

The Duluth Heights Neighborhood with residents from

Osage St

Page St

Yosemite St

W Morgan St

are appealing the Planning Commission PL22-143 ruling issued on October 11th, 2022.

This appeal is on the following grounds:

- PL22-143 has been approved despite the omission of the following in the UDC guiding document:
 - Omission of zoning standards that properly address an MU-C sharing a property line with an RR-1
- PL22-143 has been approved in opposition to the following Governing Principles as listed in the Imagine Duluth 2035 document:
 - Principle #1: Reuse previously developed lands
 - Principle #2: Declare the necessity and secure the future of undeveloped places
 - Principle #5: Promote reinvestment in neighborhoods
 - Principle #6: Reinforce the place-specific
 - Principle #10: Take actions that enhance the environment, economic, and social well-being of the community
 - Principle #12: Create efficiencies in delivery of public services
- PL22-143 has been approved over the maximum allowed building height of 45'-0", per 50-15.3.
- PL22-143 has been approved without pedestrian connections, per 50-23, despite a partial sidewalk at the corner of Sundby Rd and Page St.
- PL22-143 has been approved without the required restoration of the natural vegetation buffer to the extent feasible within 300' of a natural shoreland, per 50-18.1 D.
- PL22-143 has been approved despite a petition of 101 Duluth citizen signatures in opposition, captured as of 10/11/2022.
- The 2009 City Council public hearing regarding the 2009 Planning Commission ruling to deny the rezoning of Sundby Rd from a R-1-B to a C-5 zone, was not properly communicated to neighboring properties.

The appellant requests the following from President Forsman and Councilor Randorf:

Suspend Rule 7 regarding the 3-minute time limit:

Given the history of this property, three minutes does not allow the appellant adequate due process to present their case thoughtfully and thoroughly to the Council.

November 7, 2022

Dear President Forsman and Councilors,

The following document contains an appeal to the Planning Commission ruling on PL22-143. The document outlines seven grounds of appeal, though we believe there are more, and provides an Appendix of supporting information.

If you haven't already, we encourage you to drive down Sundby Road and through the neighboring Duluth Heights. Even better, park your vehicle and walk around. Explore the area around Miller Creek, walk the neighboring streets (Osage, Page, Yosemite, West Morgan), stand at 1516 Osage Street and look west, and imagine a four-story, fifty-one foot Marriott Towneplace directly across the street. And then ask yourself, *what doesn't belong here?*

- A. An Impaired Trout Stream
- B. A Rural Residential Neighborhood
- C. A Commercial Building
- D. Wetlands

The City's willingness to shoehorn commercial buildings between an impaired trout stream and a rural residential neighborhood, on a property full of wetlands is, to put it politely, bizarre. By not overturning this approval, the City is setting a precedent to approve development that is primarily guided by the applicant's financial gains and not by what is best for the property or what is stated in the City's guiding documents. This is a major concern for the neighborhood as the applicant owns 33 acres along Sundby Road, with the intent to develop.

In an attempt to understand how and why Sundby Road was rezoned from residential to commercial in 2009, we discovered significant information that helps highlight the long history of Sundby Road and its critical placement as a crossroads in Duluth's growth.

This appeal has been thoughtfully researched and reviewed by some of the most affected homeowners, of whom over 100 have signed a petition in opposition of this kind of development on Sundby Road. At the foundation of the appeal is a demand to our elected officials to uphold the values that are described in the Council's Imagine Duluth 2035 Plan; a comprehensive document supported by previous administrations, external reviewers, the Izaak Walton Foundation and by residents of Duluth, to ensure a healthy, fair and sustainable city is carried forward for residents and visitors of the North Shore.

Thank you,

Jill Crawford-Nichols
Jo Haubrich
Becca Mulenburg
Joyce Alworth

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The appellant requests the following from President Forsman and Councilor Randorf:
Suspend Rule 7 regarding the 3-minute time limit:

Given the history of this property, three minutes does not allow the appellant adequate due process to present their case thoughtfully and thoroughly to the Council.

PL22-143 has been approved over the maximum allowed building height of 45'-0", per 50-15.3

Within this guideline, commercial buildings can not exceed a height of 45 feet when adjacent to a residential zone. Currently, the height of the proposed hotel is at 51'-6", 6'-6" above the allowed maximum building height. An argument was made by the applicant at the 10/11/2022 Planning Commission hearing that this additional 6'-6" was to allow screening of mechanical equipment located on the roof. However, per 50-21.3 Exceptions and Encroachments, the following is listed as exceptions to building heights:

Television and radio towers, accessory communications towers for private use, religious assembly or ornamental spires and towers, belfries, monuments, tanks, water and fire towers, stage tower or scenery lofts, cooling towers, chimneys, elevator penthouses, air conditioning penthouses, skylights, smokestacks, conveyors, storage elevators and facilities, flagpoles, accessory wind power equipment or accessory rooftop solar collectors

Per the applicant drawings, dated August 9, 2022, the "screening" as described in the 10/11/2022 hearing, is depicted in all elevations not as a screen, but has a large roof structure. We argue that 50-21.3 does not suggest additional rooflines can exceed the maximum height limit. In addition, screening for mechanical equipment is only required if visible from the right-of-way of the street that fronts the property. The location of the necessary mechanical equipment is not notated on the drawings provided by the applicant, therefore necessity is difficult to determine.

In addition, per the 10/11/2022 Planning Commission meeting, the applicant indicated that the additional roof also served the purpose of hotel branding, which is reiterated in the drawings as the hotel's name is located on the height-exceeding roof structure on the Northeast and Southwest elevations.

Per 50-21.3, signage is not listed within the exception.

Per 50-27.3, roof signs are not permitted.

Per the drawings provided, the structure above the maximum allowed building height would not be defined as an awning, canopy, marquee, or parapet.

We argue PL22-143 is in violation of UDC Development Standard 50-21.

PL22-143 has been approved without pedestrian connections, per 50-23, despite a partial sidewalk at the corner of Sundby Rd and Page St.

Per Planning staff notes, *50-23 (Connectivity) – Not applicable as Sundby Road does not have sidewalks nor is it shown on any bikeways, trail, or pedestrian plan.* However, Sundby Road does have a sidewalk, for approximately 300 feet from the corner of Page Street, north along Sundby, where it abruptly ends, forcing pedestrians into the street. This sidewalk comes to the edge of the applicant's property.

Section 50-23 shall apply to all new subdivision, replatting, registered land surveys (RLSs), development and redevelopment applications after November 19, 2010. General circulation requirements are listed in Section 50-23.2, but additional circulation requirements apply in some circumstances. Sites that are (a) located in any zone district other than the RC, RR-1, RR-2, MU-B, I-G, or I-W districts, and (b) larger than three acres, and (c) will contain more than one development parcel shall meet the connectivity index requirements of Section 50-23.3. All new subdivision, replatting, development, and redevelopment applications shall meet the requirements of Section 50-23.4.

Per 50-23.4, All “places of public accommodation,” as defined in the federal Americans with Disabilities Act (42 U.S.C. 12101 et. seq.) shall comply with the requirements of that act concerning on-site circulation and access.

We argue PL22-143 is in violation of UDC Development Standard 50-23.

PL22-143 has been approved without the required restoration of the natural vegetation buffer to the extent feasible within 300' of a natural shoreland, per 50-18.1 D.

Per 50-18.1D, The shoreland overlay applies to lands within 1,000 feet of Lake Superior or within 300 feet of rivers, creeks, streams and tributaries and floodplains, as designated on the NR-O map.

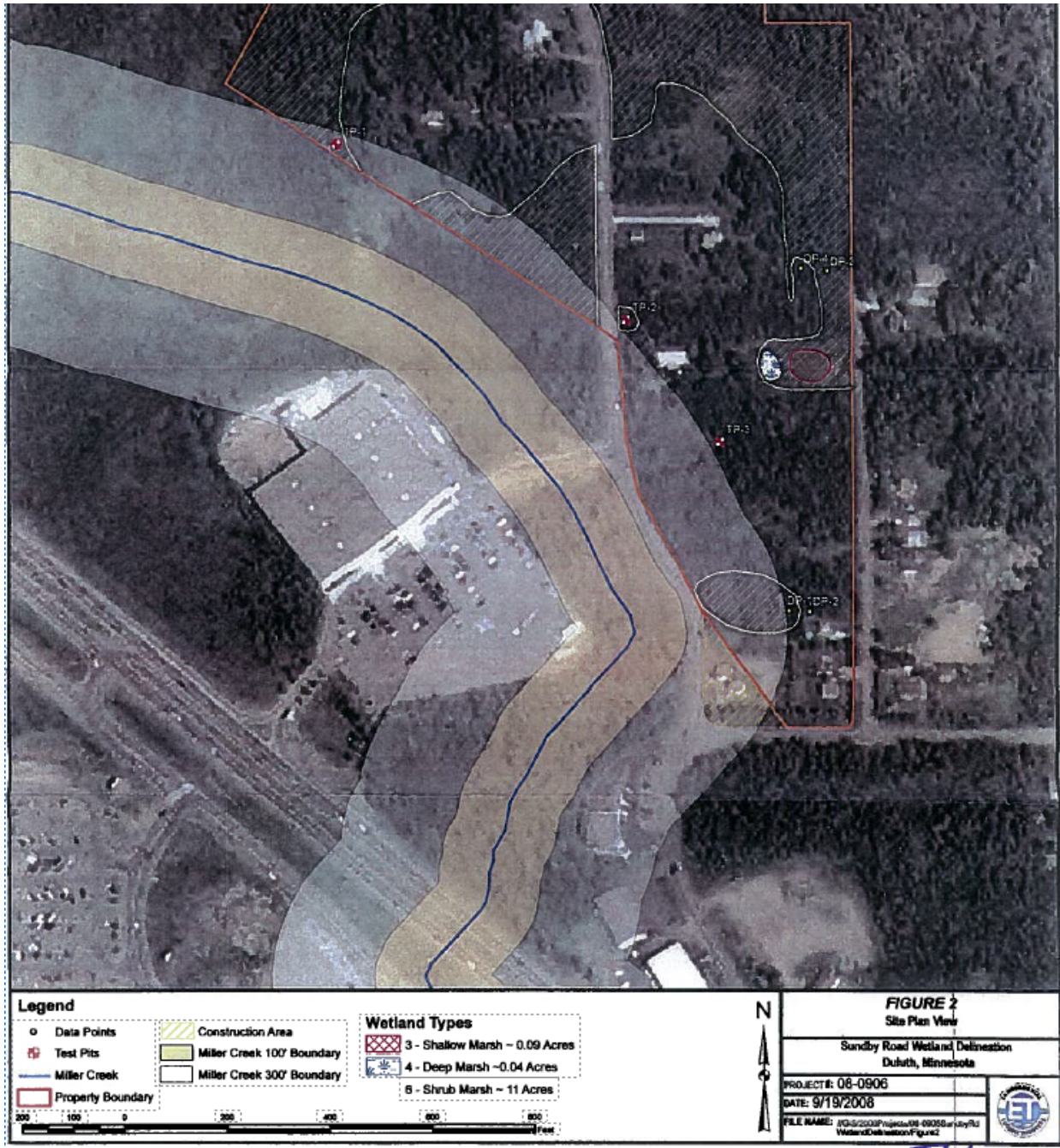
(d) Any removal of natural vegetation shall be designed to prevent erosion into regulated waters and to preserve shoreland aesthetics;

(e) Removal of trees or shrubs in a contiguous patch, strip, row or block is prohibited in shore impact zones;

(f) The project does not result in the proposed building being located in a shore or bluff impact zone;

(g) Natural vegetation buffers shall be restored to the extent feasible after any project is complete;

Please note the following aerial, outlining the 300 foot shoreland buffer along Miller Creek.



2008 Wetland Delineation Report (Full report attached in Appendix A)

On October 31, 2022 a request was made to the Planning & Development department to provide the Overlay Maps as described in the UDC. To date, this request has gone unanswered.

We argue PL22-143 is in violation of UDC Development Standard 50-18.

PL22-143 has been approved despite the omission of the following in the UDC guiding document: Omission of zoning standards that properly address an MU-C sharing a property line with an RR-1

The Unified Development Chapter (UDC) does not mention, outline or guide an MU-C bordering an RR-1 zone. Within the UDC, there is miniscule acknowledgement of other neighboring residential zones (R-1 and R-2), but it fully neglects to highlight or acknowledge an MU-C sharing a property line with an RR-1. Without this documentation, as should be standard when conflicting zones share property lines, how can the City fairly and equitably guide development?

During the 2010 update of the UDC; the same time Sundby Road was rezoned from residential to commercial; despite opposition from the 2009 Planning Commission and staff, the City Council failed to include proper guidance on how commercial zones should fairly border an opposing zone type. Simple strategies should have been implemented that make it harder to clear cut the land; for example lot coverage limits and buffer zones should have been introduced to the UDC, especially where differing zones border. This oversight opens up negative effects to the neighboring residential zones, including unfairly passing costs specific to property investment damage and safety concerns to the individual homeowner.

This omission of guidelines should have triggered a more prudent review of the applicants request by the Planning and Development department and the Planning Commission. Without it, the City is setting a precedent to approve development that is primarily guided by the applicant's financial gains and not by what is best for the property.

