CS41029 E
Ver. 49

Aug. 1962 (CSV)
1403

SETTLEMENT AGREEMENT

THIS AGREEMENT, made this 24 day of August, A.D. 1962, by and between MICHIGAN STATE HIGHWAY DEPARTMENT (hereinafter referred to as Department), an instrumentality of the State of Michigan, by its duly authorized Deputy Commissioner, and GRAND RAPIDS GYPSUM COMPANY (hereinafter referred to as Gypsum), a Michigan corporation, of Grand Rapids, Michigan, WITNESSETH:

WHEREAS, the Department has heretofore commenced condemnation of certain property interests of Gypsum, pursuant to Act No. 352, P.A. 1925, as amended, for the construction of Interstate Highway I-96, more particularly identified as Control Section 41029 E 2nd U, Parcel C-49, and there is presently pending in the Circuit Court for the County of Kent a certiorari proceeding, identified as File No. 58226, to review said Determination of Necessity made by John C. Mackie, Michigan State Highway Commissioner, under date of April 11, 1962, after a contested hearing on the question of necessity; and,

WHEREAS, there exists a bona fide dispute and controversy between the Department and Gypsum on both the question of necessity and the amount of damages owing Gypsum for the taking of said property interests, and it is the desire of both parties to compromise all issues in dispute between them; and,

WHEREAS, Gypsum has agreed to accept the provisions herein made as full and complete compensation for the property interests taken by the Department for highway purposes, as said property interests are more fully described in the amended Determination of Necessity to be filed in this cause, pursuant to the language below

specified and in lieu of any other claims Gypsum may have against the Department;

NOW, THEREFORE, In consideration of the mutual promises, covenants, payments and undertakings hereinafter set forth, IT IS MUTUALLY AGREED as follows:

1. The Department will on or before September 1, A.D. 1963, fill and grade the right-of-way for the New York Central Railroad along the relocated route as shown by the drawing prepared by S. W. Dix and Associates, attached hereto and made a part hereof, identified as Exhibit A - Plan B, said work to be performed at the sole expense and responsibility of the Department and in a good and workmanlike manner, to provide a road bed grade, exclusive of ballast, ties, tracks and switches in accordance with the specifications of said railroad, and without interference with Gypsum's normal operations.

2. The Department will pay within twenty-eight (28) days from date hereof, to Gypsum, the sum of Sixty-Nine Thousand Dollars ($69,000.00) as full and complete compensation for the taking of Parcel C-49 of Control Section 61029 K 2nd U, as said parcel is more fully described in the amended Determination of Necessity, and in default of such payment, the Department will remove any structures or obstructions it may have placed on the premises described in Parcel C-49.

3. The Department shall pay interest on the aforementioned Sixty-Nine Thousand Dollars ($69,000.00), at the rate of five per cent (5%) per annum from April 17, 1962, the date the Determination of Necessity was recorded in the Kent County Register of Deeds Office, to twenty-eight (28) days subsequent to the date hereof,

said sum to be paid at the same time and in the same manner as the aforementioned Sixty-Nine Thousand Dollars ($69,000.00) and said Sixty-Nine Thousand Dollars ($69,000.00) shall include any and all amounts and allowances to cover costs and attorney fees.

4. The Department shall deduct from said Sixty-Nine Thousand Dollars ($69,000.00) pursuant to the laws of this state, any sums due as delinquent taxes, if any there be.

5. The Department shall make payment of said Sixty-Nine Thousand Dollars ($69,000.00) to Gypsum or to its duly authorized agent and receipt therefor filed with the Department. In case of the refusal of any of the said parties to accept such payment, the same shall be deposited in the State Highway Fund in the Office of the Treasurer of the State of Michigan until further Order of the Court.

6. Gypsum herewith grants to the Department immediate use and possession for highway purposes of the lands described as Parcel C-49 in the amended Determination of Necessity.

7. The Department will convey by Commissioner's Deed to Grand Rapids Gypsum Company, a Michigan corporation, as soon as reasonably possible, the following described lands:

"All that part of the following described Tract "A" located southerly of the Consumers Power Company's right-of-way, which lies westerly of a line 150 feet westerly of and measured at right angles and parallel to the survey line of Highway M-21.

