

ITEM # 26
DATE February 12, 2008

COUNCIL ACTION FORM

SUBJECT: NOTICE OF INTENT TO COMMENCE THE RAW WELL WATER TRANSMISSION PIPELINE PROJECT

BACKGROUND:

The 2007-08 Capital Improvement Plan budget includes \$50,000 for purchase of right-of-way easements for the raw well water transmission pipeline. In the summer of 2007, Water and Pollution Control Department staff began the preliminary planning. There are three main objectives for this public improvement project with a total estimated cost of \$4,000,000.

1. Significantly increase the productivity of the city's existing well field by approximately one million gallons a day by reducing pipe friction losses
2. Extend the well piping system closer to future well fields
3. Provide increased reliability and redundancy for approximately 65 percent of the current supply capacity

In October 2007, FOX Engineering Associates, Inc. was retained as the engineering consultant to assist with detailed planning and design. Staff invited the potentially affected property owners to an open house on November 27, 2007. The primary purpose of the open house was to assist property owners in understanding the need for the project. It also allowed those potentially affected to ask questions and give feedback to staff. Staff have worked with FOX Engineering to identify the most cost-effective and feasible route for the 30-inch pipeline. This route when finalized will require permanent and temporary construction easements from up to nine different property owners. Staff are continuing to work with property owners to identify a final route for the 30-inch pipeline. The next step after the route has been finalized will be to begin acquiring permanent and temporary construction easements so that final design and preparation of plans and specifications can be completed. Efforts have been made to discuss the pipeline project with each of the affected property owners. In addition, staff have made efforts to contact residents in which permanent easements will not be required but construction-related disruptions will occur. Staff are hopeful that with more discussions, voluntary agreements on the purchase of easements can be reached; but no offers have been made.

Provisions from Section 6B.2A of the Iowa Administrative Code requires written notification to each potentially affected property owner at least 30 days prior to the time

the City Council adopts a measure to declare its "intent to proceed with a public improvement and acquisition, by condemnation if necessary, of the property." Although staff are hopeful the easements required could be negotiated without condemnation, it is conceivable that an agreement for a voluntary sale may not be reached; and condemnation might become necessary sometime in the future. Therefore, the City is required by law to notify all potential property owners before actually moving ahead with any part of this project. The attached form meets the requirements set forth by Iowa law. In addition to the legal notice, staff have made efforts to keep affected citizens informed by mailing and posting to the department's website project updates to assist them in understanding the various phases of the pipeline project.

At this time, staff request Council declare the city's intent to commence the raw well water transmission pipeline project and set March 25, 2008 as the date of the public hearing. Staff will then notify the property owners and initiate appraisals on the parcels identified for purchase of easements for the raw well water transmission pipeline.

ALTERNATIVES:

1. Approve the notice of intent to commence the raw well water transmission pipeline public improvement project, set March 25, 2008 as the date of the public hearing, and authorize staff to send notification to all affected property owners.
2. Do not initiate any activity on this project at this time.

MANAGER'S RECOMMENDED ACTION:

The raw well water transmission pipeline project is an important component of the water utility's source water development plan. The pipeline will serve all customers of the water utility by providing increased reliability and redundancy for the raw water delivery system and will actually increase the available raw water capacity. Staff are working closely with the consultant to prepare a route that minimizes the cost to all customers, while minimizing the impacts to property owners. Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1 and approve the notice of intent to commence the public improvement project and send notification to all affected property owners.

**NOTICE OF A PUBLIC HEARING TO CONSIDER A PROPOSED PUBLIC
IMPROVEMENT PROJECT TO
CONSTRUCT A RAW WELL WATER TRANSMISSION PIPELINE**

To owner(s) and any contract purchaser(s):

Name _____
Address _____

Name _____
Address _____

Under the provisions of Section 6B.2A of the Code of Iowa, a governmental body which proposes to acquire property under power of eminent domain for a public improvement project is required to give notice of intent of a proposed public improvement project to all property owners and contract purchasers, whose property or parts thereof, or interest therein, proposed to be acquired for the project, which may be subject to condemnation.

