



# City of Duluth

Council Chambers, City  
Hall

## Meeting Agenda Planning Commission.

*Council Chambers*

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Tuesday, June 14, 2022

5:00 PM

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### CALL TO ORDER AND ROLL CALL

### APPROVAL OF PLANNING COMMISSION MINUTES

[PL 22-0510](#) Minutes 05/10/22

**Attachments:** [05-10-2022 PC Minutes \(not approved yet\)](#)

### PUBLIC COMMENT ON ITEMS NOT ON AGENDA

### CONSENT AGENDA

[PL 22-095](#) Vacation of an Easement Dedicated for Park Purposes, to be Replaced by an Easement with Correct Legal Description, at 515 W 1st Street by City of Duluth

**Attachments:** [PL 22-095 Staff Report with Attachments](#)

[PL 22-079](#) Vacation of a Portion of Ebony Avenue Near 155 W Central entrance by Lakeview Christian Academy

**Attachments:** [PL 22-079 Staff report and attachments](#)

[PL 22-073](#) Vacation of Alley Near 420 W 9th Street by Ben Gasner

**Attachments:** [PL 22-073 Staff report and attachments](#)

[PL 22-083](#) Interim Use Permit for Vacation Dwelling Unit at 940 S Lake Avenue by Carl Sherman

**Attachments:** [PL 22-083 Staff report and attachments](#)

[PL 22-082](#) Interim Use Permit for Vacation Dwelling Unit at 2226 W 6th Street by Caleb Korzenowski

**Attachments:** [PL 22-082 Staff Report and Attachments](#)

[PL 22-074](#) Interim Use Permit for Vacation Dwelling Unit at 232 S 59th Avenue W by ALN Properties LLC

**Attachments:** [PL 22-074 Staff Report and Attachments](#)

[PL 22-088](#) Variance to Maximum Building Height for Dwellings at 3731, 3819, 3829, and 3867 London Road by Stocke Construction

**Attachments:** [PL22-088 Staff Report - final with attachments](#)

## **PUBLIC HEARINGS**

[PL 22-077](#) Interim Use Permit for Vacation Dwelling Unit at 2835 Minnesota Avenue by Tri-Waters Property LLC

**Attachments:** [PL22-077 Staff Report - final with attachments](#)

[PL 22-068](#) Special Use Permit for a Daycare Facility in Trinity Lutheran Church at 1108 E 8th St by Mandy Stanius

**Attachments:** [PL 22-068 Staff report and attachments](#)

[PL 22-081](#) Special Use Permit for Daycare at 2344 Nanticoke Street by Three Trees LLC

**Attachments:** [PL 22-081 Staff report and attachments](#)

[PL 22-089](#) Variance to Maximum Parking Requirements for a Planet Fitness at 1320 Mountain Shadow Drive by Planet Fitness

**Attachments:** [PL 22-089 Staff Report and Attachments](#)

## **OLD BUSINESS**

[PL 22-045](#) Planning Review for the Higher Education Overlay District at 1303 W Arrowhead Road by 1303, LLC

**Attachments:** [PL 22-045 Staff report & attachments](#)

## **OTHER BUSINESS**

[PL 22-102](#) Citizen Petition for Environmental Assessment Worksheet (EAW) for Lester Park Golf Course Development

**Attachments:** [PL 22-102 Staff Memo and Report](#)

## **COMMUNICATIONS**

Land Use Supervisor Report

Removed from the agenda, PL 22-036 Interim Use Permit for a Vacation Dwelling Unit at 619 W Skyline Parkway

Historic Preservation Commission Report, Joint Airport Zoning Board Report, Duluth Midway Joint Powers Board Report

# City of Duluth Planning Commission

May 10, 2022 – City Hall Council Chambers  
Meeting Minutes

## Call to Order

Vice-President Gary Eckenberg called to order the meeting of the city planning commission at 5:00 p.m. on Tuesday, May 10th, 2022 in the Duluth city hall council chambers.

## Roll Call

### **Attendance:**

Members Present: Jason Crawford, Gary Eckenberg, Jason Hollinday, Margie Nelson, and Michael Schraepfer

Members Absent: Andrea Wedul, and Sarah Wisdorf

Staff Present: Adam Fulton, Robert Asleson, Jenn Moses, John Kelley, Chris Lee, Kyle Deming, and Cindy Stafford

## Approval of Planning Commission Minutes -

Planning Commission Meeting – April 12, 2022

**MOTION/Second:** Nelson/Hollinday approved

**VOTE: (5-0)**

## Public Comment on Items Not on Agenda

None

## Consent Agenda

(Item PL 22-065 was removed from the consent agenda items and placed under the public hearings.)

PL 22-048 Vacation of Alley between Cody Street and Petre Street by Timothy Carter

PL 22-054 Vacation of Unimproved Lexington Street Between 61<sup>st</sup> Avenue W and 62<sup>nd</sup> Avenue W by Stephen and Carol Grams

PL 22-066 Interim Use Permit for a Vacation Dwelling Unit at 5814 London Road by 5808 London Rd, LLC

PL 22-067 Minor Subdivision at 1803 Middle Road by Matthew Martin and Miranda Stenstrop

**Public:** No speakers.

**MOTION/Second:** Hollinday/Crawford approved consent agenda items as per staff

recommendations

**VOTE: (5-0)**

### **Public Hearings**

(Commissioner Michael Schraepfer recused himself from the next agenda item.)

PL 22-065 Interim Use Permit for a Vacation Dwelling Unit at 1320 Minnesota Avenue by Lakeview Land Co.

**Public:** No speakers

**MOTION/Second:** Nelson/Hollinday approved as per staff recommendations

**VOTE: (4-0, Schraepfer Abstained)**

PL 22-049 Special Use Permit for Auto Service at 4032 Grand Avenue by Apex Automotive

**Staff:** John Kelley introduced the applicant's proposal to operate an automobile and light vehicle service in an existing 2,500 square foot building in a MU-N district. An auto service in an MU-N district requires a special use permit. The property and building have been previously used for automobile service, but that use has not been active for a few years and a special use permit is now required. The site requires a dense urban screen to be installed along all side and rear property lines abutting a residential or mixed-use district. The applicant cannot use the land within 20 feet from the public right of way, which includes Grand Avenue, North 41<sup>st</sup> Avenue West and Grand Avenue Alley. The site plan shows six parking spaces, which exceeds the minimum requirement of 5. All vehicles on site for servicing must be stored within the building. Staff recommends approval with the conditions listed in the staff report.

**Commissioners:**

**Applicant:** Michael Lykins addressed the commission. He thanked staff for their assistance. He plans to beautify the building and provide a needed auto service to the neighborhood. He plans to convert an eyesore and make it better. The dumpsters will be removed. There are multiple bus stops nearby for convenience.

**Public:** David Stromgren – 4216 W 6<sup>th</sup> St – addressed the commission. He is not in favor, or opposed to this proposal. He owns the apartment building to the East. He is concerned about parking. Gloria Walter – 4115 Grand Ave – addressed the commission. She is not in favor, or opposed, but wants the applicant to be considerate of the noise level and hot-rodding. She asked the applicant to try to keep unnecessary noise to a minimum.

**MOTION/Second:** Crawford/Hollinday approved as per staff recommendations

**VOTE: (5-0)**

PL 22-047 Variance to Exceed Maximum Parking at the Southwest Corner of Central Entrance and Anderson Road by Launch Properties/The Jigsaw LLC

**Staff:** Kyle Deming introduced the applicant's proposal for a variance to the maximum parking requirements to allow 28 parking spaces for a 3,500 square foot Chapter Aesthetics Studio. A parking study by consulting firm Kimley-Horn suggested that the Chapter Aesthetic Studio be classified as a medical clinic use with a UDC required 14 parking spaces. This would allow the planning commission to grant a variance to allow 28 parking spaces (200% of the minimum.) The need for a variance is related to site constraints and limited off-street parking. The developer has demonstrated that there is space on their site to locate the requested parking while meeting landscaping and basic storm water requirements. This level of parking would not

be out of character with the large parking lots in the mall area. The developer has proposed to mitigate the environmental impact through incorporating pervious pavement. Staff recommends denial of the applicant's requested 28 parking spaces and approval, instead, of up to 18 parking spaces with the conditions listed in the staff report.

**Applicant:** Bruce Carlson of Launch Properties addressed the commission. He thanked staff, and explained more about their possible future tenant, Chapter Aesthetics. Chapter means chapter in your life. It is helping customers be and look the best that they can be. Aspen Dental is their parent company and they are located in a Launch Properties development at the NE corner of Central Entrance and Anderson Rd. The tenant proposes 11 exam and procedure rooms with 11 or 12 staff members working with clients. There will be people in the waiting room, office, and people finishing up for a total of approximately 23-25 people on site at one time. They provide a living wage for full and part-time jobs. They need 28 parking spaces. The parking spaces will be pervious.

**Commissioners:** Chair Gary Eckenberg noted the crux is identifying the function of the business. What kind of medical procedures will they perform? Carlson stated hair replacement and Botox treatments to name a few. Chair Eckenberg asked if their parent company Aspen Dental has enough parking spaces across the street. Carlson stated it is tight. Carlson stated the tenant will walk away if they aren't allotted the 28 parking spaces. Jason Crawford asked the applicant if there will be screening. Carlson stated yes. There will be screening to the south.

**Public:** Rob Merritt of Hanft Fride Law Firm addressed the commission. He represents the Tuominen family who reside at 411 Anderson Road. They are opposed to the variance. Their house is residential and they will be adversely affected by being surrounded by commercial developments. They have many concerns including: snow removal, noise, dust and dirt generated, litter and lights (cars and overhead). This variance is not due to uniqueness of the property, but is due to a return on investment, which is not a reason to grant a variance. The proposal is inconsistent with the Unified Development Code (UDC). A new bus service will be added, and they should not be allowed more parking. The tenant will not be serving the neighborhood, but will pull in clients from around town. This is a personal service use, and not a medical use. He urges the commission to deny the variance.

**Commissioners:** Margie Nelson noted the Kimley Horn memo in their packets, which gives a nice breakdown of the parking scenarios. Chair Eckenberg asked about the difference between personal services and medical clinic. Is it licensure? Deming stated this business matches personal services most closely and that this use has been classified as such in other locations in Duluth.

**MOTION/Second:** Nelson/Schraepfer approved as per staff recommendations of denial of the requested 28 parking spaces, but approval of 18 parking spaces.

**VOTE: (5-0)**

PL 22-060 UDC Map Amendment From R-1 to R-2 (for 1.1 Acres) and R-2 to R-1 (0.7 Acres) near the Southwest Corner of Palm Street and Blackman Avenue by KAMI Holdings, LLC

**Staff:** Kyle Deming introduced the applicant's proposal for a UDC Map Amendment/Rezoning to change the zoning of 1.1 acres from Residential-Traditional (R-1) to Residential-Urban (R-2) and to change the zoning of 0.7 acres from Residential-Urban (R-2) to Residential-Traditional (R-1) in order to coincide with proposed development parcel boundaries in the proposed Kara-Mia Addition plat. Staff recommends approval for the reasons listed in the staff report.

**Applicant:** Dennis Cornelius of Amcon Construction addressed the commission. The applicant's name is pronounced "Cam-ee." A MN-DOT study looked at pedestrian traffic, mass transit and shopping. All components favor a higher-density project. Their proposal includes two phases. The first phase is the construction of the apartment building, and the second phase in

the future will be construction of townhomes. Chair Eckenberg asked who their target market will be. Cornelius stated mid-range at market rate. The apartment complex will include a pool and a rec room. There will be a shared use path to connect the lot near Orange St. to the existing path along Palm St. Parking will be below grade in the apartment building. There will be a pond in front and at the SE corner of the building for stormwater management. There will be aesthetically pleasing features. Nelson asked about access on to Central Entrance from Blackman Avenue. The applicant stated their access won't have a major impact according to the traffic study.

**Public:** Kathy McAuliffe of 215 S. Blackman Ave. addressed the commission. She also owns another lot off of Blackman Ave. She is opposed to the plan. The applicant's graphic shows no buffer between their development and her lot. She noted traffic will increase dramatically. Currently there is traffic to and from ISD 709's bus barn going up their road every day. She is also concerned about water run-off. In spring their back yard tends to flood. The building height is concerning, and four floors will tower over their home. They have built a back-yard sanctuary. They hear road traffic from Central Entrance, but removing the trees will significantly impact them by allowing more noise through. She also has lighting concerns. She stated the building and developer are not local, and these apartments will not be affordable, and will be market rate. Peggy Radosevich of 303 S. Blackman Ave. addressed the commission. She is opposed to the proposed project. They do not want increased traffic. They bought their home because of the trees, and now they will be removed. Greg Bethke of 218 S. Blackman Ave. addressed the commission. He noted the radical changes to their neighborhood in a short time period. There will be heavy construction and increased traffic flow going up and down Blackman Avenue. He has concerns about the wear and tear on the street. He is concerned about water run-off and forest destruction. He asked about snow removal, and if the snow will be trucked out. Sally Bethke of 218 S. Blackman Ave. addressed the commission. She stated Palm Street is already in bad shape. She is concerned about water run-off. The last storm had rivers of water running down Blackman Avenue. She is concerned about parking, and is opposed to the plan.

**Commissioners:** Jason Crawford asked the project engineer, Andrew Barnebey, to discuss the stormwater plan. Barnebey addressed the commission, and stated they will reduce the run-off from the site by 25% and direct it to the creek. There will be a reduction of stormwater leaving the site. There will be a storm water pipe to direct water from the site to the creek, and requirements will be met. Chair Eckenberg noted the public's question on snow removal. How will it be addressed? Barnebey stated they will push some snow into the ponds, and will haul it away if they need to. Nelson asked about buffering between the development and the nearby houses. Barnebey stated the plan is to have a buffer all along the east side of the development. The landscape plan will provide buffering. Crawford understands the neighbors concerns and also noted the need for housing. Nelson noted the previous plans to develop the site goes back to 2001. Chair Eckenberg drove by the site and observed that Palm Street goes directly to Arlington, which is in proximity to a controlled intersection with Central Entrance.

**MOTION/Second:** Crawford/Nelson recommended approval as per staff recommendations.

**VOTE: (5-0)**

PL 22-059 Vacation of Portions of Overland Street and Harding Avenue, and Utility Easements, Near Palm Street and Blackman Avenue by KAMI Holdings, LLC

**Staff:** Kyle Deming introduced the applicant's proposal for a vacation of streets and utility easements for the re-platting of the area into the Kara-Mia Addition. Approval of the vacation are contingent upon the planning commission's approval of the final plat of Kara-Mia Addition in PL22-061 and its timely recording. With the re-platting of the area, the existing streets will be useless for providing the public access to the land. Additionally, the utility easements are

useless since, with the other vacations, there are no longer public easements to which these would connect. Staff recommends approval with the conditions listed in the staff report.

**Public:** No speakers.

**MOTION/Second:** Schraepfer/Nelson recommend approval as per staff recommendations

**VOTE: (5-0)**

PL 22-061 Preliminary Plat of 14 Acres into Kara-Mia Addition at the Southwest Corner of Palm Street and Blackman Avenue by KAMI Holdings, LLC

**Staff:** Kyle Deming introduced the applicant's proposal to combine parts of 14 lots in two existing plats and 2 acres of unplatted land into the proposed 14-acre Kara-Mia Addition consisting of two building lots and associated utility easements. The site is vacant with the exception of a dwelling that will be removed as part of the lot development. Lot 1 is proposed to be developed with a 198-unit apartment building, which is a permitted use in R-2. Lot 2 (zoned R-1) is proposed to be developed in a later phase into townhomes on a private road accessing Orange Street. The developer will apply for a special use permit for the townhomes at a later time. Immediately north of the plat is 2.2 acres of City-owned land that consists of wetlands and a storm water detention pond. This pond is the headwaters to Brewery Creek. The general development shoreland requires buildings to be setback 50 feet from the Ordinary High-Water Level of the creek; Lot 1 allows adequate space for a building that complies with the setback. Natural grade of Lot 1 is much higher than the Base Flood Elevation and, therefore, buildings should be able to comply with the floodplain elevation requirements. A tree inventory has been submitted and a tree replacement plan will need to be provided at the time of site development. A traffic study was completed for the project. There is available capacity for the proposed traffic. The DTA will have stop a block away and will be providing improved service frequency starting this summer. A final stormwater management report will be submitted to the City prior to the building permit, but preliminary design shows compliance. The preliminary plat is located in an area with adequate police, fire and emergency services available to the projected population. Staff recommends approval with the conditions listed in the staff report. Chair Eckenberg noted the plans approved in 2001 for a multi-story retirement community. Deming noted that the 2001 application resulted in more wetland impacts of 1.8 acres than the current proposal.

**Public:** Kathy McAuliffe, 215 S. Blackman Ave., addressed the commission. She noted they just paid off their road assessments, and doesn't want the road to be torn up. This plan will have an adverse effect on their neighborhood. There will be noise and lights, and no buffer.

**Applicant:** Cornelius noted there will be a buffer along the east side and to the north by the parking area. They will add fencing and/or evergreens. Fencing upkeep can be challenging, and they prefer trees. Their master plan is to minimize slopes and keep vegetation. They are trying to be sensitive to the neighborhood. He also noted their tenants' view. He would like them to look outside to vegetation.

**MOTION/Second:** Schraepfer/Hollinday approved as per staff recommendations

**VOTE: (5-0)**

PL 22-064 MU-C Planning Review for a Fitness Center at 1320 Mountain Shadow Drive by Planet Fitness

**Staff:** Chris Lee introduced the applicant's proposal to construct a 22,300 square foot single story fitness center with an associated parking lot on a 2.5-acre lot. The project will remove an existing driveway on Mountain Shadow Drive and the Burning Tree Road will remain. The use is not expected to generate more than 100 trips per hour/1,000 trips per day. City engineering

has indicated that the surrounding streets are controlled via signals and can support 2,000 vehicles per day. The site plan includes a pedestrian connection from the sidewalk on Mountain Shadow Drive to the front entrance. The site plan indicates 70 trees and 93 shrubs. The lighting plan meets UDC standards. Staff recommends approval with the conditions listed in the staff report.

**Applicant:** Todd Riley (civil engineer) addressed the commission, and welcomed questions. Chair Eckenberg asked him in the applicant approves of the conditions. Riley affirmed.

**Public:** No speakers.

**MOTION/Second:** Crawford/Schraepfer approved as per staff recommendations

**VOTE: (5-0)**

### **Old Business**

PL 22-045 Planning Review for the Higher Education Overlay District at 1303 W. Arrowhead Road by 1303, LLC

Item to Remain on the Table. The city council will meet on this item on 6/13/2022. The planning commission will revisit it on 6/14/2022.

### **Communications**

Land Use Supervisor (LUS) Report – Deputy Director Fulton gave an overview. He thanked Vice-President Eckenberg for filling in as Chair this week. He also thanked newly appointed interim managers, Jenn Moses and Steven Robertson. Deputy Director Fulton noted it will be a busy summer for the planning commission.

Heritage Preservation Commission – No update.

Joint Airport Zoning Board – No update.

Duluth Midway Joint Powers Zoning Board – No update.

### **Adjournment**

Meeting adjourned at 7:00 p.m.

Respectfully,

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Adam Fulton – Deputy Director  
Planning & Economic Development



**Planning & Development Division**  
 Planning & Economic Development Department

Room 160  
 411 West First Street  
 Duluth, Minnesota 55802

218-730-5580  
 planning@duluthmn.gov

<b>File Number</b>	PL 22-095	<b>Contact</b>	Jenn Moses, jmoses@duluthmn.gov	
<b>Type</b>	Vacation of Easement	<b>Planning Commission Date</b>	June 14, 2022	
<b>Deadline for Action</b>	<b>Application Date</b>	May 27, 2022	<b>60 Days</b>	July 26, 2022
	<b>Date Extension Letter Mailed</b>	N/A	<b>120 Days</b>	September 24, 2022
<b>Location of Subject</b>	Priley Circle			
<b>Applicant</b>	City of Duluth	<b>Contact</b>	Danielle Erjavec	
<b>Agent</b>		<b>Contact</b>		
<b>Legal Description</b>	See Attached			
<b>Site Visit Date</b>	May 31, 2022	<b>Sign Notice Date</b>	May 31, 2022	
<b>Neighbor Letter Date</b>	May 31, 2022	<b>Number of Letters Sent</b>	4	

**Proposal**

The applicant is requesting to vacate a triangular shaped easement that has an incomplete legal description. There will be a new easement granted with legal descriptions covering all lots in both plats.

Staff is recommending approval with conditions.

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	F-8	Public Plaza	Open Space
<b>North</b>	F-5	Public Plaza	Open Space
<b>South</b>	F-8	Public Plaza	Central Business Primary
<b>East</b>	F-8	Public Plaza	Open Space
<b>West</b>	F-8	Public Plaza	Open Space

**Summary of Code Requirements:**

Vacation of public rights of way and/or easements require a Planning Commission public hearing with a Recommendation to City Council. City Council action is to approve or deny by resolution. Resolutions approving either a full or partial vacation require a 6/9's vote of the council.

**UCD Sec. 50-37.6.C** – The Planning Commission shall review the proposed vacation, and Council shall approve the proposed vacation, or approve it with modifications, if it determines that the street, highway, or easement proposed for vacation:

1. Is not and will not be needed for the safe and efficient circulation of automobiles, trucks, bicycles, or pedestrians or the efficient supply of utilities or public services in the city;
2. Where the street terminates at a waterfront or shoreline, the street is not and will not be needed to provide pedestrian or recreational access to the water;
3. Is not otherwise needed to promote the public health, safety, or welfare of the citizens of Duluth.

**Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):**

Principle #2 – Declare the necessity and secure the future of undeveloped places, including urban plazas. A legal description error in the original easement was discovered and is being fixed via this vacation and subsequent new easement dedication, to ensure the future of the Civic Center Plaza.

Future Land Use – Open space. High natural resource or scenic value, with substantial restrictions and development limitations.

**History:** Easement was originally granted by the U.S. Government in 1928 for park purposes.

**Review and Discussion Items:**

Staff finds that:

1. The applicant (City of Duluth) is requesting to vacate an easement over part of Priley Circle and the Civic Center plaza, granted by the U.S. Government in 1928 for park purposes.
2. The easement needs to be vacated because it contains an incomplete legal description ; it only includes the plat of Duluth Proper Third Division, but the lots are also a part of West First Street Duluth Proper First Division. It will be replaced by a new easement with a corrected legal description. The new easement will also include additional property so that the City has an interest in all of Priley Circle in the property owned by the US government.
3. The new easement will be granted by the U.S. Government and accepted by the City Council in a separate action; City Facilities Division will coordinate the recording of this vacation and the new easement dedication.
4. The City Facilities Division and City Engineering have collaborated on this vacation and new easement dedication. No other public, agency, or City comments have been received.
5. Vacations of rights of way and easements lapse unless the vacation is recorded with the county recorder within 90 days after final approval. The vacation recording is facilitated by the City of Duluth.

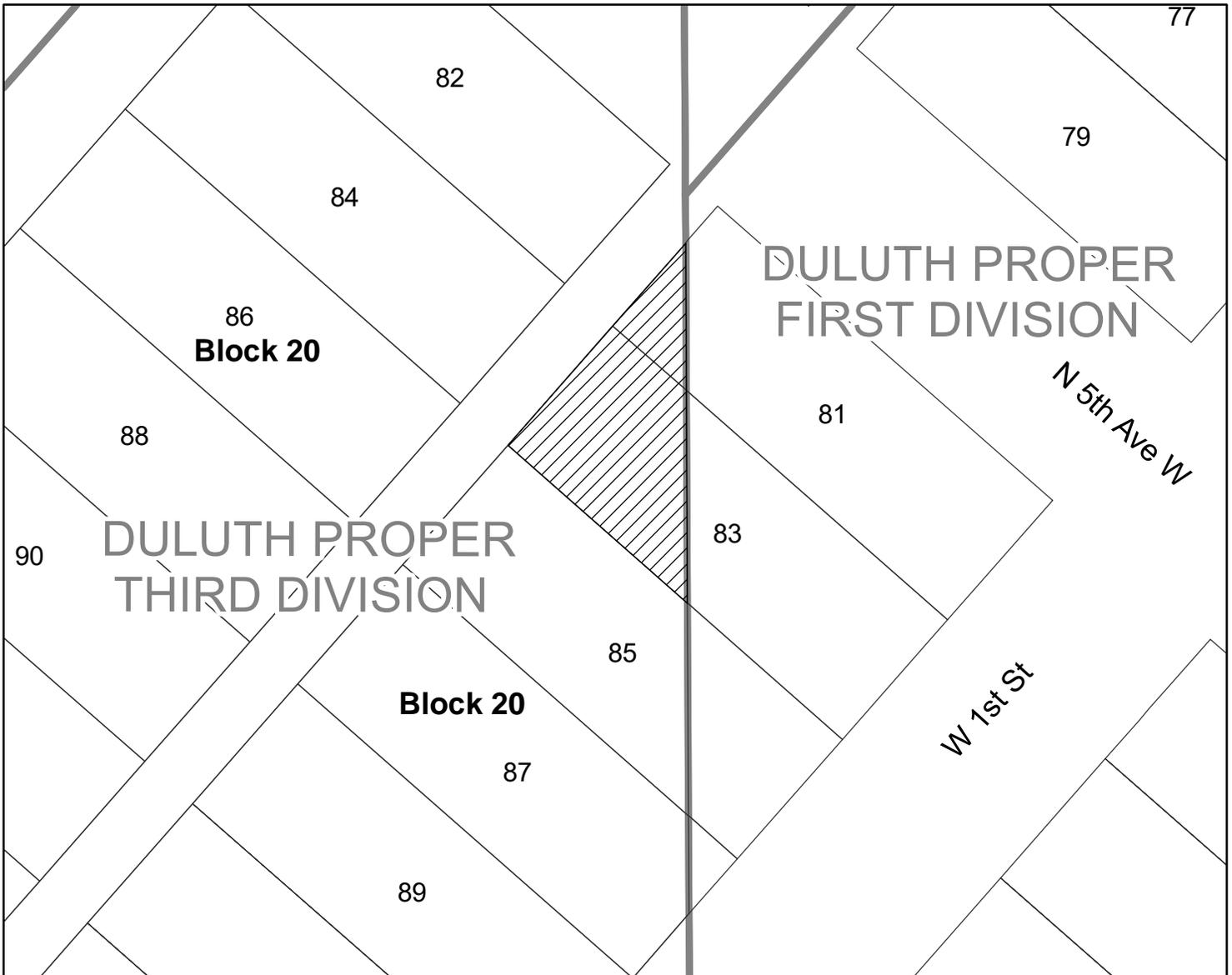
**Staff Recommendation:**

Based on the above findings, Staff recommends that Planning Commission recommend approval of the vacation with the following conditions:

1. The U.S. Government shall grant a new easement by December 31, 2022.
2. The vacation must be recorded within 90 days of final approval by City Council or such approval will lapse.



# Exhibit A



Vacation Area



Vacation of Easement over Lots 81 and 83, Block 20, Duluth Proper Third Division, according to the recorded plat thereof, in St Louis County, Minnesota.

APPROVED BY CITY ENGINEER

DATE  
Page 13 of 157



**Planning & Development Division**  
 Planning & Economic Development Department

Room 160  
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<b>File Number</b>	PL 22-079	<b>Contact</b>	John Kelley, jkelley@duluthmn.gov	
<b>Type</b>	Vacation of Platted Right of Way	<b>Planning Commission Date</b>	June 14, 2022	
<b>Deadline for Action</b>	<b>Application Date</b>	May 9, 2022	<b>60 Days</b>	July 8, 2022
	<b>Date Extension Letter Mailed</b>	May 13, 2022	<b>120 Days</b>	September 6, 2022
<b>Location of Subject</b>	A 66 foot wide portion of Ebony Street south of Myrtle Street in the recorded plat of Duluth Heights 6 <sup>th</sup> Division, adjacent to [address]			
<b>Applicant</b>	List applicant name	<b>Contact</b>		
<b>Agent</b>		<b>Contact</b>		
<b>Legal Description</b>	See Attached			
<b>Site Visit Date</b>	May 27, 2022	<b>Sign Notice Date</b>	May 31, 2022	
<b>Neighbor Letter Date</b>	May 19, 2022	<b>Number of Letters Sent</b>	36	

**Proposal**

The applicant is requesting to vacate a 66-foot wide portion of the Ebony Avenue right of way between West Myrtle Street and East Central Entrance in the recorded plat of Duluth Heights 6th Division, located in the Duluth Heights neighborhood.

Staff is recommending approval with conditions.

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	MU-N	School	Neighborhood Mixed Use
<b>North</b>	R-1	Single Family	Traditional Neighborhood
<b>South</b>	MU-N	Street	Neighborhood Mixed Use
<b>East</b>	MU-N	Single Family	Neighborhood Mixed Use
<b>West</b>	MU-N	Parking lot	Neighborhood Mixed Use

**Summary of Code Requirements:**

Vacation of public rights of way and/or easements require a Planning Commission public hearing with a Recommendation to City Council. City Council action is to approve or deny by resolution. Resolutions approving either a full or partial vacation require a 6/9's vote of the council.

UCD Sec. 50-37.6.C – The Planning Commission shall review the proposed vacation, and Council shall approve the proposed vacation, or approve it with modifications, if it determines that the street, highway, or easement proposed for vacation:

1. Is not and will not be needed for the safe and efficient circulation of automobiles, trucks, bicycles, or pedestrians or the efficient supply of utilities or public services in the city;

2. Where the street terminates at a waterfront or shoreline, the street is not and will not be needed to provide pedestrian or recreational access to the water;
3. Is not otherwise needed to promote the public health, safety, or welfare of the citizens of Duluth.

**Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):**

**Governing Principle #5** - Promote reinvestment in neighborhoods.

The vacation will allow Lake View Christian Academy to utilize this space for a safer and larger playground and a green space area for the school.

**Governing Principle #11** - Consider education systems in land use actions.

**Future Land Use** – Neighborhood Mixed Use: A transitional use between more intensive commercial uses and purely residential neighborhoods. Includes conversions of houses to office or live-work spaces. May include limited commercial-only space oriented to neighborhood or specialty retail markets.

**Review and Discussion Items:**

Staff finds that:

1. The applicant is requesting to vacate an improved portion of platted alley right of way of Ebony Avenue between West Myrtle Street and West Central Entrance in the recorded plat of Duluth Heights 6<sup>th</sup> Division, as shown on the attached exhibit. This portion of Ebony Street dead ends at East Central Entrance.
2. The proposed vacation will allow Lake View Christian Academy to utilize this space for a safer and larger playground and a green space area for the school.
3. This portion of Ebony Avenue was improved with pavement but does not connect to West Central Entrance. There is an existing gas line located on the east site of the right of way.
4. The right of way will not be needed by the City for the promotion of public health, safety, or welfare of the citizens of Duluth since it dead ends and does not connect to East Central Entrance, and City Engineering does not expect to need it in the future.
5. The City has determined that this portion of the Ebony Avenue right of way is not needed for street or pedestrian use. Vacating the right of way will not impact or deny access to other property owners. A utility easement will need to be retained over the vacated portion of the right of way.
6. Other than City Engineering, no other public or City comments have been received at the time of drafting this report.
7. Vacations of rights of way and easements lapse unless the vacation is recorded with the county recorder within 90 days after final approval. The vacation recording is facilitated by the City of Duluth.

**Staff Recommendation:**

Based on the above findings, Staff recommends that Planning Commission recommend approval of the vacation with the following conditions:

- 1.) The vacation must be recorded within 90 days of final approval by City Council or such approval will lapse.



# R-1 (Residential Traditional)

W Myrtle St

Ebony Ave

155  
W CENTRAL  
ENT

MU-N (Mixed Use  
Neighborhood)

Vacted right of way

**Legend**

- ▬▬▬ Road or Alley ROW
- ⊠ Vacated ROW
- Easement Type**
- ▬▬▬ Utility Easement
- ▬▬▬ Other Easement
- ▬▬▬ Zoning Boundaries

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.



# EXHIBIT A

## VACATION EXHIBIT

**VACATION DESCRIPTION:**

That part of Ebony Street DULUTH HEIGHTS 6TH DIVISION, City of Duluth, St. Louis County, Minnesota between the south line of Myrtle Street and the north line of Palmetto Street (a.k.a. Central Entrance) with retained utility easement over, under and across said vacation area.

 AREA TO BE VACATED WITH RETAINED UTILITY EASEMENT

APPROVED BY:

CITY ENGINEER

*[Signature]* 6-7-22



HEIGHTS

MYRTLE STREET

66.00

SOUTH LINE OF MYRTLE ST.



DULUTH

STREET

EBONY

ALLEY (unimproved)

VACATED ALLEY

66.00

BLOCK

BLOCK

DIVISION

20 19 18 17

40 39 38 37 36 35 34

NORTH LINE PALMETTO ST.

PALMETTO STREET

6TH

a.k.a. CENTRAL ENTRANCE

80.00



13 14 15 16 5

1 2 3 4 5 6 7 8 A

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Print Name: Paul A. Vogel

License # 44075

Signature:

*[Signature]*

Date: 06/01/2022

DATE PREPARED: 06/01/22

PROJ NO: 220679

FILE: 220679vSURV.

SHEET 1 of 1 SHEETS



PERFORMANCE  
DRIVEN DESIGN.  
LHBcorp.com

21 W. Superior St. Ste. 500 | Duluth, MN 55802 | 218.727.8446



**Planning & Development Division**  
 Planning & Economic Development Department

Room 160  
 411 West First Street  
 Duluth, Minnesota 55802

218-730-5580

planning@duluthmn.gov

<b>File Number</b>	PL 22-073	<b>Contact</b>	John Kelley, jkelley@duluthmn.gov	
<b>Type</b>	Vacation of Right of Way	<b>Planning Commission Date</b>	June 14, 2022	
<b>Deadline for Action</b>	<b>Application Date</b>	April 25, 2022	<b>60 Days</b>	June 24, 2022
	<b>Date Extension Letter Mailed</b>	May 13, 2022	<b>120 Days</b>	August 23, 2022
<b>Location of Subject</b>	A 20 foot wide right of way adjacent to 420 West 9 <sup>th</sup> Street between North 5 <sup>th</sup> Avenue West and North 4 <sup>th</sup> Avenue West			
<b>Applicant</b>	Ben Gasner	<b>Contact</b>		
<b>Agent</b>	Ben Grams	<b>Contact</b>		
<b>Legal Description</b>	See Attached			
<b>Site Visit Date</b>	May 27, 2022	<b>Sign Notice Date</b>	May 31, 2022	
<b>Neighbor Letter Date</b>	May 19, 2022	<b>Number of Letters Sent</b>	9	

**Proposal**

The applicant is requesting to vacate a 20-foot wide alley between Block 111 in (?) DULUTH PROPER THIRD DIVISION, between North 4th Avenue West and North 5th Avenue West, located in the Central Hillside neighborhood.

Staff is recommending approval with conditions.

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	R-1	Single Family	Traditional Neighborhood
<b>North</b>	RR-1	KBJR Television	Traditional Neighborhood
<b>South</b>	R-1	Single Family	Traditional Neighborhood
<b>East</b>	R-1	Vacant/Undeveloped	Traditional Neighborhood
<b>West</b>	R-1	Vacant/Undeveloped	Traditional Neighborhood

**Summary of Code Requirements:**

Vacation of public rights of way and/or easements require a Planning Commission public hearing with a Recommendation to City Council. City Council action is to approve or deny by resolution. Resolutions approving either a full or partial vacation require a 6/9's vote of the council.

UCD Sec. 50-37.6.C – The Planning Commission shall review the proposed vacation, and Council shall approve the proposed vacation, or approve it with modifications, if it determines that the street, highway, or easement proposed for vacation:

1. Is not and will not be needed for the safe and efficient circulation of automobiles, trucks, bicycles, or pedestrians or the efficient supply of utilities or public services in the city;

2. Where the street terminates at a waterfront or shoreline, the street is not and will not be needed to provide pedestrian or recreational access to the water;
3. Is not otherwise needed to promote the public health, safety, or welfare of the citizens of Duluth.

**Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):**

**Governing Principle #5** - Promote reinvestment in neighborhoods.

The vacation will allow for existing vacant parcels to be reconfigured for single family dwellings.

**Future Land Use** - Traditional Neighborhood - Characterized by grid or connected street pattern, houses oriented with shorter dimension to the street and detached garages, some with alleys. Limited commercial, schools, churches, and home businesses.

**Review and Discussion Items:**

Staff finds that:

1. The applicant is requesting to vacate an unimproved platted right of way between Block 111 of the recorded plat of Duluth Proper Third Division as shown on the attached exhibit.
2. The proposed vacation will allow existing vacant parcels adjacent to the right of way to be combined for a proposed single-family dwelling.
3. The right of way was platted in the Duluth Proper Third Division in 1896 but never utilized for its intended purpose for sewers, electric light, and telephone wires and poles.
4. The alley will not be needed by the City for the promotion of public health, safety, or welfare of the citizens of Duluth since the alley is currently unimproved and City Engineering does not expect to need it in the future.
5. The City has determined that this portion of the alley right of way is not needed for street or pedestrian use. Vacating the right of way will not impact or deny access to other property owners.
6. Other than City Engineering, no other public or City comments have been received at the time of drafting this report.
7. Vacations of rights of way and easements lapse unless the vacation is recorded with the county recorder within 90 days after final approval. The vacation recording is facilitated by the City of Duluth.

**Staff Recommendation:**

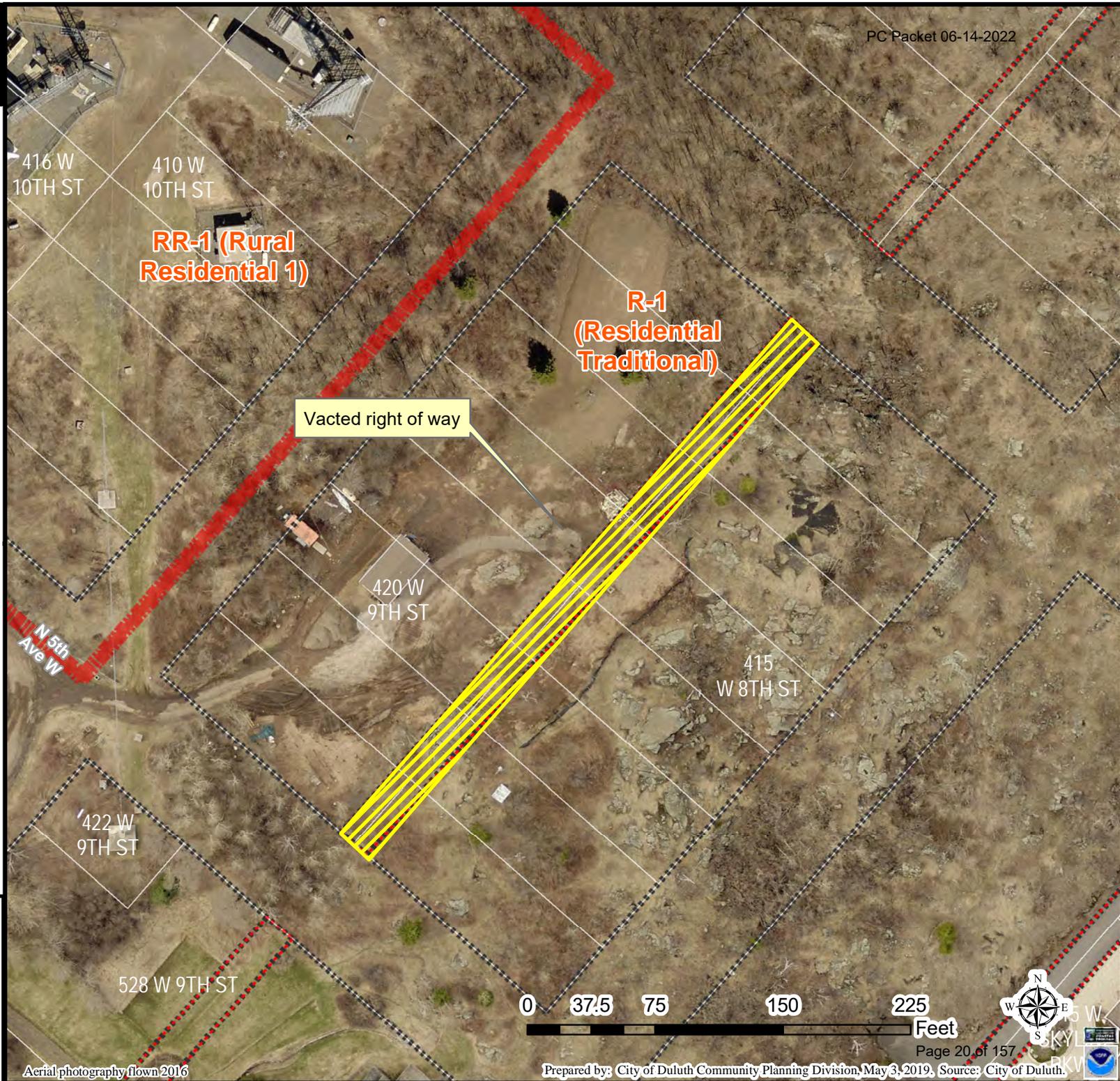
Based on the above findings, Staff recommends that Planning Commission recommend approval of the vacation with the following conditions:

- 1.) The vacation must be recorded within 90 days of final approval by City Council or such approval will lapse.



**Legend**

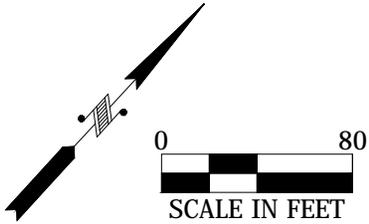
- ▬▬▬ Road or Alley ROW
- ⊠ Vacated ROW
- Easement Type**
- ▬▬▬ Utility Easement
- ▬▬▬ Other Easement
- ⊠ Zoning Boundaries



Vacted right of way

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.



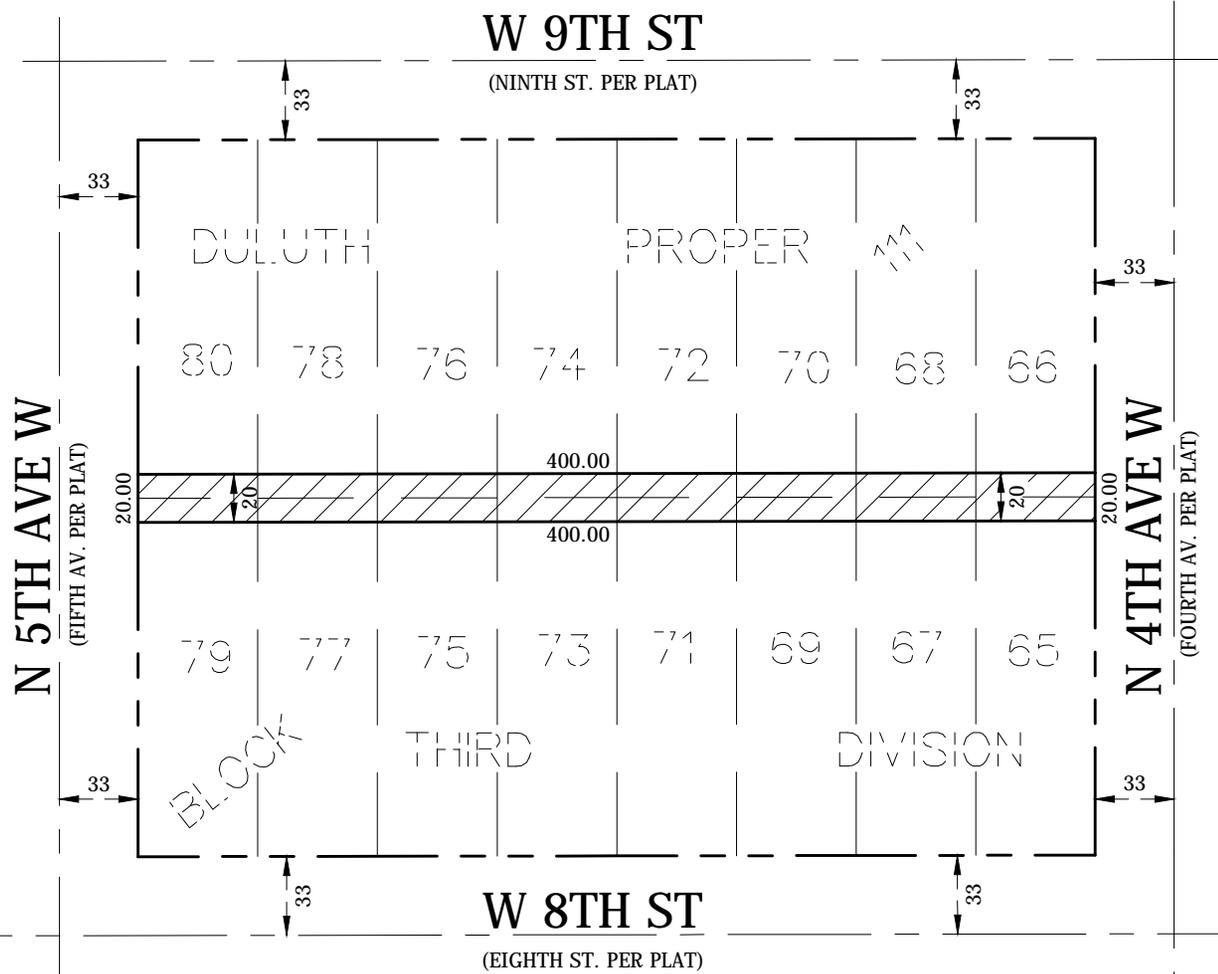


**LEGAL DESCRIPTION OF VACATION OF RIGHT OF WAY**

All that part of the 20 foot wide right of way for sewers, electric light, and telephone wires and poles lying within Block 111, DULUTH PROPER THIRD DIVISION, according to the recorded plat thereof, St. Louis County, Minnesota. Said right of way being shown on the Condemnation Plat, recorded in Book 1 of Condemnation Plats, Pages 68 through 71, File No. 5722, filed on November 20, 1896 and located in the Office of the County Recorder, St. Louis County, Minnesota. Said right of way to be vacated contains 8,000 square feet or 0.18 acres.

