



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	PL17-013	Contact	Steven Robertson	
Type	Concurrent Use Permit	Planning Commission Date		March 14, 2017
Deadline for Action	Application Date	January 24, 2017	60 Days	March 25, 2017
	Date Extension Letter Mailed	March 6, 2017	120 Days	May 24, 2017
Location of Subject		2040 Minnesota Ave. (Park Point)		
Applicant	John Howard	Contact		
Agent		Contact		
Legal Description		Lots 39 and 40, Lower Duluth Minnesota Avenue		
Site Visit Date		March 5, 2017	Sign Notice Date	February 26, 2017
Neighbor Letter Date		March 5, 2017	Number of Letters Sent	22

Proposal

A concurrent use permit to allow a private obstruction (steps and a portion of a 3 season porch) to remain in the public right of way.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	R-1	Residential Traditional	Residential Traditional
North	R-1	Undeveloped/Open Space	Preservation
South	R-1	Residential Traditional	Residential Traditional
East	R-1	Residential Traditional	Residential Traditional
West	R-1	Residential Traditional	Residential Traditional

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. Any proposed skywalk will significantly improve the circulation of pedestrians in the city without exposure to weather conditions;
3. No portion of a public easement proposed for use is being physically used or occupied by the public.

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

1943 – Home initially constructed; current size is 1,076 square feet.

2000 – Former owner granted a partial right of way vacation (Resolution 00-688). Area to be vacated was 7 feet by 16 feet. Note that the current encroachment in the right of way exceeds what was allowed in the vacation, and the current property owner is proposing a companion concurrent use permit along with this variance (PL 17-012 and PL 17-013).

2008 – Building Permit issued for 3 season screen/porch approximately 13'3" by 10'2".

2015 – Current owner purchased the property.

Governing Principles:

Principle #5 - Strengthen neighborhoods

Future Land Use: Traditional Neighborhood: Characterized by grid or connected street pattern, houses orientated 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. Includes many of Duluth's older neighborhoods, infill projects and neighborhood extensions, and new traditional neighborhood areas.

Review and Discussion Items**Staff finds that:**

1. The applicant is seeking a concurrent use permit to allow a private obstruction (steps and a portion of a 3 season porch) to remain in the public right of way.
2. The proposed concurrent use will not harm or inconvenience the health, safety and general welfare of the city.
3. The area proposed for concurrent use is not currently being used by the public.
4. Concurrent Use Permits are approved by the City Council via an ordinance. Unlike street right of way vacations, concurrent use permits are not recorded at the County as they are voidable agreements between the city and property owners. No vacations of right of way are being accepted in the park point area; citizens with obstructions in the public right of way must either remove the obstructions or seek city council approval with a concurrent use permit. The City of Duluth requires Concurrent Use Permits to include liability insurance to indemnify the City against occurrences in the right of way.
5. No other public, agency, or other City comments were received.
6. Per UDC Sec. 50-37.1.N, approved concurrent use permits lapse if the project or activity authorized by the permit or variance is not begun within 1 year.

Staff Recommendation

Based on the above findings, Staff recommends that Planning Commission recommend approval of the Concurrent Use Permit with the following conditions:

- 1) Applicant construct and maintain the project as identified in exhibit signed January 12, 2017
- 2) Applicant provide 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.
- 3) Applicant will remove the obstructions at the applicant's expense if directed to by the City with appropriate notice.
- 4) 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.



City Planning

PL 17-013: Concurrent Use Permit
2040 Minnesota Ave

Legend

Zoning Boundaries

Zoning Boundaries

Water Distribution System

30 - 60" Water Pipe

16 - 24" Water Pipe

4 - 6" Water Pipe

Sanitary Sewer Collection System

Sanitary Sewer Collector

Sanitary Sewer Interceptor

Sanitary Sewer Forced Main

Storage Basin

Pump Station

Gas Distribution Main

8" - 16" Gas Pipes

4" - 6" Gas Pipes

0" - 4" Gas Pipes

Storm Sewer Collection System

Storm Sewer Pipe

Storm Sewer Catch Basin

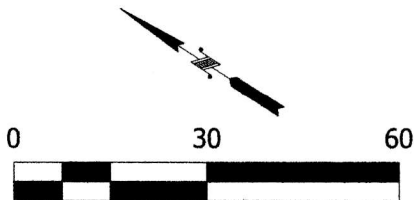
Vacated ROW

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



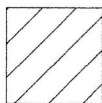
Aerial photography flown 2016

Prepared by: City of Duluth Planning Division, February 15, 2017; Source: City of Duluth.



