John H. Berch By
Madison County Sheriff
To
Madison County, Iowa

#1042

No Fee

Filed for Record the 2 day of June A. D. 1967 at 4:56 o'clock P.M.

Mary E. Welty, Recorder

Filed: 1965 JUN 24 PM 2 40
MARGUERITE MORRISSEY CLERK

CONDEMNATION PROCEEDING

OF DISTRICT COURT MADISON COUNTY, IOWA

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

RECEIVED 6-24-65
2:15 P.M. D.R. MADISON
COUNTY SHERIFF
WINTERSET, IOWA

JOHN H. BERCH, Plaintiff, : No. 19837 Law
-vs- : NOTICE OF APPEAL TO THE MADISON
MADISON COUNTY, IOWA, Defendant. : COUNTY, IOWA DISTRICT COURT FROM
: AWARD OF DAMAGES IN CONDEMNATION
: PROCEEDINGS AGAINST CERTAIN REAL
: ESTATE OF PLAINTIFF.

TO: MADISON COUNTY, IOWA: ORVILLE C. WILLCOX, FRANK G. JORGENSEN AND CLAIRE F. LEEPER, Members of the Board of Supervisors of Madison County, Iowa, and to REX ROUSE, Sheriff of Madison County, Iowa:

YOU AND EACH OF YOU ARE HEREBY NOTIFIED that the undersigned Plaintiff, John H. Berch, has and does hereby appeal from the award of damages made by the Commissioners appointed by the Sheriff of Madison County, said award having been made on the 27th day of May, 1965, Rex Rouse, Sheriff of Madison County, Iowa, acting as Sheriff in said proceedings, all as by law provided, for the purpose of appraising and awarding to the Plaintiff, John H. Berch, damages sustained as a result of condemnation and taking by right of eminent domain for public road purposes as specified in said proceedings, the following described real estate located in Madison County, Iowa, to-wit:

MAIL PARROTT & SONS CO., WATERLOO, IOWA 64-3012

Beginning at a point 40.0 feet east of the SW corner of the N½ of the fractional NW¼ of Section 30 T75 N R26W of the 5th P. M. thence North 45.0 feet; thence east 560.0 feet; thence S87°08'E 100.12 feet; thence east 300.0 feet; thence N87°08'E 300.42 feet; thence S84°17'E 100.5 feet; thence east 288.0 feet; thence south 45.0 feet; thence West 1648.0 feet to the point of beginning and containing 0.44 acres, more or less; exclusive of the present established highway and moving approximately 100 rods of barbwire fence

Note: the south side of the N½ of the fractional NW¼ of Section 30 T75N R26W is assumed to bear due east and west.

all as described and referred to in the Notice of Condemnation and the return of Commissioners in said proceedings.

YOU AND EACH OF YOU ARE FURTHER NOTIFIED that a Petition will be filed in said cause on behalf of the Plaintiff in the Office of the Clerk of the District Court of the State of Iowa, in and for Madison County, on or before the first day of the next Term of said District Court, to-wit: the September, 1965 Term, which will convene at Winterset, Madison County, Iowa, on September 7, 1965, and said cause will beheard and disposed of as provided by law.

Dated at Winterset, Iowa, this 23 day of June, 1965.

JOHN H. BERCH, PLAINTIFF
By Gordon K. Darling
GORDON K. DARLING
53 Jefferson Street
Winterset, Iowa
Telephone 462-2442
Attorney for said Plaintiff

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	RECEIVED May 12, 1965 9 A M RRR MADISON COUNTY SHERIFF WINTERSET, IOWA

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 Northwest Fractional Quarter (¼) and the West Half (½) of the Northwest Quarter (¼) of the Northeast Quarter (¼), of Section Thirty (30), Township Seventy-five (75) North, Range Twenty-six (26) 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: Chapter 471 and 472 of the1962 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

MATT PARROTT & SONS CO., WATERLOO, IOWA 64-3012

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
John H. Berch	St. Charles, Iowa	St. Charles, Iowa

Name of Mortgage or Lien Holder: Business Men's Assurance Company of America

Name of Lessee: None

Name of Easement Holder: None

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 any 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 12th day of May, 1965.

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 John H. Berch, the subject matter of this condemnation proceeding:

Beginning at a point 40.0 feet east of the SW corner of the N½ of the fractional NW¼ of Section 30 T75N R26W of the 5th P.M. thence north 45.0 feet; thence east 560.0 feet; thence S87° 08'E 100.12 feet; thence east 300.0 feet; thence N87° 08'E 300.42 feet; thence S84° 17'E 100.5 feet; thence east 288.0 feet; thence south 45.0 feet; thence west 1648.0 feet to the point of beginning and containing 0.44 acres, more or less, exclusive of the present established highway and moving approximately 100 rods of barbwire fence

Note: the south side of the N½ of the fractional NW¼ of Section 30 T75N R26W is assumed to bear due east and west.

EXHIBIT "B"

PROPERTY PLAT

Acquired from JOHN H. BERCH Married or Single MARRIED ROSE ELLEN BERCH
(Give full name of spouse)

