Deed Record, No. 91, Madison County, Iowa

H. C. Moore by Madison County Sheriff To Madison County, Iowa

#2631

No Fee

Filed for record the 27 day of May A.D. 1960 at 4:49 o'clock P. M.

Mary E. Welty, Recorder

TRANSCRIPT OF CONDEMNATION

CERTIFICATE OF TRANSCRIPT

THE STATE OF IOWA, Madison County, ss.

I, Marguerite Morrissey Clerk of the District Court in and for said County, do hereby Certify that the attached is a full, true, and correct copy of TRANSCRIPT OF CONDEMNATION PROCEEDINGS FROM SHERIFF OF MADISON COUNTY, RULING ON MOTIONS,ORDER OF DISMISSAL AND AFFIDAVIT OF CLERK OF DISTRICT COURT" In Cause Entitled H. C. Moore, Plaintiff-vs-Madison County, Iowa, Defendant, Law No. 18814, Madison County, Iowa District Court. as the same appears of record in my office.

WITNESS my hand and the Seal of said Court hereto affixed, at my office in Winterset, in said County, on this 14 day of April 1960.

(DISTRICT COURT SEAL) Marguerite Morrissey, Clerk

Deed Record, No. 91, Madison County, Iowa

FIDLAR & CHAMBERS CO., DAVENPORT, IOWA 84101

RECEIVED 1958 AUG -7 AM 9:40
MADISON COUNTY SHERIFF
WINTERSET, IOWA

FILED 1958 AUG 9 AM 10 48
MARGUERITE MORRISSEY CLERK
OF DISTRICT COURT 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) #18814) NOTICE OF DECLINATION TO ACCEPT AWARD OF COMMISSIONERS

TO.....H. C. MOORE:

YOU ARE HEREBY NOTIFIED that Madison County, Iowa hereby rejects and declines to accept the award of damages determined by Commissioners on the 1st day of August, 1958, in connection with the condemnation of real estate owned by you, which real estate is described as follows, to-wit:

Commencing at the SE Cor. NE¼ SW¼ Sec. 5, T77N R26W, thence west 33.0 feet to the point of beginning, thence north 1004.0 feet, thence west 7.0 feet, thence south 1004.0 feet, thence east 7.0 feet to the point of beginning, containing 0.16 acres, more or less.

Note: The east line of the NE¼ SW¼ of said section 5 is assumed to bear due north.

YOU ARE FURTHER NOTIFIED that Madison County, Iowa does not intend to take possession of the above described property nor make any claim of title to said real estate.

YOU ARE FURTHER NOTIFIED that this Notice is given for the purpose of reducing to writing the oral declination of intent to take said property by Madison County, Iowa, which oral notice was given on August 1, 1958 by Emery L. Goodenberger, County Attorney of Madison County, Iowa, to Shirley A. Webster, attorney for you in said condemnation proceedings.

Dated at Winterset, Iowa, this 6th day of August, 1958.

Emery L. Goodenberger
County Attorney of Madison
County, Iowa

STATE OF IOWA,)
) ss. RETURN OF ORIGINAL NOTICE
Madison County)

The within notice received this 7th day of August, 1958, and I certify that I served the same on the defendants named below by delivering a copy thereof to each of the said defendants personally at the time and place set opposite thier respective names:

Name of defendant	Month	Day	Year	City, Town or Township	County	State
H. C. Moore	Aug.	8	1958	Boone Twp.	Dallas	Iowa

Rex Rouse, Sheriff
Official Title

FEES
Service $ .75
Total $ .75

IN THE DISTRICT COURT OF IOWA IN AND FOR MADISON COUNTY

H. C. MOORE, Plaintiff, -vs- MADISON COUNTY, IOWA, Defendant.) No. — Law.) APPEAL FROM CONDEMNATION OF PROPERTY BY MADISON COUNTY, IOWA.

TO.....MADISON COUNTY, IOWA, AND TO THE BOARD OF SUPERVISORS OF MADISON COUNTY, IOWA.

YOU ARE HEREBY NOTIFIED that the undersigned, H. C. Moore, has appealed from the award of damages made by the commissioners appointed in connection with the condemnation proceedings against the following described real estate:

Commencing at the SE Cor. NE¼ SW¼ Sec. 5, T77N R26W, thence West 33.0 feet to the point of beginning, thence North, 1004.0 feet, thence West 7.0 feet, thence South 1004.0 feet, thence East 7.0 feet to the point of beginning, containing 0.16 acres, more or less,

Note: The East line of the NE¼ SW¼ of said Section 5 is assumed to bear due North.

by Madison County, Iowa, Defendant, said award being dated August 1, 1958, and filed with the Sheriff of Madison County, Iowa, on said date.

YOU ARE FURTHER NOTIFIED that said appeal will come on for hearing at the October 1958 Term of the District Court of the State of Iowa, in and for Madison County, which term of Court will commence and be held at the Courthouse in Winterset, Madison County,

FIDLAR & CHAMBERS CO., DAVENPORT, IOWA 84101

Iowa, on the 30 day of September, 1958, and that on or before the first day of said term of Court, a written Petition will be filed by the Plaintiff stating specifically the items of Plaintiff's damages on account of taking of said real estate by the Defendant, Madison County, Iowa.

