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ORDINANCE NO. F-0290
AN ORDINANCE VACATING A PORTION OF
PROSPECT AVENUE - RICHARD SMYKAL, INC.

WHEREAS, a lease agreement was entered into on November 6, 1978 between Richard Smykal, Inc. ("Smykal" "Petitioner") and the City of Wheaton ("City") allowing for Smykal to improve a portion of Prospect Avenue lying west of and adjacent to property located 1600 East Roosevelt Road and 1607 East Taft Avenue in consideration for receiving the right to park its motor vehicles on portions of Prospect Avenue for a period of twenty (20) years in conformance with engineering plans entitled "Prospect Avenue Improvements Parking Facilities at 1600 East Roosevelt Road"; and

WHEREAS, a written petition has been filed with the City, requesting the vacation of a portion of a certain right-of-way commonly known as Prospect Avenue lying west of and adjacent to the property located at 1600 East Roosevelt Road and 1607 East Taft Avenue; and

WHEREAS, the vacation petition has been filed pursuant to the provisions of Chapter 58, Article IV, of the City Code; thereafter, pursuant to notice as required by the City Code, a public hearing was conducted by the City Council on September 28, 1998, to consider the vacation; and

WHEREAS, the City has determined that the vacation of the right-of-way legally described herein will promote the health, safety, and welfare of the City and its residents.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule powers, as follows:

Section 1: The following described right-of-way commonly known as the east half of Prospect Avenue lying west of and adjacent to the property located at 1600 Roosevelt Road and 1607 East Taft Avenue is vacated:

THE EASTERLY THIRTY-THREE FEET (33') OF THAT PART OF PROSPECT AVENUE LYING WEST OF AND ADJACENT TO LOTS 11 AND 12 IN BLOCK 32 IN WHEATON ESTATES, A SUBDIVISION IN SECTION 22, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 12, 1924 AS DOCUMENT NO. 182391 IN DUPAGE, ILLINOIS, AND CONSISTING OF 8,547 SQUARE FEET. (Hereafter referred to as the "subject property".)

Section 2: The vacation provided for in this ordinance is subject to the following conditions and requirements:

- A. On or before December 16, 1998 Petitioner shall:
 - 1. File with the City a site plan illustrating the proposed reuse of the subject property and the property adjacent thereto to the east. The site plan shall illustrate all necessary public utility easements as directed by the Director of Engineering, be in compliance with all provisions of the City Code and Zoning Ordinance, and subject to the reasonable approval of the City. In the event Petitioner wishes to secure any variations or modifications from the provisions of the City's ordinances, Petitioner shall file an application therefore at the time of filing the site plan.
 - 2. File an application with the Illinois Department of Transportation (IDOT) for the ingress and/or egress to and from the subject property and Roosevelt Road, or the elimination of the presently existing Roosevelt Road curb cut along the subject property. A copy of the IDOT application shall be directed to the City.
- B. Petitioner shall pay to the City the sum of \$4.68 per square foot for a total of Forty Thousand Dollars (\$40,000), which represents the fair market value of that portion of Prospect Avenue which is vacated pursuant to the provisions of this ordinance. Fifteen Thousand Dollars (\$15,000) of which may be rebated to the Petitioner for documented cost incurred by Petitioner to remove existing improvements and construct new improvements within the Subject Property provided:
 - 1. The City Manager receives sufficient information and/or documentation, including but not limited to invoices and/or contracts to complete work, of expenses incurred to remove existing improvements and construct new improvements within the Subject Property; and
 - 2. Information and/or documentation is submitted to the City Manager no later than July 1, 1999.
- C. Petitioner shall provide letters from Commonwealth Edison, Northern Illinois Gas, Ameritech and Jones Spacelink indicating they have no interest or objection to the proposed right-of-way vacation.
- D. Petitioner shall pay all fees associated with the vacation of Prospect Avenue as provided for by Sections 58-138 and 58-140 Wheaton City Code, including appraisal fee of \$500 and an application fee of \$100.
- E. Petitioner shall commence construction of the reuse improvements pursuant to the approved site plan on or before March 1, 1999.

Section 3: It shall be a condition precedent to the effectiveness of this ordinance and the recording and filing of the plat of vacation as provided for in Section 4 that Petitioner fully comply with the conditions contained in Section 2 of this ordinance.

In the event of noncompliance by Petitioner with any provision of this ordinance, the City, in its sole discretion, may remove all of the existing improvements in the Prospect Avenue right-of-way after giving Petitioner seven (7) days written notice of the City's intention to remove the existing

improvements. Petitioner shall reimburse the City for all reasonable costs and expenses related to the removal of the improvements.

Section 4: The Mayor is authorized and directed to execute the plat of vacation, dated July 6, 1998, prepared by Lambert & Associates; and the City Clerk is authorized and directed to attest to the signature of the Mayor. The plat of vacation shall be recorded in the Office of the Recorder of Deeds, DuPage County, Illinois, along with a certified copy of this ordinance, at the expense of the petitioner, and shall also be filed in the office of the DuPage County Clerk, DuPage County, Illinois.

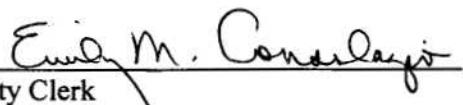
Section 5: All ordinances or parts of ordinances in conflict with these provisions are repealed.

Section 6: This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.



Mayor

ATTEST:



City Clerk

Ayes:

Roll Call Vote:

Councilman Mork
Councilwoman Davenport
Councilman Eckhoff
Mayor Carr
Councilman Johnson
Councilwoman Johnson

Nays:

None

Absent:

Councilman Gresk

MOTION CARRIED UNANIMOUSLY

Passed: November 16, 1998

Published: November 17, 1998