

# **EXHIBIT 1**

## **WATER LINE DEVELOPMENT AGREEMENT BETWEEN NORTHLAND COUNTRY CLUB AND THE CITY OF DULUTH**

This WATER LINE DEVELOPMENT AGREEMENT (this “Agreement”) is entered into by and between the CITY OF DULUTH, a municipal corporation and political subdivision created and existing under the laws of the State of Minnesota (the “City”), and NORTHLAND COUNTRY CLUB, a non-profit corporation under the laws of the State of Minnesota (the “Corporation”). The City and the Corporation are collectively referred to in this Agreement as the “Parties.”

WHEREAS, the Corporation is the fee owner of certain real estate in the City of Duluth, County of St. Louis, State of Minnesota that is outlined in the drawing attached as Exhibit A (the “Property”).

WHEREAS, the City desires to (i) construct a new water main, hydrants and related apparatus (collectively, the “Water Main”) to be located in part on the Property in order to improve its municipal water system (the “Project”); and (ii) obtain a permanent easement from the Corporation over and across a portion of the Property to allow the Water Main to be placed on the Property in perpetuity (the “Permanent Easement Agreement”).

WHEREAS, the Corporation has voluntarily agreed to allow the City to construct the Water Main on the Property and to grant the Permanent Easement Agreement, subject to the terms and conditions of this Agreement.

WHEREAS, the Parties desire to formalize the respective roles and responsibilities of the Project through this Agreement.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants and agreements hereinafter contains, the Parties agree as follows:

### **I. ADMINISTRATION**

For purposes of administering this Agreement, the City shall act through its Chief Utility Engineer or their designee (the “Utility Engineer”) and the Corporation shall act through its President of the Board or their designee. The Parties will operate in good faith, using their best efforts to work together in a collaborative manner on the Project.

## II. TERM

This Agreement is effective as of the date last executed below and will terminate on the date of Final Completion (defined below) of the Project, unless earlier terminated as provided for herein (the “Term”).

## III. TIMELINE OF THE PROJECT

Below is a summary of the task items for the Project and estimated completion dates:

Date	Task
August 2024	City contracts with Northland Engineering to design the Project
October 2024	Order title commitment
November 2024	Project is designed, advertised and opened for bids
December 2024	Award construction contract, obtain permits, and Closing
January 2025	Construction begins
April 1, 2025	Deadline for Substantial Completion
June 23, 2025	Deadline for Final Completion
2 years from Date of Final Completion	Restoration warranty period

## IV. THE PROJECT

### A. Pre-Construction.

1. Plans. The Project will be constructed generally in the location shown on Exhibit A, with the alignment of the Water Main and the Permanent Easement Agreement to be finalized as set forth in Section IV.A.2. below. The City will construct the Project according to plans and specifications developed by its consultants in conformity with this Agreement and with all applicable laws, rules, regulations, and ordinances of the City, State of Minnesota, and United States of America (the “Plans”). The City shall provide an electronic copy of the Plans to the Corporation. The City must obtain the proper permits, licenses, or other permissions needed from various local, state, and/or federal agencies and entities to construct the Project. The Project will be constructed at the City’s expense. Prior to the start of construction, the City and the Corporation shall meet together on the Property and shall photograph, inspect and document

the condition of the Property in order to evidence its then-current condition, which the Parties may then rely on in relation to the restoration requirements set forth below.

2. Alignment of Water Main and Permanent Easement Agreement. The alignment of the Water Main is generally shown on Exhibit A; however, the Parties acknowledge that the Water Main is still in the design phase and the precise alignment is subject to change. The Parties shall work cooperatively to promptly agree on the final alignment of the Water Main. Prior to the City awarding its construction contract (through its standard public bidding process) and prior to the commencement of construction of the Water Main and as further set forth in Section IV.A.4. below: (i) the Parties shall enter into the Permanent Easement Agreement, which shall be substantially in the form attached as Exhibit B, and (ii) the Permanent Easement Agreement shall be recorded in the Offices of the St. Louis County Registrar of Titles and the St. Louis County Recorder, at the City's expense. As soon as reasonably possible after completion of the Plans and based on the alignment of the Water Main agreed to by the Parties, the City shall obtain and provide to the Corporation a proposed legal description for the 20-foot-wide easement(s) to be granted in the Permanent Easement Agreement for its review and comment (the "Proposed Easement Description"). Within 10 days of receipt of the Proposed Easement Description, the Corporation shall provide the Utility Engineer with written comments and any requests for modification of the Proposed Easement Description, along with the reason or justification for such request. The Corporation may request revisions to the Proposed Easement Description to correct mistakes or more accurately describe the easement areas, but not to relocate or substantively change the location of the Water Main or the easement areas. If the Corporation requests changes to the Proposed Easement Description, the City may either (i) make the requested changes, or (ii) explain why the requested changes were not made. At the conclusion of this consulting process with the Corporation, the legal description for the Permanent Easement Agreement shall be finalized by the City and shall become the "Easement Area." Any subsequent proposed modifications to the legal description(s) for the Easement Area made prior to the Closing (defined below), shall be presented to the Corporation in the same manner for consideration and comment, except that the Corporation shall have 3 business days from receipt of the proposed modification to provide the Utility Engineer with comments and requests for modification.

3. Payment for Permanent Easement Agreement and other Impacts on the Property. The City has obtained an appraisal of the diminution of market value of the Property as impaired by the permanent and temporary easements contemplated by this Agreement and other impacts of the Project on the Property based on the preliminary alignment for the Water Main, which appraisal is attached as Exhibit C (the "Appraisal"). The total diminution of market value of the Property set forth in the Appraisal is \$280,000.00. The valuations set forth in the Appraisal are based on various square footage calculations that are subject to change once the alignment for the Water Main and the legal description for the Easement Area are finalized. Once the alignment for the Water Main and the legal description for the Easement Area are finalized and the total square footage of the property impacted can be determined, the City will have the Appraisal updated using the same valuations per square foot as currently set forth in the

Appraisal. The City shall promptly provide a copy of the updated Appraisal to the Corporation. The diminution of market value as determined by the updated Appraisal plus an additional \$10,000 for access during the Project (as set forth in Section IV.B.3. below) will be the purchase price paid by the City in exchange for the permanent and temporary easements and other impacts of the Project on the Property (the “Purchase Price”). The Appraisal will not include a valuation determination relating to the City’s use of the Property for access purposes.

4. Closing and Title Insurance for Permanent Easement Agreement. The closing on the City’s acquisition of the Permanent Easement Agreement (the “Closing”) shall occur on or before December 13, 2025 (the “Closing Date”). The Closing shall take place at the office of First American Title Insurance Company-Consolidated Title & Abstract Company (“Title”) in Duluth, Minnesota, or at such other place as the parties shall mutually agree upon. At the City’s sole discretion and expense, the City may order a commitment for an ALTA Owner’s Policy of Title Insurance in an amount equal to the value of the Permanent Easement Agreement (as set forth in the updated Appraisal), to insure the City’s title to the Permanent Easement Agreement. The City may make written objections to the Corporation’s title to the Property based on the title insurance commitment (the “Objections”). Any matter(s) that are set forth in the title commitment and to which the City does not object shall be deemed to be permitted exceptions to the state of the Corporation’s title. With regard to items to the Objections, the Corporation shall either: (i) within 5 days of receipt of the Objections, give the City written notice of the Corporation’s intent not to cure one or more of the Objections; or (ii) within 15 days after receiving the Objections from the City (the “Title Cure Period”), use its best efforts to attempt to cure the Objections, during which period the Closing will be postponed as necessary. If the Corporation (i) notifies the City that the Corporation is not willing to cure the Objections, or (ii) fails to cure the Objections within the Title Cure Period, the City will have the option to (a) terminate this Agreement (without either party being deemed at fault), or (b) waive the Objections and proceed to Closing. The City shall exercise its option to terminate under this section by delivering written notice to the Corporation within 10 days after the receipt of notice that the Corporation will not cure the Objections or the expiration of the Title Cure Period, as applicable. If the City fails to deliver notice of termination, the City shall be deemed to have waived the Objections. The City will pay all recording fees and closing costs associated with the Closing, except the Corporation will pay to cure any Objections, including obtaining and recording the consents required by Section IV.A.5. below.

5. Mortgagee Consent to Permanent Easement Agreement. On or before the Closing, the Corporation shall obtain written consents from all persons and entities with a mortgage or other monetary lien on the Property, which consents shall be notarized and in recordable form and recorded either as exhibits to the Permanent Easement Agreement or as stand-alone documents contemporaneously with the Permanent Easement Agreement. Any mortgages or monetary liens shown on the City’s title insurance commitment shall automatically be deemed “Objections” by the City without need for written notice to the Corporation. Delivering the executed written consent(s) in recordable form shall automatically be deemed a “cure” by the Corporation of any “deemed Objections” to any such mortgages or monetary liens.

The Corporation shall obtain the consents required by this section regardless of whether the City obtains a title commitment.

6. Termination if No Acceptable Bids. In the event that the City (i) does not receive any bids for the Project; (ii) does not receive any acceptable bids for the Project, as determined in the City's sole discretion; or (iii) does not award a bid for the Project for any reason whatsoever, then the City may terminate this Agreement (without either party being deemed at fault) by delivering written notice to the Corporation.

B. Construction and Restoration.

1. City to Manage Construction. The Project will be constructed by a contractor selected by the City through its standard public bidding process and in accordance with the Final Construction Plans. The City shall manage construction of the Project in its sole discretion. At the sole discretion of the Utility Engineer, during construction of the Project portions of the Property directly impacted by construction may be closed to everyone other than construction personnel and staff of the City. "Substantial Completion" of the Project shall occur no later than April 1, 2025 and shall be the date on which all of the following events have occurred: all water main facilities are accepted by the City and considered to be operational; all excess construction materials are removed and disposed of; final grading is complete; and temporary erosion stabilization is installed to protect all disturbed areas until permanent restoration can commence. Substantial Completion does not include restoration, construction or reconstruction of the Private Road (defined below). "Final Completion" of the Project shall occur on or before June 23, 2025 and shall be the date on which all of the following events have occurred: ALL work required to be performed by the City under this Agreement is complete (not including work that may be required pursuant to the City's warranty as set forth below), including permanent restoration of all areas required to be restored by the City; and complete demobilization from the Property by the City's contractor(s). Final Completion shall not include any restoration activities or other work to be completed by the Corporation or its contractors. The City shall have complete discretion as to the use of directional drilling, open cut or other construction methods on the Project. If the City chooses to use open cut methods to remove bedrock to create the trench for any portion of the Water Main, it will (i) consult with the Corporation in advance and, (ii) at the Corporation's request, the City will fracture rock with the use of explosives along the trench to a width not to exceed 15 feet. The City will only remove blasted rock from the trench to the extent necessary to complete the Project and will not remove blasted rock outside the typical cross section of a water main trench. Removed rock shall be disposed of offsite by the City, or, at the Corporation's option, the City will leave the blasted rock onsite for use by the Corporation.

