

COUNCIL ACTION FORM

SUBJECT: NEW WATER TREATMENT PLANT – INTENT TO FUND SITE-SPECIFIC DESIGN & AUTHORIZATION OF LAND ACQUISITION VIA EMINENT DOMAIN, IF NECESSARY

BACKGROUND:

In July of 2009, an Infrastructure & Needs Assessment report was published by FOX/HDR/BARR, joint venture engineering firms, regarding the future of water treatment for the City of Ames. The recommendation resulting from the assessment was to construct a new lime softening plant at a new location. At its July 14, 2009 meeting, Council gave its approval to the recommendation and directed staff to begin the planning process. On March 23, 2010, Council established the date of a public hearing on acquiring land for the project as May 11, 2010.

City staff has identified the most suitable location for the proposed water treatment plant as a 44.78-acre property owned by the United States Department of Agriculture - Agricultural Research Service (ARS) located at 1803 East 13th Street in Ames. Approximately 25 acres of the site is buildable, with the remaining ground being steeply sloped topography.

The ARS is amenable to making this land available to the City for development of the new water treatment plant. However, according to ARS staff, the site is not available for outright purchase for cash. Instead, they proposed that the City acquire other land adjacent to their main campus on Dayton Avenue, after which a transaction can be made for an exchange of land.

In conversations with the local ARS administrators, two uses for the new land were described. First, ARS would use the ground to grow feed crops for its own animals. ARS has historically grown its own feed on its Dayton Avenue campus. However, with the recently completed construction on the campus, a number of acres were taken out of production. The new ground would partially restore the number of acres being farmed. The second use would be for manure application. ARS has indicated that they do not have plans for an increase in the number of animals being managed on the site; and, as such, the volume of manure being land-applied will be in line with what is currently being applied on its existing property.

On March 19, 2010, ARS staff sent City staff an initial indication of parcels of interest. A formal letter of interest from the ARS was received in the office of the Mayor on May 3, 2010, outlining the requirements of what would be considered an acceptable land exchange from ARS' perspective. Final confirmation of the selection and prioritization of parcels of interest to ARS for trade was detailed in the letter.

Should it be needed, the City has authority to acquire all or part of the identified property(ies) by condemnation (eminent domain) for this public improvement. The City Attorney has reviewed Iowa Code Section 6A.3, which gives the state the power to convey condemned lands to the federal government. Iowa Code Section 6A.4(6) confers the rights of the State of Iowa to cities. There is a generally recognized condemnation practice referred to as substitute condemnation. Substitute condemnation has specifically been upheld under the separate-public-use doctrine. This doctrine says that a substitute condemnation is legal where the third person's property is also taken for a public use. Because the City of Ames would be condemning third-party property for the benefit of another government agency, the ARS, this legal doctrine would apply. While it is City staff's earnest intent to negotiate a voluntary sale, it is in the best interest of the City to follow the requirements of the Iowa Code in order to preserve the legal ability to acquire property by eminent domain. Staff is hopeful that, of the several potential properties of interest identified by ARS, there will be one owner who will voluntarily sell so that eminent domain can be avoided.

Construction of a new water plant at the proposed new location will also require property easements to run transmission lines and utilities to and from the new plant. The procedure to acquire easements is identical to that followed to purchase property.

Provisions from Section 6B.2A of the Iowa Code require 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." At the March 23, 2010 Council Meeting, that hearing date was set for May 11, 2010. Notifications of affected property owners were sent April 9, 2010, and a notice was published in *The Tribune* on April 27, 2010 in accordance with the IAC Section 6B.2A.

In addition to the legally required notifications, City staff held an open house for property owners on May 3, 2010 in an effort to explain the project and the land acquisition process being followed. That meeting was not a requirement of the Iowa Code, but was arranged by City staff to share as much information with property owners as possible. Property owners received a notice of the informational meeting by mail, as well as a personal phone call.

The meeting was attended by approximately half of the notified property owners, as well as owners of a nearby property and the press. Staff explained the land acquisition process and concerns of the owners were heard. Concerns expressed included the intended use of their land, use of eminent domain, property valuation, and property quantities, as well as concerns with the suitability of the proposed site for the water treatment plant. Attendees indicated that they would have liked to have had a representative of the ARS at the open house. Staff committed to invite a representative of the ARS to the May 11 Council meeting.

