



## AGENDA ITEM EXECUTIVE SUMMARY

Title:	Recommendation to Maintain the Current Condition of the Storm Sewer Manhole Located in the Front Yard Public Utility Easement at 1102 King Edward Ave.
--------	--

Presenter:	Chris Adesso
------------	--------------

*Please check appropriate box:*

	Government Operations	X	Government Services – 06.22.15
	Planning & Development		City Council
	Public Hearing		

Estimated Cost:	N/A	Budgeted:	YES		NO	
-----------------	-----	-----------	-----	--	----	--

If NO, please explain how item will be funded:

**Executive Summary:**

On April 10, 2015 Staff from the Public Works Department made an adjustment to the storm sewer manhole located in the Public Utility Easement in the front yard of the property at 1102 King Edward Avenue. The purpose of this adjustment was to bring the access lid up to an accessible level from being buried 14 inches below the ground. The work was performed in a safe, effective and clean manner and the area was restored the same day with topsoil, grass seed and erosion control blanket.

The property owner, Mr. Joe McGraw addressed the Committee during the May 2015 Government Service Committee meeting and requested that the manhole be re-buried. Further, the topic of easement rights to perform the work was brought into question. Staff has requested an evaluation of the Public Utility Easement language that was executed on the recorded subdivision plat by the City’s legal counsel. The results of the evaluation are that the Public Works Department was operating within the parameters of the easement language when performing the work and therefore had rightfully accessed the storm sewer manhole.

**Attachments:** *(please list)*

Supplementary documentation – Copy of Plat of Survey, Public Utility Easement Language, Final Engineering Plans, Picture of the work, Letter from City Legal Counsel, Written Disposition from Mr. Joe McGraw with exhibits

**Recommendation / Suggested Action** *(briefly explain):*

Recommendation to maintain the current condition of the Storm Sewer Manhole located in the front yard Public Utility Easement at 1102 King Edward Ave.

<i>For office use only:</i>	<i>Agenda Item Number: 4.b</i>
-----------------------------	--------------------------------



**City of St. Charles, Illinois**  
 Two East Main Street St. Charles, IL 60171-1384  
 Phone: (630) 377-4400 Fax: (630) 377-4410 www.stcharlesil.com

# 1102 King Edward Avenue

**RAYMOND ROGINA** Mayor  
**MARK KOENEN** City Administrator



**Data Source:**  
 City of St. Charles, Illinois  
 Date of Survey: 1/18/15  
 Projection: Transverse Mercator  
 Coordinate System: Illinois State Plane East  
 North Reference: Unknown 1883  
 Printed on: April 30, 2015 08:35 AM



**Storm Sewer**

This work was created for planning purposes only and is provided as is, without warranty of any kind, whether expressed or implied. It is not intended to constitute a contract or any other legal instrument. It is the responsibility of the user to verify the accuracy of the information presented herein and to obtain all necessary permits and approvals from the appropriate authorities. The City of St. Charles and its employees shall not be held liable for any damages, including consequential damages, arising out of the use of this document without prior written permission. The City of St. Charles is located at Two East Main Street, St. Charles, IL 60174.

INCUMBRANCE AFFECTING ALL OR ANY PART OF RESIDUED PROPERTY SHALL BE FURNISH THE TERMS AND CONDITIONS OF THIS DOCUMENT.

