

## ORDINANCE NO. F-1505

### **AN ORDINANCE AUTHORIZING THE VACATION OF A PORTION OF CHASE STREET AT ITS INTERSECTION WITH THE RAIL GRADE CROSSING AT THE UNION PACIFIC RAILROAD**

**WHEREAS**, the Union Pacific Railroad owns and operates a railway which traverses the City of Wheaton in a generally east and west direction; and

**WHEREAS**, the City operates a roadway by prescriptive easement commonly referred to as Chase Street, at its crossing with the Union Pacific Railroad at a roadway/rail grade crossing improved with automatic warning devices; and

**WHEREAS**, the Union Pacific Railroad has requested that the City of Wheaton consider closing a portion of the Chase Street at the Union Pacific's roadway/rail crossing for the purpose of installing a track crossover switch; and

**WHEREAS**, the Union Pacific Railroad has stated the purpose of the track crossover switch is to reduce train delays, increase the average train speeds, reduce the train occupancy rate of grade railroad crossings in the City of Wheaton, reduce the number of slow moving freight trains, and to reduce the railroad grade crossing gate down times in the City of Wheaton; and

**WHEREAS**, on June 23, 2010 the Illinois Commerce Commission issued an Order authorizing the construction of a pedestrian underpass in conjunction with the closure of the Chase Street roadway/rail crossing. That Order stipulates that the City finalize the vacation of the Chase Street roadway/rail crossing and provide written documentation of said vacation to the Commission within thirty (30) days of the date of the Commission's Order; and

**WHEREAS**, the Corporate Authorities of the City of Wheaton find that this vacation is not the type of vacation contemplated by the procedures set forth in Chapter 58 "STREETS, SIDEWALKS AND OTHER PUBLIC PLACES", Article III "Vacation Procedures", of the Wheaton City Code because it: involves a railway crossing; has already been the subject of a public hearing before the ICC ; and involves the payment of no compensation to the City as a result of the establishment of a railroad underpass at the railroads cost; and

**WHEREAS**, therefore to the extent that Article III of Chapter 58 is inconsistent with this Ordinance it is repealed but only to that extent and reaffirmed in all other respects.

**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 City of Wheaton hereby vacates all roadway rights of way and/or easement rights of the Chase Street roadway/rail crossing at the Union Pacific Railroad with the following conditions.

1. The findings and conditions set forth in the Illinois Commerce Commission's Order dated June 23, 2010 are incorporated herein as substantive terms and conditions of this Ordinance.

2. The location and dimensions of the Chase Street roadway right of way/easement vacation are hereby approved as depicted on Exhibit 1 which is attached hereto and incorporated herein as if fully set forth.

3. The vacation of the City's interest in the Chase Street roadway/rail crossing shall be effective upon completion of construction of the proposed pedestrian underpass.

4. The Union Pacific Railroad shall construct a pedestrian/ bicycle underpass at the Chase Street crossing to accommodate pedestrian and bicycle movements under the railroad tracks. This underpass shall constitute a permanent easement for pedestrian and bicycle movements under the railroad tracks.

5. The Union Pacific Railroad shall allow input from the City, Wheaton College and the public regarding the general design of the pedestrian underpass.

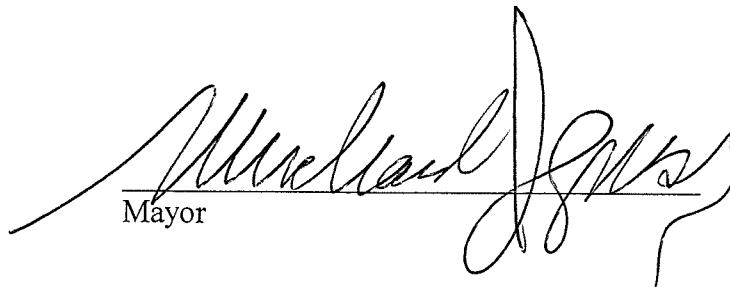
6. The Union Pacific Railroad shall construct the pedestrian underpass regardless of securing funding from the Illinois Commerce Commission, or other possible or anticipated funding sources.

7. If the Union Pacific Railroad does not construct the pedestrian underpass this Ordinance shall become null, void and without effect, and the City shall retain any rights it may have in the vacated area of Chase Street.

**Section 2:** All ordinances or parts of ordinances in conflict or inconsistent with the provisions of this Ordinance are hereby repealed only to the extent of such conflict or inconsistency and specifically as set forth in the last two "whereas" sections of this Ordinance which are adopted as part of this Section 2 as if fully set forth.

