CITY PLANNING DIVISION
EASEMENT VACATION PETITION
STAFF REPORT
Meeting Date: June 11, 2002

1. **Applicant:** Dale M. Johnson
   Spirit Bay Development Company
   8030 Spirit Cove Drive
   Duluth, MN 55807
   **Phone:** 218-624-0582

2. a) **Date Application Received:** May 9, 2002   b) **Action Deadline:** September 9, 2002

3. **Requested vacation:** Vacation of utility easement

4. **Legal Description:** Lots 1 & 6, Block 4, Spirit Cove Division

5. **Number of Surrounding Property Owners Notified:** 19

BACKGROUND DATA:

A. **Proposal:** To vacate an existing utility easement. The request is to have the existing water main replaced from the existing easement, which crosses the center of the lot, to the utility easement provided along the westerly lot frontage in Spirit Cove Drive. The easement was created and the water main installed based on the original development plan approved in 1982. This plan is completely different than the current plan of Spirit Cove.

B. **History of Past Actions:**
   1. On **September 27, 1971,** the City council approved construction of a 205 unit mobile home park on this site (FN 1-71078)
   2. On **October 12, 1971,** the Planning commission and on **November 4, 1971,** the City Council approved a rezoning of the subject property from M-2, manufacturing to R-1-c, Residential (FN 91169)
   3. On **November 12, 1974,** the Planning Commission heard a presentation by H.N. Junti & Co. for development of this property (See November 12, 1974 minutes).
   4. On **May 8, 1979,** the Planning Commission approved the preliminary Community Unit Plan and on **September 24, 1979,** the City Council approved Resolution 79-770 for the “Bayhill” Special Use Permit by H.N. Junti (see general notes).
   5. On **July 21, 1981,** the Planning Commission and on **January 25, 1982,** the City Council approved Resolution 82-0027, which granted a special use permit for the Community Unit Plan for the H.N. Junti Co. for the construction of a 276 unit condominium development.
   6. On **July 14, 1987,** the Planning Commission and on **August 27, 1987,** the City Council approved resolution 87-0700 which amended 82-0027 to provide for “Spirit Bay Development” as 62 townhouse/condominium units subject to 8 conditions. (see file no 87056).
   7. On **May 8, 1990,** the Planning Commission gave preliminary and on **September 11, 1990** gave final plat approval of “Spirit Cove Division” (FN 90152).
   8. In **October 1990,** the Planning Commission and on **May 6, 1991,** the City Council vacated a portion of Bayhill Drive in order to allow for platting of Spirit Cove Division (FN 90191).
   9. On **August 10, 1993,** the Planning Commission and on **October 18, 1993,** the City Council approved Resolution 93-0802 which amended resolution 82-0027 to permit, among other things, the construction of not more than 24 units without construction of 80th Ave. West or 84th Ave. West to connect Bayhill Drive with Grand Avenue. (FN 93115)
   10. On **February 24, 1999,** the Planning Commission and on **March 22, 1999** the City Council approved...
Resolution 99-0186 which vacated the pedestrian use of joint use (pedestrian/ utility) easements legally described as: pedestrian and utility easements on Lots 3 and 5 Block 4, Spirit Cove Division. (FN 990199)

11. On November 17, 1999 the Planning Commission and on December 9, 1999 the City Council approved Resolution 99-0833 which vacated the utility easement common to Lots 3, 4 & 5 Spirit Cove Division, with the reservation of the portion currently occupied by the sanitary sewer. Re. FN 99129

C. **Existing Area Zoning:** The subject property is zoned R-1-c and subject to Special Use Permit No. 82-0027 as amended.

D. **Existing Area Development:** In Block 4; the former "common area", is undeveloped land owned by Spirt Cove Development.

E. **Site Characteristics:** This is an unimproved easement, except for the intersection with an easement that runs west from the common east corner of lots 3 & 5.

F. **Reactions from Various Groups, Agencies and Individuals:** See attachments.

G. **Conclusions:**

   Can it be shown that there will be no future need for this right-of-way? Yes. With the waterline relocated to the public street easement available at the front lot line there is no other use for the easement.