H. C. MOORE, Plaintiff
By _____
Webster & Frederick
Farmers & Merchants State Bank Bldg.
Winterset, Iowa
Attorneys for Plaintiff.

Filed 8-2-58

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 taking and acquiring full and complete ownership of and holding certain real estate and relocating a public highway as the same now proceeds through Section 5, in Township 77 North, of Range 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 therefor, 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 the laws of the State of Iowa for such purposes, to-wit: Chapter 471 and 472 of the 1958 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 effected 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:

	Place of Residence	Post Office Address
The Owner: H. C. Moore	Booneville, Iowa	Booneville, Iowa
Name of Lessee: Madison County Agricultural Conservation Association	Winterset, Iowa	Winterset, Iowa

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 which will be 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 14th day of July, 1958.

MADISON COUNTY, IOWA
By Emery L. Goodenberger
County Attorney in and for Madison County, Iowa

FIDLAR & CHAMBERS CO., DAVENPORT, IOWA 84101

EXHIBIT "A"

Description of real estate belonging to H. C. Moore, and being the subject matter of this condemnation proceeding:

Commencing at the SE Cor. NE¼ SW¼ Sec. 5, T77N R26W, thence west 33.0 feet to the point of beginning, thence north 1004.0 feet, thence west 7.0 feet, thence south 1004.0 feet, thence east 7.0 feet to the point of beginning, containing 0.16 acres, more or less.

Note: The east line of the NE¼ SW¼ of said section 5 is assumed to bear due north.

PROPERTY PLAT

Acquired from H. C. Moore Married or Single? Married Pearle (Give full name of spouse)

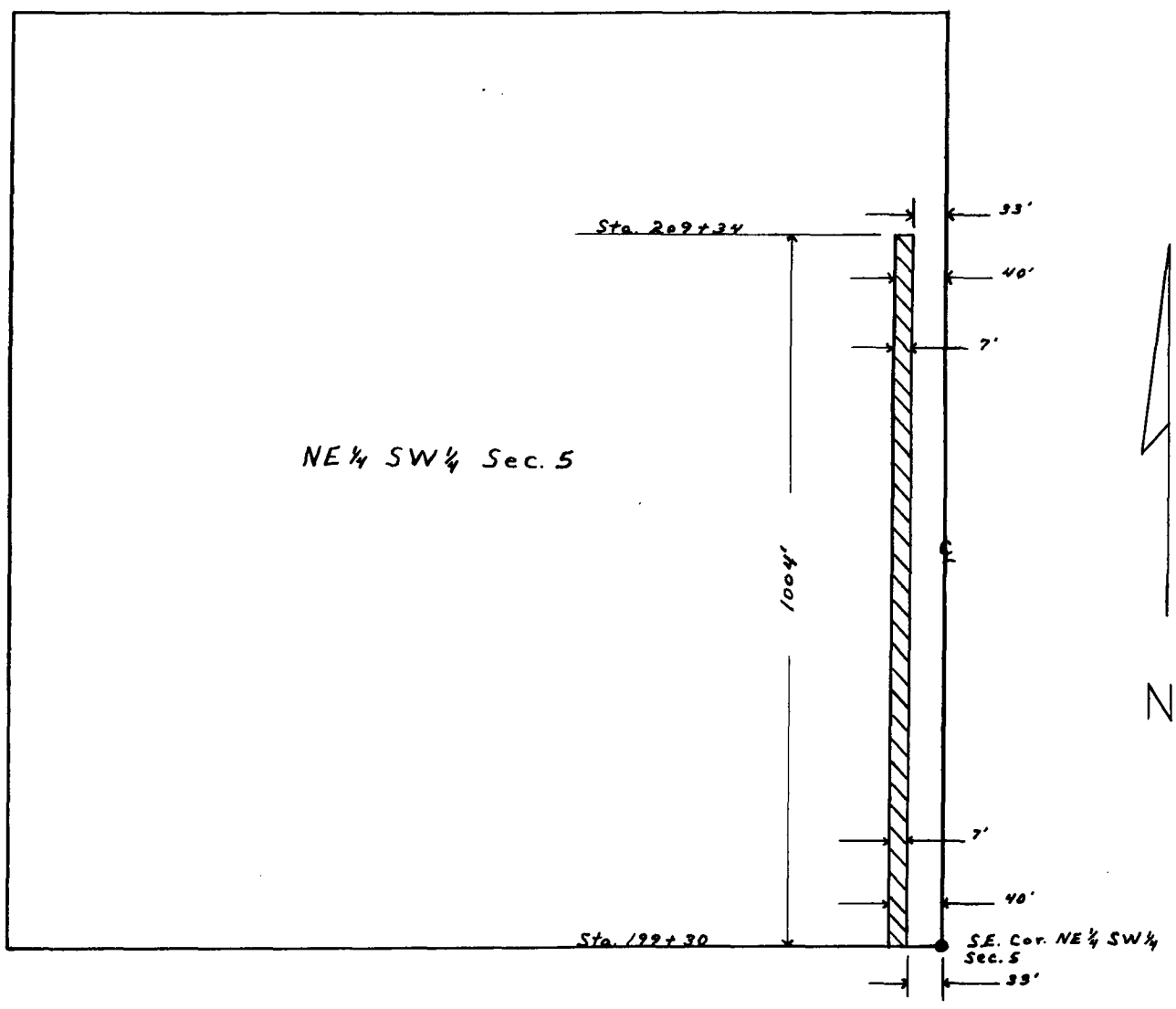
R.O.W. Area 0.16 Acres. Borrow Area - - Acres. Total Consideration $ - -

