

**CITY OF DULUTH**

Community Planning Division

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

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

File Number	PL 16-141	Contact	Steven Robertson, 730-5295	
Type	Vacation of Platted Utility Easement	Planning Commission Date		January 31, 2017
Deadline for Action	Application Date	Dec 15, 2016	60 Days	Feb 13, 2017
	Date Extension Letter Mailed	Dec 16, 2016	120 Days	April 14, 2017
Location of Subject		173 Farley Lane		
Applicant	Keven Appel and Debra Bennett-Appel	Contact	612-210-7728	
Agent		Contact		
Legal Description		A TEN (10) FOOT WIDE SEWER EASEMENT CENTERED ON THE COMMON LOT LINE TO LOTS 12 AND 13, BLOCK 3, COTTAGE GROVE ADDITION		
Site Visit Date		January 20, 2017	Sign Notice Date	January 14, 2017
Neighbor Letter Date		January 19, 2017	Number of Letters Sent	30

Proposal

Application is requesting the City vacate a platted utility easement on the applicant's property.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	R-1	Residential	Traditional Neighborhood
North	R-1	Residential	Traditional Neighborhood/Urban Res
South	R-1	Residential	Traditional Neighborhood
East	R-1	Residential	Traditional Neighborhood
West	R-1	Residential	Traditional Neighborhood

Summary of Code Requirements

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

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

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

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

Governing Principle #7 – Create and maintain connectivity. Connectivity is established through our streets and highways, transit system, sidewalks, bikeways and trails, (local and regional). The non-vehicular modes should be considered other than recreation. They are important component of an overall transportation system. Winter maintenance of sidewalks and other public ways is critical to creation of usable pedestrian systems.

Future Land Use - Traditional Neighborhood: Characterized by grid or connected street pattern, houses oriented with shorter dimension to the street and detached garages, some with alleys. Limited commercial, schools, churches, and home businesses. Parks and open space areas are scattered through or adjacent to the neighborhood.

Review and Discussion Items

- 1.) The applicant is requesting the City vacate a platted utility easement on the applicant's property.
- 2.) The 20 foot utility easement is between lots 12 and 13, portions of which are owned by the applicant; the easement is fully within the applicant's property.
- 3.) The city council approved a similar vacation request for the platted utility easement between Lots 10 and 11 in 1970. Neither utility easement is or has been used by the City for utility purposes.
- 4.) The utility easement is not otherwise needed to promote the public health, safety, or welfare of the citizens of Duluth.
- 5.) At the time that this staff report was written, one written comment in support for the vacation was received from the public, as well as two phone calls. No other public, agency, or City comments were received.
- 6.) Vacations of rights of way and easements lapse unless the vacation is recorded with the county recorder within 90 days after final approval. The vacation recording is facilitated by the City of Duluth.

Staff Recommendation

Based on the above findings, Staff recommends that the Planning Commission recommend approval of the vacation of the utility easement, with no conditions.



City Planning

PL -141: Vacate Utility Easement
173 Farley Lane

Legend

Zoning Boundaries

Zoning Boundaries

Future Land Use

- Preservation
- Recreation
- Rural Residential
- Low-density Neighborhood
- Traditional Neighborhood
- Urban Residential
- Neighborhood Commercial
- Neighborhood Mixed Use
- General Mixed Use
- Central Business Secondary
- Central Business Primary
- Auto Oriented Commercial
- Large-scale Commercial
- Business Park
- Tourism/Entertainment District
- Medical District
- Institutional
- Commercial Waterfront
- Industrial Waterfront
- Light Industrial
- General Industrial
- Transportation and Utilities