**PUBLIC UTILITY EASEMENT PROVISIONS**

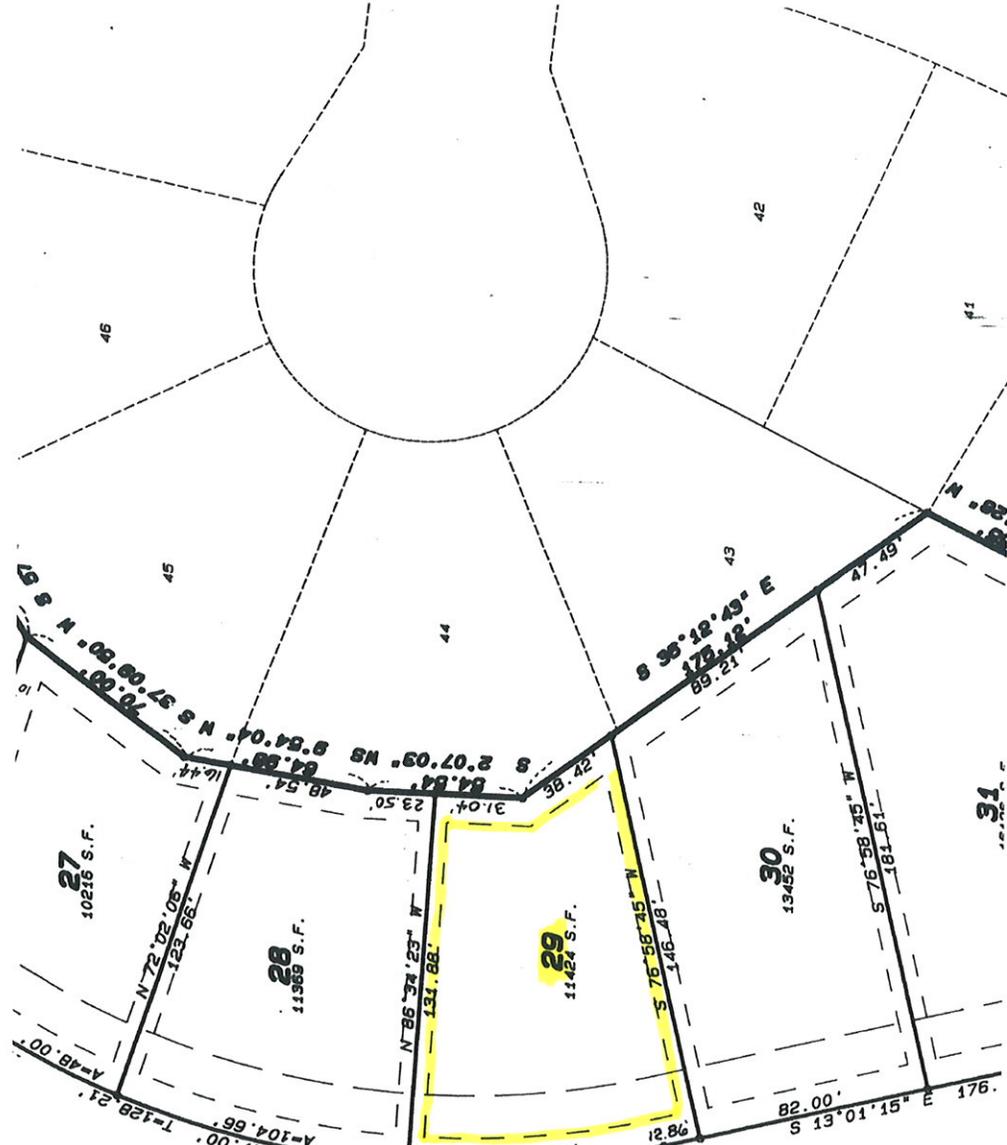
A PERMANENT NON-EXCLUSIVE EASEMENT IS HEREBY GRANTED TO THE CITY OF ST. CHARLES AND TO ALL PUBLIC UTILITY COMPANIES OF ANY KIND OPERATING UNDER FRANCHISE GRANTING THEM EASEMENT RIGHTS FROM SAID CITY OF ST. CHARLES INCLUDING, BUT NOT LIMITED TO, AMERITECH AND NORTHERN ILLINOIS GAS COMPANY AND TO THEIR SUCCESSORS AND ASSIGNS, IN, UPON, ACROSS, OVER, UNDER AND THROUGH THE AREAS SHOWN BY DASHED LINES AND LABELED "PUBLIC UTILITY EASEMENT" ON THE PLAT OF SUBDIVISION HEREON DRAWN FOR THE PURPOSE OF INSTALLING, CONSTRUCTING, INSPECTING, OPERATING, REPLACING, RENEWING, ALTERING, ENLARGING, REMOVING, REPAIRING, CLEANING, AND MAINTAINING UNDERGROUND ELECTRICAL, CABLE TELEVISION, COMMUNICATION, GAS, TELEPHONE OR OTHER UTILITY LINES OR APPURTENANCES, SANITARY AND STORM SEWERS, DRAINAGEWAYS, STORM WATER DETENTION AND RETENTION, WATER MAINS AND ANY AND ALL MANHOLES, HYDRANTS, PIPES, CONNECTIONS, CATCH BASINS, BUFFALO BOXES AND WITHOUT LIMITATION, SUCH OTHER INSTALLATIONS AS MAY BE REQUIRED TO FURNISH PUBLIC UTILITY SERVICE TO ADJACENT AREAS TOGETHER WITH THE RIGHT OF ACCESS ACROSS THE REAL ESTATE PLATTED HEREIN FOR THE NECESSARY PERSONNEL AND EQUIPMENT TO MAKE ANY OR ALL OF THE ABOVE WORK (HEREIN COLLECTIVELY REFERRED TO AS "GRANTEES"). THE RIGHT IS ALSO HEREBY GRANTED TO SAID GRANTEEES TO CUT DOWN, TRIM, OR REMOVE ANY TREES, SHRUBS, OR OTHER PLANTS OR, WITHOUT LIMITATION, UTILITY INSTALLATIONS IN, ON, UPON OR ACROSS, UNDER, OR THROUGH SAID EASEMENTS. IN THE EVENT UTILITY MAINTENANCE IS PERFORMED WITHIN THE UTILITY EASEMENT, THE CITY OF ST. CHARLES WILL HAVE NO OBLIGATION WITH RESPECT TO SURFACE RESTORATION INCLUDING, BUT NOT LIMITED TO, THE RESTORATION, REPAIR, OR REPLACEMENT OF ANY LANDSCAPING PROVIDED, HOWEVER, THE GRANTEEES SHALL BE OBLIGATED FOLLOWING ANY SUCH WORK, TO BACKFILL AND MOUNT SO AS TO RETAIN SUITABLE DRAINAGE, REMOVE DEBRIS, AND LEAVE THE AREA IN GENERALLY CLEAN AND WORKMANLIKE CONDITION. NO PERMANENT BUILDINGS OR TREES SHALL BE PLACED ON SAID EASEMENTS, BUT THE EASEMENT AREAS MAY BE USED FOR GARDENS, SHRUBS, LANDSCAPING, PAVING, FENCES, SIDEWALKS, CURBING, AND OTHER PURPOSES THAT DO NOT INTERFERE WITH THE AFORESAID USES AND RIGHTS. WHERE AN EASEMENT IS USED FOR STORM OR SANITARY SEWERS, OTHER UTILITY INSTALLATIONS SHALL BE SUBJECT TO THE PRIOR APPROVAL OF SAID CITY OF ST. CHARLES SO AS NOT TO INTERFERE WITH THE GRAVITY FLOW IN SAID SEWER OR SEWERS.

