



CITY OF DULUTH

DEPARTMENT OF PLANNING & CONSTRUCTION SERVICES
Community Planning Division
411 West First Street – Room 208 - Duluth, Minnesota 55802-1197
218-730-5580 – An Equal Opportunity Employer

MEMORANDUM

DATE: October 3, 2017
TO: Planning Commission
FROM: Steven Robertson, Senior Planner
SUBJECT: PL 17-139, City Proposal to Rezone Property Near Arrowhead Road and Arlington Avenue

At the September 12, 2017 Planning Commission, staff presented a city initiated recommendation to rezone several parcels in order to be in conformance with the comprehensive plan's future land use map. The Planning Commission tabled the item to give staff more time to fully consider public testimony and correspondence received. Based up on that information, and internal staff discussions, staff are recommending a substantially similar rezoning change as proposed in September, but with two minor amendments.

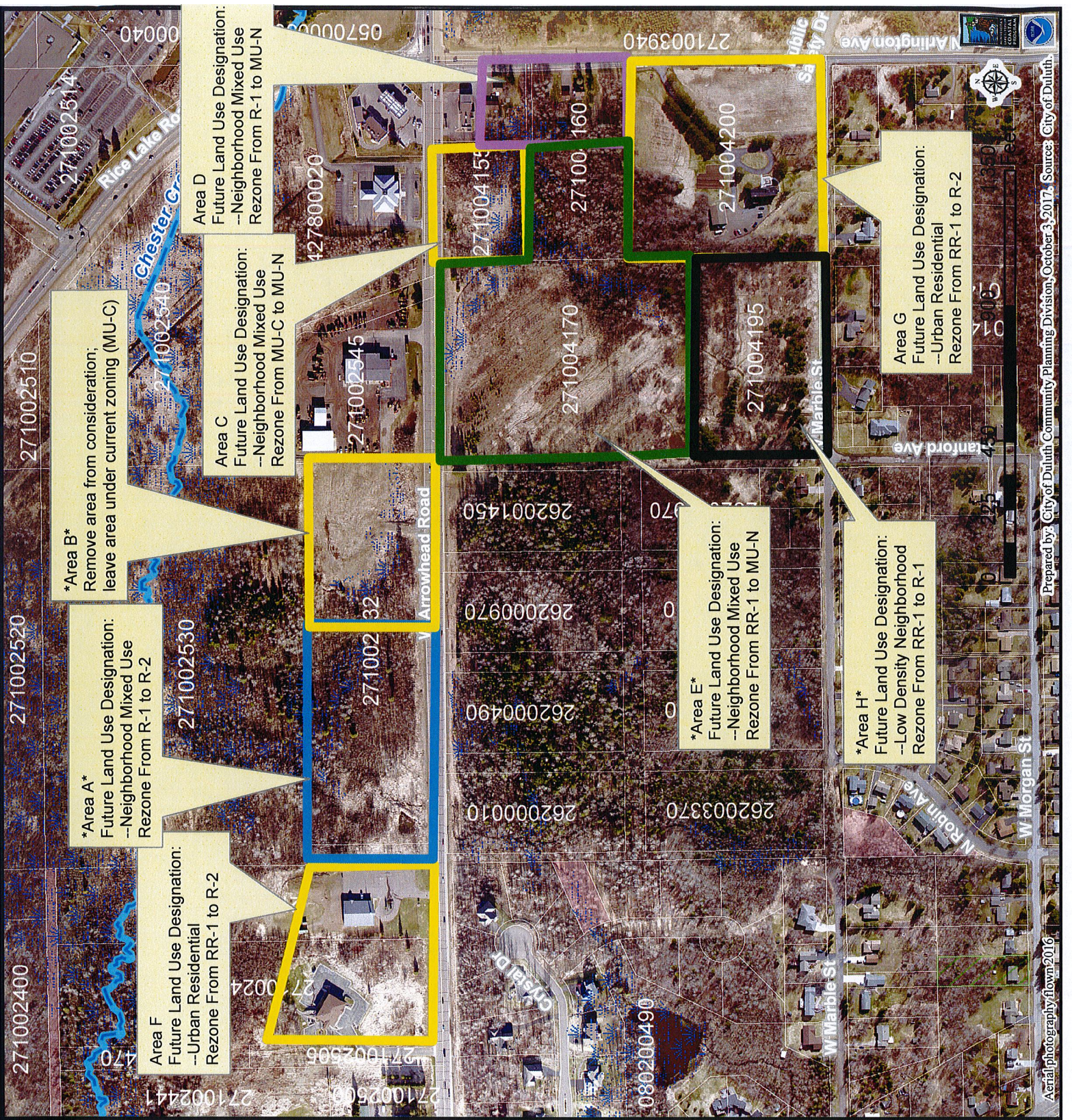
The first amendment involves a minor adjustment to a rezoning boundary near Arlington Avenue and Marble Street, as shown in the attached October 3, 2017 Proposed Area Rezoning Map as Areas E and H. Staff would recommend moving the proposed MU-N boundary south a further 200 feet, to align with the northern parcel boundary of 010-2710-04195. The area adjacent to Marble Street would still remain R-1.