"The lands described above in fee, contain 1.1 acre more or less.

"Tract "A": That part of the West 1155 feet of the Northwest fractional 1/4 of Section 35, T7N, R12W, Walker Township, Kane County, Michigan, lying South of a line 66 feet southerly of and parallel with the southerly

line of the New York Central Railway right-of-way, EXCEPT the West 2 rods.

"The survey line of Highway M-21 is described as follows:

"Beginning at a point on the West line of Section 26, T7N, R12W, Michigan, which is North 00 deg. 39' 13" East, 775.23 feet from the Southwest corner of said Section 26; thence South 26 deg. 45' 07" East, 546.97 feet to the point of curve of a 3 deg. 00' curve to the right; thence southerly along the arc of said curve 2,361.02 feet to the point of tangent of said curve; thence South 44 deg. 04' 43" West, 500 feet to a point or ending."

8. The Determination of Necessity heretofore filed in this cause in the Kent County Register of Deeds Office on April 17, 1962, at Liber 1933, pages 101 through 105, inclusive, shall be amended by stipulation between the Department and Gypsum by deleting completely therefrom, page 102 of Liber 1933, and substituting therefor the following language:

"Control Section 41029E 2nd U
Parcel C-49

"Station 397 + 00 to 414 + 20
Station 430 + 00 to 433 + 00

"I. Title in fee simple (excepting herefrom all minerals underlying the lands hereinafter described together with the right to mine and extract said minerals without entering upon the surface of said lands, and without interfering with the subjacent or lateral support of said lands, and without in any way or manner interfering with the use of the said described lands for highway purposes) including all structures, trees, and other improvements to:

(Right to mine accepts liability)

"Parcel "W": That portion of the following described Tract "B" lying southeasterly of a line which is parallel with and 150 feet distant northwesterly, when measured at right angles, from the survey line of M-21.

"Parcel "X": That part of the following described Tract "A" which lies between the Easterly and Westerly right-of-way lines of Highway M-21.

"Parcel "Y": The North 60 feet of the East 634 feet of Tract "A" EXCEPTING THEREFROM, that part which lies easterly of the westerly right-of-way line of Highway M-21.

"The lands described above in fee contain 39.0 acres, more or less.

"Together with all rights of ingress and egress, if any there be, to, from and between the highway to be constructed on the lands above described in parcels "W" and "X" and the remainder of said Tracts "A" and "B".

"II. The right to enter upon the following described land for the purpose of muck disposal including the right to grade and/or alter the underlying lands, which right shall expire on or about December 1, A.D. 1964: A strip of land 70 feet in width lying northwesterly of and adjacent to a line 150 feet northwesterly of, measured at right angles, and parallel to the survey line of Highway M-21, over and across Tract "B", EXCEPTING the North 1100 feet thereof; the lands described above for muck disposal purposes contain an area of 1.6 acre, more or less.

Tract "A": The East 1/2 of the Southeast 1/4 of Section 27, T7N, R12W, Walker Township, Kent County, Michigan, EXCEPTING THEREFROM,

(a) The North 264 feet of the West 165 feet;
(b) The South 4 rods of the Northeast 1/4 of Southeast 1/4;
(c) The North 4 rods of the Southeast 1/4 of Southeast 1/4;
(d) The East 8 rods of the Southeast 1/4 of Southeast 1/4, EXCEPT the North 4 rods; and,
(e) A triangular parcel in the Southeast 1/4 of the Southeast 1/4 described as: Beginning 252 feet West and 66 feet South of the Northeast corner of Southeast 1/4 of the Southeast 1/4, thence East 120 feet; thence South 120 feet; thence northwesterly to the point of beginning.

9. The Department agrees in reference to the muck disposal area, as said area is more particularly described in Paragraph II in the amended Determination of Necessity, that the waste peat to be stored thereon during construction shall after backfilling, be pulled in on the sides of the embankment to the position shown on the standard specifications for said project as shown on Sheet 1 of 3, E-4-1-28E, a copy of which is marked as Exhibit B, attached hereto and made a part hereof.