**LEGEND**

-  RIGHT OF WAY VACATION AREA
-  CENTER LINE
-  RIGHT OF WAY LINE
-  EXISTING PLAT LINE



**SURVEYOR'S NOTES**

1. THIS SURVEY HAS BEEN PREPARED WITHOUT BENEFIT OF A TITLE COMMITMENT OR TITLE OPINION. A TITLE SEARCH FOR RECORDED OR UNRECORDED EASEMENTS WHICH MAY BENEFIT OR ENCUMBER THIS PROPERTY HAS NOT BEEN COMPLETED BY ALTA LAND SURVEY COMPANY. THE SURVEYOR ASSUMES NO RESPONSIBILITY FOR SHOWING THE LOCATION OF RECORDED OR UNRECORDED EASEMENTS OR OTHER ENCUMBRANCES NOT PROVIDED TO THE SURVEYOR AS OF THE DATE OF THE SURVEY.
2. THIS IS NOT A BOUNDARY SURVEY.

Approved by the City Engineer of the City of Duluth, MN this 16<sup>th</sup> day of May, 2022.  
 Signed by *Cindy Voigt*  
 By 3CE89AC02DB8436...

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.  
*David R. Evanson*  
 David R. Evanson  
 MN License #49505  
 DATE: 04-15-2022

VACATION EXHIBIT	
CLIENT: BEN GASNER	REVISIONS:
ADDRESS: 420 WEST 9TH STREET DULUTH, MN 55806	
DATE: 04-15-2022	JOB NO: 22-086 SHEET 1 OF 1

**ALTA**  
 LAND SURVEY COMPANY  
 PHONE: 218-727-5211  
 LICENSED IN MN & WI  
 WWW.ALTALANDSURVEYDULUTH.COM



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<b>File Number</b>	PL 22-083	<b>Contact</b>	John Kelley, jkelley@duluthmn.gov	
<b>Type</b>	Interim Use Permit – Vacation Dwelling Unit	<b>Planning Commission Date</b>	June 14, 2022	
<b>Deadline for Action</b>	<b>Application Date</b>	May 10, 2022	<b>60 Days</b>	July 9, 2022
	<b>Date Extension Letter Mailed</b>	May 13, 2022	<b>120 Days</b>	September 7, 2022
<b>Location of Subject</b>	940 South Lake Avenue			
<b>Applicant</b>	Carl and Mathew Sherman	<b>Contact</b>		
<b>Agent</b>		<b>Contact</b>		
<b>Legal Description</b>	PID # 010-4380-00910			
<b>Site Visit Date</b>	May 27, 2022	<b>Sign Notice Date</b>	May 31, 2022	
<b>Neighbor Letter Date</b>	May 19, 2022	<b>Number of Letters Sent</b>	29	

**Proposal**

Applicant proposes to use a one-bedroom home as a vacation dwelling unit. Up to 3 people will be allowed to stay in the home.

The applicant was on the vacation dwelling unit eligibility list.

**Recommended Action:** Staff recommends that Planning Commission approve.

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	R-1	Residential	Traditional Neighborhood
<b>North</b>	R-1	Residential	Traditional Neighborhood
<b>South</b>	R-1	Residential	Traditional Neighborhood
<b>East</b>	R-1	Lake	Open Space
<b>West</b>	R-1	Residential	Traditional Neighborhood

**Summary of Code Requirements:**

UDC Section 50-19.8. Permitted Use Table. A vacation dwelling unit is an Interim Use in the R-1 zone district.

UDC Section 50-20.3. Use-Specific Standards. Lists all standards specific to vacation dwelling units.

UDC Sec. 50-37.10.E . . . the commission shall only approve an interim use permit, or approve it with conditions, if it determines that: 1. A time limit is needed to protect the public health, safety and welfare from potential longer term impacts of the requested use in that location ....; 2. The applicant agrees to sign a development agreement with the city.



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**Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):**

Governing Principle #8 - Encourage mix of activities, uses, and densities. A short-term rental allows property owners to generate income and provides a service for tourists.

Econ. Dev. Policy #3 - Build on Existing Economic Strengths & Competitive Advantages

- **S9:** Encourage expansion of the city's tourism economy through efforts to expand in areas of current activity, such as in Canal Park, but also through marketing and investment in destination neighborhoods and iconic tourism experiences unique to Duluth.

Future Land Use – Traditional Neighborhood: Characterized by grid or connected street pattern, houses oriented with shorter dimension to the street and detached garages, some with alleys. Limited commercial, schools, churches, and home businesses. Parks and open space areas are scattered through or adjacent to the neighborhood. Includes many of Duluth's older neighborhoods, infill projects, neighborhood extensions, and new traditional neighborhood areas.

**History:** The 1,280 sq. ft. home was built in 1959 is a duplex with 938 South Lake Avenue being owner occupied. The subject property, 940 South Lake Avenue, had an approved interim use permit (PL 15-059).

**Review and Discussion Items:**

- 1) Applicant's property is located at 940 South Lake Avenue. The home is a two family dwelling (duplex). The proposed vacation dwelling unit contains 1 bedroom, which would allow for a maximum of 3 guests. The adjacent unit, 938, is an owner occupied dwelling.
- 2) The applicant is proposing 1 off street parking space in the driveway located to the north and adjacent to 938 with access from South Lake Avenue.
- 3) The applicant has indicated there will not be a space for camper or trailer storage by VDU guests.
- 4) The applicant has noted on their site plan there is an outdoor patio area with table and chairs located on the southwest front corner of the dwelling unit. There are existing trees, shrubs and fencing along the southern property line. The property does not share a lot line with the adjacent lot to the south and is separated by right of way. Staff believes this is a sufficient dense urban screening for the outdoor amenities from the property to the south.
- 5) Permit holders must designate a managing agent or local contact who resides within 25 miles of the City and who has authority to act for the owner in responding 24 hours a day to complaints from neighbors or the City. Permit holder must provide the contact information for the managing agent or local contact to all property owners within 100 feet of the property boundary. The applicant has listed Carl Sherman to serve as the managing agent.
- 7) A time limit on this Interim Use Permit ("IUP") is needed to minimize negative impacts to surrounding residential uses thereby causing damage to the public's health, safety and welfare. Section 50-20.3.U.7 states the IUP shall expire upon change in ownership of the property or in six years, whichever occurs first.
- 8) Applicant must comply with Vacation Dwelling Unit Regulations, including providing information to guests on city rules



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(included with staff report as "Selected City Ordinances on Parking, Parks, Pets, and Noise").

9) No comments from citizens, City staff, or any other entity were received regarding the application.

10) The permit will lapse if no activity takes place within 1 year of approval.

**Staff Recommendation:**

Based on the above findings, Staff recommends that Planning Commission approve the permit subject to the following conditions:

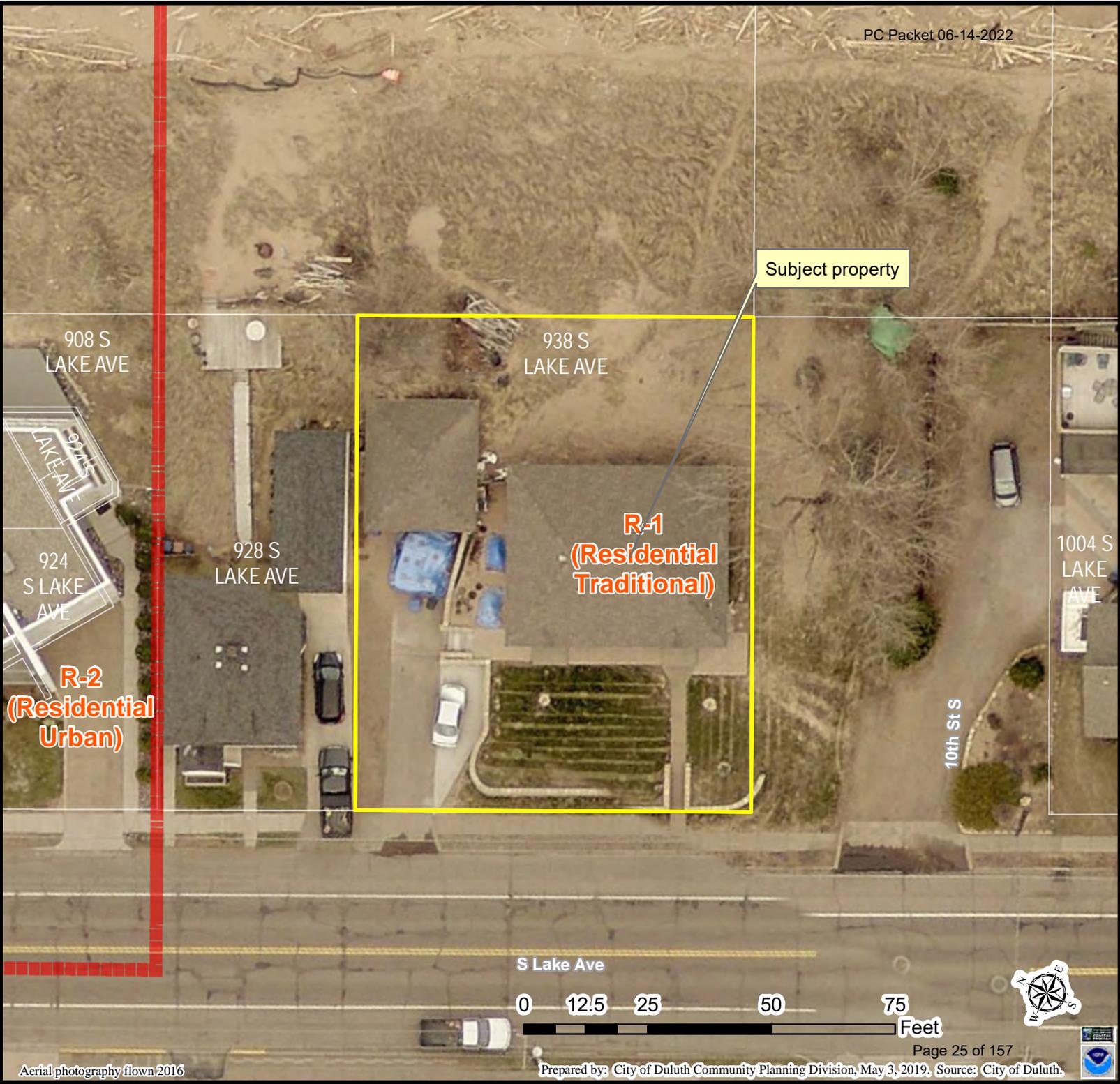
- 1) The applicant shall adhere to the terms and conditions listed in the Interim Use Permit.
- 2) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission review; however, no such administration approval shall constitute a variance from the provisions of Chapter 50.



PL 22-083  
Interim Use Permit  
Vacation Dwelling Unit

PC Packet 06-14-2022

**Legend**  
Zoning Boundaries

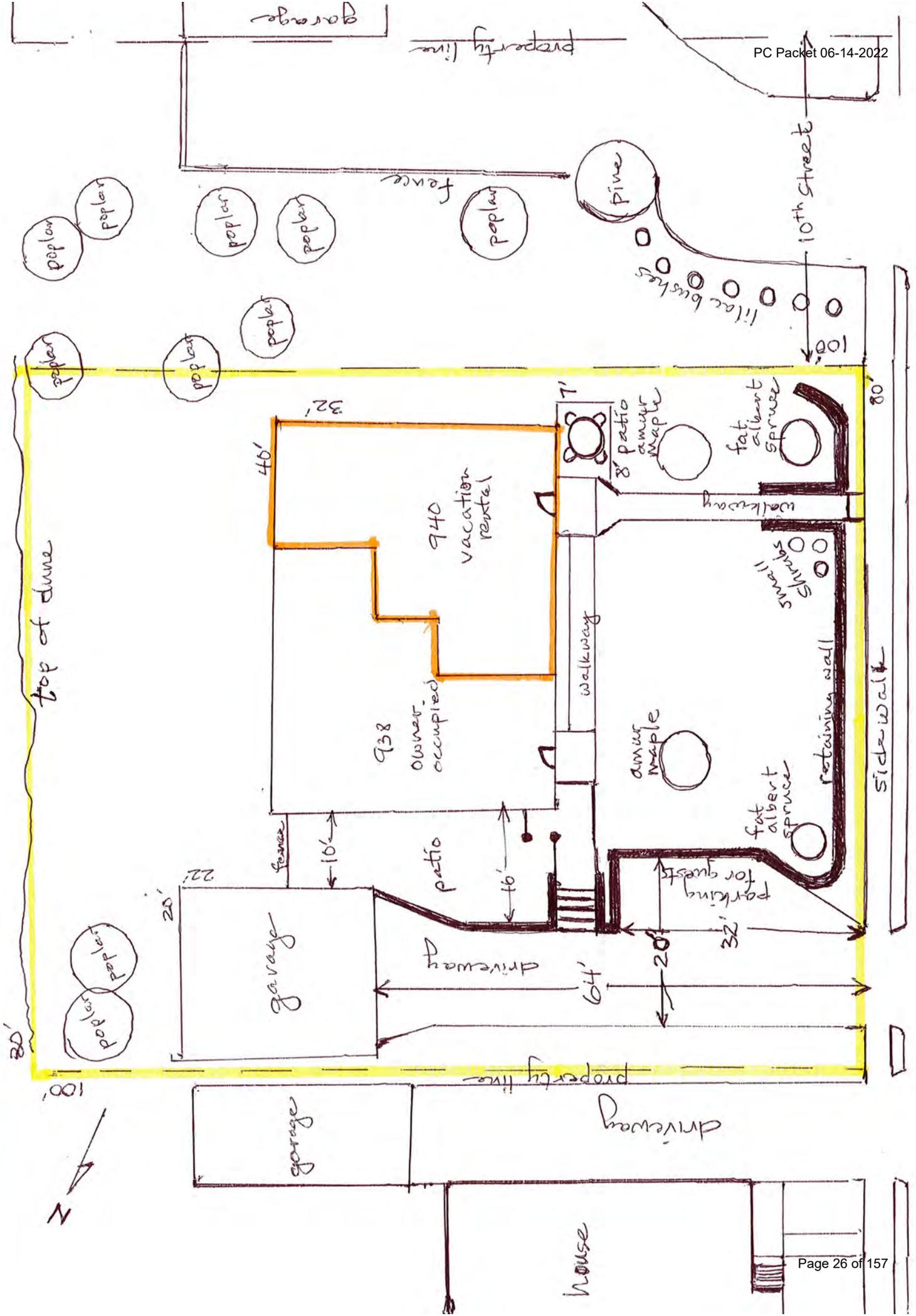


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Aerial photography flown 2016

Prepared by: City of Duluth Community Planning Division, May 3, 2019. Source: City of Duluth.





S Lakes Ave



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*Planning & Economic Development Department*

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<b>File Number</b>	PL 22-082	<b>Contact</b>	Chris Lee, clee@duluthmn.gov	
<b>Type</b>	Interim Use Permit – Vacation Dwelling Unit	<b>Planning Commission Date</b>	June 14, 2022	
<b>Deadline for Action</b>	<b>Application Date</b>	May 11, 2022	<b>60 Days</b>	July 10, 2022
	<b>Date Extension Letter Mailed</b>	May 13, 2022	<b>120 Days</b>	September 8, 2022
<b>Location of Subject</b>	2226 W 6 <sup>th</sup> Street, Unit 1			
<b>Applicant</b>	Caleb Korzenowski	<b>Contact</b>	N/A	
<b>Agent</b>	Venture Properties North LLC	<b>Contact</b>	N/A	
<b>Legal Description</b>	PID # 010-1220-01060			
<b>Site Visit Date</b>	June 1, 2022	<b>Sign Notice Date</b>	May 31, 2022	
<b>Neighbor Letter Date</b>	May 25, 2022	<b>Number of Letters Sent</b>	87	

**Proposal**

Applicant proposes use of a 2-bedroom unit of a duplex as a vacation rental unit. The permit would allow maximum of 5 occupants.

Vacation dwelling units located in the R-1 zone district. This property was on the list of eligible properties from the 2021 drawing.

**Recommended Action:** Staff recommends that Planning Commission approve the permit with conditions.

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	R-1	Duplex	Traditional Neighborhood
<b>North</b>	R-1	Single-family Residential	Traditional Neighborhood
<b>South</b>	R-2	Single-family Residential	Traditional Neighborhood
<b>East</b>	R-1	Single-family Residential	Traditional Neighborhood
<b>West</b>	R-1	Single-family Residential	Traditional Neighborhood

**Summary of Code Requirements:**

UDC Section 50-19.8. Permitted Use Table. A Vacation Dwelling Unit is an Interim Use in the R-1 zone district.  
 UDC Sec. 50-37.10.E . . . the Council shall only approve an interim use permit, or approve it with conditions, if it determines that: 1.) A time limit is needed to protect the public health, safety and welfare from potential longer term impacts of the requested use in that location ....; 2.) The applicant agrees to sign a development agreement with the city. 3.) There is a city-wide cap on vacation dwelling units or accessory vacation dwelling units; permits issued for vacation dwelling units or accessory vacation dwelling units in any form district shall not be counted against the maximum number of permits that may be issued, 4. Except for properties within the Higher Education Overlay District as identified in 50-18.5, the minimum rental period and off-street parking requirements of 50-20.3.U and 50-20.5.M shall not apply for vacation dwelling units or



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accessory vacation dwelling units in form districts.

**Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):**

**Governing Principle #8** - Encourage mix of activities, uses, and densities.

**Econ. Dev. Policy #3** - Build on Existing Economic Strengths & Competitive Advantages

- **S9:** Encourage expansion of the city's tourism economy through efforts to expand in areas of current activity, such as in Canal Park, but also through marketing and investment in destination neighborhoods and iconic tourism experiences unique to Duluth.

Applicant is proposing to provide another type of lodging product for visitors to the City of Duluth and surrounding area.

**Future Land Use – Traditional Neighborhood:** Characterized by grid or connected street pattern, houses oriented with shorter dimension to the street and detached garages, some with alleys. Limited commercial, schools, churches, and home businesses. Parks and open space areas are scattered through or adjacent to the neighborhood. Includes many of Duluth's older neighborhoods, infill projects, neighborhood extensions, and new traditional neighborhood areas.

**History:** The structure is a two-family structure built in 1925 and contains 2,208 square feet.

**Review and Discussion Items:**

- 1) Applicant's property is located at 2226 W 6<sup>th</sup> St, Unit 1. The proposed vacation dwelling is a 2-bedroom unit in a duplex. The unit would allow for a maximum of 5 guests.
- 2) As shown on the site plan, the existing driveway off the alley features room for at least 2 off-street parking spaces.
- 3) There will not be campers or trailers on the property.
- 4) The site plan indicates outdoor amenities including a porch and firepit. The applicant is proposing new privacy fencing on all sides on the rear yard.
- 5) Permit holders must designate a managing agent or local contact who resides within 25 miles of the city and who has authority to act for the owner in responding 24 hours a day to complaints from neighbors or the city. Permit holder must provide the contact information for the managing agent or local contact to all property owners within 100 feet of the property boundary. The applicant has listed Billie Korzenowski (Venture Properties North, LLC) as the managing agent, which meets the criteria.
- 6) A time limit on this Interim Use Permit ("IUP") is needed to minimize negative impacts to surrounding residential uses thereby causing damage to the public's health, safety and welfare. Section 50-20.3.U.7 states the IUP shall expire upon change in ownership of the property or in six years, whichever occurs first.
- 7) Applicant must comply with Vacation Regulations including providing information to guests on city rules ("Selected City Ordinances on Parking, Parks, Pets, and Noise").
- 8) No comments from citizens, City staff, or any other entity were received regarding the application.
- 9) The permit will expire 6 years from the approval date. The permit will lapse if no activity takes place within 1 year of approval.



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**Staff Recommendation:**

Based on the above findings, Staff recommends that Planning Commission approve the interim use permit based on the following:

1. The Interim Use Permit shall not be effective until the applicant has received all required licenses and permits for operation.
2. The applicant will install a dense urban screen as indicated in the site plan prior to receiving the Interim Use Permit.
3. The applicant shall adhere to the terms and conditions listed in the Interim Use Permit.



PL22-082  
IUP for VDU  
2226 W 6th St

**Legend**

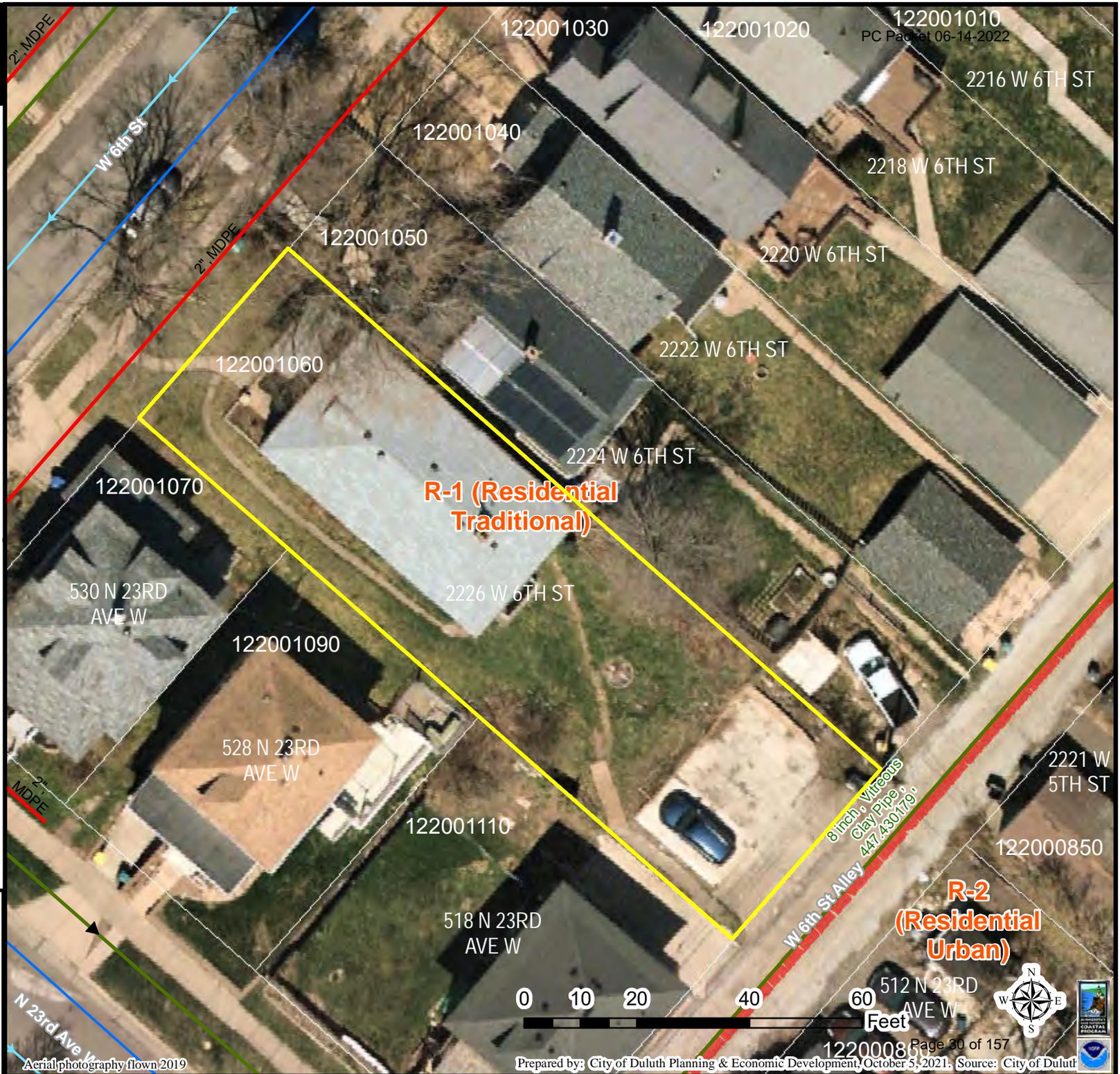
- Gas Main
- Water Main
- Hydrant

**Sanitary Sewer Mains**

- CITY OF DULUTH
- WLSSD; PRIVATE
- Sanitary Sewer Forced Main
- Storage Basin
- Pump Station

**Storm Sewer Mains**

- Storm Sewer Pipe
- Storm Sewer Catch Basin
- Zoning Boundaries



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Aerial photography flown 2019

WEST 6<sup>TH</sup> STREET SIDE

40'

21'

foyer

House

5'

4'

140'

porch

Existing Fire Pit

Proposed Privacy Fence - (6' high x 48' long)  
Dense Urban Screen

Proposed Privacy Fence - (6' high x 48' long)  
Dense Urban Screen

44'

STAIRS

Existing Retaining Wall

32'

Parking Spot 1

Parking Spot 2

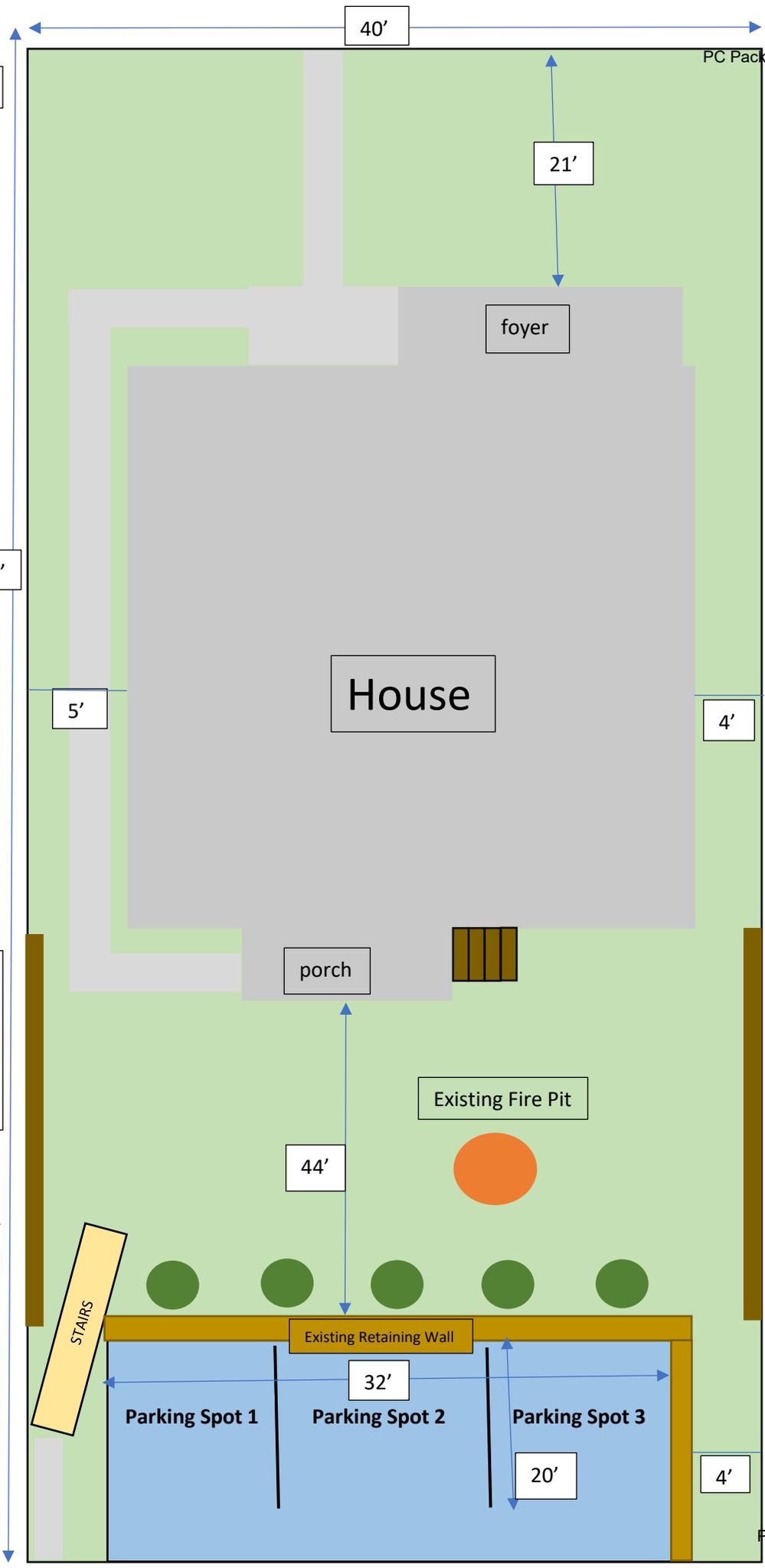
Parking Spot 3

Proposed Evergreen Shrubs

20'

4'

ALLEY SIDE



## Vacation Dwelling Unit Worksheet

1. The minimum rental period shall be not less than two consecutive nights (does not apply to Form districts). **What will be your minimum rental period?** 2 nights

2. The total number of persons that may occupy the vacation dwelling unit is one person plus the number of bedrooms multiplied by two. You may rent no more than four bedrooms.

**How many legal bedrooms are in the dwelling?**  
2

**What will be your maximum occupancy?**  
6

3. Off-street parking shall be provided at the following rate:

- a. 1-2 bedroom unit, 1 space
- b. 3 bedroom unit, 2 spaces
- c. 4+ bedroom unit, number of spaces equal to the number of bedrooms minus one.
- d. Vacation dwelling units licensed on May 15, 2016, are entitled to continue operating under the former off-street parking requirement. The parking exemption for vacation dwelling units licensed on May 15, 2016, expires upon transfer of any ownership interest in the permitted property.
- e. Form districts are not required to provide parking spaces.

**How many off-street parking spaces will your unit provide?** 1

4. Only one motorhome (or pickup-mounted camper) and/or one trailer either for inhabiting or for transporting recreational vehicles (ATVs, boat, personal watercraft, snowmobiles, etc.) may be parked at the site, on or off the street. **Will you allow motorhome or trailer parking? If so, where?** No

5. The property owner must provide required documents and adhere to additional requirements listed in the City of Duluth's UDC Application Manual related to the keeping of a guest record, designating and disclosing a local contact, property use rules, taxation, and interim use permit violations procedures.

6. The property owner must provide a site plan, drawn to scale, showing parking and driveways, all structures and outdoor recreational areas that guests will be allowed to use, including, but not limited to, deck/patio, barbeque grill, recreational fire, pool, hot tub, or sauna, and provide detail concerning the provision of any dense urban screen that may be required to buffer these areas from adjoining properties. Please note that this must be on 8 x 11 size paper.

7. The interim use permit shall expire upon change in ownership of the property or in six years, whichever occurs first. An owner of a vacation dwelling unit permitted prior to May 15, 2016, may request, and the land use supervisor may grant, an application for adjustment of an existing permit to conform to this section, as amended, for the remainder of the permit term.

8. Permit holder must keep a guest record including the name, address, phone number, and vehicle (and trailer) license plate information for all guests and must provide a report to the City upon 48 hours' notice. **Please explain how and where you will**

keep your guest record (log book, excel spreadsheet, etc):

[Excel Spreadsheet](#)

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9. Permit holder must designate a managing agent or local contact who resides within 25 miles of the City and who has authority to act for the owner in responding 24-hours-a-day to any complaints from neighbors or the City. The permit holder must notify the Land Use Supervisor within 10 days of a change in the managing agent or local contact's contact information.

**Please provide the name and contact information for your local contact:**

[Billie Korzenowski \(Venture Properties North LLC\) - \(218\)310-2948 venturepropertiesnorth@gmail.com](#)

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10. Permit holder must disclose in writing to their guests the following rules and regulations:

- a. The managing agent or local contact's name, address, and phone number;
- b. The maximum number of guests allowed at the property;
- c. The maximum number of vehicles, recreational vehicles, and trailers allowed at the property and where they are to be parked;
- d. Property rules related to use of exterior features of the property, such as decks, patios, grills, recreational fires, pools, hot tubs, saunas and other outdoor recreational facilities;
- e. Applicable sections of City ordinances governing noise, parks, parking and pets;

**Please state where and how this information will be provided to your guests:**

[The listing will display the maximum guests and vehicles allowed.](#)

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[Guestbook \(digital and physical\) will provide the other information.](#)

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11. Permit holder must post their permit number on all print, poster or web advertisements. **Do you agree to include the permit number on all advertisements?** Yes

12. **Prior to rental**, permit holder must provide the name, address, and phone number for the managing agent or local contact to all property owners within 100' of the property boundary; submit a copy of this letter to the Planning and Community Development office. In addition, note that permit holder must notify neighboring properties within 10 days of a change in the managing agent or local contact's contact information.



**Planning & Development Division**  
*Planning & Economic Development Department*

Room 160  
 411 West First Street  
 Duluth, Minnesota 55802



218-730-5580



planning@duluthmn.gov

<b>File Number</b>	PL 22-074	<b>Contact</b>	Chris Lee, clee@duluthmn.gov	
<b>Type</b>	Interim Use Permit – Vacation Dwelling Unit	<b>Planning Commission Date</b>	June 14, 2022	
<b>Deadline for Action</b>	<b>Application Date</b>	April 25, 2022	<b>60 Days</b>	June 24, 2022
	<b>Date Extension Letter Mailed</b>	May 13, 2022	<b>120 Days</b>	August 23, 2022
<b>Location of Subject</b>	232 S 59 <sup>th</sup> Avenue W			
<b>Applicant</b>	ALN Properties	<b>Contact</b>	N/A	
<b>Agent</b>	N/A	<b>Contact</b>	N/A	
<b>Legal Description</b>	PID # 010-4500-01800			
<b>Site Visit Date</b>	June 1, 2022	<b>Sign Notice Date</b>	May 31, 2022	
<b>Neighbor Letter Date</b>	May 25, 2022	<b>Number of Letters Sent</b>	39	

**Proposal**

Applicant proposes use of a 3-bedroom home as a vacation rental unit. The permit would allow maximum of 7 occupants.

Vacation dwelling units located in the R-1 zone district. This property was on the list of eligible properties from the 2021 drawing.

**Recommended Action:** Staff recommends that Planning Commission approve the permit with conditions.

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	R-1	Single-family Residential	Traditional Neighborhood
<b>North</b>	R-1	Single-family Residential	Traditional Neighborhood
<b>South</b>	R-1	Single-family Residential	Traditional Neighborhood
<b>East</b>	R-1	Single-family Residential	Traditional Neighborhood
<b>West</b>	R-1	Single-family Residential	Traditional Neighborhood

**Summary of Code Requirements:**

UDC Section 50-19.8. Permitted Use Table. A Vacation Dwelling Unit is an Interim Use in the R-1 zone district.

UDC Sec. 50-37.10.E . . . the Council shall only approve an interim use permit, or approve it with conditions, if it determines that:

1. A time limit is needed to protect the public health, safety and welfare from potential longer term impacts of the requested use in that location ....;
2. The applicant agrees to sign a development agreement with the city.
3. There is a city-



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wide cap on vacation dwelling units or accessory vacation dwelling units; permits issued for vacation dwelling units or accessory vacation dwelling units in any form district shall not be counted against the maximum number of permits that may be issued, 4. Except for properties within the Higher Education Overlay District as identified in 50-18.5, the minimum rental period and off-street parking requirements of 50-20.3.U and 50-20.5.M shall not apply for vacation dwelling units or accessory vacation dwelling units in form districts.

**Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):**

Governing Principle #8 - Encourage mix of activities, uses, and densities.

Econ. Dev. Policy #3 - Build on Existing Economic Strengths & Competitive Advantages

- **S9:** Encourage expansion of the city's tourism economy through efforts to expand in areas of current activity, such as in Canal Park, but also through marketing and investment in destination neighborhoods and iconic tourism experiences unique to Duluth.

Applicant is proposing to provide another type of lodging product for visitors to the City of Duluth and surrounding area.

Future Land Use – Traditional Neighborhood: Characterized by grid or connected street pattern, houses oriented with shorter dimension to the street and detached garages, some with alleys. Limited commercial, schools, churches, and home businesses. Parks and open space areas are scattered through or adjacent to the neighborhood. Includes many of Duluth's older neighborhoods, infill projects, neighborhood extensions, and new traditional neighborhood areas.

History: The home is a single-family structure built in 2019 and contains 1,440 square feet.

**Review and Discussion Items:**

- 1) Applicant's property is located at 232 S 59<sup>th</sup> Avenue W. The proposed vacation dwelling is a 3-bedroom single family home. The unit would allow for a maximum of 7 guests.
- 2) As shown on the site plan, the existing driveway off the alley features room for 2 off-street parking spaces.
- 3) There will be no campers or trailers parked on the property.
- 4) The site plan indicates outdoor amenities including a grill, firepit, pergola, and seating. The applicant is proposing new privacy fencing on all sides of the rear yard.
- 5) Permit holders must designate a managing agent or local contact who resides within 25 miles of the city and who has authority to act for the owner in responding 24 hours a day to complaints from neighbors or the city. Permit holder must provide the contact information for the managing agent or local contact to all property owners within 100 feet of the property boundary. The applicant has listed Rose Hale as the managing agent, which meets the criteria.
- 6) A time limit on this Interim Use Permit ("IUP") is needed to minimize negative impacts to surrounding residential uses thereby causing damage to the public's health, safety and welfare. Section 50-20.3.U.7 states the IUP shall expire upon



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change in ownership of the property or in six years, whichever occurs first.

7) Applicant must comply with Vacation Regulations (included with staff report), including providing information to guests on city rules (included with staff report as "Selected City Ordinances on Parking, Parks, Pets, and Noise").

8) No comments from citizens, City staff, or any other entity were received regarding the application.

9) The permit will expire 6 years from the approval date. The permit will lapse if no activity takes place within 1 year of approval.

**Staff Recommendation:**

Based on the above findings, Staff recommends that Planning Commission approve the interim use permit based on the following:

1. The Interim Use Permit shall not be effective until the applicant has received all required licenses and permits for operation.
2. The applicant shall adhere to the terms and conditions listed in the Interim Use Permit.

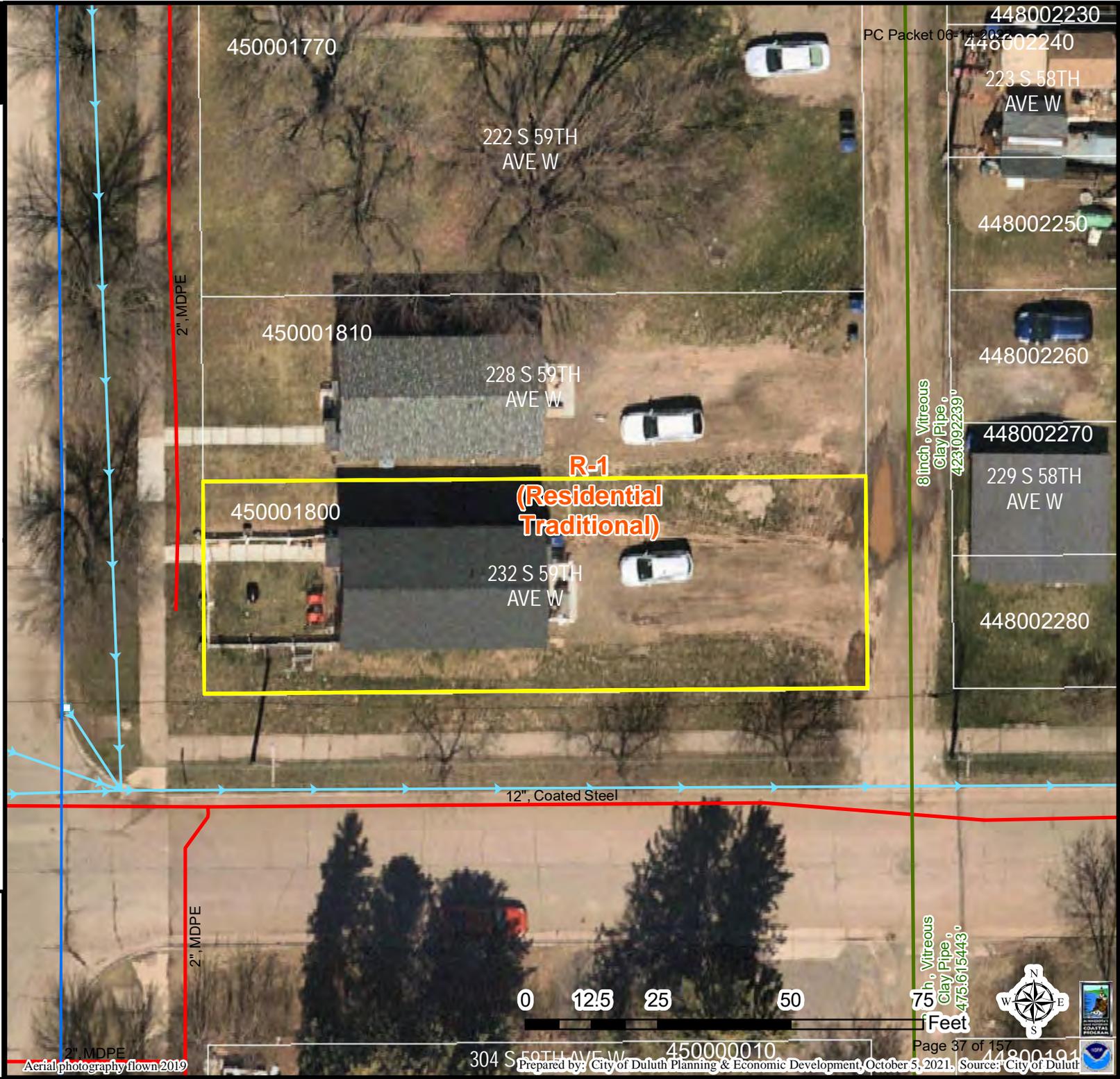


PL22-074  
Interim Use Permit  
232 S 59th Ave W

PC Packet 06-17-2021

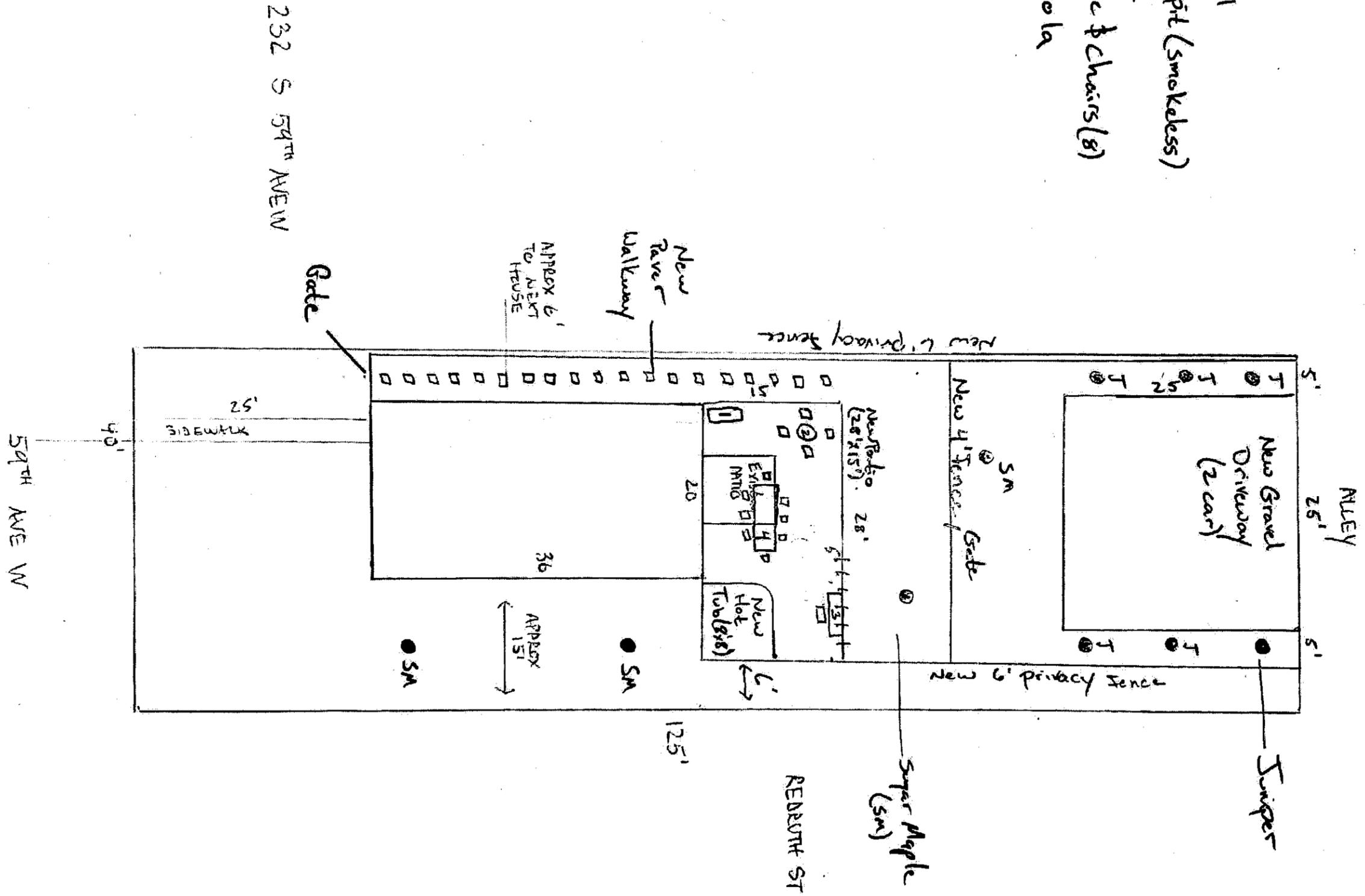
**Legend**

- Gas Main
- Water Main
- Hydrant
- Sanitary Sewer Mains**
- CITY OF DULUTH
- WLSSD; PRIVATE
- Sanitary Sewer Forced Main
- Storage Basin
- Pump Station
- Storm Sewer Mains**
- Storm Sewer Pipe
- Storm Sewer Catch Basin
- Zoning Boundaries



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- 1 - Grill
- 2 - Firepit (smokeless)
- 3 - Sofa
- 4 - Table & Chairs (8)
- 5 - Pergola





### Vacation Dwelling Unit Worksheet

1. The minimum rental period shall be not less than two consecutive nights (does not apply to Form districts). What will be your minimum rental period? 2 nights

2. The total number of persons that may occupy the vacation dwelling unit is one person plus the number of bedrooms multiplied by two. You may rent no more than four bedrooms.

