Mail to Auditor

Book 2005 Page 4481
Document 2005 4481 Type 03 006 Pages 6
Date 12/23/2005 Time 8:34 AM
Rec Amt $.00

DEBORAH L. PEYTON, RECORDER/REGISTRA
DELAWARE COUNTY IOWA

THIS DOCUMENT WAS PREPARED BY MARK NAHRA, DELAWARE COUNTY ENGINEER'S OFFICE, 2139 HIGHWAY 38., DELAWARE, IA 52036, 563-927-3505

PERMANENT EASEMENT
FOR EMERGENCY AND MAINTENANCE ACCESS TO QUAKER MILL DAM

WHEREAS, a right of way contract between Nicholas E. Dunkel and Delaware County was signed on April 27, 1968 to provide right of way to allow construction of a Maquoketa River Bridge near the Quaker Mill Dam, owned at the time by Iowa Electric Light and Power Company, now owned by Carl Willard Hawker and Marcia Hawker, and

WHEREAS, a permanent easement over the existing right of way of the Independence and McCounts Road was provided in the contract to allow Iowa Electric Light and Power access their property west of the river to maintain the dam and property, and also provided in the contract was the vacation of the Independence and McCounts Road, and

WHEREAS, said access to the west side of the dam is essential to assure proper maintenance of the land and dam structure and to allow emergency repairs to the dam, the earth embankment and gate structures comprising the property, and

WHEREAS, changes in land use by the Dunkels has resulted in a need to amend this agreement and Dunkels, Hawkers, and Delaware County have agreed to a new location for the easement and for vacation of the former road right of way,

IT IS HEREBY AGREED BY BOTH PARTIES, that the location of the easement is changed as follows:

Landowners Nicholas E. Dunkel and Joan V. Dunkel, husband and wife, and their successors and assigns, (hereinafter called the GRANTORS), in consideration of the provisions of the road vacation action by the Delaware County Board of Supervisors taken on December 19, 2005 hereby grant unto Delaware County, Iowa and to Carl W. Hawker and Marcia Hawker, and to each others' successors and assigns, except as noted herein, (hereinafter called the GRANTEES), a permanent and perpetual easement upon Grantor's real estate, (hereinafter called the PREMISES), for the sole purpose of providing an access for maintenance, inspection, and emergency repairs to the Quaker Mill Dam and land owned by the Grantee, described as Parcel A, part of the NE ¼ of Section 19, T89North, Range 5 West of the Fifth Principal Meridian, Delaware County, and recorded in Book 7 on Page 172 in the Office of the Delaware County Recorder, (hereinafter called the BENEFITED LAND). The legal description of the Benefited Land is subject to a Court Order filed February 8, 2001, in the Iowa District Court, in and for Delaware County. Said permanent easement shall not be used to access Grantee's Parcel B, part of the NE ¼ of Section 19,

T89 North, Range 5 West of the Fifth Principal Meridian, Delaware County, and recorded in Book 7 on Page 172 in the Office of the Delaware County Recorder. Said permanent easement is granted only for access to Quaker Mill Dam and Parcel A (the Benefited Land) immediately west of Quaker Mill Dam.

1. **Premises**
The Premises is described as a 30' wide permanent easement and is platted as the Vacation of the Independence and McCounts Road, part of the SW1/4 –NE1/4, Section 19., T 89North, Range 5 West of the Fifth P.M., Delaware County and recorded in book 2005, page 4480, in the Office of the Delaware County Recorder. Said Premises includes a 30' wide permanent easement on a portion of the vacated Independence and McCounts Road and a 30' wide easement from the relocated Quaker Mill Road, also known as 195th Street, Delaware County, and described on the aforementioned plat.

2. **Reservation of Rights to Grantors**
Grantors and their successors reserve the right to enter upon the Premises and to jointly use the Premises. Grantors further stipulate that the current owner of the Benefited Land is not allowed to personally use the easement except with express permission of Delaware County officials. Subsequent owners of the Benefited Land are not subject to the restriction. Contractors, inspectors and others employed for dam maintenance and repair by the current owner are allowed to use the easement for maintenance and emergency access to the dam only, and only with reasonable frequency. The current owner shall also have walk in access to the Benefited Land across the county right of way (across the wing dam) and may utilize gates, which will be provided by the County, to access the portion of his property west of the river. The current owner of the Benefited Land agrees to use the easement and the County right of way only when necessary for maintenance, inspection, or repair of the dam or the Benefited Land. Use of the easement or County right of way by the current owner of the Benefited Land shall be with reasonable frequency and not for recreational purposes. The current owner of the BENEFITED LAND will assure that gates are closed so that livestock cannot escape following use of the pedestrian access to his property.

