

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL WORKSHOP
JANUARY 9, 2007 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
Vacation of a Public Alley	Resolution ✓ Ordinance Motion Discussion Only	Don Rosenthal Community Development Director

SYNOPSIS

An ordinance has been prepared for the vacation of the fourteen foot (14') north-south public alley that is located between Austin Street and Franklin Street east of Douglas Road.

FISCAL IMPACT

Staff is recommending the petitioners compensate the Village for the vacated alley. The recommended compensation is \$5,117.78 for the entire alley to be split amongst the four petitioners.

RECOMMENDATION

Approval on an active agenda after the four (4) petitioners submit plats of vacation.

BACKGROUND

Four (4) petitioners are requesting the Village vacate the fourteen foot (14') north-south alley that is located between Austin Street and Franklin Street east of Douglas Road. The owners at 442 Austin Street, 4907 Douglas Road, 445 Franklin Street, and 501 Franklin Street are all co-petitioners. Currently, the alley is used as private driveways for 442 Austin Street and 445 Franklin Street. The driveways do not connect. Property owners at 4907 Douglas Road and 501 Franklin Street use the alley as additional yard and green space. The following table identifies the petitioners request to vacate the alley in sections.

Address	Current Alley Use	Requested Width	Approximate Increase in Property Area (sq. ft.)
442 Austin St	Driveway	14'	1,848
4907 Douglas Rd	Yard	4'	328
445 Franklin St	Driveway	10'	1,320
501 Franklin St	Yard	4'	200

Per the Village's right-of-way vacation policy (Resolution 2003-58), staff contacted the utility companies and public entities (including the Police Department, Fire Department and Public Works Department) to determine if any rights to the alley should be retained. Currently, Commonwealth Edison, Comcast, and AT&T have utility poles and overhead lines that run east-west across the alley near the rear property lines of 442 Austin Street and 445 Franklin Street. The utility providers do not have an objection to the vacation provided that an easement is retained to provide mid-block access to the utility poles and lines. Staff is recommending retaining an easement over the entire width and length of the alley for drainage and public utilities. The petitioners have been informed of

this requirement and voiced objections to the easement at the December 4, 2006 Plan Commission meeting.

Staff believes the Village should maintain an easement over the vacated alley. As a matter of policy, the Village requires all new plats of subdivision to provide a minimum ten foot (10') easement between properties, with five feet (5') being located on each parcel. The easement allows the Village to have rights for drainage and utility purposes. Additionally, the Storm Water Master Plan identifies alleys and easements as the most logical location to provide future infrastructure.

Currently, the alley that the petitioners wish to vacate is a section of an alley that runs north and south from Chicago Avenue to Rogers Avenue just east of Douglas Road. Although there are no current plans for drainage or utility improvements in this alley, it has the potential to be a significant drainage or utility corridor in the future should the Village deem it necessary. If improvements are necessary and easements are not available, the burden to obtain easements will be placed on the Village and utility providers.

The retention of the easement will significantly limit the types of structures that can be built on the alley property. A fence and driveway are the most significant structure that would likely be built on the alley. While the property owner can not build on the alley, the land under easement can be used to meet setback requirements and can be counted as lot area for lot coverage and other massing calculations.

Staff recommends that the Village be compensated for the vacated alley. Staff used the latest property assessments adjacent to the alley to determine compensation. When land will be encumbered with an easement, land is generally valued at one-third (1/3) of the value of the same property that does not have an easement. Staff recommends that each petitioner compensate the Village in the following amounts:

Property Address	Encumbered Value
442 Austin St.	\$ 2,541.85
4907 Douglas Rd.	\$ 472.67
501 Franklin St.	\$ 288.97
445 Franklin St.	\$ 1,814.29
TOTAL	\$ 5,117.78

The Plan Commission considered the project at their December 4, 2006 meeting and unanimously recommended approval of the proposed right-of-way vacation with the recommended easement language. The Plan Commission did not opine on the recommended compensation.

