



City Hall, 215 Sycamore St.
Muscatine, IA 52761-3840
(563) 262-4141
Fax (563) 262-4142

COMMUNITY DEVELOPMENT

Planning,
Zoning,
Building Safety,
Construction Inspection Services,
Public Health,
Housing Inspections,
Code Enforcement

MEMORANDUM

To: Planning and Zoning Commission
From: Andrew Fangman
Date: June 12, 2012
Re: Vacation of a MPW Utility Easement- 1421 Park Avenue

INTRODUCTION: Olsson Associates on behalf of Kum & Go has submitted an easement vacation plat that vacates a 10 feet wide utility easement, owned by Muscatine Power and Water (MPW), at 1421 Park Avenue.

BACKGROUND: On May 23, 2012 Olsson Associates on behalf of Kum & Go has submitted an easement vacation plat that vacates a 10 feet wide utility easement, owned by Muscatine Power and Water (MPW), exists along the common property line at 1421 Park Avenue only which will be in conflict with a proposed building. The Easement Vacation Plat proposes to vacate that portion of the utility easement along the common property line, the 10 feet wide utility easement for the National Guard Armory's service line, and a remaining 10 feet wide utility easement along Park Avenue. No existing utilities will remain in the vacated easements since they will be demolished, removed, and/or relocated for construction of the new building.

RECOMMENDATION/RATIONALE: Staff recommends approval of the proposed utility easement vacation.

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BACKUP INFORMATION:

1. Submittal Letter
2. Utility Easement Document
3. Plat



May 23, 2012

Steve Boka
Director of Community Development
City of Muscatine
215 Sycamore Street
Muscatine, IA 52761

Re: **Easement Vacation Plat Submittal**
Kum & Go Store #438
1421 Park Avenue, Muscatine IA

Dear Mr. Boka:

Olsson Associates is please to submit, on behalf of our client, the attached Easement Vacation Plat for the proposed Kum & Go Store #438 located at the southeast corner of Park Avenue and Colorado Street.

The proposed development encompasses two existing parcels (1429 and 1421 Park Avenue), which will be combined for this development. A 10 feet wide utility easement, owned by Muscatine Power and Water (MPW), exists along the common property line (1421 Park Avenue only) which will be in conflict with the proposed building. The Easement Vacation Plat proposes to vacate that portion of the utility easement along the common property line, the 10 feet wide utility easement for the National Guard Armory's service line, and a remaining 10 feet wide utility easement along Park Avenue.

The 10 feet wide utility easement along Park Avenue is depicted being offset back from its original location, as the utility easement was recorded on 10/4/1989. After this time the City acquired of an additional 15 feet of right-of-way which would have encompassed the original 10 feet utility easement along Park Avenue. However, for conservative reasons due to the language used in the easement document, "a perimeter easement 10 feet wide adjacent to the exterior property lines," we have depicted the utility easement moving with the property line.

It is our understanding that no existing utilities will remain in the vacated easements since they will be demolished, removed, and/or relocated for construction of the new building. The remaining utility easement around the southern, eastern, and northeastern property boundary will remain to provide access to existing MPW facilities and for future MPW use.

The adjacent property owners to the subject property are:

<u>Direction/Proximity</u>	<u>Property Address</u>	<u>Owner</u>
Northeast	141 Colorado Street	David L or Carol J Pierce Curtis P or Linda J Pierce
East	124 Colorado Street	David L Pierce Curtis P Pierce
South	1403 Park Avenue	Eastern Iowa Community College
West	City of Muscatine Right-of-Way (Park Avenue)	
North	1429 Park Avenue	Betty M Philips

Please review our Easement Vacation Plat at your earliest convenience. We appreciate your time and thank you for your consideration. Please let me know if you have any further questions or if you need additional information.

