

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

Resolution or Ordinance (Blue) Waiver of First Requested
 Recommendations of Boards, Commissions & Committees (Green)
 Other Business (Pink)

TO : PRESIDENT AND BOARD OF TRUSTEES
FROM: Scott Niehaus, Village Manager
DATE : August 14, 2017 (BOT) Date: August 17, 2017
SUBJECT: Vacation of a Portion of Stewart Avenue Public Right-of-Way North of St. Charles Road

SUBMITTED BY: William J. Heniff, AICP, Director of Community Development 

BACKGROUND/POLICY IMPLICATIONS:

The request for vacation of the Stewart Avenue right-of-way was made by the Lombard Veterinary Hospital. Primary reasons for the request are to allow them to proceed with long-desired animal play area (dog park) enhancement to their existing business. Additionally, they would also like to ensure that Stewart Avenue is not improved for public roadway purposes in the future, as it is perceived that it would impact their existing parking field and customer safety. DISTRICT #4 (3/4 Vote of the Corporate Authorities Required)

Fiscal Impact/Funding Source:

Review (as necessary):

Finance Director _____ Date _____
Village Manager _____ Date _____

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the agenda distribution.



MEMORANDUM

TO: Scott R. Niehaus, Village Manager

FROM: William J. Heniff, AICP, Director of Community Development *WH*

MEETING DATE: August 17, 2017

RE: **Vacation of a Portion of Stewart Avenue Public Right-of-Way North of St. Charles Road and South of Windsor Avenue**

Staff has been working with the owner representatives of Lombard Veterinary Hospital at 244 E. St. Charles Road on a possible vacation of a portion of the under-improved Stewart Avenue right-of-way located immediately to the east of their property. Through these ongoing discussions, requisite appraisal reviews and a review of Village need for the right-of-way, a draft ordinance is brought forward for Village Board consideration

BACKGROUND

Stewart Avenue immediately north of St. Charles Road is an under-improved right-of way owned and controlled by the Village of Lombard. The area requested to be vacated is 14,106 sq. ft. (0.32 acres) in area and abuts the Lombard Veterinary Hospital property. It was originally dedicated, per DuPage County Recorded Document No. 179463, as a 33 foot right-of-way. While the Village constructed watermain, sanitary sewer and storm sewer lines within the right-of-way, roadway improvements were never made and the property essentially remained a grass field at the surface grade. However, the area immediately abutting the veterinarian building was improved with an asphalt parking lot for their patrons.

The request for vacation of the Stewart Avenue right-of-way was made by the Lombard Veterinary Hospital. Primary reasons for the request are to allow them to proceed with long-desired animal play area (dog park) enhancement to their existing business. Additionally, they would also like to ensure that Stewart Avenue is not improved for public roadway purposes in the future, as it is perceived that it would impact their existing parking field and customer safety.

The culmination of this effort is the attached vacation ordinance. Key elements of the ordinance are:

1. The fair market value payment of \$31,700 was determined for the right-of-way, which was based upon the mean of the Village's appraised value (\$35,000), and the hospital's appraised value (\$28,400). Earlier versions of this draft agreement were intended to provide for a \$4,596.50 credit for the northern 62 feet of the right-of-way for a future cul-de-sac bulb. However with approval of the Windsor Place Subdivision by the Village Board last month, the need for this portion of the right-of-

way is no longer necessary and therefore this portion of the right-of-way can be added into the area to be vacated, as shown on the vacation plat.

2. Payments shall be made in installments of \$11,700 within 30 days, and \$10,000 installments within one year and two years from of the approval date of the Ordinance.
3. A lien will be established to ensure proper payments. Upon completion of payments, the lien shall be released.
4. Consistent with many other past vacations, entire vacated right-of-way would still be encumbered with a Public Utilities and Drainage Easement which would be retained by the Village.
5. If after a period of seven years from the date of approval of the agreement there is a desire to re-dedicate the right-of-way from the Village, there will be a process, including an appraisal review and remuneration for the rededication of Stewart Avenue as a right-of-way.

For reference purposes, kennels and animal hospitals are listed as conditional uses within the underlying B2 Neighborhood Commercial Zoning District. As such, if in the event the hospital were to expand their building on the premises, they would proceed with an application to the Plan Commission for a public hearing with their expansion plan on their existing site and the proposed vacation area.

From a Public Works perspective, the vacation is not anticipated to affect their utility operations, as a public utilities and drainage easement is retained over the proposed vacated area. It will also remove an annual maintenance/mowing obligation.