In 2009, the City of Duluth spent \$25,000 of taxpayer dollars to hire a third party, MXD Development Strategists, to advise them on how to address commercial needs, specifically on Sundby Road. However, none of the suggested elements or warning signs were taken into consideration at the time of the 2010 UDC update, or since.

This oversight has gone ignored for 13 years because despite rezoning in 2009, this is the first commercial building application the City has reviewed for this property. For more than a decade, Sundby Road has continued to be a green space and an important buffer for the RR-1 zone and Miller Creek from the commercial sprawl of the Miller Hill Corridor. Since the City was not proactive in 2010, you are now having to react to the situation that was created 13 years ago, despite warnings at that time of the same issues presented today.

This omission within the City's guiding document guarantees future conflict between these two zones and missed opportunities for the City. By neglecting to guide commercial developers to design properties that fit into the fabric of the immediate neighborhood and satisfy the City's long term vision of "place-specific", the City is missing an opportunity to secure

tactful commercial progress without sacrificing the personal investments and freedoms of their citizens and taxpayers.

In our attempt to understand how and why Sundby Road was rezoned to commercial, we uncovered significant information that helps highlight the long history of Sundby Road and its critical placement as a nexus in Duluth's growth.

Please see Appendix A.

We argue PL22-143 is in violation of the Unified Development Chapter as applicable history of the parcels were not vetted by the Planning & Development staff, nor provided to the Planning Commission for consideration.

PL22-143 has been approved in opposition to the following Governing Principles as listed in the Imagine Duluth 2035 document:

- **Principle #1: Reuse previously developed lands**
- **Principle #2: Declare the necessity and secure the future of undeveloped places**
- **Principle #5: Promote reinvestment in neighborhoods**
- **Principle #6: Reinforce the place-specific**
- **Principle #10: Take actions that enhance the environment, economic, and social well-being of the community**
- **Principle #12: Create efficiencies in delivery of public services**

The Planning staff's report notes that PL22-143 meets a single Governing Principle, number 4, *Support Economic Growth Sectors*. However, they neglect to note the many principles the applicant is in direct opposition to. As stated in the Imagine Duluth 2035 Comprehensive Plan's Executive Summary, *Imagine Duluth 2035 is more than a land use plan or simple road map for future development. It envisions a holistic, engaged, inclusive community with all its complexity and diversity...All of these issues are viewed through the lenses of health, fairness, sustainability, and accessibility for everyone.*

Given the *holistic approach* and *through the lens of fairness*, these 6 principles should have been presented to the Planning Commission by the staff and for consideration.

We argue PL22-143 was approved contrary to Duluth's Comprehensive Land Use plan as it does not properly address concerns highlighted in the following Principles:

Principle #6: Reinforce the place-specific

Duluth is a steward of the environment. As a city, a great deal of emphasis and pride is placed on the natural environment that the City benefits from. The commerce that funds Duluth, either through shipping or tourism, can be directly attributed to the place; Lake Superior and the

North Shore, emphasizing the importance of the place-specific. Natural surroundings are embedded within the fabric of Duluth's identity. However, the City loses sight of this identity along the Miller Hill Corridor. Once you begin to move away from the lake or the bordering green spaces, this identity cripples; not because the views disappear or nature is lost, but because it is no longer enforced.

As stated within this principle, *place-specific also defines commercial areas providing neighborhood goods and services, ravine parks and other natural features that define neighborhood edges*. This statement encourages that commercial areas are required to participate in the "place-specific" identity of Duluth. However, this is frequently ignored in commercial sectors.

The disregard of "place-specific" is perpetuated with the false notion that when you allow for commercial spaces, you must adopt their identity. Commercial partners will follow the place-specific guidelines if they're specified and enforced, as is evident in other municipalities. When the City allows commercial and industry partners to clear cut green space that borders rural homes and sits directly across the street from The Miller Creek restoration project, the City is telling those industry partners "Your needs and the taxes you attract are more important than our place or our people." The City needs to follow their own documents and reinforce them within the UDC. Send the message to our industry partners, "Please fit within the framework of our place-specific needs."

While at times difficult to achieve, balance should at least be what we strive for. Sundby Road is the nexus of balance, and by allowing commercial projects to ignore the place-specific is a failure by the City and a precedent set that you will not recover from.

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

Community well-being is at the heart of this principle, which reinforces the overall goals of the Imagine Duluth initiative. Site specific design with emphasis on local needs and environmental concerns suggests a more thoughtful approach from the Planning Commission should have occurred; specifically for Sundby Road. When an international Fortune 500 company proposes to build on a sensitive site; both in neighborhood proximity and among heavily debated ecological factors, nothing less than the highest level of due diligence by the City is expected.

As this development lies upwards of Miller Creek, an increase to the Duluth Urban Streams Total Maximum Daily Load of pollutants will increase, contesting the federal mandate to apply the Clean Water Act to ground-level waterways, including but not limited to road and parking lot salt applications, trash, sand, and grit entering the watershed. Additionally, current forested acreage will be lost, resulting in a warmer, ground-level microclimate due to the

extension of the commercial urban heat island into this green space with the addition of concrete and asphalt.

The Planning & Development department and the Planning Commission represent Duluth citizens and the Minnesota land and water this commercial property will inhabit. Actions should be taken to ensure *enhancement* to the environment and social well-being takes place within our communities. Focus and action directed only towards the economic values of a hotel will ultimately fail the citizens of Duluth.

Principle #12: Create efficiencies in delivery of public services

Per the Imagine Duluth 2035 Comprehensive Plan, *Infrastructure should help direct development location rather than react to it.*

The neighborhood's negative reaction to the commercial building on Sundby Road has not only been in response to the complete misalignment of previous zoning decisions, but has served as a stark reminder to the lack of infrastructure in this area, giving some residents a feeling of being ignored by the City. Sundby Road, among others, is a rural residential street without public utilities (sewer) and consistent sidewalks.

The fact that the City is allowing a hotel, that has ADA requirements, to be built where the City itself has yet to put infrastructure has raised a number of eyebrows. The question has been asked among some neighbors, "Is this the City's way to get a large company to pay for necessary public infrastructure?" Yet, while big business bankrolls the city's infrastructure, homeowners in this area continue to face large bills to replace onsite, aging septic systems, a concern among many that Duluth's planning decisions don't reflect putting its citizens first.

In case you're not aware, the majority of the 100 signatures on the petition do not have city sewer, a standard public utility. These citizens have built, paid for, and managed their own septic systems for years, and will continue to do so.

This principle only reiterates the message that Sundby Road should never have been rezoned commercially since the City has no intention to support its infrastructure.

Principle #1: Reuse previously developed lands

As the first principle in the Imagine Duluth document, it sets a tone for how the City projects its development goals and is very applicable to the Duluth Heights neighborhood surrounding the Miller Hill corridor. In particular, the emphasis to use "existing public infrastructure" continues to reiterate that streets, such as Sundby Road, are not prepared for commercial infrastructure.

To quote MXD Development's 2009 review document of Sundby Road:

The MXD evaluation of the Miller Hill - Central Entrance Corridor revealed a very sprawling land use pattern lacking connectivity and concentration of functions.

From an aerial perspective, the area at Haines Road and Miller Trunk Hwy around Kohls would seem to be a logical commercial development site. However, a closer perspective reveals environmental sensitivities that must be weighed in favor of better land utilization along the Miller Trunk Hwy...Commercial land uses do not offer an appropriate nor compatible land use buffer for a project that proposes to encroach upon a sensitive wetlands area.

...there are other existing commercially zoned areas that could accommodate development and should be prioritized ahead of rezoning residentially zoned lands. By targeting redevelopment 'greyfield' sites as opposed to larger new 'greenfield' sites, supply can be kept in balance with demand for retail space while also providing the types of development capable of attracting new tenants to the market.

We acknowledge this principle could not have directly applied to the applicant's commercial project, seeing as Sundby Road is currently zoned MU-C. However, we do believe that the lack of historical information provided to the Planning Commission by staff is in direct conflict to this principle as this is historically relevant data that would have better informed the Planning Commission.

Principle #2: Declare the necessity and secure the future of undeveloped places

Undeveloped areas are an essential part of Duluth's municipal fabric...these areas contribute to Duluth's cultural, health, recreational, and economic value and community identity. This open space system provides vistas, encourages active recreation, supplies natural infrastructure such as storm water retention, plant and animal habitat, and water quality, and is the strongest visual element defining Duluth's sense of place. Securing the future for key parcels of open space is critical to Duluth's identity and economic base.

Anyone suggesting that Sundby is not an undeveloped place is wrong. Sundby Road might be one of the most important undeveloped spaces within Duluth, as it actively supplies natural infrastructure, plant and animal habitat and is an essential location within Duluth's municipal fabric. Sundby Road contains many undeveloped acres full of wetlands that actively keep the balance in an area of Duluth that desperately needs a sensory break from the constant pollutants (noise, light, air, water) of the airport, US-53 and Arrowhead Road. This road declares its necessity as a critical place to keep nature and commerce in balance.

In addition, when heavy rainfall or snowmelt occurs, these undeveloped places frequently temper the worst of a natural disaster. Flooding disasters are more detrimental to citizens and its tax dollars when vegetation is removed and replaced with hardscape, straining the drainage infrastructure and creating imbalance. The Miller Creek corridor is well on its way to being out

of balance, especially once Sundby Road's natural space is officially gone, and hardscape is all that remains.

Principle #5: Promote reinvestment in neighborhoods

An argument can be made that this development does not impact the core of our neighborhood. But as the edges begin to fray, in time the core will crumble. At the 10/11/2022 Planning Commission meeting, a neighborhood resident most affected by the MU-C zoning, spoke up and clearly stated his intent to immediately move his family in an attempt to preserve his privacy and investment. Osage Street is the first street to be impacted by the commercial zoning, as it represents the edge of our neighborhood. As stated in this principle, *Duluth is strongly defined by its neighborhoods.*

As the five homeowners of Osage leave in an effort to avoid the negative impacts of the commercial interests on Sundby Road, what will happen to Osage Street? History dictates that the city will rezone it to mixed-use. So will this commercial creep not then continue up Page Street; slowly fraying the neighborhood until the core, the rural residential identity, unravels? We can't help but wonder, is this the City's goal? Is it your intent to quietly and slowly manipulate our neighborhood until our personal investments have dwindled away in value, only to cash in on commercial tax dollars from Fortune 500 companies? How does this align with a principle dedicated to neighborhood investment?

The Miller Hill Corridor is just that, a corridor, a hallway intersecting and connecting neighborhoods. When a corridor intersects a neighborhood it should be respectful to that neighborhood and its identity. The easiest way for the City to manage this is by conscientious zoning. We state again, Sundby Road should not have been rezoned an MU-C. And when it was, efforts should have been made to minimize the negative impacts to the neighborhood.

A neighborhood's character should never be sacrificed for the blank face of a Big Box, and the spirit of Duluth Heights should not be forfeited for the parking lot character of the Miller Hill corridor.

The 2009 City Council public hearing regarding the 2009 Planning Commission ruling to deny the rezoning of Sundby Rd from a R-1-B to a C-5 zone, was not properly communicated to neighboring properties.

All City Council meeting minutes from 2006-2019 have been reviewed for rulings and hearings regarding the rezoning of Sundby Road. On 01/30/2009, the city's Planning Department notified neighboring properties of the proposed rezoning of Sundby Road from residential to commercial. A number of those residents spoke up in opposition to this zoning change. The 2009 Planning staff review recommended against rezoning to commercial use, and

the Planning Commission followed their advice and denied the rezoning. All of this provided the concerned citizens of the area peace of mind.

However, within that same calendar year, rezoning Sundby Road was presented to the City Council in the form of a new ordinance. This discussion was tabled twice before the hearing occurred. In the months leading up to this hearing, there is no evidence of a newspaper posting or a letter to the affected neighboring properties informing them of this reversal of a previous decision. On October 14th of this year, a request was made to the City for any documentation showing communication to the concerned public. None has been provided, to date.

We argue that the City of Duluth did not fairly and properly inform its citizens of the potential reversal of the 2009 Planning Commission decision.

PL22-143 has been approved despite a petition of 101 Duluth citizen signatures in opposition, captured as of 10/11/2022.

We argue that given the number of residents in direct opposition to the proposed plan, the Planning Commission should have strictly enforced the Imagine Duluth 2035 Comprehensive Plan and provided concessions to protect the neighboring properties and the impaired trout stream, Miller Creek. The current ruling to allow the applicant to proceed as requested diverts all extraneous costs to Duluth and Minnesota taxpayers:

- Duluth Heights property owners will lose value on their personal investments and will incur additional costs to protect their homes' privacy and security.
- The State of Minnesota is actively restoring Miller Creek via taxpayer money. The South St. Louis Soil and Water Conservation District, which is a governmental and political subdivision of the state of Minnesota, is actively working to restore Miller Creek in order to remove it from the EPA's State & Federal Impaired Waters List. Additional impervious structures bordering Miller Creek will only exacerbate these efforts and raise the cost of the taxpayer-funded restoration.

