

## COMMUNITY DEVELOPMENT

### MEMORANDUM

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

**To:** Mayor and City Council Members  
**CC:** Greg Jenkins, Interim City Administrator  
**From:** Andrew Fangman, Assistant Community Development Director  
**Date:** December 19, 2019  
**Re:** Purchase Agreement Regarding the Vacation and Subsequent Sale of Surplus Right of Way Adjoining 1820 Angle Street (Pete's Tap)

The owner of Pete's Tap located at 1820 Angle Street has request the vacation and sale of some of the surplus right of way adjoining this property. The parcel upon which Pete's Tap is currently located is extremely small, just 2,548 square feet, and largely just contains the existing building footprint. The owner of Pete's Tap desires to make improvements to their business, but they are somewhat constrained by the small size of their current parcel. City staff has identified 10,920 of surplus right of way immediately surrounding 1820 Angle Street, where the convergence of Angle Street, Bond Street, Clinton Street, and the Muscatine Slough have created an excessive amount of unused right of way, the area shown in orange in the attached map, that serves no current public or any foreseen future public purpose. This area cannot privately be improved or developed independently of the parcel containing 1820 Angle Street.

City Staff and the adjoining property owner have prepared, for City Council's consideration a purchase agreement for this surplus right of way. This purchase agreement sets forth the steps that each party will need to undertake to complete this transaction, the order that they must be done, who is responsible for each step, and provided a commitment from each party to complete all necessary steps.

The right of way being proposed for vacation and sale is irregularly shaped, and does not currently have a valid legal description allowing for it to vacated and sold. As such, the purchase agreement requires that the buyer, at their expense, hire a registered surveyor to prepare a right of vacation plat for the area identified as the "Intended Right of Vacation Area".

The area proposed for vacation contains small stretches of sanitary and storm sewer, if this vacation and sale of this right of way is approved, easements will be created to accommodate these sewers lines, as is commonplace for sewer lines located outside the public right of way. Additionally, an access easement across the entire vacated right of way would be granted to the City for the purpose of maintaining the slough and the slough shoreline. The City would retain ownership of the slough shoreline and adjoining areas located within the floodplain.

With this agreement the Buyer acknowledges that they are aware that both their current property, located at 1820 Angle Street, as well as the right-of-way that they are seeking to purchase are both located in the R-3 Single Family Residence Zoning District. That bars/restaurants are not an allowed use in the R-3 district, and that the bar/restaurant operated by the Buyer, at 1820 Angle Street, is a lawful nonconforming use, under the provisions of Chapter 24 of Title of the City Code of Muscatine, Iowa, as it was established prior to the Zoning Ordinance. Section 10-24-2 states that the existing nonconforming use may continue so provided no structural alterations are made. As such, expansion of the Buyer's existing building onto the Property or the Buyer's current parcel located at 1820 Angle Street authorization in the form of a variance from the Zoning Board of Adjustment.

The purchase agreement allows for the Buyer, prior to paying for the necessary survey work and the filing of the formal request to vacate this right of way, to file for variance from the Zoning Board of Adjustment to allow for any expansion of the existing footprint of his business, and if such variance is not approved allows for this purchase agreement to be voided. To file for this variance, plans for any proposed expansion or improvements will have to be submitted as part of the application for a variance. The variance request will then be subject to a public hearing, with notification sent to all property owners living within 200 feet of the subject property, by the Zoning Board of Adjustment. After this public hearing the Zoning Board of Adjustment will vote to approve or deny the variance request. If at a later date, any additional expansion to the footprint of the legal non-conforming business, not covered by the original variance request, are proposed, an additional variance, with the full public hearing in front of the Zoning Board of Adjustment, would be required.