KING WILLIAM COURT  
HERETOFORE DEDICATED

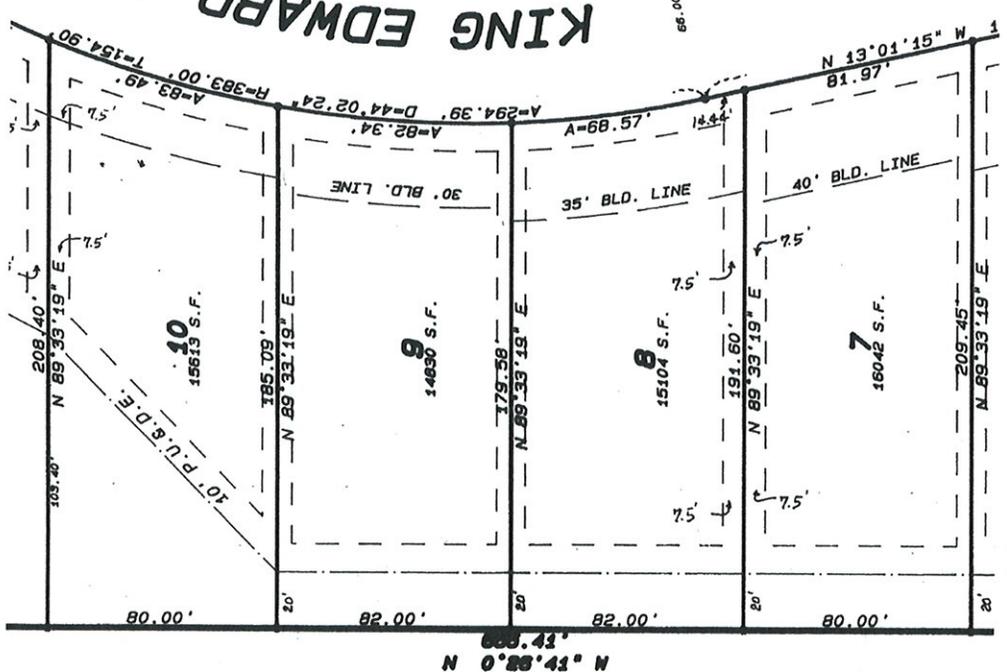


SCALE: 1 INCH = 50 FEET





**KING EDWARD AVE.**



N 0° 28' 41" N  
666.41'







1102

1102



LAW OFFICES

**HOSCHEIT, MCGUIRK, MCCrackEN & CUSCADEN, P.C.**

1001 EAST MAIN STREET, SUITE G  
SAINT CHARLES, ILLINOIS 60174-2203

JOHN J. HOSCHEIT  
JOHN M. MCGUIRK  
KATE L. MCCrackEN  
DOUGLAS R. CUSCADEN

TELEPHONE: 630.513.8700  
FACSIMILE: 630.513.8799

June 8, 2015

Via Email

cadesso@stcharles.il.gov

Mr. Chris Adesso  
Assistant Director of Public Works  
Operations – City of St. Charles  
2 East Main Street  
St. Charles, IL 60174-1984

RE: 1102 King Edward Avenue, St. Charles, Illinois

Dear Chris:

This is a follow up to our discussions with respect to the property located 1102 King Edward Avenue, St. Charles, Illinois. You requested that I review the Public Utility Easement provisions which are set forth in the Plat of Subdivision with respect to this property.

The Plat of Subdivision shows a Public Utility Easement along the front of the subject property. There is a storm sewer that was constructed within the easement as well as a storm sewer manhole. The storm sewer manhole was apparently buried beneath the surface at the initial time of the construction of the home. In order for the City to have access to and be able to maintain the storm sewer utility, the storm sewer manhole needs to be readily available to be opened by city staff. The City has undertaken a program involving raising the access of this buried manhole and various other buried manholes throughout the City.

As I understand it, the homeowner has challenged whether the Public Utility Easement provides the City with the right to make the appropriate modification to the manhole. Provisions of the Public Utility Easement provide that the City has the authority to enter upon the property “for the purpose of installing, constructing, inspecting, operating, replacing, renewing, altering, enlarging, removing, repairing, cleaning and maintaining underground or pertinences, sanitary and storm sewers...”. The City undeniably had the right to undertake the remediation work that it performed on this drainage system. Furthermore, it is my further understanding that there is no issue as to the location of the drain and that it is clearly located within the City’s easement. Therefore, any claim that the City lacks authority to undertake the work involved in this case is clearly without merit.