2. Temporary Construction Easement. Throughout the construction and restoration of the Project, the City shall have a temporary construction easement over and across the Easement Area and that portion of the Property depicted on the attached Exhibit A. The

temporary construction easement shall automatically terminate on the date of Final Completion of the Project.

3. Access. The City shall access the Property via the areas illustrated on Exhibit A. As a portion of the Purchase Price, the City shall pay the Corporation \$10,000 at the Closing as compensation for use of the Property for access purposes.

4. Installation of Temporary Bridge. The City may not use the Corporation's existing bridges for construction-related egress and activities. The City may install temporary bridges over the creeks on the Property during the Project and may use those bridges during construction and restoration activities. The City shall remove the bridges at the conclusion of the Project. The City's temporary bridges may be installed adjacent to the existing bridges, or any existing bridge may be removed for the City's bridge to be positioned. If removed, the existing bridge must be reinstalled by the City when the City's bridge is removed.

5. Parking, Staging and Laydown: The City may use those portions of the Property indicated on Exhibit A for purposes of parking, staging and material laydown.

6. Use and Restoration of Existing Private Road. The City may use the existing private maintenance road (which is included within the temporary and/or permanent easement areas) shown on Exhibit A for access purposes during construction of the Project (the "Private Road"). Upon completion of construction, the City shall restore any damaged portion of the Private Road to the specifications described below; however, to the extent the final alignment of the Water Main is located, in whole or in part, north of the existing Private Road (as depicted on the attached Exhibit A), the City will construct a new Private Road that follows the alignment of the Water Main and will have no obligation to restore that portion of the Private Road that lies south of the final alignment of the Water Main. Exhibit A depicts the section of the Private Road that will not be restored by the City upon completion of the Project. The Private Road, including any section of new Private Road constructed by the City but not including that portion of the Private Road that lies south of the final alignment of the Water Main, will be repaired or constructed to the following specifications: 16 feet in width with 15' geotextile fabric on 12" of class 5 material.

7. Restoration within Specialty Golf Area by the Corporation. The "Specialty Golf Area" is that portion of the Property outlined and labeled on Exhibit A. In the event the City causes damage to any tee box, green, fairway, rough or bunker within the Specialty Golf Area, the Corporation will be responsible for restoring such area(s). The City will reimburse the Corporation for the cost to restore any such area(s) damaged by the City, but reimbursement shall be limited to the cost necessary to restore such area(s) to its condition prior to the damage caused by the City. In order to request reimbursement, the Corporation must provide the City with written invoices evidencing the restoration costs incurred. The Corporation further agrees to consult with the City regarding the cost and method of restoration prior to incurring

the costs. Invoices shall be submitted to the City no later than December 31, 2025. To the extent necessary, the obligations set forth in this paragraph shall survive termination of this Agreement.

8. Restoration within Specialty Golf Area by the City. In the event the City causes damage to any creek bed, cart path bridge, irrigation, drainage piping or other area within the Specialty Golf Area, the City, at its sole cost, will be responsible for restoring such area(s) to their respective conditions prior to the damage caused by the City. In the event the City causes damage to grassy areas on the driving range on the Property, the City will, at its sole cost, restore the damaged area with a grass seed specification selected by the Corporation, apply fertilizer to the damaged area, and employ erosion stabilization methods as specified by the Plans. Areas that have been excavated shall also be capped with 4" of imported topsoil by the City. In addition, if any driving range posts or fencing are removed or damaged, the City shall put such posts or fencing back in place at the City's sole cost and, if not usable, shall install new posts or fencing at the City's sole cost.

9. Restoration of Non-Golf Areas and Tree Replacements. "Non-Golf Areas" means those areas of the Property outlined and labeled on Exhibit A. In the event the City causes damage to an area within the Non-Golf Areas, the City will, as directed by the Corporation and in accordance with the specifications in the Plans, grade and revegetate the Non-Golf Areas with native grass. The City will replace a removed tree with an immature tree if it removes any trees on the Property along 40<sup>th</sup> Avenue East, but only to the extent the tree removal occurs outside the City's right of way. At the Corporation's request, the City will also replace removed trees, if any, to restore screening near the Corporation's maintenance garage as labeled on Exhibit A. Trees removed along the Private Road or anywhere within the Easement Area will not be replaced. The City will restore any driveway or parking lot on the Property that is conclusively damaged due to use by the City to the condition as existed prior to the damage caused by the City.

10. Completion of Restoration and Warranty. The City's restoration activities on the Property shall be completed on or before June 23, 2025. The City will warranty its restoration of the Property for two years from the date of Final Completion. In the event the City needs to perform additional restoration activities on the Property after the date of Final Completion pursuant to the warranty, the Corporation shall allow the City to temporarily access the Property in order to complete the additional restoration work. The City's warranty does not include any restoration work on the Property performed by the Corporation or the Corporation's contractors. If the Corporation or any third party disturbs or damages the Property or a portion of the Property restored by the City or otherwise alters the Property after the City performs the restoration work required by this Agreement, then the warranty provided under this paragraph shall not apply to the area of the Property that has been disturbed, damaged or otherwise altered. If the City damages any portion of the Property that lies outside of the areas identified for use on Exhibit A, the City shall be responsible to restore the damaged area in accordance with the provisions under this Agreement for the type of area destroyed (*e.g.*, a damaged green will be restored

pursuant to the provisions under Section IV.B.7, but damaged drainage piping would be restored pursuant to the provisions under Section IV.B.8.).

11. Liens. The City shall not permit any mortgage or encumbrance to be filed or established against the Corporation's interest in the Property.

C. Additional Corporation Responsibilities. The Corporation shall be responsible for the following:

1. Prompt Review and Cooperation. The Corporation shall promptly respond to any requests by the City regarding the Project. Failure to respond within the required time periods set forth in this Agreement shall be deemed a waiver of the Corporation's opportunity to comment and request changes.

2. Liens. The Corporation shall not permit any mortgage or encumbrance to be filed or established against the City's interest in the Permanent Easement Agreement.

3. Location of Irrigation System and Private Utilities. As requested from time to time by the City and/or its contractor, the Corporation shall locate and mark or otherwise provide the approximate horizontal location of all underground irrigation system infrastructure and private utilities located on the Property, whether in service or abandoned. At the Corporation's option, this work can be performed by the Corporation's staff.

D. Post-Construction Corporation Use of Water Line. Any use of or connections to the Water Line by the Corporation must follow the City's standard water line connection processes and will incur standard applicable fees. This requirement shall survive termination of this Agreement.

## V. TITLE TO WATER MAIN

The Parties acknowledge that the City will own the Water Main and all plans, reports and all other information and documents gathered and prepared in relation to this Agreement and the Project.

## VI. DEFAULT

If either of the Parties defaults in the performance of its obligations under this Agreement due to no fault of the other party, then the non-defaulting party may, after at least twenty days prior written notice to the defaulting party and that party's failure to cure the default within said notice period, pursue any and all remedies available in law or equity, including but not limited to specific performance.



## VII. COMMUNICATIONS AND REPORTING

A. The Parties agree that a full and complete exchange of information is necessary for a successful relationship, and each party agrees to communicate openly and regularly with the other with regard to this Agreement and the Project.

B. Unless otherwise provided herein, notice to the City or the Corporation shall be sufficient if sent by regular United States mail, postage prepaid, addressed to the Parties at the addresses hereinafter set forth or to such other respective persons or addresses as the Parties may designate to each other in writing from time to time:

City of Duluth  
Attn: Chief Engineer of Utilities  
411 W. First St., Room 240  
Duluth, Minnesota 55802  
(218) 730-5200

Northland Country Club  
Attn: President and General Manager  
3901 E. Superior St.  
Duluth, MN 55804  
(218) 525-1941

With a copy to:

William Burns  
Hanft Fride, A Professional Assoc.  
130 W. Superior St., Suite 100  
Duluth, MN 55802  
(218) 722-4766

C. The Corporation acknowledges that, as provided in Minnesota Statutes Section 16C.05, Subd. 5, all of the Corporation's books, records, documents, and accounting procedures and practices related to this Agreement are subject to examination by the City or the State Auditor for six (6) years from the date of termination or expiration of this Agreement. Upon twenty-four (24) hours advance written notice by the City, the Corporation shall provide all requested books, records, documents, and accounting procedures and practices related to this Agreement.

D. The Corporation agrees to maintain all records relating to this Agreement during the Term and for six (6) years after this Agreement's termination, cancellation, or expiration.

## VIII. INDEPENDENT RELATIONSHIP

Nothing contained in this Agreement is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the Parties or of constituting the Corporation as an agent, representative, or employee of the City for any purpose or in any manner whatsoever. The Parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this

Agreement. The Corporation's employees shall not be considered employees of the City, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of the Corporation's employees while so engaged and any and all claims whatsoever arising out of employment or alleged employment, including without limitation, claims of discrimination against the City, or its officers, agents, contractors, or employees shall in no way be the responsibility of the City. The Corporation and its officers and employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Workers' Compensation, Unemployment Insurance, disability pay, or severance pay from or on behalf of the City.

#### IX. THIRD-PARTY BENEFICIARIES

This Agreement is to be construed and understood solely as an agreement between the Parties regarding the subject matter herein and shall not be deemed to create any rights in any other person or on any other matter. No person, organization, or business shall have the right to make claim that they are a third-party beneficiary of this Agreement or of any of the terms and conditions hereof, which, as between the Parties, may be waived at any time by mutual agreement of the Parties.

#### X. GOVERNMENT DATA PRACTICES

A. The Corporation shall comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the City under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by the Corporation under this Agreement.

B. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by the Corporation. If the Corporation receives a request to release the data referred to in the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, the Corporation shall immediately notify the City and consult with the City as to how the Corporation should respond to the request. The Corporation agrees to hold the City, its officers, and employees harmless from any claims resulting from the Corporation's unlawful disclosure or use of data protected under state and federal laws.

#### XI. SEVERABILITY

If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

## XII. FORCE MAJEURE

Neither party shall be liable for any failure of or delay in performance of its obligations under this Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of nature, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits, or inability to obtain labor, materials, equipment, or transportation. Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the party's obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

## XIII. INSURANCE AND INDEMNIFICATION

A. The City will require that its contractor for the Project include the Corporation as an additional insured on its Certificate of Insurance.

