

RECEIVED

OCT 27 2011

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LANCASTER COUNTY, NEBRASKA

LANCASTER COUNTY
CLERK

IN THE MATTER OF INSTITUTING
EMINENT DOMAIN PROCEEDINGS
Project No. C-55-Q-409(1)
Tract No. 36

)
) RESOLUTION NO. R-11-0082
)
)

WHEREAS, pursuant to the laws of the State of Nebraska, the County of Lancaster is charged with the duty of constructing, maintaining and improving county roads and bridges within the county, and is authorized to exercise the power of eminent domain in conjunction with its performance of such duties; and

WHEREAS, the County has concluded that it is necessary for the safety and convenience of the traveling public to improve Pine Lake Road from South 112th Street to South 148th Street, which improvements consist of re-grading of slope, culvert and driveway construction; and

WHEREAS, certain right-of-way, more particularly described and shown in Exhibits A and B, attached hereto and hereby incorporated by this reference, must be acquired in order to successfully improve Pine Lake road from South 112th Street to South 148th Street; and

WHEREAS, the County has contacted Larry L. Schmutte and Janet M. Schmutte, who are the record owners of said property, and the County has made good faith offers to purchase from them the needed right-of-way shown and described in Exhibits A and B, attached hereto; and

WHEREAS, the County has made reasonable efforts to induce said individuals to accept its offers, as shown in Summaries of Contacts attached as Exhibit C, but has been unable to reach an agreement to purchase said property.

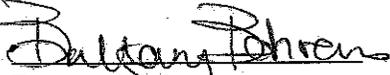
NOW, THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of

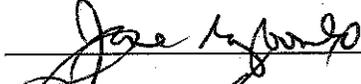
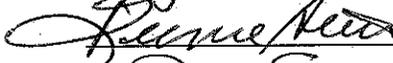
Lancaster County, Nebraska, that eminent domain proceedings be instituted in the County Court of Lancaster County, Nebraska, in order to acquire the needed right-of-way shown and described on Exhibits A and B, attached, from the above-named parties.

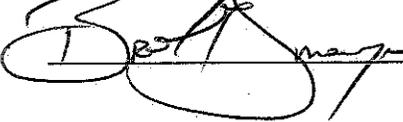
DATED this 1 of November, 2011, at the County-City Building, Lincoln, Lancaster County, Nebraska.

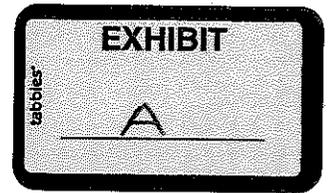
BY THE BOARD OF COUNTY
COMMISSIONERS OF LANCASTER
COUNTY, NEBRASKA

APPROVED AS TO FORM
this 1 day of
November, 2011.


Deputy County Attorney
for JOE KELLY
Lancaster County Attorney



Project No. C55-Q-409(1)
Owner: Larry L. and Janet M. Schmutte
Location: South 120th and Pinelake Rd.
Lancaster County, NE
Tract No.: 36

Fee Simple as Measured by Stationing and Offsets from Project Section line

From Sta. 118+20.82 to Sta. 130+79.08 a strip 60 ft. wide Right side

Legal Description of Warranty Deed for part taken

A part of Lot 7, Irregular Tracts, located in the N ½, of Section 19, Township 9 North, Range 8 East of 6th Principal Meridian, Lancaster County, Nebraska, more particularly described as follows:

The north 60.00 feet of Lot 7, Irregular Tracts, located in said N ½.

Containing 1.73 acres, more or less of which 0.95 acres, more or less is existing county road right of way, making a net additional right of way of 0.78 acres, more or less.

Project No. C55-Q-409(1)
Owner: Larry L. and Janet M. Schmutte
Location: South 120th and Pinelake Rd.
Lancaster County, NE
Tract No.: 36

Permanent Easement as Measured by Stationing and Offsets from Project Section line

From Sta. 125+50	to Sta. 126+00	a strip 60-70 ft. wide	Right side
From Sta. 126+00	to Sta. 127+00	a strip 70 ft. wide	Right side
From Sta. 127+00	to Sta. 128+00	a strip 70-60 ft. wide	Right side

Legal Description of Permanent Easement

A part of Lot 7, Irregular Tracts, located in the N ½, of Section 19, Township 9 North, Range 8 East of 6th Principal Meridian, Lancaster County, Nebraska, more particularly described as follows:

