



City of Grand Island

Tuesday, October 28, 2008

Council Session

Item E7

**Public Hearing on Request from Global Industries for Expansion
of Easement on Property Owned by Eugene and Janice Penrose
Located at 2810 East Highway 30**

Staff Contact: Craig Lewis

Council Agenda Memo

From: Craig Lewis, Building Department Director

Meeting: October 28, 2008

Subject: Request of Eugene & Janice Penrose and Global Industries to Expand an Existing No-Build Easement on the Property Located at 2810 East Highway #30, Grand Island, NE

Item #'s: E-7 & G-15

Presenter(s): Craig Lewis, Building Department Director

Background

This is a request to modify or expand an existing easement that was created on October 19, 2000 to accommodate construction of an addition onto the existing manufacturing facility at 2928 E. Highway #30, the location of Global Industries manufacturing facility.

Discussion

The Building Codes adopted by the City of Grand Island provides for a basic allowable area of buildings based on the occupancy and type of construction, that allowable area may be increased because of factors such as fire sprinkler systems and open yard space surrounding the building. The code does provide that certain occupancies that are one story in height shall not be limited in area if the building is provided with an automatic fire sprinklers system and is surrounded on all sides with public ways or yards not less than 60 feet in width.

Typically the required yard space is on the same property that the building occupies, but in the case of existing buildings it is sometimes difficult to provide that yard space and is not unreasonable to allow neighboring properties to share the benefit of an existing open yard space, with the provision that the City is included in an agreement for that use.

This request is to expand the existing easement granted in 2000 to accommodate another addition onto the manufacturing facility and create an additional easement including the City of Grand Island as a third party participant to assure the open yard space remains.

Alternatives

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

1. Approve the request and accept the no-build easement.
2. Disapprove or /Deny the Request.
3. Modify the easement agreement to meet the wishes of the Council.
4. Table the issue.

Recommendation

City Staff recommends that the Council approve the agreement to create a no-build easement to accommodate construction at Global Industries facility at 2928 East Highway #30, Grand Island, NE.

Sample Motion

Move to approve the requested easement agreement as specified in the staff recommendation.

NO-BUILD EASEMENT AGREEMENT

THIS AGREEMENT made and entered into this _____ day of October, 2008, by and between the **CITY OF GRAND ISLAND, NEBRASKA**, a Municipal Corporation, hereinafter referred to as "City"; **GLOBAL INDUSTRIES, INC.**, a Corporation, hereinafter referred to as "Grantee"; and **EUGENE J. PENROSE and JANICE K. PENROSE**, Husband and Wife, hereinafter referred to as "Grantors".

1. **STATEMENT OF PURPOSE.** This No-Build Easement Agreement is made for the purpose of setting forth the terms and conditions under which the Grantors will sell and convey to the Grantee a no-build easement on the tract of land which is shown and described more particularly on Exhibit "A", attached hereto. The purpose of the no-build easement is to create sufficient set back for the Grantee to construct a manufacturing facility on a tract of land owned by the Grantee and described in paragraph 2 below. Said set back is required by the Grand Island City Code and the International Building Code as adopted by the City.

2. **GRANTEE'S REAL ESTATE.** The Grantee owns the following-described real estate: Lot Two (2), Connell Industrial Park Third Subdivision to the City of Grand Island, Hall County, Nebraska.

3. **GRANTORS' REAL ESTATE.** The Grantors own the following-described real estate: Lot Two (2), Connell Industrial Park Second Subdivision to the City of Grand Island, Hall County, Nebraska.

4. **EASEMENT TO BE CONVEYED.** In consideration of the payment by the Grantee to the Grantors in the amount of One Dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged and stated more specifically hereafter, the Grantors do hereby sell and convey to the Grantee, its successors and assigns, a non-exclusive right to use a "no-build easement" on the tract of land shown and described on Exhibit "A", attached hereto and made a part hereby by reference, subject to the conditions stated hereafter.

5. **CONDITIONS OF NO-BUILD EASEMENT.** The no-build easement referred to above shall include the following conditions:

- a. The Grantors shall have the right to use and enjoy fully the premises shown and described on Exhibit "A", but shall not construct or permit to be constructed any buildings or structures thereon without the written consent of the Grantee and the City.
- b. The easement granted herein is a permanent easement and shall continue in full force and effect so long as the no-build easement is used or required by the Grantee, its successors and assigns, or the City.