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

Aerial photography flown 2016
























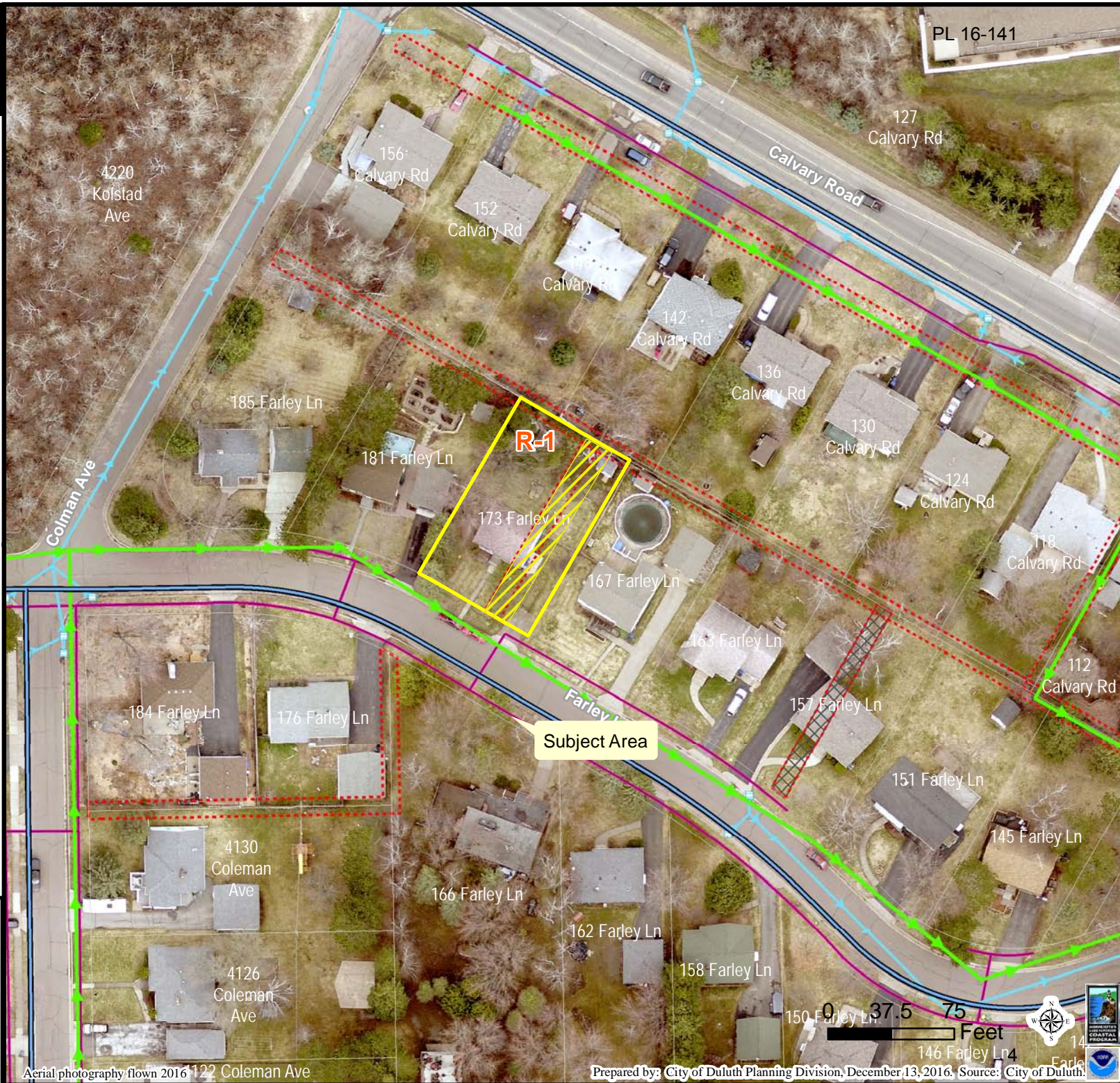
City Planning

PL -141: Vacate Utility Easement
173 Farley Lane

Legend

-  Trout Stream (GPS)
-  Other Stream (GPS)
- Zoning Boundaries**
-  Zoning Boundaries
- Water Distribution System**
-  30 - 60" Water Pipe
-  16 - 24" Water Pipe
-  4 - 6" Water Pipe
- Sanitary Sewer Collection System**
-  Sanitary Sewer Collector
-  Sanitary Sewer Interceptor
-  Sanitary Sewer Forced Main
-  Storage Basin
-  Pump Station
- Gas Distribution Main**
-  8" - 16" Gas Pipes
-  4" - 6" Gas Pipes
-  0" - 4" Gas Pipes
- Storm Sewer Collection System**
-  Storm Sewer Pipe
-  Storm Sewer Catch Basin
-  Vacated ROW
- Easement Type**
-  Utility Easement
-  Other Easement

