



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

Room 160  
 411 West First Street  
 Duluth, Minnesota 55802

218-730-5580

[planning@duluthmn.gov](mailto:planning@duluthmn.gov)

|                             |                                     |                                 |   |                    |
|-----------------------------|-------------------------------------|---------------------------------|---|--------------------|
| <b>File Number</b>          | PL 21-083                           | <b>Contact</b>                  | Chris Lee, <a href="mailto:clee@duluthmn.gov">clee@duluthmn.gov</a> |                    |
| <b>Type</b>                 | Concurrent Use Permit               | <b>Planning Commission Date</b> | July 13, 2021   |                    |
| <b>Deadline for Action</b>  | <b>Application Date</b>             | June 2, 2021                    | <b>60 Days</b>  | August 1, 2021     |
|                             | <b>Date Extension Letter Mailed</b> | June 16, 2021                   | <b>120 Days</b>   | September 30, 2021 |
| <b>Location of Subject</b>  | 2102 Minnesota Avenue               |                                 |   |                    |
| <b>Applicant</b>            | Mark Kurilla                        | <b>Contact</b>                  |   |                    |
| <b>Agent</b>                | Michael Bruckelmyer                 | <b>Contact</b>                  | Bruckelmyer Brothers  |                    |
| <b>Legal Description</b>    | See attached                        |                                 |   |                    |
| <b>Site Visit Date</b>      | June 26, 2021                       | <b>Sign Notice Date</b>         | June 29, 2021   |                    |
| <b>Neighbor Letter Date</b> | N/A                                 | <b>Number of Letters Sent</b>   | N/A   |                    |

**Proposal:** A Concurrent Use Permit to install retaining walls and landscaping in the right of way 21<sup>st</sup> Street and Lake Avenue.

**Staff Recommendation:** Staff recommends that Planning Commission recommend approval to City Council.

|                | <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 50-37.7C. The Planning Commission shall review the application, and council shall approve the application or approve it with modifications, if it determines that:

1. The proposed concurrent use will not harm or inconvenience the health, safety and general welfare of the city.
2. ... Not Applicable (Skywalks)
3. No portion of a public easement proposed for use is being physically used or occupied by the public.
4. ...Not Applicable (Parking)

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

Governing Principle #1 – Reuse previously developed lands: includes adaptive reuse of existing building stock and historic resources, as this strengthens neighborhoods.

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.

#### **History:**

The property contains a 3,000 square foot house built in 2001. The street end of 21<sup>st</sup> Street along Park Point was evaluated during the Park Point Small Area Plan and designated as an access point to Lake Superior.

### **Review and Discussion Items**

Staff finds that:

- 1.) The applicant is proposing to occupy two areas in the right of way in 21<sup>st</sup> Street and Lake Avenue. The total occupied space will be 1,536 square feet. The respective rights of way are currently undeveloped.
- 2.) This proposal is to allow for the installation of retaining walls and landscaping into the right of way.
- 3.) The City of Duluth requires concurrent use permits to include liability insurance to indemnify the City against occurrences in the right of way. Other protections for the city and the public are typically included in the ordinance that is submitted to City Council. The ordinance will state that the City is not responsible for removal/replacement of the applicant’s infrastructure should the City need to access the right-of-way in the permitted area. The applicant has provided insurance to add the City of Duluth as an additionally insured party.
- 4.) The area proposed for the concurrent use permit will not diminish the public’s ability to use the public right of way, nor will it harm or inconvenience the health, safety, and general welfare of the city.
- 5.) The proposed concurrent use permit will not impact the ability of the public to access Lake Superior from this street end. The Park Point Small Area Plan indicates this access is necessary and does not recommend vacating this street end. A concurrent use permit will allow the property owner to rebuild a failing retaining wall. City Engineering has indicated that the property owner will need to get a beach sand permit from engineering if they move any sand.
- 6.) No other public, agency, or other comments have been received as of June 21, 2021.

