

# Overom Law

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May 9, 2024

***Transmitted Via Email  
Clerks@DuluthMN.gov***

City of Duluth  
Attn: City Clerk's Office  
411 W. 1st Street  
Room 318  
Duluth, MN 55802

RE: Appeal of Spirit Cove Homeowners Association  
Our File No.: 08-003(005)

Dear Clerk Johnson:

My office represents the Spirit Cove Homeowners Association ("HOA").


On behalf of the HOA, I am submitting its Record of Appeal to the City of Duluth Local Board of Appeal & Equalization for its review and consideration.

I plan to appear on behalf of the HOA to explain its position that the estimated market value of each of the appealed parcels is greater than the property's actual value on the open market.

Should you or the Board have any questions, comments or concerns regarding the enclosed Appeal, please do not hesitate to contact me.

I look forward to resolving this matter.

Sincerely,



Gunnar B. Johnson  
GBJ/adk

cc: Client

DULUTH OFFICE  
802 GARFIELD AVE • SUITE 101  
DULUTH, MN 55802

MINNEAPOLIS OFFICE  
2725 EVEREST LANE N  
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Appeal Number: \_\_\_\_\_

ID: \_\_\_\_\_

Received by: \_\_\_\_\_

(above is for City staff use only)

## RECORD OF APPEAL TO CITY OF DULUTH LOCAL BOARD OF APPEAL & EQUALIZATION

This form will be accepted as a written appeal by City Staff, and you will be given equal consideration by the Board. This form must be received by the City of Duluth Clerk's Office by **4:00 PM on Friday, May 10, 2024**.

Parcel Code(s): \_\_\_\_\_

Property Address (if applicable): \_\_\_\_\_

Name: \_\_\_\_\_ Daytime Phone: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

The purpose of this meeting is to review your appeal of one or both of the following:

1. The **ESTIMATED MARKET VALUE** (what your property would sell for if offered for sale on the open market).
2. The **PROPERTY CLASSIFICATION** (residential, rural vacant land, seasonal, commercial, etc.).

If you refuse to allow an assessor to inspect your property, the Board cannot adjust the market value or classification in a way that would benefit the property owner.

This Board of appeal and equalization is to hear your appeal regarding the above issues ONLY, and cannot make any changes for previous years.

**Please give a brief explanation of what you are appealing; please support your appeal with facts to demonstrate property value. Include any supporting documentation, such as a recent appraisal prepared by a licensed real estate appraiser. You may attach additional documentation or typed appeal.**

-over-

NOTE: You are not required to make your appeal to the Board in person. This form will be accepted as a written appeal by City Staff, and you will be given equal consideration by the Board. **Written appeals must be received by 4:00 PM on Friday, May 10, 2024.**

Appointments to speak before the Board may be made by contacting the City of Duluth City Clerk: 218-730-5500. **Appointments must be scheduled by 4:00 PM on Friday, May 10, 2024.**

The Board will meet on **Wednesday, May 15, 2024 at 10:00 AM in the County Board Room, 2nd Floor of the St. Louis County Courthouse.** This meeting is open to the public.

You will be informed in writing of the Board's decision.

**APPRAISAL REPORT  
FOR**

**SPIRIT COVE**

DULUTH, MN 55807

**DATE OF VALUATION**

JANUARY 2, 2024

**PREPARED FOR**

MR. MICHAEL WHITECOMB

SPIRIT COVE HOMEOWNERS ASSOCIATION

8044 EAST SPIRIT COVE DRIVE

DULUTH, MN 55807

**TWIN PORTS APPRAISALS**

REAL ESTATE APPRAISING  
315 WEST SUPERIOR STREET, SUITE 203  
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WILLIAM D. CLEMENTS

THOMAS J. CLEMENTS



REAL ESTATE APPRAISING & MARKET STUDIES

# TWIN PORTS APPRAISALS

May 1, 2024

Mr. Michael Whitecomb  
Spirit Cove Homeowners Association  
8044 East Spirit Cove Drive  
Duluth, MN 55807

RE: Spirit Cove  
Duluth, MN 55807

Dear Mr. Whitecomb,

In accordance with your request for an opinion of value, the undersigned has reviewed public records, analyzed pertinent information, and my conclusions follow. The intended use of this report is to estimate the market value of the subject property and function as a basis for an appeal of the assessor's 2024 estimated market value. After a complete analysis of the subject property, including a Highest & Best Use analysis, comparable sales analysis, and physical inspection of the subject site, my report follows. In my opinion, the estimated value of the subject property, as of January 2, 2024, is:

Outlot A	\$11,000
Outlot B	\$10,100
Outlot C	<u>\$ 9,800</u>

Total \$30,900

The subject property was appraised as a whole, owned in fee simple, and unencumbered, subject to the contingent and limiting conditions outlined herein. The undersigned certifies that this appraisal assignment did not require a minimum nor specific valuation.

The attached report is intended to comply with the reporting requirements set forth under Standards Rule 2 of the Uniform Standards of Professional Appraisal Practice. As such, it presents only summary discussions of the data, reasoning, and analyses that were used in the appraisal process to develop the appraiser's opinion of value. Supporting documentation concerning the data, reasoning, and analyses is retained in the appraiser's file.

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RE: Spirit Cove  
Duluth, MN 55807

The depth of discussion contained in this report is specific to the needs of the client and for the intended use stated herein. It has been a pleasure to serve you, and should you desire further assistance, please call at your convenience.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "W.D. Clements", with a stylized flourish at the end.

William D. Clements  
Twin Ports Appraisals  
MN License #4000779

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Letter of Transmittal

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## **ADDENDA**

Article IV - Property Rights in the Common Areas

## **SUMMARY OF IMPORTANT FACTS & CONCLUSIONS**

Location:	Common Areas Spirit Cove Duluth, MN
Legal Description:	Outlots A, B, & C Spirit Cove Division of Duluth
Site Data:	3.54 Acres, <i>in toto</i>
Improvements:	N/A
Zoning:	R-1, Residential Traditional
Highest & Best Use:	Present Use
Date of Valuation:	January 2, 2024
Owner of Record:	Spirit Cove Homeowner's Association
Property Rights Appraised:	Fee Simple Interest
Indicated Value Estimate:	
Cost Approach to Value	N/A
Market Approach to Value	\$30,900
Income Approach to Value	N/A
Final Value Estimate:	
Outlot A	\$11,000
Outlot B	\$10,100
Outlot C	\$ 9,800

