Compared

FILED NO. 2642
BOOK 119 PAGE 695

1986 JUN 16 AM 7:52

MARY E. WELTY
RECORDER
MADISON COUNTY, IOWA

Fee $15.00

3pgs.

EASEMENT

THIS EASEMENT, made and entered into this 7th day of June, 1986, by and between John E. Westphal and Mabel G. Westphal, husband and wife, hereinafter referred to as the Grantors, and the City of Earlham, Madison County, Iowa, hereinafter referred to as the Grantee.

1.- The City of Earlham, Madison County, Iowa, has conducted extensive investigations in an effort to secure a satisfactory municipal water supply and has now located an alluvial source along the South Raccoon River within the Southeast Quarter (SE¼) of Section Fourteen (14), Township Seventy-eight (78) North, Range Twenty-eight (28) West of the 5th P.M., Dallas County, Iowa.

Inasmuch as the tract of land containing said water supply lies wholly outside the corporate limits of the City of Earlham, it is necessary that a water pipeline be installed to transport the water from the location of the alluvium to the City of Earlham.

2.- Grantors are the owners in fee simple of the following described real estate, to-wit:

The East 37 rods and 17 links of the Northeast Quarter (¼) of the Southeast Quarter (¼) of Section Six (6), in Township Seventy-seven (77) North, of Range Twenty-eight (28) West of the 5th P.M., Madison County, Iowa.

3.- The City of Earlham, Madison County, Iowa, is desirous of purchasing an easement from Grantors for the purpose of constructing and maintaining a municipal water pipeline on a portion of Grantors' real estate.

4.- NOW, THEREFORE, in consideration of the sum of $536.85, receipt of which is acknowledged, and other good and valuable consideration hereinafter set forth, the Grantors do hereby grant unto Grantee a perpetual easement, for the purposes hereinafter set forth, over, under and across the following described portion of Grantors' real estate, to-wit:

A 30.0 foot easement for water line purposes over, under and across the West 30 feet of the East 613.31 feet of the NE¼ SE¼ EXCEPT the North 40 feet thereof for road purposes and the South 30 feet of the North 70 feet of said East 613.31 feet of the NE¼ SE¼ of Section 6, Township 77 North, Range 28 West of the 5th P.M., Madison County, Iowa,

together with a temporary construction easement described as follows, to-wit:

A temporary construction easement over the West 100 feet of said East 613.31 feet of the NE¼ SE¼ EXCEPT the North 40 feet thereof for road purposes and the South 100 feet of the North 140 feet of said East 613.31 feet of the NE¼ SE¼ of Section 6, Township 77 North, Range 28 West of the 5th P.M., Madison County, Iowa.

5.- The easements granted hereunder shall be used by the Grantee to construct, install, and thereafter use, operate, inspect, repair, maintain, and, if necessary, remove and replace a water pipeline, and shall be used by the Grantee for no other purposes.

6.- The permanent easement granted hereunder shall include the right of ingress and egress by Grantee over the adjacent lands of the Grantors, or their successors, for the purposes of this easement.

a.- Grantee agrees to compensate Grantors, or their successors, for loss of crops and all other damages which may result from the exercise of the stated purposes of this easement. Payment shall be made to Grantors and Grantors' tenant, if any, as their respective interests appear.

#2. Easement

b.- Grantee shall maintain the pipeline in good repair so that no unreasonable damage will result from its use to the property of Grantors, or their successors.

7.- The temporary easement shall be for a period not to exceed twelve months beginning as of the date of the construction contract between the City and the pipeline contractor.

a.- The temporary easement granted hereunder shall include the right of ingress and egress over the adjacent lands of the Grantors, or their successors, for the purpose of construction and installation of the water pipeline.

b.- Grantee agrees to backfill the area used for laying the water pipeline and to restore the excavated surface to the present level and as nearly as practical to its present existing condition.

c.- Grantee shall pay Grantors for the fair and reasonable losses occasioned by damage to crops during construction of the water pipeline. Payment shall be made to Grantors and Grantors' tenant, if any, as their respective interests appear. Grantee shall pay for any damage to fences and shall mark and repair any existing tile lines damaged during the construction of said pipeline.

8.- Grantors and Grantee acknowledge that the monetary consideration stated in paragraph 4. constitutes full payment for any damage to the land of Grantors occasioned by the construction and installation of the water pipeline. Said sum does not include payment for damaged fence which Grantee has agreed to pay as provided in paragraph 7. c. Said sum does not include payment for damages to crop which Grantee has agreed to pay under paragraph 7. c.

9.- In further consideration of the easements granted hereunder by Grantors, Grantee shall allow Grantors, or their successors, to make connection with the water pipeline in order that Grantors, or their successors, may have the use and service thereof, subject to the following terms and conditions:

a.- Grantors and Grantee acknowledge that the water supplied through the pipeline from the well to the City of Earlham water treatment plant is untreated water.

b.- Grantors, or their successors, shall be allowed one (1) connection to the pipeline in consideration of the easements granted hereunder. Said connection may be made without assessment of a tapping charge by Grantee, and Grantors' water service line for said connection shall not exceed one (1) inch in diameter. The number of future connections which may be made to the pipeline shall be regulated by Grantee.

c.- Grantors shall be responsible for the expense of installation and maintenance of the water service line from the pipeline to the point of consumption on Grantors' property.

d.- Grantors shall pay Grantee for water furnished at the rates currently set forth in Grantee's city ordinances, and subject to such changes thereof as Grantee may hereafter adopt.

e.- Grantors, or their successors, by taking water agree to be bound by the applicable provisions of Grantee's city ordinances, rules, regulations and rates pertaining to water service and rates as established by the Earlham City Council.

10.- The easement rights granted herein shall be binding upon the Grantors,

their successors, administrators, and assigns.

IN WITNESS WHEREOF, the parties have hereunto set their hands the date and year above written.

GRANTEE

City of Earlham

By Claire Waugh
Claire Waugh, Mayor

By Craig A. Swartzbaugh
Craig A. Swartzbaugh, City Clerk

GRANTORS

John E Westphal
(John E. Westphal)

Mabel G. Westphal
(Mabel G. Westphal)

STATE OF IOWA :
: SS
MADISON COUNTY :

On this 7th day of March, 1986, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Claire Waugh and Craig A. Swartzbaugh, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of said city, executing the within and foregoing instrument; that said instrument was signed and sealed on behalf of said city; and that the said Mayor and City Clerk as such officers acknowledged the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

SAMUEL H. BRALAND (SEAL) NOTARIAL SEAL IOWA

Samuel H. Braland
Notary Public in and for the State of Iowa.

STATE OF IOWA :
: SS
Madison COUNTY :

On this 31 day of July, 1986, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared John E. Westphal and Mabel G. Westphal, to me personally known to be the persons named in and who executed the foregoing isntrument, and acknowledged that they executed the same as their voluntary act and deed.

SAMUEL H. BRALAND (SEAL) NOTARIAL SEAL IOWA

Samuel H. Braland
Notary Public in and for the State of Iowa.