ACQUIRING RAILROAD CROSSINGS FOR UTILITIES USING EMINENT DOMAIN POWERS AS AUTHORIZED BY IOWA CODE SECTION 476.27, PART 1: The Legal Issues and Their Answers

Despite the Iowa Legislature’s good intentions in passing Section 476.27 Public utility crossing – railroad rights-of-way in 2004, the process to obtain a utility railroad crossing permit just does not seem to work. The City of Carlisle, Iowa, had the same apparent dilemma from which all cities and utilities have suffered. The City’s choice was to pay the $30,000 offered price or lose their sanitary sewer project construction schedule.

The whole point of Section 476.27 was to simplify the permit application process. The statute clearly applies not only to the railroad corporation, but to also the owner, operator, occupant, manager, or agent of a railroad right-of-way, or the railroad corporation’s successors in interest. Hawkeye Land Company is both the agent for the railroad with exclusive authority to issue the crossing permit for the railroad by agreements between the railroad and Hawkeye Land. Hawkeye Land is also the claimed successor in interest of the railroad as grantee of the railroad’s Quit Claim Deed.

Hawkeye Land still refused to issue railroad crossing permits even when the railroad has approved the design of the crossing until they are ready to do so and until the price is right. Section 476.27(3)(a), Powers not limited, provides some support for this position where it does not prevent the railroad and the utility from otherwise negotiating the terms and conditions applicable to a crossing or the resolution of any disputes. Hawkeye Land interprets this to mean there must be an agreement on the cost of the permit. They take this position even though the statute sets the fee at $750.

The next subpart of Section 476.27(3),(b), clearly states that the powers under the statute are not limited and do not impair the authority of the public utility to secure rights by easement pursuant to the exercise of the City’s or Utility’s Power of Eminent Domain.

Hawkeye Land’s refusal to issue a railroad crossing permit is based upon a claim that they are the landowner subject to the railroad’s easement right to operate a railroad.

In every case where the railroad held only an easement (estimated 70+% of the time in Iowa) there was no title for Hawkeye Land to have received. Where the railroad held only an easement to operate a railroad underlying fee title for a city street – title to the railroad crossing is held by the city subject to the railroad’s right of way easement. Where the railroad held only an easement at a county road crossing, the underlying fee is held by the adjacent private landowners subject to the county’s easement for highway purposes and the railroad’s easement for railroad purposes as stated in Iowa Code Section 327G.77 Reversion of railroad right-of-way.
Hawkeye Land’s only interest where the railroad held only an easement and thus no title to convey is as the agent of the railroad. As the railroad’s agent, Hawkeye Land is obligated to grant the railroad crossing permit for the statutory fee of $750.

In every case where the railroad did hold a fee, the railroad’s fee was conditioned on, and subject to, the railroad’s statutory obligation to grant crossing permits under 100+ year old Iowa Code Sections 327G.12, 327G.17, and the 2004 Iowa Code Section 472.67. Even so, the city cannot force Hawkeye Land to do what it refuses to do.

There are no special circumstances that would give rise to the utility’s right to petition the Utility Board for relief. Similarly, there is no emergency other than that caused by Hawkeye Land’s refusal to grant a crossing permit that would support the utility’s right to build the crossing through the emergency relief powers of Iowa Code Section 476.27(6).

The utility’s only option in this case is to plan and proceed to use its eminent domain powers.

Because of the importance of the subject, I have divided this Newsletter into three parts. Thus, the first part contains the correspondence to explain why it is necessary to develop a utility railroad crossing acquisition system that includes the use of eminent domain powers. This is necessary in order to assure the timely and successful completion of the public improvement project. The attached correspondence illustrates how this process should proceed.

The second part of this Newsletter, the June issue, will document how to obtain the powers to condemn an easement right to a utility crossing.

The third part of this Newsletter, the July issue, will document how to prepare the Application for Condemnation and Notice of Condemnation documents needed to do this.

Upcoming:

Please check the website, grahamlad.com, for information about the upcoming classes we mentioned and summarized in the March Newsletter. There is still plenty of time to register.

Volume 1, *Economic Development*, is being offered Tuesday and Wednesday, November 11 and 12, 2008, from 8 AM to 4:30 PM at the Quality Inn and Suites, Ames, Iowa. For further information and to register to attend Volume 1, see link Reporting Interest in or Registering for Scheduled Courses.

Volume 7, *Uniform Acquisition Standards*, is being offered Tuesday and Wednesday, December 9 and 10, 2008, from 8 AM to 4:30 PM at the Quality Inn and Suites, Ames, Iowa. For further information and to register to attend Volume 7, see the link Reporting Interest in or Registering for Scheduled Courses.

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