ELECTRONICALLY FILED NOV 15, 2023 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA

Supreme Court No. 23-0958
Franklin County Case No. CVCV501944

MARABELLE ANN 'LE' ABBAS, MARABELLE ABBAS TRUST, MATTHEW ABBAS, HARLAND DUANE ABBAS TRUST; PATRICIA F. HANSON, PATRICIA HANSON, TEN-K FARMS, INC.; BRUCE D. REID and LYNETTE MEYER, ROY AND NEVA STOVER TRUST,
Plaintiffs-Appellants

vs.

FRANKLIN COUNTY BOARD OF SUPERVISOR, MIKE NOLTE, GARY MCVICKER, CHRIS VANNESS AS TRUSTEES OF DRAINAGE DISTRICT NUMBETR 48, AND FRANKLIN COUNTY DRAINAGE DISTRICT NUMBER 48,
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF FRANKLIN COUNTY
HONORABLE JUDGE RUSTIN DAVENPORT

APPELLANTS' FINAL BRIEF AND REQUEST FOR ORAL ARGUMENT

GOODWIN LAW OFFICE, P.C.
Robert W. Goodwin, AT0002986
2211 Philadelphia Street, Suite 101
Ames, Iowa 50010-8767
(515) 232-7390
(515) 232-7396 (Fax)
E-mail: goodwinlawoffice@fbx.com
ATTORNEY FOR APPELLANTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes:

Code of Iowa, Section 6B.3(1)(g)	7,43
Code of Iowa, Section 468.126(6)	7,42,43
Code of Iowa, Section 468.22	6,8,23
Code of Iowa, Section 468.27	6,8,10,18,19
Code of Iowa, Section 468.29	6,22
Code of Iowa, Section 468.86	6,7,17,27,40
Code of Iowa, Section 468.91	6,7,17,27,40

STATEMENT OF ISSUES AND AUTHORITY PRESENTED FOR REVIEW

Issue I

The Trial Court Erred In Ruling That DD1 And/Or DD48 Has An Easement For A Ditch Right Of Way Which Reduces The Plaintiffs' Damages

Allamakee County v. Collins Trust, 599 N.W.2d 448 (Iowa 1999)
Chi. Cent. & Pac. R.R. v. Calhoun Cnty. Bd. of Supervisors, 816 N.W.2d 367 (Iowa 2012)
Town of Marne v. Goeken, 147 N.W.2d 218 (Iowa 1967)
1897 Code of Iowa, Section 1939
1897 Code of Iowa, Section 1940
1897 Code of Iowa, Section 1941
1897 Code of Iowa, Section 1946
1913 Supplement To The Code of Iowa, Section 1989-a1
1913 Code of Iowa, Section 1989-a5
1924-1939 1897 Code of Iowa, Section 7448
1946-1981 1897 Code of Iowa, Section 455.33
1985 Laws of the Seventy First G.A. Chapter 163 Section 1
Code of Iowa, Section 468.22
Code of Iowa, Section 468.27
Code of Iowa, Section 468.29
Code of Iowa, Section 468.86
Code of Iowa, Section 468.91

Issue II

The Trial Court Erred In Computing Plaintiffs' Damages Without A Reasonable Basis

Chi. Cent. & Pac. R.R. v. Calhoun Cnty. Bd. of Supervisors, 816 N.W.2d 367 (Iowa 2012)
Hawkeye Motors Inc. v. McDowell, 541 N.W.2d 914, 917 (Iowa Ct. App. 1995)
Harris v. Board of Trustees of Green Bay Levee and Drainage Dist. No. 2 Lee County, 59 N.W.2d 234 (Iowa 1953)
Larson v. Webster County, 130 N.W. 165 (Iowa 1911)

Miller v. Rohling, 720 N.W.2d 562 (Iowa 2006)
Strong v. Mortgage Loans of America, LLC, No. 7-698/2090 (Iowa App. 11/29/2007), No. 7-698/06-2090 (Iowa App. Nov. 29, 2007)
Code of Iowa, Section 468.86
Code of Iowa, Section 468.91

Issue III

The Trial Court Erred In Ruling That Reid-Meyer Are To Deed Over 4.01 Acres To DD48 Which Are Not Needed For DD48's 2017 Open Ditch Project and For Which No Condemnation Proceeding Was Initiated

Chi. Cent. & Pac. R.R. v. Calhoun Cnty. Bd. of Supervisors, 816 N.W.2d 367 (Iowa 2012)
Comes v. City of Atlantic, 601 N.W.2d 93 (Iowa 1999)
Mann v. City of Marshalltown, 265 N.W.2d 307 (Iowa 1978)
Owens v. Brownlie, 610 N.W.2d 860 (Iowa 2000)
Vittetoe v. Iowa Southern Utilities Co., 123 N.W.2d 878 (Iowa 1963)
Code of Iowa, Section 6B.3(1)(g)
Code of Iowa, Section 468.126(6)
Code of Iowa, Section 468.86
Code of Iowa, Section 468.91

ROUTING STATEMENT

This case should be retained by the Supreme Court because this case presents substantial issues of first impression regarding an easement of drainage districts and severance damages that present fundamental issues of broad public importance requiring an ultimate determination by the Supreme Court.

STATEMENT OF CASE

OVERVIEW

Drainage Districts have always had statutory authority to establish a drainage district open ditch according to the engineer's survey plat, profile, and report, as now provided in Section 468.22, Code of Iowa. See Sections 1939 through 1941 of the 1897 Code of Iowa, Sections 1989-a1 through 1989-a6 of the Supplement to the 1913 Code of Iowa, and Section 455.28 of the 1946 Code of Iowa, which are predecessors of Section 468.22. However, it was not until 1985 that a drainage district "is deemed to have acquired by permanent easement all right-of-way for drainage district ditches … in the dimensions shown on the survey and report … or as shown on the permanent survey, plat, and profile …" Laws of The Seventy First G.A., 1985 Session, Chapter 163, Section 1, which was added to Section 468.27, Code of Iowa.

Prior to 1985 a drainage district simply had the authority to put in a ditch or a tile (drain) according to the engineer's survey, plat, profile, or report. However, a drainage district was not deemed to have an easement for a ditch or a tile (drain) prior to 1985.

In 1905 Drainage District No. 1 (DD1) was formed which established an open ditch through the entire drainage district according to the engineer's survey, plat, profile, and report. DD1 did not have an easement for an open ditch. The Laws of the Seventy First G.A., 1985 Session had not been passed. In 1916, DD1 ceased to be. It no longer existed. In 1916, DD1 abandoned, relinquished, and left an open ditch.

