

COUNCIL WORKSHOP ITEM

ITEM: A Resolution Establishing a Procedure to be Followed in the Vacation of Streets, Alleys and Public Rights-of-Way
DATE: June 11, 2003
PREPARED BY: Enza Petrarca, Village Attorney
PURPOSE: To Establish a Procedure to be Followed in the Vacation of Streets, Alleys and Public Rights-of-Ways

DISCUSSION:

As you know, on February 4, 2003, the Village Council adopted a resolution imposing a moratorium on the vacation of streets, alleys and public rights-of-way. The Council asked staff to review and update the current policy. Specifically, the Council requested that staff explore the topic of compensation to be paid to the Village for the vacation of public property. After reviewing the policy it was determined that the policy was outdated, and that it did not accurately reflect the actual procedures in place. Therefore, staff revised the entire policy to clarify and outline the procedures that must be followed. The policy describes what items need to be included in a petition for the vacation of public property. The policy also sets forth the requirements that need to be included in the staff report submitted to the Plan Commission. The new policy adds a provision that the petition be submitted to the Village Traffic Engineer in order to determine the potential future need for the parcel, the potential increased traffic associated with the vacation, and an estimate of the future costs to the Village associated with the vacation. The Traffic Engineer's recommendation is to be included in the staff report. Once the staff report is completed, it will be forwarded to the Plan Commission, along with the petition, for consideration.

After the Plan Commission conducts a public hearing regarding the vacation, but prior to the petition being considered by the Village Council, the petitioner will be required to submit an appraisal by a certified appraiser or a reasonable assessment of the current market value of the parcel. If the Village disputes the initial appraisal submitted, it does have the option to obtain a second appraisal at its expense. If there happens to be a discrepancy between the first two appraisals, the petitioner will have the option of getting a third appraisal. Once the appraisal is received, the Council shall consider the petition. The Council shall determine whether the public interest will be served by such vacation, whether any easements shall be retained, and the amount of compensation, if any, to be required as a condition of the vacation.

ATTACHMENT:

A Resolution Establishing a Procedure to be followed in the Vacation of Streets, Alleys and Public Rights-of-Way

RECOMMENDATION:

Place on June 24, 2003 Workshop Agenda

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VILLAGE COUNCIL POLICY

VILLAGE OF DOWNERS GROVE, ILLINOIS

SUBJECT: Procedure to be Followed in the Vacation of Streets, Alleys and Public Rights-of-Way

ISSUED BY: Village Council Date: _____

THIS IS: _____ New Policy
X Supersedes Previous Policies Dated 10/21/91, 6/24/74, 8/11/80, 7/6/93, 4/5/99 Relating to Vacation of Streets or Alleys or Portions Thereof

RESOLUTION _____

**RESOLUTION ESTABLISHING A PROCEDURE
TO BE FOLLOWED IN THE VACATION OF
STREETS, ALLEYS AND PUBLIC RIGHTS-OF-WAYS
IN THE VILLAGE OF DOWNERS GROVE, ILLINOIS**

WHEREAS, pursuant to applicable law, the Village Council of the Village of Downers Grove has the power and authority to vacate streets, alleys and public rights-of-way within the jurisdiction of the Village; and

WHEREAS, the Council of the Village of Downers Grove has determined that it is in the best interests of the Village to establish a procedure to be followed in determining whether a particular street, alley or right-of-way should be vacated, the method by which such vacation should be accomplished, and the compensation, if any, to be paid with respect thereto,

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

1. That the following procedure shall, in all events, be followed in processing, considering and acting upon requests for the vacation of streets, alleys and public rights-of-way located within the corporate limits of the Village of Downers Grove:
 - a. The person or persons desiring the vacation of a particular street, alley or public right-of-way (the "Petitioner"), shall file with the Village a written petition on a prescribed form requesting such vacation, which petition shall contain the following information:

- (i) name and address of the Petitioner;

- (ii) the location, and if possible, the legal description of the street, alley or public right-of-way to be vacated (the "Parcel");
 - (iii) names and addresses of all owners of record of property abutting upon the Parcel, and a statement as to the frontage in terms of lineal feet of each parcel of property so abutting the Parcel;
 - (iv) a statement as to the type of any known public service facilities over, under or upon the Parcel, and the name of the public utility owning the same.
 - (v) the written consent of at least two property owners who abut the proposed parcel to be vacated.
 - (vi) a fee of three hundred dollars (\$300.00) shall be paid to the Village, provided that no such fee shall be required if the Petitioner is a public body. This fee shall be used to pay for Staff processing of the petition, hearing notice publication and plat recordation costs. This fee does not include the cost of the plat preparation or the appraisal(s) of the fair market value of the Parcel (as outlined in section 1(g)).
- b. Staff shall cause written notice of the proposed vacation of the Parcel to be mailed to all public utilities with a request that such utilities inform the Village of any easements over, under, or upon the Parcel which must be retained at the time of vacation, and to units of local government having an interest in the Parcel. Failure of any such owner of record or public utility to receive such notice shall not invalidate, impair or otherwise affect the validity of any vacation that may thereafter occur.
- c. Staff shall evaluate the request and prepare a staff report, taking into consideration the nature of the request, including known public interests, if any, served by the Parcel. In doing so, Staff shall verify the information contained in the petition in order to assure that all required owners of property abutting the Parcel are named and that all existing public service facilities have been disclosed, if any, to the Village to affect such vacation. The following informational items shall be included in the staff report:
- (i) A map showing the location of the proposed street, alley or public right-of-way to be vacated.
 - (ii) Information as to current and future use of the street, alley or public right-of-way including:
 - (a) watermains
 - (b) storm sewers or storm drainage conveyance or storage facilities
 - (c) sanitary sewers