B. To the extent permitted by the constitution and laws of the State of Minnesota, the City shall save and hold harmless the Corporation from any and all damage to life or property arising from the City's activity under this Agreement, provided the City shall not be required to indemnify the Corporation for such liability arising out of the wrongful or negligent acts of employees or agents of the Corporation.

## XIV. GENERAL PROVISIONS

A. The recitals at the beginning of this Agreement are true and correct and are incorporated into this Agreement by reference.

B. The Corporation shall neither assign nor transfer any rights or obligations under this Agreement without prior written approval of the City.

C. The Parties represent to each other that the execution of this Agreement has been duly and fully authorized by their respective governing bodies or boards, that the officers of the Parties who executed this Agreement on their behalf are fully authorized to do so, and that this Agreement when thus executed by said officers of said Parties on their behalf will constitute and be the binding obligation and agreement of the Parties in accordance with the terms and conditions hereof.

D. Any amendments to this Agreement shall be in writing and shall be executed by the same officers who executed this Agreement or their successors in office.

E. The waiver by the City or the Corporation of any breach of any term, covenant, or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant, or condition of this Agreement.

F. Time is of the essence with respect to this Agreement.

G. This Agreement, including exhibits, constitutes the entire agreement between the Parties and supersedes all prior written and oral agreements and negotiations between the Parties relating to the subject matter hereof. This Agreement may be executed and delivered by a party by facsimile or PDF transmission, which transmission copy shall be considered an original and shall be binding and enforceable against such party. The exhibits to this Agreement are as follows:

Exhibit A	Map of the Property
Exhibit B	Form of Permanent Easement Agreement
Exhibit C	Appraisal

*[Remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the Parties have hereunto set their hands the day and date first shown below.

CITY OF DULUTH

NORTHLAND COUNTRY CLUB

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Countersigned:

\_\_\_\_\_  
City Auditor

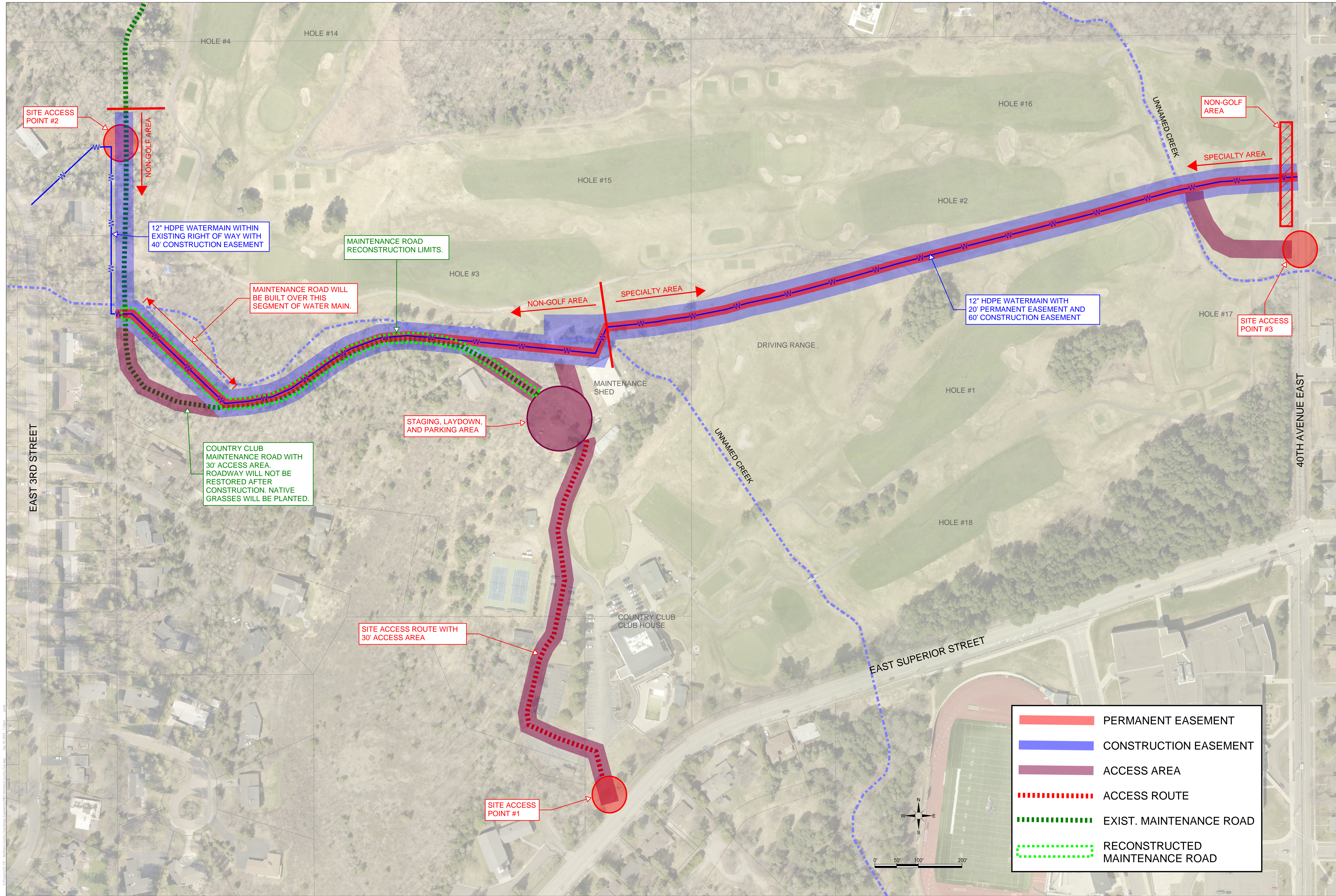
Approved as to form:

\_\_\_\_\_  
City Attorney

**EXHIBIT A**

**MAP OF THE PROPERTY**





REVISIONS:


PROJECT: 22-191  
CHECKED: DGB  
DRAWN: DRH  
DATE: 2024/09/19

Sheet Title  
**WATER MAIN**

Sheet Number  
**EX 1**

- PERMANENT EASEMENT
- CONSTRUCTION EASEMENT
- ACCESS AREA
- ACCESS ROUTE
- EXIST. MAINTENANCE ROAD
- RECONSTRUCTED MAINTENANCE ROAD



**EXHIBIT B**

**FORM OF PERMANENT EASEMENT AGREEMENT**



## **UTILITY EASEMENT**

This UTILITY EASEMENT is made by and between NORTHLAND COUNTRY CLUB, a non-profit corporation under the laws of the State of Minnesota (“Grantor”) and the CITY OF DULUTH, a municipal corporation and political subdivision created and existing under the laws of the State of Minnesota (the “City”).

## **RECITALS**

A. Grantor owns the real property in St. Louis County, Minnesota legally described on the attached Exhibit A (the “Property”).

B. Grantor wishes to grant the City a utility easement for water line purposes over, under and across a portion of the Property in trust for the benefit of the public and at no cost to the City (the “Easement”).

C. The location of the Easement is that portion of the Property legally described on the attached Exhibit B and depicted on the attached Exhibit C (the “Easement Area”).

NOW, THEREFORE, for good and valuable consideration, Grantor grants to the City, in trust for the benefit of the public, a perpetual utility easement for water line over, under and across the Easement Area. The Easement includes the City’s perpetual right, permission, authority and privilege to construction, operate, maintain, repair and replace a public water line and all necessary and usual appurtenant equipment thereto. The Easement shall extend to and bind the heirs, successors and assigns of Grantor and the City and shall run with the land. This easement document shall be governed by the laws of the State of Minnesota, and all terms, conditions, and covenants herein shall be interpreted in accordance therewith. Grantor represents to the City that the individual(s) executing this document on behalf of Grantor have the requisite authority to execute this document, and to bind Grantor thereto.

IN WITNESS WHEREOF, Grantor has caused this utility easement to be executed effective as of \_\_\_\_\_, 2024.

NORTHLAND COUNTRY CLUB

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MINNESOTA    )  
  ) SS  
COUNTY OF ST. LOUIS    )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024 by \_\_\_\_\_, the \_\_\_\_\_ of NORTHLAND COUNTRY CLUB, a non-profit corporation under the laws of the State of Minnesota.

\_\_\_\_\_  
Notary Public

This instrument was drafted by:  
Office of the City Attorney  
Room 440 City Hall  
411 West 1st Street  
Duluth, MN 55802-1198

**EXHIBIT A**  
**LEGAL DESCRIPTION OF GRANTOR PROPERTY**

NE1/4 of SE1/4 of Section 12, in Township 50 North, of Range 14 West, of the Fourth Principal Meridian, EXCEPT the following described parcel to-wit:

Beginning at the Southwest corner of the aforesaid NE1/4 of SE1/4, Iron Pipe, Center 1/16 corner of the SE1/4 thence easterly along the Southerly line of said NE1/4 of the SE1/4 a distance of 695.38 feet to a point, Iron Pipe, thence Northeasterly at an angle of 78 degrees 49 minutes to the left a distance of 232.21 feet to a point, Cross in Ledge, thence Northwesterly at an angle of 94 degrees 16 minutes 15 seconds to the left a distance of 339.80 feet to a point, Iron Pipe, thence Northwesterly at an angle of 12 degrees 33 minutes to the right a distance of 428 feet to a point, Iron Pipe, on the West line of the above NE1/4 of SE1/4, thence Southerly along said West line a distance of 411.30 feet, to place of beginning, containing 4.95 acres,

AND ALSO EXCEPT that part of the NE1/4 of SE1/4 of Section 12, Township 50 North, Range 14 West, described as follows: Commencing at the Northwest corner of Lot 1, Misquah Division of Duluth, thence North 0 degrees 3 minutes 50 seconds West, a distance of 54 feet, which is the point of beginning, thence South 0 degrees 3 minutes 50 seconds East, to the Northwest corner of said Lot 1, Misquah Division, thence South 70 degrees 32 minutes 15 seconds East, a distance of 346.72 feet, thence in a Northwesterly direction to the point of beginning.

That part of the West half of Southwest Quarter of Section 7, Township 50, Range 13 West, lying northerly of East Superior Street of the City of Duluth.