ACTION REQUESTED

Please place this item on the August 17, 2017 Village Board agenda for Approval of an Ordinance Vacation a Portion of the Stewart Avenue Public-Right-of-Way. This item should be placed on Separate Action as the requested action requires passage by a three-fourths (3/4ths) vote of the Trustees holding office.

ORDINANCE NO. _____

**AN ORDINANCE VACATING A PORTION OF STEWART AVENUE,
BETWEEN WINDSOR AVENUE AND ST. CHARLES ROAD**

BE IT ORDAINED by the President and Board of Trustees of the Village of Lombard, DuPage County, Illinois, as follows:

SECTION 1: That the President and Board of Trustees of the Village of Lombard (hereinafter the "Village") find as follows:

- A. That the dedicated right-of-way, as described in Section 3 below, (hereinafter the "Vacated Street"), was created entirely as part of the subdivision of the property to the West thereof.
- B. Pursuant to 65 ILCS 5/11-91-1, an ordinance vacating a right-of-way can provide that it shall not become effective until the owner(s) of the property abutting the right-of-way, or the owner(s) of a particular parcel of property abutting the right-of-way, to be vacated, pay(s) compensation to the municipality in an amount which, in the judgment of the corporate authorities, shall be the fair market value of the property acquired or of the benefits which will accrue to said owner(s) by reason of the vacation.
- C. Pursuant to 65 ILCS 5/11-91-1, if the ordinance vacating a street provides that only the owner of a particular parcel abutting upon the street to be vacated shall make the aforementioned compensation payment, then said owner of said particular parcel shall acquire title to the entire vacated street.
- D. That the fair market value of the Vacated Street is Thirty-One Thousand Seven Hundred and No/100 Dollars (\$31,700.00).
- E. That Thirty-One Thousand Seven Hundred and No/100 Dollars (\$31,700.00) is only the fair market value of the Vacated Street when the vacation of said Vacated Street is made subject to the conditions set forth in Section 4 below.
- F. That the owner of the following-described property, West Suburban Bank, as Trustee Under Trust Agreement Dated December 23, 1975, and Known as Trust 891:

PARCEL 1

LOTS 1 THROUGH 4, BOTH INCLUSIVE, IN BLOCK 14 IN H.O. STONE AND COMPANY'S ADDITION TO LOMBARD, BEING A SUBDIVISION OF PART OF THE SOUTHWEST ¼ OF SECTION 5 AND PART OF THE

NORTHWEST ¼ OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 26, 1924 AS DOCUMENT 179463, IN DUPAGE COUNTY, ILLINOIS;

P.I.N.s: 06-05-321-006, -007, -008 and -009; and

PARCEL 2

LOT 1 IN ARNDT HOSPITAL CONSOLIDATION PLAT, BEING A SUBDIVISION OF LOTS 5 THROUGH 9 INCLUSIVE, IN BLOCK 14 IN H.O. STONE AND COMPANY'S ADDITION TO LOMBARD, A SUBDIVISION OF THE SOUTHWEST ¼ OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID ARNDT HOSPITAL CONSOLIDATION PLAT RECORDED MAY 29, 1986 AS DOCUMENT R86-52310 IN DUPAGE COUNTY, ILLINOIS;

P.I.N.: 06-08-106-010;

(hereinafter the "Abutting Property Owner") shall make payment to the Village for the entire compensation due relative to the street vacation referenced in Section 3 below, as more specifically set forth in Section 4 below.

- G. That the occupant of PARCEL 2 of the property described in subsection F. above, Lombard Veterinary Hospital, LLC (the "Occupant"), shall guarantee payment to the Village of the entire monetary compensation due relative to the street vacation referenced in Section 3 below, as more specifically set forth in Section 4 below.

SECTION 2: It is hereby determined that the public interest will be subserved by vacating the Vacated Street, as hereinafter described, subject to the conditions set forth in Section 4 below.

SECTION 3: The following-described right-of-way:

THAT PART OF THE 33.00 FOOT WIDE STEWART AVENUE RIGHT OF WAY AS HERETOFORE DEDICATED PER H. O. STONE & COMPANY'S ADDITION TO LOMBARD (DOCUMENT NO. 79463) IN SECTIONS 5 AND 8, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING NORTH OF AND ABUTTING THE NORTHERLY LINE OF THE ST. CHARLES ROAD RIGHT OF WAY (AS DEDICATED PER DOCUMENT NO. 179463), LYING EAST OF AND ABUTTING THE EAST LINE OF LOT 1 IN ARNDT HOSPITAL CONSOLIDATION PLAT (PER DOCUMENT NO. R86-52310), LYING EAST OF AND ABUTTING THE EAST LINES OF LOTS 1, 2, 3 & 4, BLOCK 14 IN SAID H. O. STONE & COMPANY'S ADDITION TO LOMBARD, AND LYING SOUTH OF AND ABUTTING THE WINDSOR

