



**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 21-090	<b>Contact</b>	Kyle Deming	
<b>Type</b>	Concurrent Use Permit	<b>Planning Commission Date</b>	July 13, 2021	
<b>Deadline for Action</b>	<b>Application Date</b>	June 7, 2021	<b>60 Days</b>	August 6, 2021
	<b>Date Extension Letter Mailed</b>	June 24, 2021	<b>120 Days</b>	October 5, 2021
<b>Location of Subject</b>	5324/5330 E. Superior (Lakeside-Lester Park)			
<b>Applicant</b>	Sarah & Seth Maxim	<b>Contact</b>		
<b>Agent</b>		<b>Contact</b>		
<b>Legal Description</b>	See attached Certificate of Survey (PID 010-3060-00120)			
<b>Site Visit Date</b>	June 30, 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 resolve the encroachment of an existing commercial building into the 54<sup>th</sup> Ave. E.

**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>	F-2 – Low-Rise Neighborhood Mix	Commercial	Mixed Use-Neighborhood
<b>North</b>	F-2 – Low-Rise Neighborhood Mix	Residential	Mixed Use-Neighborhood
<b>South</b>	R-1 – Residential Traditional	Railroad and Lakewalk	Traditional Neighborhood
<b>East</b>	F-2 – Low-Rise Neighborhood Mix	Commercial	Mixed Use-Neighborhood
<b>West</b>	F-2 – Low-Rise Neighborhood Mix	Commercial	Mixed Use-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, as this strengthens neighborhoods.

Future Land Use – Neighborhood Mixed Use - A transitional use between more intensive commercial uses and purely residential neighborhoods. May include limited commercial -only space oriented to neighborhood or specialty retail markets.

#### **History:**

1871 – London Addition plat filed in St. Louis County Recorder’s office

1889 – Lester Park 2<sup>nd</sup> Division plat filed

1895 – Rearrangement of Block 119, London Addition, re-plat filed that reoriented the lots to Superior St.

1919 – Vacation of a part of 54<sup>th</sup> Ave. E. adjacent to Lot 11, Rearrangement of Block 119

1928 – Commercial building constructed

### **Review and Discussion Items**

Staff finds that:

- 1.) The area of the proposed concurrent use was originally platted in 1871 as the London Addition to Duluth. This plat did not include the present location of Superior St. or the North Shore Scenic Railroad.
- 2.) In 1895, Block 119 of London Addition (the block containing the subject site) was re-platted to change the orientation of the lots to “front” on Superior St. (called Grand Ave E. on the re-plat). When this re-plat was drawn up there was a surveying error and the west line of 54<sup>th</sup> Ave. E. was drawn too far east.
- 3.) In 1919, the error was corrected when the “extra” part of 54<sup>th</sup> Ave. E. was vacated.
- 4.) The existing commercial building was constructed in 1928.
- 5.) It is apparent from the platting, re-platting, and vacation history of this area that there are challenges providing accurate survey controls. It is assumed that the building was inadvertently constructed in the street easement due to a surveying error.
- 6.) The concurrent use permit will cover the existing building encroachment as well as the exit stairway to be constructed at the rear of the building.
- 7.) If approved, the applicant will need to obtain liability insurance and indemnify the City against liability for occurrences due to their encroachment into the right of way.
- 8.) The City Engineering office does not take responsibility for locating buried private improvements in the public easement and so, ordinarily, the applicant would need to sign up with Gopher State One Call to be notified of underground excavation projects in the area. However, because the private improvements in the street are all plainly visible above ground, the Engineering office will not require this of the applicant in this case.
- 9.) The area proposed for the concurrent use permit will not diminish the public’s ability to use the improved parts of the public right of way, nor will it harm or inconvenience the health, safety, and general welfare of the city.
- 10.) No other public, agency, or other comments have been received as of the time of publishing this report.

