ST. CHARLES
SINCE 1834

AGENDA ITEM EXECUTIVE SUMMARY

Title:	Recommendation to Approve the Vacation of a Portion of Indiana Street Between First Street and the Fox River
Presenter:	

Please check appropriate box:

	Government Operations	X	Government Services 08.22.11
	Planning & Development		City Council
	Public Hearing		

Estimated Cost:	$0	Budgeted:	YES		NO	

If NO, please explain how item will be funded:

Executive Summary:

As part of the agreement made with Fox Island Limited Partnership, a portion the Indiana Street right of way was to be vacated upon the completion of the Bob Leonard River Walk Phase One. This work was completed as part of the 2010 MFT Street Rehab Program.

The portion of vacated right of way is 24 feet wide and is adjacent to 225 feet of the southerly frontage of PIN 09-34-129-003. An easement for both utilities and pedestrian access is included in the vacation ordinance language.

Attachments: *(please list)*

- **Copy of Proposed ordinance for right of way vacation.**
- **Copy of Exhibit depicting location and legal description**

Recommendation / Suggested Action *(briefly explain)*:

Staff recommends approving the vacation of a portion of Indiana St. between S. 1st St. and Fox River as described and depicted on Exhibit.

For office use only:	*Agenda Item Number: 3.d*

City of St. Charles, Illinois
Ordinance No. _____

An Ordinance Vacating a Portion of Indiana Street

WHEREAS, the Illinois Municipal Code (Illinois Compiled Statutes, 1992, Ch. 65, Section 5/11-91-1) provides that whenever the corporate authorities of any municipality determine that the public interest will be subserved by the vacating of any street or part thereof within their jurisdiction, they may vacate that street or part thereof by an ordinance; and

WHEREAS, said Section further provides that the ordinance shall be passed by an affirmative vote of at least three-fourths of the aldermen then holding office; and

WHEREAS, said Section further provides that the vote shall be taken by ayes and nays and entered on the records of the corporate authorities; and

WHEREAS, said Section further provides that the ordinance shall not become effective until the owners of property abutting the street or part thereof so vacated shall pay compensation in an amount which, in the judgment of the corporate authorities, shall be equal to the benefits which will accrue to them by reason of that vacation; and

WHEREAS, said Section further provides that if there are any public service facilities in said street or part thereof, the ordinance may also reserve to the municipality or to the public utility, as the case may be, owning such facilities, such property, rights of way and easements as, in the judgment of the corporate authorities, are necessary or desirable for continuing public service by means of those facilities, for maintenance, renewal and reconstruction thereof; and

WHEREAS, Section 5/11-91-2 of the Illinois Municipal Code provides whenever any street or part thereof is vacated under or by virtue of any ordinance of any municipality, the title to the land included within the street or part thereof so vacated vests in the then owner of the land abutting thereon in the same proportions and to the extent as though the street has been dedicated by common law plat (as distinguished from a statutory plat), and as though the fee of the street has been acquired by the owners as part of the land abutting on the street;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ST. CHARLES, KANE AND DUPAGE COUNTIES, ILLINOIS, AS FOLLOWS:

1. That upon payment of $1.00 (One Dollar) to the City of St. Charles, the portion of Cedar Avenue shown in Exhibit "A", and hereinafter described be vacated:

LEGAL DESCRIPTION

That part of Indiana Street described as follows: Beginning on the north line of Indiana Street, 16.5 feet westerly of the southwest corner of Lot 5, Block 37, of the Original Town of St. Charles; thence easterly along said north line, 225 feet; thence southerly perpendicular to the last described course, 24 feet; thence westerly parallel to said north line, 225 feet; thence northerly 24 feet to the Point of Beginning, in the City of St. Charles, Kane County, Illinois

Subject to the City of St. Charles reserving and retaining a permanent non-exclusive easement granted to the City of St. Charles and to all public utility companies of any kind operating under franchise granting them easement rights from said City of St. Charles, including, but not limited to, SBC, NICOR, Comcast, and to their successors and assigns, in, upon, across, over, under and through the right of way area to be vacated as shown in Exhibit "A", for the purpose of installing, constructing, reconstructing, inspecting, operating, replacing, renewing, altering, enlarging, removing, repairing, cleaning, and maintaining underground and overhead electrical, cable television, communication, gas, poles, wires, conduits, telephone or other utility lines or appurtenances, sanitary and storm sewers, drainage ways, storm water detention and retention, water mains and any and all manholes, hydrants, pipes, connections, catch basins, buffalo boxes and without limitation, such other installations as may be required to furnish public utility service to adjacent areas together with the right of access across the real estate herein for the necessary personnel and equipment to make any or all of the above work (herein collectively referred to as "Grantees"). The right is also hereby granted to said Grantees to cut down, trim or remove any trees, shrubs or other plants that interfere with the operation of or access to said sewers, or, without limitation, utility installations in, on, upon or across, under, or through said easement. The right is also hereby granted to the City of St. Charles for pedestrian access across said easement. In the event utility maintenance is performed within the easement, the City of St. Charles will have no obligation with respect to surface restoration including, but not limited to, the restoration, repair, or replacement of any landscaping provided, however, the Grantees shall be obligated following any such work, to backfill and mound so as to retain suitable drainage, remove debris, and leave the area in generally clean and workmanlike condition. No permanent buildings shall be placed on said easements, but the easement areas may be used for gardens, shrubs, landscaping, paving, fences, sidewalks, curbing, pedestrian access, and other purposes that do not interfere with the aforesaid uses and rights. Where an easement is used for storm or sanitary sewers, other utility installations shall be subject to the prior approval of said City of St. Charles so as not to interfere with the gravity flow in said sewer or sewers for the maintenance or operation of any utility over, under and upon the portion of public right of way legally described herein and shown in Exhibit "A".