   **Points in favor:**
   With the relocation of the water line there is no other use for the easement.

   **Points in opposition:**
   None.

   **Recommendation for Planning Commission approval:** Approve the vacation with subject to the relocation of the waterline.
August 31, 1993

Dale Johnson
Spirit Bay Development Company
8050 East Spirit Cove Drive
Duluth, MN 55807

RE: Special Use Permit Amendment - Our File No. 93115

Dear Mr. Johnson:

This is to advise you that the Duluth City Planning Commission at its regular meeting on August 10, 1993 heard and considered your request the conditions of Resolution #87-0700 to amend the terms and conditions of limitations on number of units permitted in phase I, as well as associated public and private improvements required.

Following the public hearing portion of the meeting and after careful evaluation, the Planning Commission resolved to recommend to the City Council that Resolution #87-0700 be amended to allow a maximum of 24 units in phase I, and that prior to any building permits being issued for the 25th unit, all private roadways must be under contract to be completed to City standards including bituminous surface, and curb and gutter.

The amendment also goes on to state that prior to the issuance of any building permits for unit 25, in phases II or III, 80th Avenue West or 84th Avenue West must be under contract for construction and all improvements, including landscaping and street improvements, for the previous phases, shall be completed as previously approved.

This action was taken by the Planning Commission at the August 10, 1993 meeting and attached herewith is a draft resolution which has been prepared and submitted to the City Council for their consideration at their next available meeting.

Should you have any questions, please feel free to contact Jim Mohn at the address or phone number listed above.

Sincerely,

Gerald M. Kimball
Secretary, City Planning Commission

GMK:JEM:ps
Enclosure
c: Bill Burns
Salo Engineering

An Equal Opportunity Employer
BY COUNCILOR PRETTNER:

WHEREAS, on September 24, 1979, the city council approved Resolution 79-770 granting to the H.N. Juntti Company, a special use permit for a community unit plan and on January 25, 1982, the city council amended said resolution by Resolution 82-0027 to allow the Juntti Company to construct 276 apartment/townhouse type condominium units; and on August 27, 1987, the council further amended said resolution by Resolution 87-0700 to allow Dale Johnson to construct 70 condominium/townhouse units on property legally described as: That part of the southwest quarter of the southwest quarter, Section 24, Township 49, Range 15, which lies south and east of the Burlington Northern Railroad right-of-way, south of Pulaski Street, and west of the Plat of Hunter's and Markell's Grassy Point Addition to Duluth; and

WHEREAS, Dale M. Johnson, doing business as Spirit Bay Development, ("developer") has submitted to the city council a request for the alteration of the approved community unit plan to revise the number of units to 70 units based on a new site plan, and said permit application was duly referred to the city planning commission for study, report and public hearing, and the city planning commission has subsequently reported its conditional approval to the city council.

NOW, THEREFORE, BE IT RESOLVED, that the special use permit granted by the city council on September 24, 1979; January 25, 1982; and August 27, 1987, are amended to read as follows:

(a) That the special use permit (Resolution 82-0027) for a community unit plan be amended to provide for the "Spirit Bay Development" to construct 62 townhouse condominium units (in addition to the existing six unit structure), provided that the aforementioned development on all its aspects, including utility easements, recreational easements, building location, parking areas and landscaping, are constructed and maintained in accordance with the detailed plan as submitted by Damberg, Scott Peck and Booker entitled "Spirit Bay Development grading and drainage plan," dated June 22, 1987, and amended June 27, 1987, and the landscape plan dated June 22, 1987, and provided that the following conditions are met:

(1) The project shall be staged as indicated on the approved plans and further described herein:

   (A) That Phase I include units 1-24, however, only 18 units will be permitted to be constructed and/or sold until such time as all roadways in Phase I are under contract to be completed to city's standards including bituminous surface, and curb and gutter;

   (2) Prior to the issuance of any building permit for unit 25 in phases II or III, the developer shall have 80th Avenue West or 84th Avenue West under contract for construction and the shall have all improvements including landscaping and street improvements for the previous phase completed as shown on the plans. This provision applies only to the issuance of building permits for structures in a given phase, and the developer may proceed with road or landscaping improvements for other phases prior to the construction of all the buildings in one phase which is under construction;

