



**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>	PLVAC-2502-0001		<b>Contact</b>	Jason Mozol, jmozol@duluthmn.gov	
<b>Type</b>	Vacation of Street		<b>Planning Commission Date</b>		March 11, 2025
<b>Deadline for Action</b>	<b>Application Date</b>		February 4, 2025	<b>60 Days</b>	N/A
	<b>Date Extension Letter Mailed</b>		N/A	<b>120 Days</b>	N/A
<b>Location of Subject</b>		W 4 <sup>th</sup> St between 132 <sup>nd</sup> and 134 <sup>th</sup> Ave W and 133 <sup>rd</sup> Ave W between W 3 <sup>rd</sup> St and W 4 <sup>th</sup> St			
<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>		February 24, 2025	<b>Sign Notice Date</b>		February 24, 2025
<b>Neighbor Letter Date</b>		February 19, 2025	<b>Number of Letters Sent</b>		15

**Proposal**

The applicant is requesting to vacate a sections of platted W 4<sup>th</sup> St and platted 133<sup>rd</sup> Ave W with retention of utility easements.

**Staff Recommendation**

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	Undeveloped	Traditional Neighborhood/ Open Space
<b>North</b>	R-1	Undeveloped	Open Space
<b>South</b>	R-1	Highway/Residential	Traditional Neighborhood/ Open Space
<b>East</b>	R-1	Undeveloped/ Stream	Traditional Neighborhood/ Open Space
<b>West</b>	R-1	Residential	Traditional Neighborhood/ 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):**

Governing Principle #10 – Take actions that enhance the environment, economic, and social well-being of the community.

Governing Principle #6- Reinforce the place specific.

Vacating this street will allow for the transfer of the property to the Fond du Lac band and preservation of the cemetery.

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.

Open Space: High natural resource or scenic value, with substantial restrictions and development limitations. Primarily public lands but limited private use is anticipated subject to use and design controls.

Recent History

The streets were platted as part of Fond du Lac. During reconstruction of MN Hwy 23, it was discovered that human remains existed in the area and plans have developed to transfer the property to the Fond du Lac band for preservation of the cemetery. The State of Minnesota Archaeologist designed this site as the Mission Creek Cemetery in 2020 and the streets proposed to be vacated lie within the designated boundary.

W 4<sup>th</sup> Street was previously constructed outside the alignment of the platted right of way but it has been abandoned. Electric and communication utilities exist in the rights-of-way proposed to be vacated, so utility easements will be maintained.

**Review and Discussion Items:**

Staff finds that:

1. The applicant is requesting to vacate a section of platted W 4<sup>th</sup> St and platted 133<sup>rd</sup> Ave W and establish utility easements over the area, as described in the attached exhibit.
2. W 4<sup>th</sup> St was previously built but out of alignment with the platted right-of-way. It crossed the platted right-of-way but crossed a portion of the 133<sup>rd</sup> Ave W right-of-way.
3. The proposed vacation is necessary to facilitate transfer of the property to the Fond du Lac band.
4. The platted street contains electric and communication utilities. Easements will be established to allow those uses to continue.
5. The platted street will not be needed by the City for the promotion of public health, safety, or welfare of the citizens of Duluth.
6. Vacating the platted street will not impact or deny access to other property owners.
7. The City Engineering office has reviewed the proposed vacation and has indicated it does not expect to need the area for future utilities or drainage.
8. No other public, agency, or City comments have been received.
9. All affected property owners have consent to the vacation.
10. 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. City Council must approve the vacation with at least 6/9 vote.

2. The vacation and easements must be recorded within 90 days of final approval by City Council, or such approval will lapse.