Referring to the northeast corner of said N ½; thence westerly with the north line of said N ½, a distance of 279.41 feet to a point; thence southerly perpendicular to the north line of said N ½, a distance of 60.00 feet to a point, said point being the point of beginning; thence southwesterly to a point, said point being located 70.00 feet south of as measured perpendicular to the north line of said N ½, said point also being located 379.41 feet west of the northeast corner of said N ½, as measured with the north line of said N ½; thence westerly 70.00 feet south of and parallel with the north line of said N ½, a distance of 100.00 feet to a point; thence northwesterly to a point, said point being located 60.00 feet south of as measured perpendicular with the north line of said N ½, said point also being located 529.41 feet west of the northeast corner of said N ½, as measured with the north line of said N ½; thence easterly 60.00 feet south of and parallel with the north line of said N ½, to the point of beginning.

Containing 0.04 acres, more or less.

PROPERTY LINE STA. 118+21.14

118+20.82
60' ±

PINE LAKE ROAD

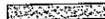
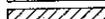
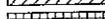
TRACT 36
LARRY L. & JANET M. SCHMUTTE
LOT 7 I.T., N 1/2, SEC.
19-T9N-R8E

SHEET 1 OF 1



LEGEND

STAT. EASE. R.O.W.
NEW R.O.W.
PERM. EASE.

	0.95 AC.
	0.78 AC.
	0.04 AC.

125+50.00
60' ±

126+00.00
70' ±

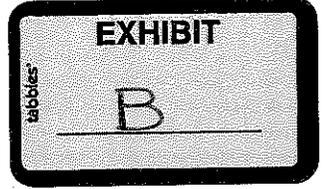
127+00.00
70' ±

128+00.00
60' ±

SECTION LINE

130+79.08
60' ±

STA. 130+79.41 NE CORNER 19-9-B



SKETCH SHOWING
RIGHT OF WAY
TO BE ACQUIRED FROM LAND OWNED BY:
LARRY L. & JANET M. SCHMUTTE

Lancaster

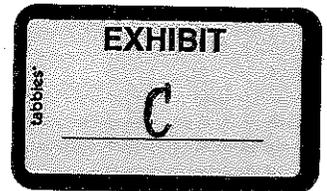
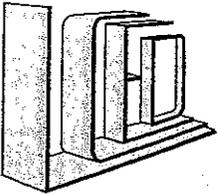
DON R. THOMAS - COUNTY ENGINEER

County

Engineering

Department

DEPUTY- KENNETH D. SCHROEDER
COUNTY SURVEYOR



June 23, 2008

Larry L. Schmutte & Janet M. Schmutte
10411 Bennet Road
Roca, Nebraska 68430

COPY

RE: Project No. C55-Q-409 (1)
Tract No. 36

Mr. and Mrs. Schmutte:

The Lancaster County Engineering Department is now purchasing land and easements for the improvement of Pine Lake Road from South 112th Street to South 148th Street. Total net length of the project will be 2.5 miles with land acquisitions beginning immediately.

The proposed start date is tentatively scheduled for the 2010 construction year. All acquisitions must be completed well in advance of this date in order to satisfy all necessary State and Federal requirements.

Engineering for this project is complete, no modifications or alterations are contemplated, any questions relating to other than property acquisition may be directed to the design engineer by calling (402) 441-7681.

Please contact me to schedule an appointment. I will meet with you to discuss the impact this project will have on your property to present the construction plan and County's offer of compensation.

You may contact me at (402) 441-8331 Monday through Friday between the hours of 7:00am and 3:30pm. In the event I am not available to receive your call please leave a return telephone number and I will contact you as soon as possible.

Appointments are scheduled during regular business hours Monday through Friday from 7:00am to 3:30pm. Presentation appointments may be conducted at the Lancaster County Engineering office, your home or your place of business.

Presentations require approximately 1 to 1-½ hours depending on the complexity of the acquisition. If there are multiple landowners, renters or a tenant farmer involved it is preferable to meet with all parties at the same time.

Please take the time to review the enclosed pamphlet paying particular attention to the highlighted portion of the text.

I look forward to receiving your call and meeting with you in the near future.

