

★ Roll Call Number

Agenda Item Number

34

Date November 6, 2006

Request to speak from Peter Sand, Scheldrup Law Firm, 900 Des Moines St., regarding public nuisance at 3721 SE 24th Ct.

Moved by _____ to receive and file comments.

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
MAHAFFEY				
KIERNAN				
VLASSIS				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk

34

Scheldrup Law Firm, P.C.

An Association of Sole Practitioners including a Professional Corporation
All written communication to:

Des Moines
900 Des Moines St.
Third Floor
Des Moines, IA

P.O. Box 36
Cedar Rapids, IA 52406-0036
Telephone: 319-286-1743
Fax: 319-286-1748
<http://www.scheldruplaw.com>

Cedar Rapids
225 Second Street SE
Law Building, Suite 200
Cedar Rapids, IA

October 26, 2006

Diane Rauh
City Clerk
Des Moines City Hall
400 Robert Ray Dr.
Des Moines, IA 50309

Re: Mike & Sarah Fuller
3721 SE 24th Ct.

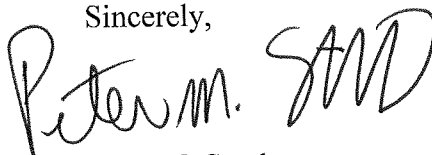
FILED
2006 OCT 27 PM 12:01
CITY CLERK
DES MOINES, IOWA

Dear Clerk and Members of the City Council:

I request an opportunity to be heard at the City Council meeting of 11/6/06 regarding a public nuisance lawsuit the City has pending against the Fullers. Please confirm by fax, email, or voicemail, that I have secured a position on the agenda that evening.

Thank you.

Sincerely,



Peter M. Sand

PMS/tim

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Cedar Rapids
225 Second Street SE
Law Building, Suite 200
Cedar Rapids, IA

October 31, 2006

Des Moines City Council/
Board of Health
400 Robert Ray Dr.
Des Moines, IA 50309

FILED
NOV - 1 AM 10:03
CITY CLERK
DES MOINES, IOWA

Below are printed the remarks I intend to make on behalf of Mike and Sara Fuller at the meeting of 11/6/06:

Dear Mr. Mayor and members of the Council/Board of Health:

I stand before you today in pro bono representation of Mike and Sara Fuller. This young couple is the very portrait of the kind of citizens Des Moines needs, professes to want, and is blessed to have. Mike and Sara had the great misfortune of suffering a serious fire at their home this past January 18. Luckily, and most importantly, Mike and Sara and their baby survived this fire, and escaped the home. The cause of this fire has not been determined with absolute certainty; the best working theory the Fullers know of is that the fire started in the engine of the car of a family friend. The car was parked up close to the Fuller's attached garage, because Mike was going to help with some repair on the car the following day. The fire totally engulfed the car, and spread to the garage and the house. The Fullers had to flee quickly with their baby, all in their pajamas, and were rendered homeless by the fire. They lived for many months with Sara's parents in Urbandale after the fire.

One would hope that city government would be one of many entities lining up to help the Fullers in their misfortune. I expect the City I live in, and for which I have tremendous pride, to be there for citizens in such times of acute trauma. Certainly the fire department was there—they came to the scene and extinguished the blaze. A city is expected to serve and protect its citizens. That is why we have a fire department, police department, and all of the other departments. These departments and services are what help a city feel like a family, and not some remote, monolithic structure serving the ends of those in power positions in its structure.

The last thing I would expect to learn is that the City of Des Moines was intentionally adding to the Fuller's problems, rather than helping them. I was shocked when the Fullers came to visit me and told me about the nuisance action pending against them in Polk County District Court. You see, when a Des Moines resident is unfortunate enough to suffer a house fire, it is the policy of the City to pile on the misfortune with nuisance citations and inspection fees.

Scheldrup Law Firm, P.C.

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From the point of view of this outsider to events, the progress on dealing with this fire proceeded about as one would expect. The Fullers contacted their home insurer, Shelter, on the day after the fire, and Shelter visited the property right away. Shelter took possession of the property and immediately engaged the services of fire investigators to see if the source of the blaze could be ascertained. The process of investigating the fire took most of February. After that, engineers and construction folks visited the property numerous times, in order to make a momentous decision about whether to rebuild. Though it was a close call, it was decided that it was economically wise to repair the home rather than demolish and rebuild. Shelter and its agents made that decision in March.