In 1916 Drainage District No. 48 (DD48) was formed. In 1916, DD48, in turn, abandoned the open ditch by discontinuing its use, and replaced it with a new main tile covered by dirt with 35 lateral tiles. The main tile covered with dirt became productive row crop ground.

In 1916, "spoil piles" of dirt were left near where the open ditch had once existed. The adjoining landowners put the dirt from the "spoil piles" over the new main tile. The area above the new tile was then productive farm ground.

In 1916 the engineer for DD48 made a survey, plat, profile, and report of establishing the new main tile covered with dirt and 35 lateral tiles. At no time did

the engineer for DD48 make a survey, plat, profile, or report to establish an open ditch of DD48.

DD48 did not, and does not, have an easement for an open ditch. In 1916 the engineer for DD48 made a survey, plat, profile, and report for a new main tile and 35 lateral tiles. No easement would exist before 1985. Even if the 1985 statute, now the last paragraph of Section 468.27, Code of Iowa, was retroactively applied back to 1916, DD48 would have been deemed to have an easement for the right of way for a tile line and 35 lateral tiles because the engineer's survey, plat, profile, and report was for a new tile line (drain) with 35 lateral tiles – not for an open ditch.

The area above the 1916 main tile line was totally filled in and became productive crop ground.

The February 1, 1937 Minutes of the Franklin County Board of Supervisors state as follows:

> "It was moved by Jurgens, seconded by Henke, that all the land in Drainage District No. 1, that was exempted from general taxation on account of being occupied by an open ditch, be now entered for taxation the same as other lands, for the reason that there is now no open ditch, that drainage district being now known as drainage district No. 48, and all of said lands having become productive farm lands. The motion carried, all members voting aye."

The Trial Court erred in ruling that a right-of-way easement exists for an open ditch that is available to DD48 to reduce the amount of damages to the Plaintiffs for land taken for DD48's 2017 Open Ditch Project.

The Plaintiffs' appraiser's statement of Ted Frandson in Exhibits 13, 14, and 15 that a severance of a property typically reduces the fair market value of the property by 10% is unrebutted. The Trial Court also erred in using a 4.5% reduction in market value to the Abbas property due to severance, and in using a 1.98% reduction in market value to the Reid-Meyer property due to severance, while using a 9.4% reduction in market value to the Hanson property due to severance. Ted Frandson, the Plaintiffs' appraiser's determination of damages compared to the Trial Court's determination of damages are as follows:

Landowner	Plaintiff's Appraiser's Damages	Court's Damages
Abbas	$221,000	$91,189.00
Hanson	$168,000	$162,003.00
Reid/Meyer	$221,000	$78,457.06

The Trial Court further erred in ruling that Reid-Meyer are required to convey 4.01 acres of their land to DD48. The 4.01 acres are not necessary for DD48's 2017 Open Ditch Project. There has been no condemnation proceeding for DD48 to acquire the 4.01 acres. The 4.01 acres have value to Reid-Meyer to rent or sell to the adjoining landowner.

STATEMENT

Plaintiffs' Petition To Review Final Action of The Board of Trustees of DD48 filed March 16, 2022.

Defendants' Answer To Petition filed April 28, 2022.

Plaintiffs' Post Trial Brief filed January 5, 2023.

Defendants' Brief And Argument filed January 17, 2023.

Plaintiffs' Reply Brief filed January 26, 2023.

Decree After Trial To The Court filed March 30, 2023.

Defendants' Motion To Enlarge And Amend Findings In Fact And Judgment filed April 5, 2023.

Plaintiffs' Resistance To Defendants' Motion To Enlarge And Amend Findings In Fact And Judgment filed April 11, 2023.

Plaintiffs' 1.904(2) Motion filed April 11, 2023.

Defendants' Motion To Extend Time To File Resistance filed April 12, 2023.

Defendants' Resistance To Plaintiffs' 1.904(2) Motion.

Order On Post-Ruling Motions filed May 31, 2023.

Plaintiffs' Notice of Appeal filed June 14, 2023.

Defendants' Notice of Cross Appeal filed June 16, 2023.

STATEMENT OF FACTS

- In 1905 DD1 was established. Trans. P. 153 ll. 3-17. App. V.I-P. 490.

- In 1916 landowners petitioned to establish a new drainage district that would be DD48. Trans. P. 156 ll. 12-18.

- In 1916 the engineer for DD48, G. H. Mack, stated:

> "I find that the condition of DD1 is as described in the petition – inadequate, insufficient, and out of repair. The open ditch is not sufficiently deep to efficiently drain much of the land tributary to it.
> I would recommend that the land within the watershed as marked on the plat, accompany ing this report, be formed into a drainage district and that the main and laterals, with starting point, routes and termini as given below be constructed." (Emphasis added.) Exhibit 1 Sheet 1 of 6 of Exhibit 18. App. V.I-P. 493.

- DD48's Engineer's Report dated January 12, 1990 in regard to DD48's 1916 new main tile states as follows:

> "A new main tile was installed to replace the open ditch from Station 92+15 to 255+00, a distance of 3.1 miles. Thirty-seven (37) tile laterals were also included in the original construction of D.D. No. 48 improvements." Exhibit 10 p. 2. App. V.I-P. 291.

- The existing three (3) miles of open ditch were replaced with tile covered with dirt and including 35 lateral tiles. Trans. P. 157 ll. 3-23; Exhibit 1 of Exhibit 18 which shows the cancellation of lateral tiles number 36 and 37. App. V.I-PP. 493, 495.

- Two (2) to five (5) feet of dirt was filled in over the new main tile. Trans. P. 158 ll. 9-16, Exhibit 3 of Exhibit 18. App. V.I-P. 500.
- Spoil piles of dirt from the 1906 excavation were left approximately eight (8) feet from the ditch when it was excavated in 1906. In 1916 there were no tracked bulldozers. The spoil piles that were left in place were also placed over the new tile line in the 1920's when tracked bulldozers were commercially available. Trans. P. 159 l. 12 to P. 163 l. 25.
- A "surface relief ditch" remained in 1916 above the new tile for excess water in the occasional larger storm. Trans. P. 165 ll. 4-11. But, it was not an improvement of the drainage district to be maintained by DD48, and it was filled in within 20 years after 1916. Trans. P. 165 ll. 12-24.
- The engineer in 1916 did not have any design, specifications, bottom width, side slopes, grade line for a ditch. This shows that the surface relief ditch was not a drainage district facility and that it was to be temporary. Trans. P. 165 l. 25 to P. 168 l. 19.
- When equipment became available, the temporary surface relief ditch was filled in, including under the direction of the Board of Supervisors,

the county engineer using county equipment. Trans. P. 168 l. 20 to P. 170 l. 14.

