



City of Grand Island

Tuesday, May 22, 2007

Council Session

Item G9

#2007-116 - Approving Right of Entry Agreement between the City of Grand Island and Poland Oil (Sapp Brothers) Hwy. 281 & Capital Avenue

Staff Contact: Gary R. Mader

Council Agenda Memo

From: Gary R. Mader, Utilities Director

Meeting: May 22, 2007

Subject: Right-of-Entry Agreement – Poland Oil, Inc., a Nebraska Corporation

Item #'s: G-9

Presenter(s): Gary R. Mader, Utilities Director

Background

The Public Works Department of the City is in the process of obtaining property values through appraisers to establish the fair value of the right-of-way needed for the expansion of Capital Avenue on both sides of Highway 281. The process is time consuming and will not be completed until later this year.

Discussion

The Utilities Department has a need to enter the property of Poland Oil, Inc., a Nebraska Corporation, to install a single power pole and an east-west double circuit overhead line across the property.

When the Capital Avenue widening project is done, this pole line will be located in the expanded right-of-way needed to accommodate the road improvement project. But that right-of-way is not now available. The Utilities Department has contacted the property owner in order to make arrangements to proceed with the necessary line construction at this time, rather than waiting until all new right-of-way acquisition is done. This would allow Utilities to complete their work prior to the actual road construction beginning, and thereby reduce congestion during the road improvement project.

The Legal Department has reviewed the agreement and does not feel it will damage the negotiating position of either the City or Poland Oil. There is no cost to either party for this agreement.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the Right of Entry Agreement between the City of Grand Island, and Poland Oil, Inc., a Nebraska Corporation.

Sample Motion

Motion to approve the Right of Entry Agreement between the City of Grand Island and Poland Oil, Inc.

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT entered into this 15th day of May, 2007, by and between The City of Grand Island, Nebraska, hereinafter called the "Grantee" and POLAND OIL, INC., n/k/a SAPP BROS. PETROLEUM, INC., a Nebraska business corporation, hereinafter called the "Grantor", whether one or more.

WHEREAS, the Grantee is in the process of negotiating for the acquisition of easements on certain real estate owned by the Grantor, and the right to enter upon such real estate is immediately needed by the Grantee.

The Grantee is in the process of constructing a new roadway, and the Grantee needs the right to enter upon the Grantor's property for the purpose of beginning utility relocations. **A new overhead power line will be constructed east-west across the property approximately 12' north of the existing property line or at the south end of the existing fuel canopy. A new power pole will be set in the southeast corner of the property approximately 37' west of the centerline of the St. Patrick Avenue.**

Upon execution of this Agreement, the Grantee, its agents, employees and all persons contracting with the Grantee and their employees, may make immediate entry upon said premises; provided, however, that such entry shall in no way interfere with the Grantor's ongoing business operations. Such entry shall include the right to temporarily store materials, excavate and refill a trench, drive construction equipment, and perform other activities necessary to construct said project; provided, however, that such entry shall in no way interfere with the Grantor's ongoing business operations. Grantor and Grantee agree to cooperate in good faith with respect to the purposes and performance of the terms of this Agreement.

This Right of Entry Agreement terminates thirty (30) days after the project is completed or on July 31, 2007, whichever occurs first; and is granted upon the condition that the Grantee will cause the area disturbed under this easement to be restored upon completion of construction.

NOW THEREFORE, in consideration of the mutual promises and covenants granted hereunder and subject to the foregoing restrictions, the Grantor hereby grants to the Grantee the right to enter upon the following described real estate:

SEE ATTACHED EXHIBIT "A"


That said Grantor for himself, itself or themselves and his or their heirs, executives, administrators and assigns, does or do confirm upon said Grantee and its assigns, that he, they or it is or are Grantors of the above described property and that he, they or it has or have the right to grant and convey this Right of Entry in the manner and form aforesaid and that he, they or it will and his or their heirs, executives, administrators and assigns shall warrant and defend this Right of Entry to said Grantee and its assigns against the lawful claims and demands of all persons.

It is further understood that this agreement shall in no way constitute a waiver of any lawful claims for the value of the Grantor's property to be acquired or for any other lawful compensable claims incurred by Grantor. Provided that no breach exists with respect to the terms and obligations of this Agreement, no claim for damages for wrongful entry or trespass shall be made by the Grantor against the Grantee on the Real Property which is the subject of this Agreement.

GRANTEE(S):

City of Grand Island, Nebraska

GRANTOR(S): POLAND OIL, INC.,
n/k/a SAPP BROS. PETROLEUM, INC.



Authorized Representative

RESOLUTION 2007-116

WHEREAS, on July 12, 2005, by Resolution 2005-196, the City Council of the City of Grand Island approved the acquisition of real property for utility easements and right-of-way purposes to widen Capital Avenue from the Moore's Creek Drainway (approximately one-half mile west of U.S. Highway 281) east to Webb Road; and

WHEREAS, it is necessary for the Utilities Department of the City of Grand Island to enter property owned by Poland Oil, Inc., n/k/a Sapp Bros. Petroleum, Inc., to install a single power pole and an east-west double circuit overhead line across the property; and

WHEREAS, a proposed Right of Entry Agreement between the City of Grand Island and Poland Oil, Inc., n/k/a Sapp Bros. Petroleum, Inc., authorizing the use of the city right of entry, for such purposes has been reviewed by the City Attorney's office.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Right of Entry Agreement by and between the City and Poland Oil, Inc., n/k/a Sapp Bros. Petroleum, Inc., authorizing the city's entrance onto the property of Sapp Bros. Petroleum, Inc., to install a single power pole and an east-west double circuit overhead line across the property is hereby approved.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute such agreement on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, May 22, 2007.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
May 18, 2007	☐ City Attorney