

_____,

Applicant - Condemnor

CONSTRUCTION STIPULATION

On the property of _____,
Parcel No. _____, Project No. _____:

On the ____ day of _____, 19____, the Condemnor hereby stipulates the following:

1. Top Soil: _____

2. Temporary Access: _____

3. Fence, Gate & Driveway: _____

4. Trees: _____

5. Hardwood: _____

Name
Condemnor's Hearing Agent

Date Signed & Filed with Sheriff

Figure 5.1a

IN THE MATTER OF THE
CONDEMNATION OF CERTAIN
RIGHTS IN LAND BY THE

IN _____ COUNTY

PROJECT:

Each of the undersigned being duly sworn says:

That I do possess the qualifications listed under my name below, and

That I do not possess any interest in the proceeding which would cause me to render a biased decision, and

That I will, to the best of my ability, faithfully and impartially assess the damages which owners, lienholders, encumbrancers and other persons interested in the land for which certain rights are sought to be appropriated by these proceedings will sustain by reason of the appropriation of the rights set forth and described in the Application and Notice of Condemnation in the Office of the Sheriff for the _____

_____, and make a written report to the Sheriff as authorized and prescribed in Chapter 6B, Code of Iowa, and any amendments thereto, and in accordance with the instructions of the Chief Justice of the Supreme Court, and will truly perform any and all other duties imposed upon me by law as a member of the compensation commission selected and appointed to assess said damages.

Name:
Licensed Real Estate
Salesperson or Broker

Name:
Licensed Real Estate
Salesperson or Broker

Name:
Knowledgeable of property values by
virtue of occupation

Name:
Knowledgeable of property values by
virtue of occupation

Name:
Agricultural

Name:
Agricultural

Name:
Other than agricultural

Name:
Other than agricultural

Acknowledged, Subscribed and sworn to before me this _____ day of _____, 19__.

Notary Public in and for said County and State

Filed in my office at, _____, Iowa, this _____ day of _____, 19__.

Sheriff of _____ County, Iowa

INSTRUCTIONS TO CONDEMNATION COMMISSIONERS
FROM CHIEF JUSTICE
OF THE IOWA SUPREME COURT

You have been selected as a compensation commission to determine and assess damages to property condemned for a public use under the power of eminent domain. Pursuant to the provisions of Iowa Code, section 6B.43 (1993), you are instructed as follows:

1. The Constitution prohibits the taking of private property for a public use without just compensation. Governmental units and certain utilities are authorized by statute to condemn private property or a certain use thereof for public purposes. It is your duty to fix a just compensation for that taking or use. You shall arrive at such compensation in a fair and impartial manner and on an independent basis. No commissioner shall possess any interest in the proceeding which would cause such person to render a biased decision.
2. The property owner is entitled to be made whole, but double recovery is not allowed. Where the entire property unit is taken, the measure of damages is the fair market value of the property immediately before the condemnation and before such value has been affected by the proposed public use. Where only a portion of the property unit is taken, including certain rights such as an easement, the measure of damages is the difference between the fair market value of the property as a whole immediately before condemnation and before it has been affected by the proposed public use and the fair market value of the remaining property after the taking. Any advantage or benefit which may accrue to the remaining property by reason of the public use is not to be considered. Substantially, the same measure applies to damages to a leasehold.
3. Allowance shall be made to the owner for any personal property damaged or destroyed, for the cost of removing and replacing fences and removing buildings onto abutting property of the owner.
4. Allowance shall be made for cost, if any, of removing personal property a distance not to exceed 25 miles, but not over \$500.
5. At the request of the condemner or the condemnee, the damages shall be divided into parts to indicate the value of any dwelling, the value of the land and improvements other than a dwelling, and the value of any additional damages.
6. You shall file with the sheriff a written report containing your appraisal.

7. In arriving at the fair market value of the property, you shall not consider evidence or information regarding prior negotiations between the parties. However, when you report the commission's award to the sheriff, if it exceeds 110% of the condemnor's final offer, the sheriff will so advise you, and you will then determine and fix reasonable attorney fees and costs, if any, incurred by the condemnee in presenting the condemnee's case before your commission.
8. You will be in the charge of the sheriff, who will administer the oath to you and furnish transportation to and from the site of the property or properties you are required to view.

These brief and general instructions do not contain all the issues which might confront you. The position of the parties or their attorneys on any additional problems may be explained to you at the time of the hearing.

Dated this 13th day of September, 1994.

Arthur A. McGiverin
Chief Justice
Supreme Court of Iowa

Copies to:

All County Sheriffs

Figure 5.3

IN THE MATTER OF THE
CONDEMNATION OF CERTAIN
RIGHTS IN LAND BY

AFFIDAVIT OF FINAL OFFER

_____ COUNTY

PROJECT NO. _____

PARCEL NO. _____

TO: SHERIFF OF _____ COUNTY, IOWA

_____ County, Iowa, Applicant in the captioned matter, hereby state and affirm that the most recent offer made to _____

_____, owners of the property and all lienholders and encumbrancers and other persons having an interest in or owning the real property the subject of this condemnation proceeding was \$_____ for all interests and all rights to be acquired as described by the Applicant in the Notice of Condemnation filed in the above matter.

Condemnation Hearing Agent

Subscribed and sworn to before me by the said _____ this _____ day of _____, 19__.

Notary Public in and for _____
County, Iowa

Sheriff's Statement of Filing:

Filed in my office at, _____, Iowa, this _____ day of _____, 19__.

Sheriff of _____ County, Iowa

Figure 5.4

IN THE MATTER OF THE
CONDEMNATION OF CERTAIN
RIGHTS IN LAND BY
_____ COUNTY, IOWA

REQUEST FOR SEPARATE AWARDS

County Road No. ____

Project No. _____

Parcel No. _____

TO: COMPENSATION COMMISSIONERS
_____ County, Iowa

_____ County, Iowa, the Condemnor, requests the Compensation Commission
to make a separate award for _____
and for _____.
Dated this ____ day of _____, 19__.