Acquired by Condemnation Date of Contract ----- 19--

LOCATION

From CL Station 199+30 to CL Station 209+34 Section 5

Township 77 N Range 26W Township (Civil) Lee Iowa.



Madison County Project No. 5-58

Exhibit "B"

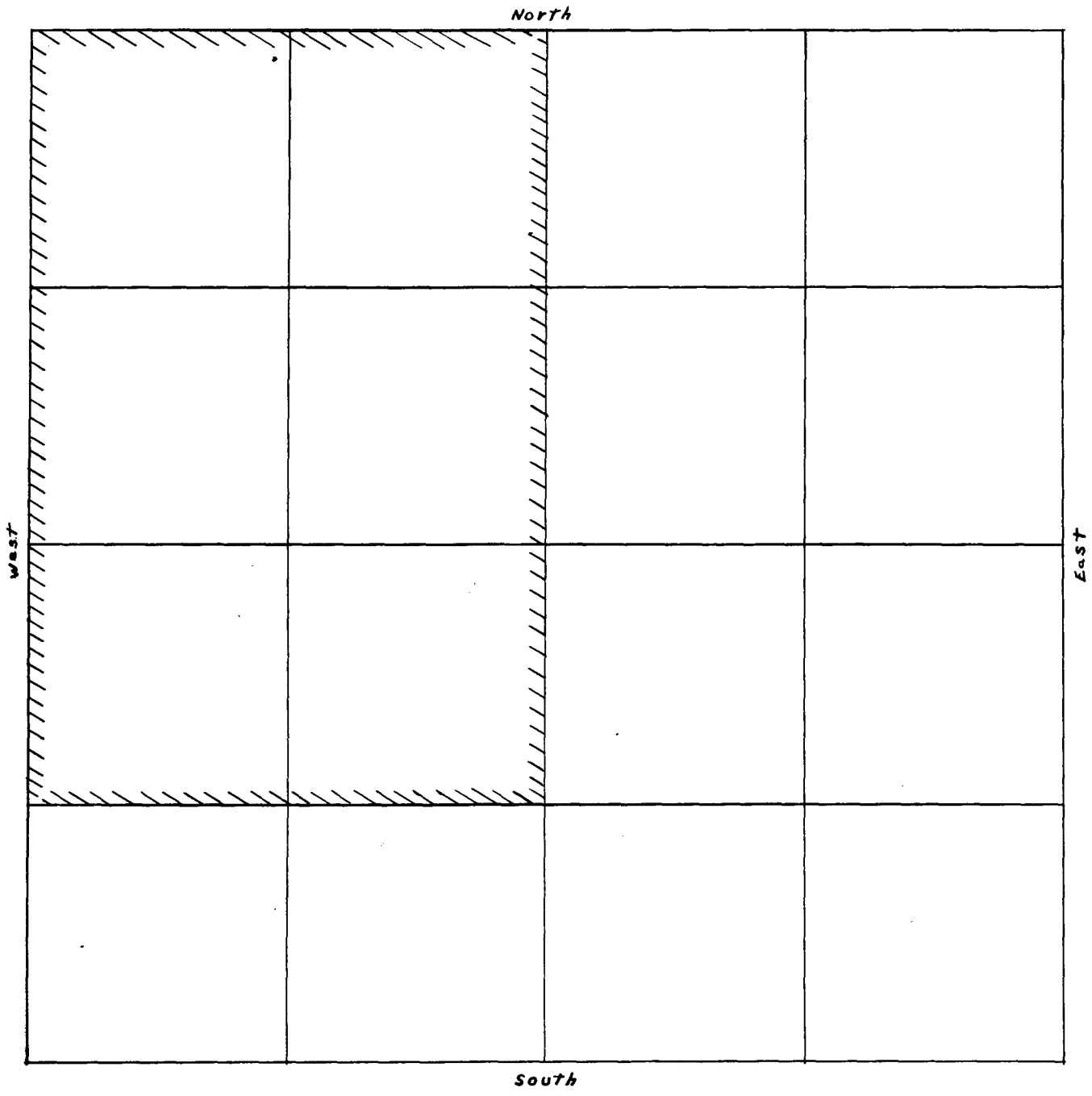
Deed Record, No. 91, Madison County, Iowa

FIDLAR & CHAMBERS CO., DAVENPORT, IOWA 84101

Plat of Property

Of H. C. Moore Area 237.93 Acres.

