MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

Robert M. Berry et al
By Madison County Sheriff
To
Madison County, Iowa

#1218

No Fee

Filed for record the 5 day of July A. D. 1967 at 4:02 o'clock P.M.

Mary E. Welty, Recorder

Received 8-3-66 2:40 P.M. R.R.R.
Madison County Sheriff Winterset, Iowa

CONDEMNATION PROCEEDINGS

IN THE MATTER OF THE APPLICATION BY MADISON COUNTY, IOWA, FOR THE APPOINTMENT OF COMMISSIONERS TO ASSESS DAMAGES FOR THE TAKING OF REAL ESTATE FOR ROAD IMPROVEMENT PURPOSES :

APPLICATION TO SHERIFF FOR CONDEMNATION OF PROPERTY

TO: REX ROUSE, SHERIFF OF MADISON COUNTY, IOWA:

WHEREAS, the undersigned, Madison County, Iowa, a corporation, is desirous of acquiring an easement for road purposes of certain real estate and relocating a public highway as the same now proceeds through the North Half (½) of the Southwest Quarter (¼) of Section Twenty (20) in Township Seventy-four (74) North, Range Twenty-eight (28) West of the 5th P.M., Madison County, Iowa, and

WHEREAS, the said Madison County cannot agree with the owner of the real estate hereinafter described as to the compensation to be paid therefore, nor as to the taking of said real estate, and,

WHEREAS, said Madison County, Iowa, is desirous of having said real estate condemned and appropriated to it for such purposes under its powers as provided by law of the State of Iowa, for such purposes, to-wit: Chapters 471 and 472 of the 1962 Code of Iowa, and any and all other pertinent statutory provisions, and,

WHEREAS, it is necessary and proper and within the powers of Madison County, Iowa, that said real estate should be condemned and appropriated for such purposes, the same being public purposes, and,

WHEREAS, the property sought to be condemned under this Application is described in Exhibit "A" attached hereto, and made a part hereof, and,

WHEREAS, there is attached to this Application a plat showing the location of property sought to be affected by condemnation under these proceedings and the location of improvements and relocations, which plat is marked Exhibit "B" and made a part of this Application, and,

WHEREAS, the record owners of said real estate and their spouses, if any, and the record holders of any and all liens and encumbrances of said real estate, if any, together with each and all of their respective places of residence, so far as known to this Applicant are as follows, to-wit:

The Owners:	Place of Residence	Post Office Address
Robert M. Berry and Catherine E. Berry	R. F. D. 2, Lorimor, Iowa	Lorimor, Iowa

Name of Mortgage or Lien Holder: Mutual Benefit Life Insurance Company

Name of Lessee: None

Name of Easement Holder: Natural Gas Pipeline Company of America

NOW, THEREFORE, this Applicant, Madison County, Iowa, requests that you appoint six disinterested freeholders of Madison County, Iowa, who are not interested in the same or a like question to inspect the said real estate hereinbefore described and to assess the damages for all claims of every kind and nature including the right of lateral support, the right to light, air, and view and other consequential damages, if any, sustained by the owners and any other persons interested in said real estate, by reason of the taking, acquiring, appropriating and condemnation of said real estate for all of said purposes hereinbefore stated by Madison County, Iowa, and you are requested to proceed in connection with this Application as provided by law.

Dated this 3rd day of August, 1966.

MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

MADISON COUNTY, IOWA
By Lewis H. Jordan
Lewis H. Jordan, County Attorney in
and for Madison County, Iowa

EXHIBIT "A"

Description of real estate belonging to Robert M. Berry and Catherine E. Berry, the subject matter of this condemnation proceedings:

Beginning at the NW corner of the SW¼ of Section 20 T74N R28W of the 5th P.M.; thence east 32.7 feet; thence S3°27'W 219.11 feet; thence S0°21'E 1104.29 feet to the south side of the NW¼ of the SW¼ of said Sec. 20; thence west 26.26 feet to the SW corner of the NW¼ of the SW¼ of said Sec. 20; thence north 1322.98 feet to the point of beginning and containing 0.11 acres, more or less, exclusive of the present established highway.

Note: the west side of the SW¼ of Sec. 20 T74N R28W was assumed to bear due north and south.

PROPERTY PLAT

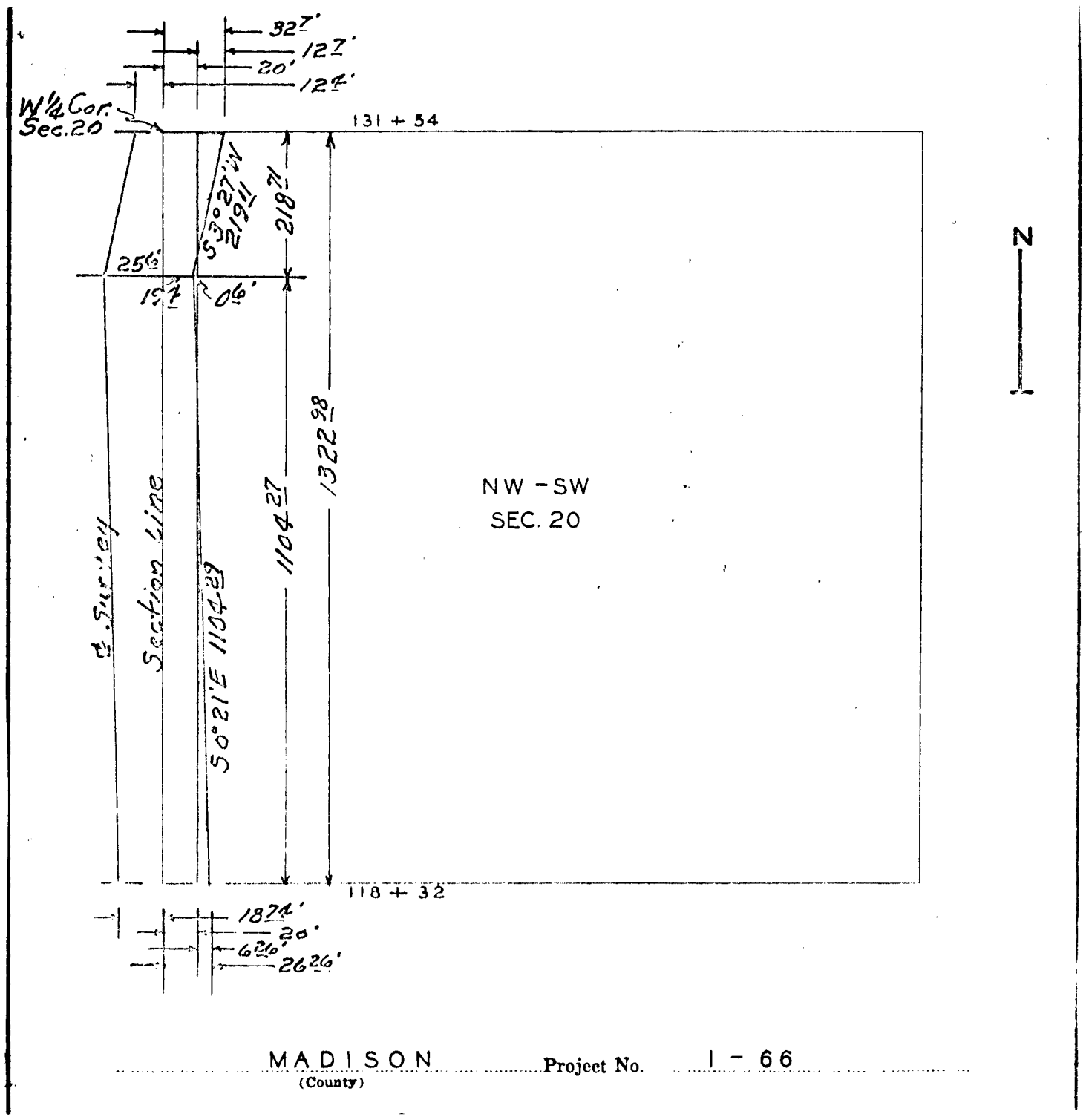
Acquired from ROBERT M. & CATHERINE E. BERRY Married or Single HUSBAND AND WIFE

R. O. W. Area 0.11 Acres. Borrow Area -- Acres. Total Consideration $ --

Acquired by CONDEMNATION Date of Contract --, 19--

LOCATION

From CL Station 118+32 to CL Station 131+54 Section 20, Township 74N, Range 28W Township (Civil) MONROE Iowa.



MADISON (County) Project No. I - 66

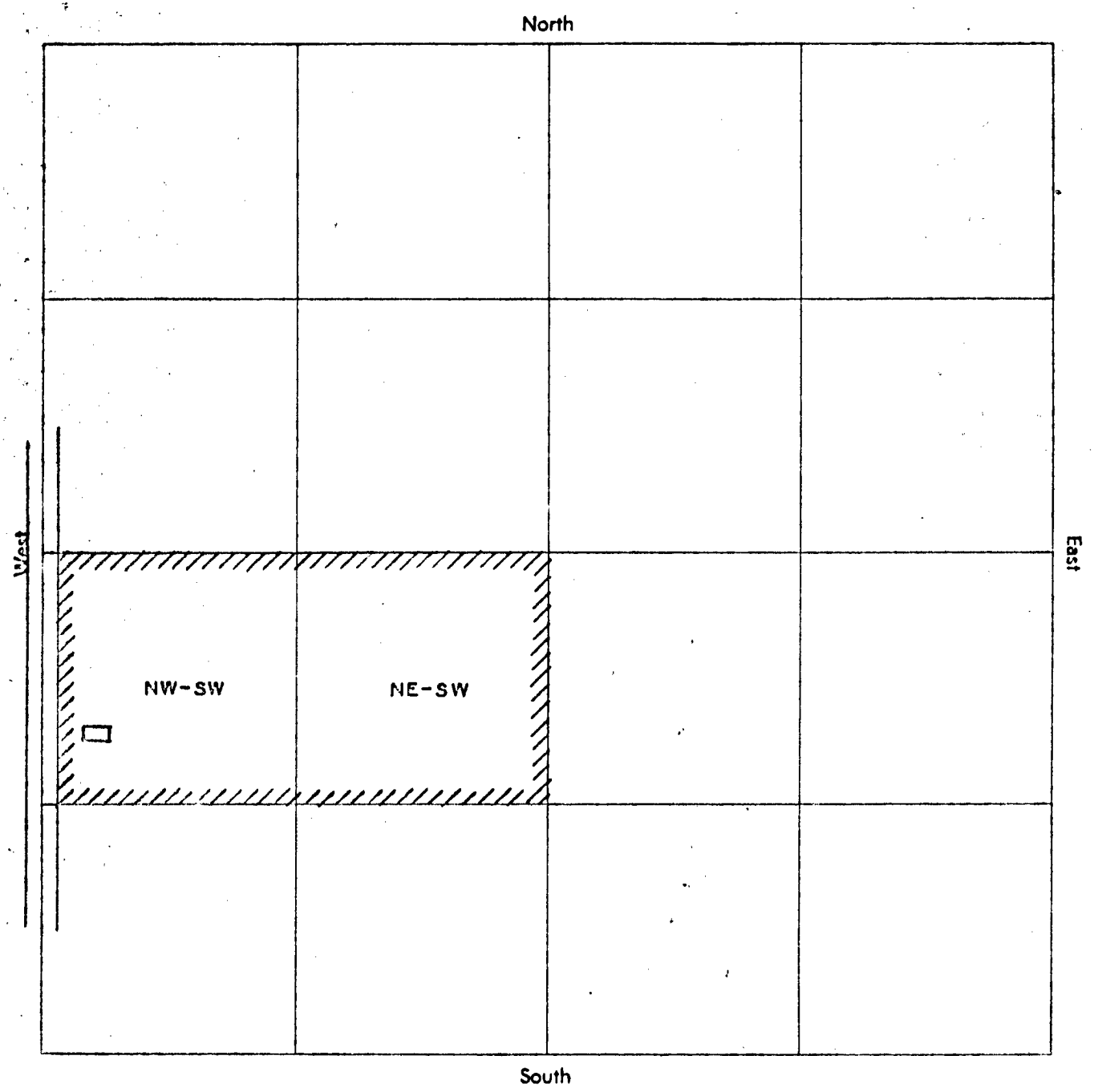
EXHIBIT "B"

HATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

PLAT OF PROPERTY

Of ROBERT M. & CATHERINE E. BERRY Area 80 Acres. Sta. 118+32 to Sta. 131+54

Section 20 T 74 R-28 W.