St. Louis County, Minnesota



**EXHIBIT C**

**APPRAISAL**

MS. DANIELLE ERJAVEC  
SENIOR PROPERTY SERVICES SPECIALIST  
CITY OF DULUTH  
1532 WEST MICHIGAN STREET  
DULUTH, MN 55806

**UNIMPAIRED AND IMPAIRED  
MARKET VALUE APPRAISAL  
OF:**

PROPOSED UTILITY EASEMENTS  
NORTHLAND COUNTRY CLUB  
DULUTH, MN

**PREPARED BY:**

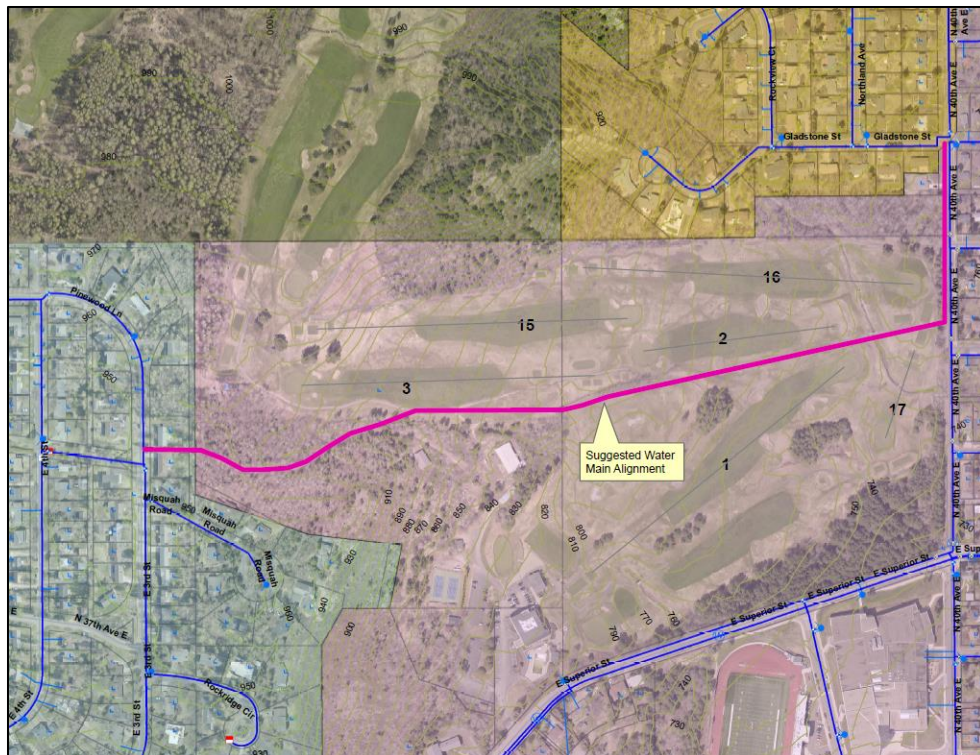
F.I. SALTER REAL ESTATE, INC.  
APPRAISAL DEPARTMENT  
SANFORD C. HOFF  
CERTIFIED GENERAL REAL PROPERTY APPRAISER  
800B WEST RAILROAD STREET  
DULUTH, MN 55802

**EFFECTIVE DATE OF THE APPRAISAL:**  
**EFFECTIVE DATE OF THE REPORT:**

December 22, 2023  
January 29, 2024



## NCC PROPERTY OVERVIEW



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January 29, 2024

Ms. Danielle Erjavec  
Senior Property Services Specialist  
City of Duluth  
1532 West Michigan Street  
Duluth, MN 55806

Re: Unimpaired and Impaired Market Value estimate due to the proposed temporary and permanent utility easements across segments of the Northland Country Club property, 3901 East Superior Street, Duluth, MN.

Dear Ms. Erjavec:

In response to your authorization contract, I have conducted the required investigation, gathered the necessary data, and made certain analyses that have enabled me to form an opinion as to the Market Value of the land area encumbered by the proposed temporary and permanent utility easements. The forthcoming appraisal is consistent with the requirements pursuant to Minnesota Statutes 117.036 Appraisal and Negotiations Requirements. The unimpaired market value estimates reflect parcels 010-2710-03500 and 00500 which will be encumbered by the proposed easements.

Based on the investigation and analyses undertaken, and subject to the contingent and limiting conditions set forth in this report, I have determined the following market value estimates for the land encumbered by the proposed temporary and permanent utility easements.

Unimpaired Market Value:	\$3,590,000
Impaired Market Value:	<u>\$3,310,000</u>
<b>Diminution in Market Value:</b>	<b>\$280,000</b>

**Detrimental Conditions Summary:**

Temporary Easement:	\$12,040
Permanent Easement:	\$57,190
Vegetative Buffer:	\$30,000
Severance Damages:	<u>\$179,500</u>
Total:	\$278,730
Rounded to:	\$280,000

The narrative appraisal that follows sets forth the identification of the property, the pertinent facts, the data researched, and the reasoning leading to the conclusions set forth. Individuals or organizations that provided significant assistance in the preparation of this report are listed in the forthcoming "Scope of the Appraisal" discussion.

**January 29, 2024**

**Ms. Danielle Erjavec**

The value conclusions of this appraisal report are not based on a required minimum valuation, nor a specified valuation amount and the report conforms to the prevailing standards outlined in the Uniform Standards for Professional Appraisal Practice (USPAP).

**Report:** Appraisal Report as defined by USPAP

Respectfully submitted,



Sanford C. Hoff  
Certified General Real Property Appraiser  
MN License #4001232

## **CERTIFICATION**

The undersigned does hereby certify, except as otherwise noted in this appraisal report that:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are, my personal, impartial, unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
4. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
5. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
6. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of the appraisal.
7. My analyses, opinions, and conclusions were developed, and this report has been prepared in conformity with the *Uniform Standards of Professional Appraisal Practice*.
8. I have personally viewed the subject property.
9. Macey Solomon provided significant real property appraisal assistance to the person signing this certification.
10. The Appraiser has the knowledge and competency to appraise this property type and has not provided any services for this property in the past three years.
11. Neither the Appraiser, nor the firm have been sued by a regulatory agency or financial institution for fraud or negligence involving an appraisal report.

January 29, 2024

Date



Sanford C. Hoff  
Certified General Real Property Appraiser  
MN License #4001232

## Unimpaired Property and the Impaired Property Valuation

### Useful Definitions:

Guide notes to the Standards of Professional Practice of the Appraisal Institute depict the outline for appraising properties and may be subject to detrimental conditions which may result in a diminution in market value. The following definitions are helpful for the forthcoming valuation.

Unless otherwise specified, definitions below are from the publication “Real Estate Damages” Randall Bell, PhD, MAI

**Unimpaired Value & Impaired Value:** The term *unimpaired* value refers to the value of a property as if no detrimental conditions exists (i.e., baseline value) while the term *impaired* value reflects the value of the property with the influence of a detrimental condition.

**Detrimental Conditions:** A detrimental condition is *any issue or condition* that may cause a diminution in value to real estate. The proposed easements on the subject property are examples of detrimental conditions.

**Market Resistance:** Market resistance is the risk, if any, associated with the ongoing stage of a detrimental condition analysis; include the reluctance on the part of the real estate market to buy a property that has historically been damaged or tainted. Sometimes called stigma.

**Severance Damages:** (J.D. Eaton, MAI, SRA Real Estate Valuation in Litigation) published by the Appraisal Institute, defines Severances Damages as follows: “It is the diminution of the market value of the remainder area, in the case of a partial taking, which arises (a) by reason of the taking (severance), and/or (b) the construction of the improvement in the manner proposed. (Ibid, 218)

### Valuation Process for Impaired Properties:

Impaired Value =      Unimpaired Value – Cost Effects (Cost to Cure) – Use Effects (Effects on Site Usability) – Risk Effects/Uncertainty/Stigma

Diminution

Impaired Value =      Unimpaired Value – Property Value Diminution

The first step in the process is to establish the unimpaired market value of the subject property. The market value of the unimpaired land, as though vacant and available for development, will be presented first followed by the market value of the improved property utilizing the Sales Comparison and Income Capitalization approaches.

**Bundle of Rights:** Bundle of rights is a term for the set of legal privileges that is generally afforded to real estate buyers with the transfer of the title. In general, the bundle of rights includes the right of possession, control, exclusion, enjoyment and disposition.

## **SUMMARY OF SALIENT FACTS AND CONCLUSIONS**

<b>Property Identification:</b>	Northland Country Club proposed temporary and permanent utility easements
<b>Property Owner:</b>	Northland Country Club, Inc
<b>Report Format:</b>	Appraisal report as defined by USPAP and confirming to the requirements of Minnesota Statutes 117.036
<b>Parcel Codes (Encumbered Parcels):</b>	010-2680-00500 & 010-2710-03500
<b>Property Rights Appraised:</b>	Fee simple subject to the proposed temporary and permanent utility easements
<b>Marketing Time:</b>	See Report
<b>Market Exposure Time:</b>	See Report
<b>Effective Date of the Value Estimate:</b>	December 22, 2023
<b>Date of the Report:</b>	January 29, 2024
<b>Appraiser:</b>	Sanford Hoff - Certified General Real Property Appraiser
<b>Intended Use:</b>	Easement Acquisition
<b>Intended User:</b>	Ms. Danielle Erjavec and City of Duluth
<b>Zoning:</b>	R-1 Residential Traditional
<b>Highest and best Use:</b>	
Larger Parcel:	Residential
Easement Parcel:	Golf course with underground utilities
<b>Site Description:</b>	
“Larger Parcel” Total NCC land area:	Approximately 232.86 Acres
Parcels Impacted:	76.35 Acres
<b>Proposed Acquisitions:</b>	
Utility Easement	55,740 square feet
Temporary Easement	111,480 square feet

## **SCOPE OF THE APPRAISAL ASSIGNMENT**

The Scope of the Appraisal encompasses the necessary research and analysis to prepare a report in accordance with the intended use, the Standards of Professional Practice of the Appraisal Institute, the Uniform Standards of Professional Practice of the Appraisal Foundation, the Real Estate Appraisal Standards for the State of Minnesota Licensing Law. Regarding the subject property, my research and analysis included the following steps:

1. Inspection of the subject property occurred on December 22, 2023. Joining me on the inspection was Danielle Erjavec and Howard Smith, both with the City of Duluth. NCC management staff coordinated our inspection but did not join us as it was not necessary.
2. Data pertaining specifically to the subject property was obtained from County records and the property owner.
3. The Highest and Best Use Analysis of the subject property is based on the data outlined in this Scope of the Appraisal. In determining the Highest and Best Use of the subject property, I considered the physical attributes of the improvements and site, legal constraints, and the economic and financial best use of the property.
4. In the approaches to value, the data utilized was compiled from a variety of sources including, but not limited to - the following:
  - St. Louis County, MN. GIS
  - SITUS RERC report – 2023 Real Estate Data
  - MN Secretary of State eCrV data
  - City of Duluth
  - St. Louis County, GIS system
  - Randall Bell PhD, MAI – Real Estate Damages Third Edition
5. My conclusions in each section of the report are based on the assembly and analysis of the data defined in this Scope of the Appraisal.
6. Report format: *Appraisal Report*

## **INTENDED USE AND USER OF THE REPORT**

The intended use of the appraisal is for the acquisition of easement interests. The intended user of the report is Ms. Danielle Erjavec, Property Services Specialist City of Duluth.

