

CITY OF LEROY
COUNTY OF MCLEAN
STATE OF ILLINOIS

ORDINANCE NO. 728

AN ORDINANCE APPROVING AN AGREEMENT
FOR DRAINAGE EASEMENT

ADOPTED BY THE CITY COUNCIL OF THE CITY OF LE ROY THIS 17th
DAY OF March 17, 1997.

PRESENTED: March 17, 1997

PASSED: March 17, 1997

APPROVED: March 17, 1997

RECORDED: March 17, 1997

PUBLISHED: March 17, 1997

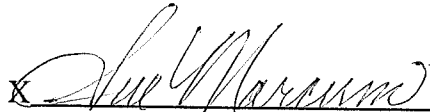
In Pamphlet Form

Voting "Aye" 5

Voting "Nay" 0

The undersigned being the duly qualified and Acting City Clerk of the City of LeRoy does hereby certify that this document constitutes the publication in pamphlet form, in connection with and pursuant to Section 1-2-4 of the Illinois Municipal Code, of the above-captioned ordinance and that such ordinance was presented, passed, approved, recorded and published as above stated.

(SEAL)


Acting City Clerk of the City of LeRoy,
McLean County, Illinois

Dated: March 17, 1997.

ORDINANCE NO. 728

AN ORDINANCE APPROVING AN AGREEMENT
FOR DRAINAGE EASEMENT

WHEREAS, the Mayor and City Council of the City of LeRoy, McLean County, Illinois, an Illinois municipal corporation, have reviewed a proposed easement agreement conveying an Exclusive and Permanent Easement and Grant of Right-Of-Way across the following described property:

A part of Lot 29 in Meadow Addition Subdivision in the North East 1/4 of Section 21, Township 22 North, Range 4 East of the Third Principal Meridian, City of LeRoy, McLean County, Illinois, more particularly described as follows: Beginning at the North West corner of Lot 29 in Meadow Addition Subdivision; thence East 27.22 feet on the North line of said Lot 29; thence South West 71.35 feet to the West line of said Lot 29; thence North 66.63 feet on the West line of said Lot 29 to the Point of Beginning, containing 905.54 square feet, more or less (PIN (Book 15) 30-21-203-011),

for the limited purposes of constructing, reconstructing, replacing, maintaining, deepening, and keeping in repair an open ditch, drain, waterway or drainage swale, and for constructing, maintaining, deepening and keeping in repair one or more subsurface sewer lines across and under the previously described permanent right-of-way and for constructing, maintaining and keeping in repair one or more subsurface utility lines across and under the previously described permanent right-of-way, and have determined that approval of the same by the City of LeRoy is in the best interests of the city and its residents; and

WHEREAS, The City of LeRoy, through its appropriate agents and officials, shall further have the right from time to time to grant rights to public utility entities and quasi-public utility entities, including electrical, natural gas, water, sewer, telephone, other telecommunications, and cable television companies, and entities to place underground lines in the exclusive permanent easement way and right-of-way previously described herein, and to grant such entities, and their agents, employees and assignees, the right to enter and depart over and upon the above-described premises from time to time to effect the purposes of the rights granted herein; and

WHEREAS, the Mayor and City Council of the City of LeRoy, have determined that the work to be accomplished in connection with the aforesaid agreement is necessary in order to improve the removal of surface waters and the drainage thereof from the City of LeRoy,

Section 1. The agreement titled "Easement," a copy of which is attached hereto as Exhibit A and is incorporated herein by reference, is hereby approved.

Section 2. The Mayor and City Clerk are hereby directed and authorized to sign the original and as many copies as appropriate of that agreement as set forth in Exhibit "A" attached hereto, being certain to obtain one or more fully signed copies for the records of the City.

Section 3. This ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as required by law.

PASSED by the City Council of the City of LeRoy, Illinois, upon the motion by Lois Parkin, seconded by Dave McClelland, by roll call vote on the 17th day of March, 1997, as follows:

Aldermen elected 6 Aldermen present 5

VOTING AYE:

Ron Litherland, Dave McClelland, Fred Dodson, Dawn Thompson, Lois Parkin
(full names)

VOTING NAY:

None

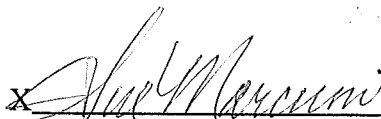
(full names)

ABSENT, ABSTAIN, OTHER:

Bill Swindle, absent

(full names)

and deposited and filed in the office of the Acting City Clerk in said municipality on the 17th day of March, 1997.