### **Staff Recommendation**

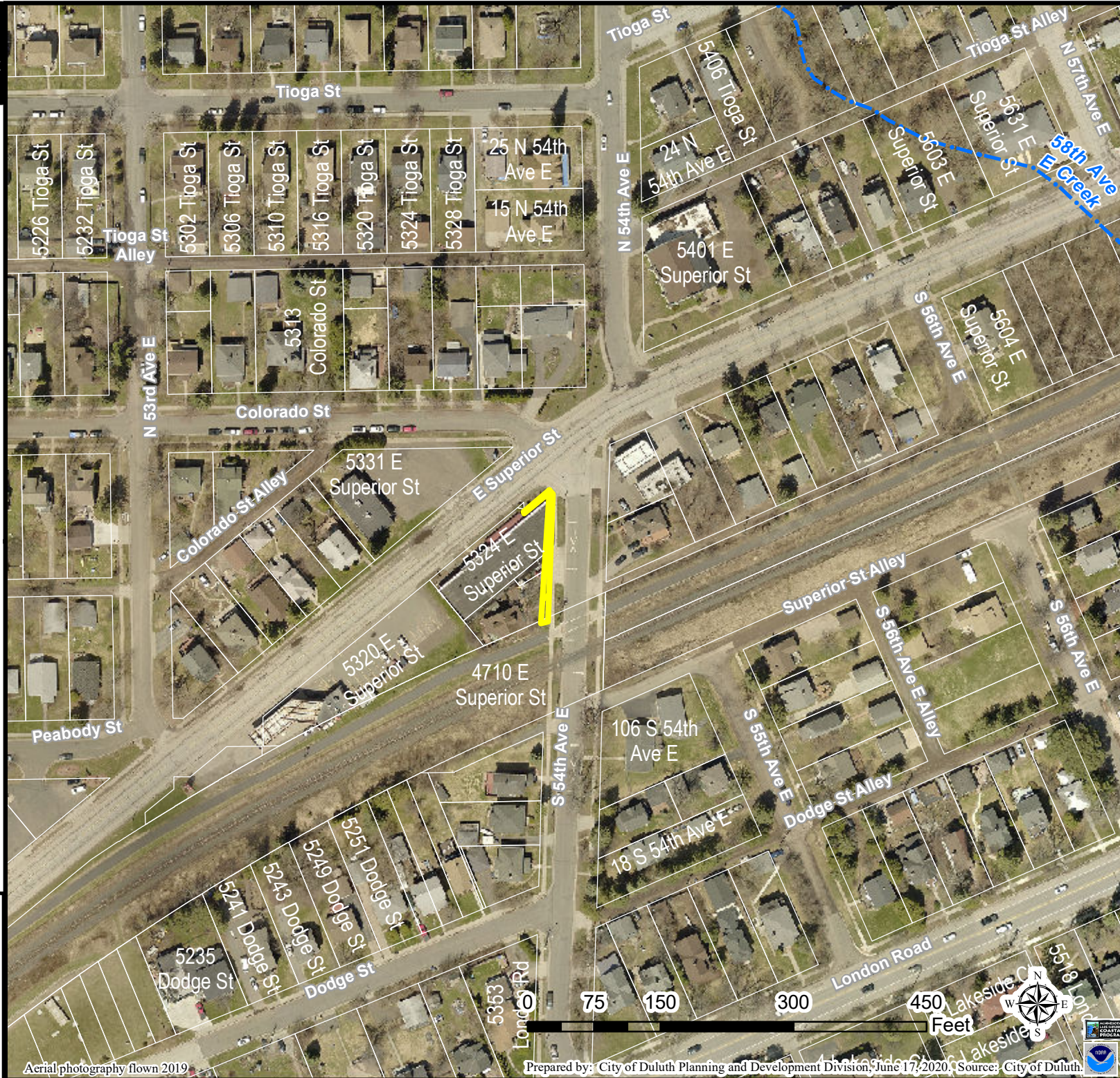
Based on the above findings, Staff recommends that Planning Commission adopt the findings of the staff report and recommend approval of the concurrent use permit with the following conditions:

- 1.) Applicant shall provide evidence to the City of Duluth that required insurance and indemnification are in place at all times.
- 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 approval; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50.





