



CITY OF DULUTH

Community Planning Division

411 W 1st St, Rm 208 * Duluth, Minnesota 55802-1197

Phone: 218/730.5580 Fax: 218/723-3559

File Number	PL 18-077	Contact	John Kelley, jkelley@duluthmn.gov	
Type	Vacation of Building Line Easement	Planning Commission Date	July 10, 2018	
Deadline for Action	Application Date	June 5, 2018	60 Days	August 4, 2018
	Date Extension Letter Mailed	June 14, 2018	120 Days	October 3, 2018
Location of Subject	2031 London Road			
Applicant	Marvin Development IV, LLC	Contact	Barb Schneider	
Agent	Adam Zwak	Contact		
Legal Description	PID 010-1460-02640, 010-1460-02650			
Site Visit Date	June 28, 2018	Sign Notice Date	June 26, 2018	
Neighbor Letter Date	June 26, 2018	Number of Letters Sent	36	

Proposal

Applicant proposes to vacate a 25-foot-wide building line easement established in 1903. This easement is not for utilities or public access, and is an outdated form of legal requirement for setbacks that predates zoning. The applicant is requesting the vacation to comply with the build-to zone or setback in the Form District 2 (F-2) low-rise neighborhood mix zone district.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	F-2	Former Gas Station	Neighborhood Mixed Use
North	R-2	Residential	Urban Residential
South	F-2	Gas Station	Neighborhood Mixed Use
East	MU-N	McDonalds	Neighborhood Mixed Use
West	F-2	Veterinary Clinic	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.

UDC Section 50-37.6C. The Planning Commission shall review the proposed vacation, and the 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 #1 - Reuse previously developed lands: Reuse of previously developed lands, including adaptive reuse of existing building stock and historic resources, directs new investment to sites which have the potential to perform at a higher level than their current state. This strengthens neighborhoods and is preferred to a dispersed development pattern with attendant alteration of natural landscapes and extensions of public services. Site preparation or building modification costs are offset by savings in existing public infrastructure such as streets, utilities, and transit, fire and police services.

Governing Principle #5 - Strengthen neighborhoods: The present city is an historical amalgam of villages and other independent units of government, contributing to the present condition of Duluth being strongly defined by its neighborhoods. This condition should be reinforced through land use, transportation and public service delivery patterns which strengthen neighborhood identity. New institutional expansions, major public infrastructure or large commercial or industrial uses should not divide historic neighborhood patterns

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.

History: Chapter 194, General Laws, of the State of Minnesota for 1903 adopted legislation enabling municipalities to establish and acquire building line easements. The building line easement was established so that no buildings or structures could be erected within the easement area. The existing building line easement is 25 feet in depth from the front property line and 150.84' feet in length running parallel to London Road. The City of Duluth by resolution in 1906 established this building line easement on the property located at 2031 London Road.

Review and Discussion Items

Staff finds that:

- 1) Applicant is proposing to vacate an existing 25' x 150.84' building line easement which encumbers 3,771 square feet of the property located at 2301 London Road.
- 2) The intent of the easement was to establish an early form of a front yard setback from the property line. The City of Duluth did not have zoning in 1903.
- 3) The property is zoned F-2. The applicant is proposing to construct a Main Street Building I, which requires a 0' to 15' front yard Build-to Zone or setback. The existing building line easement is in conflict with the current zoning standards for building setbacks.
- 4) This easement is not and will not be needed for the supply of utilities or public services in the city, and as a dedicated building line easement, could not be used for other purposes.
- 5) The building line easement to be vacated is not otherwise needed to promote the public health, safety, or welfare of the citizens of Duluth.
- 6) No public, agency, or City comments have been received.
- 7) Vacations of streets and easement 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