It is further agreed that the Department will, prior to April 1, A.D. 1964, reduce said muck disposal area to preconstruction

ground level.

10. The Department will, during the course of construction of the described project, install twenty-four inch (24") culverts to be placed at Station 410 + 00, as said station is designated on the construction plans for said project on file in the Commissioner's Office, and an outlet ditch to be constructed perpendicular to Station 410 + 00, southeasterly to the easterly edge of said Tract "B", thence southerly to the Grand River, it being the responsibility of the Department to maintain and keep free from obstructing materials, the aforementioned outlet ditch located on said Tract "B".

11. The Department will construct and maintain at its own expense, highway ditches and cross-culverts adequate to remove all normal surface waters which would accumulate along the northwesterly side of said Highway M-21, also known as I-96, and along the northwesterly side of the relocated New York Central Railroad right-of-way (as agreed upon in Paragraph 1, supra), as the same pass through the property of Gypsum.

12. It is further provided that the Department and Gypsum are, simultaneously herewith, agreeing in writing as to the proportionate share of the consideration paid by the Department for the compromise settlement attributable to the taking of property interests from Gypsum, and the proportionate share of said consideration attributable to severance damages resulting from said taking.

13. On delivery of the Commissioner's Deed referred to in Paragraph 7 hereof, and the payment of the sum specified in Paragraph 2 hereof, Gypsum will execute a stipulation for the dismissal of said certiorari proceedings, without costs to either party, and without prejudice.

This agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns, including, without limitation, any successor Commissioner or Commissioners of the Department, and any subsidiary, successor by merger, vendee or grantee, or other successor or assignee of Gypsum.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this 3rd day of August, A.D. 1962.

GRAND RAPIDS GYPSUM COMPANY

In Presence Of:

By Donald G. Slawson
Donald G. Slawson,
Executive Vice President

George I. Fischer

Gordon B. Wheeler

Howard E. Hill
Howard E. Hill, Deputy Highway
Commissioner of the State of Michigan

Mary P. Tynan
MARY P. TYNAN

Carolyn L. Hare
CAROLYN L. HARE

STATE OF MICHIGAN)
COUNTY OF KENT) ss.

On this 22 day of August, 1962, before me, a notary public in and for said county, appeared Donald G. Slawson and George I. Fischer, to me personally known, who being by me duly sworn, did each for himself say that they are respectively, the Treasurer and Executive Vice President, and [illegible] Vice President, of Grand Rapids Gypsum Company, the corporation named in and which executed the within instrument; that the seal affixed to said instrument is the corporate seal of said corporation; that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said Donald G. Slawson and George I. Fischer acknowledged said instrument to be the free act and deed of said corporation.

Checked and approved as to accuracy of descriptions in Settlement Agreement

Ben E. Stanton, Chief
Right of Way Acquisition

Notary Public, Kent County, Michigan
My commission expires: Jan 23 1965

GENERAL DESCRIPTION OF PROPERTY

The subject property is an approximately 418 acre tract of land in Section 27, 34, and 35 of Walker township, the greater portion being in the corporate limits of the City of Grand Rapids at its Southwesterly limits. The propery is besected by O'Brien Road on an East-West line, by Covell Avenue on a North-South line, by Butterworth Drive on a Northeasterly-Southwesterly line, and bounded on the North by Fulton Street, all being two-lane hard surfaced streets and county roads, with Grand River on the South boundary. The New York Central Railroad runs through the Southeasterly portion of the property adjacent to the South of and parallel to Butterworth Drive.

The acreage to the North of O'Brien Road is bisected by a Consumers Power Company right-of-way on a generally East to West line, and this portion of the property is bounded on the East by City owned land being utilized for a park and zoo, known as Jon Ball Park.

The area has electric, telephone, natural gas, city water and sanitary sewer.