Once that decision was made, Shelter engaged the necessary contractors, and they set about work right away on the repair job. Shelter issued to the Fullers a construction calendar about how the planned work would proceed. The calendar, for the most part, was followed, and the home was completely repaired as of late July. Because of the trauma the Fullers and their youngster experienced last January, they have decided to sell the home.

This reasonable series of responsive measures is contrasted with the acts of the City. In the case of the Fullers, the fire occurred at their home, at 3721 SE 24th Ct., on January 18. A city inspector visited the property on January 20. That inspector sent the Fullers a letter on February 3, notifying them that their property was a public nuisance, and the nuisance had to be abated within 30 days. If the nuisance was not abated in 30 days, the staff would ask the Council (as Board of Health) to authorize a lawsuit, and one would be filed seeking to enter the property and abate the nuisance.

Of course, it was impossible to deal with the burned out house in only 30 days, especially during the winter month of February. The staff asked for and received approval from you councilmembers, sitting as Board of Health, for a nuisance lawsuit to be filed in the district court. That action was filed April 4, 77 days after the fire. The lawsuit sought court permission to enter the property and demolish the home, and for costs to be assessed against the property. The nuisance action is set for trial in Polk District Court on November 22. If the matter is not dismissed, I will be there with the Fullers opposing any judgment against them, and I think we will be able to present potent arguments in favor of outright dismissal.

After hearing this story in August, I wondered to myself, "If the house has been repaired, and is no longer a nuisance, why doesn't this lawsuit simply get dismissed?" The Fullers then informed me that the City is demanding that it be paid \$805 in costs before it will agree to dismissal. I find that to be nothing less than a shocking shakedown equivalent to kicking someone when they are down. The City of Des Moines should be better than this.

Charles A. Blades+

Peter M. Sand

Chris J. Scheldrup*

David A. Schrock

Caitlin J. Stoner

Also licensed in +Illinois and *Arizona

Scheldrup Law Firm, P.C.

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Normally I disapprove of attempts to short circuit a legal process by seeking a political remedy. However, I consider this the best course of action to seek redress for the Fullers for several reasons:

(a) I wanted to be sure that you folks on the Council/Board of Health know and understand that when citizens have the great misfortune of suffering a house fire, it is the policy of your staff to cite them for public nuisance, and to collect inspection fees from them.

(b) If, like me, you don't think this is a wise practice to exercise across the board, the Fullers' only remedy may be your good graces in directing the staff to dismiss this lawsuit. This is because, while I think we will present strong arguments in court, it is possible the courts could enter judgment against the Fullers for the \$805 the City seeks in costs. In that case, it might be too late to seek relief outside of the legal system.

We believe that city ordinances claiming the power to assess costs in a nuisance case against the property owners are extremely troubling as applied to this case.

Certainly there are property owners whose properties become nuisances due to neglect, and lack of proper upkeep and repair. And of course, the City must have legal powers to incent and eventually force property owners to deal with nuisances. The ability to charge inspection and other costs to such bad actors was probably instituted in order to give extra incentive to property owners to avoid creating nuisance, and to prevent slumlords from visiting upon the city populace the cost of their bad behavior.

These are good goals, and city leaders were undoubtedly trying to be good stewards for the citizens in enacting these provisions.

But applying those ordinances to heap an additional \$805 of pain on this family is wrong, pure and simple.

There has been a movement in the City in recent years to try and visit the costs of City services upon those who use the service. There again, in general, this might be a good idea. But the City will fundamentally change into something ugly if we reach a point where it costs money to dial 911. Certain services necessarily must be free to the individual citizens who avail themselves of the offered service. I would think this should especially be true in the case of services (like inspection after fires) that were not requested, nor necessitated due to the demonstrable fault of the citizen.