PL21-090  
 Concurrent Use Permit  
 for Building Encroachment  
 5324 E. Superior St.



**Legend**

- Trout Stream (GPS)
- Other Stream (GPS)

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 and Development Division, June 17, 2020. Source: City of Duluth.







PL21-090  
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**Legend**

- Gas Main
- Water Main
- Hydrant

**Sanitary Sewer Mains**

- CITY OF DULUTH
- WLSSD; PRIVATE
- Sanitary Sewer Forced Main

**Storm Sewer Mains**

- Storm Sewer Pipe
- Storm Sewer Catch Basin

**Lots**

- Parcels

**ROW**

- Subdivision Boundaries

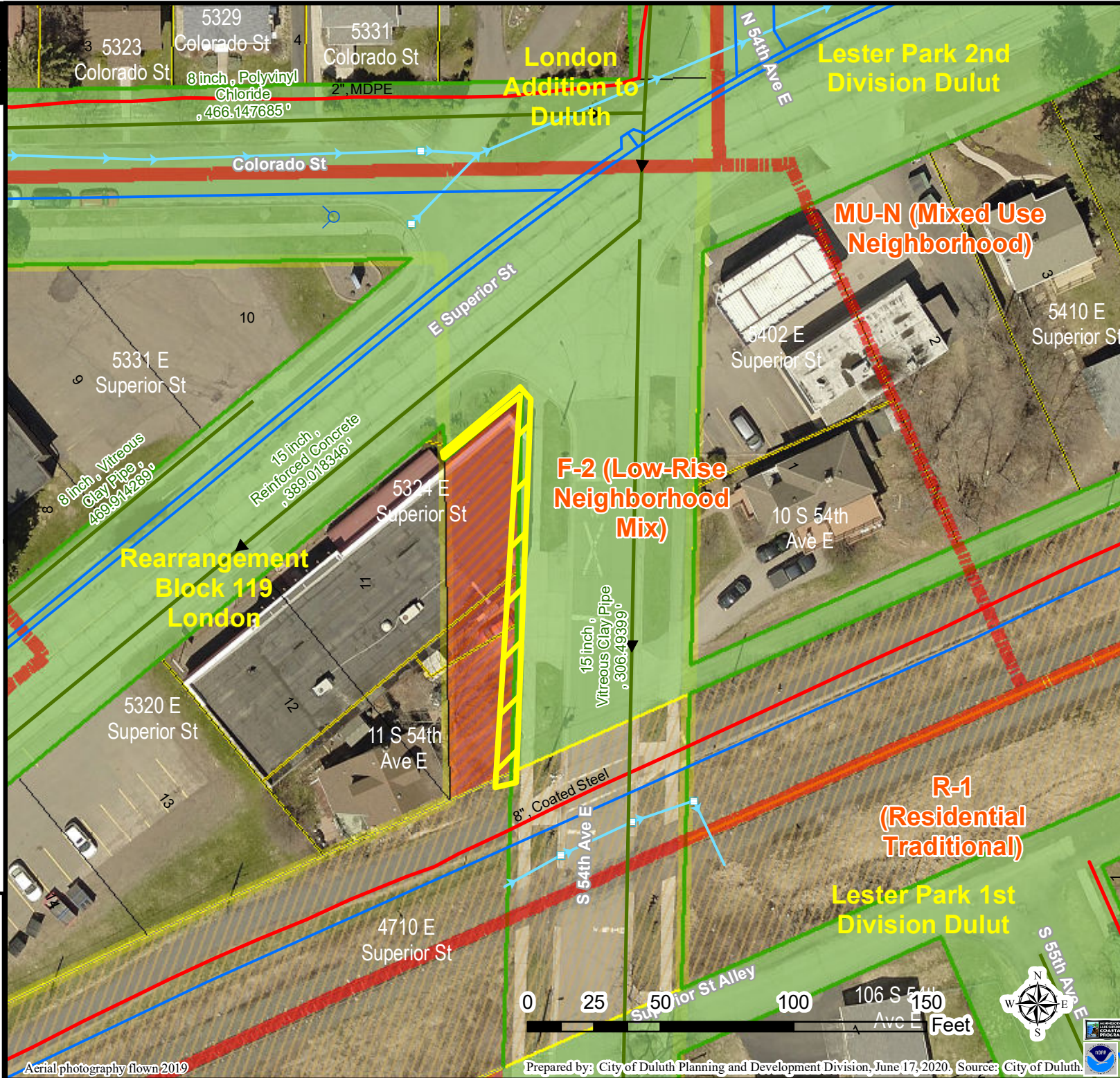
**Boundary Lines**

- <all other values>

**Subtype, ROW\_TYPE**

- Lot Line
- Parcel Line
- ROW (Road)
- ROW (Not Road)
- Subdivision Line
- Water Line
- Survey Line
- Municipal Boundary
- Zoning Boundaries
- Trout Stream (GPS)
- Other Stream (GPS)

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CONCURRENT USE AREA

That part of East Avenue as dedicated on LONDON ADDITION TO DULUTH, (now known as 54th Avenue East) according to the recorded plat thereof, St. Louis County, Minnesota, described as follows:

Commencing at the Northeasterly corner of Lot 11, RE-ARRANGEMENT OF BLOCK 119 LONDON ADDITION TO DULUTH, according to the recorded plat thereof, St. Louis County, Minnesota; thence on an assumed bearing of South 00 degrees 32 minutes 24 seconds East along the Westerly right of way line of said East Avenue (now known as 54th