The second involves extending the proposed R-2 designation from Area F into Area A, and removing Area B from the rezoning action at this time. By rezoning A to R-2 instead of MU-N, as initially proposed by staff, it will mirror the zoning of the property to the south (site of the proposed Harbor Light final plat), while maintaining a transition in zoning districts. Area B, approximately 550 feet along Arrowhead Road, would be removed from consideration in this zoning action, but the city may revisit this property, along with the commercial node at Arrowhead Road and Arlington/Rice Lake Road, in the future after the Imagine Duluth 2035 Comprehensive Plan is adopted.

4) A-1



Proposed Area Rezoning Map



Area B
Remove area from consideration;
leave area under current zoning (MU-C)

Area A
Future Land Use Designation:
--Neighborhood Mixed Use
Rezone From R-1 to R-2

Area F
Future Land Use Designation:
--Urban Residential
Rezone From RR-1 to R-2

271002530

Area C
Future Land Use Designation:
--Neighborhood Mixed Use
Rezone From MU-C to MU-N

Area D

Future Land Use Designation:
--Neighborhood Mixed Use
Rezone From R-1 to MU-N

271004170

271004155

271004200

Area E
Future Land Use Designation:
--Neighborhood Mixed Use
Rezone From RR-1 to MU-N

Area H
Future Land Use Designation:
--Low Density Neighborhood
Rezone From RR-1 to R-1

Area G
Future Land Use Designation:
--Urban Residential
Rezone From RR-1 to R-2

Legend


























- Trout Stream (GPS)
- Other Stream (GPS)
- Wetlands (NRR1)

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 the information contained within.