LINE	BEARING	DISTANCE
L1	N 57°19'59" E	200.00
L2	N 32°40'01" W	40.01
L3	N 57°19'59" E	61.00
L4	N 32°40'01" W	7.00
L5	N 57°19'59" E	16.00
L6	N 32°40'01" W	7.00
L7	N 57°19'59" E	123.00
L8	N 32°40'01" W	40.01

LEGEND



EXISTING BUILDINGS



GRAVEL SURFACE



RETAINING WALL



FENCE LINE

LEGAL DESCRIPTION PER DOC. 1272454

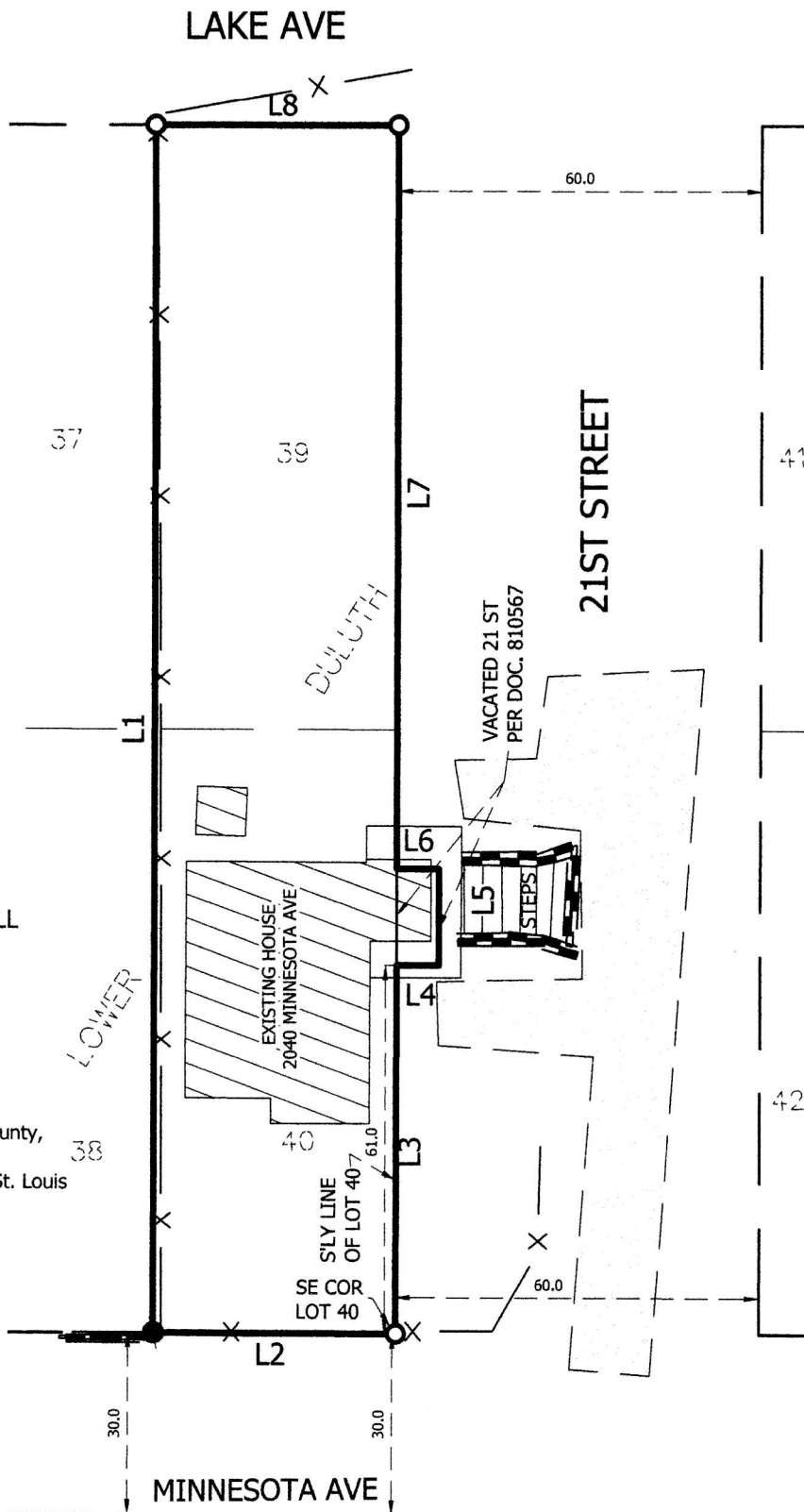
Lot 39, Lake Avenue, LOWER DULUTH, St. Louis County, Minnesota.