APPENDIX A

Page 3-31

2009 Planning Staff Documentation

Page 32-36

City Council Meeting Minutes, 2006-2019

Page 37-40

Pollution Control Agency Article, 2020

Page 41-43

Duluth News Tribune Amity Creek Article, 2021



CITY OF DULUTH
 Community Resources Department
 Planning Division
 411 W 1st St, Rm 402 * Duluth, Minnesota 55802-1197
 Phone: 218/730.5580 Fax: 218/730.5904

STAFF REPORT

File Number	09004	Contact	Cindy Petkac; cpetkac@duluthmn.gov	
Application Type	Rezone from R-1-b and S to C-5	Planning Commission Date	2-18-09	
Deadline for Action	Application Date	12-4-08	60 Days	2-2-09
	Date Extension Letter Mailed	12-18-08	120 Days	4-3-09
Location of Subject	Property on both sides of Sundby Road, north of Page Street			
Applicant	Mission Development/Arrowhead Comm.	Contact	marshall@missiondevelopment.net	
Agent	William Burns	Contact	wmb@hanftlaw.com; 218/722.4766	
Legal Description	See attached			

Proposal

Applicant is proposing to rezone property on both sides of Sundby Road, north of Page Street, from R-1-b (one-family residential) and Suburban to C-5 (planned commercial). The area is approximately 26.66 acres. The applicant is requesting the rezoning to develop "an environmentally friendly commercial campus" with 105,000 sf to 230,000 sf of commercial development.

Discussion (use numbered or bullet points; summarize and attach department, agency and citizen comments):

The City is currently developing a small area plan for the Central Entrance - Miller Hill Corridor. One of the reasons for doing the plan is to determine if the current improvements to Miller Trunk Highway, including the extension of Burning Tree Rd and new connection to Sundby Rd, will result in new areas opening up for development as well as any changes in market conditions. As part of the planning process, the City has hired MXD Development Strategists to conduct a comprehensive market analysis and positioning strategy for the area. Based on extensive fieldwork and their initial market demand findings, MXD recommends that the subject land be retained in its current residential zoning. While they indicate that there is demand in the Miller Hill area for 450,000 sf of additional retail, MXD recommends that priority should be placed on infilling and redeveloping existing commercially zoned areas. The conversion of the land from R-1-b & S to C-5 would restrict the opportunity to redevelop more compatible sites by unnecessarily absorbing demand and that any current undersupply of retail space can and should be targeted for existing commercially zoned areas (e.g. Kmart, Village Square, Gander Mountain/Miller Plaza, Miller Trunk Hwy & Maple Grove Road and Miller Hill Mall). In addition, allowing the land in question to be rezoned from R-1-b & S to C-5 would put unnecessary pressure on adjacent wetlands for commercial development that could further exacerbate the current sprawling development pattern. (See attached memo from MXD)

Miller Creek borders the site on the southwest. It is a protected trout stream and listed on the state impaired waters list. (See attached web excerpts)

This site contains 11.13 acres of wetlands: 11 acres of Type 6 (Shrub Swamp), 0.09 acres of Type 3 (Shallow Marsh), and 0.04 acres of Type 4 (Deep Marsh). (See attached Wetland Delineation Report by Environmental Troubleshooters)

Staff received two public comments against the rezoning. The City Engineer's office also submitted comments regarding water and gas extensions. (see attached emails)

III A 1

Staff Recommendation (include Planning Commission findings, i.e., recommend to approve):

Planning Commission recommend to City Council that the rezoning of property on both sides of Sundby Rd, north of Page St, from R-1-b and S to C-5, be denied for the following reasons: 1) commercial development at this site is not in keeping with the Comprehensive Plan's designation of the area as Urban Residential and environmentally sensitive; 2) there is already sufficient land commercially zoned in the Miller Hill area to capture the future market demand; and 3) rezoning to commercial would result in additional wetland impacts and could cause further degradation of Miller Creek.

Current Zoning, Existing Land Use and Future Land Use Map Designation			
	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	R-1-b and Suburban	Undeveloped/Residential	Urban Residential/Preserv./Sensitive Lands
North	R-1-b and Suburban	Undeveloped/Residential	Preservation/Sensitive Lands Overlay
South	R-1-b and C-5	Residential/Commercial	Low-Density Neigh/Large-Scale Commercial
East	Suburban	Residential	Low-Density Neighborhood
West	R-1-b, Suburban and C-5	Miller Cr/Undeveloped/Kohl's	Preservation/Large-Scale Comm/Sensitive La

Summary of Code Requirements (reference section with a brief description):

Article XXI. Amendment of Chapter. Sec. 50-114. Authority of City Council to rezone.

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

Governing Principle # 1 - Reuse previously developed lands. Reuse of previously developed lands ... directs new investment to sites which have the potential to perform at a higher level than their current state. This ... is preferred to a dispersed development pattern with attendant alteration of natural landscapes and extensions of public services.

Urban Residential includes the greatest variety of building types, medium to high densities. May include student housing areas, live/work units and limited neighborhood retail (i.e., commercial uses that serve neighborhood market).

Sensitive Land Overlay (p 32) - Duluth has identified areas where natural functions and systems need to be preserved or restored, yet can also sustain some development.

History - Three special use permits, covering much of the area, were approved by City Council in 2003. They allow for 47 rental units, 32 townhomes and 20-27 four to six unit cooperative housing buildings for low to moderate income seniors.

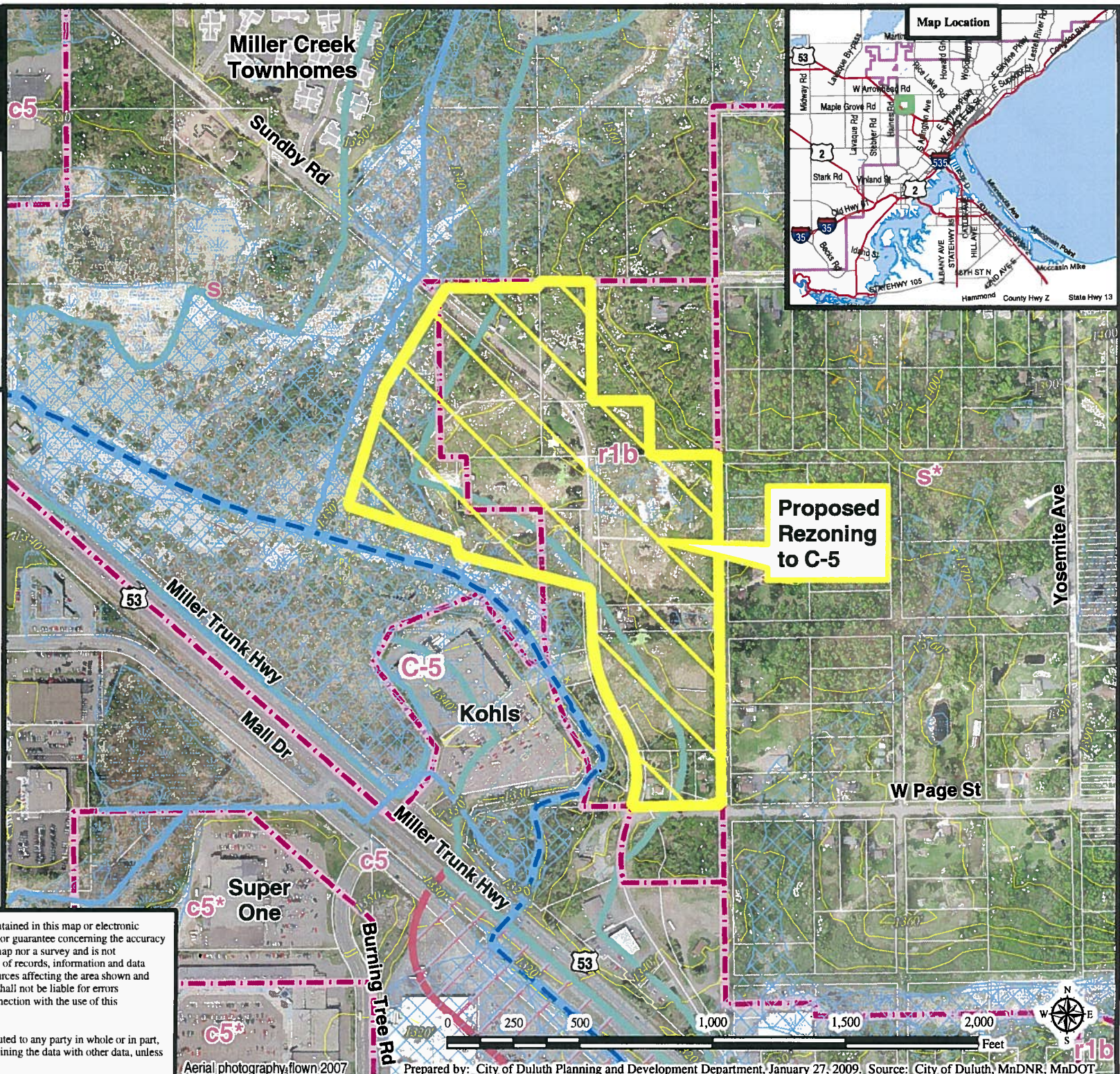
Attachments (aerial photo with zoning; site plan; copies of correspondence)

III A2

FN 09004
Mission Development
Rezone from R-1-b and
Suburban to C-5
 Area to be Rezoned



- Legend**
- Subject Property
 - 10' Contour (elev. change)
 - Trout Stream (GPS)
 - Other Stream (GPS)
 - Zoning (interim)
 - Shorland Management Zones**
 - Natural Environment
 - Recreational Development
 - General Development- Class 1
 - General Development- Class 2
 - Wetlands (NRR1)
 - Floodplain (FEMA)
 - Forest Cover Type**
 - Northern Hardwoods
 - Coniferous
 - Municipal Boundary



Proposed Rezoning to C-5

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Aerial photography flown 2007

Prepared by: City of Duluth Planning and Development Department, January 27, 2009. Source: City of Duluth, MnDNR, MnDOT



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February 11th, 2009

Cindy Petkac, Land Use Supervisor
Kyle Deming, Planner II
Community Resources Department
City Planning Division
City of Duluth,
411 W. 1st St, Rm. 402,
Duluth, MN 55802
218-730-5331

Re: Mission Development LLC Rezoning Application Memorandum

Dear Cindy & Kyle

MXD Development Strategists have been retained to conduct a comprehensive Market Analysis and Positioning Strategy for the Miller Hill – Central Entrance Corridor. As part of this assignment, land uses are being examined along the corridor to determine how growth should be managed and positioned to accommodate current and future demand, while creating an identity for the Miller Hill - Central Entrance Corridor and a stronger sense of place for the residents of Duluth. The MXD Team recently visited the City of Duluth and conducted detailed area and competitive assessments of the entire corridor including neighboring Hermantown, as well as the regional Duluth market.

The purpose of this extensive evaluation was to understand the composition and allocation of land uses along the corridor and any associated development pressures. The MXD Team also participated in meetings with a range of Stakeholders to gauge overall market strengths, weaknesses, opportunities and threats relating to economic development initiatives and commercial activities. Such groups included the Duluth Area Chamber of Commerce, Greater Downtown Council, Duluth Airport Authority, Visit Duluth, Duluth Center for Economic Development and the Area Partnership for Economic Expansion (APEX).

As part of the Miller Hill – Central Entrance Corridor Study, MXD has been asked to review a rezoning application by Mission Development LLC. The purpose of this review is to provide input on whether the 29.66 acre site located north of Page Street on either side of Sundby Road should be re-zoned from its current zoning of Residential R1b & Suburban S to Commercial C5. An examination of the Development Overview, as provided by Mission Development LLC, was undertaken and any recommendations are based on information contained in the rezoning application, most notably a total commercial area ranging from 105,000 sf to 230,000 sf.

Recommendations are based on MXD's initial Market Findings and Preliminary Supply/Demand estimates. These findings are allocated in the following sub-sections:

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1. *Political / Economic Evaluation;*
2. *Demand and Growth-Based Evaluation;*
3. *Citywide Positioning & Social Evaluation;*
4. *Development Trends Evaluation; and*
5. *Environmental Evaluation.*

1. Political / Economic Evaluation:

Duluth is the center of the Northland region for commerce, at the center of which is the Miller Hill – Central Entrance Corridor. In terms of retail sales tax, the Miller Hill – Central Entrance Corridor is the most significant retail sales tax revenue generator for the City of Duluth. In recent years however, the role of Hermantown has increased significantly to a point whereby Hermantown has now become a major player in attracting commercial developments, notably Wal-Mart, Sam’s Club, Menards and Gander Mountain. As a result, this has contributed to likely sales outflow from Duluth to Hermantown. It is therefore incumbent upon the City of Duluth to ensure that retail development recognize the parasitic and opportunistic evolution that is occurring, while at the same time ensure the need to maintain balanced and pragmatic growth within its own city limits. The rezoning application is valid in its assertion that “*potential*” short term tax benefits and sales could occur. Additionally, Hermantown does have active commercial development opportunities available, such as at Hermantown Center, which do pose a competitive threat for Duluth. However, the current economic slowdown must now also be considered as demand for commercial development slows and retailers hold off on expansion plans suggesting that now is an ideal time to prioritize developments.

