

IC 32-24-2

Chapter 2. Procedures for Cities and Towns

IC 32-24-2-1

"Fiscal officer" defined

Sec. 1. As used in this chapter, "fiscal officer" means:

- (1) the city controller of a consolidated city or second class city;
- (2) the city clerk-treasurer of a third class city; or
- (3) the town clerk-treasurer of a town.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-2

"Municipality" defined

Sec. 2. As used in this chapter, "municipality" means a city or town.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-3

"Property" defined

Sec. 3. As used in this chapter, "property" refers to real property or personal property.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-4

"Works board" defined

Sec. 4. As used in this chapter, "works board" means:

- (1) the board of public works or the board of public works and safety of a city; or
- (2) the legislative body of a town.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-5

Alternate procedure

Sec. 5. If:

- (1) a municipality has the power to acquire property under this chapter; or
- (2) another statute provides for proceedings by a municipality for acquiring property under this chapter;

the board exercising those powers may proceed under IC 32-24-1 instead of this chapter.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-6

Application of chapter; condemnation resolutions; notice; remonstrances

Sec. 6. (a) This chapter applies if the works board of a municipality wants to acquire property for the use of the municipality or to open, change, lay out, or vacate a street, an alley, or a public place in the municipality, including a proposed street or alley

crossings of railways or other rights-of-way. However, this chapter does not apply if a municipality wants to acquire the property of a public utility (as defined in IC 8-1-2-1).

(b) The works board must adopt a resolution that the municipality wants to acquire the property. The resolution must describe the property that may be injuriously or beneficially affected. The board shall have notice of the resolution published in a newspaper of general circulation published in the municipality once each week for two (2) consecutive weeks. The notice must name a date, at least ten (10) days after the last publication, at which time the board will receive or hear remonstrances from persons interested in or affected by the proceeding.

(c) The works board shall consider the remonstrances, if any, and then take final action, confirming, modifying, or rescinding its original resolution. This action is conclusive as to all persons.

As added by P.L.2-2002, SEC.9. Amended by P.L.172-2009, SEC.6.

IC 32-24-2-7

List of affected property owners

Sec. 7. (a) When the final action under section 6 of this chapter is taken, the works board shall have prepared the following:

(1) A list of all the owners or holders of the property, and of interests in it, sought to be acquired or to be injuriously affected.

(2) If a street, alley, or public place is to be opened, laid out, changed, or vacated in the municipality, or within four (4) miles of it, a list of the owners or holders of property, and of interests in it, to be beneficially affected by the work.

(b) The list required by subsection (a) may not be confined to the owners of property along the line of the proposed work but must include all property taken, benefitted, or injuriously affected. In addition to the names, the list must show, with reasonable certainty, a description of each piece of property belonging to those persons that will be acquired or affected, either beneficially or injuriously. A greater certainty in names or descriptions is not necessary for the validity of the list than is required in the assessment of taxes.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-8

Damage awards and benefit assessments; notice; remonstrances

Sec. 8. (a) Upon the completion of the list, the works board shall award the damages sustained and assess the benefits accruing to each piece of property on the list.

(b) When the assessments or awards are completed, the works board shall have a written notice served upon the owner of each piece of property, showing the amount of the assessment or award, by leaving a copy of the notice at the owner's last usual place of residence in the municipality or by delivering a copy to the owner personally.

(c) If the owner is a nonresident, or if the owner's residence is

unknown, the municipality shall notify the owner by publication in a daily newspaper of general circulation in the municipality once each week for three (3) successive weeks.

(d) The notices must also name a day, at least ten (10) days after service of notice or after the last publication, on which the works board will receive or hear remonstrances from persons with regard to the amount of their respective awards or assessments.

(e) Persons not included in the list of the assessments or awards and claiming to be entitled to them are considered to have been notified of the pendency of the proceedings by the original notice of the resolution of the works board.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-9

Guardianship proceedings; notice

Sec. 9. (a) If a person having an interest in property affected by the proceedings is mentally incompetent or less than eighteen (18) years of age, the works board shall certify that fact to the municipality's attorney.

(b) The municipality's attorney shall apply to the proper court and secure the appointment of a guardian for the person less than eighteen (18) years of age or the mentally incompetent person. The works board shall give notice to the guardian, who shall appear and defend the interest of the protected person. However, if the protected person already has a guardian, the notice shall be served on that guardian. The requirements of notice to the guardian are the same as for other notices.

(c) If there is a defect in the proceedings with respect to at least one (1) interested person, the defect does not affect the proceedings except as it may concern the interest or property of those persons, and the defect does not affect any other person concerned.

(d) In case of a defect, supplementary proceedings of the same general character as those prescribed by this chapter may be initiated in order to correct the defect.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-10

Remonstrances; appeal

Sec. 10. (a) A person notified or considered to be notified under this chapter may appear before the works board on the day fixed for hearing remonstrances to awards and assessments and remonstrate in writing against them.

(b) After the remonstrances have been received, the works board shall either sustain or modify the awards or assessments in the case of remonstrances that have been filed. The works board shall sustain the award or assessment in the case of an award or assessment against which a remonstrance has not been filed.

(c) A person remonstrating in writing who is aggrieved by the decision of the works board may, not later than twenty (20) days after

the decision is made, take an appeal to a court that has jurisdiction in the county in which the municipality is located. The appeal affects only the assessment or award of the person appealing.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-11

Appeal procedure; discontinuance

Sec. 11. (a) The appeal may be taken by filing an original complaint in the court against the municipality within the time required by section 10(c) of this chapter, setting forth the action of the works board with respect to the assessment and stating the facts relied upon as showing an error on the part of the board. The court shall rehear the matter of the assessment de novo and confirm, reduce, or increase the assessment. If the court reduces the amount of benefit assessed or increases the amount of damages awarded, the plaintiff may recover costs. If the court confirms the amount of the assessment, the plaintiff may not recover costs. The judgment of the court is conclusive, and an appeal may not be taken from the court's judgment.

