



Board of Alderman Request for Action

MEETING DATE: 6/7/2021

DEPARTMENT: Public Works

AGENDA ITEM: Bill No. 2944-22, Approving Sewer Easement Agreement – Emergency Ordinance Sponsored by Mayor Boley - 1st and 2nd reading.

REQUESTED BOARD ACTION:

A motion to approve Bill No. 2944-22, approving the easement agreement for a sanitary sewer main with Stephen and Karen Bliss. 1st and 2nd reading by title only.

SUMMARY:

In 2002, the City received an easement for a sanitary sewer main with Stephen and Karen Bliss. For consideration of the easement, the City agreed to install 150 feet of service line extending across Owens Branch and waive impact fees (attachment 1). The Blisses approached the City and are ready to connect to the sewer as their septic system is failing.

Unfortunately, the easement agreement was not executed by the City nor was the easement filed with the Registrar of Deeds.

The City made a commitment and the sewer main was constructed and is now in service. To address this situation, the Blisses have agreed to accept payment for the easement (including the impact fee cost). Upon approval of the Ordinance providing payment to the Blisses, they will re-execute the easement and the City will have the easement document filed. Their plumber provided the cost for the City's portion of installation of their service line to be \$15,000, the impact fee for sewer service is \$2800 for total compensation of \$17,800.

PREVIOUS ACTION:

N/A

POLICY ISSUE:

Infrastructure

FINANCIAL CONSIDERATIONS:

There is sufficient budget in the Utilities Operational budget for this expense.

ATTACHMENTS:

- | | |
|--------------------------------------------------------------------------------------------------|-----------------------------------|
| <input checked="" type="checkbox"/> Ordinance | <input type="checkbox"/> Contract |
| <input type="checkbox"/> Resolution | <input type="checkbox"/> Plans |
| <input type="checkbox"/> Staff Report | <input type="checkbox"/> Minutes |
| <input checked="" type="checkbox"/> Other: Original easement, Proposed easement, Plumber's quote | |

**ORDINANCE APPROVING RELEASE AND AGREEMENT FOR A SEWER EASEMENT
WITH STEPHEN G. BLISS & KAREN G. BLISS**

WHEREAS city staff has informed the Board of Aldermen that the city needs to procure and file with the Clay County Recorder of Deeds a sewer easement across property owned by Stephen K. Bliss & Rebecca Bliss.

WHEREAS the legal description of the needed sewer easement is as follows:

Description:

The permanent easement shall be twenty (20) feet in total width being ten (10) feet on either side of the center of said sewer line as constructed on and across property described as:

A tract of land in the Southwest Quarter of Section 11, Township 53, Range 33, Smithville, Clay County, Missouri, being bounded and described as follows: Beginning at the Northeast corner of the Southwest Quarter of said Section 11; thence South 0 degrees 17 minutes 00 seconds West along the East line of the Southwest Quarter of Section 11, 1,022.60 feet; thence West and parallel with the North line of the Southwest Quarter of said Section 11, 487.30 feet; thence North 0 degrees 17 minutes 00 seconds East and parallel with the East line of the Southwest Quarter of said Section 11, 585.28 feet; thence North 33 degrees 30 minutes 00 seconds East 524.45 feet to a point on the North line of the Southwest Quarter of said Section 11; thence East along the North line of the Southwest Quarter of said Section 11, 200.00 feet to the point of beginning; except all of said tract of land located east of Owen's Branch.

WHEREAS Stephen K. Bliss & Rebecca Bliss acquired ownership of the above said property from Stephen K. Bliss' parents Stephen G. Bliss & Karen G. Bliss.

WHEREAS the city and Stephen G. Bliss & Karen G. Bliss had previously discussed waiving certain fees and expenses in exchange for giving the city the needed sewer easement. Specifically, there were discussions concerning the following:

They be permitted to make two residential connections to said sewer without the assessment of additional fees related to the cost of installation of said sewer or future gravity sewer or impact fees normally assessed by the City. This waiver of additional fees shall not apply to normal monthly sewer bills as provided by City ordinance and calculated in the same manner as all city sewer customers. And

The city agrees to install one-hundred and fifty feet (150') of sewer service line connecting to said sewer and extending east across Owens Branch to Stephen G. & Karen G. Bliss' property. And

The city waives the impact fee for the sewer service.