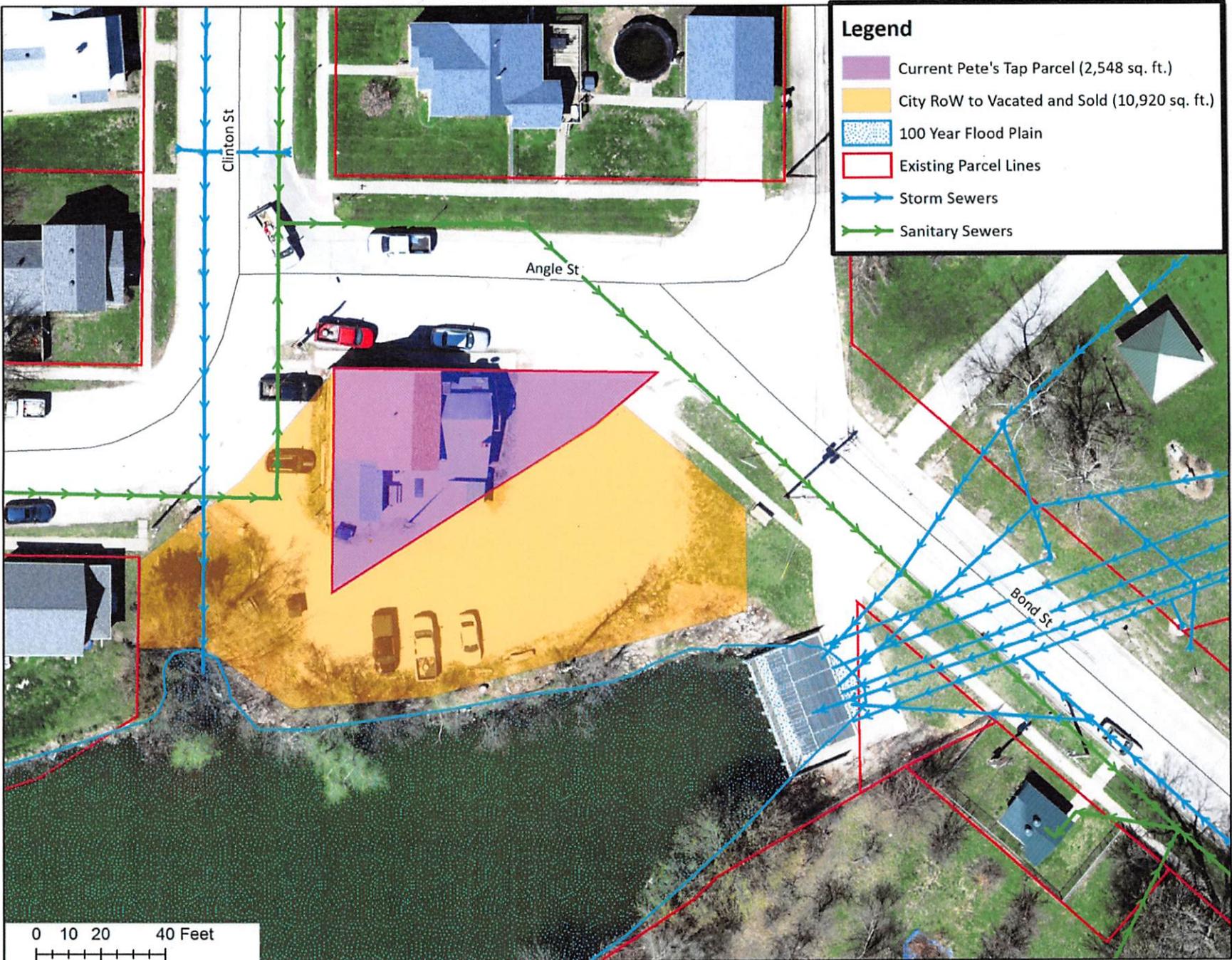
A purchase agreement and purchase price of \$250 has been negotiated. The negotiated price of \$250 is based on the costs to the City of processing the sale of a surplus property. The sale price of \$250 ensures the cost to the City of completing this transaction does not exceed its sale price. It is staff's recommendation that it is beneficial to the City to sell vacated right of way for the cost to the City to process the vacation and sale, when the following criteria are met:

- The vacated right of way is only of economic value to the adjoining property owner
- There has been no City investment in originally acquiring the vacated right of way
- The vacated right of way has no value as a standalone parcel

Staff is recommending approval of this purchase agreement. The purchase of this surplus right of way will allow the owner of Pete's Tap to make further investments to his business. Such continued investments are good for both the neighborhood and the community as a whole. While the existing business is operating as a legal non-conforming use, the requirement to go through a public hearing process before the Zoning Board of Adjustment before the existing footprint of this business is expanded will ensure that any improvements made possible by this sale of right of way are not deferential to surrounding area. In addition, for the transaction to be completed as outlined in the proposed purchase agreement, additional actions after a public hearing, are required in front of the Planning and Zoning Commission, and the City Council.