- On February 1, 1937, the Franklin County Board of Supervisors "sealed" the fact that the surface relief ditch above the 1916 main tile was not a DD48 facility, and the Board then officially noted the abandonment of the ditch. Trans. P. 170l. 15 to P. 172 l. 6.
- DD48's engineer, Brent W. Johnson, in his 1990 Report, Exhibit 10 page 1, states "Drainage District No. 1, established 11 years earlier, which was abandoned after the establishment of DD48 (on December 29, 1916)." App. V.I-P. 290.
- In 1991 DD48 undertook a repair project to have a surface waterway above its main tile. The surface waterway was to be farmable and crossable. Exhibits 10, 12. Trans. P. 16 l. 22 to P. 19 l. 25. App. V.I-P. 299.
- The 1991 repair project was a failed repair project because the area above DD48's main tile became too wet to be farmed, but it was always able to be crossed with farm equipment. Trans. P. 20 l. 1 to P. 22 l. 3; P. 35 ll. 13-25; P. 50 l. 19 to P. 52 l. 6; P. 62 l. 3 to P. 64 l. 16; P. 145 l.

5 to P. 146 l. 24; Exhibits 13, 14, and 15 PP. 10-11, App. V.I-PP. 338-339, 395-396, 446-447.

- After DD48's 1991 repair project, the cover above the 1916 main tile was reduced, water got to the main tile which was damaged by freeze and thaw. The main tile failed, causing the ground above the 1916 main tile to become wet to the point that it could not be farmed. Trans. P. 172 l. 7 to P. 175 l. 21.
- DD48's 2017 Open Ditch Project has severed the Plaintiffs' land. The open ditch cannot be crossed with farm equipment nor can it be farmed. Trans. P. 22 l. 4 to P. 23 l. 18; P. 36 l. 1 to P. 37 l. 22; P. 52 l. 7 to P. 62 l. 2; P. 146 l. 25 to P. 147 l. 20.
- "The 2017 new open ditch has improved the drainage but has now reduced the farmable area and also created a barrier and severed the farm creating smaller more irregular tracts." Exhibits 13, 14, and 15, P. 11. App. V.I-PP. 339, 396, 447.
- Matt Abbas, one of the Plaintiffs, testified that he is aware that in approximately 1916 DD48's main tile was put in to replace the open ditch. Trans. P. 44 ll. 6-18. In the 1930's, the area above DD48's main

tile was being farmed with row crops. Trans. P. 44 l. 19 to P. 47 l. 18. The 1990 repair project was a failure. The land above DD48's main tile was to be farmable. The first few years it was farmable, but thereafter it was too wet to be farmed, although it could still be crossed with farm equipment. Trans. P. 49 l. 25 to P. 52 l. 6. The 2017 DD48 open ditch project severed the Abbas land. Trans. P. 52 ll. 7-22.

ARGUMENT

Issue I

The Trial Court Erred In Ruling That DD1 And/Or DD48 Has An Easement For A Ditch Right Of Way Which Reduces The Plaintiffs' Damages

A. Preservation of Error: This issue was preserved for appellate review by the Plaintiffs' Notice of Appeal.

B. Standard of Review: The standard of review for an appeal under Section 468.86, Code of Iowa, for the amount of damages the claimants are entitled is pursuant to Section 468.91, Code of Iowa, which is at law for correction of errors. Chi. Cent. & Pac. R.R. v. Calhoun Cnty. Bd. of Supervisors, 816 N.W.2d 367, 370 (Iowa 2012).

C. Argument: The Trial Court erred in Ruling that DD1 and/or DD48 has an easement for a ditch right of way, that reduces the Plaintiffs' damages.

As shown in the Statement of Facts, DD1 was formed in 1905. In 1906, DD1 established an open ditch throughout the entire length of the drainage district. In 1906, pursuant to Sections 1939, 1940, 1941, and 1946 of the 1897 Code of Iowa, a competent engineer made a survey of the proposed improvement and returned a plat and profile and DD1 located and established an open ditch.

DD1 did not have an easement for the right of way of the open ditch because the 1985 Laws of The Seventy-First G.A., now the second paragraph of Section 468.27, Code of Iowa, did not exist.

In 1916, DD1 ceased to be, it no longer existed. In 1916, DD1 left, abandoned, the open ditch.

In 1916, DD48 was formed. DD48, in 1916, discontinued and abandoned the open ditch of the northern, upstream, 3.1 miles of the former DD1. DD48 replaced the open ditch in those 3.1 miles with a new main tile (drain) covered with dirt where DD1's open ditch had been. In 1916, DD48 covered the new main tile with dirt, as shown in Exhibit 3 of Plaintiffs' Exhibit 18. App. V.I-P. 500. Thirty-five (35) lateral tiles (lateral drains) were connected to the new main tile (drain). Exhibit 1 of Exhibit 18. App. V.I-P. 493. Dirt from the 1906 spoil piles that were left by DD1, as shown in Exhibit 3 of Plaintiffs' Exhibit 18, was pushed by the landowners over the new

tile and the land above the new tile became productive farm ground. App. V.I-PP. 591, 500.

In 1916, pursuant to Section 1989-a1 of the 1913 Code of Iowa, DD48 had a competent engineer prepare a survey, plat, profile, and report to establish a main tile (main drain) and 35 lateral tiles (lateral drains) as shown in Exhibits 1 and 2 of Exhibit 18, and the Board established DD48. App. V.I-PP. 493-499.

DD48 did not have an engineer prepare a survey, plat, profile, or report to establish a ditch.

DD1 did not have an easement for a ditch right of way because in 1905 the 1985 Laws of the Seventy-First G.A. Chapter 163 Section 1, now the second paragraph of Section 468.27, Code of Iowa, did not exist.

DD48 did not, and does not, have an easement for a ditch right of way because in 1916 (a) the 1985 Laws of The Seventy-First G.A., now the second paragraph of Section 468.27, Code of Iowa, did not exist, and (b) even if Section 468.27 is retroactively applied to 1916, DD48 did not have any survey, plat, profile, or report to establish a ditch. DD48 instead established a main tile covered with dirt with 35 lateral tiles.

On February 1, 1937, the Franklin County Board of Supervisors, as shown in Exhibit 17, state that "all the land in Drainage District No.1, that was exempted from

general taxation on account of being occupied by an open ditch, be now entered for taxation the same as other lands, for the reason there is now no open ditch … and all of said lands having become productive farm lands." App. V.I-P. 488.

The Franklin County Board of Supervisors of record on February 1, 1937 recognized and acknowledged that the open ditch of DD1 has been abandoned and filled in, and the land above DD48's tile line "all of said lands having become productive farm lands." Exhibit 17. App. V.I-P. 488.