Staff recognizes the potential public concern of building a water treatment plant on land formerly used for animal research. Initial indications from both ARS and other local researchers indicate that there is no danger to human health from the activities previously conducted on this site. Nonetheless, prior to purchase of the land, the City will conduct the necessary technical evaluations to ensure the site is suitable. In addition, experts on activities that were conducted at the site will be contacted to obtain further reassurances. Protection of public health will be paramount in the decision making process.

A packet of information was provided to each attendee at the open house. Packets were also mailed to notified property owners who were not present. Four of the most relevant documents for Council are attached: Project Background, Land Acquisition and Easement Map, Iowa's Eminent Domain Process flowchart, and a copy of the letter of interest from ARS to the Mayor.

In order to proceed with negotiations with landowners, staff now requests that the City Council approve the Water Treatment Plant Public Improvement Project in accordance with 2009 Iowa Code, Title I, Subtitle 3, Chapter 6B, Paragraph 6B.2C. This will enable staff to perform due diligence, including obtaining valuations and environmental appraisals of the properties involved. **The authority to condemn is not conferred to staff by this action, and condemnation proceedings cannot commence unless City Council takes an additional separate action specifically approving condemnation of specific property.**

As was noted elsewhere, the ARS cannot convey the preferred property to the City of Ames in exchange for cash without specific enabling federal legislation. Council may wish to consider a request to Senators Harkin and Grassley and to Representative Latham in support of such legislation. If the ARS were able to sell the property outright without the requirement for payment in the form of a land swap, the need for substitute condemnation may be eliminated. If City Council desires to pursue this option, a separate motion giving direction would be appropriate. Staff would request that such a motion be in addition to authorizing negotiations for a voluntary sale in order to preserve the project timeline.

ALTERNATIVES:

1. A. Approve a resolution declaring the City Council's intent to fund the final site-specific design and to acquire, by condemnation if necessary, property for the construction of a new drinking water treatment plant.
- B. Authorize staff to pursue voluntary negotiations with property owners and the USDA Agricultural Research Service. Extension of final offers for voluntary sales, or proceeding with condemnation, if needed, will require later, separate Council approval before either action would be taken.

2. In addition to Alternative #1 above, pass a motion requesting assistance from our Congressional delegation for specific federal legislation to allow the ARS to convey property for cash. In order to not delay the project, the actions shown under Alternative #1 will occur concurrently.
3. Do not initiate any activity on this project at this time.

MANAGER'S RECOMMENDED ACTION:

Construction of a new water treatment plant for the community is a key action needed to ensure the continued supply of adequate potable water. It is also an important component of the water utility's long-term development plan. The new water treatment plant will serve all customers of the water utility by providing increased capacity to meet future water demand, as well as replace the aging infrastructure of the existing facility.

It is the desire of staff to negotiate a voluntary purchase of land that is acceptable to the USDA ARS in trade for the East 13th Street site identified as the preferred location of the new water treatment plant. Because of the importance of the project to the Ames community, staff members are following the steps dictated in Iowa Code that are necessary to preserve the option for the City Council to exercise its eminent domain authority. If a voluntary purchase agreement cannot be negotiated, City Council would have the final voice in proceeding with condemnation.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby declaring the City Council's intent to fund the final site-specific design and its intent to acquire property, by condemnation if necessary, for the construction of a new drinking water treatment plant. This alternative would also authorize staff to move forward with appropriate due diligence investigations of the proposed site for the new water treatment plant and property suitable for trade in lieu of payment to the USDA ARS.

If the City Council desires to explore the possibility of the City paying cash for the 13th property rather than a land trade, then Alternative #2 should be approved. This action will direct staff to pursue both land purchase strategies concurrently.



CITY OF AMES, IOWA
WATER AND POLLUTION CONTROL DEPARTMENT

**Ames Water Plant Project
May 2010**

Project Background

The Ames water utility was formed in 1891. The existing Water Treatment Plant (WTP) was constructed in 1927 as a two million gallon per day (MGD) iron removal facility. Numerous improvements and expansions over the past 86 years have expanded the treatment to include lime-softening and brought the current capacity to 12 MGD.