**PHOTOGRAPHS OF SUBJECT PROPERTY**

COMMON AREAS

SPIRIT COVE

DULUTH, MN



OUTLOT A LOOKING EASTERLY



OUTLOT A LOOKING WESTERLY  
NOTE: PEDESTRIAN TRAFFIC



OUTLOT B LOOKING WESTERLY



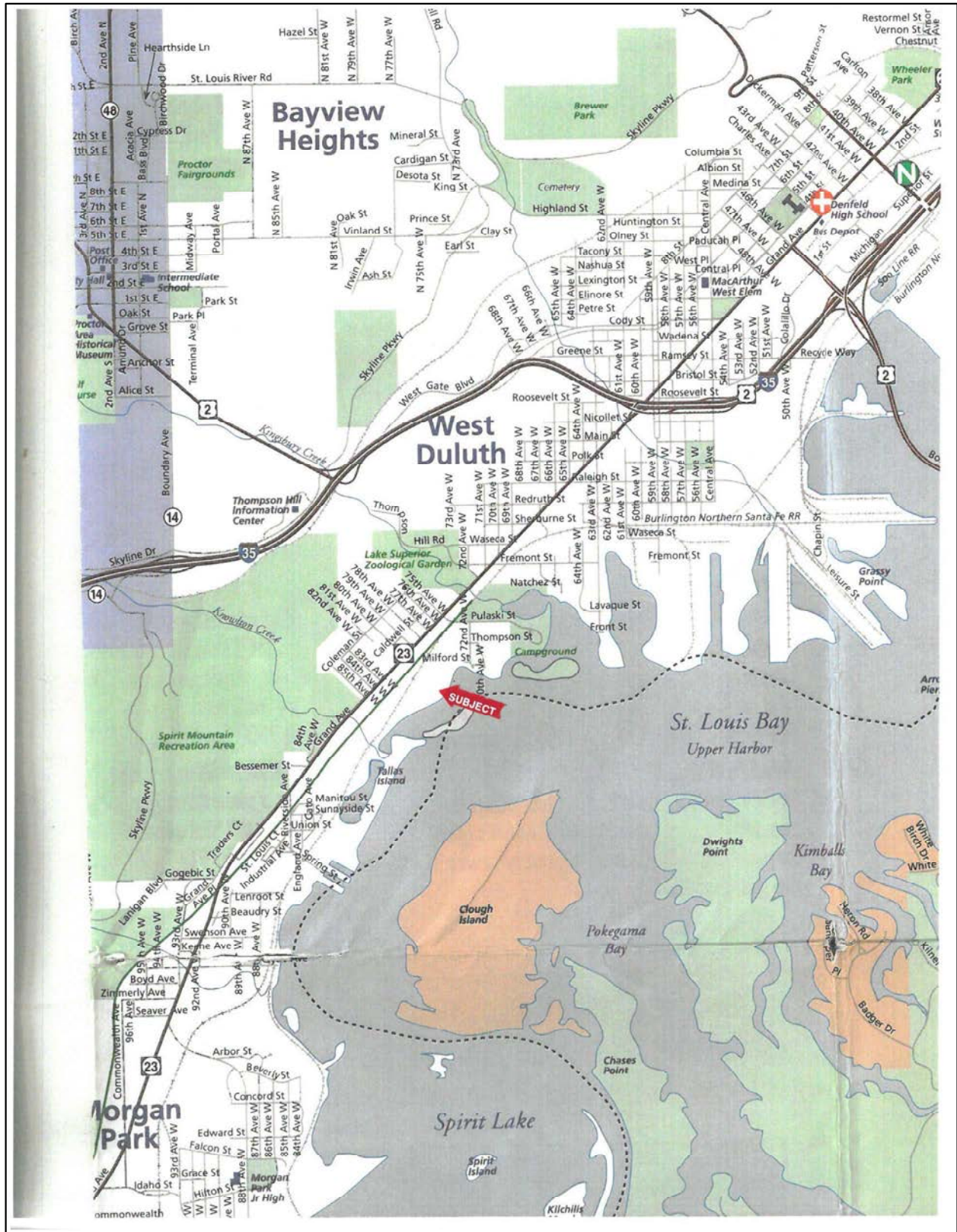
OUTLOT B  
LOOKING SOUTHWESTERLY



OUTLOT C  
MID-POINT - LOOKING WESTERLY



## AREA MAP





## **PURPOSE & FUNCTION OF THE APPRAISAL**

The intended use of this report is to analyze the herein described subject property and estimate the current market value. This appraisal is intended to function as a basis for a possible appeal of the assessor's 2024 estimated market value.

## **MARKET VALUE**

Market Value, as employed herein and contained in the Uniform Standards of Professional Appraisal Practice (USPAP), is defined as "the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus." Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- a. buyer and seller are typically motivated;
- b. both parties are well informed or well advised, and each acting in what they consider their best interest;
- c. a reasonable time is allowed for exposure in the open market;
- d. payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- e. the price represents the normal considerations for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

As defined by the Appraisal Institute, Market Value is "the most probable price in terms of money which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus."

The St. Louis County Assessor's website includes the following definition:

"Market value is the price a willing, knowledgeable buyer would pay for a piece of property if it were offered for sale on the open market."

And lastly, a Google search for Minnesota Statute 272.03 reflects the following:

"Minnesota Statute 272.03 defines Market Value as "the usual selling price ... at the time of assessment." It is the most probable price that a property should sell for in a competitive and open market under all conditions requisite to a fair sale."

## **SCOPE OF THE APPRAISAL**

The Scope of the Appraisal encompasses the necessary research and analysis to prepare a report in accordance with the intended use and the Uniform Standards of Professional Practice of the Appraisal Foundation. In regard to the subject property this involved the following steps:

1. The property was inspected on April 23, 2024; however, the effective date of the appraisal is January 2, 2024.
2. Physical data on the subject property was obtained from information provided to me by the client, Mr. Whitecomb, representative for the homeowner's association.
3. Additional data on the subject and comparable sales was acquired by the appraiser from public records. Market data on comparable sales was obtained from our own records, from a search of public records, discussions with various parties to the transactions, and the Lake County Assessor's Office, as well as via MLS records and discussions with local real estate professionals.
4. The Highest & Best Use section of this report is based upon our own research and analysis.
5. I performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this agreement.
6. After assembling and analyzing the data defined in this Scope of the Appraisal, a final estimate of value was made.

## **IDENTITY OF THE PROPERTY**

The subject property consists of a vacant land parcel consisting of approximately 3.54 acres, *in toto*, located on the St. Louis River in Duluth, MN. A more detailed description of the site and improvements may be found elsewhere in this report.

## **LEGAL DESCRIPTION**

Outlots A, B, & C,  
Spirit Cove Division of Duluth

## **FLOOD HAZARD DATA**

A copy of the flood hazard map (270421 0035 C) dated April 2, 1982, will reflect that the subject site is situated in a "Zone C," or an area of minimal flood levels.

## **SALES HISTORY DATA**

According to public records, the subject parcels have not sold in the past three years. No current listings, options or agreements of sale of the subject property were discovered in the course of this analysis.

## **PROPERTY RIGHTS APPRAISED**

The Property Rights Appraised consist of a fee simple estate. Fee simple is defined as the absolute ownership unencumbered by any other interest or estate, subject to the limitations of eminent domain, escheat, police power and taxation.

