

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL WORKSHOP
JANUARY 27, 2008 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
ROW Vacation 4529 Fairview Avenue	Resolution ✓ Ordinance Motion Discussion Only	Tom Dabareiner, AICP Community Development Director

SYNOPSIS

An ordinance has been prepared vacating a dedicated but unimproved right-of-way adjacent to the property at 4529 Fairview Avenue.

STRATEGIC PLAN ALIGNMENT

The Goals 2013 identified *Preservation of Our Residential and Neighborhood Character*. Supporting this goal are the objectives *Tolerance of Neighborhood Private Redevelopment* and *Continuing Reinvestment in the Neighborhoods*.

FISCAL IMPACT

The payment of \$6,164.40 to the Village as compensation for the vacated right-of-way will be deposited in the General Fund.

RECOMMENDATION

Approval on the February 2, 2009 active agenda per the Plan Commission's recommendation.

BACKGROUND

The petitioner, owner of the property at 4529 Fairview Avenue, is requesting the Village vacate a 33-foot wide and 120-foot long right-of-way that runs east and west and is adjacent to the properties at 4523 and 4529 Fairview Avenue. Currently, the right-of-way is partially improved with a public sidewalk running east and west and a gravel driveway currently used for parking by the petitioner.

The owners of the property at 4523 Fairview Avenue have indicated they do not wish to purchase any part of the right-of-way. As such, the petitioner, the owner of the property at 4529 Fairview Avenue is proposing to obtain the entire right-of-way. The vacation of right-of-way will enable to petitioner to improve the existing driveway and continue to use it.

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 right-of-way should be retained. The Village of Downers Grove and the Downers Grove Sanitary District have underground utilities running east-west near the middle of the right-of-way, and Downers Grove School District 99 has requested an easement for permanent access be retained on the property for pedestrian traffic. As such, staff is recommending retaining a blanket easement over the entire right-of-way to be vacated to allow adequate service of the existing and any future utilities. The easement provisions will include a

requirement to preserve a public sidewalk on the property and allow permanent public access. Staff confirmed the blanket easement provisions require the owner to preserve and provide full maintenance of the sidewalk for public access. The owner is allowed to relocate the sidewalk within the right-of-way subject to Village review and approval. The owner will also assume full liability for the use of the public sidewalk. The vacation ordinance includes indemnification clause for the Village. The petitioner has been informed of this requirement and does not object to it.

Based on recent discussions with the Village Council, staff believes the petitioners should compensate the Village for the vacated property. The fair market value is based on the latest assessment of land adjacent to the right-of-way. The fair market value of the right-of-way to be vacated will be discounted for the 3,960 square feet of land encumbered by a utility easement. The table below summarizes the estimated value:

Property Address	Assessed Land Value	Square feet	Land Value per Square foot	ROW Land to be vacated (square feet)	ROW Land encumbered by easement (square feet)	Total adjusted estimated cost of right-of-way
4529 Fairview Avenue	\$27,720	5,930	\$4.67	3,960	3,960	\$6,164.40

The Plan Commission considered the vacation at their December 1, 2008 meeting. The commission discussed the possibility of moving the existing sidewalk to the north side of the right-of-way and whether a liability issue exists either to the owner or to the Village.

The Plan Commission recommended unanimous approval of the proposed right-of-way vacation. Staff concurs with this recommendation.