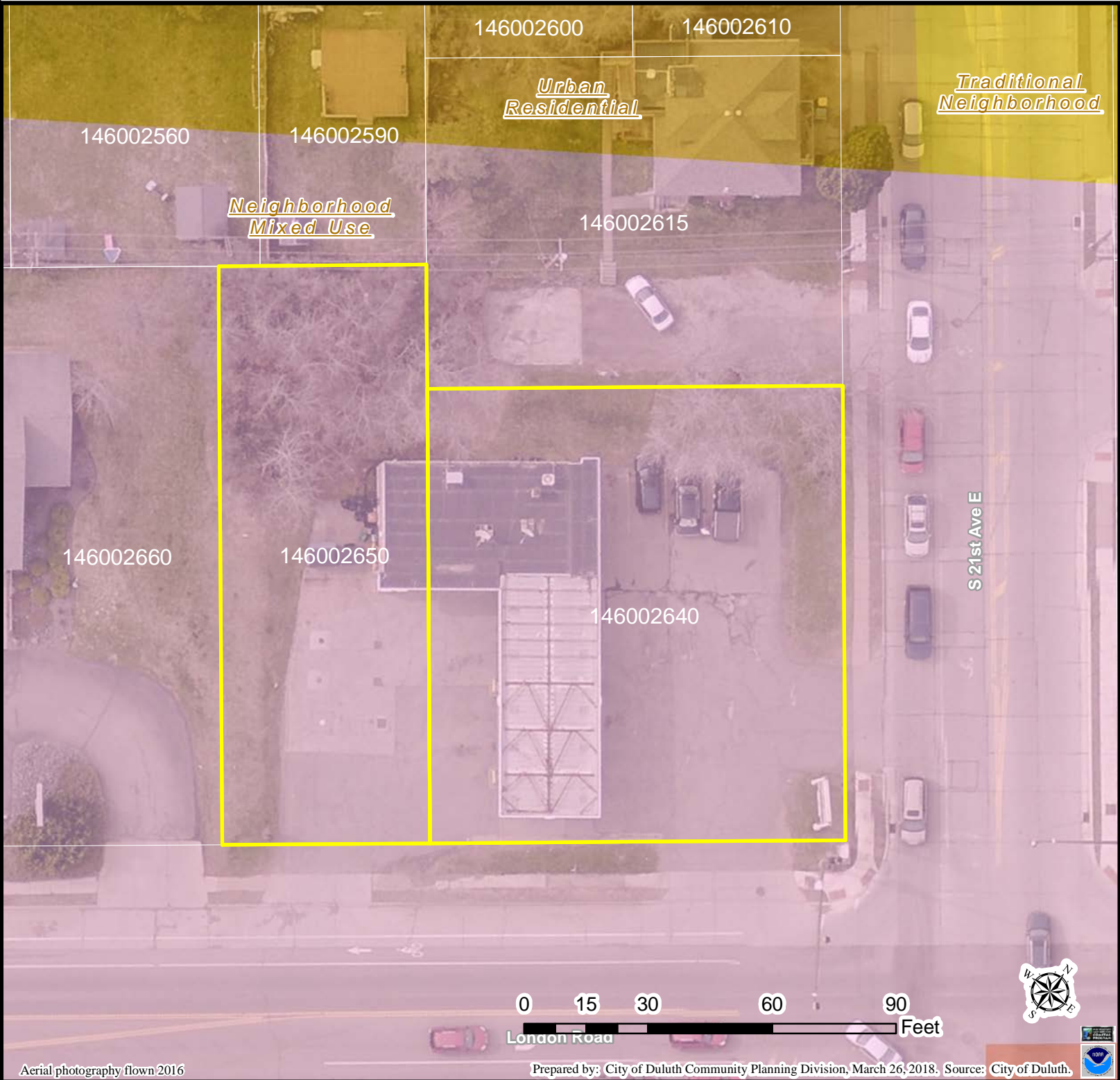
Based on the above findings, Staff recommends that the Planning Commission recommend approval of the vacation of the building line easement, as shown in the exhibit from ALTA.



Legend
Future Land Use - Plus 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

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.



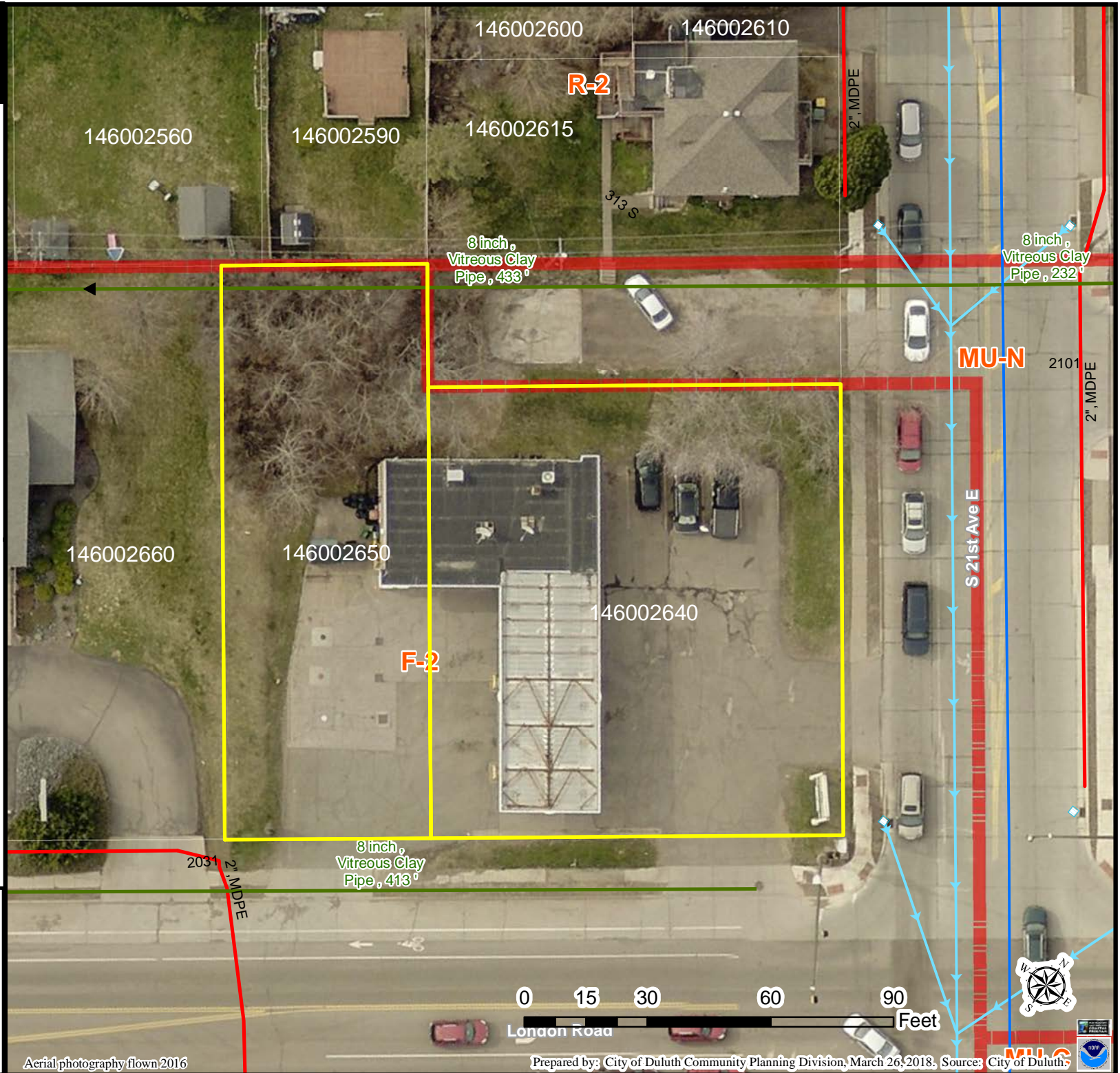


PL 18-077
Vacation
Zoning/Utility Map

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 2016



21ST AVENUE EAST

N 37°41'35" W 110.00

S 52°18'25" W 100.56(M) 100.00(R)