How many legal bedrooms are in the dwelling? 3 What will be your maximum occupancy? 7

3. Off-street parking shall be provided at the following rate:

a. 1-2 bedroom unit, 1 space

b. 3 bedroom unit, 2 spaces

c. 4+ bedroom unit, number of spaces equal to the number of bedrooms minus one.

d. Vacation dwelling units licensed on May 15, 2016, are entitled to continue operating under the former off-street parking requirement. The parking exemption for vacation dwelling units licensed on May 15, 2016, expires upon transfer of any ownership interest in the permitted property.

e. Form districts are not required to provide parking spaces.

How many off-street parking spaces will your unit provide? 2

4. Only one motorhome (or pickup-mounted camper) and/or one trailer either for inhabiting or for transporting recreational vehicles (ATVs, boat, personal watercraft, snowmobiles, etc.) may be parked at the site, on or off the street. Will you allow motorhome or trailer parking? If so, where? No

5. The property owner must provide required documents and adhere to additional requirements listed in the City of Duluth's UDC Application Manual related to the keeping of a guest record, designating and disclosing a local contact, property use rules, taxation, and interim use permit violations procedures.

6. The property owner must provide a site plan, drawn to scale, showing parking and driveways, all structures and outdoor recreational areas that guests will be allowed to use, including, but not limited to, deck/patio, barbeque grill, recreational fire, pool, hot tub, or sauna, and provide detail concerning the provision of any dense urban screen that may be required to buffer these areas from adjoining properties. Please note that this must be on 8 x 11 size paper.

7. The interim use permit shall expire upon change in ownership of the property or in six years, whichever occurs first. An owner of a vacation dwelling unit permitted prior to May 15, 2016, may request, and the land use supervisor may grant, an application for adjustment of an existing permit to conform to this section, as amended, for the remainder of the permit term.

8. Permit holder must keep a guest record including the name, address, phone number, and vehicle (and trailer) license plate information for all guests and must provide a report to the City upon 48 hours' notice. Please explain how and where you will

Keep your guest record (log book, excel spreadsheet, etc):

will be maintained electronically - electronic log book

9. Permit holder must designate a managing agent or local contact who resides within 25 miles of the City and who has authority to act for the owner in responding 24-hours-a-day to any complaints from neighbors or the City. The permit holder must notify the Land Use Supervisor within 10 days of a change in the managing agent or local contact's contact information.

Please provide the name and contact information for your local contact:

Rose Hale - 768-447-1472

10. Permit holder must disclose in writing to their guests the following rules and regulations:

- a. The managing agent or local contact's name, address, and phone number;
- b. The maximum number of guests allowed at the property;
- c. The maximum number of vehicles, recreational vehicles, and trailers allowed at the property and where they are to be parked;
- d. Property rules related to use of exterior features of the property, such as decks, patios, grills, recreational fires, pools, hot tubs, saunas and other outdoor recreational facilities;
- e. Applicable sections of City ordinances governing noise, parks, parking and pets;

Please state where and how this information will be provided to your guests:

In the house rules provided at booking & in the guidebook available electronically & physically in the house

11. Permit holder must post their permit number on all print, poster or web advertisements. Do you agree to include the permit number on all advertisements? Yes

12. Prior to rental, permit holder must provide the name, address, and phone number for the managing agent or local contact to all property owners within 100' of the property boundary; submit a copy of this letter to the Planning and Community Development office. In addition, note that permit holder must notify neighboring properties within 10 days of a change in the managing agent or local contact's contact information.

**Additional Contacts**

Other contacts that may be needed for your vacation dwelling unit:

- 1.) **City of Duluth Construction Services and Inspections, for a Change of Use Permit and/or Building Permit:** <https://duluthmn.gov/csi/> or 218-730-5240.
- 2.) **Life Safety Division of the Fire Department, for an Operational Permit:** <https://duluthmn.gov/fire/> or 218-730-4380.
- 3.) **State Department of Health, for a Lodging License:** Sara Bents, 218-302-6184, or <https://www.health.state.mn.us/>
- 4.) **State Tax Identification Numbers** can be obtained by calling 651-282-5225 or visiting <https://www.revenue.state.mn.us>
- 5.) **Make sure you sign up for City of Duluth Tourism Tax** by contacting the City Treasurers office at 218-730-5350 or [www.duluthmn.gov/finance/tourism-taxes/](http://www.duluthmn.gov/finance/tourism-taxes/).



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 Planning & Economic Development Department

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 Duluth, Minnesota 55802

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 planning@duluthmn.gov

<b>File Number</b>	PL 22-088	<b>Contact</b>	Kyle Deming, <a href="mailto:kdeming@duluthmn.gov">kdeming@duluthmn.gov</a>	
<b>Type</b>	Variance – building height	<b>Planning Commission Date</b>	June 14, 2022	
<b>Deadline for Action</b>	<b>Application Date</b>	May 17, 2022	<b>60 Days</b>	July 16, 2022
	<b>Date Extension Letter Mailed</b>	May 23, 2022	<b>120 Days</b>	September 14, 2022
<b>Location of Subject</b>	3731, 3819, 3829, 3867 London Rd.			
<b>Applicant</b>	Stocke Construction	<b>Contact</b>	Ted Stocke	
<b>Agent</b>		<b>Contact</b>		
<b>Legal Description</b>	Lots 13, 14, 23-26, Block 1, London East Division (010-3075-00130, -00140, -00230, -00240, -00250, -00260) and Lots 8 & 9, Block 31, Rearrangement of East Duluth and First Addition to East Duluth (010-1370-05060)			
<b>Site Visit Date</b>	June 1, 2022	<b>Sign Notice Date</b>	June 1, 2022	
<b>Neighbor Letter Date</b>	May 26, 2022	<b>Number of Letters Sent</b>	19	

**Proposal**

A variance to allow a one-family dwelling to be constructed at each address listed above that is 40 feet tall instead of the 30 feet maximum building height per UDC Section 50-14.5. The project is within the London East twinhomes development.

**Recommended Action:** Approve with conditions.

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	R-1	Undeveloped	Traditional Neighborhood
<b>North</b>	R-1	Railroad	Traditional Neighborhood
<b>South</b>	MU-N	Apartment buildings	Urban Residential
<b>East</b>	R-1	Undeveloped	Traditional Neighborhood
<b>West</b>	R-1	Twinhomes	Traditional Neighborhood

**Summary of Code Requirements**

Sec. 50-14.5 – Maximum building height – 30 feet

Sec. 50-37.9.C – General Variance Criteria (paraphrased): Granting of variances of any kind is limited to situations where, due to characteristics of the applicant’s property, enforcement of the ordinance would cause the landowner exceptional practical difficulties or undue hardship. The Planning Commission must find the following for a variance to be granted: a) That the landowner is proposing to use the property in a reasonable manner, b) that the need for relief from the normal regulations is due to circumstances unique to the property and not caused by the landowner, c) that granting the variance will not alter the essential character of the area, d) that granting the variance is consistent with the intent of the UDC and Comprehensive Plan.

**Comprehensive Plan Governing Principles and/or Policies and Current History (if applicable):**

Housing Strategy 5 - Foster opportunities for creative housing types and concepts, including tiny houses, townhomes, housing for individuals in Duluth on a temporary basis, and passive energy homes. Project includes twinhomes and homes with unique amenities such as roof terraces.

Applicable UDC Purpose Statements - (a) To provide for more sustainable development within the city by reducing carbon emissions, vehicle miles travelled, energy consumption, and water consumption, and by encouraging production of renewable energy and food production; and (k) To promote, preserve, and enhance the water resources and environment within the city and protect them from adverse effects caused by poorly sited or incompatible development in wetlands, shorelands and floodplains. This project would allow taller buildings that reduce the footprint of the building allowing more space for pervious surfaces and landscaping to reduce water runoff.

Zoning – Residential-Traditional (R-1) - 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 development patterns, building scale, and building location of nearby areas.

Future Land Use – Traditional Neighborhood - Characterized by grid or connected street pattern, houses oriented with shorter dimension to the street and detached garages, some with alleys. .... Includes many of Duluth 's older neighborhoods, infill projects, neighborhood extensions, and new traditional neighborhood areas. Residential unit density of 4 -8 units/acre with a mix of housing types (i.e. town homes and 4-plexes) at corners.

**History:**

1. April 14, 2020 – Variance to reduce rear yard setback by 5 feet (PL 20-016) approved by Planning Commission;
2. April 14, 2020 – Vacate utility easement in former 38<sup>th</sup> Ave. E. (PL 20-027, Resolution 20-0470R);
3. April 14, 2020 – Preliminary Plat of London East (PL 20-035) approved by Planning Commission.
4. April 29, 2020 – Approval of Wetland Replacement Plan (PL 20-017) by City Land Use Supervisor;
5. June 9, 2020 – Final Plat approval (PL20-058) approved by Planning Commission
6. 2020 through today – 6 twinhomes constructed or are under construction in London East plat.

**Review and Discussion Items**

Staff finds that:

1. The site is part of the 3.14 ac. London East twinhome development.
2. Applicant is proposing to construct 4 one-family dwellings in the eastern part of the development that would be 40 feet tall instead of the 30 feet allowed in the R-1 district. According to the plans, the portion of the building exceeding the maximum height consists of a 20-foot-wide by 22-foot-deep enclosed space, a 10-foot-wide by 22-foot-deep arbor, and an 18-foot-wide by 22-foot-deep open patio with standard height fall protection walls or railings
3. The applicant states that MN-DOT's access control on London Rd. requires them to build a frontage road to access each individual lot and City rules require it to be sufficiently wide for emergency vehicles and guest parking. Because of site slopes, the applicant needed to incorporate 7 stormwater retention ponds along the front of the site to accommodate drainage. The applicant further states that "All of these factors led to a shrinking of the buildable area for each dwelling unit. In keeping with the it has limited the size of the units and building up has made all the difference in being able to market homes that fit in this neighborhood."
4. The applicant is proposing a reasonable use of the site by developing one and two-family dwelling (twinhomes) which are permitted uses in the R-1 zone district at approximately 7 units per acre, which is consistent with the Comprehensive Plan future land use designation as well as the R-1 zone district.
5. The proposal is consistent with the Comprehensive Plan principles and strategies and UDC intent listed in the section above by facilitating the development of a site that reduces impacts to the environment by shrinking the building footprint while providing a unique housing form with rooftop terraces.
6. The need for a variance is caused by site constraints unique to this site and not caused by the applicant, and includes the need to accommodate vehicle circulation to each lot (due to MN-DOT access restrictions) and storm water

treatment (due to site slope) both in the front part of the site. City wetland rules require preservation of four wetland corridors crossing the site while the existing MN-DOT drainage culverts further restrict options for storm water treatment. Additionally, City zoning requirements limit the area on the rear of the site available for building construction and require space be dedicated to planting replacement trees as well as general landscaping.

7. Granting the variance will not alter the essential character of the area because the proposed 48-foot-wide, 40-foot-tall structures will have a similar bulk to the twin homes on the adjacent lots within the development. Additionally, across London Rd. are three large apartment buildings, one 170 feet long by 3 stories, one 270 feet long by 3 stories, and one 240 feet long by 6 stories tall. The recently completed Zvago condominium building is 4 stories tall and the Ecumen Lakeshore complex includes 3-story buildings of a similar height when including the steeply pitched roofs.
8. The variance, if granted, will not impair an adequate supply of light or air because the buildings are proposed to be set far back from London Rd. as well as 20 feet from the railroad right of way line (65 feet from the railroad). Spacing between buildings in the development will be the same as established in the original plat, which includes extra space due to wetland corridors separating the buildings.
9. The variance, if granted, will not increase congestion on public streets because the number of dwellings allowed on this site will be decreasing by 4 units due to constructing one-family buildings where two-family buildings (twinhomes) were originally platted.
10. The variance, if granted, will not increase fire danger as the Fire Department possesses equipment for fighting fires on structures of this size and larger. Additionally, the project is located in an area already served by police and fire departments and includes an appropriately sized roadway directly in front of the buildings to provide access for emergency vehicles.
11. Granting the variance is not expected to unreasonably diminish established property values in the area because the building height will not impact the view from the northwest compared to the pre-development site condition that consisted of dense tree cover in excess of the proposed building heights. The building locations far back from London Road are not expected to impact the values of property on the lower side of London Road due to the distance and mature vegetation on the properties providing screening.
12. Granting the variance is not expected to impair the health, safety, or public welfare of inhabitants of the city due to factors identified above.
13. No comments from citizens, City staff, or any other entity were received regarding the application.
14. Per UDC Section 50-37.1.N. approved variances lapse if the project or activity authorized by the permit or variance is not begun within one year.

**Staff Recommendation:**

Based on the above findings, Staff recommends that Planning Commission grant the variance to allow a height of up to 40 feet for the properties listed in the legal description above, with the following conditions:

- 1) The project be limited to, constructed, and maintained based on the plans submitted with the application that shows the portion of the building exceeding the maximum height consisting of a 20-foot-wide by 22-foot-deep enclosed space, a 10-foot-wide by 22-foot-deep arbor, and an 18-foot-wide by 22-foot-deep open patio with standard height fall protection walls or railings.
- 2) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission; however, no such administration approval shall constitute a variance from the provisions of Chapter 50.



PL22-088  
 Building Height Variance  
 3731, 3819, 3829, &  
 3867 London Rd.  
 Stocke Construction

PC Packet 06-14-2022



**Legend**

- Blocks
- Multi-Use - Paved
- Lots
- ▭ Parcels
- ▭ Subdivision Boundaries
- ▭ Zoning Boundaries
- Other Stream (GPS)

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Aerial photography flown 2019

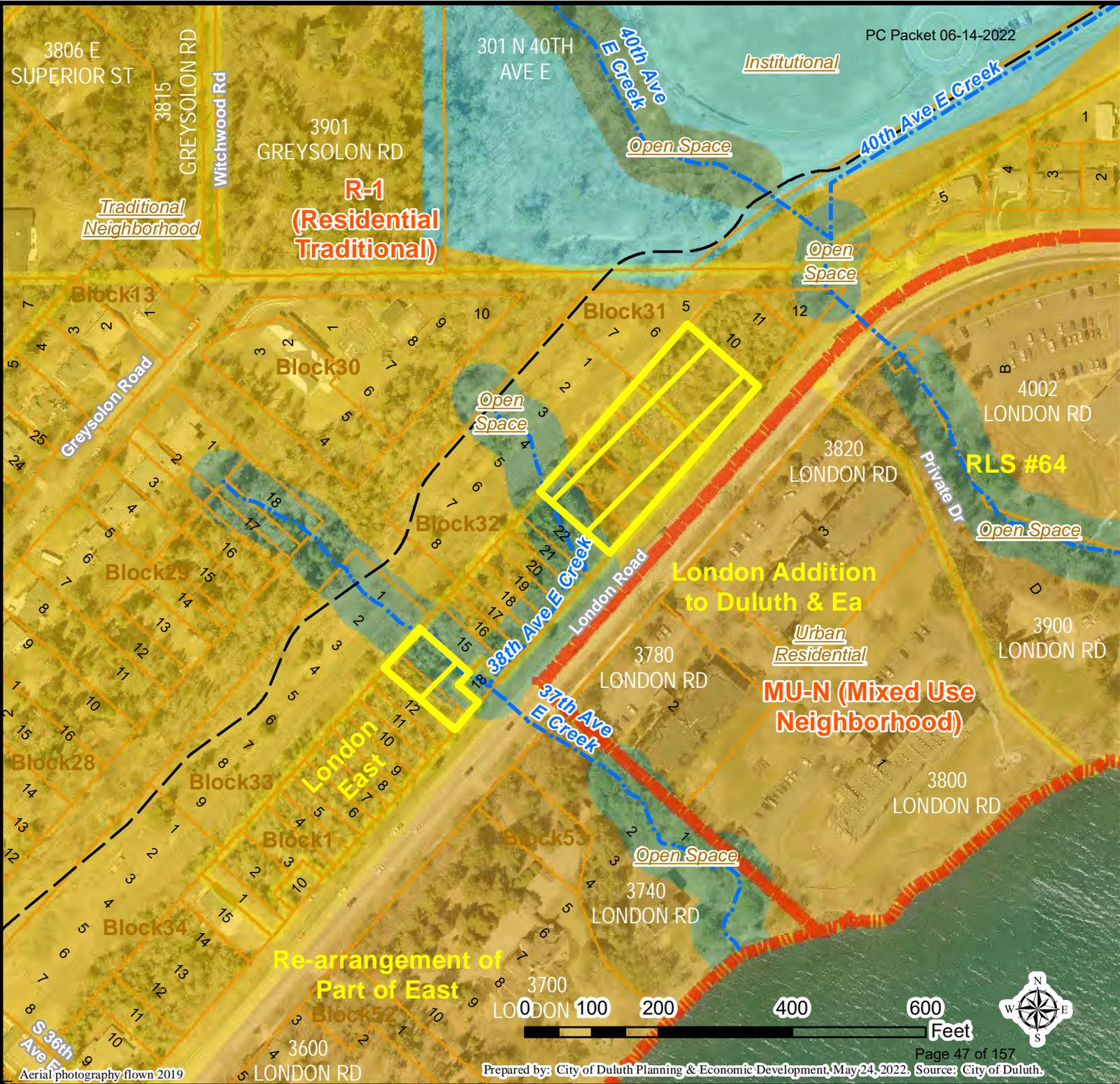




PL22-088

Building Height Variance  
3731, 3819, 3829, &  
3867 London Rd.  
Stocke Construction

PC Packet 06-14-2022



**Legend**

- Blocks
- Multi-Use - Paved
- Lots
- ▭ Parcels
- ▭ Subdivision Boundaries
- ▭ Zoning Boundaries
- ▭ Other Stream (GPS)
- ▭ Open Space
- ▭ Traditional Neighborhood
- ▭ Urban Residential
- ▭ Institutional

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Aerial photography flown 2019

Prepared by: City of Duluth Planning & Economic Development, May 24, 2022. Source: City of Duluth.





PL22-088  
 Building Height Variance  
 3731, 3819, 3829, &  
 3867 London Rd.  
 Stocke Construction

**Legend**

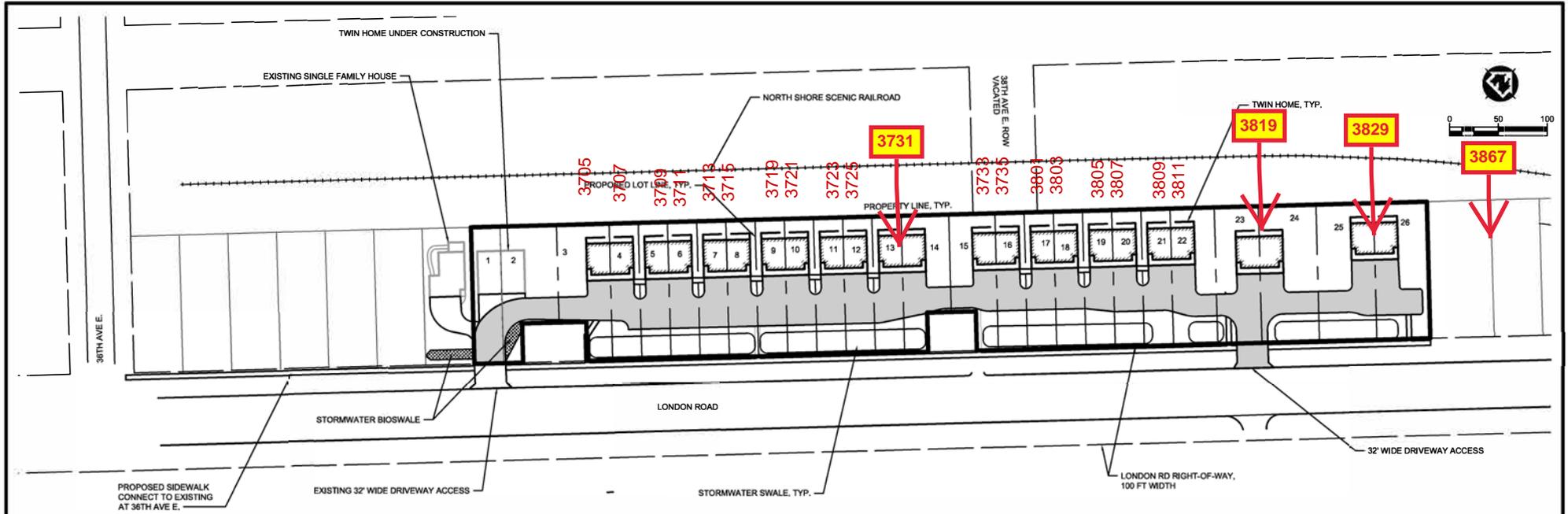
- Blocks
- Multi-Use - Paved
- Lots
- Parcels
- 1 Ft contour
- 10 Ft contour
- Subdivision Boundaries
- Zoning Boundaries
- Other Stream (GPS)

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Aerial photography flown 2019

Prepared by: City of Duluth Planning & Economic Development, May 24, 2022. Source: City of Duluth.



**PROJECT SUMMARY:**

- EXISTING PARCELS:**  
REARR PART EAST DULUTH & FIRST ADD TO EAST DU LOTS 10 THRU 18 BLK 33 INC W1/2 OF VACATED 38<sup>TH</sup> AVE E; EX SELY40 FT OF LOTS 10 AND 18,  
REARR PART EAST DULUTH & FIRST ADD TO EAST DU LOT 9 INC E1/2 OF 38<sup>TH</sup> AVE E VACATED & ALL OF LOTS 10 THRU 16,  
REARR PART EAST DULUTH & FIRST ADD TO EAST DU LOTS 8 & 9

PARCEL IDs:  
010-1370-05190, 010-1370-05360, 010-1370-5590

- ZONING AND SETBACKS:**  
PROPERTY ZONING: R-1  
PROPOSED USE: TWIN-HOMES (NO CHANGE NEEDED)

	REQUIRED	PROVIDED
FRONT SETBACK:	25 FT	31 FT
REAR SETBACK:	25 FT	25 FT
SIDE YARD SETBACK:	6 FT	6 FT
MAXIMUM HEIGHT OF BUILDING:	30 FT	30 FT
MINIMUM LOT SIZE:	3000 SF	4200 SF

DEVELOPER HAS APPLIED FOR A REAR YARD SETBACK REDUCTION FROM 25 FT TO 20 FT DUE TO SITE CONSTRAINTS.

- LAND USE BREAKDOWN:**  
TOTAL LOT AREA: 3.20 AC  
AREA IMPACTED FOR CONSTRUCTION: 3.0 AC

BUILDINGS: 0.58 AC  
PAVEMENT: 1.09 AC  
TOTAL IMPERVIOUS: 1.67 AC

TOTAL PERVIOUS: 1.68 AC

4. PARKING REQUIREMENTS:	REQUIRED	PROVIDED
DWELLING, ONE-FAMILY PER UNIT	1 SPACE	2 SPACES

- LANDSCAPE/BUFFER REQUIREMENTS:**  
STREET FRONTAGE: ONE TREE PER 35 LF, ONE SHRUB PER 25 LF

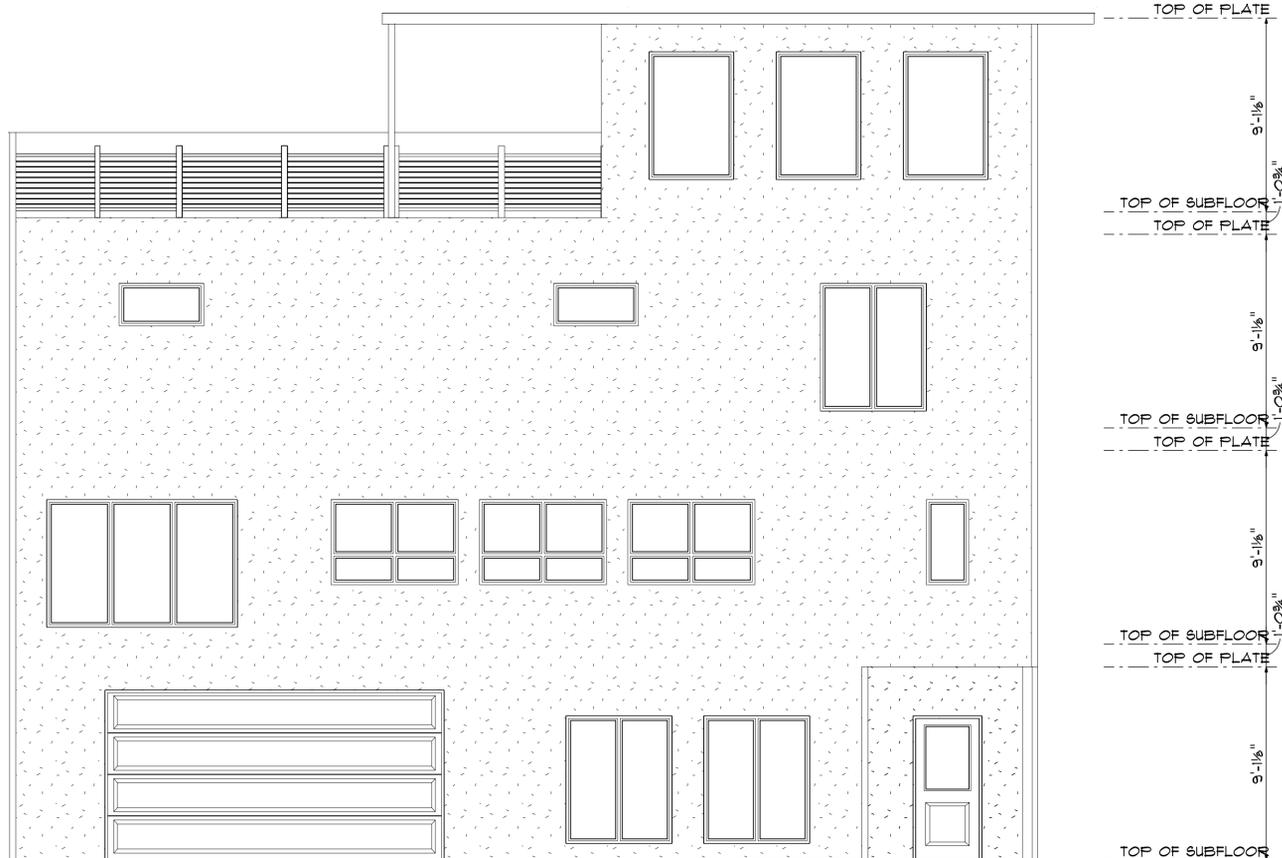
TREE REPLACEMENT REQUIREMENTS: NOT MORE THAN 30% OF REPLACEMENT TREES SHALL BE THE SAME SPECIES WITHOUT APPROVAL FROM THE CITY FORESTER.

- WETLAND DISTURBANCES:**  
13,613 SF - PERMANENT DISTURBANCE  
952 SF - TEMPORARY DISTURBANCE

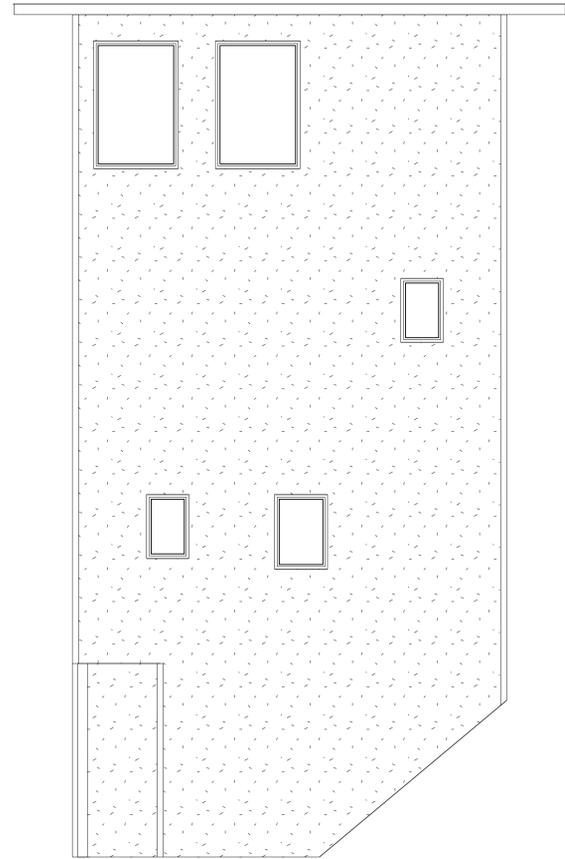
PROJECT DATE: 08/17/20	DRAWN BY: EDC	NO. DATE	REVISION	BY	I HEREBY CERTIFY THAT THIS PLAN, REPORT, OR SPECIFICATION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A FULLY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.	040620 Date 50398 License No.	MSA	ENGINEERING   ARCHITECTURE   SURVEYING FUNDING   PLANNING   ENVIRONMENTAL 332 W Superior Street, Duluth MN 55802 (218) 724-3915 www.msa-inc.com © MSA Professional Services, Inc.	LONDON ROAD UTILITY EXTENSIONS 37TH TO 39TH AVENUE EAST DULUTH, MN	OVERALL SITE PLAN	PROJECT NO: 05331006 SHEET: G-1
PLOT DATE: 3/18/2021 1:58 PM, P:\3306\03306\0331006\CADD\Construction Drawings\05331006 OVERALL Site Plan.dwg						JOSEPH J. JAROSZ					



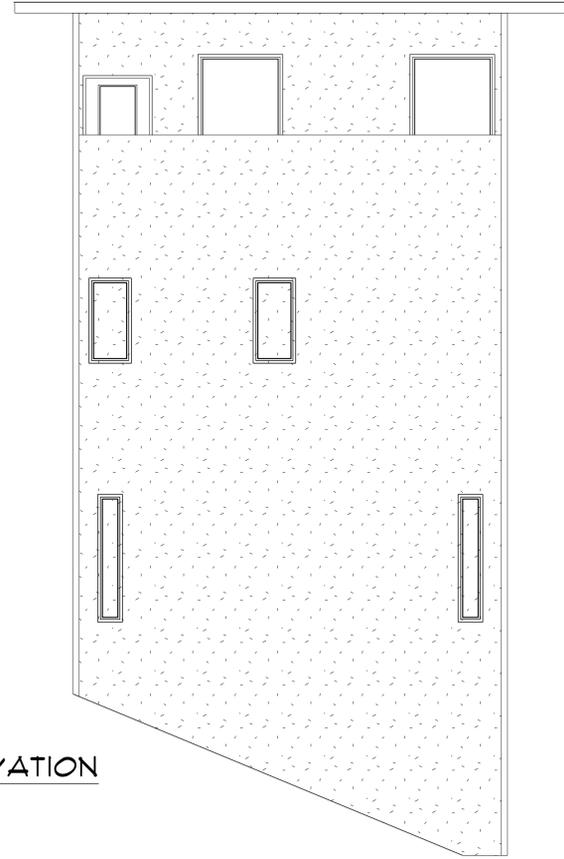
**Proposed building concept at 40 feet tall**



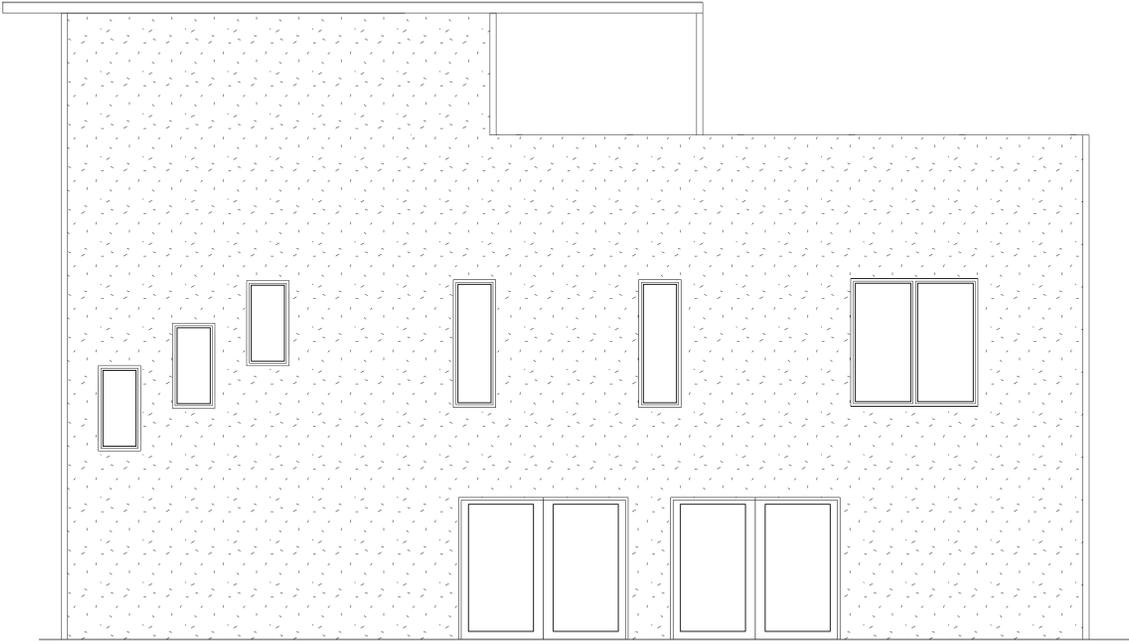
FRONT ELEVATION  
SCALE: 1/4" = 1'-0"



RIGHT ELEVATION  
SCALE: 1/4" = 1'-0"



LEFT ELEVATION  
SCALE: 1/4" = 1'-0"



REAR ELEVATION  
SCALE: 1/4" = 1'-0"

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SCALE: 1/4" = 1'-0"  
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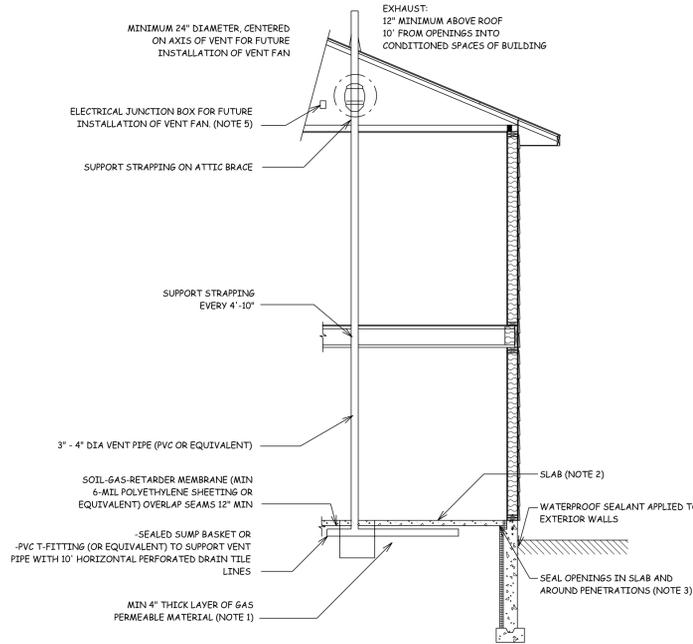
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STOCKE CONSTRUCTION -  
3731 LONDON RD  
ELEVATIONS

DATE: 11/15/2021  
REVISED: 2/1/2022  
DRAWING: 1 OF 4

PASSIVE SUB-SLAB DEPRESSURIZATION RADON CONTROL SYSTEM

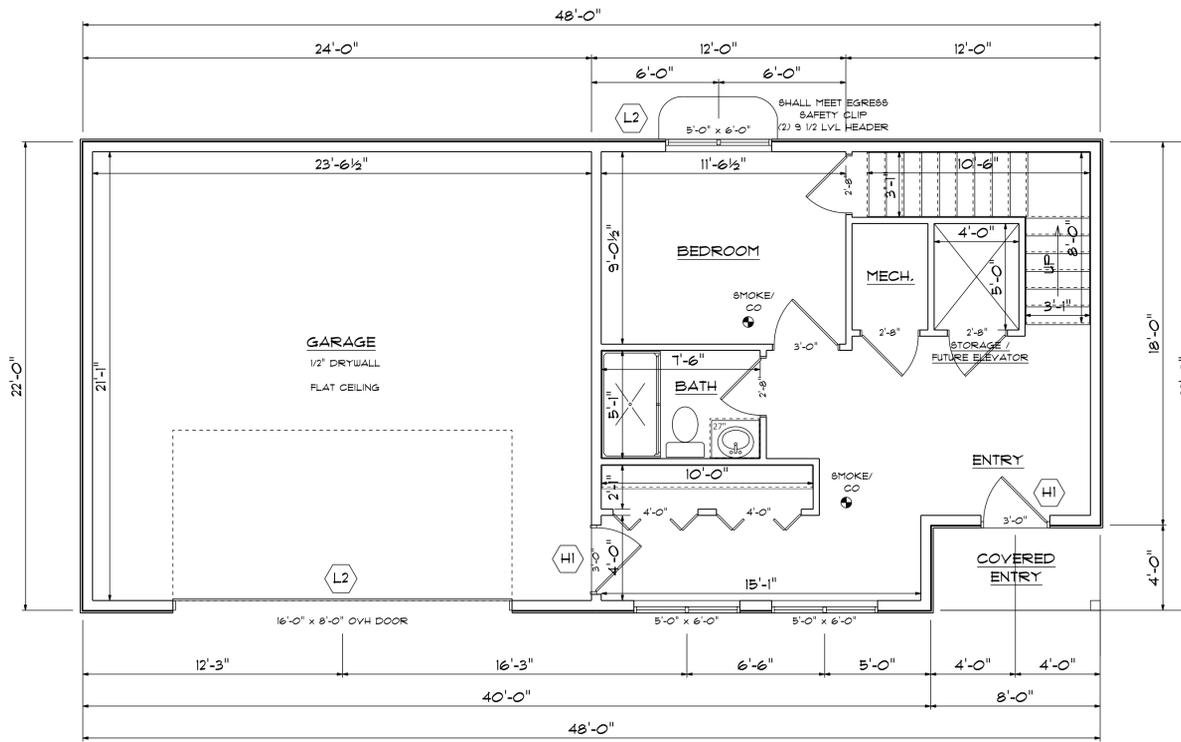
- NOTES:
1. ALL CONCRETE SLABS THAT COME IN CONTACT WITH THE GROUND SHALL BE LAID OVER A GAS PERMEABLE MATERIAL MADE UP OF EITHER A MINIMUM 4" THICK UNIFORM LAYER OF CLEAN AGGREGATE, OR A MINIMUM 4" THICK UNIFORM LAYER OF SAND, OVERLAIN BY A LAYER OR STRIPS OF MANUFACTURED MATTING DESIGNED TO ALLOW THE LATERAL FLOW OF SOIL GASES.
  2. ALL CONCRETE FLOOR SLABS SHALL BE DESIGNED AND CONSTRUCTED IN ACCORDANCE WITH LOCAL BUILDING CODES.
  3. ALL OPENINGS, GAPS AND JOINTS IN FLOOR AND WALL ASSEMBLIES IN CONTACT SOIL OR GAPS AROUND PIPES, TOILETS, BATHTUBS OR DRAINS PENETRATING THESE ASSEMBLIES SHALL BE FILLED WITH NON-SHRINK MORTAR, GROUTS OR EXPANDING FOAM MATERIALS AND SMALLER GAPS WITH WITH AN ELSTOMERIC JOINT SEALANT, AS DEFINED IN ASTM C920-87.
  4. VENT PIPES SHALL BE INSTALLED SO THAT ANY RAINWATER OR CONDENSATION DRAINS DOWNWARD INTO THE GROUND BENEATH THE SLAB OR SOIL-GAS-RETARDER MEMBRANE.
  5. CIRCUITS SHOULD BE A MINIMUM 15 AMP, 115 VOLT.
  6. ANY HORIZONTAL PIPING SHALL SLOPE DOWNWARD TOWARD STACK.
  7. ALL VENT PIPES SHALL BE VISIBLY LABELED "RADON".



RADON SYSTEM

DIMENSIONS ARE TO OUTSIDE OF 2X6 WALL. ADJUST FOR WALL SHEATHING.