3. **Maintenance of Access Way**
Grantors shall maintain and repair easement area as needed by their farming operation. They agree to not block the access with equipment, buildings, bins, or other obstructions. Should the Grantees utilize the access, they shall repair the access to pre-use condition upon the cessation of each use of the easement. The Grantees shall not change grade, elevation or contour of any part of the Premises without obtaining the prior written consent of all the Grantors.

4. **Gate and Lock**
Grantors and Grantees shall continue to maintain their existing right of way fences and shall remain responsible to restrain their own livestock. The County shall build a gate near the wing dike and tie into existing cattle pass fencing to provide pedestrian access for the current dam owner across County right of way. Grantees may provide and maintain a lock on the gate. The current owner of the Benefited Land shall not change the lock without permission of Delaware County officials.

5. **Termination of Easement**
This easement shall terminate when it is no longer used by the Grantees as a maintenance and emergency access way to and from the Benefited Land. Unless this easement is earlier released in writing by the Grantees, this easement shall terminate two years after the easement is no longer needed by the Grantees due to the removal of the dam. Upon termination of this easement

Grantors may remove and dispose of any fence or gate as they see fit without any liability to the Grantees therefore.

6. **Covenant of Title**
Grantors and Grantees and each of them hereby covenant that they hold title to said real estate described in the easement that they have good and lawful authority to grant this easement and they covenant to warrant and defend the said Premises against the lawful claims of all persons whomsoever.

Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share, if any, in and to the interests conveyed by this Easement.

7. **Easement Runs with the Land**
This Easement shall run with the land and shall be binding on all Grantors and Grantees and on Grantors' and Grantees' successors and assigns except as noted herein.

8. **Liability**
Grantees agree that the Grantor is not legally responsible for any personal injuries received by Grantees while using said easement or County right-of-way.

9. **Modification of Easement**
The Grantors may develop the real estate to the north of the current farmstead and 195th Street. The parties to this Agreement understand that the granting of this Permanent Easement is intended not to interfere with any future development of the Grantors' property. Grantees agree that Grantors shall be permitted to relocate this Permanent Easement only in the event of future development of the Grantors' farmstead or surrounding property. Grantors will be responsible for allowing and creating access to the Benefited Land. Grantees agree to vacate this Permanent Easement once alternate access to the Benefited Land is achieved.

Words and phrases herein including acknowledgement hereof shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Signed this 19 day of Dec., 2005.

GRANTORS and GRANTEE

Nicholas E. Dunkel

Joan V. Dunkel

Carl W. Hawker

Marcia Hawker

Chair, Delaware County Board of Supervisors

Delaware County Auditor

STATE OF Iowa }
}ss
COUNTY OF DELAWARE }

On this 19th day of December A.D. 2005, before me a Notary public in and for said County and State, personally appeared Nicholas E. Dunkel and Joan V. Dunkel, known to be the person(s) named in and who executed the foregoing instrument, and acknowledged that they executed the same as a voluntary act and deed.

Mark J. Nahra
Notary Public
My Commission Expires: 7-2-2005

Seal: Mark J. Nahra COMMISSION NUMBER 165627 MY COMMISSION EXPIRES 7-2-2007

Notary Public in and for said County and State

STATE OF Iowa }
}ss
COUNTY OF DELAWARE }

On this 19th day of December A.D. 2005, before me a Notary public in and for said County and State, personally appeared Carl W. Hawker and Marcia Hawker, known to be the person(s) named in and who executed the foregoing instrument, and acknowledged that they executed the same as a voluntary act and deed.

Mark J. Nahra
Notary Public
My Commission Expires: 7-2-2005

Seal: Mark J. Nahra COMMISSION NUMBER 165627 MY COMMISSION EXPIRES 7-2-2007

Notary Public in and for said County and State

STATE OF Iowa }
}ss
COUNTY OF DELAWARE }

On this 19th day of December, 2005, before me Mark J. Nahra a notary public in and for the State of Iowa appeared Shirley Helmrichs and Sharon McCrabb, to me personally known, and who, being by me duly sworn, did say that they are the Chairperson of the County Board of Supervisors and County Auditor, respectively, of the County of Delaware, Iowa; that the seal affixed to the foregoing instrument is the county seal of the county, and that the instrument was signed and sealed on behalf of the county, by authority of its Board of Supervisors, as contained in the Supervisors Minute Book X, as passed by the Board of Supervisors on the 19th day of December, 2005 and Shirley Helmrichs and Sharon McCrabb acknowledged the execution of said instrument to be their voluntary act and deed and the voluntary act and deed of the county, by it voluntarily executed.