Sta. 199+30 to Sta. 209+34 Section 5 T 77 N-R 26 W.



Madison County Project No. 5-58

INFORMATION FOR CONDEMNATION PROCEEDINGS COUNTY Madison

OWNER OF RECORD Project 5-58

H. C. Moore Booneville, Iowa

Spouses Pearle Moore

Occupant of the Land Same Is tenant a member of the family of the property owner? --

Has old road been regularly established? Yes Has tenant signed crop contract

form No. 676? - - Recorded in Book A, Page 287 Width 66'

LIENS: - - Old Fencing 61 rods. Total amount offered $91.50

Legal Description of parcel to be condemned. (R.O.W.--Channel change--Borrow.)

Commencing at the SE Cor. NE¼ SW¼ Sec. 5, T77N, R26W, thence west 33.0 feet to the point of beginning, thence north 1004.0 feet, thence west 7.0 feet, thence south 1004.0 feet, thence east 7.0 feet to the point of beginning, containing 0.16 acres, more or less.

Note: The east line of the NE¼ SW¼ of said section 5 is assumed to bear due north.

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

TO: H. C. MOORE, MADISON COUNTY AGRICULTURAL CONSERVATION ASSOCIATION:
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

FIDLAR & CHAMBERS CO., DAVENPORT, IOWA 84101

estate, which real estate is described as follows, to-wit:

Commencing at the SE Cor. NE¼ SW¼ Sec. 5, T77N R26W, thence west 33.0 feet to the point of beginning, thence north 1004.0 feet, thence west 7.0 feet, thence south 1004.0 feet, thence east 7.0 feet to the point of beginning, containing 0.16 acres, more or less.

Note: The east line of the NE¼ SW¼ of said section 5 is assumed to bear due north.

YOU ARE FURTHER NOTIFIED that such condemnation is sought for the purpose of improving 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 the 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 Commisssioner will, on the 1st day of Aug, 1958, at ten 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 Emery L. Goodenberger
County Attorney in and for Madison County, Iowa

STATE OF IOWA)
) ss. RETURN OF ORIGINAL NOTICE
Madison County)

The within notice received this 18th day of July, 1958, and I certify that I served the same on the defendants named below by delivering a copy thereof to each of the said defendants personally at the time and place set opposite thier respective names:

Name of defendent	Month	Day	Year	City, Town or Township	County	State
H. C. Moore	July	21	1958	RFD Booneville	Dallas	Iowa

Rex Rouse, Sheriff
Official Title

FEES
Service $1.25

STATE OF IOWA,)
) ss. RETURN OF ORIGINAL NOTICE.
Madison County)

The within notice received this 18th day of July, 1958, and I certify that on the 21st day of July, 1958, I served the same on the defendant Madison County Agricultural Conservation Association a Governmental Agency (1), by delivering a copy thereof to Leo King, a Manager (2), of said defendant, in the City, Town or Township of Winterset in Madison County, State of Iowa.

Rex Rouse, Sheriff
Official Title

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

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 improving 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:

Glen Burnett, Charles Tucker, Jr., Dick Mapes
Louis Lehmer, John Foster, 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

FIDLAR & CHAMBERS CO., DAVENPORT, IOWA 64101

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 21st day of July, 1958.

Rex Rouse Sheriff
of Madison County, Iowa

OATH AND QUALIFICATION OF COMMISSIONERS

STATE OF IOWA)
) ss.
MADISON COUNTY)

We, and each of us, being first duly sworn on oath depose and state that we are each one of the persons appointed by Rex Rouse, Sheriff of Madison County, Iowa, on the 21st day of July, 1958, 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 5, in Township 77 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 he is a resident freeholder of Madison County, Iowa; that he is not interested in the same or a like or similar question; that he will to the best of his ability faithfully and impartially assess said damages and make written report to the Sheriff, as provided by law.

Glen Burnett
Louis A. Lehmer
John W. Foster
Roy Pickering
Charles Tucker Jr.
Dick G. Mapes

Subscribed and sworn to before me by all and each of the foregoing named individuals, in my presence this 1st day of Aug, 1958.

(DISTRICT COURT SEAL)

Marguerite Morrissey Clerk of Court
in and for 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 taking and acquiring full and complete ownership of and holding certain real estate and relocating a public highway as the same now proceeds through Section 5, in Township 77 North, of Range 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 therefor, 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 the laws of the State of Iowa for such purposes, to-wit: Chapter 471 and 472 of the 1958 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 effected 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

FIDLAR & CHAMBERS CO., DAVENPORT, IOWA 84101

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:

	Place of Residence	Post Office Address
The Owner: H. C. Moore	Booneville, Iowa	Booneville, Iowa
Name of Lessee: Madison County Agricultural Conservation Association	Winterset, Iowa	Winterset, Iowa

Exhibit "A"

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 which will be 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 14th day of July, 1958.