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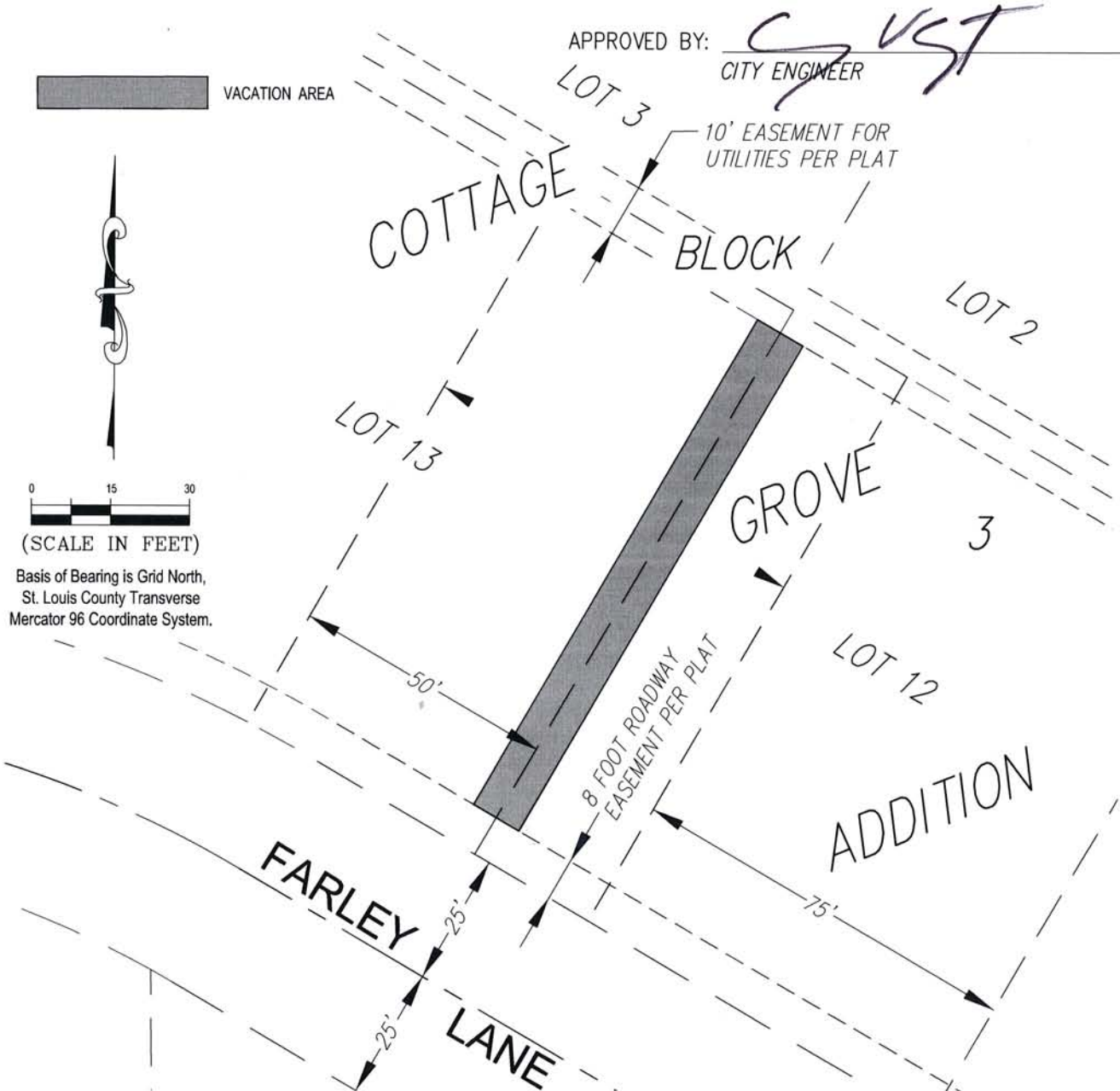