N 37°41'35" W 30.00

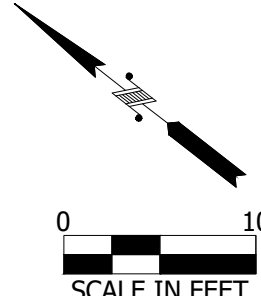
S 52°18'25" W 50.28(M) 50.00(R)

S 37°41'35" E 140.00

N 52°18'25" E 150.84(M) 150.00(R)

LONDON ROAD

DULUTH



LEGEND

[Symbol]	CONCRETE SURFACE
[Symbol]	BITUMINOUS SURFACE
[Symbol]	EXISTING BUILDINGS
(M)	FIELD MEASURED DIMENSION
(R)	RECORD DIMENSION
[Symbol]	TREE/BRUSH LINE
[Symbol]	UNDERGROUND ELEC
[Symbol]	FENCE LINE
[Symbol]	UNDERGROUND FIBER OPTIC
[Symbol]	UNDERGROUND GAS
[Symbol]	OVERHEAD UTILITIES
[Symbol]	SANITARY SEWER
[Symbol]	WATER MAIN
[Symbol]	STORM SEWER
[Symbol]	12 IN DIAM STEEL CLEANOUT
[Symbol]	CARVED WOOD BEAR
[Symbol]	GAS METER
[Symbol]	SIGN
[Symbol]	DECIDUOUS TREE
[Symbol]	POST/BOLLARD
[Symbol]	UTILITY VAULT
[Symbol]	CONTROL POINT
[Symbol]	BENCH MARK
[Symbol]	FOUND 5/8 IN REBAR
[Symbol]	FOUND 1 1/4 IN IRON ROD
[Symbol]	ELEC METER
[Symbol]	UTILITY POLE
[Symbol]	SANITARY MANHOLE
[Symbol]	SQUARE GRATE CATCH BASIN

- SURVEYORS NOTES**
- THE BASIS OF BEARING FOR THIS SURVEY IS THE ST. LOUIS COUNTY TRANSVERSE MERCATOR COORDINATE SYSTEM OF 1996.
 - PROPERTY ADDRESS IS 2031 LONDON ROAD, DULUTH, MN 55812.
 - FEMA FLOOD ZONE CLASSIFICATION IS ZONE C-AREAS OF MINIMAL FLOODING ACCORDING TO FEMA FLOOD INSURANCE RATE MAP 270421 0025 C.
 - GROSS LAND AREA IS 18,101 SQ. FT OR 0.42 ACRES
 - UTILITIES WERE LOCATED IN THE FIELD BY OBSERVED EVIDENCE, BY UTILITY SKETCHES AND DRAWINGS PROVIDED BY UTILITY COMPANIES, PER GOPHER STATE ONE CALL TICKET NO. 172271314.
 - THIS SURVEY HAS BEEN PREPARED ACCORDING TO THE COMMERCIAL PARTNERS TITLE, LLC AS AGENT FOR CHICAGO TITLE INSURANCE COMPANY, FILE NO. 54245, EFFECTIVE MARCH 30, 2018 AT 7:00 AM.
 - NO SPECIFIC SOILS INVESTIGATION HAS BEEN COMPLETED ON THIS LOT BY ALTA SURVEY COMPANY. THE SUITABILITY OF SOILS TO SUPPORT THE SPECIFIC STRUCTURE PROPOSED IS NOT THE RESPONSIBILITY OF ALTA LAND SURVEY COMPANY OR THE SURVEYOR.
 - THERE WAS NO EVIDENCE OF EARTH MOVING WORK, BUILDING CONSTRUCTION OR BUILDING ADDITIONS.
 - THERE WAS NO EVIDENCE OF PROPOSED CHANGES IN STREET RIGHT OF WAY LINES.
 - NO WETLAND MARKINGS WERE PRESENT AT THE TIME OF THIS SURVEY.
 - THERE ARE 4 DESIGNATED REGULAR PARKING STALLS LOCATED TO THE EAST OF THE EXISTING BUILDING.
 - AN OVERHEAD UTILITY LINE SERVICING THE EXISTING BUILDING CROSSES OVER PRIVATE PROPERTY, NO EASEMENT PROVIDED IN TITLE COMMITMENT. AN OVERHEAD UTILITY LINE CROSSED OVER THE NORTHERN PORTION OF LOT 11 AND SERVES OTHER ADJACENT PROPERTIES, NO EASEMENT PROVIDED IN TITLE COMMITMENT.
 - NO MARKINGS OF SEALED OR UNSEALED WELLS WERE PRESENT AT THE TIME OF THIS SURVEY.
 - THE PROPERTY HAS DIRECT ACCESS TO LONDON ROAD AND 21ST AVENUE EAST, BOTH BEING PUBLIC RIGHTS OF WAY.