MADISON County Project No. 1-66

RECEIVED 8-3-66 2:40 P.M. D.R.
MADISON COUNTY SHERIFF WINTERSET, IOWA

IN THE MATTER OF THE APPLICATION: BY MADISON COUNTY, IOWA, FOR THE APPOINTMENT OF COMMISSIONERS TO ASSESS DAMAGES FOR THE TAKING OF REAL ESTATE FOR ROAD IMPROVEMENT PURPOSES : NOTICE OF CONDEMNATION OF PROPERTY BY MADISON COUNTY, IOWA

TO: ROBERT M. BERRY AND CATHERINE E. BERRY AND MUTUAL BENEFIT LIFE INSURANCE COMPANY AND NATURAL GAS PIPELINE COMPANY OF AMERICA

YOU AND EACH OF YOU ARE HEREBY NOTIFIED that Madison County, Iowa, a corporation, desires the condemnation of the following described real estate, and has filed with the Sheriff of Madison County, Iowa, a written application for the condemnation of said real estate, which real estate is described as follows, to-wit:

Beginning at the NW corner of the SW¼ of Section 20 T 74N R28 W of the 5th P.M.; thence east32.7 feet; thence S3°27'W 219.11 feet; thence S0°21' E 1104.29 feetto the south side of the NW¼ of the SW¼ of said Sec. 20; thence west 26.26 feet to the SW corner of the NW¼ of the SW¼ of said Sec. 20; thence north 1322.98 feet to the point of beginning and containing 0.11 acres, more or less, exclusive of the present established highway.

Note: the west side of the SW¼ of Sec. 20 T74N R28W was assumed to bear due north and south.

YOU ARE FURTHER NOTIFIED that such condemnation is sought for the purpose of widening, improving, altering and relcating the public highway which now adjoins said real estate, and for further particulars you are referred to said Application now on file with the Sheriff of Madison County, Iowa, as aforesaid.

MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

YOU ARE FURTHER NOTIFIED that a commission of six appraisers has been appointed as provided by law for the purpose of appraising all damages which will be sustained by you and which will be caused by said condemnation of said real estate.

YOU ARE FURTHER NOTIFIED that said Commissioners will on the 18th day of Aug., 1966, at 9:30 o'clock A.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.

MADISON COUNTY, APPLICANT
By Lewis H. Jordan
Lewis H. Jordan, County Attorney
in and for Madison County, Iowa

RECEIVED
8-9-66
9:20 A.M. D.R.
MADISON COUNTY
SHERIFF
WINTERSET, IOWA

RECEIVED
8-3-66
2:40 P.M. D.R.
MADISON COUNTY
SHERIFF
WINTERSET, IOWA

IN THE MATTER OF THE APPLICATION BY MADISON COUNTY, IOWA, FOR THE APPOINTMENT OF COMMISSIONERS TO ASSESS DAMAGES FOR THE TAKING OF REAL ESTATE FOR ROAD IMPROVEMENT PURPOSES.

NOTICE OF CONDEMNATION OF PROPERTY BY MADISON COUNTY, IOWA

TO: ROBERT M. BERRY AND CATHERINE E. BERRY AND MUTUAL BENEFIT LIFE INSURANCE COMPANY AND NATURAL GAS PIPELINE COMPANY OF AMERICA

YOU AND EACH OF YOU ARE HEREBY NOTIFIED that Madison County, Iowa, a corporation, desires the condemnation of the following described real estate, and has filed with theSheriff of Madison County, Iowa, a written application for the condemnation of said real estate, which real estate is described as follows, to-wit:

Beginning at the NW corner of the SW¼ of Section 20 T 74N R28 W of the 5th P.M.; thence east 32.7 feet; thence S3° 27'W 219.11 feet; thence S0° 21' E 1104.29 feet to the south side of the NW¼ of the SW¼ of said Sec. 20; thence west 26.26 feet to the SW corner of the NW¼ of the SW¼ of said Sec. 20; thence north 1322.98 feet to the point of beginning and containing 0.11 acres, more or less, exclusive of the present established highway.

Note: the west side of the SW¼ of Sec. 20 T74N R28W was assumed to bear due north and south.

YOU ARE FURTHER NOTIFIED that such condemnation is sought for the purpose of widening, improving, altering and relocating the public highway which now adjoins said real estate, and for further particulars you are referred to said Application now on file with the Sheriff of Madison County, Iowa, as aforesaid.

YOU ARE FURTHER NOTIFIED that a commission of six appraisers has been appointed as provided by law for the purpose of appraising all damages which will be sustained by you and which will be caused by said condemnation of said real estate.

YOU ARE FURTHER NOTIFIED that said Commissioners will on the 18th day of Aug., 1966, at 9:30 o'clock A. 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.

RECEIVED 1966 AUG-4
AM 10:58 SHERIFF, STORY
COUNTY, IOWA J. I. SHALLEY, SHERIFF

MADISON COUNTY, APPLICANT
By Lewis H. Jordan
Lewis H. Jordan, County Attorney
in and for Madison County, Iowa

STATE OF IOWA, STORY County) ss. RETURN OF NOTICE.

The within notice received this 4" day of AUGUST, 1966, and I certify that on the 4" day of AUGUST, 1966, I served the same on the defendant MUTUAL BENEFIT LIFE INSURANCE CO., a CORPORATION (1), by delivering a copy thereof to Alfred P. Stempel a VICE PRESIDENT of said defendant, in the City, of AMES in STORY County, State of Iowa.

Service	$ .75	Sheriff of Story	J. I. Shalley, Sheriff, Story County, Iowa
Mileage	2.00	County No. 38659	By Dean Drake deputy
	$2.75		Official Title

MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

RETURN OF ORIGINAL NOTICE No._____

STATE OF IOWA MADISON COUNTY) ss:

The within notice received this 3rd day of August, 1966, and I certify that I served the same on the defendants named below by delivering a copy thereof to each of said defendants personally at the time and place set opposite their respective names:

Name of Defendants	Month	Day	Year	City, Town or Township	County	State
Robert M. Berry	Aug.	3rd	1966	Monroe	Madison	Iowa
Catherine E. Berry	Aug.	3rd	1966	Monroe	Madison	Iowa

Service & Copy $1.75
Mileage 4.00
$5.75

Rex Rouse
Official Title
Rex Rouse, Sheriff

RETURN OF SERVICE--Company or Corporation

STATE OF IOWA, Madison County, ss.

The within notice came into my hands on the 3rd day of August, 1966 and on the 4th day of August, 1966, I served the same upon the Natural Gas Pipeline Company of America by offer- to read the same to Don Allen, he being the Supt. of Pipe Line of said corporation or company, which he waived, and by giving him a true copy thereof, all done in Virginia Township, Warren County, Iowa.

Rex Rouse, Sheriff
Rex Rouse
of Madison County

IN THE MATTER OF THE APPLICATION BY MADISON COUNTY, IOWA, FOR THE APPOINTMENT OF COMMISSIONERS TO ASSESS DAMAGES FOR THE TAKING OF REAL ESTATE FOR ROAD IMPROVEMENT PURPOSES : APPOINTMENT AND COMMISSION

WHEREAS, written application has been made to me by Madison County, Iowa, a corporation, for the appointment of commissioners to assess the damages sustained by those having intereest in certain real estate for the purposes of widening, improving, altering and relocating a part of the public highway system of Madison County, Iowa, which is more particularly described in said Application, a copy of which Application is attached to this order, marked Exhibit "A" and by this reference made a part hereof.

IT IS NOW HEREBY ORDERED that the following persons, to-wit:

Merrill Creger
Lowell Olson
Bernard Hollingsworth
Don Wilson
Richard Stanley
Roy Pickering

being six freeholders of Madison County, Iowa, not interested in the same or a like question, be and they are hereby appointed Commissioners whose duty it shall be to inspect the real estate described in said Application and assess the damages which the owner thereof and the parties interested therein will sustain by the appropriation of such land for road purposes, for the use of Madison County, Iowa, and make report thereof in writing to the undersigned Sheriff, as provided by law, said real estate being situated in Madison County, Iowa, and described as set out in said Exhibit "A", a part hereof.

Dated at Winterset, Madison County, Iowa, this 15th day of Aug, 1966.

Rex Rouse Sheriff of
Madison County, Iowa

IN THE MATTER OF THE APPLICATION BY MADISON COUNTY, IOWA, FOR THE APPOINTMENT OF COMMISSIONERS TO ASSESS DAMAGES FOR THE TAKING OF REAL ESTATE FOR ROAD IMPROVEMENT PURPOSES : NOTICE TO APPRAISERS OF TIME FOR APPRAISEMENT

TO: Merrill Creger, Lowell Ole Olson, Bernard Hollingsworth, Don Wilson Richard Stanley and Roy Pickering.

YOU AND EACH OF YOU ARE HEREBY NOTIFIED, that, having heretofore been appointed by me as appraisers to appraise the damage to certain real estate owned by Robert M. Berry and Catherine E. Berry and located in Section 20 in Township 74 North, of Range 28 West of the

MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

5th P.M., Madison County, Iowa, taking and appropriating a part thereof for road purposes, which part said Madison County, Iowa, asked to have condemned in an application filed by said Madison County, Iowa, with the undersigned Sheriff on the 3rd day of Aug, 1966, and that Notice of such condemnation have been served on all the parties named in said application as being interested in said real estate as shown by the Returns of Service thereon on file in my office, and that the time stated in said Notice as the time when the Commissioners will view the premises and appraise the damages is the 18 day of Aug, 1966, at 9:30 o'clock A.M., and that you are now and hereby notified that you are required to proceed with the appraisement of damages in connection with the condemnation of said real estate at the time and date so stated.

YOU ARE FURTHER NOTIFIED that the real estate affected by said condemnation is described in said application and in the copy of said application which is attached to this Notice, marked Exhibit "A" and by this reference made a part hereof.

Dated this 15th day of Aug, 1966.

Rex Rouse
Sheriff of Madison County, Iowa

RETURN OF ORIGINAL NOTICE No.____

STATE OF IOWA -- County) ss:

The withinnotice received this 3rd day of August, 1966, and I certify that I served the same on the defendants named below by delivering a copy thereof to each of said defendants personally at the time and place set opposite their respective names:

Name of Defendants	Month	Day	Year	City, Town or Township	County	State
Merrill Creger	Aug.	15	1966	Ohio	Madison	Iowa
Lowell Olson	Aug.	15	1966	Lincoln	Madison	Iowa
Bernard Hollingsworth	Aug.	15	1966	Union	Madison	Iowa
Don Wilson	Aug.	15	1966	South	Madison	Iowa
Richard Stanley	Aug.	15	1966	Lee	Madison	Iowa
Roy Pickering	Aug.	15	1966	Center	Madison	Iowa

Service & Copy $3.25
Mileage 12.20
$15.45

Rex Rouse
Official Title
Rex Rouse, Sheriff

fees paid R.R.R.

OATH AND QUALIFICIATION OF COMMISSIONERS

STATE OF IOWA MADISON COUNTY) ss

We, and each of us, being first duly sworn on oath depose and say that we are each one of the persons appointed by Rex Rouse, Sheriff of Madison County, Iowa, on the 15th day of Aug, 1966, as a commissioner to assess damages to real estate, on account of Madison County, Iowa, asking to have certain real estate appraised, condemned and set over to it for road purposes, said real estate being located in Section 20 in Township 74 North, of Range 28 West of the 5th P.M., Madison County, Iowa, and being more particularly described in the order for Appointment of Commissioners to which this oath and qualification is attached; we and each of us, further state that we are resident freeholders of Madison County, Iowa; that we are not interested in the same or a like or similar question; that we will to the best of our ability faithfully and impartially assess said damages and make written report to the Sheriff as provided by law.

Roy Pickering
N. B. Hollingsworth
Lowell L. Olson
Richard Stanley
R. D. Wilson
Merrill S. Creger

Subscribed and sworn to before me this 18th day of Aug., 1966.

