

ORDINANCE NO. 5556

**AN ORDINANCE VACATING A PORTION OF THE ELIZABETH STREET
RIGHT-OF-WAY SOUTH OF ST. CHARLES ROAD**

WHEREAS, the Village of Lombard (hereinafter the “VILLAGE”) maintains a right-of-way of eighty feet (80’) in width for that portion of Elizabeth Street which is located within the corporate limits of the VILLAGE; and

WHEREAS, the VILLAGE finds that a drive-through pharmacy is proposed to be developed at the southwest corner of Elizabeth Street and St. Charles Road, Lombard Illinois; and

WHEREAS, said development is subject to a development agreement for Walgreens, 309-315 W. St. Charles Road, approved by the Corporate Authorities of the Village of Lombard on September 16, 2004; and

WHEREAS, the VILLAGE finds that a portion of Elizabeth Street between St. Charles Road and the Union Pacific Railroad, as described in Section 2 below (hereinafter referred to as the “SUBJECT RIGHT-OF-WAY”) is an amount in excess of what is customarily reserved for Village right-of-way purposes; and

WHEREAS, the VILLAGE has determined that the SUBJECT RIGHT-OF-WAY would primarily be for the use and benefit of the owner of the parcel at the southwest corner of Elizabeth Street and St. Charles Road and would not serve the transportation needs of the Village; and

WHEREAS, the VILLAGE would benefit by transferring the future maintenance responsibilities of the SUBJECT RIGHT-OF-WAY from the VILLAGE to the owner of the parcel at the southwest corner of Elizabeth Street and St. Charles Road; and

WHEREAS, the Corporate Authorities of the VILLAGE have received a Plat of Right of Way Vacation for the SUBJECT RIGHT-OF-WAY, attached hereto as “Exhibit A” and made part hereof; and

WHEREAS, the Corporate Authorities of the VILLAGE deem it to be in the best interest of the Village of Lombard to authorize said right-of-way vacation if, as consideration for such vacation, the owner of the property located at the southwest corner of Elizabeth Street and St. Charles Road, completes to the satisfaction of the VILLAGE those improvements noted below;

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

SECTION 1: The President and Board of Trustees find as follows:

- A. Pursuant to 65 ILCS 5/11-91-1, an ordinance vacating a street can provide that it shall not become effective until the owner of a particular parcel of property abutting upon the street to be vacated pays 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 by reason of the vacation.
- B. That the fair market value of that portion of Elizabeth Street as described in Section 3 below is \$ 111,312 (i.e., sale price of abutting property per square foot of \$28.94 multiplied by 3846.30 square feet in area).
- C. That the developer of Walgreens, 309-315 W. St. Charles Road (hereinafter the "ABUTTING PROPERTY OWNER"), shall make payment to the Village for the entire compensation due relative to the street vacation referenced in Section 2 below, as more specifically set forth in Section 4 below.
- D. That the public interest will be served by vacating the SUBJECT RIGHT-OF-WAY.

SECTION 2: The following described SUBJECT RIGHT-OF-WAY:

THAT PART OF ELIZABETH STREET LYING EASTERLY AND ADJACENT TO LOTS 1 AND 3 OF MARQUARDT'S RESUBDIVISION DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 3 IN MARQUARDT'S RESUBDIVISION, THENCE NORTH ALONG THE EAST LINES OF SAID LOTS 3 AND 1 IN MARQUARDT'S RESUBDIVISION 202.28 FEET, THENCE SOUTHEASTERLY AT AN ANGLE 51 DEGREES 02 MINUTES 58 SECONDS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE 25.72 FEET; THENCE SOUTH PARALLEL WITH THE EAST LINES OF SAID LOTS 3 AND 1 IN MARQUARDT'S RESUBDIVISION 182.88 FEET TO THE NORTHERLY PART OF THE RIGHT OF WAY LINE OF CHICAGO AND NORTH WESTERN RAILROAD; THENCE WESTERLY ALONG SAID NORTHERLY RIGHT OF WAY LINE OF THE CHICAGO AND NORTH WESTERN RAILROAD 20.18 FEET TO THE POINT OF BEGINNING IN THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN IN DU PAGE COUNTY, ILLINOIS CONTAINING 3846.30 SQUARE FEET (OR 0.0883 ACRES) MORE OR LESS;

as shown on the plat attached hereto as Exhibit "A" and designated "area to be vacated" be and

the same hereby is vacated subject to the conditions listed in Section 3 below.

