

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 R. Niehaus, Village Manager

DATE : March 29, 2023 (BOT) Date: April 6, 2023

SUBJECT: **Letter of Intent Between the Lombard Park District and the Village of Lombard – Acquisition of an Easement for 44 Parking Spaces at 130 South Main Street**

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

**BACKGROUND/POLICY IMPLICATIONS:**

The Helen M. Plum Memorial Library District, the Lombard Park District and the Village of Lombard are proceeding in entering into a series of intergovernmental agreements associated with the future disposition of the existing Helen M. Plum Memorial Library building and property at 110 West Maple Street. As part of these discussions, the Village has expressed an interest in acquiring the rights to the 44 parking spaces for downtown area visitor and commuter parking purposes. Village Counsel has prepared a draft Letter of Intent (LOI) with the Lombard Park District to transfer the easement rights to the aforementioned parking spaces, contingent upon the Park District's acquisition of the Library properties and the razing of the existing Library building. For consideration of this parking easement transfer, the Village will pay the Park District \$175,000.

**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:** President Keith T. Giagnorio  
Village Board of Trustees

**FROM:** Scott R. Niehaus, Village Manager

**MEETING DATE:** April 6, 2023

**SUBJECT:** **Letter of Intent/Intergovernmental Agreement Between the Lombard Park District and the Village of Lombard: 130 South Main Street Parking**

The Helen M. Plum Memorial Library District, the Lombard Park District and the Village of Lombard have been cooperatively working on a series of actions relative to the disposition of the existing Helen M. Plum Memorial Library building and property at 110 West Maple Street (attached is a graphic depicting the subject properties). As the pending real estate transfer between the Library District and Park District occurs, the Park District will also assume easement rights over 44 existing parking spaces located on the Edward-Elmhurst Memorial Healthcare Property at 130 South Main Street, and which are currently used for Library parking.

As part of these discussions, the Village has expressed an interest in acquiring the rights to the 44 parking spaces for downtown area visitor and commuter parking purposes. To perfect this pending action, Village Counsel has prepared a draft Letter of Intent (LOI) with the Lombard Park District to transfer the easement rights to the aforementioned parking spaces, contingent upon the Park District's acquisition of the Library properties and the razing of the existing Library building. For consideration of this parking easement transfer, the Village will pay the Park District \$175,000.

A draft LOI is attached for reference purposes. Village staff is seeking concurrence with the Village Board to proceed with further discussions with the Lombard Park District relative to a formal agreement based upon the representations within the LOI. Should matters proceed, an agreement will be finalized for execution among the Village and Park District.