ATTACHMENTS

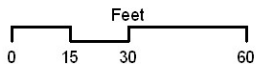
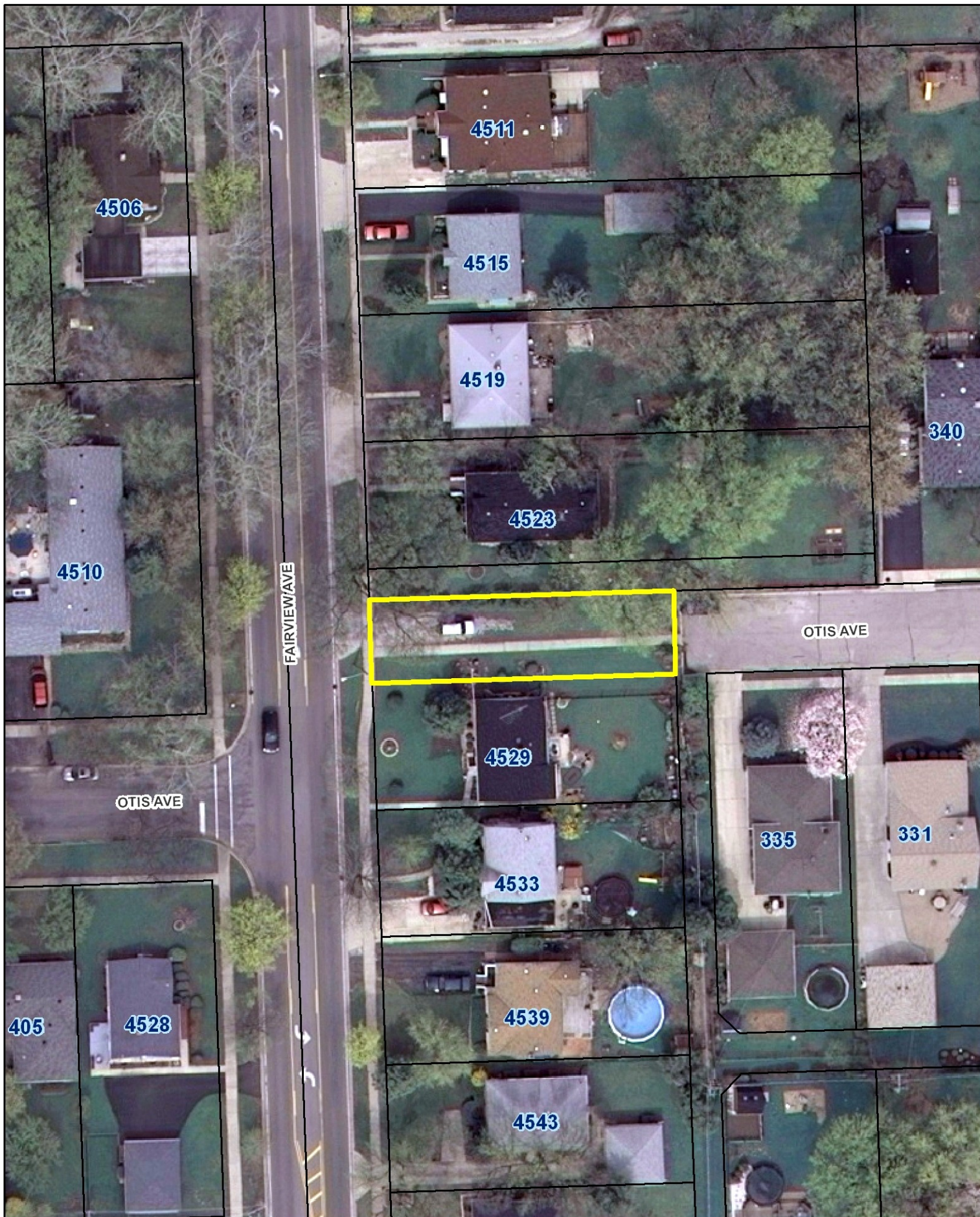
Aerial Map

Ordinance

ROW Division Map

Staff Report with attachments dated December 1, 2008

Minutes of the Plan Commission Hearing dated December 1, 2008



4529 Fairview Ave ROW Vacation

ORDINANCE NO. _____

**AN ORDINANCE VACATING A CERTAIN PORTION OF AN UNIMPROVED
RIGHT-OF-WAY ADJACENT TO 4529 FAIRVIEW AVENUE
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 33-foot wide by 120-foot long right-of-way (the unimproved right-of-way located on the east side of Fairview Avenue at the intersection of Fairview and Otis Avenues) 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 33-foot wide and 120-foot long unimproved right-of-way adjacent to and located immediately north of:

Lots 19 and 20 in Block 1 in East Grove Syndicate Subdivision, being a subdivision of part of the Southwest Quarter of Section 4, Township 38 North, Range 11 East of the Third Principal Meridian, according to the plat thereof recorded on July 9, 1890, as Document 43071, in DuPage County, Illinois

Commonly known as the unimproved right-of-way adjacent to 4529 Fairview Avenue, Downers Grove, IL 60515 (PIN 09-04-302-001)

(hereinafter referred to as the "Vacated Right-of-Way"), is hereby vacated, 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. Easements are 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, AT&T, Commonwealth Edison Company, Comcast, 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 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, public walkway and access from Fairview Avenue to Otis Avenue, and the performance of any and all municipal and other governmental services.