### **Staff Recommendation**

Based on the above findings, Staff recommends that Planning Commission adopt the findings of the staff report and recommend approval of the concurrent use permit with the following conditions:

- 1.) Applicant shall maintain the project as identified in the attached exhibits.
- 2.) Applicant shall provide annual proof of liability insurance to indemnify the City against any occurrences in the right of way that are due to items covered under this permit.
- 3.) Applicant shall not take actions in the rights-of-way near their property to exclude people from accessing. Should such action occur, the concurrent use permit shall be revoked.
- 4.) 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 approval; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50.



PL 21-083: Concurrent Use Permit  
2102 Minnesota Ave

**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



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 2019

Prepared by: City of Duluth Planning & Economic Development, June 14, 2020. Source: City of Duluth.

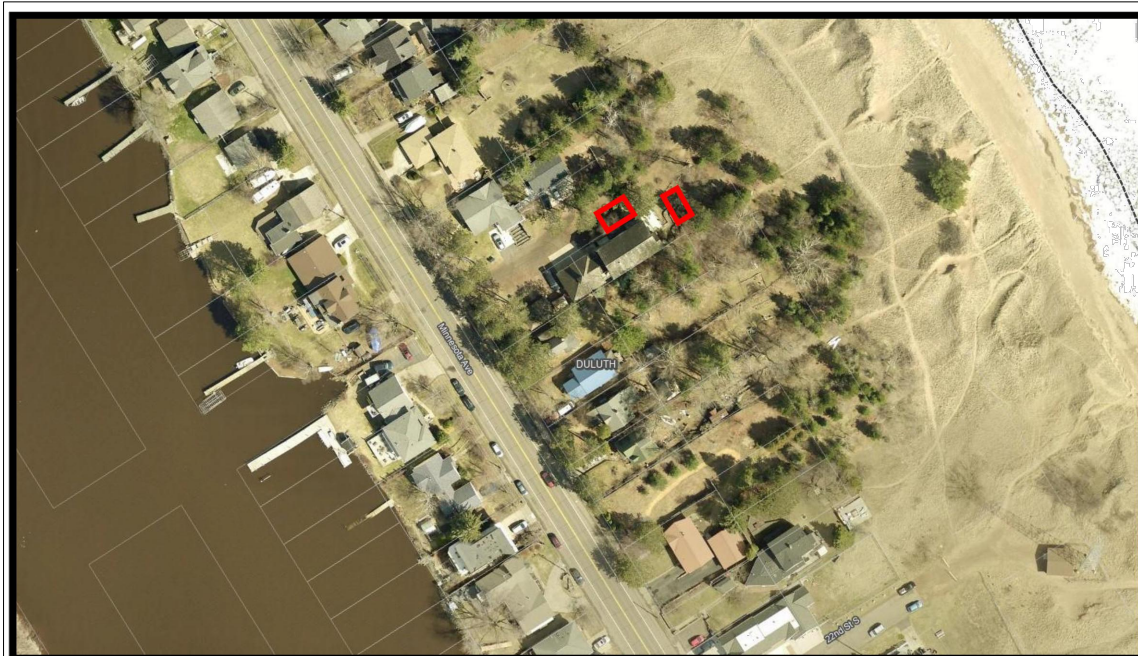


**LEGAL DESCRIPTION FOR CONCURRENT USE AREA #1**

A parcel of land lying within the platted right of way of Lake Avenue lying adjacent to Lot 41, Lower Duluth, Lake Avenue, according to the recorded plat thereof, St. Louis County, Minnesota, described as follows:  
 Beginning at the North most corner of said Lot 41; thence Northeasterly, 18.50 feet, along the Northeasterly extension of the Northwesterly line of said Lot 41 to a line parallel with and distant 18.50 feet Northeasterly of the Northeasterly line of said Lot 41; thence Southeasterly, deflecting to the right 90 degrees, along said parallel line 32.50 feet; thence deflecting 90 degrees to the right 18.50 feet to the Northeasterly line of said Lot 41; thence deflecting to the right 90 degrees, along the Northeasterly line of said Lot 41 for a distance of 32.50 feet to the point of beginning.  
 Said concurrent use area contains 601 Sq. Feet or 0.01 Acres.

