

**UPPER DARBY TOWNSHIP
DELAWARE COUNTY, PENNSYLVANIA**

ORDINANCE NO. 3104

**AN ORDINANCE OF UPPER DARBY TOWNSHIP
VACATING ECOLE AVENUE FOR OWNERSHIP AND USE
BY THE UPPER DARBY SCHOOL DISTRICT**

WHEREAS, the Home Rule Charter of Upper Darby Township (“Township”) authorizes the Upper Darby Township Council (“Council”) to make and adopt ordinances consistent with the Constitution and laws of this Commonwealth and with the Charter;

WHEREAS, Council is authorized to adopt ordinances to vacate a street or parts of a street upon petition of the owners of properties abutting the street, thereby terminating the public right in or to the street if so vacated;

WHEREAS, the Township presently owns a street identified as Ecole Avenue, being a dead-end street with ingress/egress solely from Sherbrook Boulevard and surrounded by property owned by the Upper Darby School District (“Vacated Road”) and used in connection with the Beverly Hills Middle School, with an address of 1400 Garrett Road, Upper Darby, Upper Darby Township, Delaware County, Pennsylvania, being tax parcel number 16-04-01978-01 (the “Property”);

WHEREAS, pursuant to 53 P.S. §57005, and by petition dated August 4, 2021, the Upper Darby School District petitioned the Township to vacate Ecole Avenue to facilitate certain improvements to the Beverly Hills Middle School athletic fields and facilities;

WHEREAS, Council has determined that the Vacated Road, as shown in the vacation plan for Ecole Avenue attached hereto as Exhibit “A” and made a part hereof, has no current or anticipated pedestrian or vehicle transportation, mobility, or connectivity needs or uses of the Township, but rather would serve the public interest of the Township to vacate the Vacated Road;

WHEREAS, there are no properties abutting the Vacated Road except for the Property owned by the Upper Darby School District;

WHEREAS, after due consideration of this proposed ordinance at a duly advertised and noticed public hearing, Council has determined that the Vacated Road has no useful purpose to the Township and it is in the best interest to the public to vacate the Vacated Road, in the manner shown in Exhibit “A”;

NOW, THEREFORE, the Upper Darby Township Council hereby ordains and enacts as follows:

SECTION 1. STREET IS VACATED. Ecole Avenue, to the point terminating at Sherbrook Boulevard and located within the property of the Upper Darby School District, currently used as the Beverly Hills Middle School, with an address of 1400 Garrett Road, Upper Darby, Upper Darby Township, Delaware County, Pennsylvania, being tax parcel number 16-04-01978-01, and as further identified in the Vacation Plan Exhibit attached hereto as Exhibit "A", is hereby **VACATED** upon execution and compliance with the terms of the Agreement to Vacate Ecole Avenue between Upper Darby Township and the Upper Darby School District, approved by Council contemporaneously with the enactment of this ordinance and attached hereto as Exhibit "B" and made a part hereof.

SECTION II. REPEALER. All Ordinances or parts of Ordinances inconsistent herewith or in conflict with any of the specific terms enacted hereby, to the extent said inconsistencies or conflicts cannot be reconciled, are hereby repealed. Further, it is understood and intended that all other sections, parts, provisions, and ordinances that are not otherwise specifically in conflict or inconsistent with this Ordinance, shall remain in full force and effect, the same being reaffirmed hereby.

SECTION III. SEVERABILITY. In the event that any section, sentence, clause, phrase or word of this Ordinance shall be declared illegal, invalid or unconstitutional by any Court of competent jurisdiction, such declaration shall not prevent, preclude or otherwise foreclose enforcement of any of the remaining portions of this Ordinance.

SECTION IV. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its legal enactment.

SECTION V. FAILURE TO ENFORCE NOT A WAIVER. The failure of the Township to enforce any provision of this Ordinance shall not constitute a waiver by the Township of its rights of future enforcement hereunder.