EXHIBIT

VACATION

VACATION DESCRIPTION:

A TEN (10) FOOT WIDE SEWER EASEMENT CENTERED ON THE COMMON LOT LINE TO LOTS 12 AND 13, BLOCK 3, COTTAGE GROVE ADDITION, CITY OF DULUTH, ST. LOUIS COUNTY, MINNESOTA. SAID SEWER EASEMENT LYING BETWEEN AN 8 FOOT WIDE EASEMENT FOR ROADWAY PURPOSES ABUTTING FARLEY LANE AND A 10 FOOT WIDE UTILITY EASEMENT COMMON TO LOTS 2, 3, 12 AND 13, SAID BLOCK 3, COTTAGE GROVE ADDITION.



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

Print Name: Paul A. Vogel

License # 44075

Signature: Paul A. Vogel

Date: 12/14/2016

REVISED: 12/14/16

DATE PREPARED: 11/17/16

PROJ NO: 110675

FILE: 110675 cSurv

SHEET 1 of 1 SHEETS



PERFORMANCE
DRIVEN DESIGN.
LHBcorp.com

21 W. Superior St., Ste. 500 | Duluth, MN 55802 | 218.727.8446

FILE: ..\110675\600 Drawings\Survey\110675 cSurvey-VACA Exhibit.dwg

VACATION DESCRIPTION:

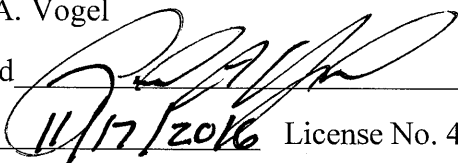
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I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Paul A. Vogel

Signed

Date


11/17/2016 License No. 44075



Petition to Vacate Street, Alley, or Utility Easement

Name: Kevin E. Appel + Deben J. Bennett-Appel

Description of street, alley, or easement to vacate: UTILITY EASEMENT RUNNING THROUGH PROPERTY AT 173 FARLEY LANE CURRENTLY RUNNING THROUGH EXISTING HOUSE

My request for this vacation is to (indicate purpose of vacation):

ALLOW CONSTRUCTION OF A GARAGE ON THE PROPERTY

The City of Duluth will not need this street, alley, or easement in the future because:

EXISTING DWELLING HAS STRADDLED THE EASEMENT SINCE 1954 AND THE CITY HAS NEVER NEEDED TO USE THE EASEMENT

PLEASE TAKE NOTICE: Pursuant to Section 50-37.6 of the Duluth City Code, the above-identified applicant(s) petition the Duluth City Council to vacate the street, alley, or easement described in the attached legal description.

This petition is made upon the following facts and reasons (Identify the factual basis and reasons supporting the petition) ¹:

THE EASEMENT IS USELESS BECAUSE THE DWELLING HAS STRADDLED THE EASEMENT SINCE ITS CONSTRUCTION IN 1954. THE REQUEST IS BEING MADE BECAUSE THE PROPOSED CONSTRUCTION OF A GARAGE MAY ALSO ENCRONCH ON THE EASEMENT. (MAP ATTACHED SHOWING POSITION OF EASEMENT). PRECEDENCE HAS BEEN SET BY VACATION OF NEIGHBORING EASEMENT THREE DOOR AWAY FROM 173 FARLEY LANE.

This petition is supported by a majority of the person(s) who own a majority of the lineal frontage of the land abutting upon the portion of the public easement proposed to be vacated. A copy of the signatures of these persons is attached hereto and made a part hereof. ²

The petitioner(s) agree to provide the city with a plat of the easement(s) as required by Section 50-37.6B(3) of the Duluth City Code upon approval of the vacation. We understand that the vacation cannot occur without the submission of the required plat. We understand that the cost of producing the plat is the responsibility of the petitioner(s). We also understand that the approval will lapse and be of no effect if the plat and clerk certification is not recorded with the county recorder within 90 days after final approval.