1. NOTICE OF PROPOSED PUBLIC IMPROVEMENT

Notice is hereby given that the City of Ames, Iowa (the Acquiring Authority) will consider giving final approval to fund the site-specific design, the selection of the proposed route or site location for this public improvement, and to authorize the completion of this public improvement. The Acquiring Authority proposes, but has not yet given final approval, to open negotiations to acquire the property, easement(s), or other rights in real property necessary to construct this public improvement, or to institute condemnation proceedings, if necessary to do so.

2. DESCRIPTION OF THE GENERAL NATURE OF THE PUBLIC IMPROVEMENT

The proposed public improvement project is as shown on a project plan prepared by: FOX Engineering Associates Inc., Ames, Iowa; and consists of approximately 14,000 feet of 30-inch water main for the purpose of conveying raw water from city wells to the water treatment plant.

3. INTENDED USE OF PRIVATE PROPERTY TO BE ACQUIRED

- A. The proposed route or site location of the above-described public improvement is shown on the project plan.
- B. If the Acquiring Authority undertakes to construct the above-described project, it will be necessary to acquire land for water pipeline purposes and, as may be necessary, to acquire permanent water main easements and temporary construction easements by negotiated purchase; otherwise, it will be necessary for the City to proceed to institute condemnation to acquire the property rights needed to construct and maintain the public improvement.

4. ACTION REQUIRED TO PROCEED WITH THE PROJECT: OPPORTUNITY FOR PUBLIC INPUT

In order to proceed with the above-described project and complete the acquisition of property and property rights needed for the project, the Acquiring Authority will hold a public hearing to consider giving final approval to fund the site-specific design for the public improvement, to make a final selection of the route or site location for the public improvement, to proceed with the construction of the project, and to authorize acquisition of private property rights needed for the project by condemnation proceedings, if necessary, on the 25th day of March 2008. You may appear in person at the public hearing and provide input into this process. You may also contact the Acquiring Authority in writing not later than 12:00 p.m. the 25th day of March 2008.

You may contact Christina Murphy, P.E., Assistant Director, Water & Pollution Control Department at 300 E. 5th St., Bldg. 1, Ames, Iowa 50010, and by phone at 515-239-5150 for information regarding the public improvement.

5. TIME, DATE, AND PLACE FOR PUBLIC HEARING

The public hearing will be held at 7:00 p.m. on the 25th day of March 2008.

The Project Plan and Statement of the Rights of Individual Property Owners are on file and available for review at the Ames Water and Pollution Control Department, 300 East 5th St., Building 1, Ames, IA 50010.

(Printed Name & Title)

_____, Iowa

Attachment: Statement of the Rights of Individual Property Owners

Timeline Regarding the Raw Well Water Transmission Pipeline

Below is a preliminary timeline regarding the formal process the City of Ames must go through in accordance with the Iowa Administrative Code (IAC) regarding public improvement projects that require the purchase of right of way easements and may be subject to the use of eminent domain. The City is currently in the process of hiring a certified appraiser to conduct appraisals for those properties that will require the purchase of easements.

February 12, 2008	30-Day Notice of Public Hearing regarding the public improvement project declared at City Council Meeting. These are required to be mailed to property owners that easements for the project are required. It will also be mailed to those that will be temporarily impacted during the construction process (ie. 6 th Street residents).
March 25, 2008	Public hearing for Public Improvement Project. Council will approve a resolution deeming the project necessary and allow the project to proceed
March 28, 2008*	Preliminary easement documents with offers based on certified appraisals will be sent to affected property owners.
April 9, 2008*	After a 10 day waiting period as stated in the IAC, city staff and their representative (Graham Land Acquisition Associates) will contact property owners to begin processing the easement documents and conduct any additional negotiations.
Aug/Sept 2008*	Preliminary Plans and Specifications are approved, Bid letting, and Contract Award
October 2008*	Construction Begins
October 2009*	Estimated project completion

* These dates are preliminary and subject to change.