WINDOW RO'S TO BE PROVIDED BY WINDOW MANUF. U FACTOR IS 0.3 WINDOWS SIZES LISTED ARE GENERAL SIZES. CAULK AND SEAL ALL DOORS AND WINDOWS AS PER CODE

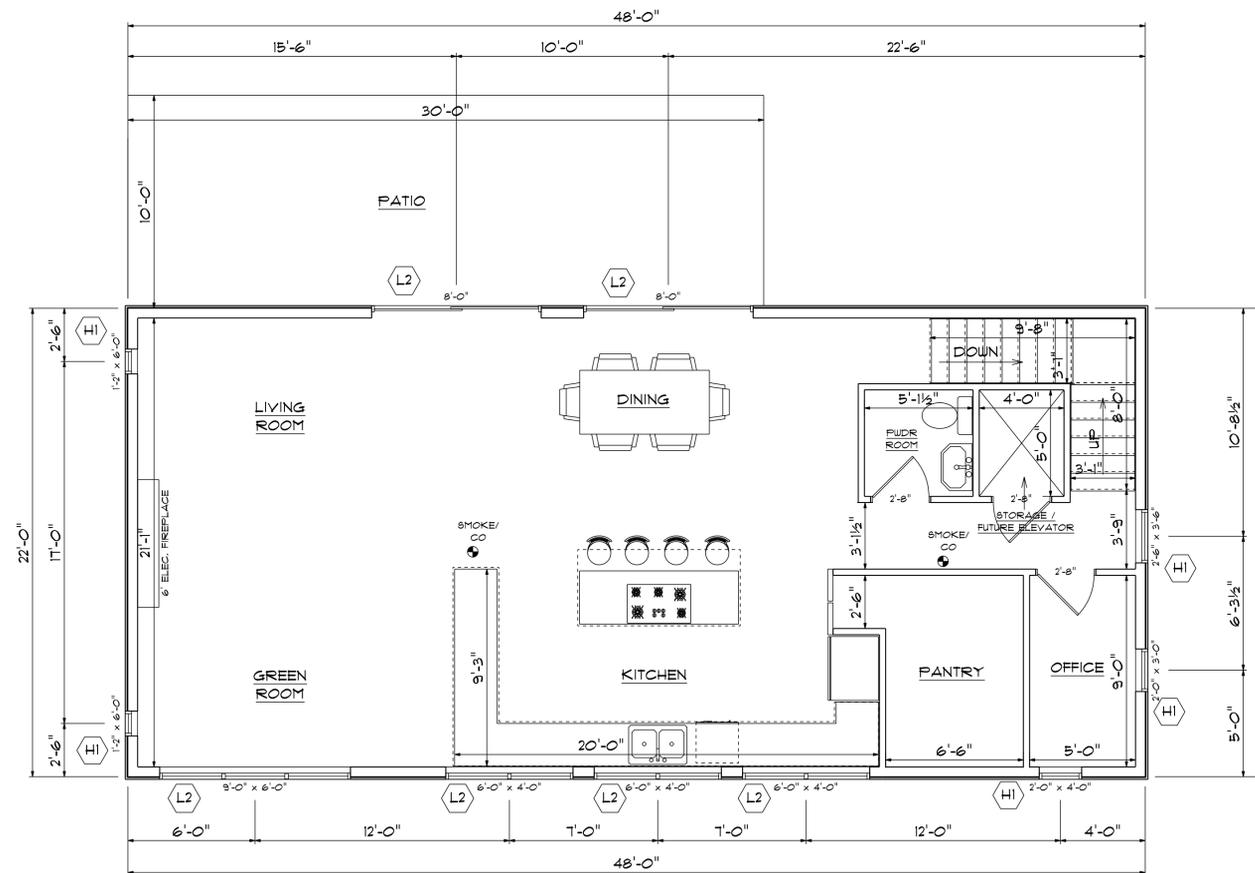


FIRST FLOOR

SCALE: 1/4" = 1'-0"

HEADER / BEAM SCHEDULE	
LABEL	DESCRIPTION
L1	2-PLY 9 1/4" LVL HEADER
L2	2-PLY 11 1/8" LVL HEADER
H1	2-PLY 2X10 HEADER; NO.2 OR BETTER
H2	2-PLY 2X12 HEADER; NO.2 OR BETTER

SM/CO SMOKE/CARBON MONOXIDE ALARM



SECOND FLOOR

SCALE: 1/4" = 1'-0"

HEADER / BEAM SCHEDULE	
LABEL	DESCRIPTION
L1	2-PLY 9 1/4" LVL HEADER
L2	2-PLY 11 1/8" LVL HEADER
H1	2-PLY 2X10 HEADER; NO.2 OR BETTER
H2	2-PLY 2X12 HEADER; NO.2 OR BETTER

SM/CO SMOKE/CARBON MONOXIDE ALARM

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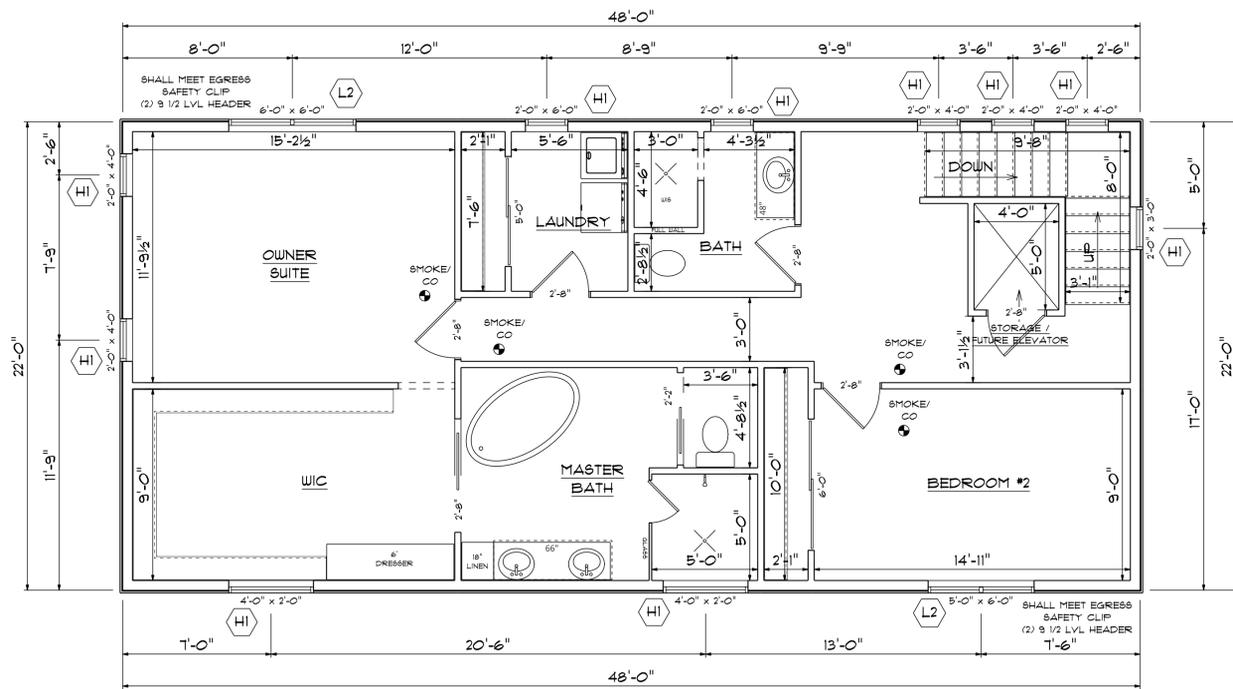
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SALESMAN: TS



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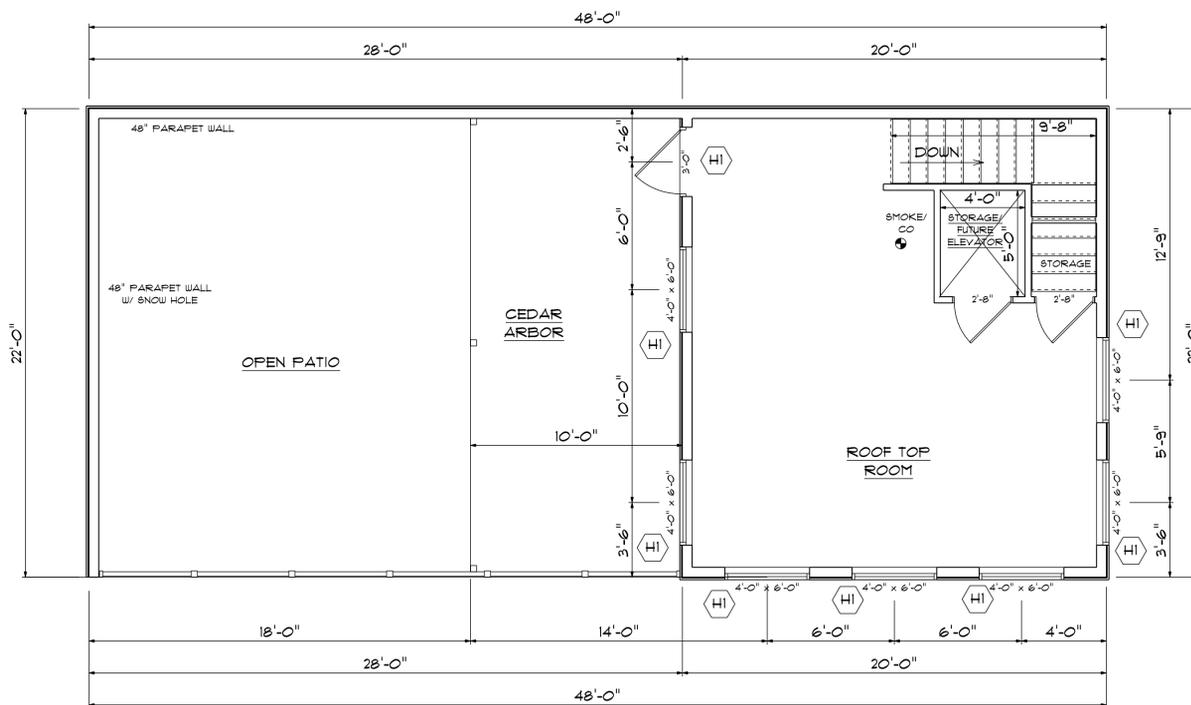
STOCKE CONSTRUCTION -  
3731 LONDON RD  
FLOOR PLAN

DATE: 11/15/2021  
REVISED: 2/1/2022  
DRAWING: 2 OF 4



DIMENSIONS ARE TO OUTSIDE OF 2X6 WALL. ADJUST FOR WALL SHEATHING.

WINDOW RO'S TO BE PROVIDED BY WINDOW MANUF. U FACTOR IS 0.3 WINDOWS SIZES LISTED ARE GENERAL SIZES. CAULK AND SEAL ALL DOORS AND WINDOWS AS PER CODE



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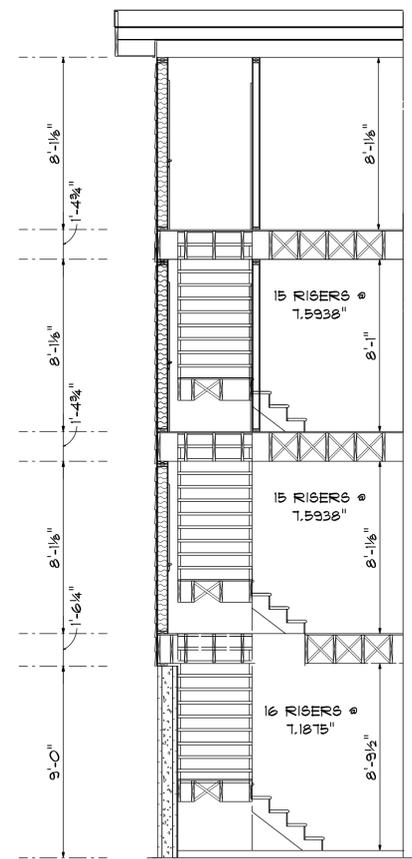
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SALESMAN: TS



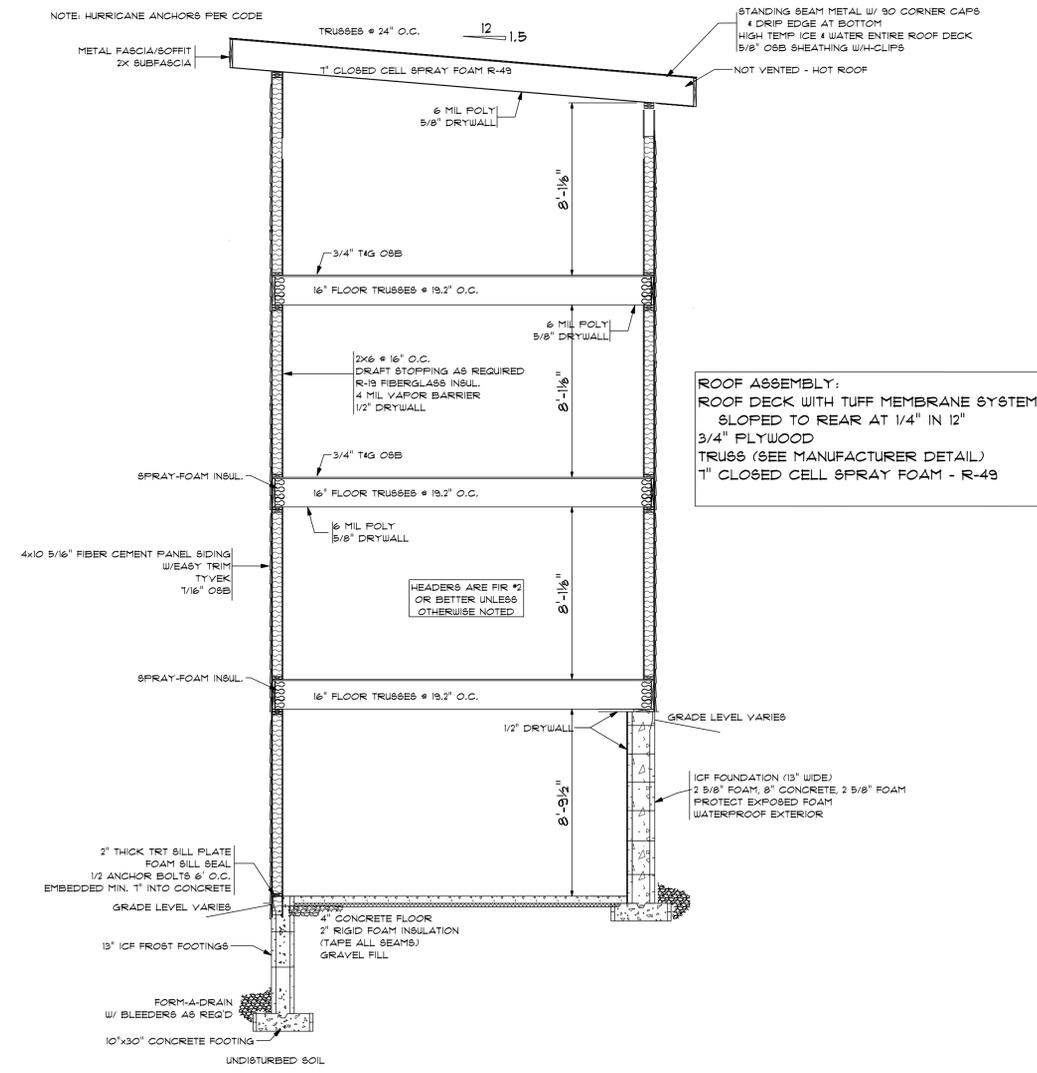
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DATE: 11/15/2021  
REV/ISS: 2/1/2022  
DRAWING#: 30F 4

STOCKE CONSTRUCTION -  
3731 LONDON RD  
FLOOR PLANS 2



**CROSS SECTION**  
SCALE: 1/4" = 1'-0"



STOCKE CONSTRUCTION -  
3731 LONDON RD  
DETAILS

DATE: 11/15/2021  
REVISED: 2/1/2022  
DRAWING#: 40F 4

SCALE: 1/4" = 1'-0"  
DRAWN BY: SW  
SALESMAN: TS

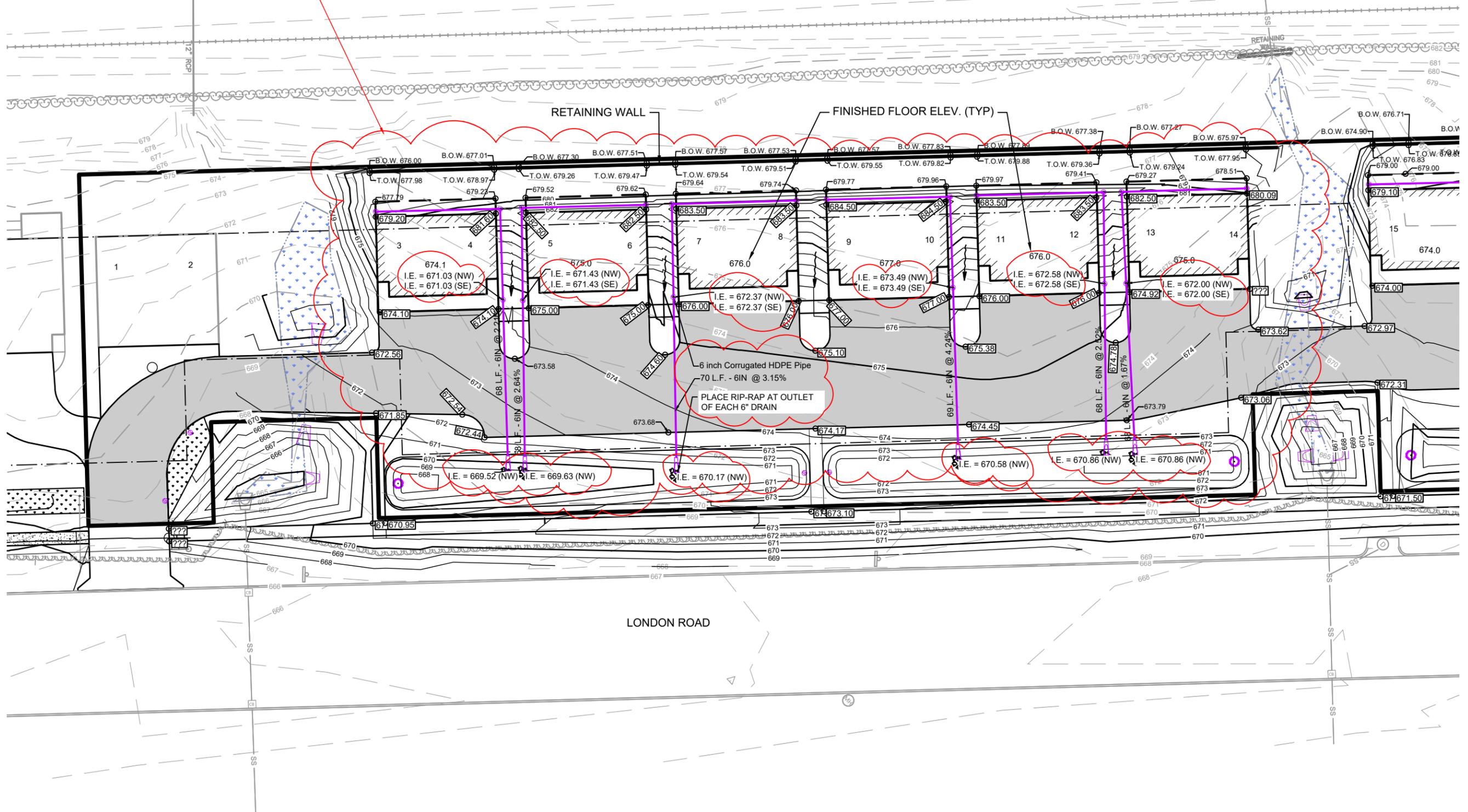


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PLAN UPDATE  
1.27.22

REVISION 3



- CONSTRUCTION NOTES:
1. CONTRACTOR TO GRADE BETWEEN BUILDINGS SO WATER FLOWS FROM THE BACK YARDS TO THE ROAD/STORMWATER SWALES.
  2. CONTRACTOR TO GRADE SIDEWALK CROSSING DRIVEWAY TO APPLICABLE ADA REQUIREMENTS.

NO.	DATE	REVISION	BY
1	8.2.2021	REGRADED BACK OF HOUSES, BOULEVARD, & SIDEWALK	SFS
2	11.5.2021	ALIGNMENT CHANGES, REGRADED OF PAVED AREAS	JAS
3	11.18.21	UNDERDRAIN AND REGRADED BACK OF LOTS	DAL

I HEREBY CERTIFY THAT THIS PLAN, REPORT, OR SPECIFICATION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

08/02/2021 Date  
52222 License No.  
JON M. LOYE

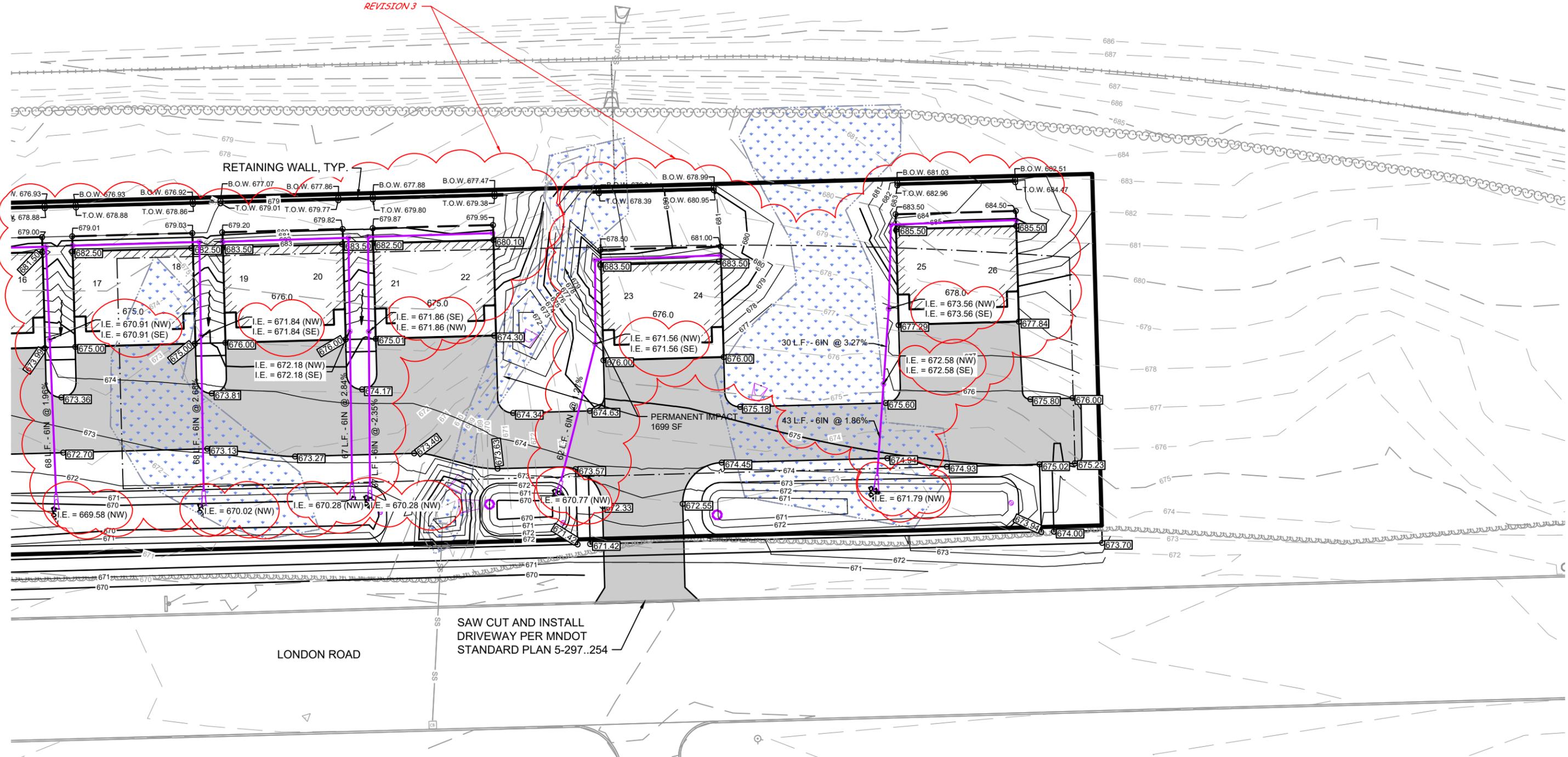
**MSA**  
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(218) 722-3915 www.msa-ps.com  
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LONDON ROAD UTILITY EXTENSIONS  
37TH TO 39TH AVENUE EAST  
DULUTH, MN



PLAN UPDATE  
1.27.22

REVISION 3



- CONSTRUCTION NOTES:
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PROJECT DATE: 02/17/20	DRAWN BY: EDC	NO. 1	DATE 8/2/2021	REVISION REGRADED BACK OF HOUSES, BOULEVARD, & SIDEWALK	BY SFS	I HEREBY CERTIFY THAT THIS PLAN, REPORT, OR SPECIFICATION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.	08/02/2021	52222		ENGINEERING   ARCHITECTURE   SURVEYING FUNDING   PLANNING   ENVIRONMENTAL 332 W Superior Street, Duluth MN 55802 (218) 722-3915 www.msa-ps.com © MSA Professional Services, Inc.	LONDON ROAD UTILITY EXTENSIONS 37TH TO 39TH AVENUE EAST DULUTH, MN	PROJECT NO. 05331006
CHECKED BY: JJJ	NO. 2	DATE 11.5.2021	ALIGNMENT CHANGES, REGRADING OF PAVED AREAS	JAS	Date		License No.					
CHECKED BY: JJJ	NO. 3	DATE 11.18.21	UNDERDRAIN AND REGRADING BACK OF LOTS	DAL	JON M. LOYE							
PLOT DATE: 4/21/2022 9:01 AM, P:\53006\53306\533105331006\CADD\Construction Drawings\05331006 Grading Plan.dwg												



**Twinhome buildings under construction on the site**

Variance Application  
 London East  
 Height Restrictions

**1. Please explain how the exceptional narrowness, shallowness or shape of the property, or exceptional topographic or other conditions related to the property, would result in practical difficulties under strict application of the requirements of the UDC:**

This project has 28 lots on 3.14 acres along London Road. Being that London Road is state owned & operated, we were only allowed 2 ingress/egress curb cuts. We therefore needed to build a service road to access each individual lot. Further, we were requested to build a wider road than the normal to accommodate for emergency vehicles. We also needed to widen the road to accommodate additional guest parking for guests. Additionally, a sidewalk was required to accommodate pedestrian traffic. We also needed to incorporate 7 stormwater retention ponds to accommodate drainage.

All of these factors led to a shrinking of the buildable area for each dwelling unit. In keeping with the it has limited the size of the units and building up has made all the difference in being able to market homes that fit in this neighborhood. (This references Imagine Duluth 2035 plan: policy number 1, S4)

**2. Please explain how the special circumstances or conditions that create the need for relief is due to circumstances unique to the property, and were NOT created by the property owner or the property owners' predecessors-in-interest:**

Being on a state highway with only two curb cuts being allowed created the need to build the service road. Being at the lowest point of the hill that is Duluth created the need for the large retention ponds.

**3. Please explain the special circumstances or conditions applying to the building or land in question are peculiar to this property or immediately adjoining properties, and do not apply generally to other land or buildings in the vicinity:**

The neighborhood is comprised of several mansions, an apartment complex, an assisted living facility, and East High School. The character and feel is for larger structures. We feel these attributes of the neighboring properties are in line with our request.

Also, these proposed Scenery Lofts on the single family homes will have the same width as the adjacent townhomes, keeping a similar style and symmetry to the project.

**4. Please explain how the application proposes to use the property in a reasonable manner, which would not be permitted by this code except for a variance:**

As the buildable footprints in this site are small, the only method to design in the square footage necessary to meet the demand for this area is to go up. The views of Lake Superior are at a premium. This use would allow for Scenic Lofts, which are a permitted exception to the height restriction in the code. Also, keeping the footprints to a minimum minimizes the need for excavation on each site.

**5. Please explain how that if the variance is granted it will not impair an adequate supply of light and air to adjacent property, or unreasonably increase the congestion in public streets or the danger of fire or imperil the public safety, or unreasonably diminish or impair established property values within the surrounding areas, or in any other respect impair the health, safety or public welfare of the inhabitants of the city:**

The additional height, if granted, will not affect any surrounding properties as one side is London Road and the other is the railroad. The height variance would not affect the traffic on London Road. The variance requested will not impair safety, as the backyard is similar to any 2 story structure and does not impose an undue safety concern. The height would not impair the established property values. Due to the unique characteristics of the variance, it would help to increase property values.

**6 Please explain how, if the variance is granted, it will not substantially impair the intent of zoning code and the official zoning map, and will not alter the essential character of the neighborhood:**

If the intent of the code is to follow the Imagine Duluth 2035 Forward Together outline; Section 8, Housing, each item in Policy #1 fits with our request:

Policy #1 – Increase density in and around the designated Core Investment Areas

- Promote infill development with a mix of densities appropriate to the context of the surrounding neighborhood.
  - This is an infill site, with the requested variance allowing for a fit with the neighboring properties
- Encourage and incentivize live/work opportunities.
  - With the variance, we are allowing for the space necessary for a home office
- Explore opportunities to increase amenities to create livable and walkable neighborhoods.
  - The sidewalk being added into this project increased the walkability of the neighborhood, but inhibited the horizontal footprint of the structures, necessitating a vertical build to accommodate the square footage necessary to maintain the character of the Congdon neighborhood.
- Focus on creative housing options of a non-traditional neighborhood design, such as homeownership through dense attached or detached single-family housing development fronting a pedestrianized street.

- The variance requested is a creative design approach to overcoming the site's given parameters and helps to keep the character of the Congdon neighborhood.
- Create walk-to-work incentives for employers to support housing near employment centers.
  - This site incentivises walk-to-work for downtown employers. The requested variance adds the square footage that is being demanded of these residents of our city, and also helps to keep the character of the neighborhood.

Further, There is a provision in the code for Exceptions to Height Restrictions; 50-21.3 Exceptions and encroachments for Scenery Lofts and Elevator Penthouses. There are no descriptions in the code under Article 6: Definitions depicting what Scenery Lofts or Elevator Penthouses are. We felt that this variance request fell into this parameter.

**Does your variance request need to meet any of the specific criteria in UDC Section 50-37.9, subsections D through M (E. Unsewered Areas, F. Two Family Dwellings in R-1, G. Parking Regulations, H. Reduce Setbacks, I. MU-C District, J. Airport Overlay, K. Flood Plain Regulations, L. Shorelands, or M. Non-Conforming Buildings)? Yes No**

- No



**Planning & Development Division**  
*Planning & Economic Development Department*

Room 160  
 411 West First Street  
 Duluth, Minnesota 55802



218-730-5580



planning@duluthmn.gov

<b>File Number</b>	PL 22-036	<b>Contact</b>	John Kelley, jkelley@duluthmn.gov	
<b>Type</b>	Interim Use Permit – Vacation Dwelling Unit	<b>Planning Commission Date</b>	June 14 2022	
<b>Deadline for Action</b>	<b>Application Date</b>	March 7, 2022	<b>60 Days</b>	May 6, 2022
	<b>Date Extension Letter Mailed</b>	March 15, 2022	<b>120 Days</b>	July 5, 2022
<b>Location of Subject</b>	619 West Skyline Parkway			
<b>Applicant</b>	Dawn Holmberg	<b>Contact</b>		
<b>Agent</b>		<b>Contact</b>		
<b>Legal Description</b>	PID # 010-1350-02920			
<b>Site Visit Date</b>	May 27, 2022	<b>Sign Notice Date</b>	May 31, 2022	
<b>Neighbor Letter Date</b>	May 19, 2022	<b>Number of Letters Sent</b>	27	

**Proposal**

Applicant proposes to use a four-bedroom home as a vacation dwelling unit. Up to 9 people will be allowed to stay in the home.

The applicant was on the vacation dwelling unit eligibility list.

**Recommended Action:** Staff recommends that Planning Commission approve.

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	R-1	Residential	Traditional Neighborhood
<b>North</b>	R-1	Residential	Traditional Neighborhood
<b>South</b>	R-1	Residential	Traditional Neighborhood
<b>East</b>	R-1	Residential	Traditional Neighborhood
<b>West</b>	R-1	Residential	Traditional Neighborhood

**Summary of Code Requirements:**

UDC Section 50-19.8. Permitted Use Table. A vacation dwelling unit is an Interim Use in the R-1 zone district.

UDC Section 50-20.3. Use-Specific Standards. Lists all standards specific to vacation dwelling units.

UDC Sec. 50-37.10.E . . . the commission shall only approve an interim use permit, or approve it with conditions, if it determines that: 1. A time limit is needed to protect the public health, safety and welfare from potential longer term impacts of the requested use in that location ....; 2. The applicant agrees to sign a development agreement with the city.



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**Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):**

Governing Principle #8 - Encourage mix of activities, uses, and densities. A short-term rental allows property owners to generate income and provide a service for tourists.

Econ. Dev. Policy #3 - Build on Existing Economic Strengths & Competitive Advantages

- **S9:** Encourage expansion of the city's tourism economy through efforts to expand in areas of current activity, such as in Canal Park, but also through marketing and investment in destination neighborhoods and iconic tourism experiences unique to Duluth.

Future Land Use – Traditional Neighborhood: Characterized by grid or connected street pattern, houses oriented with shorter dimension to the street and detached garages, some with alleys. Limited commercial, schools, churches, and home businesses. Parks and open space areas are scattered through or adjacent to the neighborhood. Includes many of Duluth's older neighborhoods, infill projects, neighborhood extensions, and new traditional neighborhood areas.

**History:** This 3,000 sq ft home was built in 1894 and contains 4 bedrooms.

**Review and Discussion Items:**

- 1) Applicant's property is located at 619 West Skyline Parkway. The proposed vacation dwelling unit contains 4 bedrooms, which would allow for a maximum of 9 guests.
- 2) The applicant is proposing 2 off street parking spaces at the rear of the house adjacent to the garage. Access to the parking is via a shared driveway with the adjacent property to the east. The applicant has provided a copy of the recorded shared driveway easement and maintenance agreement. Access to the site and parking area will be from West Skyline Parkway.
- 3) The applicant has indicated there will not be a space for camper or trailer storage by VDU guests.
- 4) The site plan depicts a recreation area on the southwest front exterior corner of the house that is screened by trees and shrubs along the west property line, and a deck on the southeast exterior front corner of the house that will be screened by two 6-foot tall trees. The site plan also shows an entrance to the home on the northwest rear corner of the home screened by a 6-foot tall wood privacy fence. The applicant has stated that there will be no outdoor amenities anywhere in the rear yard area. It will only be for parking. The grassy area above the parking area and rock retaining wall in the backyard is not conducive to any use. The ground is sloped, brushy and there are only very narrow access ways to get to it. The applicant further stated that if a fence was installed on the side lot line it will make access to that area quite difficult. The site plan depicts a dense urban screen of mature trees and shrubs along the west property line. Staff finds this is a sufficient dense urban screening.
- 5) Permit holders must designate a managing agent or local contact who resides within 25 miles of the City and who has authority to act for the owner in responding 24 hours a day to complaints from neighbors or the City. Permit holder must provide the contact information for the managing agent or local contact to all property owners within 100 feet of the property boundary. The applicant has listed themselves to serve as the managing agent.



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- 7) A time limit on this Interim Use Permit (IUP) is needed to minimize negative impacts to surrounding residential uses thereby causing damage to the public's health, safety and welfare. Section 50-20.3.U.7 states the IUP shall expire upon change in ownership of the property or in six years, whichever occurs first.
- 8) Applicant must comply with Vacation Dwelling Unit Regulations, including providing information to guests on city rules and ordinances such as Parking, Parks, Pets, and Noise.
- 9) No comments from citizens, City staff, or any other entity were received regarding the application.
- 10) The permit will expire 6 years from the approval date. The permit will lapse if no activity takes place within 1 year of approval.

**Staff Recommendation:**

Based on the above findings, Staff recommends that Planning Commission approve the permit subject to the following conditions:

- 1) The Interim Use Permit shall not be effective until the applicant has received all required licenses and permits for operation.
- 2) The applicant shall adhere to the terms and conditions listed in the Interim Use Permit.



619 West Skyline Parkway



**Legend**  
 Zoning Boundaries

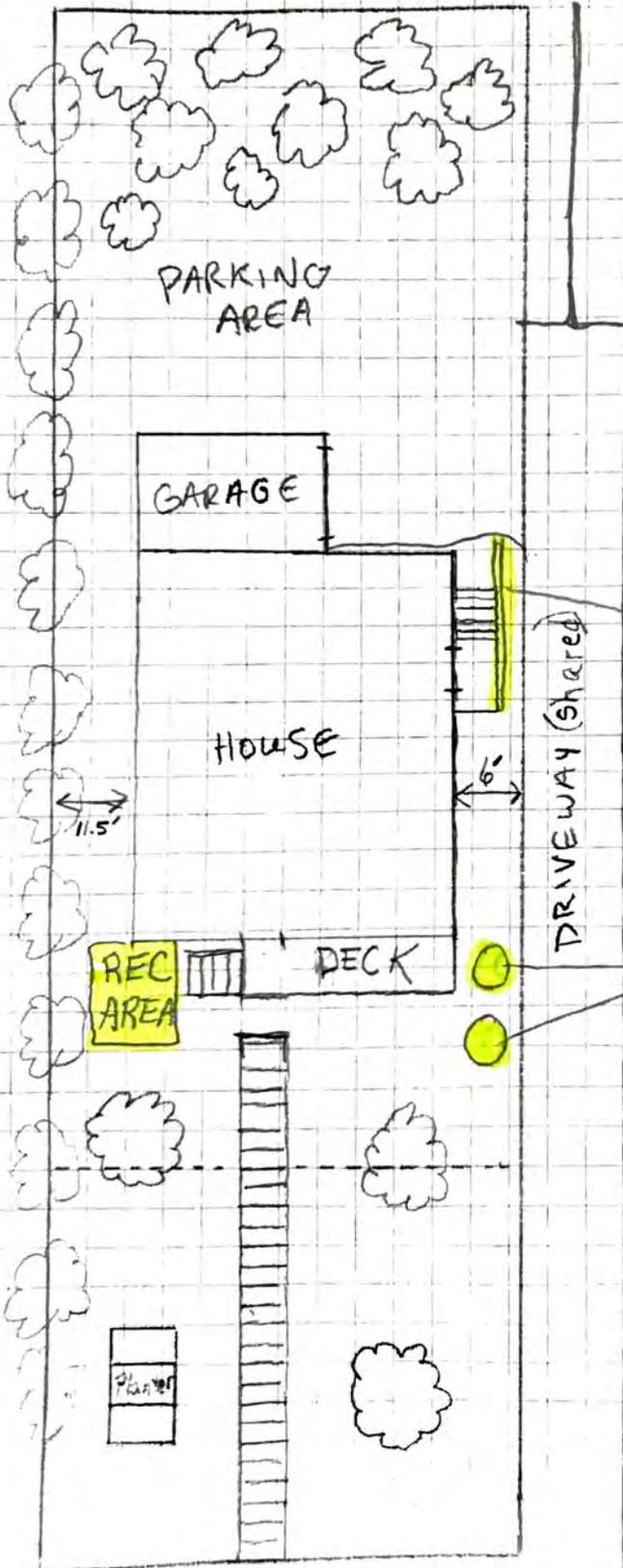
The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

Aerial photography flown 2016



# Revised Site Plan with screening; 5/11/2022

PC Packet 06-14-2022



Dawn Holmberg  
dawn.holmberg@gmail.com  
Page 65 of 157

Dear Planning Commissioners:

My name is Jeremy Rubin, and my wife and I have been living at 531 W. Skyline Parkway for nearly twelve years. We love our home and our neighbors.

Regarding the possibility of adding yet another vacation rental unit less than a block away from us — there is one two houses to the east of the property in question — I ask that this application be denied. A shortage of affordable family homes in Duluth has been a problem for young families for years. Taking another unit off the market for the individual gain of a single property owner at the expense of the surrounding neighbors does not make sense.

I am attaching a scanned document written by my neighbor, Ellie Davis, who lives across the street at 602 W. Skyline Parkway. She also opposes this move as she does not have access to off-street parking and has often had trouble finding a spot near her home when all available parking is taken up by visitors to the existing vacation unit.

Thank you for your consideration,

Jeremy Rubin

218-213-1405

531 W. Skyline Parkway

Duluth, MN 55806



**Planning & Development Division**  
*Planning & Economic Development Department*

Room 160  
 411 West First Street  
 Duluth, Minnesota 55802



218-730-5580



planning@duluthmn.gov

<b>File Number</b>	PL 22-077	<b>Contact</b>	Kyle Deming, <a href="mailto:kdeming@duluthmn.gov">kdeming@duluthmn.gov</a>	
<b>Type</b>	Interim Use Permit – Vacation Dwelling Unit	<b>Planning Commission Date</b>	June 14, 2022	
<b>Deadline for Action</b>	<b>Application Date</b>	May 9, 2022	<b>60 Days</b>	July 8, 2022
	<b>Date Extension Letter Mailed</b>	May 16, 2022	<b>120 Days</b>	September 6, 2022
<b>Location of Subject</b>	2835 Minnesota Avenue (Park Point)			
<b>Applicant</b>	Tri-Water's Property, LLC	<b>Contact</b>	Heather Grazzini-Sims	
<b>Agent</b>	Heirloom Property Management	<b>Contact</b>		
<b>Legal Description</b>	Lot 197, Lower Duluth, Minnesota Avenue, and Lot 198, Lower Duluth, St. Louis Avenue (PID 010-3110-01030)			
<b>Site Visit Date</b>	June 4, 2022	<b>Sign Notice Date</b>	May 31, 2022	
<b>Neighbor Letter Date</b>	May 26, 2022	<b>Number of Letters Sent</b>	28	

**Proposal**

To use an 1,871 sq. ft., 3-bedroom detached home as a vacation dwelling unit with 2 off-street parking spaces, for a maximum of 7 occupants. The proposed vacation dwelling is located in an R-1 district and was on the vacation dwelling unit eligibility list.

**Recommended Action:** Approval, with conditions.

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	Residential-Traditional (R-1)	Residential – Detached dwelling	Traditional Neighborhood
<b>North</b>	Residential-Traditional (R-1)	Residential – Detached dwelling	Traditional Neighborhood
<b>South</b>	Residential-Traditional (R-1)	Residential – Detached dwelling	Traditional Neighborhood
<b>East</b>	Residential-Traditional (R-1)	Residential – Detached dwelling	Traditional Neighborhood
<b>West</b>	Residential-Traditional (R-1)	St. Louis Bay	Traditional Neighborhood

**Summary of Code Requirements:**

UDC Section 50-19.8. Permitted Use Table. A Vacation Dwelling Unit is an Interim Use in the R-1 zone district.

UDC Sec. 50-37.10.E . . . the Council shall only approve an interim use permit, or approve it with conditions, if it determines that: 1. A time limit is needed to protect the public health, safety and welfare from potential longer term impacts of the requested use in that location . . . ; 2. The applicant agrees to sign a development agreement with the city. 3. No more than 60 permits may be issued for either vacation dwelling units or accessory vacation dwelling units. Permits issued for vacation dwelling units or accessory vacation dwelling units in any form district shall not be counted against the maximum number of permits that may be issued, 4. Except for properties within the Higher Education Overlay District as identified in 50-18.5, the minimum rental period and off-street parking requirements of 50-20.3.U and 50-20.5.M shall not apply for vacation dwelling units or accessory vacation dwelling units in form districts.

**Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):**

- Governing Principle #8 - Encourage mix of activities, uses, and densities. Project is a reuse of a dwelling.
- Econ. Dev. Policy #3 - Build on Existing Economic Strengths & Competitive Advantages  
S9: Encourage expansion of the city's tourism economy through efforts to expand in areas of current activity, such as in Canal Park, but also through marketing and investment in destination neighborhoods and iconic tourism experiences unique to Duluth. The proposed vacation dwelling unit expands beyond Canal Park some of the Duluth's tourism economy, possibly providing new tourism experiences.

Future Land Use – Traditional Neighborhood: Characterized by grid or connected street pattern, houses oriented with shorter dimension to the street and detached garages, some with alleys. Limited commercial, schools, churches, and home businesses. Parks and open space areas are scattered through or adjacent to the neighborhood. Includes many of Duluth's older neighborhoods, infill projects, neighborhood extensions, and new traditional neighborhood areas.

**History:**

2021 – Home was demolished down to the foundation and new home constructed on remaining foundation with additions.

PL 20-147 – Planning Commission approval of a side-yard setback variance to allow a combined width of 9.7 feet.

PL 20-161 – Planning Commission approval of a shoreland setback variance to allow the dwelling to be constructed at 27 feet to the shoreline.

**Review and Discussion Items:**

1. Applicant's property is 40 feet wide by approximately 120 feet deep with frontage on St. Louis Bay.
2. The home was reconstructed on an existing foundation, with additions, in 2021 and consists of 1,871 sq. ft., with an attached one-car garage.
3. Proposal is a 3-bedroom vacation dwelling unit for up to 7 guests. Minimum stay duration will be 2 nights.
4. The applicant is providing one parking stall in the garage and a second parking stall in the driveway to meet the required two off-street parking stalls.
5. Applicant has indicated guests will not bring campers or trailers to the property.
6. The site plan shows outdoor areas that consist of a sitting area on the front porch, an 8-foot-wide deck on the rear of the building with tables, chairs, and a grill, a gas fire pit with seating in the rear yard, and a dock with seating in St. Louis Bay.
7. For screening, there is an existing fence to the north side of the property, and the abutting property owner (2839 Minnesota Ave.) has waived, in writing, the requirement for a screening fence.
8. Applicant has indicated that Heirloom Property Management will manage the property and that they will contact the owners of all properties within 100 feet of the subject property to provide the manager's contact information.
9. A time limit on this Interim Use Permit ("IUP") is needed to minimize negative impacts to surrounding residential uses thereby causing damage to the public's health, safety and welfare. Section 50-20.3.U.7 states the IUP shall expire upon change in ownership of the property or in six years, whichever occurs first.
10. Applicant must comply with items listed in the Vacation Dwelling Unit Worksheet and provide to guests information about City rules found on the handout provided to the applicant titled "Selected City Ordinances on Parking, Parks, Pets, and Noise."
11. Two email comments from a residents (attached). No other comments from City staff, or any other entity.

**Staff Recommendation:**

Based on the above findings, Staff recommends that Planning Commission approve the permit subject to the following:

1. The Interim Use Permit shall not be effective until the applicant has obtained all required licenses and permits for operation and provided notice to landowners within 100 feet of the property with required contact information.
2. Applicant shall adhere to the terms and conditions listed in the Interim Use Permit.
3. Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission review; however, no such administration approval shall constitute a variance from the provisions of Chapter 50.



PL22-077  
 Vacation Dwelling Unit  
 Interim Use Permit  
 2835 Minnesota Avenue  
 Tri-Water's Property, LLC

PC Packet 06-14-2022

**Legend**

- Hiking
- Lots
- Parcels
- Subdivision Boundaries
- Zoning Boundaries



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Aerial photography flown 2019

Prepared by: City of Duluth Planning & Economic Development, May 24, 2022. Source: City of Duluth.