R. O. W. Area 0.44 Acres. Borrow Area - - Acres.

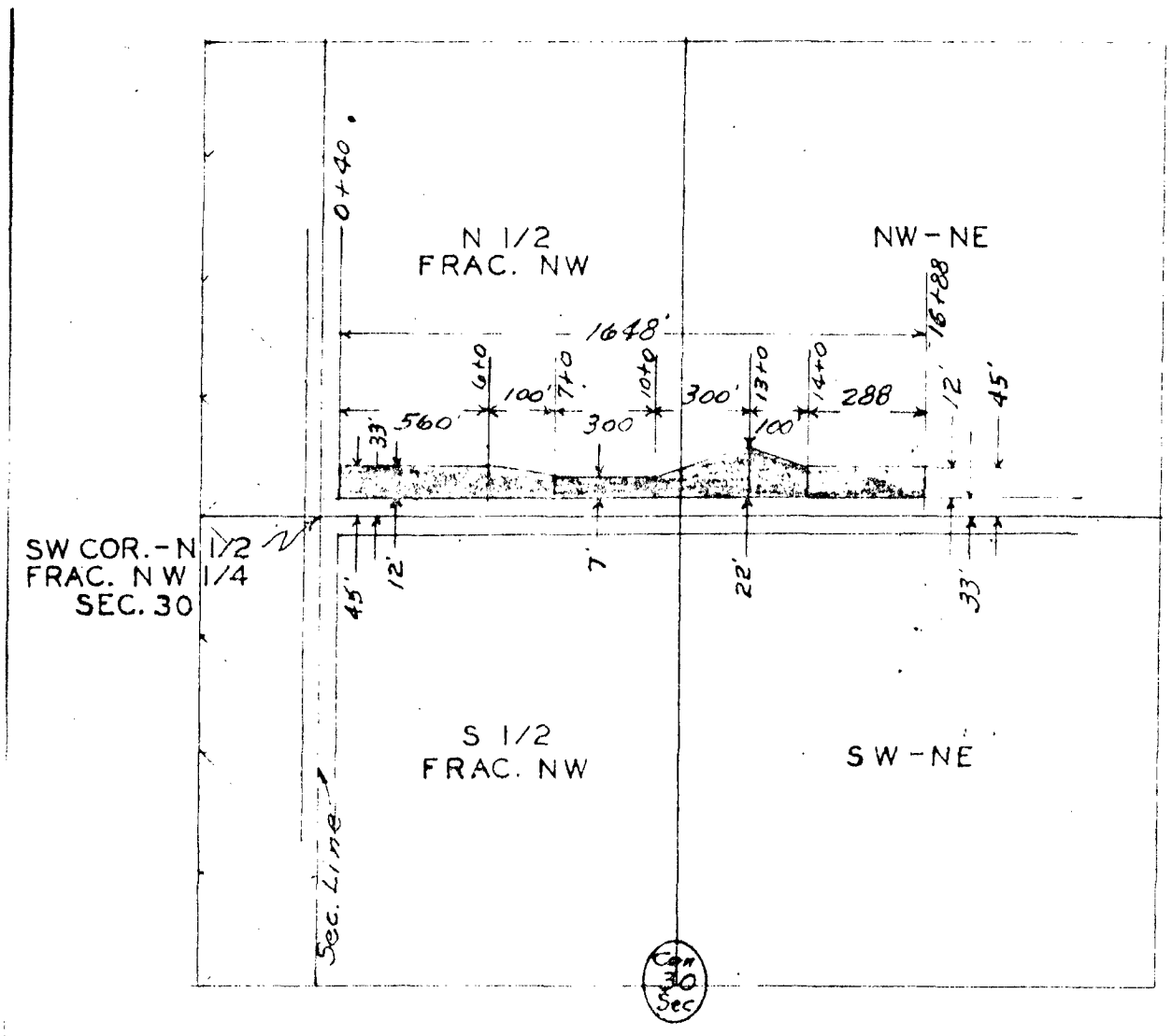
Total Consideration $ - - Acquired by CONDEMNATION Date of Contract - -, 19 - -

LOCATION

From CL Station 0+40 to CL Station 16+88 Section 30, Township 75N, Range 26W

Township (Civil) SOUTH Iowa.

MAID PARROTT & SONS CO., WATERLOO, IOWA 64-3012



MADISON (County) Project No. 2-65

MADISON County Project No. 2-65

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	RECEIVED 5-12-65 9 AM RRR MADISON COUNTY SHERIFF WINTERSET, IOWA

TO: JOHN H. BERCH and BUSINESS MEN'S ASSURANCE 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 a point 40.0 feet east of the SW corner of the N½ of the fractional NW¼ of Section 30 T75N R26W of the 5th P.M. thence north 45.0 feet; thence east 560.0 feet; thence S87°08'E 100.12 feet; thence east 300.0 feet; thence N87°08'E 300.42 feet; thence S84°17'E 100.5 feet; thence east 288.0 feet; thence south 45.0 feet; thence west 1648.0 feet to the point of beginning and containing 0.44 acres, more or less, exclusive of the present established highway and moving approximately 100 rods of barbwire fence.
>
> Note: the south side of the N½ of the fractional NW¼ of Section 30 T75N R26W is assumed to bear due east and west.

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 NOTIFED 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 27th day of May, 1965, at

MATT PARROTT & SONS CO., WATERLOO, IOWA 64-3012

9:00 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

RETURN OF ORIGINAL NOTICE No._____

STATE OF IOWA Madison County ss

The within notice received this 12th day of May, 1965, 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
John H. Berch	May	13	1965	Scott	Madison	Iowa

Service & Copy 1.25
Mileage_____

Rex Rouse, Sheriff
Official Title

OFFICE OF SHERIFF OF MADISON COUNTY
REX ROUSE, SHERIFF
EDWARD POWELL, DEPUTY
WINTERSET, IOWA 50273

State of Iowa Madison County ss

Return of Service, Original Notice

The within notice received this 12th day of May, 1965, and I certify that I served the same on the defendant, Business Men's Assurance Company of America, an out-of-state corporation licensed to transact business in Iowa, by offering to read the same to William E. Timmons, he being the Insurance Commissioner for the State of Iowa and attorney-in-fact, of said corporation, which he waived, and by giving him a true copy thereof, all done in Polk County, Des Moines, Iowa.

Rex Rouse Rex Rouse, Sheriff
Madison County, Iowa

INSURANCE DEPARTMENT OF IOWA
STATE OFFICE BUILDING
DES MOINES

WILLIAM E. TIMMONS
COMMISSIONER

W. M. SHEEHAN
FIRST DEPUTY COMMISSIONER

May 13, 1965

Certified Mail #55211

Rex Rouse, Sheriff
Madison County
Winterset, Iowa

RECEIVED 5-14-65 9 A M RRR
MADISON COUNTY SHERIFF
WINTERSET, IOWA

NOTICE OF CONDEMNATION

APPLICATION BY MADISON COUNTY, IOWA

To

BUSINESS MEN'S ASSURNACE COMPANY OF AMERICA

Enclosed you will find copy of Condemnation Notice which has been served on the Commissioner of Insurance of the State of Iowa, in accordance with law, as process agent for the above-named company.

The Commissioner's Acceptance of Service is affixed thereon and we request that this notice be filed in the above-named proceeding as required by statute.

