

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
NOVEMBER 1, 2011 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
Grant of Non-exclusive Utility Easements at 5132 and 5136 Cumnor Road	✓ Resolution Ordinance Motion Discussion Only	Nan Newlon, P.E. Director of Public Works

SYNOPSIS

A resolution has been prepared to grant non-exclusive utility easements to Commonwealth Edison Company and Illinois Bell Telephone Company (dba SBC Ameritech Illinois) for access to utilities related to the 2nd and Cumnor stormwater project (SW-035).

STRATEGIC PLAN ALIGNMENT

The goals for 2011 to 2018 include *Top Quality Infrastructure*.

FISCAL IMPACT

NA

RECOMMENDATION

Approval on the November 1, 2011 consent agenda.

BACKGROUND

This project was identified as a high priority in the Village's Watershed Infrastructure Improvement Plan. The completed project will provide much needed stormwater storage for the area, which will alleviate significant structure flooding and reduce the amount of flooding at the intersection of 2nd Street and Cumnor Road.

This project included the purchase and demolition of five existing homes which were acquired by the Village through voluntary buyouts. A portion of Cumnor Road is being removed between 2nd Street and 3rd Street for the excavation and creation of a wetland bottom detention basin with native vegetation as well as a pedestrian path that will connect Cumnor Road to 2nd Street.

Relocation of the existing utility lines within the project limits was required for construction and future maintenance of the detention basin. Staff recommends granting easements to Commonwealth Edison Company, Illinois Bell Telephone Company dba SBC Ameritech Illinois for access to utilities.

ATTACHMENTS

Easement 5132 Cumnor Document
Easement 5136 Cumnor Document

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING A GRANT OF EASEMENT AND INDEMNIFICATION AGREEMENT FOR 5132 CUMNOR ROAD

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Easement and Indemnification Agreement (the “Easement”), between the Village of Downers Grove (the “Grantor”) and Commonwealth Edison Company (the “Grantee”), for non-exclusive utility easements, for the property located at 5132 Cumnor Road, as set forth in the form of the Easement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Easement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Easement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____

Village Clerk

**EASEMENT AND
INDEMNIFICATION
AGREEMENT TO
Commonwealth Edison
Company and Illinois
Bell Telephone Company
dba SBC Ameritech Illinois
FOR ACCESS, UTILITY
PURPOSES**

PINs: 09-09-309-023
09-09-309-022

Address: 5132 Cumnor Rd.
Downers Grove, IL
60515

This space is reserved for recording purposes.

The undersigned GRANTOR, VILLAGE OF DOWNERS GROVE (the "VILLAGE"), an Illinois municipal corporation, in the County of DuPage and State of Illinois, its successors and assigns, for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, grants, warrants and conveys to the GRANTEES, COMMONWEALTH EDISON COMPANY, an Illinois corporation, and ILLINOIS BELL TELEPHONE COMPANY doing business as SBC AMERITECH ILLINOIS, an Illinois corporation and utility company, and their respective successors and assigns (hereinafter referred to as "GRANTEES"), a perpetual non-exclusive easement and privilege on, over, across, under, in and through certain property legally described and shown on **Exhibit A** attached hereto and made a part hereof (the "EASEMENT PREMISES"), for the purposes of constructing, reconstructing, operating, supplementing, repairing, maintaining, modifying, replacing, relocating, or removing utility systems, consisting of anchors, guys, wires, cables, buried cables, conduits,

terminals, manholes, transformers, pedestals, poles, equipment cabinets, and other related fixtures and appurtenances used in connection with overhead and underground transmission and distribution of electricity, communication, sounds and signals, that the GRANTEES may from time to time require or deem appropriate for the purpose of providing utility services, including the right to ingress and egress for the purpose of this grant and the right to clear and keep cleared such trees, roots, bushes and other obstructions from the Easement Premises:

Nothing contained herein shall restrict the VILLAGE or any other governmental authorities having jurisdiction of the land access to the Easement Premises for ingress, egress and the performance of any and all municipal and other governmental services; provided, however, in no event shall any obstruction be placed over any of GRANTEES' facilities within the Easement Premises and in no event shall the grade of the property be altered in a manner so as to interfere with the operation or maintenance of any facilities installed by GRANTEES. GRANTEES agree to restore all property disturbed by their activities in use of the easement to the condition existing prior to the disturbance.

Notwithstanding anything to the contrary herein, it is understood that the GRANTOR hereby reserves the right to utilize the Easement Premises so long as it meets zoning requirements and does not interfere with the easement rights granted hereunder or the GRANTEES' facilities or their operations.

This easement and all the terms, conditions, rights and obligations contained herein shall run with the land and the covenants and agreements herein contained shall be binding upon the parties hereto, their respective grantees, lessees, successors, assigns and all subsequent owners of the fee title to the Easement Premises.