#### **Supporting Documents**

1. Map
2. Purchase Agreement



## **RIGHT OF VACATION and REAL ESTATE PURCHASE AGREEMENT**

THIS REAL ESTATE PURCHASE AGREEMENT (the "Agreement") is deemed made on the date the last of the parties executes this Agreement (the "Effective Date") by and between the City of Muscatine, Iowa, whose address for the purposes of this Agreement is 215 Sycamore Street, Muscatine, Iowa 52761 (hereafter referred to as the "City") and LEGAL NAME OF PETES TAP, whose address for the purposes of this Agreement is ADDRESS (collectively hereafter referred to as the "Buyer.")

### **RECITALS**

WHEREAS, City is the owner of undeveloped right of way adjoining the 1820 Angle Street;

WHEREAS, Buyer desires to purchase from City and City desires to vacate and sell to Buyer said right of way;

WHEREAS, Buyer and City desire to set forth the obligations, restrictions, limitations, and conditions upon which the Property will be conveyed by City to Buyer;

### **AGREEMENT**

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, each for the other, Buyer and City agree as follows:

1. Intent to Vacate and Sell Right of Way. The City agrees to vacate and sell to buyer approximately XX,XXX square feet of city right of way adjoining 1820 Angle Street. This surplus right of way is the area labeled as "Intended Right of Way Vacation Area" (hereafter referred to as the "Intended Right of Way Vacation Area") on the map attached hereto as "Exhibit A".
2. Preparation of Right of Way Vacation Plat. The Buyer shall cause a right of way vacation plat (hereafter referred to as the "Plat") to be prepared at no expense to the City.
  - a. The area of right of way identified for vacation on the Plat shall correspond to the Intended Right of Way Vacation Area.
  - b. The Plat shall include a legal description of the right of way that is to be vacated (hereafter referred to as the "Property")
  - c. Said Plat shall be prepared an Iowa Registered Land Surveyor
  - d. Said Plat shall contain all easements identified in Exhibit A
  - e. Minor adjustments allowable by mutual consent of Buyer and City Staff.

3. Vacation of Right of Way

- a. After preparation of the Plat, buyer shall formally submit the Right of Way Vacation Plat for City Council approval.
- b. The parties acknowledge that the vacation of the right of way that comprises the Property as part of this Agreement will require a public hearing and approval of the Muscatine City Council, in addition to approval of this Agreement as a whole. If vacation of the Property is not approved by the Muscatine City Council, this Agreement shall be rendered null and void

4. Acknowledgment of Necessity of a Variance. The Buyer acknowledges that they are aware that both their current property, located at 1820 Angle Street, and the Property are both located in the R-3 Single Family Residence Zoning District. That bars/restaurants are not an allowed use in the R-3 district, and that the bar/restaurant operated by the Buyer, at 1820 Angle Street, is a lawful nonconforming use, under the provisions of Chapter 24 of Title of the City Code of Muscatine, Iowa, as it was established prior to the Zoning Ordinance. Section 10-24-X states that the existing nonconforming use may continue so provided no structural alterations are made. As such, expansion of the Buyer's existing building onto the Property or the Buyer's current parcel located at 1820 Angle Street authorization in the form of a variance the Zoning Board of Adjustment.

5. Sale of Property. Upon the vacation of the Right of Way described as the Property, City agrees to sell and convey to Buyer, and Buyer agrees to purchase from City, for the Purchase Price set forth below and, on the terms, and conditions set forth in this Agreement, the Property. For purposes of this Agreement, Property shall be deemed to mean, on a collective basis: (a) the parcel of land described in the approved right of way vacation, together with all rights, easements and interests appurtenant thereto.