William E. Timmons,
William E. Timmons, Commissioner
WET:pk
Enclosure
cc - Lewis H. Jordan, County Attorney for
Madison County
Winterset, Iowa
Certified Mail

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	RECEIVED 5-12-65 9 AM RRR MADISON COUNTY SHERIFF WINTERSET, IOWA

TO: JOHN H. BERCH and BUSINESS MEN'S ASSURANCE 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

MAID PARROTT & SONS CO., WATERLOO, IOWA 64-3012

Madison County, Iowa, a written application for the condemnation of said real estate, which real estate is described as follows, to-wit:

Beginning at a point 40.0 feet east of the SW corner of the N½ of the fractional NW¼ of Section 30 T75N R26W of the 5th P.M. thence north 45.0 feet; thence east 560.0 feet; thence S87°08'E 100.12 feet; thence east 300.0 feet; thence N87°08'E 300.42 feet; thence S84°17'E 100.5 feet; thence east 288.0 feet; thence south 45.0 feet; thence west 1648.0 feet to the point of beginning and containing 0.44 acres, more or less, exclusive of the present established highway and moving approximately 100 rods of barbwire fence.

Note: the south side of the N½ of the fractional NW¼ of Section 30 T75N R26W is assumed to bear due east and west.

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 27th day of May, 1965, at 9:00 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

ACCEPTANCE OF SERVICE

STATE OF IOWA COUNTY OF POLK ss

Service of the foregoing Notice of Condemnation is hereby accepted as is provided by the law for the Business Men's Assurance Company of America defendant named therein, this 13th day of May 1965 Des Moines, Iowa.

COMMISSIONER OF INSURANCE
By William E. Timmons
Deputy Commissioner

OATH AND QUALIFICATION 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 12th day of May, 1965, 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 30 in Township 75 North, of Range 26 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.

Harry M. Wight
Alfred Koch
M S Creger
Dwight Mundell
Hubert Steddom
Roy L. Pond

Subscribed and sworn to before me this 27th day of May, 1965.

(DISTRICT COURT SEAL)

Marguerite Morrissey Clerk of Court
in and for Madison County Iowa

MATT PARROTT & SONS CO., WATERLOO, IOWA 64-3012

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: Roy Pond, Lee Twp.
Merrill Creger, Ohio Twp.
Alfred Koch, Jefferson Twp.
Harry Wight, Webster Twp.
Dwight Mundell, Center Twp.
Hubert Steddom, Center Twp.

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 John H. Berch and located in Section 30, Township 75 North, Range 26 West of the 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 12th day of May, 1965, 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 27th day of May, 1965, at 9:00 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 12th day of May, 1965.

Rex Rouse Sheriff of
Madison County, Iowa

ACCEPTANCES AND ACKNOWLEDGEMENTS OF SERVICE

We, the undersigned, having been appointed as Commissioners to appraise the damages to real estate in connection with the condemnation by Madison County, Iowa, do hereby acknowledge and accept due and legal service of the above and foregoing Notice this____day of____, 1965.

Alfred Koch
Harry M. Wight
Dwight Mundell
M. S. Creger
Hubert Steddom
Roy L. Pond

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 Northwest Fractional Quarter (¼) and the West Half (½) of the Northwest Quarter (¼) of the Northeast Quarter (¼), of Section Thirty (30), Township Seventy-five (75) North, Range Twenty-six (26) 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: Chapter 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

MAIL PARROTT & SONS CO., WATERLOO, IOWA 64-3012

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
John H. Berch	St. Charles, Iowa	St. Charles, Iowa

Name of Mortgage or Lien Holder: Business Men's Assurance Company of America

Name of Lessee: None

Name of Easement Holder: None

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 any 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____day of_____, 1965.

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

EXHIBIT "A"

Description of real estate belonging to John H. Berch, the subject matter of this condemnation proceeding:

Beginning at a point 40.0 feet east of the SW corner of the N½ of the fractional NW¼ of Section 30 T75N R26W of the 5th P.M. thence north 45.0 feet; thence east 560.0 feet; thence S87°08'E 100.12 feet; thence east 300.0 feet; thence N87°08'E 300.42 feet; thence S84° 17'E 100.5 feet; thence east 288.0 feet; thence south 45.0 feet; thence west 1648.0 feet to the point of beginning and containing 0.44 acres, more or less, exclusive of the present established highway and moving approximately 100 rods of barbwire fence

Note: the south side of the N½ of the fractional NW¼ of Section 30 T75N R26W is assumed to bear due east and west.

EXHIBIT "B"

PROPERTY PLAT

Acquired from JOHN H. BERCH Married or Single MARRIED ROSE ELLEN BERCH
(Give full name of spouse)

R. O. W. AREA 0.44 Acres. Borrow Area - - Acres.

Total Consideration $- - Acquired by CONDEMNATION Date of Contract_____, 19__

LOCATION

From CL Station 0+40 to CL Station 16+88 Section 30, Township 75N, Range 26W

Township (Civil) SOUTH Iowa.

FOR COPY OF PLAT AS SHOWN ON FILED INSTRUMENT
SEE PLAT RECORD IN DEED RECORD 94, PAGE 372

MADISON County Project No. 2-65

MATT PARROTT & SONS CO., WATERLOO, IOWA 64-3012

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 interest in certain real estate for the purpose 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 apart hereof.

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

Roy Pond, Lee Twp., Harry Wight, Webster Twp.
Merrill Creger, Ohio Twp., Dwight Mundell, Center Twp.
Alfred Koch, Jefferson Twp., Hubert Steddom, Center Twp.

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 12th day of May, 1965.

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 : 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 Northwest Fractional Quarter (¼) and the West Half (½) of the Northwest Quarter (¼) of the Northeast Quarter (¼), of Section Thirty (30), Township Seventy-five (75) North, Range Twenty-six (26) 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 desirour 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: Chapter 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,

MAC. PARROTT & SONS CO., WATERLOO, IOWA 64-3012

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
John H. Berch	St. Charles, Iowa	St. Charles, Iowa

Name of Mortgage or Lien Holder: Business Men's Assurance Company of America

Name of Lessee: None

Name of Easement Holder: None

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 any 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____day of_____, 1965.

