

LEGISTAR: 170126
DISTRICT #: ALL

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

 X Resolution or Ordinance (Blue) X 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 : March 15, 2017 **(BOT) Date:** April 6, 2017
SUBJECT: Vacation of Magnolia Circle ROW between Cherry Lane and Madison Meadows Park
SUBMITTED BY: Carl S. Goldsmith, Director of Public Works *CS*

BACKGROUND/POLICY IMPLICATIONS:

The Village of Lombard has determined that the subject property is surplus and has negotiated the vacation of the ROW pursuant to State Statute. The vacation of the property requires that the Village Board of Trustees adopt An Ordinance Vacating Magnolia Circle between Cherry Lane and Madison Meadows Park Madison Street.

Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney _____ Date _____
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.



March 15, 2017

TO: Village President and Board of Trustees

THROUGH: Scott Niehaus, Village Manager

FROM: Carl Goldsmith, Director of Public Works *ag*

SUBJECT: Ordinance Vacating Magnolia Circle between Cherry Lane and Madison Meadows Park

Background

At the January 21, 2016 Village Board meeting, the Village Board directed staff to proceed with the process to vacate the Magnolia Circle right-of-way (ROW) located west of Cherry Lane that has been deemed surplus. Since the January 21, 2016 meeting, staff has met with the two adjacent property owners (to the north and south) who had expressed interest in obtaining half of the ROW. The area is generally depicted below.



Throughout the past several months, Village staff and the Village Attorney have worked with the property owners on the attached Ordinance that would enable the vacation and subsequent conveyance of half the right-of-way to each of the adjacent property owners. The Ordinance has been executed by both of the adjacent property owners. The Ordinance articulates the direction previously provided to staff. The salient points of the Ordinance are summarized below for the Village Board's consideration.

1. The Village has determined that the fair market value of the property is \$30,000. Each of the abutting property owner would be required to deposit Fifteen Thousand dollars (\$15,000) with the Village within sixty (6) days of the approval date of the Ordinance.

2. The Village would be responsible for the removal of the pavement, sidewalks, trees and utilities from the vacated area and restore the area with grass. This would be required to be completed on or before December 21, 2020.
3. The abutting property owners would receive title to the property upon recording of the Ordinance and Plat of Vacation.
4. In the event that abutting property owners do not make the required payments within sixty (60) days of the approval of the Ordinance, the Ordinance shall be null and void.
5. In the event that the Village fails to perform the required improvements, on or before December 31, 2020, as a result of the Project not moving forward, the Village shall refund the payments made by the Abutting Property Owners, along with interest thereon at the rate of two percent (2%) per annum.
6. If the Village Board of Trustees repeal or amend this Ordinance on or before December 31, 2020, without the prior written approval of the abutting property owners, the payments made to the Village will be refunded, along with interest thereon at the rate of five percent (5%) per annum, from the date of the deposit with the Village.

The work to restore the right-of-way will be conducted in accordance with the Lombard Meadows Phase 3: Magnolia Circle Project, which is scheduled for construction in 2020. The estimated cost for the reconstruction of the area subject to the vacation is \$185,000. The estimated cost for the removal of the pavement and sidewalks, removal of trees and restoration of the right-of-way is estimated at \$45,000. As such, the Village will see a reduced cost of the project of approximately \$140,000 in addition to the long term cost of maintenance of the roadway and other assets subject to the vacation.

Upon execution of the Ordinance, the Village will hold the ordinance until the completion of the project. At that time, the Ordinance and plat of vacation will be recorded and the property shall be transferred per the terms and conditions outlined in the ordinance.

The Public Works Department respectfully requests that this matter be placed on the Village Board agenda for the April 6, 2017 meeting. Should you have any questions, please feel free to contact me.

Recommendation

Staff recommends that the Village Board of Trustees adopt AN ORDINANCE VACATING A PORTION OF MAGNOLIA CIRCLE, BETWEEN CHERRY LANE AND MADISON MEADOWS PARK.

ORDINANCE NO. _____

**AN ORDINANCE VACATING A PORTION OF MAGNOLIA CIRCLE,
BETWEEN CHERRY LANE AND MADISON MEADOWS PARK**

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 (hereinafter the "Corporate Authorities") of the Village of Lombard (hereinafter the "Village") find as follows:

- A. 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.
- B. That the fair market value of the dedicated right-of-way, as described in Section 3 below (hereinafter the "Vacated Street"), after taking into account the work to be performed by the Village as set forth in Section 4 below, is Thirty Thousand and No/100 Dollars (\$30,000.00).
- C. That the owners of the following-described properties:

PARCEL 1 (Steven Tani LLC – hereinafter the "Parcel 1 Owner"):

Lot 292 in Lombard Meadows, a subdivision in parts of Sections 16 and 17, Township 39 North, Range 11, East of the Third Principal Meridian, according to the plat thereof recorded July 23, 1957 as document 850186, in DuPage County, Illinois;

P.I.N.: 06-17-215-001;

Common Address: 902 Cherry Lane, Lombard, Illinois 60148; and

PARCEL 2 (L. Frances Brach, as Trustee under the Trust Agreement dated July 3, 2014, and known as the L. Frances Brach Trust – hereinafter the "Parcel 2 Owner"):

Lot 291 in Lombard Meadows, a subdivision in parts of Sections 16 and 17, Township 39 North, Range 11, East of the Third Principal Meridian, according to the plat thereof recorded July 23, 1957 as document 850186, in DuPage County, Illinois;

P.I.N.: 06-17-217-001;

Common Address: 906 Cherry Lane, Lombard, Illinois 60148;

(the Parcel 1 Owner and the Parcel 2 Owner are hereinafter collectively referred to as the "Abutting Property Owners") 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.