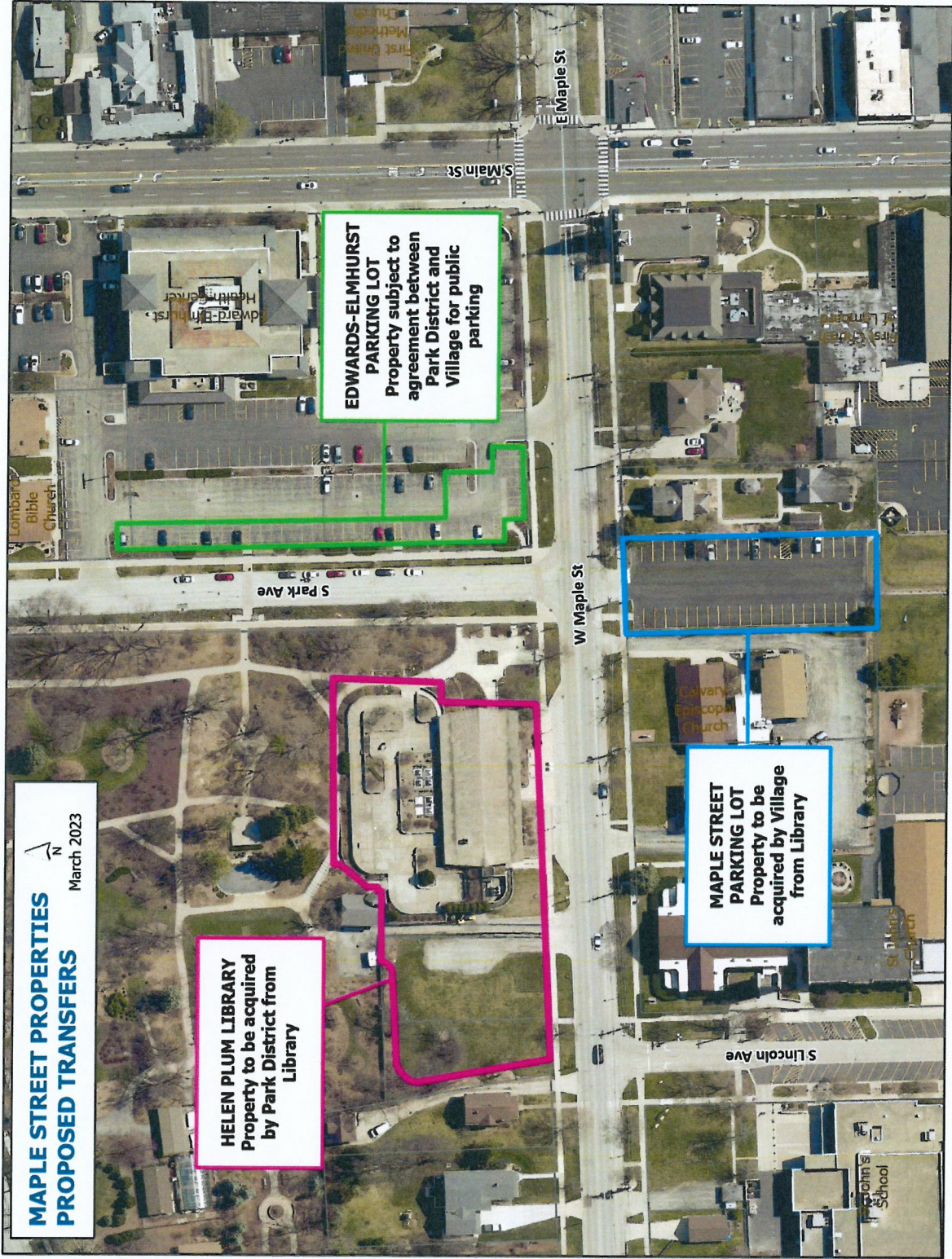
**ACTION REQUESTED:**

This item is being placed on the April 6, 2023 Village Board agenda for consideration and approval of a Letter of Intent relative to the possible easement transfer of parking rights for 44 parking spaces located at 44 South Main Street.



**MAPLE STREET PROPERTIES  
PROPOSED TRANSFERS**

March 2023



**HELEN PLUM LIBRARY**  
Property to be acquired  
by Park District from  
Library

**EDWARDS-ELMHURST  
PARKING LOT**  
Property subject to  
agreement between  
Park District and  
Village for public  
parking

**MAPLE STREET  
PARKING LOT**  
Property to be  
acquired by Village  
from Library



[INSERT VILLAGE OF LOMBARD LETTERHEAD]

April \_\_, 2023

**VIA EMAIL**

David Lemar, President  
Paul Fredrichs, Executive Director  
Lombard Park District  
227 West Parkside Avenue  
Lombard, IL 60148

**Re: Letter of Intent for Purchase of Permanent Easement for Parking related to 130 South Main Street, Lombard, Illinois**

To Whom It May Concern,

On behalf of the Village of Lombard (“Village”), I submit this Letter of Intent for your consideration regarding the proposed purchase of a permanent easement for parking to 130 South Main Street in the Village of Lombard, Illinois, by the Village.

**Terms of the Letter of Intent**

- 1) **Property:** 130 South Main Street, Lombard, DuPage County, Illinois, consisting of forty-four (44) parking spaces to support the downtown and commuter parking needs of the Village and its residents (15,120 square feet of parking space and usable drive isles).
- 2) **Purchaser:** Village of Lombard
- 3) **Seller:** Lombard Park District
- 4) **Purchase Price:** One Hundred Seventy-Five Thousand and No/100 Dollars (\$175,000.00).
- 5) **Closing Date:** Within thirty (30) days of completion of the demolition of the library building located at 110 W. Maple, Lombard, Illinois.
- 6) **Nature of Conveyance:** Permanent and exclusive parking easement to use the forty-four (44) parking spaces and related drive aisles on the Property (the “Parking Easement”), contingent on the Seller acquiring title to the Property from the Helen M. Plum Memorial Library District.
- 7) **Due Diligence Period:** Purchaser shall review, relative to the Property, prior to the Closing (“Due Diligence Period”), and Seller shall provide, title report(s), relevant recorded documents, available surveys, site plans and environmental and/or other reports,



studies and documents as determined by Purchaser in its sole and absolute discretion to determine if the Property is suitable for Purchaser's intended use, and shall advise the Seller, within the Due Diligence Period, if Purchaser wishes to proceed with the acquisition of the Property and enter into the Contract to purchase the Property.