**COMMITMENT NUMBER 54245
SCHEDULE B - PART II
EXCEPTIONS**

- The policy or policies to be issued will include exceptions to the following unless they are disposed of to the satisfaction of the Company.
- Defects, liens encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this commitment. **NONE KNOWN**
 - Rights or claims of parties in possession not shown by the public records. **NONE KNOWN**
 - Any encroachment, encumbrance, violation, variation or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. **REFER TO SURVEYORS NOTE #12**
 - Easements or claims of easements not shown by the public records. **NONE KNOWN**
 - Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records. **DOES NOT AFFECT SURVEY**
 - Taxes or special assessments which are not shown as existing liens by the public records. **DOES NOT AFFECT SURVEY**
A. Real estate taxes payable in 2018 are \$11,366.00 and are unpaid.
Base Tax: \$11,366.00 Property Identification No. 010-1460-02640 (Parcel 1 and part of Parcel 2)
Real estate taxes payable in 2018 are \$4,400.00 and are unpaid.
Base Tax: \$4,400.00 Property Identification No. 010-1460-02650 (Part of Parcel 2)
NOTE: 2017 real estate taxes are DELINQUENT for Property Identification No. 010-1460-02650. Contact the Office of the St. Louis County Treasurer for current payoff figures.
B. There are no levied or pending assessments of record. **DOES NOT AFFECT SURVEY**
 - Rights or claims of tenants, as tenants only, in possession under unrecorded leases. **DOES NOT AFFECT SURVEY**
This exception has been deleted and will not appear on the final plat.
 - Commercial Real Estate Mortgage dated April 25, 2017, filed May 10, 2017, as Document No. 1309019 (Abstract), and filed August 28, 2017, as Document No. 889111.0 (Torrens), executed by Lakehead Oil Company, Inc., a Minnesota corporation, as mortgagor, to Western National Bank, as mortgagee, in the original principal amount of \$150,000.00. **DOES NOT AFFECT SURVEY**
 - Assignment of Leases and Rents dated April 25, 2017, filed May 24, 2017, as Document No. 1309608 (Abstract), and filed August 28, 2017, as Document No. 889112.0 (Torrens), executed by Lakehead Oil Company, Inc., a Minnesota corporation, as assignor, to Western National Bank, as assignee. **DOES NOT AFFECT SURVEY**
 - Building Line Easement, in favor of the City of Duluth, as created in document dated April 30, 1906, filed May 7, 1906, as Document No. 840 (Torrens). (Parcel 1) **REFER TO SURVEY**
 - Underground Storage Tank Affidavit dated February 8, 2001, filed February 28, 2001, as Document No. 809950 (Abstract), and filed February 29, 2001, as Document No. 697055 (Torrens). **REFER TO SURVEY FOR TANK LOCATIONS**
 - Subject to the following matters as shown on the survey prepared by Land Survey Company dated September 5, 2017, as Job No. 17-278:
(a) An overhead utility line servicing the building on the Land crosses over neighboring property without the benefit of an easement.
(b) An overhead utility line encroaches over the Northern portion of Lot 11 and services other adjacent properties without the benefit of an easement.
REFER TO SURVEY FOR UTILITY LINE LOCATIONS

To: Lakehead Oil Company, Inc., a Minnesota corporation, Marvin Development IV, LLC, a Minnesota limited liability company, The Huntington National Bank, a national banking association, its successors and assigns as their interests may appear, Commercial Partners Title, LLC, and Chicago Title Insurance Company.

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items, 1 through 6, 8, 10(a), 10(b), 13, 14, 16, 17, 18 and 21 of Table A hereof.

The field work was completed on August 24, 2017.

Date of plat or map: September 5, 2017

David R. Evanson
David R. Evanson, PLS. #49505

LEGAL DESCRIPTION PER TITLE COMMITMENT

- Parcel 1:
The Southerly 110 feet of Lot 9, Block 34, Endion Division of Duluth.
- Parcel 2:
The Southerly 110 feet of Lot 10 and all of Lot 11, Block 34, Endion Division of Duluth.
St. Louis County, Minnesota Torrens Property



