



CITY OF DULUTH
Community Planning Division

411 W 1st St, Rm 208 * Duluth, Minnesota 55802-1197
Phone: 218/730.5580 Fax: 218/723-3559

File Number	PL 17-046	Contact	Chris Lee, cleee@duluthmn.gov	
Type	Vacation	Planning Commission Date		April 11, 2017
Deadline for Action	Application Date	March 9, 2017	60 Days	May 8, 2017
	Date Extension Letter Mailed	March 22, 2017	120 Days	July 7, 2017
Location of Subject		Boundary Avenue, See Attached		
Applicant	Lotus Realty Services, Inc.	Contact	brad@lotusre.biz	
Agent	N/A	Contact	N/A	
Legal Description		See Attached		
Site Visit Date	March 10, 2017	Sign Notice Date		March 28, 2017
Neighbor Letter Date	March 23, 2016	Number of Letters Sent		20

Proposal

Application for Lotus Realty Services to vacate undeveloped streets and alleys. The applicant intends to use the vacated streets and alleys to create a new plat for development.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subjects	R-1	Single-family residential	Neighborhood Mixed Use
North	R-1	Single-family residential	Low-Density Neighborhood
South	RR-1	Rural Residential	Low-Density Neighborhood
East	R-1	Single-family residential	Low-Density Neighborhood
West	Proctor	Proctor	Proctor

Summary of Code Requirements

Vacation of public rights of way and/or easements require a Planning Commission public hearing with a recommendation to City Council. City Council action is to approve or deny by resolution. Resolutions approving either a full or partial vacation require a 6/9's vote of the council.

UDC Section 50-37.6C. The Planning Commission shall review the proposed vacation, and the council shall approve the proposed vacation, or approve it with modifications, if it determines that the street, highway or easement proposed for vacation:

1. Is not and will not be needed for the safe and efficient circulation of automobiles, trucks, bicycles or pedestrians or the efficient supply of utilities or public services in the city;
2. Where the street terminates at a waterfront or shoreline, the street is not and will not be needed to provide pedestrian or recreational access to the water;
3. Is not otherwise needed to promote the public health, safety or welfare of the citizens of Duluth.

310-1

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

Governing Principle #7 – Create and maintain connectivity.

Future Land Use – Neighborhood Mixed Use: A transitional use between more intensive commercial uses and purely residential neighborhoods. Includes conversions of houses to office or live-work spaces. May include limited commercial-only space oriented to neighborhood or specialty retail markets

This area was originally platted as the Steel Plant Terminal Addition to Duluth in 1916.

Review and Discussion Items

Staff finds that:

- 1.) Proposal is to vacate an undeveloped streets and alley that are within the applicant's properties. Applicant wants to use the vacated the streets and alleys to replat the parcels for development.
- 2.) The alleys to be vacated are located between Park Place and the Minnesota Power transmission lines. The street being vacated is an undeveloped section of Furnace Avenue. These right of ways is not and will not be needed for the safe and efficient circulation of automobiles or pedestrians.
- 3.) There are no city utilities located in the right of way. There are no plans to extend any utilities within this right of way. Right of way is not needed for the efficient supply of utilities or public services in the city. Minnesota Power does have an easement for a transmission line right of way on the NE-SW running street of Boulevard Avenue North.
- 4.) A Neighboring property to the north of applicant's proposal is located within portion of an alley and street that, if vacated, would be granted to the property at 9228 Park Place. The affected neighbor has signed the vacation petition.
- 5.) The UDC requires signatures from the majority of property owners affected by the vacation (determined by linear feet). Applicant has acquired more than 50 percent of affected property owner's signatures.
- 6.) The right of way is not otherwise needed to promote the public health, safety, or welfare of the citizens of Duluth. The development will increase walkability from residents of Zenith Terrace.
- 7.) Governing Principle # 7 of the Comprehensive Plan addresses the implications of connectivity; however, as the platted alley dead-ends, it is not needed for connectivity purposes. Any new alleys or easements will be dedicated as needed in the new plat. Note that generally the City's policy is to avoid dead-end streets and alleys as they are problematic from a maintenance and life safety standpoint.
- 8.) One comment was received related to the vacation (email attached to staff report). City engineering has asked for several minor amendments to the exhibit; the exhibit was being revised at the time that this staff report was being prepared. No other public, agency, or City comments were received.
- 9.) Vacations of streets lapse unless the vacation is recorded with the county recorder within 90 days after final approval. The vacation recording is facilitated by the City of Duluth.