AVENUE RIGHT OF WAY AS HERETOFORE DEDICATED PER SAID H. O. STONE & COMPANY'S ADDITION TO LOMBARD, ALL IN DUPAGE COUNTY, ILLINOIS;

CONTAINING: 13,806.65 SQ. FT., 0.32 AC;

as shown on the plat of vacation attached hereto as Exhibit A, and made part hereof, [an original thereof to be provided by the Village, in final form, suitable for recording, upon the Abutting Property Owner depositing with the Village the amount estimated by the Village to cover the costs for document and plat preparation, recording costs and all third party fees necessary to complete the vacation], and designated "hereby vacated" on said plat of vacation, be and the same hereby is vacated, subject to the conditions listed in Section 4 below.

SECTION 4: That this Ordinance shall be subject to the following:

- A. The Abutting Property Owner making the monetary deposit referenced in Section 3 above, within thirty (30) days of the approval date of this Ordinance.
- B. The payment by the Abutting Property Owner of compensation to the Village in the amount of Thirty-One Thousand Seven Hundred and No/100 Dollars (\$31,700.00), as follows:
 - (i) Eleven Thousand Seven Hundred and No/100 Dollars (\$11,700.00) shall be deposited with the Village within thirty (30) days of the approval date of this Ordinance;
 - (ii) Ten Thousand and No/100 Dollars (\$10,000.00) shall be deposited with the Village on or before the date which is one (1) year from the approval date of this Ordinance; and
 - (iii) Ten Thousand and No/100 Dollars (\$10,000.00) shall be deposited with the Village on or before the date which is two (2) years from the approval date of this Ordinance.

In regard to subsections (ii) and (iii) above, late payments shall accrue interest at the rate of two percent (2%) per month, with the minimum interest payment being for a one (1) month period. Should the Abutting Property Owner sell, or assign beneficial ownership of, the Vacated Street, or any portion thereof, prior to making the payments set forth in

subsections (ii) and (iii) above, the balance of the payments under said subsections (ii) and (iii) shall be immediately due and payable, notwithstanding the referenced payment date(s) in relation thereto.

- C. The recording of a fully executed Agreement to Create Lien, relative to the payments set forth in subsections B.(ii) and B.(iii) above, after the recording of this Ordinance, with said Agreement to Create Lien being in the form attached hereto as Exhibit B and made part hereof.
- D. The retention of a public utility and drainage easement, in the form attached hereto as Exhibit C, and made part hereof, in, across, over and under the entire Vacated Street, with said easement language to be set forth on the plat of vacation attached hereto as Exhibit A.
- E. Effective seven (7) years from the passage date of this Ordinance, upon a written request to the Abutting Property Owner from the Village, the Abutting Property Owner shall rededicate all, or any portion of, the Vacated Street, as referenced in said written request, for public right-of-way purposes (hereinafter the "Rededication"). The Abutting Property Owner shall do all things necessary and appropriate to cooperate with the Village, and to effectuate the Rededication within three (3) months from the date of receipt of the request for Rededication from the Village. In regard to any such Rededication:
 - (i) The Village may only tender a written request to the Abutting Property Owner, for the Rededication, in the event that redevelopment is going to take place in the area of the Vacated Street, and said redevelopment, in the Village's sole and absolute judgment, requires that all, or any portion, of said Vacated Street be developed as a street for vehicular traffic.
 - (ii) In the event that the Village tenders a written request to the Abutting Property Owner, for the Rededication, the Village shall, upon the Rededication being completed, tender to the Abutting Property Owner the then fair market value of the Vacated Street, or such portion thereof that is subject to the Rededication.
 - (iii) The fair market value of the Vacated Street, or such portion thereof that is subject to the Rededication, shall be determined by an appraisal to be prepared by the Village at its cost. Should the Abutting Property Owner disagree with the Village's appraisal, the Abutting Property Owner, at its own cost, may obtain an appraisal and tender same to the Village. In such case, the Village may either pay the amount set forth in the Abutting Property Owner's appraisal, or request that the Village's appraiser and the Abutting Property Owner's appraiser jointly select a third appraiser, who

shall review the two (2) appraisals, and make a determination as to the fair market value of the Vacated Street, or such portion thereof that is subject to the Rededication, which shall be binding upon both the Village and the Abutting Property Owner. In such case, the Village shall pay the costs of the third appraisal. As was done in determining the fair market value of the Vacated Street, as set forth in Sections 1D, 1E and 4B of this Ordinance, the appraisals done pursuant to this Section 4E(iii) shall take into account the fact that the Vacated Street is subject to the perpetual easement as referenced in Section 4D of, and Exhibit C to, this Ordinance, which prevents the construction of permanent improvements on the Vacated Street.