ATTACHMENTS

Locator Map

Draft Ordinance

Staff Report, with attachments, dated December 4, 2006

Minutes of Plan Commission Public Hearing dated December 4, 2006

4844

4900

4906

4910

4914

DOUGLAS RD

501

4907

4915

500

4929

FRANKLIN ST

445

441

437

433

425

421

419

442

438

434

430

426

422

418

AUSTIN ST

445

441

437

433

429

417

413

ORDINANCE NO. _____

**AN ORDINANCE VACATING A CERTAIN PORTION OF A
PUBLIC ALLEY WEST OF 442 AUSTIN STREET AND 445 FRANKLIN STREET
IN THE VILLAGE OF DOWNERS GROVE**

WHEREAS, it has been determined by the Council of the Village of Downers Grove in DuPage County, Illinois, that it is in the public interest to vacate a certain portion of an unimproved and un-named public alley right-of-way (the unimproved alley right-of-way located immediately west of and adjacent to the property commonly known as 442 Austin Street and 445 Franklin Street, Downers Grove, IL) in said Village hereinafter more particularly described; and

WHEREAS, there are certain public service facilities situated in said portion of said right-of-way, and the Village Council has determined that it is necessary and in the public interest to reserve such rights-of-way and easements as are in the judgment of the Council necessary or desirable for continuing public service by means of those facilities and for the maintenance, renewal and reconstruction thereof; and

WHEREAS, the required public notice has been given and a public hearing respecting said vacation has been conducted in accordance with applicable law; and

WHEREAS, the Village Council, after due investigation and consideration, has determined that the nature and extent of the public use and the public interest to be served is such as to warrant the vacation of said portion of said right-of-way.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Downers Grove, in DuPage County, Illinois, as follows:

SECTION 1. That the following described property, to wit:

The fourteen (14) foot public alley lying immediately west of Lots 38 and 39 and the south half of the vacated alley lying north of and adjoining said Lots 38 and 39 in Block 9 in Gostyn, a subdivision of part of the Northeast Quarter of Section 8, Township 38 North, Range 11, East of the Third Principal Meridian, in DuPage County, Illinois, commonly known as 442 Austin Street, Downers Grove, IL (PIN 09-08-224-013); and Parcel 1, Lots 26 and 27 in Gostyn, a subdivision of part of the Northeast Quarter of Section 8, Township 38 North, Range 11, East of the Third Principal Meridian, in DuPage County Illinois, and Parcel 2, the north half of the vacated alley lying south and adjoining said Lots 26 and 27 in Block 9 in Gostyn, a subdivision of part of the Northeast Quarter of Section 8, Township 38 North, Range 11, East of the Third Principal Meridian in DuPage County, Illinois

Commonly known as 445 Franklin Street, Downers Grove, IL (PIN 09-08-224-005).

(hereinafter referred to as the "Vacated Alley Right-of-Way"), is hereby vacated and closed, and that it is hereby declared that the same is no longer required for public use and that the public interest will be served by such vacation.

SECTION 2. An easement is hereby reserved for and granted to the Village of Downers Grove, County of DuPage, and to utility companies operating under franchise from the said Village including, but not limited to, SBC Ameritech, Commonwealth Edison Company, the Downers Grove Sanitary District and their respective successors and assigns jointly and severally, over all of the areas marked "Public Utilities Easement Reservation" on the plat of vacation of the Vacated Alley Right-of-Way as described herein for the perpetual right, privilege and authority to construct, reconstruct, repair, inspect, maintain and operate various utility

transmission and distribution systems and community antenna televisions systems and all necessary connections, appliances and other structures and appurtenances as may be deemed necessary by said Village and for any and all municipal purposes, over, upon, along, under and through said indicated easements, together with right of access across the property to do any of the above work. The right is also granted to cut down, trim or remove any trees, shrubs or other plants that interfere with the operation of the utilities. No permanent buildings or structures shall be placed on said easements, but same may be used for gardens, shrubs, landscaping, driveways, fences and other purposes that do not then or later interfere with the aforesaid uses and rights. All installations shall be subject to the ordinances of the Village of Downers Grove. Easements are hereby reserved for and granted to the Village of Downers Grove and other governmental authorities having jurisdiction of the land over the entire easement area for ingress, egress and the performance of any and all municipal and other governmental services.