- 8) **Environmental Inspection:** Simultaneous with execution of this Letter of Intent, Seller shall comply with the terms of the environmental contamination rider attached hereto as Exhibit A, which is made a part hereof as though fully set forth herein.
- 9) **Title and Survey:** Seller shall order and present to Purchaser, a title report from Chicago Title Insurance Company and obtain a current ALTA ACSM Land Title Survey within sixty (60) days after execution of this Letter of Intent.
- 10) **Closing Costs:** Purchaser and Seller shall equally share all closing costs relative to the conveyance of the Property, including but not limited to the costs of recording, the title policy, the survey, and the Closing Escrow.
- 11) **Brokerage:** Purchaser and Seller represent separately and independently that no third-party broker or finder has been engaged or consulted by it, or its subsidiaries or agents or employees, or, through Purchaser's or Sellers' actions (or claiming through such party), is entitled to compensation as a consequence of this transaction.
- 12) **Contract:** Seller and Purchaser shall negotiate the terms of a Contract for the conveyance of the Parking Easement, which Contract shall be consistent with the terms of this Letter of Intent, and which shall have such additional terms as are customary and as the Seller and Purchase agree.
- 13) **Term:** This Letter of Intent shall remain in effect until the earlier of \_\_\_\_\_ \_\_, 2023, or the date on which the Contract is executed.
- 14) **No Shop:** During the term of this Letter of Intent, Seller shall not offer the Property for sale, accept any offers for the purchase of the Property, or convey any easement rights in the Property, other than to Purchaser.

The undersigneds acknowledge that the transaction contemplated in this Letter of Intent is subject to approval by the Village's President and Board of Trustees and the Park District's Board of Park Commissioners, and the negotiation and execution of a Contract, which Contract shall contain terms including representations, warranties, indemnification, and so on, in addition to those terms set forth above. Except for the "No Shop" provision above, this Letter of Intent is



not a contract between Seller and Purchaser, and the undersigneds agree and acknowledge that this Letter of Intent is non-binding.

Sincerely,

VILLAGE OF LOMBARD

Scott Niehaus  
Village Manager

Approved this \_\_\_ day of \_\_\_\_\_ 2023.

Village of Lombard, Purchaser:

\_\_\_\_\_

By: Keith T. Giagnorio  
Its: President

Approved this \_\_\_ day of \_\_\_\_\_ 2023.

Lombard Park District, Seller:

\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_



## **EXHIBIT A**

### **Environmental Rider**

1. Environmental Inspection and Contingency Period. Notwithstanding any term to the contrary in this Letter of Intent, prior to the Closing the Purchaser shall have the right to select and retain environmental and other consultants to examine and inspect the physical condition of the Property (including the groundwater thereunder), to conduct a site assessment and environmental audit, and to perform any environmental and engineering investigation or testing it deems necessary and appropriate ("Environmental Assessment").

The Seller grants to the Purchaser and its consultants, their employees, agents, subcontractors and representatives, an irrevocable license and authorization to enter upon and have full access to the Property for the purposes of conducting a complete inspection of the Property and to perform such tests, including without limitation subsurface testing, soil and groundwater testing, and other tests which may physically invade the Property or improvements thereon or to conduct other environmental and engineering investigations, as the Purchaser, in its sole discretion, determines is necessary to protect its interests and will do nothing to interfere with the investigation of the Property (including the groundwater thereunder). This period shall be known as the "Environmental Contingency Period" (or the "Contingency Period"), and shall commence one (1) day after the effective date of this Letter of Intent. The Seller shall provide to the Purchaser and its employees, agents, representatives and consultants full and complete access to the Property (including the groundwater thereunder). If requested, the Seller will make available to the Purchaser's consultants those key people having knowledge about the environmental practices and procedures of the Seller and prior occupants of the Property, and, if necessary, will make available all documents and information in the Seller's possession, custody or control which relate to adjacent property. The term "Environmental Assessment" as referred to in this section shall include, but not be limited to, Phase I and Phase II environmental audits.

