

The Eminent Domain Process
By Mark Truesdell
Attorney for the Preservation of Rural Iowa Alliance

Why should you, as a landowner from whom Clean Lines seeks an easement, hold out against signing a voluntary easement?

- 1) To stand and be clearly counted among those who oppose this line. One who has filed an Objection with the IUB not withdrawn by the time of the IUB Hearing is clearly counted among those opposing the line. An Objector receives notice of significant proceedings, and has the right to be heard and to cross-examine witnesses at the hearing itself.
- 2) To be able to take two swings at the ball:
 - First, at the IUB hearing. You would have the right to oppose Clean Line at the IUB Hearing as it requests from the IUB the legal authority to condemn an easement over your land. Clean Line must establish at the IUB hearing two assertions to the satisfaction of the IUB:
 - That Clean Line needs the easement over your parcel for the public use; and
 - The easement sought will not unreasonably interfere with the use of your land.
 - Second, if IUB does grant Clean Line eminent domain authority over your land, before the County Compensation Commission on the issue of valuation a/k/a damages. If granted eminent domain authority, Clean Line must then commence the procedure of condemnation pursuant to chapters 6A and 6B of the Iowa Code. This procedure does not decide anew whether Clean Line may condemn your property for Clean Line's easement; that issue will have been already decided. This procedure will determine how much you will be paid for the easement condemned.

When you sign a voluntary easement you give up your right to take those two swings at the Clean Line ball. You also give up the chance of having Clean Line pay for your attorney and your appraiser.

If Clean Line is granted by the Iowa Utilities Board the power to condemn the easement over your land, what happens then?

- 1) Clean Line files an application with the Chief Judge of the Judicial District which includes your county. This application requests the appointment of a commission to appraise damages.; i.e. how much you are to be paid for the easement. Copies of the application are mailed to all interested parties and a copy is also published in a newspaper of general circulation in the county.
- 1) The applicant also bears a statutory duty to have negotiated in good faith. The statute further indicates that when the applicant has offered one hundred thirty percent of the amount of its own appraisal plus payment of the landowner's statutorily allowed expenses, the duty of negotiation in good faith has been met.

- 2) When the Chief Judge approves its application, Clean Line will file the approved application with the County Recorder. This filing constitutes legal notice to all parties that condemnation appraisal has commenced.
- 3) The Chief Judge then selects from a list of 28 persons annually named by the County Board of Supervisors, six (6) person to form a compensation commission to assess the damages to all property to be taken by Clean Line in the county. The Chief Judge appoints one of the six appointees Chair.
- 4) The applicant (Clean Lines) requests the appraisal of damages by the compensation commission.
- 5) The County Sheriff arranges for the meeting of the compensation commission.
- 6) The applicant (Clean Lines) then provides the landowner 30 days' written notice of the day and the hour when the compensation commission will meet, view the premises, and appraise the damages. The County Sheriff notifies the compensation commissioners.
- 7) Prior to the appointed time, the commissioners are not to communicate with either the applicant, the property owner, tenant, or their agents, about the proceeding.
- 8) At the appointed time, the compensation commission of 6 citizens is to view the land and assess the damages which the owner will sustain. This is a meeting in open session in which the commissioners may receive evidence. So the proceeding will be, in reality, in two parts: a) the Viewing; and b) the Hearing. In reality, the compensation commission might schedule several Viewings simultaneously and might consider several parcels at a single Hearing. Both the Viewing and the Hearing are in open session, but then the commission may deliberate in closed session to write its report.
- 9) The important part is often not the actual Viewing of the property. Without objection, the commission might proceed without a Viewing. The important part is likely to be the testimony of the appraisers at the Hearing. The property owner has a right to hire an appraiser. (If the commission's award is 110% of the last offer, the applicant is required to pay for the landowner's appraiser as well as the landowner's attorney and expenses.) The landowner is to submit an application for fees and costs prior to adjournment of the final meeting of the county compensation committee on the matter.
- 10) The applicant will almost certainly have its own expert appraiser. A "before and after" appraisal method is sometimes used. Sometimes, a running foot or square foot analysis is used.
- 11) The appraisers for both parties get to testify. The landowner gets to testify. Either party can also bring in other experts to testify; e.g. an agronomist or a civil engineer with expertise in soils.
- 12) Members of the compensation commission are to receive a per diem of \$200 and actual and necessary expenses for the performance of their duties. Clean Line is to pay these expenses.
- 13) The commission shall keep minutes of all its meetings. These minutes are to show the results of each vote taken and information sufficient to indicate the vote of each member present. The vote of each member present shall be made public at the open session. The minutes shall be public records open to public inspection.
- 14) The County Sheriff gives notice of the amount of the appraisal by ordinary mail to both parties.
- 15) Either party may appeal the commission's appraisal by filing a notice of appeal with the District Court within 30 days of notice of the appraisal.

- 16) If not appealed by that deadline, the commission's appraisal is final.
- 17) When Clean Line deposits the amount appraised with the Sheriff, Clean Line may take possession of the land and proceed with the improvement.