2. The portion of the vacated street legally described herein and shown in Exhibit "A" is hereby restricted as to use so that no structures be constructed hereon.

3. The City Clerk is directed to record a duly certified copy of this Ordinance of Vacation in the Office of the Recorder of Deeds in Kane County, Illinois.
4. This Ordinance shall be in full force and effect from and after its passage and approval pursuant to law.

PRESENTED to the City Council of the City of St. Charles, Illinois, this _____ day of _____ 2011.

PASSED by the City Council of the City of St. Charles, Illinois, this_____ day of _____ 2011.

APPROVED by the Mayor of the City of St. Charles, Illinois, this _____ day of _____ 2011.

_____
Donald P. DeWitte, Mayor

ATTEST:

_____
City Clerk

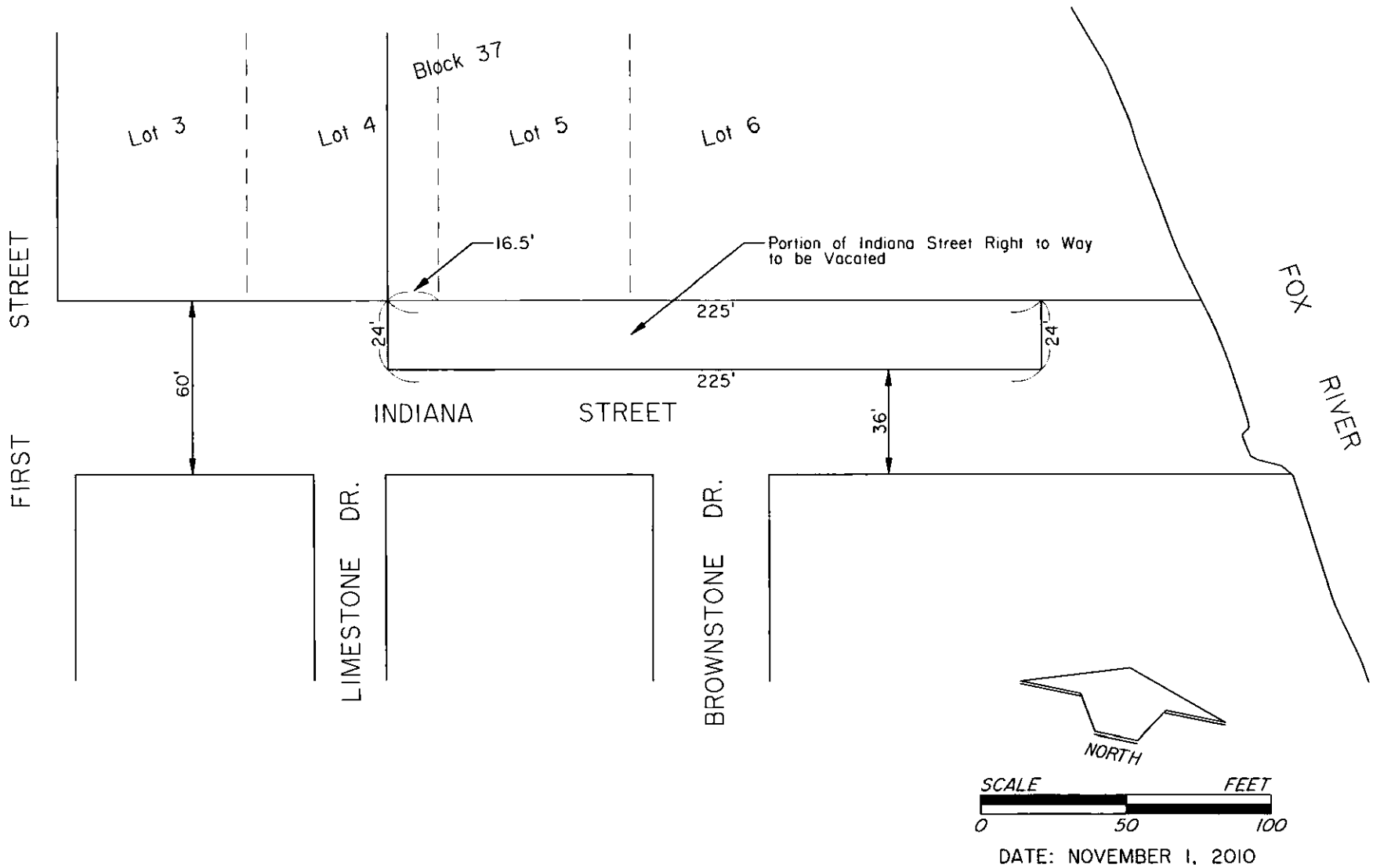
COUNCIL VOTE:
Ayes:
Nays:
Absent:
Abstain:

APPROVED AS TO FORM:

_____
City Attorney

DATE: _____

EXHIBIT "A"



DATE: NOVEMBER 1, 2010