## **PURPOSE OF THE APPRAISAL**

The purpose of this report is to determine the diminution in market value of the land area being encumbered by the proposed easements by the City of Duluth.

## **DEFINITION OF MARKET VALUE**

As referred to herein, "Market Value" is defined as:

"The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated.
2. Both parties are well informed or well advised, and each, acting in what they consider their best interest.
3. A reasonable time is allowed for exposure in the open market.
4. Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.”<sup>1</sup>

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<sup>1</sup>Federal Financial Institution Reform, Recovery, & Enforcement Act [FIRREA]



## **PROPERTY RIGHTS APPRAISED**

### **Unimpaired Property:**

The property rights appraised are the fee simple interest, unencumbered by any indebtedness and subject to zoning regulations, easements and restrictions of record. This appraisal is for surface rights only and does not consider any mineral reservations, which may be included with the property.

### **Impaired Property:**

The property rights appraised subject to the proposed easements are the fee simple interest subject to the proposed easements, unencumbered by any indebtedness and subject to zoning regulations, easements and restrictions of record. This appraisal is for surface rights only and does not consider any mineral reservations, which may be included with the property.

## **HYPOTHETICAL CONDITION**

A hypothetical condition is defined by USPAP as “a condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results but is used for the purposes of analysis.” The impaired value estimates assume the City of Duluth proceeds with acquiring the proposed easements.

## **EXTRAORDINARY ASSUMPTION**

An Extraordinary Assumption is defined by USPAP as “an assignment-specific assumption as of the effective date regarding uncertain information used in the analysis which, if found to be false, could alter the appraiser’s opinion or conclusions.” Extraordinary Assumptions we made. The value conclusions of this report assumes the City of Duluth will restore the disturbed land areas on or adjacent to the golf course, in a similar condition before the easements. The impaired market value conclusions recognize remediation may be needed to restore vegetative buffers in the wooded where possible. It is unlikely the land area directly over the permanent easement can be restored with vegetative buffer.

The forthcoming valuation assumes the City of Duluth will acquire easements on the subject property. The value conclusions of this report assume no detrimental influence on the market value due to the presence of hazardous substances.

## **LEGAL DESCRIPTION OF THE EASEMENTS**

The proposed easements extend through parcels 010-2710-03500, and 010-2680-00500 on the Northland County Club Property. These parcels essentially represent the southerly half of the total NCC property. Legal descriptions for the easements were not available at the time of the appraisal report, but the proposed approximate route is depicted on maps contained in this appraisal report.

## **OWNERSHIP HISTORY**

County data indicates that ownership of the property is vested in Northland County Club, Inc. Title has been held by this entity for more than five years. The property is not listed for sale and there are no contracts pending.

## **LARGER PARCEL CONSIDERATION**

The proposed easements extend across Northland Country Club which comprises 232.86 acres and is improved with the golf course, clubhouse and ancillary support facilities. The Uniform Standards of Federal Land acquisition requires an appraiser to identify the "Larger Parcel" when valuing land being acquired by eminent domain. While this appraisal is not subject to the Federal guidelines, recognition of the larger parcel is appropriate in this situation. The Uniform standards defines the larger parcel as follows: "That tract, or those tracts, of land that possess a unity of ownership and have the same, or an integrated, highest and best use." The land area proposed to be encumbered by the temporary and permanent easements has unity of ownership with the larger NCC property. However, the proposed easements extend through two parcels on the southerly half of the NCC property. The northerly parcels are not negatively impacted by the proposed easements as the highest and best legally permissible, and physically possible uses are not negatively impacted. Therefore the forthcoming will focus on the two parcels that are directly impacted by the proposed easements.

## **TAX ASSESSMENT DATA**

The following tax and assessment data reflects the two parcels that may be encumbered by the proposed easements.

<b>Parcel Code</b>	<b>Land Value</b>	<b>Building Value</b>	<b>Total Value</b>	<b>Taxes Payable 2023</b>
010-2710-03500	\$318,200	\$203,000	\$521,200	\$15,810
010-2680-00500	\$449,100	\$0.00	\$449,100	\$13,590
<b>Total</b>	<b>\$767,300</b>	<b>\$203,000</b>	<b>\$970,300</b>	<b>\$29,400</b>

## ZONING

According to the City of Duluth Zoning ordinance subject parcel is located in the R-1, Residential-Traditional zoning district. The subject property was constructed prior to implementation of the current zoning classification and is grandfathered use. The existing use as a golf course is considered legally permissible.

### 50-14 Residential Districts

#### 50-14.5 Residential-Traditional (R-1).

##### A. Purpose.

The **R-1** district is established to accommodate traditional neighborhoods of single-family detached residences, duplexes and townhouses on moderately sized lots. This district is intended to be used primarily in established neighborhoods. Many of the dimensional standards in this district require development and redevelopment to be consistent with development patterns, building scale, and building location of nearby areas. Uses are allowed as shown in Table 50-19.8;

**TABLE 50-14.5-1**

#### **R-1 DISTRICT DIMENSIONAL STANDARDS**

		LOT STANDARDS
Minimum lot area per family (One-family) <sup>[1]</sup> <sup>[2]</sup>		The smaller of 4,000 sq. ft. or average of developed 1-family lots on the block face
Minimum lot area per family (Two-family) <sup>[1]</sup> <sup>[2]</sup> <sup>[3]</sup>		The smaller of 3,000 sq. ft. or average of developed 2-family lots on the block face
Minimum lot area per family (Townhouse) <sup>[1]</sup>		3,000 sq. ft.
Minimum lot frontage (one-family) <sup>[1]</sup>		The smaller of 40 ft. or average of developed lots with similar uses on the block face
Minimum lot frontage (two-family and townhouses) <sup>[1]</sup>		The average of developed lots with similar uses on the block face, but not less than 40 feet.
		STRUCTURE SETBACKS
Minimum depth of front yard		The smaller of 25 ft. or average of adjacent developed lots facing the same street
Minimum width of side yard (one- and two-family)	General	6 ft.
	Lots with less with 50 ft, but more than 25 ft frontage	Combined width of side yards must be at least 12 ft., with no side yard less than 3 ft. wide
	Lots with 25 ft or less of frontage	Combined width of side yards must be at least 8 ft., with no side yard less than 3 ft. wide
Minimum width of side yard (all other principal structures)		10 ft. if adjacent to another lot
		25 ft. if adjacent to platted street
Corner Lot: width of front side yard	Dwelling	15 ft.
	Detached accessory building	15 ft.
	All other Principal Structures	25 ft.
Minimum depth of rear yard		25 ft.
		STRUCTURE HEIGHT
Maximum height of building		30 ft.

<sup>[1]</sup> Determined using "Lots on the block face" definition. When doing this calculation, exclude the subject lot from the calculation.  
<sup>[2]</sup> Lots without municipal sewer must also meet requirements of 50-21.2.  
<sup>[3]</sup> Existing structures that have a change of use from one-family to two-family must meet minimum lot area and frontage, but not setbacks. For lots with less than the minimum lot frontage, refer to 50-38.5  
 Section 50.21 Dimensional standards contains additional regulations applicable to this district.

### **FLOOD ZONE**

Per panel number 270421 0025 C, revised April 2, 1982, the subject does not appear to be in an area that would be subject to flooding.

## **HAZARDOUS SUBSTANCES**

I have not been provided with an environmental assessment pertaining to hazardous conditions on the site. If the reader suspects the presence of hazardous materials, competent professional assistance should be sought. The value conclusions of this report assumes there is no negative influence on market value due to the presence of hazardous substances.