Sincerely,



Jeremy Shepherd, PE
Project Manager

Enclosures (3): Easement Vacation Plat
 Utility Easement Document
 Plat Filing Fee (\$200)

LEGAL DESCRIPTION:

A TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER (SE $\frac{1}{4}$) OF SECTION 25, TOWNSHIP 77 NORTH, RANGE 2 WEST OF THE 5TH P.M., CITY AND COUNTY OF MUSCATINE, IOWA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

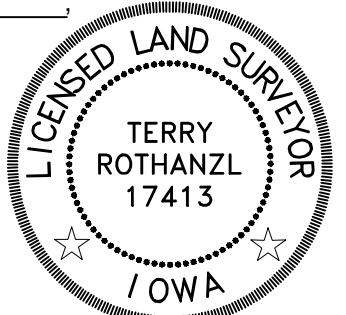
COMMENCING AT A POINT INTERSECTING THE SOUTH RIGHT OF WAY LINE OF COLORADO STREET AND THE EAST RIGHT OF WAY LINE, S00°18'43"E (ASSUMED BEARING), 150.00 FEET TO THE POINT OF BEGINNING; THENCE S89°41'31"W, 235.00 FEET; THENCE S89°42'41"W, 150.14 FEET; THENCE S01°16'34"E, 199.82 FEET; THENCE N89°40'24"E, 384.13 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF PARK AVENUE (HWY NO. 35); THENCE ON SAID EAST RIGHT OF WAY LINE, N00°32'38"W, 200.00 FEET TO THE POINT OF BEGINNING, CONTAINING 1.77 ACRES MORE OR LESS.

SURVEYOR'S CERTIFICATE

I, TERRY L. ROTHANZL, DO HEREBY CERTIFY THAT THIS SURVEY WAS MADE BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.

DATED THIS 23 DAY OF MAY,
2012.

Terry L. Rothanzl



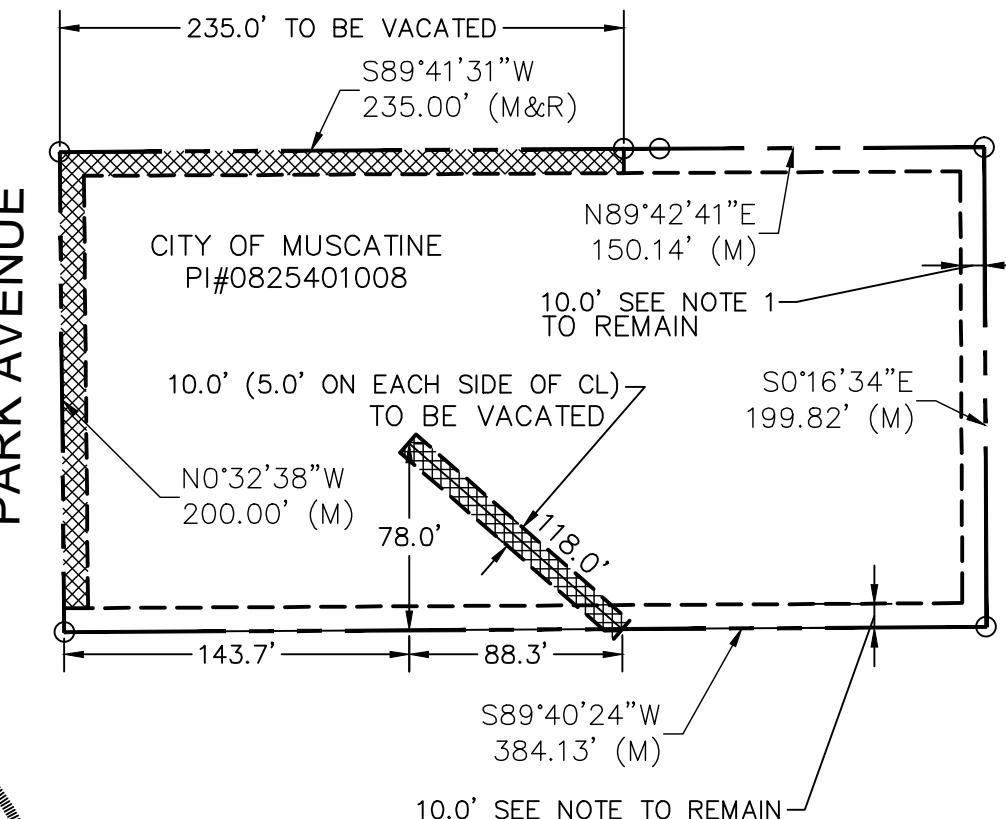
TERRY L. ROTHANZL
R.L.S. NO. 17413
OLSSON ASSOCIATES
1707 DAKOTA AVE, SOUTH SIOUX CITY, NE 68776
402-494-3059

MY LICENSE EXPIRATION IS DECEMBER 31, 2012

PROPRIETOR: KUM & GO, L.C.