Any mortgage, deed of trust, or ground lease granted or entered into with respect to the real estate of which the Easement Premises is a part from and after the date of this grant of easement shall be subordinate and inferior to the easements, rights, benefits and obligations created hereby, and the foreclosure under any such mortgage or deed of trust shall not extinguish or impair the easements, right, benefits, and obligations created by this grant of easement.

GRANTEES, individually, and each GRANTEES' heirs, successors, and assigns shall indemnify, defend, and hold harmless the VILLAGE, its elected officials, officers and employees, for any injury and damage to persons or property occasioned by or arising in connection with the utility systems located within the Easement Premises.

GENERAL TERMS

1. The VILLAGE, its officers, agents or employees, including any other public utility that is authorized to use the public right-of-way, shall not be liable for any damage incurred to the easement during or as a result of any repair, maintenance, operation, use or installation of equipment or facilities within the VILLAGE right-of-way, including but not limited to tree removal. Except for emergency repairs affecting the health and safety of the public, the VILLAGE shall provide GRANTEES with not less than thirty (30) days advance notice of any work (including routine maintenance) so that GRANTEES may take such protective actions as GRANTEES deem necessary to ensure the safety and reliability of GRANTEES' facilities in the area of the VILLAGE's proposed work. GRANTEES shall give written notice to the VILLAGE within fourteen (14) days of receiving the above advance notice of work advising the VILLAGE of whether GRANTEES will be performing any protective work

on or about the Easement Premises. In no event shall the VILLAGE have any liability to GRANTEES if GRANTEES fail to notify the VILLAGE within the foregoing fourteen (14) day period that any protective work will be undertaken by GRANTEES. Nothing herein shall relieve the VILLAGE or any other person from the obligation to comply with the Illinois Underground Utilities Facilities Damage Prevention Act, 220 ILCS 50/1 et seq.

2. The persons executing this Easement and Agreement for and on behalf of the respective parties represent and warrant that they have the full power and authority to execute this document and to bind the respective parties to all the terms conditions and covenants contained herein and that their authority has been granted and approved by the appropriate authority.

3. In case one or more of the provisions contained in this Easement and Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

4. This Document shall be recorded by the VILLAGE with the DuPage County Recorder of Deeds, at the GRANTEES' expense.

5. Illinois law shall govern this Easement and Agreement in its performance and interpretation. Venue shall be the County of DuPage.

IN WITNESS THEREOF, the parties hereto have executed this Easement on the date herein written below.

October 4th, 2011
Date

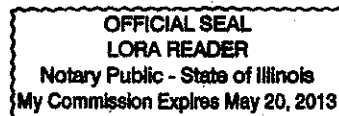
**GRANTEE:
COMMONWEALTH EDISON COMPANY**

By: Timothy Hyles
Its: Director of Real Estate & Facilities



Subscribed and sworn to this 4th day of October, 2011

Lora Reader
Notary Public



**GRANTEE:
ILLINOIS BELL TELEPHONE COMPANY DBA SBC AMERITECH ILLINOIS**

Sylvia Jamies
Right of Way - Manager

Subscribed and sworn to this 15th day of September, 2011

Adele G. Herrera
Notary Public



**GRANTOR:
VILLAGE OF DOWNERS GROVE**

David Fieldman, Village Manager

Attest: _____
Village Clerk

Prepared by:
Village of Downers Grove Legal Department
801 Burlington Ave.
Downers Grove, IL 60515
630-434-5504

Return to:
Village Clerk
Village of Downers Grove
801 Burlington Ave.
Downers Grove, IL 60515

EXHIBIT A

A 10 FOOT EASEMENT ALONG THE NORTH PROPERTY LINE OF LOT 3 AND A 10 FOOT EASEMENT ALONG THE WEST PROPERTY LINE OF LOTS 3 AND 4 OF THE GRANTOR'S PROPERTY LEGALLY DESCRIBED AS:

LOTS 3 AND 4 IN BLOCK 4 IN VICTOR FREDENHAGEN JR'S RESUBDIVISION OF BLCOKS 2 TO 16 INCLUSIVE IN VICTOR FREDENHAGEN JR'S SUBDIVISION AT EAST GROVE, BEING A SUBDIVISION IN THE WEST ½ OF SECTION 9, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID RESUBDIVISION RECORDED SEPTEMBER 8, 1886 AS DOCUMENT 36375, IN DUPAGE COUNTY, ILLINOIS, SITUATED IN THE COUTY OF DUPAGE AND STATE OF ILLINOIS.

PINs: 09-09-309-022 and 09-09-309-023

Property Address: 5132 Cumnor Rd., Downers Grove, IL 60515