Signed: _____
Condemnor's Hearing Agent

I further certify that this request for separate awards came into my hands on the ____ day of
_____, 19__ and that I delivered this request to the Compensation Commission
for their deliberation on the ____ day of _____,
19_ at _____ o'clock AM - PM.

Sheriff of _____ County, Iowa

_____ County, Iowa
 In the matter of the Condemnation
 of Certain Rights in Land by

REPORT OF
 COMPENSATION
 COMMISSION

PROJECT NO.

PARCEL NO.

LANDOWNER(S)

TO: _____, SHERIFF OF _____ COUNTY, IOWA

We, the undersigned, being duly appointed and qualified commissioners appointed to assess the damages sustained by the owners, lienholders, encumbrancers and other persons interested in the appropriation of certain specified rights as set forth and described in the Notice of Condemnation filed in the above entitled matter respectfully report as follows:

That we proceeded to view the respective premises at the time or times fixed in the notice to persons interested therein and do hereby assess and appraise the damages which the respective persons will sustain by reason of the appropriation as follows:

Owners, Tenants, Lienholders and Encumbrancers	Land & Improvements	Consequential Damages	Total Award
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____

The award for Condemnee's attorney fees and costs, if any, is:

For Attorney _____	\$ _____
For Attorney _____	\$ _____

Respectfully reported at _____, Iowa this _____ day of _____,
 19____. Signatures of Compensation Commissioners:

_____	_____
_____	_____

Attach - Endorsement of Sheriff of mailing of Notice of Appraisement of Damages and Time For Appeal.
 Sheriff's Statement of Filing:

Filed in my office at, _____, Iowa, this _____ day of _____, 19__.

 _____ Sheriff of County, Iowa

Figure 5.5b

In the matter of the Condemnation
of Certain Rights in Land by
_____ County, Iowa

REPORT OF
COMPENSATION
COMMISSION

PROJECT NO.

PARCEL NO.

LANDOWNER(S)

TO: _____, SHERIFF OF _____ COUNTY, IOWA

We, the undersigned, being duly appointed and qualified commissioners appointed to assess the damages sustained by the owners, lienholders, encumbrancers and other persons interested in the appropriation of certain specified rights as set forth and described in the Notice of Condemnation filed in the above entitled matter respectfully report as follows:

That we proceeded to view the respective premises at the time or times fixed in the notice to persons interested therein and do hereby assess and appraise the damages which the respective persons will sustain by reason of the appropriation as follows:

The total assessment of damages awarded is:

For Land and Improvements \$ _____

For consequential damages \$ _____

Total Award \$ _____

The award for condemnee's attorney's fees and costs, if any, is: \$ _____

If requested by the condemnee or the condemnor, the total award shall be divided into parts, as follows:

- 1. Value of Dwelling \$ _____
- 2. Value of Land and Improvements,
acquired other than the Dwelling \$ _____
- 3. Value of additional damages \$ _____

Respectfully reported at _____, Iowa this ____ day of _____, 19____.

Signatures of Compensation Commissioners:

Attach - Endorsement of Sheriff of mailing of Notice of Appraisement of Damages and Time For Appeal.

Sheriff's Statement of Filing

Filed in my office at, _____, Iowa, this _____ day of _____, 19__.

Sheriff of _____ County, Iowa

_____ County, Iowa
In the matter of the Condemnation
of Certain Rights in Land by

NOTICE OF APPRAISEMENT
OF DAMAGES AND TIME
FOR APPEAL

PROJECT NO.

PARCEL NO.

LANDOWNER(S)

TO: _____,¹ You and each of you are hereby notified that on the _____ day of _____, 19____, duly appointed and qualified commissioners made the following appraisalment of damages and that pursuant to the Code of Iowa, you may appeal this appraisalment of damages to the District Court within 30 days from the date of the mailing of this Notice of Appraisalment of damages and time for appeal.

The Total assessment of damages awarded is:

For Land and Improvements \$ _____

For consequential damages \$ _____

Total Award \$ _____

The award for condemnee's attorney's fees and costs, if any, is: \$ _____

The total award was (or was not) divided:

1. Value of Dwelling \$ _____

2. Value of Land and Improvements,
acquired other than the Dwelling \$ _____

3. Value of additional damages \$ _____

Dated _ day of _____, 19__.

Sheriff of _____ County, Iowa

¹Instructions to Sheriff:

- Insert name of all condemnee(s)
- Send separate notice to each condemnee

_____ County, Iowa
In the matter of the Condemnation
of Certain Rights in Land by

ENDORSEMENT OF SHERIFF
OF MAILING OF NOTICE OF
APPRAISEMENT OF DAMAGES
AND TIME FOR APPEAL

PROJECT NO.

PARCEL NO.

LANDOWNER(S)

The undersigned hereby endorses on this the original foregoing Report of Compensation Commission that I have mailed by ordinary mail on the _____ day of _____, 19__ the attached Notice(s) of Appraisement of Damages and Time for Appeal to the last known address of each person made a party to these proceedings and to all parties who have voluntarily appeared in these proceedings.

Sheriff of _____ County, Iowa

Instructions to Sheriff:

- Attach this endorsement to the Original Form Report of Compensation Commission as required by Section **6B.18, Notice of Appraisement - Appeal of Award**, of the Code of Iowa.
- Attach a copy of the Addressed Notice of Appraisement of Damages and Time for Appeal that was sent to each party.

Figure 5.6c

_____ County, Iowa
In the matter of the Condemnation
of Certain Rights in Land by

NOTICE OF APPRAISEMENT
OF DAMAGES AND TIME
FOR APPEAL

PROJECT NO.

PARCEL NO.

LANDOWNER(S)

TO: _____,² You and each of you are hereby notified that on the
____ day of _____, 19____, duly appointed and qualified commissioners made the
following appraisalment of damages and that pursuant to the Code of Iowa, you may appeal this
appraisalment of damages to the District Court within 30 days from the date of the mailing of
this Notice of Appraisalment of damages and time for appeal.