SECTION 3. This vacation shall be subject to the following conditions:

1. Prior to the petition being considered by the Village Council, the Petitioners must submit a plat of vacation which shall specifically include the easement language contained in Section 2 of this Ordinance.
2. The Petitioners shall pay to the Village of Downers Grove \$5117.78.
3. The vacation shall substantially conform to the staff report dated December 4, 2006 and with the plat of vacation submitted to the Village of Downers Grove dated _____ prepared by _____.

SECTION 4. That the Mayor and Clerk of the Village of Downers Grove are hereby authorized to sign the plat of vacation of the Vacated Alley Right-of-Way described herein.

SECTION 5. That a certified copy of this ordinance and an accurate Plat of the Vacated Alley Right-of-Way which specifically includes the easement language contained in Section 2 of this ordinance shall be filed for record by the Clerk of the Village of Downers Grove in the Office of the Recorder of Deeds, DuPage County, Illinois, at the Petitioner's expense.

SECTION 6. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 7. That this ordinance shall be in full force and effect from and after its passage and publication in pamphlet form as provided by law.

Mayor

Passed:

Published:

Attest: _____
Village Clerk



Village of Downers Grove

STAFF REPORT

TO: Plan Commission

HEARING DATE: December 4, 2006

FROM: Department of Community
Development

PREPARED BY: Stan Popovich, AICP
Planner

TITLE

PC 46-06; Alley East of Douglas Road between Austin Street and Franklin Street – Alley Vacation; The petitioners are requesting that the Village vacate a fourteen foot (14') alley immediately west of and adjacent to 442 Austin Street and 445 Franklin Street.

APPLICATION/NOTICE: The application has been filed in conformance with applicable procedural and public notice requirements.

GENERAL INFORMATION

OWNER: Village of Downers Grove
801 Burlington Avenue
Downers Grove, IL 60515

APPLICANTS:	R. Michael McCann 442 Austin Street Downers Grove, IL 60515	Daniel P. Ulrich 4907 Douglas Road Downers Grove, IL 60515
	Dale Hofstra 501 Franklin Street Downers Grove, IL 60515	Bruce Martin 445 Franklin Street Downers Grove, IL 60515

PROPERTY INFORMATION

EXISTING ZONING: R-4 Single Family Residence (Surrounding properties)

EXISTING LAND USE: Unimproved Alley.

PROPERTY SIZE: Approximately 3,700 square feet (14-foot public alley proposed to be vacated).

PINs: 09-08-224-013 (442 Austin St.), 09-08-224-005 (445 Franklin St.),
09-08-224-001 (501 Franklin St.), 09-08-224-002 (4907 Douglas Rd.),

SURROUNDING ZONING AND LAND USES:

ZONING

NORTH:	R-4 Single Family Residence
SOUTH:	R-4 Single Family Residence
EAST:	R-4 Single Family Residence

FUTURE LAND USE

Residential (0-6 DU/Acre)
Residential (6-11 DU/Acre)
Residential (0-6 and 6-11 DU/Acre)

WEST:	R-4 Single Family Residence	Residential (0-6 DU/Acre)
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ANALYSIS

SUBMITTALS

This report is based on the following documents, which are on file with the Department of Community Development:

1. Application/Petition for Public Hearing
2. Signature Page from four Petitioners
3. Project Summary/Cover Letter
4. Plat of Surveys
5. Letters Not Objecting to Vacation from Owners Adjacent to Alley
6. Letters Not Objecting to Vacation from Utility Companies