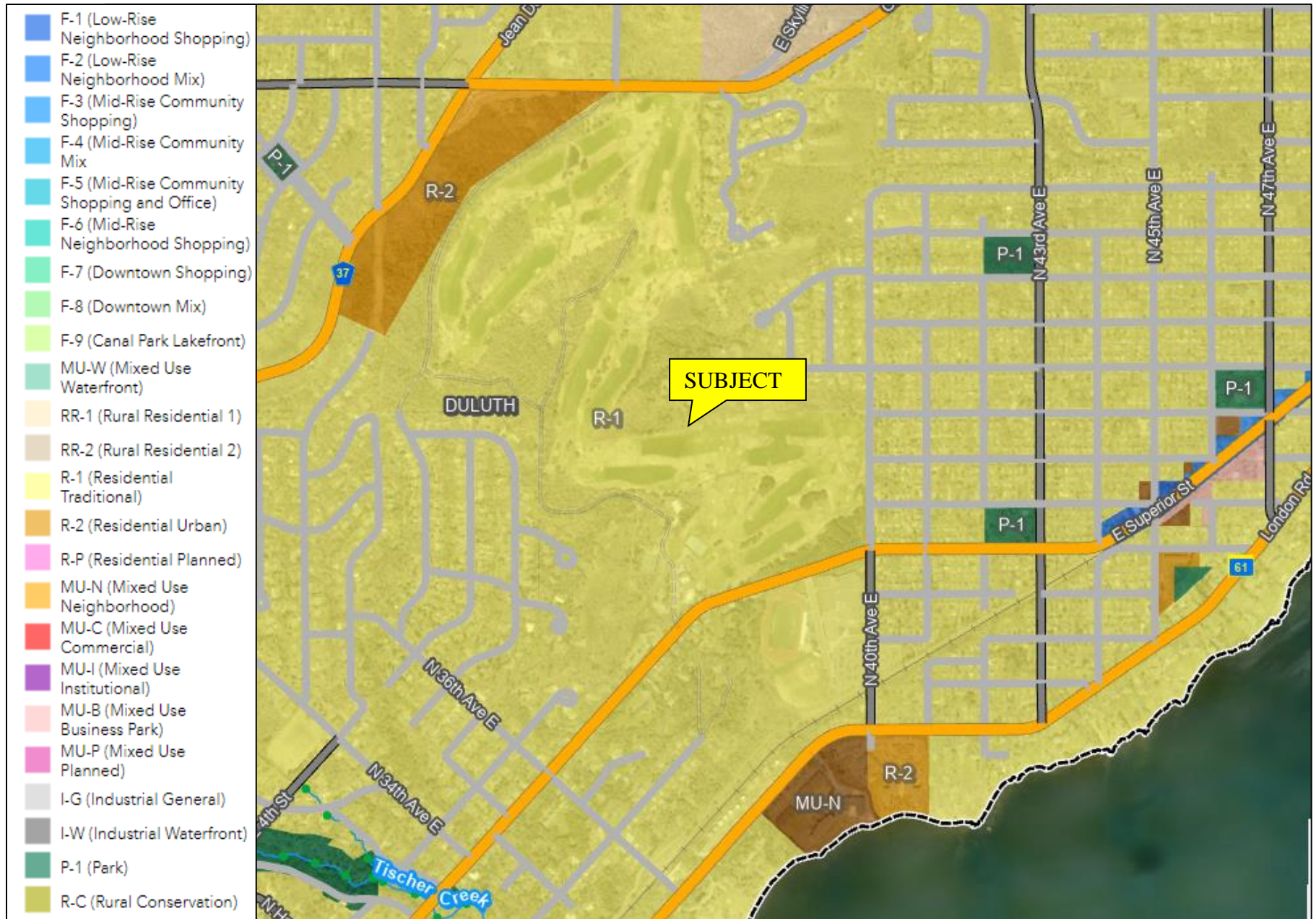


**NCC “LARGER PARCEL” GIS MAP**

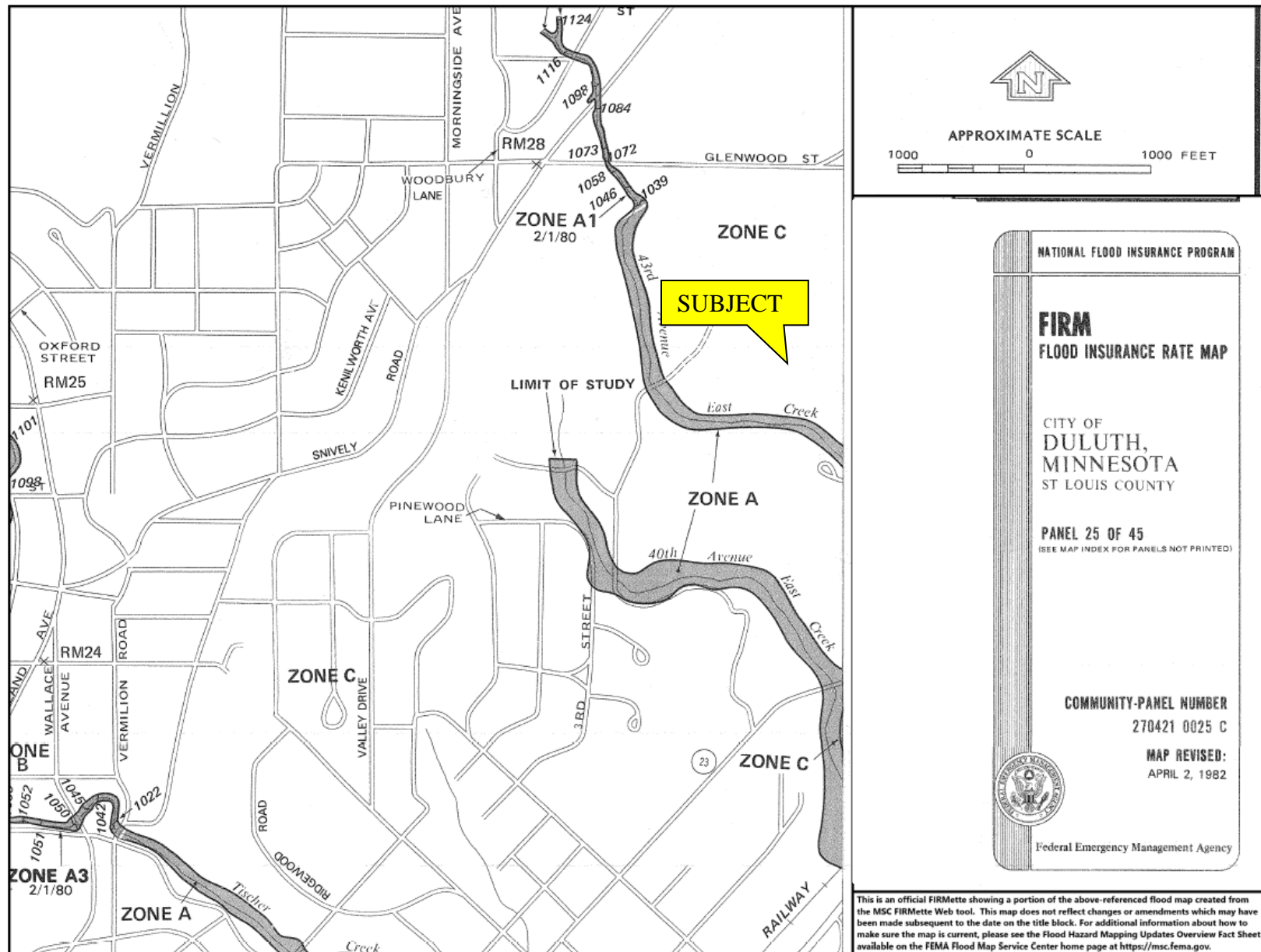




## ZONING MAP



## FLOOD ZONE MAP





## **MARKETING PERIOD AND EXPOSURE TIME**

The appraisal rules adopted by the Federal Financial Institution Regulatory Agencies (FFIRA) in August of 1990 to comply with Title XI of the Federal Financial Institution's Reform, Recovery and Enforcement Act of 1989 (FIRREA) requires the appraiser to "...analyze and report a reasonable marketing period for the subject property..." Pursuant to the appraisal standards board in the contexts of the cited requirement, the reasonable marketing period is an estimate of the amount of time it might take to sell a property interest in real estate at the estimated market value level during the period immediately after the effective date of an appraisal. The reasonable marketing period is a function **of price, time and use**, not an isolated estimate of time alone.

Marketing period may further be described as follows:

The marketing period is the amount of time necessary to expose a property to the open market in order to achieve a sale. Implicit in this definition are the following conditions:

- 1) The property is actively exposed in and aggressively marketed to potential purchasers through market channels commonly used by sellers of similar types of properties.
- 2) The property is offered at a price reflecting the most probable markup over market value used by sellers of similar properties.
- 3) A sale is consummated under the terms and conditions of the definition of market value stated in this report.

Before the proposed easements, a marketing time of one year or less should be anticipated if offered at a price consistent with the value conclusions of this report. A similar market exposure time should be anticipated. After the easements are in place similar marketing and exposure times should be anticipated if the real estate is offered for sale at the impaired market value.

## **AREA AND NEIGHBORHOOD DATA**

Users of this report are very familiar with the community and immediate neighborhood. Therefore, these discussions are omitted from the report.

## **SITE DESCRIPTION AND ANALYSIS BEFORE THE PROPOSED UTILITY EASEMENTS**

### **General Overview:**

Users of this report are familiar with the property so only a summary description is provided. The NCC golf course property comprises 232.86 acres and is improved with the 18-hole golf course, clubhouse and ancillary site improvements. The golf course features dynamic rugged terrain with an elevation at the southerly boundary of 760' MSL rising to 1,060' MSL at the northerly boundary. The rising elevation combined with plateaus of level terrain affords a panoramic view of Lake Superior from numerous vantage points on the golf course. The golf course is bounded on the north by Glenwood Street, on the east by a variety of residential streets and on the south by Superior Street. Municipal utilities have been extended into the site at the southerly border near Superior Street. The two parcels impacted by the proposed easements are located on the southerly half of the NCC property and comprise a combined 76.35 acres.

### **Proposed Temporary and Underground Utility Easements:**

The location of the easements is depicted on the forthcoming map. Following is a description of the easements as provided by the City of Duluth.

### **Permanent Utility Easement:**

The proposed utility easement will facilitate construction of an underground watermain to enhance the functionality of the City water system. The proposed easement extends east to west across the golf course approximately along the southerly boundary of fairways 2 and 3 and the northerly side of the 1<sup>st</sup> fairway near the northeast corner. The total length along the alignment is 2,787 feet of which approximately 2,000 feet are in the improved areas of the golf course and 787 feet in a wooded area to the west. The total land area encumbered by the permanent easement is 55,740 square feet.

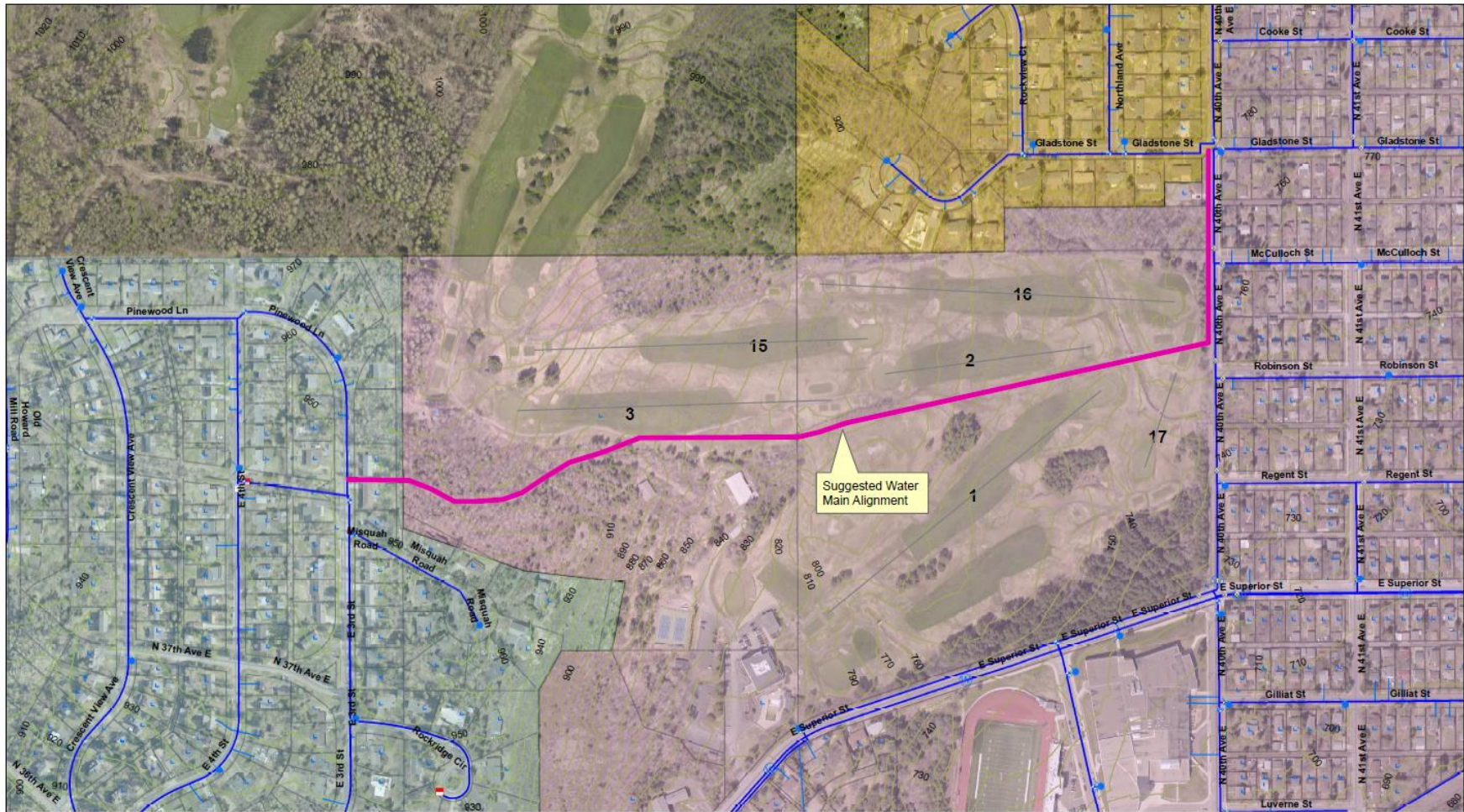
### **Temporary Construction Easement:**

The temporary construction easement is depicted as comprising a width of 60 feet along the entire length of the permanent easement. However, the 60-foot width is inclusive of the 20-foot-wide permanent easement so the net land area allocated to the temporary easement is 40 feet, presumably 20' on either side of the permanent easement. However, the exact location has not been identified. The total land area encumbered by the temporary easement is 111,480 square feet.