**Section 3:** That if any part of this Ordinance is declared invalid by a Court of competent jurisdiction, such partial invalidity shall not affect the remainder of this ordinance.

**Section 4:** That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as authorized and directed to be done by the Mayor and City Council of the City of Wheaton.



Michael J. Winters  
Mayor

ATTEST:

Emily M. Gresk  
City Clerk

ROLL CALL VOTE

Ayes: Councilwoman Corry  
Mayor Gresk  
Councilman Suess

Nays: Councilman Levine  
Councilman Scalzo

Absent: Councilman Mouhelis  
Councilman Prendiville

Motion Carried

Passed: July 19, 2010

Published: July 20, 2010



Chase Street Vacation at Union Pacific Railroad Crossing

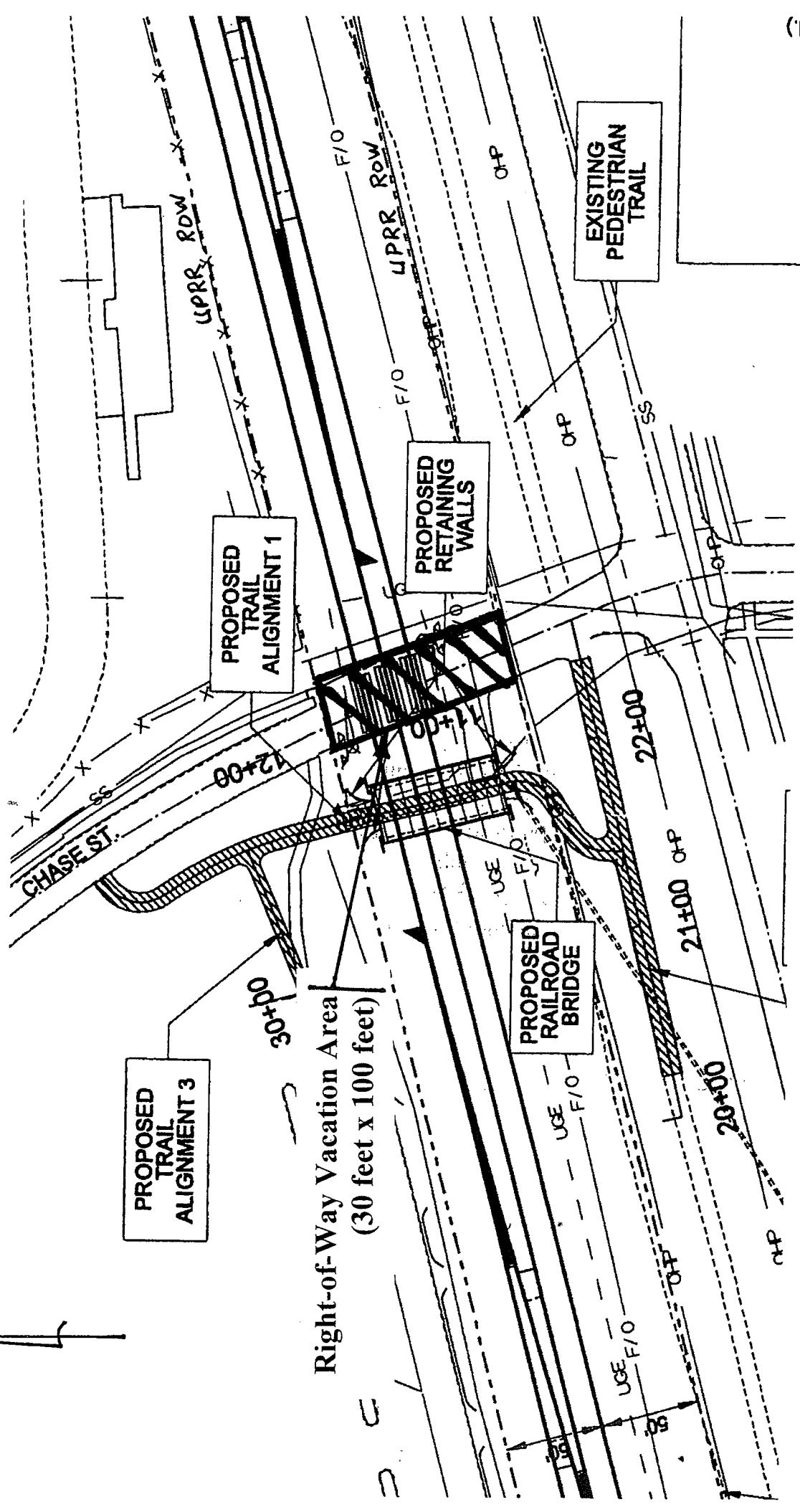


EXHIBIT 1

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