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November 15, 2024

Mayor Jacque and City Council Members
City of Dyersville
Memorial Building
340 1st Avenue East
Dyersville, IA 52040

Subject: Work Session: Eminent Domain Procedures for Dangerous Building

Dear Honorable Mayor Jacque and Council Members,

I am writing to inform you about the upcoming work session to discuss the necessary actions to remove Leonard Ollendick's dangerous building at 703 2nd Avenue SW. On August 6, 2024, Mr. Ollendick was found guilty of violating Chapter 145, Dangerous Building. The judge concurred with the city's assessment that the building is unsafe and dangerous to the community.

In September, the city sent Mr. Ollendick a Notice and Order to Abate the Dangerous Building, giving him until November 1, 2024, to substantially complete the abatement unless other prior arrangements were approved. Mr. Ollendick did not appeal the Notice or make any arrangements with the City. Furthermore, he failed to make any substantial improvements to his building.

The work session aims to discuss the steps required to address this issue and the procedures necessary to resolve it. I have attached the procedures for review. Assistant City Attorney Ed Henry will be present at the work session to guide the City Council through the eminent domain process and answer any questions you may have.

Please let me know if you require additional information or have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Mick Michel", is written over the typed name and title.

Mick Michel,
City Administrator

FUERSTE, CAREW, JUERGENS & SUDMEIER, P.C.
MEMORANDUM

TO: City of Dyersville

FROM: FCJS

RE: Eminent Domain Procedure

DATE: November 15, 2024

Iowa Code § 6B provides for the following procedure that must be followed in a condemnation action by the initiating party, the “acquiring agency” (the City of Dyersville):

1. In all cases except those involving the acquisition of property with a minimal fair market value, the acquiring agency must obtain an appraisal of the property. *Id.* at § 6B.54(2).¹ The owner must be given an opportunity to accompany at least one appraiser during the inspection of the property. *Id.* In the case of a property with a low fair market value, the acquiring agency may adopt a procedure to waive the appraisal. *Id.* The acquiring agency must then mail, by ordinary mail, a copy of the appraisal to the persons and/or entities who have an interest in the property, at least ten days prior to the initiation of negotiations. *Id.* at § 6B.45.

2. the acquiring agency must make a good faith effort to negotiate with the owner to purchase the property interest before filing an application for condemnation or proceeding with the condemnation process. *Id.* at § 6B.2B. The acquiring agency may not make an offer to purchase the property that is less than the fair market value established in the appraisal. *Id.* The purchase offer must include provisions for payment to the owner of expenses, including relocation expenses, recording fees, transfer taxes, penalty costs for full or partial prepayment of any preexisting recorded mortgage, and incidental expenses. *Id.*; see also *Id.* at § 6B.54(10). Rather than paying a purchase price equal to or more than the fair market value of the property plus relocation expenses, the acquiring agency may make an offer equal to one hundred thirty percent of the appraisal amount plus all other expenses previously listed. *Id.* at § 6B.2B. The governing body for the acquiring agency must approve the use of condemnation and there must be a reasonable expectation that the applicant will be able to achieve its public purpose, comply with all applicable standards, and obtain the necessary permits.

3. The acquiring agency must send a notice of a proposed document authorizing the acquisition of property by eminent domain to each property owner and

¹ No Iowa case law exists on what constitutes property with a “low fair market value” under this Section.

contract purchaser of record of the property at least fourteen days before the meeting at which the proposed authorization will be considered for adoption by the acquiring agency. *Id.* at § 6B.2D. The notice must include the date, time, and place of the meeting, and a copy of the proposed document authorizing the acquisition of the property. *Id.* The notice must also contain a statement of individual rights with respect to the acquisition of property and the availability of relocation benefits. *Id.*; *see also Id.* at § 6B.2A(f). The notice must also contain a statement that the persons receiving the notice have a right to attend the meeting and to object to the proposed acquisition of the property.

4. The acquiring agency must prepare a written application containing: 1. A description of all property in the county affected or sought to be condemned in tracts not exceeding one-sixteenth of a section, or if the land consists of lots, by the numbers of the lot and block, and plat designation; 2. A plat showing the location of the right-of-way or other property sought to be condemned with reference to such description; 3. The names of all record owners of the different tracts of land sought to be condemned or otherwise affected, and the place of residence of these persons as known to the acquiring agency; 4. The purpose of the condemnation; 5. A request for the appointment of a commission to appraise the damages; 6. A showing of the minimum amount of land necessary to achieve the public purpose and the amount of land to be acquired by condemnation for the public improvement; and 7. A statement indicating the efforts made by the applicant to negotiate in good faith with the owner to acquire the private property sought to be condemned. *Id.* at § 6B.3(1). The applicant must then mail a copy of the application by certified mail to the owner at the owner's last known address, to any contract purchaser of record of the property, to any tenant known to be occupying the property, and to any record lienholder or encumbrancer of the property at the lienholder's or encumbrancer's last known address. *Id.* at § 6B.3(2)(a). The applicant must also publish the application once in a newspaper of general circulation in the county between four and twenty days before the meeting of the compensation commission to assess damages. *Id.* Rather than mailing and publishing the application, the acquiring agency may also personally serve the application. *Id.* at § 6B.3(2)(b). The county recorder must then file and index the application in the record of deeds which constitutes constructive notice to all parties that a proceeding to condemn the property is pending so that no interest can be acquired by third parties against the applicant's rights. *Id.* at § 6B.3(3)(b)-(c). The county recorder must also file a copy of the application with the secretary of state. *Id.* at § 6B.3(b). An owner of the property may bring an action to challenge the exercise of eminent domain authority in the district court of the county in which the property is located. *Id.* at § 6B.3A.