The Total assessment of damages awarded is:

Owners, Tenants, Lienholders and Encumbrancers	Land & Improvements	Consequential Damages	Total Award
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____

The award for Condemnee's attorney fees and costs, if any, is:

For Attorney _____ \$ _____
For Attorney _____ \$ _____

Dated ____ day of _____, 19__.

Sheriff of _____ County, Iowa

²Instructions to Sheriff:
●Insert name of all condemnees
●Send separate notice to each condemnee

Figure 5.6d

_____ County, Iowa
In the matter of the Condemnation
of Certain Rights in Land by

ENDORSEMENT OF SHERIFF
OF MAILING OF NOTICE OF
APPRAISEMENT OF DAMAGES
AND TIME FOR APPEAL

PROJECT NO.

PARCEL NO.

LANDOWNER(S)

The undersigned hereby endorses on this the original foregoing Report of Compensation Commission that I have mailed by ordinary mail on the ____ day of _____, 19__ the attached Notice(s) of Appraisement of Damages and Time for Appeal to the last known address of each person made a party to these proceedings and to all parties who have voluntarily appeared in these proceedings.

Sheriff of _____ County, Iowa

Instructions to Sheriff:

- Attach this endorsement to the Original Form Report of Compensation Commission as required by Section 6B.18, Notice of Appraisement - Appeal of Award, of the Code of Iowa.
- Attach a copy of the Addressed Notice of Appraisement of Damages and Time for Appeal that was sent to each party.

7575

☐ VOID☐ CORRECTED

Figure 5.7a

FILER'S name, street address, city, state, and ZIP code		1 Date of closing (MMDDYY)	OMB No. 1545-0997 1994	Proceeds From Real Estate Transactions
		2 Gross proceeds		
		\$		
FILER'S Federal identification number	TRANSFEROR'S identification number	3 Address or legal description (including city, state, and ZIP code)		Copy A For Internal Revenue Service Center File with Form 1098. For Paperwork Reduction Act Notice and instructions for completing this form, see Instructions for Forms 1099, 1098, 5498, and W-2G.
TRANSFEROR'S name				
Street address (including apt. no.)				
City, state, and ZIP code				
Account number (optional)		4 Check here if the transferor received or will receive property or services as part of the consideration. <input type="checkbox"/>		
		5 Buyer's part of real estate tax		
		\$		

Form 1099-S Cat. No. 64292E Department of the Treasury - Internal Revenue Service

☐ CORRECTED (if checked)

FILER'S name, street address, city, state, and ZIP code		1 Date of closing	OMB No. 1545-0997 1994	Proceeds From Real Estate Transactions
		2 Gross proceeds		
		\$		
FILER'S Federal identification number	TRANSFEROR'S identification number	3 Address or legal description		Copy B For Transferor This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.
TRANSFEROR'S name				
Street address (including apt. no.)				
City, state, and ZIP code				
Account number (optional)		4 Transferor received or will receive property or services as part of the consideration (if checked) <input type="checkbox"/>		
		5 Buyer's part of real estate tax (See Box 5 on back.)		
		\$		

Form 1099-S (Keep for your records.) Department of the Treasury - Internal Revenue Service

☐ VOID☐ CORRECTED

FILER'S name, street address, city, state, and ZIP code		1 Date of closing	OMB No. 1545-0997 1994	Proceeds From Real Estate Transactions
		2 Gross proceeds		
		\$		
FILER'S Federal identification number	TRANSFEROR'S identification number	3 Address or legal description (including city, state, and ZIP code)		Copy C For Filer For Paperwork Reduction Act Notice and instructions for completing this form, see Instructions for Forms 1099, 1098, 5498, and W-2G.
TRANSFEROR'S name				
Street address (including apt. no.)				
City, state, and ZIP code				
Account number (optional)		4 Check here if the transferor received or will receive property or services as part of the consideration. <input type="checkbox"/>		
		5 Buyer's part of real estate tax		
		\$		

Form 1099-S Department of the Treasury - Internal Revenue Service

COPY B

Instructions for Transferor

Generally, persons responsible for closing a real estate transaction must report the real proceeds to the Internal Revenue Service and must furnish this statement to you. If the real estate transferred was your main home, file **Form 2119, Sale of Your Home**, with your income tax return even if you sold at a loss or you did not replace your home. If the real estate transferred was not your main home report the transaction in the applicable parts of **Form 4797, Sales of Business Property**, **Form 6252, Installment Sale Income**, and/or **Schedule D (Form 1040)**, Capital Gains and Losses.

If you sold your home and (1) you did not own it for more than 9 years and (2) it was financed after 1990 under a Federally subsidized program (qualified mortgage bonds or mortgage credit certificates), you may have to recapture part of the subsidy. This will increase your tax. See **Form 8828, Recapture of Federal Mortgage Subsidy**, and **Pub. 523, Selling Your Home**.

Box 1.-Shows the date of closing.

Box 2.-Shows the gross proceeds from a real estate

transaction. Gross proceeds include cash and notes payable to you and notes assumed by the transferee(buyer). **Box 2** does not include the value of other property or services you received or are to receive. See **Box 4**.

Box 3.-Shows the address of the property transferred or a legal description of the property.

Box 4.-If marked, shows that you received or will receive services or property (other than cash or notes) as part of the consideration for the property transferred. The value of any services or property (other than cash or notes) is not included in **box 2**.

Box 5.-Shows certain real estate tax on a residence charged to the buyer at settlement. If you have already paid the real estate tax for the period that included the sale date, subtract this amount from the amount already paid to determine your deductible real estate tax. But if you have already deducted the real estate tax in a prior year, generally report this amount as income on the line for "Other income" on **Form 1040**. For more information, see **Pub. 523**.

COPY C

Filers, Please Note-

Specific information needed to complete this form and other forms in the 1099 series is given in the **Instructions for Forms 1099, 1098, 5498 and W-2G**. A chart in those instructions gives a quick guide to which form must be filed to report a particular payment. You can order those instructions and additional forms by calling 1-800-TAX-FORM (1-800-829-3676).

Furnish Copy B of this form to the transferor by January 31, 1995.

File Copy A of this form with the IRS by February 28, 1995.