STATEMENT OF THE RIGHTS AND BASIC PROTECTIONS OF INDIVIDUAL PROPERTY OWNERS

08/09/06

1. **Just Compensation** – The property owner has the right to receive just compensation for the property. Article 1, Section 18 of the Iowa Constitution.
2. **Description of Land Furnished** – When a fee simple interest is acquired the Acquiring Agency shall provide a legal description of the part taken and a legal description of the remainder compatible with the property owners existing abstract description of the entire tract. A centerline description is compatible only when it contains reference points which are part of and tied to the abstract description. §6A.20, *Code of Iowa*.
3. **Opportunity to Accompany the Appraiser** – Except where the property or rights in property to be acquired are minor or they have a low market value, the Acquiring Agency will appraise the property. The property owner will be given the opportunity to accompany the appraiser to inspect the property. §6B.45 and §6B.54(2), *Code of Iowa*.
4. **Appraisal** – The appraisal shall as a minimum include an itemization of the appraised value of the real property or interest in the property, any buildings on the property, all other improvements including fences, severance damages and loss of access. §6B.45 and §6B.54(2), *Code of Iowa*.
5. **Compensation Estimate** – Where the property or rights in property to be acquired are minor or they have a low market value, the Acquiring Agency may waive the appraisal and in lieu of an appraisal may estimate compensation required to pay for the acquisition and for any damages caused by the construction of the project. §6B.54(2), *Code of Iowa*.
6. **Notice of Methods and Factors used by Utility to Determine Offer** – The methods and factors used by a utility in arriving at the offered price in lieu of an appraisal must be provided by certified mail to the owner of record 30 days prior to negotiations and this must include the range of cash amount of each component. §6B.45 and §6B.54 (3), *Code of Iowa*.
7. **Offer to Acquire** – Before initiating negotiations for purchase of the property, the Acquiring Agency will establish and promptly offer to pay the full amount which it believes to be just compensation for the property. When an appraisal is required, this amount cannot be less than the fair market value the Acquiring Agency has established for the property or property interests to be acquired, or in the case of utility, not less than the amount indicated by the methods and factors used in arriving at the offered price for a voluntary easement. §6B.2B and §6B.54(1), (2) and (3), *Code of Iowa*.
8. **Mailing Appraisal** – When an appraisal is required, the appraisal upon which the Acquiring Agency relies to establish just compensation for the property shall be mailed in its entirety to the property owner not less than ten days prior to the date of the first contact with the property owner to commence negotiations, unless a written waiver of the right to receive the notice authorizing the immediate commencement of negotiations is obtained from the landowner. §6B.45, *Code of Iowa*.
9. **Uneconomical Remnants** – If the Acquiring Agency determines that the acquisition of only a portion of the property would leave the property owner with an uneconomical remnant or land that the Acquiring Agency determines to have little or no value or utility to the owner, the Acquiring Agency shall offer to acquire the remnant and may acquire the remnant by condemnation. §6B.54(8) and §6B.3(g), *Code of Iowa*.
10. **Donations** – After being fully informed of the right to receive just compensation and, where an appraisal is required, the right to have the property appraised, the person whose real property is being acquired may donate the property or any part or interest in the property or any compensation paid for it. §6B.54(9), *Code of Iowa*.
11. **Moving Buildings** – The property owner may move buildings onto remaining property, either at the expense of the Acquiring Agency or the Acquiring Agency may move the building. The cost to move buildings is not an additional element of damages which would permit unjust enrichment or a duplication of payments. §6B.44, *Code of Iowa*.
12. **Moving or Replacement of Fence** – The property owner may move or replace an agricultural fence onto remaining property either at the expense of the Acquiring Agency or the Acquiring Agency may move or replace the fence. The cost to move or relocate a fence is not an additional element of damages which would permit unjust enrichment or a duplication of payments. §6B.44, *Code of Iowa*.
13. **Good Faith Negotiations** – The Acquiring Agency will make a good faith effort to negotiate the purchase of private property before filing an application for condemnation, or otherwise proceeding with the condemnation process. You will receive an explanation of the offer and be provided a reasonable opportunity to consider the offer and to suggest modifications in the proposed terms and conditions of the purchase. A change in the offer will be made if information you provide or information is otherwise obtained in the negotiations indicating a need to do so. §6B.2A(1)(f), §6B.2B, §6B.3(1) and §6B.54(1) & (6), *Code of Iowa*.
14. **Negotiations with Owner, Tenant, or their Attorney or Attorney in Fact** – The Acquiring Agency will make a diligent effort to personally contact and will communicate directly with property owners and their tenants or with their attorney or other representative to explain the project, the acquisition process, the offer to purchase, and relocation assistance benefits and payments. §6B.2B, §6B.54(1) & (6), *Code of Iowa*. Owners and tenants have the right to be represented by legal counsel or other representative, but solely at their expense. 761 IAC 111.6(4) of the Iowa Administrative Code.
15. **Relocation Assistance** – In the event of the acquisition of a residential dwelling, business premises, farming operation, nonprofit organization or outdoor advertising display, the owner or other person occupying the property is entitled to receive relocation assistance. §6B.42(1) & (2) and §316.1(5)(a)(3) & (b)(3), *Code of Iowa*.
 - They are entitled to relocation assistance and/or relocation benefits and payments for which they are determined to be eligible.
 - Determination on eligibility for a benefit or payment, or its amount, is appealable to the Acquiring Agency.
16. **Rental Charges Prohibited** – Rent shall not be charged to a person in possession of the property until all or a portion of a compensation award has been paid to the condemnee pursuant to Sections 6B.25, 6B.54(5), and 6B.60, *Code of Iowa*.