Hermantown is following in Duluth’s footsteps with haphazard, uncohesive commercial developments. The City of Duluth should now take the lead in establishing and promoting more compact urban/suburban developments that prioritize areas already zoned for commercial land uses. Retail Sales Taxes are a critical component of revenues for the City, however by allowing development to occur away from the existing critical mass of retail could have the negative impact of reducing foot traffic in the core shopping area around the Miller Hill Mall, while also encouraging Hermantown to further densify their retail concentration along Haines Road resulting in additional retail sales tax revenues for Hermantown. Consumers are not concerned with the boundary between Duluth and Hermantown, but they will shop and patronize those areas that are more compact, have the stores they are looking for and offer more services in close proximity of one another.

On the basis of the project’s proximity and access to Haines Road, new commercial development in the proposed location could have the unintended effect of placing significant development pressure on the adjacent wetlands and could act as a further catalyst for Hermantown to develop and infill along Haines Road in the short term, as opposed to being catalytic for Duluth’s existing retail. This development pattern could result in further retail sales outflow from Duluth to Hermantown. Alternatively, if development is more focused and concentrated around the Miller Hill Mall then the result would be to create demand in an area that is already zoned commercial which would benefit existing Duluth retailers and residents.

With respect to historical rezoning applications and approvals (as documented in the Mission Development LLC Rezoning Application), many of the rezoning approvals profiled were in commercially compatible areas and did not have environmental concerns or wetland encroachment issues. From a future land use allocation perspective, historical rezoning applications do not take into account the need to incorporate a new planning direction and focus for development that is more consistent with current development trends for prioritization, intensification and densification of properties.

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2. Demand and Growth-Based Evaluation:

An assessment of the population growth dynamics and current performance metrics of retail in the City of Duluth indicate a slow growth market, which must be considered when evaluating any potential addition of commercially zoned land, particularly since future demand is largely a function of population and economic growth factors.

According to the Minnesota State Demographic Center, the City of Duluth’s population is estimated at 85,380 (2008) and is forecast to grow at only 0.12% per annum over the period 2008 to 2015. Similarly, the Duluth MSA region is estimated at 234,397 (2008) and this too is forecast to grow at only 0.27% per annum over the period 2008 to 2015.

The City of Duluth has approximately 3.2 million sf of retail space (**Table 1**), of which it is estimated that over half is located in the Miller Hill area. This allocation of retail space illustrates a significant amount of retail space in the Miller Hill area, with a vacancy estimated to be in the range of 4%.

The vacancy figure for the Miller Hill area notably includes the 36,000 sf former Gander Mountain store site, which is significant to recognize in the context of any future development activity or proposals that could include larger format retail. From an industry perspective, larger format vacancies typically present a greater challenge for re-leasing as well as promoting a negative image to the consumers. Before any additional new large format users of comparable size are added to the inventory every effort should be made to try to re-lease current empty boxes or target these lands as redevelopment sites. Such could be the case with the former Gander Mountain/Miller Plaza site, which is already commercially zoned.

**TABLE 1
CITY OF DULUTH RETAIL INVENTORY**

CITY RETAIL DISTRICT	APPROXIMATE RETAIL INVENTORY (excluding auto dealers)	Est. Vacancy
DOWNTOWN	500,000 sq. ft.	15.0%
EAST DULUTH	250,000 sq. ft.	1.0%
CANAL PARK (incl Duluth 10)	150,000 sq. ft.	0.0%
WEST DULUTH	400,000 sq. ft.	5.0%
CENTRAL ENTRANCE	100,000 sq. ft.	20.0%
MILLER HILL	1,800,000 sq. ft.	4.0%
TOTAL	3,200,000 sq. ft.	5.9%

Source: MXD Development Strategists 2009
Estimates from Market Fieldwork Feb 3 - 6, 2009

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When measuring the current retail demand against the current retail supply for the City of Duluth (**Table 2**), it is estimated there is currently residual demand for retail space in the City in the range of 800,000 sf. This demand for space is Citywide, but assuming the same ratio of retail space as currently exists, the Miller Hill area could justify current demand in the magnitude of 450,000 sf of retail space.

**TABLE 2
CITY OF DULUTH ESTIMATED RESIDUAL DEMAND & RETAIL SPACE PER CAPITA**

RESIDUAL DEMAND SUMMARY	ALL RETAIL CATEGORIES (Excluding Auto Sales, Service & Repair)
Total Inventory Estimate (Year End 2008 estimate)	3,200,000 sq. ft.***
Total City of Duluth Retail Spending (Year End 2008 estimate)	\$1,331,928,000 (YE 2008)
Estimated Retail Sales Outflow Factor (To Hermantown & Twin Cities)	10% (YE 2008)
Net Total City of Duluth Retail Spending (Year End 2008 estimate)	\$1,198,735,200 (YE 2008)
Estimated Retail Sales Productivity for all Retail Categories (excluding auto)	\$300 /sq. ft.
Estimated Retail Floorspace Demand for all Retail Categories (excluding auto)	3,995,784 sq. ft.
Residual Demand	795,784 sq. ft.
CURRENT RETAIL SPACE PER CAPITA	37.5 sf/capita

Sources:

Dollars & Cents of Shopping Centres 2007

Inventory augmented by MXD Development Strategists Ltd. fieldwork inventory February, 2009

The retail spending figures outlined in **Table 2** represent the amount of retail spending potential by all residents in the City of Duluth and is a calculation derived by applying the population multiplied by the per capita retail spending, which is estimated at \$15,600. However, not all of this spending takes place in the City, therefore a conservative figure of 10% sales outflow is applied to recognize spending that occurs in Hermantown or in the Twin Cities. As a result, the net total City spending is applied as that figure which is spent in the City of Duluth (~ \$1.2 Billion).

Based on the current estimated retail inventory (3.2 million sf), Duluth has approximately 37.5 sf of retail space per capita, which exceeds the National average or optimal average of approximately 20 to 25 sf per capita. As a comparison, if a ratio of 25 sf per capita were applied this would suggest that the optimal amount of retail space for Duluth could be in the range of 2.1 million sf. It is worth noting however, that this per capita retail space figure is slightly skewed as larger regional markets and those with significant tourism components (such as Duluth) can typically support a larger amount of retail space per capita beyond that which their city population base alone would suggest. However, this figure does nonetheless indicate that additional new commercially zoned land should be carefully examined to ensure that the ratio of supply to demand does not go too far beyond that which is supportable by the wider market.

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Slow population growth and minimal migration over the same period (2008 to 2015), combined with an optimal retail space per capita ratio of 25.0 could equate to total new retail demand for the Duluth MSA of approximately 110,069 sf by 2015. This would result in approximately 15,724 sf of annual incremental new demand for the City. It is important to state that these figures represent the forecasted growth of additional new retail space driven by population growth. Accordingly, the Mission Development LLC Rezoning Application, which proposes a range of development scenarios totaling 150,000 sf to 230,000 sf, could potentially absorb all the 'new' retail demand for the next 5 to 10 years.

The optimal retail inventory equilibrium for the City of Duluth should be in the range of 3.5 to 4.0 million sf (excluding auto dealerships). As a result, any commercial rezoning applications should be carefully scrutinized to ensure they not only fill demand, but they are also compatible with the longer term development vision and identity for the Miller Hill – Central Entrance Corridor as well as other important City retail districts.

From the evaluation of the current retail inventory and preliminary demand figures, there is sufficient demand to warrant a project size as outlined by Mission Development LLC. However, demand is not of such a magnitude to require the addition of new commercial land and warrant rezoning of the site at this time, as there are other existing commercially zoned areas that could accommodate development and should be prioritized ahead of rezoning residentially zoned lands.

3. Citywide Positioning & Social Evaluation

Another important consideration in evaluating the Mission Development LLC Rezoning Application is how the project fits within the greater Citywide retail hierarchy in accommodating consumers' needs and establishing development priorities. From the MXD evaluation of the entire Duluth market, it has become evident that there must be a sensitivity for future development/redevelopment opportunities along the Miller Hill - Central Entrance Corridor that promote smart growth and help to encourage more compact, vehicle and pedestrian-friendly developments.

While the Mission Development LLC Rezoning Application does propose to be a more "attractive" commercial development, its lack of connectivity to the existing critical mass of commercial functions around the Miller Hill Mall area suggest that consumers will still be forced to drive further to access the majority of goods and services. Consumers are increasingly expecting a higher standard for commercial developments and are also seeking developments that have more options available to them within walking distance of their homes or vehicles. The Mission Development LLC Project, if developed, would be an isolated development and would not meet the latter objective of consumers as there would be a limited critical mass and critical mix of retail.

The Mission Development LLC Rezoning Application proposes to create a new cluster of commercial activity around Kohls. Though the project could represent a site capable of accommodating retailers looking for a more attractive development, the location would represent a distinct shift in the critical mass/center of gravity of retail along the Corridor, further away from the optimal location of where development should be concentrated, which is at or around the Miller Hill Mall. Also, the location would not benefit from visibility from either Haines Road or Miller Trunk Highway and this would therefore necessitate the likely request for major signage along the Miller Trunk Highway.

Future redevelopment and repositioning of the Downtown Core must also be considered when examining development opportunities. In this respect, the local hierarchy of retail for the City is important. If new additional commercial development land is prioritized in the Miller Hill – Central Entrance corridor ahead of existing commercially-zoned lands, then demand for targeted areas in Downtown could be taken away from other important areas of the City.

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4. Development Trends Evaluation

The MXD evaluation of the Miller Hill - Central Entrance Corridor revealed a very sprawling land use pattern lacking connectivity and concentration of functions. From this initial assessment, infill, densification and redevelopment sites should be prioritized to avoid further unnecessary sprawl and promote more compact urban development. A more pragmatic approach to development will help encourage better vehicular, pedestrian and transit connectivity and access.

It is estimated that there is currently in excess of 300,000 sf of obsolete, dated retail space in and around the Miller Hill Mall area. By targeting redevelopment 'greyfield' sites as opposed to larger new 'greenfield' sites, supply can be kept in balance with demand for retail space while also providing the types of development capable of attracting new tenants to the market.

For example, the current Kmart site occupies an approximate land area of 18 acres, which with denser new urbanist development guidelines could accommodate commercial development in the magnitude of 200,000 sf. If the surrounding Village Square and Wendy's restaurant cluster are combined, the total land area could reach approximately 34 acres, which is larger than the Mission Development LLC site. Moreover, the Kmart location would provide better visibility from a retailer's perspective than that offered at the Mission Development LLC site. Other examples of areas along the Corridor that are more compatible and should be prioritized for redevelopment or infill include the former Gander Mountain/Miller Plaza site, the land directly opposite Miller Hill Mall fronting Miller Trunk Hwy and either side of Maple Grove Road as well as the land surrounding Home Depot in Duluth Heights and behind the Miller Hill Mall.

From a potential traffic and transit perspective, by concentrating development in and around the Miller Hill Mall, the movement of people would also be more efficient as would transportation planning. It is also worth noting that the current site plan alternatives provided in the Mission Development LLC Rezoning Application indicate a very strategic access point from Sundby Road into the east side of Kohls. However, this access will not be made available since a new access point is currently nearing completion at the south end of Kohls. This new access/egress point will provide more direct and convenient access to/from existing commercially zoned lands to the south, which themselves could become optimal areas for redevelopment and infill ahead of the Mission Development LLC site.

The Miller Hill – Central Entrance Corridor does not require additional new commercially zoned land, but rather more intense use and efficient utilization of existing commercially zoned lands. The redevelopment of existing sites with modern development standards would also act as a catalyst for improvements to surrounding properties. This is consistent with the City of Duluth's Comprehensive Plan Governing Principles, which state among the following:

"...redevelop sites for more intensive housing and mixed-use development in areas where existing development is underperforming its potential."

"...Priority for public investment should be in existing systems that promote reuse of developed land and infill projects, including mixed-neighborhood redevelopment."

Reflecting on the previous demand figures, the Mission Development LLC project could absorb a significant amount of justified demand in an area not compatible with commercial land uses, when compared to the current amount of land available for infill development elsewhere along the Miller Hill – Central Entrance Corridor.

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5. Environmental Evaluation

From an aerial perspective, the area at Haines Road and Miller Trunk Hwy around the Kohls would seem to be a logical commercial development site. However, a closer perspective reveals environmental sensitivities that must be weighed in favor of better land utilization along the Miller Trunk Hwy.

Commercial land uses do not offer an appropriate nor compatible land use buffer for a project that proposes to encroach upon a sensitive wetlands area. The approximate 30 acre site, because of its layout, configuration and need to respect environmental issues in fact occupies a larger land area than would typically be required for a comparably sized commercial mix, if it were developed in an existing commercially zoned or redevelopment site.

There is a need to ensure that any new development does not unnecessarily encroach on sensitive land areas. It is incumbent and responsible to protect and contribute to more livable and sustainable communities. Duluth is as much a steward of the environment as it is a center for commerce and these fundamentals must be maintained in balance. Only at such time in the future, which at this point is not foreseeable, should this site be considered for re-zoning from Residential to Commercial.

It should be acknowledged and recognized that while the rezoning application and site planning "used LEED and Green principles", this is only a rezoning application and not a development application. Moreover, the application does not propose to be a LEED-Certified development, which should at a minimum be required for areas of the site that directly impact the wetlands area.