## **ENVIRONMENTAL DISCLAIMER**

The value estimate in this report is based on the assumption that the property is not negatively affected by the existence of hazardous substances or detrimental environmental conditions. The appraisers are not experts in the identification of hazardous substances or detrimental environmental conditions. Unless otherwise indicated in this report, the appraisers' routine inspection of and inquiries about the subject property did not develop any information that indicated any hazardous substances or detrimental environmental conditions which would affect the property negatively. It is possible that tests and inspection made by a qualified hazardous substance and environmental expert would reveal the existence of hazardous materials and environmental conditions on or around the property that would negatively affect its value. Thus, no responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them.

## **REAL ESTATE & TAX ASSESSMENT DATA**

Information obtained at the St. Louis County Assessor's Office reflects the following current (2024) information:

<b><u>Parcel</u></b>	<b><u>Land</u></b>	<b><u>Improvements</u></b>	<b><u>Total</u></b>	<b><u>Revised*</u></b>
010-4055-00300	\$ 96,100	N/A	\$ 96,100	\$ 57,100
010-4055-00310	\$ 59,700	N/A	\$ 59,700	\$ 32,200
010-4055-00320	<u>\$ 56,300</u>	<u>N/A</u>	<u>\$ 56,300</u>	<u>\$ 30,100</u>
	\$212,100	N/A	\$212,100	\$119,400

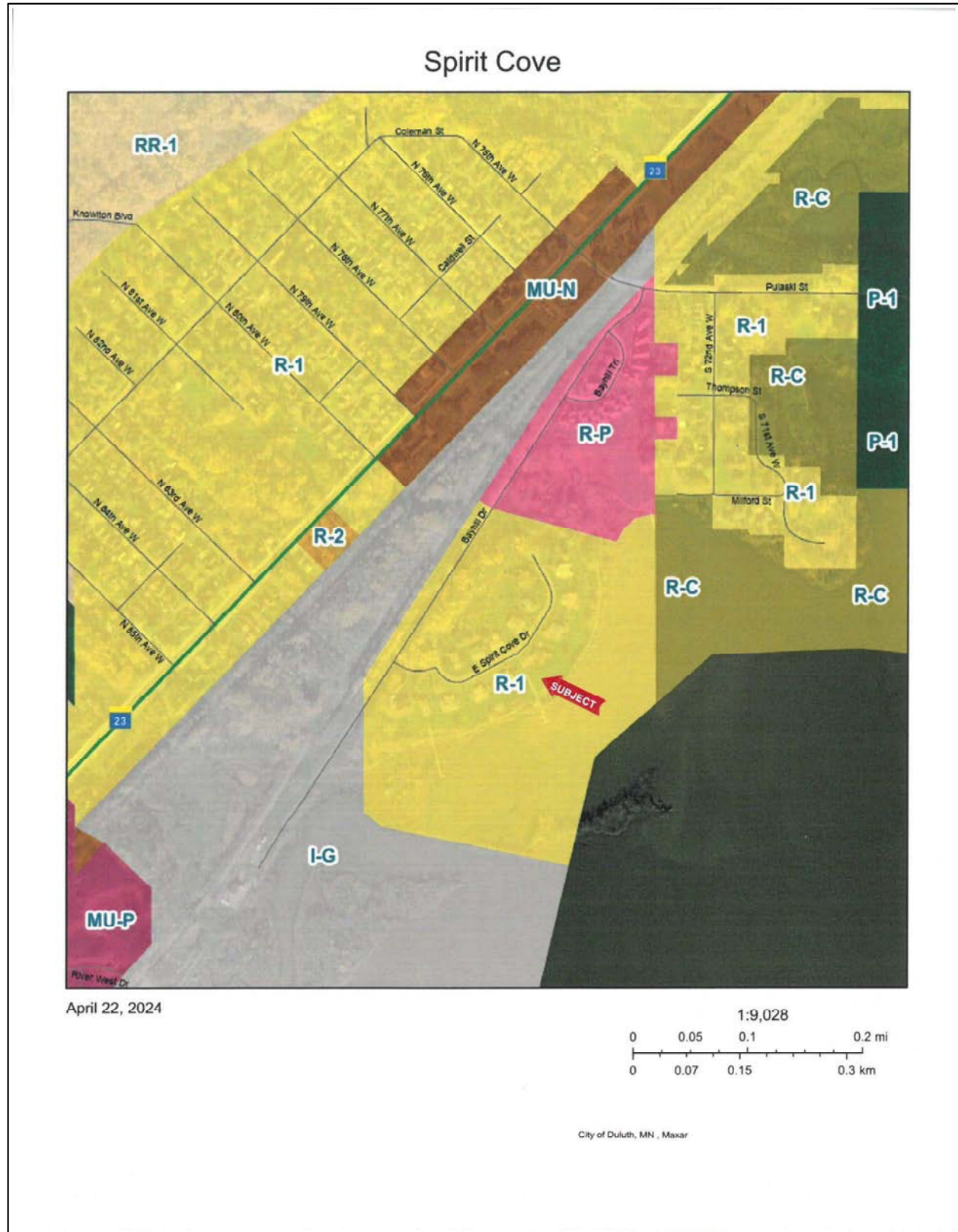
Significantly, the cumulative assessment level dramatically increased from \$21,900 in 2023 to \$212,100 in 2024. Information provided to me by the client indicates that the assessor's office opines that "the trail easement area along the waterfront *enhances* the market value," a speculative support for the increase in the assessment level. Contrary to this view, the homeowner's association provides arguments that would modify this concept. Please note that the St. Louis County Assessor's office revised the subject EMV during the course of this analysis and those amounts are noted above.

## **ZONING DATA**

According to the City of Duluth zoning map, the subject property is situated in an R-1, Residential-Traditional Zoning District. The R-1 district is established to accommodate traditional neighborhoods of single-family detached residences, duplexes, and townhouses on moderately sized lots. This district is intended to be used primarily in established neighborhoods. Many of the dimensional standards in this district require development and redevelopment to be consistent with the development patterns, building scale, and building location of nearby areas. *This analysis assumes the current use of the subject property to be in conformity with all applicable codes and ordinances for purposes of this analysis.*

\* It is my understanding that subsequent to a preliminary appeal by the homeowner's association, the St. Louis County Assessor's Office has revised the value estimate downwards.