F. Upon:

- (i) the Abutting Property Owner's payment in full of all amounts owed the Village pursuant to subsection B above; and
- (ii) the Village's receipt of a dedication of right-of-way, sufficient, in the Village's sole discretion, to construct a cul-de-sac for Windsor Avenue at its intersection with dedicated but unimproved Stewart Avenue, whether from the Abutting Property Owner, the owner of the property North of and abutting the Windsor Avenue right-of-way, between the Craig Place right-of-way and the Stewart Avenue right-of-way (the "Subdivision Owner"), or from a combination of the Abutting Property Owner and the Subdivision Owner;

the provisions of subsection E. above shall terminate, and become null and void, and the Village shall record a document evidencing the termination of said subsection E.

SECTION 5: Pursuant to 65 ILCS 5/11-91-1, the Abutting Property Owner shall acquire title to the Vacated Street, upon the recording of a certified copy of this Ordinance and the plat of vacation attached hereto as Exhibit A.

SECTION 6: That the Abutting Property Owner and the Occupant are in agreement with the terms and conditions of this Ordinance, as evidenced below:

A. WEST SUBURBAN BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 23, 1975, AND KNOWN AS TRUST 891, being the Abutting Property Owner, hereby voluntarily agrees to be bound by the terms and conditions of this Ordinance, relative to the vacation of the Vacated Street, and hereby further agrees that the terms and conditions of Section 4.E. of this Ordinance shall constitute a covenant running with the land (inclusive of PARCEL 1 and PARCEL 2 as referenced in Section 1.F. above, and the Vacated Street located East of and adjacent to said PARCEL 1 and said PARCEL 2 – hereinafter collectively the “Land”) and shall be binding upon the Owner’s successors in any manner in title to the Land.

By: WEST SUBURBAN BANK
NOT PERSONALLY BUT AS
 Name: TRUSTEE U/T. NO. 891
 BY Christine Paulsch
 Title: TRUST OFFICER

Date: 8/11/17

ATTEST: WEST SUBURBAN BANK
NOT PERSONALLY BUT AS
 Name: TRUSTEE U/T. NO. 891
 BY Angela Young
 Title: TRUST OFFICER

Date: 8/11/17

CERTIFICATION

STATE OF ILLINOIS)
) SS
 COUNTY OF DuPAGE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named Christine Paulsch and Angela Young, personally known to me to be Trust Officers at West Suburban Bank (the “Bank”), and also known to me to be the same persons whose names are subscribed to the foregoing instrument as such Trust Officers, appeared before me this day in person and severally acknowledged that, as such Trust Officers, they signed and delivered the signed instrument, pursuant to authority given by said Bank, as their free and voluntary act, and as the free and voluntary act and deed of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal, this 11th day of August, 2017.



Gina R. Morgan
 Notary Public

SECTION 7: That, in the event that the payments provided for in Sections 4.A. and 4.B.(i) above, and the Agreement to Create Lien signed by the Property Owner and Occupant, are not received by the Village within thirty (30) days of the approval date of this Ordinance, this Ordinance shall be null and void and of no further effect, the recording as referenced in Section 8 below shall not take place, and the Corporate Authorities of the Village shall take the appropriate action to formally repeal this Ordinance.

SECTION 8: That, upon the Village's receipt of the payments referenced in Sections 4.A. and 4.B.(i) above, the Director of Community Development is hereby directed to record the original signature copy of this Ordinance, along with the original plat of vacation and a certification by the Village Clerk as to the Ordinance being the original Ordinance, with the DuPage County Recorder of Deeds.

SECTION 9: That, upon the recording of this Ordinance, as provided for in Section 8 above, the Director of Community Development is hereby directed to record the original signature copy of the Agreement to Create Lien, as referenced in Section 4.C. above, with the DuPage County Recorder of Deeds.

SECTION 10: That this Ordinance shall be in full force and effect from and after its passage by a three-fourths (3/4ths) vote of the Trustees holding office, and approval, as required by law.

Passed on first reading this ____ day of _____, 2017.

First reading waived by action of the Board of Trustees this ____ day of _____, 2017.

Passed on second reading this ____ day of _____, 2017, pursuant to a roll call vote as follows:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED by me this ____ day of _____, 2017.