### **Environmental Conditions:**

An environmental assessment report was not made available for this appraisal. No hazardous substances were noted during our inspection. The value conclusions of this report assume no detrimental influence on the market value due to the presence of hazardous substances.

## PROPOSED WATER MAIN ALIGNMENT



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.

The City of Duluth requires that this map/data not be redistributed to any party in whole or in part, including any derivative works of products generated by combining the data with other data, unless authorized by the City of Duluth GIS office.

**CITY OF DULUTH**

**Proposed Water Zone Interconnect Pipe  
Northland Country Club Connection**



1 inch = 300 feet

Date: 10/1/2021



## **HIGHEST AND BEST USE ANALYSIS**

The NCC golf course property impacted by the proposed easements comprises 76.35 acres. The following discussions will reflect the highest and best use of the property prior to the proposed utility easements and subject to the utility easements to determine if the easement has a negative influence on the subject property, referred to as severance damages.

Highest and Best Use is described as:

"That reasonable and probable use that supports the highest present value, as defined, as of the effective date of the appraisal.

1. **Physically Possible Use. What uses of the site are physically possible?**

Comprising 76.35 acres, the site is sufficient in size to accommodate the southerly half of the existing golf course and ancillary site improvements. There also appears to be excess land in the westerly regions of the site that could be developed for residential uses. The location of the proposed easements does not appear to hinder the functionality of the golf course, long-term. It is assumed that construction of the easement will occur at a time of year and in a manner to minimize disruption to golf activities.

1a. **"As though Vacant". What is the likely use of the site if vacant?**

If the NCC site was vacant and available for development, it is unlikely with current construction costs and market conditions, that it would be developed with a golf course. The highest and best use, as vacant is likely for residential development.

1b. **"As Though Improved". What is the Highest and Best Use of the improvements as improved?**

The NCC property is designed to meet the functional requirements of an 18-hole golf course with ancillary improvements. As such, the highest and best use, as improved, is the current use.

2. **Legal permissible use. What uses are permitted by zoning and deed restrictions?**

The current utilization as a golf course is legally permissible. The proposed easements will capture a significant portion of the "bundle of rights" in the easement areas. The legally permissible use of the unencumbered regions will not change. The legally permissible use of the land area encumbered by the permanent easement will be limited to surface uses for golf course operations.

3. **Financially feasible use. Which possible and permissible uses will produce a net return to the owner of the property?**

The proposed easements should not disrupt golf operations in the long-term and hence should not have a negative influence on the financial feasibility of NCC. However, while not a consideration for this analysis, the location of the water main may enhance the ability to develop some regions of the site.

### **Highest and Best use, continued**

4. **Maximally productive. Among the feasible uses which will produce the highest net return or the highest present worth?**

The maximally productive use of the subject prior to the proposed easements is the golf course. The maximally productive use after the proposed easements continues to be subject to use limitations in the easement areas and severance damages noted in this report.

### **Conclusions - Highest and Best Use**

The highest and best use of the subject prior to the proposed easements is the NCC golf course. The highest and best subject to the easement continues to be the golf course subject to use limitations in the easement areas and considerations for severance damages.

## **THE APPRAISAL PROCESS**

The Appraisal Process is a procedure followed in the preparation of this report. It is a method of arriving at an estimate of value by employing an orderly program for the accumulation, analysis and observation of data. The appraisers begin with a preliminary study of the problem involved and define the basis on which the appraisal is made. Next, the data called for in the preliminary study is collected, classified and analyzed. Finally, an interpretation of the data in the three approaches is made and the result correlated into the final value estimate.

These three basic approaches to value are the Direct Sales Comparison Approach, The Income Approach (if an investment property), and the Cost Approach. These three approaches provide market data from three different sources when all three approaches are applicable.

The Direct Sales Comparison Approach has as its premise a comparison of the subject property with others of similar design, utility and use that have sold in the recent past. To indicate a value for the property, adjustments are made to the comparable for differences with the subject.

The Income Approach, as used for investment properties, has as its premise, the estimation of the amount of net income, which when capitalized in a manner that is commensurate with the risk and life expectancy of the improvements, will indicate the present value of the income stream.

The Cost Approach has as its premise, the valuation of the site by comparison with other sites in the area that have sold in the recent past, making adjustments for differences to indicate a site value estimate. To this site is added the estimated cost to replace the improvements with an improvement of like utility, less any loss of value (depreciation) that might have transpired or taken place.

Normally, these three approaches will each indicate a different value. After all the factors in each of the approaches have been carefully weighed, the indication of value derived from each of the approaches is correlated to arrive at a final value estimate.

In the final section of the method of estimating the value defined by this report, the appraisal process relies on the approach to value, which seems to apply most logically to the type and condition of property being appraised. The approach to value, which most nearly represents the thinking and actions of buyers and sellers in the market, for this type of property, is inherent to the process.

### **Subject Valuation:**

Based on discussions in the highest and best use section of the report, the proposed temporary and permanent easements do not create severance damages to the “larger parcel”. As such, only the market value of the land encumbered by the easements will be established. The first step in the process is to establish the unimpaired market value of the land using the direct sales comparison approach.

**Direct Sales Comparison,**  
**As Though Unimproved and Available for Development**

The Direct Sales Comparison Approach relies basically upon the principle of substitution and consists of the comparison of similar properties that have recently sold and are ideally in close proximity to the subject site. This comparison consists of adjustments being made between the subject and the comparable, using certain common denominators or units of comparison and considering such factors as location, date of sale, terms of sale and physical characteristics. The subject is the standard, and the adjustments are made to the sale price of the comparable properties in order to arrive at an indication of value for the subject. This approach is applicable to both vacant land and all other types of properties.

**Valuation Subject to the proposed Easements:**

The first step in the valuation process is to establish the value of the site as though unimpaired by the proposed easements. Following is a summary of comparable sales data that will be used to establish the value of the land. It is important to note that the land value will reflect the market value as part of the larger parcel.

## **Direct Sales Comparison Approach, continued**

### **Sale 1:**

<b>Address:</b>	Woodland Avenue, Duluth
<b>Parcel Code:</b>	010-4680-01265
<b>Legal Description:</b>	Block 10 Woodland Park 6 <sup>th</sup> Division
<b>Buyer:</b>	Force 1, LLC
<b>Seller:</b>	Jane Hovland
<b>Sale Price:</b>	\$399,000
<b>Sale Date:</b>	May 2022
<b>Terms:</b>	Cash
<b>Sale Verified With:</b>	Ecrv /Appraiser's Files
<b>Lot Size:</b>	8.2 Acres / 357,192 Square Feet
<b>Improvements:</b>	Unimproved
<b>Price Per S/F:</b>	\$48,658 per acre or \$1.12 per square foot
<b>Comments:</b>	Property previously was developed with a house which was destroyed by fire. Driveway and utilities in site. Proposed for residential development.







### **Direct Sales Comparison Approach, continued**

**Sale 3:**

**Parcel Codes:** 010-2720-00320, 321, 322, 260, 340

**Buyer:** Amity Bluffs, LLC

**Seller:** William and Alice Truscott and Michael and Ron Edmunds

**Sale Price:** \$400,000 initial land purchase from two owners

**Sale Date:** March 2021

**Sale Terms:** Cash

**Lot Size:** 25.3 acres

**Price per Acre:** \$15,810 vacant land

**Sale Verified With:** Buyer/Appraiser's Files

**Comments:** This parcel is proposed for development with 30 lots and would also include drainage ponds, a setback from the creek, and greenspace.



## **Direct Sales Comparison Approach, continued**

### **Comments and Analysis:**

These sales represent differing locations, site sizes and site quality and characteristics. Adjustments are necessary for location, size and site quality. Analysis of market data indicates stable market conditions so a time adjustment will not be recognized. The appropriate adjustments are depicted in the following table and are based on a paired sales analysis.

**Comparable Sales Summary Table**

	Subject	Comparable 1	Comparable 2	Comparable 3
Property Name	NCC Easement	Force 1 LLC	Hartley Hills	Amity Bluffs
Address	3901 E. Superior	XXX Woodland Ave	Hartley Hills Dr	
City	Duluth	Duluth	Duluth	Duluth
County	St. Louis	St. Louis	St. Louis	St. Louis
State	Minnesota	Minnesota	Minnesota	Minnesota
Date		May-22	Jul-20	Mar-21
Price		399,000.00	430,000.00	400,000.00
Site Size Acres	76.35	8	10	25
Price Per Acre	\$ -	\$ 48,658.54	\$ 43,000.00	\$ 15,810.00
Transaction Adjustment				
Property Rights		0%	0%	0%
Financing		0%	0%	0%
Conditions of Sale		0%	0%	0%
Adjusted GBA Price	\$ -	\$ 48,658.54	\$ 43,000.00	\$ 15,810.00
Location	Very Good	0%	0%	50%
Site Size Larger Parcel	Large but divisible	-15%	-15%	-5%
Quality/Characteristics	Good Quality	5%	15%	25%
Road Frontage	Excellent	10%	5%	30%
Net Adjustment		0%	5%	100%
Adjusted Price	\$ -	\$ 48,658.54	\$ 45,150.00	\$ 31,620.00

## **Direct Sales Comparison Approach, continued**

### **Comments and Analysis:**

The indicated market value range is from a low of \$31,620 to \$48,658 per acre. Sale #3 is considerably lower than the other two comparable and required significant adjustments, and therefore, will not be weighted in the final conclusions but does reflect the low end of the value range. Assigning equal weight to sales 1 and 2 results in a weighted average of \$46,904 per acre. Based on this data a stabilized value estimate of \$47,000 per acres, or \$1.08 per square foot, is reasonable and supportable. Applying this rate to the subject results in the following value estimate:

$$\begin{aligned} \$47,000 \text{ acre} \times 76.35 \text{ s/f} &= \$3,588,450 \\ &\text{Rounded to } \$3,590,000 \end{aligned}$$

The indicated unimpaired market value of the parcels impacted by the proposed easements is \$3,590,000. For calculation purposes later in the report, the market value calculates to \$1.08 per square foot.