Donald E. Etler, P.E., one of the Plaintiffs' expert witnesses, provided a report, Exhibit 18, that states in pertinent parts as follows:

- Engineer G. H. Mack's second report recommends "to replace the upper 3.1 miles of the main open ditch with the same tile drain recommended in his first report ranging in size from 32" to 14". Thirty-seven (37) tile laterals are also recommended." P. 2 of Exhibit 18. App. V.I-P. 491.
- The Public Notice to the landowners, Exhibit 2 of Exhibit 18, "does not mention a surface drain facility (open ditch) as one of the improvements. App. V.I-P. 499. A surface drain (open ditch) is not

noted in the Minutes. P. 2 and Exhibit 1 of Exhibit 18. App. V.I-P. 493.

- "There still was no grade or bottom width assigned to a surface drain (open ditch)." P. 2 of Exhibit 18. App. V.I-P. 491.
- The Public Notice in pertinent part states "said engineer has made a report recommending the establishment of a tile drainage system" – not an open ditch. Exhibit 2 of Exhibit 18. App. V.I-P. 499.
- "This board is well aware of its responsibilities to keep drains (ditches) in good repair and it would not have allowed the rapid filling of this surface drain (open ditch) if they thought it was a district facility." P. 3, Exhibit 18. App. V.I-P. 500.
- "It is my opinion that the district had no surface drain (ditch) after the 1916 work and that the open ditch was legally filled in over time." P. 3, Exhibit 18. App. V.I-P. 492.

The Trial Court in its Decree After Trial To The Court (Decree) erred in ruling that the open ditch of DD1 was not abandoned, superseded, and replaced by a main tile covered with dirt and 35 lateral tiles. The Trial Court erred when it stated on page 14 of its Decree as follows:

> "The Court rejects Plaintiffs' argument that there was an abandonment of the drainage ditch in 1916 ..." App. V.I-P. 227.

As previously discussed, DD1 was formed in 1905. It established an open ditch by its survey, plat and profile. It ceased to exist in 1916. It left, abandoned, the open ditch. In 1916, DD48 was formed. DD48, in turn, abandoned and discontinued the open ditch, and instead replaced it with a main tile covered with dirt and 35 lateral tiles as shown in DD48's survey, plat, profile, and report.

As Brett McClure in his Engineer's Report for DD48 dated January 12, 1990, on page 1, states "Drainage District No. 1, established 11 years earlier, which was abandoned after the establishment of DD48." App. V.I-P. 290.

DD1 in 1916 ceased to be, it no longer existed. The Trial Court states on page 15 of its Decree, there was no formal procedure for dissolution of a drainage district until 1924 when what is now Section 468.29 came into effect. App. V.I-P. 228. There was no formal "dissolution" of DD1 because there was no formal procedure in 1916 to dissolve a drainage district. But, DD1 ceased to exist in 1916.

The Trial Court also stated on page 15 of its Decree there was no agreement "of the holder of the easement to abandon the easement." App. V.I-P. 228. There was no need nor possibility for a formal relinquishment of an easement of DD1 because DD1 had no easement in 1916. The presumption of an easement did not

come about until 1985 with the Laws of The Seventy First G.A. 1985 Session Chapter 163, Section 1.

DD48 discontinued, ended, terminated the use of an open ditch in 1916, and instead replaced it with a main tile covered with dirt and 35 lateral tiles as shown in its survey, plat, profile, and report. Exhibit 1 of Exhibit 18. App. V.I-P. 493.

Drainage districts have always had the authority to install a ditch or a tile as shown in its survey, plat, profile, and report under what is now Section 468.22, Code of Iowa, and its predecessor Code 1897 §§ 1939, 1940, 1941, 1946; S13§1989-a5; C 24-39 §7448, and C 46-81 § 455.28.

Again, in 1916 there was no formal procedure for abandoning an easement for an open ditch. Furthermore, in 1916 DD48 did not have a presumption of an easement for an open ditch because (a) such a presumption did not exist until 1985, and (b) more significantly DD48 in 1916 had a survey, plat, profile, and report for a main tile covered with dirt and 35 lateral tiles, which replaced the prior open ditch. At no time did DD48 have a survey, plat, profile, or report for an open ditch. At no time did DD48 have a presumption of an easement for a ditch right of way.

On February 1, 1937, the Minutes of the Franklin County Board of Supervisors, Exhibit 17, App. V.I-P. 488 states:

- All land in DD1 that was exempted from general taxation on account of being an open ditch should now be entered for taxation the same as other lands for the reason that there is now no ditch;
- That drainage district being now known as DD48;
- All of said land having become productive farm ground.

It is clear that as of February 1, 1937, at one time DD1 had an open ditch but it no longer existed and instead there were productive farm lands above the main tile line in DD48.

The Franklin County Board of Supervisors put the land back on the tax rolls.

The February 1, 1937 Minutes, Exhibit 17, clearly documents that DD1's open ditch ceased to exist and instead became productive farm ground.

An abandonment of an easement is not the correct focus since no presumption of an easement existed until 1985. However, there has been an abandonment of DD1's open ditch. DD1 left, abandoned, its open ditch in 1916 to DD48. In turn, in 1916, DD48 discontinued, ceased, and abandoned the open ditch and instead replaced it with a main tile covered with dirt and 35 lateral tiles as shown in DD48's survey, plat, profile, and report. DD48 did not, and does not, have a survey, plat, profile, and report for an open ditch.

> "In order to prove abandonment, actual acts of relinquishment, accompanied by intention to abandon, must be shown. Allamakee County v. Collins Trust, 599 N.W.2d 448, 451 (Iowa 1999).
>
> "'In order to establish an abandonment of property, actual acts of relinquishment accompanied by intention must be shown. The primary elements are the intention to abandon and the external act by which that intention is carried into effect..." Town of Marne v. Goeken, 147 N.W.2d 218, 224 (Iowa 1967).

DD48's "intention to abandon" the open ditch of DD1 was its 1916 survey, plat, profile, and report to replace the open ditch and instead have a main tile covered with dirt with 35 lateral tiles; and DD48 did not have a survey, plat, profile, and report for an open ditch. The external "act of abandoning" the open ditch is the construction of the new main tile covered with dirt and the 35 new lateral tiles, and that the area above the new main tile was filled in without any objection of the landowners or of the Board of Supervisors in their role as manager of DD48. The ditch no longer existed, and the area was productive farm ground as shown by the Board of Supervisors' February 1, 1937 Minutes, Exhibit 17. App. V.I-P. 488.