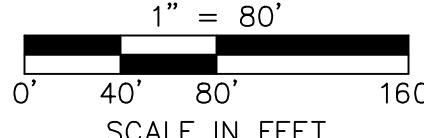
MUSCATINE POWER AND WATER

TRANSMISSION AND DISTRIBUTION	TITLE	DATE
WATER PRODUCTION AND DISTRIBUTION	TITLE	DATE
COMMUNICATIONS	TITLE	DATE



NOTE:

1. TYPICAL 10.0' UTILITY EASEMENT ON THE INTERIOR OF THE PROPERTY LINE UNLESS NOTED OTHERWISE.



EASEMENT DESCRIPTION:

A PERPETUAL RIGHT-OF-WAY AND EASEMENT IN, OVER, UNDER AND UPON THE LAND OWNED BY GRANTOR LYING AND BEING IN THE COUNTY OF MUSCATINE, IOWA, TO-WIT:

1. A STRIP OF LAND 10 FEET WIDE OR 5 FEET ON EACH SIDE OF A CENTERLINE DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NATIONAL GUARD ARMORY PROPERTY IN THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 77 NORTH, RANGE 2 WEST OF THE 5TH PRINCIPAL MERIDIAN IN MUSCATINE COUNTY, IOWA; THENCE EAST TO A POINT ON THE SOUTH PROPERTY LINE OF SAID PROPERTY LOCATED 248.4 FEET EAST OF THE SOUTHWEST PROPERTY CORNER OF SAID PROPERTY AND CENTERLINE OF A RISER POLE AS CONSTRUCTED AND A POINT OF BEGINNING; THENCE NORTHWESTERLY 118.0 FEET TO A PADMOUNT TRANSFORMER NEAR THE SOUTH SIDE OF THE ARMORY BUILDING.

2. A PERIMETER EASEMENT 10 FEET WIDE WITHIN AND ADJACENT TO THE EXTERIOR PROPERTY LINES OF THE FOLLOWING DESCRIBED PROPERTY;

A CERTAIN TRACT OR PARCEL OF LAND IN THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 77 NORTH, RANGE 2 WEST OF THE 5TH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WEST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 25, 533.8 FEET SOUTH OF THE CENTER OF SAID SECTION 25, THE PLACE OF BEGINNING, RUNNING THENCE EAST TO THE EAST LINE OF PARK AVENUE IN THE CITY OF MUSCATINE, IOWA, TO A POINT 800.0 FEET NORTHERLY MEASURED ALONG THE EAST LINE OF SAID PARK AVENUE FROM A POINT WHERE THE NORTH LINE OF FAIR OAKS ADDITION TO THE CITY OF MUSCATINE, IOWA, INTERSECTS THE EAST LINE OF SAID PARK AVENUE, THENCE CONTINUING EAST A DISTANCE OF 400.0 FEET, THENCE NORTH 200.0 FEET, THENCE WEST TO A POINT ON THE NORTH AND SOUTH CENTERLINE OF SAID SECTION 25, THENCE SOUTH ALONG THE NORTH AND SOUTH CENTERLINE OF SAID SECTION 25, 200.0 FEET TO THE PLACE OF BEGINNING.

LEGEND

—	PROPERTY LINE
- - -	EASEMENT LINE
	EASEMENT TO BE VACATED
○	FOUND IRON PIPE
(M)	MEASURED DISTANCE
(R)	RECORDED DISTANCE

BY: Dudley P. Sindt, State
Quartermaster,

UTILITY EASEMENT.

to

Dated October 2, 1989.

The Board of Water and Light
Trustees of the City of Muscatine,
Iowa.

Filed October 4, 1989.

Recorded Book 339 Lots, page 1105.

Grants:-

A perpetual right-of-way and easement in, over, under and upon the land owned by grantor lying and being in the County of Muscatine, Iowa, to-wit:

I. A strip of land 10 feet wide or 5 feet on each side of a centerline described as follows:

Commencing at the Southwest corner of the National Guard Armory property in the Southeast Quarter of Section 25, Township 77 North, Range 2 West of the 5th Principal Meridian in Muscatine County, Iowa; thence East to a point on the South property line of said property located 248.4 feet east of the Southwest property corner of said property and centerline of a riser pole as constructed and a point of beginning; thence northwesterly 118.0 feet to a padmount transformer near the South side of the Armory building.