6. **ACCESS ROAD EASEMENT.** The Parties agree that the non-monetary consideration for this no-build easement shall include the right of the Grantors to use the Grantee's portion of the existing driveway serving the parties' properties for access to the Grantors' real estate at any point not further than Seven Hundred Feet (700') from the Southeast Corner of Lot 2, Connell Industrial Park Second Subdivision to the City of Grand Island, Hall County, Nebraska. This easement may be used by the Grantors, their successors, assigns, business invitees, customers, and representatives. This easement shall include the right to cross the Grantee's real estate from such portions of the access drive as are wholly on the Grantee's property directly to the Grantors' real estate.

7. **SUCCESSORS AND ASSIGNS.** This no-build easement contains all the agreements and stipulations between the Grantors and Grantee with respect to said easement and the same shall inure to the benefit and be binding on the Grantors and Grantee, their respective successors and assigns.

8. **AMENDMENTS.** The terms of this no-build easement may be modified or terminated only by a written agreement executed by the Grantors and Grantee, their respective successors and assigns, and approved by the Mayor and City Council of the City.

9. **CHOICE OF LAWS.** This No-Build Easement Agreement shall be construed in accordance with the laws of the State of Nebraska and the United States of America.

DATED this _____ day of October, 2008.

**CITY OF GRAND ISLAND, NEBRASKA,
A Municipal Corporation**

Attest: _____
RaNae Edwards, City Clerk

By: _____
Margaret Hornady, Mayor

**GLOBAL INDUSTRIES, INC.,
A Corporation, Grantee**

Attest: _____
Todd Kleint

By: _____
Douglas D. Fargo, C.F.O./Executive V.P.

By: _____
EUGENE J. PENROSE, Grantor

By: _____
JANICE K. PENROSE, Grantor

STATE OF NEBRASKA)
)ss:
COUNTY OF HALL)

On _____, 2008, before me, a notary public, qualified in said County, personally came Margaret Hornady, Mayor of the City of Grand Island, Nebraska, a municipal corporation, known to me to be such officer and the identical person who signed the foregoing document and acknowledged that the execution thereof was her voluntary act and deed on behalf of the municipal corporation, and that the City's corporate seal was thereto affixed by proper authority.

WITNESS my hand and notarial seal the date above written.

Notary Public

STATE OF NEBRASKA)
)ss:
COUNTY OF HALL)

On _____, 2008, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Douglas D. Fargo, C.F.O./Executive Vice President of Global Industries, Inc., a corporation, known personally to me to be the identical person who signed the foregoing document and acknowledged the execution thereof was his voluntary act and deed on behalf of the corporation.

WITNESS my hand and notarial seal the date above written.