WHEREAS the city and Stephen G. Bliss & Karen G. Bliss did not file any sewer easement or obtain the Boards approval of said previous discussions or any alleged agreements concerning same.

WHEREAS to clarify and resolve any issues concerning the sewer easement and compensation for said easement, city staff is recommending the city and Stephen K. Bliss & Rebecca Bliss agree to the contract attached hereto as Exhibit 1.

WHEREAS the consideration to Stephen K. Bliss & Rebecca Bliss for said contract and easement is Seventeen Thousand Eight Hundred Dollars (\$17,800.00) for which the money is currently in the city's budget. Staff recommends the acceptance of this agreement with the Stephen G. Bliss & Karen G. Bliss.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF SMITHVILLE, MISSOURI AS FOLLOWS:

The City hereby approves the agreement with Stephen K. Bliss & Rebecca Bliss as set forth in Exhibit 1 attached hereto. The City hereby approves the expenditure of Seventeen Thousand Eight Hundred Dollars (\$17,800.00) for said contract. The Mayor or the City Administrator are directed to execute said contract on behalf of the city.

PASSED THIS _____ DAY OF _____, 2022.

DAMIEN BOLEY, MAYOR

ATTEST:

CITY CLERK

First Reading: 06/07/2022
Second Reading: 06/07/2022

Ordinance - Exhibit 1

Settlement – Release and Agreement For A Sewer Easement

THIS AGREEMENT/CONTRACT entered this ____ day of _____, 2022 by and between the City of Smithville, a political subdivision in the State of Missouri (hereinafter occasionally referred to as "City"), and Stephen K. Bliss & Rebecca Bliss (husband and Wife) (hereinafter occasionally referred to as "Owners").

WHEREAS Owners are the legal owners and have the right to convey free and clear title to a sewer easement to the city over, through and under the following land located in Smithville Missouri more fully described as follows:

Description:

The permanent easement shall be twenty (20) feet in total width being ten (10) feet on either side of the center of said sewer line as constructed on and across property described as:

A tract of land in the Southwest Quarter of Section 11, Township 53, Range 33, Smithville, Clay County, Missouri, being bounded and described as follows: Beginning at the Northeast corner of the Southwest Quarter of said Section 11; thence South 0 degrees 17 minutes 00 seconds West along the East line of the Southwest Quarter of Section 11, 1,022.60 feet; thence West and parallel with the North line of the Southwest Quarter of said Section 11, 487.30 feet; thence North 0 degrees 17 minutes 00 seconds East and parallel with the East line of the Southwest Quarter of said Section 11, 585.28 feet; thence North 33 degrees 30 minutes 00 seconds East 524.45 feet to a point on the North line of the Southwest Quarter of said Section 11; thence East along the North line of the Southwest Quarter of said Section 11, 200.00 feet to the point of beginning; except all of said tract of land located east of Owen's Branch.

WHEREAS Stephen K. Bliss & Rebecca Bliss acquired ownership of the above said property from Stephen K. Bliss' parents Stephen G. Bliss & Karen G. Bliss (hereinafter occasionally referred to as "Parents").

WHEREAS at a time the property was owned by the Parents, the city and Parents discussed waiving certain fees and expenses in exchange for Parents granting the city the needed sewer easement(s). Specifically, there were discussions concerning the following:

Excluding fees for monthly sewer bills as provided by City ordinance and calculated in the same manner as all city sewer customers the Owners' being permitted to

make two residential connections to said sewer without the assessment of additional fees related to the cost of installation of said sewer or future gravity sewer. And

The city agreeing to install one-hundred and fifty feet (150') of sewer service line connecting to said sewer and extending east across Owens Branch to Stephen G. & Karen G. Bliss' property. And

The city waiving the impact fee for the sewer service.

WHEREAS neither the city or Parents filed any sewer easement or obtained the Boards approval of said previous discussions or alleged agreements.