Recognizing the adjacency of the wetlands area, the current zoning of R1b & S represents a more compatible land use than commercial C5 for this area. Residential uses would have less impact on the area in terms of vehicular movements and overall land requirements for parking. Before any development is approved in wetlands or R1b & S zoning is changed to C5 zoning, development should be prioritized on existing commercially zoned lands.

Conclusion & Recommendations

As a result of the extensive fieldwork conducted by MXD and our initial market demand findings, it is the recommendation of MXD that the subject land in question be retained in its current zoning as Residential R1b & Suburban S.

From a strictly empirical standpoint, there is justified demand in the market for the amount of commercial space proposed in the Mission Development LLC Rezoning Application. However, there are other salient factors that must be considered in determining whether the current land should be re-zoned from Residential R1b & Suburban S to Commercial C5.

On this basis, the key findings in support of the MXD recommendation are articulated in the following:

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- Though the residential market has softened, so too has the commercial market and accordingly, priority should be placed on infilling and redeveloping existing commercially zoned areas.
- Forecasted growth in Duluth is not significant enough to justify the rezoning of land from Residential to Commercial, particularly when existing sites are available through redevelopment and infill. The conversion of the land from R1b & S to C5 would restrict the opportunity to redevelop more compatible sites by unnecessarily absorbing demand.
- Any current undersupply of retail space can and should be targeted for existing commercially zoned areas along the Miller Hill – Central Entrance Corridor. Population and economic growth forecasts do not necessitate the addition of 30 acres of new commercially zoned land, but rather focus should be placed on re-development and repositioning of existing, obsolete retail inventory and commercially zoned sites (e.g. Kmart, Village Square, Gander Mountain/Miller Plaza, Miller Trunk Hwy & Maple Grove Road, Duluth Heights and Miller Hill Mall).
- Although much of the surrounding land uses may have transitioned to commercial, particularly on the Hermantown side of Haines Road, **it should nonetheless be recognized that the most compatible and complementary land use for the land in question remains Residential R1b & Suburban S.**
- The objective of future commercial land use along the Miller Hill – Central Entrance Corridor **should be to promote a stronger and more compact critical mix and critical mass of uses incorporating leading edge principles of place making that would have appeal to local and regional residents as well as tenants. The initial focus should prioritize lands in the immediate proximity of the Miller Hill Mall, where pedestrian, vehicle and transit can coexist.**
- **In an age of environmental responsibility, it is important that the City be a leader in preserving its sensitive lands,** particularly when other areas exist that can accommodate demand over the next 5 to 7 years. Allowing the land in question to be rezoned from R1b & S to C5 would put unnecessary pressure on adjacent wetlands for commercial development that could further exacerbate the current sprawling development pattern.
- Larger retail developments should be allocated for sites along the south side of Miller Trunk Hwy, except where they are not directly adjacent to residential areas (e.g. Former Gander Mountain). Any retail on the north side that is adjacent to residential areas should be smaller scale and locally oriented to more appropriately serve as a transition from commercial to residential.
- Duluth is a City comprised of retail districts, each with its own unique potential market positioning. The Miller Hill – Central Entrance should be maintained as the core commercial area with focused concentrated sub areas, as opposed to replicating history by continuing a sprawling development pattern.

MXD Development Strategists have reviewed the rezoning application and the eight sight plans provided therein and have carefully assessed the rezoning application against the extensive market study and fieldwork that has been conducted thus far. We trust that the findings and recommendations provided in this memorandum help you in your decision-making process.

Respectfully submitted



Kieron Hunt, Vice President



Martin Anstey, Senior Vice President

Excerpt from Duluth Streams.org Web Page:

Miller Creek is on the State & Federal Impaired Waters List and suffers from rising temperatures, high sediment and turbidity levels, elevated levels of chlorides (from road salt), and elevated levels of mercury in fish tissue. Since 1998 when a Joint Powers Agreement was signed between Duluth and Hermantown (expired in 2005) and the Miller Creek Task Force was formed, a number of studies have investigated the causes for these problems and there has been considerable volunteer and agency work to try and prevent further degradation although intense development continues in the upper watershed. A [TMDL](#) study is now (early 2007) in its initial stages. Source: <http://www.duluthstreams.org/streams/millerTMDL.html>

Excerpt from South St. Louis County Soil & Water Conservation District Web Page:

Miller Creek Total Maximum Daily Load

Listed: 2002

Impairment(s): Biota (Absence of Trout) and Temperature

Current Status: The Quality Assurance Plan and Monitoring Plan are done. The first of two years of monitoring was completed in September 2007.

Source:
http://www.southstlouisswcd.org/miller_TMDL.html



Excerpt from Regional Storm Water Protection Team's "Creek News" newsletter:

Every two to three years, the City of Duluth clears the mouth of the creek of sediment. This can be as much as 500 cubic yards of material (50 truck loads) per year. A lot of this mud is from winter road sanding and individuals raking sand and debris into the streets where it enters the storm drain system. These feed directly into the stream at many points on its route to Lake Superior. Another significant portion is debris from erosion due to increased velocity and volume of runoff coming off paved surfaces during rainstorms and spring runoff that erodes the streambanks and channel. During summer, rainwater runoff is heated by running over impervious asphalt surfaces warmed by the sun. The warm water increases the temperature of the stream placing additional stress on the fish. Trout cannot tolerate warm water for very long. The more development that occurs in the watershed, the more the creek heats up and the greater the stress. Notice also that in developed areas the natural shade trees and shrubs along the stream corridor are gone, further increasing summer temperatures. Source: **Regional Stormwater Protection Team Presents "Creek News"**, Creek news is a weekly press release of happenings along our streams, lakes and rivers. For more information contact the Regional Stormwater Protection Team c/o Chris Kleist, City of Duluth (218) 730-4063 or visit www.lakesuperiorstreams.org.

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Wetland Delineation Report

Sundby Road
Duluth, MN

September 2008

Prepared For:
Marshall Weems
Mission Development
603 20th Street North
Sartell, MN 56377

Prepared By:
Environmental Troubleshooters, Inc.
3825 Grand Avenue
Duluth, Minnesota 55807

ET Project #08-0906

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1.0 EXECUTIVE SUMMARY

Environmental Troubleshooters, Inc. (ET) performed a wetland delineation for Mr. Marshall Weems of Mission Development for a parcel of property ("subject site") located east and west of Sundby Road in Duluth, Minnesota. The site location is visually depicted on Figure 1, attached. The property's legal description is the SE ¼ of the NW ¼, Sec. 18, T 50 N, R 14 W, (St. Louis County). Marshall Weems called to request a wetland delineation as part of future site development. The subject site encompasses the east and west sides of Sundby Road. The subject site is an irregularly shaped parcel. The subject site is approximately twenty-eight (28) acres in size. Sundby intersects the subject site on the east and west, Page Street borders the subject property on the east, Kohl's Department store borders the subject site on the southwest, residential property borders the subject site on the north and east, Miller Creek borders the subject site on the southwest, and undeveloped property borders the subject site to the south, west, and east.

The subject property is currently developed with residential homes and also has undeveloped portions. The subject site consists of mature forest with wetland areas on the northwestern, northeastern, and southeastern portions of the property. The approximate property size is twenty-eight (28) acres.

Based on visual observations and data collected along various points, the subject property contains three (3) wetland areas, consisting of three (3) wetland types. The wetlands are classified as a Type 6 (Shrub Swamp), Type 3 (Shallow Marsh), and Type 4 (Deep Marsh). Approximately fifty (50) percent of the property is wetlands. The Type 6 wetland is located on the northwestern, northeastern, and southwestern portions of the subject site, the Type 3 (Shallow Marsh) is located on the east central portion of the subject site, and the Type 4 (Deep Marsh) is located on the east central portion of the subject site adjacent to the Type 3 (Shallow Marsh) wetland. The approximate wetland sizes and locations are visually depicted on Figure 2, attached. Because these wetlands are located in the Miller Creek Floodplain and Shore land boundary, the following City of Duluth rules apply:

- No Building, Roads, Parking within 150 feet of Miller Creek.
- No greater than 30% Impervious Areas within 300 feet of Miller Creek

2.0 INTRODUCTION

The following is a report documenting the wetland delineation completed at the subject site located on Sundby Road in Duluth, Minnesota. The wetland delineation was conducted on behalf of Mr. Marshall Weems of Mission Development as part of future site development. ET performed the wetland delineation on September 5, 16, and 17 of 2008 and determined the wetland/upland boundaries on the subject site. Approximate wetland sizes, wetland/upland boundaries and data point locations are illustrated on Figure 2, attached.

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3.0 SITE DESCRIPTION

3.1 Location and Legal Description

The subject site is located on Sundby Road in Duluth, Minnesota (Figure 2). The property's legal description is the SE ¼ of the NW ¼, Sec. 18, T 50 N, R 14 W, (St. Louis County). The site location is visually depicted on Figure 1, attached. The property is approximately 28 acres in size.

3.2 Site and Vicinity Characteristics

The subject site contains wooded areas and three (3) wetland areas. The subject site is made up of Upland, Type 6, Type 3, and Type 4 wetlands, which are part of the Miller Creek minor watershed and the St. Louis River major watershed. Sundby intersects the subject site on the east and west, Page Street borders the subject property on the east, Kohl's Department store borders the subject site on the southwest, residential property borders the subject site on the north and east, Miller creek borders the subject site on the southwest, and undeveloped property borders the subject site to the south, west, and east. The Western and southwestern portions of the subject property are within the 100 foot flood plain boundary and the 300 foot shore land boundary of Miller Creek, which is visually depicted on Figure 2, Attached.

3.3 Geologic and Hydrologic/ Hydrogeologic Information

Local site geology, from information collected during data point collection in wetland and upland areas, consists primarily of reddish brown, silty clays, and clay loams [0 to 13 inches below ground surface (bgs)].

Regional surficial geology consists of Quaternary deposits overlying bedrock. Bedrock at the site is composed of anorthositic gabbro and other mafic intrusive rocks of the Duluth Complex (Morey, 1996). Outcrops are common regionally due to variation in drift deposit thickness, and present locally (Lindholm et. al, 1979). Quaternary geology consists of sandy and stony till associated with the Mille Lacs-Highland Moraine Association of the of the Late Wisconsinan advance of the Superior Lobe (Hobbs and Goebel, 1982).

Regional Quaternary hydrogeology consists of admixed, unstratified and compact silt and clay with minor sand, gravel and boulders (Kanivetsky, 1979). The sustained yield rating from this unit is reported to be less than one (1) gallon per minute (Kanivetsky, 1979).

The subject site water is supplied by the City of Hermantown. The regional direction of groundwater flow in the vicinity of the subject site is inferred to be south/southeast (towards Lake Superior), reflecting the topography and natural drainage. Presumed groundwater flow direction is based on the assumption that groundwater flow closely parallels ground surface topography. This does not take

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into account any historic cut and fill activity, shallow bedrock or unobserved artificial conditions.

4.0 METHODS

ET conducted a thorough property walk-through observing the vegetation, soils, landforms and hydrology that defined the subject site.

ET personnel collected data points throughout the subject site to determine the wetland/upland boundaries. Wetland delineation flags were placed around each wetland/upland boundary. The approximate wetland and upland locations are outlined on the Wetland Location Map, attached as Appendix 2.

Plant species, hydrology and the soil profile were described for each data point. Uplands occur where the soil profile, vegetation, and hydrology reflect upland or non-hydric characteristics. Plant species were identified within the following visual radii:

- Twenty (20) feet for Trees (T);
- Twenty (20) feet for Saplings/Shrubs (S/S); and
- Five (5) feet for Herbaceous (H).

Dominant plant species are those that compose greater than twenty percent (20%) coverage for each layer. The methodology for describing hydric soils is outlined in Field Indicators of Hydric Soils In The United States Version 4, March, 1998 by Wetlands Science Institute and Soils Division – Natural Resources Conservation Service (NRCS) and Field Book for Describing Soils, 1998 by National Soil Survey Center – NRCS. The methodology used to describe hydrology, and sample and document vegetation strata for the transects was the standard releve plot method as described in the Corps of Engineers Wetlands Delineation Manual, 1987. Routine Method Data Sheets were used to record the vegetation, soils, and hydrology. These Method Data Sheets are attached as Appendix 3. ET mapped the site and inclusive wetlands.

5.0 RESULTS

The subject site contains three (3) wetland areas. The wetlands are located in the Miller Creek minor watershed and the St. Louis River major watershed. The wetland types observed at the subject site are classified as a Type 6 (Shrub Swamp), Type 3 (Shallow Marsh), and Type 4 (Deep Marsh). The Type 6 wetland is located on the northwestern, northeastern, and southwestern portions of the subject site, the Type 3 (Shallow Marsh) is located on the east central portion of the subject site, and the Type 4 (Deep Marsh) is located on the east central portion of the subject site adjacent to the Type 3 (Shallow Marsh) wetland. The following sections summarize the results gathered from each data point. The summaries include a description of vegetation, soil types and hydrology. Wetland plant species that were observed at the subject site are shown for reference in Appendix 5, attached. The data and descriptions provided are based on visual observations and procedures performed at the time of the site walk-through and may

III A47

change over time. Wetland data point collection forms are included in Appendix 3, attached. Approximate wetland/upland boundaries and data collection point locations are visually depicted on the wetland location map, attached as Appendix 2.