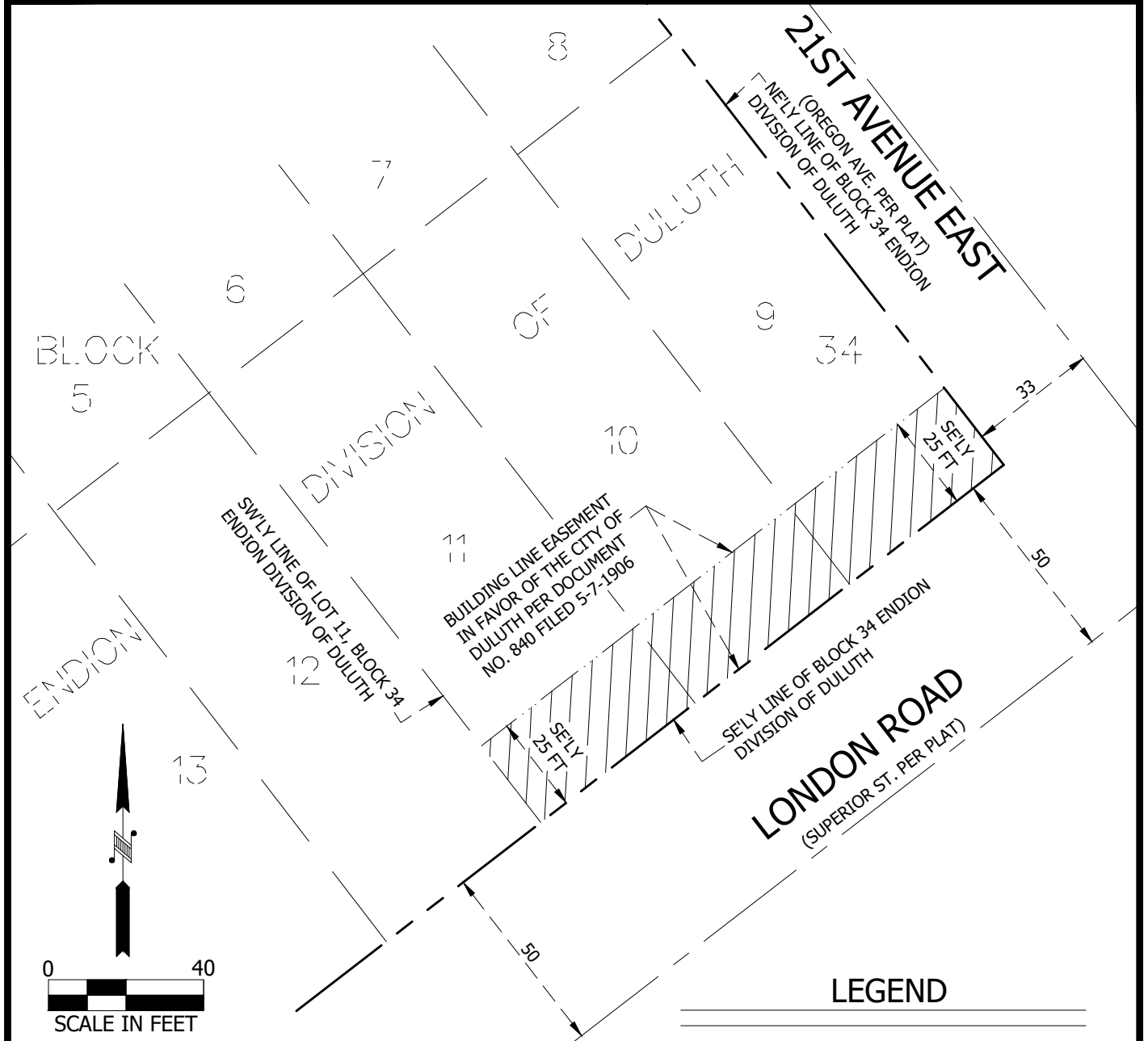
ALTA
LAND SURVEY COMPANY
LAND SURVEYING
LAND DEVELOPMENT
LAND ACQUISITION
LAND MARKING
LAND RECORDS
LAND RECONSTRUCTION
LAND RESTORATION
LAND USE PLANNING
LAND VALUE APPRAISAL
LAND ZONING
LAND ACQUISITION
LAND RECORDS
LAND RECONSTRUCTION
LAND RESTORATION
LAND USE PLANNING
LAND VALUE APPRAISAL
LAND ZONING

ALTA/NSPS LAND TITLE SURVEY

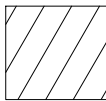



DATE:
09-05-17

JOB NO.
17-278

SHEET NO.
1



LEGEND

-  PROPOSED BUILDING LINE EASEMENT VACATION
-  CENTER LINE
-  RIGHT OF WAY LINE
-  EXISTING EASEMENT LINE

SURVEYORS NOTES

1. THIS IS NOT A BOUNDARY SURVEY.
2. 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.

LEGAL DESCRIPTION OF PROPOSED BUILDING LINE EASEMENT VACATION
 All that part of the 25 foot wide building line easement lying over, under and across the Southeastery 25 feet of Lots 9, 10 and 11, Block 34, ENDION DIVISION OF DULUTH, according to the recorded plat thereof, St. Louis County, Minnesota.
 Said building line easement vacation contains 3,771 Sq. Feet or 0.09 Acres.

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

Date: 6-6-2018

MN Lic. No. 49505

BUILDING LINE EASEMENT VACATION EXHIBIT

CLIENT: NORTHLAND CONSULTING ENGINEERS/BORDER FOODS	REVISIONS: XXX
DATE: 6-6-2018	
ADDRESS: 2031 LONDON RD DULUTH, MN 55812	
JOB NUMBER: 18-165	



LAND SURVEY COMPANY
 * LAND SURVEYING
 * LAND DEVELOPMENT
 * PLATTING
 * LEGAL DESCRIPTIONS
 * CONSTRUCTION STAKING
 PHONE: 218-727-5211
 LICENSED IN MN & WI
 CERTIFIED FEDERAL SURVEYOR
 WWW.ALTLANDSURVEYDULUTH.COM

powers of attorney or other instruments conveying or affecting in any manner any interest in or title to real property situated in newly organized counties have been filed and recorded in the office of the register of deeds for the county in which said real property was situated at the time of the creation of said new county, since the creation and organization of said new county, and before the passage of this act, such record is, in all respects, legalized and made valid and effectual, for the purpose of notice, evidence or otherwise, as though the same had been recorded in the office of the register of deeds for the county where said property was actually situated. *Provided*, that nothing herein contained shall in any manner affect the rights or title of any bona fide purchaser without notice for a valuable consideration of any such real estate prior to the passage of this act, and shall not apply to or affect any action or proceedings now pending in any court of this state.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved April 14, 1903.

H. F. No. 49.

CHAPTER 194.

Enabling municipalities to establish building line easements.