DESCRIPTION

The applicants are requesting the Village vacate a fourteen foot (14') alley that runs north and south and is immediately west of and adjacent to the properties at 442 Austin Street and 445 Franklin Street. Currently, the alley is used as private driveways for 442 Austin Street and 445 Franklin Street. The driveways do not connect. Property owners at 4907 Douglas Road and 501 Franklin Street use the alley as additional yard and green space. Two property owners at 500 Austin Street and 4915 Douglas Road abut the alley but do not currently utilize the alley. These two property owners are not requesting any portion of the alley and do not object to the vacation.

Table 1. Vacation Overview

Address	Current Alley Use	Requested Width	Approximate Increase in Property Area (sq. ft.)	Current Zoning Classification	Future Land Use
442 Austin St	Driveway	14'	1,848	R4	Res (6-11 DU/Acre)
500 Austin St	None	None	0	R4	Res (6-11 DU/Acre)
4907 Douglas Rd	Yard	4'	328	R4	Res (0-6 DU/Acre)
4915 Douglas Rd	None	None	0	R4	Res (6-11 DU/Acre)
445 Franklin St	Driveway	10'	1,320	R4	Res (0-6 DU/Acre)
501 Franklin St	Yard	4'	200	R4	Res (0-6 DU/Acre)

Per the Village's right-of-way vacation policy (Resolution 2003-58), staff contacted the utility companies and public entities (including the Police Department, Fire Department and Public Works Department) to determine if any rights to the alley should be retained. Currently, Commonwealth Edison, Comcast, and AT&T have utility poles and overhead lines traversing the alley near the rear property lines of 442 Austin Street and 445 Franklin Street. The utility providers do not have an objection to the vacation provided that an easement is retained. The Public Works Department is recommending retaining an easement over the entire width and length of the alley. The retention of an easement will significantly limit the types of structures that can be built on the alley property. A fence is the most significant structure that would likely be built in the vacated alley. The petitioners have been informed of this requirement and do not object to the easement.

COMPLIANCE WITH THE FUTURE LAND USE PLAN

Currently, all the properties are zoned R-4. The alley is an unimproved residential alley. According to the Future Land Use Plan, properties (442 and 500 Austin Street and 4915 Douglas Road) abutting the south half of the alley are designated as Residential (6-11 DU/Acre). The remaining properties (4907 Douglas Road and 445 and 501 Franklin Street) are designated as Residential (0-6 DU/Acre). The use of the alley will not be significantly altered as the Village is requiring that an easement be retained. Staff believes the proposed vacation and use is consistent with the designation on the Future Land Use Map. The proposal is also consistent with other Village planning documents.

COMPLIANCE WITH THE ZONING ORDINANCE

No significant changes will occur in the land use. The uses on the surrounding properties are single family residences and will continue to be consistent with zoning requirements. The addition of the alley will increase each property's lot area as noted in the above table. Attachment A provides a graphic of the alley and how it is to be vacated to the four property owners. The extra land will increase each property's compliance with the zoning requirements. No new buildings or uses are proposed for the portion of the alley to be vacated. The retention of an easement will significantly limit the types of structures that can be built on the alley property. A fence is the most significant structure that would likely be built in the vacated alley.

COMPLIANCE WITH THE SUBDIVISION ORDINANCE

This section is not applicable.

COMPLIANCE WITH THE SIGN ORDINANCE

This section is not applicable.

COMPLIANCE WITH THE OGDEN AVENUE MASTER PLAN

This section is not applicable.

ENGINEERING/PUBLIC IMPROVEMENTS

This section is not applicable.

PUBLIC SAFETY REQUIREMENTS

The Fire Department and the Police Department have reviewed the plans for the vacation and noted no objections to the vacation of the alley.