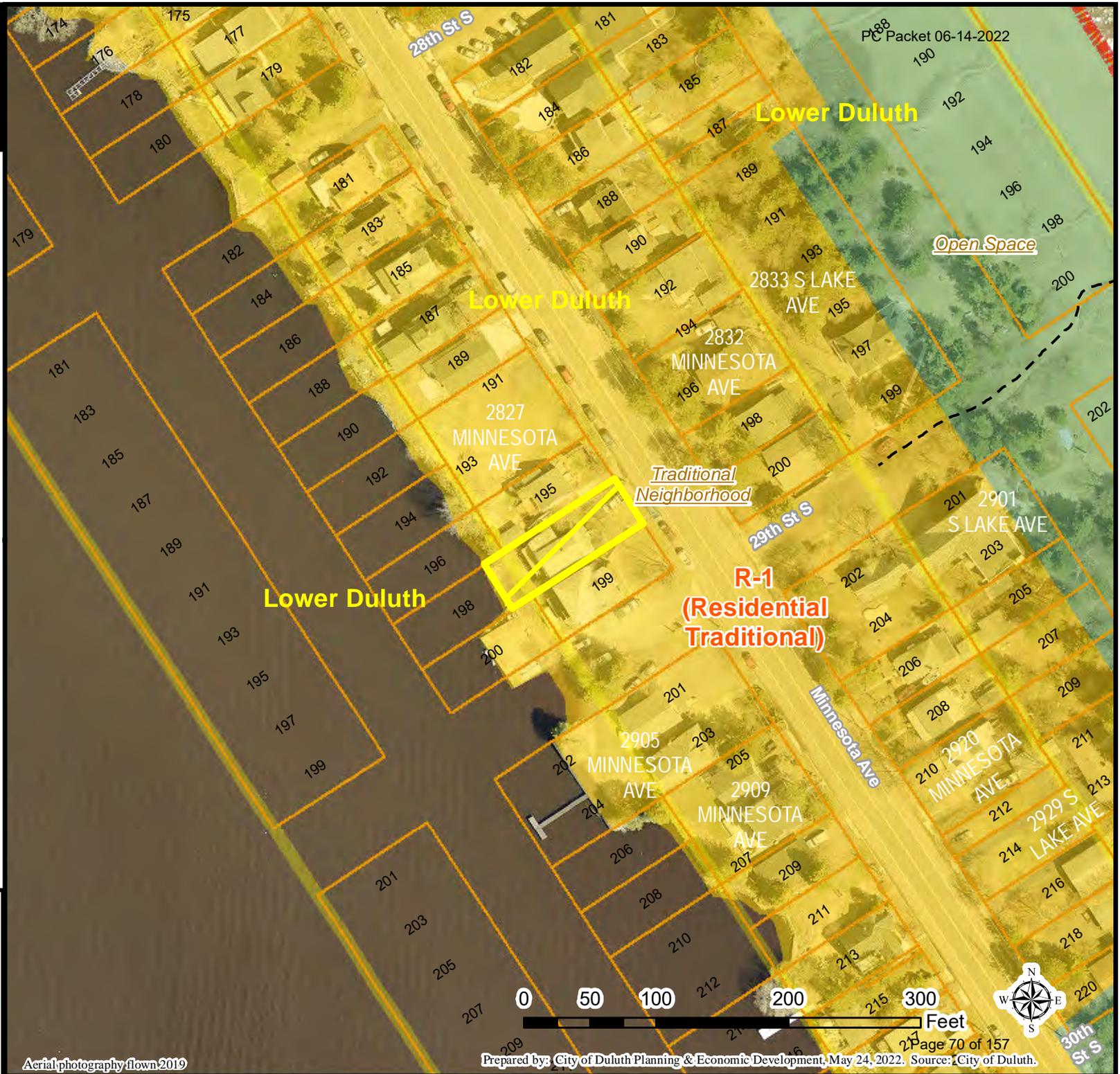


PL22-077  
 Vacation Dwelling Unit  
 Interim Use Permit  
 2835 Minnesota Avenue  
 Tri-Water's Property, LLC

PC Packet 06-14-2022

**Legend**

- Hiking
- Lots
- Parcels
- Subdivision Boundaries
- Zoning Boundaries
- Open Space
- Traditional Neighborhood



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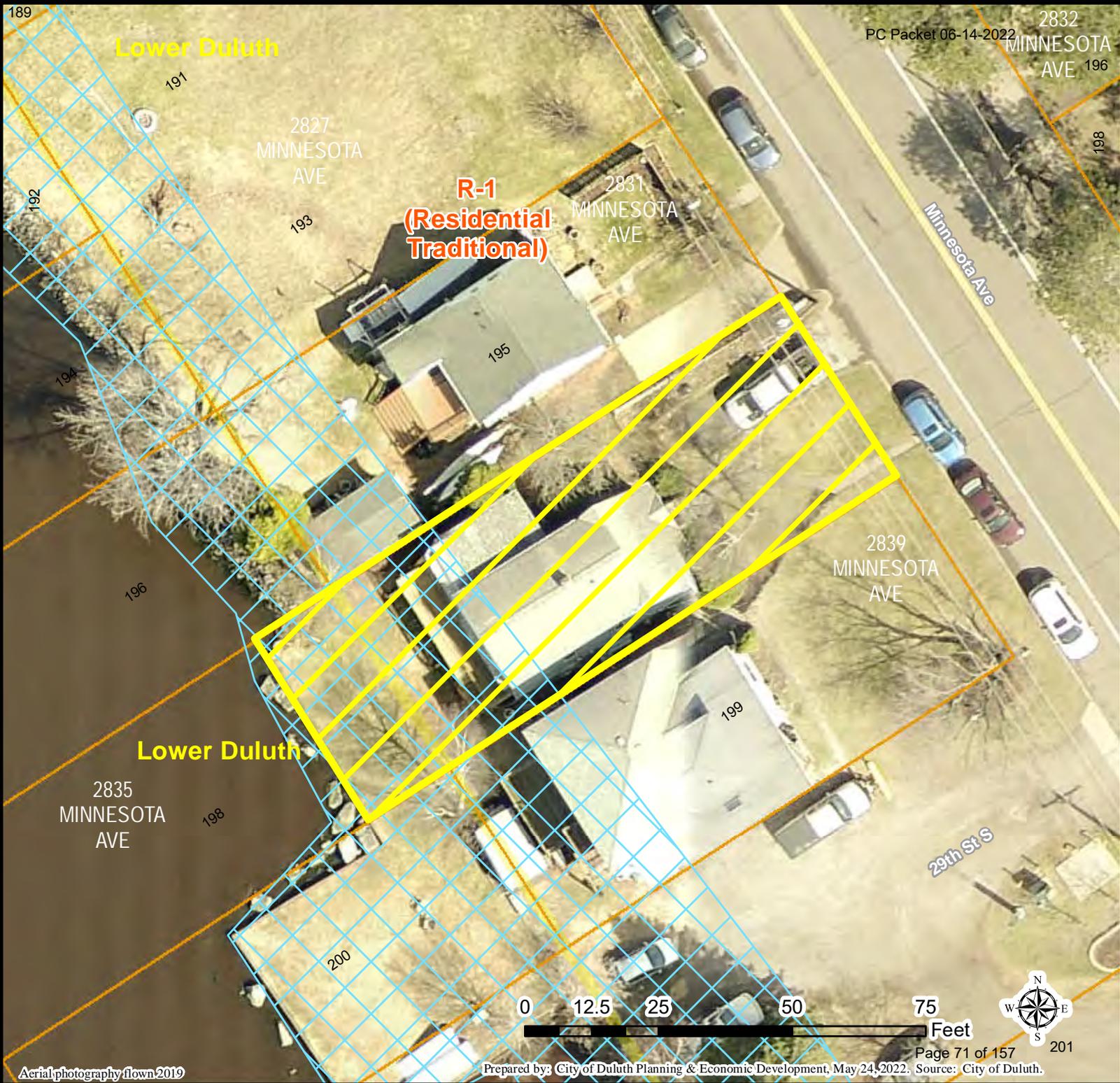


PL22-077  
 Vacation Dwelling Unit  
 Interim Use Permit  
 2835 Minnesota Avenue  
 Tri-Water's Property, LLC

PC Packet 06-14-2022  
 2832 MINNESOTA AVE 196

**Legend**

- Lots
- Parcels
- Subdivision Boundaries
- Zoning Boundaries
- Floodplain (UDC)**
- Flood Fringe

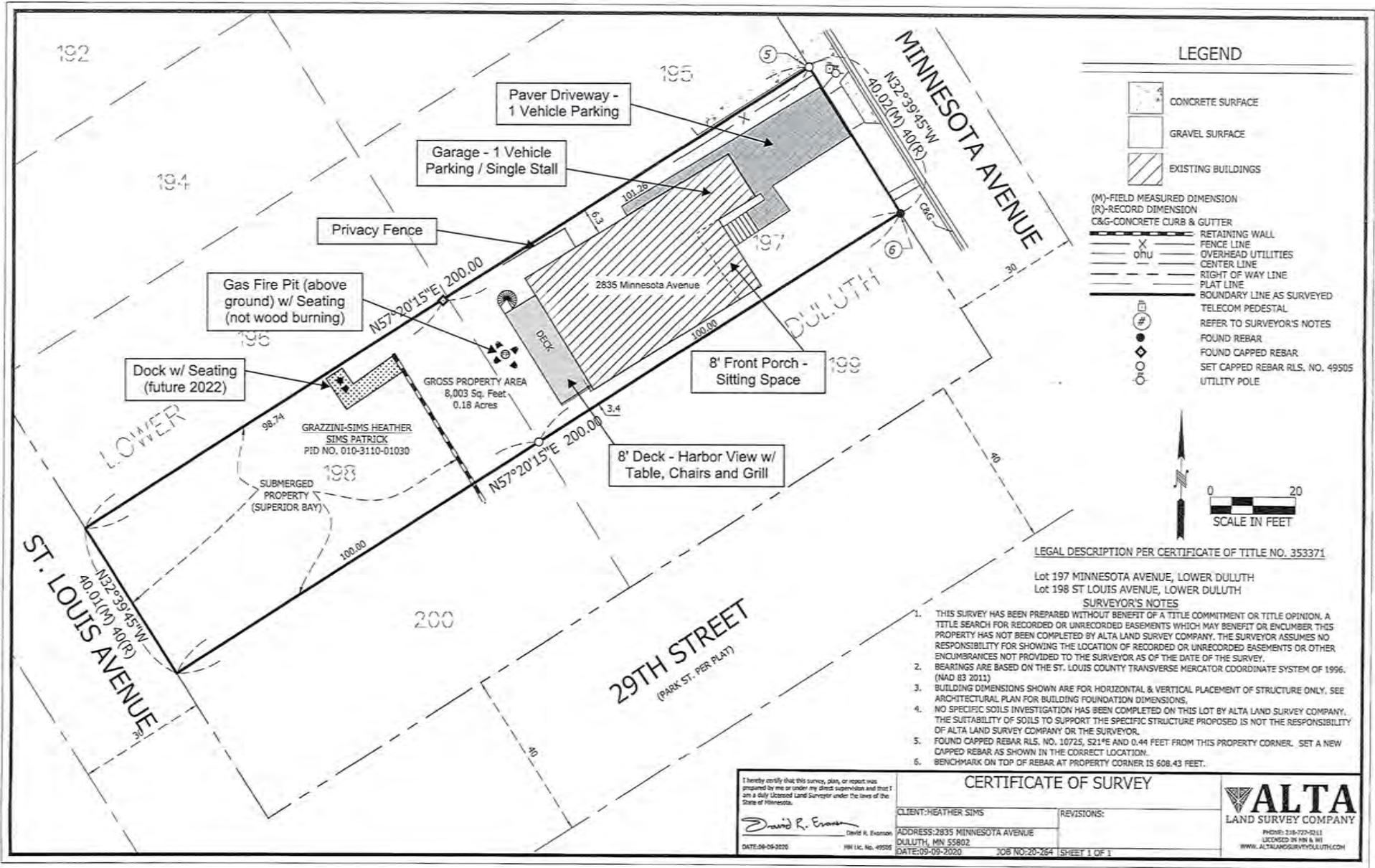


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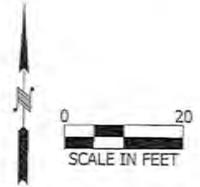
Aerial photography flown 2019

Prepared by: City of Duluth Planning & Economic Development, May 24, 2022. Source: City of Duluth.



**LEGEND**

- CONCRETE SURFACE
- GRAVEL SURFACE
- EXISTING BUILDINGS
- (M)-FIELD MEASURED DIMENSION
- (R)-RECORD DIMENSION
- C&G-CONCRETE CURB & GUTTER
- RETAINING WALL
- FENCE LINE
- OVERHEAD UTILITIES
- CENTER LINE
- RIGHT OF WAY LINE
- PLAT LINE
- BOUNDARY LINE AS SURVEYED
- TELECOM PEDESTAL
- REFER TO SURVEYOR'S NOTES
- FOUND REBAR
- FOUND CAPPED REBAR
- SET CAPPED REBAR RLS. NO. 49505
- UTILITY POLE



LEGAL DESCRIPTION PER CERTIFICATE OF TITLE NO. 353371

Lot 197 MINNESOTA AVENUE, LOWER DULUTH  
 Lot 198 ST LOUIS AVENUE, LOWER DULUTH

**SURVEYOR'S NOTES**

1. THIS SURVEY HAS BEEN PREPARED WITHOUT BENEFIT OF A TITLE COMMITMENT OR TITLE OPINION. A TITLE SEARCH FOR RECORDED OR UNRECORDED EASEMENTS WHICH MAY BENEFIT OR ENCLUMBER THIS PROPERTY HAS NOT BEEN COMPLETED BY ALTA LAND SURVEY COMPANY. THE SURVEYOR ASSUMES NO RESPONSIBILITY FOR SHOWING THE LOCATION OF RECORDED OR UNRECORDED EASEMENTS OR OTHER ENCUMBRANCES NOT PROVIDED TO THE SURVEYOR AS OF THE DATE OF THE SURVEY.
2. BEARINGS ARE BASED ON THE ST. LOUIS COUNTY TRANSVERSE MERCATOR COORDINATE SYSTEM OF 1996. (NAD 83 2011)
3. BUILDING DIMENSIONS SHOWN ARE FOR HORIZONTAL & VERTICAL PLACEMENT OF STRUCTURE ONLY. SEE ARCHITECTURAL PLAN FOR BUILDING FOUNDATION DIMENSIONS.
4. NO SPECIFIC SOILS INVESTIGATION HAS BEEN COMPLETED ON THIS LOT BY ALTA LAND SURVEY COMPANY. THE SUITABILITY OF SOILS TO SUPPORT THE SPECIFIC STRUCTURE PROPOSED IS NOT THE RESPONSIBILITY OF ALTA LAND SURVEY COMPANY OR THE SURVEYOR.
5. FOUND CAPPED REBAR RLS. NO. 10725, S21°E AND 0.44 FEET FROM THIS PROPERTY CORNER. SET A NEW CAPPED REBAR AS SHOWN IN THE CORRECT LOCATION.
6. BENCHMARK ON TOP OF REBAR AT PROPERTY CORNER IS 608.43 FEET.

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.		<b>CERTIFICATE OF SURVEY</b>	
David R. Erwin David R. Erwin DATE: 06-06-2020      MN Lic. No. 49505		CLIENT: HEATHER SIMS ADDRESS: 2835 MINNESOTA AVENUE DULUTH, MN 55802 DATE: 06-06-2020	REVISIONS:  208 NO-20-264 SHEET 1 OF 1
		ALTA LAND SURVEY COMPANY PHONE: 318-727-7215 LICENSED BY MN & WI WWW.ALTLANDSURVEYDULUTH.COM	

## Vacation Dwelling Unit Worksheet

1. The minimum rental period shall be not less than two consecutive nights (does not apply to Form districts). **What will be your minimum rental period?** two nights

2. The total number of persons that may occupy the vacation dwelling unit is one person plus the number of bedrooms multiplied by two. You may rent no more than four bedrooms.

**How many legal bedrooms are in the dwelling?**  
3

**What will be your maximum occupancy?**  
8

3. Off-street parking shall be provided at the following rate:

- a. 1-2 bedroom unit, 1 space
- b. 3 bedroom unit, 2 spaces
- c. 4+ bedroom unit, number of spaces equal to the number of bedrooms minus one.
- d. Vacation dwelling units licensed on May 15, 2016, are entitled to continue operating under the former off-street parking requirement. The parking exemption for vacation dwelling units licensed on May 15, 2016, expires upon transfer of any ownership interest in the permitted property.
- e. Form districts are not required to provide parking spaces.

**How many off-street parking spaces will your unit provide?** 2

4. Only one motorhome (or pickup-mounted camper) and/or one trailer either for inhabiting or for transporting recreational vehicles (ATVs, boat, personal watercraft, snowmobiles, etc.) may be parked at the site, on or off the street. **Will you allow motorhome or trailer parking? If so, where?** no motorhome or trailer parking

5. The property owner must provide required documents and adhere to additional requirements listed in the City of Duluth's UDC Application Manual related to the keeping of a guest record, designating and disclosing a local contact, property use rules, taxation, and interim use permit violations procedures. **Heirloom Property Management is agent**

6. The property owner must provide a site plan, drawn to scale, showing parking and driveways, all structures and outdoor recreational areas that guests will be allowed to use, including, but not limited to, deck/patio, barbeque grill, recreational fire, pool, hot tub, or sauna, and provide detail concerning the provision of any dense urban screen that may be required to buffer these areas from adjoining properties. Please note that this must be on 8 x 11 size paper. **see attached**

7. The interim use permit shall expire upon change in ownership of the property or in six years, whichever occurs first. An owner of a vacation dwelling unit permitted prior to May 15, 2016, may request, and the land use supervisor may grant, an application for adjustment of an existing permit to conform to this section, as amended, for the remainder of the permit term. **OK**

8. Permit holder must keep a guest record including the name, address, phone number, and vehicle (and trailer) license plate information for all guests and must provide a report to the City upon 48 hours' notice. **Please explain how and where you will**

keep your guest record (log book, excel spreadsheet, etc):

Heirloom Property Management is my agent, I can obtain this information from them if needed

9. Permit holder must designate a managing agent or local contact who resides within 25 miles of the City and who has authority to act for the owner in responding 24-hours-a-day to any complaints from neighbors or the City. The permit holder must notify the Land Use Supervisor within 10 days of a change in the managing agent or local contact's contact information.

**Please provide the name and contact information for your local contact:**

Heirloom Property Management 218-390-4317

10. Permit holder must disclose in writing to their guests the following rules and regulations:

- a. The managing agent or local contact's name, address, and phone number;
- b. The maximum number of guests allowed at the property;
- c. The maximum number of vehicles, recreational vehicles, and trailers allowed at the property and where they are to be parked;
- d. Property rules related to use of exterior features of the property, such as decks, patios, grills, recreational fires, pools, hot tubs, saunas and other outdoor recreational facilities;
- e. Applicable sections of City ordinances governing noise, parks, parking and pets;

**Please state where and how this information will be provided to your guests:**

This information will be provided to guest within the contract they are required to sign in order to rent the property

11. Permit holder must post their permit number on all print, poster or web advertisements. **Do you agree to include the permit number on all advertisements?** yes

12. **Prior to rental**, permit holder must provide the name, address, and phone number for the managing agent or local contact to all property owners within 100' of the property boundary; submit a copy of this letter to the Planning and Community Development office. In addition, note that permit holder must notify neighboring properties within 10 days of a change in the managing agent or local contact's contact information.   ok

**From:** [planning](#)  
**To:** [Kyle Deming](#)  
**Subject:** FW: PL 22-077  
**Date:** Wednesday, June 1, 2022 7:30:13 AM

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**From:** Frank Berdan <>  
**Sent:** Tuesday, May 31, 2022 9:50 PM  
**To:** planning <planning@DuluthMN.gov>  
**Subject:** PL 22-077

To whom it may concern,

We are concerned that two transient vacation dwelling units in an otherwise residential block diminishes the quality of life in our neighborhood. There is already a VRBO unit at 2832 Minnesota Avenue (licensed?), directly across the street from the property at issue.

Frank & Kathi Berdan  
2818 MN Av

**From:** [Mary Sodd](#)  
**To:** [Kyle Deming](#); [planning](#)  
**Cc:** [Mary Jo Sodd](#)  
**Subject:** PL 22-077  
**Date:** Tuesday, June 7, 2022 8:52:41 AM

---

To: Mr. Deming and Duluth Planning Commission  
In re: PL 22-077

From: Mary Jo Sodd  
Homeowner, 2824 Minnesota Avenue, Duluth, MN 55802

This is a response to a letter sent recently to residents within 350 feet of 2835 Minnesota Avenue about a vacation dwelling unit (“VDU”) interim-use permit. It is my understanding from neighbors that if the permit is awarded, this would be a third VDU within 1-1/2 blocks of my home.

A group of neighbors discussed this new VDU permit notification a week ago as we read the posted public notice. It was not a happy discussion. One neighbor told us that Heirloom, the VDU agency, had told the owner to go ahead with renting as the VDU permit would go through as they have clout.

That day a renter from New York (per their license plates) had already moved into the house. Afterwards I checked google for VRBO websites and saw bookings on offer for future dates at \$912 a night. Isn’t an interim-use permit required before interim use?

In apparent violation of the Duluth building code, the front porch did not and does not have safety railings, and the current renters have a young child. Did the house pass its final inspection? Has it been issued an occupancy permit?

I am fully against this VDU permit for this property. If the owners wish to rent the property long term, that would be fine. Then our environment would not be transient.

Myself and others worry about the long-term implication that this area could become a commercial zone. Our property taxes are being hiked up by commercial (“non-residential”?) usage; when does this end?

I thought I was moving into a safe neighborhood with my adult daughter who has autism and epilepsy, however these new zoning practices might destroy our dream. A “neighborhood” could become a more transient hotel row and more dangerous, etc. Can you help us?

Furthermore, the Duluth Planning Commission might not be aware of all of the nearby VDUs. I also never received notification that a VDU would be or was operating next door to my house, at 2832 Minnesota Avenue (a VRBO according to the decals on the side of the cleaner’s van). But that fact

has become all too clear. A driveway is shared between my home and the VRBO. Last February and March, VRBO plowed snow from the 2832 side of the driveway 6-8 feet high in front of my garage at 2824 (I was not there during that time) without my permission. It took weeks to negotiate a plow out with Heirloom so Comfort Systems could make a furnace maintenance appointment.

Heirloom may have a similar problem for 2835. Where will they deposit their driveway's snow?

What kind of neighbors are VDUs? Our experience concludes that VDUs operate for their profit and at the expense of others' tax rates, collateral damage and inconvenience.

Please turn this permit down and others on Park Point. There are too many VDUs here.

Respectfully,  
Mary Jo Sodd



**Planning & Development Division**  
 Planning & Economic Development Department

Room 160  
 411 West First Street  
 Duluth, Minnesota 55802

218-730-5580  
 planning@duluthmn.gov

<b>File Number</b>	PL 22-068	<b>Contact</b>	John Kelley, <a href="mailto:jkelly@duluthmn.com">jkelly@duluthmn.com</a>	
<b>Type</b>	Special Use Permit – Day Care Facility	<b>Planning Commission Date</b>	June 14, 2022	
<b>Deadline for Action</b>	<b>Application Date</b>	April 8, 2022	<b>60 Days</b>	June 7, 2022
	<b>Date Extension Letter Mailed</b>	April 14, 2022	<b>120 Days</b>	August 6, 2022
<b>Location of Subject</b>	1108 East 8 <sup>th</sup> Street			
<b>Applicant</b>	Mandy Stanius	<b>Contact</b>		
<b>Agent</b>		<b>Contact</b>		
<b>Legal Description</b>	LOTS 1 THRU 4 BLOCK 150 PORTLAND DIVISION OF THE TOWN OF DULUTH			
<b>Site Visit Date</b>	April 29, 2022	<b>Sign Notice Date</b>	April 26, 2022	
<b>Neighbor Letter Date</b>	April 27, 2022	<b>Number of Letters Sent</b>	77	

**Proposal**

Applicant is requesting a special use permit for a Daycare Facility for 20 students ages 3-5 years old.

**Recommendation**

Staff are recommending approval with conditions.

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	R-1	Church/Daycare Facility	Traditional Neighborhood
<b>North</b>	R-1	Residential	Traditional Neighborhood
<b>South</b>	R-1	Residential	Traditional Neighborhood
<b>East</b>	P-1	Park	Open Space
<b>West</b>	R-1	Residential	Traditional Neighborhood

**Summary of Code Requirements**

UDC Section 50-37.10. Special Use Permits: Planning Commission shall approve the planning review or approve it with modifications, if it is determined that the application complies with all applicable provisions of this Chapter.

- 1) The application is consistent with the Comprehensive Land Use;
- 2) The application complies with all applicable provisions of this Chapter; including without limitations to any use-specific standards applicable to the proposed use, development or redevelopment, and is consistent with any approved district plan for the area.
- 3) Without limiting the previous criteria, the Commission may deny any application that would result in a random pattern of development with little contiguity to existing or programmed development or would cause anticipated negative fiscal or environmental impacts on the community.

UDC Section 50-20.3.I. Daycare facility, small and large, and preschools.

1. Must provide off-street parking spaces for pick-up and drop-off .... Pick-up and drop-off areas must be clearly signed as for

pick-up and drop-off only, and shall not conflict with safe on-site pedestrian and vehicular movements.

2. N/A

3. N/A

4. N/A

**Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):**

Governing Principle #8- Encourage mix of activities, uses, and densities. The daycare facility is located in a traditional residential neighborhood.

Governing Principle #11 - Include consideration for education systems in land use actions. The daycare facility enrolls preschool aged students.

Future Land Use- Traditional Neighborhood: Characterized by grid or connected street pattern, houses oriented with shorter dimension to the street and detached garages, some with alleys. Limited commercial, schools, churches, and home businesses. Parks and open space areas are scattered through or adjacent to the neighborhood. Includes many of Duluth's older neighborhoods, infill projects, neighborhood extensions, and new traditional neighborhood areas.

### Review and Discussion Items

- 1) The applicant proposes to operate a daycare facility that serves students 3-5 years of age within the existing Trinity Lutheran Church at 1108 East 8<sup>th</sup> Street. The daycare facility proposes to have an enrollment of up to 20 children. The daycare hours of operation will be 7 am to 5 pm Monday through Friday.
- 2) The proposed daycare facility will not alter the essential character of the neighborhood, which includes a variety of uses including single-family homes, multifamily and religious assembly uses. An existing daycare facility has been operating in this location without a special use permit.
- 3) Sec 50-20.3.I (Daycare facility, small and large, and preschools). Parking spaces for pick-up and drop-off: Parents use the existing church parking lot for drop off and pick up. Parents park and walk their children across East 8<sup>th</sup> Street and then southeast along North 11<sup>th</sup> Avenue East to door #5 as depicted on the site plan and map.
- 4) Sec 50-24 (Parking and Loading). Daycare facility use requires 1 space per 5 persons care. The daycare uses the existing church parking lot located on the north side of East 8<sup>th</sup> Street. The parking lot has ample space available to accommodate parking, drop off and pick up. All staff utilize the church parking lot to park their vehicles during operating hours.
- 5) Sec. 50-25.5 (Landscaping between differing land uses). No additional landscaping is required as this project is not increasing the floor space by 25%, nor is the building expanding to accommodate this program being housed in the lower level of the existing church building.
- 6) Sec. 50-26 (Screening, Walls and Fences). Not applicable to project.
- 7) Sec. 50-27 (Signs). Sign permits are required and will be reviewed and permitted in a separate process.
- 8) Sec. 50-28 (Stormwater Drainage and Erosion Control). The applicant is not proposing to add any impervious surface to the site.
- 9) Sec. 50-29 (Sustainability Standards). Not applicable to this project.
- 10) Sec. 50-30 (Building Design Standards). These requirements do not apply for this project.
- 11) No citizen or City Departments comments were received at the time that this report was compiled.

### Staff Recommendation

Based on the above findings, Staff recommends that Planning Commission approve the special use permit subject to the following conditions:

- 1) The daycare hours of operation shall be 7 am to 5 pm Monday through Friday.
- 2) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission review; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50.



PL 22-068  
Special Use Permit  
Day Care

PC Packet 06-14-2022

**MU-N (Mixed Use  
Neighborhood)**

Site

**Legend**  
Zoning Boundaries

**P-1 (Park)**

**R-1  
(Residential  
Traditional)**

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Aerial photography flown 2016

Prepared by: City of Duluth Community Planning Division, May 3, 2019, Source: City of Duluth

Munger PARK

Playground

OUT door field space

Sand

Sand

Picnic Table

SIDE WALK

E 8th St.

Gym

Men's room

Stairway to upstairs

Preschool Bathroom

Church safe

Janitor Closet

Imagination Room

HALLWAY

Kitchen

lockers

Classroom Door

ENTRANCE Door #5

Parish Hall

Lounge

SIDE WALK



### MU-N (Mixed Use Neighborhood)

### P-1 (Park)

### R-1 (Residential Traditional)

**Legend**  
 Zoning Boundaries



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[REDACTED]  
[REDACTED]  
Sent: Tuesday, May 31, 2022 10:52 AM

To: planning <planning@DuluthMN.gov>

Subject: PL22-068

Hello,

I'm writing today to express my full support of the Special Use Permit submitted by Mandy Stanius. The Preschool of Fine Arts is a wonderful part of our community and it is such a joy to see/hear the children who are in attendance there, out exploring and playing in our neighborhood. We've had the wonderful experience of having one of our children attend PFA and another starting this summer; the location and great reputation of the facility was an added bonus we found out about after moving into our home in 2016. We are thrilled to see that Mandy will be carrying on the legacy of this space and strongly suggest that the Planning Commission approve this project.

Thank you,

Sarah

Sarah Herrick-Smisek

1123 E 7th St



**Planning & Development Division**  
 Planning & Economic Development Department

Room 160  
 411 West First Street  
 Duluth, Minnesota 55802

218-730-5580  
 planning@duluthmn.gov

<b>File Number</b>	PL 22-081	<b>Contact</b>	John Kelley, <a href="mailto:jkelly@duluthmn.com">jkelly@duluthmn.com</a>	
<b>Type</b>	Special Use Permit – Day Care Facility	<b>Planning Commission Date</b>	June 14, 2022	
<b>Deadline for Action</b>	<b>Application Date</b>	May 9, 2022	<b>60 Days</b>	July 8, 2022
	<b>Date Extension Letter Mailed</b>	May 13, 2022	<b>120 Days</b>	September 6, 2022
<b>Location of Subject</b>	2344 Nanticoke Street			
<b>Applicant</b>	Three Trees Community Centre	<b>Contact</b>		
<b>Agent</b>	Anna Buchanon	<b>Contact</b>		
<b>Legal Description</b>	REARRANGEMENT OF BLOCK 1 HARBOR VIEW DIVISION LOTS 8, 9 AND 10			
<b>Site Visit Date</b>	May 27, 2022	<b>Sign Notice Date</b>	May 31, 2022	
<b>Neighbor Letter Date</b>	May 19, 2022	<b>Number of Letters Sent</b>	38	

**Proposal**

Applicant is requesting a special use permit for a Daycare Facility for 52 children for daytime and 20 children for evening care.

**Recommendation**

Staff are recommending approval with conditions.

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	R-1	Former Church building	Traditional Neighborhood
<b>North</b>	R-1	Residential	Traditional Neighborhood
<b>South</b>	R-1	Residential	Traditional Neighborhood
<b>East</b>	R-1	Residential	Traditional Neighborhood
<b>West</b>	MU-N	Commercial	Neighborhood Commercial

**Summary of Code Requirements**

UDC Section 50-37.10. Special Use Permits: Planning Commission shall approve the planning review or approve it with modifications, if it is determined that the application complies with all applicable provisions of this Chapter.

- 1) The application is consistent with the Comprehensive Land Use;
- 2) The application complies with all applicable provisions of this Chapter; including without limitations to any use-specific standards applicable to the proposed use, development or redevelopment, and is consistent with any approved district plan for the area.
- 3) Without limiting the previous criteria, the Commission may deny any application that would result in a random pattern of development with little contiguity to existing or programmed development or would cause anticipated negative fiscal or environmental impacts on the community.

UDC Section 50-20.3.I. Daycare facility, small and large, and preschools. Must provide off-street parking spaces for pick-up

and drop-off, which must be clearly signed for pick-up and drop-off only, and shall not conflict with safe on-site pedestrian and vehicular movements.

### **Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):**

Governing Principle #8- Encourage mix of activities, uses, and densities. The daycare facility is located in a traditional residential neighborhood.

Governing Principle #11 - Include consideration for education systems in land use actions. The daycare facility enrolls preschool aged students.

Future Land Use- Traditional Neighborhood: Characterized by grid or connected street pattern, houses oriented with shorter dimension to the street and detached garages, some with alleys. Limited commercial, schools, churches, and home businesses. Parks and open space areas are scattered through or adjacent to the neighborhood. Includes many of Duluth's older neighborhoods, infill projects, neighborhood extensions, and new traditional neighborhood areas.

### **Review and Discussion Items**

The applicant proposes to operate a daycare facility within a 3,684 square foot church building at 2344 Nanticoke Street. The day care facility will use the entire building with the exception of the sanctuary for the small church congregation that will hold church services on Sunday. The daycare facility proposes to have an enrollment of up to 52 children during the daytime and 20 children during evening hours with hours of operation from 7:00am to 11:00pm, with 10 employees.

- 1) A daycare facility requires a special use permit to operate in an R-1 district. This use will not alter the essential character of the neighborhood, which includes a variety of uses including single-family homes, religious assembly and office uses.
- 2) Sec 50-20.3.I (Daycare facility, small and large, and preschools). Parents use the existing church parking lot for drop off and pick up. The building has two drop off points with vehicle traffic using a one-way route to enter and exit the site. Parents can walk their children into the building.
- 3) Sec 50-24 (Parking and Loading). Daycare facility use requires 1 space per 5 persons care. The daycare uses the existing church parking lot located on the west side of the building. The parking lot has ample space available to accommodate parking, drop off and pick up. All staff utilize the church parking lot to park their vehicles during operating hours.
- 4) Sec. 50-25 (Landscaping and Tree Preservation). No additional landscaping is required as this project is not increasing the floor space by 25%, nor is the building expanding to accommodate this program being housed in the existing church building.
- 5) Sec. 50-25.5 (Landscaping between differing land uses). Due to the potential for nighttime drops offs and pickups to increase glare from vehicle lights on neighboring properties to the north and south, applicant will provide sufficient screening and/or direct families with procedures to eliminate glare on these adjacent properties. Applicant will submit a plan in writing prior to receiving a building permit and will ensure glare mitigation is in place on an ongoing basis" – or something like that. The properties to the south and east are single family dwellings. Staff is recommending that a dense urban screening consisting of a privacy fence and/or planting of trees and shrubs be installed around all outdoor play areas to mitigate impacts on the adjacent residential properties.
- 6) Sec. 50-26 (Screening, Walls and Fences). The site plan does not show a dumpster on site. If the applicant does place a dumpster on site it shall meet the screening requirements for an dumpster enclosure of Section 50-26.3.C of the UDC.
- 7) Sec. 50-27 (Signs). Sign permits are required and will be reviewed and permitted in a separate process.
- 8) Sec. 50-28 (Stormwater Drainage and Erosion Control). The applicant is not proposing to add any impervious surface to the site.
- 9) Sec. 50-29 (Sustainability Standards). Not applicable to this project.
- 10) Sec. 50-30 (Building Design Standards). These requirements do not apply for this project.
- 11) Staff received one email (see attached). No City Departments comments were received at the time that this report was compiled.

**Staff Recommendation**

Based on the above findings, Staff recommends that Planning Commission approve the special use permit subject to the following conditions:

- 1) The daycare hours of operation shall be 7:00am to 11:00pm Monday through Friday.
- 2) Limited to 72 of children as stated above.
- 3) Approval of this SUP constitutes approval only for the proposed day care use for children; any other proposed uses for the building must meet all UDC criteria and receive any approvals necessary.
- 4) The applicant shall install a dense urban screen consisting of a privacy fence and/or planting of trees and shrubs around all outdoor play areas be installed to mitigate impacts on the adjacent residential properties.
- 5) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission review; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50.



PL 22-081  
Special Use Permit  
Day Care Facility

PC Packet 06-14-2022

Subject property

2344  
NANTICOKE ST

**R-1 (Residential  
Traditional)**

2340  
NANTICOKE ST

Chambersburg Ave

2334 NANTICOKE ST

2626  
PIEDMONT  
AVE

2622  
PIEDMONT  
AVE 60

2618  
PIEDMONT  
Feet

0 15 30



Page 88 of 157

Aerial photography flown 2016

Prepared by: City of Duluth Community Planning Division, May 3, 2019, Source: City of Duluth,

**Legend**  
Zoning Boundaries

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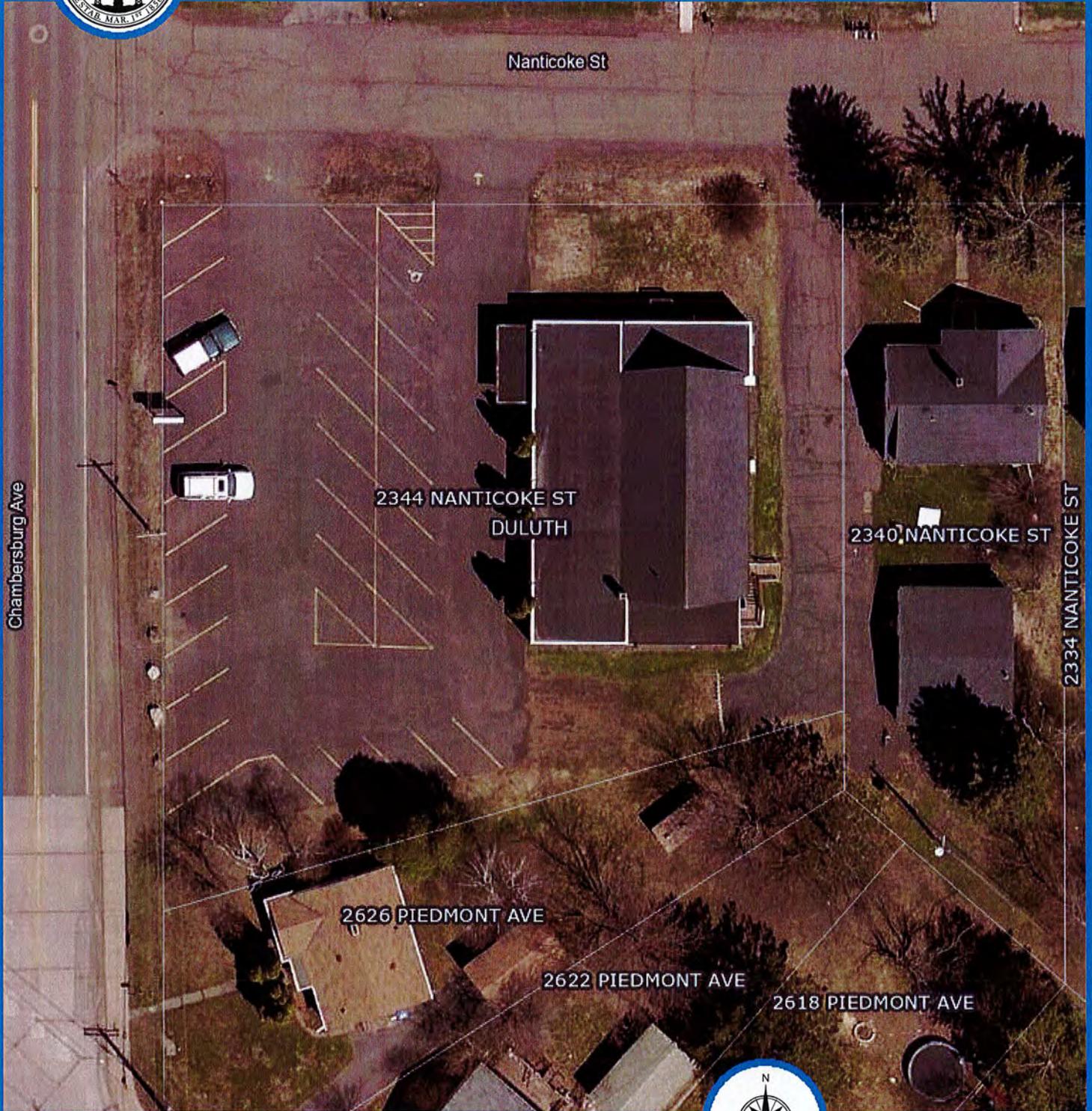


# County Land Explorer

St. Louis County, Minnesota



St. Louis County MN



Title...2344 Nanticoke

default author

Map created using County Land Explorer  
[www.stlouiscountymn.gov/explorer](http://www.stlouiscountymn.gov/explorer)



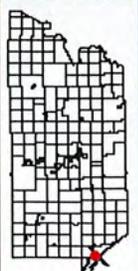
0 0.0035 0.007 0.014 0.021  
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County Land Explorer  
St. Louis County [www.stlouiscountymn.gov/explorer](http://www.stlouiscountymn.gov/explorer) Minnesota

### Disclaimer

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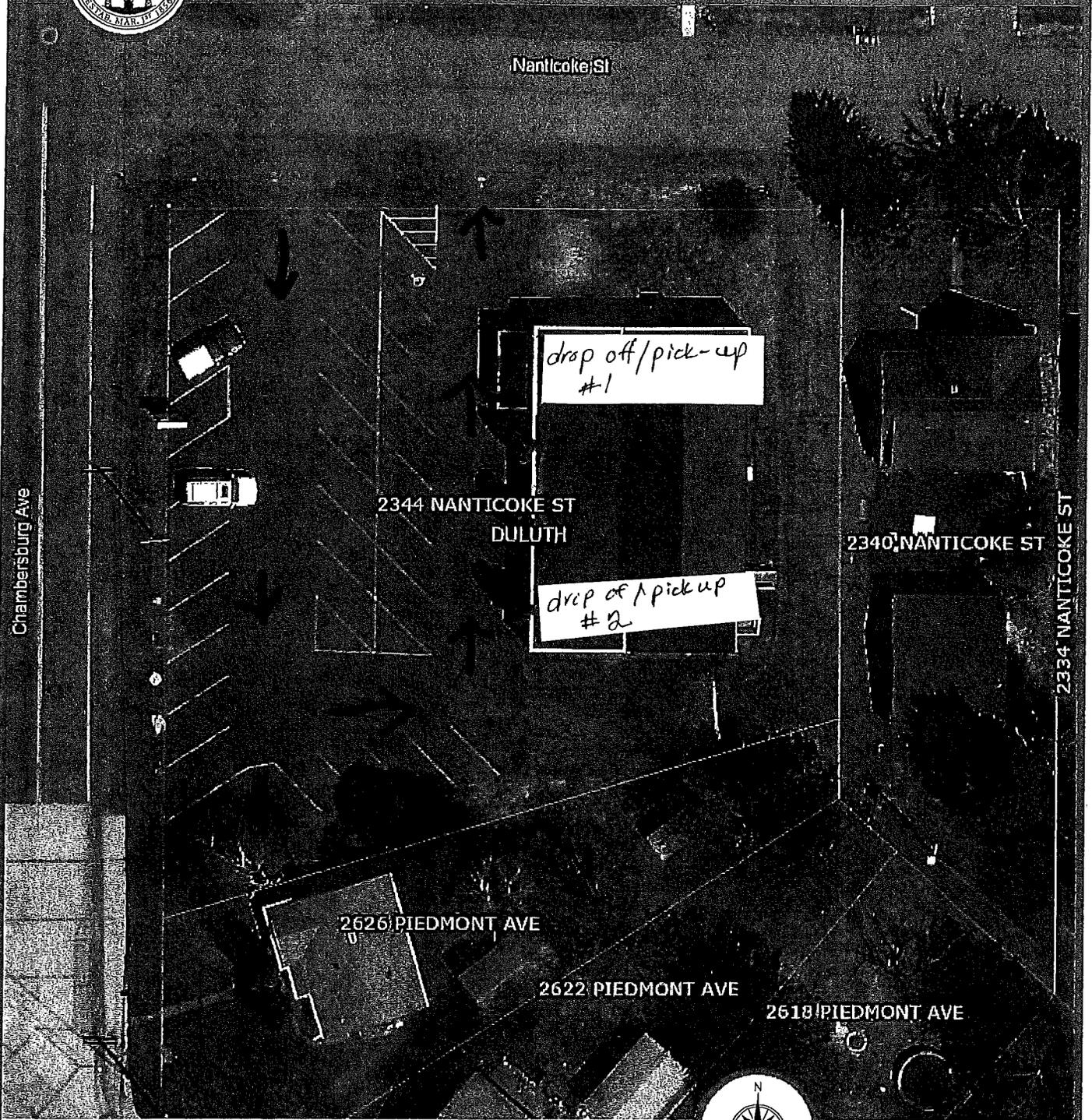
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# County Land Explorer

St. Louis County, Minnesota



Title...2344 Nanticoke

default author



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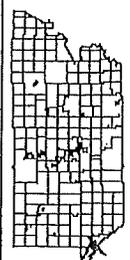
County Land Explorer  
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Sent: Tuesday, May 31, 2022 12:21 PM

To: planning <planning@DuluthMN.gov>

Subject: 2344 Nanticoke Street

To whom it may concern:

My name is Caitlyn, and I own a house that is directly behind this building. I believe such a business at this address would cause a major noise disturbance on top of the cars going by on Piedmont. The traffic and amount of parking would also be an issue. There is also the possibility of kids running around in my backyard and my fellow neighbors' yards and backyards. I do NOT want any of these things to occur. Please reconsider the impact this will have on the already busy residential areas. We do not need yet another business like this in this area. Piedmont Elementary has already made traffic around this area busier. No more. At least when this property was a church, it was just usually Sundays when there was a disturbance (and not much of one, I might add).