An act to enable municipalities to establish and acquire building line easements along streets, highways, parks and parkways, and defining the nature of such easements.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. The common council of any city may establish along any street or highway within such city a building line upon the land adjoining such street or highway, or any portion thereof, and distant not more than fifty feet from the margin of such street or highway, and may, in behalf of the city, acquire an easement in the land between such line and the exterior street line, such that no buildings or structure shall be erected or maintained upon said land. Such easement shall be known as a building line easement.

By purchase, grant or condemnation.

SEC. 2. Such easement may be acquired by the city council by purchase, or by grant, or by condemnation. It may also be created by dedication by indicating such building line upon any town plat hereafter recorded in the

office of the register of deeds of the county where the land lies; and city council shall have power to refuse to accept or approve plats of lands unless building lines are shown thereon.

SEC. 3. Any board of park commissioners having control of any park or parkway may in like manner acquire building line easements along the same, or any portion thereof.

Board of park commissioners may exercise such right.

SEC. 4. The easement above specified may be acquired by proceedings to be conducted in the following manner by the board of park commissioners, in case of parks and parkways controlled by a board of park commissioners, and by the city council in other cases.

Proceedings.

The term "governing body" is used in this and the following sections to designate the appropriate body in any given case, whether the city council, or board of park commissioners. The governing body shall first designate the easement to be acquired and define the lines by which it is bounded, and shall have power to condemn for the use of the public a building line easement as defined above, and when such condemnation shall have been completed, as in this section provided, the title to such easement shall pass to and be vested in the city for the public use. For the purpose of making said condemnation all the tracts of land required for any improvement may be included in the same proceeding.

Governing body may condemn.

Provided, that no such easement shall include or take in any portion of a private residence existing at the time of the passage of this act excepting by purchase or grant.

Exception.

After making the designation the governing body shall proceed in manner following:

•SEC. 5. First—The governing body shall appoint five appraisers, who shall be disinterested freeholders and qualified voters of said city, and none of whom shall be residents of the ward or wards in which the property so designated is situated, to view the premises and appraise the damages which may be occasioned by the taking of private property or otherwise in making such improvement.

Appraisers.

Said appraisers shall be notified as soon as practicable by the secretary of the board or the city clerk, as the case may be, to attend at a time fixed by him, for the purpose of qualifying and entering upon their duties. Whenever a vacancy may occur among said appraisers by neglect

or refusal of any of them to act or otherwise, such vacancy shall be filled by the governing body.

Oath of office.

Second—The appraisers shall be sworn to discharge their duty as appraisers in the matter with impartiality and fidelity; and to make due return of their acts to the governing body.

To give notice by publication.

Third—The appraisers shall give notice, by publication in the official newspaper of the city, once a week for two consecutive weeks, which last publication shall be at least ten days before the day of such meeting, which notice shall contain a general description of the lands designated by the governing body, and give notice that a plat of the same has been filed in the office of the city clerk or secretary, as the case may be, and that said appraisers will meet at a place and time designated in the notice, and thence proceed to view the premises, and appraise the damages for property to be taken, or which may be damaged by such improvement, and to assess benefits in the manner hereinafter specified.

Notice served on owners by mailing.

Fourth—The secretary or city clerk shall, after the first publication of such notice, and at least six days (Sundays excluded) prior to the meeting specified in said notice, serve upon each person in whose name each tract or parcel of said land is then assessed, a copy of said notice by depositing the same in the postoffice of said city, with postage prepaid, directed to such person at his place of residence, if known to the secretary, or city clerk, but if not known, then to his place of residence as given in the last published city directory of said city, if his name appears therein.

Notice to person in possession.

After the first publication of such notice, and at least six days (Sundays excluded) prior to the meeting specified in said notice, a copy of the same shall also be served upon the person in possession of each of said tracts or parcels of land, or some part thereof, if the same be actually occupied, in the same manner as provided for the service of summons in a civil action in the district court. A copy of all subsequent notices relating to said proceedings which are required to be published, shall be mailed by said clerk or secretary in the manner above specified, immediately after the first publication thereof, to such persons as shall have appeared in said proceedings and requested in writing that such notice be mailed to them.

Fifth—At the time and place mentioned in the notice, the said appraisers shall meet and thence proceed to view the premises, and may hear any evidence or proof offered by the parties interested, and may adjourn from time to time for the purposes aforesaid. When their view and hearing shall be concluded they shall determine the amount of damages, if any, suffered by each piece or parcel of land of which that taken is a part. They shall also determine the amount of benefits, if any, to each piece or parcel of land of which that taken is a part. If the damages exceed the benefits to any particular piece, the excess shall be awarded as damages. If the benefits exceed the damages to any particular piece, the difference shall be assessed as benefits, but the total assessment for benefits shall not be greater than the aggregate net award of damages; and in every case the benefits assessed upon the several parcels shall be in proportion to the actual benefits received, and no assessment upon any particular piece shall exceed the amount of actual benefits after deducting the damages, of any.

Meeting of appraisers. Hear and determine damages and benefits.

Sixth—If there be any buildings standing, in whole or in part, upon any parcel of the land to be taken, the said appraisers shall, in such case, determine the amount of damages which should be paid to the owner or owners thereof, in case such building, or so much as may be necessary, should be taken, and shall also appraise and determine the amount of damages to be paid such owner or owners in case he, or they, shall elect to remove such buildings.

In case of buildings on lands.

Seventh—If the land and buildings belong to different persons, or if the land be subject to lease, mortgage or judgment, or if there be any estate less than an estate in fee, the injury or damage done to such person or interests respectively may be awarded to them separately by the appraisers. *Provided*, that neither such award of the appraisers, nor the confirmation thereof by the governing body, shall be deemed to require the payment of such damages to the person or persons named in such award in case it shall transpire that such person or persons are not entitled to receive the same.