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

1. The vacation shall substantially conform to the staff report dated December 1, 2008 and Plat of Survey prepared by ARS Surveying Services, LLC., dated September 26, 2007.
2. Upon final Village Council consideration, the petitioner shall submit a Mylar copy of the Plat of Vacation indicating a blanket public easement over the entire right-of-way to be vacated.
3. The petitioner shall pay the Village a total of \$6,164.40.
4. Petitioner assumes all liability and shall indemnify, defend and hold harmless the Village, its officers, agents and employees, for any injury and damage to persons or property, occasioned by or arising in connection with the use or occupancy of the walkway on the vacated property. Licensee shall maintain the Property in a clean and safe condition free of any and all obstacles and shall be maintained in such a way that it does not damage or otherwise create defects or hazards.
5. The Village of Downers Grove shall be named as an additional insured on the petitioner's insurance policy covering the vacated property and the sidewalk improvement thereon.
6. Petitioner must obtain Village permits for any construction on the vacated property in accordance with Village ordinances.

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 Right-of-Way described herein.

SECTION 5. That a certified copy of this ordinance and an accurate Plat of the Vacated 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.

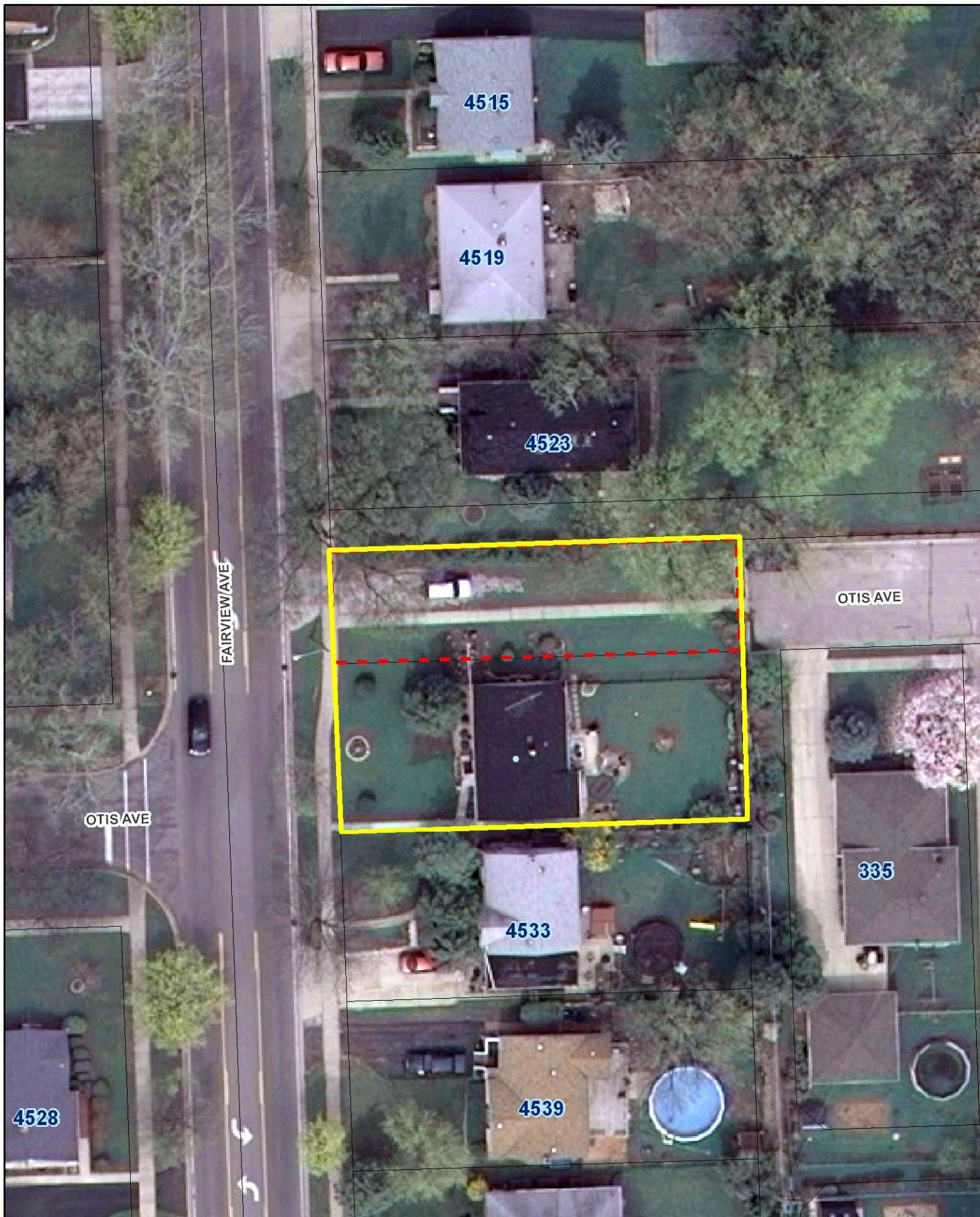
Mayor

Passed:

Published:

Attest: _____

Village Clerk



4515

4519

4523

OTIS AVE

335

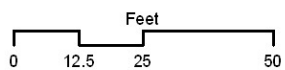
4533

4539

4528

FAIRVIEW AVE

OTIS AVE



4529 Fairview Ave ROW Division



**VILLAGE OF DOWNERS GROVE
REPORT FOR THE PLAN COMMISSION
DECEMBER 1, 2008 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
PC-28-08 4529 Fairview Avenue	Right-of-way Vacation	Damir Latinovic, AICP Planner

REQUEST

The petitioner is requesting vacation of the 33-foot wide by 120-foot long Otis Avenue right-of-way adjacent to 4529 Fairview Avenue.

NOTICE

The application has been filed in conformance with applicable procedural and public notice requirements.

GENERAL INFORMATION

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

APPLICANTS: Carlos and Meghan Ruvalcaba
4529 Fairview Avenue
Downers Grove, IL 60515

PROPERTY INFORMATION

EXISTING ZONING: R-4 Single Family Residence District (4529 Fairview Avenue)
EXISTING LAND USE: Improved right-of-way (Existing public sidewalk only)
PROPERTY SIZE: Approximately 3,960 square feet (33-foot wide public right-of-way proposed to be vacated).
PINS: 09-04-302-001 (4529 Fairview Avenue)

SURROUNDING ZONING AND LAND USES

	ZONING	FUTURE LAND USE
NORTH:	R-3 Single Family Residence District	Residential 0-6 DU/Acre
SOUTH:	R-4 Single Family Residence District	Residential 0-6 DU/Acre
EAST:	R-4 Single Family Residence District	Residential 0-6 DU/Acre
WEST:	R-4 Single Family Residence District	Residential 0-6 DU/Acre

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. Project Narrative
3. Plat of Survey

PROJECT DESCRIPTION

The petitioner, owner of the property at 4529 Fairview Avenue, is requesting the Village vacate a 33-foot wide and 120-foot long Otis Avenue right-of-way that runs east and west and is located east of Fairview Avenue adjacent to the properties at 4523 and 4529 Fairview Avenue. The right-of-way is partially improved with a gravel driveway currently used for parking by the petitioner. An existing concrete sidewalk running east and west is also located within the right-of-way. The owner of the property at 4523 Fairview Avenue has selected not to purchase any part of the right-of-way. As such, the petitioner is proposing to obtain the entire right-of-way. The vacation of right-of-way will enable the petitioner to improve the existing driveway and continue to use it.

The requested vacation is summarized in the table below:

Property Address	Requested Width	Approx. Increase in Area
4529 Fairview Avenue	33 ft.	3,960 square feet

Per the Village's Right-of-Way Vacation Policy (Resolution #2003-58), staff contacted the utility companies and outside public agencies (including the Police Department, Fire Department and Public Works Department, School Districts, Sanitary District and Downers Grove Park District) to determine if any rights to the public right-of-way should be retained. Currently the Village of Downers Grove and the Downers Grove Sanitary District have underground utilities running east-west in the middle of the right-of-way. There are no other utilities in the right-of-way. An existing public sidewalk is also located in the right-of-way.

The utility providers do not have an objection to the vacation of the right-of-way. Downers Grove Sanitary District has requested a utility easement be retained for the existing utility line running full length of the right-of-way. Downers Grove School District 99 has requested an easement for a permanent sidewalk be retained on the property for pedestrian traffic. Staff is recommending retaining a blanket easement over the entire right-of-way to be vacated to allow adequate service of the existing Downers Grove Sanitary District's and Village of Downers Grove's utilities. The easement provisions will include a requirement to preserve the existing public sidewalk and allow permanent public access. The easement will restrict any construction within the vacated right-of-way except for a driveway or fence. The petitioner has been informed of this requirement and restrictions and does not object to the easement.

COMPLIANCE WITH FUTURE LAND USE PLAN

The subject right-of-way is partially improved with a gravel driveway currently used by the petitioner for parking. According to the Future Land Use Plan, the surrounding properties are designated as Residential (0-6 DU/Acre). The petitioner is not proposing any construction at this time and wishes to continue using the property for parking purposes. The use of land will not be significantly altered as the proposed blanket easement will restrict any construction within the vacated right-of-way except for a driveway or a fence. Staff believes the proposed vacation is consistent with the designation on the Future Land Use Map to

preserve the area for residential use. The proposal is also consistent with other Village planning documents.