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

EXHIBIT "A"

Description of real estate belonging to John H. Berch, the subject matter of this condemnation proceeding:

Beginning at a point 40.0 feet east of the SW corner of the N½ of the fractional NW¼ of Section 30 T75N R26W of the 5th P.M. thence north 45.0 feet; thence east 560.0 feet; thence S87°08'E 100.12 feet; thence east 300.0 feet; thence N87°08'E 300.42 feet; thence S84° 17'E 100.5 feet; thence east 288.0 feet; thence south 45.0 feet; thence west 1648.0 feet to the point of beginning and containing 0.44 acres, more or less, exclusive of the present established highway and moving approximately 100 rods of barbwire fence

Note: the south side of the N½ of the fractional NW¼ of Section 30 T75N R26W is assumed to bear due east and west.

EXHIBIT "B"

PROPERTY PLAT

Acquired from JOHN H. BERCH Married or Single MARRIED ROSE ELLEN BERCH
(Give full name of spouse)

R. O. W. Area 0.44 Acres. Borrow Area - - Acres. Total Consideration $ - -

Acquired by CONDEMNATION Date of Contract_____, 19_____

LOCATION

From CL Station 0+40 to CL Station 16+88 Section 30, Township 75N, Range 26W

Township (Civil) SOUTH Iowa.

FOR COPY OF PLAT AS SHOWN ON FILED INSTRUMENT
SEE PLAT RECORD IN DEED RECORD 94, PAGE 372

MADISON County Project No. 2-65

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 12th day

HART PARROTT & SONS CO., WATERLOO, IOWA 64-3012

of May, 1965, 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 12th day of May, 1965, do hereby make report that upon due notice we met upon said premises, viewed and inspected the same on the 27th day of May, 1965, at 9:00 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 a point 40.0 feet east of the SW corner of the N½ of the fractional NW¼ of Section 30 T75N R26W of the 5th P.M. thence north 45.0 feet; thence east 560.0 feet; thence S87°08'E 100.12 feet; thence east 300.0 feet; thence N87°08'E 300.42 feet; thence S84°17'E 100.5 feet; thence east 288.0 feet; thence south 45.0 feet; thence west 1648.0 feet to the point of beginning and containing 0.44 acres, more or less, exclusive of the present established highway and moving approximately 100 rods of barbwire fence.

Note: the south side of the N½ of the fractional NW¼ of Section 30 T75N R26W is assumed to bear due east and west.

TO: John H. Berch $500.00

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 $21.78
Attendance and notices $12.00

APPRAISER'S FEES:

Roy L. Pond	$20.76
Hubert Steddom	$15.18
Merrill S. Creger	$18.24
Alfred Koch	$17.34
Dwight Mundell	$15.18
Harry M. Wight	$17.16
Jury Meals	$ 5.35

May 27, 1965

SHERIFF'S CERTIFICATION OF COSTS

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

	FEE	MILEAGE	TOTAL
1. Serving Original Notices	1.25	9.63	$10.88
2. Sheriff Serving Notice of Appointment of Commissioners	3.25	10.17	13.42
3. Sheriff Attending Commissioners	7.50	1.98	9.48
TOTAL SHERIFF'S COSTS			$33.78

4. Commissioner's Expenses:

Roy Pond, Lee Twp. 1 day service and mileage (used his car on viewing)	20.76
Merrill Creger, Ohio Twp. 1 day service and mileage	18.24
Alfred Koch, Jefferson Twp. 1 day service and mileage	17.34
Harry Wight, Webster Twp. 1 day service and mileage	17.16
Dwight Mundell, Center Twp. 1 day service and mileage	15.18
Hubert Steddom, Center Twp. 1 day service and mileage	15.18
Jury meals	5.35
TOTAL JURY COSTS	$109.21

5. Damages awarded:

John H. Berch	$500.00
TOTAL DAMAGES AWARDED	$500.00

RECAPITULATION

TOTAL DAMAGES AWARDED	$500.00
TOTAL SHERIFF'S COSTS	33.78

HAHN PARROTT & SONS CO., WATERLOO, IOWA 64-3012

TOTAL COMMISSIONER'S EXPENSES 109.21
GRAND TOTAL $642.99

All commissioner's fees charges on John H. Berch condemnation.

Certified a true statement of John H. Berch condemnation expenses and original copies of proceedings therewith.

Rex Rouse Rex Rouse, Sheriff
Madison County, Iowa

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

RECEIVED 6-24-65
2:15 P.M. DR MADISON
COUNTY SHERIFF
WINTERSET, IOWA

FILED 1965 SEP 7 AM 9 34
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

JOHN H. BERCH, Plaintiff,
-vs-
MADISON COUNTY, IOWA, Defendant.

No. 19837 Law
NOTICE OF APPEAL TO THE MADISON COUNTY, IOWA DISTRICT COURT FROM AWARD OF DAMAGES IN CONDEMNATION PROCEEDINGS AGAINST CERTAIN REAL ESTATE OF PLAINTIFF.

TO: MADISON COUNTY, IOWA; ORVILLE C. WILLCOX, FRANK G. JORGENSEN AND CLAIRE F. LEEPER, Members of the Board of Supervisors of Madison County, Iowa, and to REX ROUSE, Sheriff of Madison County, Iowa:

YOU AND EACH OF YOU ARE HEREBY NOTIFIED that the undersigned Plaintiff, John H. Berch, has and does hereby appeal from the award of damages made by the Commissioners appointed by the Sheriff of Madison County, said award having been made on the 27th day of May, 1965, Rex Rouse, Sheriff of Madison County, Iowa, acting as Sheriff in said proceedings, all as by law provided, for the purpose of appraising and awarding to the Plaintiff, John H. Berch, damages sustained as a result of condemnation and taking by right of eminent domain for public road purposes as specified in said proceedings, the following described real estate located in Madison County, Iowa, to-wit:

Beginning at a point 40.0 feet east of the SW corner of the N½ of the fractional NW¼ of Section 30 T75N R26W of the 5th P. M. thence North 45.0 feet; thence east 560.0 feet; thence S87°08'E 100.12 feet; thence east 300.0 feet; thence N87°08'E 300.42 feet; thence S84°17'E 100.5 feet; thence east 288.0 feet; thence south 45.0 feet; thence West 1648.0 feet to the point of beginning and containing 0.44 acres, more or less; exclusive of the present established highway and moving approximately 100 rods of barbwire fence

Note: the south side of the N½ of the fractional NW¼ of Section 30 T75N R26W is assumed to bear due east and west.

all as described and referred to in the Notice of Condemnation and the return of Commissioners in said proceedings.