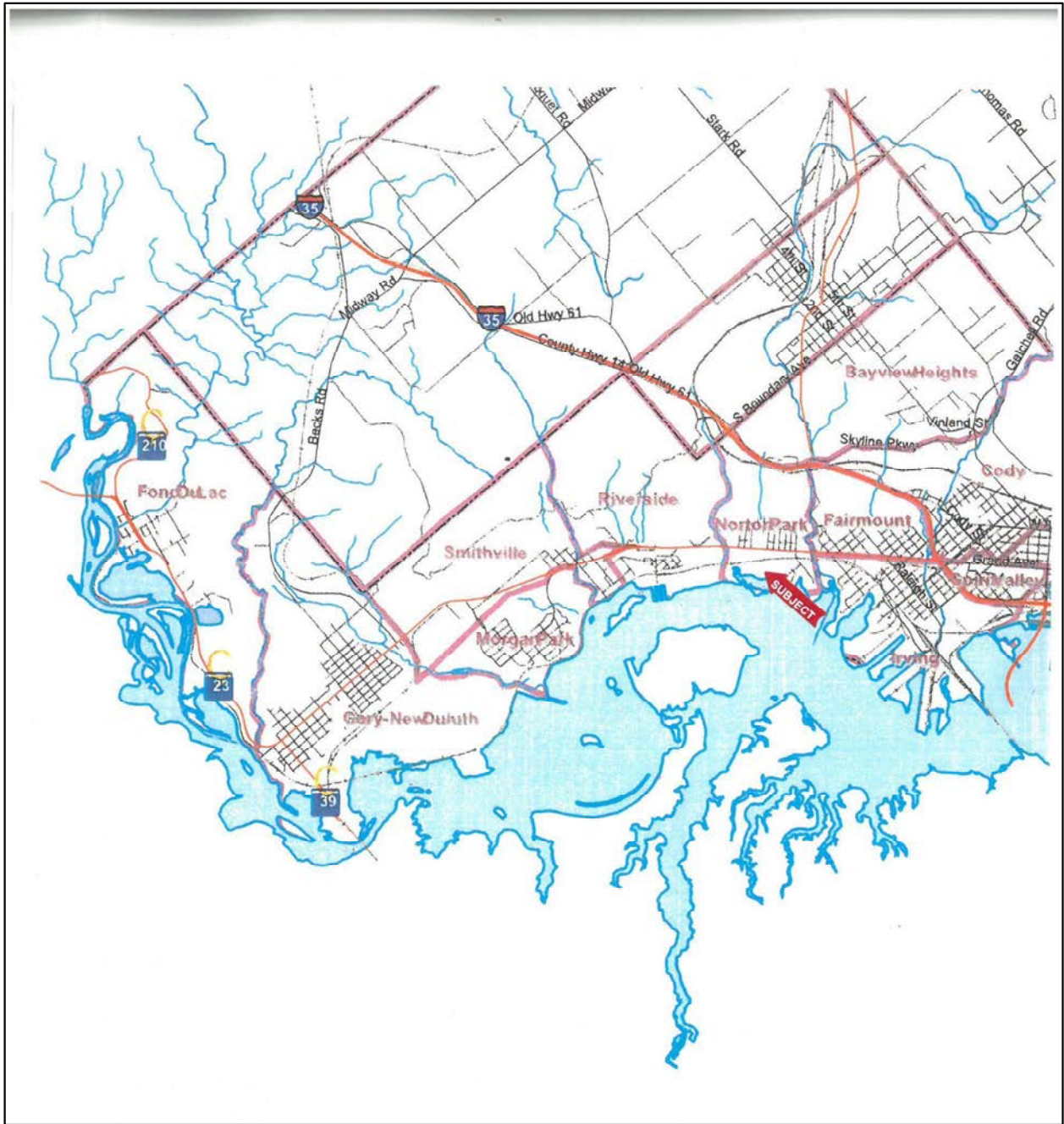
## ZONING MAP



## **NEIGHBORHOOD DATA**

The subject property is situated in the western peripheral of Duluth on the northwest shoreline of the St. Louis River. The immediate subject area consists mainly of a residential environ with the immediate area dominated by the Spirit Cove Townhome Development. The subject vicinity is generally referred to as the Norton Park neighborhood.

## **NEIGHBORHOOD MAP**





## **SITE DATA**

Copies of the St. Louis County plat map, contour map, and aerial photograph may be found on the following pages. The aerial photograph evidences that the site is essentially undeveloped, identified as common areas, and covered with natural vegetation. The contour map evidences topography that slopes upwards from the shoreline to the various building sites. The outlot elevations rise from about 604' -606' at the shoreline to about 620' at the townhouse lot lines. Vehicular access is nonexistent. Most notably, an easement for the western waterfront, or the "Waabizheshikana: the Marten Trail," traverses these three parcels along the western shoreline of the St. Louis River. This trail is a public right-of-way existing in front of the townhouse units, somewhat obscuring the waterfront view amenity, and affecting access and privacy to that characteristic. Issues related to the trail easement were outlined by the homeowner's association as follows:

**Privacy** - people are on the trail at all hours of the day and night, using lights at night.

**Risk** - potential injury risk with walking, biking, and running.  
If the city does indeed have full control of the trail, then they should have full liability for any accidents/injuries that might occur on the trail.

**Additional Risks -**

Theft: possible increased risk of theft of private property due to proximity of the public access near our homes.

Nuisance: there are many nuisance issues such as loose dogs, dog excrement (not picked up), litter along trail and yards, noise, lights and general privacy."

While the homeowner's association can use the trail and waterfront, the control of that (public) land rests entirely with the City of Duluth. As a result, it is difficult to define ownership of the land when the association has no ability to control, maintain, alter, or sell the property.

The Dictionary of Real Estate, 7<sup>th</sup> Edition defines an easement as "the right to use another's land for a stated purpose." More simply put, an easement grants another person, or entity, the right to use someone else's property. In the subject instance, that entity is the general public. Multiple websites emphasize that the Western Waterfront/Waabizheshikana trail can be accessed by *all*. Having such an easement often times can negatively affect the value of the abutting servient property. First is the loss of land area, and following that is the inharmonious effects (sight, noise, nuisance, *etc.*) adversely affecting the property. According to the City of Duluth design standards for the trail include the following:

The trail is designed to be surfaced with a crushed stone material that meets accessibility requirements of "firm and stable" (preferably limestone to match existing trail condition).

The trail will be 8 feet wide with 1-foot shoulders for a total width of 10 feet to match existing segments of the trail.

The trail will be open to pedestrians, bicyclists, cross country skiers, and snowshoers.

Screening of the trail from adjacent private residences may be necessary. Location of screening, type, and extent will be determined during the design process and coordination with homeowners.

I would note that each of these guidelines tend to diminish the homeowner's rights and will have the effect of obscuring any view attribute, thus lessening the positive enjoyment and view enhancement of the waterfront ambience. I believe that the homeowner's reaction to the lakefront trail, which was relocated from the lakeshore in front of the Beacon Point Condominiums to the rear of the dwelling units, is a case in point (reference article in addenda).

The subject land area is estimated as follows:

Outlot A	55,002 S.F.	1.26 Acres
Outlot B	50,439 S.F.	1.16 Acres
Outlot C	<u>48,750 S.F.</u>	<u>1.12 Acres</u>
Total	154,191 S.F.	3.54 Acres

### **HIGHEST & BEST USE**

The Appraisal Institute defines Highest & Best Use in its Dictionary of Real Estate Appraisal as "the reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the Highest & Best Use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity.