ENACTED AND ORDAINED by the Township Council of the Township of Upper Darby this 22nd day of September, 2021.

**COUNCIL of the
THE TOWNSHIP OF UPPER DARBY**

BY: _____

Laura Wentz


President of Council

ATTEST: _____

Michelle Billups

Secretary of Council

APPROVED THIS 22nd day of September, 2021

BY: 
Barbarann Keffer
Mayor, Upper Darby Township

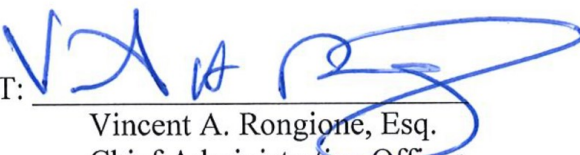
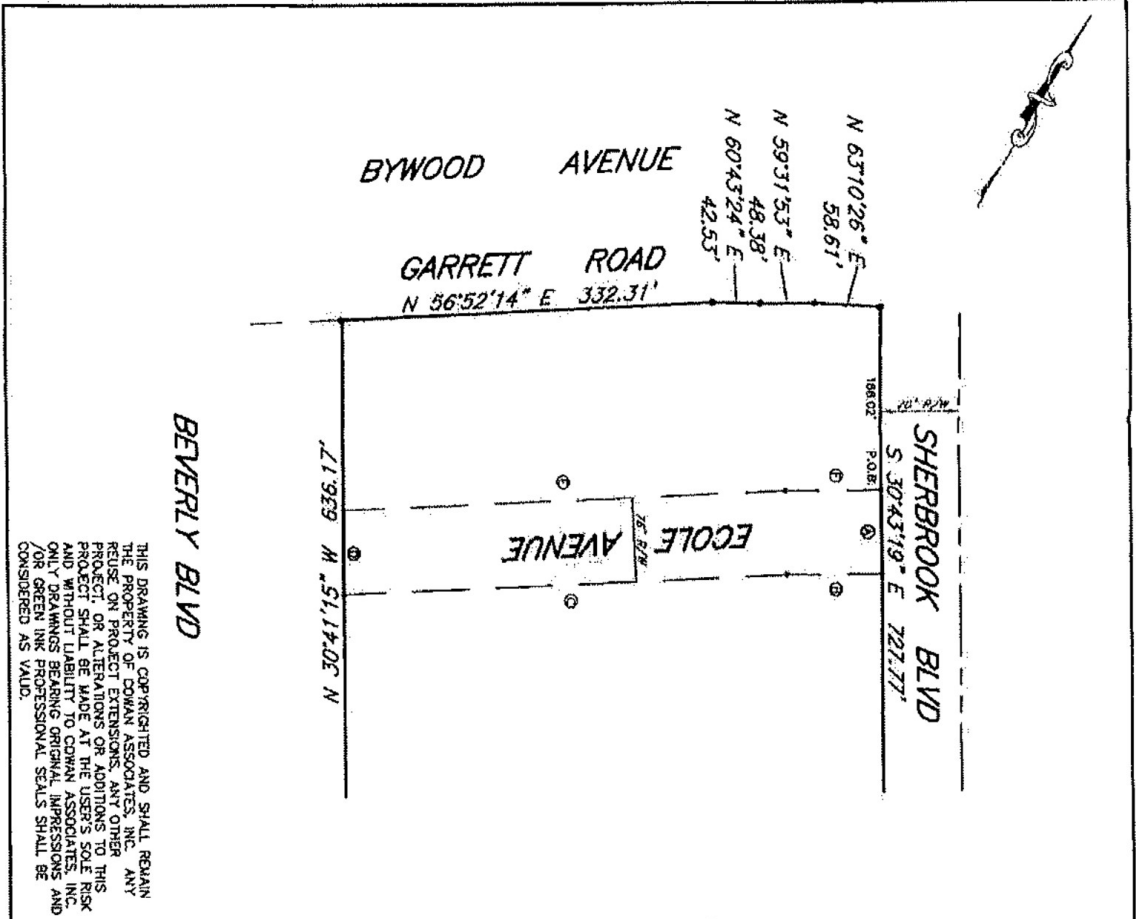
ATTEST: 
Vincent A. Rongione, Esq.
Chief Administrative Officer