The land is for the most part medium to high rolling with steep slopes and ravines, mostly wooded with a natural growth of hardwood trees. The Southeasterly portion is quite level of considerably lower elevation sloping down from Butterworth Drive to the New York Central Railroad spur tracks, then continuing on a downward slope into the lowland adjacent to Grand River and being subject to overflow from the river. This lowland area is mostly wooded, swamp and has a considerable amount of muck.

The manufacturing site has a considerable amount of underground sewer and drainage tiling, with 9 to 12 inch diameter tile, and catch basins. Also a 12" and 14" tile drain from the newly-built warehouse extending under the railroad track to the lowlands. Has concrete drives throughout the plant site and retaining walls.

The surface soil of the acreage is generally sandy for the most part as is evidenced by the excavation along the North side of O'Brien Road to the East of Covell.

Has a total of approximately 34 buildings on the two-plant site, of various type construction and facility, and of variable age categories and condition. For purposes of this appraisal the building improvements are not included in the estimate of value before or after the taking as they are not within the area of the taking and in the considered judgment of the Appraiser are not affected by the taking, and will have the same utility and use as before.

In Section 35 is a 70' x 500' strip of land parallel to the west section line containing a 14' concrete road down to the New York Central Railroad.

PRESENT USE OF PROPERTY

The land is presently being utilized in a gypsum mine operation with installations for the manufacture of plaster, rock lathe and sheetrock primarily. Also, processing of gypsum for bedding, polishing of glass, fireproofing, and roof decking, for use in various types of industry. The mine is over a 100 years old and has been in operation for this period of time, the gypsum deposit being in two and three seams.

The mining is done on a three level basis with the acreage divided into numbered caregories for the purpose of the operation, which is on a room and pillar system. The first level has a relative high purity up to 92% and 95%; with the lower levels reportedly at from 80 to 85% percent. From 90,000 to 150,000 tons of gypsum are taken out of the mine annually, and estimatedly within 15 to 16 years all the gypsum shall have been removed from the first level of the present ownership. Five (5) of the areas are old sections of the mine which have some caved areas and questionable pillar support. In these areas the first level of the gypsum deposit was mined many years ago and the only areas presently in use are those near the plants, through which mined rock is hauled. The 69 acre portion at the Northwest corner of Covell and O'Brien Road essentially has been mined to the first level. The Company has not mined at the second or lower level of these areas.

The Company acquired an approximately 31.75 acre parcel of land at the Southeast corner of Covell and Fulton Street in 1959, which has not been mined at any level.

The mines are drained with two pumps of 400 to 500 ga[illegible]ons-per-minute capacity, with 9 to 10 inch lines emptying into two shallow ravines in the Southeasterly portion of the ownership.

The City of Grand Rapids has since January 1955 leased the approximately 37 acre portion in the Northeast corner of the ownership from the Grand Rapids Gypsum Company for public picnic grounds, surface rights only, for $1.00 per year, automatically renewed from year to year unless cancelled by either party, subject to cancellation by the Company upon one year's written notice. Any construction done by the City during the lease must be of a nature so as to be readily and easily removable.

A surface rights courtesy lease with an Archery Club is also in existence, subject to cancellation on a 30 day basis.

The waste plaster and dust of the manufacturing plants are deposited in the lowland area in the Southeast portion of the ownership adjacent to Grand River.

A portion of the manufacturing site in which the buildings of the Grand Rapids Gypsum Company are situated is leased to the United States Gypsum Company and contains a sheetrock manufacturing plant, the lease being made for inter-operation between the two concerns and is of mutual benefit to both firms.

In addition to the ownership in fee simple the company is leasing sub-surface mining rights from the U. S. Gypsum Co. on approximately 56 acres immediately adjacent to the West of the subject property on the South side of O'Brien Road and also approximately 17 acres from Certain-Teed Corp. adjacent to the West of the U. S. Gypsum leased acreage.

The Mining operation is presently in the two before mentioned leased areas, and in a 24.70 acre tract of land to the Northwest of the intersection of Covell and O'Brien Road to the North of the Consumers Power Company right-of-way.

The site of the manufacturing plants and allied buildings is presently not undermined.