(b) If upon appeal the benefits assessed or damages awarded by the works board are reduced or increased, the municipality may, upon the payment of costs, discontinue the proceedings. It may also, through the works board, make and adopt an additional assessment against all the property originally assessed in the proceeding, or that part that is benefitted, in the manner provided for the original assessment. However, such an assessment against any one (1) piece of property may not exceed ten percent (10%) of the original assessment against it.

(c) If the municipality decides to discontinue the proceedings upon payment of costs and if assessments for benefits have already been paid, the amounts paid shall be paid back to the person or persons paying them.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-12

Assessment of benefits; local assessment roll

Sec. 12. (a) Upon completion of the assessment list by the works board, the list shall be delivered to the fiscal officer of the municipality. From the time the respective amounts of benefits are assessed, or if a lot or parcel has sustained both benefits and damages because of an improvement as stated in the assessment list, then the excess of benefits assessed over damages awarded constitutes a lien superior to all other liens except taxes against the respective lot or parcel.

(b) The fiscal officer of the municipality shall immediately prepare a list of the excess of benefits, to be known as the local assessment list. If the municipality is a second class city and the county treasurer collects money due the city, the local assessment list shall be delivered to the county treasurer.

(c) The duties of the fiscal officer of the municipality and county treasurer are the same as prescribed with regard to assessments for street improvement. The provisions of the statute relating to:

- (1) the payment of street improvement assessments by installments on the signing of waivers and issuance of bonds and coupons in anticipation;
- (2) the duties of the fiscal officer and the county treasurer in relation to them; and
- (3) the enforcement of payment of assessments in proceedings for the improvement of streets by the works board;

applies to these assessments.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-13

Due date of benefit assessments; foreclosure of liens; costs

Sec. 13. (a) The benefit assessments are due and payable to the fiscal officer or county treasurer from the time of the preparation or delivery of the assessment duplicate.

(b) If an assessment is not paid within sixty (60) days, the municipality, by its attorney, shall proceed to foreclose the liens as mortgages are foreclosed, with similar rights of redemption, and have the property sold to pay the assessments. The municipality may recover costs, with reasonable attorney's fees, and interest from the expiration of the sixty (60) days allowed for payment, at the rate of six percent (6%) per year.

(c) If the person against whom the assessment is made is a resident of the municipality, demand for payment must be made by delivering to the person personally, or leaving at the person's last or usual place of residence, a notice of the assessment and demand for payment.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-14

Payment of damage awards

Sec. 14. The works board may determine if any part of the damages awarded shall be paid out of funds appropriated for the use of the board. However, not more than two thousand dollars (\$2,000) in damages may be paid out of the municipality's funds for any improvement or condemnation except under an ordinance appropriating money for the specific improvement or condemnation. All benefits assessed and collected by the fiscal officer or county treasurer are subject to draft, in the usual manner, upon certificate by the works board in favor of persons to whom damages have been awarded. Any surplus remaining above actual awards belongs to the municipality. The works board may delay proceedings until the benefits have been collected.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-15

Certificates of damages; disputes as to whom damages should be

paid; injunction

Sec. 15. (a) Upon completion of the award of damages or whenever any time for delay as provided has expired, the works board shall make out certificates for the proper amounts and in favor of the proper persons. Presentation of the certificates to the fiscal officer of the municipality entitles the person to a warrant on the fiscal officer or the county treasurer. The certificates or vouchers shall, whenever practicable, be actually tendered to the persons entitled to them, but when this is impracticable, they shall be kept for the persons in the office of the works board. The making and fixing of the certificate is a valid and effectual tender to the person entitled to it, and the certificate must be delivered to that person on request.

(b) If a dispute or doubt arises as to which person the money shall be paid, the works board shall make out the certificate in favor of the municipality's attorney for the use of the persons entitled to it. The attorney shall draw the money and pay it into court in a proper proceeding, requiring the various claimants to interplead and have their respective rights determined.

(c) If an injunction is obtained because damages have not been paid or tendered, the works board may tender the certificate for the amount with interest from the time of entry upon the property, if any has been made, including all accrued costs. The injunction shall then be dissolved. The pendency of an appeal does not affect the validity of a tender made under this section, but the municipality may proceed with its acquisition of the property in question. However, when a lot or parcel has sustained both benefits and damages because of improvements as stated in the assessment list, only an excess of damages awarded over benefits assessed is payable under this section.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-16

Shoreline improvements; condemnation procedure

Sec. 16. (a) This section applies whenever the works board of a municipality located upon or adjoining a harbor connected with a navigable stream or lake, or upon any navigable channel, slip, waterway, or watercourse, wants to acquire for the use of the municipality any property for a right-of-way for seawalls, docks, or other improvement of the harbor, channel, slip, waterway or watercourse.

(b) The works board shall adopt a resolution that the municipality wants to acquire the property, describing the property that may be injuriously or beneficially affected. All proceedings necessary for the completion of and payment for any such undertaking, including notice, remonstrance, appeal, letting of and performance of contracts, assessment and collection of payment for benefits, and the determination and payment of damages to property, are the same, to the extent applicable, as those proceedings for street improvements of the municipality by its works board or other entity charged by

statute with the performance of those duties on behalf of the municipality.

As added by P.L.2-2002, SEC.9.

IC 32-24-2-17

Attorney's fees

Sec. 17. If applicable, a landowner who incurs attorney's fees through the exercise of eminent domain under this chapter is entitled to reasonable attorney's fees in accordance with IC 32-24-1-14.

As added by P.L.163-2006, SEC.14.