Sincerely,

John E. Mahan
Right-of-Way Agent

Enclosures: 1-ROW pamphlet

LANCASTER COUNTY ENGINEERING DEPARTMENT
AGENT CALL REPORT

NAME: Schmutte, Larry L. & Janet M.
ADDRESS: 10411 Bennet Rd. Roca, NE 68430
HOME PHONE: 423-3998
WORK PHONE:

PROJECT NO.: C55-Q-409 (1)
TRACT NO: 36
CELL PHONE:
E-mail:

CALL DATE	VISIT NO.	AMOUNT OFFERED	SALVAGE OFFERED	COUNTER OFFER	PERSONS PRESENT
06-29-08	1	\$14,572.50	-0-	-0-	Larry L. Schmutte Janet M. Schmutte John E. Mahan

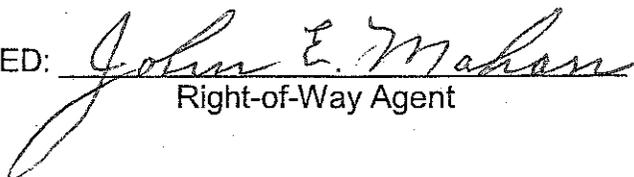
REPORT OF DISCUSSION:

I met with Mr. and Mrs. Schmutte on Friday June 29, 2008 at their home at 3:00PM. I gave them a Letter of Information, Federal Tax Information form, Color-coded Right-of-Way drawing, Right-of-Way Acquisition Sheet, Fee Simple contract, Warranty Deed, Permanent Easement contract, Permanent Easement agreement, and a Temporary Easement contract.

I showed the Schmutte's the Right-of-Way plan, Plan profile and Cross sections concerning their property explaining the impact the construction would have on their property. Mr. Schmutte is concerned about the engineering of two driveways. The first located at Sta.123+75 Right (-5.0% grade) and the second is located at Sta. 130.58 Right (-14.1 Grade). The concern is because both driveways have a negative grade, an excessive amount of water will flow onto his property causing the driveways to become soft and difficult to negotiate during wet weather. The second driveway is particularly critical as the grade is excessively steep and due to an LES easement heavy truck traffic uses the driveway at various times several months of the year. I explained the concerns he has are engineering questions and would be better handled by speaking directly with Doug Pillard as relaying his concerns through a third party will not resolve these concerns as accurately. I gave Mr. Schmutte the office phone number and suggested he call Doug directly.

I asked the Schmutte's if they had any other concerns that would keep them from signing with the County and they advised if the driveway issues can be resolved they are willing to sign. It was agreed I would speak with Doug Pillard letting him know Mr. Schmutte will be contacting him. I will monitor the resolution of the driveway questions and contact the Schmutte's as soon as the engineering problems are answered.

SIGNED:


Right-of-Way Agent

MEMORANDUM

Date: 6/30/08 3:00 PM
To: Jim Shotkoski, Right-of-Way Manager
From: John E. Mahan, Right-of-Way Agent
Subject: Contract revisions for Larry L. & Janet Schmutte

Please add the listed fencing to this contract offer:

4 rods 4 SBW @ \$23.00/ rod	\$96.00
3 corner post assemblies @ \$160.00/ ea.	<u>\$320.00</u>
	\$416.00

LANCASTER COUNTY ENGINEERING DEPARTMENT
AGENT CALL REPORT

OWNER: Schmutte, Larry L. & Janet M.	PROJECT NO.: C55-Q-409(1)
ADDRESS: 10411 Bennet Rd. Roca, NE 68430	TRACT NO.: 36
HOME PHONE: 423-3998	CELL PHONE:
WORK PHONE:	E-mail:

CALL DATE	VISIT NO.	AMOUNT OFFERED	SALVAGE OFFERED	COUNTER OFFER	PERSONS PRESENT
6/2011	NA	NA	NA	NA	Alex Olson

REPORT OF DISCUSSION:

File Given to me.

SIGNED: _____


Right-of-Way Agent

LANCASTER COUNTY ENGINEERING DEPARTMENT
AGENT CALL REPORT

OWNER: Schmutte, Larry L. & Janet M.	PROJECT NO.: C55-Q-409(1)
ADDRESS: 10411 Bennet Rd. Roca, NE 68430	TRACT NO.: 36
HOME PHONE: 423-3998	CELL PHONE:
WORK PHONE:	E-mail:

CALL DATE	VISIT NO.	AMOUNT OFFERED	SALVAGE OFFERED	COUNTER OFFER	PERSONS PRESENT
7/2011	NA	\$7,277.50	NA	\$14,572.50	Alex Olson, Mrs. Schmutte

REPORT OF DISCUSSION:

I spoke with Mrs. Schmutte about the Pinelake project, she feels they are not being treated fairly in the value for the ground. She also stated the offer had been cut in half from the previous one in 2008. I informed her we needed to reappraise the properties due to the length of time it is taking to buy this project. Mrs. Schmutte was not happy and the conversation ended.