And: Lot 40, Minnesota Avenue, LOWER DULUTH, St. Louis County, Minnesota.

BEARINGS ARE BASED ON THE ST. LOUIS COUNTY TRANSVERSE MERCATOR COORDINATE SYSTEM OF 1996.

BUILDING DIMENSIONS SHOWN ARE FOR HORIZONTAL & VERTICAL PLACEMENT OF STRUCTURE ONLY.

THIS SURVEY HAS BEEN PREPARED WITHOUT BENEFIT OF A TITLE COMMITMENT OR TITLE OPINION. A TITLE SEARCH FOR RECORDED OR UNRECORDED EASEMENTS WHICH MAY BENEFIT OR ENCUMBER THIS PROPERTY HAS NOT BEEN COMPLETED BY ALTA LAND SURVEY COMPANY.



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.

David R. Evanson
David R. Evanson

Date: 1-3-2017

MN Lic. No. 49505

CERTIFICATE OF SURVEY

CLIENT: JOHN HOWARD

REVISIONS: XXX

DATE: 1-3-2017

ADDRESS: 2040 MINNESOTA AVE
DULUTH, MN

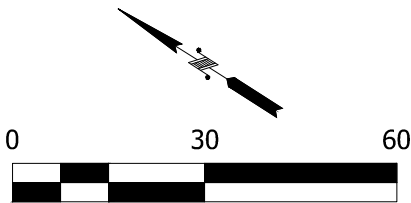
JOB NUMBER: 16-392



LAND SURVEY COMPANY

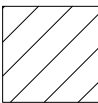
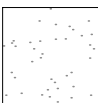
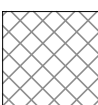






* LAND SURVEYING
* LAND DEVELOPMENT
* PLATTING
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* CONSTRUCTION STAKING

PHONE: 218-727-5211
LICENSED IN MN & WI
CERTIFIED FEDERAL SURVEYOR
WWW.ALTA LAND SURVEY DULUTH.COM



LINE	BEARING	DISTANCE
L1	S 57°19'59" W	200.00
L2	S 32°40'01" E	40.01
L3	N 57°19'59" E	61.00
L4	N 32°40'01" W	7.00
L5	S 57°19'59" W	16.00
L6	S 32°40'01" E	7.00
L7	N 57°19'59" E	123.00
L8	N 32°40'01" W	40.01
L9	N 57°19'59" E	3.00
L10	S 57°19'59" W	8.00

LEGEND

-  EXISTING BUILDINGS
-  GRAVEL SURFACE
-  PARCEL A
-  RETAINING WALL
-  FENCE LINE
-  SET MAG NAIL
-  SET CAPPED REBAR RLS NO. 49505
-  POC POINT OF COMMENCEMENT
-  POB POINT OF BEGINNING

LEGAL DESCRIPTION PER DOC. 1272454
Lot 39, Lake Avenue, LOWER DULUTH, St. Louis County, Minnesota.
And: Lot 40, Minnesota Avenue, LOWER DULUTH, St. Louis County, Minnesota.