COMPLIANCE WITH ZONING ORDINANCE

Surrounding properties are zoned R-3 and R-4, Single Family Residence district. The addition of the 33-foot wide right-of-way to the adjacent property will increase the area of the property by 3,960 square feet and the side yard setback requirement from five feet to 8.2 feet. No new buildings or uses are proposed for the portion of the right-of-way to be vacated.

PUBLIC SAFETY REQUIREMENTS

The Fire Department and the Police Department have reviewed the petition and noted no objections to the vacation of the right-of-way.

NEIGHBORHOOD COMMENT

Staff has not received any written neighborhood comment regarding the proposal at this time.

FINDINGS OF FACT

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 and recommends vacating the entire right-of-way to the petitioner. The Village has no future plans to improve the right-of-way for vehicular traffic. The right-of-way is currently used for private parking and a pedestrian sidewalk. Staff believes the 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 required 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 a blanket utility easement over the entire area of the right-of-way. The easement provisions will include a requirement to preserve the existing sidewalk and allow permanent public access. As such, a total of 3,960 square feet of land will be encumbered by a utility easement.

Staff recommends that the petitioner provide the Village with compensation for the vacated right-of-way. Based on recent discussions with the Village Council, staff believes the petitioner should compensate the Village fair market value of the vacated property. The fair market value is based on the latest assessment of land adjacent to the right-of-way. 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. As such, the fair market value of the right-of-way land to be vacated will be discounted for the total of 3,960 square feet of land to be encumbered by a utility easement. The table below summarizes the estimated value:

Property Address	Assessed Land Value	Square feet	Land Value per Square foot	ROW Land to be vacated (square feet)	ROW Land encumbered by easement (square feet)	Total adjusted estimated cost of right-of-way
4529 Fairview Avenue	\$27,720	5,930	\$4.67	3,960	3,960	\$6,164.40

Based on the land value assessment model, the petitioner is required to pay the Village a total of \$6,164.40.

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 associated with PC 28-08 to the Village Council subject to the conditions below:

1. The vacation shall substantially conform to the staff report dated December 1, 2008 and Plat of Survey prepared by ARS Surveying Services, LLC., dated September 26, 2007.
2. Prior to final Village Council consideration, the petitioner shall submit a Mylar copy of the Plat of Vacation indicating a blanket utility easement over the entire right-of-way to be vacated.
3. Prior to final Village Council consideration, the petitioner shall pay the Village a total of \$6,164.40.

Staff Report Approved By:

Tom Dabareiner, AICP
Director of Community Development

TD:dl
-att

P:\P&CD\PROJECTS\PLAN COMMISSION\2008 PC Petition Files\PC-28-08 4529 FAIRVIEW AVE ALLEY VACATION\Staff Report PC 28-08.doc

Carlos and Meghan Ruvalcaba
4529 Fairview Ave.
Downers Grove, IL 60515
708-699-3397
caruvalcaba@hotmail.com

9/17/08

To The Village of Downers Grove,

We, Carlos and Meghan Ruvalcaba, are owners of the property at 4529 Fairview Ave. The legal description of our property is: LOTS 19 AND 20 IN BLOCK 1 IN EAST GROVE SYNDICATE SUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 38 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED ON JULY 9, 1890, AS DOCUMENT 43071, IN DUPAGE COUNTY, ILLINOIS. This letter is to formally request to the Village of Downers Grove permission for us to purchase the land directly to the north of us.

We would like to purchase the entire piece of land. Our neighbors directly to the north of the land, Jeffrey and Sara Cascio have no desire to purchase half of it. They have provided us a letter expressing their willingness for us to move on with our plans. Please see attached letter for verification. Thank you in advance for your cooperation.

Regards,

Carlos and Meghan Ruvalcaba



Carlos Ruvalcaba



Meghan Ruvalcaba

Jeffrey L. and Sara E. Cascio
4523 Fairview Ave., Downers Grove, IL 60515
(630) 963-0236

October 4, 2007

Jeff O'Brien
Village of Downers Grove
801 Burlington Ave.
Downers Grove, IL 60515

Jeff:

We have no objection to the village affording easement rights to residents of 4529 Fairview Ave., Downers Grove, of the village property adjacent to ours to the south for residential parking, provided that no structure is to be built on that piece of land that would deter access to our back yard fence gate.

Said land has been used for parking during our 9 years here and we have no objections to the continuation of it for that use.