Avenue East) as dedicated on said LONDON ADDITION TO DULUTH for a distance of 12.75 feet; thence North 51 degrees 05 minutes 56 seconds East 33.48 feet to the Westerly right of way line of said East Avenue as shown on LESTER PARK 2ND DIVISION, according to the recorded plat thereof, St. Louis County, Minnesota; thence South 05 degrees 09 minutes 47 seconds West, along the Westerly right of way line of said East Avenue 3.78 feet to the point being the point of beginning of the parcel herein described; thence South 38 degrees 27 minutes 44 seconds East 8.35 feet; thence South 02 degrees 40 minutes 30 seconds West 58.16 feet; thence South 51 degrees 04 minutes 41 seconds West 11.54 feet to the Westerly right of way of said East Avenue, said LESTER PARK 2ND DIVISION; thence North 05 degrees 09 minutes 47 seconds East along said Westerly right of way line 72.17 feet to the point of beginning.

Said parcel contains 459 Sq. Feet.

**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. BEARINGS ARE BASED ON THE ST. LOUIS COUNTY TRANSVERSE MERCATOR COORDINATE SYSTEM OF 1996. (NAD 83 2011)
3. THIS IS NOT A BOUNDARY SURVEY.

**LEGEND**



CONCURRENT USE AREA

R/W-RIGHT OF WAY  
 POC-POINT OF COMMENCEMENT  
 POB-POINT OF BEGINNING  
 C/L-CENTER LINE

————— CENTER LINE  
 ———— RIGHT OF WAY LINE  
 — ··· — CONCURRENT USE LINE  
 ———— EXISTING PLAT LINE

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:6-11-2021

**CONCURRENT USE EXHIBIT**

CLIENT:SETH MAXIM

REVISIONS:

ADDRESS:5324 E SUPERIOR ST,  
 DULUTH, MN 55804

DATE:6-11-2021

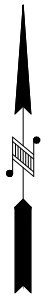
JOB NO:20-241

SHEET 1 OF 2

**ALTA**  
 LAND SURVEY COMPANY

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





**EAST SUPERIOR ST.**  
(GRAND AVE. E. PER PLAT)

SE'LY R/W LINE OF E SUPERIOR ST  
PER RE-ARRANGEMENT OF BLOCK  
119 LONDON ADD TO DULUTH

RE-ARRANGEMENT OF  
BLOCK 119

LONDON ADDITION

NE'LY COR  
LOT 11, POC

500°32'24"E  
12.75

N51°05'56"E  
33.48

POB

S05°09'47"W  
3.78

8.35  
S38°27'44"E

33

33

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W'LY R/W LINE OF 54TH AVE E  
PER RE-ARRANGEMENT OF BLOCK  
119 LONDON ADD TO DULUTH &  
LONDON ADD TO DULUTH

VACATED 54TH AVE. E.  
(PER BOOK "N" OF PLATS, PAGE 141)

W'LY R/W LINE OF 54TH AVE  
E PER LESTER PARK 2ND ADD  
N05°09'47"E 72.17

S02°40'30"W 58.16

S51°04'41"W  
11.54

TO  
DULUTH

E LINE OF LONDON  
ADDITION TO DULUTH

C/L OF 54TH AVE E PER RE-ARRANGEMENT  
OF BLOCK 119 LONDON ADD TO DULUTH &  
LONDON ADDITION TO DULUTH

C/L OF 54TH AVE E PER LESTER PARK 2ND ADD

**54TH AVE. E.**  
(EAST AVE. PER PLAT)

C/L OF 54TH AVE E  
AS CONSTRUCTED  
& TRAVELED

**CONCURRENT USE EXHIBIT**

CLIENT: SETH MAXIM  
ADDRESS: 5324 E SUPERIOR ST,  
DULUTH, MN 55804  
DATE: 6-11-2021

REVISIONS:  
JOB NO: 20-241  
SHEET 2 OF 2

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



126  
126

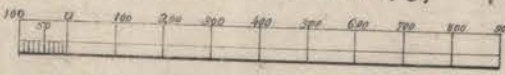
# LONDON

## ADDITION

TO

# DULUTH

Scale  
400ft = 1 inch.





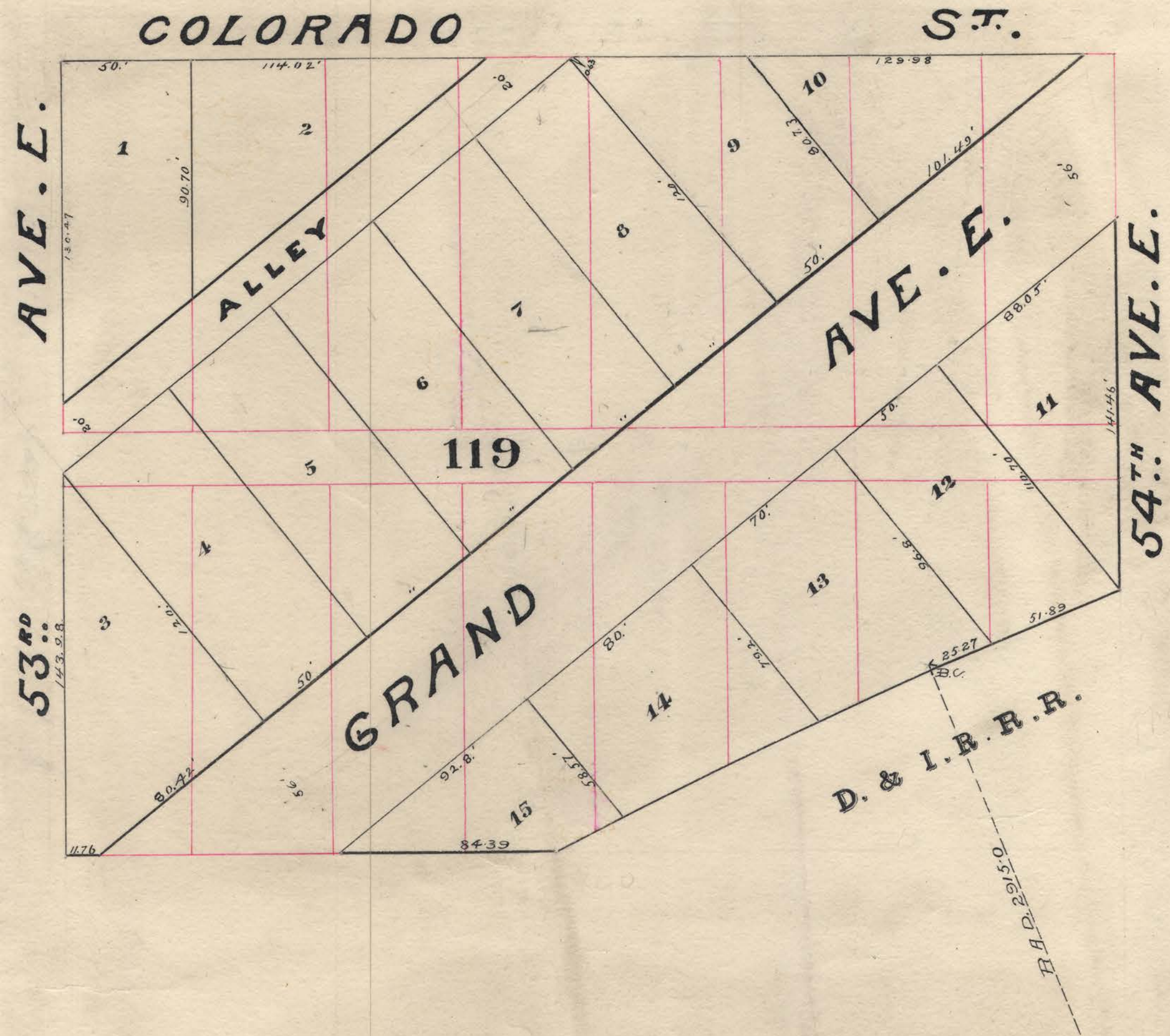
Vacation # 171780  
Vacation # 206460  
165399



*Handwritten notes:*  
No. 4 of No. 10 Sec 8  
Sec 8







**THE  
RE-ARRANGEMENT OF BLOCK 119.  
LONDON ADDITION TO DULUTH.**

SCALE, 40 FT. = 1 INCH.

**KNOW ALL MEN BY THESE PRESENTS** that the Lakeside Land Company a corporation organized under the laws of the State of Minnesota, being the owner of the following described property lying and being in the State of Minnesota, County of St. Louis, City of Duluth to wit: All that part of Block one hundred and nineteen (119) in London Addition to Duluth according to the record plat thereof, which lies north of the right of way of the Duluth and Iron Range railway, as at present located through said London Addition and being desirous of re-arranging the same, said company have caused said property to be surveyed, and the annexed plat thereof made in accordance with the statutes in such cases made and provided. Now therefore the said Lakeside Land Company does hereby ratify and in all respects confirm, said survey and plat thereof as the Re-arrangement of Block 119 London Addition to Duluth and the alley and street represented on said plat are hereby dedicated to public use. I witness whereof the said Lakeside Land Company has caused this instrument to be executed and signed by its President and its corporate seal to be hereto affixed and duly attested by its Secretary this 13<sup>th</sup> day of February, A.D. 1895.

In presence of W. H. Crowley Chas. R. Haines President  
J. N. Davis attest. John B. Greenfield Secretary.