(DISTRICT COURT SEAL)

Marguerite Morrissey Clerk of District Court in and for Madison County, Iowa

MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

IN THE MATTER OF THE APPLICATION BY MADISON COUNTY, IOWA, FOR THE APPOINTMENT OF COMMISSIONERS TO ASSESS DAMAGES FOR THE TAKING OF REAL ESTATE FOR ROAD IMPROVEMENT PURPOSES : REPORT OF COMMISSIONERS

TO: REX ROUSE, SHERIFF OF MADISON COUNTY, IOWA

The undersigned Commissioners appointed by you by Order of Appointment dated the 15th day of Aug., 1966, to inspect the real estate hereinafter described and assess the damages which the owner and parties interested therein are sustaining by reason of the condemnation and appropriation, thereof, for the use of Madison County, Iowa, in connection with the improvement of certain roads in Madison County, Iowa, as stated in the Application for Condemnation of Property, filed with you the 3rd day of Aug, 1966, do hereb make report that upon due notice we met upon said premises, viewed and inspected the same on the 18th day of Aug, 1966 at 9:30 o'clock A. M., and appraised and assessed the damages sustained by reason of said condemnation as follows by reason of the taking of the following described tract of real estate by Madison County, Iowa, to-wit:

Beginning at the NW corner of the SW¼ of Section 20 T74N R28W of the 5th P.M.; thence east 32.7 feet; thence S3°27' 219.11 feet; thence S0°21'E 1104.29 feet to the south side of the NW¼ of the SW¼ of said Sec. 30; thence west 26.26 feet to the SW corner of the NW ¼ of the SW¼ of said Sec. 20; thence north 1322.98 feet to the point of beginning and containing 0.11 acres, more or less, exclusive of the present established highway.

Note: the west side of the SW¼ of Sec. 20 T74N R28W was assumed to bear due north and south.

TO: Robert M. Berry and Catherine E. Berry $1925.00

We further report that the costs of paid assessment are as follows:

NOTICES: Sheriff of Madison County, Iowa,	
Cost of mileage and attendance of Sheriff's office	
Mileage	$ 21.20
Attendance and notices	$ 13.25
APPRAISER'S FEES:	
Lowell L. Olson	$ 15.20
N. B. Hollingsworth	$ 16.20
Richard Stanley	$ 19.80
Merrill S. Creger	$ 18.24
R. D. Wilson	$ 18.40
Roy Pickering	$ 18.20
Jury meals	$ 6.01

August 18, 1966

SHERIFF'S CERTIFICATION OF COSTS

I further certify that costs incident to this proceeding have been taxed as follows:

	FEES	MILEAGE	TOTAL
1. Serving Original Notices	2.50	6.00	8.50
2. Sheriff Serving Notice of Appointment of Commissioners	3.25	12.20	15.45
3. Sheriff Attending Commissioners	7.50	3.00	10.50
TOTAL SHERIFF'S COSTS			$34.45
4. Commissioner's Expenses:			
Lowell Olson, Center Twp. 1 day service and mileage			$ 15.20
Roy Pickering (used his car on viewing) 1 day service and mileage			18.20
Merrill Creger, Ohio Twp. 1 day service and mileage			18.24
Richard Stanley, Lee Twp. 1 day service and mileage			19.80
Bernard Hollingsworth, Union Twp. 1 day service and mileage			16.20
Don Wilson, South Twp. 1 day service and mileage			18.40
Jury meals			6.01
TOTAL JURY COSTS			$ 112.05
5. Damages awarded: Robert M. Berry and Catherine E. Berry			1925.00
TOTAL DAMAGES AWARDED			$ 1925.00

MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

RECAPITULATION

TOTAL DAMAGES AWARDED	$ 1925.00
TOTAL SHERIFF'S COSTS	34.45
TOTAL COMMISSIONER'S EXPENSES	112.05
GRAND TOTAL	$ 2071.50

Certified a true statement of Robert M. Berry and Catherine E. Berry condemnation expenses and original copies of proceedings therewith.

Rex Rouse
Rex Rouse, Sheriff
Madison County, Iowa

Now on this 16th day of September, 1966, Notice of Appeal of this action having been received in my office, I further certify that this file contains all the original papers and reports in connection with the Robert M. Berry and Catherine E. Berry condemnation action.

Rex Rouse
Rex Rouse, Sheriff
Madison County, Iowa

No. 3321

TREASURER'S OFFICE $1925.00
Madison County, Iowa

Winterset, Iowa, September 16, 1966

RECEIVED OF Rex Rouse Sheriff for Secondary Road Fund, the sum of Nineteen Hundred Twenty Five DOLLARS, for Condemnation Award Appeal, Robert M. Berry, et al

County Treasurer
By Laura Garnett

RECEIVED 9-16-66 9:15 A.M. RRR
MADISON COUNTY SHERIFF
WINTERSET, IOWA
Filed: 1966 SEP 16 PM 1 20
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

IN THE MATTER OF THE CONDEMNATION OF CERTAIN RIGHTS IN LAND BY MADISON COUNTY, IOWA, FOR PUBLIC HIGHWAY IN MADISON, COUNTY, IOWA, ROBERT M. BERRY AND CATHERINE E. BERRY, Plaintiffs v. MADISON COUNTY, IOWA, Defendant	Law No. 20066 NOTICE OF APPEAL

TO: MADISON COUNTY, IOWA, DEFENDANT; WAYNE A. GRIFFITH, AS AUDITOR OF MADISON COUNTY, IOWA; REX ROUSE, AS SHERIFF OF MADISON COUNTY, IOWA; LEWIS H. JORDAN, AS COUNTY ATTORNEY OF MADISON COUNTY, IOWA; MUTUAL BENEFIT LIFE INSURANCE COMPANY, AMES, IOWA; AND NATURAL GAS PIPELINE COMPANY OF AMERICA, TRURO, IOWA:

YOU AND EACH OF YOU, ARE HEREBY NOTIFIED that Robert M. Berry and Catherine E. Berry have appealed and do hereby appeal to the District Court of Iowa, in and for Madison County, from the assessment returned by the Condemnation Commission, on or about the 18th day of August, 1966, fixing the damages sustained by these owners of the following described real estate, situated in Madison County, Iowa, to-wit:

The North One-half (N½) of the Southwest Quarter (SW¼) of Section Twenty (20) and all of the Northwest Quarter (NW¼) of Section Twenty-nine (29), except the East One-half (e½) of the Northeast One-fourth (NE¼) of the Northwest Quarter (NW¼) of Section Twenty-nine (29); all in Township Seventy-four (74) North, Range Twenty-eight (28) West of the 5th P. M., Madison County, Iowa.

The land sought to be appropriated and the property rights taken by said condemnation is in connection with a widening, altering, and re-locating of public highway which now adjoins said real estate, and described as follows:

Beginning at the NW corner of the SW¼ of Section 20 T 74N R28 W of the 5th P. M.; thence east 32.7 feet; thence S3°27' W 219.11 feet; thence S0°21'E 1104.29 feet to the south side of the NW¼ of the SW¼ of said Sec. 20; thence west 26.26 feet to the SW corner of the NW¼ of the SW¼ of said Sec. 20; thence north 1322.98 feet to the point of beginning and containing 0.11 acres, more or less, exclusive of the present established highway.

MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

Said appeal is taken to the District Court of Iowa, in and for Madison County, to the November, 1966, term thereof, which will begin November 1, 1966.

For full particulars, see copy of Plaintiff's Petition, which will be on file as provided by law, in said Court and cause, and govern yourselves accordingly.

Dated this 16th day of September, 1966.

ROBERT M. BERRY
CATHERINE E. BERRY
Plaintiffs-Appellants
By Killmar & Reynoldson
KILLMAR AND REYNOLDSON
Attorneys for Plaintiffs-Appellants
Osceola, Iowa

ACCEPTANCE OF SERVICE

Service of the foregoing Notice of Appeal is hereby accepted, and the receipt of a true copy thereof acknowledged at Winterset, Iowa, this 16th day of September, 1966.

Rex Rouse
Rex Rouse, Sheriff of
Madison County, Iowa

RECEIVED 9-16-66 RRR
MADISON COUNTY SHERIFF
WINTERSET, IOWA

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

FILED: 1966 SEP 16 PM 2 54
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

IN THE MATTER OF THE CONDEMNATION OF CERTAIN RIGHTS IN LAND BY MADISON COUNTY, IOWA, FOR PUBLIC HIGHWAY IN MADISON, COUNTY, IOWA, ROBERT M. BERRY AND CATHERINE E. BERRY,

Plaintiffs

v.

MADISON COUNTY, IOWA,

Defendant

Law No. 20066

NOTICE OF APPEAL

TO: MADISON COUNTY, IOWA, DEFENDANT; WAYNE A. GRIFFITH, AS AUDITOR OF MADISON COUNTY, IOWA; REX ROUSE, AS SHERIFF OF MADISON COUNTY, IOWA; LEWIS H. JORDAN, AS COUNTY ATTORNEY OF MADISON COUNTY, IOWA; MUTUAL BENEFIT LIFE INSURANCE COMPANY, AMES, IOWA; AND NATURAL GAS PIPELINE COMPANY OF AMERICA, TRURO, IOWA:

YOU AND EACH OF YOU, ARE HEREBY NOTIFIED that Robert M. Berry and Catherine E. Berry have appealed and do hereby appeal to the District Court of Iowa, in and for Madison County, from the assessment returned by the Condemnation Commission, on or about the 18th day of August, 1966, fixing the damages sustained by these owners of the following described real estate, situated in Madison County, Iowa, to-wit:

The North One-half (N½) of the Southwest Quarter (SW¼) of Section Twenty (20) and all of the Northwest Quarter (NW¼) of Section Twenty-nine (29), except the East One-half (e½) of the Northeast One-fourth (NE¼) of the Northwest Quarter (NW¼) of Section Twenty-nine (29); all in Township Seventy-four (74) North, Range Twenty-eight (28) West of the 5th P. M., Madison County, Iowa.

The land sought to be appropriated and the property rights taken by said condemnation is in connection with a widening, altering, and re-locating of public highway which now adjoins said real estate, and described as follows:

Beginning at the NW corner of the SW¼ of Section 20 T 74N R28 W of the 5th P. M.; thence east 32.7 feet; thence S3°27' W 219.11 feet; thence S0°21'E 1104.29 feet to the south side of the NW¼ of the SW¼ of said Sec. 20; thence west 26.26 feet to the SW corner of the NW¼ of the SW¼ of said Sec. 20; thence north 1322.98 feet to the point of beginning and containing 0.11 acres, more or less, exclusive of the present established highway.

Said appeal is taken to the District Court of Iowa, in and for Madison County, to the November, 1966, term thereof, which will begin November 1, 1966.

For full particulars, see copy of Plaintiff's Petition, which will be on file as provided by law, in said Court and cause, and govern yourselves accordingly.

MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

Dated this 16th day of September, 1966.

ROBERT M. BERRY
CATHERINE E. BERRY
Plaintiffs-Appellants
By Killmar & Reynoldson
KILLMAR AND REYNOLDSON
Attorneys for Plaintiffs-
Appellants
Osceola, Iowa

ACCEPTANCE OF SERVICE

Service of the foregoing Notice of Appeal is hereby accepted, and the receipt of a true copy thereof acknowledged at Winterset, Iowa, this 16th day of September, 1966.

Rex Rouse
Rex Rouse, Sheriff of
Madison County, Iowa

ACCEPTANCE OF SERVICE

Service of the foregoing Notice of Appeal is hereby accepted, and the receipt of a true copy thereof acknowledged for and on behalf of Madison County, Iowa, at Winterset, Iowa, on this 16 day of September, 1966.

Wayne A. Griffith
Wayne A. Griffith, Auditor of
Madison County, Iowa

ACCEPTANCE OF SERVICE

Service of the foregoing Notice of Appeal is hereby accepted, and the receipt of a true copy thereof acknowledged, at Winterset, Iowa, on this 16th day of September, 1966.

Lewis H. Jordan
Lewis H. Jordan, Madison
County Attorney

ACCEPTANCE OF SERVICE

Service of the above and foregoing Notice of Appeal is hereby accepted, and receipt of a true copy thereof acknowledged, for and on behalf of Mutual Benefit Life Insurance Company, Ames, Iowa, on this 16th day of September, 1966.