We have no interest in purchasing the property from the village.

If you have any questions or require additional information/documentation, please feel free to contact us.

Very sincerely,

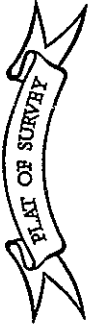
Handwritten signatures of Jeff and Sara Cascio. The signature on the left is for Jeff, and the signature on the right is for Sara. Both are written in black ink.

Jeff & Sara Cascio

ARS

SURVEYING SERVICES, LLC

1221 LAKEVIEW CT.
 ROMEVILLE, ILLINOIS 60446
 PH: (630) 226-9200 FAX: (630) 226-9234



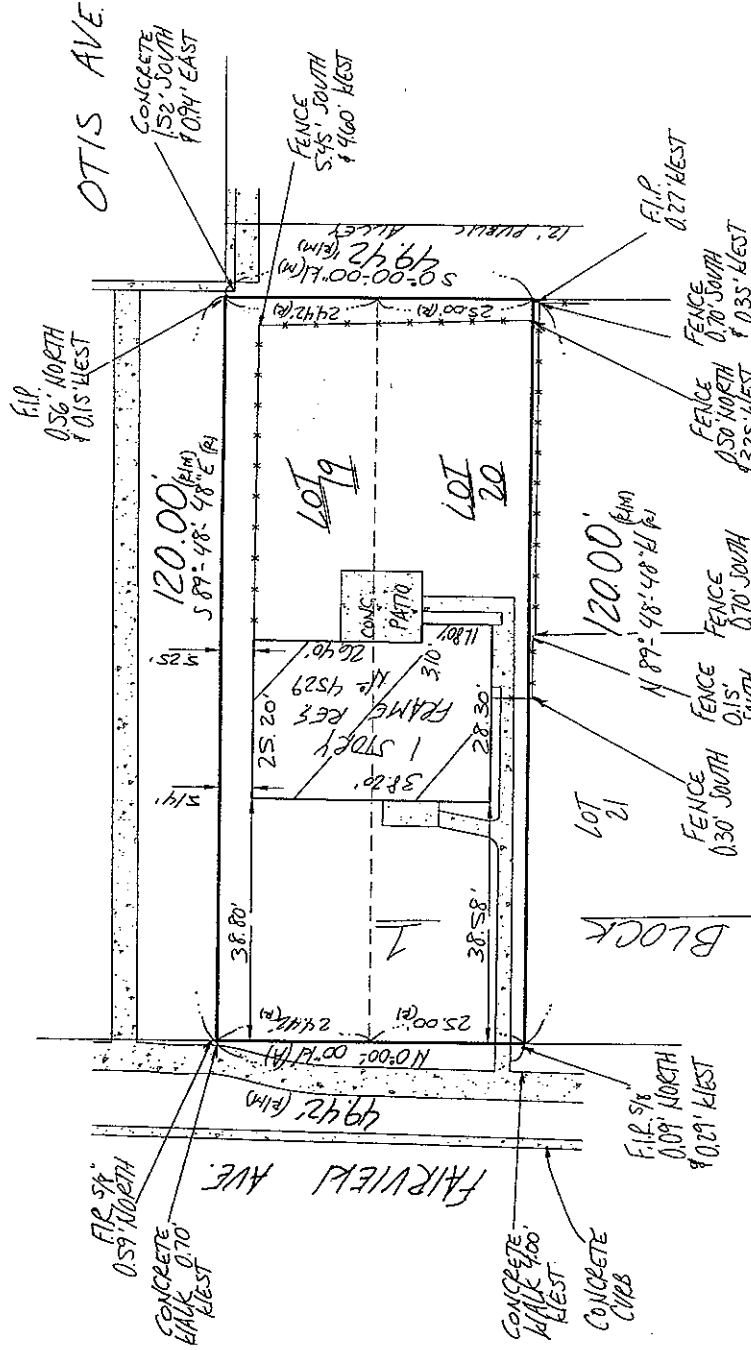
BASIS OF BEARING:
 EAST LINE OF FAIRVIEW AVENUE AS MONUMENTED AND
 OCCUPIED PER RECORDED SUBDIVISION PLAT.
 N 0°00'00" W (A)

LOTS 19 AND 20 IN BLOCK 1 IN EAST GROVE SYNDICATE SUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP
 38 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED ON JULY 9, 1890, AS DOCUMENT 43071, IN
 DUPAGE COUNTY, ILLINOIS.