**LEGAL DESCRIPTION FOR CONCURRENT USE AREA #2**

A parcel of land lying within the platted right of way of 21st Street lying adjacent to Lot 41, Lower Duluth, Lake Avenue, according to the recorded plat thereof, St. Louis County, Minnesota, described as follows:  
 Commencing at the North most corner of said Lot 41; thence Southwesterly along the Northwesterly line of said Lot 41 for a distance of 38.50 feet to the point of beginning of the concurrent use area herein described; thence continuing Southwesterly along said Northwesterly line 43.50 feet; thence Northwesterly, deflecting to the right 90 degrees 21.50 feet to a line parallel with and distant 21.50 feet Northwesterly of the Northwesterly line of said Lot 41; thence Northeasterly, deflecting 90 degrees to the right, along said parallel line 43.50 feet; thence Southeasterly, deflecting 90 degrees to the right 21.50 feet to the point of beginning.  
 Said concurrent use area contains 935 Sq. Feet 0.02 Acres.



2102 MINNESOTA AVENUE,  
 DULUTH, MN 55802

**VICINITY MAP**



**LEGEND**

- POC-POINT OF COMMENCEMENT
- POB-POINT OF BEGINNING
- C&G-CONCRETE CURB & GUTTER
- RETAINING WALL
- FENCE LINE
- OVERHEAD UTILITIES
- CENTER LINE
- RIGHT OF WAY LINE
- EXISTING EASEMENT LINE
- PLAT LINE
- CONCURRENT USE LINE
- UTILITY POLE
- CONCRETE SURFACE
- GRAVEL SURFACE
- PAVER SURFACE
- EXISTING BUILDINGS
- CONCURRENT USE AREA

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:6-9-2021

**CONCURRENT USE AREA**

CLIENT:JIM CARGILL

REVISIONS:

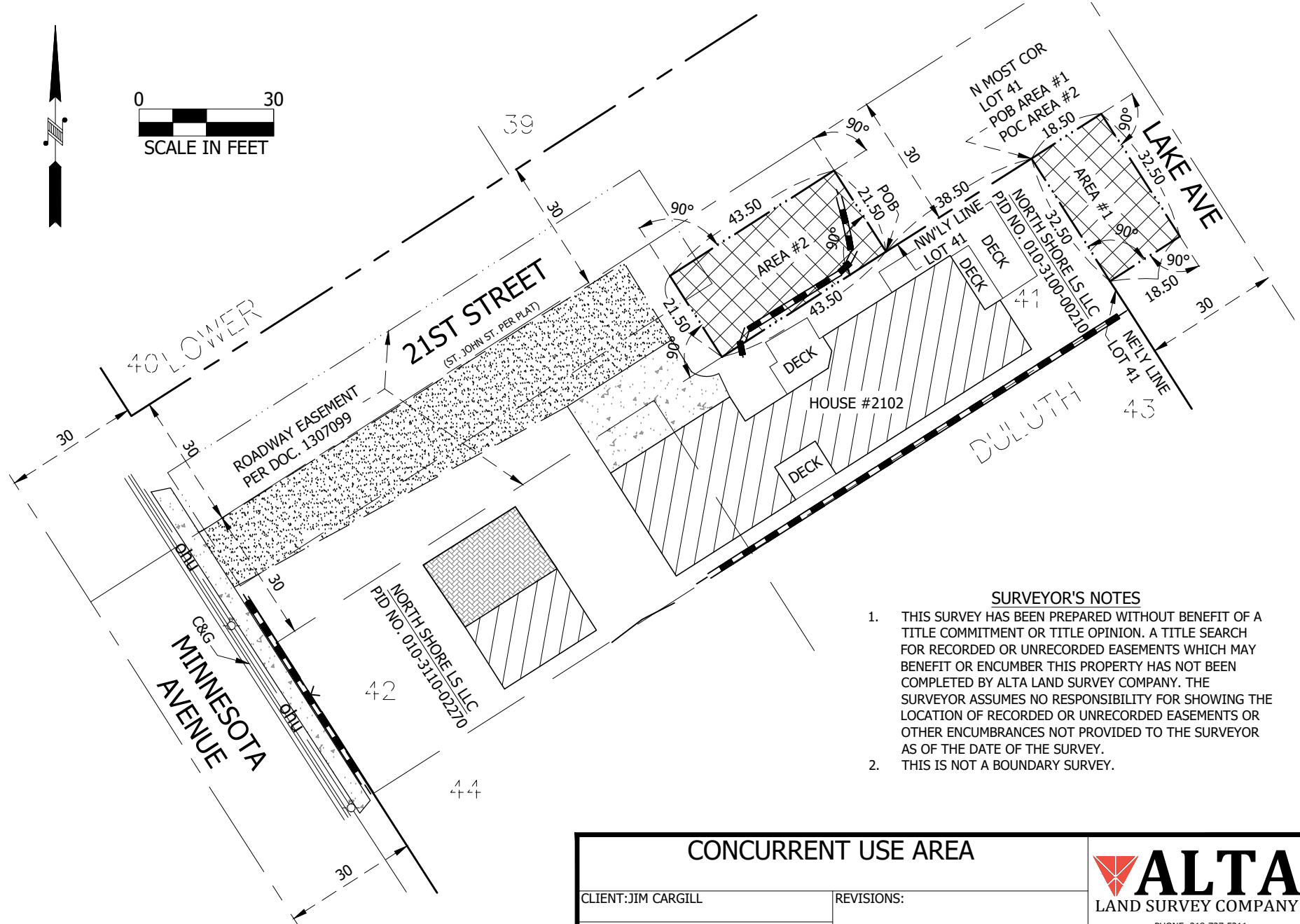
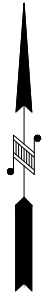
ADDRESS:2102 MINNESOTA AVE,  
 DULUTH, MN 55802