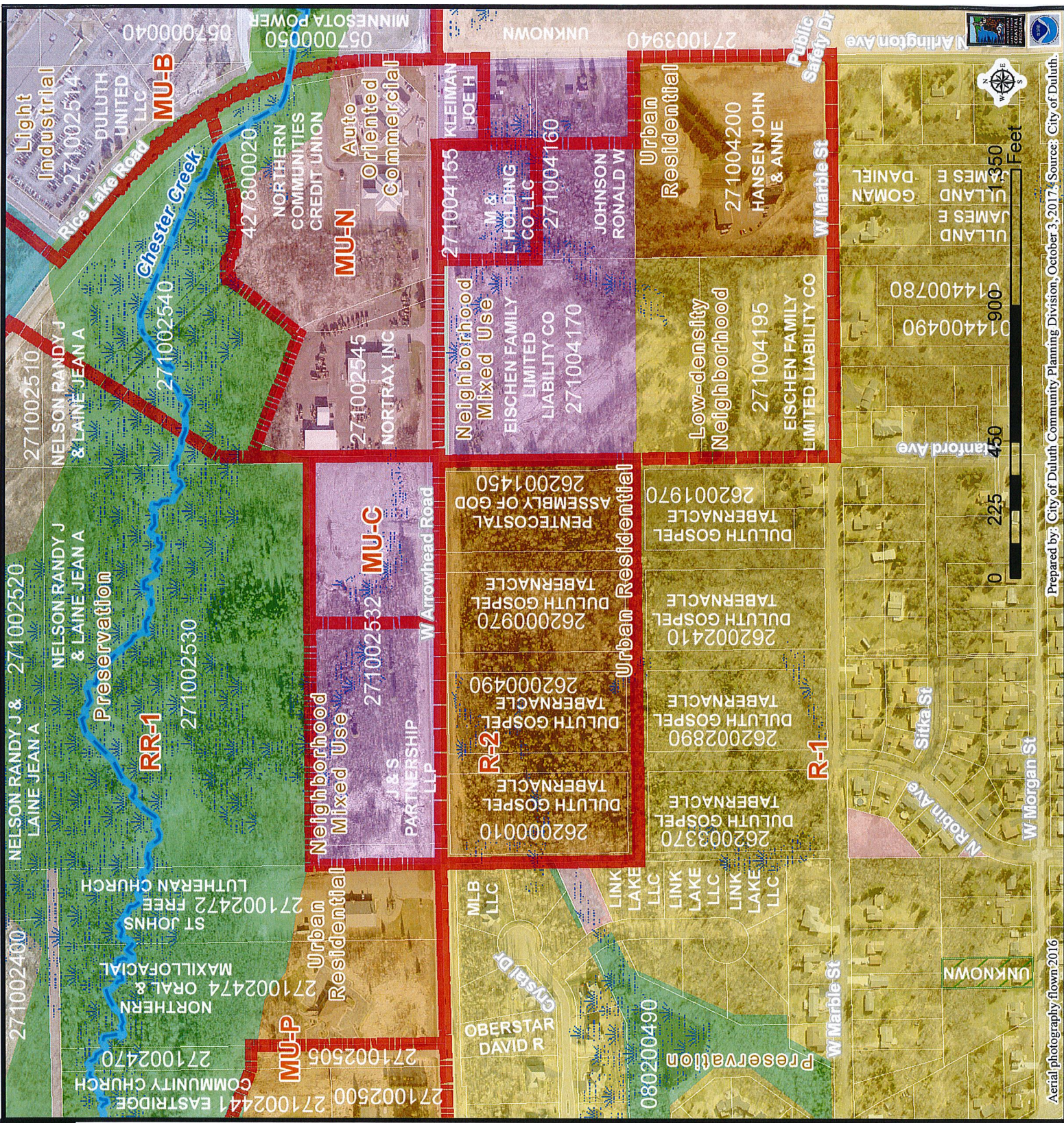
A-2



Legend

-  Zoning Boundaries
-  Trout Stream (GPS)
-  Other Stream (GPS)
-  Wetlands (NRR1)
- Future Land Use**
-  Preservation
-  Recreation
-  Rural Residential
-  Low-density Neighborhood
-  Traditional Neighborhood
-  Urban Residential
-  Neighborhood Commercial
-  Neighborhood Mixed Use
-  General Mixed Use
-  Central Business Secondary
-  Central Business Primary
-  Auto Oriented Commercial
-  Large-scale Commercial
-  Business Park
-  Tourism/Entertainment District
-  Medical District
-  Institutional
-  Commercial Waterfront
-  Industrial Waterfront
-  Light Industrial
-  General Industrial
-  Transportation and Utilities

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Aerial photography flown 2016

Prepared by: City of Duluth Community Planning Division, October 3, 2017. Source: City of Duluth.