(CORPORATE SEAL)

MUTUAL BENEFIT LIFE INSURANCE COMPANY
By Howard E. Nickey
RJL Authorized Officer
JPK Howard E. Nickey, Vice President

RECEIVED 9-16-66 9:15 A.M. RRR
MADISON COUNTY SHERIFF
WINTERSET, IOWA

IN THE DISTRICT COURT OF THE STATE OF IOWA
IN AND FOR MADISON COUNTY

FILED: 1966 SEP 16 PM 2 54
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

IN THE MATTER OF THE CONDEMNATION OF CERTAIN RIGHTS IN LAND BY MADISON COUNTY, IOWA, FOR PUBLIC HIGHWAY IN MADISON, COUNTY, IOWA ROBERT M. BERRY AND CATHERINE E. BERRY, Plaintiffs	)	Law No. 20066
v.	)	
MADISON COUNTY, IOWA, Defendant	)	NOTICE OF APPEAL

TO: MADISON COUNTY, IOWA, DEFENDANT; WAYNE A. GRIFFITH, AS AUDITOR OF MADISON COUNTY, IOWA; REX ROUSE, AS SHERIFF OF MADISON COUNTY, IOWA; LEWIS H. JORDAN, AS COUNTY ATTORNEY OF MADISON COUNTY, IOWA; MUTUAL BENEFIT LIFE INSURANCE COMPANY, AMES, IOWA; AND NATURAL GAS PIPELINE COMPANY OF AMERICA, TRURO, IOWA:

YOU AND EACH OF YOU, ARE HEREBY NOTIFIED that Robert M. Berry and Catherine E. Berry have appealed and do hereby appeal to the District Court of Iowa, in and for Madison County, from the assessment returned by the Condemnation Commission, on or about the 18th day of August, 1966, fixing the damages sustained by these owners of the following described real estate, situated in Madison County, Iowa, to-wit:

The North One-half (N½) of the Southwest Quarter (SW¼) of Section Twenty (20) and all of the Northwest Quarter (NW¼) of Section Twenty-nine (29), except the East One-half (e½) of the Northeast One-fourth (NE¼) of the Northwest Quarter (NW¼) of Section Twenty-nine (29); all in Township Seventy-four (74) North, Range Twenty-eight (28) West of the 5th P. M., Madison County, Iowa.

MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

The land sought to be appropriated and the property rights taken by said condemnation is in connection with a widening, altering, and re-locating of public highway which now adjoins said real estate, and described as follows:

Beginning at the NW corner of the SW¼ of Section 20 T 74 N R28 W of the 5th P. M.; thence east 32.7 feet; thence S3°27' W 219.11 feet; thence S0°21'E 1104.29 feet to the south side of the NW¼ of the SW¼ of said Sec. 20; thence west 26.26 feet to the SW corner of the NW¼ of the SW¼ of said Sec. 20; thence north 1322.98 feet to the point of beginning and containing 0.11 acres, more or less, exclusive of the present established highway.

Said appeal is taken to the District Court of Iowa, in and for Madison County, to the November, 1966, term thereof, which will begin November 1, 1966.

For full particulars, see copy of Plaintiff's Petition, which will be on file as provided by law, in said Court and cause, and govern yourselves accordingly.

Dated this 16th day of September, 1966.

ROBERT M. BERRY
CATHERINE E. BERRY
Plaintiffs-Appellants
By Killmar-Reynoldson
KILLMAR AND REYNOLDSON
Attorneys for Plaintiffs-Appellants
Osceola, Iowa

RETURN OF SERVICE--Company or Corporation

STATE OF IOWA, Madison County) ss.

The within Notice of Appeal came into my hands on the 16th day of September, 1966 and on the 16th day of September, 1966, I served the same upon the Natural Gas Pipeline Company of America, Truro, Iowa by offering to read the same to Don Allen, he being the Superintendant of Pipe Line of said corporation or company, which he waived, and by giving him a true copy thereof, all done in Virginia Township, Warren County, Iowa.

FEES		
Service	$ .75	
Copies	$	
Mileage	$4.20	
Total	$4.95	Pd. by Plaintiff's Atty. 9-21-66

Rex Rouse
of Madison County

Rex Rouse

IN THE DISTRICT COURT OF THE STATE OF IOWA
IN AND FOR MADISON COUNTY

November 1, 1966 Term of Court

FILED: 1966 OCT 6 AM 9 20
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

ROBERT M. BERRY and CATHERINE E. BERRY, Plaintiffs	)	Law No. 20066
v.	)	PETITION AT LAW
MADISON COUNTY, IOWA, Defendant	)	(Condemnation Appeal)

Comes now the plaintiffs, Robert M. Berry and Catherine E. Berry, and for cause of action against the defendant, Madison County, Iowa, state:

1. That plaintiffs are now, and have been at all times relevant hereto, the owner in fee of the following described real estate, situated in Madison County, Iowa, to-wit:

The North One-half (N½) of the Southwest Quarter (SW¼) of Section Twenty (20); and all of the Northwest Quarter (NW¼) of Section Twenty-nine (29), except the East One-half (E½) of the Northeast One-fourth (NE¼) of the Northwest Quarter (NW¼) of Section Twenty-nine (29); and the Southwest Quarter (SW¼) of the Northwest Quarter (NW¼) and the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of Section Twenty-eight (28); all in Township Seventy-four (74) North, Range Twenty-eight (28) West of the 5th P.M., Madison County, Iowa, and consisting of 300 acres, more or less.

2. That each portion, part, and parcel of said land has been used together as one complete tract or unit for farm purposes and exclusively devoted to the said one actula and permanent use at all times relevant hereto.

MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

3. That the real estate described in Paragraph 1, above, is a 300 acre farm, more or less, operated by the plaintiffs and the homestead of each of the plaintiffs is located thereon, said farm is highly improved, and has many valuable improvements and buildings thereon, and is used by plaintiffs in a general farming operation of production of crops and livestock, (and is fenced in a manner most convenient to its efficient operation.

4. That the defendant, Madison County, Iowa, is organized under the laws of the State of Iowa and has charge of the planning and construction of secondary roads, with the right to condemn and take for public use, and pay for the same out of county funds.

5. That on or about the 18th day of August, 1966, the defendant, Madison County, Iowa, by eminent domain proceedings did condemn for the purposes of widening, improving, altering and relocating a public highway, a part of said land, specifically and particularly designated as follows:

> Beginning at the Northwest corner of the Southwest Quarter (SW¼) of Section Twenty (20), Township Seventy-four (74) North, Range Twenty-eight (28) West of the 5th P.M.; thence East 32.7 feet; thence South 3°27'West 219.11 feet; thence South 0°21' East 1104.29 feet to the South side of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of said Section Twenty (20); thence West 26.26 feet to the Southwest corner of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of said Section Twenty (20); thence North 1322.98 feet to the point of beginning.

6. That in accordance with the Application of the Defendant, the Sheriff of Madison County, Iowa, appointed a Commission to assess the damages that the plaintiffs would be entitled to for the taking of their property by the defendant. That on the 18th day of August, 1966, the said Commission assessed the damages due the plaintiffs.

7. The plaintiffs have taken an Appeal from said assessment of damages to this Court.

8. The damages so fixed and awarded by said Commission are inadequate, and do not constitute just compensationfor the taking and appropriation of plaintiffs' property.

9. That the plaintiffs will sustain damages, because of said condemnation and appropriation of their property, in the following particulars:

(a) The value of the remaining farm will be considerably reduced by reason of said condemnation.

(b) The taking of approximately 1.1 acres of plaintiffs' land by the defendant for purposes of widening the said road.

(c) The loss of natural shade and beauty from trees growing on the condemned real estate, (which will reduce the desirability of said property to plaintiffs and prospective purchasers).

(d) The destruction of trees near feeding lots and pasture and the farmstead which have been used for shade and wind break purposes.

(e) The destruction of eight rods of fence (which will require replacement.)

(f) The appropriation of land requiring the destruction of removal of one sheep barn.

(g) The removal of the present vegetation from the road banks which will result in substantial sheet and ditch erosion by water drainage which will make it extremely difficult to maintain the line fence in proper condition and state of repair, and will also necessitate the removal of a corn crib and a granary from its permanent location near the slopes of the roadway.

(h) Plaintiffs will have to erect a temporary fence along the eighty rod boundary line in order to allow livestock to graze the land adjacent to the road which is to be widened.

(i) The natural course of the water drainage will be altered so that plaintiffs will necessarily have two additional water gaps in their pasture fence.

(j) That the taking by condemnation of the said right-of-way and easement will work an involuntary conversion of the plaintiffs' property into money, will require him to take the same into account on his income tax return and pay income tax upon the proceeds of the conversion.

It will require him to go to the expense of having said return computed and filed, regardless of the amount of tax.

MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

10. That each and all of the aforesaid matters are detrimental to and will greatly diminish the fair and reasonable market value of the plaintiffs' farm.

11. That by the condemnation, appropriation and taking of plaintiffs' property by the defendant, the fair and reasonable market value of plaintiffs' land has been reduced in the amount of Forty-two Hundred and No/100 ($4200.00) Dollars, and plaintiffs have been damaged in that amount. The said damages are plaintiffs' property, and unpaid.

WHEREFORE, plaintiffs pray that their damages be assessed in the amount of Forty-two Hundred and No/100 ($4200.00) Dollars, with interest, costs and attorney fees, as provided by law, and that the Court make such Orders as by law provided for the enforcement and collection of said damages.

KILLMAR AND REYNOLDSON
By L. P. Van Werden
Osceola, Iowa
Attorneys for Plaintiffs
Telephone No. 342-2157

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

FILED: 1966 OCT 6 AM 9 20
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

ROBERT M. BERRY and CATHERINE E. BERRY, Plaintiffs
v.
MADISON COUNTY, IOWA, Defendant

Law No. 20066

REQUEST FOR JURY TRIAL

Plaintiffs hereby demand a jury trial of all of the facts and issues in this action.

KILLMAR AND REYNOLDSON
By L. P. Van Werden
L. P. Van Werden
Osceola, Iowa
Attorneys for Plaintiffs
Telephone No. 342-2157

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

FILED: 1966 OCT 7 PM 4 09
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

ROBERT M. BERRY and CATHERINE E. BERRY, Plaintiff
-vs-
MADISON COUNTY, IOWA, Defendant.

Law No. 20066

MOTION TO STRIKE

Comes now the defendant and moves to strike from the petition of the plaintiff the following:

1. All that part of paragraph 3 following the word "livestock" for the reason that the same is an improper conclusion not stating or supported by any statement of ultimate fact.

2. All of paragraph 4 for the reason that the same is unnecessary matter.

3. All of paragraph 7 for the reason that the same is unnecessary matter.

4. All of paragraph 8 for the reason that the same is an improper conclusion not stating or supported by any statement of ultimate fact.

5. All of sub-paragraph (a) of paragraph 9 for the reason that the same is an improper conclusion not stating or supported by any statement of ultimate fact.

6. All that part of sub-paragraph (c) of paragraph 9 following the word "estate" for the reason that the same is an improper conclusion not stating or supported by any statement of ultimate fact.

7. All that part of sub-paragraph (e) of paragraph 9 after the word "fence" for the reason that the same is an improper conclusion not stating or supported by any statement of ultimate fact.

8. All of sub-paragraph (g) of paragraph 9 for the reason that the same is an improper conclusion not stating or supported by any statement of ultimate fact and for the further reason that the same is highly speculative in nature and could not be the basis for damages to the condemnee.

MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

9. All of sub-paragraph (h) of paragraph 9 for the reason that the same is an improper conclusion not stating or supported by any statement of ultimate fact and for the further reason that the same states no ground for legal compensible damages to the condemnee.

10. All of sub-paragraph (i) in paragraph 9 for the reason that the same is an improper conclusion not stating or supported by any statement of ultimate fact.

11. All of sub-paragraph (j) in paragraph 9 for the reason that the same is an improper conclusion not stating or supported by any statement of ultimate fact and for the further reason that the same appears to be a conclusion of law and does not correctly state the law.

12. The second sentence of paragraph 11 for the reason that the same is unnecessary matter.

Original & copy filed;
Copy to: Killmar and Reynoldson
Osceola, Iowa
ATTORNEYS FOR PLAINTIFFS
Copy Mailed 10-8-66

Lewis H. Jordan
Lewis H. Jordan, Madison County Attorney
Farmers & Merchants State Bank Bldg.
Winterset, Iowa 50273
ATTORNEY FOR DEFENDANT

NOTICE OF CALENDAR ENTRY

IN THE DISTRICT COURT OF IOWA, IN AND FOR MADISON COUNTY.

ROBERT M. BERRY AND CATHERINE E. BERRY
Plaintiffs,
vs.
MADISON COUNTY, IOWA
Defendant.