State of Minnesota }  
County of St. Louis } S.S.  
On this 13 day of Feb'y. A.D. 1895 before me personally appeared Chas. R. Haines and John B. Greenfield, to me personally known to be the identical persons whose signatures are subscribed to the above certificate, who being by me duly and severally sworn did say that they are respectively, the President and Secretary of the Lakeside Land Company of Duluth, Minn., that the foregoing instrument was signed and sealed in behalf of the said company by authority of its Board of Directors that the seal imprinted thereon is the corporate seal of said corporation and that the said Chas. Haines and John B. Greenfield acknowledge said plat and said certificate to be the free act and deed of said corporation.

Alvin B. Kurt Notary Public St. Louis Co. Minn.

I the undersigned, a surveyor and civil engineer, do hereby certify, that at the request of the Lakeside Land Company I have surveyed the the land described in the foregoing certificate and represented on the plat hereto annexed, and that said plat is a true and accurate plat of said land surveyed.

S. L. Rice Surveyor.

State of Minnesota }  
County of St. Louis } S.S.  
On this 13 day of Feb'y. A.D. 1895 before me appeared S. L. Rice, to me personally known and he did say, that he is a surveyor and civil engineer and that he executed the foregoing certificate and acknowledged the same as his own free act and deed.

Alvin B. Kurt Notary Public, St. Louis Co. Minn.

The annexed plat of the Re-arrangement of Block 119 London Addition to Duluth approved by us this 18<sup>th</sup> day of March A.D. 1895

Attest Amos Kilger } Board of  
Clerk of Board of Public Works. } Public Work.  
James Strickland

Accepted by the common council of the City of Duluth at a meeting held on the 25<sup>th</sup> day of March A.D. 1895.

City Clerk, City of Duluth.

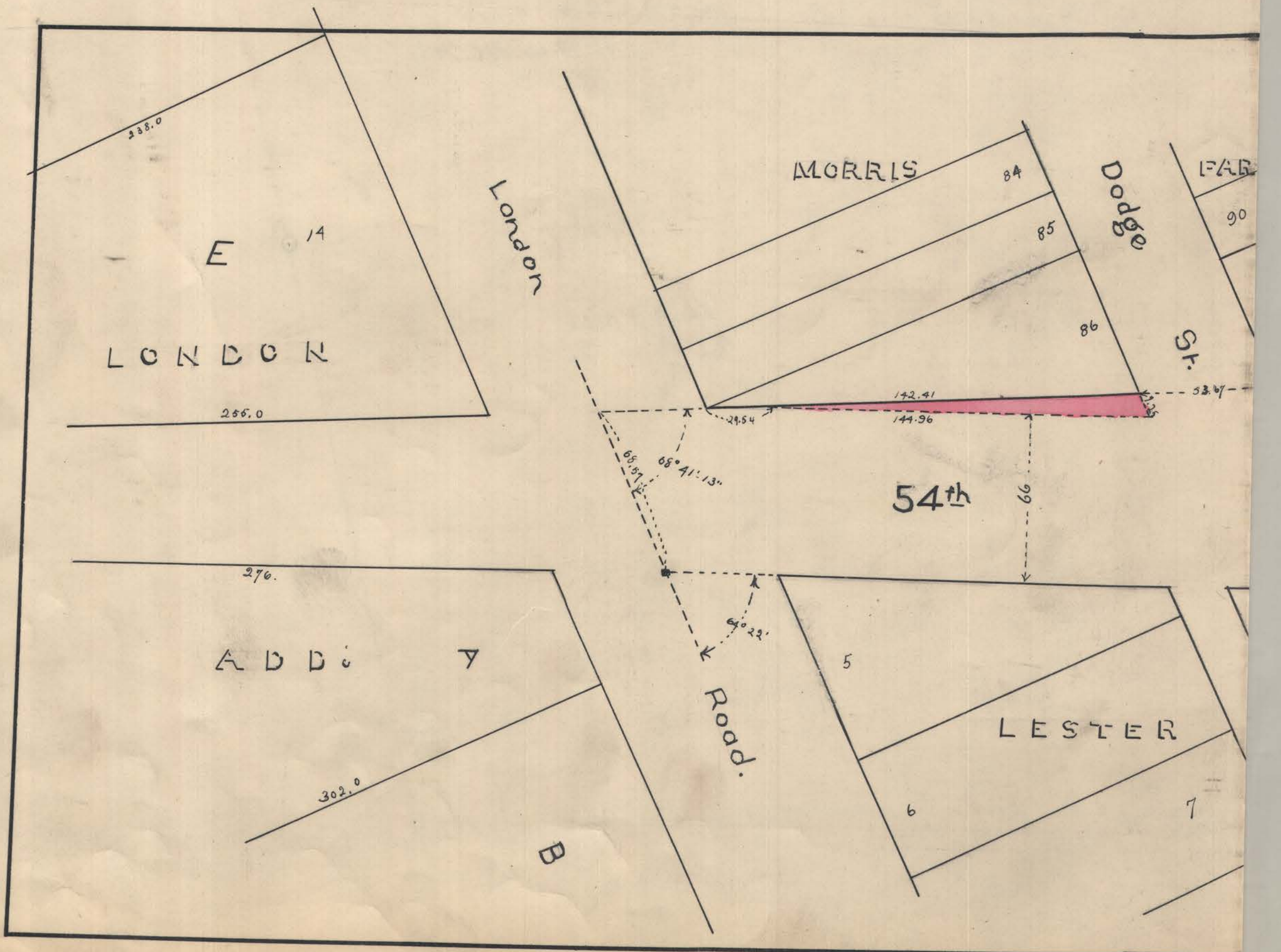
I hereby certify that the taxes on the above described land are fully paid to date.