YOU AND EACH OF YOU ARE FURTHER NOTIFIED that a Petition will be filed in said cause on behalf of the Plaintiff in the Office of the Clerk of the District Court of the State of Iowa, in and for Madison County, on or before the first day of the next Term of said District Court, to-wit: the September, 1965 Term, which will convene at Winterset, Madison County, Iowa, on September 7, 1965, and said cause will be heard and disposed of as provided by law.

Dated at Winterset, Iowa, this 23 day of June, 1965.

JOHN H. BERCH, PLAINTIFF
By Gordon K. Darling
GORDON K. DARLING
53 Jefferson Street
Winterset, Iowa

Attorney for said Plaintiff

RETURN OF ORIGINAL NOTICE No._____

STATE OF IOWA Madison County

The within notice received this 24th day of June, 1965, 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:

MATT PARROTT & SONS CO., WATERLOO, IOWA 64-3012

Name of Defendants	Month	Day	Year	City, Town or Township	County	State
ORVILLE C. WILLCOX	June	24th	1965	Center	Madison	Iowa
FRANK G. JORGENSEN	June	24th	1965	Center	Madison	Iowa
CLAIRE F. LEEPER	June	24th	1965	Center	Madison	Iowa
REX ROUSE	June	24th	1965	Center	Madison	Iowa

Service & Copy $2.75
Mileage .18
$2.93 Paid by Plaintiffs Attorney
9-6-65 D.R.

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 24th day of June, 1965 and on the 24th day of June, 1965, I served the same upon the Madison County by offering to read the same to Wayne Griffith, he being the Auditor of said Governmental Body, which he waived, and by giving him a true copy thereof, all done in Center Township, Madison County, Iowa.

Rex Rouse
of Madison County
Rex Rouse, Sheriff

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

JOHN H. BERCH, Plaintiff, : No. 19837 Law
-vs- : PETITION ON APPEAL FROM CONDEMNATION OF REAL ESTATE
MADISON COUNTY, IOWA, Defendant. :

FILED 1965 SEP 7 PM 2 46
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

Comes now the Plaintiff and for cause of action states:

Par. 1

That the Plaintiff is the owner and holder of the following described real estate situated in Madison County, Iowa, to-wit:

North Half of the Northwest Fractional Quarter and the West Half of the Northwest Quarter of the Northeast Quarter of Section Thirty (30), Township Seventy-five (75) North, Range Twenty-six (26) West of the Fifth P. M., Iowa.

Par. 2

That said real estate has at all times been used by the Plaintiff and is being now used by him for residential purposes of himself and his family, and for general farming purposes, including the raising of livestock. That said real estate is used by the Plaintiff in conjunction with other real estate.

Par. 3

That on or about May 27, 1965, the Defendant took and appropriated by condemnation proceedings a part of the Plaintiff's said real estate for a public road right-of-way and for road purposes, said real estate appropriated being described as follows:

Beginning at a point 40.0 feet East of the SW corner of the N½ of the fractional NW¼ of Section 30 T75N R26W of the 5th P.M., thence North 45.0 feet; thence East 560.0 feet; thence S 87°08'E 100.12 feet; thence East 300.0 feet; thence N87°08'E 300.42 feet; thence S84°17'E 100.5 feet; thence East 288.0 feet; thence South 45.0 feet; thence West 1648.0 feet to the point of beginning and containing 0.44 acres, more or less; exclusive of the present established highway and moving approximately 100 rods of barbwire fence.

Note: the South side of the N½ of the fractional NW¼ of Section 30 T75N R26W is assumed to bear due East and West.

Par. 4

That the Defendant on May 27, 1965, took immediate possession of said real estate.

Par. 5

That by reason of said condemnation and taking the Plaintiff has been damaged and the

MAIL PARROTT & SONS CO., WATERLOO, IOWA 64-3012

value of his said real estate has been diminished as hereinafter alleged.

Par. 6

That the items of damage to the Plaintiff occasioned by said condemnation and taking include the following:

A. The taking of 0.44 acres of land, more or less, comprising the area of said road right-of-way.

B. The injury, loss and damage to Plaintiff's access between said public road and Plaintiff's remaining adjacent land.

C. The alteration of grade elevation of said public road, thereby impairing and damaging Plaintiff's use of his adjoining remaining land.

D. The loss of lateral support of Plaintiff's land occasioned by Defendant's said taking, road construction and road alteration.

E. The substantial damage to a permanent dam existing on Plaintiff's remaining land in immediate proximity to the North edge of said road right-of-way, which dam was heretofore erected and maintained by Plaintiff and contained a substantial body of water, used in his farming and livestock operations.

F. The complete destruction and taking of accessible area immediately South of said body of water and dam, adequate to permit the watering of livestock at the outlet to said body of water.

G. The alteration and destruction of the earth compaction of said dam, and the resultant damage to the ability of said dam adequately to contain water.

H. The reduction in value of Plaintiff's said real estate.

Par. 7

That by reason of said condemnation and taking the Plaintiff has been damaged in the total sum of $7,200.00.

WHEREFORE, Plaintiff demands judgment against the Defendant, Madison County, Iowa, in the sum of $7,200.00, together with interest thereon at the rate of five per cent per annum from and after May 27, 1965, together with the costs of maintaining this action, including attorney's fees for Plaintiff's attorney pursuant to the provisions of Section 472.33 of the Code of Iowa.

Gordon K. Darling
GORDON K. DARLING
53 Jefferson Street
Winterset, Iowa
Attorney for Plaintiff

IN THE DISTRICT COURT OF IOWA

IN AND FOR MADISON COUNTY

FILED 1965 SEP 14 AM 10 00
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

JOHN H. BERCH, Plaintiff, -vs- MADISON COUNTY, IOWA, Defendant. : LAW NO. 19837

ANSWER

Comes now the Defendant and for answer to the Plaintiff's petition, states:

Par. 1.