DD48 as of 1985 was presumed to have an easement for a main tile with 35 lateral tiles since 1916. DD48 since 1991 was also presumed to have an easement for a farmable, crossable surface waterway. However, DD48 has not, and does not, have an easement for an open ditch.

The Trial Court adopted engineer Gallentine's and the two fee holders' Appraisal assumption on page 4 of Exhibit 23 (App. V.II-P. 32) that DD1 and/or DD48 have easements from 1906, and DD48 has an easement from 1991 which affects the amount of acres taken for the 2017 Open Ditch Project as follows:

Owner	Acres Occupied Ditch In 2017	DD48's Asserted 1906 Easement	DD48's Asserted 1991 Easement	No. of Acres DD48 Wants To Pay For
Hanson	3.96 Acres	2.50 Acres		1.46 Acres
Abbas	7.94 Acres	6.14 Acres		1.80 Acres
Reid-Meyer	10.77 Acres		9.45 Acres	1.32 Acres

DD48's 2017 Open Ditch Project put in an open ditch, for which the Plaintiffs are entitled to be compensated for the entire open ditch put in, plus severance damages.

Conclusion

The Trial Court erred in ruling that DD1 and/or DD48 have an easement for a ditch right of way (ROW). The Decree of the Trial Court should be reversed, and it should be the ruling of this Court that the respective Plaintiffs be compensated for the taking of the following amount of acres for DD48's 2017 Open Ditch Project:

Owner	ROW
Hanson	3.96 Acres
Abbas	7.94 Acres
Reid	10.77 Acres

Issue II

The Trial Court Erred In Computing Plaintiffs' Damages Without A Reasonable Basis

A. Preservation of Error: This issue was preserved for appellate review by the Plaintiffs' Notice of Appeal.

B. Standard of Review: The standard of review for an appeal under Section 468.86, Code of Iowa, for the amount of damages the claimants are entitled is pursuant to Section 468.91, Code of Iowa, which is at law for correction of errors. Chi. Cent. & Pac. R.R. v. Calhoun Cnty. Bd. of Supervisors, 816 N.W.2d 367, 370 (Iowa 2012).

C. Argument: The Trial Court erred in computing Plaintiffs' damages without a reasonable basis because (a) it incorrectly assumed there was an existing easement for a ditch right of way as discussed in Issue I, and (b) it used severance damage percentages of 4.5% for the Abbas land, 1.98% for the Reid-Meyer land, and 9.4% for the Hanson land, when it was Plaintiffs' Appraiser, Ted Frandson's, unrebutted testimony that a severance of land typically reduces the fair market value of the property by 10%.

Plaintiffs' Appraiser, Ted R. Frandson, MAI, CCIM's Appraisal Reports, Exhibit 13, P. 11, Exhibit 14, P. 11, and Exhibit 15, P. 11, state that:

> "Market participants and experienced farm brokers, indicate at least generally a 10% difference in market value between rectangular tracts with long rows and irregular tracts with short or point rows." App. V.I-PP. 339, 396, 447.

The Trial Court's Decree on page 10 states:

> "While Frandson testified the severance would result in at least a 10% decrease in value of the land, his calculations for the loss due to severance range from 11% to 14%." App. V.I-P. 223.

However, Mr. Frandson's Appraisals, Exhibits 13, 14, and 15, show severance damages of 8.7% and 9.1% using the comparable sales approach for the before and after fair and reasonable market values as follows:

	Severance Damage			
Abbas				
Before		$8,042 x 222.74A	=	$1,791,297
After	9.1%	$7,311 x 214.80A	=	$1,570,000
		7.94A*		$221,000
				Exhibit 14, PP. 30 and 32. App. V.I-PP. 415, 417.

Hanson				
Before		$8,048 x 188.36A	=	$1,583,689
After	8.7%	$7,677 x 184.80A	=	$1,416,000
		3.96A*		$168,000
				Exhibit 13, PP. 36 and 38. App. V.I-PP. 364, 366.
Reid-Meyer				
Before		$8,773 x 183.15A	=	$1,607,000
After	9.1%	$8,042 x 172.38A	=	$1,386,000
		10.77A*		$221,000
				Exhibit 15, PP. 31 and 33. App. V.I-PP. 467, 469.

* Acres taken for 2017 Open Ditch Project.

The Trial Court's before and after values for the Plaintiffs' properties show the respective percentage of severance damages:

Abbas		
Before		$7,700 per acre
After	4.5%	$7,350 per acre
Hanson		
Before		$8,550 per acre
After	9.4%	$7,750 per acre
Reid-Meyer		
Before		$8,570 per acre
After	1.98%	$8,400 per acre

Decree After Trial To The Court, PP. 19 and 20. App. V.I-PP. 232, 233.

The Trial Court in its Decree, on page 12, correctly cited the case of Larson v. Webster County, 130 N.W. 165, 166 (Iowa 1911) in holding that "the Court determines the fair and reasonable market value of the Plaintiffs' land immediately before the establishment of the (2017) ditch, and immediately after the location of the (2017) ditch in order to determine the amount of damages." App. V.I-P. 225.

Harris v. Board of Trustees of Green Bay Levee and Drainage Dist. No. 2 Lee County, 59 N.W.2d 234 (Iowa 1953) is also authority that the proper measure of damages is the difference in the fair and reasonable market value of the Plaintiffs' property immediately before and immediately after DD48's 2017 Open Ditch Project.

> "Under the law of this state pertaining to condemnation and by all our previous decisions in eminent domain proceedings, this court has said that the plaintiffclaimant was entitled to reimbursement for the difference in the fair and reasonable market value of the farm just before and just after the taking. This, of course, takes into consideration the fair and reasonable market value of the land actually taken, but also includes the reduced value, if any, of the remaining farm lands, and other damages caused by such severance. The authority is voluminous. (Citations omitted)." (Emphasis added.) Id., 59 N.W.2d 237.

Plaintiffs' Appraiser, Ted Frandson, in accord with Iowa law, used the comparable sales approach to determine the difference in the fair and reasonable market value of the Plaintiffs' properties before DD48's 2017 Open Ditch Project, and after DD48's 2017 Open Ditch Project.