The homeowner has also raised the issue of his liability as the owner of the property. While claims against property owners for activities that occur on their property cannot be foreseen with

**HMM&C**

any certainty, there has never been a claim against the City or any homeowner in the City for injuries claimed to have been sustained as a result of drains located in public utility easements located within residential properties. The type of manhole that exists on this property is similar to others throughout the City. While a possible claim resulting from an accident on a sewer drain cannot be foreseen and is always a possibility, this manhole was constructed by the City in accordance with industry standards and it a necessary components of a properly functioning system. The manhole access is at grade and does not present a trip hazard.

Hopefully, the above addresses all of the legal issues relating to this matter. If you need anything further, please contact me.

Very truly yours,  
Hoscheit, McGuirk, McCracken & Cuscaden, P.C.

A handwritten signature in black ink, appearing to read "John M. McGuirk". The signature is written in a cursive style with a large initial "J" and "M".

John M. McGuirk

JMM:lmk

**Name: Joseph McGraw**

**Address: 1102 King Edward Avenue, St. Charles, IL 60174**

**Request of Committee:**

I request that the committee recommend restoring the recessed access to a sewer located in the front lawn at 1102 King Edward Avenue.

Restoration of the recessed access to the sewer will continue to provide the water department full access to the sewer whenever necessary to provide maintenance, but without creating a liability hazard to the homeowner and adversely affecting curb appeal, aesthetics, and home value.

**Sewer Access Raised**

On April 10, 2015 access to a storm sewer was raised in the front lawn of our single family residence located at 1102 King Edward Avenue, St. Charles, IL 60174. We were not provided any notification that such work would be done. I arrived home on the evening of April 10<sup>th</sup> to find the following manhole cover constructed just feet from the front door of our home.



**Existing Sewer Covers located in Front Yard of Property:**

There were 2 exposed sewer covers that existed when the home was first built, 17 years ago; they were, and continue to be, located on the street side of the sidewalk. Another sewer access that is located on the home side of the sidewalk had been prudently recessed below the surface of the ground—achieving both a preferred aesthetic while avoiding a hazard that increases homeowner liability.



### **Hazard & Liability**

Raising the manhole cover and leaving it exposed at 1102 King Edward creates a new hazard and presents liability risks for the homeowner. As the attached statement from Allstate Insurance Company attests, there are a variety of potential risks and liabilities presented by the newly created manhole cover that is on the home side of the sidewalk.

### **Aesthetics and Home Value**

The home was constructed 17 years ago. At the time of home construction there was a conscious, deliberative decision to recess the sewer cover below the surface of the ground. We would like the access to the sewer to be restored to where it had been for the previous 17 years. Exposing the manhole cover diminishes the curb appeal of the property and reduces its fair market value.

### **Need**

The only time the sewer was ever accessed was on April 10, 2015, and only to raise the access to surface level. The sewer was not only rarely accessed, it was never accessed—except on April 10<sup>th</sup> to raise its access. Could there exist in the future a reason to access the sewer at the precise point in the sewer's network that is located steps from the front door of 1102 King Edward Avenue? Possibly. But even so, with the access just below the surface of the soil the sewer will remain readily accessible being just a few moments and hand shovels away!

The Water Department has presented a schematic (attached) of the sewer network and access points indicating to me that my neighbors have the same issue. I infer that the point they wish to make is that my neighbors are not complaining, so why am I?

But although the schematic shows an access point in the sewer on my neighbors property (1004 King Edward) and at just about the same location on his property as mine, you will see from the picture below the sewer access on their property has not been raised, it remains recessed.



## **Easement**

We acknowledge and respect the obvious need for utility personnel to have access to utilities in order to service and maintain in the public interest. We have always provided and will continue to provide uninhibited access to utility company personnel, without requiring legal proof before granting permission to perform their duties.

I'm not an attorney, nor do I wish to debate the extents and limits of an easement right. But it would appear to me that a reasonable interpretation of an easement right granted to a utility would imply a right of access in order to provide specific and necessary maintenance. Can raising access to a storm sewer in which there was already access have been intended with the granting of an easement right to a utility? Doesn't the past 17 years of having the access below the surface of the soil and being the original condition of the home mean something?

The easement provision and schematic provided by the Water Department appears to establish the right of access to be 5 feet from the sidewalk. Again, the Water Department had uninhibited access to the sewer for the past 17 years. But it is worth noting that over 80% of what was constructed on top of the surface (manhole cover) appears to be beyond the 5 foot easement.

## **In Sum: Win-Win**

I request that the committee recommend restoring the recessed access to a sewer located in the front lawn at 1102 King Edward Avenue.

Restoration of a recessed access to the sewer will continue to provide the water department full access to the sewer whenever necessary to provide maintenance, but without creating a liability hazard to the homeowner and adversely affecting curb appeal, aesthetics, and home value.