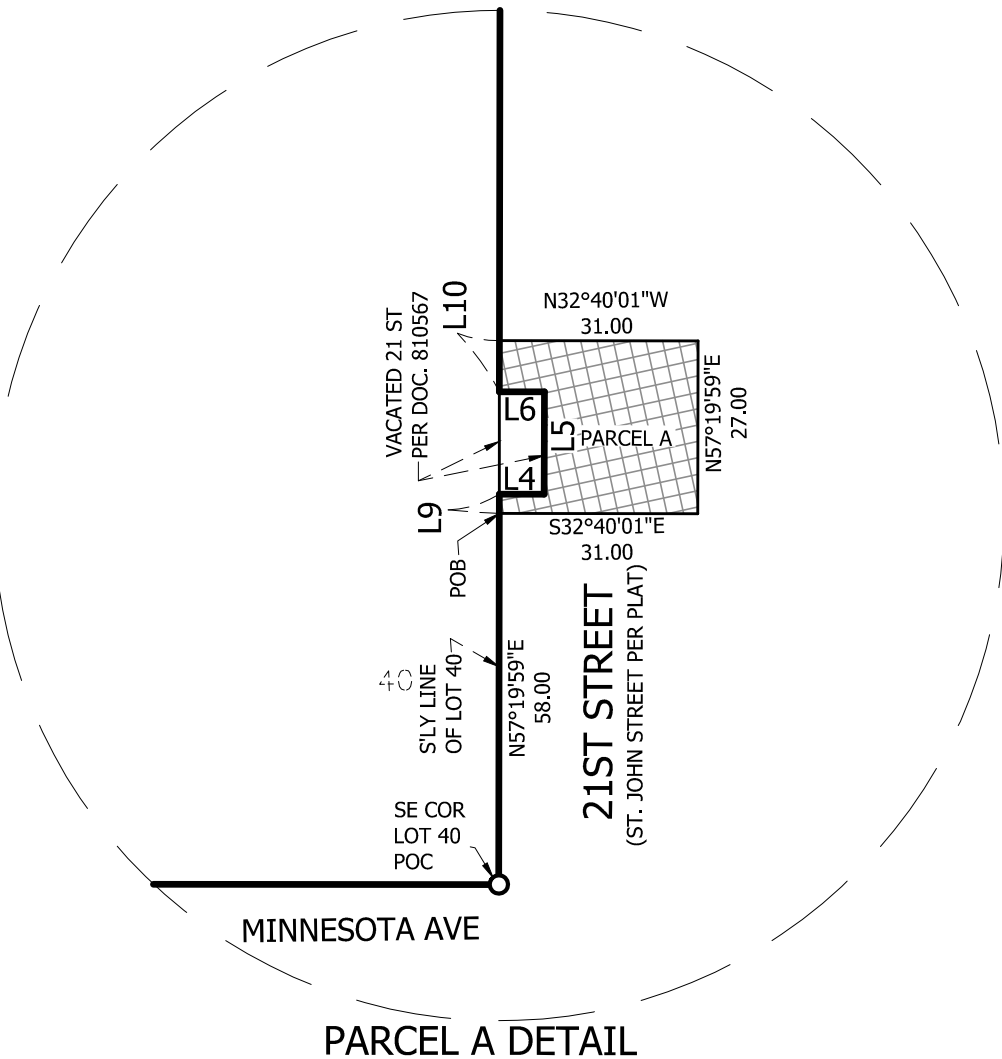
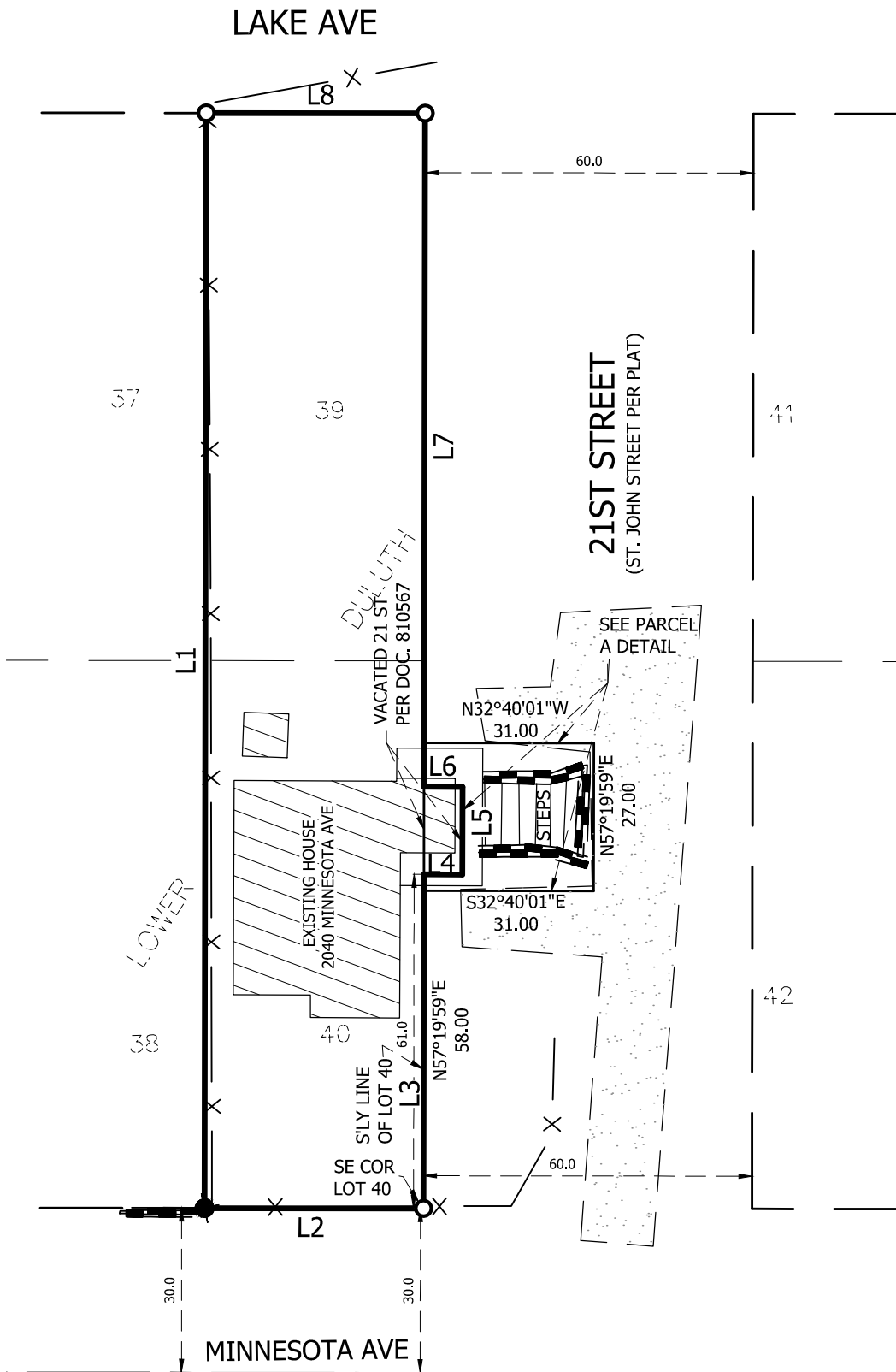
LEGAL DESCRIPTION OF PREVIOUSLY VACATED 21ST STREET PER DOC. 810567
A portion of 21st Street South legally described as: beginning at the northeast corner of the intersection of Minnesota Avenue and 21st Street South, which is also the southeast corner of Lot 40, Lower Duluth, Minnesota Avenue; thence northerly on and along the southerly line of Lot 40 a distance of 61 feet to the point of beginning; thence turning 90 degrees to the right a distance of seven feet to a point; thence turning 90 degrees to the left a distance of 16 feet to a point; thence turning 90 degrees to the left a distance of seven feet to a point on the southerly line of said Lot 40 and there terminating.