28<sup>th</sup> day of March 1895  
#1994 O. Hadden County Auditor St. Louis Co.  
Alex. Filutz

State of Minnesota }  
County of St. Louis } S.S.  
A.D. 1895 at 3:30 o'clock P.M.  
I hereby certify that this plat was filed in my office 21 March 1895

P. Bergstrom Register of Deeds St. Louis Co.  
Wm. R. O'Shea







# N of Plats

No. 293776

Filed January 31st 1919 at 4 P.M.

By Commissioner Farrell:

Resolved, That Peabody street lying southerly of the Duluth & Iron Range Railway company's right-of-way, excepting an alley sixteen feet wide adjacent to said Duluth & Iron Range Railway company's right-of-way and all that portion of Fifty-fourth avenue east between London Road and Superior street lying west of a line sixty-six feet west of and parallel to the east line of Fifty-fourth avenue east be and the same are hereby vacated.

Resolved further, That the City of Duluth does hereby reserve the right-of-way for easements through said property for conduits for wires, sewers, water and gas and other public necessities.

Commissioner Farrell moved the adoption of the resolutions and it was declared adopted upon the following vote:

Yeas - Commissioners Farrell, Phillips, Silberstein, Voss, Mayor Magney - 5.

Nays - None. Adopted Jan. 20, 1919. Approved Jan. 20, 1919.

I, F. D. Ash, City Clerk of the City of Duluth, in the State of Minnesota, do hereby certify that I have compared the annexed copy of Resolution adopted by the City Council of the City of Duluth, on the 20th day of Jan. 1919, with the original document and record thereof on file and of record in my office, and in my custody as City Clerk of said City, and that the same is a true and correct copy thereof, and the whole thereof, and a true and correct transcript therefrom.

In Witness Whereof, I have hereunto set my hand and affixed the corporate seal of said City of Duluth, this 28th Day of Jan. 1919.

F. D. Ash, City Clerk, City of Duluth, Minn.

Corporate Seal of the City of Duluth. 1887

## Vacation Plat of a part of the westerly side of 54th Ave. E. from Superior St. to London Road.

The part to be vacated is shown colored in red on the annexed plat. Aug. 10, 1915.

Corporate Seal of the City of Duluth 1887.

Vacated by resolution of the City Council of the City of Duluth on the 20th day of Jan. A.D. 1919.

F. D. Ash City Clerk.