Separate Charge Prohibited.-The law prohibits any person required to file **Form 1099-S** from separately charging any customer a fee for complying with the requirements to file **Form 1099-S**.

Figure 5.8a

Form **W-9**
(Rev. January 1993)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give this form to
the requester. Do
NOT send to IRS.

Please print or type

Name (If joint names, list first and circle the name of the person or entity whose number you enter in Part I below. See Instructions on page 2 if your name has changed.)

John A. and Jane B. Doe

Business name (Sole proprietors see instructions on page 2.) (If you are exempt from backup withholding, complete this form and enter "EXEMPT" in Part II below.)

Address (number and street)

123 Fourth Street

City, state, and ZIP code

Des Moines, Iowa 50000

List account number(s) here (optional)

County Road

Project

$\frac{1}{4}$ $\frac{1}{4}$ - Sec. Twp. Rg.

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). For sole proprietors, see the instructions on page 2. For other entities, it is your employer identification number (EIN). If you do not have a number, see How To Obtain a TIN below.

Social security number

--	--	--	--	--	--	--	--

OR

Employer identification number

--	--	--	--	--	--	--	--

Note: If the account is in more than one name, see the chart on page 2 for guidelines on whose number to enter.

Part II For Payees Exempt From Backup Withholding (See Exempt Payees and Payments on page 2)

Requester's name and address (optional)

County

567 Eighth Street

Des Moines, Iowa 50000

Certification.—Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding.

Certification Instructions.—You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because of underreporting interest or dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, the acquisition or abandonment of secured property, contributions to an individual retirement arrangement (IRA), and generally payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (Also see Signing the Certification on page 2.)

Sign
Here

Signature ►

Date ►

Section references are to the Internal Revenue Code.

Purpose of Form.—A person who is required to file an information return with the IRS must obtain your correct TIN to report income paid to you, real estate transactions, mortgage interest you paid, the acquisition or abandonment of secured property, or contributions you made to an IRA. Use Form W-9 to furnish your correct TIN to the requester (the person asking you to furnish your TIN) and, when applicable, (1) to certify that the TIN you are furnishing is correct (or that you are waiting for a number to be issued), (2) to certify that you are not subject to backup withholding, and (3) to claim exemption from backup withholding if you are an exempt payee. Furnishing your correct TIN and making the appropriate certifications will prevent certain payments from being subject to backup withholding.

Note: If a requester gives you a form other than a W-9 to request your TIN, you must use the requester's form.

How To Obtain a TIN.—If you do not have a TIN, apply for one immediately. To apply, get Form SS-5, Application for a Social Security Card (for individuals), from your local office of the Social Security Administration, or Form SS-4, Application for Employer Identification Number (for businesses and all other entities), from your local IRS office.

To complete Form W-9 if you do not have a TIN, write "Applied for" in the space for the TIN in Part I, sign and date the form, and give it to the requester. Generally, you will then have

60 days to obtain a TIN and furnish it to the requester. If the requester does not receive your TIN within 60 days, backup withholding, if applicable, will begin and continue until you furnish your TIN to the requester. For reportable interest or dividend payments, the payer must exercise one of the following options concerning backup withholding during this 60-day period. Under option (1), a payer must backup withhold on any withdrawals you make from your account after 7 business days after the requester receives this form back from you. Under option (2), the payer must backup withhold on any reportable interest or dividend payments made to your account, regardless of whether you make any withdrawals. The backup withholding under option (2) must begin no later than 7 business days after the requester receives this form back. Under option (2), the payer is required to refund the amounts withheld if your certified TIN is received within the 60-day period and you were not subject to backup withholding during that period.

Note: Writing "Applied for" on the form means that you have already applied for a TIN OR that you intend to apply for one in the near future.

As soon as you receive your TIN, complete another Form W-9, include your TIN, sign and date the form, and give it to the requester.

What Is Backup Withholding?—Persons making certain payments to you after 1992 are required to withhold and pay to the IRS 31% of such payments under certain conditions. This is called "backup withholding." Payments that could be subject to backup withholding include interest,

dividends, broker and barter exchange transactions, rents, royalties, nonemployee compensation, and certain payments from fishing boat operators, but do not include real estate transactions.

If you give the requester your correct TIN, make the appropriate certifications, and report all your taxable interest and dividends on your tax return, your payments will not be subject to backup withholding. Payments you receive will be subject to backup withholding if:

- You do not furnish your TIN to the requester, or
- The IRS notifies the requester that you furnished an incorrect TIN, or
- You are notified by the IRS that you are subject to backup withholding because you failed to report all your interest and dividends on your tax return (for reportable interest and dividends only), or
- You do not certify to the requester that you are not subject to backup withholding under 3 above (for reportable interest and dividend accounts opened after 1983 only), or
- You do not certify your TIN. This applies only to reportable interest, dividend, broker, or barter exchange accounts opened after 1983, or broker accounts considered inactive in 1983.

Except as explained in 5 above, other reportable payments are subject to backup withholding only if 1 or 2 above applies. Certain payees and payments are exempt from backup withholding and information reporting. See Payees and Payments Exempt From

Backup Withholding, below, and Exempt Payees and Payments under Specific Instructions, below, if you are an exempt payee.

Payees and Payments Exempt From Backup Withholding.—The following is a list of payees exempt from backup withholding and for which no information reporting is required. For interest and dividends, all listed payees are exempt except item (9). For broker transactions, payees listed in (1) through (13) and a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker are exempt. Payments subject to reporting under sections 6041 and 6041A are generally exempt from backup withholding only if made to payees described in items (1) through (7), except a corporation that provides medical and health care services or bills and collects payments for such services is not exempt from backup withholding or information reporting. Only payees described in items (2) through (6) are exempt from backup withholding for barter exchange transactions, patronage dividends, and payments by certain fishing boat operators.