EXHIBIT "A"
Vacation Plan for Ecole Avenue

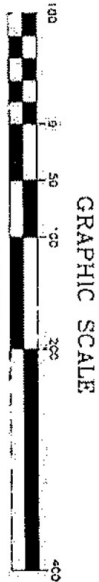
EXHIBIT "B"
Agreement to Vacate Ecole Avenue between
Upper Darby Township and the Upper Darby School District



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- ECOLE AVENUE R/W
- ① S 30°43'19" E 76.00'
 - ② S 69°28'50" W 84.57'
 - ③ S 57°10'44" W 397.45'
 - ④ N 30°41'15" W 76.05'
 - ⑤ N 57°10'44" E 398.14'
 - ⑥ N 57°28'50" E 85.63'
- CONTAINING 36,616.35 SQ. FT. 0.84 ACRES

NOT TO BE USED FOR CONSTRUCTION UNLESS SIGNED BY SURVEYOR OR PROJECT NUMBER
 VOID UNLESS GREEN PROFESSIONAL SEAL IS PRESENT
 5500 E. WILSON ST. SUITE 100
 DENVER, CO 80221
 BEARER BY: JRL
 PAID FOR BY: TRM
 DATE: 5-28-21
 SCALE: 1"=100'
 DRAWN BY: TRM
 CHECKED BY: TRM



NO.	DATE	REVISIONS	BY	CHECK

VACATION PLAN EXHIBIT

PREPARED FOR

UPPER DARBY SCHOOL DISTRICT

UPPER DARBY TOWNSHIP, DELAWARE COUNTY, PENNSYLVANIA

PROVIDING A FULL RANGE OF CIVIL ENGINEERING & SURVEYING SERVICES
 120 PENN-44 DRIVE P.O. BOX 840
 QUADTOWN, PENNSYLVANIA 19841
 TELEPHONE (215) 581-7215
 FAX (610) 581-1882

SHEET NO. **1**
 OF 1
 71495.01

EXHIBIT "B"
Agreement to Vacate Ecole Avenue between
Upper Darby Township and the Upper Darby School District

**AGREEMENT FOR VACATION OF ROADWAY
BETWEEN UPPER DARBY SCHOOL DISTRICT AND UPPER DARBY TOWNSHIP**

THIS AGREEMENT TO VACATE ROADWAY (“Agreement”) is made and is effective as of this 22nd day of September, 2021, by and between **UPPER DARBY SCHOOL DISTRICT**, a school district of the second class in the County of Delaware, Pennsylvania (“District”) and **UPPER DARBY TOWNSHIP**, a home rule municipality in the County of Delaware, Pennsylvania (“Township”). The District and the Township may hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

WHEREAS, the Township presently owns a street identified as Ecole Avenue, being a dead-end street with ingress/egress solely from Sherbrook Boulevard and surrounded by property owned by the District (“Vacated Road”) and used in connection with the Beverly Hills Middle School, with an address of 1400 Garrett Road, Upper Darby, Upper Darby Township, Delaware County, Pennsylvania, being tax parcel number 16-04-01978-01 (the “Property”);

WHEREAS, pursuant to 53 P.S. §57005, and by petition dated August 4, 2021, the District petitioned the Township to vacate Ecole Avenue to facilitate certain improvements to the Beverly Hills Middle School athletic fields and facilities;

WHEREAS, Council has determined that the Vacated Road, as shown in the vacation plan for Ecole Avenue attached to the petition and approval ordinance (“Vacation Plan”), has no current or anticipated pedestrian or vehicle transportation, mobility, or connectivity needs or uses of the Township, but rather would serve the public interest of the Township to vacate the Vacated Road;