No. 20066

NOTICE OF CALENDAR ENTRY

To Killmar & Reynoldson and Lewis H. Jordan, County Attorney

You are hereby notified of a Calendar entry in the above entitled case as follows:

"Defendants motion to strike is sustained as to item 1, 2, 3, 4, 5, 6, 7, 8, 9 and 11 and overruled as to item 10 and 12."

/s/ S. E. Prall, Judge

Dated this 27th day of October, 1966.

-- Clerk District Court

The above notice was mailed to Killmar & Reynoldson and Lewis H. Jordan on the 28th day of October, 1966.

-- Clerk District Court

IN THE DISTRICT COURT OF IOWA

IN AND FOR MADISON COUNTY

FILED: 1966 NOV 1 PM 4 05
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

ROBERT M. BERRY and CATHERINE E. BERRY,
Plaintiffs,
-vs-
MADISON COUNTY, IOWA,
Defendant.

Law No. 20066

ANSWER

Comes now the defendant, Madison County, Iowa, and by way of answer to the plaintiffs' petition, states:

Par. 1.

The defendant admits the allegations of paragraph 1.

Par. 2.

For lack of information and belief, the defendant denies the allegations of paragraph 2.

Par. 3.

The defendant denies the allegations of paragraph 3.

Par. 4.

By way of answer to paragraph 5, the defendant admits the allegations thereof and affirmatively alleges that the real estate described therein consists of approximately 0.11 acres more or less exclusive of the present established highway.

Par. 5.

The defendant admits the allegations of paragraph 6.

MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

Par. 6.

The defendant denies the allegations of paragraph 9.

Par. 7.

The defendant denies the allegations of paragraph 10.

Par. 8.

The defendant denies the allegations of paragraph 11.

WHEREFORE, defendant prays that plaintiffs' petition be dismissed at plaintiffs' costs.

Lewis H. Jordan
Lewis H. Jordan, Madison County Attorney
Farmers & Merchants State Bank Bldg.
Winterset, Iowa 50273
ATTORNEY FOR DEFENDANT

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

FILED: 1966 NOV 7 AM 9 00
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

ROBERT M. BERRY and CATHERINE E. BERRY, Plaintiffs
v.
MADISON COUNTY, IOWA, Defendant

LAW NO. 20066

CERTIFICATE OF READINESS FOR TRIAL

The undersigned hereby certifies that:

1. The issues are joined and the case is ready for trial in all respects;
2. Necessary use of discovery rules has been completed and the taking of desired depositions concluded by the undersigned;
3. The adverse party has had reasonable time toobtain inspections, examinations and reports under rules 131 to 133;
4. Sufficient time has elapsed to afford the adverse party reasonable opportunity to be ready for trial;
5. Pretrial conference has not been held;
6. Settlement of the case (a) has been discussed; and
7. Assignment for trial (a) by jury upon timely demand filed.

A copy of this certificate is filed herewith for each adverse party.

Dated this 4th day of November, 1966.

KILLMAR AND REYNOLDSON
By L. P. Van Werden
L. P. Van Werden
Attorney(s) for Plaintiffs

P. O. Address 200 West Jefferson
Osceola, Iowa
Telephone No. 342-2157

Copy Hereof Delivered
to Webster Frederick & Jordan
11-7-1966
Beverly Ham
Deputy Clerk of District Court
Madison County, Iowa

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

FILED: 1967 APR 13 AM 9 26
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

ROBERT M. BERRY and CATHERINE E. BERRY, Plaintiffs
v.
MADISON COUNTY, IOWA, Defendant

Law No. 20066

APPLICATION FOR LEAVE OF COURT TO AMEND PETITION

Come now the Plaintiffs, Robert M. Berry and Catherine E. Berry, and respectfully ask the Court for leave of Court to Amend the Petition as set out in the proposed first amendment to Petition of which a copy is attached hereto and made a part hereof by reference.

KILLMAR AND REYNOLDSON
By L. P. Van Werden
Osceola, Iowa
Attorneys for Plaintiffs
Telephone No. 342-2157

MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

FILED: APR 13 1967
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

ROBERT M. BERRY and
CATHERINE E. BERRY,
Plaintiffs
v.
MADISON COUNTY, IOWA.
Defendant

Law No. 20066

FIRST AMENDMENT TO PETITION

Come now the Plaintiffs, Robert M. Berry and Catherine E. Berry, and pursuant to Rule of Civil Procedure No. 88, hereby amend the Petition as follows:

Plaintiffs hereby delete the words and figures Forty-two Hundred and no/100 Dollars wherever the said words or figures appear in Paragraph 11 of the Petition and the prayer of the Petition, and substitute therefor, the words and figures Forty-eight Hundred and no/100 Dollars.

WHEREFORE, Plaintiffs pray that the damages be assessed in the amount of Forty-eight Hundred Dollars ($4800.00), with interest, costs and attorney fees, as provided by law, and that the Court make such other Orders as by law provided for the enforcement and collection of said damages, interest, costs and attorney fees.

KILLMAR AND REYNOLDSON
By L. P. Van Werden
L. P. Van Werden
Osceola, Iowa
Attorneys for Plaintiffs
Telephone No. 342-2157

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

FILED: 1967 APR 21 AM 10 26
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

ROBERT M. BERRY and
CATHERINE E. BERRY,
Plaintiffs
v.
MADISON COUNTY, IOWA,
Defendant

Law No. 20066

PLAINTIFFS' REQUESTED INSTRUCTIONS

Come now the Plaintiffs, and request the Court to submit the attached instructions to the jury.

KILLMAR AND REYNOLDSON
By L. P. Van Werden
L. P. Van Werden
Osceola, Iowa
Attorneys for Plaintiffs

REQUESTED INSTRUCTION NO. 1

You are to try and determine this case according to the evidence produced and submitted to you in Open Court on this trial, together with such inferences and deductions as you, as fair and reasonable jurors, draw therefrom, and the law as given you in charge by theCourt in these instructions. You are the sole judges of the facts in this case, and the Court instructs you as to the law. The Court has not, however, attempted or intended to embody in any one instruction all of the law applicable to the case. You are to consider and construe together all of the instructions and imply them as a whole to the evidence in this case.

ASKED BY THE PLAINTIFFS

Refused BY THE COURT

PLAINTIFFS EXCEPT

M. C. Herrick
JUDGE

REQUESTED INSTRUCTION NO. 2

The statutes of this State have authorized the counties to condemn and appropriate private property for public purposes. This is known as the right of eminent domain.

It is provided by law that such property shall not be taken for public use without just compensation to the owner thereof. Therefore, the sole question for your consideration in this case is the determination of the amount of damages which plaintiffs have suffered by reason of the taking of their property or the taking of a portion of their property.

MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

The law provides that a fair and just compensation means the payment of such a sum of money to the owners of the property taken or appropriated that will serve to make the owners whole.

When the right of eminent domain is exercised by a condemning authority, the question of whether or not the owner of the property desires to part with his property has no bearing upon the fair and reasonable market value of such property, or any part thereof.

The owner and condemning authority each and both have equal rights in court, which means that this cause is to be tried and determined by you as though it were a case by and between two individuals, and no inferences or presumptions are to indulged against the condemning authority that would be improper in an action between two individuals, nor is the condemning authority entitled to any consideration which a private litigant would not be entitled.

ASKED FOR THE PLAINTIFFS

Refused BY THE COURT - - - - -

JUDGE

PLAINTIFFS EXCEPT

REQUESTED INSTRUCTION NO. 3

The burden of proof is upon the plaintiffs to establish by a preponderance of the evidence, the fair and just compensation to which they are entitled, which, under the law, is the difference in the fair and reasonable market value of their property as a whole immediately before, and the fair and reasonable market value of that portion of said property remaining in the plaintiffs, immediately after the appropriation and condemnation as made by defendant on August 18, 1966.

In making the allowance referred to, the law provides that you disregard entirely and exclude from your calculations any and all benefits to the plaintiffs' property, which have resulted or may result in the future from the improvement of said highway, if there are any such improvements.

ASKED BY THE PLAINTIFFS

Refused BY THE COURT M. C. Herrick

JUDGE

PLAINTIFFS EXCEPT

REQUESTED INSTRUCTION NO. 4

As bearing upon the question of the fair and reasonable market value of the property involved as a whole before the condemnation of that part which was taken, and the value immediately thereafter, you have a right to and should consider all of the varied factors which tend to show the value or lack of value at such times, as disclosed by the evidence. These factors may include the location and topography of plaintiffs' property, the size and shape thereof, the improvements subsequently made, the quality, age and construction of the buildings, their location as to the highway boundary line, and comparable sales of other property, if any you find.

Other factors for consideration may include the extent of the land actually taken, any inconveniences resulting therefrom, the character of the neighborhood, the rental value, use and capabilities of the property, as to any and every use to which it may reasonably be adapted, and all the conditions of the surroundings as well as any and all other facts and circumstances disclosed by the evidence which tend to show the fair and reasonable market value of the property at the time immediately before the condemnation of a part thereof, and immediately thereafter.

These factors or characteristics which tend to show the values must not be regarded as distinct and independent items of value, but merely as factors bearing upon and tending to show the reasonable market value of the property on dates herein involved.

ASKED BY THE PLAINTIFFS
Refused BY THE COURT M. C. Herrick
JUDGE
PLAINTIFFS EXCEPT

HATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

REQUESTED INSTRUCTION NO. 5

You are instructed that in arriving at your verdict in this case you should determine the value of this property in the light of the testimony given from the witness stand. You are not authorized to arbitrarily disregard the testimony of any witness. Certain witnesses have testified in this case as to values of the property in question. You are instructed that in weighing the testimony of these witnesses who have given their opinions as to such values, you are permitted to weigh and judge the soundness of opinions as expressed by your own judgment, in the light of your own experience and knowledge in common with mankind in general, with respect to such matters. Give to the opinion of each witness on value such weight as you determine it entitled to, or none if you believe it entitled to none. However, your verdict must be based upon the testimony, and not upon your own estimated of the value.

ASKED BY THE PLAINTIFFS
Refused BY THE COURT
PLAINTIFFS EXCEPT

M. C. Herrick
JUDGE

REQUESTED INSTRUCTION NO. 6

In this case, the plaintiffs, Robert M. Berry and Catherine E. Berry, claim that the property involved was, just prior to the condemnation, used in conjunction and as a unit with certain other property owned by Robert M. Berry and Catherine E. Berry which are not so involved. This is denied by Defendant.

As bearing on this contention you should consider the location of and the relation between the tracts of real estate, the kind and character of the improvements, the type of farming being carried on, the ownership of and the location of any and all personal property used or employed in such use, and any and all other facts and circumstances shown by the evidence.

If the jury find by preponderance of the evidence just before the condemnation that all tracts were operated as a single farming unit, then such evidence may be considered as bearing upon the fair and reasonable market value of the property involved herein and the damages sustained thereto by reason of the said condemnation.

If you fail to so find, no consideration should be given to the other tracts of property in determining such value.

ASKED BY THE PLAINTIFFS
Refused BY THE COURT
PLAINTIFFS EXCEPT

M. C. Herrick
JUDGE

REQUESTED INSTRUCTION NO. 7

The question for determination is the difference in value of the property as a whole before and after the condemnation as heretofore explained, and this must be done by unanimous vote and such amount will be the verdict.

It is not necessary that the members of the jury agree as to the exact values before and after condemnation, but the only agreement required for a verdict is as to the difference in value of the entire property before and its value after the condemnation and appropriation by the defendant.

ASKED BY THE PLAINTIFFS
Refused BY THE COURT
PLAINTIFFS EXCEPT

M. C. Herrick
JUDGE

REQUESTED INSTRUCTION NO. 8

The amount of damages awarded to the plaintiffs by the condemnation commission may be known to you, or some of you, but should be given no consideration by any individual juror or the jury as a whole. The fact that plaintiffs' land was condemned is, of course, the material fact, because it gives the plaintiffs the right to recover from the condemning authority, but the amount of the award made by the condemnation commission is of no materiality in this proceeding, is not a fact that is proven by the record in this case, and must not be given any consideration by you.

ASKED BY THE PLAINTIFFS
Refused BY THE COURT
PLAINTIFFS EXCEPT

M. C. Herrick
JUDGE

MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

REQUESTED INSTRUCTION NO. 9

In determining the amount to be awarded the plaintiffs on account of the condemnation of a portion of their property, the jurors must first find the fair and reasonable market value of the property as a whole immediately before the condemnation, the date of which was August 18,1966.