LEGAL DESCRIPTION FOR PARCEL A
A portion of St. John Street, also known as 21st Street, lying adjacent to Lot 40, Minnesota Avenue, LOWER DULUTH, St. Louis County, Minnesota according to the recorded plat thereof described as follows:
Commencing at the Southeast corner of said Lot 40; thence on an assumed bearing of North 57 degrees 19 minutes 59 seconds East, along the Southerly line of said Lot 40 for a distance of 58.00 feet to the Point of Beginning of the parcel herein described; thence South 32 degrees 40 minutes 01 seconds East 31.00 feet; thence North 57 degrees 19 minutes 59 seconds East 27.00 feet; thence North 32 degrees 40 minutes 01 seconds West 31.00 feet to the said Southerly line of Lot 40; thence South 57 degrees 19 minutes 59 seconds West, along said Southerly line 8.00 feet; thence South 32 degrees 40 minutes 01 seconds East 7.00 feet; thence South 57 degrees 19 minutes 59 seconds West 16.00 feet thence North 32 degrees 40 minutes 01 seconds West 7.00 feet to the Point of Beginning.
Said parcel contains 725.00 square feet.

BEARINGS ARE BASED ON THE ST. LOUIS COUNTY TRANSVERSE MERCATOR COORDINATE SYSTEM OF 1996.

BUILDING DIMENSIONS SHOWN ARE FOR HORIZONTAL & VERTICAL PLACEMENT OF STRUCTURE ONLY.

THIS SURVEY HAS BEEN PREPARED WITHOUT BENEFIT OF A TITLE COMMITMENT OR TITLE OPINION. A TITLE SEARCH FOR RECORDED OR UNRECORDED EASEMENTS WHICH MAY BENEFIT OR ENCUMBER THIS PROPERTY HAS NOT BEEN COMPLETED BY ALTA LAND SURVEY COMPANY.



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.

