

ADDRESS:

Right-of-Way along Naperville-Wheaton Road [part of]
East of PIN 08-08-12-005
Naperville, IL 60563

PREPARED BY:

City of Naperville
Legal Department
630/420-4170

ORDINANCE NO. 17 - _____

**AN ORDINANCE VACATING A PORTION OF
RIGHT-OF-WAY ON NAPERVILLE-WHEATON ROAD**

WHEREAS, the City owns a fifty-foot (50') wide by approximately five hundred and fifty-eight-foot (558') long strip of real property (hereinafter "City Right-of-Way") along Naperville-Wheaton Road to the east of 1210 E. Ogden Avenue, Naperville, IL; and

WHEREAS, the City Right-of-Way was conveyed to the City on April 15, 1963 by the owner of 1210 E. Ogden Avenue at no charge to the City at a time when the City planned to undertake expansion of Naperville-Wheaton Road; and

WHEREAS, the anticipated expansion of Naperville-Wheaton Road did not occur; and

WHEREAS, the City recognizes an ongoing and vital need to promote and encourage the Ogden Avenue Corridor Enhancement Initiative which was adopted in 2008, and to that end implemented the Ogden Avenue Site Improvement Grant Program to incentivize owners on the Ogden Avenue Corridor to undertake improvements which support said Initiative; and

WHEREAS, Naper-Olds Associates, L.P. (hereinafter "Petitioner") is the current owner of the property located at 1210 E. Ogden Avenue, Naperville, IL which property is legally described and depicted on Exhibit A ("Naper-Olds Property"); and

WHEREAS, Petitioner has requested that the City of Naperville vacate a portion of the City Right-of-Way as depicted and legally described on the plat of vacation (“Plat of Vacation”) attached hereto and made part hereof as Exhibit B (hereinafter “Subject Right-of-Way”), and for title thereto to vest in the Petitioner; and

WHEREAS, Petitioner has agreed to make significant improvements to the Naper-Olds Property (hereinafter “Improvements”) as described on Exhibit C attached hereto and made part hereof, including but not limited to streetscape and landscaping improvements, which align with the goals of the Ogden Avenue Corridor Enhancement Initiative; and

WHEREAS, instead of applying for City grant money under the Ogden Avenue Site Improvement Grant Program, Petitioner has requested that title to the vacated Subject Right-of-Way vest in Petitioner subject to the terms and conditions set forth herein; and

WHEREAS, the City has determined that it has no further use or need of the Subject Right-of-Way, and that the public interest will be served by its vacation as provided herein; and

WHEREAS, vacation of the Subject Right-of-Way and conveyance of the same to Petitioner will return said property to the tax rolls, relieve the City of all responsibility for its maintenance, repair, and reconstruction, and relieve the City of liability associated with said Subject Right-of-Way; and

WHEREAS, it is the judgment of the Mayor and City Council that the benefits which will accrue to the City as described herein represent sufficient consideration for vacation of the Subject Right-of-Way as provided herein; and

WHEREAS, the Plat of Vacation for the Subject Right-of-Way shall not be recorded until Petitioner has completed the Improvements in conformity with the approved plans for said

Improvements, and until the Improvements have been inspected and approved by the City's Director of Transportation, Engineering, and Development; and

WHEREAS, Petitioner shall have until July 19, 2018 to submit a written notification ("Notification") to the City's Director of Transportation, Engineering, and Development that it desires to have the Plat of Vacation recorded and proceed with the vacation. Upon receipt of said Notification and confirmation of completion of the Improvements as provided herein, the City shall cause the Vacation Ordinance to be recorded and title to the Subject Property shall vest in Petitioner. If the City has not received Notification of Petitioner's desire to proceed with the Vacation on or before July 19, 2018, or if the Improvements have not been completed and approved by that date, this Ordinance vacating a portion of the right-of-way on Naperville-Wheaton Road shall automatically be null and void without further action of the City or Petitioner and shall not be recorded; and **WHEREAS**, prior to recordation of the Plat of Vacation, Petitioner intends to conduct environmental testing of the Subject Right-of-Way. Within forty-five (45) days of approval of this Ordinance, Petitioner shall notify the City's Director of the Transportation, Engineering and Development of the results of its environmental testing and shall include in said notice whether Petitioner intends to seek issuance of a no further remediation ("NFR") letter from the Illinois Environmental Protection Agency for the Subject Right-of-Way; and

WHEREAS, upon approval of this Ordinance, Petitioner shall have a right to access the Subject Right-of-Way to perform reasonable environmental and other inspections so long as Petitioner: (i) gives prior written notice to the City's Director of Transportation, Engineering, and Development as to the dates, times, and types of testing to be performed; (ii) restores the Subject Right-of-Way to the same or better condition as existed prior to testing; (iii) defends, indemnifies, and holds the City and its officers, agents, and employees harmless from any liability or claims of

environmental or other damage resulting from such testing; and (iv) in the event that inspection or testing results in the exacerbation of any environmental condition, or otherwise causes damage to any part of the Subject Right-of-Way, Petitioner agrees, at its sole cost, to take all steps necessary to promptly remediate or remedy such condition or damage to the satisfaction of the City's Director of Transportation, Engineering, and Development.