   (3) Streets and driving areas may be constructed by the developer on an interim basis as indicated on the plans submitted, provided that within three
years of the date of completion of construction of each phase, final construction shall be accomplished including curb and gutter as specified on the plan;

(b) Building permits shall not be issued for construction of any unit in Phase I until the following conditions have been met:

1) That the developer shall submit a draft of the community association agreements and the condominium plat to the land use committee of the planning commission for their review and approval prior to the developer filing these documents. The condominium bylaws shall also be submitted to such committee for review and approval upon making the determination that assurances are made for the completion of all roadways;

(c) The architectural plans which are a part of this submittal are intended only to indicate the character and general architectural style for this project. Minor alterations to these plans by the developer are permitted and may be required by the building inspection department. Such alterations shall first be approved by the secretary of the planning commission after said secretary has determined that the changes did not materially alter the intent of the improved plans;

(d) The community facilities (tennis court, pool or equivalent facility) as desired by the homeowners association and approved by the secretary of the planning commission be completed prior to the issuance of building permits for Phase III;

(e) The proposed marina shall be approved in concept only, and before any construction of such marina is initiated, a special use permit shall be reviewed and approved under the terms of chapters 50 and 51 of the Duluth City Code;

(f) Before any construction is initiated, the secretary of the planning commission shall review and approve detail grading plans for each unit initiated, and the city engineer shall approve an overall storm water runoff plan providing proper collection and disposal of storm water. This special use permit shall not act as an exemption for any required grading permits under Chapter 51 of the Duluth City Code.

BE IT FURTHER RESOLVED, that such special use permit for a community unit plan shall expire 40 years from the date of approval by the city council.

Resolution 93-0802 was unanimously adopted.

Approved October 18, 1993

GARY L. DOTY, Mayor

I, JEFFREY J. COX, city clerk of the city of Duluth, Minnesota, do hereby certify that I have compared the foregoing resolution passed by the city council on the 18th day of October, 1993, with the original in my custody as city clerk of said city, and that the same is a true and correct transcript therefrom.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said city of Duluth, this 19th day of October, 1993.

JEFFREY J. COX
City Clerk

by Zeyda Blount
Deputy
CITY OF DULUTH, MINNESOTA
CITY PLANNING DEPARTMENT
SPECIAL USE PERMIT

AMENDMENT

STAFF REPORT
Date: July 23, 1993

1. Applicant's Name(s): Spirit Bay Development Company
   Dale Johnson
   8050 East Spirit Cove Drive
   Duluth, MN 55807

2. Proposed Use: An amendment to the terms and conditions of Resolution
   No. 87-0700, Subsection 1.b., relating to street improvements.
   Zoning Code Sect: 50-35

3. Location: Approximately 79th Avenue West and Bayhill Drive

4. Legal Description: Spirit Bay Cove Division in Government Lot 2,
   Section 24, Township 49 North, Range 15 West.

5. Number of Surrounding Property Owners Notified: 1

BACKGROUND DATA:

A. The Proposal: The proposal calls for removal of the requirement from
   Special Use Permit Resolution No. 87-0700 which required the construction
   of improvements under contract for construction of either 80th Avenue West
   or 84th Avenue West prior to the issuance of Building Permit for Unit
   No. 13 of the Spirit Bay development.

B. Reason for Planning Commission Action: Special use permits and subsequent
   amendments to special use permits are made by resolution by the City
   Council following a public hearing and recommendation from the City
   Planning Commission. This amendment does require the sequence of actions,
   meetings and recommendations.

C. History of Past Actions:

1. On September 27, 1971, the City Council approved construction of a
   205-unit mobile home park on this site (Ref. File No. 1-71078).

2. On October 12, 1971, the Planning Commission
   and on November 4, 1971, the City Council approved a rezoning from
   "M-2" Manufacturing to "R-1-c" Residential, on the subject property
   (Ref. File No. 1-71169).

Planning Commission: Action
City Council: Action

1200.16/93115 -1-
3. On November 12, 1974, the Planning Commission heard a presentation by H. N. Gentti & Company for development of this property (see November 12, 1974, Minutes).