Signature(s):

Kevin E. Appel & Deben J. Bennett-Appel

Date:

13 NOV 2016

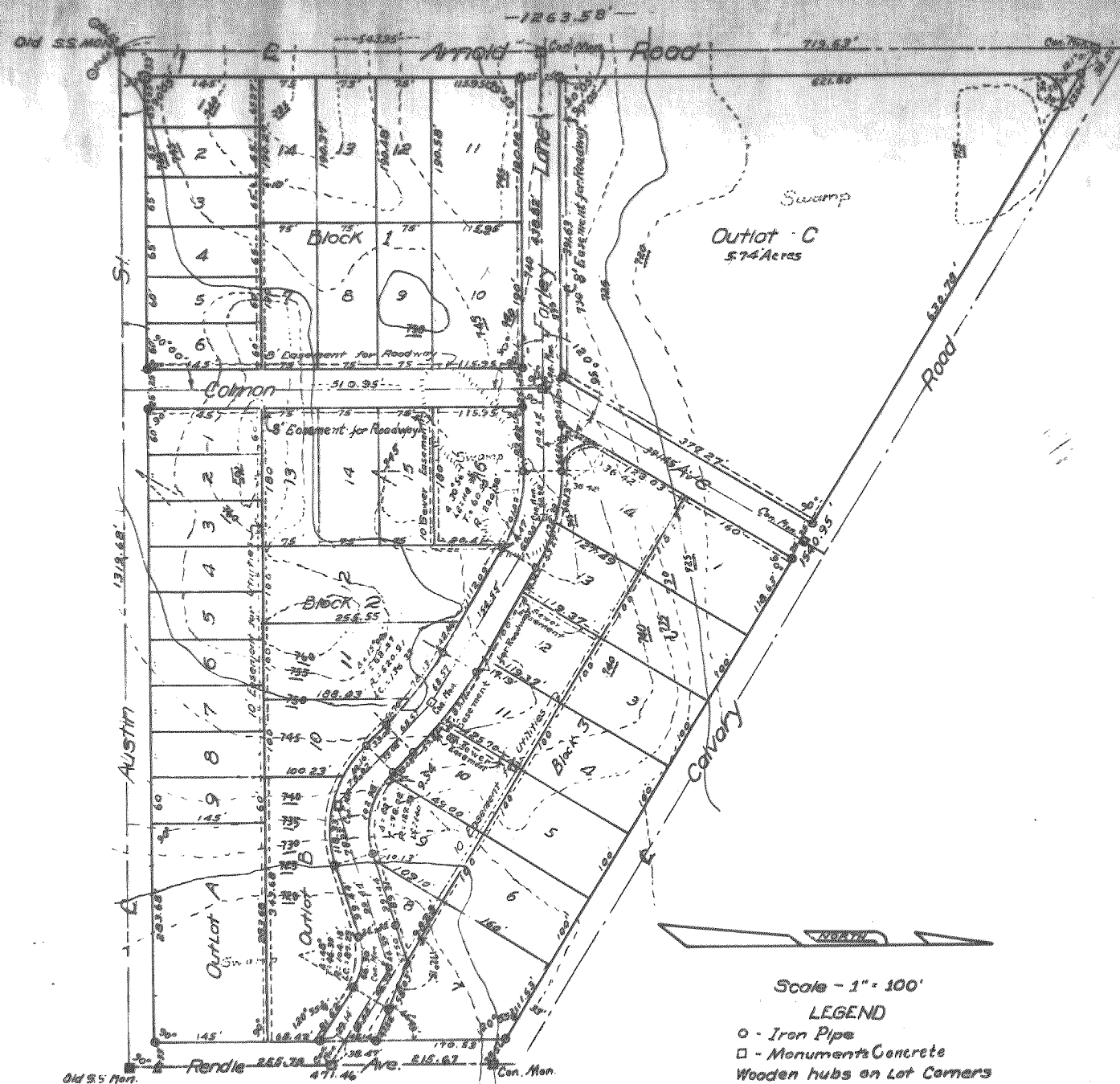
Notice: This is public data.

¹ In order to vacate a public easement it must be demonstrated that the easement is useless for the purpose for which it was dedicated.