During the Environmental Contingency Period, the Purchaser shall not be obligated to take title to the Property if, in addition to the terms of the Letter of Intent, in the Purchaser's sole and exclusive judgment, for any reason whatsoever (including, without limitation, information revealed by the Environmental Assessment), it determines that the use or condition of the Property (including the groundwater thereunder), or any part thereof or any adjacent property, poses a health, safety or environmental hazard, or if the Environmental Assessment reveals or if at any time prior to Closing the Purchaser otherwise becomes aware of the existence of any environmental condition which may be dangerous and/or unacceptable to the Purchaser, or in violation of any environmental law or regulation including, but not limited to, the presence of any Hazardous Material, as said term is defined below. Pursuant to this paragraph, the Purchaser shall have the right, in its sole and exclusive judgment, to revoke its acceptance of this Letter of Intent prior to taking title to the Property, and to declare this Letter of Intent, null and void.

2. Representations of the Seller. Seller represents that to the best of Seller's knowledge:

A. The Seller has provided to the Purchaser any environmental record concerning the Property which Seller possesses or could reasonably have attained. These records are      [list to be provided by the Seller]      (collectively referred to as the "Environmental Reports").

B. Except as disclosed in the Environmental Reports, (i) the Property has never been used and will not be used before the Closing as a landfill, open dump or a waste dump, or for any



activities involving, directly or indirectly, the use, generation, treatment, storage, release or disposal of any hazardous or toxic chemical, material, substance or waste and (ii) the Property does not contain underground storage tanks or "Hazardous Materials," as defined below. Except as disclosed in the Environmental Reports, Seller has received no notice of nor, to Seller's actual knowledge, does the Property (including the groundwater thereunder) violate any Environmental Laws. For purposes of this Letter of Intent, the phrase "Environmental Laws" shall mean any federal, state or local law, statute, ordinance, order, decree, rule or regulation (including but not limited to judicial orders, administrative orders, consent agreements and permit conditions) relating to releases, discharges, emissions or disposals to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use, treatment, handling, storage or disposal or management of Hazardous Materials. "Hazardous Materials" shall mean each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under Environmental Laws or the release of which is regulated under Environmental Laws.

C. There are no proceedings pending or, to based on Seller's actual knowledge and belief of the Seller, threatened against or affecting the Seller in any court or before any governmental authority or arbitration board or tribunal which, if adversely determined, would materially and adversely affect the Property. The Seller is not in default with respect to any order of any court or governmental authority or arbitration board or tribunal, which default would materially and adversely affect the Property. Seller shall immediately provide the Purchaser with a copy of any notice relating to the Property upon Seller's receipt thereof.

### 3. Known Environmental Conditions.

A. Seller assumes and agrees to pay on behalf of Purchaser during Purchaser's ownership of the Property all "Damages" (which include, without limitations, damages, liabilities, costs, losses, diminution in value, fines, penalties, demands, claims, cost recovery actions, lawsuits, administrative proceedings, orders, response action costs, compliance costs, investigation expenses, consultant fees, attorneys' fees and litigation expenses) in connection with the Property to the extent they arise from either of the following (collectively, the "Pre-Closing Conditions"):

(i) any matter, activity, omission, event, circumstance, occurrence, release, threatened release or condition that occurred or was in existence at the Property on or before the Closing; or,

(ii) the operation of any business at the Property on or before the Closing.

Seller shall indemnify, hold harmless and hereby waives and covenants not to sue for any claim for contribution against Purchaser for any Damages to the extent they arise from:

(a) a Pre-Closing Condition related to:

(i) any release, threatened release or disposal of any Hazardous Material at the Property;

(ii) the operation or violation of any environmental law at the Property;  
or,



(iii) any Environmental Claim (which shall mean any investigation, notice, violation, demand, allegation, action, suit, injunction, judgment, order, consent decree, penalty, fine, lien, proceeding or claim (whether administrative, judicial or private in nature) arising (a) pursuant to, or in connection with an actual or alleged violation of, any environmental law, (b) in connection with any Hazardous Material or actual or alleged hazardous material activity, (c) from any abatement, removal, remedial, corrective or other response action in connection with a Hazardous Material, environmental law or other order of a governmental authority or (d) from any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment) in connection with the Property; or,

(b) the inaccuracy or breach of any representation or warranty by Seller in this Letter of Intent or the Contract.

This assumption, indemnification and waiver shall be binding upon successors and assigns of Seller and to the benefit of Purchaser and its trustees, officers, employees and agents, and their successors and assigns.