Keith Giagnorio, Village President

ATTEST:

Sharon Kuderna, Village Clerk

Exhibit A

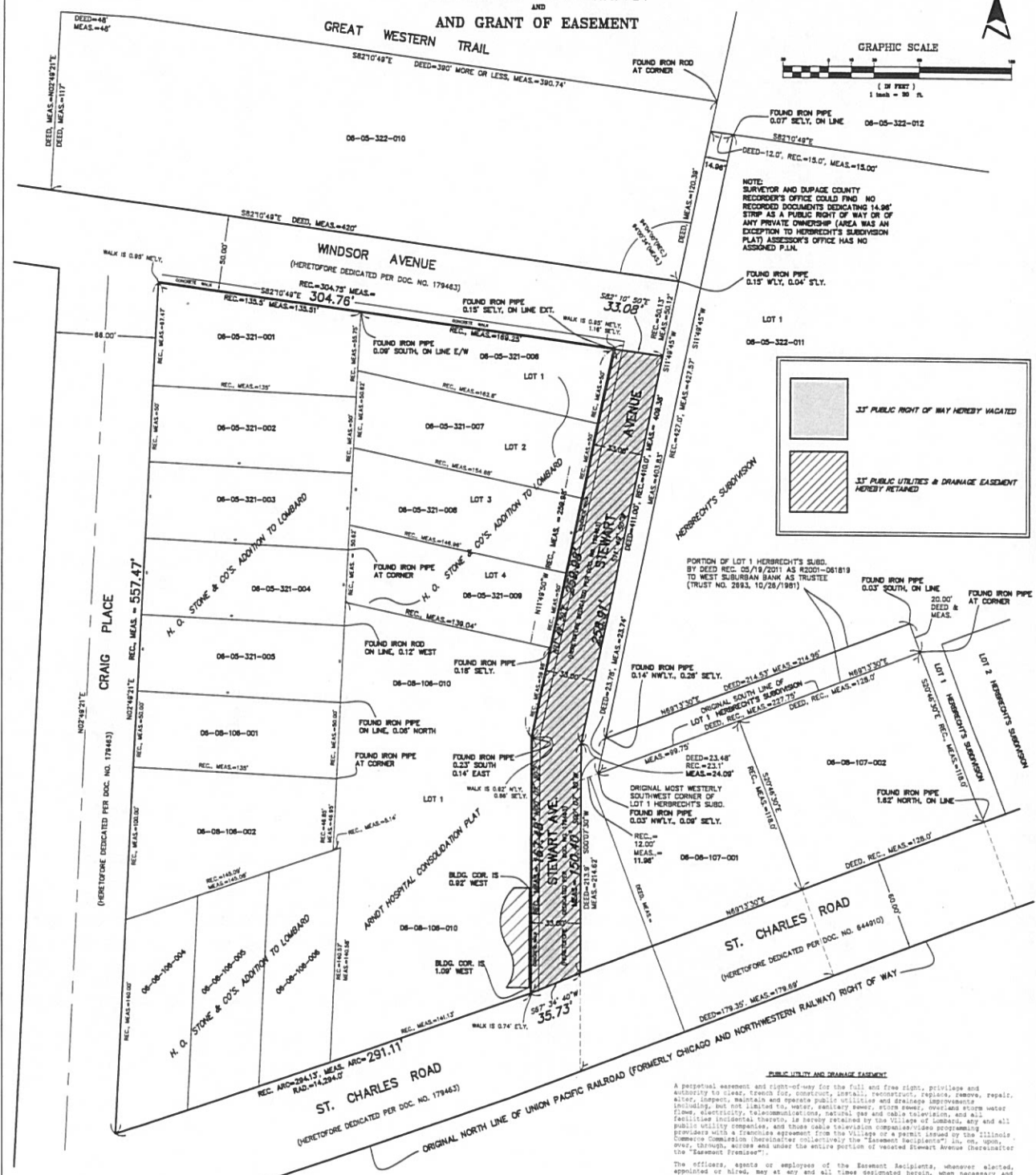
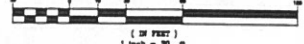
Plat of Vacation

(attached)

PLAT OF VACATION AND GRANT OF EASEMENT

GREAT WESTERN TRAIL

GRAPHIC SCALE



NOTE: SURVEYOR AND DUPAGE COUNTY RECORDER'S OFFICE COULD FIND NO RECORDED DOCUMENTS DEDICATING 14.96' STRIP AS A PUBLIC RIGHT OF WAY OR OF ANY PRIVATE OWNERSHIP (AREA WAS AN EXCEPTION TO HERBRECHT'S SUBDIVISION PLAT) ASSESSOR'S OFFICE HAS NO ASSIGNED PLAT.