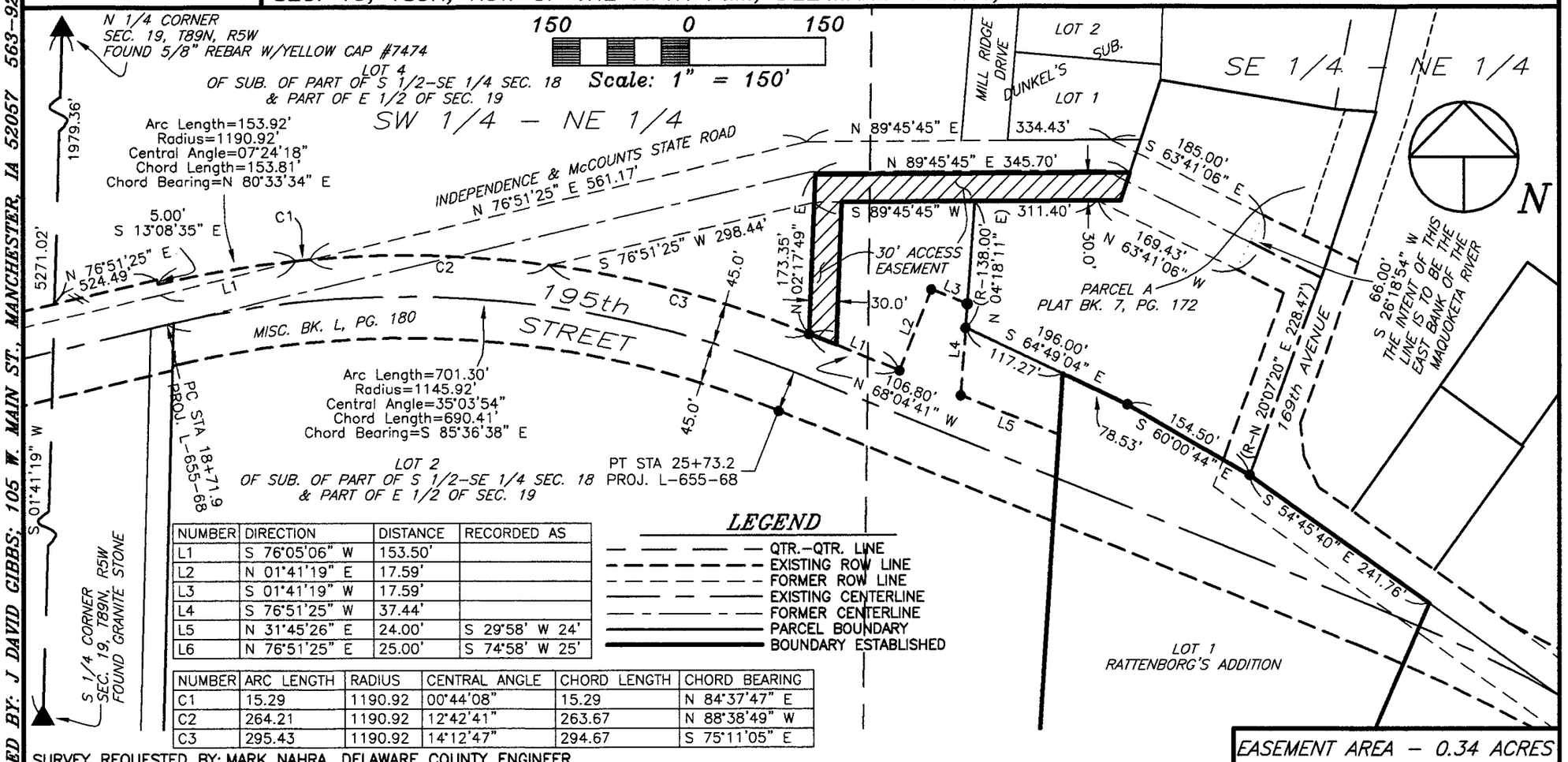
Mark J. Nahra
Notary Public
My Commission Expires: 7-2-2007

Seal: Mark J. Nahra COMMISSION NUMBER 165627 MY COMMISSION EXPIRES 7-2-2007

Notary Public in and for said County and State

EXHIBIT A

30' MAINTENANCE EASEMENT, PART OF THE VACATED INDEPENDENCE & McCOUNTS STATE ROAD, PART OF THE SW 1/4 – NE 1/4 & PART OF THE SE 1/4 – NE 1/4 SEC. 19, T89N, R5W OF THE FIFTH P.M., DELAWARE COUNTY, IOWA



NUMBER	DIRECTION	DISTANCE	RECORDED AS
L1	S 76°05'06" W	153.50'	
L2	N 01°41'19" E	17.59'	
L3	S 01°41'19" W	17.59'	
L4	S 76°51'25" W	37.44'	
L5	N 31°45'26" E	24.00'	S 29°58' W 24'
L6	N 76°51'25" E	25.00'	S 74°58' W 25'