WHEREAS the city and Owners wish to resolve all issues they may have between them or Parents concerning the sewer easement and compensation for said easement(s) or the construction of any sewer lines on Parents or Owner's property (formerly owned by Parents) or any rights or causes of action Owners obtained from Parents.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein the parties agree as follows:

1. For the sole consideration of Seventeen Thousand Eight Hundred Dollars (\$17,800.00) paid by the city, the receipt of which is hereby acknowledged, Stephen K. Bliss & Rebecca Bliss, husband and wife, do hereby fully and forever release and discharge the city, it's elected officials, officers, and employees, administrators, successors, and assigns, and all other persons and organizations who are or might be liable to either of them from all claims or rights to any services and for all damages resulting to Parents, Owners and/or to property owned by Owners or Parents as a result of the construction of any sewer lines or as a result of any negotiations or alleged agreements concerning any sewer easement(s) or lines and that any such previous alleged agreements concerning sewer easement(s) on Parents' or Owners' property between the city and Parents shall be for all purposes null and void ab initio.

2. Claims or rights to any services and for all damages of any kind resulting to Parents, Owners and/or to property owned by Parents or Owners shall include but not be limited to: (A) Any damage done to Parents' or Owners' property because of the construction of a sewer line. (B) Any claim or right to the Parents or Owners' being permitted to make two residential connections to said sewer without the assessment of additional fees related to the cost of installation of said sewer or future gravity sewer.; (C) Any claim or right to the city being obligated to install one-hundred and fifty feet (150') of sewer service line connecting to said sewer and extending east across Owens Branch to the Parents or Owners' property; and (D) Any claim or right to the city waiving the impact fee for the sewer service. Owners agree that neither they nor Parents have such rights, as set forth above and that the city has no such obligations.

3. As further consideration of said payment, Owners hereby covenant and agree to indemnify the city, its elected officials, officers, and employees, administrators, successors, and assigns, and all other persons and organizations who are or might be liable to Parents, their heirs, executors, administrators, successors, and assigns and to save them and each of them forever harmless against all loss and damage (including reasonable attorney fees) from any and all further claims, demands, damages, actions and causes of action which may hereinafter at any time be made or brought against said parties or any of them by anyone claiming to have suffered any damages or obtained any rights as a result of matters released above.

4. Owners shall execute and have notarized and deliver to the city the Sewer Easement attached hereto as Exhibit A to this Agreement which is incorporated by reference herein as if more fully set forth verbatim. Said delivery due upon the payment of the \$17,800.00.

5. The city agrees that all alleged previous agreements between the Parents and the city concerning any sewer easement(s) and any such alleged sewer easements on Parents' or Owners' property shall be for all purposes null and void ab initio.

6. The language of this Agreement reflects negotiations between Owners and the City, each of whom have had the opportunity to modify the text. In the event of litigation or other dispute concerning the language of this Agreement, general rules construing ambiguities against the drafter shall not apply. It is agreed that if more than one copy of this document may be executed and that the original filed with the City shall be deemed to be the controlling original.

7. This Agreement shall be null and void and of no effect unless and until the City has by Ordinance passed by the City obtained the authority to enter into this Agreement.

8. The laws of the State of Missouri shall govern this Agreement. Any action regarding the arising out of the terms and conditions of this Settlement – Release and Agreement For A Sewer Easement shall be instituted and litigated in the courts of the State of Missouri, County of Clay and in no other. In accordance, the parties submit to the jurisdiction of the courts of the State of Missouri and to venue in Clay County.

IN WITNESS WHEREOF, the parties have set their hands and seals the date and year first above written. The parties represent that the signatories below have full authority and authorization to sign on behalf of the respective parties.

THE CITY OF SMITHVILLE

By:_____

Name:_____

Owner(s)

Stephen K. Bliss

Rebecca Bliss

Exhibit A to Agreement

SEWER EASEMENT

THIS AGREEMENT made this _____ day of _____ 2022, by and between Stephen K. Bliss & Rebecca A. Bliss of Smithville, Clay County, Missouri, **GRANTOR(S)**, and the City of Smithville, a Municipal Corporation of Clay County, Missouri, 107 W. Main Street, Smithville, Missouri 64089, **GRANTEE**.

(Mailing address of said GRANTEE is 107 W. Main Street Smithville, MO 64089).