Appreciatively,

Joseph McGraw  
1102 King Edward Avenue  
St. Charles, IL 60174

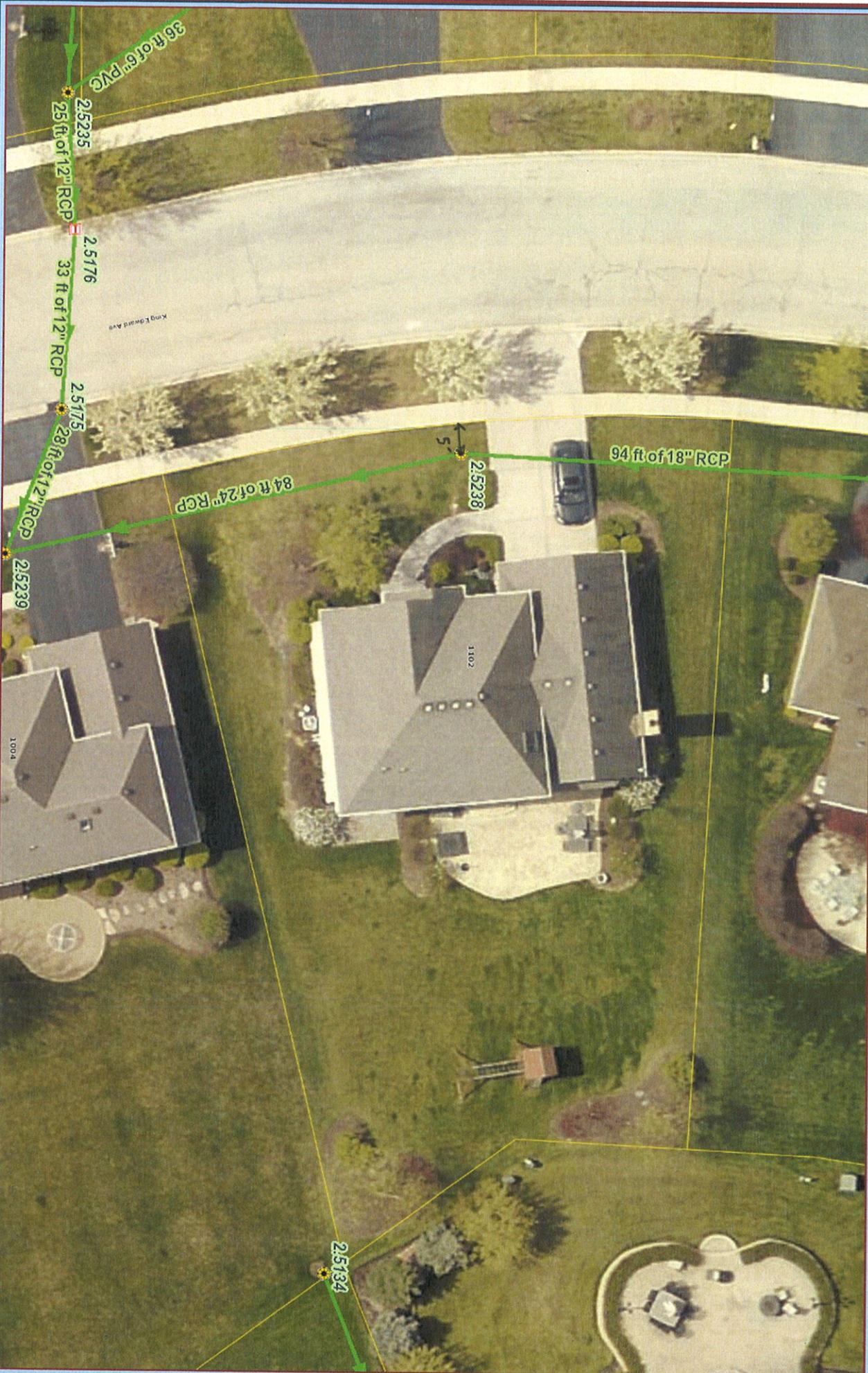
[joemcgraw@mac.com](mailto:joemcgraw@mac.com)  
630-661-6050



**City of St. Charles, Illinois**  
 Two East Main Street St. Charles, IL 60174-1384  
 Phone: (630) 377-4400 Fax: (630) 377-4440 www.stcharlesil.com

# 1102 King Edward Avenue

**RAYMOND ROGINA** Mayor  
**MARK KOENEN** City Administrator



Data Source:  
 City of St. Charles, Illinois  
 Date of Survey: 1/18/2015  
 Projection: Transverse Mercator  
 Coordinate System: Illinois State Plane East  
 North Reference: Unknown 1883  
 Printed on: April 30, 2015 08:35 AM



Storm Sewer

This work was created for planning purposes only and is provided as is, without warranty of any kind, whether expressed or implied. It is not intended to constitute a contract or any other legal instrument. It is the responsibility of the user to verify the accuracy of the information presented herein and to obtain any necessary permits or approvals from the appropriate authorities. The City of St. Charles and its employees shall not be held liable for any damages, including consequential damages, arising out of the use of this document without prior written permission. City of St. Charles, 1102 East Main Street, St. Charles, IL 60134

INCUMBRANCE AFFECTING ALL OR ANY PART OF RESIDUED PROPERTY SHALL BE FURNISH THE TERMS AND CONDITIONS OF THIS DOCUMENT.