Please do not put a daycare at this address.

Thank you,

Caitlyn M.



**Planning & Development Division**  
*Planning & Economic Development Department*

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 Duluth, Minnesota 55802

218-730-5580

planning@duluthmn.gov

<b>File Number</b>	PL 22-089	<b>Contact</b>	clee@duluthmn.gov	
<b>Type</b>	Variance – Maximum Parking	<b>Planning Commission Date</b>	June 14, 2022	
<b>Deadline for Action</b>	<b>Application Date</b>	May 18, 2022	<b>60 Days</b>	July 17, 2022
	<b>Date Extension Letter Mailed</b>	May 18, 2022	<b>120 Days</b>	September 15, 2022
<b>Location of Subject</b>	2327 Mountain Shadow Drive			
<b>Applicant</b>	PF Baseline Fitness	<b>Contact</b>	Scott Bernstein	
<b>Agent</b>	Todd Reyling	<b>Contact</b>		
<b>Legal Description</b>	Lots 2 & 3, Block 1, Village Mall			
<b>Site Visit Date</b>	April 27, 2022	<b>Sign Notice Date</b>	May 31, 2022	
<b>Neighbor Letter Date</b>	April 25, 2022	<b>Number of Letters Sent</b>	30	

**Proposal**

A variance to maximum parking requirements to allow 178 parking spaces for a 22,000 sq. ft. fitness center.

**Recommended Action:** Approve with conditions or modifications.

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	MU-C	Personal Services	Large Scale Commercial
<b>North</b>	MU-C	Commercial	Large-Scale Commercial
<b>South</b>	MU-C	Retail/Commercial	Large Scale Commercial
<b>East</b>	MU-C	Large commercial site	Large Scale Commercial
<b>West</b>	MU-C	Retail/Commercial	Large Scale Commercial

**Summary of Code Requirements**

Sec. 50-24.4 – Maximum Parking Limits – No more than 150 percent of the minimum required number off-street parking spaces, excluding the adjustments allowed in 50-24.3, shall be provided.

Sec. 50-37.9.C – General Variance Criteria (paraphrased): Granting of variances of any kind is limited to situations where, due to characteristics of the applicant's property, enforcement of the ordinance would cause the landowner exceptional practical difficulties or undue hardship. The Planning Commission must find the following for a variance to be granted: a) That the landowner is proposing to use the property in a reasonable manner, b) that the need for relief from the normal regulations is due to circumstances unique to the property and not caused by the landowner, c) that granting the variance will not alter the essential character of the area, d) that granting the variance is consistent with the intent of the UDC and Comprehensive Plan.

Section 50-37.9.G.3 – Variances from the maximum parking limits provided in 50-24.4 shall not exceed 200 percent of the minimum requirement provided in Table 50-24.1. In addition to meeting the general variance criteria in 50-37.9C, a parking study that provides justification for the number of off-street parking spaces proposed is required. It must include estimates of parking demand based on recommendations of the Institute of Traffic Engineers (ITE), or other acceptable estimates as approved by the City Engineer and should include other reliable data collected from uses or combinations of uses that are the same as or comparable with the proposed use. Comparability will be determined by density, scale, bulk, area, type of activity, and location. The study must document the source of data used to develop the recommendations.

**Comprehensive Plan Governing Principles and/or Policies and Current History (if applicable):**

**Governing Principle #8** – Encourage mix of activities, uses, and densities. A mix of uses and activities also allows for shared parking and for people to visit multiple destinations with one car trip. This project is located in proximity to retail uses and large multifamily buildings (Capstone).

Zoning – MU-C District: Established to provide for community and regional commercial development along commercial corridors and nodal centers. Intended non-residential uses include retail, lodging, service, and recreational facilities needed to support the community and region. Development should facilitate pedestrian connections between residential and non-residential uses.

Future Land Use – Large-Scale Commercial: Mall, shopping center, and big box retail development, with associated surrounding retail and service uses, but only ancillary office uses. Oriented primarily to the motorist, with planned internal circulation patterns while still accommodating pedestrian movement. Requires access to regional transportation routes. May include regional green infrastructure for watershed protection.

**History:** Site is currently Country Lanes North operating as an indoor and outdoor entertainment facility. This structure will be demolished and the fitness center will be built on the cleared site. The planning review for Planet Fitness was approved in May 2022 via PL 22-064.

**Review and Discussion Items**

Staff finds that:

1. The applicant is proposing to construct a Planet Fitness fitness center in a 22,300 sq. ft. standalone building.
2. Minimum parking for other commercial uses can be determined by the Land Use Supervisor. The LUS has determined that for this use, 4 spaces per 1,000 sq. ft. of building area is appropriate. This use would require 89 parking spaces for the proposed 22,500 sq. ft. building. Maximum parking without a variance is 134 spaces.
3. According to the developer, Planet Fitness needs the ability to park 180 clients and staff during peak hours and days. Planet Fitness’ experience nationally is that 190-200 or more parking spaces are needed for clients. The developer’s request is a variance to allow 178 parking spaces, which is 200% of the maximum.
4. The parking variance criteria in Sec. 50-37.9.G.3 limits the maximum variance the Planning Commission can approve to 200% of the minimum parking, or 178 parking spaces.
5. In evaluation of the Variance General Criteria, staff finds the applicant is proposing a reasonable use of the site with an appropriately-scaled commercial building for an MU-C zone, and the proposal variance is reasonable at 178 parking spaces, but is not reasonable at 189 parking spaces due to the 200% maximum variance allowed by the UDC.
6. The developer has demonstrated that there is space on their site to locate the requested parking while meeting landscaping and basic storm water requirements. This level of parking would not be out of character with the large parking lots in the mall area that were created before the UDC parking maximum standards were adopted.
7. The UDC parking maximum was established to reduce the amount of impervious surfaces and the associated environmental impacts as well as to incentivize creative site designs that encourage alternative transportation usage.
8. No comments from citizens, City staff, or any other entity were received regarding the application.
9. Per UDC Section 50-37.1.N. approved variances lapse if the project or activity authorized by the permit or variance is not begun within one-year.

**Staff Recommendation:**

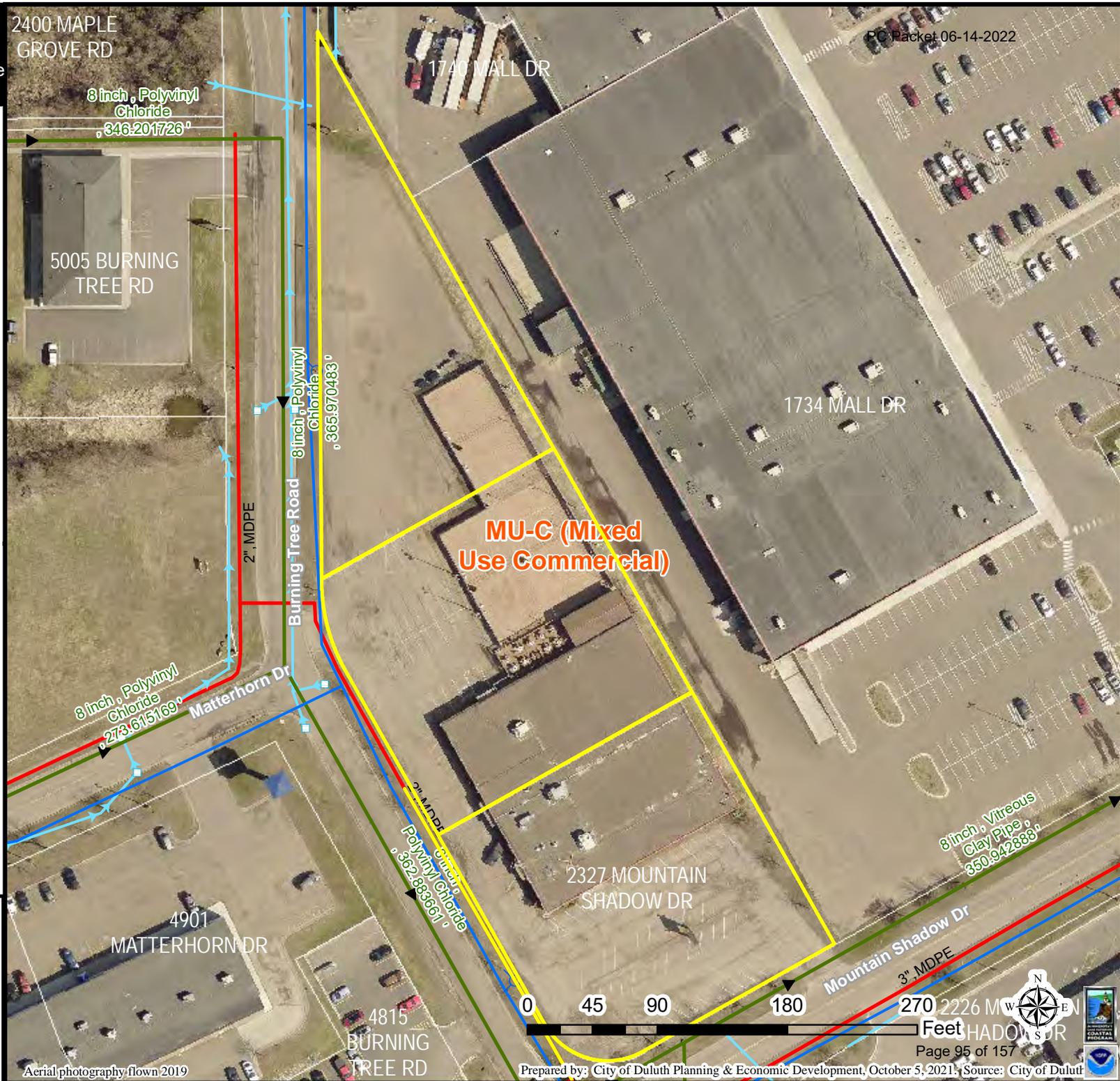
Based on the above findings, staff recommends that Planning Commission approve a variance to allow 178 parking spaces with the following conditions:

- 1) The parking lot shall be constructed as shown in the site plan dated April 4, 2022 with 178 parking stalls.
- 2) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission; however, no such administration approval shall constitute a variance from the provisions of Chapter 50.



**Legend**

- Gas Main
- Water Main
- Hydrant
- Sanitary Sewer Mains**
- CITY OF DULUTH
- WLSSD; PRIVATE
- Sanitary Sewer Forced Main
- Storage Basin
- Pump Station
- Storm Sewer Mains**
- Storm Sewer Pipe
- Storm Sewer Catch Basin
- Zoning Boundaries



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**Planning & Development Division**  
 Planning & Economic Development Department

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planning@duluthmn.gov

## Variance Application Supplemental Form

In order to submit a complete variance application, please explain how your request meets all of the below variance criteria. This is information that is required by the zoning code and will be shared with the Planning Commission during their review. You may fill out this form, or attach your information in a separate letter. This information will be shared with the Planning Commission in order to help them determine the appropriateness of the variance application and request.

**List the UDC Section you are seeking relief from** (example: "50-14.5 – front yard setback in an R-1"):

50-24.2 required parking spaces

---

**1. Please explain how the exceptional narrowness, shallowness or shape of the property, or exceptional topographic or other conditions related to the property, would result in practical difficulties under strict application of the requirements of the UDC:**

The property dimensions do not apply to this variance request.

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**2. Please explain how the special circumstances or conditions that create the need for relief is due to circumstances unique to the property, and were NOT created by the property owner or the property owners' predecessors-in-interest:**

This variance request is regarding the intended use of the property. Fitness Centers especially

Planet Fitness is a heavy parker during peak hours. The property owner has not created any unique

circumstances

---

**3. Please explain the special circumstances or conditions applying to the building or land in question are peculiar to this property or immediately adjoining properties, and do not apply generally to other land or buildings in the vicinity:**

Planet Fitness is a heavy parking use during peak hours. We are requesting additional parking per the code

for, 1. the ease of traffic through the parking lot and to keep the local roads free of traffic, 2. so our

customers are not parking on adjoining properties parking lots due to insufficient parking on the Planet

Fitness parking lot.

---

**4. Please explain how the application proposes to use the property in a reasonable manner, which would not be permitted by this code except for a variance:**

The City code currently has no requirements for a Fitness Center use. After discussing with the Planning Department, the closest use is Commercial use which allows only 4 spaces per 1,000sf of gross floor area. These facilities normally follow the use of a gym or event center. Typically a Planet Fitness has roughly 4-6k members per club location requiring much more parking than 4 spaces per 1,000. We would like to use the 200% parking as allowed by the City's parking variance.

**5. Please explain how that if the variance is granted it will not impair an adequate supply of light and air to adjacent property, or unreasonably increase the congestion in public streets or the danger of fire or imperil the public safety, or unreasonably diminish or impair established property values within the surrounding areas, or in any other respect impair the health, safety or public welfare of the inhabitants of the city:**

By allowing this variance, vehicles would be able to move around the site easier than a restricted parking lot with less parking. More parking would be available to a heavy user such as a Planet Fitness and allow vehicles to turn more freely off of Mountain Shadow Drive and Burning Tree Road.

**6 Please explain how, if the variance is granted, it will not substantially impair the intent of zoning code and the official zoning map, and will not alter the essential character of the neighborhood:**

We don't believe that allowing additional parking spaces would affect the current zoning or alter the character of the existing neighborhood.



**Does your variance request need to meet any of the specific criteria in UDC Section 50-37.9, subsections D through M (E. Unsewered Areas, F. Two Family Dwellings in R-1, G. Parking Regulations, H. Reduce Setbacks, I. MU-C District, J. Airport Overlay, K. Flood Plain Regulations, L. Shorelands, or M. Non-Conforming Buildings)?** Yes  No

Discuss what subsections are applicable and how this request meets those: \_\_\_\_\_  
It appears that Section G. refers to residential districts. Also, Section I does not apply, we are meeting all landscaping and buffering requirements.

Note: We have included check-in data for other Planet Fitness clubs in the surrounding market.

# January 2022 West St. Paul Check Ins

## Week One

	1	2	3	4	5	6	7
0	5	1	0	1	1	1	10
1	0	0	2	1	2	1	1
2	2	0	0	2	1	0	1
3	1	1	1	2	2	2	1
4	1	4	18	14	12	12	5
5	3	27	5	25	26	17	9
6	10	39	26	26	30	28	21
7	5	22	18	16	15	14	31
8	22	42	30	18	24	23	55
9	32	36	31	15	22	19	35
10	26	26	21	27	16	20	43
11	26	38	36	21	30	32	47
12	17	34	24	22	23	19	35
13	33	31	24	33	22	33	4
14	22	30	48	29	30	24	28
15	43	62	41	38	46	30	33
16	26	72	72	39	65	1	31
17	18	68	88	36	61	28	35
18	19	60	52	59	23	33	28
19	35	56	49	45	40	43	34
20	32	44	41	46	37	39	32
21	20	26	31	30	27	38	27
22	13	22	17	16	17	10	13
23	6	12	7	6	8	12	14

## Week Two

	1	2	3	4	5	6	7
0	9	4	3	2	5	3	5
1	7	3	0	5	3	1	5
2	1	3	0	1	0	1	2
3	0	9	0	5	4	6	1
4	3	15	10	13	16	7	3
5	7	23	43	37	32	25	8
6	5	23	34	36	31	32	15
7	14	22	37	17	18	16	23
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14	27	45	39	42	28	21	34
15	32	51	58	68	48	33	36
16	33	78	72	91	80	44	21
17	26	82	70	67	77	43	39
18	2	62	65	69	60	43	19
19	0	42	50	56	58	41	26
20	3	47	69	46	47	35	21
21	1	45	31	48	30	30	10
22	8	18	19	4	16	20	14
23	8	10	10	9	12	10	8

## Week Three

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3	3	5	3	5	0	3	3
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9	43	36	28	34	30	19	54
10	29	49	30	27	29	21	50
11	26	44	27	41	17	24	45
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13	17	38	16	30	33	28	45
14	28	54	42	44	36	31	23
15	30	59	59	50	54	34	35
16	25	55	78	92	91	55	28
17	35	79	90	74	63	52	22
18	29	62	77	62	59	39	18
19	41	45	56	71	51	40	23
20	31	48	36	28	49	31	23
21	11	53	35	45	32	20	21
22	10	16	10	18	7	27	14
23	11	10	10	9	9	6	3

## Week Four

	1	2	3	4	5	6	7
0	6	8	5	4	6	10	5
1	2	4	2	6	3	3	11
2	6	2	0	5	0	0	1
3	4	4	6	2	4	5	2
4	1	15	13	16	17	13	4
5	6	28	25	23	27	28	5
6	1	27	28	25	25	33	14
7	17	11	24	28	34	13	30
8	20	22	35	35	28	18	41
9	39	27	16	47	26	26	55
10	29	30	13	28	29	33	55
11	30	29	37	36	30	19	44
12	38	38	44	40	29	35	42
13	35	33	30	30	32	29	36
14	46	47	33	40	33	36	44
15	27	59	38	54	50	47	18
16	27	77	95	81	64	48	36
17	32	56	83	77	54	57	26
18	27	73	76	61	86	43	27
19	42	60	64	76	54	49	24
20	35	62	47	38	46	28	36
21	19	47	28	44	25	32	32
22	15	16	16	20	17	35	16
23	6	8	5	13	10	11	9

# January 2022 Crystal Check Ins

## Week One

	1	2	3	4	5	6	7
0	5	5	4	4	7	2	8
1	1	1	2	4	1	1	4
2	1	2	1	2	2	3	1
3	0	2	2	4	1	2	1
4	0	12	14	6	5	6	1
5	5	20	26	20	24	15	4
6	10	26	35	26	26	14	18
7	10	27	27	24	23	17	23
8	22	27	25	19	23	22	34
9	36	41	24	22	37	31	49
10	37	45	47	26	26	33	35
11	36	42	38	27	29	28	53
12	34	43	38	29	38	36	41
13	46	32	22	25	27	26	24
14	47	42	42	23	32	37	22
15	29	50	69	49	39	43	33
16	42	97	86	58	74	61	22
17	33	50	98	68	65	48	28
18	26	54	63	50	44	34	29
19	33	50	51	40	55	26	14
20	20	3	30	53	29	35	22
21	20	3	38	27	20	24	16
22	8	2	16	22	10	28	18
23	4	12	14	11	9	19	11

## Week Two

	1	2	3	4	5	6	7
0	9	1	7	5	6	6	6
1	2	1	5	1	2	2	3
2	2	1	0	2	3	4	1
3	3	5	3	4	6	2	2
4	2	12	10	15	11	10	2
5	5	16	22	23	24	19	8
6	9	22	30	27	37	34	17
7	14	0	25	26	23	22	19
8	21	11	29	29	21	15	24
9	42	27	50	42	44	21	59
10	36	35	34	34	27	25	36
11	42	29	36	36	44	35	58
12	37	33	30	47	44	24	52
13	30	41	35	19	40	21	42
14	19	37	54	53	38	16	32
15	26	60	50	51	39	25	29
16	40	68	85	81	45	49	39
17	24	89	91	82	76	33	33
18	40	61	82	54	67	38	31
19	23	42	64	60	42	21	25
20	38	40	49	40	39	35	29
21	22	37	39	40	31	19	41
22	18	19	26	22	23	17	22
23	11	5	5	12	8	19	8

## Week Three

	1	2	3	4	5	6	7
0	6	2	4	3	4	3	11
1	5	2	2	5	1	3	2
2	0	0	1	2	1	1	2
3	0	2	3	6	1	1	3
4	4	10	18	13	7	12	8
5	3	18	25	14	17	8	3
6	13	32	40	37	34	33	8
7	18	27	29	22	19	18	17
8	20	30	26	20	25	26	34
9	46	43	34	27	24	29	38
10	43	60	29	34	35	29	42
11	37	51	40	35	29	39	65
12	39	53	34	24	33	32	47
13	31	56	34	28	26	28	29
14	40	46	36	51	36	32	49
15	30	53	70	71	64	46	30
16	24	71	60	76	70	49	37
17	30	91	104	94	70	47	22
18	28	69	63	62	52	33	25
19	26	60	44	61	58	41	22
20	27	46	65	40	30	21	26
21	30	46	58	39	37	32	12
22	20	22	32	19	22	30	14
23	15	11	7	16	19	18	10

## Week Four

	1	2	3	4	5	6	7
0	4	3	5	5	9	4	7
1	1	2	3	3	3	2	2
2	0	4	0	1	0	4	4
3	0	3	2	3	3	0	3
4	0	10	7	12	14	4	0
5	0	10	17	13	17	16	10
6	0	37	34	33	38	37	11
7	12	21	24	31	21	17	23
8	33	15	23	21	14	23	29
9	23	24	34	31	29	23	43
10	40	31	30	23	23	28	42
11	45	37	39	30	32	36	41
12	56	35	37	41	37	36	25
13	31	29	26	23	24	24	29
14	34	42	35	43	33	41	28
15	29	55	43	62	66	42	29
16	28	65	88	86	77	55	32
17	38	92	86	92	67	46	27
18	16	65	63	63	61	41	25
19	20	61	53	63	40	34	24
20	19	49	54	41	57	26	32
21	21	34	52	41	33	28	19
22	16	34	24	31	26	20	19
23	7	8	10	6	11	12	11

# January 2022 Urbandale Check Ins

## Week One

	1	2	3	4	5	6	7
0	0	0	1	2	3	3	0
1	0	0	1	1	1	0	0
2	0	0	1	3	2	2	0
3	0	0	7	8	4	7	0
4	0	14	23	18	13	17	0
5	0	35	52	40	30	40	0
6	0	41	27	39	29	42	13
7	30	31	26	23	29	30	56
8	23	46	40	45	42	44	51
9	27	53	51	44	38	56	65
10	67	67	50	41	57	42	68
11	58	74	55	55	46	31	64
12	46	54	59	48	56	50	74
13	50	63	55	53	51	43	62
14	38	67	50	62	59	53	49
15	48	64	88	82	68	77	41
16	50	81	114	112	100	82	34
17	32	93	105	96	80	65	36
18	10	77	73	61	86	44	12
19	0	63	69	58	48	27	0
20	0	41	45	38	31	19	0
21	0	23	28	32	25	0	0
22	0	19	11	25	13	0	0
23	0	8	9	4	2	0	0

## Week Two

	1	2	3	4	5	6	7
0	0	0	4	4	3	4	0
1	0	0	2	3	3	1	0
2	0	0	3	3	2	2	0
3	0	0	4	6	7	4	0
4	0	11	23	16	23	21	0
5	0	49	56	47	45	34	0
6	0	40	36	48	34	29	0
7	47	39	28	33	33	26	7
8	33	48	40	37	41	20	18
9	54	49	40	39	48	38	22
10	60	58	45	46	48	44	27
11	61	64	63	47	42	46	44
12	46	52	46	45	37	52	34
13	52	45	48	44	38	39	33
14	62	54	57	62	43	33	44
15	52	85	75	90	54	38	42
16	48	139	88	94	86	34	37
17	57	109	108	82	89	20	30
18	25	89	89	80	56	15	12
19	1	73	65	48	47	11	2
20	0	50	51	53	38	2	0
21	0	33	31	17	35	0	0
22	0	9	7	18	28	0	0
23	0	11	4	8	6	0	0

## Week Three

	1	2	3	4	5	6	7
0	0	0	1	3	1	3	0
1	0	0	0	1	1	4	0
2	0	0	2	3	0	3	0
3	0	0	3	6	1	6	0
4	0	5	23	19	1	12	0
5	0	35	63	59	2	40	0
6	8	41	49	38	8	45	0
7	28	34	26	34	4	20	64
8	20	41	31	49	3	27	44
9	59	77	41	48	10	34	57
10	48	81	52	47	6	49	78
11	52	54	66	41	10	43	58
12	42	69	42	40	6	54	53
13	47	50	56	45	18	41	46
14	42	74	53	35	53	44	47
15	26	56	73	81	67	82	51
16	41	77	94	90	100	79	36
17	36	101	132	95	80	60	32
18	15	83	65	64	62	63	14
19	0	56	68	34	59	29	0
20	0	46	48	3	43	16	0
21	0	29	22	4	28	0	0
22	0	14	17	0	11	0	0
23	0	6	7	2	4	0	0

## Week Four

	1	2	3	4	5	6	7
0	0	0	6	7	5	8	0
1	0	0	0	3	8	5	0
2	0	0	2	6	0	1	0
3	0	0	7	5	5	5	0
4	0	1	18	22	16	21	0
5	0	48	55	56	39	43	0
6	7	56	55	44	52	53	1
7	29	38	28	33	30	26	63
8	28	33	36	46	43	52	52
9	67	52	42	52	43	29	86
10	45	54	34	51	34	13	81
11	56	47	43	57	61	2	53
12	48	45	58	50	36	22	55
13	52	48	47	41	38	8	41
14	44	47	38	43	45	9	47
15	60	83	86	82	74	7	46
16	44	100	110	116	87	30	47
17	38	99	107	93	99	65	34
18	14	90	76	81	77	54	14
19	0	62	67	67	62	37	0
20	0	54	45	44	44	17	0
21	0	37	25	36	33	0	0
22	0	29	16	20	14	0	0
23	0	10	5	6	6	0	0

# January 2022 Moreno Valley Check Ins

## Week One

	1	2	3	4	5	6	7
0	4	10	24	20	11	13	20
1	5	5	11	10	15	14	3
2	1	6	9	11	7	7	6
3	2	10	12	13	11	13	12
4	8	20	15	20	20	18	7
5	15	19	32	26	28	26	10
6	19	28	24	23	21	23	14
7	19	40	36	24	33	34	41
8	32	28	28	28	24	29	32
9	26	44	44	28	33	38	31
10	27	49	58	41	35	41	51
11	40	41	46	49	40	38	37
12	32	65	45	44	39	31	33
13	27	44	46	43	43	37	35
14	32	44	49	40	44	41	29
15	35	58	55	60	45	46	25
16	29	59	60	55	50	30	27
17	38	73	76	80	60	45	33
18	23	88	84	61	70	44	33
19	28	75	75	65	56	61	29
20	20	73	42	39	53	43	35
21	26	37	44	40	24	35	19
22	23	29	40	31	33	18	19
23	18	22	25	28	27	14	10

## Week Two

	1	2	3	4	5	6	7
0	8	6	17	13	18	18	20
1	3	1	10	5	5	6	11
2	3	5	5	5	6	6	4
3	1	6	14	11	14	10	8
4	1	21	19	18	15	20	12
5	6	38	41	37	39	30	14
6	18	23	30	16	27	31	23
7	24	25	30	27	45	30	35
8	31	59	53	45	66	50	38
9	36	55	51	45	38	46	32
10	49	36	47	37	41	40	40
11	36	54	41	48	42	42	45
12	23	40	36	44	42	34	33
13	33	40	31	36	41	41	30
14	37	33	28	67	30	36	28
15	23	60	41	53	36	44	30
16	26	62	82	64	55	41	26
17	31	74	93	88	73	46	40
18	31	78	79	72	85	45	24
19	34	91	85	61	80	62	42
20	36	62	54	59	50	29	46
21	28	44	59	43	41	24	24
22	26	34	38	40	29	35	26
23	11	18	24	18	25	24	12

## Week Three

	1	2	3	4	5	6	7
0	7	12	15	23	20	13	18
1	8	2	10	12	10	9	11
2	4	2	4	4	6	6	4
3	6	9	9	11	6	13	10
4	7	18	18	26	19	22	10
5	12	23	39	38	35	37	16
6	16	23	33	40	32	40	25
7	41	33	38	33	32	33	41
8	45	37	54	67	54	42	39
9	34	60	32	40	44	51	55
10	29	34	49	40	38	31	34
11	33	50	60	46	47	44	43
12	31	49	45	25	30	36	49
13	23	57	49	42	44	32	38
14	22	46	43	67	46	29	27
15	27	66	47	55	40	36	21
16	20	49	69	61	56	49	21
17	27	65	93	82	68	59	30
18	36	73	68	109	74	51	33
19	30	73	77	87	66	49	47
20	37	58	62	95	75	47	29
21	43	35	50	49	39	26	37
22	26	34	17	44	42	45	28
23	13	20	23	24	23	18	16

## Week Four

	1	2	3	4	5	6	7
0	11	12	12	21	21	17	12
1	3	14	9	11	6	9	12
2	4	9	10	12	9	5	2
3	9	9	17	15	12	17	15
4	12	24	21	30	25	23	10
5	13	29	44	32	33	21	13
6	18	28	37	40	36	20	29
7	29	46	33	34	29	38	36
8	35	56	68	60	51	48	55
9	33	53	52	63	40	36	54
10	38	40	58	38	34	47	47
11	28	49	41	64	52	48	35
12	23	55	64	52	46	33	45
13	34	39	47	52	35	28	37
14	31	48	54	56	42	33	37
15	34	41	57	63	48	37	34
16	20	86	92	73	64	47	27
17	30	101	79	109	80	47	36
18	33	83	95	84	93	74	39
19	53	90	102	97	84	58	27
20	37	78	80	77	64	36	29
21	35	58	54	40	61	33	36
22	33	39	33	37	31	39	33
23	17	0	37	25	21	31	26

**GENERAL SITE NOTES:**

ALL CONSTRUCTION SHALL BE PERFORMED IN ACCORDANCE WITH THE LATEST CITY OF DULUTH, ST. LOUIS COUNTY AND THE MINNESOTA DEPARTMENT OF TRANSPORTATION CODES, STANDARDS AND SPECIFICATIONS.

ANY CITY OF DULUTH INFRASTRUCTURE (ABOVE OR BELOW GRADE, VISIBLE OR NOT) OR PROPERTY DAMAGED AS A RESULT OF CONSTRUCTION SHALL BE REPAIRED BY THE CONTRACTOR TO THE SATISFACTION OF THE CITY.

ALL CONSTRUCTION SHALL CONFORM TO THE APPLICABLE LOCAL, STATE, AND FEDERAL CODE REQUIREMENTS. WHEN CODES ARE IN CONFLICT, THE MORE STRINGENT SHALL APPLY.

ALL SIGNAGE AND PAVEMENT MARKINGS SHALL COMPLY WITH THE LATEST EDITION OF THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD), OR AS OTHERWISE SPECIFIED. INSTALLATION OF ALL SIGNS SHALL BE GOVERNED BY LOCAL CODES.

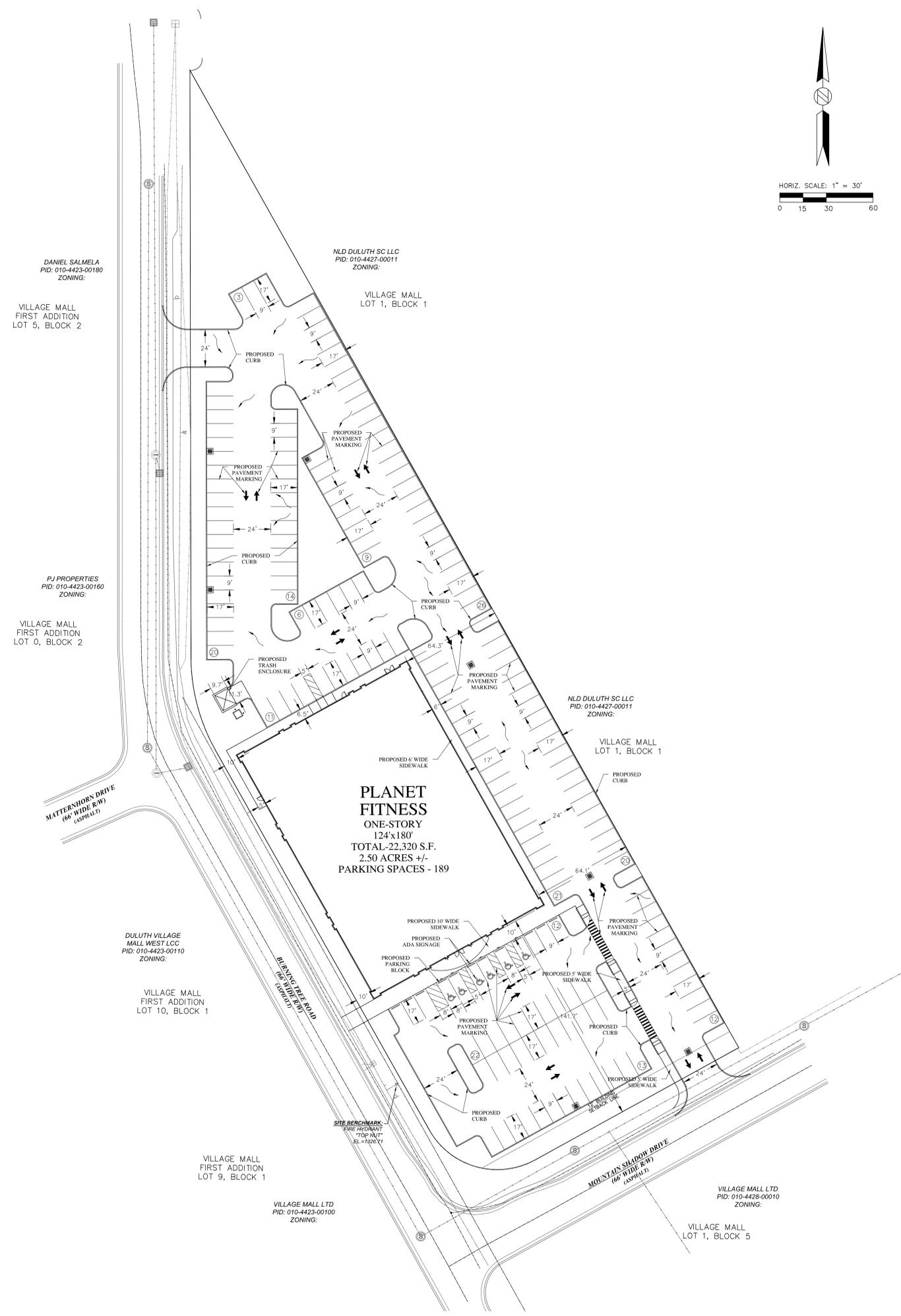
THE CONTRACTOR IS RESPONSIBLE TO HAVE ALL EXISTING UTILITIES LOCATED AND PROTECTED DURING CONSTRUCTION. THE CONTRACTOR SHALL NOTIFY THE UTILITY PROTECTION CENTER AT LEAST THREE (3) DAYS PRIOR TO ANY SITE WORK FOR IDENTIFICATION OF EXISTING UTILITIES.

THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS AT THE PROJECT SITE BEFORE BEGINNING CONSTRUCTION.

DIRECTION OF OVERLAND FLOW PATH.

**TRAFFIC NOTE:**

THE PROPOSED USE WILL NOT EXCEED 100 TRIPS PER HOUR OR 1,000 TRIPS PER DAY.



Architect:

**MT STUDIO**  
210 South Market St., Suite B  
Troy, OH 45373  
p 937.760.3884  
mtwiss@gomtstudio.com

Civil Engineer:

**RDC**  
REYLING DESIGN & CONSULTING  
4516 Boardwalk | Smithton, IL 62285  
reylingdc@gmail.com

RDC Project No. 22-104

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULUTH LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

SIGNATURE:

NAME: TODD JEFFREY REYLING  
DATE: 04.05.2022 LICENSE NUMBER: 50973

ENGINEER OF RECORD:  
Todd J. Reyling, PE  
Minnesota PE 50973



New Ground Up Building for:

**PLANET FITNESS**  
2327 Mountain Shadow Drive  
Duluth, MN 55811  
St. Louis County, Minnesota  
MTSTUDIO PROJECT NUMBER:

ISSUED / REVISED	DATE
ISSUED TO CITY	04.05.2022

Site Plan

**C2.0**

Page 102 of 157







**Planning & Development Division**  
 Planning & Economic Development Department

Room 160  
 411 West First Street  
 Duluth, Minnesota 55802

218-730-5580  
 planning@duluthmn.gov

<b>File Number</b>	PL 22-045	<b>Contact</b>	John Kelley, <a href="mailto:jkelly@duluthmn.gov">jkelly@duluthmn.gov</a>	
<b>Type</b>	HE-O Planning Review	<b>Planning Commission Date</b>		April 12, 2022
<b>Deadline for Action</b>	<b>Application Date</b>	March 14, 2022	<b>60 Days</b>	June 13, 2022
	<b>Date Extension Letter Mailed</b>	March 16, 2022	<b>120 Days</b>	July 12, 2022
<b>Location of Subject</b>	1303 West Arrowhead Road			
<b>Applicant</b>	1303, LLC	<b>Contact</b>	Alex Bushey	
<b>Agent</b>	Arola Architecture	<b>Contact</b>	Ryan Arola	
<b>Legal Description</b>	010-1560-02210			
<b>Site Visit Date</b>	April 1, 2022	<b>Sign Notice Date</b>		March 29, 2022
<b>Neighbor Letter Date</b>	March 21, 2022	<b>Number of Letters Sent</b>		29

**Proposal**

Applicant proposes to construct a 3,500 sq. ft. office/restaurant building and outdoor dining area in the Higher Education Overlay (HE-O) with associated parking, landscaping, lighting, and connectivity located to adjacent to Arrowhead Road and Dodge Avenue.

**Recommendation**

Staff recommends approval, subject to conditions.

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	MU-N	Residential	Urban Residential
<b>North</b>	R-1	Residential	Urban Residential
<b>South</b>	MU-N	Commercial	Neighborhood Mixed Use
<b>East</b>	R-1	Residential	Traditional Neighborhood
<b>West</b>	MU-N	Commercial/Office	Urban Residential

**Summary of Code Requirements**

50-18.5 Higher Education Overlay – Planning review by the Planning Commission is required for most development or redevelopment in areas zoned R-2 or MU-N.

50-18.1 Shoreland, Flood Plains, Wetlands, Stormwater.

50-23 Connectivity and Circulation – Focuses on pedestrian and bicycle accommodations.

50-24 Parking and Loading – Addresses required parking spaces, loading docks, and snow storage.

50-25 Landscaping and Tree Preservation – Landscaping requirements and tree preservation

50-26 Screening, Walls, and Fences – Screening of equipment, loading areas, etc., plus fences & retaining walls.

50-29 Sustainability Standards – Sustainability point system for new development.

50-30 Design Standards – Building standards for multi-family, commercial, institutional, and industrial buildings.

50-31 Exterior Lighting – Directs the minimum and maximum illumination values and lighting fixtures for a site.

50-37.11 Planning Review – Planning Commission shall approve the Planning Review or approve it with modifications, if it is determined that the application complies with all applicable provisions of this Chapter.

**Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):**

Governing Principle #1 – Reuse previously developed lands.

Economic Development Policy #3: Priority will be given to investment that reuses previously developed lands and limits increase in utility operation or maintenance costs.

Zoning – MU-N District: Established to provide for community and regional commercial development along commercial corridors and nodal centers. Intended non-residential uses include retail, lodging, service, and recreational facilities needed to support the community and region. Development should facilitate pedestrian connections between residential and non-residential uses.

HE-O: The purpose of the overlay is to minimize the impacts of potential student use on adjacent residential neighborhoods and to encourage the development of pedestrian friendly neighborhood destinations near the UMD (University of Minnesota-Duluth) and St. Scholastica campuses.

Future Land Use – Urban Residential: Greatest variety of residential building types, medium to high densities. Applicable to larger infill areas close to downtown, entertainment or activity centers, and waterfront residential areas. May include student housing areas, live/work units, and limited neighborhood retail. Connected or adjacent to parks and open space.

**History:** Site was zoned R-2 prior to 2018 (PL 18-068) when it was rezoned to MU-N.

**Review and Discussion Items:**

Staff finds that:

- 1) 50-18.5 (Higher Education Overlay Planning Review) – The applicant is proposing to construct an approximate 3,500 square foot commercial/office building along West Arrowhead Road and Dodge Avenue. The property is zoned Mixed Use Neighborhood (MU-N) but is within the Higher Education Overlay (HE-O) district, which requires a planning review by the planning commission. This overlay district has additional development standards to the underlying zoning requirements.
- 2) 50-18.5.C (HE-O Development Standards) – This is a commercial development, which according to the HE-O is required to be concentrated on a major road. The building is located adjacent to Arrowhead Road, which is a major road; while Dodge Street is used for ingress and egress, this is necessary for traffic safety, and traffic for this development will not significantly impact neighborhood streets. The HE-O requires primary buildings be constructed to a build-to zone of five feet to 20 feet along a primary street such as West Arrowhead Road. The proposed building meets the 20 foot required build-to zone.

The site plan shows a sidewalk connection along the south end of building to the existing sidewalks along West Arrowhead Road. The Engineering Department is requiring sidewalk along the east property line along Dodge Avenue. The site plan depicts the required sidewalk.

- 3) The City Engineering Department had the following comments: Applicant to provide engineering with documentation regarding sight distances at Dodge and Arrowhead with their proposed landscaping; Add sidewalk on Dodge; There's a Mill & Overlay project planned for 2022 summer that may impact construction at this location; Be sure to get a driveway permit from Engineering.
- 4) The City Forester stated that the street trees (sugar maple) aren't the hardiest tree around Duluth so normal construction work without adequate protection around them will cause a significant decline in those trees. The Forester would like to see a more detailed replacement plan; the estimation of a tree with a mature canopy of 60-75' growing from a space the size of a single parking space seems a bit optimistic around here. The storm water engineer has not received a storm water plan to review.
- 5) Staff received one email (see attached) regarding the proposed development. Additional comments received will be forwarded to the Planning Commission.
- 6) Per UDC 50-37.1.N, an approved Planning Review will expire if the project or activity authorized is not begun within one year, which may be extended for one additional year at the discretion of the Land Use Supervisor.

#### **Staff Recommendation**

Based on the above findings, staff recommends that Planning Commission approve the Planning Review, subject to the following conditions:

- 1) The project be limited to, constructed, and maintained according to the construction and building plans submitted with this application titled "Commercial Building" by Arola Architecture Studios, LLC.
- 2) Prior to issuance of building permit, Applicant shall submit a financial security in the form of a cash escrow or Letter of Credit in the amount of 100% of the installed value of the landscaping to insure survivability of all required landscaping for at least one year after installation.
- 3) Applicant shall submit a tree inventory/replacement plan prior to the issuance of a building permit.
- 4) Applicant shall submit storm water management plans prior to issuance of building permit.
- 5) The final lighting plan shall be submitted and reviewed for approval in advance of building permit submittal, and shall be approved by the LUS.
- 6) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission; however, no such administrative approval shall constitute a variance from the provisions of UDC Chapter 50.
- 7) Per UDC 50-37.1.N, an approved Planning Review will expire if the project or activity authorized is not begun within one year, which may be extended for one additional year at the discretion of the Land Use Supervisor.



1303 West Arrowhead Road



**Legend**  
 Zoning Boundaries

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

Aerial photography flown 2016



[REDACTED]

Sent: Friday, March 25, 2022 6:05 PM

To: planning <[planning@DuluthMN.gov](mailto:planning@DuluthMN.gov)>

Subject: Re: special use permit 22-040

To Whom it May Concern at the Planning Comission:

Please reconsider placing a commercial building/restaurant at 1303 Arrowhead Road.

There is already a lack of safety making a left turn onto Dodge Ave from W Arrowhead Rd as well as making a turn from Dodge Ave onto Arrowhead Road in either direction. Traffic and pedestrian safety as well as the traffic back up from the Arrowhead and Kenwood intersection makes the intersection dangerous now. Especially as the sidewalk in front of the proposed restaurant is bus access sidewalk. It will make getting to public transit less safe if cars are turning left trying to beat oncoming traffic into the commercial building. Part of the draw of living on Woodrich Circle for my aging parents was the walk ability of the neighborhood which is already significantly impacted.

Mixed use neighborhoods should have more of a buffer between restaurant traffic and lights than the small area between the houses on Dodge and the proposed spot on Arrowhead.

There are noise, traffic, light pollution and safety issues with adding more and more non-residential businesses to this area before the expansion of the Kenwood shopping center is even complete.

Woodrich Circle was a quiet residential neighborhood with shopping close by. The mixed use of tearing down multiple homes and continuing to tear down more makes this area more commercial than residential.

As my parents are residents on Woodrich Circle I have taken their input as well as added my own concerns to this email.