Next, the jurors must determine the fair and reasonable market value of that part of the property which remains in the plaintiffs after the taking of the property and property rights described in the condemnation proceedings.

The jurors should then subtract the value of the property as it remained after the condemnation from the value before condemnation, and this difference will be the amount allowed by you as damages.

In making the allowance referred to, the law provides that you disregard entirely and exclude from your calculations any and all benefits to the plaintiffs' property, which have resulted or may result in the future from the improvement of said roadway, if there are any such benefits.

ASKED BY THE PLAINTIFFS
Refused BY THE COURT
PLAINTIFFS EXCEPT

M. C. Herrick
JUDGE

REQUESTED INSTRUCTION NO. 10

The Court has not by its instructions, or by any ruling made, or by any act done, or by anything said during the trial, intended or attempted to give any intimation or opinion as to what the facts are or what are not the facts, what the proof is or what it is not, or what your verdict should be.

ASKED BY THE PLAINTIFFS
Refused BY THE COURT
PLAINTIFFS EXCEPT

M. C. Herrick
JUDGE

REQUESTED INSTRUCTION NO. 11

The parties have agreed that we may take a sealed verdict in this case. This means that when you have arrived at a sum upon which all of you agree, and have filled in the amount in the verdict and your foreman has signed the same, you may seal the verdict, along with these instructions in the large envelope provided herewith, and you may then separate.

ASKED BY PLAINTIFFS
Refused BY THE COURT
PLAINTIFFS EXCEPT

M. C. Herrick
JUDGE

REQUESTED INSTRUCTION NO. 12

The plaintiffs in their petition have asked for damages because of the condemnation of a portion of their property in the sum of $4800.00, and in no event can your verdict exceed that amount. This limitation as to the amount is not stated as an indication that such an amount is or is not proper to be allowed by the jury, but as being the amount claimed in the petition, and which, therefore, limits the amount of your verdict.

In the verdict, the form of which is submitted herewith, you will insert the amount which you find to be the difference between the fair and reasonable market value of the property involved before the condemnation on August 18, 1966, and such a value of the portion remaining in the plaintiffs after the appropriation by the defendant. The verdict must be signed by one of your number whom you shall have chosen as foreman or forewoman and returned with these instructions into court.

ASKED BY THE PLAINTIFFS
Refused BY THE COURT
PLAINTIFFS EXCEPT

M. C. Herrick
JUDGE

REQUESTED INSTRUCTION NO. 13

There has been evidence introduced into the record tending to show that the original designated easement for the road in question was designated as a 40 foot wide road to be placed

MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

on the Section Line which runs by the land in question, and that this said easement encompassed the area upon which the windbreak of trees, as described in the evidence, was planted. The court holds as a matter of law and directs you that the said original easement for road purposes was abandoned by the construction and continued maintenance of the said secondary road in a different location and you are, therefore, instructed that said easement as originally acquired no longer exists and that you are to consider the trees in question and land upon which they are located as the sole and absolute property of the plaintiffs, Robert M. and Catherine E. Berry.

ASKED BY THE PLAINTIFFS
Refused BY THE COURT
PLAINTIFFS EXCEPT

M. C. Herrick
JUDGE

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

April, 1967, Term

ROBERT M. BERRY and CATHERINE E. BERRY, Plaintiffs
v.
MADISON COUNTY, IOWA, Defendant

Law No. 20066

VERDICT

FORM NO. 1.

We, the jury, find for the plaintiffs against the defendant, and fix the amount of plaintiffs' damages because of the condemnation of the real estate in question in this case in the sum of $_____.

_____
Foreman

IN THE DISTRICT COURT OF IOWA

IN AND FOR MADISON COUNTY

FILED: 1967 APR 21 AM 10 11
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

ROBERT M. BERRY and CATHERINE E. BERRY, Plaintiffs
vs.
MADISON COUNTY, IOWA, Defendant

No. 20066 Law

REQUEST FOR INSTRUCTIONS

Comes now the Defendant, Madison County, Iowa, and requests the Court to give the following instructions attached hereto and by this reference made a part hereof.

C. R. Bentz
C. R. Bentz
210 North First Street
Winterset, Iowa
Madison County Attorney

INSTRUCTION NO. 1

The burden of proof is upon the Plaintiffs to establish by a preponderance of the evidence, the fair and just compensation to which they are entitled, which, under the law, is the difference in the fair and reasonable market value of their property as a whole immediately before, and the fair and reasonable market value of that portion of said property remaining in the Plaintiffs, immediately after the appropriation and condemnation as made by the Defendant on August 18, 1966.

The Plaintiffs are not entitled in determining the fair and reasonable market value of their property either before or after the condemnation, to have such values depend upon any property not owned by them prior to the condemnation.

Refused
M. C. Herrick, J.

INSTRUCTION NO. 2

The Plaintiffs in this case have introduced testimony as to the value of their property immediately prior to the condemnation herein on August 18, 1966. The witnesses testifying to these values have included in their determination of value certain trees and fences which were shown by the undisputed testimony in this case to lie in the previously existing

MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

and established highway.

You are instructed that neither the trees nor any part of the previously established highway upon which they grew belong to the Plaintiffs, and that the Plaintiffs are not entitled to have the value of such trees or land considered in determining the value of their property immediately prior to the condemnation; nor are they entitled to have the removal of said trees and use of the land on which they stood within the boundaries of the previously established highway considered in determining the value of their property immediately after the condemnation.

Refused
M. C. Herrick, Judge

INSTRUCTION NO. 3

The term "fair and reasonable market value" as used in these instructions means the cash price which would be arrived at as between a voluntary seller willing but not compelled to sell and a voluntary purchaser willing but not compelled to buy, both of whom are acting freely, intelligently and at arms length, bargaining in the open market for the sale and purchase of the real estate in question.

Such term does not mean the value under peculiar circumstances where greater than its fair price could be obtained, nor does it mean the price which the property would bring at a forced sale.

It does not mean what the property is worth to the Plaintiffs nor what the Defendant can afford to pay, but it is fairly worth in cash on the open market.

Refused (Given in substance.)
M. C. Herrick, Judge

IN THE DISTRICT COURT OF THE STATE OF IOWA
IN AND FOR MADISON COUNTY
APRIL 1967 TERM

FILED: 1967 APR 21 PM 4 48
Marguerite Morrissey
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

ROBERT M. BERRY, and CATHERINE E. BERRY, PLAINTIFFS, -vs- MADISON COUNTY, IOWA, DEFENDANT. : No. 20066 Law. : Statement of Issues and Instructions.

MEMBERS OF THE JURY:

It is admitted in the pleadings that the plaintiffs are the owners and holders of the following described real estate in Madison County, Iowa, to-wit:

> The North One-half (N½) of the Southwest Quarter (SW¼) of Section Twenty (20); and all of the Northwest Quarter (NW¼) of Section Twenty-nine (29), except the East One-half (E½) of the Northeast One-fourth (NE¼) of the Northwest Quarter (NW¼) of Section Twenty-nine (29); and the Southwest Quarter (SW¼) of the Northwest Quarter (NW¼) and the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of Section Twenty-eight (28); all in Township Seventy-four (74) North, Range Twenty-eight (28) West of the 5th P.M., Madison County, Iowa, and consisting of 300 acres, more or less.

It is also admitted in the pleadings that on or about August 18, 1966, the defendant condemned a part of plaintiffs' land for highway purposes as a county road, the said real estate being appropriated being described as follows:

> Beginning at the Northwest corner of the Southwest Quarter (SW¼) of Section Twenty (20), Township Seventy-four (74) North, Range Twenty-eight (28) West of the 5th P.M.; thence East 32.7 feet; thence South 3°27' West 219.11; thence South 0° 21' East 1104.29 feet to the South side of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of said Section Twenty (20); thence West 26.26 feet to the Southwest corner of the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of said Section Twenty (20); thence North 1322.98 feet to the point of beginning, and containing 0.11 acres, more or less, exclusive of the present established highway.

MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

The plaintiffs allege in their petition that each portion, part and parcel of their land has been used together as one complete tract or unit; that the said farm contains 300 acres, more or less, has the homesteads of the plaintiffs located thereon; that the said farm is highly improved and is used by the plaintiffs in a general farming operation in the production of crops and livestock.

The plaintiffs further allege certain items of damage occasioned by said condemnation and taking, including the following:

1) The taking of approximately 0.11 acres of plaintiffs' land by the defendant for purposes of widening the said road.

2) The loss of natural shade and beauty from trees growing on the condemned real estate.

3) The destruction of trees near feeding lots and pasture and the farmstead which have been used for shade and wind-break purposes.

4) The destruction of eighty rods of fence.

5) The appropriation of land requiring the destruction and removal of one sheep barn.

6) The natural course of the water drainage will be altered so that plaintiffs' will necessarily have two additional water gaps in their pasture fence.

The plaintiffs further allege that each and all of said matters are detrimental to and will diminish the fair and reasonable market value of plaintiffs' farm, and they ask for damages in the amount of $4,800.00.

The defendant admits liability for a fair and reasonable amount for a part or all of said items, but denies plaintiffs have been damaged to the extent claimed, and denies all other allegations of the plaintiffs not specifically admitted.

The question, herefore, for the determination of the jury is the amount of damage plaintiffs have sustained, which must be computed under the rules set out in these instructions.

You are instructed as follows:

Instruction No. 1

You are to try and determine this case according to the evidence produced and submitted to you in open court on this trial, together with such inferences and deductions as you, as fair and reasonable jurors, draw therefrom, and the law as given you in charge by the Court in these instructions. You are the sole judges of the facts in the case, and the Court instructs you as to the law. The Court has not, however, attempted or intended to embody in any one instruction all of the law applicable to the case. You are to consider and construe together all of the instructions and apply them as a whole to the evidence in the case.

Instruction No. 2

You are the sole judges of the weight of the evidence, the credibility of the witnesses and the conclusions to be drawn from the facts and circumstances proved.

If the testimony or any part of it is conflicting, you will reconcile it, if you can, that it may all have weight and effect, but if you cannot you will then give credit to the testimony and those witnesses that to you, as fair-minded persons, seem most entitled thereto.

In passing on the credibility of the witnesses and weighing their testimony you should consider their appearance and conduct on the witness stand; their age, intelligence, strength of memory, and means of knowledge whereof they speak; their interest or lack of interest in the result of the trial; their relation or feeling, if any, toward the parties; the motives, if any, actuating them as witnesses; their candor, fairness, bias or prejudice, the time that has elapsed since the occurrence of which they testify; the reasonableness and probability of their statements or the want thereof; whether their testimony is corroborated or contradicted by other witnesses or by facts proven; and every fact and circumstance proved, thus giving to the testimony of each witness and to every fact and circumstance proved such weight, and only such weight as it ought reasonably and justly to be given in view of all the evidence.

MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

You should consider and compare the proofs which tend to support the claims of the respective parties, reason upon the same as men and women of intelligence and common sence, and return a true verdict according to the evidence and the instructions now given you by the Court.

Instruction No. 3

A preponderance of the evidence means a greater weight of evidence. It does not necessarily mean a greater amount of evidence or the statements of a greater number of witnesses, but it means that evidence which from its character, its reasonableness and every other matter connected with it you can say it is of greater or superior weight. And the preponderance or greater weight of the evidence is arrived at and determined by fully and fairly considering, comparing and weighing all the evidence in the whole case, the testimony of each and all the witnesses, giving to such testimony and to the testimony of each witness, just such credit and weight, and just such credit and weight only, as you may believe the same entitled to, when taken and considered in connection with all the evidence and all the facts and circumstances proven and established on the trial of the case.

By "burden of proof" is meant the obligation resting upon a party to establish by a preponderance of the evidence an allegation made by him which is denied by his opponent.

Instruction No. 4

"Evidence" is whatever is admitted in the trial of the case as a part of the record, whether it be an article or document marked as an exhibit, or other matter formally introduced and received, a stipulation, or the testimony of witnesses.

Instruction No. 5

Testimony with regard to verbal statements should be received with caution. Where any evidence consists of the mere repetition of oral statements, it is subject to imperfection and mistake either in consequence of the person speaking not having clearly expressed his own meaning or in consequence of the witness having misunderstood him. It frequently happens also that the witness, by unintentionally altering a few of the expressions really used, gives an effect to the statement completely at variance with what the person did in fact say; but when such verbal statements are deliberately made, or often repeated, and are correctly given, they are often the most satisfactory evidence.