5. The chief judge of the judicial district will then select six people from a list annually gathered by the board of supervisors who will constitute a compensation commission to assess the damages to all property to be taken by the applicant and located in the county. *Id.* at § 6B.4(2)(a). The commission must consist of four persons who own city property when the property to be condemned is not agricultural, and two owners of agricultural property. *Id.* The chief judge will also select a chairperson from the six people selected. *Id.* at § 6B.4(2)(b). The acquiring agency and the property owner may each challenge one commissioner without cause at least seven days prior to the meeting of the compensation commission. *Id.* at § 6B.5(2). If a commissioner is stricken or otherwise

unable to act, the sheriff will select and notify an alternate commissioner at least twenty-four hours before the meeting. *Id.* at § 6B.5(3).

6. The sheriff will then coordinate the meeting of commissioners. *Id.* at § 6B.6. Before said meetings, all commissioners must file with the sheriff a written oath that they will to the best of their abilities faithfully and impartially assess damages and make a written report assessing the damages to the sheriff. *Id.* at § 6B.7. At any time after the appointment of commissioners, the acquiring agency or any lienholder of the land described in the application may have the damages to the land assessed by giving the other party thirty days' written notice. *Id.* at § 6B.8. The notice must specify the date and time when the commissioners will meet, view the premises, and assess the damages. *Id.* Such notice must be personally served. *Id.* After service, the notice must be filed with the sheriff. *Id.* at § 6B.11.

7. The commissioners will meet at the time fixed in the notices under § 6B.8, view the property sought to be condemned, and assess the damages which the owner will sustain by reason of the appropriation. *Id.* at § 6B.14. The commission will then file its written report, signed by all commissioners, with the sheriff. *Id.* If requested by either the condemner or the condemnee, the commission must divide the damages into parts to indicate the value of any dwelling, the value of the land and improvements other than a dwelling, and the value of any additional damages. *Id.* In determining the fair market value of property, the commissioners shall not consider only the assessed value assigned to such property for purposes of property taxation, but also consider personal property which is damaged, destroyed, or reduced in value. *Id.* at § 6B.14(3)-(4). The owner occupying the land which is proposed to be acquired by condemnation must then be awarded a sum sufficient to remove such owner's personal property from the land to be acquired, as well as the reasonable costs of moving the personal property from the land to a point no greater than fifty miles. *Id.* at § 6B.14(5). Such moving costs may not exceed \$5,000 per person occupying the land. *Id.*

8. After the commission delivers an appraisal of damages to the sheriff, the sheriff shall give written notice, by ordinary mail, to the condemner and condemnee of the date on which the appraisal was made, the appraisal amount, and that any interested party may, within thirty days from the date of mailing the notice, appeal to the district court by filing a notice of appeal with the district court and by giving written notice to the sheriff that the appeal has been taken. *Id.* at § 6B.18. If no appeal is taken, the appraisal of damages returned by the commissioners is final. *Id.* at § 6B.17.

9. Thirty days after the date of mailing the notice of appraisal of damages, the sheriff must file with the county recorder the following papers: 1. A certified copy of the application for condemnation; 2. All notices, together with all returns of service endorsed on the returns or attached to the returns; 3. The report of the commissioners; 4. All other papers filed with the sheriff in the proceedings; 5. A written statement by the sheriff of all money received in payment of damages. *Id.* at § 6B.35.

10. When damages are payable from public funds, the sheriff or clerk of district court shall certify to the officer, board, or commission having power to audit claims for the purchase of such property, the amount payable to each claimant, and separately, a detailed statement of the cost legally payable from such public funds. *Id.* at § 6B.31. The acquiring agency must pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs. *Id.* at § 6B.33. The condemnee must submit an application for fees and costs prior to adjournment of the final meeting of the compensation commission held on the matter. *Id.* Interests in the property do not pass to the acquiring agency until damages have been finally determined and paid. *Id.*

11. Upon the filing of the commissioners' report with the sheriff, the applicant may deposit with the sheriff the amount assessed, take possession of the land condemned, and proceed with the improvement. *Id.* at § 6B.25.