17. **Payment Assured** – No one will be required to surrender possession until the Acquiring Agency pays the agreed purchase price or has deposited the condemnation award with the Sheriff. §6B.54(11), *Code of Iowa*. At the time damages are paid the Acquiring Agency shall also give written notice to the property owner of the right to purchase property not used for 5 years for the purpose for which it was acquired. §6B.56A(3), *Code of Iowa*.
18. **90-Day Notice** – No one will be required to move from a dwelling or move the business or farm operation without 90 days written notice of the date by which the move is required. §6B.54(4), *Code of Iowa*.
19. **Reimbursement of Transfer Cost** – As soon as practicable after the Acquiring Agency's payment of the purchase price, or after the Acquiring Agency's deposit of the condemnation award, the Acquiring Agency will reimburse the property owner for the recording fees, transfer taxes, and similar incidental expenses to convey the property, and certain mortgage prepayment penalties. §6B.54(10), *Code of Iowa*.
20. **Limitation on Possession** – The property owner will not be required to surrender possession of the property owner's residence, dwelling house, orchard, garden, or outbuilding if the residence or dwelling house is also acquired until the damages have been fully determined or paid. For this purpose, outbuildings means structures and improvements located in proximity to the property owner's residence. §6B.26, *Code of Iowa*.
21. **Impartial Condemnation Proceedings Provided** – If the property is to be acquired by an exercise of the power of eminent domain, the Acquiring Agency shall comply with the following procedures.
 - If necessary, the Acquiring Agency will commence formal condemnation proceedings and shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of a taking of the owner's real property. §6B.54(7), *Code of Iowa*.
 - Any other appraisals made on the property as a result of the condemnation proceeding shall be made available to condemnees upon request. §6B.45, *Code of Iowa*.
 - A copy of application for condemnation will be either mailed by certified mail to the property owner, contract purchasers of record, tenants known to be occupying the property, and to record lienholders and encumbrancers or, in lieu of mailing, may be served in the manner provided by the Iowa rules of civil procedure for the personal service of original notice. §6B.3(2), *Code of Iowa*.
 - The Acquiring Agency will mail a copy of the list of compensation commissioners to the property owner or, in lieu of mailing, the Acquiring Agency may cause the list to be served upon the owner of the property in the manner provided by the Iowa rules of civil procedure for the personal service of original notice. §6B.4, *Code of Iowa*.
 - The property owner may without cause challenge one of the compensation commissioners selected by the Chief Judge. §6B.5, *Code of Iowa*.
 - The owner of property described in the Application for Condemnation may challenge the exercise of eminent domain authority in the District Court. §6A.23 and §6B.24, *Code of Iowa*.
22. **Costs and Attorney Fees** – In the event its property is condemned and property owner is awarded an amount by the compensation commission which exceeds by ten percent (10%) the Acquiring Agency's final offer to the property owner, the Acquiring Agency will pay the reasonable attorney fees and costs, including the reasonable cost of one appraisal, incurred by the property owner in the condemnation proceedings, as determined by the compensation commissioners. §6B.33, *Code of Iowa*.