² If a property is owned in joint tenancy or by tenants in common, each individual with an ownership interest will be counted to determine if a majority of owners have signed the petition. An owner cannot sign for another owner unless legally authorized to do so, i.e. power of attorney, trustee, or court approved guardianship or conservatorship.

COTTAGE GROVE ADDITION

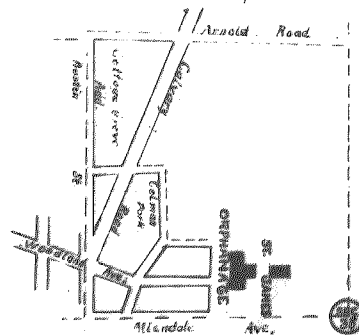
PART OF SW 1/4 of SW 1/4 - SECTION 35-T.51 N.-R.14 W.



Scale - 1" = 100'

- LEGEND**
- - Iron Pipe
 - - Monuments Concrete
 - Wooden hubs on Lot Corners
 - Bench Mark - 735.47, Spike in pole of SW Corner of Woodland Ave. & Austin St.
 - - Old-Sandstone Monuments

Index Map



PLAT DEDICATION

Know All Men by these Present, that R. A. Anderson a widower of Duluth, in the county of St. Louis, State of Minnesota being the owner of the following described property, situated in the county of St. Louis, State of Minnesota to-wit:

All that part of the S.W. 1/4 of S.W. 1/4 except that parcel lying north of the center line of Calvary Road, of Section 35, Township 51 north, Range 14 West, of the fourth principal meridian, according to the government survey thereof; containing 27 acres. And being desirous of platting same into lots, outlots, streets, and utility easements have caused the same to be surveyed and the annexed plat thereof to be made in accordance with the statutes in such cases made and provided. Now therefore he does ratify and confirm in all respects said survey and the plat and dedicate to the public use all streets and utility easements therein delineated, and sign seal, and execute said plat.

In witness whereof the said R. A. Anderson a widower has caused this certificate to be signed and acknowledged by him

This 6th day of Jan. A.D. 1948

In the presence of

John A. Hoppe R. A. Anderson

Notary Public St. Louis County, Minn.

State of Minnesota
County of St. Louis B.S.
On this 6th day of Jan. A. D. 1948, before me a Notary Public within and for said county, personally appeared R. A. Anderson a widower to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Notary Public, St. Louis County, Minn.
My commission expires Aug. 1, 1951

I, John A. Hoppe, do hereby certify that I am a registered Land Surveyor and that I have at the request of the owners thereof made a careful survey of the property described in the foregoing certificate of the owner and have platted the same into lots, outlots, streets, and utility easements as more fully appears on the annexed plat entitled "Cottage Grove Addition". The plat is a correct representation of the survey and all distances are correctly shown on the plat.

Monuments for the guidance of future surveys have been correctly placed in the ground as shown. The outside boundary lines are correctly designated and the topography of the land is correctly shown and datum reference to the topography is designated on the plat.

There are no rivers, streams, creeks, lakes, ponds, swamps or public highways and thoroughfares laid, opened or travelled existing before platting other than shown on plat.

Signed in the presence of

John A. Hoppe
John A. Hoppe
Surveyor Reg. No. 2950
Subscribed and sworn to before me this 12th day of Dec. A. D. 1947

Notary Public St. Louis County, Minnesota

My commission expires June 11, 1950

I hereby certify that the annexed plat entitled "Cottage Grove Addition" was approved by the Duluth City Planning Commission on the 7th day of January A. D. 1948

Charles Calligan
Charles Calligan
City Planning Commission

OFFICE OF REGISTRAR OF TITLES
STATE OF MINNESOTA,
County of St. Louis
I hereby certify that the within instrument was filed in this office the 7th day of Jan 1948 at 11th M. and was duly registered in book 24 of Register of Titles page 24 of Book 298, Page 132

CHARLES CALLIGAN
Registrar of Titles

E. Hoof

Taxes for the year 1947 on lands described within, PAID

JOHN A. BRANDT, County Treasurer

Taxes paid and transfer entered this 27th day of Jan. A. D. 1948

W. H. CARRIGAN, County Auditor

By W. H. Carrigan
Deputy