Sue Marcum, Acting City Clerk of the City of LeRoy, McLean County, Illinois

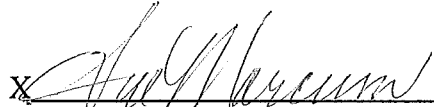
APPROVED BY the Mayor of the City of LeRoy, Illinois, this 17th day of March, 1997.



Jerry C. Davis, Mayor of the City of LeRoy, McLean County, Illinois

ATTEST:

(SEAL)

X 

Sue Marcum, Acting City Clerk, City of
LeRoy, McLean County, Illinois



Mail to: Hunt Henderson, Attorney
for the City of LeRoy
112 East Center Street
LeRoy, Illinois 61752

EASEMENT

THE GRANTOR(s), Brad Stewart and Lori Stewart, Husband and Wife, of 627 Meadow Lane , of the City of LeRoy , County of McLean, and State of Illinois (hereinafter referred to as "GRANTOR"), in consideration of One Dollar (\$1.00) and other good and valuable consideration, in hand paid, do hereby convey to the City of LeRoy , McLean County, Illinois, an Illinois municipal corporation (hereinafter referred to as "CITY"), an Exclusive Permanent Easement and Grant of Right-Of-Way across the following described premises:

A part of Lot 29 in Meadow Addition Subdivision in the North East 1/4 of Section 21, Township 22 North, Range 4 East of the Third Principal Meridian, City of LeRoy, McLean County, Illinois, more particularly described as follows: Beginning at the North West corner of Lot 29 in Meadow Addition Subdivision; thence East 27.22 feet on the North line of said Lot 29; thence South West 71.35 feet to the West line of said Lot 29; thence North 66.63 feet on the West line of said Lot 29 to the Point of Beginning containing 905.54 square feet, more or less (PIN (Book 15) 30-21-203-011).

The easement granted herein shall be for the limited purposes of constructing, reconstructing, replacing, maintaining, deepening, and keeping in repair an open ditch, drain, surface drain, waterway or drainage swale, for constructing, maintaining, deepening and keeping in repair one or more subsurface sewer lines across and under the previously described permanent right-of-way, and for constructing, maintaining and keeping in repair, one or more other subsurface utility lines across and under the previously described permanent right-of-way. The subject premises shall not be available for public use as a travelway, roadway, or other means of ingress or egress to any other property, but shall be used for the purposes of constructing, re-constructing, replacing, maintaining, deepening, and keeping in repair, an open ditch, drain, surface drain, waterway or drainage swale, and further, for constructing, maintaining, deepening and keeping in repair one or more subsurface sewer lines or other utility lines across and under the premises previously described herein. The City of LeRoy , its agents, employees and assignees, shall have the right from time to time to enter and depart over and upon the above-described premises to effect the purposes of the easement herein granted. The City of LeRoy, through its appropriate agents and officials, shall further have the right from time to time to grant rights to public utility entities and quasi-public utility entities, including electrical, natural gas, water, sewer, telephone, other telecommunications, and cable television companies and entities, to place underground utility lines in the exclusive permanent easement way and right-of-way previously described herein, and to grant such entities, and their agents, employees and assignees, the right to enter and depart over and upon the above-described premises from time to time to effect the purposes of the rights granted herein.

Exhibit A

In consideration of the conveyance by GRANTOR, CITY agrees as follows:

1. Upon completion of any construction, reconstruction, maintenance, repair, or deepening of the surface drainage way, open ditch, drain, waterway or drainage swale, as provided previously herein, CITY shall restore the premises previously described herein to that condition as such premises existed prior to the aforesaid construction, reconstruction, maintenance, repair or deepening of the surface drainage way, open ditch, drain, waterway or drainage swale as nearly as may be reasonably possible, in keeping with good engineering practices and accepted soil erosion control practices.

2. From time to time, should CITY make further improvements in said surface drainage way, drainage ditch, drain, waterway, drainage swale, or subsurface sewer lines or other subsurface utility lines, or install one or more subsurface sewer lines or other subsurface utility lines, CITY shall restore the premises described above to the condition as the same existed prior to said construction as nearly as may reasonably be possible, in keeping with good engineering practices and accepted soil erosion control practices.

3. CITY shall cause any entity or persons to whom CITY shall grant rights as provided herein for placement of underground utility lines to restore the premises previously described herein to that condition as such premises existed prior to any construction, reconstruction, maintenance, repair or deepening of any underground utility line, as nearly as may be reasonably possible, in keeping with good engineering practices and excepted soil erosion control practices.