The principle of Highest & Best Use, or the most profitable, probably, and likely use to which a given site can be utilized, is predicated upon many factors. The appraiser must consider zoning, local trends, the neighborhood, present uses, site analysis, and analysis of the market to determine what is most probable and economically feasible today and in the future. USPAP augments the above definition of Highest & Best Use analysis to include the "effect on use and value of the following factors: existing land use regulations, reasonable probable modifications of such land use regulations, economic demand, the physical adaptability of the property, neighborhood trends, and the optimal usage of the property. In addition, the appraisal must consider the effect on the property being appraised of anticipated public or private improvements, located on or off the site, to the extent that market actions reflect such anticipated improvements of the appraisal."

Since the site is valued as if vacant and able to be put to its Highest & Best Use, that use for the vacant site must be analyzed. The site is a desirable location for any number of possible uses but limited to those that are permitted by local zoning codes. Those codes limit the site to mainly residential use. Therefore, those use types would be a Highest & Best Use of the vacant site. It has been noted that the subject site is essentially vacant and historically has reflected a



similar utilization. In terms of the four criteria, the site is zoned primarily for residential development, and that use type is consistent with other land uses in the vicinity. The subject's topographical features are consistent with those found in the immediate neighborhood of which it is part, and neighboring properties are improved with residential buildings.

Accordingly, it would *ordinarily* be assumed that the property meets the test of physical possibility. After determining the uses that are physically possible and legally permissible, it is necessary to analyze financial feasibility. Maximum productivity, or economic benefit, occurs as a result of Highest & Best Use of the land. It is achieved through an economic gain for the property specific, as well as the community as a whole, and it is reflected through the creation of jobs in the construction industry, increased real estate taxes, and an owner's contribution to the local economies. Assuming the land be put to use for any type of allowed residential purposes, the test of maximum productivity has been met.

The subject site is situated in a residential environ and is essentially vacant land dedicated as a "common area" for the benefit of the Spirit Cove Townhome Development. In any event, each individual outlot parcel would likely be considered unbuildable due to waterfront setback requirements, and even more so with the trail easement. Consequently, the Highest & Best Use must be considered to be its present use, that of a common area for the homeowners in the Spirit Cove residential development, albeit encumbered by a public trail easement.

### **VALUATION PROCEDURE**

Appraisal methodology utilizes three indications of value: the Cost Approach, the Sales (Market Data) Approach, and the Income Analysis Approach. In the Cost Approach, land value is estimated by direct comparison to other known land sales in the vicinity, and the depreciated value of any improvement is added. The Market Data Approach is predicated on comparable sales of similar properties in the marketplace. The Income Capitalization (Analysis) Approach is predicated on existing, reported, or forecasted lease data attributable to the subject insofar as it coincides with actual market data.

Insofar as the subject property is basically undeveloped lands, neither the Cost nor Income Approaches are considered applicable. Given the essentially undeveloped nature of the subject site, the Market Data Approach is considered the most appropriate method of estimating value. For purposes of this appraisal, a search of unimproved property sales was conducted. Due primarily to location, emphasis was placed upon sales with the subject waterfront area. Vacant land sales for the past few years were examined. Those sales were considered representative of the market and were used to value the subject's lands.

The subject's land value will be estimated via direct comparison with other known land sales in the subject vicinity having similar zoning or land use characteristics. The basic premise of the Sales Comparison Approach is the comparison of the subject property with others of similar utility and use that have sold in the recent past. Adjustments are made to the comparables for differences with the subject in order to derive an indication of value. This approach to value requires good verifiable sales data having similar use potential characteristics, *etc.* A summary of recent sales data in the immediate vicinity is included herein for informational purposes. The data for those sales follows:

<u>No.</u>	<u>Identification</u>	<u>Date</u>	<u>Sale Price</u>	<u>Area</u>	<u>\$/S.F.</u>
1	010-3100-02810+	04-2021	\$157,500	8,000 S.F.	\$19.69
2	010-1420-00370+	05-2023	\$715,000	15,264 S.F.	\$46.84

Sale No. 1 is especially relevant to the subject insofar as it is a waterfront property with a public beach between the site and the shoreline. Additionally, it is currently unbuildable due to a lack of access and municipal utilities. This makes it especially relevant to the subject circumstance. Sale No. 2 is more recent, and it is prepped and ready for development with an unobstructed lake view and ready access. It need be adjusted substantially downwards for access, utilities, and use potential.



**Comparable Land Sale No. 1:**

Identification: 2602 South Lake Avenue  
Duluth, MN

PIN: 010-3100-02810+

Seller/Grantor: S. Hanson

Buyer/Grantee: T. & P. Fillipi

Sale Price: \$157,500

Date of Sale: April 2021

Zoning Data: R-1, Residential Traditional

Site Data: 8,000 S.F.

\$/S.F.: \$19.69

Improvement Data: Vacant site having 80 front feet of lakeshore. Site abuts platted, unimproved avenue making it inaccessible. The site was sold to an adjacent homeowner and provides for an unobstructed view, albeit over a public beach. Notably, this sale predates the recent and controversial Cargill acquisitions on Park Point, which would distort the unit price upwards. Property was listed for sale at \$175,000 (LSAR MLS #6095455). At the time of sale, an estimate for the extension of road and utilities was \$300,000.



### **Comparable Land Sale No. 2:**

Identification: XXX South 23<sup>rd</sup> Avenue East  
Duluth, MN

PIN: 010-1420-00370, 00390, 00300, & 00306

Seller/Grantor: C. & D. Shonfeld

Buyer/Grantee: P. & C. Hayden

Sale Price: \$715,000

Date of Sale: August 2023

Zoning Data: R-2, Residential Urban

Site Data: Irregular - 15,264 S.F.

\$/S.F.: \$46.84

Improvement Data: Accessible shoreline approximating 151 F.F. of lakeshore. Site prepped for development. Unobscured view and access to shoreline. Property was sold to adjacent landowner in an assemblage type transaction. Ordinarily listed for sale at \$850,000 (LSAR MLS #6106712). Lakewalk trail situated behind subject.

It is necessary to adjust the market data in order to reflect those factors that will differ from the subject. Those factors can include time, location, physical characteristics, zoning, use potential, *etc.* Price increase have occurred in recent years, and the rate of increase will differ between properties and classifications.

After consideration for time, location is a factor considered. The subject site and the sale properties are situated in fairly similar locations. That is to say all are waterfront properties. A more subjective component is the contributory value of the physical characteristics such as topography, slope, shape, *etc.* In this instance, the sales data tends to share a general similarity of features, and minimal adjustment is contemplated. While the available sales data tends to be slightly dated, the provide the most recent, reliable, geographically relevant data and can be used to estimate the market value of the subject property.