SIGNED: _____

Alex Olson
Right-of-Way Agent

**LANCASTER COUNTY ENGINEERING DEPARTMENT
AGENT CALL REPORT**

OWNER: Schmutte, Larry L. & Janet M.	PROJECT NO.: C55-Q-409(1)
ADDRESS: 10411 Bennet Rd. Roca, NE 68430	TRACT NO.: 36
HOME PHONE: 402-423-3998	CELL PHONE:
WORK PHONE:	E-mail:

CALL DATE	VISIT NO.	AMOUNT OFFERED	SALVAGE OFFERED	COUNTER OFFER	PERSONS PRESENT
7/2011	NA	\$9,680.00	NA	\$14,572.50	Alex Olson, Mrs. Schmutte

REPORT OF DISCUSSION:

After looking at the appraisal I asked Jim S. why the offer was less than the appraised value. Jim told me he reviewed the appraisal and went with the amount of \$7,500/Ac.

After we talked about the project and some of the issues, not being able to move forward with the project, he decided we should go with the appraised value of \$10,000/Ac.

I called Mrs. Schmutte and told her about the change in value, but they still are set on the original value. Mrs. Schmutte also stated they were sure they signed some papers with the original values of \$15,000/Ac. I asked John M. about this, he said they did not sign anything. John and I looked through the file and could not find anything.

SIGNED: _____

Alex Olson
Right-of-Way Agent

LANCASTER COUNTY ENGINEERING DEPARTMENT
AGENT CALL REPORT

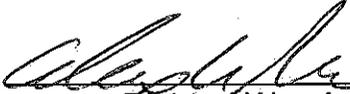
OWNER: Schmutte, Larry L. & Janet M.	PROJECT NO.: C55-Q-409(1)
ADDRESS: 10411 Bennet Rd. Roca, NE 68430	TRACT NO.: 36
HOME PHONE: 402-423-3998	CELL PHONE:
WORK PHONE:	E-mail:

CALL DATE	VISIT NO.	AMOUNT OFFERED	SALVAGE OFFERED	COUNTER OFFER	PERSONS PRESENT
7/2011	NA	\$9,680.00	NA	\$14,572.50	Alex Olson, Mrs. Schmutte

REPORT OF DISCUSSION:

I called Mrs. Schmutte and asked her if they have made any decisions on the project, she said they had not. Mrs. Schmutte said they still feel they are not being treated fairly on the value, I told her they could get an appraisal of their own at any time.

SIGNED: _____


Right-of-Way Agent

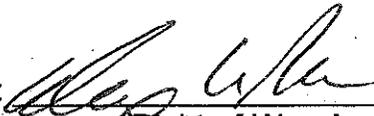
LANCASTER COUNTY ENGINEERING DEPARTMENT
AGENT CALL REPORT

OWNER: Schmutte, Larry L. & Janet M.	PROJECT NO.: C55-Q-409(1)
ADDRESS: 10411 Bennet Rd. Roca, NE 68430	TRACT NO.: 36
HOME PHONE: 402-423-3998	CELL PHONE:
WORK PHONE:	E-mail:

CALL DATE	VISIT NO.	AMOUNT OFFERED	SALVAGE OFFERED	COUNTER OFFER	PERSONS PRESENT
9/09/2011	NA	\$9,680.00	NA	\$14,572.50	Alex Olson, Mrs. Schmutte

REPORT OF DISCUSSION:

After limited contact we have decided to send a Last Best offer to Mr. & Mrs. Schmutte.

SIGNED: 

Right-of-Way Agent

LANCASTER COUNTY ENGINEERING DEPARTMENT
AGENT CALL REPORT

OWNER: Schmutte, Larry L. & Janet M.	PROJECT NO.: C55-Q-409(1)
ADDRESS: 10411 Bennet Rd. Roca, NE 68430	TRACT NO.: 36
HOME PHONE: 402-423-3998	CELL PHONE:
WORK PHONE:	E-mail:

CALL DATE	VISIT NO.	AMOUNT OFFERED	SALVAGE OFFERED	COUNTER OFFER	PERSONS PRESENT
9/12/2011	NA	\$9,680.00	NA	\$14,572.50	Alex Olson, Mrs. Schmutte

REPORT OF DISCUSSION:

Mrs. Schmutte called me on the last best letter we sent them. She said they were going to look for the papers they said they signed.