NEIGHBORHOOD COMMENT

Two neighbors immediately west and adjacent to the alley (500 Austin Street and 4915 Douglas Road) have provided written statements indicating that they do not object to the vacation. Additionally, these neighbors are not requesting a portion of the alley.

STAFF FINDINGS

Compliance with the Procedure to be Followed in the Vacation of Streets, Alleys, and Public Rights-of-Way (Resolution #2003-58)

Staff believes the request complies with the Village policy outlined in Resolution #2003-58. The alley is not used for public traffic and is currently used by the four applicants. Two applicants (501 Franklin Street and 4907 Douglas Road) have planted shrubs within the alley while the other two applicants (442 Austin Street and 445 Franklin Street) use the alley for private driveways. Staff believes the alley right-of-way does not need to be retained for the general health, safety and welfare of Village residents. The utility providers affected by the vacation have noted that an easement is acceptable to continue maintenance of the existing utilities. Staff believes the existing utilities and public needs can be addressed with an easement and is recommending retaining an easement over the entire portion of the alley to be vacated.

Staff recommends that the south half of the entire fourteen feet (14') alley be vacated to the owner of 442 Austin Street. Staff recommends that the eastern ten feet (10') of the north half of the alley be vacated to the owner of 445 Franklin Street. Staff recommends that the western four feet (4') of the north half of the alley that abuts the property at 4907 Douglas Road be vacated to the property owner. Staff recommends that the western four feet (4') of the north half of the alley that abuts the property at 501 Franklin Street be vacated to the property owner. Attachment A provides a graphic representation of the vacation.

At their sole expense, each petitioner will be required to provide a Plat of Vacation by a licensed surveyor. Each licensed surveyor shall consult with the DuPage County Recorder to determine how the Plat of Vacation shall be prepared to meet the DuPage County requirements. The surveyor shall adequately describe the vacated alley on each of the Plats of Vacation.

Staff recommends that the petitioners provide the Village with compensation for the vacated alley. Compensation is typically determined by a land value assessment, an appraisal, or a purchase price for redevelopment. The Village Council decided the most recent alley vacation (adjacent to 513 Chicago Avenue) compensation. Originally, \$3,000 was recommended as just compensation by staff, but after review by the Council, it was agreed that the Village would require a \$1 payment for the 1,750 square foot alley. Staff believes that the alley compensation should be determined on the latest assessment of land adjacent to the alley. When land will be encumbered with an easement, land is generally valued at one-third (1/3) of the value of the same property that does not have an easement. The following table provides the estimated value of the petitioner's land.

Table 2. Estimated value of alley

Property Address	Land Value	Land Value per Acre	Acres of Alley to be vacated	Estimated Value	Encumbered Value
442 Austin St.	\$ 27,600	\$ 181,579	0.04242	\$ 7,702.58	\$ 2,541.85
4907 Douglas Rd.	\$ 44,130	\$ 190,216	0.00753	\$ 1,432.32	\$ 472.67
501 Franklin St.	\$ 26,900	\$ 190,780	0.00459	\$ 875.68	\$ 288.97
445 Franklin St.	\$ 27,580	\$ 181,447	0.03030	\$ 5,497.86	\$ 1,814.29

Staff recommends that each petitioner compensate the Village in the following amounts:

Table 3. Recommended compensation

Property Address	Encumbered Value
442 Austin St.	\$ 2,541.85
4907 Douglas Rd.	\$ 472.67
501 Franklin St.	\$ 288.97
445 Franklin St.	\$ 1,814.29

RECOMMENDATIONS

The proposed right-of-way vacation is compatible with the surrounding zoning and land use classifications. Based on the findings listed above, staff recommends that the Plan Commission make a motion recommending approval of a right-of-way vacation for the portion of the fourteen (14) foot public alley immediately west of and adjacent to 442 Austin Street and 445 Franklin Street to the Village Council subject to the conditions below:

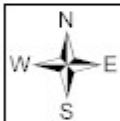
1. The vacation shall substantially conform to the staff report dated November 6, 2006 and with the plat of surveys/site plans submitted to the Plan Commission dated March 1, 1995 prepared by Residential Surveying Service P.C. for 501 Franklin Street, August 14, 1995 prepared by Harrington & Associates, Inc. for 4907 Douglas Road, July 1, 2003 prepared by Tri-County Engineering, Inc. for 442 Austin Street and November 11, 2005 prepared by G. Powell & Associates, Inc. for 445 Franklin Street, except such plans may be modified to conform to Village Codes and Ordinances and the following conditions:
 - a. A utility and drainage easement shall be retained over the entire alley by the Village of Downers Grove and other applicable utility companies for the maintenance of the existing utility facilities and future utility needs.
 - b. The construction of future structures on the alley proposed to be vacated shall be limited to fences. Construction of any new buildings on the alley shall not be permitted.
2. Prior to final Village Council consideration, each petitioner shall have a Plat of Vacation prepared by a licensed surveyor.
3. Prior to completion of each Plat of Vacation, each licensed surveyor shall contact and discuss with the DuPage County Recorder as to how the vacated land shall be described on each of the plats of vacation.
4. Prior to final Village Council consideration, each petitioner shall provide the Village with compensation for the alley as shown in Table 3 above.

Staff Report Approved By:

Don Rosenthal
Director of Community Development

DR:sjp
-att

P:\P&CD\PROJECTS\PLAN COMMISSION\2006 PC Petition Files\PC-46-06 ALLEY VAC-AUSTIN-FRANKLIN



Attachment A - Alley vacation map

PC Case # PC-46-06 Alley Vacation

PIN # 09-08-224-013 (442 Austin St),
 09-08-224-005 (445 Franklin St),
 09-08-224-001 (501 Franklin St),
 09-08-224-002 (4907 Douglas Rd)

Department of Community Development

Legend

- Vacated to 442 Austin St.
- Vacated to 445 Franklin St.
- Vacated to 501 Franklin St.
- Vacated to 4907 Douglas Rd.

VILLAGE OF DOWNERS GROVE
PLAN COMMISSION MEETING, DECEMBER 4, 2006, 7:00 P.M.

FILE NO. PC-46-06 A petition seeking an Alley Right of Way Vacation; Alley immediately West of properties commonly known as 442 Austin Street, Downers Grove, IL (PIN 09-08-224-013) and 445 Franklin Street, Downers Grove, IL (PIN 09-08-224-005); R. Michael & Kristin McCann, Daniel P. & Mary Ann Ulrich, Dale & Lyndi S. Hofstra and Bruce Martin, Petitioners; Village of Downers Grove, Owner

Chairman Jirik swore in those individuals who would be speaking on behalf of 46-06.

Village planner, Mr. Popovich, discussed that the request is for a vacation of an alley that runs north and south, east of Douglas between Austin and Franklin Streets. The alley will be vacated among four petitioners: 501 Franklin, 4907 Douglas, 445 Franklin, and 442 Austin. Two adjoining property owners at 4915 Douglas and 500 Austin Street do not object to the vacation. However, today, the son of the property owner of 4915 Douglas spoke with staff and had concerns about the building setbacks should the property at 442 Austin be sold and the 4907 Douglas home be sold. Staff did speak to the son, did address the setback and easement issues, and explained that his father's home at 4915 Douglas would have larger setbacks with the vacated alley. Staff confirmed that written correspondence was sent to all property owners regarding the alley vacation. Staff recommended moving forward with the petition. Per the village's vacation policy, all necessary public entities and utility companies were contacted about the proposed alley vacation.

Per questions, the only structure allowed on the property would be a fence. No other objections were received from the residents except for the concern by 4915 Douglas. A plat of vacation will be required for each of the property owners receiving a portion of the alley. Details of the recommended vacation followed for each of the properties. Staff recommended approval of the alley vacation regardless of compensation.