The subject parcels, individually or collectively, are unique in terms of use potential, inharmonious public right-of-way easement, *etc.* Not the least of the subject characteristics is the inability to possess the ability to market the asset (i.e. willing buyer/willing seller concept). In short, the subject parcels are inherently deficient relative to typical sale properties. Sale No. 1 tends to be most similar to the subject in terms of current use potential. Still, various differences are noted and are illustrated below:

	<b>Subject</b>	<b>Sale No. 1</b>	<b>Adjustment</b>
Time	01-2024	04-2021	+*
View	Yes	Yes	N/A
Obstructed	Yes	Not Likely	(-)
Pedestrian	Yes	Minimal	(-)
Bicyclists	Yes	No	(-)
Skiers, Snowshoers	Yes	Not Likely	(-)
Plantings	Yes	No	(-)
Risk	Yes	Not Likely	(-)
Access	No	No	N/A
Potential	No	Yes	(-)
Buildable	No	No	N/A
Current	No	Not Likely	(-)
Potential	No	Yes	(-)

\*Property previously sold in 01-2014 for \$91,000. Appreciation over 87 months computes to \$66,500, or 73.1%, or 0.84%/month.

While the market data does not represent textbook comparables, the appraiser would note that they are the best available in terms of price, vicinity, size, amenities, *etc.* Nonetheless, more recent pertinent data is just not available in the subject area. A comparison of the subject and Sale No. 1 reflects multiple requirements for downwards allowances for different influences. A comparison of Sale No. 1, which is currently unbuildable but curable at some expense, with Sale No. 2 which is prepped and ready for development, or “shovel ready” as some politicians like to note reflects a significant downwards variance, and as illustrated above, the subject would reflect a further downward variance. The SF unit price for Sale No. 1 is \$19.69 versus the unit price for Sale No. 2 which computes to \$46.84/SF, a 238% differential. Likewise, the Front Foot

comparison reflects \$1,969 for Sale No. 1 versus \$4,735 for Sale No. 2, a 240 % differential. In any event, a substantial dollar amount is applicable to a waterfront site lacking use potential, and in the subject instance, the use potential for the subject parcels is not *curable* in the same sense as Sale No. 1 consequently suggesting an additional and substantial downwards adjustment in terms of market value.

The preceding page illustrates at least nine negative influences that the subject is affected by relative to Sale No. 1, an unbuildable site, but one with available corrective measures, an ability not available to the subject. In addition, the subject site has two twenty-foot wide pedestrian easements which further reduce the land area, as well as subterranean utility easements which diminish use potential. Consequently, the subject market value/EMV need be adjusted downwards for both land area, as well as use potential.

Arguably, the subject *market value* could be effectively zero insofar as it is not likely to be marketed independently and it is not likely that a buyer could be found with the desire and ability to invest in a site with little use but to the Spirit Cove homeowners. Their twenty-two (improved) sites have an EMV of \$1,618,800 which already tends to adequately compensate for any potential view enhancement.

Given the bundle of rights theory, which is defined as “the concept that compares property ownership to a bundle of sticks with each stick representing a distinct and separate right of the property owner, the right to use real estate, to sell it, to lease it, to give it away, or the choose the exercise all or none of those rights.” Clearly, the subject parcels lack virtually all of the criteria within that description, most notably the rights to sell, lease, gift, *etc.* Those rights can otherwise be identified as the right of possession (no), the right of control (no), the right of exclusion (no), the right of enjoyment, and the right of disposition (no).

Consequently, it appears reasonable to this appraiser to assign a one percent allowance to the existing ownership rights, much the same as a prescriptive right-of-way easement. Our Comparable Sale No. 1, which is most similar to the subject circumstance, evidences a non-buildable site, however one with a curable type, albeit costly, method of successfully creating a buildable site. That unit price multiplied by one percent would represent a most probable unit price for the subject parcels (e.g.  $\$19.69 \times \$0.01 = \$0.197$ , say \$0.20).

The various individual sales were considered, and individual adjustments were made where necessary. Predicated upon my analysis and after consideration of all the various factors that influence value, I am of the opinion that the subject site, overall, will substantiate an estimate market value, as of the appraisal date, of approximately \$0.20 per square foot of land area, or:

Outlot A	55,002 S.F. x \$0.20	\$11,000
Outlot B	50,439 S.F. x \$0.20	\$10,100
Outlot C	48,750 S.F. x \$0.20	<u>\$ 9,800</u>
Total		\$30,900

## VALUATION CONCLUSION

Predicated upon the analysis presented herein, the most probable market value for the subject property, as of January 2, 2024, can be estimated at approximately:

**\$30,900**

**- THIRTY THOUSAND NINE HUNDRED DOLLARS -**

## EQUALIZATION

I would note that “according to State Statutes, properties are to be assessed at Market Value. Because it is impossible to achieve 100% of the market value on every property, the acceptable range by state standards is from 90% to 105% of market.” This statement implies a sales ratio may be applied to an individual assessment in order to obtain equalization with other properties. A search of waterfront land sales within the city of Duluth reveals only two sales in the past three years that are seemingly competitive. One is readily developable, the other has limitations making it relevant to the subject circumstance. The sales ratios for those two properties are as follows:

	<u>Sale Price</u>	<u>EMV</u>	<u>Ratio</u>
Sale No. 1	\$157,500*	\$46,000*	0.292
Sale No. 2	\$715,000	\$384,000	0.537

Average: 0.415

\* 2021 time of sale and EMV

It would appear from this limited data that the likelihood exists that the subject EMV is not within the 90% to 105% standard but is nearer the Sale No. 1 indication but only lower.

A comparison of the subject unit value with adjacent properties follows:

	<u>EMV</u>	<u>Area</u>	<u>\$/S.F.</u>
Subject	\$119,400*	3.54 Acres	\$0.77
Parcel 2420-09310	\$13,900	6,307 S.F.	\$2.20**
Parcel 2420-09320	\$25,500	11,813 S.F.	\$2.16**
Parcel 2420-00474	\$6,700	3.08 Acres	\$0.05

\* Revised EMV

\*\* Partly underwater but inclusive of riparian rights

Notably, the unit prices vary widely. However, the characteristics of Parcel 2420-00474 tend to be most relevant to the subject in terms of size and location. The unit price for that parcel, which is just west of the subject, reflects a site with very limited use potential, a description applicable to the subject, even if for different reasons. In short, that unit price, as well as the EMV sales ratio for the two sale properties, suggests that the subject is unfairly treated both in terms of market value and equalization. The application of a 41.5% ratio to the subject estimated unit price results in an equalized EMV estimate of approximately \$0.083, which is more consistent with the current EMV of Parcel 2420-00474 and could be given consideration in the appeal process ( $\$0.20 \times .0415 = \$0.083$ ).