4. On May 8, 1979, the Planning Commission approved the preliminary Community Unit Plan for the Bayhill special use permit by H. N. Gentti (see general notes).

5. On July 21, 1981, the Planning Commission and on July 25, 1982, the City Council granted a special use permit for the Community Unit Plan for the H. N. Gentti Company for the construction of a 276-unit apartment/townhouse-type condominium development on the project site, provided that the development and all of its aspects including utility easements, recreation easements, building location, parking lots and landscaping, are constructed and maintained in accordance with the detailed plans as indicated on City Public Document No. 82-0125-19, subject to six conditions.

6. On July 14, 1987, the Planning Commission and on August 27, 1987, the City Council adopted Resolution 87-0700 as follows:

I. That the Special Use Permit (Resolution 82-0027) for a Community Unit Plan be amended to provide for the Spirit Bay development to construct 62 townhouse/condominium units (in addition to the existing 6-unit structure), provided that the development and all its aspects, including utility easements, etc. are constructed and maintained in accordance with plans as submitted by Damberg, Scott, Peck & Booker entitled "Spirit Bay Development", grading and drainage plan dated 6/22/87 and amended 6/27/87, and the landscape plan dated 6/22/87, provided that the following conditions are met:

a. The project shall be staged as indicated on the approved plans and further described herein:

1) That Phase I shall include Units 1-18; however, only 12 units will be permitted to be constructed and/or sold until such time as private roadways in Phase I are completed to City standards including bituminous surface, curb-and-gutter, and either 80th Avenue West or 84th Avenue West is scheduled for construction.

b. Prior to the issuance of any building permit for Unit 13 in Phase I or Phases II or III, 80th Avenue West and/or 84th Avenue West must be under contract for construction and all improvements including landscaping and street improvements for the previous phase shall be completed as shown on the approved plans. This provision applies only to the issuance of building permits for structures in a given phase, and the developer may proceed with road or landscaping improvements for other phases prior to the construction of all the buildings in one phase which is under construction.
c. Streets and driving areas may be constructed on an interim basis as indicated on the plans submitted, provided that within three years of the date of completion of construction of each phase, final construction shall be accomplished including curb-and-gutter as specified on the plans.

There are an additional five points outlined in this permit (Ref. File No. 87056) for details.

7. On May 8, 1990, the City Planning Commission gave preliminary plat approval to the plat of Spirit Cove Division, subject to four conditions (Ref. File No. 90054).

8. On September 11, 1990, the Planning Commission gave unconditional approval to the final plat of Spirit Cove Division (Ref. File No. 90152).

9. In October, 1990, the Planning Commission and on May 6, 1991, the City Council vacated portions of Bayhill Drive in order to allow for platting of Spirit Cove Division (Ref. File No. 90191).

D. Existing Area Zoning: The subject site is zoned "R-1-c"; lands to the west are zoned "M-2" Manufacturing and "C-2" Commercial; lands to the east are zoned "R-1-c", "W-1" Waterfront and "R-2" Residential Apartment.

E. Existing Area Development: One 6-unit condominium module has been constructed onsite in accordance with previously approved special use permits. Twelve (12) units in 6 structures have been developed along the Spirit Circle in Block 1 of Spirit Cove Division. The balance of the tract is vacant.

F. Site Characteristics: The total site is trapezoidal in shape, measuring approximately 1,400' and 2,000' on the sides, and sloping 40' in elevation with an average lot depth of 750' from west to east. The topography consists of a high plateau (following an auto racetrack) and low swampy areas on the east and west ends of the development. Scattered portions of the site are covered with popple, birch and alder.

G. Reactions from Various Groups, Agencies and Individuals:

1. Personal communication from Minnesota Power on 8-2-93 stating no objection.

2. Personal communication from City Engineer on 8-2-93 stating considerable objection to the proposed deletion, noting that elimination of this second access to the project site will result in the equivalent of a cul-de-sac greater than 1/2 mile in length with no other means of emergency access or service.

3. Personal communication with Fire Marshall on 8-5-93 stated: 80th or 84th should be provided to give adequate access to this project. A 1/2 mile long cul-de-sac is unacceptable.