The Defendant admits the allegations of Paragraph 1.

Par. 2.

The Defendant admits that the Plaintiff and his family now reside on said real estate and uses the same for general farming purposes including the raising of livestock. For lack of information and belief, the Defendant denies all other allegations of Paragraph 2.

Par. 3.

The Defendant admits that on or about May 27, 1965, the Defendant took and appropriated by condemnation proceedings an easement, for a public road right-of-way and for road purposes, across certain of the Plaintiff's real estate, said real estate appropriated for said easement

MATT PARROTT & SONS CO., WATERLOO, IOWA 64-3012

being that described in Paragraph 3 of the Plaintiff's petition. The Defendant denies all other allegations of Paragraph 3.

Par. 4.

The Defendant denies the allegations of Paragraph 4 and affirmatively alleges that it refrained from taking possession of said real estate until the Plaintiff was given the opportunity to remove the fence located on said real estate.

Par. 5.

The Defendant denies the allegations of Paragraph 5.

Par. 6.

The Defendant denies the allegations of Paragraph 6.

Par. 7.

The Defendant denies the allegations of Paragraph 7.

WHEREFORE, the Defendant prays that Plaintiff's petition be dismissed at Plaintiff's cost.

Copy Hereof Delivered
to Gordon K. Darling
on 9-14-1965
M. Morrissey
Clerk of District Court
Madison County, Iowa

Lewis H. Jordan
Lewis H. Jordan, County Attorney
of Madison County, Iowa
Farmers & Merchants Bank Bldg.
Winterset, Iowa
Attorney for the Defendant

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

FILED 1965 SEP 15 PM 2 36
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

JOHN H. BERCH, Plaintiff,
-vs-
MADISON COUNTY, IOWA, Defendant.:

No. 19837 Law

PLAINTIFF'S DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial to a jury of all of the issues raised herein.

Gordon K. Darling
GORDON K. DARLING
53 Jefferson Street
Winterset, Iowa
Telephone 462-2442

Attorney for Plaintiff

One copy filed herewith for -
Lewis H. Jordan
County Attorney
Winterset, Iowa
Copy Hereof Delivered
to Webster, Frederick &
Jordan
on 9-15 1965
M. Morrissey
Clerk of District Court
Madison County, Iowa

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

JOHN H. BERCH, Plaintiff,
-vs-
MADISON COUNTY, IOWA, Defendant.

No. 19837 Law

REPLY

FILED 1965 SEP 15 PM 2 36
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT

For reply to Defendant's Answer herein, Plaintiff states:

1. He denies the affirmative allegations in Paragraph 4.

WHEREFORE, Plaintiff prays as in his Petition.

Gordon K. Darling
GORDON K. DARLING
53 Jefferson Street
Winterset, Iowa
Telephone 462-2442

Attorney for Plaintiff

One copy filed
herewith for -
Lewis H. Jordan
County Attorney
Winterset, Iowa
Copy Hereof Delivered
to Webster, Frederick
& Jordan
on 9-15 1965
M. Morrissey
Clerk of District Court
Madison County, Iowa

MAID PARROTT & SONS CO., WATERLOO, IOWA 64-3012

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR Madison COUNTY

FILED 1965 OCT 18 AM 9 22
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

JOHN H. BERCH, Plaintiff, -vs- MADISON COUNTY, IOWA, Defendant.) Law No. 19837

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;

3. The adverse party has had reasonable time to obtain 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 has not been discussed; and

7. Assignment for trial (a) by jury upon timely demand filed is requested.

Dated this 12 day of October, 1965.

JOHN H. BERCH
BY Gordon K. Darling
Attorney(s) for Plaintiff
P.O. Address 53 Jefferson Street
Winterset, Iowa
Telephone No. 462-2442

One copy filed herewith
for -
Lewis H. Jordan
County Attorney
Winterset, Iowa
Copy Hereof Delivered
to Lewis H. Jordan
on Oct. 19 1965
M. Morrissey
Clerk of District Court
Madison County, Iowa

IN THE DISTRICT COURT OF THE STATE OF IOWA
IN AND FOR MADISON COUNTY
NOVEMBER 1965 TERM

FILED 1965 NOV 10 PM 3 27
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

JOHN H. BERCH, PLAINTIFF, -vs- MADISON COUNTY, IOWA, DEFENDANT. : No. 19837 Law.

V E R D I C T.

FORM NO. 1.

We, the Jury, find for the plaintiff and against the defendant, and fix the amount of his damages because of the condemnation of the real estate in question in this case in the sum of $2750.00.

F. M. Harper,
Foreman.

IN THE DISTRICT COURT OF IOWA

IN AND FOR MADISON COUNTY

FILED 1965 DEC 6 PM 4 01
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

JOHN H. BURCH, Plaintiff, -vs- MADISON COUNTY, IOWA, Defendant. : No. 19837 LAW

MOTION TO SET ASIDE VERDICT OF JURY and TO GRANT A NEW TRIAL

Comes now the Defendant, Madison County, Iowa, and respectfully moves the Court to set aside the verdict the jury returned herein on November 10, 1965, and to grant a new trial on each of the following grounds:

Par. 1.

That the Court erred in submitting to the jury numbered paragraph 2 of page 2 of the Statement of Issues and Instructions which reads as follows:

MATT PARROTT & SONS CO., WATERLOO, IOWA 64-3012

> "The alteration of grade elevation of said public road, thereby impairing and damaging plaintiff's use of his adjoining remaining land."

when there was no evidence in the record to sustain a finding that plaintiff's use of his adjoining remaining land was impaired or damaged by the alteration of the grade elevation of said road.

Par. 2.

The Court erred in submitting to the jury numbered paragraph 3 of page 2 of the Statement of Issues and Instructions which reads as follows:

> "The complete destruction and taking of accessible area immediately south of said body of water and dam, adequate to permit the watering of livestock at the outlet to said body of water."

when the evidence affirmatively showed that there was no complete destruction and taking of the assessible area immediately south of the pond and that in fact only seven (7) feet was taken immediately south of said dam.