### **CERTIFICATION**

The undersigned hereby certifies that, to the best of our knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The report analyses, opinions, and conclusions are limited only by the report assumptions and limiting conditions and are our personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- We have no present or contemplated interest in the property, financial or otherwise, that is the subject of this report and no personal interest with respect to the parties involved.
- We have made a personal inspection of the property that is the subject of this report.
- We have knowledge and experience in appraising this type of property in this market area.
- We are aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records, and other data sources for the area in which the property is located.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- Our compensation for completing this assignment is not contingent upon the development or reporting of predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- The appraisal assignment was not based on a requested minimum value and was not based on a specific (dictated) value.
- The report analyses, opinions and conclusions were developed, and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice.



William D. Clements  
Twin Ports Appraisals  
MN License #4000779

### **CONTINGENT & LIMITING CONDITIONS**

The legal description is assumed to be correct.

We assume no responsibility for matters legal in character, nor do we render an opinion as to the title, which is assumed to be good. All existing liens and encumbrances have been disregarded and the property is appraised as though free and clear under responsible ownership and competent management.

We have made no survey of the property and assume no responsibility for its accuracy.

The sketches included in this report are only for the purpose of aiding the reader in visualizing the property.

Possession of this report, or copy thereof, does not carry with it the right of publication, nor may it be used for any purposes by any but the client without the previous written consent of the appraiser and/or client.

The information supplied to the appraiser by others and used in this report is assumed to be correct; however, further responsibility and accuracy have been previously made, therefore.

We have no present or contemplated interest in the property appraised.

The distribution of the total valuation in this report between land and improvements applies only under the existing program of utilization.

We assume that there are no hidden or unapparent conditions of the subsoil which would render it more or less valuable than otherwise comparable property.

In the appraisal assignment, the existence of potentially hazardous materials used in the construction or maintenance of the building, such as the presence of urea-formaldehyde foam insulation and/or the existence of toxic waste, which may or may not be present on the property, was not observed by me; nor do I have any knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The existence of urea-formaldehyde foam insulation, asbestos, radon, or other potentially hazardous waste material may have an effect on the value of the property. We urge the client to retain an expert in this field if desired.

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## **QUALIFICATIONS OF WILLIAM D. CLEMENTS**

### **Education:**

Duluth Central High School - Diploma  
University of Minnesota, Duluth - B.A. Degree

### **Appraisal Schools & Seminars Attended:**

SREA Course 101, Macalester College - An Introduction to Appraising Real Properties  
SREA R-2 - Residential Examination  
SREA Course 201, Wisconsin State University, Superior - Principles of Income Property Appraising  
SREA Course 202, University of Wisconsin, Madison - Applied Income Property Valuation  
MAAO Course B - Residential Appraising  
MAAO Course C - Narrative Report Writing  
MAAO Course D - Appraising Industrial & Commercial Property  
IAAO Course 2A - Appraisal of Income Producing Property  
IAAO Course 302 - Mass Appraisal of Income Producing Property  
SREA Seminar, R-41B - FHLBB Appraisal Standards & Guidelines  
SREA Seminar, Augsburg College - Narrative Report Writing  
SREA Seminar - Professional Practice  
SREA Seminar - Basic Introduction to Income Capitalization  
SREA Seminar - Motels & Shopping Center Feasibility Analysis  
SREA Seminar - Appraising Second Homes & Home Sites  
SREA Seminar - Tax Consideration in Real Estate Transactions  
SREA Seminar - Houses, Houses, Houses  
SREA Seminar - Appraising Apartments  
SREA Seminar - Creative Financing/Cash Equivalency  
SREA Seminar - Uniform Residential Appraisal Report  
SREA Seminar - Radon Gas/Asbestos  
D.O.E. Seminar - Appraisal Techniques in the Valuation of Solar Buildings  
E.H. Boeckh Company - Cost Estimating Seminar  
CRA Seminar - Reviewing the Residential Appraisal Report  
CRA Seminar - Mortgage Underwriting  
Kaplan Seminar - FHA Appraisal Guidelines  
IRWA Seminar - Easement Valuation (1992)  
Appraisal Institute Seminar - URAR (1993)  
Pro-Source Seminar - How to Perform FHA Appraisals Within HUD Guidelines (1994)  
Appraisal Institute Seminar - Appraisal Reporting of Complex Residential Properties (1994)  
Appraisal Institute Seminar - Understanding Limited Appraisal & Appraisal Reporting Options (1994)  
U.S. Department of Housing & Urban Development Seminar - FHA Appraisals (1994)  
HUD FHA 203 (K) Appraisal Training Session (1995)  
HUD FHA Single-Family New Construction Appraisal Training Session (1995)  
Appraisal Institute Seminar - Fair Lending & the Appraiser (1996)  
FHA Appraisal Training, Earl Brown Center, University of Minnesota, St. Paul - Major Changes & Revisions (1997)  
Appraisal Institute Seminar - FHA & the Appraisal Process  
Appraisal Institute Seminar - USPAP Update (1999)  
Appraisal Institute Seminar - Appraisal of Local Retail Properties (1999)  
Appraisal Institute Seminar - Eminent Domain & Condemnation (1999)  
Appraisal Institute Seminar - Partial Interest Valuation Divided (2000)  
Appraisal Institute Seminar - Application & Use of Streamlines Process (2001)  
Appraisal Institute Seminar - Special Purpose Properties (2003)  
Appraisal Institute Seminar - USPAP Update (2003)  
Appraisal Institute Seminar - Minnesota License Law Update (2004)  
MN DNR Seminar - Appraisal Review (2005)  
Pro-Source Seminar - USPAP Update (2006)  
Pro-Source Seminar - Advanced URAR & FNMA Guidelines (2006)  
Kaplan Seminar - USPAP Update (2008)  
MHFA - The FHA Appraisal (2009)  
Appraisal Institute Seminar - Commercial Appraisal & Review (2010)

*(Appraisal Schools & Seminars Attended, continued)*

Kaplan Seminar - Appraisal Update (2011)  
Appraisal Institute Seminar - USPAP Update (2012-2013)  
HUD - The FHA Appraisal (2013)  
Appraisal Institute Seminar - Valuation By Comparison (2019)  
IAAO Residential Appraising - One-Day Forum 990 (2019)  
Barkalow Seminar - Communication Among Real Estate Professionals (2021)  
Barkalow Seminar - Using ANSI Z765-2013 (2021)  
MNDOT Seminar - Right-Of-Way Professionals (1995-2008, 2010-2018, 2021, 2023)  
Barkalow Seminar - Bias & Fair Housing (2022)  
IFA Seminar - USPAP Update (2010-2011, 2014-2023)  
Barkalow Seminar - Residential Appraisal Report, Highest & Best Use, Appraisal In Courtroom (2023)

**Memberships:**

Certified State of Minnesota, General Real-Property License #4000779  
Duluth Board of Realtors  
Certified Minnesota Assessor (1975)  
National Association of Review Appraisers (Senior Member)

**Appraisal Experience:**

(1972-1976)

Four years appraisal experience in the City of Duluth Assessor's Office appraising residential, commercial, industrial & income properties for *ad valorem* taxation, acquisition, & easement purposes.