The facility is showing signs of serious deterioration. During late 2008 and early 2009, an extensive evaluation was performed to identify the infrastructure improvement and capacity expansions necessary for the utility to continue to reliably meet the needs of the Ames community. The end result of that study was a determination that the cost to renovate, modernize, and expand the existing facility would exceed the cost of constructing a new treatment facility. On July 14, 2009, the Ames City Council directed city staff to proceed with planning and design for a new water treatment plant.

The anticipated cost for the new treatment plant is currently estimated at \$50.1 million. The project will be funded in large part through a low-interest loan from the Iowa Drinking Water State Revolving Fund (SRF). Repayment of the loan will be made from utility revenues. A series of rate increases are anticipated over the next four years to account for the loan repayment.

Conceptual design work has already begun. An important early step in the design process is to secure a site for the new treatment facility.

Project Timeline

April 2008 – July 2009	Infrastructure and Capacity Needs Assessment
July 2009 – March 2011	Detailed Engineering Design
March 2010 – October 2010	Land Acquisition
April 2011 – June 2011	Bidding
July 2011 – March 2014	Construction
April 2014 – June 2014	Commissioning
July 2014	New Plant in Operation



United States Department of Agriculture

Research, Education, and Economics
Agricultural Research Service

APR 28 2010

Mayor Ann Campbell
Post Office Box 811
515 Clark Avenue
Ames, Iowa 50010

Dear Mayor Campbell:

I would like to express the interest of the Agricultural Research Service (ARS) in a proposed land exchange in Story County, Iowa, between ARS and the City of Ames. ARS is not able to commit to a legally binding agreement; however, ARS supports the concept and objective of the proposed exchange.

This proposal involves 44.78 acres, more or less, of improved Federal land currently administered by ARS as part of the National Animal Disease Center (NADC), located off 13th Street in Ames, Iowa. The research at NADC is constrained by limitations on its current land holdings related to ongoing operations.

Accomplishing this proposal will require that we address several matters which were discussed with the Ames Water and Pollution Control Department via teleconference on March 4, 2010. To allow ARS and the City of Ames to further assess the feasibility of an exchange proposal, the following, at a minimum, will be required:

- A description of the lands to be exchanged
- An agreement to obtain appraisals of the properties to be exchanged (Note: The appraisals shall be performed by a qualified appraiser, in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions.)
- A time schedule for the proposed environmental and suitability studies (Note: Thorough studies are necessary to determine the suitability and compliance with applicable environmental laws.)
- A description of the appurtenant rights to be exchanged (Note: The United States never warrants land titles and title to any lands conveyed would be by quitclaim deed from the Government. The U.S. Attorney General's Title Standards require that conveyance of lands to the Government be conveyed by warranty deed.)
- Permission by each party to physically examine the land offered by the other party



Office of the Administrator
1400 Independence Avenue, SW § Room 302-A § Jamie L. Whitten Federal Building
Washington, DC 20250-0300
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ARS does not have general land exchange authority. ARS is limited in authority to acquire land under the Agriculture Property Management Regulations in so as acquisitions of real property by purchase or exchange are only permitted where legislative authority has been provided and funds for the acquisition have been specifically appropriated. The Agency's current exchange authority is contained in Public Law 111-80, *Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 2010* and is limited to "land exchanges where the lands exchanged shall be of equal value or shall be equalized by a payment of money to the grantor which shall not exceed 25 percent of the total value of the land or interests transferred out of Federal ownership." If a proposed exchange would exceed the cash equalization authority provided in annual appropriations language, special legislation would be required.

On March 19, 2010, parcels of interest to ARS were identified to Mr. Steven DuVall, Assistant Director, Ames Water and Pollution Control Department, via e-mail. These parcels are listed below, in order of preference.