Mr. Frandson's Appraisal Report, Exhibit 14 PP. 10-12, explains the background and his appraisal as follows:

> "The general history of the drainage district serving the subject is that an original drainage ditch was installed in the general area of the current ditch in 1906 to provide draining to the area as part of a drainage district. Then in 1916 drainage district tile was installed and the ditch filled over the tile. The entire area was then farmed with continuous crops until the tile main began to fail in several areas in the late 1980's and early 1990's. This was likely due to increased equipment size during that period. Instead of repairing or replacing the 1916 tile the district attempted to alleviate the problem by grading in a shallow, farmable waterway. They classified this as a repair. At the time McClure engineering specified that newly graded waterways be farmable. The farm operator and co-owner, Matt Abbas and his father report that they were able to farm through the newly graded waterway for approximately five years. However, the ditch was reportedly installed over the tile and the tile began to fail more significantly. After approximately five years the waterway became too wet to farm consistently, so it was enrolled in CRP and seeded. This attempted repair did not provide the same drainage as the tile when the tile was working properly. The shallow waterway and the areas served by the improvised repairs became less and less farmable due to wetness (worse than it had been when the original tile was working properly).
>
> While this shallow waterway was originally farmed through for a period of several years it became wetter. Many areas were seeded but it could still be crossed during conditions that also allowed farming operations. McClure Engineering indicates in their 1991 design that the area is to be farmable.
>
> Before the acquisition the topography and drainage in the area of this project would at least be considered a crossable grassed waterway or farmable shallow waterway. However, if the original tile from 1916 had been repaired or replaced to original specifications instead of the installation of the shallow waterway as an attempted repair, there would be every reason to expect that the entire area could be farmed through as it has been since 1916. Also, a proper tile main could have been used as an outlet for lateral tile patterns

which would have further improved the drainage and farm-ability. This was not possible with a shallow ditch and failing tile.

Since the function of the valuation is to determine compensation for the ROW acquired for the drainage district and since the farm will be assessed for the cost of the repair project the before valuation should be based on the physical property with the originally designed system in its working state; not in its failed state and needing repair.

In the failed state the subject has a shallow crossable waterway. In its originally designed state and in the state designed by McClure engineering for the 1991 attempted repair, the area had a working tile and was entirely farmable. Since the pre-1916 state was a shallow waterway that was improved in 1916 with a tile system that operated successfully until the 1990's when the attempted repair of a shallow ditch was made and worked temporarily, but clearly failed. It is our conclusion that the situation or status before the taking was that of a failed tile that has functioned successfully but was in need of repair or replacement and not that of a shallow non-crossable ditch. As assessment by the district for the cost of repairing the original 1916 sub-surface system would have been expected. But with new sub-surface drainage repaired, the area of the taking would be expected to be restored to its farmable condition as it had been for the majority of the time since the 1916 project.

. . .

The impact on the subject will be a reduction in the useable farmable area as well as severance damage to the remainder" App. V.I-PP. 395-397

Similar statements are also contained in Exhibit 13 PP. 10-12, and Exhibit 15 PP. 10-11. App. V.I-PP. 338-340, 446-448.

Engineer Gallentine and the two fee holders' Appraiser's Report for DD48, Exhibit 23, does not consider the difference in the fair and reasonable market value of the Plaintiffs' properties before and after DD48's 2017 Open Ditch Project.

Exhibit 23 did not compute severance damages, and does not consider a percentage of severance damages. App. V.II-PP. 31-33, 37-39.

Engineer Gallentine and the two fee holders' Appraisers' Report for DD48. Exhibit 23, used CSR2 (Corn Suitability Rating) for the value of Plaintiffs' lands, Apps. E, F, and G. App. V.II-PP. 74-81. Plaintiffs' appraiser, Ted Frandson, testified that CSR2 is only one factor to be used in appraising the market value of real estate. CSR2 does not consider topography, drainage, shape, size, tile outlets, and ability to pattern tile. Trans. P. 87 l. 3 to P. 88 l. 22.

The CSR2 rating remains the same before and after the 2017 Open Ditch Project. It doesn't recognize severance damages, point rows, and irregular shaped fields that no longer have long straight rows.

Ted Frandson's market approach is the standard appraisal method of finding comparable sales of property to establish the before and after fair market value of a property. Mr. Frandson's appraisal had nine (9) such comparable sales upon which his appraisal relies. Exhibit 13 PP. 39-47, Exhibit 14 PP. 33-41, Exhibit 15 PP. 34-42. App. V.I-PP. 367-375, 418-426, 470-478. Mr. Frandson's Appraisals are in accord with Iowa law which consider the fair and reasonable market value of the Plaintiffs' properties before and after DD48's 2017 Open Ditch Project. See the Larson and Harris cases.

There is no evidence to support 1.98% and 4.5% severance damage for the Abbas nor Reid-Meyer properties. There is no reasonable basis for the Trial Court to have severance damages ranging from 1.98% to 4.5% and 9.4%.

There should be very little difference in the percentages of severance damages affecting the market value of the Plaintiffs' properties. The Hanson (9.4%), Abbas (4.5%), and Reid-Meyer (1.98%) properties are adjoining. The Reid-Meyer property (1.98%) is approximately 1 mile downstream from the Hanson and Abbas properties, but is in close proximity with the Hanson and Abbas properties when considering fair market values.

The Trial Court's Decree, on page 18, cites the cases of Miller v. Rohling, 720 N.W.2d 562, 572 (Iowa 2006) and Hawkeye Motors Inc. v. McDowell, 541 N.W.2d 914, 917 (Iowa Ct. App. 1995). App. V.I-P. 231.

> "[A] fact finder may allow recovery provided there is a reasonable basis in evidence from which the fact finder can infer or approximate the damages." (Emphasis added.) Id., 720 N.W.2d 572.
>
> "The trial court may not disregard evidence and arbitrarily fix an amount for which no basis in the evidence exists." (Emphasis added.) Id., 541 N.W.2d 917.
>
> "[R]ecovery may be had if there is proof of a reasonable basis from which the amount can be affirmed or approximated." Strong v. Mortgage Loans of America, LLC, No. 7-698/2090 (Iowa App. 11/29/2007), No. 7-698/06-2090 (Iowa App. Nov. 29, 2007).

The Trial Court erred in failing to award Plaintiffs' damages for the entire amounts of acres taken for DD48's 2017 Open Ditch Project. There was no basis in the evidence to not allow Plaintiffs' damages for the total acres taken by DD48's 2017 Open Ditch Project. In 1916 DD48 abandoned DD1's former open ditch, and instead changed it into a main tile covered with dirt with 35 lateral tiles.

The Trial Court also erred in applying widely varying percentages of severance damages to Plaintiffs' lands that are in the same vicinity without any basis in the evidence submitted in this case. There is no basis in the evidence for a 4.5% nor a 1.98% of severance damages. There is no basis in the evidence for severance damages that are not close to 10%.

The Trial Court in its Decree, on page 10, noted that appraiser Ted Frandson for the Plaintiffs had a preliminary report in February 2022 and a final report in September 30, 2022, and wondered why the values would be different. App. V.I-P. 223. Appraiser Ted Frandson testified that with his preliminary February 2022 report his original understanding was that the 1990's failed repair with a crossable but not farmable surface waterway had been a persistent condition since the installation of the main tile in 1916. But, with further information, Mr. Frandson realized that from at least February 1, 1937 until the 1990's failed repair project,

there was no ditch and the land above DD48's main tile was productive crop ground. Trans. P. 77 l. 18 to P. 78 l. 18.