Staff Recommendation

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

C-2



City Planning

PL 17-046: Vacation of ROW's
Boundary Ave

Legend

Zoning Boundaries

Zoning Boundaries

Water Distribution System

30 - 60" Water Pipe

16 - 24" Water Pipe

4 - 6" Water Pipe

Sanitary Sewer Collection System

Sanitary Sewer Collector

Sanitary Sewer Interceptor

Sanitary Sewer Forced Main

Storage Basin

Pump Station

Gas Distribution Main

8" - 16" Gas Pipes

4" - 6" Gas Pipes

0" - 4" Gas Pipes

Storm Sewer Collection System

Storm Sewer Pipe

Storm Sewer Catch Basin

Right-of-Way Type

Road or Alley ROW

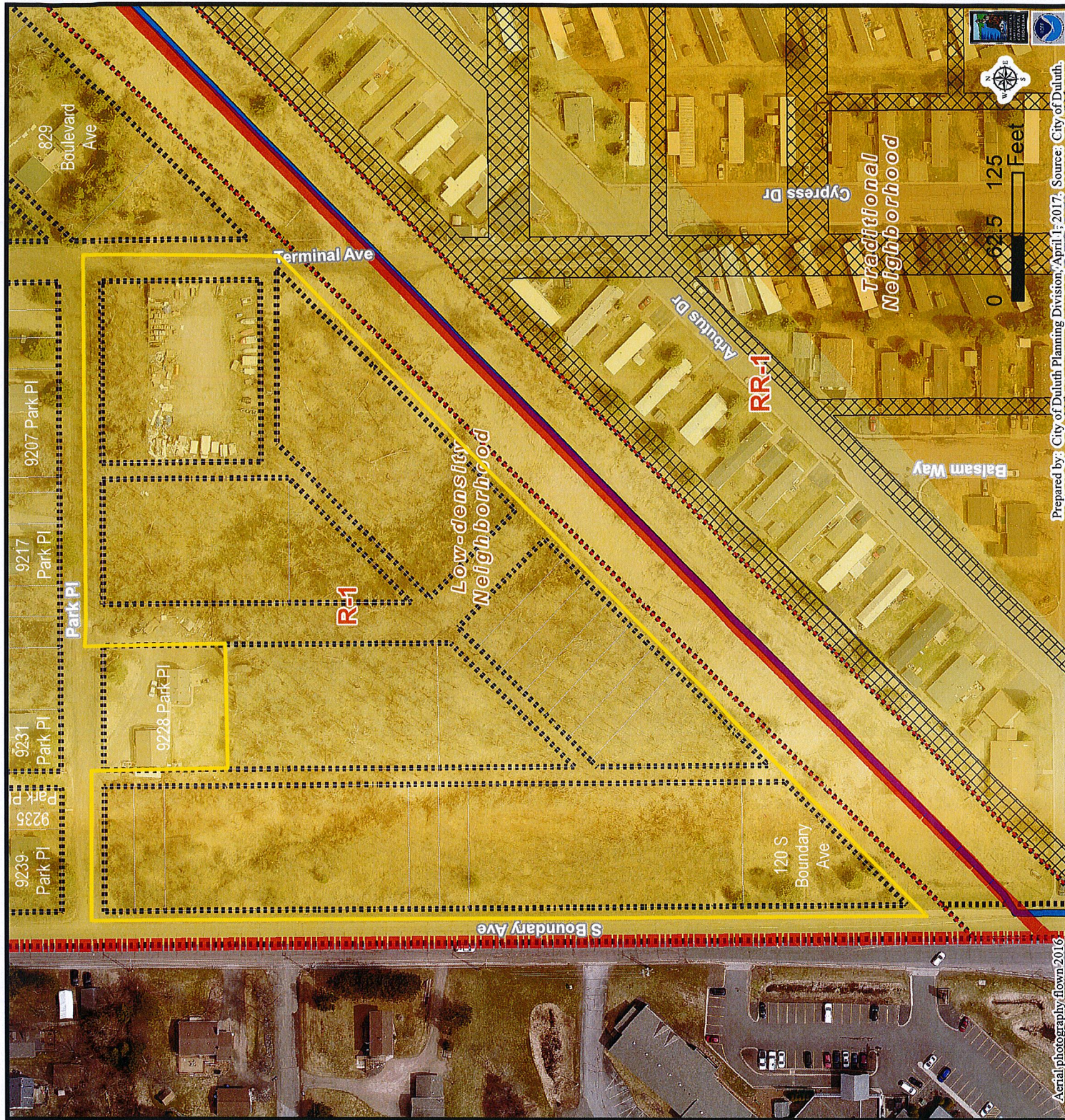
Vacated ROW

Easement Type

Utility Easement

Other Easement

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.