5.1 Type 6 – Shrub Swamp

Data Points #1, #3, #5, and #6 along with Test Pits #1 and #2 are representative of a Type 6 wetland. These Data Points were collected within a low-lying Shrub Swamp, which occupies approximately forty-five (45) percent of the subject property. The dominant vegetation consists of Speckled Alder (*Alnus rugosa*), Black Ash (*Fraxinus nigra*), Quaking Aspen (*Populus tremuloides*), and Missouri Goldenrod (*Solidago missouriensis*), Dwarf Raspberry (*Rubus pubescens*), Flat Topped Aster (*Aster umbellatus*), and Canada Bluejoint Grass (*Calamagrostis Canadensis*).

The soils collected from these Data Points consisted of Reddish Brown to Black, silty clays, sandy clay loams and mucky loams, from the surface to thirteen (13) inches bgs. Soils met the F6 NRCS indicator, the TF2 NRCS indicator, and the F1 NRCS Indicator, for further description of the indicators please see Appendix 6, Attached. Free water was not observed at the data points or test pit locations. Saturated soils were found between two (2) and ten (10) inches below ground surface. Data Points #1, #3, #5, and #6 along with Test Pits #1 and #2 are indicative of a Type 6 shrub Swamp.

5.2 Type 3 – Shallow Marsh

A Data Point was not collected for the Type 3 (Shallow Marsh) wetland, however visual observation of hydrology and vegetation are consistent with a Type 3 (Shallow Marsh) wetland. The dominant vegetation consisted of Broad leaf Cattails (*Typha latifolia*), and Sedges (sp?).

The Type 3 (Shallow Marsh) wetland was inundated with up to 12 inches of water. The visual observations made were indicative of a Type 3 (Shallow Marsh) wetland.

5.3 Type 4 – Deep Marsh

A Data Point was not collected for the Type 4 (Deep Marsh) wetland, however visual observation of hydrology and vegetation are consistent with a Type 4 (Deep Marsh) wetland. Due to the amount of water found within the Type 4 wetland, vegetation was only present along the edges between the wetland/upland boundaries. The dominant vegetation consisted of Broad leaf Cattails (*Typha latifolia*).

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The Type 4 (Deep Marsh) wetland was inundated with approximately three (3) feet of water. The visual observations made were indicative of a Type 4 (Deep Marsh) wetland.

5.4 Upland

Data Points #2, #4 and #7 along with Test Pit #3 are representative of an Upland area, which is located throughout the northwestern and central portions of the subject site. Topographic relief and distinct changes of vegetation and soils establish the wetland/upland boundary. The dominant vegetation located in this area consists of Quacking Aspen (*Populus tremuloides*), Big Leaf Aster (*Aster macrophyllus*), Paper Birch (*Betula papyrifera*), Dwarf raspberry (*Rubus pubescens*), Missouri Goldenrod (*Solidago missouriensis*), Speckled Alder (*Alnus incana*), Tansy (*Tanacetum vulgare*), Black Ash (*Fraxinus nigra*), and Bracken Fern (*Pteridium aquilinum*).

The soils at Data Points #2 #4 and #7 along with Test Pit #3 consisted of brown to reddish brown silty clays extending from the surface to thirteen (13) inches bgs. Soils at these data points did not meet any NRCS indicators for hydric soils. No free water or saturated soils were observed at these Data Points. Data Points #2, #4 and #7 along with Test Pit #3 were classified as Upland areas.

6.0 CONCLUSIONS AND RECOMMENDATIONS

Based on visual observations and data collected at various points, the subject site contains three (3) wetland areas. The wetlands are located in the Miller Creek minor watershed and the St. Louis River major watershed. The wetland types observed at the subject site are classified as a Type 6 (Shrub Swamp), Type 3 (Shallow Marsh) and Type 4 (Deep Marsh). The predominant wetlands are classified as Type 6 (Shrub Swamp) wetlands, and they border Miller creek to the north south and west. The wetlands occupy approximately fifty percent (50%) of the subject site. Because these wetlands are located in the Miller Creek Floodplain and Shore land boundary, the following City of Duluth rules apply:

- No Building, Roads, Parking within 150 feet of Miller Creek.
- No greater than 30% Impervious Areas within 300 feet of Miller Creek

ET recommends that this wetland delineation report and approximated wetland map be submitted to members of the jurisdictional Technical Evaluation Panel (TEP) for the subject site. The TEP consists of The City of Duluth, Army Corps of Engineers, Soil and Water Conservation District, Minnesota Department of Natural Resources, and the Board of Water and Soil

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Resources (BWSR). The property owner is responsible to maintain the wetland flags. The wetland delineation flags should be maintained until the TEP meeting occurs and until the property is surveyed.

Once the Delineation is approved, the construction plan should be reviewed to determine if wetland impacts exist. Based on the site plan the following wetland permits/mitigation options exist:

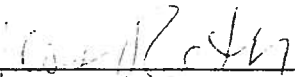
- If greater than 400 square feet of the Type 6, Type 3, or Type 4 wetlands are impacted then a wetland permit is required from LGU, SWCD, BWSR, and Army Corps of Engineers and a wetland mitigation plan is required.

ET has qualified wetland permitting and mitigation specialists to assist you with completing the wetland mitigation process.


III ASD

7.0 SIGNATURE PAGE

This wetland delineation report and supporting documentation have been prepared in accordance with generally accepted wetland determination/ delineation practices and principles of this time and location. Interpretations and recommendations in this report are based on available data, and additional data may result in revised interpretations and recommendations. This report is intended for use by the client, applicable governmental agents, and ET for its intended purpose only at the time of preparation. The report may be unsuitable for other uses, and reliance on its contents by anyone other than the client and the applicable governmental agents is done at the sole risk of the user. ET accepts no responsibility for application or interpretation of the results by anyone other than the client and applicable governmental agents. This Wetland Delineation Report was prepared by Environmental Troubleshooters, Inc.



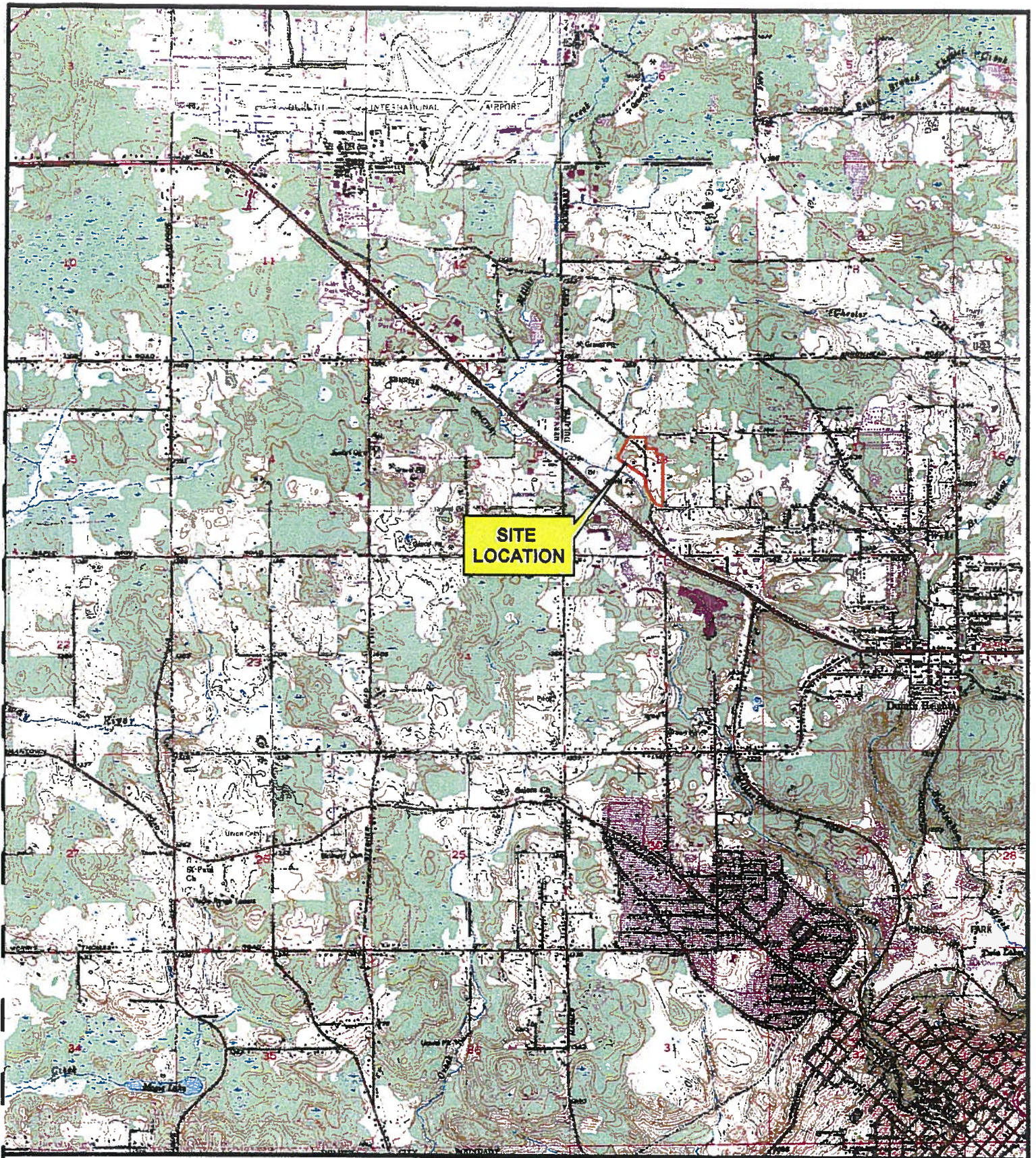
Jessica M. Roth
Environmental Scientist
Report Preparer



Craig P. Wilson, CHMM
President
Report Reviewer

APPENDIX 1
Site Location Map

III A52



**SITE
LOCATION**



SCALE: 1/24,000

Source: USGS Duluth Heights 7 1/2" Quadrangle



FIGURE 1
Site Location Map

Sundby Road Wetland Delineation
Duluth, Minnesota *TH A53*

PROJECT #: 08-0906

DATE: 9/18/2008

FILE NAME: //GIS/2008Projects/08-0906SundbyRd
WetlandDelineation/Figure1



APPENDIX 2

Wetland Location Map

IIA54



Legend

- Data Points
- ⊕ Test Pits
- Miller Creek
- ▭ Property Boundary
- ▨ Construction Area
- ▭ Miller Creek 100' Boundary
- ▭ Miller Creek 300' Boundary

Wetland Types

- ▨ 3 - Shallow Marsh ~ 0.09 Acres
- ▨ 4 - Deep Marsh ~ 0.04 Acres
- ▨ 6 - Shrub Marsh ~ 11 Acres



FIGURE 2
Site Plan View

Sundby Road Wetland Delineation
Duluth, Minnesota

PROJECT #: 08-0906

DATE: 9/19/2008

FILE NAME: J:\GIS\2008\Projects\08-0906\SundbyRd
WetlandDelineation\Figure2



III A55

Cindy Petkac - Sundby Road Re-Zoning

From: "Northstar"
To: "Cindy Petkac"
Date: 2/3/2009 7:06 PM
Subject: Sundby Road Re-Zoning

To: Duluth Planning Commission

C/O: Cindy Petkac

Regarding: Sundby Road Rezoning

From: David & Pam Sorenson

1820 W. Morgan St

Duluth, MN 55811

February 3, 2009

To Whom it may Concern:

As neighbors with property contiguous to the proposed re-zoning (parcel 2710-04560), we ask that the Planning Commission recommend AGAINST the proposed re-zoning along Sundby Road for the following reasons.

1. All of the proposed re-zoning area is designated as housing in the Duluth Comprehensive Plan. To change this land use is to ignore the long and diligent efforts of this community in adopting the Comprehensive Plan not long ago.
2. A significant portion of the proposed re-zoning area is a major natural drain-way for the neighborhoods to the east. This drainage makes it way to nearby Miller Creek. To level the site and build upon it would cause major disruption to the watershed of the greater neighborhood.
3. Significant portions of the proposed re-zoning area are wetlands. Building anything there will again damage the ecology of the area.
4. Arrowhead Commercial Partners is another paper corporation of Mr. Mike Saxton who has a long record of ill repute in Duluth. Former Mayor Bergson once vowed that Mr. Saxton would never do business in Duluth. Though we have a new mayor, Mr. Saxton and company remain the same.

Sincerely,

David & Pam Sorenson



Cindy Petkac - TO THE PLANNING COMMISSION

From: Candy Lee
To:
Date: 2/4/2009 9:28 AM
Subject: TO THE PLANNING COMMISSION

LETTER TO THE PLANNING COMMISSION C/O CINDY PETKAC. (please forward to them)

TO WHOM IT MAY CONCERN:

I am a neighbor who has property that touches the property on Sundby rd that is looking at a zoning change. I am **totally against** this for many reasons:

1. This area has many acres of wet land and is the main water shed area that is left for Miller Creek.
2. I feel we have more than enough commercial zoning already in place in this area.
3. Traffic is already a major problem in this area with all the area businesses so crammed together in a small area (Mall, Target, K-mart, Kohls, BestBuy etc.)
4. Does any one have any respect at all for the comprehensive plan that was put in place for this area?
5. What happens to all the wildlife in the area? Yes, I am sure most people don't give that much thought, but I do, and you should also.
6. I hope you look further into who this developer really is and make sure you know who you are dealing with. I have had some first hand experience with this developer and did not have a good feeling about a lot of the things that transpired in dealing with them.