Par. 3.

The Court erred in sustaining plaintiff's objections to the question propounded by the defendant to the witness, Roy Burch, which question in substance asks said witness the purchase price that the plaintiff, John H. Burch, had paid for the farm involved in the condemnation proceedings when said witness had already testified that he knew what the plaintiff had paid for the farm and that he had taken said figure into account in arriving in his valuation of said farm, which valuation he had previously testified to, and the Court further erred in refusing the defendant's offer to prove that the answer of said witness, had he been allowed to answer, would have been $5,500.00.

Par. 4.

That the Court erred in allowing plaintiff's counsel to crossexamine the witness, Earl Pottorff, with regard to the feasibility or possibility of construction the improvement to the road so that none of the plaintiff's land would have been taken by condemnation, over proper objections.

Par. 5.

The Court erred in admitting impropver evidence over defendant's objections.

Par. 6.

The Court erred in excluding proper evidence offered by defendant.

Par. 7.

That the verdict of the jury herein is so excessive that it is the result of passion and prejudice of the jury.

Par. 8.

That the verdict is not sustained by sufficient evidence.

Par. 9.

That the verdict is contrary to the instructions, particularly Instruction No. 11 in that the jurors did consider and did make an allowance for plaintiff's attorney fees. That the jury did arrive at a figure of $2,000.00 for the plaintiff's damages and then added an additional $750.00 to said figure for plaintiff's attorney fees.

Par. 10.

That the defendant did not on the whole record have a fair trial.

Par. 11.

That on the whole record, the combination of occurrances at the trial, the nature and character of the evidence, and its great preponderance in defendant's favor, the Court should in its discretion order a new trial before a different jury.

MAID PARROTT & SONS CO., WATERLOO, IOWA 64-3012

Original and one copy filed.

Copy to:
Gordon K. Darling
53 Jefferson St.
Winterset, Iowa
Attorney fro Plaintiff

Copy Hereof Delivered
to Gordon K. Darling
on 12-6 1965
M. Morrissey
Clerk of District Court
Madison County, Iowa

Lewis H. Jordan
LEWIS H. JORDAN, County Attorney
Farmers & Merchants State Bank Bldg.
Winterset, Iowa 50273
Telephone 462-3731

ATTORNEY FOR DEFENDANT

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

FILED 1965 DEC 14 AM 10 59
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

JOHN H. BERCH, Plaintiff, : No. 19837 Law
-vs- :
MADISON COUNTY, IOWA, Defendant. : RESISTANCE TO DEFENDANT'S MOTION TO SET ASIDE VERDICT OF JURY AND TO GRANT A NEW TRIAL

Comes now the Plaintiff and resist the Motion filed herein by the Defendant to set aside the verdict of the jury and to grant a new trial. Plaintiff denies the allegations of said Motion and for resistance thereto respectfully states to the Court:

1. Plaintiff resists Paragraph 1 thereof on the following grounds:

A. That the statement of issue as set out in Defendant's said Paragraph 1 was properly pled by the Plaintiff, and was supported by ample evidence introduced by the Plaintiff to create a jury question thereon.

B. That said allegation and the Court's statement of issue submitted to the jury is a proper element of damages to have been considered by the jury.

C. That there was no error on the part of the Court in submitting said statement of issue, and in fact the Court would have been in error had it failed to submit said issue as a part of the submission to the jury herein.

D. That the Defendant did not preserve an objection with respect to the Court's submission of said statement of issue.

2. Plaintiff resists Paragraph 2 thereof on the following grounds:

A. That the statement of issue as set out in Defendant's said Paragraph 2 was properly pled by the Plaintiff, and was supported by ample evidence introduced by the Plaintiff to create a jury question thereon.

B. That said allegation and the Court's statement of issue submitted to the jury is a proper element of damages to have been considered by the jury.

C. That there was no error on the part of the Court in submitting said statement of issue, and in fact the Court would have been in error had it failed to submit said issue as a part of the submission to the jury herein.

D. That the Defendant did not preserve a proper objection with respect to the Court's submission of said statement of issue.

3. Plaintiff resists Paragraph 3 thereof on the following grounds:

A. That Defendant was cross examining Roy Berch after said witness testified for the Plaintiff, and the questions propounded to said witness as set out in Paragraph 3 of Defendant's Motion were outside of the scope of proper cross examination.

B. That said questions propounded to said witness by the Defendant on cross examination called for heresay evidence and secondary evidence, and were incompetent for said reasons.

C. That the matter of allowing any witness to testify as to the original purchase price of land subject to condemnation is discretionary with the Court. That in the instant case, no proper foundation had been laid with respect to changes, alterations, additions and improvements to said real estate since its acquisition, and that testimony with regard to its

MATT PARROTT & SONS CO., WATERLOO, IOWA 64-3012

original purchase price was therefore wholly immaterial and irrelevant to the issues being tried.

That for all of the foregoing reasons the Court properly sustained Plaintiff's objections to the questions propounded as set out in Defendant's Paragraph 3 of its Motion.

4. Plaintiff resists Paragraph 4 thereof on the following grounds:

A. That the questions propounded by Plaintiff on crossexamination of Defendant's witness, Earl Pottorff, were in direct response to matters testified to by said witness on direct examination on behalf of the Defendant, were relevant and material to the issues of the case, and were in the specific scope of said witness's knowledge as established by the Defendant on the direct examination of said witness.

B. That no proper objections to said cross-examination of said witness were made by the Defendant.

That for said reasons the Court properly allowed Plaintiff to cross examine said witness as recited in Paragraph 4 of Defendant's Motion.

5. Resisting Paragraph 5 of Defendant's Motion, Plaintiff asserts that the Court made no errors in admitting improper evidence over any objections properly made.

6. Resisting Paragraph 6 of Defendant's Motion, Plaintiff asserts that the Court made no errors in excluding proper evidence properly offered by the Defendant.

7. Plaintiff resists Paragraph 7 of Defendant's Motion on the following grounds:

A. That the verdict of the jury was not excessive, was well within the range of testimony of witnesses as to values, both on behalf of the Plaintiff and the Defendant, and was in fact nearer to the testimony of Defendant's value witness than of the Plaintiff's value witnesses.