- (d) electric utilities
 - (e) natural gas utilities
 - (f) telephone utilities
 - (g) vehicular access, public or private
 - (h) pedestrian access, public or private
 - (i) public open space
- (iii) A recommendation with regard to retention of easements, if any, within the Parcel for the benefit of public utilities, potential use of the parcel for public walkways or bike trails and access of adjacent property owners.
- (iv) A recommendation regarding the vesting of title to the property upon vacation of the street, alley or public right-of-way. The instrument dedicating the street, alley or public right-of-way must be examined to determine if the specific devolution of the title upon vacation thereof is provided for in the document. If no specific devolution of title is provided for, then a recommendation regarding the vesting rights of the abutting property owners must be made. The Village, in its discretion, may grant title to the entire vacated street, alley or public right-of-way to only one abutting property owner.
- d. Staff shall forward the petition to the Village Traffic Engineer who shall be responsible for reviewing the request to determine the potential future need for the Parcel, the potential for increased traffic associated with the vacation of the Parcel, and an estimate of future costs to the Village associated with the vacation. This information shall be incorporated into the staff report.
- e. Upon completion of the staff report, the staff report and the petition shall be referred to the Plan Commission for public hearing. Notice of the time and place of such hearing shall be given not more than thirty (30) nor less than fifteen (15) days before the date thereof, by publishing such notice at least once in one or more newspapers of general circulation within the Village. In addition, copies of such notice shall be sent by the Village to the owners of record of property abutting the Parcel.
- f. The Plan Commission shall forward its recommendation regarding vacation of the Parcel to the Village Council for its consideration.
- g. Prior to the petition being considered by the Village Council, the Petitioner must submit an appraisal conducted by a certified appraiser. The Village, in its sole discretion, may consider an alternate assessment of the current market value of the Parcel in lieu of an appraisal.

4. That this resolution shall be in full force and effect from and after its passage and approval as provided by law.

Brian J. Krajewski, Mayor

Passed: _____, 2003
Attest: April Holden, Village Clerk

VILLAGE POLICY-PROCEDURE STATEMENT

VILLAGE OF DOWNERS GROVE, ILLINOIS

SUBJECT: Procedure to be Followed in the Vacation of Streets or Alleys or Portions Thereof

ISSUED BY: Village Council Date: April 5, 1999

CHECK ONE: Official Village Council Policy Approved by Council

THESE ARE: New Policy or Procedure

Amends or Supersedes Previous Policies Dated 10/21/91, 7/24/74, 8/11/80, 7/6/93 Relating to Vacation of Streets or Alleys or Portions Thereof

RESOLUTION 99-22

**RESOLUTION ESTABLISHING A PROCEDURE
TO BE FOLLOWED IN THE VACATION OF
STREETS OR ALLEYS OR PORTIONS THEREOF
IN THE VILLAGE OF DOWNERS GROVE, ILLINOIS**

WHEREAS, pursuant to applicable law, the Village Council of the Village of Downers Grove has the power and authority to vacate streets and alleys or portions thereof within the jurisdiction of the Village; and

WHEREAS, the Council of the Village of Downers Grove has determined that it is in the best interests of the Village to establish a procedure to be followed in determining whether a particular street or alley or portion thereof should be vacated, the method by which such vacation should be accomplished, and the compensation, if any, to be paid with respect thereto,

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

1. That the following procedure shall, in all events, be followed in processing, considering and acting upon requests for the vacation of streets and alleys or portions thereof located within the corporate limits of the Village of Downers Grove:

- a. The person or persons desiring the vacation of a particular street or alley or portion thereof (the "Petitioner"), shall file with the Community Development office a written petition on a prescribed form requesting such vacation, which petition shall contain the following information:
 - (i) name and address of the Petitioner;
 - (ii) the location, and if possible, the legal description of the street or alley or portion

thereof to be vacated (the "Parcel");