The value of such testimony depends upon the age, intelligence and honesty of the witness, the length of time since such statements were made, the circumstances under which they were made, and all other facts developed and established by the testimony which you may think throw light on their credibility. Taking all these things into consideration you will give such verbal statements just such credit and weight, and such credit and weight only, as you may think them justly entitled to receive.

Instruction No. 6

The statutes of this State have authorized Madison County, Iowa, to condemn and appropriate private property for public purposes. This is known as the right of eminent domain.

It is provided by law that sudh property shall not be taken for public use without just compensation to the owner thereof. Therefore, the sole question for your consideration in this case is the determination of the amount of damages which plaintiffs have suffered by reason of the taking of their property or the taking of a portion of their property.

The law provides that a fair and just compensation means the payment of such a sum of money to the owner of the property taken or appropriated that will serve to make the owner whole.

When the right of eminent domain is exercised by a condemning authority, the question of whether or not the owner of the property desires to part with his property has no bearing

MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

upon the fair and reasonable market value of such property or any part thereof.

The owner and condemning authority each and both have equal rights in court, which means that this cause is to be tried and determined by you as though it were a case by and between two individuals, and no inferences or presumptions are to be indulged against the condemning authority that would be improper in an action between two individuals, nor is the condemning authority entitled to any consideration to which a private litigant would not be entitled.

Instruction No. 7

The burden of proof is upon the plaintiffs to establish by a preponderance of the evidence the "fair and just compensation" to which they are entitled, which, under the law, is the difference in the fair and reasonable market value of their property as a whole immediately before, and the fair and reasonable market value of that portion of said property remaining in the plaintiffs immediately after the appropriation and condemnation as made by the defendant on August 18, 1966.

In making the allowance referred to, the law provides that you disregard entirely and exclude from your calculations any and all benefits to the plaintiffs' property, which have resulted or may result in the future from the improvement of said land, if there are any such benefits.

Instruction No. 8

The term "fair and reasonable market value", as used in these instructions, means the cash price which would be arrived at as between a voluntary seller willing but not compelled to sell and a voluntary purchaser willing but not compelled to buy, both of whom are acting freely, intelligently and at arms's length, bargaining in the open market for the sale and purchase of the real estate in question.

Such term does not mean the value under peculiar circumstances where greater than its fair price could be obtained, nor does it mean the price which the property would bring at a forced sale. It does not mean what the property is worth to the plaintiffs nor what the defendant can afford to pay, but what it is fairly worth in cash on the open market, as above stated.

Instruction No. 8 ½

In this case the plaintiffs claim that the property involved was, just prior to the condemnation, used in conjunction and as a unit with certain other properties owned by the plaintiffs which are not so involved. This is denied by defendant.

As bearing on this contention you should consider the location of and the relation between the tracts of real estate, the kind and character of the improvements, the type of farming being carried on, the ownership of and the location of any and all personal property used or employed in such use, the length of time such use had been and would be in operation, and any and all other facts and circumstances as shown by the evidence.

If the jury find by a preponderance of the evidence just before the condemnation that all tracts were operated as a single farming unit, then such evidence may be considered as bearing upon the fair and reasonable market value of the property involved herein.

But, if you fail to so find, no consideration should be given to the other tracts of property in determining such value.

Instruction No. 9

As bearing upon the question of the fair and reasonable market value of the property involved as a whole before the condemnation of that part which was taken, and the value immediately thereafter, you have a right to and should consider all of the varied factors which tend to show the value or lack of value at such times, as disclosed by the evidence. These

MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

factors may include the location and topography of the plaintiffs' property, the size and shape thereof, the date it was purchased, the price paid, the improvements subsequently made and comparable sales of other properties, if any you find, Other facto5s for consideration may include the extent of the land actually taken, any inconvenience resulting therefrom, the character of the neighborhood, the rental value, use and capabilities of the property, as to any and every use to which it may reasonably be adapted, and all the conditions and surroundings as well as any and all other facts and circumstances disclosed by the evidence which tend to show the fair and reasonable market value of the property at the time immediately before the condemnation of a part thereof, and immediately thereafter.

These facts or characteristics which tend to show the values must not be regarded as distinct and independent items of value, but merely as factors bearing upon and tendind to show the reasonable market value of the property on the dates herein involved.

Instruction No. 10

Evidence received upon the trial relative to the sale prices of tracts of real estate other than that involved herein may be considered by you in testing the knowledge and competench of valuation witnesses and as bearing upon the weight and value of their opinions as to value. Further, in those situations, if any, in which one or more other tracts are similar in character to the property involved in this case the sale prices thereof may also be considered as independent evidence of the value of the instant tract.

"Similar" as herein used does not mean identical, but having a resemblance, and tracts may be similar although each possesses various points of difference. The size, use, location and nature of the land and the time and nature of the sale thereof are factors bearing upon the matter of similarity.

Instruction No. 11

The amount of damages awarded to the plaintiffs by the condemnation commission may be known to you, or some of you, but should be given no consideration by any individual juror or the jury as a whole. The fact that plaintiffs' land was condemned is, of course, the material fact, because it gives the plaintiff the right to recover from Madison County, Iowa, but the amount of the award made by the condemnation commission is of no materiality in this proceeding, is not a fact that is proven by the record in this case and must not be given any consideration by you.

Instruction No. 12

You are instructed that in arriving at your verdict in this case you should determine the value of this property in the light of the testimony given from the witness stand. You are not authorized to arbitrarily disregard the testimony of any witness. Certain witnesses fave testified in this case as to values of the property in question. You are instructed that in weighing the testimony of these witnesses who have given their opinions as to such values, you are permitted to weigh and judge and soundness of opinions thus expressed by your own judgment, in the light of your own experience and knowledge in common with mankind in general, with respect to such matters. Give to the opinion of each witness on values such weight as you determine it entitled to, or none if you believe it entitled to none. Your verdict must be based upon the testimony and not upon your own estimate of the value.

Instruction No. 13

The law provides that in arriving at the value of plaintiffs' property before and after the condemnation herein, and in arriving at the award of damages to the plaintiffs, you may not consider or take into account the matter of the costs of this proceeding or plaintiffs' attorney fees or interest to the plaintiffs on the award made, for the reason that such items are not elements of damage and are provided for by law otherwise than in the award of damages to the plaintiffs.

MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

Instruction No. 14

Testimony has been given in this case by certain witnesses who, in law, are termed "experts", and in this action the Court suggests to you that while in cases such as the one being tried the law receives the testimony of men expert in certain lines as to their information derived from their knowledge of the particular questions, the ultimate weight which is to be given to the testimony of an expert is a question to be determined by the jury, and there is no rule of law which requires you to surrender your judgment to that of any person testifying as an expert witness or to give controlling effect to expert testimony. You are to reach your conclusions from a consideration of the whole of the evidence, including the opinions and testimony of the experts, and also the substantive facts deposed to by all of the witnesses, whether expert or non-expert, and you are not to surrender your conclusions from the whole of the evidence, but your conclusions so found should determine what your verdict shall be.

Instruction No. 15

The question for determination is the difference in value of the property as a whole before and after the condemnation as heretofore explained, and this must be done by unanimous vote and such amount will be the verdict.

It is not necessary that themembers of the jury agree as to the exact value before and after condemnation, but the only agreements required for a verdict is as to the difference in value of the entire property before and its value after the condemnation and appropriation by the defendant.

Instruction No. 16

In determining the amount to be awarded the plaintiffs on account of the condemnation of a portion of their property, the jury must first find the fair and reasonable market value of the property as a whole immediately before the condemnation, the date of which was August 18, 1966.

Next, the jury must determine the fair and reasonable market value of that part of the property which remains in the plaintiffs after the taking of the property and property rights described in the condemnation proceedings.

The jury should then subtract the value of the property as it remained after the condemnation from the value before condemnation, and this difference will be the amount allowed by you as damages.

In making the allowance referred to, the law provides that you disregard entirely and exclude from your calculations any and all benefits to the plaintiffs' property, which have resulted or may result in the future from the condemnation, if there are any such benefits.

Instruction No. 17.

In this case the jury has been permitted to view the premises involved in this controversy. The Purpose of such view is to enable the jury to better understand the testimony of the witnesses and to more intelligently apply said testimony to the issues, and not to make the jurors silent witnesses in the case. You will consider the evidence in the light of the evidence alone. You must not take into consideration facts coming to your knowledge solely from viewing said premises and must not base your verdict in any degree upon the viewing of the premises, except as such viewing may aid you in better understanding the testimony of the witnesses.

Instruction No. 18

In arriving at the amount of damages, if any, you may not return what is known as a "quotient verdict"; that is, your verdict cannot be arrived at by setting down the estimate of each juror as to damages, and agreeing in advance that the average of such estimates shall stand as the verdict of the jury.

MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

Instruction No. 19

The Court does not by these instructions, nor has the Court by any ruling made or by any acts done or words said during the trial intimated or meant to give any opinion as to what the proof is or what it is not, or what the facts are or are not in the case, or what the verdict should be.

It is your duty as jurors to follow the instructions of the Court. In your jury room you should not refer to, discuss, or consider any testimony that has been stricken out or anything in connection with this case except the evidence received pon the trial and the instructions of the Court. All extraneous matters, statements, and suggestions should be carefully discarded by you, and, as heretofore instructed, you should base your verdict solely upon the evidence and be guided by these instructions and seek to arrive at the very truth of the matter without sympathy, bias, passion or prejudice.

Instruction No. 20

Upon retiring at the close of the case your first duty is to elect a foreman. The foreman acts as chairman. It is his duty to see that discussion is carried on in an orderly and proper fashion, that the issues are fully and freely discussed, and that every juror is given an opportunity to express his views. When ballots are taken he will see that it is done. He will sign the form of verdict which is in accord with your decision. He will sign any written requests made by the jury to the Court.

The attitude of the jurors at the outset of their deliberations is important. It is seldom helpful for a juror, upon entering the jury room, to announce an emphatic opinion in a case or a determination to stand for a certain verdict. When a juror does that at the outset individual pride may become involved and the juror may later hesitate to recede from an announced position even when show it is incorrect. Youare not partisans. You are judges---ojudges of the facts. Your sole interest is to ascertain the truth.

Instruction No. 21

The plaintiffs in their petition have asked for damages because of the condemnation of a portion of their property in the sum of $4800.00, and in no event can your verdict exceed that amount. This limitation as to the amount is not stated as an indication that such an amount is proper to be allowed by jury, but as being the amount claimed in the petition, and which, therefore, limits the amount of your verdict.

In the verdict, the form of which is submitted herewith, you will insert the amount which you find to be the difference between the fair and reasonable market value of the property involved before the condemnation on August 18, 1966, and such value of the portion remaining in the plaintiffs after the appropriation by Madison County, Iowa.

You will sign the verdict by one of your number as foreman, or by all your number, at your own option, and return into court bringing it and the other papers in the case with you.

The foregoing instructions numbered from One to 21, inclusive, were by me on my own motion, read and given to the jury in the above-entitled cause.

M. C. Herrick,
Presiding Judge.

IN THE DISTRICT COURT OF THE STATE OF IOWA
IN AND FOR MADISON COUNTY
APRIL 1967 TERM

FILED: 1967 APR 21 PM 4 48
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

ROBERT M. BERRY, and CATHERINE E. BERRY, PLAINTIFFS, -vs- MADISON COUNTY, IOWA, DEFENDANT. : No. 20066 Law.

V E R D I C T.

FORM NO. 1.

We, the Jury, find for the plaintiffs and against the defendant, and fix the amount of their damage because of the condemnation of the real estate in question in this case in the

MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

sum of $2400.00.

Eloise Armstrong,
Foreman
Ruth Jobst
Phyllis Werts
Willis Salsbury Jr.
Patricia Roth
Mrs. Marvin Phillips
Ilene Holmes
Edna Wharff
Norman Howard
John Williamson
Clarence Eivins
LaVerne Neidt

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

FILED: 1967 MAY 29 AM 9 00
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

ROBERT M. BERRY and CATHERINE E. BERRY, Plaintiffs
v.
MADISON COUNTY, IOWA, Defendant

Law. No. 20066

MOTION FOR JUDGMENT ON THE VERDICT AND TO TAX ATTORNEY FEES AS COSTS

Come now the Plaintiffs, and respectfully show the Court:

1. That this action was a condemnation appeal, appealing from the award of the Condemnation Commission reported August 18, 1966, in the amount of Nineteen Hundred Twenty-five Dollars ($1925.00).