4. GRANTOR shall have the right to use the premises located within the easement description for purposes not inconsistent with CITY's full enjoyment of the rights hereby granted, including those rights that CITY may grant to other entities as aforesaid, provided that GRANTOR shall not erect or construct any building or other structure, or drill or operate any well, or construct any other obstruction within the easement way.

5. Any and all costs and expenses with regard to the aforesaid easement and use of the same by CITY, including, but not limited to, construction, reconstruction, operation and maintenance, in good repair, of the surface drainage way, open ditch, drain, waterway, or drainage swale, shall be the duty and obligation of CITY and CITY shall repair any damage caused by it to GRANTOR's premises, and shall save and hold harmless and indemnify GRANTOR from any and all liability which may be incurred by GRANTOR by reason of the construction, reconstruction, maintenance, in good repair, or operation, of said surface drainage way, open ditch, drain, waterway or surface drainage way, open swale, or subsurface sewer line or other subsurface utility line(s) installed by or operated by CITY, and that may be incurred by GRANTOR by reason of CITY's exercise of its right to enter and depart upon the described easement way as previously set forth herein. Any and all costs in regard to any future improvements or reconstructions in any surface drainage way, open ditch, waterway, drain, drainage swale, or subsurface sewer line or other subsurface utility line(s) installed by or operated by CITY, either existing or to be constructed in the future, including, but not limited to, construction, reconstruction, operation and maintenance of said surface drainage way, open ditch, drain, waterway, drainage swale or subsurface sewer line or other subsurface utility line(s) installed by or operated by CITY, shall be the duty and obligation of CITY. Further, should CITY grant any rights to any entities as previously granted herein for the placement of underground utility lines of any sort, as previously described herein, CITY shall cause the assignee or grantee of any such rights to repair any damage caused by it to GRANTOR's premises, and shall cause said entity to save and hold harmless and indemnify GRANTOR from any and all liability which may be incurred by GRANTOR by reason of construction, reconstruction, maintenance, in good repair, or operation of any said underground utility line or improvement as well as for any future such improvements or reconstructions.

6. CITY agrees, upon the completion of any construction, reconstruction, or maintenance work conducted by it on or in the easement way to reseed the stand of grass in the easement way, to the extent of any grassy area damaged, and to follow up the reseeding, as may be necessary, to water and fertilize the seed bed in order to re-establish the grassy area in a condition the same as or better than it existed prior to the damage to the grassy area by CITY or its agents, employees, or contractors.

7. The parties hereto agree that CITY, its agents, employees and contractors, from time to time, may place temporary stakes and markers within the easement way in order to facilitate construction, reconstruction, or repair work. Further, that GRANTOR shall not place any fencing along the sides, on either end, or within the easement way, without CITY's consent.

8. All provisions of this instrument, including the benefits and burdens, run with the land and are binding upon and inure to the heirs, assigns, tenants, personal representatives, and successors in interest, of the parties hereto.

9. The rule of strict construction shall not apply to this grant of easement. This grant shall be given a reasonable construction so that the intention of the parties to confer a usable right in grantee (CITY) is carried out.

10. This written agreement contains the sole and entire agreement between the parties, and supersedes any and all other agreements between them. The parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of this agreement or any representations inducing the execution and delivery of this agreement except such representations as are specifically set forth herein, and each party acknowledges that he, she, or it has relied on his, her, or its own judgment in entering into this agreement. The parties further acknowledge that any statements or representations that may have heretofore been made by either of them to the other are void and of no effect and that neither of them has relied thereon in connection with his, her or its dealings with the other.

11. No waiver or modification of this agreement or of any covenant, condition or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith. Furthermore, no evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the parties arising out of or affecting this agreement, or the rights or obligations of any party hereunder, unless such waiver or modification is in writing, duly executed as aforesaid. The provisions of this paragraph may not be waived except as herein set forth.

12. This agreement and performance hereunder and all suits and special proceedings hereunder shall be construed in accordance with the laws of the State of Illinois.

13. Should either party, or the respective heirs, executors, administrators, assigns or successors in interest of either party, to this agreement, be required to incur attorney fees, costs, and/or other expenses as a result of the other party's failure to perform any obligation pursuant to the terms of this agreement, then the party so failing to perform shall be liable to the other party for any reasonable attorney fees, costs, and expenses incurred by such other party. Should either party to this agreement, or the respective heirs, executors, administrators, assigns or successors in interest of either party, fail to reimburse the other party for such reasonable attorney fees, costs, and other expenses, as aforesaid, then said amount may be obtained or collected by the party to whom it is due by bringing an action against the other party for such fees, costs and expenses incurred as a result of the first party's failure to perform.

