City of Manchester

336-155
DELAWARE COUNTY IOWA
FILED
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BOOK 7 PAGE 61
DELAWARE COUNTY RECORDER
21.00

Prepared by: Jim Peters, P.O. Box 774, Independence, Iowa 50644 319-334-9992

AGREEMENT REGARDING CONSTRUCTION
OF STRUCTURES ENCROACHING UPON
SANITARY SEWER EASEMENTS

WHEREAS, Michael J. Peyton and Deborah Peyton, husband and wife, are the owners of property located in Manchester, Iowa, more specifically described as:

SEE ATTACHED

WHEREAS, the City of Manchester, Iowa, previously has acquired an easement for sanitary sewer purposes which was recorded in the office of the Delaware County Recorder on December 20, 1950, in Book H at Page 502; and

WHEREAS, Michael J. Peyton and Deborah Peyton, husband and wife, hereinafter referred to as "Peyton", desire to place a wood deck over the sanitary sewer line operated by the City of Manchester, Iowa, pursuant to the above-referenced easements, upon the Peytons' property; and

WHEREAS, installation of said structure over the sanitary sewer line of the City of Manchester, Iowa, would impair the City's right to maintain and repair the sanitary sewer line as provided in the above-referenced easement; and

WHEREAS, the construction of a structure over the sanitary sewer line maintained and operated by the City of Manchester, Iowa, would in some instances, significantly increase the cost of maintenance, repair or replacement of the sanitary sewer; and

WHEREAS, the parties have entered into an agreement set forth herein which permits Peyton to construct a wood deck over the sanitary sewer line operated by the City of Manchester, Iowa, subject to certain obligations, assumptions of risk and liabilities set forth herein.

IT IS HEREBY AGREED as follows:

1. That this Agreement shall be binding upon the heirs, guarantees, transferees, executors, and legal representatives of Peyton and shall run with the land and be binding upon all owners of the following-described property:

SEE ATTACHED

2. That the City of Manchester, Iowa, hereinafter referred to as "City", shall permit the construction of a wood deck more specifically described below, to be placed over the

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sanitary sewer line operated by the City upon the property owners' property pursuant to the above-described easement:

(Description and location of structure).

See Page 4

3. That Peyton, their heirs and assigns, shall be solely responsible for, and shall indemnify and hold the City harmless, for any damage caused to the sanitary sewer line as a result of the placement of the above-referenced structure over the sanitary sewer line.

4. That Peyton, their heirs and assigns, and all owners of the above-described property, are hereby on notice of the location of the sanitary sewer line shown by the above-referenced easement and its proximity to the structures placed on the above-described property. The grant of a building permit by the City for construction of the structure located over the sanitary sewer line does not constitute a representation by the City that such construction is proper, prudent or appropriate, and such construction is solely at the risk of the property owners, their heirs and assigns.

5. The Agreement set forth herein shall not operate as a recision of any of the terms and conditions the above-referenced easement except as specifically modified herein. The City of Manchester, Iowa, by entering into this Agreement, does not waive any of its rights to strictly enforce the terms of the easement referred to above in any other situation or regarding any other property not specifically addressed herein.

6. In the event proper care by the City requires the sanitary sewer located on the above-referenced premises currently owned by Peyton to be repaired, replaced, or to perform maintenance on the sanitary sewer line, the costs shall be allocated between the City, Peyton, their heirs and assigns, as follows:

(a) The City shall pay for repair, maintenance and replacement of the sanitary sewer line located on the above-referenced premises if the options for repair, maintenance and replacement are unaffected by the location of the above-referenced structure over the sanitary sewer line.

(b) If options for repair, maintenance and replacement are affected by the location of a structure over the sanitary sewer line, the City shall be solely responsible for such costs if such repair, maintenance or replacement would not have required digging of the sanitary sewer line in the area where the structure is located over the sanitary sewer line.

(c) If, in the sole discretion of the City, the most cost-effective manner for performing the maintenance, repair or replacement of the sanitary sewer line if no structure had been placed over the sanitary sewer line would have required digging at the location where the above described structure is placed over the sanitary sewer line, the owner of the above property shall be reponsible for removing said structure from the easement in a reasonable period of time. In the event the structure is not removed within a reasonable period of time the City shall be entitled to remove the structure and assess the costs to the property owner.

7. The City shall not be responsible except for gross negligence or willful acts, for damage caused to the structure placed over the sanitary sewer line by property owners caused by actions taken by the City for maintenance, repair or ~~replacement~~ of the sanitary sewer line located beneath the structure placed over the sanitary sewer line by the property owners.

Michael J. Peyton

Deborah Peyton

Subscribed and sworn to before me by Michael J. Peyton and Deborah Peyton on this 18th day of June, 1997.

Linda K. Tutton
Notary Public in and for the State of Iowa

CITY OF MANCHESTER, IOWA

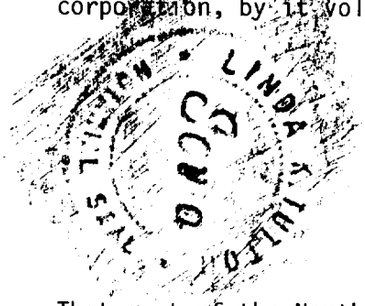
BY: Milt Kramer
Milt Kramer, Mayor

BY: Karen K. Cole
Karen Cole, City Clerk

STATE OF IOWA)
) SS:
COUNTY OF DELAWARE)

On this 8th day of July, 1997, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Milt Kramer and Karen Cole, to me personally

known, and who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Manchester, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Resolution R-076-97 passed by the City Council of the City of Manchester, Iowa on the 7th day of July, 1997, and that Milt L. Kramer and Karen K. Cole acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.



Linda K. Tutton
Linda K. Tutton, Notary Public
My commission expires 8-29-99

DESCRIPTION & LOCATION OF STRUCTURE

That part of the Northwest 1/4 of the Southeast 1/4 of Section 29, Township 89 North, Range 5 West of the 5th P.M. and of Lot 10 of Railroad Addition to Manchester, Iowa, described as commencing at a point on the West line of Lot 29 of Burrington's Addition to Manchester, Iowa, that is 300.0 feet North of the Southwest Corner of Lot 27 of said Burrington's Addition, and running thence North 145.0 feet to the Northwest Corner of said Lot 29 of Burrington's Addition, thence West 19 rods, thence South 145.0 feet to a point due West of the Point of Beginning, thence East 19 rods to the Point of Beginning.