Lorene Schwab

Donna and Tom Frisk



**Planning & Development Division**  
 Planning & Economic Development Department

Room 160  
 411 West First Street  
 Duluth, Minnesota 55802

218-730-5580  
 planning@duluthmn.gov

## MEMORANDUM

**DATE:** June 7, 2022  
**TO:** Planning Commission  
**FROM:** Steven Robertson, Senior Planner  
**RE:** Citizen Petition for An Environmental Assessment Worksheet (EAW) Related to a Potential Housing Development at Vassar Street

On May 16, 2022, the Minnesota Environmental Quality Board (EQB) notified the City of Duluth that a citizen petition for an Environmental Assessment Worksheet (EAW) had been submitted. The petition stated: the proposed project is a mixed use development with 400 units of market rate and “affordable housing” with 80,000 square feet of commercial development, on 37 acres of the Lester Park Golf Course, in the Lester River drainage basin at the eastern edge of Duluth and the international gateway to Duluth and the North Shore of Lake Superior.

According to Section 2-41 of the City Code, the planning commission shall serve as the responsible governmental unit and conduct environmental reviews pursuant to Minnesota Statutes Chapter 116D and the applicable state regulations.

The most recent residential EAW for residential development was for Kayak Bay (PL 17-085, 105,000 square feet of retail space, 175,000 square feet of office space, 540 units of attached dwellings, or 65 units of unattached dwellings (townhomes), and the most recent commercial/industrial EAW was for Essentia Vision Northland (PL 18-120, 920,000 square foot multi-story tower).

It is the Planning Commission’s task to review the submitted petition and the scope of the proposed project, and determine if there is a potential for significant environmental impacts, and determine if an EAW is required. When deciding whether a project has the potential for significant environmental effects, the following factors shall be considered: A. type, extent, and reversibility of environmental effects; B. cumulative potential effects; C. the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority; and D. the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer.

Existing regulatory and mitigation standards in the UDC include: floodplain standards; wetland avoidance, minimization, and replacement standards; shoreland setback standards; tree protection standards including replacement, setback standards for zoning districts, and stormwater management standards.

Based on the fact that a preliminary plat application has not been submitted for this project and there has been no formal, official, or specific project accepted for this site, it is the recommendation of City Staff that an EAW is not appropriate at this time and the petition should be denied.

***What is the purpose of the environmental review process?***

The Minnesota Environmental Policy Act of 1973 established a formal process for reviewing the environmental impacts of major development projects. The purpose of the review is to provide information to units of government on the environmental impacts of a project before approvals or necessary permits are issued. After projects are completed, unanticipated environmental consequences can be very costly to undo, and environmentally sensitive areas can be impossible to restore. Environmental review creates the opportunity to anticipate and correct these problems before projects are built. The process operates according to rules (legally binding regulations) adopted by the EQB, but it is carried out by a local governmental unit or state agency (which is termed the RGU, for Responsible Governmental Unit). The Duluth City Planning Commission is the RGU for the City of Duluth. The primary role of the EQB is to advise local units and state agencies on the proper procedures for environmental review.

***What is an Environmental Assessment Worksheet (EAW)?***

An EAW is a document designed to provide a brief analysis and overview of the potential environmental impacts for a specific project and to help the RGU determine whether an Environmental Impact Statement (EIS) is necessary. The EAW consists of a standard list of questions and is meant to set out the basic facts of the project's environmental impacts. The EAW is not meant to approve or disapprove a project, but is simply a source of information to guide other approvals and permitting decisions. The information in the EAW process has two functions: to determine whether an EIS is needed, and to indicate how the project can be modified to lessen its environmental impacts; such modifications may be imposed as permit conditions by regulatory agencies.

***What are significant environmental effects?***

In deciding whether a project has the potential for significant environmental effects, the RGU "shall compare the impacts that may reasonably be expected to occur from the project with the criteria in this rule," considering the following factors (part 4410.1700, subparts 6 and 7):

- A. Type, extent, and reversibility of environmental effects;
- B. Cumulative potential effects of related or anticipated future projects;
- C. The extent to which environmental effects are subject to mitigation by ongoing public regulatory authority; and
- D. The extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other Environmental Impact Statements.

***Can the RGU's decision be appealed?***

The decision of the RGU to prepare or not prepare an EAW can be appealed in the county district court where the project would take place. The appeal must be filed within 30 days of the date on which the RGU makes its decision. There is no administrative appeal of an RGU; the EQB has no jurisdiction to review an RGU's decision.

**Minnesota Environmental Quality Board**  
**520 Lafayette Road North**  
**Saint Paul, MN 55155**

VIA E-MAIL (cover letter & petition)

May 16, 2022

Adam Fulton  
Interim Director, Planning & Economic Development  
City of Duluth  
[afulton@duluthmn.gov](mailto:afulton@duluthmn.gov)

RE: Petition for an Environmental assessment worksheet for proposed mixed use development for 37 acres of Lake 9 of the Lester Park Golf Course

Dear Mr. Fulton,

The Environmental Quality Board (EQB) received a complete petition on May 16, 2022 requesting that an Environmental Assessment Worksheet (EAW) be prepared for the project described in the petition. When a petition is filed, [Minn. R. 4410.1100](#), Subp. 5 directs EQB to designate a Responsible Governmental Unit (RGU) pursuant to [Minn. R. 4410.0500](#). EQB determined the City of Duluth is the appropriate responsible governmental unit to decide the need for an EAW (Minn. R. 4410.0500, Subp. 3) because *"for any project of a type for which a mandatory category is listed in part [4410.4300](#), the RGU is the governmental unit specified by the mandatory category for projects of that type, unless the project will be carried out by a state agency"*.

The procedures to be followed in making the EAW decision are set forth in part Minn. R. 4410.1100.

1. Because a petition for an EAW has been filed that complies with the requirements of Minn. R. 4410.1100, a project may not be started and a final governmental decision may not be made to grant a permit, approve a project, or begin a project, until the petition for an EAW is dismissed. To start or begin a project includes taking any action or activity that directly alters the environment. It includes preparation of land or fabrication of facilities. It does not include surveying or mapping. See [Minn. R. 4410.3100](#), Subparts 1 and 2 for the prohibitions on final governmental decisions.
2. Please notify EQB staff as soon as possible if the City of Duluth determines the following conditions apply:
  - a. If the City of Duluth has already made its final decisions to grant all permits or approvals required from it to construct the project (Minn. R. 4410.0500); and/or
  - b. If the City of Duluth cannot act on a petition because no permit application has been filed, the application has been withdrawn, or the application has been denied. In those cases, the petition remains in effect for no more than one year from the date on which it was filed with the EQB. While the petition remains in effect, Minn. R. 4410.3100, Subparts 1 and 2, apply to any proposed project for which the nature and location is

Proposed mixed use development for 37 acres of Lake 9 of the Lester Park Golf Course

Page 2

May 16, 2022

substantially similar to the project identified in the petition (Minn. R. 4410.1100). As a courtesy, a notification of this determination will appear in the *EQB Monitor*.

3. Compare the project to the mandatory EAW and mandatory Environmental Impact Statement (EIS) categories listed in [Minn. R. 4410.4300](#) and [4410.4400](#).
4. Compare the project to the exemption categories in [Minn. R. 4410.4600](#); if the project should fall under any of these categories, the project is exempt from environmental review.
5. The standard for making the decision on the need for an EAW is provided in Minn. R. 4410.1100, subpart 6. When considering the evidence provided by the petitioners, proposers, or other persons, the City of Duluth must take into account the factors listed in [Minn. R. 4410.1700](#), subpart 7. The RGU shall maintain either as a separate document or contained within the records of the RGU, a record, including specific findings of fact, of its decision on the need for an EAW.
6. The City of Duluth has 15 days from the date of the receipt of the petition to decide on the need for an EAW; intermediate Saturdays, Sundays, and legal holidays shall be excluded in the counting of days (Minn. R. 4410.1100; [Minn. R. 4410.0200](#)).
  - a. If the decision must be made by a board, council, or other body which meets only on a periodic basis, the time period may be extended for an additional 15 days.
  - b. For all other RGUs, the EQB's chair shall extend the 15-day period by not more than 15 additional days upon request of the RGU.
7. Within 5 working days of a decision, the City of Duluth must provide written notification of the decision to the Proposer, the Petitioners' Representative, and the EQB as described in Minn. R. 4410.1100, subpart 8. Please provide written notification to these parties even in cases where an EAW or EIS will be prepared according to [Minn. R. 4410.1000](#), subparts 2 or 3, or the project is found to be exempt from environmental review.
  - a. To notify the EQB of the decision on the need for an EAW, please send an email to [EQB.Monitor@state.mn.us](mailto:EQB.Monitor@state.mn.us). The EQB requests that you include a copy of your record of decision in your email, including instances where environmental review is mandatory, voluntary, or exempt.

Proposed mixed use development for 37 acres of Lake 9 of the Lester Park Golf Course

Page 2

May 16, 2022

Notice of the petition and its assignment to your unit of government will be published in the *EQB Monitor* on May 17, 2022.

If you have any questions or need any assistance, please do not hesitate to contact us at [env.review@state.mn.us](mailto:env.review@state.mn.us) or 651-757-2873.

Sincerely,

*Katrina Hapka*

Katrina Hapka  
Environmental Review Program Coordinator  
Environmental Quality Board

cc: John M. Klaers, Petitioner's Representative  
Katie Pratt, EQB Executive Director  
Denise Wilson, Director of Environmental Review Program

**JOHN KLAERS PLANNING & DEVELOPMENT INC.**  
218 N. 12<sup>TH</sup> Ave W. Duluth, MN. 55806

May 13, 2022

Katrina Hapka  
Environmental Review Coordinator  
Minnesota Environmental Quality Board  
520 Lafayette Road  
St. Paul, MN, 55155

Dear Ms Hapka:

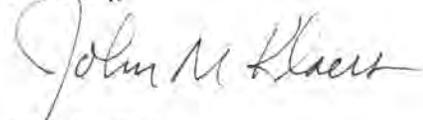
Attached for your review and information is the revised EAW Citizens Petition, prepared and resubmitted by Duluthian's for Preservation of Minnesota's Most Livable City.

Specifically the addresses for 124 signatories of the Petition are now compliant with MR 4400.1100 subpart 1. All residents and/or property owners supporting the petition now have a complete mailing address. We entered every mailing address into Google Maps to obtain and verify place of residence and zip code. It's not pretty, but compliant with the rules.

In addition to this electronic re-submittal we have forwarded the amended, original document returned to me on May 12, 2022, via US Mail.

Thank you for your assistance in this matter.

Sincerely,



John M. Klaers  
Petitioners Representative

**DULUTHIAN'S FOR PRESERVATION OF MINNESOTA'S MOST LIVABLE  
CITY P.O. BOX 16065 DULUTH, MN. 55816**

**PETITION TO MINNESOTA ENVIRONMENTAL EQUALITY BOARD TO  
REQUIRE THE CITY OF DULUTH TO PREPARE AN EAW ON THE MIXED  
USE DEVELOPMENT PROPOSED FOR 37 ACRES OF THE LAKE 9, OF THE  
LESTER PARK GOLF COURSE.**

**May 2022**

## **INFORMATION REQUIRED BY MN RULES, CHAPTER 4410.1100**

### **A. DESCRIPTION OF THE PROJECT**

The proposed project is a mixed use development with 400 units of market rate and “affordable housing” with 80,000 square feet of commercial development, on 37 acres of the Lester Park Golf Course, in the Lester River drainage basin at the eastern edge of Duluth and the international gateway to Duluth and the North Shore of Lake Superior.

### **B. PROPOSER OF THE PROJECT**

The City of Duluth has conveyed the property to the Duluth Economic Development Authority to execute a development agreement with a land development company by December 2022. Land development projects of this size and scope require a mandatory EAW under MN Rules.

The Duluth Parks and Recreation Commission, Planning Commission and City Council all approved the project and land conveyance to DEDA, with no consideration of the environmental, social, and economic impacts of the project.

### **C. NAME ADDRESS AND TELEPHONE NUMBER OF PETITIONERS REPRESENTATIVE**

John Klaers Planning & Development Inc. 218 N. 12<sup>th</sup> Ave West, Duluth, MN. 55806

Telephone: 218-727-5543

### **D. DESCRIPTION OF POTENTIAL ENVIRONMENTAL EFFECTS OF THE PROJECT**

The project will potentially impact water quality of the Lester River and Lake Superior. Project impacts are short term, long term and cumulative. The project will change forested, and grassed, open areas that buffers and protects water quality in the area, to impervious surfaces of mixed use, high density urban development. The project will require removal of grass and trees, and other vegetation covering highly erodable clay soils, on sloped areas. The project requires grading and removal of vegetation covering clay soils, excavation and removal of clay soils, fractured bedrock, and importation of granular soils.

The project will alter ground water flows and seepage through fractured bedrock that flows to the river and the Lake.

The project will cause soil erosion and sedimentation of spawning areas of the river and the lake. The project will generate heated storm water and snow melt runoff, contaminated by deicing chemicals and sand/grit, to the Lester River and Lake Superior threatening cold water fisheries.

The project is located in a land use district protected by the North Shore Management Plan (NSMP). The NSMP is administered by the North Shore Management Board. The NSMP was updated in June of 2016, and is intended to preserve the archaeological, historical, and architectural resources of the international gateway to Duluth and the North Shore. Duluth is not a participant in the NSMP or the Board but can impact both.

The NSMP Shoreland Alteration Goals include;

Maintain vegetation especially on steep slopes and bluffs.

Limited Vegetation Removal.

Require Storm Water management.

Maintain Character of the North Shore.

The project is incompatible with other low density, low environmental impact development in the area. The project is incompatible with nearby designated parks, trails, and recreation areas.

The project will generate noise, dust and odors during and after construction that will have short and long term cumulative impacts on the area its ecosystems and nearby resources.

The site is located in the International Flyway for migrating birds and raptors which extends from the Arctic Circle to the Gulf of Mexico. The project will create barriers and hazards to birds and raptors in the form of 80 to 100 foot high concrete and plate glass structures on the highest part of the site, 230 above the level of Lake Superior. The project will result in the loss of transitional habitat for migrating birds and raptors, and threatened and endangered species in range of the site.

The project will cause the loss of unique scenic views and vistas available to Duluth residents and visitors to the North Shore of Lake Superior. The project will generate air pollution from stationary and mobile sources. Vehicle traffic to and from the site traffic will generate dust, noise and odors with cumulative environmental impacts to sensitive receptors adjacent to the project site.

The projects impacts on public infrastructure and public services requires the city administration to eliminate the golf course in order to meet the projects demand for fire flows and daily potable water consumption.

The project's environmental, social and financial impacts will degrade the environment of a sensitive area and reduce recreation opportunities and quality of life city wide, and result in adverse impacts on the local economy.

## **E. MATERIAL EVIDENCE INDICATING THE NATURE AND LOCATION OF THE PROJECT WILL POTENTIALLY CAUSE SIGNIFICANT ENVIRONMENTAL EFFECTS**

The attached maps and air photo exhibits illustrate and support the following factual evidence:

### **1. Land Use Impacts.**

The project and the development site are not natural or logical extensions of urban density development in Duluth, or the Lakeside /Lester Park neighborhoods.

The project site is within the duly established shoreland zones of both the Lester River and Lake Superior.

The project site is a key part of the International Flyway for migrating birds and raptors that stretches from the Arctic Circle to the Gulf of Mexico.

The Lester River is the eastern edge of the geographic area covered by the North Shore Management Plan. A multi jurisdictional plan that seeks to preserve the natural environment and the historic character of Lake Superiors' Scenic North Shore, from Duluth to Silver Bay.

The area surrounding the project site is sparsely developed and the golf course is the perfect buffer and transitional, seasonal, recreational land use between the Lester River and urban density development of Duluth and the existing Lakeside/Lester Park neighborhoods. .

Duluth closed the Lester Park Golf Course in 2020 because of the Covid 19 Pandemic, and a determination that it was less accessible than Enger Park. Now it is deemed accessible for five times the Average Daily Traffic generated by the golf course during peak periods.

The project will forever change the scenic views and vistas from Hawk Ridge, Lester River basin parks and trails, and from Lake Superior and the North Shore.

The project is incompatible with the character of development in the Gateway area that is also a popular location for lake trout anglers, birders, residents and visitors to Lester River parks and trails.

Lester River is a unique Wild, Scenic Recreational River that is both fishable and swimmable. The river supports a brook trout population and the mouth of the river is a spawning area for cold water fish species of Lake Superior. Duluth residents use the river water and shorelands for swimming, kayaking, hiking and fishing.

Hawks, eagles, and falcons frequent the area year round. Brighton Beach is a Duluth park and part of the North Shore Gateway experience.

The project will adversely, physically and visually degrade the area and reduce tourism and recreation in Duluth, the region and the state. See Map/Exhibits 1 and 2.

### **2. Physical Impacts on Water Resources.**

The volume of Storm water and snow melt runoff to the river and the lake will increase exponentially. Runoff from the site will carry contaminants from construction activities, and after construction from

roofs, driveways and parking areas. Runoff will be heated and cause erosion and carry soil sediments as it leaves the site. Heated, contaminated runoff and sediments will impact critical fish habitat and spawning grounds of the river and the lake. Reduced water quality will adversely impact recreation and reduce tourism and visitors to the area.

### **3. Wastewaters.**

Sewage from the development will discharge to the Duluth city sewer system that serves Lakeside/Lester Park. These neighborhoods have a high rate of sewer system Infiltration and Inflow due to substandard building drains connecting to city lateral sewers. The City only requires building drain line upgrades when properties are sold. Sewage overflows are directed to Lake Superior.

### **4. Water Use.**

The City cannot meet fire flow and consumption demand for the project with out first taking the irrigation water the golf course uses. The golf course and the project cannot coexist. A new water main to serve the project is cost prohibitive, so the golf course is subjected to artificial political barriers intended to eliminate the use and allocate potable water to the project. The city has considered using the remaining golf course acreage for more housing development.

### **5. Geologic Hazards and Soil Conditions.**

The project site has shallow depth to bedrock and tight clay soils. The project site is characterized by changes in elevation and slopes to the river and the lake. Clay soils are highly erodable once the vegetative cover is disturbed. Project construction will require site grading exposing acres of bare soil, removal of clay soils, rock excavation and importation of mineral soils. Fugitive sediments in runoff to the river and lake are a threat to water quality, impacting spawning grounds and fisheries.

A single extreme weather precipitation/storm event during the project's Site Preparation Phase, will blow out downstream stormwater sediment barriers and the Construction Phase Temporary holding pond.

The resulting damage to the mouth of the Lester River and the shoreline of Lake Superior could be catastrophic to salmon, lake trout, brown trout, steel heads and other cold water fish that spawn in the river and the lake. Sediments in lake and river water will cover spawn and kill recently hatched fish. Storms and Lake Superior wave action will continually disturb and re-suspend fine clay particles. Degraded water quality will devastate the fisherie and reduce the areas appeal for recreation and visitation. See Map/Exhibit 3.

### **6. Air Emissions, Dust, Noise and Odors.**

Project construction and post construction, will generate stationary air emissions from construction equipment and heating/cooling systems. Truck and vehicle traffic to and from the site will generate mobile air emissions. Construction and post construction truck and vehicle traffic will generate dust, noise and odors in the project area and Duluth neighborhoods along arterial streets connecting the project to employment and business centers. London Road, and Superior Street are the primary arterial

streets connecting the project site to the community below the Lake Superior escarpment. London Road carries through traffic connecting to I-35 and the North Shore. Superior Street carries local traffic to and from neighborhoods and nearby activity centers. See map/Exhibit 1.

Glenwood Street, Snively Blvd and West Arrowhead Road connect the project site and eastern neighborhoods to Duluth's commercial retail and employment centers over the hill. Existing development along these arterial connectors will be subjected to more traffic generated dust, noise and odors. Some eastern and hilltop neighborhoods will be subject to "cut through traffic" as drivers seek to avoid bottlenecks and traffic congestion. Construction and post construction traffic impacts have not been studied or evaluated. See Map/Exhibits 1 and 2.

## **7. Visual Impacts**

The completed project will forever alter and **eliminate** scenic views and vistas from Hawk Ridge, Lester River parks and trails, Lake Superior and the North Shore. The project will create fugitive light and illuminate natural areas and sensitive resources adjacent to the project site in the gateway area.

The roofs of project structures will likely contain communication system antenna's, some of which will require continuous flashing, high intensity warning beacons. Another bird hazard and degradation of the areas natural environment. See Map/Exhibit 2 and 3.

## **8. Energy Consumption**

This is not a green project by any stretch. Urban sprawl into a sensitive and critical area will be an economic and community development mistake that will be an identifiable burden on the cost of local government and Duluth's economy for decades. This project will forever change the image and perception of Duluth, and the North Shore of Lake Superior.

The project's location in the community will result in high energy costs and consumption for all of the occupants of the development, forever.

Old cities like Duluth, must be continually revitalizing and redeveloping the older core neighborhoods of the City. This project was proposed for the Central High School property but proposers backed out in favor of this site.

Redevelopment and revitalization of older core neighborhoods in Duluth needs multiple smaller versions of this project that mesh with preservation of single family homes and community redevelopment needs. Needed infrastructure upgrades must be planned and programmed to facilitate redevelopment and preservation. Duluth City Planning is none existent in this regard.

## **9. Impact on Infrastructure and Public Services.**

Failure to consider short and long term project impacts on infrastructure and public services will hide the real public costs of urban sprawl in a city 27 miles long, shaped like an isosceles triangle. Duluth taxpayers will have to subsidize the project in order to update and expand the Lakeside/Lester Park Fire Hall. Police services will decentralize and have to travel farther, responding to more calls for assistance from other less populated and developed areas within their jurisdiction.

The City has already closed the golf course and continues to create artificial political barriers to eliminate golf, and allocate golf course irrigation water for the project. A **special interest, city/public subsidy** for this project which should have been approved by voters.

The golf course provides multiple recreational opportunities for the Lakeside/Lester Park neighborhoods and the city. Walking, running, cross county skiing, snowshoeing, sleigh rides, kiting, and community/neighborhood events, are a few of the many recreational activities supported by the golf course, at minimal cost to the city.

The project's demand for water, sanitary sewer and natural gas will require the city to upgrade mains and pumping stations to convey potable water, sewage and natural gas to and from the project site. The project location was never intended to be a site for high density urban mixed use, development. No duly prepared and approved, Duluth Comprehensive Land Use Plan ever targeted this site for urban level development.

School age children will have to be bused to school from the project site, they will never walk to school, only to the bus stop. See Map/Exhibits 1,2, and 3.

#### **10. Cumulative Impacts.**

The cumulative environmental impacts of the project on Lester River and Lake Superior water quality has the potential to adversely impact the cold water trout and salmon fisheries that make the mouth of the river and the nearby shoreline of the Lake, a rich habitat for fish, birds and wildlife.

The River and the Lake have combined to create a unique subsurface delta of sand and gravel formed by high spring, white water flows along the river, and high wind events on the lake to create an intricate pattern of stratified sediments fanning into the lake.

The projects potential to erode soils and direct fine clay particles into the delta will cause fine soil particles to remain suspended by Lake Superior wave action, above the bottom elevation of the river delta. Combined with heated runoff from new impervious surfaces, the project will destroy pristine fish habitat and forever impact the natural environment of the area surrounding the project site.

The project will forever change the ecology and undeveloped character of a unique, sensitive part of Duluth and the North Shore. The Cumulative impacts of constructing the project, will increase dust, noise and odors on land adjacent to the development site, including Lester River and Lake Superior shoreland zones. Post construction traffic will increase air emissions, including dust, noise and odors along the roadways connecting the development to community activity centers.

The cumulative visual impacts of construction and post construction will forever change the environment and character of an international gateway to Duluth and the North Shore of Lake Superior. Cumulative visual impacts will impact scenic views and vistas from Hawk Ridge, Lester River parks and trails and the remaining 18 holes of the Lester Park golf course.

The project will create incentives for more urban level development on golf course land and vacant private property in the gateway area. More urban development compounds all of the negative environmental impacts created by the project. See Map/Exhibits 1,2, and 3.

### **11. Compliance with State Law and Environmental Regulations**

The City and State agencies have failed to comply with State Law and Mn Rules regulating development in sensitive areas. Specifically:

A. The project unanimously approved by the Parks and Recreation Commission, Planning Commission and City Council, should have been subject to an EAW before the land was conveyed to DEDA.

MN Rules 4410.4300 Governmental Units Descretionary Worksheets:

Mn Rules 4410.4500: A governmental unit with jurisdiction may order an EAW for any project that does not exceed the mandatory thresholds designated in Part 4410.4300 or 4410.4400 if the governmental unit determines that because of the nature or location of the proposed project, the project may have the potential for significant environmental effects and the project is not exempted pursuant to part 4410.4600.

Mn Rules 4410.4300 – 4410.4400 Mandatory EAW Thresholds The Project Approved by the Duluth Parks and Recreation Commission, Planning Commission and City Council and City Council requires a Mandatory EAW.

Mn Rules 4410.0300 Authority, Scope, Purpose and Objectives.

Subpart 3. Purpose:

The Minnesota Environmental Policy Act recognizes that the restoration and maintenance of environmental quality is critically important to our welfare. The Act also recognizes that human activity has a profound and often adverse impact on environment.

A first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed project will have on the environment. The purpose of Parts 4410.0200 to 4410.0500 is to aid in providing that understanding through the preparation of environmental documents.

**Environmental documents shall contain information that addresses the significant environmental issues of a proposed action. This information shall be made available to governmental units and citizens early on in the decision making process.**

B. Minnesota Department of Natural Resources (MDNR)

The MDNR should be actively involved with Duluth regarding the environmental impacts of the proposed project at the proposed project location.

1. Watershed Health Scores for Lester River and Lake Superior.

MDNR Watershed Health Scores compare conditions of land, water and habitat by inventorying and comparing 24 criteria under the following categories:

Biology, Connectivity, Geomorphology, Hydrology, and Water Quality.

MDNR should be advising the City of baseline Watershed Health Scores before and after the project, with and without the golf course.

## 2. Chapter 6115.050 Purpose, Statutory Authority.

Provide for the orderly and consistent review permit applications to conserve and utilize water resources of the state in the best interests of its people.

Proposed development must be consistent with Federal, State, and local environmental quality programs, shoreland, floodplain, water surface use, boat and water safety, wild and scenic rivers, water quality, recreational or wilderness critical areas, wilderness critical areas, scientific and natural areas, protected species management.

None of these issues have been addressed by the City of Duluth or MDNR.

Clearly, the proposer of the project at the project location, is obligated to lawfully prepare an EAW on the project consistent with state law and statutory rules. Clearly, the Larson Administration has failed to comply with state law and statutory rules. They are undoubtedly the proposers of the project at this location.

The City has the money and the time to complete an EAW and before moving forward with sale of the property. We shouldn't have to Petition the EQB to make this happen.

We also intend to raise these issues with the Attorney General's Office.



Project Location

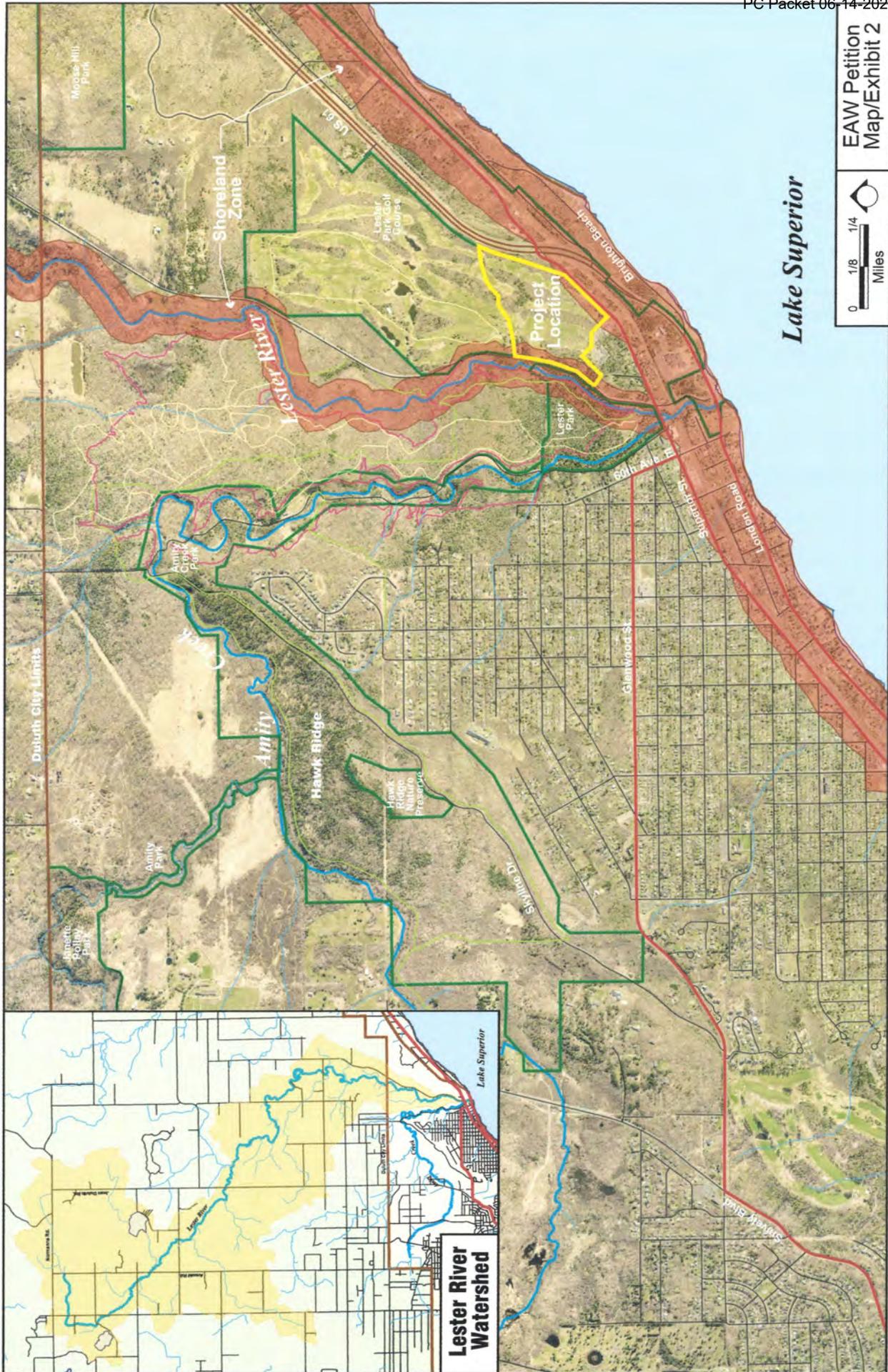
Lake Superior

Duluthian's for Preservation of Minnesota's Most Livable City



Not To Scale

EAW Petition Map/Exhibit 1

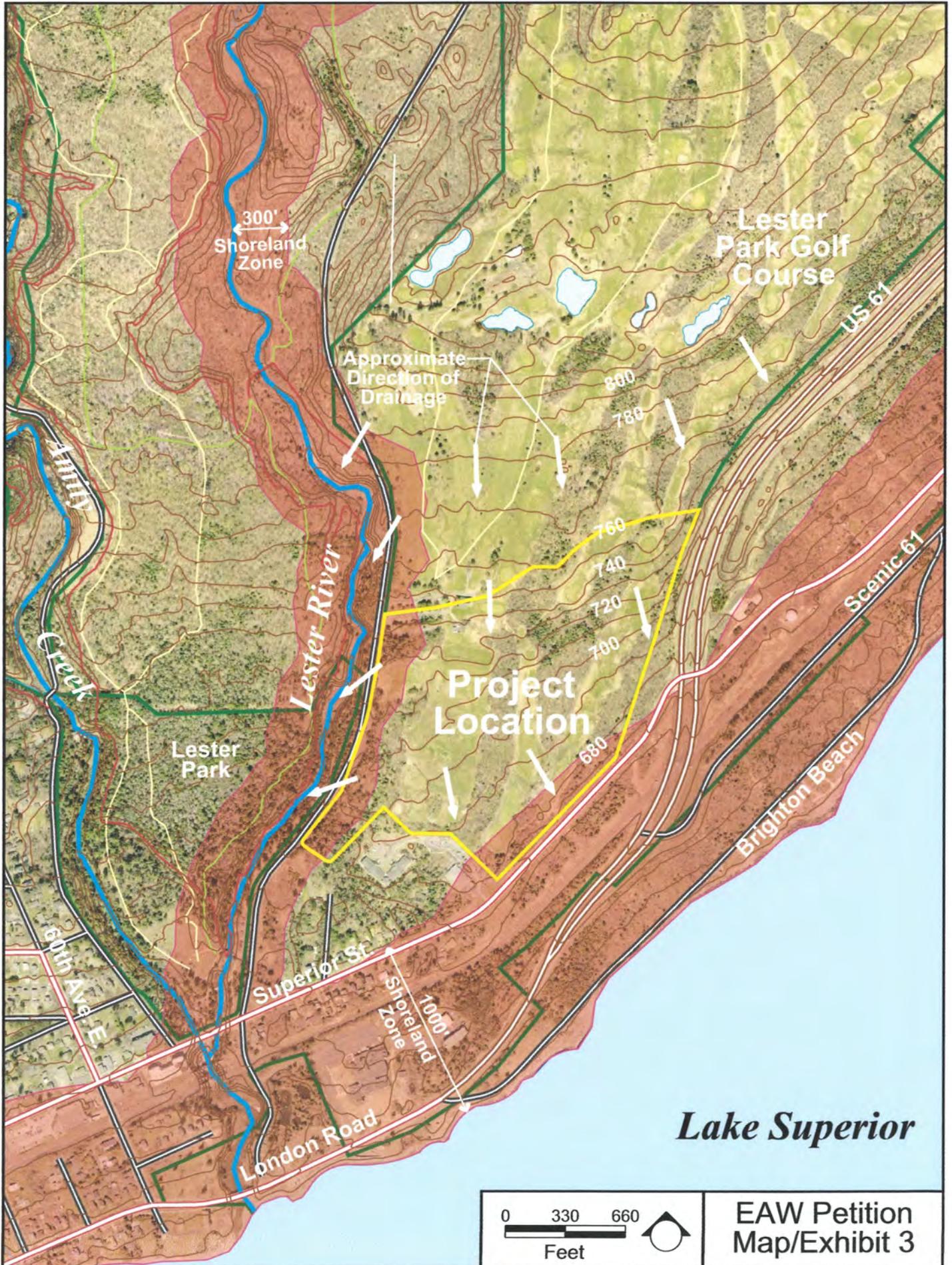


EAW Petition  
Map/Exhibit 2



Lake Superior

Lester River Watershed



EAW Petition  
Map/Exhibit 3

**DULUTHIAN'S FOR PRESERVATION OF MINNESOTA'S MOST LIVABLE CITY**

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February 24, 2022

**PETITION TO THE MINNESOTA ENVIRONMENTAL QUALITY BOARD TO REQUIRE THE CITY OF DULUTH/DULUTH ECONOMIC DEVELOPMENT AUTHORITY TO PREPARE AN EAW ON THE MIXED USE DEVELOPMENT PROPOSED FOR THE 37 ACRE PARCEL OF THE LESTER PARK GOLF COURSE LAKE 9.**

**BY THEIR SIGNATURE BELOW THE UNDERSIGNED CERTIFY THEY ARE RESIDENTS AND/OR PROPERTY OWNERS OF MINNESOTA.**

PRINTED NAME	ADDRESS	SIGNATURE	
SCOTT A HAGBERG	4125 COOKE ST	<i>Scott A. Hagberg</i>	DULUTH 55804
Janet Anelli	5023 London Rd	<i>Janet Anelli</i>	DULUTH 55804
Megan Spitzum	4717 Oakley	<i>Megan Spitzum</i>	DULUTH 55804
Eric Frost	30 Savila Rd	<i>Eric Frost</i>	ESKO 55733
Ryan Michela	4929 Idlewild St	<i>Ryan Michela</i>	DULUTH 55804
Melina Lind	5317 Oakley St.	<i>Melina Lind</i>	DULUTH 55804
Jon Lind	5317 Oakley St.	<i>Jon Lind</i>	DULUTH 55804
Kathleen Allen	4521 Pitt St	<i>Kathleen Allen</i>	DULUTH, 55804
Jeff Linder	1900 Lester River Rd	<i>Jeff Linder</i>	DULUTH, 55804
Deakia Isaksson	2318 Skove Dr	<i>Deakia Isaksson</i>	DULUTH 55804
Anita Hanna	3129 Beyer Rd	<i>Anita Hanna</i>	DULUTH 55804
Jason Welles	600 N 23rd Ave E	<i>Jason Welles</i>	DULUTH 55812
Peter Bussa	2228 Nanticoke St.	<i>Peter Bussa</i>	DULUTH 55811
Chris Reimer	416 Oak Bend Dr	<i>Chris Reimer</i>	DULUTH 55811
John Kroeschel	5305 Sawmill Rd	<i>John Kroeschel</i>	DULUTH 55803
Robert O'Quinn	4610 W Pioneer Rd	<i>Robert O'Quinn</i>	DULUTH 55803
Jeanne Chesney	4773 Chesney Rd	<i>Jeanne Chesney</i>	DULUTH 55803
RALPH JOHNSON	4274 ANDERSON RD	<i>Ralph Johnson</i>	DULUTH 55811



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**BY THEIR SIGNATURE BELOW THE UNDERSIGNED CERTIFY THEY ARE RESIDENTS AND/OR PROPERTY OWNERS OF MINNESOTA.**

PRINTED NAME	ADDRESS	SIGNATURE	
MARLA AHLGREN	243 Freeman Rd Cloquet	<i>Marla Ahlgr</i>	55720
MARGARET C. SKINNER	4709 JAO St	<i>Margaret C Skinner</i>	55720 CLOQUET
KATHLEEN M HANSON	4930 Trails End Dr Hermantown	<i>Kath M Han</i>	55811
PAMELA M. PRUDHOMME	319 Hickory St Duluth, MN	<i>Pamela M Prudhomme</i>	55811
Kathy Lewing	1125 E. Skyline Pkwy Duluth MN.	<i>Kathy Lewing</i>	55805
Paul Johnson	636 Levesque Ave Duluth MN	<i>Paul Johnson</i>	55803
Michael Johnson	3719 N RIDGERO DULUTH MN	<i>Michael Johnson</i>	55804
Dennis Hughes	4718 GLADSTONE ST DULUTH MN	<i>Dennis Hughes</i>	55804
Tim Allen	4521 Pitt St. Duluth Mn.	<i>Timothy Rath</i>	55804
Kay allen	4521 Pitt St Duluth mn	<i>Kay Allen</i>	55804
Michael Johnson	3747 Keene Creek Lane Hermantown	<i>Michael Johnson</i>	55811
FRANK LEFS	3708 Greysolon Rd Duluth Mn	<i>Frank Lefs</i>	55804

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PRINTED NAME	ADDRESS	SIGNATURE
Sharon Bergquist	5529 Highland St Duluth	Sharon Bergquist 55807
MARK FIEGE	5021 McComb Rd Duluth	Mark Fiege 55803
Patricia Carlson	1715 Trail DR Duluth	Patricia A. Carlson 55803
Judy Rindor Arnold	6650 Bergstrom Rd Duluth	Judy Rindor Arnold 55803
Inge Lauritzen	118 Beebeek Blvd #377 Duluth	Inge Lauritzen 55811
ROSEMARY TARNOWSKI	118 Coffee Creek Blvd #202 Duluth	Rosemary H. Tarnowski 55811
Lorna J Burda	1812 Ricehake Rd Duluth	Lorna J. Burda 55811
Lawrence J. Burda	" Duluth	Lawrence J. Burda 55811
RONALD HEIN	1214 BUTTERNUT AVE Duluth	Ronald P. Hein 55811
Jennifer Wilson	4279 Birch Valley Hermantown	Jennifer B. Wilson 55811
Phillip Carlson	4066 West Moorhead Duluth	Phillip Carlson 55811
Dale Jones	5724 River La Duluth	Dale Jones 55803
STALE EKLUND	1571 Circle Dr Carlton MN	Stale Eklund 55718
Byron Gorman	Box 33 Knife River Duluth	Byron E. Gorman 55609
DAVID WENBERG	5072 Starbuck #19 Hermantown	David Wenberg 55811
FRED HAUGEN	4126 Dodge St Duluth	Fred Haugen 55804
Forrest Lundberg	4929 Tiooga St Duluth	Forrest Lundberg 55804
Mark	5131 Miller Trk Hwy Hermantown	Mark 55811

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**BY THEIR SIGNATURE BELOW THE UNDERSIGNED CERTIFY THEY ARE RESIDENTS AND/OR PROPERTY OWNERS OF MINNESOTA.**

PRINTED NAME	ADDRESS	SIGNATURE
DONALD A. LARSON	1102 Como Ave	Donald A. Larson Duluth 55811
JO ANN LARSON	1102 COMO AVENUE	Jo Ann M. Larson Duluth 55811
Roberta Johnson	405 W. Watonau St.	Roberta Johnson Duluth 55803
Helen Stellmaker	4920 Wyoming St	Helen Stellmaker Duluth 55804
Carol Lilyquist	1122 Como Avenue	Carol Lilyquist Duluth 55811
Tom De Sutter	5627 W. Shore Dr	Tom De Sutter Duluth 55864
Glen Nelson	2009 Hutchinson Rd	Duluth, MN 55811
Marilyn Nelson	2009 Hutchinson Rd	Duluth, MN 55811
GARY PAGE	2974 EXETER ST.	Duluth, MN, 55806

9

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**BY THEIR SIGNATURE BELOW THE UNDERSIGNED CERTIFY THEY ARE RESIDENTS AND/OR PROPERTY OWNERS OF MINNESOTA.**

PRINTED NAME	ADDRESS	SIGNATURE	
DEWANE Kolar	2021 E 9th St	<i>[Signature]</i>	DULUTH 55812
JAMES TRACHSEL	420 W. FARIBAUT ST	<i>[Signature]</i>	DULUTH 55803
GAY TRACHSEL	420 W. Faribault	<i>[Signature]</i>	DULUTH 55803
Heitha Gille	4117 W 8th St	<i>[Signature]</i>	DULUTH 55803
JAMES SCHULZETENBERG	4117 W 8th St	<i>[Signature]</i>	DULUTH 55803
PATRICIA MILINOWICZ	1221 Birchwood Dr	<i>[Signature]</i>	DULUTH 55810
Kelly Kinnunen		<i>[Signature]</i>	HERMANTOWN 55811
Christina Sandwig	4892 Tomcrack Lane Unit B	<i>[Signature]</i>	
Carol Kinnunen		<i>[Signature]</i>	
John C. McGraw	119 W. 9th St Duluth	<i>[Signature]</i>	55806
Geraldine F. McGraw	119 W 9th St Duluth	<i>[Signature]</i>	Duluth 55806

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**BY THEIR SIGNATURE BELOW THE UNDERSIGNED CERTIFY THEY ARE RESIDENTS AND/OR PROPERTY OWNERS OF MINNESOTA.**

PRINTED NAME	ADDRESS	SIGNATURE
DOUG McKERCHER	333 COFFEE CRK BLVD DULUTH MN	<i>Doug McKecker</i> - DULUTH 55811
LINDA BLOOM	333 COFFEE CRK BLVD DULUTH MN - 55811	<i>Linda Bloom</i>
KLEWOW NOVITZKI	2822 PARKWOOD LN DULUTH 55811	<i>Klewow Novitzki</i>

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**BY THEIR SIGNATURE BELOW THE UNDERSIGNED CERTIFY THEY ARE RESIDENTS AND/OR PROPERTY OWNERS OF MINNESOTA.**

PRINTED NAME	ADDRESS	SIGNATURE	
Bob McKeercher	428. No. 59th W	Bob McKeercher	DULUTH 55807
James D. Orump	4260 Lindahl Hmtn	James D. Orump	55811
Randy Bowen	41779 Lyndal Rd	Randy Bowen	HERMANTOWN 55811
Beth Freeman	5846 Roserd	Beth Freeman	HERMANTOWN 55811
Steve Freeman	" "	Steve Freeman	HERMANTOWN 55811
DONNA SWANSON	1116 2ND AVE PROCTOR	Donna Swanson	55806
ROBERT SWANSON	1116 2ND AVE PROCTOR	Robert Swanson	55806
Chuck Bergquist	5506 Lavaca Rd	Chuck Bergquist	HERMANTOWN 55811
DENNIS STURDEVANT	6171 LAKEWOOD RD	Dennis Sturdevant	DULUTH 55804
DICK PRILEY	120 SUMMIT ST	Dick Priley	DULUTH 55803
DICK KUPCZYNSKI	4091 REINHE RD	Dick Kupczynski	HERMANTOWN 55811
Randy Mullan	1915 DENIM ST	Randy Mullan	DULUTH 55811
Neil Busch	2525 PLYMOUTH AVE	Neil Busch	DULUTH 55811
Terry A. Olson	2610 Bayhill Trail	Terry A. Olson	DULUTH 55807
KENNETH KLEMMACK	326 S. 90TH AVE W	Kenneth Klemmack	DULUTH 55808
James S Anderson	54 Arbutus Dr	James S Anderson	DULUTH 55810
James Christenson	3979 OLD MIDWAY RD	James Christenson	HERMANTOWN 55810
JAMES GILBERT	910 6TH ST	James Gilbert	DULUTH 55805
ROBERT ROSKOSKI	1911 DENIM ST	Robert Roskoski	DULUTH 55811
GARY SORENSEN	4129 JEFFREY RD	Gary Sorensen	DULUTH 55810
DENNIS SAVOY	1214 STANFORD AVE	Dennis L. Savoy	DULUTH 55811
GARY BERSON	1882 E 5TH ST	Gary Berson	DULUTH 55805
LEA SORENSEN	4129 JEFFREY RD	Lea Sorensen	DULUTH 55810

