

#36.26

11/20/72

First Supplement to Memorandum 72-74

Subject: Study 36.26 - Condemnation (Acquisition, Removal, and Relocation of Structures and Related Improvements)

We have discovered several additional statutes dealing with the problem that arises where a structure is located partly on land being condemned and partly on other land. See Exhibit I attached.

Respectfully submitted,

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Executive Secretary

Indiana

48-2108. Structures on property acquired — Removal by owner or board—Retention of property removed—Right of entry—Costs entailed. —Whenever in any such improvement any part of the property so acquired by the city, under any proceedings authorized herein, shall be encumbered in whole or in part by any obstructions, buildings, or other structures, that will interfere with any proposed public use of such property, said board shall have power, either in the original proceedings or by supplementary proceedings under said improvement, or in any proceedings under any subsequent improvement, or by voluntary agreement with the person so affected, or as otherwise provided by law, to provide for the removal thereof by such original owner or anyone so authorized by him and the retention of the property so removed, if done at his own expense and under such terms and conditions as said board may require. The said board may also provide in any such aforesaid proceedings for the removal thereof and may order such removal to be effected either under a separate contract, or by the employees of the city, and may provide the funds necessary for that purpose. In doing any of such work said board, or anyone authorized by it, may enter upon the property of the person so affected in performing all the necessary work of removing the aforesaid obstructions, buildings, or structures from the land so acquired by the city, and it shall be the duty of the person so affected to cooperate in such work and to protect his own property and all structures thereon from any damage that might be caused by such work being done by the city with reasonable care on its adjoining property. The cost of removing all, or any part, of any of such obstructions, buildings, or structures from the land so acquired by the city, if not assumed and paid by such original owner or his assigns, as aforesaid, may be provided and paid for either wholly by the city out of any funds available therefor and acquired under any of the provisions of this act, or under any existing law; or else, in any subsequent separate public improvement, embracing all or part of the land so acquired and requiring the removal of such obstructions, buildings, or structures, such cost may be assessed in whole or in part against the property benefited by such improvement, or in whole or in part against the city; all as said board, in its discretion, may determine to be just and proper. [Acts 1933, ch. 15, § 8, p. 37.]

### Washington

**8.04.112 Damage to buildings.** If there is a building standing, in whole or in part, upon any land to be taken, the jury shall add to their finding of the value of the land taken, the damages to the building. If the entire building is taken, or if the building is damaged, so that it cannot be readjusted to the premises, then the measure of damages shall be the fair market value of the building. If part of the building is taken or damaged and the building can be readjusted or replaced on the part of the land remaining, and the state agrees thereto, then the measure of damages shall be the cost of readjusting or moving the building, or the part thereof left, together with the depreciation in the market value of the building by reason of such readjustment or moving. [1955 c 156 § 4.]

**8.04.114** ———Where based on readjustment or moving. If damages are based upon readjustment or moving of building or buildings, the court shall order and fix the time in the judgment and decree of appropriation within which any such building must be moved or readjusted. Upon failure to comply with said order, the state may move said building upon respondent's remaining land and recover its costs and expenses incidental thereto. The state shall have a lien upon the building and the remaining land from the date of the judgment and decree of appropriation for the necessary costs and expenses of removal until the order of the court has been complied with. The amount of the lien and satisfaction thereof shall be by application and entry of a supplemental judgment in said proceedings and execution thereon. [1955 c 156 § 5.]

**8.12.140. Damage to buildings—Measure.** If there be any building standing, in whole or in part, upon any land to be taken, the jury shall add to their finding of the value of the land taken the damages to said building. If the entire building is taken, or if the building is damaged, so that it cannot be readjusted to the premises, then the measure of damages shall be the fair market value of the building. If part of the building is taken or damaged and the building can be readjusted or replaced on the part of the land remaining, then the measure of damages shall be the cost of readjusting or moving the building, or the part thereof left, together with the depreciation in the market value of said building by reason of said readjustment or moving. [1907 c 153 § 10; RRS § 9224. Prior: 1905 c 55 § 10; 1893 c 84 § 10.]

§ 1240.420. Condemnation of remainder of structure

1240.420. Whenever property is to be acquired by a public entity for public use and a structure is located partly on the property to be acquired and partly on other property, the public entity may exercise the power of eminent domain to acquire the entire structure and the temporary use of the other property [an easement] for the purpose of demolishing or relocating the structure if the portion of the structure that otherwise would not be taken would be a detriment rather than a benefit to the remainder.

Section to be Included in Compensation Chapter

§ Expenses of protecting against injury from partially completed improvement

\_\_\_\_\_. Where an improvement is in the process of construction on the property on the date of service of summons, there shall be included in the computation of just compensation the amount of any expenses reasonably incurred for work performed after the date of service of summons that was necessary to protect persons or other property against the risk of injury created by the partially constructed improvement.

§ 1245.000. Protection of partially completed improvement

1245.000. Where an improvement is in the process of construction on the property on the date of service of summons, there shall be included in the assessment of compensation and damages any work performed after the date of service of summons that was reasonably necessary to protect the improvement from being vandalized or from being damaged by exposure to the elements.