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REPLY TO CLOQUET OFFICE

WWW.HANFTLAW.COM

Email: wmb@hanftlaw.com

September 21, 2017

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JOHN D. KELLY*
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R. THOMAS TORGERSON*
CHERYL M. PRINCE*
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CHARLES H. ANDRESEN, OF COUNSEL
DAVID C. LINGREN, OF COUNSEL

*ALSO ADMITTED IN WISCONSIN

Via Email Only

Mr. Steven Robertson
Senior Planner
City of Duluth Planning and Construction Services
411 W. First Street, Room 210
Duluth, MN 55802

Re: Arrowhead Road Property Rezoning/J & S Partnership
Our File No. 25118.000

Dear Steven:

The PL 17-139 (West Arrowhead and North Arlington) rezone was, as you are well aware, tabled at the September 12th Planning Commission meeting.

We want to again urge you and others from the Planning Department to consider modification of a proposed map prior to bringing it back to the Planning Commission in light of:

1. The arguments set forth in my attached letter to you of September 11, 2017;
2. Points made by us and by others regarding the nature of this corner, the availability of sewer and water (at least one Planning Commission member thought commercial use here would cause extension to utilities, etc., which is not true); and
3. J & S's offer, as an additional inducement, to donate the wetlands property which we have indicated could be rezoned without our objection, to the City of Duluth to utilize as it sees fit. A no development covenant, which J & S also offers as an alternative, would also be available.

I have made the argument, as you know, that there might even be a taking here if the City, after dealing with Mr. Strom and Mr. Johnson for many years and seeing their ongoing efforts to develop this property, decides, in the face of some opposition that I would consider fair and appropriate, to rezone the property still. I am hopeful, after reviewing this letter, that you will agree with me.

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Mr. Steven Robertson
September 21, 2017
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Mr. Strom and Mr. Johnson are willing to take further steps here to assist and support leaving this property as an MU-C. If you would contact me, we would be happy to discuss.

I would very much appreciate it if this letter would be furnished to the Planning Commission, with a copy of my September 11 letter, in the week before the meeting. Alternatively, I can furnish it as well, but traditionally, as you know, direct contact with the Commission has been discouraged.

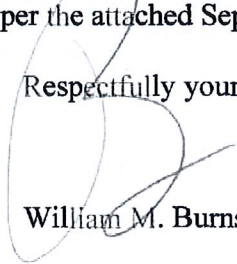
I assume that, since there has been a public hearing, we would not ordinarily have a further opportunity to address the Planning Commission. I am making the request here and ask that you take it to the Chair that such remarks be permitted at the October meeting when this matter, presumably, comes off-the-table, due to the following:

- Unfortunately, at the September Commission meeting that we attended, there were a number of Commissioners who were not in attendance.
- Staff will likely have the opportunity to present their position. Although their position might well, hopefully, now be in sync with our position, I am concerned that we have a full and fair hearing with what could be almost a completely different Planning Commission, depending on attendance.

It is hard not to note here the issues that arose at the Arrowhead Road Access Meeting, which was conducted by Adam Fulton and Kyle Deming in the early evening on September 19, 2017. Although LHB and Gospel Tabernacle tried to hijack the meeting, our principal takeaway from the meeting is that, if there is a prompt decision there, we can take Jim Foldesi up on the County's proposal to pay for moving the existing J & S access and dealing with wetlands there. It is critical that that be moved along as well and that a decision be made promptly. As I read Jim's commitments (and I have not talked with him since, as yet), the offer to pay for and process a move of that access for J & S is only going to be good for a relatively brief period of time due to their 2018 design schedule for the Arrowhead Road fifth lane.

Our goal, obviously, remains to not have to wage this "war" at yet another Planning Commission meeting and then appear in front of the City Council once or twice. We presented strong arguments for maintaining the development site as MU-C; we believe it is recognized that this is, at worst, a close call; and we believe that fairness should compel the City Planning Department to amend its report to remove our development property portion, per the attached September 11, 2017 letter, so it remains MU-C.