Thank you for listening, feel free to contact me if you would like.
Please vote no on this!! :)

Candy Lee, 1819 W Morgan St. 591-6452

III 157

> Date: Mon, 2 Feb 2009 16:07:55 -0600
> From: cpetkac@duluthmn.gov
> To: candylee29@hotmail.com
> Subject: Re: Sundby rd.

>
> Candy,
>
> I'll email you the staff report once it's completed.

>
> Thanks,
> Cindy

>
> Cindy Petkac, AICP
> Land Use Supervisor
> City of Duluth
> Community Resources Department
> Planning Division
> 411 W. 1st Street, Room 402
> Duluth, MN 55802-1197
> Phone: 218/730.5331
> Web: www.duluthmn.gov
> Email: cpetkac@duluthmn.gov

> >>> Candy Lee <candylee29@hotmail.com> 2/2/2009 3:39 PM >>>

>
> Hello, I got the letter about the change in zoning on Sundby rd. I am interested in getting the staff report when it is available. Is there any way you could e-mail that to me when you have it? or is there a link to it? If not, I will go to the library that day to get it. I am super concerned about this because of miller Creek and that whole area being a water shed area for the creek, I feel with so much stuff going on in the whole miller hill area that this creek is already hanging on by a thread. Thank you, and please let me know about the staff report. I will be at the meeting also and I will be getting you a letter very soon. thanks

> Candy Lee, 1819 W Morgan St.

>

III A58

From: Larry Winner
To: Benning, Jim; Bergen, Kathy; Bushey, Bryan; Carlson, Todd; Cox, Jeff...
Date: 2/2/2009 10:14 AM
Subject: Re: Rezone at Sundby Rd & Page St

CC: Petkac, Cindy

Please note that the utility extensions that would be required as referenced below would be at the developer's expense.

Thank You

It should be noted that this area proposed for commercial rezoning is in need of water and gas extensions to develop the site. The existing 10" water main and 3" gas main in the area of Sundby Road and Miller Creek Drive would need to be extended southeasterly in Sundby Road to the existing 8" water main in Sundby Road at the Kohl's entrance and the existing 3" gas main in W. Page Street at Sundby Road. There is also an existing 8" water main and 2" gas main in Osage Avenue north of W. Page Street that could provide connections to the south end of the site.

>>> Terri Fitzgibbons 1/30/2009 2:00 PM >>>
Memo attached for your review and comment. Thank you.

Terri Fitzgibbons,
Administrative Specialist
City of Duluth Administration
tfitzgibbons@duluthmn.gov
218.730.5315

III A59

City Council Meeting Minutes 2006-2019 Regarding Rezoning Sundby Road

2006

Resolution 06-0005, of intent to reconstruct Sundby Road from Page Street northerly 1,415± feet and construct utilities per plans prepared by SEH, Inc., for City Project 0390TR01, dated August 28, 2005, by Councilor Stover, from the table, which motion was seconded and unanimously carried.

Heather Odden and Randy Budisalovich questioned why all of Sundby Road is not being redone because of the increased traffic of Kohl's store and the potential development that will bring more residents living on the road. Planning and Development Department Director Bruce explained that one of the conditions placed on the developer for this project to be built was the improvement of Sundby Road, which has not yet happened. He continued by saying that the developer is trying to use the assessment process which would help finance the construction of the road. Mr. Bruce stated that the question that needs to be answered is why should the city finance the improvement that was a condition of the petitioner's original permission. Councilor Krause reviewed that once this project goes forward, the next steps do not allow the residents of the area to submit a remonstrance petition because this individual owns 77 percent of this section of the road that is to be improved. Resolution 06-0005 failed upon the following vote (Public Document No. 06-0123-12):

Yeas: Councilors Stewart and Stover -- 2

Nays: Councilors Gilbert, Krause, Little, Ness, Stauber and President Reinert -- 6

Absent: Councilor Johnson -- 1

2008

A petition was filed with City Council in October (no date provided in documentation)

08-1215-02 Mission Development, LLC/Arrowhead Commercial Partners, LLC, et al. (seven signatures), by William M. Burns, attorney, petition to reclassify from R-1 to C-5 property north and east of Sundby Road at 2115 Miller Trunk Highway. -- Assessor

2009

Petitions received

09-0223-08 The following communications regarding the proposed rezoning of both sides of Sundby Road, north of Page Street (09-0131R and 09-006-O): (a) Candy Lee; (b) Tom and Maryann Salmonson; (c) David and Pamela Sorenson. -- Received

Resolution 09-0131, denying a request to amend Chapter 50 of the Duluth City Code, 1959, as amended, Zoning District Map No. 27 as contained in the Appendix to Chapter 50, to provide for the reclassification from R-1-b, One Family Residential, and S, Suburban, to C-5, Planned Commercial, for property located on both sides of Sundby Road, north of Page Street (Mission Development, LLC/Arrowhead Commercial Partners, LLC), was introduced by Councilor Stauber. Councilor Stauber moved to table the resolution for consideration with companion Ordinance 09-006 at the next meeting, which motion was seconded and unanimously carried.

The following entitled ordinance was read for the first time: INTRODUCED BY COUNCILOR STAUBER 09-006 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 27 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-B, ONE-FAMILY RESIDENTIAL, AND S, SUBURBAN, TO C-5, PLANNED COMMERCIAL, FOR PROPERTY LOCATED ON BOTH SIDES OF SUNDBY ROAD, NORTH OF PAGE STREET (MISSION DEVELOPMENT, LLC/ARROWHEAD COMMERCIAL PARTNERS, LLC).

09-0309-25 Janet Draper communication regarding the proposed rezoning of both sides of Sundby Road, north of Page Street (09-0131R and 09-006-O). -- Received

The following entitled ordinance was read of the second time: INTRODUCED BY COUNCILOR STAUBER 09-006 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 27 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-B, ONE-FAMILY RESIDENTIAL, AND S, SUBURBAN, TO C-5, PLANNED COMMERCIAL, FOR PROPERTY LOCATED ON BOTH SIDES OF SUNDBY ROAD, NORTH OF PAGE STREET (MISSION DEVELOPMENT, LLC/ARROWHEAD COMMERCIAL PARTNERS, LLC). Councilor Stauber moved to table the ordinance for a committee meeting, which motion was seconded and unanimously carried.

The following communications regarding the proposed rezoning of property on both sides of Sundby Road (09-0131R and 09-006-O): (a) Aaron Brockman; (b) Janet Draper; (c) Alex M. Johnson; (d) Jan Karon. -- Received

09-0413-20 The following communications regarding the proposed rezoning of property on both sides of Sundby Road (09-0131R and 09-006-O): (a) Al Bugge; (b) Sandy Johnson; (c) Mike and Robyn Jones; (d) Candy Lee. -- Received

Councilor Stauber moved to remove Resolution 09-0131, denying a request to amend Chapter 50 of the Duluth City Code, 1959, as amended, Zoning District Map No. 27 as contained in the Appendix to Chapter 50, to provide for the reclassification from R-1-b, One-family Residential, and S, Suburban, to C-5, Planned Commercial, for property located on both sides of Sundby

Road, north of Page Street (Mission Development LLC/arrowhead Commercial Partners, LLC), from the table, which motion was seconded and unanimously carried.

INTRODUCED BY COUNCILOR STAUBER 09-006 (9963) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 27 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-B, ONE-FAMILY RESIDENTIAL, AND S, SUBURBAN, TO C-5, PLANNED COMMERCIAL, FOR PROPERTY LOCATED ON BOTH SIDES OF SUNDBY ROAD, NORTH OF PAGE STREET (MISSION DEVELOPMENT, LLC/ARROWHEAD COMMERCIAL PARTNERS, LLC). At this time, Councilor Stauber moved to remove the ordinance from the table, which motion was seconded and unanimously carried. The rules were suspended upon a unanimous vote to hear from speakers on the issue. The following speakers urged support of the rezoning of Sundby Road for the following reasons: David Ross, representing the Duluth Area Chamber of Commerce, Craig Olson, representing the building trades, Ken Truscott and Dave Holappa stated there is too little commercial development in Duluth; this development would add to the tax base to keep and restore our public services; Duluth needs more businesses that generate tax revenue through property and sales taxes; Duluth needs to find a way to keep developers and help to become a better retail center; this project will create construction and retail jobs; very few neighbors would be impacted by this development; there are reasons to change and update the comprehensive plan when needed and this is a large piece of property for a large development to happen. Councilor Krause reviewed that this is a challenged piece of property with 11 acres of wetland and a long downgrade slope to Miller Creek that will require a lot of mitigation, and this request would convert the property to a high density box development with no idea of what that box development would be or what tax base would be. He voiced concern that this is a blind piece of land with no definition of what is coming and could even be sectioned off and sold. Councilor Krause also stated that there is concern from the neighbors, and city staff and the planning commission are not in support of this development. He also explained that the development model around the country for malls is going from a high density model to a more modern development that is a mixed use model that is more user and family friendly, removing the impact of high density to a residential area. Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote: Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 8 Nays: Councilor Krause --

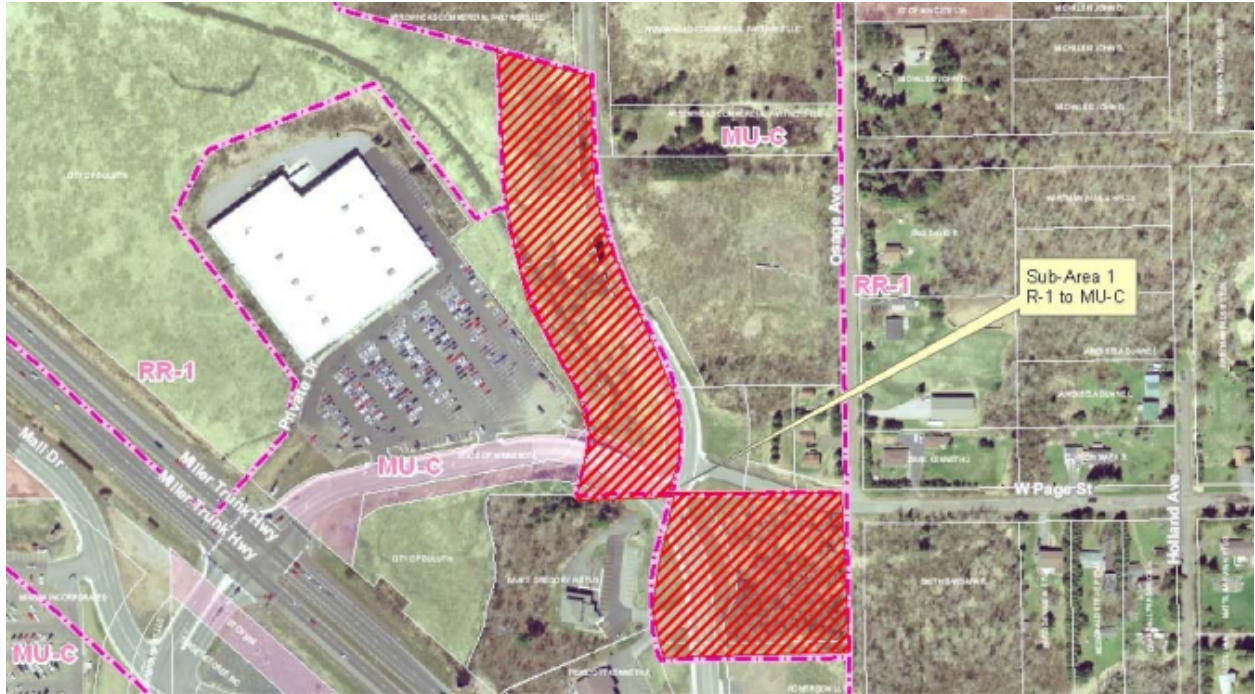
1

ORDINANCE NO. 9963 AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 27 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-B, ONE-FAMILY RESIDENTIAL, AND S, SUBURBAN, TO C-5, PLANNED COMMERCIAL, FOR PROPERTY LOCATED ON BOTH SIDES OF SUNDBY ROAD, NORTH OF PAGE STREET (MISSION DEVELOPMENT, LLC/ARROWHEAD

COMMERCIAL PARTNERS, LLC). The city of Duluth does ordain: Section 1. That the 29.66 acres of the subject property located on both sides of Sundby Road, north of Page Street, be reclassified from R-1-b, one-family residential, and S, suburban, to C-5, planned commercial, and that Plate No. 27 of the zoning district map as contained in the Appendix to Chapter 50 of the Duluth City Code, 1959, is amended to read as follows: [MAP] [see map at end of meeting] (Reference File No. 09004) Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: May 24, 2009) Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote: Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 8 Nays: Councilor Krause -- 1 Passed April 13, 2009

2012

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1 AND R-2 TO MU-N, AND R-1 TO MU-C, PROPERTIES IN THE MILLER HILL AREA (CITY OF DULUTH). The city of Duluth does ordain: Section 1. That the 6.6 acres of the subject property located south of Page Street, and east and west of Sundby Road, and as more particularly described in Exhibit A and by the following: The below parcels and area, along Page Street and Sundby Road, where these parcels and site abut roadways: 010-2710-04653 010-2710-04654 an area beginning at the centerline of Sundby Road to the northwest corner of Parcel 010-3257- 00050, then northwest 200 feet, then south 315 feet, then southeast 270 feet, then south southeast 200 feet, then south 150 feet, then east 190 feet to centerline of Sundby Road, then north to point of beginning following centerline of Sundby Road; be reclassified from R-1, to MU-C, and that the official zoning map of the city of Duluth as referenced in Chapter 50 of the Duluth City Code, 1959, is amended to read as follows:



2013

Parcel 2: 1624 Sundby Road, Tax Parcel Number 010-2710-04555. Notification of order for condemnation for demolition to owner, Arrowhead Commercial Partners, delivered by registered mail on February 3, 2012

Stream of consciousness



With wealth of streams, Duluth considers improving habitat.