WITNESSETH, That the Grantor(s), in consideration of the sum of One Dollar (\$1.00) paid to them by the Grantee, the receipt and sufficiency of which is hereby acknowledged, do by these presents grant, bargain and sell, convey and confirm unto said Grantee, its successors and assigns, a Permanent Sewer Easement over and under the following described tract of land lying, being and situated in the City of Smithville, Clay County, Missouri, to wit:

Description:

The permanent easement shall be twenty (20) feet in total width being ten (10) feet on either side of the center of said sewer line as constructed on and across property described as:

A tract of land in the Southwest Quarter of Section 11, Township 53, Range 33, Smithville, Clay County, Missouri, being bounded and described as follows: Beginning at the Northeast corner of the Southwest Quarter of said Section 11; thence South 0 degrees 17 minutes 00 seconds West along the East line of the Southwest Quarter of Section 11, 1,022.60 feet; thence West and parallel with the North line of the Southwest Quarter of said Section 11, 487.30 feet; thence North 0 degrees 17 minutes 00 seconds East and parallel with the East line of the Southwest Quarter of said Section 11, 585.28 feet; thence North 33 degrees 30 minutes 00 seconds East 524.45 feet to a point on the North line of the Southwest Quarter of said Section 11; thence East

along the North line of the Southwest Quarter of said Section 11, 200.00 feet to the point of beginning; except all of said tract of land located east of Owen's Branch.

TO HAVE AND TO HOLD the same for the aforesaid use with all rights, privileges, appurtenances, and immunities thereto belonging unto the Grantee, its successors and assigns for so long as said use shall continue, the Grantor hereby covenanting for them and their heirs, successors and assigns unto the Grantee, its successors and assigns the following.

(1) Said easement will be kept free from buildings and any other structures or obstructions (except sidewalks, roadways, pavement, or curbs) which will interfere with the Grantee in excavating upon said land for the purpose of laying, constructing, reconstructing, operating, repairing, and maintaining said sewer and appurtenances, and no excavation or fill shall be made and no other operation of any kind or nature shall be performed or authorized by the Grantor to be performed which will reduce or increase the earth coverage in such manner and to such extent so as to interfere with, or jeopardize or threaten the normal and proper operation and maintenance of said sewer and appurtenances, said sewer at all times to be laid and constructed at a proper depth below any pavement or street surfacing laid out or established at any time along, upon, or over said easement or any portion thereof, and the Grantee will repair any damage to fences, pavement, curb or sod in any way arising in connection with the laying, constructing, and repairing of said sewer and appurtenances. By granting this easement, same shall not be considered or construed as prohibiting the Grantors in the developing of any adjoining property from the laying out, establishing and the constructing of pavement surfacing of roadways, curbing and gutters along, upon, over or across said easement or any portion thereof.

2. The right of Grantee its agents, servants, employees or independent contractor to go upon said land, and so much of the Grantor's adjoining land as may be reasonably necessary, at any time to excavate or perform other operations for the purpose of laying, constructing, reconstructing, operating, removing, replacing, repairing, or maintaining said sewer and all appurtenances incidental thereto.

3. That Grantor(s) are lawfully seized and possessed of the real estate above described, that Grantor(s) have a good and lawful right to convey the same; that it is free from all encumbrances done or suffered by them which would interfere with the rights granted hereunder; and that Grantor(s) forever warrant and defend the title thereto against the lawful claims of all affecting the rights and easement granted hereunder.

IN WITNESS WHEREOF, the said Grantors have caused these presents to be signed this
_____ day of _____, 2022.

Grantor(s)

Stephen K. Bliss

Rebecca A. Bliss

MISSOURI ACKNOWLEDGMENT

STATE OF MISSOURI)
) SS
COUNTY OF CLAY)

ON THIS THE _____ day of _____, 2022, before me, a Notary Public, personally appeared: Stephen K. Bliss & Rebecca A. Bliss proved to me on the basis of satisfactory evidence to be the person(s) described herein and who executed the foregoing instrument, on behalf of the persons therein named, and acknowledge to me that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed by official seal in
_____ the day and year last above written.

Notary Public Signature

Printed or Typed Name

(Seal)

My Commission Expires:

Exhibit A

SEWER EASEMENT

THIS AGREEMENT made this _____ day of _____ 2022, by and between Stephen K. Bliss & Rebecca Bliss of Smithville, Clay County, Missouri, **GRANTOR(S)**, and the City of Smithville, a Municipal Corporation of Clay County, Missouri **GRANTEE**.