MADISON COUNTY, IOWA
By Emery L. Goodenberger
County Attorney in and for Madison
County, Iowa

EXHIBIT "A"

Description of real estate belonging to H. C. Moore, and being the subject matter of this condemnation proceeding:

Commencing at the SE Cor. NE¼ SW¼ Sec. 5, T77N R26W, thence west 33.0 feet to the point of beginning, thence north 1004.0 feet, thence west 7.0 feet, thence south 1004.0 feet, thence east 7.0 feet to the point of beginning, containing 0.16 acres, more or less.

Note: The east line of the NE¼ SW¼ of said section 5 is assumed to bear due North.

PROPERTY PLAT

Acquired from H. C. Moore Married or Single? Married Pearle (Give full name of spouse)

R.O.W. Area 0.16 Acres. Borrow Area - - Acres. Total Consideration $ - -.

Acquired by Condemnation Date of Contract - - 19 - -

LOCATION

From CL Station 199+30 to CL Station 209+34 Section 5,

Township 77 N, Range 26 W Township (Civil) Lee Iowa.

FOR COPY OF PLAT AS SHOWN ON FILED INSTRUMENT
SEE PLAT RECORDED IN DEED RECORD 91, PAGE 94

Madison County Project No. 5-58

Plat of Property

Of H. C. Moore Area 237.93 Acres. Sta. 199+30 To Sta. 209+34

Section 5 T 77 N-R 26 W.

FOR COPY OF PLAT AS SHOWN ON FILED INSTRUMENT
SEE PLAT RECORDED IN DEED RECORD 91, PAGE 95

Madison County Project No. 5-58

INFORMATION FOR CONDEMNATION PROCEEDINGS COUNTY Madison

Project 5-58

OWNER OF RECORD

H. C. Moore Booneville, Iowa

Spouses Pearle Moore Occupant of the Land Same

Is tenant a member of the family of the property owner? - - Has old road been regularly established? yes Has tenant signed crop contract form No. 676 - -

Recorded in Book A, Page 287 Width 66'

LIENS: - - Old Fencing 61 rods. Total amount offered $91.50

FIDLAR & CHAMBERS CO., DAVENPORT, IOWA 84101

Legal Description of parcel to be condemned. (R.O.W.--Channel change--Borrow.)

Commencing at the SE Cor. NE¼ SW¼ Sec. 5, T77N R26W, thence west 33.0 feet to the point of beginning, thence north 1004.0 feet, thence west 7.0 feet, thence south 1004.0 feet, thence east 7.0 feet to the point of beginning, containing 0.16 acres, more or less.

Note: The east line of the NE¼ SW¼ of said section 5 is assumed to bear due north.

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

NOTICE TO APPRAISERS OF TIME FOR APPRAISEMENT

TO: ——

YOU AND EACH OF YOU ARE HEREBY NOTIFIED, that, having heretofore been appointed by me as appraisers to appraise the damages to certain real estate owned by H. C. Moore and located in Section 5, in Township 77 North, of Range 26, West of the 5th P. M., Madison County, Iowa, on account of 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, with the undersigned Sheriff on the 18th day of July, 1958, and that Notices 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 1st day of Aug, 1958, at ten 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 effected 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 21st day of July, 1958.

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 July, 1958.

Glen Burnett
Louis A. Lehmer
John W. Foster
Roy Pickering
Charles Tucker Jr.
Dick G. Mapes

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 taking and acquiring full and complete ownership of and holding certain real estate and relocating a public highway as the same now proceeds through Section 5, in Township 77 North of Range 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 therefor, 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 the laws of the State of Iowa for such purpose, to-wit: Chapter 471 and 472 of the 1958 Code of Iowa, and

FIDLAR & CHAMBERS CO., DAVENPORT, IOWA 84101

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 effected 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:

	Place of Residence	Post Office Address
The Owner: H. C. Moore	Booneville, Iowa	Booneville, Iowa
Name of Lessee: Madison County Agricultural Conservation Association	Winterset, Iowa	Winterset, Iowa
		Exhibit "A"

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 which will be 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 14th day of July, 1958.

MADISON COUNTY, IOWA
By Emery L. Goodenberger
County Attorney in and for Madison
County, Iowa

EXHIBIT "A"

Description of real estate belonging to H. C. Moore, and being the subject matter of this condemnation proceeding:

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Note: The east line of the NE¼ SW¼ of said section 5 is assumed to bear due north.

Plat of Property

Of H. C. Moore Area 237.93 Acres. Sta. 199+30 to Sta. 209+34

Section 5 T 77 N-R 26 W.