H. Conclusions:

Points in favor: None.
Points in opposition:

Elimination of this requirement will result in the potential of 50 units being located at the end of a 1/2-mile-long cul-de-sac. The City's maximum standards for cul-de-sacs state that no "dead-end street" shall be longer than 1,300'.

This proposal is not acceptable under standards of good planning public service or life safety.

Suggested Conditions if the Planning Commission is inclined to approve:

None.

Comments
Allowing an extension of time, such as not more than 3 years or an additional 6 units may allow time for economic circumstances to change in a manner favorable to this improvement obligation.
APPLICANT: Dale M. Johnson  
Property under consideration
Spirit Bay Development Company

PURPOSE: Vacation of Utility Easement

FILE NO: 02040

SCALE: 1" = 200'

DATE: May 19, 2002

DIVISION OF PLANNING
CITY OF DULUTH, MINNESOTA
KNOW ALL MEN BY THESE PRESENTS: That Spirit Bay Development Company, a Minnesota Corporation, being mortgagor of described property situated in the City of Duluth, County of St. Louis, State of Minnesota to

That part of Government Lot 2, Section 24, Township 49 North, Range 15 West of the Fourth P.M., lying Southeasterly and Southerly of a line described as follows:

Comencing at the Northwest corner of said Section 24, thence South 0° 29' 58" East (assumed on the West line of said Section 24, a distance of 1177.03 feet to the beginning of the line) along the Duluth Transfer track of the Northern Pacific Railway, also being the Northwesterly distance of 979.74 feet; thence South 87° 25' 15" East a distance of 501.00 feet; thence South 21° 28' 6" South a distance of 307.00 feet, or less, to the Northwestern bank of the St. Louis River, and terminating.

EXCEPT: that part of Government Lot 2, Section 24, Township 49 North, Range 15 West of the Meridian, lying Southeasterly, Southerly and Westerly of a line described as follows:

Comencing at the Northwest corner of said Section 24, thence South 0° 29' 58" East (assumed on the West line of said Section 24, a distance of 1297.96 feet to the beginning of the line) along the Duluth Transfer track of the Northern Pacific Railway, along a tangent curve concave to the North, having a radius of 183.00 feet and a central angle of 12° 51' 52" East, a distance of 307.00 feet, or less, to the Northwestern bank of the St. Louis River, and terminating.

The above described property contains 16.8 acres of land, more or less, except all minerals.

Have caused the same to be surveyed and platted as SPIRIT COVE DIVISION and do hereby donate the public, for public use forever the thoroughfares and also dedicating the easements as shown for trail, pedestrian and utility purposes only.

IN WITNESS WHEREOF said Spirit Bay Development Company has caused these presents to be

Mortgages

By: North Shore Bank of Commerce

By: North Shore Bank of Commerce

STATE OF MINNESOTA]

COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this 17th day of APRIL, 1991.

By: D. C. Johnson, President

By: N. C. Johnson, Secretary/Treasurer, of Spirit Bay Development Company, on behalf of the corporation.

STATE OF MINNESOTA]

COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this 18th day of APRIL, 1991.

By: T. J. Comard, Vice President of North Shore Bank of Commerce, a Minnesota Corporation, on behalf of the Corporation.

I hereby certify that I have surveyed and platted the property described on this plat as SPIRIT COVE DIVISION and that this plat is a correct representation of the survey, that all monuments have been correctly placed and that the outside boundary lines are correctly designated on this plat and that the wetlands or public highways to be designated other than those are indicated.

By: Dale L. Bernsten, Land Surveyor

Minnesota Registration No. 13794

STATE OF MINNESOTA]

COUNTY OF ST. LOUIS)

The foregoing Surveyor's Certificate was acknowledged before me this 17th day of APRIL, 1991.

By: Dale L. Bersten, Land Surveyor

Minnesota Registration No. 13794
DIVISION OF PHYSICAL PLANNING

SCALE: 1" = 250', DATE: 2/28/10
FILE NO: 9054
PURPOSE: Rezoning Plan - Special Use Permit Amendment
Applicant: Jule Johnson
Property under consideration...