2. That the Defendant deposited its check in said amount with the Sheriff of Madison County, Iowa, on or shortly after August 18, 1966, and thereafter became entitled to possession of the condemned premises, and went on the premises for various purposes.

3. That the verdict of the jury on this appeal, filed on April 21, 1967, fixed the Plaintiffs' damages at the sum of Twenty-four Hundred Dollars ($2400.00).

4. That judgment should now be rendered upon said verdict, and that there should be taxed as part of the costs, fees for the Plaintiffs' attorney, as provided by Section 472.33 of the 1966 Code of Iowa.

5. That the Affidavit of L. P. Van Werden relative to the fees which were performed is attached hereto, marked "Exhibit A", and made a part hereof by reference. That said services performed by Plaintiffs' attorney were in the fair and reasonable value of Nine Hundred Dollars and 23/100 ($911.23). That said services and expenses were all performed and/or incurred subsequent to the date of the condemnation commission's award on August 18, 1966, and that all the said services and expenses were performed and incurred in connection with the said appeal.

6. That no amount of the condemnation commission award was ever taken or received by the Plaintiffs.

WHEREFORE, Plaintiffs respectfully move for judgment on the verdict in the amount of Two Thousand Four Hundred Dollars ($2400.00), and for interest thereon as by law provided, and for judgment for the costs of this appeal, said costs to include attorney fees for Plaintiffs' attorney to be allowed in the sum of not less than Nine Hundred Eleven Dollars and 23/100 ($911.23) for the services necessarily performed and the expenses necessarily incurred herein.

KILLMAR AND REYNOLDSON
By L. P. Van Werden
L. P. Van Werden
Osceola, Iowa
Attorneys for Plaintiffs

"EXHIBIT A"

A F F I D A V I T

STATE OF IOWA CLARKE COUNTY) ss:

I, L. P. Van Werden, being first duly sworn on oath, depose and state:

The the Firm of Killmar and Reynoldson was employed by the Plaintiffs after the Condemnation Commission has reported in this case, for the purposes of taking an appeal to the

MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

District Court.

That Plaintiffs' attorneys spent considerable time checking out "comparable sales' of other tracts of real estate in the general vicinity of the Plaintiffs' land.

That there was also involved in this case the question of whether the Plaintiffs were entitled to damages for the destruction, by the Defendant, of certain trees. That considerable research and time were spent in connection with this question and is hereinafter accounted for.

That an itemization of the services performed by L. P. Van Werden is as follows:

8/23/66 Conference with Plaintiffs; retained for the purposes of this appeal--1 hour
8/23/66 Toll call to Madison County Board of Supervisors reference: settlement $3.10
8/23/66 Toll call to Madison County Supervisor, Claire Leeper; reference: settlement 80¢
8/23/66 Toll call to Madison County Engineer $2.60
9/8/66 Conference with Plaintiffs reference: taking this appeal--.5 hour
9/13/66 Toll call to Robert Berry $1.14
9/15/66 Toll call to Madison County Sheriff reference: appeal notices 60¢
9/15/66 Delivery of appeal notices to Winterset and Ames, Iowa 170 miles--6½ hours
9/15/66 Expense for serving notices $4.95
9/15/66 Preparing appeal--1½ hours
10/4/66 Drafting appeal Petition and Request for Jury Trial--2½ hours
10/4/66 Toll call to Robert Berry 33¢
10/12/66 Lining up and talking to witnesses-5.0 hours
10/12/66 Mileage reference: Witnesses trip Osceola-Lorimor-Winterset 104 miles
10/12/66 Toll call Robert Berry 25¢
10/12/66 Toll call Robert Berry 25¢ (second call)
10/27/66 Toll call Madison County Judge's Chambers reference: trial assignment 30¢
11/3/66 Toll Call Madison County Attorney reference: settlement $1.70
1/17/67 Attention to Correspondence--.4 hour
1/20/67 Toll call to Robert Berry 25¢
1/23/67 Toll call to Madison County Attorney reference: trial assignment 80¢
1/23/67 Conference with Plaintiff reference: settlement--.5 hour
2/3/67 Researching law--1.0 hour
2/17/67 Attention to correspondence--.3 hour
3/15/67 Conference with Plaintiff--.4 hour
3/15/67 Toll call to Madison County Attorney 30¢
3/17/67 Toll call to Madison County Attorney reference: trial assignment 60¢
3/20/67 Attention to correspondence--.2 hour
3/28/67 Trip to Plaintiffs' farm reference: visiting with witnesses--3.0 hours, mileage Osceola-Lorimor 60 miles
4/12/67 Drafting Application to Amend Petition and proposed Amendment; attention to correspondence--.5 hour
4/14/67 Trip to Winterset reference: lining up witnesses-- 5.0 hours and mileage round trip Osceola-Winterset 90 miles
4/16/67 Researching law--.9 hour
4/17/67 Drafting Requested Jury Instructions--1.3 hours
4/18/67 Preparing for trial--5.0 hours
4/19/67 Trial--picking jury, round trip Osceola-Winterset-- 6.0 hours; researching law
4/20/67 Trial (9:00-12:00) - (1:00-4:30) round trip Osceola-Winterset, researching law (7:00-9:30)--9 hours
4/21/67 Trial (9:00-12:00) - (1:00-1:45) round trip Osceola-Winterset, 5.0 hours
Mileage during three-day trial--3 round trips Osceola-Winterset--240 miles

That the above itemization does not include all of the services rendered by this attorney, but only that for which a specific record was made, and does not include some brief conferences, and consultations between Plaintiffs' counsel and other counsel in the same law firm. Also, the above itemization does not include amounts paid out for appraisers' fees in the sum of at least One Hundred Dollars ($100.00).

That the above itemization totals 55.5 hours of services rendered in the preparation and trial of this cause; that it includes $13.02 in long distance telephone calls; that it includes 664 miles driven and when ths said mileage is computed at 9¢ per mile, totals $59.76. That on a straight time basis, and computing the time of L. P. Van Werden, in the amount of $15.00 per hour, which is less than the minimum hourly rate for legal services as recommended by the Iowa State Bar Association Advisory Schedule of Minimum Fees, the services rendered would compute out at $832.50. That the total services rendered and expenses compute out at Nine Hundred Eleven Dollars and 23/100 $911.23).

That the minimum value of the services performed by L. P. Van Werden in connection with this appeal is, in my opinion, the sum of Nine Hundred Eleven Dollars and 23/100 ($911.23).

That the statements and allegations herein contained are true and correct as I verily believe.

L. P. Van Werden
L. P. Van Werden

MATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

Subscribed and sworn to before me by L. P. Van Werden on this 25th day of April, 1967.

(NOTARIAL SEAL) Kaye Lescher Notary Public

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

FILED: 1967 MAY 29 AM 9 00
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

ROBERT M. BERRY and CATHERINE E. BERRY, Plaintiffs
v.
MADISON COUNTY, IOWA, Defendant

Law No. 20066

MOTION TO RELEASE EVIDENCE EXHIBIT

Come now the plaintiffs and show the Court:

1., That plaintiffs offered and had admitted into evidence, at the trial in the District Court of this case, an aerial photograph of plaintiffs' farmstead, which was marked as plaintiffs' Exhibit No. 1.

2. That the District Court jury rendered a verdict in this matter on April 21, 1967.

3. That the time in which an appeal of this matter could be taken has now expired.

4. That plaintiffs desire to have the above designated Exhibit released to their possession because it is a framed picture which has been used as a decoration in their home, and has an approximate value of Eighty and No/100 ($80.00) Dollars.

WHEREFORE, plaintiffs pray that the said Exhibit designated as plaintiffs' Exhibit No. 1 be released and retutned to their possession.

KILLMAR AND REYNOLDSON
By L. P. Van Werden
L. P. Van Werden
Osceola, Iowa
Attorneys for Plaintiffs

IN THE DISTRICT COURT OF IOWA

IN AND FOR MADISON COUNTY

FILED: 1967 JUN 2 AM 9 37
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

ROBERT M. BERRY and CATHERINE E. BERRY, Plaintiffs
vs.
MADISON COUNTY, IOWA, Defendant.

No. 20066 Law

APPLICATION

Comes now the Defendant and respectfully states to the Court:

That the time for appeal has now expired and, therefore, Defendant requests that the exhibits in the above captioned cause be released.

WHEREFORE, Defendant prays for an order authorizing and directing the Clerk to return the exhibits introduced in the above captionec cause to the attorneys for the respective parties.

C. R. Bentz
C. R. Bentz Madison County, Iowa Attorney
210 N. 1st Street Winterset, Iowa 50273

IN THE DISTRICT COURT OF IOWA

IN AND FOR MADISON COUNTY

FILED: 1967 JUN 2 AM 9 37
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

ROBERT M. BERRY and CATHERINE E. BERRY, Plaintiffs
vs.
MADISON COUNTY, IOWA, Defendant.

No. 20066 Law

ORDER

BE IT REMEMBERED that on this 2nd day of June, 1967, this matter comes on before the Court on the application of the Defendant and the Court having examined said application and being well and fully advised in the premises, finds:

That the time for appeal has not passed and the exhibits introduced for the trial of the above captioned cause may be released.

IT IS THEREFORE ORDERED that the Clerk of this Court be and is hereby authorized and directed to return the exhibits introduced herein to the attorneys for the respective parties

HATT PARROTT & SONS CO., WATERLOO, IOWA 66-4316

if requested and to accept and receipt therefor.

Robert O. Frederick Judge ofsthe
Fifth Judicial District of Iowa.

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

FILED: 1967 JUN 15 PM 3 15
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

ROBERT M. BERRY and CATHERINE E. BERRY, Plaintiffs
v.
MADISON COUNTY, IOWA, Defendant

Law. No. 20066

O R D E R

BE IT REMEMBERED, that this matter in the above entitled case came on for hearing on this 15 day of June, 1967, upon the Plaintiffs' Motion For Judgment on the Verdict and to Tax Attorney Fees as Costs.

After having read the said Motion and being fully advised in the premises, the Court finds that Plaintiffs should be granted a judgment in the amount of Twenty-four Hundred Dollars ($2400.00) plus interest at the rate of five per cent (5%) on the principal sum of Four Hundred Seventy-five Dollars ($475.00) from August 18, 1966, to April 21, 1967; that defendant should also be required to pay plaintiffs their reasonable attorney fees as a part of the costs of this matter and that the defendant be required to pay the costs of this action.

It is, therefore, ORDER, ADJUDGED AND DECREED that the Clerk of the Madison County District Court enter judgment against the defendant and for the plaintiffs in the amount of Twenty-four Hundred Dollars ($2400.00) plus interest at the rate of five per cent (5%) on the principal sum of Four Hundred Seventy-five Dollars ($475.00) from August 18, 1966, to April 21, 1967, and that the fair and reasonable fee to be allowed the plaintiffs' attorney is the sum of $572.78 and judgment is rendered in this amount against the defendant, and that judgment be rendered against the defendant for the costs of this action.

M. C. Herrick Judge Fifth
Judicial District Iowa

A F F I D A V I T

STATE OF IOWA MADISON COUNTY) SS:

I, Marguerite Morrissey, Clerk of the District Court in and for Madison County, Iowa, do hereby certify that the following payments were received in my office in the case of Robert M. Berry and Catherine E. Berry, Plaintiffs-vs-Madison County, Iowa., Defendant, Law No. 20066 - Docket 40 Page 174.

6-16-67	Check from Madison County, Iowa in the sum of $2419.59 representing damages in the sum of $2400.00 and interest in the sum of $19.59	$2419.59	This amount was paid direct to Robert M. Berry and Catherine E. Berry being my check No. 10452
6-16-67	Check from Madison County, Iowa in the amount of $572.78 representing attorney fees due Killmar and Reynoldson of Osceola, Iowa	572.78	This amount was paid direct to Killmar & Reynoldson, being my check No. 10442
6-16-67	Check from Madison County, Iowa in full payment of Court costs in the sum of $119.53		

WITNESS MY HAND AND SEAL this 5th day of July, 1967.

Marguerite Morrissey Clerk of Court.