Respectfully yours,


William M. Burns

WMB/dac
Enclosure

c: Mr. Kyle Deming
Mr. Adam Fulton
Mr. Keith Hamre

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September 11, 2017

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Mr. Steven Robertson
Senior Planner
City of Duluth Community Planning Division
411 W. First Street, Room 208
Duluth, MN 55802

Re: Arrowhead Road Property/J & S/Proposed Mass Rezone
Our File No. 25118.000

Dear Steven:

This constitutes our final written formal request to staff, with a request that it be presented to the Planning Commission on Tuesday evening, to withdraw the property identified in Exhibit A to this letter as the "Development Parcel" from the rezoning that has been proposed by the City Planning staff and will be presented to the Planning Commission for recommendation to the City Council on September 12. I will be present to attempt to advance the proposition here during the meeting, but recognize the press of time, and somewhat confusing issues that can arise as items are "thrown around" and therefore submit this writing with a proposed amendment to the resolution approving the rezoning.

The history here, as Ron Johnson detailed when we met last Thursday, is that he, and then he and his partner Fred Strom, have been involved in this property, one way or another, since before 1980. No question but that it has been difficult to develop but now with improved commercial activity, increasing traffic and development on Arrowhead Road is not the time to curtail uses of this property. Our clients have presented plans to you, including the attached strip mall type concept which will not be possible, absent some major variance (variances are given ever more reluctantly) if the property be rezoned to MU-N.

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Mr. Steven Robertson
September 11, 2017
Page 2

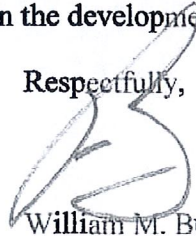
There is nothing surprising about our request that this property be left Commercial, since we met with staff, discussed it, and committed the attached letter to Jen Moses over a year ago shortly before an earlier staff proposal to rezone was withdrawn.

We recognize and accept the concept of transitions from zone to zone, and while we appreciate the time that the staff has devoted to the project, and that you, Messrs. Deming, Fulton, and Hamre all took the time to meet with Ron and I last week, we think you are wrong on this one and that this property is legitimately and appropriately exempted and removed from the rezone. Keep in mind it is adjacent to a heavy industrial/commercial use and that we have proposed a significant compromise as follows:

- The property further to the west, as shown in the attached drawing, Exhibit B, has the "rezone" piece and would be rezoned as proposed.
- In light of your staff indicating that they would hate to see this development parcel as an automobile dealership, we offer a covenant not to so develop which would be recorded with the property and run with the land.
- J & S and Johnson-Wilson have been building and developing in Duluth for 40 years. Based on my experience with them over that period, I see them as having been one of the three principal commercial developers in the City of Duluth and their commercial developments, on Grand Avenue, Airpark, and elsewhere and have helped transform and been a part of the Duluth resurgence. This is not a want to be or out of town developer, but a long-time player in the commercial development of Duluth which is continuing to attempt to add to the tax base and making what we feel is a legitimate and timely request that this property be removed from the rezone.

The attached amending resolution that we propose be presented and hope is picked up by one of the Planning Commissioners or directly be recommended to them by staff as attached would eliminate the development parcel from the rezoning; require as a condition of it that any objections to rezoning the "rezone as you wish" parcel would be withdrawn and a covenant prohibiting use as an auto dealership or used car sales facility would be placed on the development parcel by ownership.