FOR COPY OF PLAT AS SHOWN ON FILED INSTRUMENT
SEE PLAT RECORDED IN DEED RECORD 91, PAGE 95

Madison County Project No. 5-58

PROPERTY PLAT

Acquired from H. C. Moore Married or Single? Married Pearle
(Give full name of spouse)

R.O.W. Area 0.16 Acres Borrow Area - - Acres. Total Consideration $ - -

Acquired by Condemnation Date of Contract - - 19 - -

LOCATION

From CL Station 199+30 to CL Station 209+34 Section 5,

Township 77N Range 26W Township (Civil) Lee Iowa.

Deed Record, No. 91, Madison County, Iowa

FIDLAR & CHAMBERS CO., DAVENPORT, IOWA 84101

FOR COPY OF PLAT AS SHOWN ON FILED INSTRUMENT
SEE PLAT RECORDED IN DEED RECORD 91, PAGE 94

Exhibit "B" Madison County Project No. 5-58

INFORMATION FOR CONDEMNATION PROCEEDINGS COUNTY Madison

Project 5-58

OWNER OF RECORD

H. C. Moore Booneville, Iowa

Spouses Pearle Moore Occupant of the Land Same

Is tenant a member of the family of the property owner? - - Has old road been regularly established? yes Has tenant signed crop contract form No. 676? - -

Recorded in Book A, Page 287 Width 66'

LIENS: - - Old Fencing 61 rods. Total amount offered $91.50

Legal Description of parcel to be condemned. (R.O.W.) --Channel change--Borrow.)

Commencing at the SE Corn. NE¼ SW¼ Sec. 5, T77N R26W, thence west 33.0 feet to the point of beginning, thence north 1004.0 feet, thence west 7.0 feet, thence south 1004.0 feet, thence east 7.0 feet to the point of beginning, containing 0.16 acres, more or less.

Note: The east line of the NE¼ SW¼ of said section 5 is assumed to bear due north.

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 21st day of July, 1958, 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 18th day of July, 1958 do herebymake report that upon due notice we met upon said premises, viewed and inspected the same on the 1st day of Aug., 1958, at ten 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:

Commencing at the SE Cor. NE¼ SW¼ Sec. 5 T77N R26W, thence west 33.0 feet to the point of beginning, thence north 1004.0 feet, thence west 7.0 feet,thence south 1004.0 feet, thence east 7.0 feet to the point of beginning, containing 0.16 acres, more or less.

Note: The east line of the NE¼ SW¼ of said section 5 is assumed to bear due north.

To H. C. Moore $244.00

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

NOTICES: Sheriff of Madison County, Iowa
Costs of mileage and attendance of Sheriff's office
Mileage $ - -
Attendance $ - -

APPRAISER'S FEES:
Charged on Erwin Hinz action RRR

State of Iowa)
) ss
Madison County)

We, the undersigned, being each duly sworn on oath depose and state that we are the six Commissioners appointed by the Sheriff of Madison County, Iowa, to appraise and assess the damages in connection with the Condemnation of certain real estate by Madison County, Iowa, said real estate being described in the within and foregoing report, said real estate being condemned for road purposes, and that we have viewed the premises involved and have appraised and assessed said damages and that the above and foregoing Report

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contains the assessment of damages as made by us as such Commissioners, and that in making such assessment, we have to the best of our ability, faithfully and impartially assessed such damages, all of which is true and correct as we verily believe.

Roy Pickering — Glen Burnett,
John W. Foster — Charles Tucker Jr.
Louis A. Lehmer — Dick G. Mapes

Subscribed and sworn to before me by the above named individuals this 1st day of August, A.D., 1958.

(DISTRICT COURT SEAL)

Marguerite Morrissey Clerk of
District Court, Madison County, Ia.

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

CLARENCE E. FORRET, Plaintiff vs. MADISON COUNTY, IOWA, Defendant	NO. 18812 LAW	FILED 1960 MAR 11 AM 11 29 MARGUERITE MORRISSEY CLERK OF DISTRICT COURT MADISON COUNTY, IOWA
ERWIN R. HINZ, Plaintiff vs. MADISON COUNTY, IOWA, Defendant	NO. 18813 LAW	
H. C. MOORE, Plaintiff, vs. MADISON COUNTY, IOWA, Defendant	NO. 18814 LAW	
LEE JAMISON and HENRIETTA JAMISON, Plaintiffs, vs. MADISON COUNTY, IOWA, Defendant.	NO. 18815 LAW RULING ON MOTIONS	

STATEMENT OF FACTS

Condemnation proceedings were commenced by the defendant, Madison County, Iowa, to condemn land for a county secondary road improvement project.

Condemnation Commissioners were selected and on 8-1-58 they met and made their award of damages. The award was made about 3:00 P. M.

At about 4:00 P. M. on the day of the award the Board of Supervisors of Madison County, Iowa met and decided to abandon the condemnation and not take the land nor pay the award. The County Attorney of Madison County at about 5:30 P. M. on that day notified the attorney for the plaintiff by telephone of the decision of the County Board of Supervisors to abandon the condemnation and not take the land nor pay the award.