I hope you members also examine the bill for \$805. You will see that the City is trying to charge the Fullers \$125 for the effort it took the City to ascertain legal ownership of the property. There are four "service fees" of \$25 each that are not explained. Photographs, before and after repairs, are charged at \$30, which is probably the most reasonable expense shown. Inspections of

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the property are charged at \$100 each. One occurred soon after the fire. There are three others on this bill, but they are all listed as having occurred on the same day, 8/3/06, at the end of the repair process. It should be noted that Regency Builders, who were engaged by Shelter Insurance to be general contractor on the repair project, obtained the necessary city building permits and it is believed they paid the cost of inspection attributable to those permits. The City is also trying to recoup the \$100 filing fee for the nuisance lawsuit. This, despite the fact that the City agrees that the property is no longer a nuisance (therefore it cannot win an award of nuisance at the trial scheduled for 1/1/22), and despite the fact that court costs are only awarded to parties that prevail in a lawsuit.

To summarize, on behalf of myself as a citizen of Des Moines, and on behalf of the Fullers, we assert as follows:

(A) The City should not try to impose costs on citizens suffering the misfortune of house fire, when those ordinances were intended to deter irresponsible property owners.

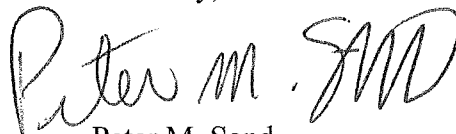
(B) The City should not aim for breaking even or earning a profit on all services offered to citizens. Such a goal is not achievable and fundamentally changes a city into a less and less attractive place to live.

(C) The costs the City is trying to impose in this case are unreasonable.

Mike and Sara's homeowners' policy does not cover the costs being threatened by the City. They have asked Shelter to take of this, but Shelter refuses. Shelter did pay the cost for the construction permits necessary to repair the burned house, but a city nuisance fee is not specifically listed as a covered loss. They ask you to consider directing city staff to dismiss the nuisance lawsuit.

It would be a gross understatement to tell you that 2006 has been a tough year for the Fullers. I could go on at length with details about the life stress this event has caused them. But I tend to shy away from emotional appeals, even when I have seen myself the havoc this fire wreaked on their lives. Certainly the fire itself was the source of most of the stress. That is what necessitated months of living with in-laws, tripling of commute times, nightmares, etc. But why on earth would the City add to their misfortune? If you cannot answer that question, this lawsuit should go away. Thank you.

Sincerely,



Peter M. Sand

PMS/tim



Invoice

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Invoice Date: 08/16/2006
Invoice Number: COD2006-00863

Parcel Number: 010/01931-026-000

ATTENTION: SARA A COWGER & MICHAEL G FULLER
Title Holder
4322 101ST ST
URBANDALE, IA 50322

The following charges were incurred as a result of an administrative or legal action taken by the City of Des Moines against a property located at 3721 SE 24TH CT on 08/16/2006.

Date	Account Number	Description	Fee Amount	Amount Paid	Amount Due
1/25/06	GE001 CDD070100-19	Legal Inspection	100.00	0.00	100.00
1/25/06	CDD070100 462210-5	Photographs	15.00	0.00	15.00
2/2/06	GE001 CDD070100-2	Title Search	125.00	0.00	125.00
2/8/06	GE001 CDD070100-18	Service Fee	25.00	0.00	25.00
2/8/06	GE001 CDD070100-18	Service Fee	25.00	0.00	25.00
2/8/06	GE001 CDD070100-18	Service Fee	25.00	0.00	25.00
4/4/06	GE001 CDD070100-1	Court Costs	100.00	0.00	100.00
4/13/06	GE001 CDD070100-18	Service Fee	25.00	0.00	25.00
4/13/06	GE001 CDD070100-18	Service Fee	25.00	0.00	25.00
4/18/06	GE001 CDD070100-18	Service Fee	25.00	0.00	25.00
8/3/06	GE001 CDD070100-19	Legal Inspection	100.00	0.00	100.00
8/3/06	CDD070100 462210-5	Photographs	15.00	0.00	15.00
8/3/06	GE001 CDD070100-19	Legal Inspection	100.00	0.00	100.00
8/3/06	GE001 CDD070100-19	Legal Inspection	100.00	0.00	100.00
			\$805.00	\$0.00	\$805.00

If you have questions please contact this office. Failure to pay these costs by 9/15/2006 will result in an assessment to your property. Payments may be directed to Neighborhood Inspections Division, 602 Robert D Ray Drive, Des Moines, Iowa 50309.

Sincerely,

Ms. Sara Dreyer, 283-4255
City of Des Moines
Neighborhood Inspection Division
602 Robert D. Ray Drive
Des Moines, Iowa 50309