DATE:6-9-2021

JOB NO:20-312 SHEET 1 OF 2

**ALTA**  
 LAND SURVEY COMPANY

PHONE: 218-727-5211  
 LICENSED IN MN & WI  
 WWW.ALTA LANDSURVEYDULUTH.COM



**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.

**CONCURRENT USE AREA**

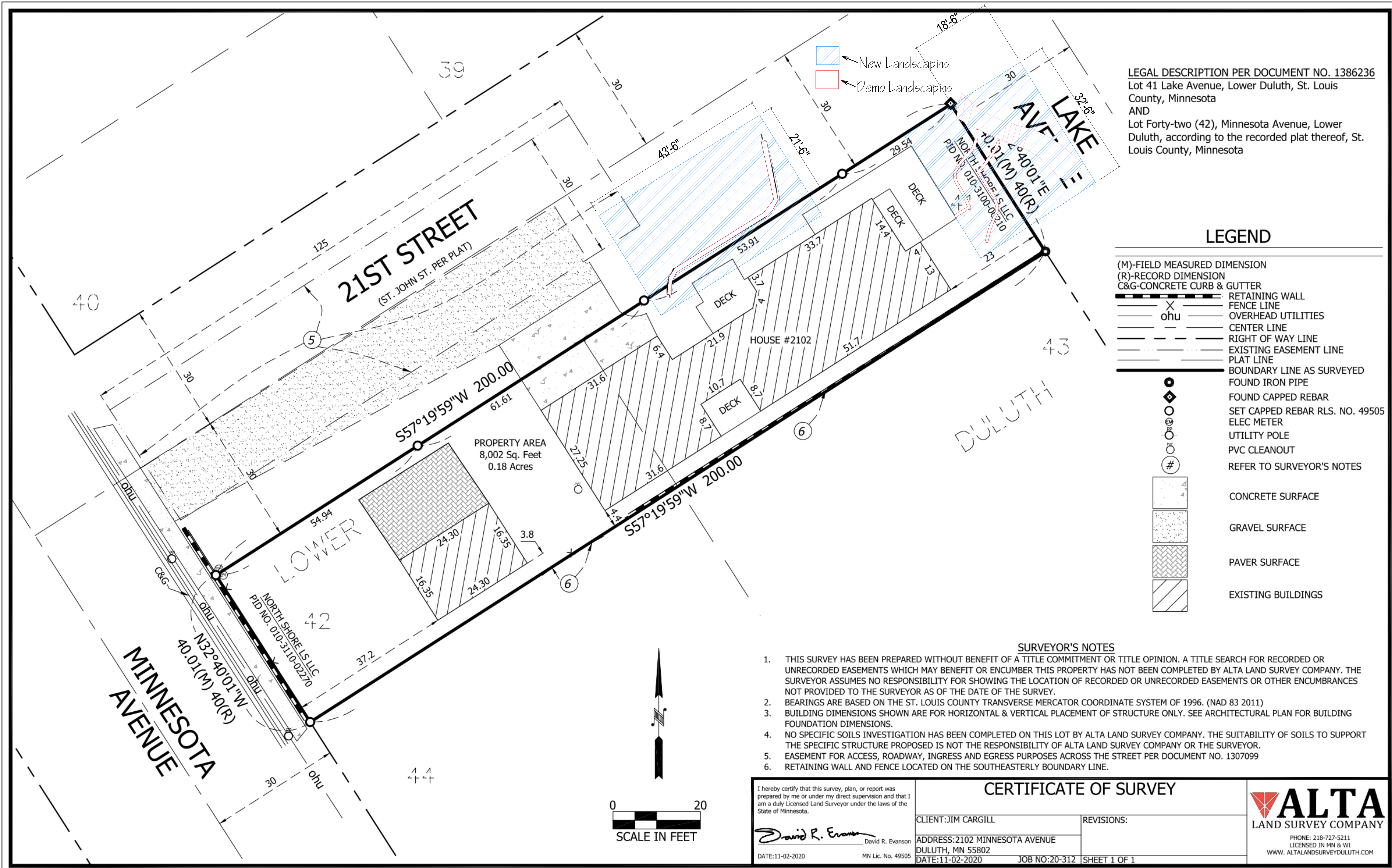
CLIENT: JIM CARGILL  
 ADDRESS: 2102 MINNESOTA AVE,  
 DULUTH, MN 55802  
 DATE: 6-9-2021

REVISIONS:  
  