(1976-1987)

Eleven years appraisal experience appraising residential & commercial properties in Duluth and the surrounding area (Executive Vice President, Twin Ports Appraisals, a subsidiary of Midwest Federal Savings & Loan Association of Minneapolis, Formerly First Federal Savings & Loan Association of Duluth).

(1988-Present)

Owner Twin Ports Appraisals, independent real estate appraisal firm appraising residential & commercial properties in Duluth and the surrounding area.

Qualified as an expert witness in District Court, 6<sup>th</sup> Judicial District

Appointed a Commissioner in Condemnation Proceedings by the District Court, 6<sup>th</sup> Judicial District

Appointed to Real Estate Tax Board of Review by City of Duluth (1986-1995)

Appointed to Real Estate Tax Board of Review by St. Louis County (1991-2012)

**Partial List of Clients:**

Anheuser-Busch Company	Park State Bank
Beacon Bank	Pioneer National Bank
Bessemer-Erie Railroad	Preferred Mortgage Express Company
Better Homes & Gardens Relocation	Prudential Relocation
Boatmen's General Relocation Company	Republic Bank, Duluth, MN
Bye, Boyd, & Agnew	Rothschild Mortgage Company
Byron Reed Relocation Company	St. Louis Bank for Savings, FSB
Carlton County, MN	St. Louis County, MN
Chemexec Relocation	St. Louis County Federal Savings & Loan Association
City of Duluth, MN	Superior Community Credit Union
City of Grand Rapids, MN	TCF Mortgage Company
Coldwell Bank Company	U.S. Bank, N.A.
Commercial State Bank, Two Harbors, MN	V.A. Administration
Cook County, MN	Van Evera, Slure, Butler, & Michelson
Duluth Clinic	Wells Fargo Bank
Duluth Transit Authority	Wells Fargo Home Mortgage, Inc.
DuPont Company	Western National Bank
Empire Relocation Authority	Western Lake Superior Sanitary District
Equitable Relocation Company	Woodlands National Bank
Falsani, Balmer, Berglund, & Merritt	
FBS Mortgage Company	
F.D.I.C.	
First Bank, Duluth, MN	
First Bank, Hibbing, MN	
First Federal Savings & Loan, Duluth, MN	
First Federal Savings & Loan, Grand Rapids, MN	
First Minnesota Savings Bank	
Franklin Foods	
Gerlach Beaumier	
GMAC Mortgage	
Grand Marais State Bank	
Hanft-Fride, P.A.	
Heritage Mutual Insurance Company	
HomeEquity Relocation	
Howard Relocation Company	
Interbay Funding	
Knutson Mortgage Company	
Lake Bank	
Lenders Service, Inc.	
M. & I. Bank	
Members Co-op Credit Union	
Meredith Mortgage Company	
Merrill Lynch Relocation	
Midwest Federal Savings & Loan Association, FA	
Minnesota Department of Transportation	
National Bank of Commerce	
North Shore Bank of Commerce	
North Shore Federal Credit Union	
North Shore Mortgage	
North Star Title, Inc.	
Norwest Bank, Approved Appraiser 2566	
Norwest Bank, Duluth, MN	

## ADDENDA

ARTICLE IV - PROPERTY RIGHTS IN THE COMMON AREAS (PAGE 4 OF 22)

**ARTICLE IV**  
**PROPERTY RIGHTS IN THE COMMON AREAS**

4.1 Members' Easement of Enjoyment. Subject to the provisions of Section 4.2, every Owner shall have the following non-exclusive appurtenant easements in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot:

- (a) Ingress and egress.
- (b) Utility and private water and sewer systems, including the right to discharge sewage and waste from the Living Unit and storm water from the Living Unit and Lot to, into and through pipes, tanks, drainage areas and related fixtures and improvements.
- (c) Right to take water from the watermains for all domestic purposes, by and through pipes.
- (d) Subject to easements created in subparagraphs (a), (b) and (c) of this paragraph 4.1, rights and easements of enjoyment for recreational purposes.

4.2 Extent of Members' Easements. The rights and easements created hereby and the title of the Association to the Common Area shall be subject to the following:

- (a) The right of the Association, in accordance with its Articles and By-Laws to borrow money for the purpose of improving the Common Area and in aid thereof to mortgage the Common Area; however, the rights of the Mortgagee in the Common Area shall be subordinate to the rights of the Members hereunder.
- (b) The right of the Association to take such steps as are reasonably necessary to protect the common Area against foreclosure.
- (c) The right of the Association, as provided in its Articles and By-Laws, to suspend the use of any recreational facilities located on the Common Area of any Member for any period during which any assessment remains unpaid, and to suspend the said enjoyment rights for any period not to exceed sixty (60) days for each infraction of its published rules and regulations; provided, however, that nothing contained in this paragraph 4.2(c) shall be deemed to deny an Owner easement for access nor for utility or private sewer system purposes or right to water from the watermain.



ARTICLE IV - PROPERTY RIGHTS IN THE COMMON AREAS (PAGE 5 OF 22)

- (d) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof shall be effective unless an instrument signed by Members entitled to cast three-fourths (3/4) of the votes of membership has been recorded agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least ninety (90) days in advance of any action taken.

4.3 Taxes and Special Assessments on Common Area. The Association shall have the right, power and authority to collect such levies as part of the annual assessment, if such taxes and special assessments are not collected by the governmental body from the owners or paid by the owners to the governmental body when the same are due and payable.

4.4 Use of the Common Area. The Common Area shall be used strictly in accordance with the easements granted thereon. Except as herein provided, no Owner shall obstruct or interfere whatever with the rights and privileges of other Owners in the Common Area and nothing shall be planted, altered, constructed upon or removed by an Owner from the Common Area, except by prior written consent of the Association. If an Owner shall violate this section, the Association shall have the right to restore the Common Area to its prior condition and assess the cost thereof against the Owner who violates this section and such cost shall become a lien upon the Lot of such Owner, which shall become due and payable upon demand. The Association shall have the same right and powers to collect the cost of such restoration as provided in Article VI for the collection of delinquent annual assessments. If an Owner interferes with the rights and privileges of another Owner in the use of the Common Area, except as herein provided, the Association and the Owner may commence an action to enjoin such interference and the prevailing party shall be entitled to recover such reasonable attorney's fees as the Court may allow, together with all necessary costs and disbursements in connection therewith.

4.5 Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, as the same may be amended from time to time, his non-exclusive right and easement of ingress and egress and of enjoyment in and to the Common Area, to the members of his family, invitees, to his tenants, as permitted by the Board pursuant to Section 12.3 hereof, or his contract purchaser who reside on his Lot.

4.6 Title to Common Area. The Developer shall convey legal title to the Common Area to the Association prior to the first conveyance of any Lot.