(Mailing address of said GRANTEE is 107 W. Main Street Smithville, MO 64089).

WITNESSETH, That the Grantor(s), in consideration of the sum of One Dollar (\$1.00) paid to them by the Grantee, the receipt and sufficiency of which is hereby acknowledged, do by these presents grant, bargain and sell, convey and confirm unto said Grantee, its successors and assigns, a Permanent Sewer Easement over and under the following described tract of land lying, being and situated in the City of Smithville, Clay County, Missouri, to wit:

Description:

The permanent easement shall be twenty (20) feet in total width being ten (10) feet on either side of the center of said sewer line as constructed on and across property described as:

A tract of land in the Southwest Quarter of Section 11, Township 53, Range 33, Smithville, Clay County, Missouri, being bounded and described as follows: Beginning at the Northeast corner of the Southwest Quarter of said Section 11; thence South 0 degrees 17 minutes 00 seconds West along the East line of the Southwest Quarter of Section 11, 1,022.60 feet; thence West and parallel with the North line of the Southwest Quarter of said Section 11, 487.30 feet; thence North 0 degrees 17 minutes 00 seconds East and parallel with the East line of the Southwest Quarter of said Section 11, 585.28 feet; thence North 33 degrees 30 minutes 00 seconds East 524.45 feet to a point on the North line of the Southwest Quarter of said Section 11; thence East

along the North line of the Southwest Quarter of said Section 11, 200.00 feet to the point of beginning; except all of said tract of land located east of Owen's Branch.

TO HAVE AND TO HOLD the same for the aforesaid use with all rights, privileges, appurtenances, and immunities thereto belonging unto the Grantee, its successors and assigns for so long as said use shall continue, the Grantor hereby covenanting for them and their heirs, successors and assigns unto the Grantee, its successors and assigns the following.

(1) Said easement will be kept free from buildings and any other structures or obstructions (except sidewalks, roadways, pavement, or curbs) which will interfere with the Grantee in excavating upon said land for the purpose of laying, constructing, reconstructing, operating, repairing, and maintaining said sewer and appurtenances, and no excavation or fill shall be made and no other operation of any kind or nature shall be performed or authorized by the Grantor to be performed which will reduce or increase the earth coverage in such manner and to such extent so as to interfere with, or jeopardize or threaten the normal and proper operation and maintenance of said sewer and appurtenances, said sewer at all times to be laid and constructed at a proper depth below any pavement or street surfacing laid out or established at any time along, upon, or over said easement or any portion thereof, and the Grantee will repair any damage to fences, pavement, curb or sod in any way arising in connection with the laying, constructing, and repairing of said sewer and appurtenances. By granting this easement, same shall not be considered or construed as prohibiting the Grantors in the developing of any adjoining property from the laying out, establishing and the constructing of pavement surfacing of roadways, curbing and gutters along, upon, over or across said easement or any portion thereof.

2. The right of Grantee its agents, servants, employees or independent contractor to go upon said land, and so much of the Grantor's adjoining land as may be reasonably necessary, at any time to excavate or perform other operations for the purpose of laying, constructing, reconstructing, operating, removing, replacing, repairing, or maintaining said sewer and all appurtenances incidental thereto.

3. That Grantor(s) are lawfully seized and possessed of the real estate above described, that Grantor(s) have a good and lawful right to convey the same; that it is free from all encumbrances done or suffered by them which would interfere with the rights granted hereunder; and that Grantor(s) forever warrant and defend the title thereto against the lawful claims of all affecting the rights and easement granted hereunder.

IN WITNESS WHEREOF, the said Grantors have caused these presents to be signed this _____ day of _____, 2022.

Grantor(s)

Stephen K. Bliss

Rebecca Bliss

MISSOURI ACKNOWLEDGMENT

STATE OF MISSOURI)
) SS
COUNTY OF CLAY)

ON THIS THE _____ day of _____, 2022, before me, a Notary Public, personally appeared: Stephen K. Bliss & Rebecca A. Bliss proved to me on the basis of satisfactory evidence to be the person(s) described herein and who executed the foregoing instrument, on behalf of the persons therein named, and acknowledge to me that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed by official seal in _____ the day and year last above written.

Notary Public Signature

Printed or Typed Name

(Seal)

My Commission Expires:
