

Minutes of the Butler County Compensation Commission  
E911 Tower Acquisition Meeting  
February 27, 2025 1:30 p.m.  
Butler County Courthouse Meeting Room, Allison, Iowa

Commission Chairman David Kelm called the meeting to order at 1:30 p.m.

Commissioners Present:

David Kelm, Chair  
Kyle Mehmen  
Mark Gerdes  
Dana Uhlenhopp  
Cindy Kannegieter  
Lisa Schmitz

There were 14 total in attendance including commissioners and interested parties.

County Attorney David Kuehner began the discussion, presenting the property report and appraisal and other identifying information. Kuehner also queried whether all commissioners were familiar with the location and had visually inspected the location. There were varied responses from the commission members.

Gaylen Winterberg, owner of the property which is to be acquired, introduced himself. He was accompanied by his attorney, Gary Papenheim. Papenheim also wanted to be sure the committee was aware that Winterberg did not want the property to be condemned, through strenuous objection.

Kelm began discussion with review of appraisal and the value placed at \$100,000, noting it was done in 2022 and commented about possible appreciation since it had been done.

Kuehner was questioned by Kyle Mehmen about possible waiver of site-visit, or "survey" in the Assessment of Damages section in the Iowa Code section 6B.4. He clarified the code means visit the property with visual inspection in his interpretation.

There was internal discussion among members how the visit should occur and when.

Papenheim stated that Winterberg has more property around the condemned property, surrounding the pond. He stated that because frontage property will be taken, it limits access and therefore development of those three or four lots around the pond. Kelm questioned Winterberg if further development of the property had been considered. Winterberg stated he had wanted to sell lots. Winterberg also stated he had spent \$50,000 to build the pond in 2008.

Papenheim inserted an objection to the appraised value on Winterberg's behalf, stating a

portion of the pond was being taken, and that other considerations are not being considered including loss of value of surrounding land as the development of such is now not a possibility.

Kuehner stated that they needed a portion of the pond because of anchor guidelines to be sure they had enough room per structural requirements.

Dana Uhlenhopp inquired how this situation came about. Kuehner stated it started with Hawkeye Community College construction of the tower. Sheriff Jason Johnson further gave history of the property for the group. It had been owned by the Espositos, and then went to sheriff's sale and Winterberg bought it in 2008. After that, it went through a series of rental contracts split up between Winterberg, his son, and trusts. Originally it included rental of a much larger tower. Hawkeye had purchased the tower but did not own the land. They later sold it for \$1 to Butler County, the plan was for it to be used as an important feature for county safety as a 911 tower. Dana questioned if all remedies had been attempted, and Kuehner stated the acquisition is settled matter and previous discussions are not to be considered. There was brief discussion about rents and previous disagreements among the audience.

Kuehner directed all parties to return to the discussion of the value of the property as instructed.

Kelm also directed members to the property market value focus, and said other items can be settled in a court of law.

Uhlenhopp questioned if the \$1 purchase from HCC was correct and Papenheim confirmed it was so. Kelm asked if rent was being paid now. Papenheim affirmed. Kuehner stated these things were not relevant to the discussion of value. Kuehner stated the process has been completed prior to here, it's been condemned and the compensation board's role is just about establishing value.

Papenheim stated again that the appraisal does not consider damages to the rest of the property. Kelm stated that it is not possible to consider that, it makes assumptions. Papenheim gave an example of loss of value in another land instance.

Lisa Schmitz referred to #3 of Assessment of Damages which states in part that "the measure of the damages is the fair market value of the property immediately before the condemnation and before such value has been affected by the proposed public use". Schmitz added that as there was no plat for development the value should be based on the property immediately before the condemnation which does not appear to be actively being developed at that or any other time. Kelm said this is "blue sky", we can't know future value.

Papenheim said there should be a value set for the 4.74 acres for both before and after moving the tower.

Mark Gerdes asked if any other site had been considered. Johnson said moving the tower was not cost-effective. Winterberg stated the property was one of the highest sites in Iowa.

Mehmen asked what are the next steps in this process. Gerdes questioned if a new appraisal was needed. Mehmen stated it was not practical. Schmitz stated the added-value items Papenheim listed were not definable by an appraiser in her experience on the Review Board when examining appraisal challenges.

Mehmen stated it is hard to find like-kind parcels, and that some of the comparable parcels conditions of sale are unknown as well. He also stated that Winterberg bought the property with the tower on it.

Papenheim stated the lease of the land expired in 2015, and Winterberg negotiated the lease to go until 2020. He stated Winterberg believed that they had agreed to take the tower down, but instead sold for \$1 to the county and did not take it down.

Johnson stated that Winterberg needed to give permission to allow the county to buy it, which he did. Negotiations per this began on April 18, 2018 and the agreement was finalized in March 2020.

Mehmen wanted to make a motion to waive the visual requirement, but Kuehner wanted to take a further look at the Code regarding this before a motion. Kuehner read the code established in 2016.

Uhlenhopp made a motion to continue discussion in a closed meeting. Gerdes seconded the motion. The motion carried with all ayes and the commission went to a closed meeting.

Open session was resumed at 2:37 p.m. by order of Kelm and discussion began after the audience returned to the room.

Mehmen made a motion to approve an assessment of value of the property in consideration at \$105,000 and by March 6 all commission members will have a visual of the property by March 6 and will report that visit to the chair by email confirmation.

Arends seconded the motion.

Kelm called for a roll-call vote which was as follows:

Mehmen-aye

Kannegieter-aye

Schmitz-aye

Kelm-aye

Mehmen-aye

Uhlenhopp-aye

Kelm declared motion carried by all ayes.

Papenheim asked for an explanation of the value. He asked if loss of value of other property was considered.

Mehmen stated all things were considered in his determination of value.

Papenheim said you must itemize the values, so that we can know what the values are.

Kuehner read details of the code regarding other considerations which include:

- dwellings on property, there are none
- Personal property to be removed, there is none
- Any other considerations such as loss of property or consequential damages.

Mehmen stated the \$105,000 included any consequential damages.

Papenheim read to the commission the code which allows for the owner of the condemned property to request an itemization of all values.

Schmitz re-read a portion of the same code for interpretation of the commission.

Mehmen asked to amend his motion to include the \$105,000 value is the full property value at \$0 compensatory damages. Gerdes second. Kelm asked for ayes, all ayes by unanimous consent. Motion carried.

Papenheim asked Mehmen if he was saying the 4.74 A. property is the part condemned. Mehmen agreed and Kelm stated anything else would be outside our authority.

Kuehner stated there will be a formal report required with a signature from each commissioner. Discussion was held whether it could be electronic. Kuehner stated that how it is signed should not be discussed. It should be a decision by the commission.

Johnson stated he will follow the orders of the chair regarding any signatures.

Papenheim objected to electronic signatures and stated the board should develop a form. Mehmen stated the board will decide how we will sign and what form we will use. Gerdes stated it can't be recorded until it is done.

Mehmen made a motion to adjourn. Seconded by Uhlenhopp. The members adjourned by unanimous consent. Kelm adjourned the meeting.

Respectfully Submitted,

Lisa Schmitz