On the next day, 8-2-58, the plaintiff had a notice of appeal served upon R. O. Brock, Madison County, Iowa, Auditor, and on 8-4-58 said notice of appeal was served upon Glenn Shoemaker, Chairman of the Madison County, Iowa, Board of Supervisors. These notices were served by Rex Rouse, Sheriff of Madison County, Iowa. The notice of appeal was directed to "Madison County, Iowa, and to the Board of Supervisors of Madison County, Iowa." The notice of appeal was not directed to nor was service in any form made of the notice upon the Sheriff of Madison County, Iowa.

A "notice of declination to accept award" dated 8-6-58 was signed by the County Attorney of Madison County, Iowa, was served on the plaintiff on 8-8-58. This notice advised the plaintiff that Madison County, Iowa, declined to accept the award of damages made on 8-1-58, and that the County did not intend to take possession of the real estate or claim title thereto.

On 8-15-58 Madison County, Iowa, filed a motion and application to dismiss the appeal of the plaintiff.

A resistance was filed on 9-10-58 by the plaintiff to the defendant's motion to dismiss the appeal.

A reply to the plaintiffs' resistance was filed by the defendant on 9-26-58 and on 9-26-58 a hearing was had on the motion and the attorneys were granted time to file briefs.

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On 10-1-58 the defendant filed an amendment to its motion and application to dismiss appeal.

On 10-4-58 plaintiffs filed a motion to strike defendant's amendment to motion and on 10-28-58 the defendant filed a resistance to the plaintiff's motion to strike the amendment.

The developments in this case are such that the attorneys on each side would undoubtedly like the opportunity to start again at the beginning. If the County Attorney could retrace his actions he would not have called the plaintiffs' attorneys in the late afternoon of 8-1-58 notifying him of the Supervisors' decision to abandon the condemnation, but would have waited until a proper record of the decision of the Board of Supervisors could be made and a formal written notice of the Board's decision to abandon the condemnation could be given the plaintiffs, which, in all probability, would have been before any appeal was taken.

If the plaintiffs' attorneys could have the opportunity to start their appeal again they would include the sheriff in their notice of appeal and also serve the notice of appeal upon him.

The defendant's attorneys, if they could retrace their steps, would have filed a special appearance to the plaintiffs' notice of appeal attacking the jurisdiction of the Court because of the failure of the plaintiffs to serve the sheriff with notice of appeal.

Neither party may retract their actions; none of us are free of mistakes and we must proceed in the best manner possible after a mistake.

FINDINGS OF THE COURT

The Court finds that the condemnation proceedings when originally instigated were not in the District Court and the District Court had no jurisdiction of the parties nor of the subject matter and could acquire none until after the Commissioners appointed by the sheriff had rendered their findings as to the award of damage to which the property owner was entitled. The District Court could then acquire jurisdiction of the parties and of the subject matter only if an appeal was taken and properly perfected from the award of damages made by the sheriff's commissioners.

The statute prescribes the manner in which an appeal may be taken from the award of damages by the commissioners and until the appellant has complied with the requirements of the statute in perfecting his appeal, the District Court has no jurisdiction of the parties nor of the subject matter.

In the case at bar the appellants failed to address the notice of appeal in such a manner as to include the sheriff and also failed to give the sheriff a written notice that the appeal had been taken by having the notice served on the sheriff in the same manner as is provided for the service of an original notice. Therefore, since the statute prescribing the manner of appealing the matter to the District Court was not complied with, the District Court did not acquire jurisdiction of the subject matter unless that jurisdiction could have been and was acquired in some other manner.

Only by the process of appeal does the District Court obtain jurisdiction over both the subject matter and the parties. Its jurisdiction is appellate only. See Mazzoli v. City of Des Moines, 245 Iowa 571, 63 NW 2d, 218.

The plaintiffs' contention is that the defendant's first motion to dismiss the plaintiffs' appeal failed to raise the issue of the failure to serve notice of appeal on the sheriff but was based on the allegation that the defendant had dismissed and abandoned the condemnation proceedings thereby leaving nothing to appeal from. That such a motion constituted a general appearance on the part of the defendant and he may not now in a

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subsequent amendment to the motion raise the matter of failure to properly serve the notice of appeal in order to attack the jurisdiction of the Court.

If the Court can only acquire jurisdiction of the subject matter by one of the parties taking an appeal in the manner prescribed by statute and the appeal is not perfected in the manner prescribed, then the parties cannot even by consent waive the statutory requirements. If consent would not confer jurisdiction, appearance, of course, could not.

See: Orcutt v. Hanson 71 Iowa 514, 517
Cerro Gordo County v. Wright County 59 Iowa 485
Bedford v. Supervisors 162 Iowa 588, 592
Dicks v. Hatch 10 Iowa 380
City of Fairfield v. Jefferson County 178 Iowa 623

The matter of want of jurisdiction may be raised at any state of the proceedings.

See: Johnson v. Purcell 225 Iowa 1265, 1267
Orcutt v. Hanson, supra
Cerro Gordo County v. Wright County, supra

Service of notice on the sheriff was essential to give the District Court jurisdiction.