Respectfully,



William M. Burns

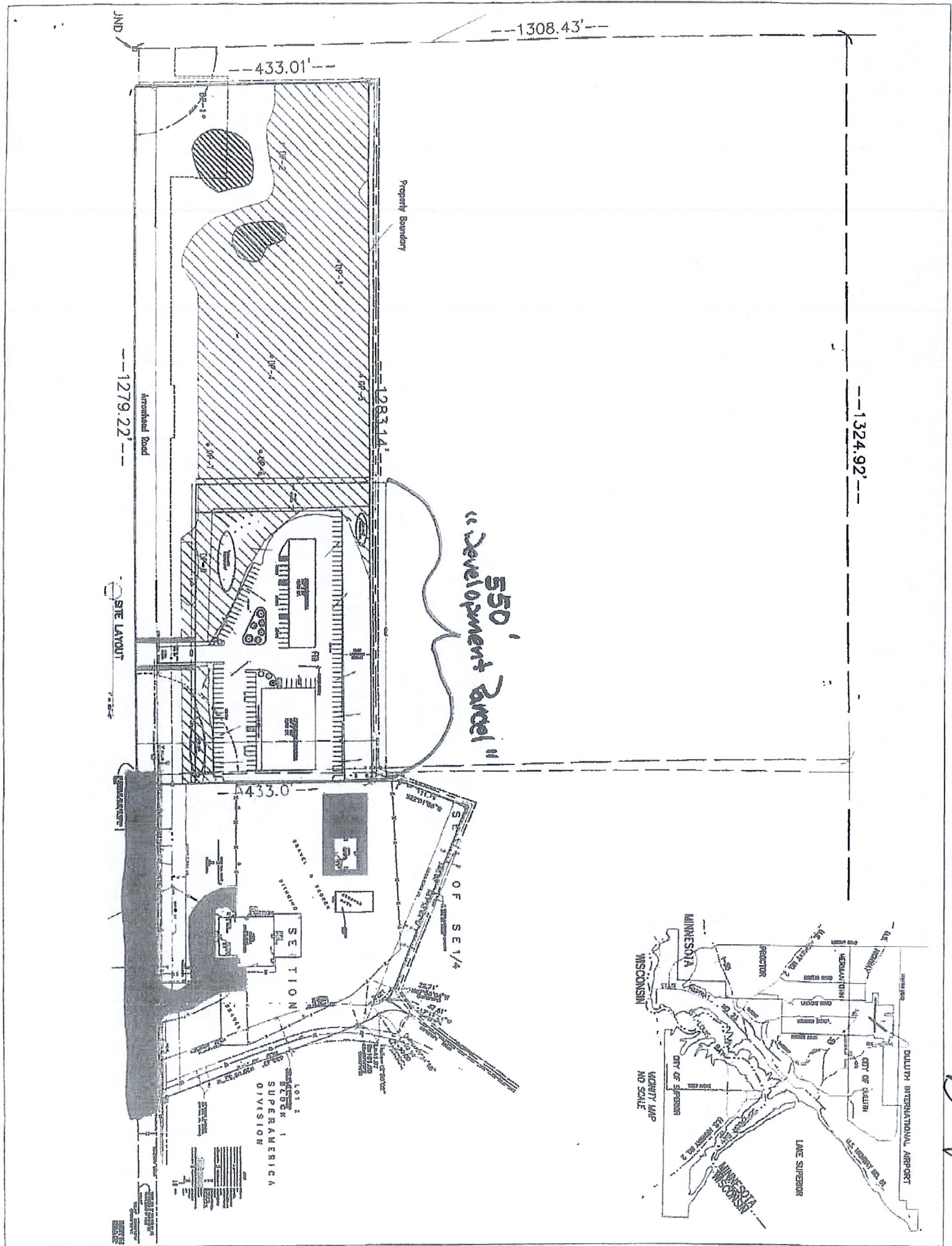
WMB:dar
Attachments

A-7

Exhibit A

The easterly 550.00 feet of the southerly 433.00 feet of the South Half of the Southeast Quarter of Section 8, Township 50 North, Range 14 West of the Fourth Principal Meridian, St. Louis County, Minnesota, lying westerly of the line described as follows: Commencing at the southeast corner of said South Half of the Southeast Quarter; thence South 89 degrees 50 minutes 08 seconds West, assumed bearing, along the south line of said South Half of the Southeast Quarter, a distance of 1308.11 feet to the beginning of the line to be described; thence North 00 degrees 09 minutes 52 seconds West a distance of 433.00 feet and said line there terminating.