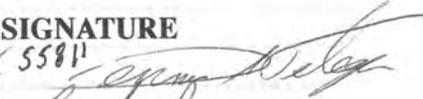
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PRINTED NAME	ADDRESS	SIGNATURE
<del>Terriis Telega</del> RANDY SORENSEN	3906 TRINITY RD-Duluth 55811 4732 GLENWOOD ST-DULUTH	 Randy Sorensen 55804

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PRINTED NAME	ADDRESS	SIGNATURE	
Gary Westerhoff	2202 Lester River Rd 55804	Gary Westerhoff	DULUTH
Steve Moellen	2231 Pershing St 55811	Steve Moellen	DULUTH
ROBERT MYERS	1601 E 8th St 55812	Robert Myers	DULUTH
James Stearnson	28 W Cleveland St 55801	James R Stearnson	DULUTH
Erika Bassett	410 N 9th Ave E 55805	Erika Bassett	DULUTH
Paul Sandholm	3933 Fountain Gate	Paul H. Sandholm	DULUTH 55811
Pam Meryel	1437 LaVague 55806	Pam Meryel	HERMONTON 55811
Glen Merriv	1637 LAVAGUE RD	Glen Merriv	HERMONTON 55811
Marquet Edens	6025 E. Superior St	Marquet Edens	DULUTH 55804
Binky Moen	1111 Stanford Ave	Binky Moen	DULUTH 55811
Zach Taran	817 LIBBY CIR	Zach Taran	PROTOR 55810
DAVE GILFILL	3236 TRUSAD VAL.	Dave Gilfill	55811
Tom Kemp	Duluth, Minn 3953 Fountain Gate	Tom Kemp	DULUTH 55811
Lowell Olson	5051 ALPINE DR. 55811	Lowell Olson	DULUTH
Ron W Linden	302-18th Ave West	Ron W Linden	DULUTH 55806
Ron M Lindh	616 N 7th Ave W	Ron M Lindh	DULUTH 55806
John CRAIN	3327 MN Ave	John Crain	DULUTH 55802
Al Johnson	1732 E 4th St Apt W	Al Johnson	DULUTH 55812
55812 Rachel Beckovich	4607 Jay St	Rachel Beckovich	DULUTH 55804
LEN WEISS	274 SKIFF LANE RD. W	Len Weiss	
RICHARD M. HARRIS	1525 E Superior St	Richard Harris	DULUTH 55812
John Loiseille	422 West Quatanna	John Loiseille	DULUTH 55803
JOAN LOISEILLE	422 West Quatanna	Joan Loiseille	DULUTH 55803
Kathy Harper	2032 Springdale Cir	Kathy Harper	DULUTH 55811
John P. Horner	" " "	John P. Horner	DULUTH 55811
John A. Horner			

## RESOLUTION DENYING PETITION TO ORDER AN EAW FOR A 37 ACRE MIXED USE DEVELOPMENT AT LESTER PARK GOLF COURSE

WHEREAS, on May 16, 2022, the Minnesota Environmental Quality Board (the “EQB”) notified the City of Duluth that a citizen petition (the “Petition”) meeting the requirements of Minn Rules 4410.1100 had been filed with the EQB requesting that an Environmental Assessment Worksheet (“EAW”) be required for a proposed mixed use development covering 37 acres of the Lake 9 of the Lester Golf Course; and

WHEREAS, that the EQB identified the City of Duluth as the Responsible Governmental Unit (“RGU”) for the Petition; and

WHEREAS, pursuant to Section 2-41 of the City Code, the planning commission serves as the responsible governmental unit (the “RGU”) pertaining to the conduct of environmental reviews pursuant to Minnesota Statutes Chapter 116D and the applicable state regulations; and

WHEREAS, pursuant to Section 4410.1100 Subp. 6, the RGU shall order the preparation of an EAW if the evidence presented by the petitioners, proposers, and other persons or otherwise known to the RGU demonstrates that, because of the nature or location of the proposed project, the project may have the potential for significant environmental effects but the RGU shall deny the petition if the evidence presented fails to demonstrate the project may have the potential for significant environmental effects, and in considering the evidence, the RGU must take into account the factors listed in Minn Rule 4410.1700, subpart 7; and

WHEREAS, the Petition states that there are several environmental considerations related to a potential project: the project is incompatible with low density development in the area; the project is incompatible with nearby parks and trails; the project will generate noise, dust and odors during construction; the project will create barriers and hazards to birds and raptors in the form of 80 to 100 foot high concrete and plate glass structures; the project will cause the loss of unique scenic views; the project impacts demand for fire flows and daily potable water consumption; and the project’s environmental, social, and financial impacts will degrade the environment and reduce recreation opportunities and the quality of life city wide; and

WHEREAS, on August 8, 2014, the City of Duluth issued an RFP seeking a qualified housing developer to purchase all or a portion of the 268 acres of the Lester Park Golf Course for new commercial or housing development, however no qualified proposals were submitted and/or accepted; and

WHEREAS, on January 29, 2020, the City of Duluth issued, and reissued on April 24, 2020, an RPF seeking a qualified developer to purchase 50 acres of the Lester Park Golf Course for a new mixed-use residential development, however no qualified proposals were submitted and/or accepted; and

WHEREAS, on September 22, 2021, the Duluth Economic Development Authority discussed a preliminary design concept to develop 37.5 acres of the property, but no specific housing size or density was discussed other a concept plan showing a concept that indicated three development parcels: Affordable Phase I 3.8 Acres, Affordable Phase II 3.8 acres, and Mixed Use/Mixed Income Phased 28 Acres; and

WHEREAS, there is not a specific project proposed for Lester Park Golf Course to date and there has not been filed an application to replat Property or for any other zoning permit or authorization to proceed with any development of the Property; and

WHEREAS, the most likely trigger for a mandatory EAW would be either 4410.4300 sub 19, which mandates an EAW for housing developments of at least 250 unattached units or 375 attached units in a city not located in the seven county metro area that has filed with the EQB a certification that it has adopted a comprehensive plan, or 4410.4300 sub 36, which mandates an EAW for land use conversion, for golf courses, for residential development where the lot size is less than five acres, and other projects resulting in the permanent conversion of 80 or more acres of agricultural, native prairie, forest, or naturally vegetated land; and

WHEREAS, the need for an EAW is premature as there is the desire for general housing development in the future but there has not been specific project proposed in this area to date;

WHEREAS, pursuant to Minn. Rules 4410.1700 Subp. 7, the RGU is required to consider the following criteria in deciding whether a project has the potential for significant environmental effects:

- §
- A. type, extent, and reversibility of environmental effects;
  - B. cumulative potential effects. The RGU shall consider the following factors: whether the cumulative potential effect is significant; whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect; the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effect; and the efforts of the proposer to minimize the contributions from the project;
  - C. the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The RGU may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project; and
  - D. the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs.

RESOLVED, that the Petition of petitioners herein to require an EAW of the 37.5 acre mixed use development at Lester Golf Course is hereby denied, by a vote of \_\_\_\_\_, with \_\_\_\_\_ Planning Commissioners absent, at the June 14, 2022, Planning Commission meeting.

RESOLUTION AFFIRMING PETITION TO ORDER AN EAW FOR A 37 ACRE MIXED USE DEVELOPMENT AT LESTER PARK GOLF COURSE

WHEREAS, on May 16, 2022, the Minnesota Environmental Quality Board (the “EQB”) notified the City of Duluth that a citizen petition (the “Petition”) meeting the requirements of Minn Rules 4410.1100 had been filed with the EQB requesting that an Environmental Assessment Worksheet (“EAW”) be required for a proposed mixed use development covering 37 acres of the Lake 9 of the Lester Golf Course; and

WHEREAS, that the EQB identified the City of Duluth as the Responsible Governmental Unit (“RGU”) for the Petition; and

WHEREAS, pursuant to Section 2-41 of the City Code, the planning commission serves as the responsible governmental unit (the “RGU”) pertaining to the conduct of environmental reviews pursuant to Minnesota Statutes Chapter 116D and the applicable state regulations; and

WHEREAS, pursuant to Section 4410.1100 Subp. 6, the RGU shall order the preparation of an EAW if the evidence presented by the petitioners, proposers, and other persons or otherwise known to the RGU demonstrates that, because of the nature or location of the proposed project, the project may have the potential for significant environmental effects but the RGU shall deny the petition if the evidence presented fails to demonstrate the project may have the potential for significant environmental effects, and in considering the evidence, the RGU must take into account the factors listed in part Minn Rule 4410.1700, subpart 7; and

WHEREAS, the Petition states that there are several environmental considerations related to a potential project: the project is incompatible with low density development in the area; the project is incompatible with nearby parks and trails; the project will generate noise, dust and odors during construction; the project will create barriers and hazards to birds and raptors in the form of 80 to 100 foot high concrete and plate glass structures; the project will cause the loss of unique scenic views; the project impacts demand for fire flows and daily potable water consumption; and the project’s environmental, social, and financial impacts will degrade the environment and reduce recreation opportunities and the quality of life city wide; and

WHEREAS, the most likely trigger for a mandatory EAW would be either 4410.4300 sub 19, which mandates an EAW for housing developments of at least 250 unattached units or 375 attached units in a city not located in the seven county metro area that has filed with the EQB a certification that it has adopted a comprehensive plan, or 4410.4300 sub 36, which mandates an EAW for land use conversion, for golf courses, for residential development where the lot size is less than five acres, and other projects resulting in the permanent conversion of 80 or more acres of agricultural, native prairie, forest, or naturally vegetated land; and

WHEREAS, pursuant to Minn. Rules 4410.1700 Subp. 7, the RGU is required to consider the following criteria in deciding whether a project has the potential for significant environmental effects:

- §
- A. type, extent, and reversibility of environmental effects;
  - B. cumulative potential effects. The RGU shall consider the following factors: whether the cumulative potential effect is significant; whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative

potential effect; the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effect; and the efforts of the proposer to minimize the contributions from the project;

C. the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The RGU may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project; and

D. the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs.

RESOLVED, that based on the application for the rezoning of the Property and the Applicant's presentation to the Commission and the evidence adduced at the above-referenced public hearing, the Commission hereby makes the following findings:

- A.
- B.
- C.
- D.

FURTHER RESOLVED, that the Petition of petitioners herein to require an EAW prior to the adoption of the proposed rezoning of the Property is hereby affirmed by a vote of \_\_\_\_, with \_\_\_\_ Planning Commissioners absent, at the June 14, 2022, Planning Commission meeting.

**4410.4300 MANDATORY EAW CATEGORIES.**

Subpart 1. **Threshold test.** An EAW must be prepared for projects that meet or exceed the threshold of any of subparts 2 to 37, unless the project meets or exceeds any thresholds of part 4410.4400, in which case an EIS must be prepared.

If the proposed project is an expansion or additional stage of an existing project, the cumulative total of the proposed project and any existing stages or components of the existing project must be included when determining if a threshold is met or exceeded if construction was begun within three years before the date of application for a permit or approval from a governmental unit for the expansion or additional stage but after April 21, 1997, except that any existing stage or component that was reviewed under a previously completed EAW or EIS need not be included.

Multiple projects and multiple stages of a single project that are connected actions or phased actions must be considered in total when comparing the project or projects to the thresholds of this part and part 4410.4400.

Subp. 2. **Nuclear fuels and nuclear waste.** Items A to F designate the RGU for the type of project listed:

A. For construction or expansion of a facility for the storage of high level nuclear waste, other than an independent spent-fuel storage installation, the EQB is the RGU.

B. For construction or expansion of a facility for the storage of low level nuclear waste for one year or longer, the MDH is the RGU.

C. For expansion of a high level nuclear waste disposal site, the EQB is the RGU.

D. For expansion of a low level nuclear waste disposal site, the MDH is the RGU.

E. For expansion of an away-from-reactor facility for temporary storage of spent nuclear fuel, the EQB is the RGU.

F. For construction or expansion of an on-site pool for temporary storage of spent nuclear fuel, the EQB is the RGU.

Subp. 3. **Electric-generating facilities.** Items A to D designate the RGU for the type of project listed:

A. For construction of an electric power generating plant and associated facilities designed for or capable of operating at a capacity of 25 megawatts or more but less than 50 megawatts and for which an air permit from the PCA is required, the PCA is the RGU.

B. For construction of an electric power generating plant and associated facilities designed for and capable of operating at a capacity of 25 megawatts or more but less than 50 megawatts and for which an air permit from the PCA is not required, the local governmental unit is the RGU.

C. For construction of an electric power generating plant and associated facilities designed for and capable of operating at a capacity of 50 megawatts or more, the PUC is the RGU, and

environmental review must be conducted according to parts 7849.1000 to 7849.2100 and chapter 7850.

D. For construction of a wind energy conversion system, as defined in Minnesota Statutes, section 216F.01, designed for and capable of operating at a capacity of 25 megawatts or more, the PUC is the RGU, and environmental review must be conducted according to chapter 7854.

Subp. 4. **Petroleum refineries.** For expansion of an existing petroleum refinery that increases the refinery's capacity by 10,000 barrels per day or more, the PCA is the RGU.

Subp. 5. **Fuel conversion facilities.**

A. Subitems (1) and (2) designate the RGU for the type of project listed:

(1) For construction of a new fuel conversion facility for the conversion of coal, peat, or biomass sources to gaseous, liquid, or solid fuels if that facility has the capacity to utilize 25,000 dry tons or more per year of input, the PCA is the RGU.

(2) For construction of a new fuel conversion facility for the production of alcohol fuels that would have the capacity to produce 5,000,000 gallons or more per year of alcohol, the PCA is the RGU.

B. An EAW is required if an ethanol plant or biobutanol facility meets or exceeds thresholds of other categories of actions for which EAWs must be prepared.

Subp. 6. **Transmission lines.** For construction of a transmission line at a new location with a nominal capacity of between 70 kilovolts and 100 kilovolts with 20 or more miles of its length in Minnesota, the EQB is the RGU. For construction of a high-voltage transmission line and associated facilities, as defined in part 7850.1000, the PUC is the RGU. Environmental review must be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.

Subp. 7. **Pipelines.** Items A to D designate the RGU for the type of project listed:

A. For routing of a pipeline, greater than six inches in diameter and having more than 0.75 miles of its length in Minnesota, used for the transportation of coal, crude petroleum fuels, or oil or their derivatives, the EQB is the RGU.

B. For the construction of a pipeline for distribution of natural or synthetic gas under a license, permit, right, or franchise that has been granted by the municipality under authority of Minnesota Statutes, section 216B.36, designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than:

(1) five miles if the pipeline will occupy streets, highways, and other public property;  
or

(2) 0.75 miles if the pipeline will occupy private property;

the EQB or the municipality is the RGU.

C. For construction of a pipeline to transport natural or synthetic gas subject to regulation under the federal Natural Gas Act, United States Code, title 15, section 717, et. seq., designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than:

(1) five miles if the pipeline will be constructed and operated within an existing right-of-way; or

(2) 0.75 miles if construction or operation will require new temporary or permanent right-of-way;

the EQB is the RGU. This item shall not apply to the extent that the application is expressly preempted by federal law, or under specific circumstances when an actual conflict exists with applicable federal law.

D. For construction of a pipeline to convey natural or synthetic gas that is not subject to regulation under the federal Natural Gas Act, United States Code, title 15, section 717, et seq.; or to a license, permit, right, or franchise that has been granted by a municipality under authority of Minnesota Statutes, section 216B.36; designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than 0.75 miles, the EQB is the RGU.

Items A to D do not apply to repair or replacement of an existing pipeline within an existing right-of-way or to a pipeline located entirely within a refining, storage, or manufacturing facility.

Subp. 8. **Transfer facilities.** Items A to C designate the RGU for the type of project listed:

A. For construction of a new facility designed for or capable of transferring 300 tons or more of coal per hour or with an annual throughput of 500,000 tons of coal from one mode of transportation to a similar or different mode of transportation or the expansion of an existing facility by these respective amounts, the PCA is the RGU.

B. For construction of a new facility or the expansion by 50 percent or more of an existing facility for the bulk transfer of hazardous materials with the capacity of 10,000 or more gallons per transfer, if the facility is located in a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the PCA is the RGU.

C. The PCA is the RGU for a silica sand project that:

(1) is designed to store or is capable of storing more than 7,500 tons of silica sand; or

(2) has an annual throughput of more than 200,000 tons of silica sand.

Subp. 9. **Underground storage.** Items A and B designate the RGU for the type of project listed:

A. For expansion of an underground storage facility for gases or liquids that requires a permit, pursuant to Minnesota Statutes, section 103I.681, subdivision 1, paragraph (a), the DNR is the RGU.

B. For expansion of an underground storage facility for gases or liquids, using naturally occurring rock materials, that requires a permit pursuant to Minnesota Statutes, section 103I.681, subdivision 1, paragraph (b), the DNR is the RGU.

Subp. 10. **Storage facilities.** Items A to H designate the RGU for the type of project listed:

A. For construction of a new facility designed for or capable of storing more than 7,500 tons of coal or with an annual throughput of more than 125,000 tons of coal or the expansion of an existing facility by these respective amounts, the PCA is the RGU.

B. For construction of a new major facility, as defined in part 7151.1200, that results in a designed storage capacity of 1,000,000 gallons or more of hazardous materials, the PCA is the RGU.

C. For expansion of an existing major facility, as defined in part 7151.1200, with a designed storage capacity of 1,000,000 gallons or more of hazardous materials when the expansion adds a net increase of 1,000,000 gallons or more of hazardous materials, the PCA is the RGU.

D. For expansion of an existing facility that has less than 1,000,000 gallons in total designed storage capacity of hazardous materials when the net increase in designed storage capacity results in 1,000,000 gallons or more of hazardous materials, the PCA is the RGU.

E. For construction of a new facility designed for or capable of storing on a single site 100,000 gallons or more of liquefied natural gas, as defined in Minnesota Statutes, section 299F.56, subdivision 14, or synthetic gas, as defined in Minnesota Statutes, section 216B.02, subdivision 6b, the PUC is the RGU, except as provided in item G.

F. For construction of a new facility designed for or capable of storing on a single site 100,000 gallons or more of anhydrous ammonia, the MDA is the RGU, except as provided in item G.

G. For construction of a new facility designed for or capable of storing on a single site 100,000 gallons or more of a combination of liquefied natural gas, as defined in Minnesota Statutes, section 299F.56, subdivision 14; synthetic gas, as defined in Minnesota Statutes, section 216B.02, subdivision 6b; or anhydrous ammonia, the PUC is the RGU.

H. The PCA is the RGU for a silica sand project that:

- (1) is designed to store or is capable of storing more than 7,500 tons of silica sand; or
- (2) has an annual throughput of more than 200,000 tons of silica sand.

Subp. 11. **Metallic mineral mining and processing.** Items A to C designate the RGU for the type of project listed:

A. For mineral deposit evaluation of metallic mineral deposits other than natural iron ore and taconite, the DNR is the RGU.

B. For expansion of a stockpile, tailings basin, or mine by 320 or more acres, the DNR is the RGU.

C. For expansion of a metallic mineral plant processing facility that is capable of increasing production by 25 percent per year or more, provided that increase is in excess of 1,000,000 tons per year in the case of facilities for processing natural iron ore or taconite, the DNR is the RGU.

Subp. 12. **Nonmetallic mineral mining.** Items A to D designate the RGU for the type of project listed:

A. For development of a facility for the extraction or mining of peat which will result in the excavation of 160 or more acres of land during its existence, the DNR is the RGU.

B. For development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 40 or more acres of land to a mean depth of ten feet or more during its existence, the local governmental unit is the RGU.

C. For development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 20 or more acres of forested or other naturally vegetated land in a sensitive shoreland area or 40 acres of forested or other naturally vegetated land in a nonsensitive shoreland area, the local governmental unit is the RGU.

D. For development of a silica sand project that excavates 20 or more acres of land to a mean depth of ten feet or more during the project's existence, the local governmental unit is the RGU.

Subp. 13. **Paper or pulp processing mills.** For expansion of an existing paper or pulp processing facility that will increase its production capacity by 50 percent or more, the PCA is the RGU.

Subp. 14. **Industrial, commercial, and institutional facilities.** Items A and B designate the RGU for the type of project listed, except as provided in items C and D:

A. For construction of a new or expansion of an existing warehousing or light industrial facility equal to or in excess of the following thresholds, expressed as gross floor space, the local governmental unit is the RGU:

- (1) unincorporated area, 150,000 square feet;
- (2) third or fourth class city, 300,000 square feet;
- (3) second class city, 450,000 square feet; and
- (4) first class city, 600,000 square feet.

B. For construction of a new or expansion of an existing industrial, commercial, or institutional facility, other than a warehousing or light industrial facility, equal to or in excess of the following thresholds, expressed as gross floor space, the local governmental unit is the RGU:

- (1) unincorporated area, 100,000 square feet;
- (2) third or fourth class city, 200,000 square feet;
- (3) second class city, 300,000 square feet; and

(4) first class city, 400,000 square feet.

C. This subpart applies to any industrial, commercial, or institutional project which includes multiple components, if there are mandatory categories specified in subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, or part 4410.4400, subparts 2 to 10, 12, 13, 15, or 17, for two or more of the components, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the entire project must be compared to the thresholds specified in items A and B to determine the need for an EAW. If the project meets or exceeds the thresholds specified in any other subpart as well as that of item A or B, the RGU must be determined as provided in part 4410.0500, subpart 1.

D. This subpart does not apply to projects for which there is a single mandatory category specified in subparts 2 to 13, 16, 17, 20, 23, 25, 29, or 34, or part 4410.4400, subparts 2 to 10, 12, 13, 17, or 22, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the need for an EAW must be determined by comparison of the project to the threshold specified in the applicable subpart, and the RGU must be the governmental unit assigned by that subpart.

Subp. 15. **Air pollution.** Items A and B designate the RGU for the type of project listed.

A. For construction of a stationary source facility that generates 250 tons or more per year or modification of a stationary source facility that increases generation by 250 tons or more per year of any single air pollutant, other than those air pollutants described in item B, after installation of air pollution control equipment, the PCA is the RGU.

B. For construction of a stationary source facility that generates a combined 100,000 tons or more per year or modification of a stationary source facility that increases generation by a combined 100,000 tons or more per year of greenhouse gas emissions, after installation of air pollution control equipment, expressed as carbon dioxide equivalents, the PCA is the RGU. For purposes of this subpart, "greenhouse gases" include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride, and their combined carbon dioxide equivalents shall be computed by multiplying the mass amount of emissions for each of the six greenhouse gases in the pollutant GHGs by the gas's associated global warming potential published in Table A-1 to subpart A of Code of Federal Regulations, title 40, part 98, Global Warming Potentials, as amended, and summing the resultant value for each.

Subp. 16. **Hazardous waste.** Items A to D designate the RGU for the type of project listed:

A. For construction of a new or expansion of an existing hazardous waste disposal facility, the PCA is the RGU.

B. For construction of a new facility for hazardous waste storage or treatment that is generating or receiving 1,000 kilograms or more per month of hazardous waste or one kilogram or more per month of acute hazardous waste, the PCA is the RGU.

C. For expansion of an existing facility for hazardous waste storage or treatment that increases the facility's capacity by ten percent or more, the PCA is the RGU.

D. For construction or expansion of a facility that sells hazardous waste storage services to generators other than the owner and operator of the facility or construction of a facility at which a generator's own hazardous wastes will be stored for a time period in excess of 90 days, if the facility is located in a water-related land use management district, or in an area characterized by soluble bedrock, the PCA is the RGU.

Subp. 17. **Solid waste.** Items A to G designate the RGU for the type of project listed:

A. For construction of a mixed municipal solid waste land disposal facility for up to 100,000 cubic yards of waste fill per year, the PCA is the RGU.

B. For expansion by 25 percent or more of previously permitted capacity of a mixed municipal solid waste land disposal facility for up to 100,000 cubic yards of waste fill per year, the PCA is the RGU.

C. For construction or expansion of a mixed municipal solid waste transfer station for 300,000 or more cubic yards per year, the PCA is the RGU.

D. For construction or expansion of a mixed municipal solid waste energy recovery facility or incinerator or use of an existing facility for the combustion of mixed municipal solid waste or refuse-derived fuel, with a permitted capacity of 30 tons or more per day of input, the PCA is the RGU.

E. For construction or expansion of a mixed municipal solid waste compost facility or a refuse-derived fuel production facility with a permitted capacity of 50 tons or more per day of input, the PCA is the RGU.

F. For expansion by at least ten percent but less than 25 percent of previously permitted capacity of a mixed municipal solid waste land disposal facility for 100,000 cubic yards or more of waste fill per year, the PCA is the RGU.

G. For construction or expansion of a mixed municipal solid waste energy recovery facility ash landfill receiving ash from an incinerator that burns refuse-derived fuel or mixed municipal solid waste, the PCA is the RGU.

Subp. 18. **Wastewater systems.** Items A to F designate the RGU for the type of project listed:

A. For expansion, modification, or replacement of a municipal sewage collection system resulting in an increase in design average daily flow of any part of that system by 1,000,000 gallons per day or more if the discharge is to a wastewater treatment facility with a capacity less than 20,000,000 gallons per day, the PCA is the RGU.

B. For expansion, modification, or replacement of a municipal sewage collection system resulting in an increase in design average daily flow of any part of that system by 2,000,000 gallons per day or more if the discharge is to a wastewater treatment facility with the capacity of 20,000,000 gallons or greater, the PCA is the RGU.

C. For expansion or modification of an existing municipal or domestic wastewater treatment facility that results in an increase by 50 percent or more and by at least 200,000 gallons per day of the facility's average wet weather design flow capacity, the PCA is the RGU.

D. For construction of a new municipal or domestic wastewater treatment facility with an average wet weather design flow capacity of 200,000 gallons per day or more, the PCA is the RGU.

E. For expansion or modification of an existing industrial process wastewater treatment facility that increases the facility's design flow capacity by 50 percent or more and by at least 200,000 gallons per day or more, the PCA is the RGU.

F. For construction of a new industrial process wastewater treatment facility with a design flow capacity of 200,000 gallons per day or more, 5,000,000 gallons per month or more, or 20,000,000 gallons per year or more, the PCA is the RGU. This category does not apply to industrial process wastewater treatment facilities that discharge to a publicly owned treatment works or to a tailings basin reviewed according to subpart 11, item B.

Subp. 19. **Residential development.** An EAW is required for residential development if the total number of units that may ultimately be developed on all contiguous land owned or under an option to purchase by the proposer, except land identified by an applicable comprehensive plan, ordinance, resolution, or agreement of a local governmental unit for a future use other than residential development, equals or exceeds a threshold of this subpart. In counting the total number of ultimate units, the RGU shall include the number of units in any plans of the proposer; for land for which the proposer has not yet prepared plans, the RGU shall use as the number of units the product of the number of acres multiplied by the maximum number of units per acre allowable under the applicable zoning ordinance or, if the maximum number of units allowable per acre is not specified in an applicable zoning ordinance, by the overall average number of units per acre indicated in the plans of the proposer for those lands for which plans exist. If the total project requires review but future phases are uncertain, the RGU may review the ultimate project sequentially in accordance with part 4410.1000, subpart 4.

If a project consists of mixed unattached and attached units, an EAW must be prepared if the sum of the quotient obtained by dividing the number of unattached units by the applicable unattached unit threshold, plus the quotient obtained by dividing the number of attached units by the applicable attached unit threshold, equals or exceeds one.

The local governmental unit is the RGU for construction of a permanent or potentially permanent residential development of:

A. 50 or more unattached or 75 or more attached units in an unsewered unincorporated area or 100 unattached units or 150 attached units in a sewerer unincorporated area;

B. 100 unattached units or 150 attached units in a city that does not meet the conditions of item D;

C. 100 unattached units or 150 attached units in a city meeting the conditions of item D if the project is not consistent with the adopted comprehensive plan; or

D. 250 unattached units or 375 attached units in a city within the seven-county Twin Cities metropolitan area that has adopted a comprehensive plan under Minnesota Statutes, section 473.859, or in a city not located within the seven-county Twin Cities metropolitan area that has filed with the EQB chair a certification that it has adopted a comprehensive plan containing the following elements:

(1) a land use plan designating the existing and proposed location, intensity, and extent of use of land and water for residential, industrial, agricultural, and other public and private purposes;

(2) a transportation plan describing, designating, and scheduling the location, extent, function, and capacity of existing and proposed local public and private transportation facilities and services;

(3) a sewage collection system policy plan describing, designating, and scheduling the areas to be served by the public system, the existing and planned capacities of the public system, and the standards and conditions under which the installation of private sewage treatment systems will be permitted;

(4) a capital improvements plan for public facilities; and

(5) an implementation plan describing public programs, fiscal devices, and other actions to be undertaken to implement the comprehensive plan, and a description of official controls addressing the matters of zoning, subdivision, private sewage systems, and a schedule for the implementation of those controls. The EQB chair may specify the form to be used for making a certification under this item.

**Subp. 19a. Residential development in shoreland outside of the seven-county Twin Cities metropolitan area.**

A. The local governmental unit is the RGU for construction of a permanent or potentially permanent residential development located wholly or partially in shoreland outside the seven-county Twin Cities metropolitan area of a type listed in items B to E. For purposes of this subpart, "riparian unit" means a unit in a development that abuts a public water or, in the case of a development where units are not allowed to abut the public water, is located in the first tier of the development as provided under part 6120.3800, subpart 4, item A. If a project is located partially in a sensitive shoreland area and partially in nonsensitive shoreland areas, an EAW must be prepared if the sum of the quotient obtained by dividing the number of units in the sensitive shoreland area by the applicable sensitive shoreland area threshold, plus the quotient obtained by dividing the number of units in nonsensitive shoreland areas by the applicable nonsensitive shoreland area threshold, equals or exceeds one. If a project is located partially in shoreland and partially not in shoreland, an EAW must be prepared if the sum of the quotients obtained by dividing the number of units in each type of area by the applicable threshold for each area equals or exceeds one.

B. A development containing 15 or more unattached or attached units for a sensitive shoreland area or 25 or more unattached or attached units for a nonsensitive shoreland area, if any of the following conditions is present:

(1) less than 50 percent of the area in shoreland is common open space;

(2) the number of riparian units exceeds by at least 15 percent the number of riparian lots that would be allowable calculated according to the applicable lot area and width standards for riparian unsewered single lots under part 6120.3300, subparts 2a and 2b; or

(3) if any portion of the project is in an unincorporated area, the number of nonriparian units in shoreland exceeds by at least 15 percent the number of lots that would be allowable on the parcel calculated according to the applicable lot area standards for nonriparian unsewered single lots under part 6120.3300, subparts 2a and 2b.

C. A development containing 25 or more unattached or attached units for a sensitive shoreland area or 50 or more unattached or attached units for a nonsensitive shoreland area, if none of the conditions listed in item B is present.

D. A development in a sensitive shoreland area that provides permanent mooring space for at least one nonriparian unattached or attached unit.

E. A development containing at least one unattached or attached unit created by the conversion of a resort, motel, hotel, recreational vehicle park, or campground, if either of the following conditions is present:

(1) the number of nonriparian units in shoreland exceeds by at least 15 percent the number of lots that would be allowable on the parcel calculated according to the applicable lot area standards for nonriparian unsewered single lots under part 6120.3300, subparts 2a and 2b; or

(2) the number of riparian units exceeds by at least 15 percent the number of riparian lots that would be allowable calculated according to the applicable lot area and width standards for riparian unsewered single lots under part 6120.3300, subparts 2a and 2b.

F. An EAW is required for residential development if the total number of units that may ultimately be developed on all contiguous land owned or under an option to purchase by the proposer, except land identified by an applicable comprehensive plan, ordinance, resolution, or agreement of a local governmental unit for a future use other than residential development, equals or exceeds a threshold of this subpart. In counting the total number of ultimate units, the RGU shall include the number of units in any plans of the proposer. For land for which the proposer has not yet prepared plans, the RGU shall use as the number of units the number of acres multiplied by the maximum number of units per acre allowable under the applicable zoning ordinance or, if the maximum number of units allowable per acre is not specified in an applicable zoning ordinance, by the overall average number of units per acre indicated in the plan of the proposer for those lands for which plans exist.

Subp. 20. **Campgrounds and RV parks.** For construction of a seasonal or permanent recreational development, accessible by vehicle, consisting of 50 or more sites, or the expansion of such a facility by 50 or more sites, the local governmental unit is the RGU.

Subp. 20a. **Resorts, campgrounds, and RV parks in shorelands.** The local governmental unit is the RGU for construction or expansion of a resort or other seasonal or permanent recreational development located wholly or partially in shoreland, accessible by vehicle, of a type listed in item A or B:

A. construction or addition of 25 or more units or sites in a sensitive shoreland area or 50 units or sites in a nonsensitive shoreland area if at least 50 percent of the area in shoreland is common open space; or

B. construction or addition of 15 or more units or sites in a sensitive shoreland area or 25 or more units or sites in a nonsensitive shoreland area, if less than 50 percent of the area in shoreland is common open space.

If a project is located partially in a sensitive shoreland area and partially in nonsensitive shoreland areas, an EAW must be prepared if the sum of the quotient obtained by dividing the number of units in the sensitive shoreland area by the applicable sensitive shoreland area threshold, plus the quotient obtained by dividing the number of units in nonsensitive shoreland areas by the applicable nonsensitive shoreland area threshold, equals or exceeds one. If a project is located partially in shoreland and partially not in shoreland, an EAW must be prepared if the sum of the quotients obtained by dividing the number of units in each type of area by the applicable threshold for each area equals or exceeds one.

Subp. 21. **Airport projects.** Items A and B designate the RGU for the type of project listed:

A. For construction of a paved, new airport runway, the DOT, local governmental unit, or Metropolitan Airports Commission is the RGU.

B. For construction of a runway extension that would upgrade an existing airport runway to permit usage by aircraft over 12,500 pounds that are at least three decibels louder than aircraft currently using the runway, the DOT, local governmental unit, or Metropolitan Airports Commission is the RGU. The RGU is selected according to part 4410.0500, subpart 5.

Subp. 22. **Highway projects.** Items A to C designate the RGU for the type of project listed:

A. For construction of a road on a new location over one mile in length that will function as a collector roadway, the DOT or local governmental unit is the RGU.

B. For construction of additional through lanes or passing lanes on an existing road for a length of two or more miles, exclusive of auxiliary lanes, the DOT or local governmental unit is the RGU.

C. For the addition of one or more new interchanges to a completed limited access highway, the DOT or local governmental unit is the RGU.

Subp. 23. **Barge fleeting.** For construction of a new or expansion of an existing barge fleeting facility, the DOT or port authority is the RGU.

Subp. 24. **Water appropriation and impoundments.** Items A to C designate the RGU for the type of project listed:

A. For a new appropriation for commercial or industrial purposes of either surface water or ground water averaging 30,000,000 gallons per month; or a new appropriation of either ground water or surface water for irrigation of 540 acres or more in one continuous parcel from one source of water, the DNR is the RGU.

4410.4300

## MINNESOTA RULES

12

B. For a new permanent impoundment of water creating additional water surface of 160 or more acres or for an additional permanent impoundment of water creating additional water surface of 160 or more acres, the DNR is the RGU.

C. For construction of a dam with an upstream drainage area of 50 square miles or more, the DNR is the RGU.

Subp. 25. **Marinas.** For construction or expansion of a marina or harbor that results in a 20,000 or more square foot total or a 20,000 or more square foot increase of water surface area used temporarily or permanently for docks, docking, or maneuvering of watercraft, the local governmental unit is the RGU.

Subp. 26. **Stream diversion.** For a diversion, realignment, or channelization of any designated trout stream, or affecting greater than 500 feet of natural watercourse with a total drainage area of ten or more square miles unless exempted by part 4410.4600, subpart 14, item E, or 17, the DNR or local governmental unit is the RGU.

Subp. 27. **Public waters, public waters wetlands, and wetlands.** Items A and B designate the RGU for the type of project listed:

A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public water or public waters wetland except for those to be drained without a permit according to Minnesota Statutes, chapter 103G, the DNR or local governmental unit is the RGU.

B. For projects that will cause an impact, as defined in part 8420.0111, to a total of one acre or more of wetlands, regardless of type, excluding public waters wetlands, if any part of the wetland is within a shoreland area, a delineated floodplain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the local governmental unit is the RGU. This item does not apply to projects exempted by part 4410.4600, subpart 14.

Subp. 28. **Forestry.** Items A and B designate the RGU for the type of project listed:

A. For harvesting timber for commercial purposes on public lands within a state park, a historical area, a wilderness area, a scientific and natural area, a wild and scenic rivers district, the Minnesota River Project Riverbend area, the Mississippi headwaters area, or a critical area that does not have an approved plan under Minnesota Statutes, section 86A.09 or 116G.07, the DNR is the RGU.

B. For a clear-cutting of 80 or more contiguous acres of forest, any part of which is located within a shoreland area and within 100 feet of the ordinary high water mark of the lake or river, the DNR is the RGU.

Subp. 29. **Animal feedlots.** The PCA is the RGU for the types of projects listed in items A and B unless the county will issue the feedlot permit, in which case the county is the RGU. However, the county is not the RGU prior to January 1, 2001.

A. For the construction of an animal feedlot facility with a capacity of 1,000 animal units or more or the expansion of an existing facility by 1,000 animal units or more if the facility is not in an area listed in item B.

B. For the construction of an animal feedlot facility of more than 500 animal units or expansion of an existing animal feedlot facility by more than 500 animal units if the facility is located wholly or partially in any of the following sensitive locations: shoreland; a delineated flood plain, except that in the flood plain of the Red River of the North the sensitive area includes only land within 1,000 feet of the ordinary high water mark; a state or federally designated wild and scenic river district; the Minnesota River Project Riverbend area; the Mississippi headwaters area; or an area within a drinking water supply management area delineated under chapter 4720 where the aquifer is identified in the wellhead protection plan as vulnerable to contamination; or within 1,000 feet of a known sinkhole, cave, resurgent spring, disappearing spring, Karst window, blind valley, or dry valley.

The provisions of part 4410.1000, subpart 4, regarding connected actions do not apply to animal feedlots. The provisions of part 4410.1000, subpart 4, regarding phased actions apply to feedlots.

With the agreement of the proposers, the RGU may prepare a single EAW to collectively review individual sites of a multisite feedlot proposal.

**Subp. 30. Natural areas.** For projects resulting in permanent physical encroachment on lands within a national park, a state park, a wilderness area, state lands and waters within the boundaries of the Boundary Waters Canoe Area, or a scientific and natural area when the encroachment is inconsistent with laws applicable to or the management plan prepared for the recreational unit, the DNR or local governmental unit is the RGU.

**Subp. 31. Historical places.** For the destruction, in whole or part, or the moving of a property that is listed on the National Register of Historic Places or State Register of Historic Places, the permitting state agency or local governmental unit is the RGU, except this does not apply to projects reviewed under section 106 of the National Historic Preservation Act of 1966, United States Code, title 54, section 306108, or the federal policy on lands, wildlife and waterfowl refuges, and historic sites pursuant to United States Code, title 49, section 303, or projects reviewed by a local heritage preservation commission certified by the State Historic Preservation Office pursuant to Code of Federal Regulations, title 36, sections 61.5 and 61.7. This subpart does not apply to a property located within a designated historic district if the property is listed as "noncontributing" in the official district designation or if the State Historic Preservation Office issues a determination that the property is noncontributing.

**Subp. 32. Mixed residential and industrial-commercial projects.** If a project includes both residential and industrial-commercial components, the project must have an EAW prepared if the sum of the quotient obtained by dividing the number of residential units by the applicable residential threshold of subpart 19, plus the quotient obtained by dividing the amount of industrial-commercial gross floor space by the applicable industrial-commercial threshold of subpart 14, equals or exceeds one. The local governmental unit is the RGU.

Subp. 33. **Communications towers.** For construction of a communications tower equal to or in excess of 500 feet in height, or 300 feet in height within 1,000 feet of any public water or public waters wetland or within two miles of the Mississippi, Minnesota, Red, or St. Croix rivers or Lake Superior, the local governmental unit is the RGU.

Subp. 34. **Sports or entertainment facilities.** For construction of a new sports or entertainment facility designed for or expected to accommodate a peak attendance of 5,000 or more persons, or the expansion of an existing sports or entertainment facility by this amount, the local governmental unit is the RGU.

Subp. 35. **Release of genetically engineered organisms.** For the release of a genetically engineered organism that requires a release permit from the EQB under chapter 4420, the EQB is the RGU. For all other releases of genetically engineered organisms, the RGU is the permitting state agency. This subpart does not apply to the direct medical application of genetically engineered organisms to humans or animals.

Subp. 36. **Land use conversion, including golf courses.** Items A and B designate the RGU for the type of project listed:

A. For golf courses, residential development where the lot size is less than five acres, and other projects resulting in the permanent conversion of 80 or more acres of agricultural, native prairie, forest, or naturally vegetated land, the local governmental unit is the RGU, except that this subpart does not apply to agricultural land inside the boundary of the Metropolitan Urban Service Area established by the Metropolitan Council.

B. For projects resulting in the conversion of 640 or more acres of forest or naturally vegetated land to a different open space land use, the local governmental unit is the RGU.

Subp. 36a. **Land conversions in shoreland.**

A. For a project proposing a permanent conversion that alters 800 feet or more of the shoreline in a sensitive shoreland area or 1,320 feet or more of shoreline in a nonsensitive shoreland area, the local governmental unit is the RGU.

B. For a project proposing a permanent conversion that alters more than 50 percent of the shore impact zone if the alteration measures at least 5,000 square feet, the local governmental unit is the RGU.

C. For a project that permanently converts 20 or more acres of forested or other naturally vegetated land in a sensitive shoreland area or 40 or more acres of forested or other naturally vegetated land in a nonsensitive shoreland area, the local governmental unit is the RGU.

Subp. 37. **Recreational trails.** If a project listed in items A to F will be built on state-owned land or funded, in whole or part, by grant-in-aid funds administered by the DNR, the DNR is the RGU. For other projects, if a governmental unit is sponsoring the project, in whole or in part, that governmental unit is the RGU. If the project is not sponsored by a unit of government, the RGU is the local governmental unit. For purposes of this subpart, "existing trail" means an established corridor in current legal use.

A. Constructing a trail at least 25 miles long on forested or other naturally vegetated land for a recreational use, unless exempted by part 4410.4600, subpart 14, item D.

B. Designating at least 25 miles of an existing trail for a new motorized recreational use other than snowmobiling. When designating an existing motorized trail or existing corridor in current legal use by motor vehicles, the designation does not contribute to the 25-mile threshold under this item. When adding a new recreational use or seasonal recreational use to an existing motorized recreational trail, the addition does not contribute to the 25-mile threshold if the treadway width is not expanded as a result of the added use. In applying items A and B, if a proposed trail will contain segments of newly constructed trail and segments that will follow an existing trail but be designated for a new motorized use, an EAW must be prepared if the total length of the newly constructed and newly designated segments is at least 25 miles.

C. Paving ten or more miles of an existing unpaved trail, unless exempted by part 4410.4600, subpart 27, item B or F. Paving an unpaved trail means to create a hard surface on the trail with a material impervious to water.

D. Constructing an off-highway vehicle recreation area of 80 or more acres, or expanding an off-highway vehicle recreation area by 80 or more acres, on agricultural land or forested or other naturally vegetated land.

E. Constructing an off-highway vehicle recreation area of 640 or more acres, or expanding an off-highway vehicle recreation area by 640 or more acres, if the land on which the construction or expansion is carried out is not agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed by past human activities such as mineral mining.

F. Some recreation areas for off-highway vehicles may be constructed partially on agricultural naturally vegetated land and partially on land that is not agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed by past human activities. In that case, an EAW must be prepared if the sum of the quotients obtained by dividing the number of acres of agricultural or naturally vegetated land by 80 and the number of acres of land that is not agricultural, is not forested or otherwise naturally vegetated, or has been significantly disturbed by past human activities by 640, equals or exceeds one.

**Statutory Authority:** *MS s 116C.94; 116C.991; 116D.04; 116D.045; L 1998 c 401 s 54; L 2013 c 114 art 4 s 105; L 2015 1Sp4 art 4 s 121; art 5 s 33*

**History:** *11 SR 714; 13 SR 1437; 13 SR 2046; 17 SR 139; 21 SR 1458; 24 SR 517; 28 SR 951; 30 SR 319; 31 SR 539; 34 SR 721; 36 SR 567; 44 SR 691*

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