## **IMPAIRED MARKET VALUE ESTIMATE**

The detrimental conditions impacting the subject parcels include the 12-month temporary construction easement, permanent underground utility easement, loss of vegetative buffer and severance damages. Following are discussions on each detrimental conditions.

### **Temporary Easement:**

The proposed temporary construction easement will encumber 111,480 square feet and extend for 12 months. With the temporary easement the city of Duluth is essentially renting the property for the term of the easement. Based on data published in the Real Estate Research Report, a reasonable rate of return for this level of investment risk is approximately 8.5%. Adding an additional 1.5% for ancillary expenses and holding costs brings the total rental rate of 10% annually. The calculations are as follows:

$$\begin{array}{rcl} \text{Market Value of the Easement Area: } 111,480 \times 1.08 \text{ s/} & = & \$120,398 \\ \text{Rental Rate 12 months @ 10\%} & & \$ 12,040 \end{array}$$

The annual rental rate calculates to \$12,040.

### **Permanent Easement:**

The permanent underground easement encumbers 55,740 square feet. The proposed easement will capture essentially 95% of the bundle of rights (possession, control, exclusion, enjoyment and disposition). The rights of control and exclusion are clearly impacted and to some extent the right of enjoyment thus warranting a 95% reduction in market value. The calculations are as follows:

$$\text{Value of the land: } \$55,740 \times 1.08 = \$60,199 \times 95\% = \$57,190 \text{ rounded}$$

The diminution in value due to the permanent easement calculates to \$57,190.

### **Vegetative Buffer:**

The temporary and permanent easements will follow the existing gravel road for approximately 665 feet and then track northeast through a wooded area a distance of approximately 165 feet. The trees and brush will be removed in this area to facilitate construction of the easement. The total land area encumbered will be approximately 9,960 square feet based on the total width of the temporary and permanent easements of 60 feet. The woods in this area provide a visual and sound buffer and enhance the overall aesthetics of the golf course property. Reasonable compensation for the loss of the wooded area is determined by determining the replacement cost for trees and the brush/understory in this area. Using the Marshall & Swift Cost manual I have determined an approximate replacement cost of \$3.00 per square foot. The calculations are as follows:

$$9,960 \text{ s/f} \times \$3.00 = \$29,880 \text{ rounded to } \$30,000$$

It is important to note that the cost estimates reflect the cost for installing trees and landscaping in a typical residential setting and are not necessarily reflective of the cost for replacing the exact number of size of trees located on the subject property.



## **Impaired market value estimate, continued**

### **Severance Damages:**

As a review *Severance damages are*: “the diminution of the market value of the remainder area, in the case of a partial taking, which arises (a) by reason of the taking (severance), and/or (b) the construction of the improvement in the manner proposed. (J.D. Eaton, MAI, SRA Real Estate Valuation in Litigation) published by the Appraisal Institute:

While the proposed utility easement will be underground, the presence of the easement has ongoing uncertainty related to possible future failure and/or repairs, the location may impede future development or upgrades to the course, and the general ongoing stigma related to having the easement bisect the NCC property. These factors create uncertainty which creates risk for a buyer/investor. Investors account for risk by discounting the price of a property. While risk rates for improved properties typically range from 7% to 10%, a risk rate of 5% is reasonable considering the current use of the property and fact that the pipeline is underground. The calculations are as follows:

Unimpaired Market Value:	$\$3,590,000 \times 5\% = \$179,500$
--------------------------	--------------------------------------

Severance damages calculate to \$179,500.

### **Detrimental Conditions Summary:**

Temporary Easement:	\$ 12,040
Permanent Easement:	\$ 57,190
Vegetative Buffer:	\$ 30,000
Severance Damages:	<u>\$179,500</u>
Total:	\$278,730
<b>Rounded to:</b>	<b>\$280,000</b>

### **Valuation Summary:**

Unimpaired Market Value:	\$3,590,000
Less Damages:	<u>\$ 280,000</u>
Impaired Market Value:	\$3,310,000

### **Summary And Conclusions:**

The diminution in market value was established by determining the unimpaired and impaired market value of the subject. Below is a summary of the calculations:

Unimpaired Market Value:	\$3,590,000
Impaired Market Value:	<u>\$3,310,000</u>
Diminution in Market Value:	\$ 280,000

Respectfully submitted,



Sanford C. Hoff  
Certified General Real Property Appraiser  
MN License #4001232

# ADDENDUM

## **QUALIFICATIONS OF THE APPRAISER**

Sanford C. Hoff is an appraiser with the F. I. Salter Company, Inc., a 130+-year old real estate firm, whose specialties include real estate brokerage, property management, syndications, investments, professional appraising, and consulting.

### **Professional Affiliations:**

- Member of the Duluth Area Board of Realtors
- Approved Residential Appraisal Instructor by the University of Minnesota and has been an instructor for certification of Residential Appraisers

### **State Licensing:**

- Certified General Real Property Appraisal License  
I.D. Number #4001232

### **Education:**

- BA Degree from the University of Minnesota in Business Administration
- Has attended and successfully completed the following courses offered by the American Institute of Real Estate Appraisers:
  - "Basic Valuation Procedures"
  - "Principles of Valuation"
  - "Residential Valuation"
  - "Capitalization Theory and Techniques - Part A & B"
  - "The Standards of Professional Practice"

Attended lectures, schools, seminars, and short courses covering many phases of the real estate and appraisal industry, including residential and multiple dwellings, various types of commercial, industrial, and income-producing properties.



## **Qualifications of the Appraiser, continued**

### **Clients:**

- Major Financial Institutions
- Law Firms
- Relocation Companies
- Religious Institutions
- Corporate and Private Property Owners
- Government Agencies

### **Experience:**

- Residential and recreational properties
- Multi-family dwellings
- Shopping centers
- Marina facilities
- Office buildings
- Service stations
- A variety of commercial buildings
- Large tracts of lake property
- Sub-division analysis
- Convenience stores
- Liquor stores
- Automobile dealerships
- Nursing homes
- Involved in numerous condemnation projects
- Mini storage buildings

STATE OF MINNESOTA



SANFORD C HOFF  
800B WEST RAILROAD STREET  
DULUTH, MN 55802

Department of Commerce

The Undersigned COMMISSIONER OF COMMERCE for the State of Minnesota hereby certifies that  
Sanford C Hoff

800B WEST RAILROAD STREET  
DULUTH, MN 55802

has complied with the laws of the State of Minnesota and is hereby licensed to transact the business of  
Resident Appraiser : Certified General

**License Number: 4001232**

unless this authority is suspended, revoked, or otherwise legally terminated. This license shall be in effect  
until August 31, 2025.

IN TESTIMONY WHEREOF, I have hereunto set my hand this August 29, 2023.

A handwritten signature in cursive script, reading "Grace Arnold".

COMMISSIONER OF COMMERCE  
Minnesota Department of Commerce

Licensing Division  
85 7th Place East, Suite 500  
St. Paul, MN 55101-3165  
Telephone: (651) 539-1599  
Email: [licensing.commerce@state.mn.us](mailto:licensing.commerce@state.mn.us)  
Website: [commerce.state.mn.us](http://commerce.state.mn.us)

**Notes:**

- † **Individual Licensees Only - Continuing Education:** 15 hours is required in the first renewal period, which includes a 7 hour USPAP course. 30 hours is required for each subsequent renewal period, which includes a 7 hour USPAP course.
- **Appraisers:** You must hold a licensed Residential, Certified Residential, or Certified General qualification in order to perform appraisals for federally-related transactions. **Trainees do not qualify.** For further details, please visit our website at [commerce.state.mn.us](http://commerce.state.mn.us).

### **CONTINGENT AND LIMITING CONDITIONS**

I assume no responsibility for matters legal in nature, nor do I render any opinion as to the title, which is assumed to be marketable. The property is appraised as though under responsible ownership.

Any sketch in this report is included to assist the reader in visualizing the property, and I assume no responsibility for its accuracy. I have made no survey of the property.

I am not required to give testimony or appear in court because of having made this appraisal with reference to the property in question, unless arrangements have been previously made.

The distribution of the total valuation in this report between land and improvements applies only under the existing program of utilization. The separate valuations for land and building must not be used in conjunction with any other appraisal and are invalid if so used.

I assume that there are no hidden or unapparent conditions of the property, subsoil or structures which would render it more or less valuable. I assume no responsibility for such conditions or for engineering which might be required to discover such factors. Information, estimates and opinions furnished me and contained in this report were obtained from sources considered reliable and believed to be true and correct. However, no responsibility for accuracy can be assumed by me.

Neither all or any part of the contents of this report, or copy thereof, shall be used for purposes by anyone but the client without the previous consent of the appraiser and/or client, nor shall it be conveyed by any, including the clients to the public through advertising, public relations, news, or other media, without the written consent and approval of the author, particularly as to the valuation conclusions, the identity of the appraiser or a firm which he/she is connected, or any initialed designations conferred upon the appraiser.

### **AMERICANS WITH DISABILITIES ACT – ADA**

The Americans with Disabilities Act "ADA" became effective January 26, 1992. I have not made a specific compliance survey and analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property, together with a detailed analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this fact could have a negative effect upon the value of the property. Since I have no direct evidence relating to this issue, I did not consider possible non-compliance with the requirements of ADA in estimating the value of the property.

### **ENVIRONMENTAL DISCLAIMER**

The value estimate in this report is based on the assumption that the property is not negatively affected by the existence of hazardous substances or detrimental environmental conditions. The appraiser is not an expert in the identification of hazardous substance or detrimental environmental conditions. Unless otherwise indicated in this report the appraiser's routine inspection of and inquiries about the subject property did not develop any information that indicated any hazardous substances or detrimental environmental conditions which would affect the property negatively. It is possible that tests and inspections made by a qualified hazardous substance and environmental expert would reveal the existence of hazardous materials and environmental conditions on or around the property that would negatively affect its value. Thus, no responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them.

To reiterate we would need a 20 foot wide utility easement for the life of the pipe, and a 60 feet construction easement for probably a 12 month duration. The total length along the alignment show on the NCC property is 2,787 feet. Of that about 2,000 feet is presently in the golf course area of play. So if my math is right, we are looking at almost 55,000 SF of permanent easement on parcels 010-2680-00500 and 010-2710-03500.