Notary Public

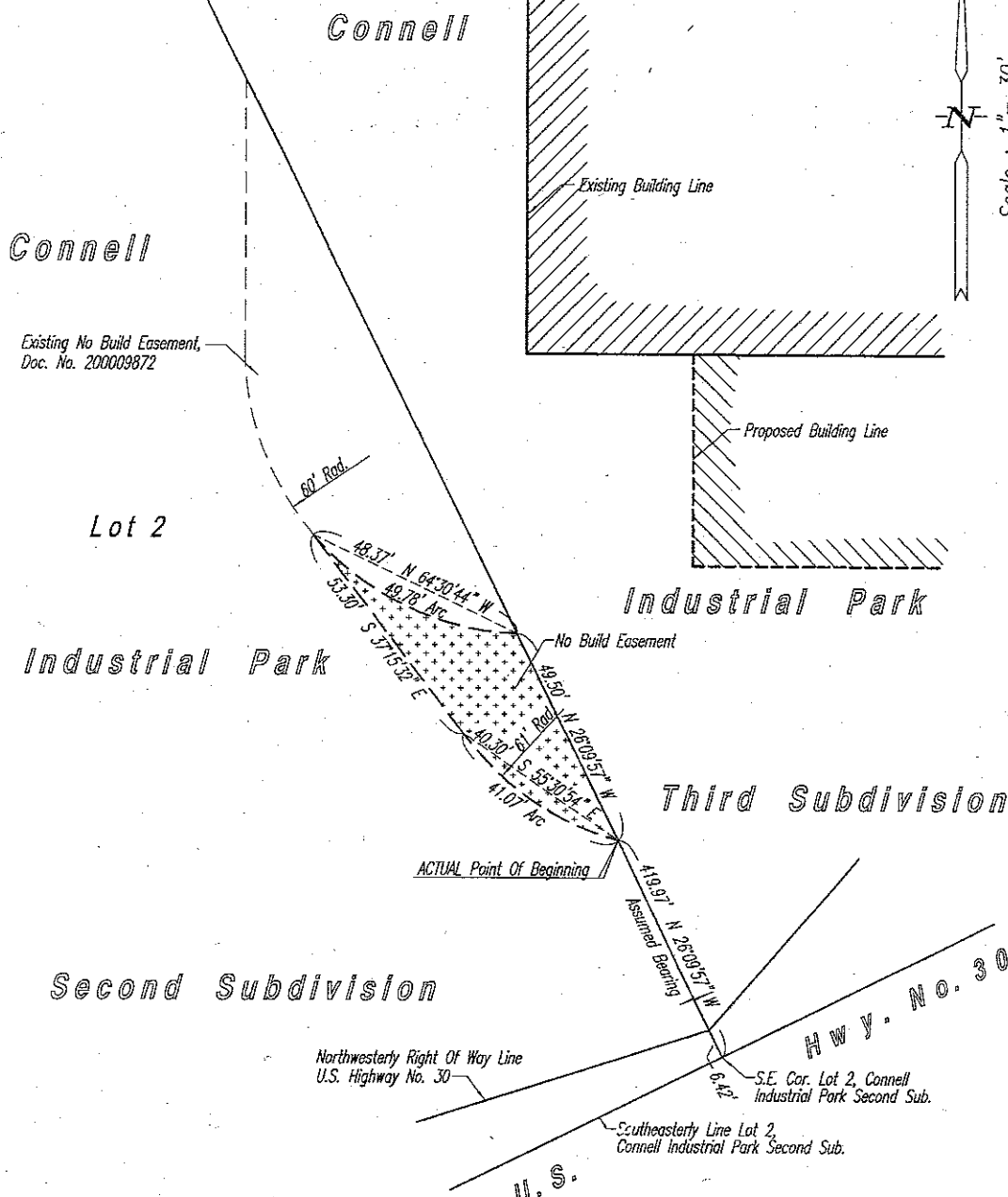
STATE OF NEBRASKA)
)ss:
COUNTY OF HALL)

On _____, 2008, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Eugene J. Penrose and Janice K. Penrose, Husband and Wife, known personally to me to be the identical persons who signed the foregoing document and acknowledged the execution thereof was their voluntary act and deed.

WITNESS my hand and notarial seal the date above written.

Notary Public

EXHIBIT 'A'



Description (No Build Easement)

A tract of land comprising a part of Lot Two (2), Connell Industrial Park Second Subdivision, in the City of Grand Island, Hall County, Nebraska, more particularly described as follows:

Beginning at the southeast corner of said Lot Two (2); thence running northwesterly along the easterly line of said Lot Two (2), on an Assumed Bearing of $N26^{\circ}09'57''W$, a distance of Four Hundred Nineteen and Ninety Seven Hundredths (419.97) feet, to the ACTUAL point of beginning; thence continuing $N26^{\circ}09'57''W$, along the easterly line of said Lot Two (2), a distance of Forty Nine and Fifty Hundredths (49.50) feet, to the southeasterly corner of an existing No Build Easement as recorded in the Register of Deeds Office as Document No. 200009872, and to a point on a curve; thence running northwesterly along the arc of a curve to the right whose radius is Sixty (60.00) feet, the long chord of which bears $N64^{\circ}30'44''W$, a long chord distance of Forty Eight and Thirty Seven Hundredths (48.37) feet, (an arc distance of Forty Nine and Seventy Eight Hundredths (49.78) feet); thence running $S37^{\circ}15'32''E$, a distance of Fifty Three and Thirty Hundredths (53.30) feet, to a point on a curve; thence running southeasterly along the arc of a curve to the left whose radius is Sixty One (61.00) feet, the long chord of which bears $S55^{\circ}30'54''E$, a long chord distance of Forty and Thirty Hundredths (40.30) feet, (an arc distance of Forty One and Seven Hundredths (41.07) feet), to the ACTUAL point of beginning and containing 0.023 acres (1,006 square feet) more or less.

Date : October 20, 2008

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