Property Number	Property Name	Description	Approximate Acreage
1	HR Holdings	west of the National Animal Disease Center (NADC), across Dayton Avenue	40
2	Griffith Century Farms, Limited Liability Corporation (LLC)	west of the NADC, across Dayton Avenue and adjacent (south) to Property 1 above	29.61
3	Griffith Century Farms, LLC	adjacent (north) to NADC	27.56
4	Sergeant Lease Royalty Trust	adjacent (north) to NADC and adjacent (east) to Property 3	22.56

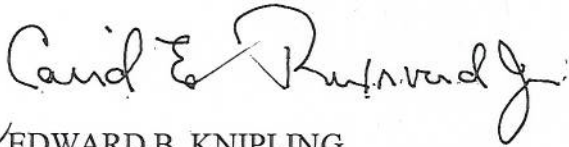
Upon determination by both parties that an exchange is feasible, ARS is willing to work with the City of Ames to see if this proposal can come to fruition. Carol Moran, Administrative Officer, and Judy Adams Morrison, Realty Specialist, will be the primary ARS contacts for this proposal.


Mayor Ann Campbell

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Carol may be reached on 515-337-7558 and Judy may be reached on 301-504-1230. Additionally, Departmental attorneys from the Department of Agriculture Office of the General Counsel will provide legal assistance on behalf of ARS.

Sincerely,



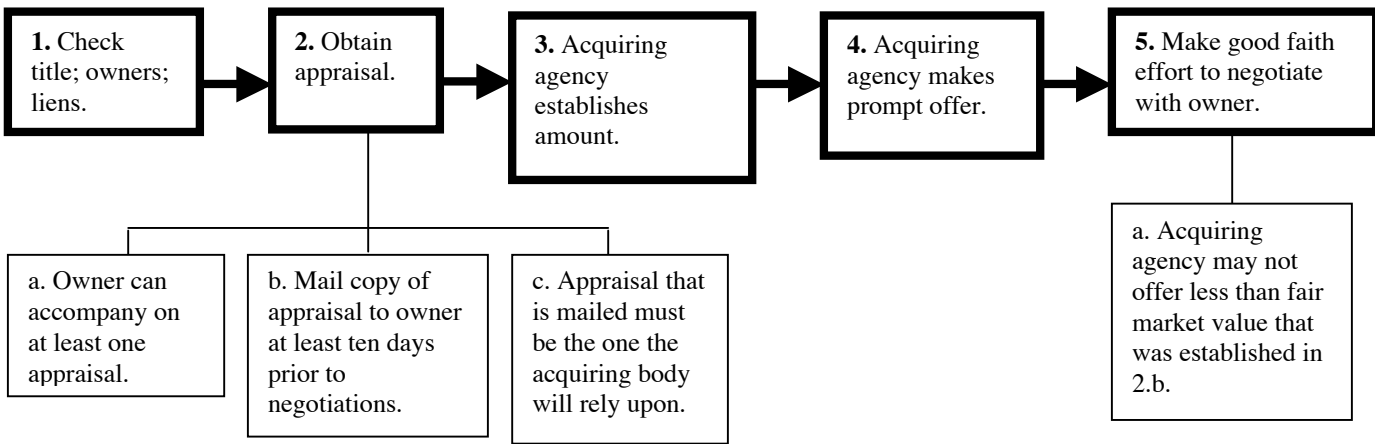
 EDWARD B. KNIPLING
Administrator

cc:

J. Dunn, Director, Water and Pollution Control Department
L. Chandler, MWA
D. Strub, MWA
P. Barry, FD
E. Reilly, FD
L. Wurzberger, FD
C. Moran, MWA
W. Myers, MWA
B. Holzinger, MWA
T. Golden, MWA
J. Adams Morrison, FD

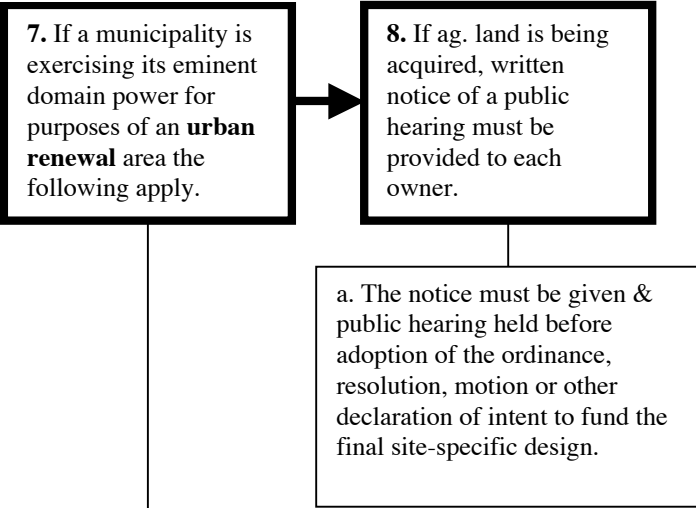
Iowa's Eminent Domain Process

INITIAL REQUIREMENTS – ATTEMPT A NEGOTIATED SETTLEMENT (STEPS 1-5)