AREA OF SURVEY:

CONTAINING 5.930 SQ. FT. 0.14 ACRES MORE OR LESS

SCALE: 1" = 20'



STATE OF ILLINOIS)
 COUNTY OF WILL)

I, THE UNDERSIGNED, AN ILLINOIS PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT "THIS PROFESSIONAL SERVICE CONFORMS TO THE CURRENT ILLINOIS MINIMUM STANDARDS FOR A BOUNDARY SURVEY," AND
 THAT THE PLAT HEREON DRAWN IS A CORRECT REPRESENTATION OF SAID SURVEY.

DATED, THIS 26TH DAY OF SEPTEMBER, A.D., 2007, AT ROMEDEVILLE, ILLINOIS.

Mark A. Lindstrom
 MARK A. LINDSTROM

CLIENT COTTRILL

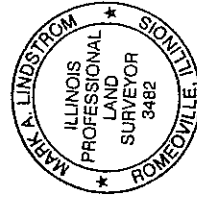
ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 035-3482

JOB NO. 92407-07

LICENSE EXPIRATION DATE NOVEMBER 30, 2008

ILLINOIS BUSINESS REGISTRATION NO. 184-2961

FIELDWORK DATE 09-26-07



9/26/2007 2:57:10 PM Mark

LEGEND

- (R) = RECORD
- (M) = MEASURED
- (D) = DEED
- (C) = CALCULATED
- (L) = ARC LENGTH
- (CH) = CHORD
- (R.O.W.) = RIGHT OF WAY
- (F.I.P.) = FOUND IRON PIPE
- (F.I.R.) = FOUND IRON ROD
- (NW) = NORTHWESTERLY
- (NE) = NORTHEASTERLY
- (SW) = SOUTHWESTERLY
- (SE) = SOUTHEASTERLY
- (RAD) = RADIUS
- (A) = ASSUMED
- (P.U. & D.E.) = PUBLIC UTILITY & DRAINAGE EASEMENT
- (B.S.L.) = BUILDING SETBACK LINE
- *-*- = CHAIN LINK FENCE
- *-o-o- = WIRE FENCE
- *-o-o- = WOOD FENCE
- o-o- = SPLIT RAIL FENCE
- o-o- = WROUGHT IRON FENCE
- o-o- = PUBLIC UTILITY & DRAINAGE EASEMENT
- o-o- = BUILDING SETBACK LINE

PC-28-08 A petition seeking a right-of-way vacation of a 33-foot wide by 120-foot long dedicated but unimproved right-of-way located on the East side of Fairview Avenue at the intersection of Fairview and Otis Avenues, adjacent to the property commonly known as 4529 Fairview Avenue, Downers Grove, IL (PIN 09-04-302-001); Carlos and Meghan Ruvalcaba, Petitioner; Village of Downers Grove, Owner

Chairman Jirik swore in those individuals who would be speaking on File PC-28-08.

Mr. Latinovic, Village Planner, discussed the petitioner/owner of the property at 4529 Fairview Avenue was requesting the Village to vacate a 33-foot wide by 120-foot right-of-way (ROW) of Otis Avenue immediately north of the petitioner's property. The ROW was partially improved with a gravel driveway with a curb cut on Fairview Avenue. A five-foot wide existing public sidewalk runs east and west along the entire length of the ROW. The owner is currently using the ROW to park his vehicles, and he would like to purchase the ROW in order to legally park his vehicles. The property owner at 4923 Fairview Avenue north of the ROW did submit correspondence to the Village stating he was not interested in purchasing the ROW.

Per Mr. Latinovic, all public utilities were contacted about the vacation. The Sanitary District has requested a utility easement be retained for an existing utility line running the length of the ROW. The Village has also a stormwater line running in the middle of the ROW. Downers Grove School District 99 has requested an easement to preserve the permanent sidewalk for pedestrian traffic.

The ROW vacation complies with the Future Land Use Plan and Land Use Map. The petitioner has expressed interest in constructing a detached garage at the rear of his property at 4929 Fairview Avenue with access through the ROW and the existing curb cut off Fairview Avenue.

The surrounding properties are zoned R3 and R4, Single Family Residence district. Should the ROW be vacated, the property at 4529 Fairview will become 82.42 feet wide, which means the side yard setback would be 8.2 feet or 10% of the lot width, which was slightly more than the five-foot setback along the south property line. The site will no longer be a corner lot.

Staff believed the proposal complies with the Village policy outlined in Resolution #2003-58 and recommends vacating the entire ROW. The Village has no plans to improve Otis Avenue for vehicular traffic. However, staff does recommend retaining a blanket easement over the entire ROW which will also include language to preserve the existing sidewalk to allow public access.