PORTION OF LOT 1 HERBRECHT'S SUBD. BY DEED REC. 02/19/2011 AS R2001-081819 TO WEST SUBURBAN BANK AS TRUSTEE (TRUST NO. 2953, 10/28/1981)

PUBLIC UTILITY AND DRAINAGE EASEMENT

A perpetual easement and right-of-way for the full and free right, privilege and authority to clear, trench for, construct, install, reconstruct, replace, remove, repair, alter, inspect, maintain and operate public utilities and drainage improvements including, but not limited to, water, sanitary sewer, storm sewer, overhead storm water lines, electricity, telecommunications, natural gas and cable television, and all facilities incidental thereto, is hereby granted by the Village of Lombard, and all public utility companies, and those cable television companies/video programming providers with a franchise agreement from the Village of a permit issued by the Illinois Commerce Commission (hereinafter collectively the "Easement Beneficiaries") to, on, upon, over, through, across and under the entire portion of vacated Stewart Avenue (hereinafter the "Easement Premises").

The officers, agents or employees of the Easement Beneficiaries, when properly appointed or hired, may at any and all times designated herein, when necessary and convenient to do so, on, upon, over, through, across and under the Easement Premises, and do and perform any and all acts necessary or convenient to the carrying into effect the purposes for which the easements created hereby are granted, and the owners of the Easement Premises shall not disturb, molest, injure or in any manner interfere with, or in any way restrict access to, the aforesaid public utilities and/or drainage improvements, and all facilities and activities incidental thereto.

The owner of the Easement Premises shall have the right to make any use of the Easement Premises, whether on, above or below its surface, for any lawful purpose, except that any use shall not interfere in any manner with the easements and uses by the Easement Beneficiaries hereby retained and authorized.

The right is also granted to the Easement Beneficiaries to trim or remove any trees, shrubs or other plants, or remove any structures on the Easement Premises, that interfere with the operation of the public utilities and/or drainage improvements.

The perpetual easement created hereby is, on, upon, over, through, across and under the Easement Premises shall run with the land.

STATE OF ILLINOIS) S.S.
COUNTY OF DUPAGE)

THIS IS TO CERTIFY THAT I, JOSEPH GENTILE, ILLINOIS PROFESSIONAL LAND SURVEYOR NUMBER 2923, HAVE SURVEYED AND PLATTED THE FOLLOWING DESCRIBED PROPERTY FOR THE PURPOSE OF VACATING A CERTAIN PUBLIC RIGHT OF WAY (AS SHOWN HEREON) DESCRIBED AS FOLLOWS:

THAT PART OF THE 33.00 FOOT WIDE STEWART AVENUE RIGHT OF WAY AS HERETOFORE DEDICATED PER H.G. STONE & COMPANY'S ADDITION TO LOMBARD (DOCUMENT NO. 79483) IN SECTIONS 3 AND 8, TOWNSHIP 38 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING NORTH OF AND ABUTTING THE NORTHERLY LINE OF THE ST. CHARLES ROAD RIGHT OF WAY (AS DEDICATED PER DOCUMENT NO. 179483), LYING EAST OF AND ABUTTING THE EAST LINE OF LOT 1 IN ARNDT HOSPITAL CONSOLIDATION PLAT (PER DOCUMENT NO. 886-82310), LYING EAST OF AND ABUTTING THE EAST LINES OF LOTS 1, 2, 3 & 4, BLOCK 14 IN SAID H.G. STONE & COMPANY'S ADDITION TO LOMBARD, AND LYING SOUTH OF AND ABUTTING THE WINDSOR AVENUE RIGHT OF WAY AS HERETOFORE DEDICATED PER SAID H.G. STONE & COMPANY'S ADDITION TO LOMBARD, ALL IN DUPAGE COUNTY, ILLINOIS.

CONTAINING: 13,806.85 SQ. FT., 0.32 AC.
ALL DISTANCES ARE SHOWN IN FEET AND DECIMAL PARTS THEREOF.
GIVEN UNDER MY HAND AND SEAL THIS 21ST DAY OF JUNE, A.D. 2017.

SUBMITTED BY AND MAILED TO:
ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 2923
MY LICENSE EXPIRES NOVEMBER 30, 2018

STATE OF ILLINOIS) S.S.
COUNTY OF DU PAGE)
APPROVED BY THE DEPARTMENT OF COMMUNITY DEVELOPMENT OF THE VILLAGE OF LOMBARD, ILLINOIS, THIS _____ DAY OF _____ A.D. 20____
DIRECTOR OF COMMUNITY DEVELOPMENT

STATE OF ILLINOIS) S.S.
COUNTY OF DUPAGE)
APPROVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, ILLINOIS, THIS _____ DAY OF _____ A.D. 20____
PRESIDENT
VILLAGE CLERK