(1) A corporation. (2) An organization exempt from tax under section 501(a), or an IRA, or a custodial account under section 403(b)(7). (3) The United States or any of its agencies or instrumentalities. (4) A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities. (5) A foreign government or any of its political subdivisions, agencies, or instrumentalities. (6) An international organization or any of its agencies or instrumentalities. (7) A foreign central bank of issue. (8) A dealer in securities or commodities required to register in the United States or a possession of the United States. (9) A futures commission merchant registered with the Commodity Futures Trading Commission. (10) A real estate investment trust. (11) An entity registered at all times during the tax year under the Investment Company Act of 1940. (12) A common trust fund operated by a bank under section 584(a). (13) A financial institution. (14) A middleman known in the investment community as a nominee or listed in the most recent publication of the American Society of Corporate Secretaries, Inc., Nominee List. (15) A trust exempt from tax under section 664 or described in section 4947.

Payments of dividends and patronage dividends generally not subject to backup withholding include the following:

- Payments to nonresident aliens subject to withholding under section 1441.
- Payments to partnerships not engaged in a trade or business in the United States and that have at least one nonresident partner.
- Payments of patronage dividends not paid in money.
- Payments made by certain foreign organizations.

Payments of interest generally not subject to backup withholding include the following:

- Payments of interest on obligations issued by individuals.

Note: You may be subject to backup withholding if this interest is \$600 or more and is paid in the course of the payer's trade or business and you have not provided your correct TIN to the payer.

- Payments of tax-exempt interest (including exempt-interest dividends under section 852).
- Payments described in section 6049(b)(5) to nonresident aliens.
- Payments on tax-free covenant bonds under section 1451.
- Payments made by certain foreign organizations.
- Mortgage interest paid by you.

Payments that are not subject to information reporting are also not subject to backup withholding. For details, see sections 6041, 6041A(a), 6042, 6044, 6045, 6049, 6050A, and 6050N, and their regulations.

Penalties

Failure To Furnish TIN.—If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil Penalty for False Information With Respect to Withholding.—If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal Penalty for Falsifying Information.—Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs.—If the requester discloses or uses TINs in violation of Federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name.—If you are an individual, you must generally provide the name shown on your social security card. However, if you have changed your last name, for instance, due to marriage, without informing the Social Security Administration of the name change, please enter your first name, the last name shown on your social security card, and your new last name.

If you are a sole proprietor, you must furnish your individual name and either your SSN or EIN. You may also enter your business name or "doing business as" name on the business name line. Enter your name(s) as shown on your social security card and/or as it was used to apply for your EIN on Form SS-4.

Signing the Certification.—

1. Interest, Dividend, and Barter Exchange Accounts Opened Before 1984 and Broker Accounts Considered Active During 1983. You are required to furnish your correct TIN, but you are not required to sign the certification.

2. Interest, Dividend, Broker, and Barter Exchange Accounts Opened After 1983 and Broker Accounts Considered Inactive During 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real Estate Transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other Payments. You are required to furnish your correct TIN, but you are not required to sign the certification unless you have been notified of an incorrect TIN. Other payments include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services, payments to a nonemployee for services (including attorney and accounting fees), and payments to certain fishing boat crew members.

5. Mortgage Interest Paid by You, Acquisition or Abandonment of Secured Property, or IRA Contributions. You are required to furnish your correct TIN, but you are not required to sign the certification.

6. Exempt Payees and Payments. If you are exempt from backup withholding, you should complete this form to avoid possible erroneous

backup withholding. Enter your correct TIN in Part I, write "EXEMPT" in the block in Part II, and sign and date the form. If you are a nonresident alien or foreign entity not subject to backup withholding, give the requester a completed Form W-8, Certificate of Foreign Status.

7. TIN "Applied for." Follow the instructions under How To Obtain a TIN, on page 1, and sign and date this form.

Signature.—For a joint account, only the person whose TIN is shown in Part I should sign.

Privacy Act Notice.—Section 6109 requires you to furnish your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, or contributions you made to an IRA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 31% of taxable interest, dividend, and certain other payments to a payee who does not furnish a TIN to a payer. Certain penalties may also apply.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee
b. So-called trust account that is not a legal or valid trust under state law	The actual owner
5. Sole proprietorship	The owner
For this type of account:	Give name and EIN of:
6. Sole proprietorship	The owner
7. A valid trust, estate, or pension trust	Legal entity
8. Corporate	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

¹ List first and circle the name of the person whose number you furnish.

² Circle the minor's name and furnish the minor's SSN.

³ Show your individual name. You may also enter your business name. You may use your SSN or EIN.

⁴ List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)

Note: If no name is circled when there is more than one name, the number will be considered to be that of the first name listed.

Figure 5.9

ALLOCATION OF PROCEEDS STATEMENT

County _____

Parcel _____

Project No. _____

GROSS PROCEEDS AMOUNT \$ _____

(includes Total Consideration for all property and property rights being acquired)

<u>Name of Transferor</u>	<u>Address</u>	<u>Allocation Amount of Proceeds</u>
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

NOTE: If the Allocation of Proceeds is not provided or is not the same as reported by other sellers, IRS Regulations Sec. 1.6056-4 require the gross proceeds be reported to each seller.

IRS regulations require that the attached W-9 form be supplied to you. Please complete this W-9 form and return it in the self-addressed, pre-stamped envelope provided.

NOTE: If an Allocation of Proceeds Statement is also attached, please allocate the Gross Proceeds among the persons listed on that form and return it also.

**FOR QUESTIONS ABOUT THESE IRS FORMS, CONTACT YOUR TAX PREPARER,
LOCAL IRS OFFICE OR CALL 1-800-829-1040.**

(Date)

_____, Sheriff
_____ County_____ Address
_____ City, Iowa ZIP _____RE: _____ County Road # _____
Condemnation proceedings
Parcel # _____, Landowner _____ property

Dear Sheriff _____:

I am enclosing partially completed Internal Revenue Service forms W-9 Request for Taxpayer Identification Number and Certification and Allocation of Proceeds Statement and instructions requesting the land owners complete and return the forms to the county. The county must ask the land owners to furnish this information so that the county can comply with IRS regulations requiring the county to file IRS form 1099-S Proceeds from Real Estate Transactions.