The Trial Court calculated the Plaintiffs' damages by "comparing apples to oranges", which is not a reasonable basis. The Trial Court in its Decree on page 19 uses engineer Gallentine's CSR2 rating to find the before values of the Plaintiffs' land, and uses Frandson's February 7, 2022 preliminary appraisal figures for the after values.

> "Generally, the Court finds Gallentine and the appraiser's use of CSR2 rating to be more credible than Frandson's market approach … The Court relies on Frandson's February 7, 2022 estimation of the post 2017 valuation." App. V.I-P. 232.

There is no reasonable basis for the Trial Court to "mix and match", "comparing apples and oranges" by using engineer Gallentine's CSR2 rating (which doesn't consider topography, drainage, shape, size, tile outlets, and ability to pattern tile for the before values), with Mr. Frandson's February 2022 estimated after market values (which didn't recognize that the land above DD48's main tile from some time after 1916 to 1990 was productive farm land) for the after values.

There is no reasonable basis to not rely upon Mr. Frandson's September 30, 2022 appraisals, which use the proper measure of damage, of the before and after reasonable and fair market value, as required by the Larson and Harris cases.

There is no reasonable basis for the Trial Court to have varying percentage of severance damages for the Plaintiffs' lands, i.e., Abbas - 4.5%; Hanson - 9.4%; Reid-Meyer - 1.98%. There is no evidence to support severance damage amounts of 4.5% nor 1.98%.

If the Trial Court's 9.4% severance damage for the Hanson property was applied to the Trial Court's before values with a recognition that there is no easement for a ditch right of way relating back to 1905 and/or 1916, the following would be the result:

Abbas				
Before		$7,700 x 222.74A	=	$1,715,098.00
After	9.4%	$6,976.20 x 214.80A	=	$1,498,487.70
		7.94A		$216,610.30
Hanson				
Before		$8,550 x 188.36A	=	$1,610,478.00
After	9.4%	$7,746 x 184.40A	=	$1,428,417.70
		3.96A		$182,060.30
Reid-Meyer				
Before		$8,570 x 179.14A	=	$1,535,229.80
After	9.4%	$7,764.42 x 172.38A	=	$1,338,420.70
		10.77A		$196,799.10

The Plaintiffs are entitled to the following compensation for damage as shown in Ted Frandson's Appraisals, Exhibits 13, 14, and 15:

Abbas	$221,000
Hanson	$168,000
Reid-Meyer	$221,000

Conclusion

There is not a reasonable basis for the Trial Court's Decree to:

- Reduce Plaintiffs' damages on the basis that DD1 and/or DD48 have an easement for a ditch right of way.
- Apply a 4.5% difference in market value of the Abbas property due to severance when the Trial Court applies a 9.4% difference in market value of the Hanson property due to severance.
- Apply a 1.98% difference in market value of the Reid-Meyer property due to severance when the Trial Court applies a 9.4% difference in the market value of the Hanson property due to severance.

This Court should reverse the Trial Court's Order in its Decree in regard to the Plaintiffs' damages and remand this case to the Trial Court to award Plaintiffs' damages on the basis that:

(a) the Plaintiffs shall be compensated for the following amounts of land taken for DD48's 2017 Open Ditch Project:

	ROW
Hanson	3.96 Acres
Abbas	7.94 Acres
Reid-Meyer	10.77 Acres

and

(b) all the Plaintiffs' severance damages shall be determined at a 9.4% market value against the Trial Court's before values for the respective Plaintiffs as shown on pages 35-36 of Plaintiffs' Brief, which result in the following damages for the respective Plaintiffs:

Abbas	$216,610.30
Hanson	$182,060.30
Reid-Meyer	$196,799.10

or, that Plaintiffs' damages should be based on the appraisals of Ted Frandson whose computation of damages is as follows:

Abbas	$221,000
Hanson	$168,000
Reid-Meyer	$221,000

Issue III

The Trial Court Erred In Ruling That Reid-Meyer Are To Deed Over 4.01 Acres To DD48 Which Are Not Needed For DD48's 2017 Open Ditch Project

A. Preservation of Error: This issue was preserved for appellate review by the Plaintiffs' Notice of Appeal.

B. Standard of Review: The standard of review for an appeal under Section 468.86, Code of Iowa, for the amount of damages the claimants are entitled is pursuant to Section 468.91, Code of Iowa, which is at law for correction of errors. Chi. Cent. & Pac. R.R. v. Calhoun Cnty. Bd. of Supervisors, 816 N.W.2d 367, 370 (Iowa 2012).

C. Argument: The Trial Court erred in Ruling that Reid-Meyer are required to deed over 4.01 acres which are not necessary for DD48's 2017 Open Ditch Project, and for which there has been no condemnation proceeding initiated to acquire 4.01 acres.

Exhibit 23 for DD48, pages 3 and 4, show the DD48 20017 Open Ditch Project now occupies 10.77 acres of the Reid-Meyer property. App. V.II-PP. 31-32. Page 11 of Exhibit 23 shows that DD48's 2017 Open Ditch Project (which occupies 10.77 acres of the Reid-Meyer property) has left 4.01 acres, which lies northwest of

the new open ditch, now landlocked by the new open ditch, as shown on page 14 of Exhibit 15. App. V.I-P. 450.

There was no evidence presented that the 4.01 acres are necessary for DD48's 2017 Open Ditch Project.

The Plaintiffs' Appraiser Ted Frandson's Appraisal Exhibit 15 is based on DD48's 2017 Improvement Project taking 10.77 acres from the Reid-Meyer property for DD48's 2017 Open Ditch Project, as shown in Exhibit 15, P. 12. App. V.I-P. 448.

DD48's Appraiser's Report for DD48, Exhibit 23, made by Engineer Lee O. Gallentine, P.E., and two freeholders, on pages 3 and 4 show that 10.77 acres of the Reid-Meyer property is occupied and necessary for DD48's 2017 Open Ditch Project. On page 11, Exhibit 23 shows that an additional 4.01 acres of the Reid-Meyer property is now landlocked as a result of DD48's 2017 Open Ditch Project which occupies the 10.77 acres necessary for the new open ditch. App. V.II-P. 39.

Exhibit 23 does not state that the 4.01 acres of the Reid-Meyer property is necessary for DD48's 2017 Open Ditch Project. There was no evidence offered that DD48 was intending to, or has, initiated any condemnation proceeding to acquire said 4.01 acres.