23. **District Court Appeal** – In the event the property is condemned and property owner or tenant is dissatisfied with the award of the compensation commission, the property owner or tenant is entitled to appeal the commission's award to the District Court. §6B.33, *Code of Iowa*.
24. **Right to Renegotiate** – The property owner will have five years from the date of settlement or condemnation to renegotiate construction or maintenance damages not apparent at the time of such settlement. §6B.52, *Code of Iowa*.
25. **Resale of Acquired Property** – If the property owner's property is condemned but is not used for the purpose identified in the application for condemnation or if the property is used for the purpose stated in the application and the Acquiring Agency seeks to dispose of any part of the property by sale to a private person within 5 years after the acquisition of the property, the Acquiring Agency shall first offer the property for sale to the prior owner or the prior owner's successor in interest. §6B.56(1), *Code of Iowa*.
 - The Acquiring Agency shall give the prior owner or successor in interest prior written notice of intent to sell the property or any part of the property not used for the purpose for which it was acquired and the 60-day right to purchase the property for its current appraised value or the fair market value of the property at the time it was acquired plus cleanup costs incurred by the Acquiring Agency, whichever is less. §6B.56(2), *Code of Iowa*.
 - When property is acquired by condemnation for other than street or highway projects and has not been used for the purpose for which it was acquired for 5 years, the Acquiring Agency shall within 60 days adopt a resolution reaffirming the purpose for which the property will be used or to dispose of the property and to offer the property for sale to the prior owner. §6B.56A, *Code of Iowa*.
 - The Acquiring Agency, having control over unused highway right of way, shall notify both the person who owned the land at the time it was acquired and the present owner of adjacent land from which the unused right of way was acquired either by purchase or condemnation of their right to be heard and to make offers to purchase the property within 60 days and, where their offer equals or exceeds any other offer and the fair-market value of the property, to be given preference to purchase the land. §306.23, *Code of Iowa*.
 - If property is acquired by condemnation or by otherwise exercising the power of eminent domain by an Acquiring Agency (other than the Iowa DOT), and the property is later sold by the Acquiring Agency for more than the acquisition price paid to the property owner, the Acquiring Agency will pay the property owner from whom the property was acquired the difference between the price at which it was acquired and the price at which it was sold by the Acquiring Agency, less the cost of any improvements made to or benefiting the property by the Acquiring Agency. §6B.59, *Code of Iowa*.
26. **Notice of the Right of Prior Owner to Petition for Sale of Condemned Property at the Time Damages are Paid to the Owner** – Where property acquired for non-street or highway projects has not been used for the purpose it was acquired for 5 years. §6B.56A(3), *Code of Iowa*.
27. **Limitations of Statement of Individual Rights** – These individual rights are derived from Chapters 6A and 6B of the Iowa Code as revised by House File 2351 effective July 14, 2006, and are intended to be a summary statement only. For a more detailed description of these rights, refer directly to Chapter 6A Eminent Domain Law, Chapter 6B Procedures Under Eminent Domain and Chapter 316 Relocation of Persons Displaced by Highways and the Iowa Administrative Rules implementing these code chapters. Copies of these laws and regulations can be obtained from the Acquiring Agency.