Based on discussions with Village Council, staff believes the petitioner should compensate the Village the fair market value of the vacated property, which is based on the latest assessment of land adjacent to the ROW property. The fair market value of the right-of-way land to be vacated will be discounted for the total of 3,960 square feet of land to be

encumbered by a utility easement. The cost estimated for the ROW is \$6,164.40. The petitioner does not object to that cost figure.

In closing, staff recommended that the Plan Commission make a positive recommendation for the right-of-way vacation subject to staff's three conditions.

Commissioner questions followed. Mr. Beggs asked for clarification of the next case and whether this case was in conflict with it. With regard to maintaining a utility easement on the right-of-way, Mr. Beggs asked for a list of utility companies needed to be included in a motion should he make one. Staff explained the easement provisions over the ROW will include access to all current and future utility companies, and if Mr. Beggs were to make a positive recommendation, the request of the three utility companies is reflected in the easement to be retained including the public access and sidewalk.

Questions followed as to what accessories could be placed on the ROW and who maintains a typical public sidewalk, to which Mr. O'Brien stated the adjacent property owners would. Concern was raised that the public sidewalk would be on private property and whether a liability issue existed either to the owner or to the Village. Mr. O'Brien confirmed with Mr. Millette that indemnification clauses would be created for the Village and property owner.

Chairman Jirik also referenced a June 17, 1992 memo written by Dan Blondin that addresses liability issues related to vacation of public right-of-ways.

As to language in the condition "preserving the existing sidewalk", the Chairman asked if the text could be revised to incorporate "that a sidewalk access is provided" just in case work had to be done, and the location of the existing sidewalk had to be changed. The Village Engineer confirmed the language in the staff's condition will allow the sidewalk to be relocated but it has to be preserved. When asked if the proposal would allow installing driveway access from Fairview to Otis or accessing the property from Otis Avenue, Mr. O'Brien stated it would not prevent access to Otis. However, any proposal of installing a full through street access would have to be reviewed by staff. Given that there is an existing alley, Mr. O'Brien stated it could be improved, then access could be gained from existing Otis Avenue.

Mr. Carlos Ruvalcaba, Petitioner, 4529 Fairview Avenue, stated Staff Report was well presented and he agrees with everything. He was available to answer questions. He stated he was parking on the parcel currently but wanted ownership of the parcel. Mr. Quirk voiced his concerns about the sidewalk being used very much. He suggested moving the sidewalk further to the north to which Mr. Ruvalcaba indicated he would move it when he was closer to construction of the garage on his lot. If the concern was the driveway location relative to the sidewalk, Mr. O'Brien explained the Commissioners could attach a condition to the recommendation that the driveway never cross the sidewalk.

Chairman Jirik pointed out that most private driveways cross public sidewalks.

Chairman Jirik opened up the meeting to Public Participation. No comments were received. Public Participation was closed.

When asked if the Commission needed to specifically state the comments about School District 99, Chairman Jirik clarified the blanket utility easement language will include that and as long as a sidewalk was provided, there is flexibility for its location.

WITH RESPECT TO FILE PC-28-08, MR. COZZO MADE A MOTION THAT THE PLAN COMMISSION MAKE A POSITIVE RECOMMENDATION TO THE VILLAGE COUNCIL APPROVING THE RIGHT-OF-WAY VACATION, SUBJECT TO THE FOLLOWING CONDITIONS:

- 1. THE VACATION SHALL SUBSTANTIALLY CONFORM TO THE STAFF REPORT DATED DECEMBER 1, 2008 AND PLAT OF SURVEY PREPARED BY ARS SURVEYING SERVICES, LLC., DATED SEPTEMBER 26, 2007;**
- 2. PRIOR TO FINAL VILLAGE COUNCIL CONSIDERATION, THE PETITIONER SHALL SUBMIT A MYLAR COPY OF THE PLAT OF VACATION INDICATING A BLANKET UTILITY EASEMENT OVER THE ENTIRE RIGHT-OF-WAY TO BE VACATED; AND**
- 3. PRIOR TO FINAL VILLAGE COUNCIL CONSIDERATION, THE PETITIONER SHALL PAY THE VILLAGE A TOTAL OF \$6,164.40.**

SECONDED BY MR. QUIRK.

ROLL CALL:

AYE: MR. COZZO, MR. QUIRK, MR. BEGGS, MR. WEBSTER, CHAIRMAN JIRIK

NAY: NONE

MOTION CARRIED. VOTE: 5-0