 David R. Evanson

Date: 1-12-17 MN Lic. No. 49505

CERTIFICATE OF SURVEY

CLIENT: JOHN HOWARD

REVISIONS: XXX

DATE: 1-12-17

ADDRESS: 2040 MINNESOTA AVENUE
DULUTH, MN

JOB NUMBER: 16-392

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00-0688R

RESOLUTION VACATING A PORTION OF 21st STREET SOUTH
ADJACENT TO PROPERTY LOCATED AT 2040 MINNESOTA AVENUE.
(Lindskog-Peterson)

BY PRESIDENT GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of a portion of 21st Street South legally described as: beginning at the northeast corner of the intersection of Minnesota Avenue and 21st Street South, which is also the southeast corner of Lot 40, Lower Duluth, Minnesota Avenue; thence northerly on and along the southerly line of Lot 40 a distance of 61 feet to the point of beginning; thence turning 90 degrees to the right a distance of 7 feet to a point; thence turning 90 degrees to the left a distance of 16 feet to a point; thence turning 90 degrees to the left a distance of 7 feet to a point on the southerly line of said lot 40 and there terminating, and

WHEREAS, pursuant to Section 100 of the City Charter and Article IV of Chapter 45 of the Duluth City Code, 1959 as amended, such petition was duly referred to the city planning commission, and such commission gave due notice of public hearing and did consider same in public hearing; and

WHEREAS, the city planning commission approved unanimously, the partial street vacation petition at its September 27, 2000 meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approve the vacation of the portion of 21st Street South described above, and as more particularly described on Public Document No. _____; and

BE IT FURTHER RESOLVED, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the street to be vacated.

Approved as to form:



Attorney

PLNG JEM:mv 10/02/00

STATEMENT OF PURPOSE:

This resolution vacates a 7' x 16' portion of South 21st Street located adjacent to 2040 Minnesota Avenue. This vacation removes a cloud on the title to the property created by a porch and roof structure over an access to a tuck under garage. This vacates a one to two foot area around the structure to remove the cloud on the title, the vacation leaves 53 of the 60 feet of right of way for future street improvements.

The City Planning Commission unanimously approved this at its regular meeting on September 27, 2000.