HIGHEST AND BEST USE

In analyzing the subject property it is apparent that it has uses of different categories.

The area of the manufacturing operation as improved has a highest and best use as Industrial w/rail siding, in conjunction with the mines and in conformity with the zoning.

The portions of the acreage presently being mined in the subsurface have an evident highest and best use for Gypsum Mining.

The approximately 31.75 acre tract of land at the Southeast corner of Covell and Fulton Streets, as yet not mined, has a highest and best use as Potential Residential Subdivision as is evidenced by the two subdivisions within the same quarter section and by the extensive growth and development which has taken place to the North of Fulton Street, West of Bristol Avenue.

The surface rights of the land which has been mined is of somewhat problematic use. There are remote cases of the land being used for residential purposes with buildings located over a mined area, as a sale to the West of the subject verifies. The structure in the sale is old and with no recent subsurface activity in any proximity to it, thereby not affecting its use. However, there is no evidence in the market of any residential structures being placed on land that had been undermined. A deterent factor could be the lack of financing on such a site, as they are not favorably looked upon by financial institutions in the area, or more so by the Federal Housing Administration which insures the loans. Another factor which is considered to create resistance to residential use is the dynamiting or blasting in the mines which creates shock waves which can and do carry a minimum distance of ½ mile from the point of blast. The existing lease with the City of Grand Rapids of the Northeast 37 acre portion

of the subject for picnic grounds and or recreational use indicates to the Appraiser that this would be the highest and best use of such undermined acreage and is congruous with the present use.

The lowlands in the Southeasterly portion of the ownership have a highest and best use for dumping purposes in conjunction with the manufacturing site and of proportionate contribution.

PROPERTY VALUATION BEFORE TAKING

The property being appraised is an approximately 418 acre operating gypsum mine, over a 100 years old, with installations for the manufacture of finished products for marketing.

The basic problem in the Appraisal is to estimate the fair market value of the land before the taking for limited access highway purposes and to estimate the fair market value of the remainder, thereby arriving at the recommended just compensation due the owners. The major problem in the Appraisal is the estimating of diminution in value of the industrial site caused by the reduction in size by the taking of approximately 60% of the waste dumping area which is necessary to the operation being conducted.

The only applicable approach to the value of the land is the Market Data Approach, and sufficient sales are available to substantiate this approach.

The buildings and land improvements are not within the area of the taking, nor in my opinion is their utility or use affected, therefore the Appraisal is made on land values only.

The land leased to the United States Gypsum Company, all within the ownership of the subject, is not affected by the proposed taking nor is the land utilized for dumping purposes for this plant as it is located farther to the Southeast. In the considered judgment of the Appraiser, the United States Gypsum Company has no leasehold advantage, therefore will be given no further consideration in this report.

The 37 acre portion in the Northeast corner of the ownership leased to the City of Grand Rapids with a $1.00 per year renumeration, and cancellation clause of one year's written notice, in the opinion of the Appraiser has no apparent monetary value to the City, nor is the City entitled to compensation due to severance of this leased acreage as they have no valuable interest in the property. Will, therefore, be given no further consideration in this report.

This appraisal being for purposes of evaluating the land only, the Income Approach or the Cost Approach to value are not applicable.

To arrive at an estimated market value the various categories of land uses within the subject ownership are being analyzed in the market analysis, and a distinction of uses and their estimated market value is broken down to the following:

Industrial Site	-	30.00 acres
Lowlands	-	40.00 acres
Uplands, mined	-	316.75 acres
Upland, not mined	-	31.75 acres
Total	-	418.50 acres

Based on sales and offerings in the general vicinity of the subject property and adjusted to the subject, the estimated value of the land, bare and unimproved is:

Industrial land	-	30 acres	@	$3000. a/a	$ 90,000.00
Lowlands	-	40 acres	@	250. a/a	10,000.00
Uplands, mined	-	316.75 acres	@	500. a/a	158,375.00
Uplands, not mined	-	31.75 acres	@	2000. a/a	63,500.00
ESTIMATED MARKET VALUE OF LAND BEFORE					$321,875.00