Aerial photography flown 2016

Prepared by: City of Duluth Planning Division, April 1, 2017. Source: City of Duluth.



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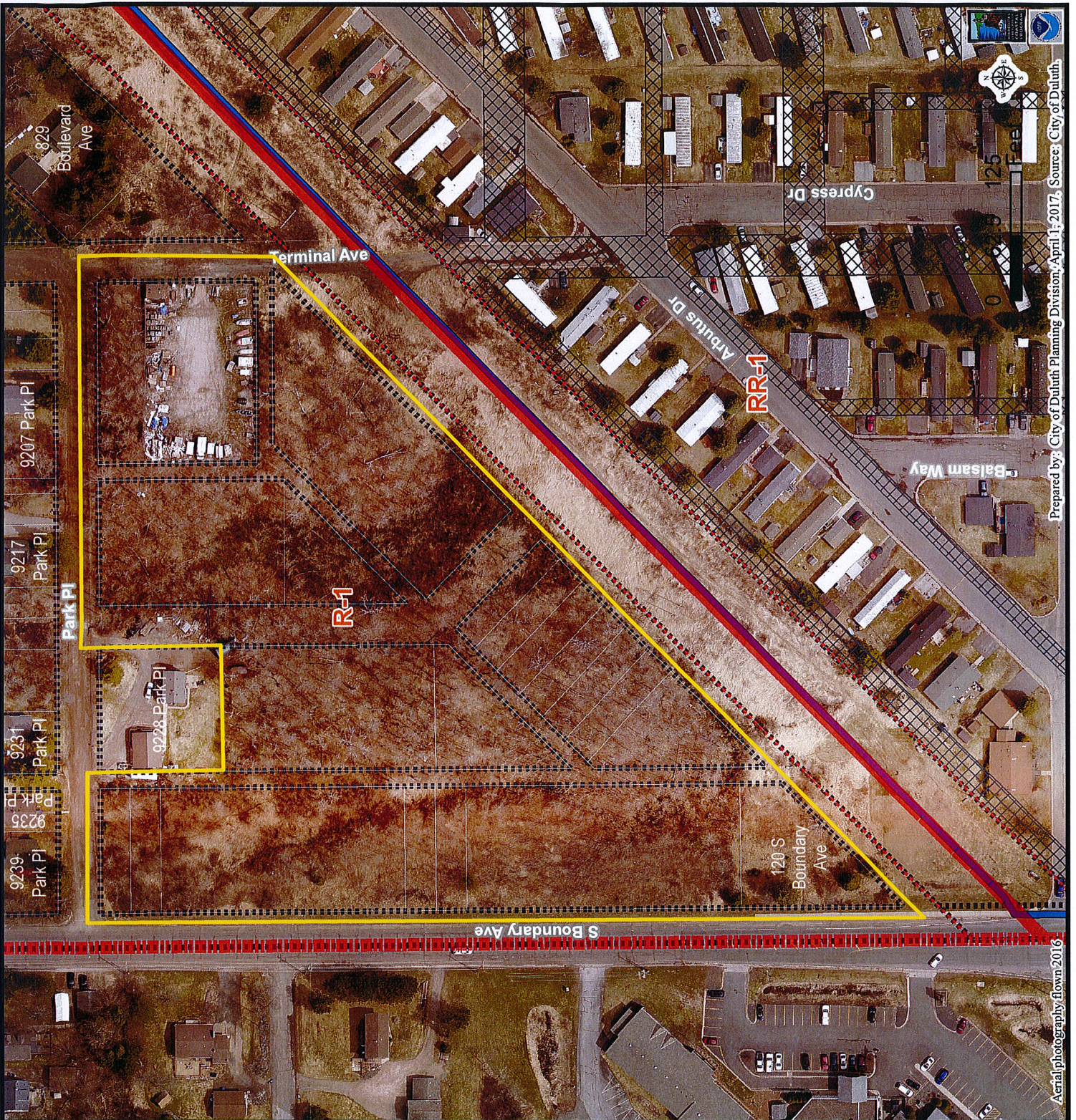
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Easement Type