- (iii) names and addresses of all owners of record of property abutting upon the Parcel, and a statement as to the frontage in terms of lineal feet of each parcel of property so abutting the Parcel;
 - (iv) if there are any public service facilities over, under or upon the Parcel that are known to the Petitioner, a statement as to the type of such facility and the public utility owning same.
 - (v) a fee of two hundred dollars (\$200.00) shall be paid to the Village, provided that no such fee shall be required if the Petitioner is a public body. This fee shall be used to pay for Staff processing of the petition, ordinance publication and plat recordation costs.
 - (vi) signature of at least two property owners who abut the proposed parcel to be vacated.
- b. The staff of the Village shall verify the information contained in the petition in order to assure that all required owners of property abutting on the Parcel are named and that all existing public service facilities have been disclosed, , if any, to the Village to effect such vacation. The Village Manager shall cause the vacation request to proceed forward only if the above information is provided and the application is signed by at least two adjacent property owners who abut the proposed parcel to be vacated.
- c. Before further action is taken, the Village Manager shall notify the Village Council in writing in order to ascertain if the Council has objections to the requested vacation. In doing so, the Village Manager will provide information to the Village Council as to the nature of the request, including known public interests, if any, served by the parcel and whether, in the opinion of Staff, the vacation request should be referred by the Village Council to the Plan Commission for a public hearing. In presenting information to the Village Council on any proposed street or alley vacation the Village Manager shall notify other units of local government, if any, such as school districts, park districts and the DuPage County Forest Preserve District, and cause the following informational items to be included in a staff report:
- (i) A map showing the location of the proposed street or alley to be vacated.
 - (ii) Information as to current use of the street or alley right-of-way including:
 - (a) watermains
 - (b) storm sewers or storm drainage conveyance or storage facilities
 - (c) sanitary sewers
 - (d) electric utilities
 - (e) natural gas utilities
 - (f) telephone utilities
 - (g) vehicular access, public or private
 - (h) pedestrian access, public or private

- (i) public open space
- (iii) Information as to future use of the street or alley right-of-way including:
 - (a) watermains
 - (b) storm sewers or storm drainage conveyance or storage facilities
 - (c) sanitary sewers
 - (d) electric utilities
 - (e) natural gas utilities
 - (f) telephone utilities
 - (g) vehicular access, public or private
 - (h) pedestrian access, public or private
 - (i) public open space
- (iv) A recommendation with regard to retention of easements, if any, within the Parcel for the benefit of public utilities, potential use of the parcel for public walkways or bike trails and access of adjacent property owners.
- (v) A recommendation regarding the vesting of title to the property upon vacation of the street or alley. The instrument dedicating the street or alley must be examined to determine if the specific devolution of the title upon vacation thereof is provided for in the document. If no specific devolution of title is provided for, then a recommendation regarding the vesting rights of the abutting property owners must be made. The village, in its discretion, may grant title to the entire vacated street or alley to only one abutting property owner.
- d. Absent any objections by the Village Council to Section 1c. above, the petition may be referred by the Village Manager to the Plan Commission for public hearing. Notice of the time and place of such hearing shall be given not more than thirty (30) nor less than fifteen (15) days before the date thereof, by publishing such notice at least once in one or more newspapers of general circulation within the Village. In addition, copies of such notice shall be sent by the Village to the owners of record of property abutting on the Parcel. Prior to such public hearings written notice of the proposed vacation of the Parcel shall be mailed to all public utilities with a request that such utilities inform the Village of any easements over, under, or upon the Parcel which must be retained at the time of vacation. Failure of any such owner of record or public utility to receive such notice shall not invalidate, impair or otherwise affect the validity of any vacation that may thereafter occur.
- e. The Village Manager shall make a recommendation to the Plan Commission as to the vacation of the parcel or portion thereof including the retention of easements, if any, within the Parcel for the benefit of public utilities, potential use of the parcel for public walkways or bike trails and access of adjacent property owners.
- f. The Plan Commission shall forward its recommendation regarding vacation of the Parcel to the Village Council for its consideration.
- g. The Village Council shall determine:

- (1) Whether the Parcel or portion thereof, is no longer necessary for public use and whether the public interest will be served by such vacation request.
 - (2) Whether the Parcel or portion thereof, should be vacated and whether public utility easements and any ingress-egress easements are to be maintained.
- h. The Petitioner shall be notified of the decision of the Village Council, and of any conditions placed on the vacation. If the Petitioner desires to proceed with such vacation, the Petitioner shall provide a plat of vacation with reservation of required easements, if any, in a form as prescribed by the Village.
 - i. After a statement by the Village Manager that the plat has been prepared and submitted, the Village Council shall consider the ordinance. If the Village Council determines to adopt such ordinance, it shall do so by a 3/4 vote of its members.
 - j. Upon passage of the ordinance, the Village Clerk shall record the ordinance and the plat in the Office of the Recorder of Deeds of DuPage County and file such documents with the DuPage County Clerk. Copies of the recorded documents shall be sent by the Village Clerk to the office of the assessor for the township in which the Parcel is located and notice of the effectiveness of the vacation shall be sent to the owners of record of the property abutting the Parcel.
2. The validity of any vacation otherwise carried out in accordance with applicable law shall not be invalidated, impaired or otherwise affected by noncompliance with any part of the procedure set forth herein.
 3. That Resolutions 74-34, 80-45, 91-43, and all other resolutions or parts of resolutions in conflict with the provisions of this resolution are hereby repealed.
 4. That this resolution shall be in full force and effect from and after its passage and approval as provided by law.

Betty M. Cheever, Mayor

Passed: April 5, 1999
Attest: April Holden, Village Clerk

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