



City of Grand Island

Tuesday, March 11, 2008

Council Session

Item I3

**#2008-93 - Approving Settlement of Sapp Bros. Petroleum, Inc.
Condemnation Appeal**

Staff Contact: Wes Nespor

Council Agenda Memo

From: Wesley D. Nespor, Legal Department

Meeting: March 11, 2008

Subject: Settlement of Sapp Bros. Petroleum, Inc. Condemnation Appeal

Item #'s: I-3

Presenter(s): Wesley D. Nespor, Attorney

Background

The City previously authorized an improvement project to widen a portion of Capital Avenue. It was necessary to acquire permanent and temporary rights-of-way and easements to complete this project as designed. Negotiations to purchase the needed property from Poland Oil, Inc. (now known as Sapp Bros. Petroleum, Inc.) stalled and eminent domain proceedings were commenced. The Board of Appraisers awarded the sum of \$40,785.00 which was deposited by the City last year in an account controlled by the Hall County Court. Sapp Bros. Petroleum, Inc. appealed the award to the District Court seeking more money.

Discussion

After due consideration of all the factors, costs, and the potential outcome of a new trial in District Court, a settlement was negotiated by the legal department with Sapp Bros. Petroleum subject to approval by the Nebraska Department of Roads and the City Council. Pre-approval has been received from the NDOR and approval is now sought from the Council.

Alternatives

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

1. Move to approve
2. Move to deny

Recommendation

City Administration recommends that the Council approve a resolution authorizing settlement with Sapp Bros. Petroleum, Inc. as follows:

That the Forty Thousand Seven Hundred Eighty Five Dollars (\$40,785.00) deposited with the Hall County Court in Case No. CI07-4107, together with any interest accrued thereon, may be released to Sapp Bros. Petroleum, Inc.

The City of Grand Island, Nebraska, shall pay to Sapp Bros. Petroleum, Inc., the additional sum of Forty Four Thousand Seven Hundred Fifty Eight Dollars (\$44,758.00) in full and complete settlement of all claims and damages arising out of the public taking of the subject property.

Each party shall be responsible for its own costs and attorneys fees and no additional interest will be due on the settlement except the interest that has accrued on the amount deposited in County Court.

Nothing in this Stipulation is intended to affect the City of Grand Island's ability to specially assess the adjoining real estate for street improvements.

Sample Motion

Move to approve a resolution authorizing settlement with Sapp Bros. Petroleum, Inc. under the terms negotiated by the legal department.

RESOLUTION 2008-93

WHEREAS, the City of Grand Island, Nebraska condemned certain real estate belonging to Sapp Bros. Petroleum, Inc. as successor in interest to Poland Oil, Inc.; and

WHEREAS, Sapp Bros. Petroleum, Inc appealed the award of appraisers to the Hall County District Court; and

WHEREAS, a settlement has been negotiated that is fair and reasonable;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the settlement is approved and the Mayor is authorized to sign the settlement agreement which provides, in pertinent part:

That the Forty Thousand Seven Hundred Eighty Five Dollars (\$40,785.00) deposited with the Hall County Court in Case No. CI07-4107, together with any interest accrued thereon, may be released to Sapp Bros. Petroleum, Inc.

The City of Grand Island, Nebraska, shall pay to Sapp Bros. Petroleum, Inc., the additional sum of Forty Four Thousand Seven Hundred Fifty Eight Dollars (\$44,758.00) in full and complete settlement of all claims and damages arising out of the public taking of the subject property.

Each party shall be responsible for its own costs and attorneys fees and no additional interest will be due on the settlement except the interest that has accrued on the amount deposited in County Court.

Nothing in this Stipulation is intended to affect the City of Grand Island's ability to specially assess the adjoining real estate for street improvements.

Adopted by the City Council of the City of Grand Island, Nebraska, March 11, 2008.

Mitchell Nickerson, President
Grand Island City Council

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
March 6, 2008	☐ City Attorney