



**Planning & Development Division**  
*Planning & Economic Development Department*

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File Number	PL 20-124	Contact	Kris Liljeblad, 218-730-5338	
Type	Concurrent Use Permit	Planning Commission Date		September 8, 2020
Deadline for Action	Application Date	August 11 , 2020	60 Days	October 10, 2020
	Date Extension Letter Mailed	N/A	120 Days	December 9, 2020
Location of Subject		530 S 59 <sup>th</sup> Avenue W, Duluth, MN		
Applicant	IPS Cranes	Contact	Jackie O’Connell, President/Owner	
Agent	Krech Ojard & Associates	Contact	Scott Stempihar, P.E.	
Legal Description		Public right of way of S 59 <sup>th</sup> Ave W. See attached.		
Site Visit Date		August 19, 2020	Sign Notice Date	August 18, 2020
Neighbor Letter Date		August 27, 2020	Number of Letters Sent	18

**Proposal:** The applicant is proposing to install a new spur track and at-grade railroad crossing of 59<sup>th</sup> Avenue W off an existing private industrial spur track from the Burlington Northern Santa Fe Railway (BNSF) mainline to serve industrial site expansion. IPS Cranes manufactures and rebuilds heavy mobile cranes especially for railroad use. This project is related to CUP PL-125; both projects serve industrial expansion within the Hallett Industrial Park Plat.

**Staff Recommendation:** That Planning Commission recommend approval to City Council.

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	I-G	Public right of way	Public right of way
<b>North</b>	R-1 Residential	Traditional neighborhood	Traditional neighborhood
<b>South</b>	I-G	Heavy industrial manufacturing	Heavy industrial manufacturing
<b>East</b>	I-G	Heavy industrial manufacturing	Heavy industrial manufacturing
<b>West</b>	I-G	Heavy industrial manufacturing	Heavy industrial manufacturing

**Summary of Code Requirements:**

UDC Section 50-37.7C. The Planning Commission shall review the application, and council shall approve the application or approve it with modifications, if it determines that:

1. The proposed concurrent use will not harm or inconvenience the health, safety and general welfare of the city.
2. Not Applicable – Skywalk related
3. No portion of a public easement proposed for use is being physically used or occupied by the public.
4. Not Applicable – Parking related

### **Comprehensive Plan Governing Principles and/or Policies:**

Economic Policy #3 – “Build on existing economic strengths and competitive advantages.” Strategy S1: “Promote employer expansions that include job growth, as well as new commercial and industrial development to support and enhance the level of activity in the Industry and Commerce Priority Areas.”

Transportation Policy #6 – “Protect and enhance regional transportation networks, especially for the purpose of expanding opportunities for movement of freight.” Strategy S2: “Promote the use of appropriate regional freight corridors and intermodal facilities for the success of water-borne commerce and shipping by truck and rail.” Strategy S6: “Expand public-private partnerships with rail freight companies to maintain, improve and expand rail infrastructure.”

Transformational Opportunities: “Preserve and expand economic opportunities within Duluth’s industrial waterfront.”

### **Review and Discussion Items**

Staff finds that:

- 1.) The applicant is seeking a concurrent use permit to install a new spur track and at-grade railroad crossing of S 59<sup>th</sup> Ave W off an existing private industrial spur track from the BNSF mainline to an expanded IPS Cranes manufacturing facility on Waseca Industrial Road. A related CUP (PL 20-125) is requested by Hallett Rail and Storage Services for a new at-grade railroad crossing of Waseca Industrial Road. Both crossings are requested to serve industrial expansion in the Hallett Industrial Park Plat, and both would be served from the BNSF mainline.
- 2.) The applicant has indicated that the expansion of manufacturing processes on their site is contingent upon upgraded railroad access. As proposed, the application is consistent with the Comprehensive Plan policies and strategies cited above.
- 3.) City Engineering has determined that the proposed use of public right of way will cause minimal disruption of vehicular travel on S 59<sup>th</sup> Avenue W and Waseca Industrial Road, which serve the Hallett Industrial Park Plat. The new railroad spur and crossings will be designed and constructed to comply with BNSF and Federal Railroad Administration standards. Thus, although this area is currently being used by the public, this concurrent use will not preclude existing use as a public street.
- 4.) The City of Duluth requires concurrent use permits to include liability insurance to indemnify the City against occurrences in the right of way. Other protections for the city and the public are typically included in the ordinance that is submitted to City Council. The ordinance will also state that the City is not responsible for removal/replacement of the applicant’s infrastructure should the City need to access the right-of-way in the permitted area.
- 5.) The affected roadway, S 59<sup>th</sup> Ave W is a low volume street serving the Hallett Industrial Park Plat, which would be subject to infrequent travel delays as a result of this CUP. Thus, the proposed use of public right of way will not harm or inconvenience the health, safety and general welfare of the city.
- 6.) No public, agency, or City comments have been received as of September 1, 2020.

### **Staff Recommendation**

Based on the above findings, Staff recommends that Planning Commission recommend approval of the concurrent use permit to City Council with the following conditions:

- 1.) Applicant shall construct the proposed at-grade railroad/roadway crossings within the limits identified in the attached exhibit.
- 2.) The proposed at-grade railroad/roadway crossings will need to comply with applicable engineering standards and Federal Railroad Authority requirements.
- 3.) Applicant shall provide annual proof of liability insurance to indemnify the City against any occurrences in the right of way that are due to items covered under this permit.
- 4.) Applicant will remove the at-grade crossings at the applicant’s expense if directed to by the City with appropriate notice.
- 5.) The City shall not be responsible for any damage to the at-grade railroad/roadway crossing caused by work in the right of way.

6.) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission approval; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50.

### **Legal Description**

#### Description of Proposed Right of Way to be Used:

A 30' wide area of South 59<sup>th</sup> Avenue West right of way to be used for railroad purposes. The centerline of said area is described as follows: Commencing at the northwest corner of Outlot A of Hallett Industrial Park Plat, City of Duluth, St. Louis County, Minnesota; Thence south 00 degrees 04 minutes 54 seconds east 52.69 feet along easterly right of way line of South 59<sup>th</sup> Avenue West to the point of beginning: Thence north 73 degrees 47 minutes 06 seconds west 104.19' more or less to the westerly right of way line of South 59<sup>th</sup> Avenue West and there terminating. The sidelines of said area are to be prolonged or shortened to terminate at the westerly and easterly right of way lines of South 59<sup>th</sup> Avenue West.