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 Sections 4, 6, 7, 8 and 9 below.

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

That part of Magnolia Circle located South of and adjacent to Lot 292, and North of and adjacent to Lot 291, in Lombard Meadows, a subdivision in parts of Sections 16 and 17, Township 39 North, Range 11, East of the Third Principal Meridian, according to the plat thereof recorded July 23, 1957 as document 850186, in DuPage County, Illinois, and North of and adjacent to Lot 291 in Lombard Meadows, a subdivision in parts of Sections 16 and 17, Township 39 North, Range 11, East of the Third Principal Meridian, according to the plat thereof recorded July 23, 1957 as document 850186, in DuPage County, Illinois;

as shown on the plat of vacation attached hereto as Exhibit A, and made part hereof, and designated "hereby vacated" on said plat of vacation, be and the same hereby is vacated, subject to the conditions listed in Sections 4, 6, 7, 8 and 9 below, with said vacation not being in full force and effect until such time as the recording of this Ordinance, as referenced in Section 9 below, actually takes place.

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

- A. Each of the Abutting Property Owners making a monetary deposit of Fifteen Thousand and No/100 Dollars (\$15,000.00) with the Village, within sixty (60) days of the approval date of this Ordinance.

B. The Village:

- (1) removing all pavement, sidewalk, trees and utilities from the Vacated Street, and restoring the Vacated Street to a grassed area;
- (2) abandoning the existing watermain, in the Vacated Street, but leaving the existing watermain in place; and
- (3) disconnecting the existing water service line, serving the house on PARCEL 1 (as referenced in Section 1.C. above), from the existing watermain in the Vacated Street, and constructing a water service line from the existing watermain in Cherry Lane to the house on said PARCEL 1;

as part of the Village's Lombard Meadows 3: Magnolia Circle Project (the "Project"); on or before December 31, 2020 (hereinafter the "Village Work").

SECTION 5: Pursuant to 65 ILCS 5/11-91-1, the Parcel 1 Owner shall acquire title to the North 1/2 of the Vacated Street, and the Parcel 2 Owner shall acquire title to the South 1/2 of 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, in the event that the payments, by both the Parcel 1 Owner and the Parcel 2 Owner, as provided for in Section 4.A. above, are not received by the Village within sixty (60) 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 7: That, in the event that the Village Work, as provided for in Section 4.B. above, is not completed by the Village on or before December 31, 2020, as a result of the Project not moving forward, the payments made to the Village, by the Abutting Property Owners, pursuant to Section 4.A. above, shall be refunded to the Abutting

Property Owners by the Village, along with interest thereon at the rate of two percent (2%) per annum, from the date of the deposit thereof with the Village to the date of the refunding thereof to each of the Abutting Property Owners, this Ordinance shall be null and void and of no further effect, the recording as referenced in Section 9 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, in the event that the Corporate Authorities of the Village repeal or amend this Ordinance on or before December 31, 2020, without the prior written approval of the Abutting Property Owners, the payments made to the Village, by the Abutting Property Owners, pursuant to Section 4.A. above, shall be refunded to the Abutting Property Owners by the Village, along with interest thereon at the rate of five percent (5%) per annum, from the date of the deposit thereof with the Village to the date of the refunding thereof to each of the Abutting Property Owners.

SECTION 9: That, upon the Village's receipt of the payments referenced in Section 4.A. above, and the Village's completion of the Village Work as referenced in Section 4.B. 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 10: That the Abutting Property Owners are in agreement with the terms and conditions of this Ordinance, and accept same as evidenced below:

- A. STEVEN TANI LLC, an Illinois limited liability company, being the Parcel 1 Owner, hereby voluntarily accepts, and agrees to be bound by, the terms and conditions of this Ordinance, relative to the vacation of the Vacated Street.

By: 
Steven Tani
Sole Member

CERTIFICATION

STATE OF _____)
) SS
COUNTY OF _____)

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

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

**PLEASE SEE
NOTARY ATTACHMENT**

Notary Public

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

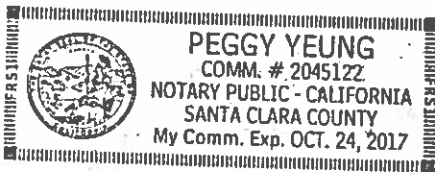
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Santa Clara)
On Jan 4th 2017 before me, Peggy Yeung, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Steven Tani
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Ordinara Viteating Portion -- Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

B. L. FRANCES BRACH, AS TRUSTEE UNDER THE TRUST AGREEMENT DATED JULY 3, 2014, AND KNOWN AS THE L. FRANCES BRACH TRUST, being the Parcel 2 Owner, hereby voluntarily accepts, and agrees to be bound by, the terms and conditions of this Ordinance, relative to the vacation of the Vacated Street.

By: *L. Frances Brach*
L. Frances Brach
Trustee Under the Trust Agreement Dated July 3, 2014,
and Known as the L. Frances Brach Trust

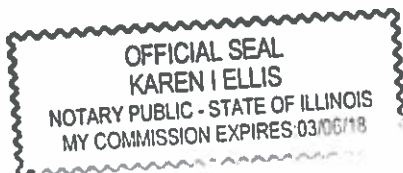
CERTIFICATION

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 L. Frances Brach, personally known to me to be the Trustee Under the Trust Agreement Dated July 3, 2014, and Known as the L. Frances Brach Trust (the "Trust"), and also known to me to be the same person whose name is subscribed to the foregoing instrument as such Trustee, appeared before me this day in person and acknowledged that, as such Trustee, she signed and delivered the signed instrument, pursuant to authority given by said Trust, as her free and voluntary act, and as the free and voluntary act and deed of said Trust, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal, this 16th day of March, 2017.

Karen A. Ellis
Notary Public



SECTION 11: 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)