B. In the event of the breach of any covenant, warranty or representation made in this Letter of Intent or the Contract by the Seller, Seller hereby covenants and agrees, at Seller's sole cost and expense, to unconditionally indemnify, defend and hold the Purchaser, its trustees, officers, servants, employees, agents, successors and assigns (collectively "Purchaser's Affiliates"), both in their capacities as Purchaser's representatives and as individuals, harmless from and against any loss, actions, responsibilities, obligations, liability, damage (whether direct or consequential), expenses, claims (whether asserted or unasserted, direct or indirect, existing or inchoate, known or unknown, having arisen or to arise in the future), penalties, fines, injunctions, suits, proceedings, disbursements or expenses (including, without limitation, attorneys' and experts' fees and disbursements and court costs) (collectively, the "Liabilities"), arising under or relating to any environmental laws, or any other Liabilities which may be incurred by or asserted against any of the Purchaser's Affiliates directly or indirectly resulting from the presence of Hazardous Material on or in the Property (including the groundwater thereunder) and/or any condition of any property (including groundwater) or surface water alleged to have been caused by the migration, transportation, release or threatened release of Hazardous Materials on or from the Property (including the groundwater thereunder). Seller shall assume the expense of defending all suits, administrative proceedings and disputes of any description with all persons, entities, political subdivisions or government agencies arising out of the matters to be indemnified under this Letter of Intent or the Contract. In the event that the Purchaser or any of the Purchaser's Affiliates is/are named as a defendant(s) in any lawsuit arising out of the matters to be indemnified under this Letter of Intent or the Contract, the Purchaser and/or any of the Purchaser's Affiliates shall have the right to choose the attorney(s) who represent(s) them in said lawsuit, and the costs, expenses and fees associated with said attorney(s) in relation to said lawsuit shall be paid by Seller pursuant to the indemnification provisions herein. Seller shall pay, promptly upon entry, any nonappealable order, judgment or other final resolution of any claim or dispute arising out of the matters to be indemnified under the Purchase and shall pay promptly when due any fines, penalties or agreed settlements arising out of the matters to be indemnified under this Letter of Intent or the Contract. In the event that such payment is not made, the Purchaser or any Purchaser's Affiliate, at their sole discretion, may proceed to file suit against the Seller to compel such payment. The Seller also agrees that it will not settle or compromise any action, suit or proceeding without the Purchaser's prior written consent, which consent shall not be unreasonably withheld. Promptly following completion of any actions imposed upon Seller



under any environmental laws, Seller shall obtain and deliver to the Purchaser an environmental report in form and substance acceptable to the Purchaser from an environmental consultant acceptable to the Purchaser, stating that all required action has been taken, and that upon completion of such action, the Property is, to the knowledge of such professional, then in compliance with all applicable environmental laws.

C. In any pending or threatened litigation, contest, dispute, suit or proceeding (whether instituted by Purchaser, Seller or any other party, including any governmental agency charged with enforcement of any environmental law) in any way relating to this Letter of Intent or the Contract and the indemnification described herein, or to enforce the indemnification hereunder or, if the Purchaser has a reasonable basis to believe that a violation of the environmental laws exist in regard to the Property (including the groundwater thereunder), the Purchaser shall have the right to retain counsel and environmental sciences consultants of its own choice for advice or other representation without affecting or otherwise impairing the indemnification hereunder and all Liabilities arising from such services shall be payable by Seller within thirty (30) days of demand.

D. Seller's obligations hereunder shall in no way be impaired, reduced or released by reason of the Purchaser's omission or delay to exercise any right described herein or in connection with any notice, demand, warning or claim regarding violations of any environmental laws governing the Property (including the groundwater thereunder).

E. Seller's liability hereunder shall not be limited by the other provisions contained in this Letter of Intent or the Contract, if a Contract is entered into, and Seller agrees that the indemnification contained herein is separate, independent of and in addition to Seller's other undertakings under this Letter of Intent or the Contract, and that said indemnification shall survive the term of the Letter of Intent and/or Contract.

F. The Purchaser shall not be named the "owner" (as that term is used and/or applicable as it relates to all environmental laws) of the contaminated soil and/or groundwater or any material taken from the Property or any underground storage tank on the Property and as between Seller and Purchaser, Seller shall have the sole and exclusive responsibility and liability for complying with any and all environmental laws pertaining to the contaminated soil and groundwater, including but not limited to the requirements for the excavation and off-site disposal of the contaminated soil and/or groundwater. It is the specific intention of this section that Purchaser shall never at any time be identified or construed as being the owner (past or present), generator or transporter of the contaminated soil and/or groundwater, and underground storage tanks, and that all responsibilities, obligations and liability relating to that soil and/or groundwater and underground storage tanks shall remain with the Seller.