6. Compensation. City, in consideration of the mutual covenants and agreements contained herein, agrees to sell to Buyer and Buyer, in consideration of the mutual covenants and agreements contained herein, agrees to purchase the Property from City for the following consideration:

- a. Cash in the amount of \$250.00 (the "Purchase Price"), and
- b. The parties acknowledge that disposal of the Property as part of this Agreement will require a public hearing and approval of the Muscatine City Council, in addition to approval of this Agreement as a whole. If disposal of the property is not approved by the Muscatine City Council, this Agreement shall be rendered null and void.

7. Payment of the Purchase Price. The Purchase Price shall be paid by Buyer to City, in good

and immediately available funds by wire transfer or cashier's check, at the time of Closing.

**8. Abstract and Title.** If the Buyer desires an abstract of title to the Property, the Buyer shall obtain said abstract at no cost to the City.

**9. Closing.** The Closing of this transaction shall occur as soon as reasonably practicable, after, as agreed in writing by the parties (hereinafter referred to as the "Closing Date"), at a location mutually agreed upon by the parties herein. Time is of the essence in this Purchase Agreement.

**10. Real Estate Taxes.** The Property is currently tax-exempt while owned by the City. Buyer shall pay all real estate taxes assessed against the Property for all periods following the date of Closing.

**11. Special Assessments.** Buyer shall be responsible for all special assessments with respect to the Property.

**12. Commission.** City and Buyer each represent and warrant to the other that no brokerage commission, finder's fee or other compensation is due and payable with respect to the transaction contemplated by this Agreement. Buyer represents to City that it knows of no fee, commission or payment due to any broker, finder, agent or other person or entity, in connection with the transactions contemplated. City represents to Buyer that it knows of no fee, commission or payment due to any broker, finder, agent or other person or entity, in connection with the transactions contemplated herein. City and Buyer each, one to the other, indemnify, protect, defend and hold the other harmless from and against all losses, claims, costs, expenses and damages (including but not limited to reasonable attorney fees) resulting from the claims of any broker, finder or other such party claiming, by, through or under the acts or agreements of the indemnifying party. The warranties and obligations of the parties pursuant to this paragraph shall survive the termination of the Closing. Should any third-party claim a commission is due and owing, both parties agree to cooperate in challenging such claim. Such cooperation shall not be deemed to alter the indemnifications contained in this paragraph in any manner.

**13. Warranties and Representations of City.** City warrants and represents to Buyer that, upon approval of the Muscatine City Council, it has the full right, power and authority to sell and convey the Property to Buyer as provided in this Agreement and to carry out the City's obligations hereunder. At Closing, a Groundwater Hazard Statement will be filed by City regarding the following: (i) wells; (ii) solid waste disposal; (iii) hazardous wastes; and (iv) underground storage tanks located on the Property.

**14. Conveyance Documents.** City shall convey the Property to Buyer by a general quit claim deed.

15. Closing Costs. City shall pay any necessary transfer taxes. Buyer shall pay the recording fees in connection with the Deed conveying title to Buyer, and any financing documents encumbering or relating to the Property and other documents Buyer desires to record. Buyer shall pay the premium for issuing the Iowa Title Guaranty or title policy (if any) described herein. Each party shall be responsible for paying its own attorney fees.

16. Pending Actions. City has no notice of any action, litigation, proceeding, or investigation against itself, related entities, its partners, or the Property, which would affect the Property or the right of City to sell and convey the Property, or any action, litigation, proceeding, or investigation, including without limitation, any eminent domain proceeding which would result in any lien, claim, right, or interest in the Property in favor of any third party.