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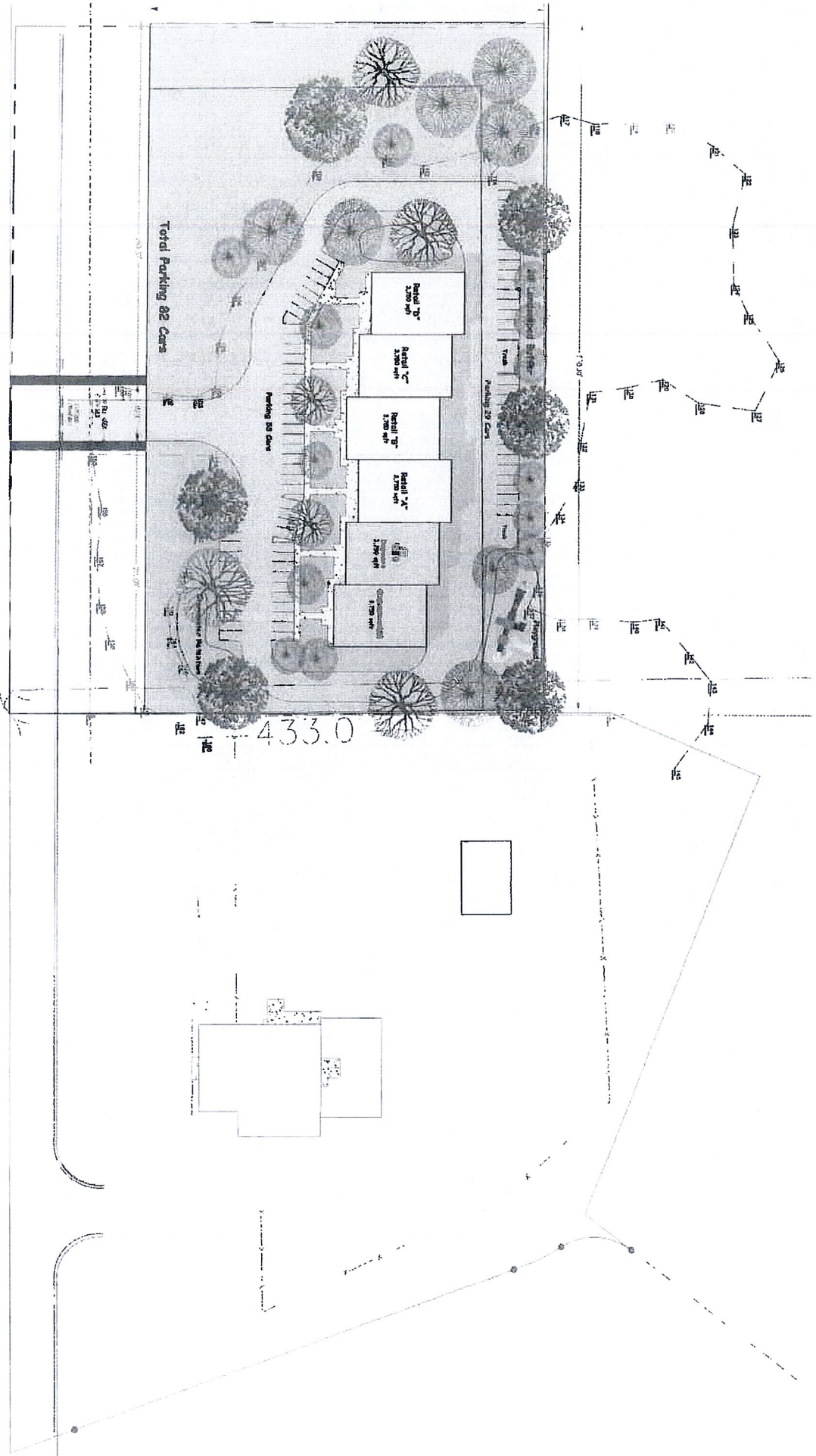


I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly licensed professional engineer or architect in the State of Minnesota.

John Ivey Thomas Associates Inc. Architects, 413 East Superior Street, Duluth, Minnesota 55802 (218) 722-8271

DATE	1/12/80
BY	JIT
CHECKED	JIT
APPROVED	JIT
SCALE	AS SHOWN

ARROWHEAD ROAD



A-10