WHEREAS, after duly advertised public hearings on the District’s petition and a proposed ordinance for vacation, the Township enacted an ordinance to vacate Ecole Avenue pursuant to the Vacation Plan and conditioned upon execution and compliance with the terms of this Agreement;

NOW, THEREFORE, the Parties hereto covenant and agree as follows:

1. The foregoing recitals are true and correct and made a part hereof.
2. The Parties hereby agree to the vacation of Ecole Avenue as set forth in the Vacation Plan and as approved by the Township’s vacation ordinance.
3. The Parties agree to the vacation pursuant to the Vacation Plan without the formality of a petition of review before the Board of Viewer and without the formal assessment of any damages.
4. The Township agrees that this Agreement and the affiliated ordinance permanently vacate and end the use of the Vacated Road as a laid out public road, and that the property comprising the Vacated Road shall be utilized by the District for any lawful purposes. The Township hereby releases, remises, and relinquishes to the District, and the District’s successors and assigns, any and all right, title, interest, and claim which the Township has (or may have) with respect to the Vacated Road and the property comprising the Vacated

Road. The District, and the District's successors and assigns, agrees to accept, maintain, and assume all liabilities and responsibilities for the Vacated Road and the property comprising the Vacated Road, and hereby releases, remises and relinquishes any and all such liabilities and responsibilities from the Township.

5. The District agrees to waive any rights to file exceptions to the vacation ordinance enacted; to file a petition for review from the Delaware County Board of Viewers for the purpose of reviewing the ordinance and exceptions; and to claim damages for the Vacated Road.
6. In consideration for the Township's approval of the District's Petition to Vacate Ercole Avenue, the District agrees to save, protect, defend and hold harmless the Township, including the Township's Council, Mayor, officials, officers, employees, and agents, from claims asserted against such parties that arise from the vacation of Ercole Avenue.
7. The District agrees to be solely responsible and will pay all costs associated with the filing, advertising, and recording of the Petition to Vacate, this Agreement, or any action involving the Township relative to the vacation of Ercole Avenue, including the costs of review and holding a hearing on the Petition to Vacate and the associated ordinance, including the Township's reasonable attorneys' fees incurred for such purposes.
8. The District agrees that any future deeds, land development plans, or property boundary descriptions will incorporate the Vacated Road as part of the District's property and will record any necessary documents to revise the official property records associated with the Vacated Road to show the Vacated Road as part of the District's property.
9. The District agrees to record any appropriate and necessary existing easements for the Township or any third-party utilities as applicable within the Vacated Road.
10. This Agreement is for the sole benefit of the Parties and does not provide any third-party rights, privileges or benefits.
11. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all counterparts shall together constitute one and the same document.
12. This Agreement contains the sole agreements between the Parties and supersedes any prior agreements or representations.
13. This Agreement shall be binding upon the Parties hereto, and their successors and assigns, and inure to the benefit of the District's administrators, successors, and assigns, and shall run with the land.

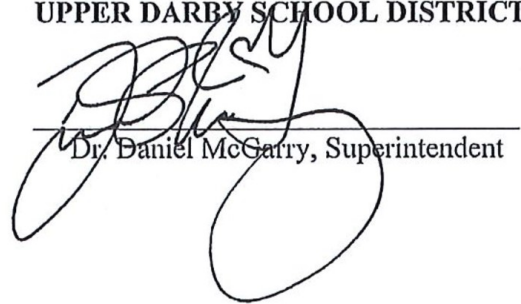
IN WITNESS HEREOF, and intending to be legally bound hereby, the Parties hereto have set their hands and seals on the date first written above.

UPPER DARBY TOWNSHIP


Barbarann Keffer, Mayor

Date: 9.22.21

UPPER DARBY SCHOOL DISTRICT


Dr. Daniel McCarry, Superintendent

Date: 10/4/21