Petitioner, Mr. Michael McCann, 442 Austin Street, Downers Grove, discussed that the petition was straightforward and he was not seeking any improvements on the land. He commented that he found it strange that he and his neighbor had their driveways on the easement. The other two abutting neighbors had bushes on the easement. He stated he did speak to his neighbors Chuck and Helen Waz at 4915 Douglas and explained to them what the issues were. He asked Mr. Waz if was interested in vacating his part of the alley, which he was not interested at the time. Mr. McCann then asked them to sign a letter of understanding that was submitted with this petition. However, Mr. McCann did have concerns about the compensation and about an easement that takes up the entire alley or 14 feet. As to the drainage, he stated it was already a driveway. He pointed out that the utilities travel east/west and not north/south and understood that there was a prior east-west alley that was vacated with an easement over that. He wanted to make staff aware of that easement. If the alley were to be vacated and become a part of his property, he stated he wanted control over his property and not have it encumbered by an easement.

He did not believe it was necessary to encumber the entire 14 feet and asked for a reduction. To impose an easement over his driveway simply because he was getting it by vacation of an alley was treating his property differently than everyone else on his block. He asked that the 14-foot easement not be recommended.

Chairman Jirik asked if other properties have the inclusion of a vacated public right-of-way, which Mr. McCann was not aware of except for the prior vacation he mentioned earlier. Mr. McCann mentioned that a utility does already have access and to encumber his property with additional access appeared redundant or unnecessary.

Chairman Jirik asked if Mr. McCann would be amenable to a 14-foot side yard that could be buildable. Mr. Matejczyk felt that maintaining utility easements was important because no one knew the future of the area and cited circumstances that could impact his request. Asked if a recorded easement currently existed on the alley, Mr. O'Brien stated the village had no easement on the alley but the petitioner was requesting the right to own the land and the village was asking to retain the easement for access rights.

Petitioner, Mr. Bruce Martin, 445 Franklin Street, Downers Grove was amenable to the 14-foot side yard. However, he asked if there was a current easement over the alley, and would the easement be in addition to the 5 feet to the side yard or would the side yard be included, wherein Mr. Popovich clarified that the required side yard could be within the easement.

Mr. Mike Millette, from Public Works explained that rights-of-ways exist separate from easements and an alley was a right-of-way. The village's franchise agreements with the utility companies allowed their use of all village rights-of-ways. Therefore, he stated that vacated alleys retain the easement rights because the village does not know what will happen to an area in the future. The same followed for drainage purposes. Mr. Popovich added that Com Ed, Comcast, and AT&T did request to retain an easement over the parcels.

Chairman Jirik opened up the meeting to public comment.

Ms. Sheila McClone-Iseman, 445 Austin Street, supported the vacation of the alley and knew the McCanns cared for the property. She asked that they be allowed to have the property with as few encumbrances as possible.

Prior petitioner Mr. Roger Penninger, 4714 Douglas Road, was not sure if what was being done was helping or hurting him since he would like to keep no driveway on the vacated alley. Chairman Jirik explained that restrictions would exist on the site and that this petition was separate from his petition even though the recommendations were similar. It would reconcile the matter, if approved.

Chairman Jirik closed the public Comment portion.

Mr. McCann, petitioner, closed by thanking his neighbor for speaking. He clarified that he already had a driveway that existed for 40 years and he did not own it. He reiterated he would like his property encumbered as little as possible. He asked that the 14 foot recommendation be reduced, especially since there will be a right-of-way on both adjoining properties. He thanked staff's efforts.

Mr. Matejczyk strongly recommended that the utility easement be maintained on the vacated alley due to his earlier statements. Mr. Beggs did not disagree with Mr. Matejczyk if the easement was a utility easement, however, he expressed concern about creating an indefinite property right and would prefer something more specific. In addition, he stated that there was no drainage easement being indicated in the petition. Mr. Webster inquired about properties abutting each other and the size of easements for those properties, wherein Mr. O'Brien explained that public drainage and utility easements would require five feet on all side yard property lines and 20 feet on all rear property lines per the subdivision code. Details followed on how the access changed over the years. Mr. O'Brien explained that the village has always requested utility access when vacating alleys in order for maintenance purposes and as required in the current subdivision ordinance.