Land and building owned by different persons, etc.

Eighth—The said appraisers having ascertained and appraised the damages and benefits as aforesaid, shall make and file with the secretary or city clerk, as the case may be, a written report of their action in the premises,

Report.

embracing a schedule and appraisalment of the damages awarded and benefits assessed, with descriptions of the lands, and the names of the owners, if known to them, and also a statement of the costs of the proceeding.

Notice.
Governing
board to
meet and
consider re-
port.

Ninth—Upon such report being filed, the secretary of the board or city clerk shall give notice that such appraisalment has been returned, and that the same will be considered by the governing body at a meeting thereof, to be named in the notice, which notice shall be published in the official newspaper of said city, once a week for two consecutive weeks, and the last publication shall be at least 10 days before such meeting. Any person interested in any building standing in whole or in part upon any land required to be taken by such improvement, shall on or before the time specified for said meeting in such notice, notify the governing body in writing of his election to remove such building, if he so elect. The governing body upon the day fixed for the consideration of such report, or at any subsequent meeting to which the same may stand over or be referred, shall have power in their discretion to confirm, revise or annul the appraisalment and assessment, giving due consideration to any objections interposed by parties interested in the manner hereinafter specified, provided that said governing body shall not have the power to reduce the amount of any award, nor increase any assessment. In case the appraisalment and assessment is annulled, the governing body may thereupon appoint new appraisers, who shall proceed, in like manner, as in case of the first appraisalment, and upon the coming in of their report, the governing body shall proceed in a like manner and with the same powers as in the case of the first appraisalment. In case any owner or owners shall elect to remove any building or buildings, and thereby reduce the amount of damages to be paid, the amount of reduction shall be deducted from the benefits assessed to each parcel proportionately before confirmation thereof.

New ap-
praisers.

Awards.

Tenth—If not annulled or set aside, such awards shall be final, and shall be a charge upon the city, for the payment of which the credit of the city shall be pledged. Such assessments shall be and remain a lien and charge upon the respective lands until paid. The awards shall be paid to the persons entitled thereto, or shall be deposited and set apart in the treasury of the city for the use of

the parties entitled thereto, within six months after the confirmation of the appraisal and award. But in case any appeal or appeals shall be taken from the order confirming said appraisal and assessment, as hereinafter provided, then the time for payment of said awards shall be extended until and including sixty days after the final determination of all appeals taken in the proceeding, and in case of any change in the awards or assessment upon appeal, the governing body may, by resolution duly adopted, at any time within sixty days after the determination of all appeals, set aside the entire proceeding. Any awards so set aside shall not be paid, and the proceedings as to the tracts for which the awards are so set aside shall be deemed abandoned. Any awards not so set aside shall be a charge upon the city, for the payment of which the credit of the city shall be pledged. All awards shall bear interest at the rate of six per centum per annum from the time of the filing of the original appraisers' report, and all subsequent awards and awards upon appeals shall be made as of the day and date of filing of such original reports.

Eleventh—Upon the conclusion of the proceedings and the payment of the awards, the several tracts of land shall be deemed to be taken and appropriated for the purpose of this act, and the easement above specified shall vest absolutely in the city in which the lands are situate. In case the governing body shall in any case be unable to determine to whom the damages should in any particular case be paid, or in case of adverse claim in relation thereto, or in case of the legal disability of any person interested, the governing body shall, and in any and every case, the governing body may in its discretion deposit the amount of damages with the district court of the county in which such lands are situate, for the use of the parties entitled thereto, and the court shall, upon the application of any person interested and upon such notice as the court shall prescribe, determine who is entitled to the award, and shall order the same paid accordingly. Any such deposit shall have the same effect as the payment to the proper persons.

Twelfth—In case any owner or owners of buildings, as aforesaid, shall have elected to remove his or their buildings, he or they shall remove them within thirty days from the confirmation of said report, or within such

Conclusion
and payment
of awards.

In case of
removal of
buildings.

further time as the governing body may allow for the purpose, and shall be entitled to the payment of the amount of damages awarded in such case, in case of removal. When such person or persons shall not have elected to remove such buildings, or shall have neglected (after having elected) to remove the same within the time above specified, such buildings, or so much thereof as may be necessary, upon paying or depositing the damages awarded for such taking in manner aforesaid, may be taken and appropriated, sold or disposed of as the said governing body shall direct.

Appeal
from
order of
govern-
ing body.

Thirteenth—Any person whose property is proposed to be taken or interfered with or assessed under any provision of this chapter, and who deems that there is any irregularity in the proceedings of said governing body, or action of the appraisers, by reason of which the award of the appraisers ought not to be confirmed, or who is dissatisfied with the amount of damages awarded to him for the taking of, or interference with his property, or the assessment thereon, may at any time before the time specified for the consideration of the award and assessment by the governing body, file with the secretary of the board or the city clerk, as the case may be, in writing, his objections to such confirmation, setting forth therein specifically the particular irregularities complained of, and the particular objection to the award or assessment, and continuing a description of the property in which he is interested, affected by such proceedings and his interest therein, and if, notwithstanding such objections the said governing body shall confirm the award, or assessment, such person so objecting shall have the right to appeal from such order of confirmation of the governing body to the district court of the county where such land is situate, within twenty days after such order. Such appeal shall be made by serving a written notice of appeal upon the secretary of the board, or the city clerk, as the case may be, which shall specify the property of the appellant affected by such award and refer to the objection filed as aforesaid, thereupon said secretary or city clerk, at the expense of the appellant, shall make out and transmit to the clerk of the district court a copy of the record of the entire proceedings, and of the award of the appraisers as confirmed by the governing body and of the order of the governing body confirming the same, and of the objections filed by

the appellant, as aforesaid, and of the notice of appeal, all certified by said secretary or city clerk to be true copies, within ten days after the taking of such appeal. But if more than one appeal be taken from any award, it shall not be necessary that the secretary or city clerk in appeals subsequent to the first, shall send up anything but a certified copy of the appellant's objections. There shall be no pleading on any appeal, but the court shall determine in the first instance whether there was in the proceedings any such irregularity or omission of duty prejudicial to the appellant and specified in his written objection that as to him the award or assessment of the appraisers ought not to stand, and whether said appraisers had jurisdiction to take action in the premises.