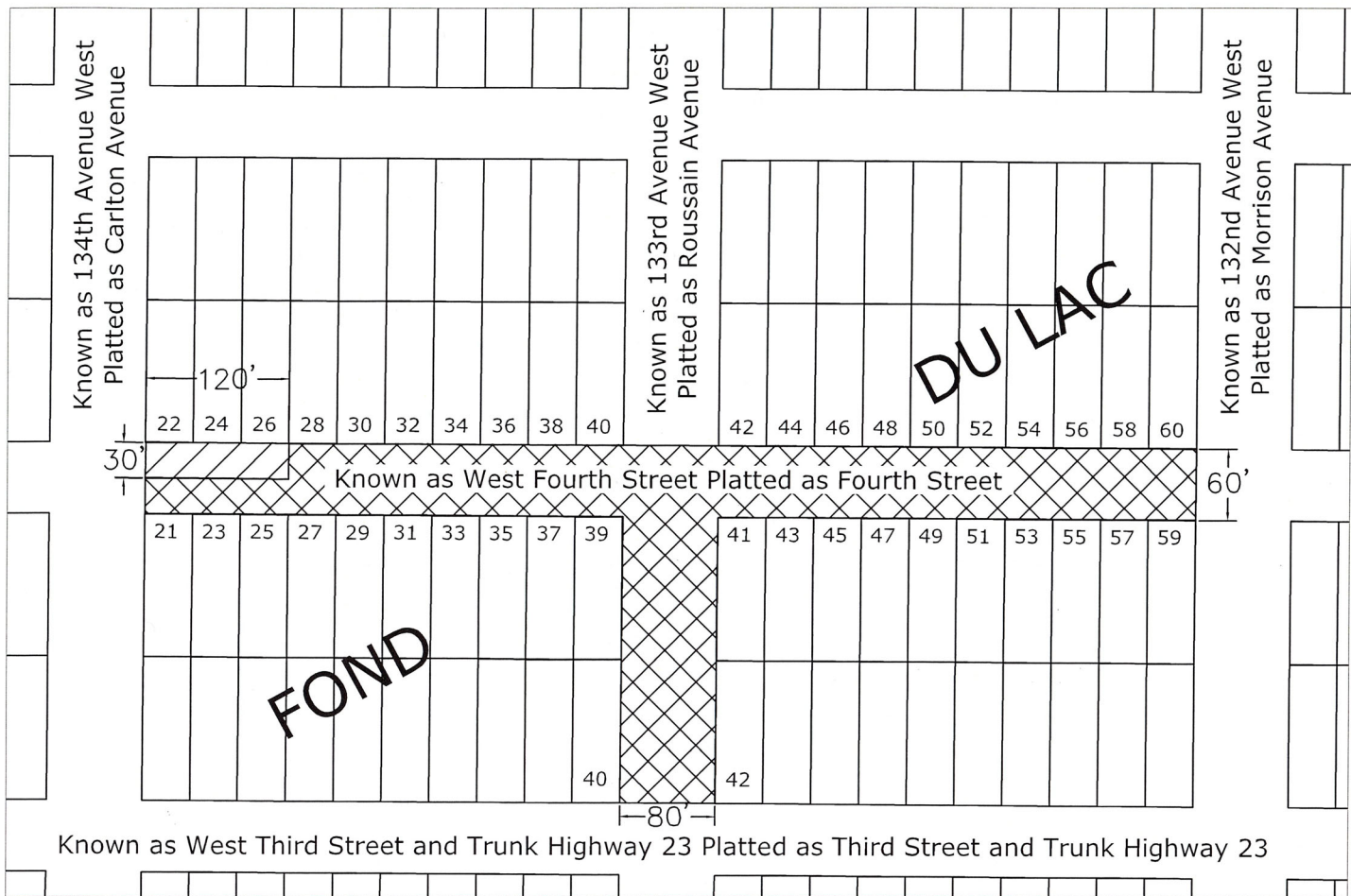
PLVAC-2502-0001  
Right of Way Vacation  
W 4th St and 133rd Ave W





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.