2040 MINNESOTA AVE

LOT 39, LAKE AVE, LOWER DULUTH

LOT 90, MINNESOTA AVE. LOWER DULUTH

DRAWN SKETCH BY JON UDOVICH

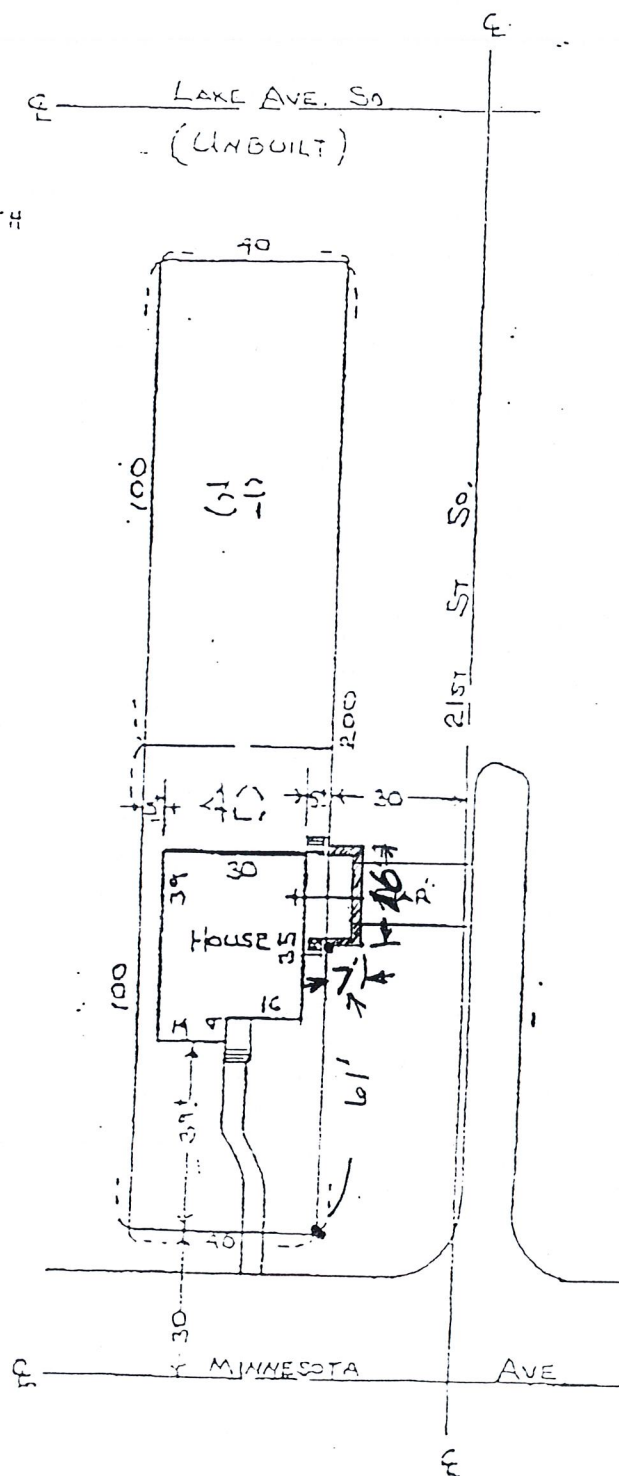
NOT A SURVEY

MEASUREMENTS ARE APPROXIMATE

LOT DIMENSIONS FROM PLAT

SCALE: 1" = 10'

PETERSON



ation of the improvements shown on this drawing are approximate and are based on a visual inspection of
 nses. The lot dimensions are taken from the recorded plat or county records. This drawing is for informational
 and should not be used as a survey. It does not constitute a liability of the company and is intended for
 purposes only."

**CITY PLANNING DIVISION
PARTIAL STREET VACATION PETITION
STAFF REPORT**

Meeting Date: September 27, 2000

1. Applicant: Lois Lindskog & Lynn Peterson *Lynn*
2040 Minnesota Avenue
Duluth, MN 55802
2. Proposed Vacation: 2040 Minnesota Avenue
3. Legal Description: Lot 40, Lower Duluth, Minnesota Avenue (Plat 3110, parcel 02260)
4. Number of Surrounding Property Owners Notified: 30 + Community Club
5. BACKGROUND DATA:
 - A. Proposed Use: Remove cloud on the title due to building encroachment into the right of way.
 - B. History of Past Actions:
 1. The building was constructed in 1948
 2. On March 19, 1990, the City Council adopted Resolution # March 19, 1990, which reads as follows
RESOLUTION ADOPTING A CITY POLICY FOR PARK POINT STREETS RIGHTS-OF-WAY.
WHEREAS, the Duluth City Planning Commission and the Park Point Community has historically acted to preserve street rights-of-way on Park Point for the following purposes:
 1. Preserve lake and bay vistas.
 2. Preserve access to the lake and bay for both Park Pointers and other Duluth citizens.
 3. Prevent overcrowding the Point.
 4. Provide visual relief from the continuous rows of buildings along the avenues.
 5. Provide for future utility corridors, and

WHEREAS, in 1988 and 1989 a number of requests for vacations and concurrent use permits were submitted to the City to vacate or otherwise occupy street rights-of-way on Park Point and the City Council has requested the Planning Commission to review its policy regarding street rights-of-way on Park Point; and

WHEREAS, the Planning Commission has met with the Park Point Community Club Point evaluated the issue as it relates to all Duluthians and has recommended adoption of this statement of policy.

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council will continue to discourage vacations of and the placement of structures in public rights-of-way on Park Point in order to preserve lake and bay vistas, lake and bay access for both residents of the Point and other Duluth citizens, prevent overcrowding, provide visual relief from the continuous rows of buildings along the avenues and to provide for future utility needs.

Planning Commission: Action *Shufelt* Date September 27, 2000
City Council: Action *man* Date _____
1200/17 FN 00120

BE IT FURTHER RESOLVED, that the Duluth City Council may consider, where circumstances warrant, the limited non-structural occupation of street rights-of-way for adjacent private properties through fencing off a reasonable portion to provide security and parking areas, so long as preservation of public walking as well as other goals of this policy are observed. This shall be accomplished through the public review process and approved by resolution of the Duluth City Council following a recommendation of the Planning Commission.

BE IT FURTHER RESOLVED, that the Duluth City Council recognizes that properties on Park Point corners suffer from a larger setback requirement than interior lots and therefore cannot expand their buildings (which are generally located on narrow lots). Therefore, in such cases of corner lots on the lake side of the Point, and where there are no homes on Lake Avenue, it may be advisable to permit variances from the 15' setbacks to the more standard 6' or 7' side-yard setback.