Utility Easement

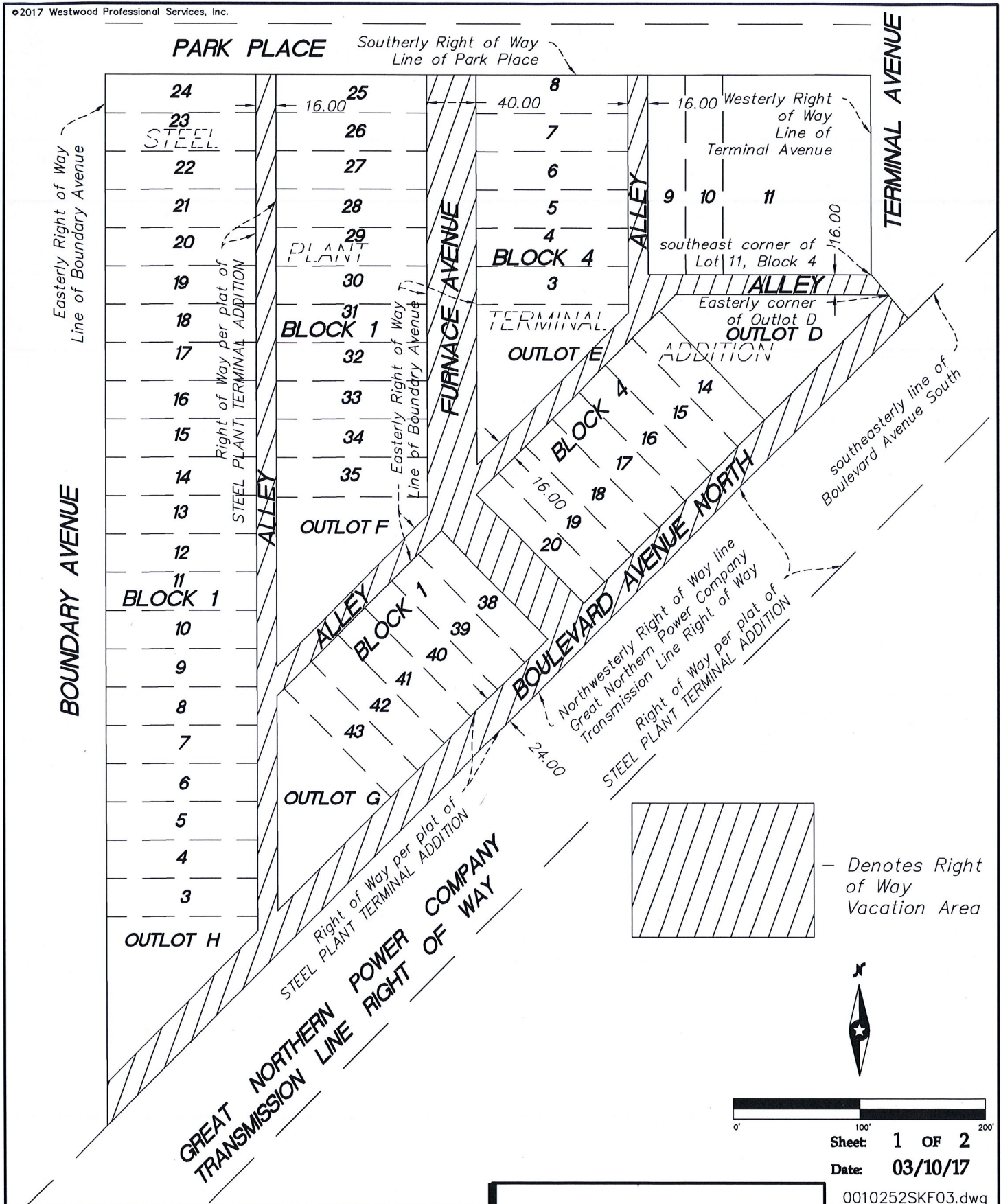
Other Easement

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Right of Way Vacation Description

That part of Boulevard Avenue North, Furnace Avenue and the Alleys as dedicated on STEEL PLANT TERMINAL ADDITION, according to the recorded plat thereof, St. Louis County, Minnesota lying easterly of the right of way line of Boundary Avenue, lying southerly of the southerly right of way line Park Place, and lying southwesterly of a line drawn from the southeast corner of Lot 11, Block 4, said STEEL PLANT TERMINAL ADDITION to the most easterly corner of Outlot D, extended southeasterly to the southeasterly right of way line of said Boulevard Avenue North.