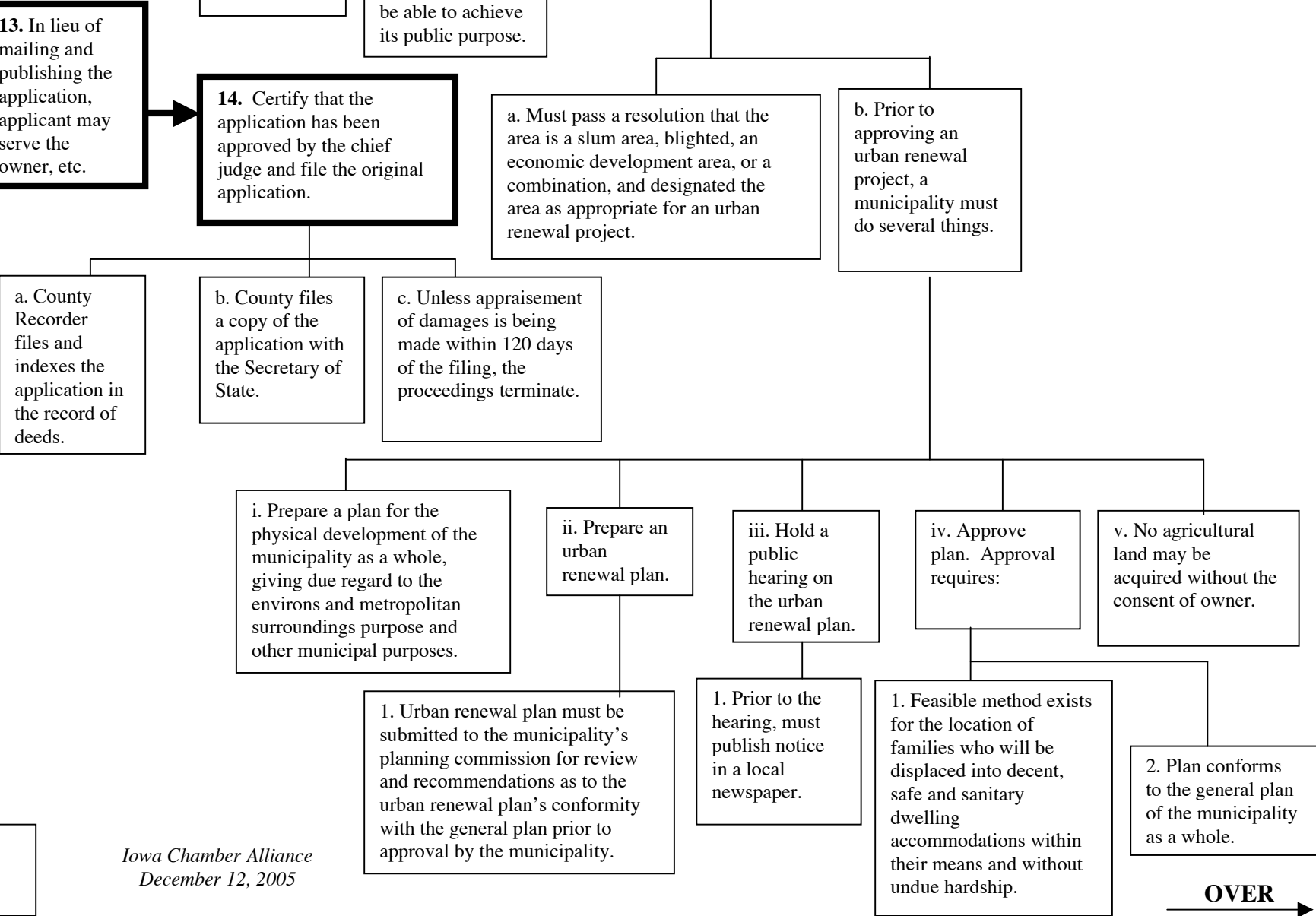