See: Thorson v. City of Des Moines 194 Iowa 565

The Court finds the defendant abandoned the condemnation proceedings before an appeal was properly perfected.

R U L I N G

The Court overrules the plaintiffs' motion to strike the defendant's amendment to motion to dismiss.

The Court sustains the defendant's motion, as amended, to dismiss the plaintiffs' appeal.

Dated this 10th day of March, 1960.

Geo. H. Sackett
JUDGE OF THE FIFTH JUDICIAL
DISTRICT OF IOWA.

Copy Hereof
to Webster & Frederick
Gordon K. Darling
Emery L. Goodenberger
on 3-11-1960
M. Morrissey Clerk of
District Court Madison County, Iowa

PP-642 IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR MADISON COUNTY

H. C. Moore, Plaintiff, : No. 18814 Law
-vs- :
MADISON COUNTY, IOWA, Defendant : ORDER OF DISMISSAL

FILED 1960 MAR 31 PM 2 41
MARGUERITE MORRISSEY CLERK OF
DISTRICT COURT MADISON COUNTY, IOWA

BE IT REMEMBERED, that this matter is before the Court on the Defendant's Motion and Application to Dismiss Appeal, Plaintiff's Resistance thereto, Defendant's Reply to said Resistance, Defendant's Amendment to Motion and Application to Dismiss Appeal, Plaintiff's Motion to Strike Defendant's said Amendment, and Defendant's Resistance to said Motion to Strike. All of said matters having heretofore been argued and submitted to the Court, and the Court having on March 11, 1960, filed written Ruling thereon, and the Court being well and fully advised in the premises, finds:

That condemnation proceedings instituted by the Defendant, Madison County, Iowa, as condemner, on July 14, 1958, against lands owned by the Plaintiff, in which Commissioners duly appointed by the Madison County, Iowa Sheriff reported their assessment of damages to Plaintiff's land on August 1, 1958.

That in the purported appeal proceedings now before the Court, the Plaintiff-Appellant failed to address the Notice of Appeal in such a manner as to include the Sheriff of Madison County, Iowa, as a named party to said Notice, and also failed to give the Sheriff of Madison County, Iowa, a written notice that the appeal had been taken, by having the notice served on the Sheriff of Madison County, Iowa, in the same manner as provided for the service of an Original Notice, as required by Section 472.18 and 472.19 of the 1958 Code of Iowa. That the serving of notice on the Sheriff of Madison County,

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Iowa, was essential to give this Court jurisdiction of the subject matter hereof. That since the statutes prescribing the manner of appealing from condemnation proceedings to the District Court were not complied with, this Court did not acquire jurisdiction of the subject matter of said condemnation proceedings.

The Court further finds that the jurisdiction of the District Court in condemnation matters is appellate only; that only by process of appeal does the District Court obtain jurisdiction over both the subject matter and the parties in condemnation matters; that where appeal is not perfected in the manner prescribed by statute, the Court acquired no jurisdiction of the subject matter, regardless of the appearance of the Defendant therein. The Court further finds that want of jurisdiction of the subject matter may be raised herein at any stage of the proceedings.

The Court further finds that the Defendant, Madison County, Iowa, fully abandoned the condemnation proceedings against Plaintiff's lands hereinbefore referred to, and that the Defendant has no rights against Plaintiff's lands arising out of said condemnation proceedings.

The Court therefor finds that Plaintiff's Motion to Strike Defendant's Amendment to Motion and Application to Dismiss Appeal should be overruled, and that Defendant's Motion and Application to Dismiss Appeal as amended should be sustained.

IT IS NOW THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Plaintiff's Motion to Strike Defendant's Amendment to Motion and Application to Dismiss Appeal be and it is now and hereby overruled, and that Defendant's Motion and Application to Dismiss Appeal as amended be and it is now and hereby sustained, and this cause is now and hereby ordered dismissed with prejudice at Plaintiff's costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Defendant, Madison County, Iowa, has fully abandoned the condemnation proceedings heretofore instituted by it against Plaintiff's lands and that Defendant has no rights against Plaintiff's real estate arising out of said condemnation proceedings.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment for costs, assessed in the sum of $29.93 be and it is now and hereby ordered and entered against the Plaintiffs and each of them of record.

All of which is now and hereby ordered and entered of record this 31st day of March, A. D. 1960.

Geo. H. Sackett
Judge of the Fifth Judicial District
of Iowa.

Approved as to Form:
Shirley A. Webster
Attorneys for Plaintiffs.

A F F I D A V I T

THE STATE OF IOWA, Madison County, ss:

I, Marguerite Morrissey, Clerk of the District Court in and for Madison County, Iowa, do hereby certify that in the cause entitled H. C. Moore, Plaintiff -vs- Madison County, Iowa, Defendant, Law No. 18814, was dismissed and that there was no money paid into my office for damages in said cause.

WITNESS my hand and the Seal of said Court hereto affixed, at my office in Winterset, in said County, on this 14th day of April, 1960.

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

(DISTRICT COURT SEAL)

COMPARED