There are separate forms for each land owner or interest holder. A husband and wife are considered to be one transferor and no allocation of proceeds is required if the husband and wife are the only transferor.

If the Compensation Commission determines that Mr. & Mrs. _____ are the only owners and return an award only to Mr. & Mrs. _____ and not to _____ nor to _____. There is no need to send Mr. & Mrs. _____ the Allocation of Proceeds Statement and nothing needs to be sent to _____ or ,

If the Compensation Commission returns an award to all persons listed as owners including _____ and _____, the Allocation of Proceeds Statement must be sent to all persons shown as Transferor on the Allocation of Proceeds Statement form.

It is not necessary to send these forms to lienholders, the _____ Bank or the taxing authority for the county.

It is not necessary to send these forms to land owners of the total award of the Compensation Commission is less than \$600.00.

Please include these forms as appropriate in your mailing of the Condemnation Form Notice of Appraisal of Damages and Time for Appeal.

Very Truly Yours,

Title

cc: _____, _____ County Engineer

Figure 5.12a

IN THE MATTER OF THE
CONDEMNATION OF CERTAIN RIGHTS IN
LAND BY

_____ COUNTY FOR THE
IMPROVEMENT OF

LOCATED IN _____ COUNTY, IOWA

SHERIFF'S CERTIFICATION OF
AWARDS AND COSTS

PROJECT NO.

APPLICANT: _____ County, Iowa

THE ORIGINAL CERTIFIED APPLICATION FOR CONDEMNATION IS RECORDED IN BOOK/
PAGE-DOC.# _____ # _____ ,AND

DATED _____.

TO: _____ COUNTY, IOWA

I certify that the commissioners in the above-entitled cause convened at _____,
Iowa, on the _____ day of _____, 19____, and thereupon proceeded to view the premises and said
commissioners did thereafter on the _____ day of _____,
19____, file their report in my office awarding damages as follows:

Awards and Condemnee Attorney fee costs:

NAMES OF CONDEMNEES	AWARD(S)	ATTORNEY FEES
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
TOTAL DAMAGES AWARDED	_____	_____

I certify that the costs incident to this proceeding have been taxed as follows:
Sheriff's Costs:

Service Of Notices As Listed Below:

Names of Condemnees

Date Served Fee: Mileage at Rate cents: Amount: Total

Summoning and attending Commissioners	.....	\$	_____
Mileage while attending Commissioners, _____ miles at _____ cents	.....	\$	_____
Postage	.....	\$	_____
Notarizing (Notarizing Oath)	.....	\$	_____
Total Sheriff's Costs	.....	\$	_____

COMMISSIONER'S COSTS

	OF		, Iowa
day service			
\$			
miles at \$0. per mile			
\$			
meals			
\$			
	OF		, Iowa
day service			
\$			
miles at \$0. per mile			
\$			
meals			
\$			
	OF		, Iowa
day service			
\$			
miles at \$0. per mile			
\$			
meals			
\$			
	OF		, Iowa
day service			
\$			
miles at \$0. per mile			
\$			
meals			
\$			
	OF		, Iowa
day service			
\$			
miles at \$0. per mile			
\$			
meals			
\$			
	OF		, Iowa
day service			
\$			
miles at \$0. per mile			
\$			
meals			
\$			

Grand Total \$

I certify that the foregoing amounts are legally payable to each claimant and that the claim is

correct and that payment has not been received.

Filed in my office at, _____, Iowa, this _____ day of _____, 19__.

Sheriff of _____ County, Iowa

CONDEMNATION COMMISSIONER'S STATEMENT

To the Sheriff of _____ County, Iowa

I certify that my fee and expenses as a member of the commission in the matter of the condemnation of certain real estate or rights to real estate for _____, held on the ____ day of _____, 19__, are as follows and that these claims are due, just and unpaid.

_____	day service at \$_____	.....	\$_____
_____	miles at \$0._____	.....	\$_____
_____	meals	.....	\$_____

Signed this _____ day of _____, 19__.

COMMISSIONER

_____, 19__

 _____ County Sheriff
 _____ County Courthouse
 _____, Iowa _____

RE: Condemnation of Parcel owned by

 for _____
 _____ County
 Project # _____

Dear Sheriff _____:

Enclosed are the following papers in connection with the above-captioned condemnation proceedings set for hearing on _____, 19__.

1. "CERTIFIED TRUE COPY" of the APPLICATION TO CHIEF JUDGE
2. SELECTION AND APPOINTMENT OF COMPENSATION COMMISSIONERS
3. SUPPLEMENTARY ORDER APPOINTING ALTERNATE COMPENSATION COMMISSIONERS
4. SUMMONS TO COMMISSIONERS (two copies for each commissioner). Please notify each commissioner of their selection and of the day and hour when they will be required to proceed with the appraisalment. Have each commissioner sign and return one copy of the SUMMONS prior to the hearing for your records (Sec. 6B.11). Copies of the Application are attached to commissioners copy.
5. OATH OF COMMISSIONERS. Each commissioner must execute this oath prior to the hearing. Their signature must be acknowledged by a Notary Public or Clerk of the District Court (Sec. 6B.7).
6. NOTICE OF CONDEMNATION. This Notice of Condemnation is being served by a process server and must be served at least ten (10) days prior to the date of the hearing (Sec. 6B.8). One copy of return of service will be sent to our office and the original will be sent to you to be retained in your files. (Sec. 6B.11)
7. PROOF OF PUBLICATION (if there have been any publications) as well as Affidavits in connection therewith.

8. REPORT OF COMPENSATION COMMISSION. This report will contain the award and has to be signed by the compensation commissioners after they determine an award and then signed by the Sheriff or Deputy.
9. SHERIFF'S CERTIFICATION OF AWARDS AND COSTS (two copies, one of which is to be returned to this office when completed). **Each copy must be signed by the Sheriff.** (Sec. 6B.33).
10. CONDEMNATION COMMISSIONERS STATEMENT (six copies, one for each commissioner for stating their fees and expenses). Each commissioner must sign this statement. This is a claim form to pay commissioner's costs. They must be sent to the County if the County is to pay commissioners directly. They are not necessary if the Sheriff is to pay the commissioners and then be reimbursed by the County.