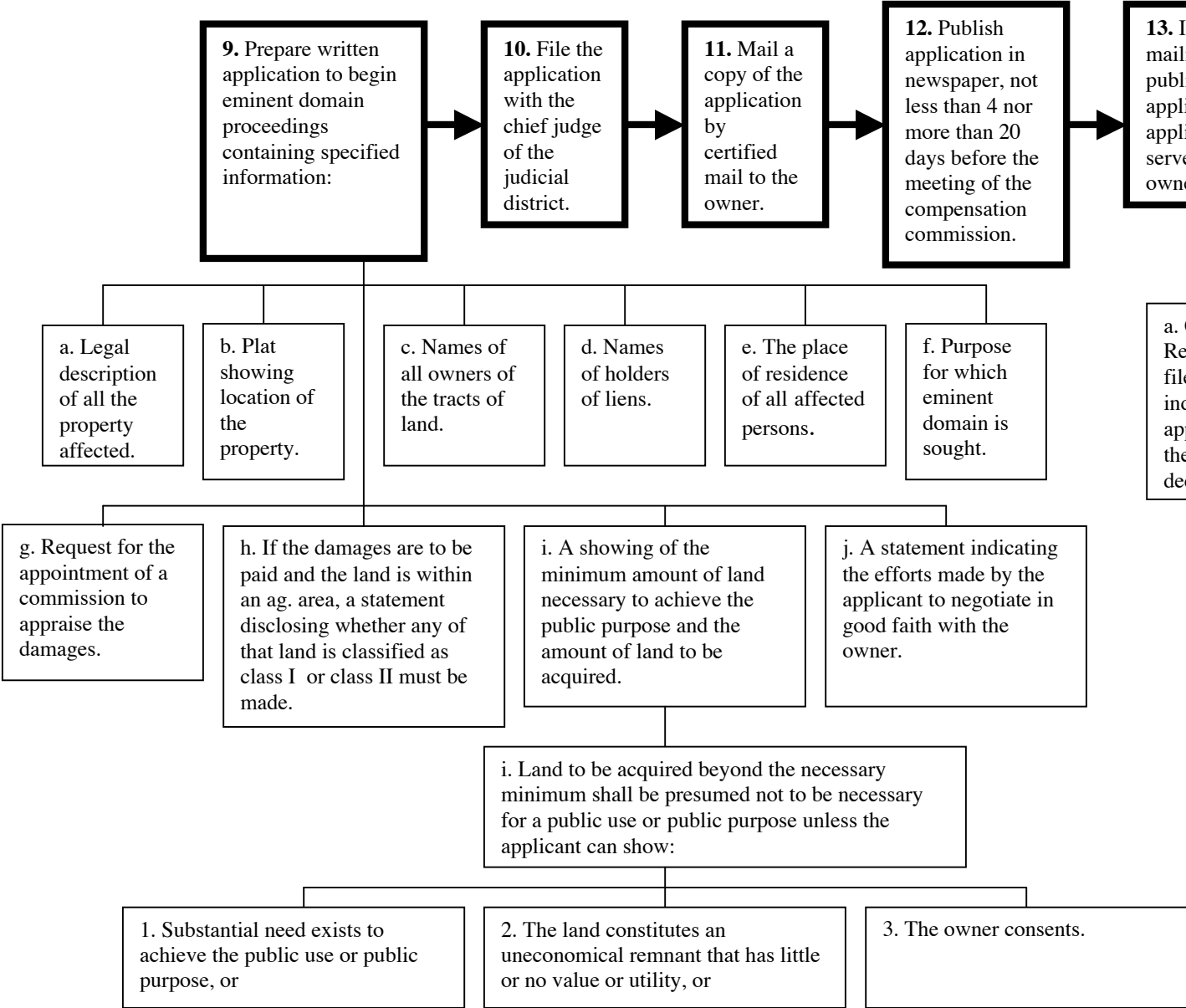