GENTILE & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYORS
800 E. ST. CHARLES PLACE
LOMBARD, ILLINOIS 60148
PHONE (833) 978-8282
FAX (833) 978-8284

PREPARED FOR VILLAGE OF LOMBARD ILLINOIS PROFESSIONAL DESIGN
DRAWN BY: VAF FIRM LICENSE NO. 184.002870
CHECK NO. 20288-17 V/V/E

STATE OF ILLINOIS) S.S.
COUNTY OF DUPAGE)
THIS INSTRUMENT NUMBER _____ WAS FILED FOR RECORD IN THE RECORDER'S OFFICE OF DUPAGE COUNTY, ILLINOIS, AFORESAID, ON THE _____ DAY OF _____ A.D. 20____ AT _____ O'CLOCK _____ M.
DUPAGE COUNTY RECORDER OF DEEDS

Exhibit B

AGREEMENT TO CREATE LIEN

I, Scott Niehaus, Village Manager for the Village of Lombard, DuPage County, Illinois (the "Village"), hereby certify that, pursuant to the agreement between the Village and West Suburban Bank, as Trustee Under Trust Agreement Dated December 23, 1975, and Known As Trust 891, (the "Property Owner"), as set forth in Village Ordinance No. _____, approved on August 17, 2017, and recorded on _____, 2017, as document number _____, with the DuPage County Recorder of Deeds (the "Ordinance"), the Village has vacated the following street right-of-way:

LEGAL DESCRIPTION:

THAT PART OF THE 33.00 FOOT WIDE STEWART AVENUE RIGHT OF WAY AS HERETOFORE DEDICATED PER H. O. STONE & COMPANY'S ADDITION TO LOMBARD (DOCUMENT NO. 79463) IN SECTIONS 5 AND 8, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING NORTH OF AND ABUTTING THE NORTHERLY LINE OF THE ST. CHARLES ROAD RIGHT OF WAY (AS DEDICATED PER DOCUMENT NO. 179463), LYING EAST OF AND ABUTTING THE EAST LINE OF LOT 1 IN ARNDT HOSPITAL CONSOLIDATION PLAT (PER DOCUMENT NO. R86-52310), LYING EAST OF AND ABUTTING THE EAST LINES OF LOTS 1, 2, 3 & 4, BLOCK 14 IN SAID H. O. STONE & COMPANY'S ADDITION TO LOMBARD, AND LYING SOUTH OF AND ABUTTING THE WINDSOR AVENUE RIGHT OF WAY AS HERETOFORE DEDICATED PER SAID H. O. STONE & COMPANY'S ADDITION TO LOMBARD, ALL IN DUPAGE COUNTY, ILLINOIS;

CONTAINING: 13,806.65 SQ. FT., 0.32 AC;

(the "Vacated Street"); with said Vacated Street being located East of and adjacent to PINs 06-05-321-006, -007, -008 and -009, and 06-08-106-010, and commonly known as that portion of Stewart Avenue between St. Charles Road and Windsor Avenue, Lombard, Illinois.

Pursuant to the agreement between the Village and the Property Owner, as set forth in the Ordinance, and in lieu of paying a lump sum for the Vacated Street, the Property Owner has agreed to pay the Village the final Twenty Thousand and No/100 Dollars (\$20,000.00), of the amount to be paid the Village for said Vacated Street, pursuant to the Ordinance, as follows:

- A. Ten Thousand and No/100 Dollars (\$10,000.00) on or before August 17, 2018; and
- B. Ten Thousand and No/100 Dollars (\$10,000.00) on or before August 17, 2019;

with a lien in the amount of Twenty Thousand and No/100 Dollars (\$20,000.00) being recorded against the Vacated Street.

That, by reason of the foregoing, and pursuant to the provisions of the agreement between the Village and the Property Owner, as set forth in the Ordinance, a lien in the amount of Twenty Thousand and No/100 Dollars (\$20,000.00), on behalf of the Village, is hereby declared against the Vacated Street (the "Lien").

Said Lien shall be released only upon the full satisfaction of the amount owed, including interest that may accrue thereon pursuant to the provisions of the Ordinance. Should said Property Owner sell, or assign beneficial ownership of, said Vacated Street prior to full satisfaction of the amount due, the balance of the unpaid Lien, along with any interest that may accrue thereon pursuant to the provision of the Ordinance, shall be immediately due and payable. Said Lien shall be assignable to a subsequent owner of said Vacated Street only with the express written consent of the Village.

The Property Owner shall be entitled to prepay any amount due without penalty.