Fourteenth—The case may be brought on for hearing on eight days' notice, at any general or special term of the court, and the judgment of the court shall be to confirm or annul the proceedings, only so far as the said proceedings affect the property of the appellant proposed to be taken or damaged or assessed, and described in said written objection. In case the amount of damages or benefits assessed is complained of by such appellant, the court shall, if the proceedings be confirmed in other respects, appoint three disinterested freeholders, residents of said city, appraisers, to reappraise said damages, and reassess benefits as to the property of appellant. The parties to such appeal shall be heard by said court upon the appointment of such appraisers, and the court shall fix the time and place of meeting of such appraisers, they shall be sworn to the faithful discharge of their duties as such appraisers, and shall proceed to view the premises and to hear the parties interested, with their allegations and proofs pertinent to the question of the amount of damages or benefits; such appraisers shall be governed by the same provisions in respect to the method of arriving at the amount of damages or benefits and in all other material respects as are in this chapter made for the government of appraisers appointed by said governing body. They shall, after the hearing and view of the premises, make a report to said court of their award of damages and assessment of benefits in respect to the property of such appellant. The appellant shall within five days of the notice of filing the award file his written election to remove the building if he so elect. Such election

Hearing,
etc.

shall not affect his right to a review. The award shall be final unless set aside by the court. The motion to set aside shall be made within fifteen days. In case such report is set aside, the court may, in its discretion, recommit the same to the same appraisers, or appoint new appraisers, as it shall deem best; said court shall allow to said appraisers a reasonable compensation for their services, and make such award of costs on such appeal, including the compensation of such appraisers as it shall deem just in the premises, and enforce the same by execution. In case the court shall be of the opinion that such appeal was frivolous or vexatious, it may adjudge double costs against such appellant. An appeal may be taken to the supreme court of the state from any final decision of the district court in said proceedings.

Frivolous
or vexa-
tious ap-
peals.

Maps and
plats to
be made,
filing.

SEC. 6. As soon as such condemnation proceedings have been completed, it shall be the duty of such governing body to cause maps or plats of such improvement to be made, with a list of the parcels of land taken and the amount paid on account of each parcel, and to file one of such maps and list duly certified by the president of the governing body and the clerk or secretary, as the case may be, in each of the following offices, to-wit: the office of the city engineer, the office of the register of deeds of the county, and the office of the city clerk or secretary of the park board, as the case may be; and the same shall be prima facie evidence of the full and complete condemnation and appropriation of such easement for the public use. As soon as the assessments are confirmed, the secretary of the board of park commissioners or the city clerk, or the clerk of the district court, as the case may be, shall transmit a copy thereof duly certified, to the county auditor of the county in which the lands lie. The county auditor shall include the same in the next general tax list for the collection of state, county and city taxes, against the several tracts or parcels of land, and said assessments shall be collected with and as a part of, and shall be subject to the same penalties, costs and interest, as the general taxes. Such assessments shall be set down in the tax books in an appropriate column to be headed, "Building Line Assessments," and when collected a separate account thereof shall be kept by the county auditor, and the same shall

Assess-
ments con-
firmed to
be included
in general
tax lists.

Building
line as-
sessments.

be transmitted to the treasurer of the city, and placed to the credit of the proper fund.

SEC. 7. The governing body shall have power at any time to vacate such building line easement or any portion thereof.

Easements vacated.

SEC. 8. This act shall take effect and be in force from and after its passage.

Approved April 14, 1903.

CHAPTER 195.

H. F. No. 533.

An act to provide for the release and discharge of executors, administrators and guardians, and for the depositing with the county treasurer of funds belonging to absent heirs, legatees, wards or creditors, or other persons whose whereabouts cannot be ascertained.

Release of executors, administrators, and guardians.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. That whenever an executor or administrator shall have fully complied with all the terms and conditions of the final decree of distribution and of all other decrees and orders of the probate court appointing him, and shall have paid over to the distributees named in such final decree of distribution of the said court, all moneys and funds and property to them awarded by such final decree, and when such executor shall have in all other respects fully complied with the terms and conditions of said final decree, and have fully complied with all the orders and decrees of the said court, the court may, upon due notice given, and after full hearing and examination, find such facts, and if it shall appear to the court that the executor or administrator has paid over all moneys to the proper parties, and that he has in all things complied with the orders of the court and the terms of the final decree in the said estate, and that he has in all things, well, faithfully and fully administered his trust as such executor or administrator, the court may enter an order and decree fully discharging the said executor or administrator and the sureties on his bond from all further liability, and from all liability by reason of said trust and by reason of said administration.

On full compliance with all orders of probate court, said court may order discharge of executor or administrator.

SEC. 2. That whenever any guardian shall have fully complied with all the terms and conditions of the orders

Same as to guardians.