 JOB NO: 20-312 SHEET 2 OF 2



PHONE: 218-727-5211  
 LICENSED IN MN & WI  
 WWW.ALTLANDSURVEYDULUTH.COM

**Northshore LS, LLC**  
2102 Minnesota Ave  
Duluth, MN 55802



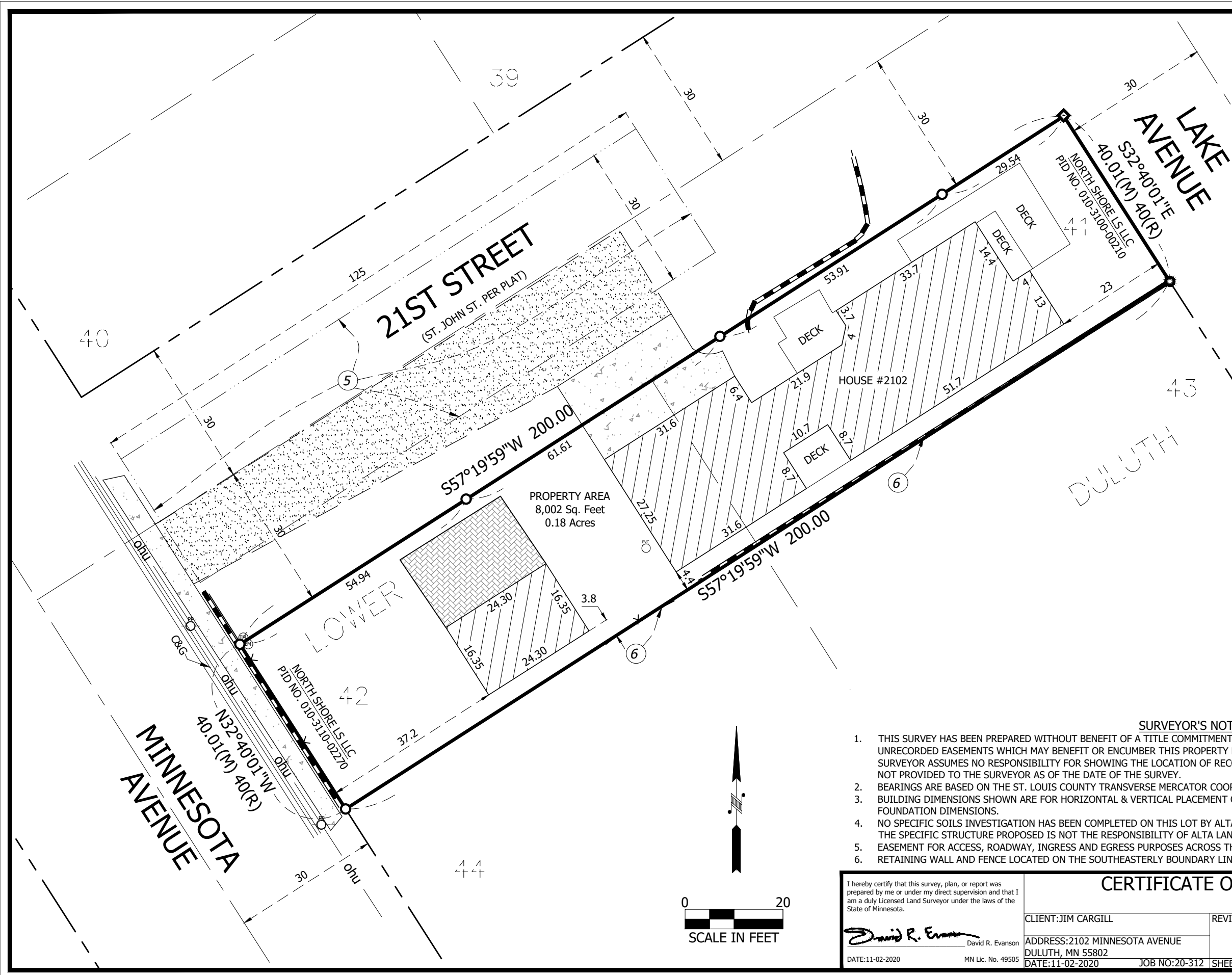
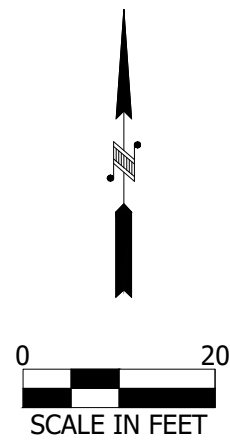
LEGAL DESCRIPTION PER DOCUMENT NO. 1386236  
 Lot 41 Lake Avenue, Lower Duluth, St. Louis  
 County, Minnesota  
 AND  
 Lot Forty-two (42), Minnesota Avenue, Lower  
 Duluth, according to the recorded plat thereof, St.  
 Louis County, Minnesota

**LEGEND**

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

**SURVEYOR'S NOTES**

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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. EASEMENT FOR ACCESS, ROADWAY, INGRESS AND EGRESS PURPOSES ACROSS THE STREET PER DOCUMENT NO. 1307099
6. RETAINING WALL AND FENCE LOCATED ON THE SOUTHEASTERLY BOUNDARY LINE.



**CERTIFICATE OF SURVEY**

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  
 DATE: 11-02-2020 MN Lic. No. 49505

CLIENT: JIM CARGILL  
 ADDRESS: 2102 MINNESOTA AVENUE  
 DULUTH, MN 55802  
 DATE: 11-02-2020

REVISIONS:  
 JOB NO: 20-312 SHEET 1 OF 1

