

**VILLAGE OF DOWNERS GROVE  
REPORT FOR THE VILLAGE COUNCIL MEETING  
FEBRUARY 3, 2009 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.

**UPDATE & RECOMMENDATION**

This item was discussed at the January 27, 2009 workshop. Staff recommends approval on the February 3, 2009 active agenda.

**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:

<b>Property Address</b>	<b>Assessed Land Value</b>	<b>Square feet</b>	<b>Land Value per Square foot</b>	<b>ROW Land to be vacated (square feet)</b>	<b>ROW Land encumbered by easement (square feet)</b>	<b>Total adjusted estimated cost of right-of-way</b>
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.

**ATTACHMENT**  
Ordinance

**VILLAGE OF DOWNERS GROVE**  
**COUNCIL ACTION SUMMARY**

**INITIATED:** Applicant **DATE:** February 3, 2009  
(Name)

**RECOMMENDATION FROM:** Plan Commission **FILE REF:** PC-28-08  
(Board or Department)

**NATURE OF ACTION:**

**STEPS NEEDED TO IMPLEMENT ACTION:**

- Ordinance
- Resolution
- Motion
- Other

Motion to Adopt "AN ORDINANCE VACATING A CERTAIN PORTION OF AN UNIMPROVED RIGHT-OF-WAY ADJACENT TO 4529 FAIRVIEW AVENUE IN THE VILLAGE OF DOWNERS GROVE", as presented.

**SUMMARY OF ITEM:**

Adoption of the attached ordinance will vacate a 33-foot wide by 120-foot wide unimproved right-of-way located on the east side of Fairview Avenue at the intersection of Fairview and Otis Avenues and adjacent to 4529 Fairview Avenue.

**RECORD OF ACTION TAKEN:**

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**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.

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Mayor

Passed:

Published:

Attest: \_\_\_\_\_

Village Clerk