There aren't many cities that can claim 50 streams running through their boundaries, like Duluth can, let alone a dozen or more clear and cool enough to hold native, wild trout.

From Mission Creek on the west to the Lester River on the east, the city is crossed by streams that start high over the hill and tumble down to the St. Louis River or Lake Superior.

Jeff Jasperson of Duluth likes to snorkel in these shallow, cool streams and look behind old logs in the water. He's finding not only small brook trout babies but also some bigger, breeding stock fish, in places that don't necessarily look like the trout streams we see in fly-fishing magazines or movies.

"I don't think many people in Duluth realize how many of these local streams still have wild trout in them," said Jasperson, a biologist for the Minnesota Pollution Control Agency in Duluth. "It's not just the bigger rivers. We're finding trout in tiny, coldwater tributaries you could jump across in one step."

When Jasperson isn't snorkeling for fun or monitoring streams as part of his day job, he likes catching trout with his kids. He's even captured some great underwater video of urban trout on his Go-Pro.

"The fact we can walk from our house in Duluth and catch a few trout and cook them up for dinner, the kids think that's so cool. So do I," he said.

But most of Duluth's urban trout streams are impaired, in some sort of trouble caused by the trappings of city life: Too much sediment from runoff, salt from winter road clearing and E. coli bacteria contamination from people and animals.

All that concrete and blacktop in town means water runs off, doesn't soak in, and is often too warm and too dirty, or turbid, to meet trout standards. Some Duluth streams are already too warm at times for trout to live. Worse, most are forecast by midcentury — just 30 years from now — to warm to levels that are fatal to trout, thanks to a warming climate.

That's why the PCA has developed a report on the status of those streams and released a plan on how to make 11 of them more hospitable to fish. The 11 are the streams with enough long-term data available to show what impairments are an issue.

The name is a mouthful — the Duluth Urban Streams Total Maximum Daily Load — part of the sometimes-obtuse federal mandate to apply the Clean Water Act to ground-level waterways. The effort establishes the amount of each pollutant, the load, that each stream can accept and still meet water quality standards. The process provides a snapshot of where streams are today and lays out a road map on how to improve water quality over the next 10-30 years. But it's going to take more than a plan to get there.

Local governments, watershed districts and especially residents will have to spend time, money and effort.

"It's not saying that by 2030 or even 2050 everything is going to be fine. But it's identifying the issues and offering a plan on how to improve," said Karen Evens, who is leading the effort for the PCA. "And it gives us a way to measure the progress along the way."

There are no trout police to enforce the effort.

"It's not prescriptive. We can't order the community to do these things," Evens noted. "It has to be collaborative."

Fixes included more and better street sweeping by cities to keep polluted sediment from flushing into the streams with each rain; better stormwater storage and management; cleaning sediment traps in storm sewers; protecting small, cold-water tributaries that keep the bigger streams cold and oxygenated enough for trout; limiting or at least better planning for development near streams; and preserving vegetation along the waterways.

E.coli bacteria in streams washes in not just from humans, but also pets and wild animals. On

the human side, fixing leaking sewer pipes and replacing failing septic systems are key. Adding more and better restrooms in city parks would help. Reducing pet waste remains a huge issue. There may be areas where nuisance wild animal populations — raccoons, deer, beaver, etc. need to be reduced or where birds like geese and ducks need to be encouraged to stay away.

While many people perceive brook trout to be a hyper-sensitive species that needs pristine waters to survive, Jasperson says Duluth brook trout have adapted over the last century of intense development, with the strongest fish passing on their genes.

“The surviving fish know where the cold water springs and tributaries are; I’ve seen fish really packed around those. They also know where to go in August, or in a drought year like right now, to hang out when the flows are really low,” he said.

That’s how Miller Creek can flow right through the uber-developed Miller Hill Mall district and still have a viable population of wild brook trout. But fluctuations in the creek’s population — from as high as 448 trout per 1,000 feet in 1993 to just 34 in 2005 — show problems remain: Salt, sediment, a lack of coldwater hiding places and runoff from the massive parking lots and ribbons of road in the area.

“When people realize that these aren’t just drainage ditches running through town. When you show them they are a functioning, living systems with real fish — maybe not functioning as well as they could be — most people are willing to help,” Jasperson said. “But a lot of people don’t know.

I’ve talked to landowners who didn’t even know they had a cold-water stream on their land, let alone a population of wild brook trout. Some of them are just floored when I tell them.”

Over 30 years, to do all the suggested work in the PCA plan could cost the community between \$100 and \$130 million to save its trout streams, Evens said. But it’s not an all-or-nothing proposition.

“We want to target efforts to where they are going to have the most bang for the buck,” she said. “That’s why we want to incorporate stream (protections) into projects that are already going to happen.”

That means UMD plans ahead to improve campus stormwater control efforts as part of its new dormitory construction project. City officials incorporate stream protection efforts as they rebuild city streets and sewers. Slowing and storing warm, dirty water on developed sites is a big step toward cleaner streams. So is protecting wetlands and springs high on Duluth’s hill, the sources of each stream, using conservation easements and tougher construction rules.

Deserae Hendrickson, Minnesota Department of Natural Resources Duluth area fisheries supervisor, said reclaiming more natural stream channels also is key for trout, and restoration projects that followed the massive 2012 flood have done wonders.

Chester Creek, for example, has seen a transformation from a dammed, channeled stream slowed by a pond to a more natural, freeflowing waterway thanks to a project by the South St. Louis County Soil and Water Conservation District.

The effort also has helped the stream stay within its natural floodplain during major flood events.

The flood itself has some surprising benefits. When a man-made debris barrier blew out of Mission Creek in western Duluth during the flood, it opened up the upper stream for fish.

Now, steelhead trout from Lake Superior are spawning far upstream for the first time in half a

century, Hendrickson said.

“The flood did a lot of damage, certainly. But where it blew out (small culverts and small bridges) it allowed us to get larger passages replaced in those areas. So we saw a lot of re-connectivity there, opening up new areas for trout,” she said.

In a few western Duluth streams, the DNR found cool water but no wild trout remaining. So they stocked the creeks and now the trout are reproducing on their own.

But problem areas remain.

Tischer Creek just below Hartley Nature Area now is a warm water dead zone for trout, Hendrickson noted, in large part because the creek is dammed to create Hartley Pond. Removing the dam would help trout but destroy the pond, a favorite spot for local residents. There are possible solutions, such as separating the creek from the pond so the stream water can flow faster.

“We have stretches of streams that are impaired and need attention,”

Hendrickson said. “But we also have a lot of stream runs that, despite what we’ve done to them over the years, somehow hang on and support trout.”

The PCA’s Evens agreed.

“These trout, even if you don’t fish for them, are part of Duluth’s identity, part of the quality of life,” she said. “Having trout streams in our city is part of why people want to live here.”

11 Duluth trout streams and their major problems

Keene Creek — E. coli bacteria Kingsbury Creek — Poor invertebrate population

Miller Creek — Salt; poor invertebrate population; warm water; E.coli

Sargent Creek — E. coli bacteria

Stewart Creek — E. coli bacteria

Merritt Creek — E. coli bacteria

Tischer Creek — E. coli bacteria

Chester Creek — E. coli bacteria

Amity Creek — Sediment turbidity

Amity Creek East Branch — Sediment turbidity

Lester River — Sediment turbidity

Comment on the plan:

The PCA is asking for public comments on the TMDL report, which is available on the project’s web page at www.pca.state.mn.us/water/total-maximum-daily-load-tmdlprojects or at PCA’s Duluth office. You can get more information or send written comments to Karen Evens 218-302-6644, PCA, 525 Lake Avenue South, Suite 400, Duluth, MN 55802, by July 22.

Duluth City Council considers zoning amendment to better protect Amity Creek

The proposed zoning change is intended to address neighbors' fears that development could pose a threat to a neighboring trout stream.

By [Peter Passi](#)

July 22, 2021 03:21 PM



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A controversial request to rezone property next to Amity Creek in Duluth's Woodland neighborhood has been reshaped to allay concerns that the proposed development could threaten the health of the designated trout stream.

Kevin Christiansen of Midwest Properties LLC proposes to develop 25-30 residential lots on about 26 acres of land, but 16 acres of the property are currently zoned for rural residential use, allowing for residential lots no smaller than 5 acres.

To build the Amity Bluffs subdivision that Christiansen envisions, a change to a traditional neighborhood residential R-1 zoning will be required.

But a number of neighbors have objected to rezoning the property, noting the negative impact it could have on the adjacent stream and the additional traffic new development could bring to their quiet corner of Duluth, especially the residents of Vassar Street — what's now a sleepy dead-end road that could be extended to provide access to Amity Bluffs.

To address fears that rezoning the area could imperil the stream and the steep wooded valley that enfolds it, the Duluth City Council amended the rezoning proposal earlier this week to ensure that property near Amity Creek would be off limits to anything but the lowest-density development.

“What this does is it excludes a portion of the property that was proposed for rezoning from the rezoning,” said 2nd District Councilor Joel Sipress, explaining the revised rezoning proposal. “There are significant ecological impacts from having a higher-density zoning along Amity Creek. And that is why on the (city's) future land use map, that area was designated as ‘open space.’”

“When we did the comp plan — the Imagine Duluth plan — along all of our waterways, there were areas designated along those waterways as ‘open space,’ in recognition of the need to protect our waters,” he said.

Councilor Gary Anderson, who represents the Woodland neighborhood along with the rest of Duluth’s 1st District, expressed his support of the amendment, which he said will “expand the 150 feet of shoreland protection that is traditional around our waterways.”

At large Councilor Arik Forsman noted that it was unusual to rezone only part of an established legal land parcel and asked if it was appropriate.

At large Councilor Zack Filipovich acknowledged that the partial rezoning is a bit out of the ordinary.

“But this can be done and has been vetted by staff,” he said.

The Duluth Planning Commission had earlier voted 6-3 to recommend rezoning the whole property, as requested, and 5th District Councilor Janet Kennedy, a former Planning Commission member, questioned why the council shouldn’t follow that lead.

“The commission is the body that does this work, and we need to support them and trust that the decision they made was vetted,” she said.

Anderson noted the split vote by the Planning Commission.

“I really do believe this amendment does two things: I think it honors the spirit of the vote of the Planning Commission, which was to find a way to let a potential development dialogue go forward, and at the same time, to work to protect that watershed there,” he said.

Kennedy suggested sufficient protection mechanisms are already in place to ensure any future development would not harm the creek and the proposed amendment was simply an attempt to appease nervous neighbors.

“I think those safety nets are in place, and we’re just building an amendment that I think is going to make the neighborhood feel good,” she said.

The motion to amend the rezoning ordinance passed 7-2, with councilors Kennedy and Derek Medved voting in the minority. Monday's meeting represented the first reading of the revised zoning ordinance. It is expected to go to a final vote Aug. 16, when the council returns from its summer break.

The idea of allowing development in close proximity to the headwaters of Amity Creek stirred concern about the health of what’s already considered an impaired trout stream, said Rich Staffon, president of the W.J. McCabe Chapter of the Izaak Walton League of America

“I think we’re pretty happy with the compromise they came up with. If I understand it right, it should keep the R-1 traditional neighborhood zoning about an eighth of a mile away from the creek. So, that should be enough to provide it with pretty good protection,” he said.

Some neighbors continue to have concerns beyond the health of the creek, however.

Katey Ferguson, a resident of Vassar Street, suggested street improvements necessitated by further development could deprive people of property and result in assessments that might ultimately price people out of the neighborhood.

Christiansen, the would-be developer of Amity Bluffs, did not respond to calls from the News Tribune following the council’s action on his zoning request, but Filipovich expressed confidence that the downsized rezoning should still leave plenty of land to accommodate the scale of the proposed project.

“There are delicate woodland areas all over Duluth that make this city a special place to live in and enjoy. But at the same time, we do need to balance the need to protect those areas with the desperate need for housing. And I think this gets at that,” Filipovich said.