NUMBER	ARC LENGTH	RADIUS	CENTRAL ANGLE	CHORD LENGTH	CHORD BEARING
C1	15.29	1190.92	00°44'08"	15.29	N 84°37'47" E
C2	264.21	1190.92	12°42'41"	263.67	N 88°38'49" W
C3	295.43	1190.92	14°12'47"	294.67	S 75°11'05" E

LEGEND

- QTR.-QTR. LINE
- EXISTING ROW LINE
- FORMER ROW LINE
- EXISTING CENTERLINE
- FORMER CENTERLINE
- PARCEL BOUNDARY
- BOUNDARY ESTABLISHED

EASEMENT AREA – 0.34 ACRES

SURVEY REQUESTED BY: MARK NAHRA, DELAWARE COUNTY ENGINEER

PREPARED BY: J. DAVID GIBBS; 105 W. MAIN ST., MANCHESTER, IA 52057 563-927-2434

SCALE: 1"=150'	
DATE: 1/13/2005	
DRAWN BY: RLR	
CHECKED BY: JDG	
FIELD BK: D.L.	
REVISED	
SHEET 1 OF 2	

PROPRIETORS: NICHOLAS E. DUNKEL & JOAN V. DUNKEL

PROJECT NO. 05-50/04-89

I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED AND THE RELATED SURVEY WORK WAS PERFORMED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.

J. DAVID GIBBS, P.E., L.S. — LICENSE #8419 — DATE 12/21/05

MY LICENSE RENEWAL DATE IS DECEMBER 31, 2006

LICENSED LAND SURVEYOR
J. DAVID GIBBS
8419
IOWA

PAGES OR SHEETS COVERED BY THIS SEAL: 1-2

GIBBS ENGINEERING & SURVEYING
105 WEST MAIN STREET, MANCHESTER, IA 52057

LEGAL DESCRIPTION:

30 FOOT MAINTENANCE EASEMENT; *PART OF THE VACATED OF PART OF THE INDEPENDENCE & McCOUNTS STATE ROAD, PART OF THE SOUTHWEST QUARTER (SW ¼) OF THE NORTHEAST QUARTER (NE ¼) AND PART OF THE SOUTHEAST QUARTER (SE ¼) OF THE NORTHEAST QUARTER (NE ¼) OF SECTION NINETEEN (19), TOWNSHIP EIGHTY-NINE NORTH (T89N), RANGE FIVE WEST (R5W) OF THE FIFTH PRINCIPAL MERIDIAN, DELAWARE COUNTY, IOWA,* located Easterly and Southerly of the following described line;

COMMENCING at the North Quarter Corner of Section Nineteen (19), Township Eighty-Nine North (T89N), Range Five West (R5W) of the Fifth Principal Meridian, Delaware County, Iowa;

THENCE along the Westerly Line of the Northeast Quarter (NE ¼) of said Section Nineteen (19), South 01° 41' 19" West, to the Northerly Line of 195th Street, as recorded in Book 2005, Page 753 in the Office of the Delaware County Recorder, 1979.36 feet;

THENCE along the Northerly Line of 195th Street, North 76° 51' 25" East, 524.49 feet;

THENCE continuing along the Northerly Line of 195th Street, South 13° 08' 35" East, 5.00 feet;

THENCE continuing along the Northerly Line of 195th Street along a circular curve concave Southeasterly for an arc length of 153.92 feet, said circular curve having a radius of 1190.92 feet, a central angle of 07° 24' 18", a chord length of 153.81 feet, and a chord bearing of North 80° 33' 34" East;

THENCE continuing along the Northerly Line of 195th Street along a circular curve concave Southeasterly for an arc length of 15.29 feet, said circular curve having a radius of 1190.92 feet, a central angle of 00° 44' 08", a chord length of 15.29 feet, and a chord bearing of North 84° 37' 47" East to the Northerly Line of the former Independence and McCounts State Road;

THENCE continuing along the Northerly Line of 195th Street along a circular curve concave Southerly for an arc length of 264.21 feet, said circular curve having a radius of 1190.92 feet, a central angle of 12° 42' 41", a chord length of 263.67 feet, and a chord bearing of South 88° 38' 49" East;

THENCE continuing along the Northerly Line of 195th Street along a circular curve concave Southwesterly for an arc length of 295.43 feet, said circular curve having a radius of 1190.92 feet, a central angle of 14° 12' 47", a chord length of 294.67 feet, and a chord bearing of South 75° 11' 05" East, the **POINT OF BEGINNING**;

THENCE North 02° 17' 49" East, 173.35 feet;
THENCE North 89° 45' 45" East, 345.70 feet to the **POINT OF TERMINATION**;

The Westerly Line of the Northeast Quarter (NE ¼) of Section Nineteen (19), Township Eighty-Nine North (T89N), Range Five West (R5W) of the Fifth Principal Meridian, Delaware County, Iowa is assumed to bear South 01° 41' 19" West.