APPROVAL OF USE OF EMINENT DOMAIN – (STEPS 6-8)

URBAN RENEWAL

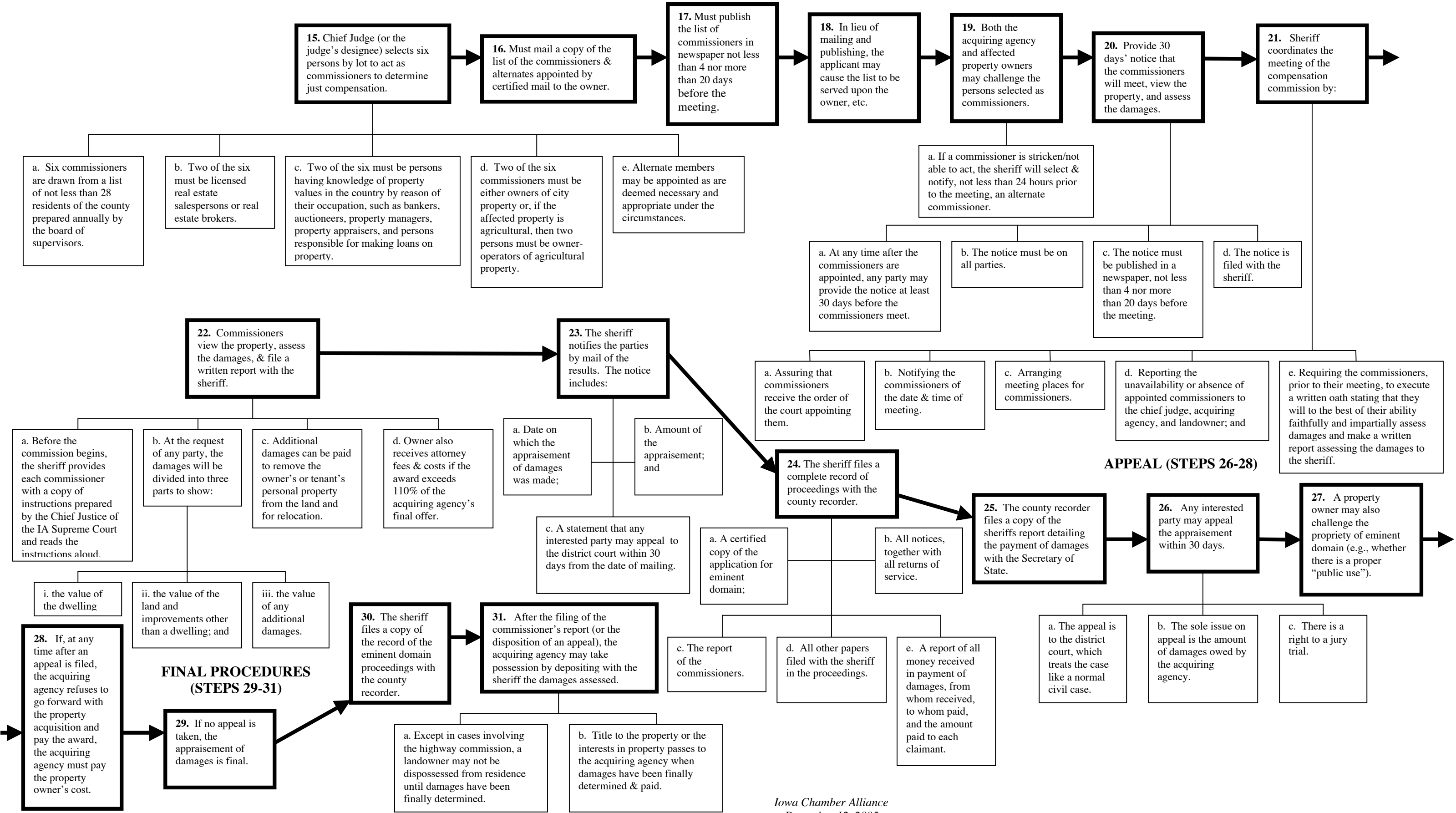


COMMENCE JUDICIAL PROCEEDINGS (STEPS 9-14)



Iowa's Eminent Domain Process

DETERMINING JUST COMPENSATION (STEPS 15-25)



Land Acquisition and Easements