## VACATION EXHIBIT



-  Area to be vacated, with utility easement retained
-  Area previously vacated

0 125 250 Feet



Legal description of vacation of West Fourth Street and 133<sup>rd</sup> Avenue West

All that part of Fourth Street and Roussain Avenue of FOND DU LAC, according to the recorded plat thereof, St. Louis County, Minnesota, said right of way is also known as West Fourth Street and 133<sup>rd</sup> Avenue West respectively, described as follows:

That part of Fourth Street bounded on the west by the extension of the east right of way of Carlton Avenue of FOND DU LAC, also known as 134<sup>th</sup> Avenue West; and bounded on the east by the extension of the west right of way of Morrison Avenue, also known as 132<sup>nd</sup> Avenue West.

EXCEPT that part of the north half of Fourth Street extending 120 feet east of said 134<sup>th</sup> Avenue West previously vacated under City of Duluth Resolution No. 03-0680 registered with the St. Louis County Registrar of Titles on May 10, 2004 as Doc. No. 775608 and recorded with the St. Louis County Recorder on May 10, 2004 as Doc. No. 942981

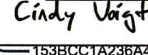
AND that part of Roussain Avenue bounded on the north by the extension of the north right of way of said Fourth Street, and bounded on the south by the extension of the north right of way of Third Street, also known as West Third Street, Trunk Highway 23.

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.

 21774 Feb. 4, 2025  
Greg Stoewer MN. License # Date

Approved by the City Engineer of the City of Duluth, MN

Signed by: this the 4 day of February 2025.

By:   
153BCC1A236A4E8...

# Petition to Vacate Street, Alley, or Utility Easement

Name: City of Duluth

Description of street, alley, or easement to vacate: West Fourth Street platted as Fourth Street and 133rd Avenue platted as Roussain Avenue.

My request for this vacation is to (indicate purpose of vacation):  
Vacate the rights of ways within the Mission Creek Cemetery boundary.

The City of Duluth will not need this street, alley, or easement in the future because:  
City streets and utilities have been abandoned and/or relocated in coordination with MnDOT


**PLEASE TAKE NOTICE:** Pursuant to Section 50-37.6 of the Duluth City Code, the above-identified applicant(s) petition the Duluth City Council to vacate the street, alley, or easement described in the attached legal description.

This petition is made upon the following facts and reasons (Identify the factual basis and reasons supporting the petition) <sup>1</sup>:

The City is supporting the Fond du Lac Band and MnDOT on the Mission Creek Cemetery site,  
that was inadvertently disturbed by MnDOT's bridge replacement project in 2017. MnDOT is completing a  
landscape project. The parties intend that all property within the cemetery boundary will be transferred to  
the Fond du Lac Band.

This petition is supported by a majority of the person(s) who own a majority of the lineal frontage of the land abutting upon the portion of the public easement proposed to be vacated. A copy of the signatures of these persons is attached hereto and made a part hereof. <sup>2</sup>

The petitioner(s) agree to provide the city with a plat of the easement(s) as required by Section 50-37.6B(3) of the Duluth City Code upon approval of the vacation. We understand that the vacation cannot occur without the submission of the required plat. We understand that the cost of producing the plat is the responsibility of the petitioner(s). We also understand that the approval will lapse and be of no effect if the plat and clerk certification is not recorded with the county recorder within 90 days after final approval.

Signature(s):  Danielle Erjavec, Sr. Property Services Specialist  
City of Duluth  
Date: 2/7/2025 | 13:51:12 CST

**Notice: This is public data.**

<sup>1</sup> In order to vacate a public easement it must be demonstrated that the easement is useless for the purpose for which it was dedicated.

<sup>2</sup> If a property is owned in joint tenancy or by tenants in common, each individual with an ownership interest will be counted to determine if a majority of owners have signed the petition. An owner cannot sign for another owner unless legally authorized to do so, i.e. power of attorney, trustee, or court approved guardianship or conservatorship.

# Petition Signature Form

We, the undersigned, do hereby request that the City of Duluth consider vacating: West Fourth Street platted as Fourth Street and 133rd Avenue platted as  
Roussain Avenue

[illegible]

# Petition Signature Form

We, the undersigned, do hereby request that the City of Duluth consider vacating: West Fourth Street platted as Fourth Street and 133rd Avenue platted as  
Roussain Avenue

[illegible]