If the Property Owner defaults in the payment of any of the installments aforesaid, and if any portion thereof shall remain due and unpaid for a period of thirty (30) days thereafter, the Twenty Thousand and No/100 Dollars (\$20,000.00) Lien amount, or any unpaid balance thereof, together with all interest thereon as provided for in the Ordinance, shall, at the option of the Village, become immediately due and payable, without notice, and shall be collected immediately or at any time after such default, anything hereinbefore contained to the contrary notwithstanding. The Village and the Property Owner hereto severally waive presentment for payment, notice of dishonor and protest. In addition, upon any such default by the Property Owner, the Village shall have the right to foreclose said Lien, in the same manner as the foreclosure of a mortgage against the Vacated Street.

Dated this _____ day of _____, 2017.

VILLAGE OF LOMBARD

Scott Niehaus
Village Manager

CERTIFICATION

STATE OF ILLINOIS)
)SS
COUNTY OF DuPAGE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named Scott Niehaus, personally known to me to be the Village Manager of the Village of Lombard, Illinois (the "Village"), and also known to me to be the same person whose name is subscribed to the foregoing instrument as such Village Manager, appeared before me this day in person and acknowledged that, as such Village Manager, he signed and delivered the signed instrument, pursuant to authority given by said Village, as his free and voluntary act, and as the free and voluntary act and deed of said Village, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal, this ____ day of _____, 2017.

Notary Public

Approved and consented to by WEST SUBURBAN BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 23, 1975, AND KNOWN AS TRUST 891, the legal owner of record of the Vacated Street, this ____ day of _____, 2017.

By: _____

Name: _____

Title: _____

ATTEST:

Name: _____

Title: _____

CERTIFICATION

STATE OF ILLINOIS)
) SS
COUNTY OF DuPAGE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named _____ and _____, personally known to me to be Trust Officers at West Suburban Bank (the "Bank"), and also known to me to be the same persons whose names are subscribed to the foregoing instrument as such Trust Officers, appeared before me this day in person and severally acknowledged that, as such Trust Officers, they signed and delivered the signed instrument, pursuant to authority given by said Bank, as their free and voluntary act, and as the free and voluntary act and deed of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal, this ____ day of _____, 2017.

Notary Public

Pursuant to the Ordinance, LOMBARD VETERINARY HOSPITAL, LLC, an Illinois limited liability company, has guaranteed the Twenty Thousand and No/100 Dollars (\$20,000.00) payment referenced herein, and hereby acknowledges said payment guarantee this ____ day of _____, 2017.

By: _____
Georgianne Ludwig
Manager

CERTIFICATION

STATE OF ILLINOIS)
) SS
COUNTY OF DuPAGE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named Georgianne Ludwig, personally known to me to be the Manager of Lombard Veterinary Hospital, LLC (the "Company"), and also known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that, as such Manager, she signed and delivered the signed instrument, pursuant to authority given by said Company, as her free and voluntary act, and as the free and voluntary act and deed of said Company, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal, this ____ day of _____, 2017.

Notary Public

Exhibit C

Public Utility and Drainage Easement

A perpetual easement and right-of-way for the full and free right, privilege and authority to clear, trench for, construct, install, reconstruct, replace, remove, repair, alter, inspect, maintain and operate public utilities and drainage improvements including, but not limited to, water, sanitary sewer, storm sewer, overland storm water flows, electricity, telecommunications, natural gas and cable television, and all facilities incidental thereto, is hereby retained by the Village of Lombard, any and all public utility companies, and those cable television companies/video programming providers with a franchise agreement from the Village or a permit issued by the Illinois Commerce Commission (hereinafter collectively the "Easement Recipients") in, on, upon, over, through, across and under the entire portion of vacated Stewart Avenue (hereinafter the "Easement Premises").

The officers, agents or employees of the Easement Recipients, whenever elected, appointed or hired, may at any and all times designated herein, when necessary and convenient to do so, go in, on, upon, over, through, across and under the Easement Premises, and do and perform any and all acts necessary or convenient to the carrying into effect the purposes for which the easements created hereby are retained, and the owners of the Easement Premises shall not disturb, molest, injure or in any manner interfere with, or in any way restrict access to, the aforesaid public utilities and/or drainage improvements, and all facilities and activities incidental thereto.

The owner of the Easement Premises shall have the right to make any use of the Easement Premises, whether on, above or below its surface, for any lawful purpose, except that any use shall not interfere in any manner with the easements and uses by the Easement Recipients hereby retained and authorized.

The right is also granted to the Easement Recipients to trim or remove any trees, shrubs or other plants, or remove any structures on the Easement Premises, that interfere with the operation of the public utilities and/or drainage improvements.

The perpetual easement created hereby in, on, upon, over, through, across and under the Easement Premises shall run with the land.