Mr. O'Brien could not confirm whether an easement existed on the east/west vacated alley or if they really existed at all. Further discussion followed on the village's philosophy for keeping utility easements. Mr. Matejczyk stated that if the alley was not being utilized in the future it was not hindering the property owner. However, Mr. Webster voiced his concern as it relates to property rights. Mrs. Rabatah and Mrs. Cozzo stated they supported staff's recommendation of 14 feet.

WITH RESPECT TO PC FILE NO. PC-46-06 MR. MATEJCZYK MADE A MOTION TO FORWARD A POSITIVE RECOMMENDATION TO THE VILLAGE COUNCIL FOR APPROVAL OF A RIGHT-OF-WAY VACATION FOR THE PORTION OF THE FOURTEEN (14) FOOT PUBLIC ALLEY IMMEDIATELY WEST OF AND ADJACENT TO 442 AUSTIN STREET AND 445 FRANKLIN STREET TO THE VILLAGE COUNCIL SUBJECT TO THE CONDITIONS BELOW:

- 1. THE VACATION SHALL SUBSTANTIALLY CONFORM TO THE STAFF REPORT DATED NOVEMBER 6, 2006 AND WITH THE PLAT OF SURVEYS/SITE PLANS SUBMITTED TO THE PLAN COMMISSION DATED MARCH 1, 1995 PREPARED BY RESIDENTIAL SURVEYING SERVICE P.C. FOR 501 FRANKLIN STREET, AUGUST 14, 1995 PREPARED BY HARRINGTON & ASSOCIATES, INC. FOR 4907 DOUGLAS ROAD, JULY 1, 2003 PREPARED BY TRI-COUNTY ENGINEERING, INC. FOR 442 AUSTIN STREET AND NOVEMBER 11, 2005 PREPARED BY G. POWELL & ASSOCIATES, INC. FOR 445 FRANKLIN STREET, EXCEPT SUCH PLANS MAY BE MODIFIED TO CONFORM TO VILLAGE CODES AND ORDINANCES AND THE FOLLOWING CONDITIONS:**

- a. A UTILITY AND DRAINAGE EASEMENT SHALL BE RETAINED OVER THE ENTIRE ALLEY BY THE VILLAGE OF DOWNERS GROVE AND OTHER APPLICABLE UTILITY COMPANIES FOR THE MAINTENANCE OF THE EXISTING UTILITY FACILITIES AND FUTURE UTILITY NEEDS.
 - b. THE CONSTRUCTION OF FUTURE STRUCTURES ON THE ALLEY PROPOSED TO BE VACATED SHALL BE LIMITED TO FENCES. CONSTRUCTION OF ANY NEW BUILDINGS ON THE ALLEY SHALL NOT BE PERMITTED.
2. PRIOR TO FINAL VILLAGE COUNCIL CONSIDERATION, EACH PETITIONER SHALL HAVE A PLAT OF VACATION PREPARED BY A LICENSED SURVEYOR.
3. PRIOR TO COMPLETION OF EACH PLAT OF VACATION, EACH LICENSED SURVEYOR SHALL CONTACT AND DISCUSS WITH THE DUPAGE COUNTY RECORDER AS TO HOW THE VACATED LAND SHALL BE DESCRIBED ON EACH OF THE PLATS OF VACATION.

SECONDED BY MR. QUIRK. ROLL CALL:

AYE: MR. MATEJCZYK, MR. QUIRK, MR. BEGGS, MRS. RABATAH, MR. COZZO, MR. WEBSTER, CHAIRMAN JIRIK

NAY: NONE

MOTION PASSED. VOTE: 7-0.