14. It is expressly understood and agreed between the parties to this agreement that in the event a court of competent jurisdiction shall at any time after the date of this agreement hold that a portion of this agreement is invalid, illegal or unenforceable, that the remainder shall not be affected thereby, but shall continue in full force and effect.

15. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

16. Whenever the context of this agreement requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural.

17. This agreement shall be binding upon and inure to the benefit of the respective parties, their respective heirs, executors, administrators, assigns and successors in interest.

18. This agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same agreement.

19. Service of all notices under this agreement shall be sufficient if given personally or mailed via certified mail to the party involved at its respective address as previously set forth in this agreement, or at such other address as such party may provide in writing from time to time in accordance with this section regarding notices. Any such notice mailed to such address shall be effective when deposited in the United States mail, duly addressed and with first-class postage prepaid.

IN WITNESS WHEREOF, the GRANTOR(s) ~~has~~/have set ~~his~~/her/their hand(s) and seal(s) and CITY has caused its proper corporate officers to set their hands and affix the seal of the City to this agreement this 12th day of March, 1997.

Brad Stewart (SEAL)
Brad Stewart

Lori Stewart (SEAL)
Lori Stewart

CITY OF LEROY, McLean County, Illinois,
an Illinois municipal corporation,

By: _____
Jerry C. Davis, Mayor

ATTEST:

(SEAL)

Sue Marcum, Acting City Clerk of the City
of LeRoy, McLean County, Illinois

STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEAN)

I, the undersigned, a Notary Public in and for said county and state aforesaid, DO HEREBY CERTIFY that Jerry C. Davis, personally known to me to be the Mayor of the City of LeRoy, and Sue Marcum, personally known to me to be the Acting City Clerk of said city, whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such mayor and acting city clerk, they signed and delivered said instrument of writing as mayor and as acting city clerk of said city, and caused the seal of the City of LeRoy to be affixed thereto pursuant to authority given by the City Council of said city as a free and voluntary act, and as the free and voluntary act and agreement of the City of LeRoy for the uses and purposes therein set forth.

Given under my hand and notarial seal, this _____ day of _____, 1997.

My Commission Expires: _____

Notary Public

STATE OF ILLINOIS)
) SS.
COUNTY OF McLEAN)

I, the undersigned, a Notary Public in and for said county and state aforesaid, DO HEREBY CERTIFY that Brad Stewart and Lori Stewart, Husband and Wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal, this 12th day of March, 1997.

Sally E. Gulley My Commission Expires: Nov. 20, 1999
Notary Public



This instrument prepared by:
Hunt Henderson, Attorney at Law #01186256
112 East Center Street, LeRoy, Illinois 61752
Telph: (309) 962-2791

CERTIFICATE

I, Sue Marcum, certify that I am the duly appointed and acting municipal clerk of the City of LeRoy, of McLean County, Illinois.

I further certify that on March 17, 1997, the Corporate Authorities of such municipality passed and approved Ordinance No. 728, entitled:

AN ORDINANCE APPROVING AN AGREEMENT
FOR DRAINAGE EASEMENT,

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 728, including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was posted at the municipal building, commencing on March 17, 1997, and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the municipal clerk.

Dated at LeRoy, Illinois, this 17th day of March, 1997

(SEAL)



Acting Municipal Clerk

STATE OF ILLINOIS)
) SS:
COUNTY OF McLEAN)

I, Sue Marcum, do hereby certify that I am the duly qualified and Acting City Clerk of the City of LeRoy, McLean County, Illinois, and as such Acting City Clerk that I am the keeper of the records and files of the Mayor and the City Council of said City.

I do further certify that the foregoing is a true, correct and complete copy of an ordinance entitled:

AN ORDINANCE APPROVING AN AGREEMENT
FOR DRAINAGE EASEMENT.

I do further certify said ordinance was adopted by the City Council of the City of LeRoy at a regular meeting on the 17th day of March, 1997, and prior to the making of this certificate the said ordinance was spread at length upon the permanent records of said City where it now appears and remains as a faithful record of said ordinance in the record books.

Dated this 17th day of March, 1997.

X *Sue Marcum*
Acting City Clerk