Should any commissioner be unable to service, please contact one of the alternate commissioners and notify this office of who can serve. If neither of the alternates can serve, please notify this office for a substitute commissioner.

THE FOLLOWING PAPERS MUST BE RETAINED BY YOU IN A SEPARATE FILE FOR RECORDING:

1. "CERTIFIED TRUE COPY" of the APPLICATION TO CHIEF JUDGE (Sec. 6B.3)
2. SELECTION AND APPOINTMENT OF COMPENSATION COMMISSIONERS (Sec. 6B.4)
3. SUPPLEMENTARY ORDER APPOINTING ALTERNATE COMPENSATION COMMISSIONERS
4. ORDER FILLING VACANCY APPOINTING SUBSTITUTE COMPENSATION CAMMISSIONERS
5. The signed copy of the SUMMONS TO COMMISSIONERS for each original, alternate or substitute commissioner.
6. OATH OF COMMISSIONERS, signed by all six commissioners. Their signature must be acknowledged by a Notary Public or Clerk of District Court (Sec. 6B.7).
7. The signed copy of the SHERIFF'S CERTIFICATION AS TO AWARDS AND COSTS (Sec. 6B.33).

8. CONDEMNATION COMMISSIONER'S STATEMENT, one signed statement form for each commissioner.
9. ALL NOTICES OF CONDEMNATION with returns of service in the condemnation, including any Notices of Appeal (Sec. 6B.11).
10. PROOF OF PUBLICATION (if there have been any publications), as well as all AFFIDAVITS in connection therewith.
11. RECORD OF VOLUNTARY APPEARANCE OF PARTIES.
12. AFFIDAVIT OF FINAL OFFER (Sec. 6B.33).
13. The original of the REPORT OF COMPENSATION COMMISSIONER, signed by each commissioner and certified by the Sheriff (Sec. 6B.14). Two copies shall be returned to our office. The original of the ENDORSEMENT OF SHERIFF OF MAILING OF NOTICE OF APPRAISEMENT OF DAMAGES AND TIME FOR APPEAL is contained on the reverse side of the REPORT OF COMPENSATION COMMISSIONER. It must be endorsed and certified by the Sheriff at the time of mailing (Sec. 6B.18).
14. The original of the NOTICE OF APPRAISEMENT OF DAMAGES AND THE TIME FOR APPEAL endorsed by the Sheriff. A written notice in the form of a copy of the original NOTICE OF APPRAISEMENT OF DAMAGES AND TIME FOR APPEAL must be mailed to each condemnee (Sec. 6B.18).

The preceding three forms will be provided at the hearing by a representative of the County.

15. STIPULATIONS AND AMENDMENTS to be filed as part of the proceedings by the County.
16. You will also be required to record all other papers filed in connection with said condemnation proceedings and provide a written statement by the Sheriff of all monies received in payment of damages, from whom received and to whom paid, and the amount paid to each claimant (Sec. 6B.35).

PLEASE NOTE THAT:

1. Thirty days after the date of mailing the NOTICE OF APPRAISEMENT OF DAMAGES, the Sheriff shall file the condemnation proceedings with

the County Recorder of the County in which the condemned land is situated (Sec. 6B.35). Prior to your recording, this office will provide you with the recording data of the original CERTIFIED APPLICATION FOR CONDEMNATION by book and page or by instrument number and the date. Please make this reference on the Sheriff's Certification as to Awards and Costs.

2. If an appeal is taken (within these 30 days), the Sheriff shall at once file with the Clerk of District Court a certified copy of as much of the assessment as applies to the part for which the appeal is taken (Sec. 6B.20). Again, the original condemnation papers will be filed with the County Recorder.

3. Please request the recorder to return all recorded original condemnation documents to _____ County, % _____
 _____,
 address _____, phone _____,
 so that these records are not lost or otherwise disposed of (Sec. 6B.38).

If you have any question, please contact me or (name, title, address and telephone number).

Sincerely,

Name
 Title

Enclosures

Figure 6.1a

IN THE DISTRICT COURT OF THE STATE OF IOWA

JOE DOE,) NO. _____
)
 Plaintiff,)
)
)
)
 vs.) APPLICATION AND CLAIM OF COUNTY
)
 _____) TREASURER FOR PAYMENT OF PROPERTY
)
 _____) TAX AND SPECIAL ASSESSMENTS FROM
)
 _____) THE AWARD OF COMPENSATION TO BE
)
 Defendant(s)) ADJUDICATED IN THIS CAUSE.

The Claimant, Treasurer of _____ County, Iowa, states as follows:

1. That on the _____ day of _____, 19____, the _____
Iowa DOT, City
_____, acquired certain rights in land for road purposes through condemnation
or County
proceedings from the above captioned (Plaintiff(s)/Defendant(s)) who are the owners or interest
holders thereof.

2. The award of the compensation commission was in the sum of Dollars (\$_____) for which sum a warrant has been deposited with the Sheriff of _____ County, Iowa, on the _____ day of _____, 19_____, made payable to _____

_____ Pursuant to Section 472.26, Code of Iowa, the _____
Iowa DOT, City of County

has the right to obtain possession of the property condemned (or will have the right to obtain possession of the property condemned on the _____ day of _____, 19____, or on the day the owner surrenders possession of the property to the _____, Iowa DOT, City or County

whichever day is earlier). \therefore

3. Pursuant to Section 427.2, Code of Iowa, the owner of the property acquired for road purposes shall pay all property taxes and property special assessments for the property acquired which are due and payable and also those which will become due and payable for the fiscal year in which the property is acquired until the _____ either obtains possession of Iowa DOT, City or County the property or the right to obtain possession of the property as authorized by Section 472.26, Code of Iowa, and such property taxes and special assessments may be paid from the proceeds of the condemnation award as finally adjudicated by this Court.