B. The amount of damages in a condemnation case is peculiarly and especially within the province of the jury, and should not be interfered with by the Trial Court.

C. The record of this case contains no indication or inference of any passion or prejudice on the party of the jury.

D. Defendant's Motion asserts no fact indicating any passion or prejudice on the part of the jury.

8. Plaintiff resists Paragraph 8 of Defendant's Motion and asserts that the verdict was amply and manifestly sustained by the greater weight of the evidence.

9. Plaintiff resists Paragraph 9 of Defendant's Motion on the following grounds:

A. Plaintiff denies that the jurors in fact considered or deliberated with regard to astorneys' fees. The Court clearly and concisely instructed the jury with regard thereto in Instruction No. 11.

B. That the Defendant's assertions in Paragraph 9 of its Motion are an attempt to go behind the jury's verdict and to raise matters which inhere in the jury's verdict.

C. That the matters raised by Defendant in Paragraph 9 of its Motion, even if the same were true, are not grounds for the granting of a new trial, in the clear light of the Court's correct instructions to the jury.

10. Plaintiff resists Paragraph 10 of Defendant's Motion and asserts that on the whole record herein Defendant in every manner had a fair and impartial trial.

11. Plaintiff resists Paragraph 11 of Defendant's Motion and asserts that no occurence, ruling of the Court, offer of evidence, conduct of the jury or any other fact, would justify the Court in granting a new trial. That to set aside the verdict of the jury and grant a new trial would be to invade the province of the jury, work a travesty upon the rights of the Plaintiff, and be wholly without support under the law or under the record in this case.

For all of the reasons herein urged the Plaintiff respectfully prays the Court to overrule and deny Defendant's Motion.

MARR PARROTT & SONS CO., WATERLOO, IOWA 64-3012

Gordon K. Darling
GORDON K. DARLING
53 Jefferson Street
Winterset, Iowa
Telephone 462-2442

Attorney for Plaintiff

Plaintiff respectfully requests that he be heard by counsel in support of the foregoing Resistance to Defendant's Motion.

One copy filed herewith

for -
Lewis H. Jordan
County Attorney
Winterset, Iowa
Attorney for Defendant
Copy Delivered 12-14-65
M. Morrissey, Clerk

Gordon K. Darling
GORDON K. DARLING
53 Jefferson Street
Winterset, Iowa
Telephone 462-2442

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

FILED 1965 DEC 22 AM 9 11
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

JOHN H. BERCH, Plaintiff : No. 19837 Law
-vs-
MADISON COUNTY, IOWA, Defendant : STIPULATION

Subject to the approval of the Court, the parties hereby stipulate as follows:

1. The Defendant withdraws its Motion to Set Aside Verdict of Jury and to Grant a New Trial.

2. The Plaintiff agrees to a remittur of $325 of the verdict returned by the jury herein.

3. Both parties agree that the Court's Decree herein may allow $500 attorney's fees in favor of Plaintiff's attorney, Gordon K. Darling, without formal application being made for said fees.

4. It is therefore agreed that Decree may be entered herein in accordance with Section 472.23 of the Code of Iowa, finding Plaintiff's damages occasioned by Defendant's condemnation of Plaintiff's land to be in the sum of $2,425, together with interest thereon at five per cent per annum from May 27, 1965; that said Decree may award attorney's fees in favor of Plaintiff's attorney in the sum of $500, and assess the costs including said attorney's fees against the Defendant.

Executed this 22nd day of December, 1965.

Gordon K. Darling
Attorney for Plaintiff

Lewis H. Jordan
Attorney for Defendant

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

FILED 1965 DEC 22 AM 9 11
MARGUERITE MORRISSEY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

JOHN H. BERCH, Plaintiff, : No. 19837 Law
-vs-
MADISON COUNTY, IOWA, Defendant. : DECREE

BE IT REMEMBERED that this cause was tried to a jury which returned its verdict herein November 10, 1965, setting Plaintiff's damages occasioned by Defendant's condemnation of Plaintiff's land at $2,750; that thereafter Defendant filed Motion to Set Aside Verdict of Jury and to Grant a New Trial; that thereafter a Stipulation of the parties was filed herein, agreeing that the Defendant withdraw its Motion to Set Aside Verdict of Jury and to Grant a New Trial, that Plaintiff agreed to a remittur of $325 of the verdict returned by the jury herein, and that the parties agreed to the allowance of $500 as attorney's fees in favor of Plaintiff's attorney, Gordon K. Darling, without formal application.

Pursuant to Section 472.23 of the 1962 Code of Iowa,

IT IS NOW THEREFORE ORDERED, ADJUDGED AND DECREED that the amount of Plaintiff's damages

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occasioned by Defendant's condemnation of Plaintiff's land is hereby ascertained and entered of record to be in the sum of $2,425, together with interest thereon at the rate of five per cent per annum from May 27, 1965, until paid, assessed to this date in the sum of $69.03. The Court hereby allows Plaintiff's attorney, Gordon K. Darling, attorney's fees in the sum of $500 as a part of the costs herein. The costs of this action, including said attorney's fees, are now and hereby assessed against the Defendant.

All of which is now and hereby ordered and entered of record this 23rd day of December, 1965.

Approved as to form:
Gordon K. Darling
Attorney for Plaintiff
Lewis H. Jordan
Attorney for Defendant

M. C. Herrick
Judge of the Fifth Judicial District
of 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 recied in my office in the case of John H. Berch, Plaintiff-vs-Madison County, Iowa, Defendant, Law No. 19837 - Docket 39 Page 252.

12-22-65	Check from Madison County, Iowa in the sum of $2,425.00 and interest in the sum of $69.03 or a total of	$2494.03.	This amount was paid direct to John H. Berch being my check No. 8842.
12-22-65	Check from Madison County, Iowa in the amount of $500.00 representing attorney fees due Gordon K. Darling	500.00	This amount was paid direct to Gordon K. Darling, being my Check No. 8841.
12-22-65	Check from Madison County, Iowa in full payment of Court Costs in the sum of	88.23	

WITNESS MY HAND AND SEAL this 12th day of May, 1967.

(DISTRICT COURT SEAL) Marguerite Morrissey Clerk of Court.