PUBLIC UTILITY EASEMENT PROVISIONS

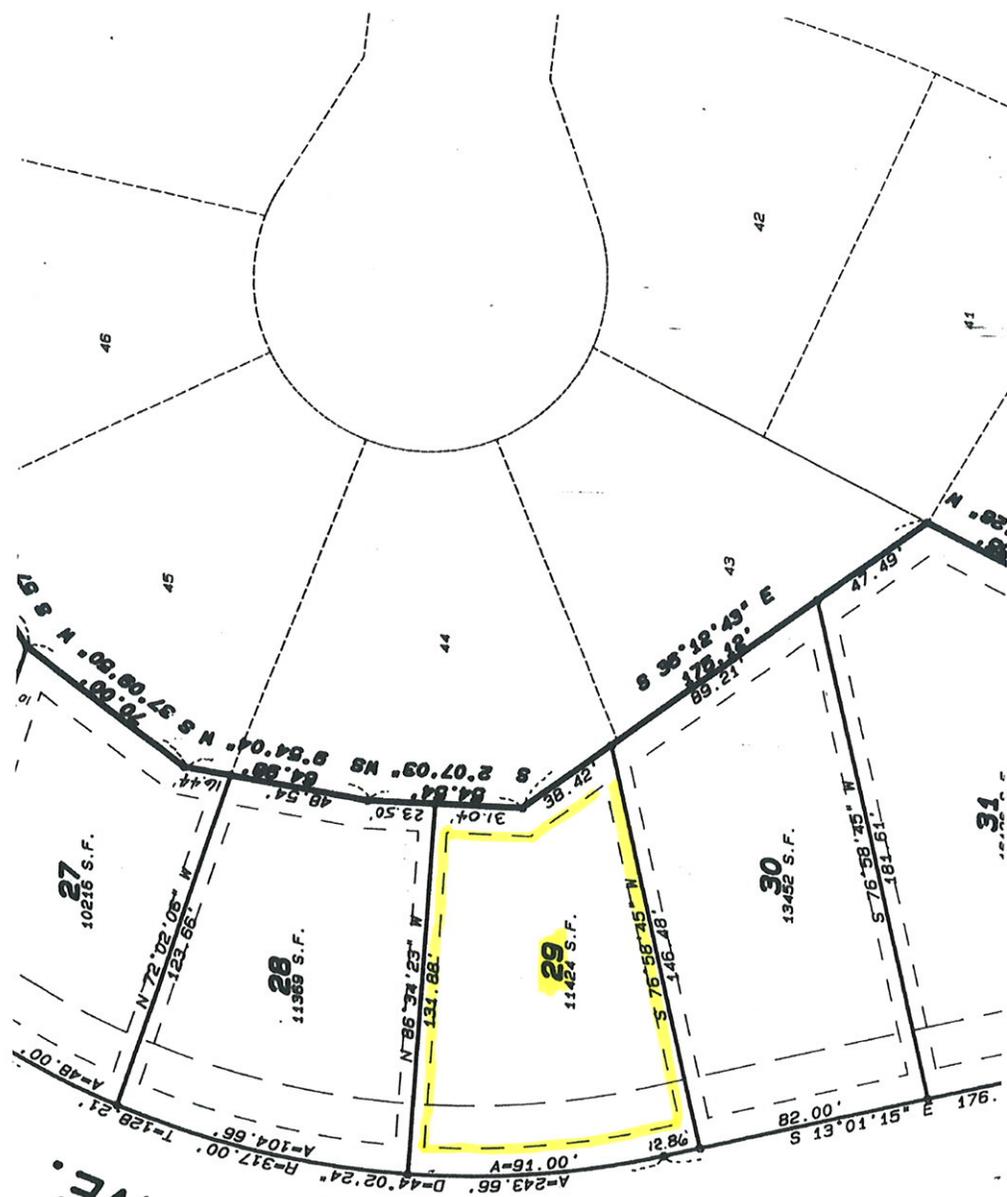
A PERMANENT NON-EXCLUSIVE EASEMENT IS HEREBY GRANTED TO THE CITY OF ST. CHARLES AND TO ALL PUBLIC UTILITY COMPANIES OF ANY KIND OPERATING UNDER FRANCHISE GRANTING THEM EASEMENT RIGHTS FROM SAID CITY OF ST. CHARLES INCLUDING BUT NOT LIMITED TO, AMERITECH AND NORTHERN ILLINOIS GAS COMPANY AND TO THEIR SUCCESSORS AND ASSIGNS, IN, UPON, ACROSS, OVER, UNDER AND THROUGH THE AREAS SHOWN BY DASHED LINES AND LABELED "PUBLIC UTILITY EASEMENT" ON THE PLAT OF SUBDIVISION HEREON DRAWN FOR THE PURPOSE OF INSTALLING, CONSTRUCTING, INSPECTING, OPERATING, REPLACING, RENOVING, ALTERING, ENLARGING, REMOVING, REPAIRING, CLEANING, AND MAINTAINING UNDERGROUND ELECTRICAL, CABLE TELEVISION, COMMUNICATION, GAS, TELEPHONE OR OTHER UTILITY LINES OR APPURTENANCES, SANITARY AND STORM SEWERS, DRAINAGEWAYS, STORM WATER DETENTION AND RETENTION, WATER MAINS AND ANY AND ALL MANHOLES, HYDRANTS, PIPES, CONNECTIONS, CATCH BASINS, BUFFALO BOXES AND WITHOUT LIMITATION, SUCH OTHER INSTALLATIONS AS MAY BE REQUIRED TO FURNISH PUBLIC UTILITY SERVICE TO ADJACENT AREAS TOGETHER WITH THE RIGHT OF ACCESS ACROSS THE REAL ESTATE PLATTED HEREIN FOR THE NECESSARY PERSONNEL AND EQUIPMENT TO