17. Notices. Neither party shall have the right to terminate this Agreement or seek any remedy for a breach hereof by the other party unless such breach continues for a period of thirty (30) days following written notice by the party seeking to pursue such remedy, specifying the occurrence and description of such default under this Agreement and unless the party given such notice shall have failed to commence to take such steps as are necessary to cure such breach or default as soon as possible (or having so commenced such steps to cure shall thereafter have failed to proceed diligently and with continuity to remedy the same). All notices, demands, writings, supplements, or other documents which are required or permitted by the terms of this Agreement to be given to any party shall be delivered in person, or shall be deposited in the United States Mail, postage prepaid, return receipt requested, addressed at the addresses specified above and shall be effective upon such deposit.

18. Assignment; Agreement Binding on Successors; Survival of Provisions. This Agreement may not be assigned or transferred by any of the parties without the express written consent of the other. This Agreement, and amendments, if any, and all representations, warranties, indemnification obligations, rights and duties hereunder, shall survive the Closing and shall be fully binding at all times against City, and Buyer as well as any and all of its or their successors in interest, assigns or transferees.

19. Default; Remedies of the Parties.

16.1 Buyer's Remedies for City's Default. If (a) each of the conditions precedent set forth in this Agreement have been satisfied or waived prior to the Closing Date and (b) City fails or refuses to timely convey the Property to Buyer in accordance with the terms and conditions of this Agreement, except on account of a default hereunder by Buyer, Buyer may elect one of the following remedies: (a) be entitled to terminate Buyer's obligations under this Agreement by written notice to City; (b) be entitled to specific performance of this Agreement; or (c) any other remedies available at law or equity.

16.2. City's Remedies for Buyer's Default. If (a) each of the conditions precedent set forth in this Agreement have been satisfied or waived prior to the Closing Date and (b) Buyer fails or refuses to timely purchase the Property and Close in accordance with the terms and conditions of this Agreement, except on account of a default hereunder by City, City may elect one of the following remedies: (a) be entitled to terminate City's obligations under this Agreement by written notice to Buyer; (b) be entitled to specific performance of this Agreement; or (c) any other remedies available at law or equity.

20. Time. Time is of the essence in the performance of each party's obligations hereunder.

21. No Waiver. Subject to the deemed approvals under this Agreement, no waivers by any party of the performance or satisfaction of any covenant or condition shall be valid unless in writing, nor shall it be considered to be a waiver by such party of any other covenant or condition hereunder.

22. Entire Agreement. This Agreement contains the entire agreement between the parties regarding the Property and supersedes all prior agreements, whether written or oral, between the parties regarding the same subject. This Agreement may only be modified by subsequent written agreement signed by the party to be charged.

23. Counterparts and Effectiveness. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement, and this Agreement shall only be effective if a counterpart is signed by both Buyer and City and approved by the Muscatine City Council.

24. Severability. In the event any provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

25. Survival of Warranties. Any warranties, covenants and representations contained in this document shall survive the execution of this Agreement and any other documents, including the Quit Claim Deed given by City to Buyer to consummate this transaction, shall not be merged into such documents.

26. Attorney Fees. In the event of default by either party pursuant to any of the terms of this Agreement, the prevailing party in any litigation or enforcement action shall be entitled to reimbursement by the defaulting party for any of the prevailing party's reasonable attorney fees, court costs, and other associated costs of enforcement.

27. Governing Law; Construction. This Agreement shall be construed pursuant to the laws of the State of Iowa. Wherever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid. If any such provision of this Agreement shall be determined

to be invalid or unenforceable, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating or otherwise affecting the remaining provisions of this Agreement.

28. Headings. Article and section headings used in this Agreement are for the convenience of the parties only and shall not affect the construction of this Agreement.

29. Further Assurances. At or after Closing, the parties shall prepare, execute and deliver at their respective expense, such additional instruments and other documents and shall take or cause to be taken such other action as is reasonably requested by the other party at any time or from time to time in order to effectuate and comply with all the terms of this Agreement and the transactions contemplated hereby.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**City**

City of Muscatine, Iowa

By: \_\_\_\_\_  
Greg Jenkins, Interim City Administrator

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Diana L. Broderson, Mayor

Date: \_\_\_\_\_

**Buyer**

By: \_\_\_\_\_  
LEGAL NAME OF PETES TAP

Date: \_\_\_\_\_

Exhibit A