II. A perimeter easement 10 feet wide within and adjacent to the exterior property lines of the following described property:

A certain tract or parcel of land in the Southeast Quarter of Section 25, Township 77 North, Range 2 West of the 5th Principal Meridian, described as follows:

Commencing at a point on the West line of the Southeast Quarter of said Section 25, 533.8 feet South of the center of said Section 25, the place of beginning, running thence East to the East line of Park Avenue in the City of Muscatine, Iowa, to a point 800.0 feet Northerly measured along the East line of said Park Avenue from a point where the North line of Fair Oaks Addition to the City of Muscatine, Iowa, intersects the East line of said Park Avenue, thence continuing East a distance of 400.0 feet, thence North 200.0 feet, thence West to a point on the North and South centerline of said Section 25, 333.8 feet South of the center of said Section 25, thence South along the North and

South center line of said Section 25, 200.0 feet to the place of beginning.

Recites:- "Said tract of land is to be used for the purpose of constructing, reconstructing, operating, repairing, maintaining, patrolling or removing an electric and water transmission or distribution line(s) or system(s), associated appurtenances or accessories, above or below ground, used and useful in the transmission, transformation and distribution of electricity and water.

Grantors further grants unto said grantee the right of reasonable ingress and egress to, from, over, along and across said premises and any adjoining lands of the grantor herein at all times for the purpose of transporting, erecting, maintaining, repairing, patrolling and removing of said electric lines and water mains, equipment, appurtenances and any parts thereof.

* * * * *

Consideration is shown as "the sum of one dollar (\$1.00) and other valuable consideration".

Corporate acknowledgment affixed.

Grantor's name appears in the body of the instrument as NATIONAL GUARD ARMORY, STATE OF IOWA.

Copy of plat attached to the above instrument is attached hereto.

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Eastern Iowa Community College District BY Kirby Kleffmann, Board President and Pacia Sauer, Board Secretary,

EASEMENT AGREEMENT.

Dated October 17, 1994.

to

Filed November 22, 1994.

Recorded Book 399, page 242.

STATE OF IOWA.

Grants:-

An easement for construction, maintenance, security, operation, repair, replacement, and removal of communications equipment, lines, cables and related facilities, from time to time, as GRANTEE may require under, across and through the following described parcel of land which the GRANTOR has and interest in the County of Muscatine, State of Iowa, to wit:

Part of the NE 1/4 of the SE 1/4 of section 25, T77N, R2W, more specifically described in book 204 pages 111 and 112 in the Muscatine County recorder's office.

Limited as follows:

The cable shall be buried within a strip of land 10 feet wide extending Northerly and Westerly from the Southeast corner of Larson Hall to the Westerly boundary of the property described above with the cable being the centerline of said 10 foot strip.

Grantee shall have the right of ingress and egress over and across the land of the Grantor to and from the above-described property. Grantee shall be responsible for all damage caused to Grantor arising from Grantee's exercise of the rights and privileges herein granted.

"The rights granted herein may be assigned in whole or in part. By any such assignment, the liabilities assumed hereby by the original grantee shall continue until a written release therefrom is executed by the grantor or its successor. The terms of this agreement shall constitute covenants running with the land and shall be binding upon

and inure to the benefit of the parties hereto, their respective heirs, successors, and assigns and personal representatives."

The Grantor reserves the right to occupy, use and cultivate said easement for all purposes not inconsistent with, nor interfering with the rights herein granted.

Consideration is shown as "the sum of One and 00/100 dollars (\$1.00) and other good and valuable consideration".

The Board President and Board Secretary's names are not typed under their signatures.

The Corporate acknowledgment shows: "That (no seal has been procured by the said) (the seal affixed thereto is the seal of said corporation", however no corporate seal is affixed.

Joel 515-457-0158

Book 204 Page 111

22238

FILED APR 17 1962

10:25 A.M.

P.M.