MAKE ANY OR ALL OF THE ABOVE WORK (HEREIN COLLECTIVELY REFERRED TO AS "GRANTEES"). THE RIGHT IS ALSO HEREBY GRANTED TO SAID GRANTEEES TO CUT DOWN, TRIM, OR REMOVE ANY TREES, SHRUBS, OR OTHER PLANTS OR, WITHOUT LIMITATION, UTILITY INSTALLATIONS IN, ON, UPON OR ACROSS, UNDER, OR THROUGH SAID EASEMENTS. IN THE EVENT UTILITY MAINTENANCE IS PERFORMED WITHIN THE UTILITY EASEMENT, THE CITY OF ST. CHARLES WILL HAVE NO OBLIGATION WITH RESPECT TO SURFACE RESTORATION INCLUDING, BUT NOT LIMITED TO, THE RESTORATION, REPAIR, OR REPLACEMENT OF ANY LANDSCAPING PROVIDED, HOWEVER, THE GRANTEEES SHALL BE OBLIGATED FOLLOWING ANY SUCH WORK, TO BACKFILL AND MOUNT SO AS TO RETAIN SUITABLE DRAINAGE, REMOVE DEBRIS, AND LEAVE THE AREA IN GENERALLY CLEAN AND WORKMANLIKE CONDITION. NO PERMANENT BUILDINGS OR TREES SHALL BE PLACED ON SAID EASEMENTS, BUT THE EASEMENT AREAS MAY BE USED FOR GARDENS, SHRUBS, LANDSCAPING, PAVING, FENCES, SIDEWALKS, CURBING, AND OTHER PURPOSES THAT DO NOT INTERFERE WITH THE AFORESAID USES AND RIGHTS. WHERE AN EASEMENT IS USED FOR STORM OR SANITARY SEWERS, OTHER UTILITY INSTALLATIONS SHALL BE SUBJECT TO THE PRIOR APPROVAL OF SAID CITY OF ST. CHARLES SO AS NOT TO INTERFERE WITH THE GRAVITY FLOW IN SAID SEWER OR SEWERS.