4. Property taxes and special assessments required to be paid are:

WHEREFORE, the Claimant respectfully requests this Court to enter an Order instructing a warrant be prepared and delivered payable to the Treasurer of _____ County, Iowa, in the amount of \$_____ as full and final payment of all property taxes and special assessments due and payable on the _____ day of _____, 19__, the day the warrant in payment of the award of the compensation commission was deposited with the Sheriff (and in the amount of \$_____ for each month thereafter until the owner of the land acquired surrenders possession of the property to the _____ Iowa DOT, City or County or until the _____ has the right to obtain possession,, of the property as Iowa DOT, City of County authorized by Section 472.26 of the Code of Iowa, whichever is earlier).

Name of Treasurer

Treasurer _____ County, Iowa.

Name of County Attorney

County Attorney, _____ County, Iowa

Figure 6.1d

IN THE DISTRICT COURT OF THE STATE OF IOWA

JOE DOE,	)	NO.
)	
Plaintiff(s)	)	ORDER FOR PAYMENT OF PROPERTY TAX
)	
vs.	)	AND SPECIAL ASSESSMENTS FROM THE
)	
_____	)	AWARD OF COMPENSATION IN THIS CAUSE.
)	
_____)	
)	
_____)	
Defendant.)	
)	

Now on this ____ day of _____, 19__, the application and claim of the Treasurer of _____ County for the payment of property tax and special assessments from the award of compensation to be (or as) finally adjudicated in this cause comes before this Court wherein the Claimant requests the disbursement of a portion of certain funds now held by the _____ of _____ County in the above entitled action.

Sheriff, Clerk of Court, Treasurer
After reviewing this Application and the Court file and hearing statements of counsel, this Court finds that the award of the compensation commission was in the sum of \$_____ for which a warrant is presently on deposit with the _____ Sheriff, Clerk of Court, Treasurer of _____ County (or has been deposited with the Treasurer as condemnation funds as required by Section 331.656, Code of Iowa).

_____ has/have made application for an order for Plaintiff(s)/Defendant for disbursement of a portion of that award to the property owners without prejudice to or effect upon the right of any of the parties herein as authorized by Section 472.25, Code of Iowa. This

cause has been duly tried (or The terms and conditions for the settlement of this cause have been agreed to by the parties and approved by this Court) and the final award of just compensation has been determined to be \$_____.

The Treasurer of _____ County has made application and claim for the payment of property taxes from the award of compensation in this cause as authorized by Section 427.2, Code of Iowa. This Court finds that the _____ Plaintiff(s)/Defendant(s) are obligated to pay \$_____ in property taxes and special assessments for the property acquired and that the same should be and is hereby ordered to be paid to the Treasurer of _____ County from the award of compensation in this cause.

The Court further finds that the _____ of _____ Sheriff or Clerk of Court County should be and is hereby authorized to return warrant in the amount of \$_____ to the _____; that the _____ should Iowa DOT, City or County Iowa DOT, City or County be and is hereby authorized to issue two warrants in lieu thereof in the amounts of \$_____ and \$_____ payable to the Treasurer of _____ County and the _____.

condemnees or interest holders

It is Further Ordered, Adjudged and Decreed, that the right to possession to the property condemned herein on the part of the _____ shall remain and Iowa DOT, City or County continue as provided by law.

Judge of the _____ Judicial District for Iowa

Figure 7.1

IN THE MATTER OF THE)
CONDEMNATION OF CERTAIN LAND OF)
LANDOWNERS AND)
MORTGAGEE AND) NOTICE
TENANTS)
BY _____ COUNTY)
PROJECT NO: _____)

TO: _____
(name of all condemnees)

In accordance with the provisions of Section 306.28 through 306.37, Code of Iowa 1993, as amended, notice is given that the Board of Supervisors of _____ County, Iowa, propose to condemn for road purposes the following described real estate in said County:

(description of right of way, and the tract or tracts from which such right of way will be taken)

The damages caused by said condemnation will be assessed by three appraisers. Notice is hereby given that the owner or owners of said real estate may on or before _____, appoint one of said appraisers and that in case such right be not exercised, or if exercised and the said appointee fails to appear and qualify, the said three appraisers will be otherwise appointed as provided by law.

All parties interested are further notified that said three appraisers will, when duly appointed, proceed to appraise said damages, will report said appraisal to the said Board of Supervisors and that said latter Board will pass thereon as provided by law, and that at all such times and places you may be present if you be so minded. You are further notified that at said hearing before the said Supervisors you may file objections to the use of said land for road purposes and that all such objections not so made will be deemed waived.

You are further notified that in this condemnation of right-of-way for secondary roads the Board of Supervisors of _____ County, Iowa, shall proceed as provided in Sections 306.28 through 306.37, Code of Iowa.

County Auditor
_____ County, Iowa

Figure 7.2

IN THE MATTER OF THE)
CONDEMNATION OF CERTAIN LAND OF)
LANDOWNERS AND)
MORTGAGEE AND) OATH OF APPRAISERS
TENANTS)
BY _____ COUNTY)
PROJECT NO: _____)
STATE OF IOWA)
) ss
_____ COUNTY)

Each of the undersigned being duly sworn says: That I will well and truly perform all the duties imposed upon me by law as an appraiser selected and appointed to faithfully and impartially assess the damages claimed, which damages are to be paid to respective record owners and other persons having any interest in or upon the premises involved in the above entitled proceedings by reason of the appropriation of the improvement of Secondary Roads as authorized and prescribed in Chapter 306, 1993 Code of Iowa as amended:

(description of right of way, and the tract or tracts from which such right of way will be taken)

I affirm _____ and _____
and _____ did appear before me and did take, and did sign, this Oath in my presence.

County Auditor

Subscribed and sworn to me before me this _____ day of _____, 19____.

State of Iowa

Figure 7.3

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In the Matter of Chicago, Milwaukee, St. Paul and Pacific Railroad Company v. City of New Hampton, Iowa, 738 F. 2d 209 (7th Cir. 1984), cited at page 41.

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Lower v. C. B. & O. R. Co., 13 N.W. 71 (Iowa 1882), cited at page 128.

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Warren v. Iowa State Highway Commission, 93 N.W. 2d 60 (Iowa 1959), cited at page 39.
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