

CITY OF SIGOURNEY, IOWA  
MINUTES OF SPECIAL MEETING OF  
CITY COUNCIL  
MONDAY, DECEMBER 21, 1998

The Sigourney City Council met in special session in the City Council Chambers of the Memorial Hall on Monday, December 21, 1998, at 5:00 P.M., with Mayor Blake Gosnell presiding, and the following Councilmembers answering roll call: Ed Conrad, Rich Wilkening, Lyle G. Van Fleet, Douglas L. Glandon, Bob L. Mendenhall, and Jeffrey A. Winn. Others present, in addition to the City Clerk, were Terry Wilkening, Bill Tremmel, Jerry Wohler, and Mr. and Mrs. Quinn Patterson.

Mayor Gosnell said the purpose of the meeting was to attempt to resolve the problem of Mr. and Mrs. Patterson having been disconnected from their septic tank and being without a sewer outlet. Councilmember Winn had talked with Dan Moore and he is not interested in giving an Easement. Unlike the project in Meadowbrook which served several residential units, land could be condemned for a public sewer, but for a single household condemnation could not take place. French-Reneker had estimated an 8" main from Mackey/Kelley up to Kelley/Cherry, approximately 300 ft., to cost approximately \$18,000.00. 150' from Mackey/Kelley intersection to 150' from Pattersons' would run \$13,000-\$14,000 and then Pattersons would have to hook up a 4" to meet the other sewer line, which might cost them \$2500.00.

Mayor Gosnell said he had obtained information regarding the Easement for the sewer line that runs through Dan Moore's property, and that only covers 15' on either side of the line, and not enough space to take it up to where we need to be for Pattersons. It was pointed out that a 4" service line from Pattersons' house down to the existing sewer main at Mackey/Kelley would have to run approximately 300' and the estimated cost would be \$4500-\$5000. Councilmember Van Fleet said he thinks that our easement is good enough for this purpose. However, the Mayor said the City Attorney said it is not: there is the difference between public and private usage. He further said the options are: extend sewer a long way, extend sewer a little way, or dig their own. Councilmember Glandon reminded the group that if the City would go up Kelley Street and end there the line would only serve one house (the Pattersons) and would be setting a precedent to do private sewers and we would be liable to do it again, again, and again.

Councilmember Winn asked what would happen if the grain bins on Cherry Street would get sold and people decide to develop that area for housing, how would we be able to get an easement to tie in? Mayor Gosnell replied that would then be serving multiple users. Councilmember Conrad reaffirmed that if a development would start there would have to be more than one house before we could proceed with condemnation. Councilmembers Mendenhall and Winn both asked if it would be feasible to consider bringing the line up to Cherry to serve other lots.

Mayor Gosnell again reviewed the options:

- A. Run 300' from the corner of Mackey/Kelley to Cherry 8" main with two manholes, estimated \$18,000
- B. Running 150' up Kelley from manhole at Mackey/Kelley \$14,000 and put in a manhole where Pattersons may connect for approximately \$2250.00
- C. Running 300' from Patterson's house 4" down to manhole at Mackey/Kelley, between \$4500-\$5000, and won't serve anybody but Pattersons

Resolution No. 12-16-98-3

A resolution to support court proceedings  
to protect a City's right to maintain the use and control of rights of way  
within its corporate limits

WHEREAS, The Federal Telecommunications Act of 1996 ("the ACT") preserves the right of municipalities to manage rights-of-way within their corporate limits and receive compensation for use and management of the rights-of-way, so long as the regulation of the rights-of-way is nondiscriminatory; and

WHEREAS, The Iowa State Supreme Court has established the "Rule of 1897" whereby a phone company ("1897 company"), including its successors, that was providing local phone service to a community prior to October 1, 1897, does not have to seek permission to use the rights-of-way nor pay any fee for their use; and

WHEREAS, the 1998 legislature passed Senate File 2368: an act relating to the management of public rights of way by local government units, eliminating the power of cities to grant franchises to erect, maintain, and operate plants and systems for telecommunications services within the city; and

WHEREAS, US West has filed suit against the City of Coralville which challenges the status of Coralville's Right of Way Ordinance on the grounds that it violates the Federal Telecommunications Act of 1996; that the requirements of the ordinance are preempted by state law; and that the ordinance is inconsistent with US West's perpetual franchise rights ("Rule of 1897"); and

WHEREAS, In order to best meet the needs of citizens to receive telecommunication and other essential services, it is necessary that cities be able to regulate the use of their rights of way and to receive payment from the users of the rights-of-way for their use; and

WHEREAS, The Iowa League of Cities has established a fund for the purpose of supporting an action to protect the rights of Iowa cities in their rights-of-way; and

WHEREAS, The City of Sigourney agrees that it supports such court action and will provide funding for the proceeding;

NOW THEREFORE, be it resolved that the City of Sigourney agrees that it supports such court action and will pay the sum of \$ (your city's population multiplied by \$.10) as its per capita share of the cost of filing the initial action. ( \$211 . 10 )

BE IT FURTHER RESOLVED, that the City of Sigourney hereby authorizes the Iowa League of Cities to retain counsel and to coordinate and otherwise manage the litigation.

Approved and adopted this 16th day of December, 1998

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December 21, 1998

Mayor Gosnell said he is also leery about getting into private lines. Bill Tremmel asked if French-Reneker specs would have to be followed for a private line - he thought they were extremely high. The Mayor told him that the work should not exceed the engineer's estimate. Councilmember Mendenhall suggested throwing out a motion to see what happens.

Councilmember Conrad moved, seconded by Councilmember Van Fleet, to go ahead with Plan C, 4" tile, from Pattersons' house to Mackey/Kelley, with the cost to be divided equally between the City and Pattersons. Upon the roll being called, the following voted: Ayes: Conrad, Wilkening, Van Fleet, Mendenhall. Nays: Glandon, Winn. The motion was approved.

Jerry Wohler and Quinn Patterson left the room briefly and when they returned Mayor Gosnell asked if they had any comment. They said the attorney for the Pattersons is of the opinion that they shouldn't be paying more than \$200-\$300 that it would cost the property owner in Iowa City, and they would not agree to splitting a \$4500-\$5000 cost. Mayor Gosnell said the Sigourney Ordinance is obviously different from what their attorney had in mind.

The Mayor asked if there was a motion to strike the previously approved motion? There was no comment.

Jerry Wohler asked if the City wanted the Court to decide this matter? Mayor Gosnell said he would have to check with our Attorney. It was suggested that the City may have been at fault by not following up and penalizing Shavers when they did not connect to the sewer when notified. Councilmember Conrad said the City may not have the right to go after Shavers now, but Pattersons should. It was decided that if the City Attorney and Pattersons' attorney would meet, perhaps the issue could be resolved. Mayor Gosnell will contact John Wehr in the morning and have him contact Pattersons' attorney to see if they can work something out so that the City does not have to pay more than 50% of the bill. The Mayor asked Bill Tremmel to get a concrete estimate on the 4" line.

After the Mayor had asked for other comments and there were none, Councilmember Wilkening moved for adjournment at 5:44 P.M. The second was by Councilmember Van Fleet.

Bob Gosnell  
MAYOR

ATTEST: Reggie Heintz  
CITY CLERK