KING WILLIAM COURT  
HERETOFORE DEDICATED

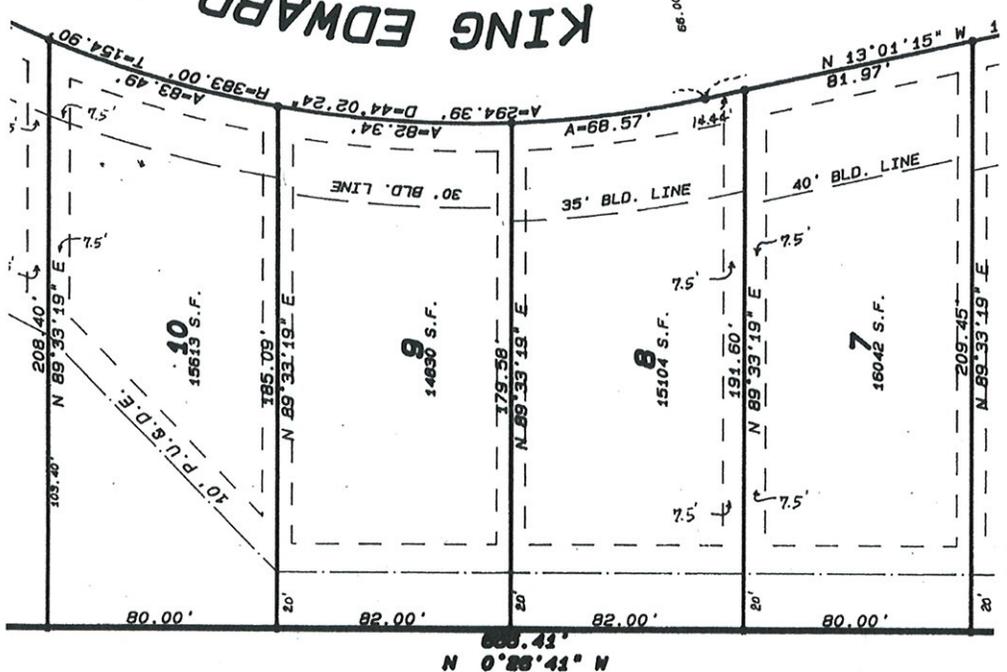


SCALE: 1 INCH = 50 FEET





**KING EDWARD AVE.**

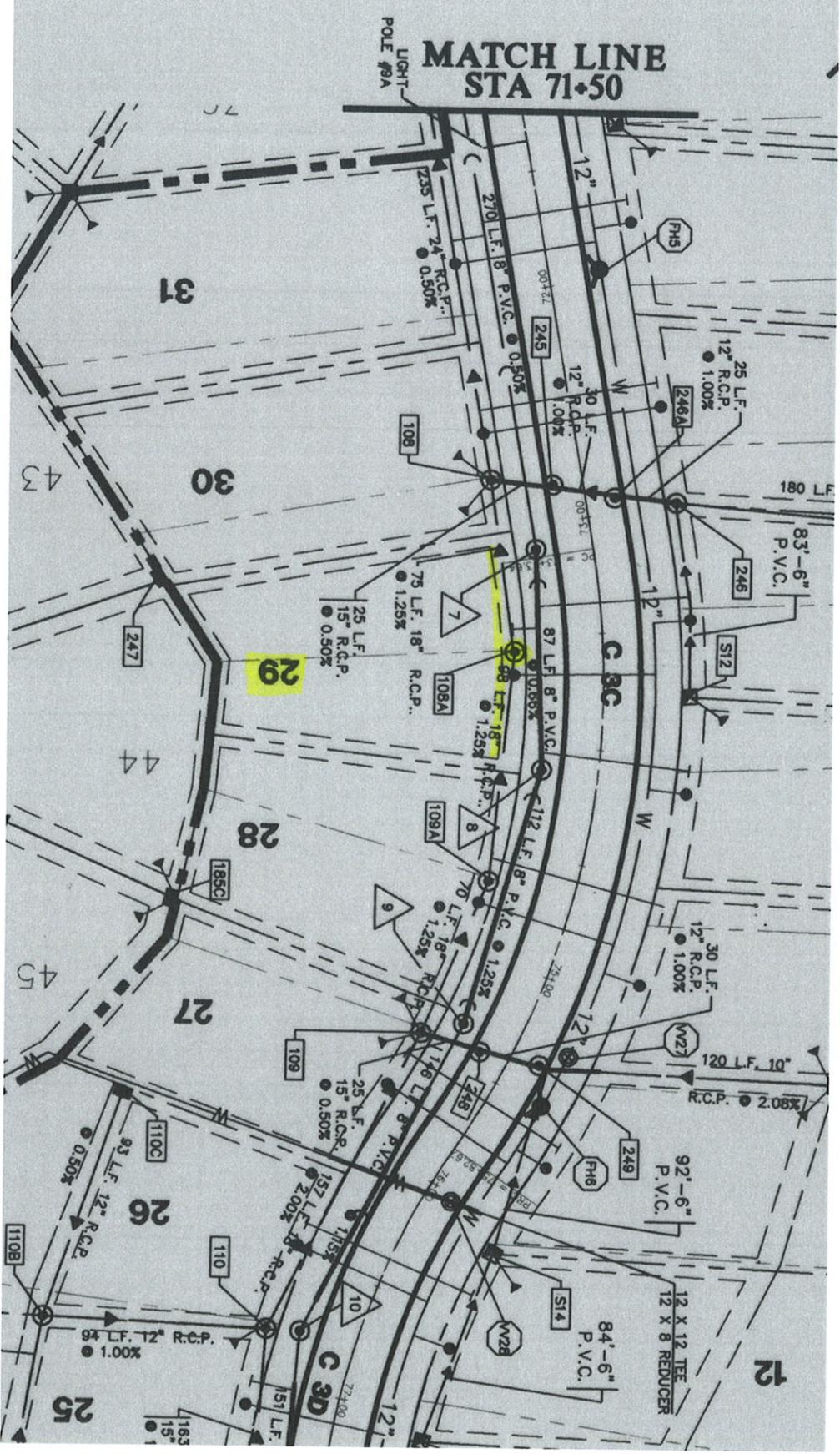


N 0° 28' 41\"

~~82+50, 25R  
T.A., 4' DIA  
785.08~~

F.HYD 8 F.HYD  
A 79+25 STA 82+60  
S 19.75'L O/S 24.4'L  
= 781.73 GR. = 794.95  
16 V.VAULT  
STA 82+40  
O/S 22'L  
GR. = 795.50

### MATCH LINE STA 71+50









**Allstate Insurance Co.  
M. Milkes Insurance Agency, Inc.  
2628 ½ W. Touhy Ave.  
Chicago, Illinois 60645  
Phone: 773-508-9600  
Fax: 773-508-9784**

JOSEPH MCGRAW  
1102 KING EDWARD AVE  
ST. CHARLES, IL 60174

Joseph,

I have a concern regarding the manhole cover located on your property. If the sod/soil erodes the lip could be exposed and present a tripping hazard. Injuries are also a possibility should someone fall on the metal cover. The main concern I have is that in the event that the cover is removed serious liability issues could arise.

Sincerely,

Mike Milkes  
Allstate Insurance Co.  
M. Milkes Insurance Inc.  
2628 ½ W Touhy Ave  
Chicago, IL 60645-3110  
773-508-9600 PHONE  
773-508-9784 FAX

*Milkes Insurance, Serving Allstate's Customers for over 52 years.*