LUCILLE FREYBLER, RECORDER

4-50

WARRANTY DEED

THIS DEED, Made and executed this 1st day of February, A. D. 1962, by and between VERA I. HEINZ, a widow, and HENRY J. HEINZ, II, and DORUE ENGLISH HEINZ, husband and wife, all of Allegheny County, Pennsylvania, grantors, and THE COMMUNITY SCHOOL DISTRICT OF THE CITY OF MUSCATINE, in Muscatine County, in the State of Iowa, a school corporation, grantees;

W I T N E S S E T H;

That the grantors, in consideration of their interest in the welfare and development of the public schools and in the young people of Muscatine County, Iowa, do hereby give, grant and convey unto The Community School District of the City of Muscatine, in Muscatine County, State of Iowa, its successors and assigns forever, the following described real estate lying and being situated in the City and County of Muscatine, in the State of Iowa, to-wit:

Commencing at the center of Section Twenty-five (25), in Township Seventy-seven (77) North, Range Two (2) West of the Fifth (5th) P. M.; thence East, along the center line of said Section 25, one thousand two hundred thirty three and five tenths (1233.5) feet to the true point of beginning; thence due South, parallel with the North-South center line of said Section 25, one thousand three hundred thirty three and eight tenths (1333.8) feet to the North line of Fair Oaks Addition to the City of Muscatine, Iowa; thence West, along the North line of said Addition, four hundred four and five tenths (404.5) feet, more or less, to a point on the North line of said Addition which is the Southeast corner of a tract heretofore conveyed by grantors to The Independent School District of the City of Muscatine, Iowa, by deed dated September 20, 1961, recorded in Book 120 of Lots, at page 10, in the office of the Recorder of Muscatine County, Iowa; thence North eight hundred (800) feet along the East line of the tract conveyed by said deed, parallel to the North-South center line of said Section 25; thence West, along the North line of the tract conveyed by said deed, two hundred eighty-five (285) feet, more or less, to the South-easterly corner of a tract heretofore conveyed by the grantors to Albertus W. Barnes by deed dated May 5, 1961, recorded in Book 191 of Lots, at page 300, in the office of the Recorder of Muscatine County, Iowa; thence North, parallel with the North-

1006 204 pg 112

South center line of said Section 25, along the East line of the tract conveyed by said deed, a distance of five hundred thirty three and eight tenths (533.8) feet to the East-West center line of said Section 25; thence East along said center line of said Section 25 a distance of six hundred forty three and five tenths (643.5) feet, more or less, to the point of beginning, subject to all recorded easements and to the rights of the public and of the City of Muscatine, Iowa, in Colorado Street on and along the North line of the Southeast Quarter of Section 25, Township 77 North, Range 2 West of the Fifth (5th) P.M., containing fifteen and four tenths (15.4) acres. The bearing of the North-South center line of Section 25, Township 77 North, Range 2 West of the 5th P. M. is taken as due North and South.

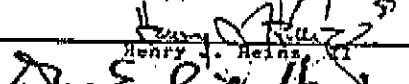
The grantee expressly agrees, in accepting this conveyance and as a part of the consideration therefor, that the premises herein conveyed shall never be used for commercial purposes except as related to school purposes and that no vehicular entrance shall ever be made to said tract from the South.

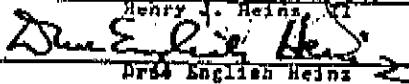
It is the intention of the grantors to convey hereby an absolute title in fee simple to said real estate, including any right of homestead or any right or contingent interest had therein.

And we, the grantors, warrant the title against all persons whomsoever, except as above stated.

IN WITNESS WHEREOF, the grantors have hereunto set their hands the day and year first hereinabove written.


Vira I. Heinz


Henry J. Heinz


Dru English Heinz

Dru English Heinz

STATE OF PENNSYLVANIA, ALLEGHENY COUNTY: set

On this 20th day of March, A. D. 1962, before me, the undersigned, a Notary Public in and for Allegheny County, State of Pennsylvania, personally appeared Vira I. Heinz, a widow, and Henry J. Heinz, II, and Dru English Heinz, husband and wife, to me known to be the persons named in and who executed the foregoing instrument, and acknowledged that they each executed the same as their voluntary act and deed.

JOSEPH F. FRANK, Notary Public
PITTSBURGH, ALLEGHENY COUNTY, PA.
MY COMMISSION EXPIRES JUN 7, 1963


Joseph F. Frank
Notary Public in and for said County
My commission expires