SECTION 3: That this Ordinance shall be subject to the payment by the ABUTTING PROPERTY OWNER, as set forth in Section 1 above, of compensation in the amount of \$111,312, which shall be paid prior to issuance of any building permits by the VILLAGE for the adjacent property at 309-315 West St. Charles Road, as well as compliance with the following conditions:

- A. The SUBJECT RIGHT-OF-WAY to be vacated shall be improved in conformance with a site plan, in full conformance with all applicable VILLAGE Codes and Ordinances and consistent with the terms and conditions as noted in the "Development Agreement for Walgreens, 309-315 W. St. Charles Road," approved by the Corporate Authorities of the Village of Lombard on September 16, 2004.
- B. All public improvements shall be subject to the requirements of the Subdivision and Development Ordinance (Title 15, Chapter 154 of the Lombard Village Code). The Plat of Vacation shall not be recorded and no building permits for private improvements shall be issued until the Department of Community Development has determined that all required submittals have been made.
- C. Construction of the site improvements described within the aforementioned "Development Agreement for Walgreens, 309-315 W. St. Charles Road" and all public improvements shall be completed within thirty-six (36) months from the date of adoption of this Ordinance. Shall the ABUTTING PROPERTY OWNER not complete the above improvements within thirty-six (36) months from the date of adoption of this Ordinance, the ABUTTING PROPERTY OWNER agrees to transfer title of the SUBJECT RIGHT-OF-WAY back to the Village, at no cost to the VILLAGE.
- D. The ABUTTING PROPERTY OWNER shall indemnify and hold harmless the Village with respect to any claim or loss, including but not limited to, attorney's fees, costs and expenses of litigation, claims and judgments in connection with any and all claims or suits of any kind which may arise, either directly or indirectly, as a result of the VILLAGE's adoption of this Ordinance.

SECTION 4: Pursuant to 65ILCS 5/11-91-1, the following parcel(s) shall acquire title to that portion of the vacated SUBJECT RIGHT-OF-WAY that lies immediately adjacent thereto:

Parcel Identification Numbers: 06-07-208-016 and 022

SECTION 5: That the costs borne by the ABUTTING PROPERTY OWNER associated with environmental testing within the Elizabeth Street or St. Charles Road rights-of-way, as required by the VILLAGE as part of a Highway Authority Agreement may be applied toward

meeting the compensation requirement as set forth in Section 3 above.

SECTION 6: That the ABUTTING PROPERTY OWNER is in agreement with the terms and conditions of this Ordinance, as evidenced below:

We, the undersigned, being the developer of Walgreens, 309-315 W. St. Charles Road, which abuts the SUBJECT RIGHT-OF-WAY described in Section 2 above, hereby state that I have read this Ordinance and voluntarily agree to the conditions stated herein, and the associated compensation for said street vacation as set forth herein.

SECTION 7: That the Department of Community Development is hereby directed to record a certified copy of this Ordinance, along with the original Plat of Vacation, with the DuPage County Recorder of Deeds, subject to the restriction set forth in Section 3 above.

SECTION 8: That this Ordinance shall be in full force and effect from and after its passage and approval as provided by law.

Passed on first reading this ____ day of _____, 2004.

First reading waived by action of the Board of Trustees this ____ day of _____, 2004.

Passed on second reading this ____ day of _____, 2004, pursuant to a roll call vote as follows:

AYES _____
NAYS _____
ABSENT _____

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Approved by me this ____ day of _____, 2004.

William J. Mueller
Village President

ATTEST:

Barbara A. Johnson
Deputy Village Clerk