On pages 5 and 6 of DD48's Motion To Enlarge And Amend Findings In Fact And Judgment, DD48 asked the Trial Court to require Reid-Meyer to deed over the 4.01 acres to DD48 by warranty deed, which was resisted by the Plaintiffs.

The 4.01 acres, although landlocked, have value. They can be rented or sold to the adjoining landowner. The 4.01 acres are not necessary for DD48's 2017 Open Ditch Project. There has been no condemnation proceedings initiated by DD48 to acquire said 4.01 acres.

The Trial Court, in its Order On Post-Ruling Motions, incorrectly ruled that Reid-Meyer should convey the 4.01 acres to DD48 by warranty deed. App. V.I-PP. 261-262. There is no legal authority by which Reid-Meyer can be required to convey the 4.01 acres, which are landlocked, to DD48.

Section 468.126(6), Code of Iowa, provides that a drainage district can only acquire "the necessary lands or easements for making repairs or improvements under this section." (Emphasis added.) There is no evidence that the 4.01 acres are necessary for DD48's Open Ditch Project. Only the 10.77 acres within and immediately adjoining the new open ditch is necessary for the 2017 Open Ditch Project.

There has been no effort by DD48 to condemn the 4.01 acres as would be required under Section 468.126(6), Code of Iowa.

Section 468.126(6) in pertinent parts provides as follows:

> "The governing body of the district may ... acquire ... the necessary lands or easements for making repairs or improvements ... the same may be obtained it he manner provided in the original establishment of the district, or by exercise of eminent domain as provided for in chapter 6B." (Emphasis added.)

Again, Section 6B.3(1)(g), Code of Iowa, requires "A showing of the minimum amount of land necessary to achieve the public purpose and the amount of land to be acquired by condemnation for the public purpose." (Emphasis added.)

DD48 has not initiated any condemnation proceedings to acquire said 4.01 acres. If it would, such effort would be challenged as an invalid excessive taking of land that is not necessary for DD48's 2017 Open Ditch Project.

A condemning authority is only empowered to condemn the minimum amount necessary for the public improvement that is involved. Vittetoe v. Iowa Southern Utilities Co., 123 N.W.2d 878, 882 (Iowa 1963), Mann v. City of Marshalltown, 265 N.W.2d 307, 313 (Iowa 1978), Comes v. City of Atlantic, 601 N.W.2d 93, 96 (Iowa 1999), Owens v. Brownlie, 610 N.W.2d 860, 866 (Iowa 2000).

Conclusion

There is no legal authority for the Trial Court to order that Reid-Meyer must deed the 4.01 acres to DD48. There has been no effort by DD48 to initiate condemnation proceedings to acquire said 4.01 acres – which are not necessary for

DD48's 2017 Open Ditch Project. The 4.01 acres are a part of Reid-Meyer's 183.15 acres of farm ground, all of which has suffered severance damage, as shown in Exhibit 15, P. 12. App. V.I-P. 448. The 4.01 acres are a part of said 183.15 acres which are now landlocked, but which still have value to Reid-Meyer as being able to rent or sell to the adjoining landowner.

The Trial Court's Ruling in regard to requiring Reid-Meyer to convey the 4.01 acres to DD48 should be reversed.

REQUEST FOR ORAL ARGUMENT

The City of Tiffin, Iowa reasserts its request for oral arguments in this matter.

GOODWIN LAW OFFICE, P.C.
/s/ Robert W. Goodwin
Robert W. Goodwin AT0002986
2211 Philadelphia Street, Suite 101
Ames, Iowa 50010-8767
Telephone: (515) 232-7390
Fax: (515) 232-7396
E-mail: goodwinlawoffice@fbx.com
ATTORNEY FOR PLAINTIFFS-APPELLANTS

Original E-filed.
Copy to:
G. A. Cady III AT0001386
Cady & Rosenberg Law Firm, P.L.C.
9 First Street SW
PO Box 456
Hampton, Iowa 50441
Phone: 888-575-0326
Fax: 641-456-3315
Email: gacady@hobsoncadylaw.com
Attorney for Defendants

ATTORNEY'S COST CERTIFICATE

I certify that the actual cost of reproducing the necessary copies of Plaintiffs'-Appellants' Final Brief And Request For Oral Argument consisting of 48 pages was in the sum of $4.80.

GOODWIN LAW OFFICE, P.C.
/s/ Robert W. Goodwin
Robert W. Goodwin, AT0002986
2211 Philadelphia Street, Suite 101
Ames, Iowa 50010-8767
Telephone: (515) 232-7390
Fax: (515) 232-7396
E-mail: goodwinlawoffice@fbx.com
ATTORNEY FOR PLAINTIFFS-APPELLANTS

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. This Final Brief And Request For Oral Argument complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this Final Brief And Request For Oral Argument contains 9,305 words, excluding the parts of the Appendix exempted by Iowa R. App. P. 6.903(1(g)(1).

2. This Final Brief And Request For Oral Argument complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this Final Brief And Request For Oral Argument has been prepared in a proportionally spaced typeface using Microsoft Word in Size 14 font.

Dated this _____ day of November, 2023.

GOODWIN LAW OFFICE, P.C.
/s/ Robert W. Goodwin
Robert W. Goodwin, AT0002986
2211 Philadelphia Street, Suite 101
Ames, Iowa 50010-8767
Telephone: (515) 232-7390
Fax: (515) 232-7396
E-mail: goodwinlawoffice@fbx.com
ATTORNEY FOR PLAINTIFFS-APPELLANTS

CERTIFICATE OF FILING AND SERVICE

I, Robert W. Goodwin, hereby certify that I electronically filed the foregoing Appellants' Final Brief And Request For Oral Argument with the Clerk of the Iowa Supreme Court, on November _____, 2023.

I, Robert W. Goodwin, hereby further certify that on November _____, 2023, I served the foregoing Appellants' Final Brief And Request For Oral Argument, by the electronic filing system, to the following attorneys of record:

G. A. Cady III, AT0001386
Cady & Rosenberg Law Firm, P.L.C.
9 First Street SW
PO Box 456
Hampton, Iowa 50441
Phone: 888-575-0326
Fax: 641-456-3315
Email: gacady@hobsoncadylaw.com
Attorney for Defendants

GOODWIN LAW OFFICE, P.C.
/s/ Robert W. Goodwin
Robert W. Goodwin, AT0002986
2211 Philadelphia Street, Suite 101
Ames, Iowa 50010-8767
Telephone: (515) 232-7390
Fax: (515) 232-7396
E-mail: goodwinlawoffice@fbx.com
ATTORNEY FOR PLAINTIFFS-APPELLANTS