SIGNED: _____

Right-of-Way Agent

LANCASTER COUNTY ENGINEERING DEPARTMENT
AGENT CALL REPORT

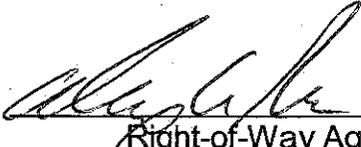
OWNER: Schmutte, Larry L. & Janet M.	PROJECT NO.: C55-Q-409(1)
ADDRESS: 10411 Bennet Rd. Roca, NE 68430	TRACT NO.: 36
HOME PHONE: 402-423-3998	CELL PHONE:
WORK PHONE:	E-mail:

CALL DATE	VISIT NO.	AMOUNT OFFERED	SALVAGE OFFERED	COUNTER OFFER	PERSONS PRESENT
9/28/2011	NA	\$9,680.00	NA	\$14,572.50	Alex Olson, Mrs. Schmutte

REPORT OF DISCUSSION:

I called Mr. & Mrs. Schmutte to see if they had gotten an appraisal and or if they were ok with the offer. They were not at home to take the call, I did leave a message for them to call me.

SIGNED: _____


Right-of-Way Agent

LANCASTER COUNTY ENGINEERING DEPARTMENT
AGENT CALL REPORT

OWNER: Schmutte, Larry L. & Janet M.	PROJECT NO.: C55-Q-409(1)
ADDRESS: 10411 Bennet Rd. Roca, NE 68430	TRACT NO.: 36
HOME PHONE: 402-423-3998	CELL PHONE:
WORK PHONE:	E-mail:

CALL DATE	VISIT NO.	AMOUNT OFFERED	SALVAGE OFFERED	COUNTER OFFER	PERSONS PRESENT
9/28/2011	NA	\$9,680.00	NA	\$14,572.50	Alex Olson & Jim S.

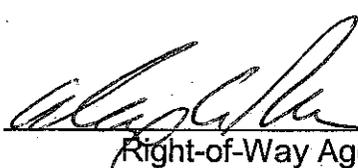
REPORT OF DISCUSSION:

Jim S. and I went down to the Schmutte property to see the name of the company that is selling the land, it is Woods Brothers. The contact # is 402-440-0692 the contact name is Jeff Bown.

When we got back to the office I called Jeff with Woods Brothers and asked him a few questions.

1. The Schmutte's are asking \$20,000/Ac
2. Jeff with Woods Brothers was not aware of the acquisition.

SIGNED: _____


Right-of-Way Agent

**LANCASTER COUNTY ENGINEERING DEPARTMENT
AGENT CALL REPORT**

OWNER: Schmutte, Larry L. & Janet M.	PROJECT NO.: C55-Q-409(1)
ADDRESS: 10411 Bennet Rd. Roca, NE 68430	TRACT NO.: 36
HOME PHONE: 402-423-3998	CELL PHONE:
WORK PHONE:	E-mail:

CALL DATE	VISIT NO.	AMOUNT OFFERED	SALVAGE OFFERED	COUNTER OFFER	PERSONS PRESENT
9/29/2011	NA	\$9,680.00	NA	\$14,572.50	Alex Olson & Mrs. Schmutte

REPORT OF DISCUSSION:

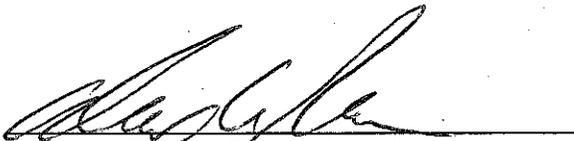
Mrs. Schmutte called me and voiced their concerns and issues with the Pinlake Rd. project.

They feel they have been dealt with poorly and not in good faith.

Mrs. Schmutte then said they are willing to sign the contracts. To me it did not sound like they wanted to sign the contracts, but felt they had no choice. I felt that it would be in non good faith to have them sign. Mrs. Schmutte said they did not want to get an attorney and put more money into this than what they will get back. I then told them about the Condemnation proceedings, and how things work. After the conversation about the condemnation proceedings I asked Mrs. Schmutte if this is the way they would like to proceed, Mrs. Schmutte said yes.

Mrs. Schmutte and I talked for a while longer and after the conversation, I asked her to write a letter to me about what we just talked about and more importantly how they feel they have been treated and things that have happened.