WHEREAS, any utility company having a utility located in the Subject Right-of-Way will be reserved a permanent non-exclusive public utility easement in the Subject Right-of-Way to operate, maintain, repair, construct and reconstruct their utilities; and

WHEREAS, after the Plat of Vacation is recorded and title has vested with the Petitioner, the Subject Right-of-Way shall be consolidated with the Naper-Olds Property as follows: If Petitioner has determined that it will not be necessary to seek issuance of an NFR letter from the IEPA, Petitioner shall seek to consolidate the Subject Right-of-Way with the Naper-Olds Property within sixty (60) days of recordation of the Plat of Vacation. Petitioner may continue to use the Subject Right-of-Way until the sixty (60) day period has elapsed, but shall cease use the Subject Right-of-Way after sixty (60) days if consolidation has not occurred. If Petitioner has determined that environmental remediation work is necessary, Petitioner shall work to complete the environmental remediation work and obtain the NFR within twenty-four (24) months of approval of this Ordinance. Upon issuance of the NFR, Petitioner shall seek to consolidate the Subject Right-of-Way with the Naper-Olds Property within sixty (60) days of receipt of an NFR. Petitioner shall cease use of the Subject Right-of-Way after sixty (60) days of receipt of an NFR or after twenty-four (24) months from approval of this Ordinance, (whichever occurs first) if consolidation of the Subject Right-of-Way with the Naper-Olds Property has not occurred.

WHEREAS, in addition to compliance with all notice requirements of the Illinois Open Meetings Act, notice of the proposed vacation of the Subject Right-of-Way was provided pursuant to the provisions of 65 ILCS 5/11-91-1 by publication in a newspaper of general circulation at least fifteen (15) days prior to July 18, 2017 on which date a public hearing was opened and held by the Naperville City Council regarding the proposed vacation of the Subject Right-of-Way; and

WHEREAS, an ordinance vacating property pursuant to 65 ILCS 5/11-91-1 may only be passed upon a vote of three-fourths of the City Council members then holding office, which three-quarter vote constitutes seven (7) votes; and

WHEREAS, all steps necessary to lawfully vacate the Subject Right-of-Way as described and referenced herein have been taken; and

WHEREAS, this Ordinance shall not be recorded until Petitioner has completed the Improvements described herein to the satisfaction of the Director of the Transportation, Engineering, and Development Business Group.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in exercise of its home rule authority, as follows:

SECTION 1: The foregoing recitals are incorporated herein as though fully set forth in this Section 1. All Exhibits referenced in this Ordinance shall be deemed incorporated herein and made part hereof.

SECTION 2: Subject to the terms and conditions set forth and referenced herein, vacation of the Subject Right-of-Way legally described and depicted on the Plat of Vacation attached hereto as Exhibit B is hereby approved, and upon recordation of this Ordinance with the DuPage County Recorder, title to said vacated Subject Right-of-Way shall vest in Naper-Olds Associates, L.P.

SECTION 3: Subject to the terms and conditions set forth and referenced herein, including but not limited to reservation of easements for utilities located in the Subject Right-of-Way, if necessary, the Plat of Vacation attached to this Ordinance as Exhibit B is hereby approved; and

SECTION 4: The Subject Right-of-Way shall be consolidated with the Naper-Olds Property as provided herein, and Petitioner's use of the Subject Right-of-Way until consolidation occurs shall be subject to the terms and conditions set forth herein; and

SECTION 5: The City Clerk is authorized and directed to record a certified copy of this Ordinance and the exhibits attached hereto, including but not limited to the Plat of Vacation approved by this Ordinance, with the DuPage County Recorder upon confirmation from the City's Director of Transportation, Engineering and Development that the terms and conditions set forth or referenced herein have been fulfilled.

SECTION 6: Upon recordation of the Plat of Vacation, the Subject Right-of-Way shall conform to the provisions of the Naperville Municipal Code, as amended from time to time, including but not limited to the permitted uses and all other regulations of the B3 (General Commercial District).

SECTION 7: If any section, paragraph, or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provision, shall not affect any of the remaining provisions of this Ordinance or any other City ordinance or resolution.

SECTION 8: This Ordinance shall be in full force and effect upon its recordation with the DuPage County Recorder.

PASSED this _____ day of _____, 2017.

AYES:

NAYS:

ABSENT:

APPROVED this _____ day of _____, 2017.

Steve Chirico
Mayor

ATTEST:

Pam Gallahue, Ph. D.
City Clerk