Approved by the City Engineer of the City of Duluth, Minnesota this _____ day
of _____, 20_____

By _____

I hereby certify that this survey was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.



03/10/17

Craig W. Morse, R.L.S.
License No. 23021

Date

Sheet: 2 OF 2

Date: 03/10/17

0010252SKF03.dwg

Westwood

Phone (952) 937-5190 7699 Anagram Drive
Fax (952) 937-5822 Eden Prairie, MN 55344
Toll Free (888) 937-5190 www.westwoodps.com
Westwood Professional Services, Inc.

Crew: _____

Checked: CWM

Drawn: BTW

Record Drawing by/date: _____

**Steel Plant
Terminal Addition**

St. Louis County, Minnesota

Right of Way
Vacation Exhibit

2-7



C-8



DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
180 FIFTH STREET EAST, SUITE 700
ST. PAUL, MN 55101-1678

REPLY TO ATTENTION OF
REGULATORY BRANCH

Regulatory File No. 2016-02733-KAL

March 9, 2017

Mr. Brad Johnson
Lotus Realty Services
PO Box 235
Chanhassen, Minnesota 55317

Dear Mr. Johnson:

This letter concerns your request for a Department of the Army permit to permanently discharge dredged and fill materials into 0.45 acre of forested wetlands for the purpose of constructing a convenience store facility with gas pumps and associated parking. The project would include the temporary discharge of dredged and fill materials into 0.05 acre of the forested wetlands to facilitate construction activities. The project site is in Section 10, Township 49 North, Range 15 West, St. Louis County, Minnesota.

As part of our analysis of this project, we must determine whether it complies with the guidelines of Section 404(b)(1) of the Clean Water Act (CWA). These guidelines require that when a project is not "water dependent," that is, it does not need to be located in or near wetlands to serve its basic purpose, it is presumed that there are alternative upland sites available and that the use of the upland sites would be less environmentally-damaging than would be the proposed alteration of the wetland.

Your project does not require access to, or proximity to, or siting within a wetland to fulfill its purpose. Therefore, it is incumbent upon you to clearly rebut the presumption that upland sites are available and would be less environmentally-damaging than your proposal. The fact that you may not own the upland site is not, by itself, sufficient to rebut this presumption as long as upland property is available at a reasonable cost.

In evaluating this project, it appears that there may be a number of upland sites in the area that are suitable for development. Please provide us specific information, such as a site cost comparison or real estate market analysis, as to why you are unable to construct your proposed project on an upland site.

Each proposal is judged on its own merits. Permits are issued only when projects comply with the guidelines of the CWA, and would provide public or private benefits that equal or outweigh project detriments. Our regulations require us to deny all other applications in order to protect the public interest in maintaining the integrity of the waters of the United States.

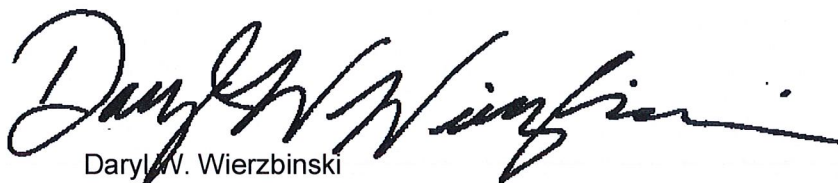
Please forward all pertinent information within the next 30 days from the date of this letter so we may conduct our review with a full appreciation of the circumstances. We will continue to evaluate your application in the interim.

C-9

Regulatory Branch (File No. 2016-02733-KAL)

If you have any questions, please contact Kristoffer Laman in our Duluth office at (218) 720-5291 or kristoffer.a.laman@usace.army.mil. In any correspondence or inquiries, please refer to the Regulatory file number shown above.

Sincerely,

A handwritten signature in black ink, appearing to read "Daryl W. Wierzbinski". The signature is fluid and cursive, with a long horizontal stroke at the end.

Daryl W. Wierzbinski
Regulatory Project Manager, Duluth Office

Enclosure:

2016-02733-KAL Drawing 1 of 2 through 2 of 2

cc:

Heidi Bringman, LHB Inc., Duluth, MN

R.C. Boheim, SWCD, Duluth, MN

David Demmer, BWSR, Duluth, MN