SIGNED:


Right-of-Way Agent

COPY

September 29, 2011

CERTIFIED MAIL

Larry L. and Janet M. Schmutte
10411 Bennet Rd.
Roca, NE 68430

RE: Project No. C55-Q-409(1)
Pinelake Rd. (S 112th – S 148th)
Tract 36

Dear Mr. and Mrs. Schmutte:

Reference is made to our past offer of compensation for right-of-way required by Lancaster County on the above-mentioned project. Your real estate that is affected is legally described as part of Tract No. 36 consisting of 1.73 acres, more or less inclusive of existing right of ways situated in Lot 7, I.T. of the N ½ of Section 19, Township 9 North, Range 8 East, of the 6th Principal Meridian, Lancaster County, Nebraska.

Our last and best offer of compensation for the right-of-way to be acquired is as follows:

Fee Simple	
0.78 acre at \$ 10,000.00/acre	\$ 7,800.00
Statutory Easement	
0.95 acre at \$ 10,000.00/acre x 10%	\$ 950.00
Remove and replace existing fencing (non-functional fence)	
77 rods of 3 SBW at \$ 5.00/rod	\$ 385.00
Permanent Easement:	
0.04 acre at \$ 10,000.00/acre x 90%	\$ 360.00
Title Extension Fee	\$ 60.00
Total Compensation	\$ 9,555.00

To date, our negotiator has been unable to arrive at an agreeable settlement. We would appreciate an acceptance of our offer.

However, if you do not make an attempt to contact this office in the near future towards consummating this transaction, we will assume this acquisition will have to be made through the process of Eminent Domain.

Please be assured our only purpose in initiating Eminent Domain proceedings would be to assure ourselves the right-of-way will be available to meet our construction schedule.

In the event it becomes necessary to initiate Eminent Domain proceedings, it would still be possible for you to consummate this transaction, if you so desire, at anytime prior to the holding of the hearing on the proceedings.

A further explanation of the Eminent Domain procedure is enclosed for your information.

If you have any questions, please feel free to contact this office.

Sincerely,

Kenneth D. Schroeder
Deputy County Surveyor
For
Don R. Thomas
Lancaster County Engineer

Enc.
DRT/JJS

Lancaster County declares our offer to purchase as indicated on the Right-of-Way Contract which you have received (1) is based on the fair market value of the property, (2) is not less than the approved appraised value of the property, (3) disregards any decrease or increase in the fair market value caused by the project for which the property is being acquired, and (4) in the case of separately held interests in the real property, includes an appointment of the total compensation for each of those interests.

You will not be required to surrender possession of your property before Lancaster County completes payment of the agreed purchase price or deposits in court an amount not less than the agency's approved appraisal of the fair market value of your property or the amount of the award of compensation in the condemnation proceedings for your property.

It is the intent of Lancaster County that the construction or development of the public improvement shall be so scheduled that to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling or to move his business or farm operation, without at least ninety days written notice. This ninety day written notice will be given to you at the time negotiations for purchase begins. This notice will also inform you that you will be given a thirty-day written notice specifying a date by which the property must be vacated.

If as a result of the right-of-way acquisition there is a portion of your property which is considered by Lancaster County to be an uneconomic remnant, you will have the right to receive an offer from the County to acquire the remnant.

In addition to the above information, we would also like to note the following:

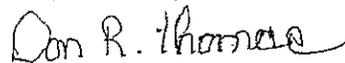
If improvements (house, garage, etc.) are being purchased, you will be allowed the option of retaining the improvements at a retention value predetermined by Lancaster County. Also, you will have the right to receive payment or have the County pay for recording fees, transfer taxes, penalty costs for pre-payment of any pre-existing recorded mortgages entered into in good faith, and the prorate portion of real property taxes paid which are allocable to a period subsequent to the day of vesting title, or the effective date of the possession by Lancaster County, whichever is the earlier.

You are also eligible for certain expenses if a court decides that we cannot condemn your property, if we abandon a condemnation of your property, or if you are successful in an inverse condemnation action.

You may appeal our decision of your eligibility for the amount of the previously described payments. Your written appeal must be filed with us within sixty days after we have given you written notice of our original decision. If you are still not satisfied after our review of your appeal, you may seek judicial review of our final decision.

We trust the above information will be helpful to you and if you have further questions, please feel free to contact the Lancaster County Engineer's office.

Sincerely,



Don R. Thomas

Lancaster County Engineer