- C. Existing Area Zoning: R-1-c, Single Family Residential
- D. Existing Area Development: Residential
- E. Site Characteristics:
- F. Reactions from Various Groups, Agencies and Individuals:
See Attachments
- H. Conclusions:

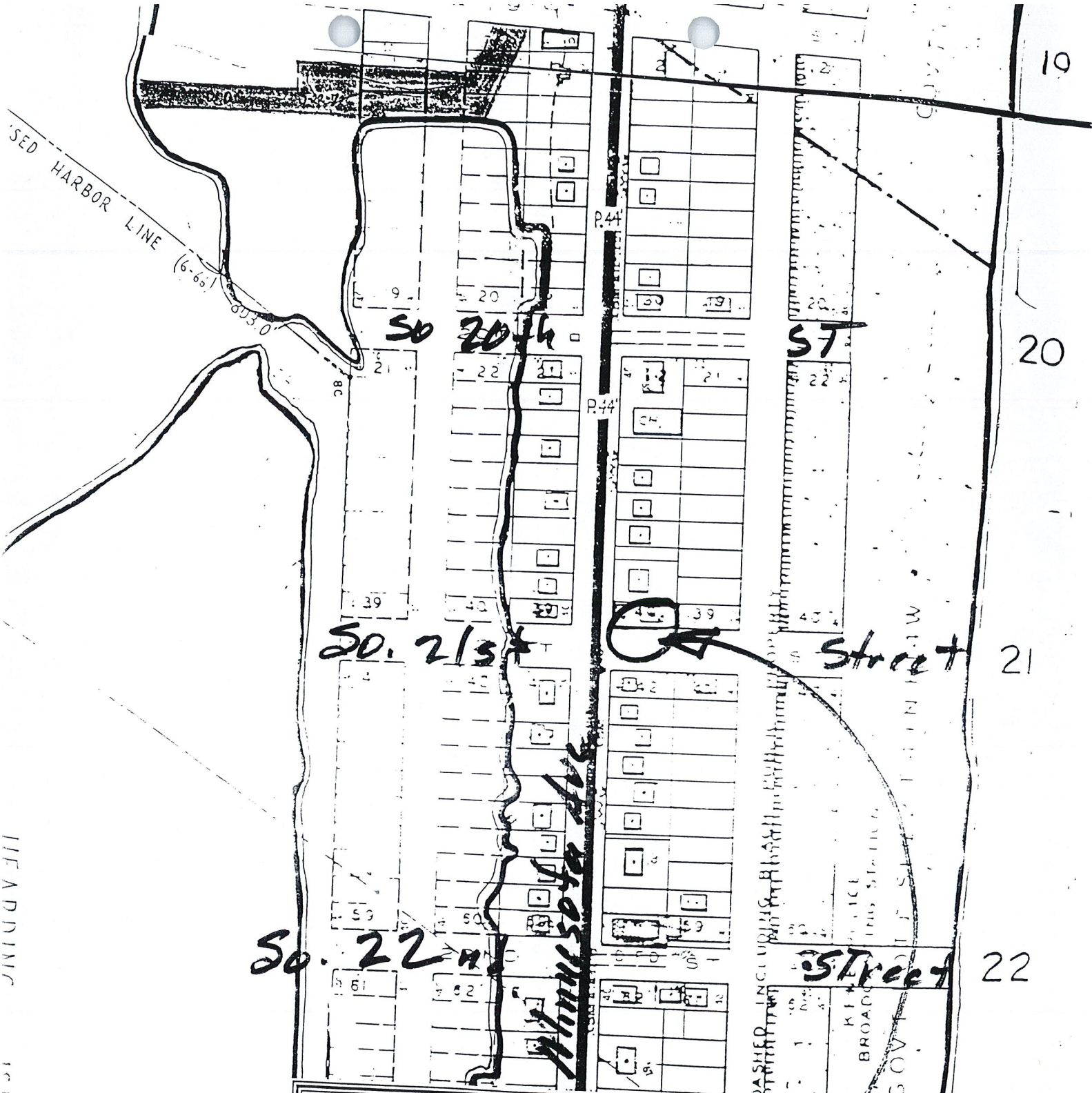
Can it be shown that there will be no future need for this right-of-way? Yes, this portion of the right of way is and has been occupied by the building for several years.

Points in favor:

Points in opposition:

Recommendations for Planning Commission approval:

Vacate the area occupied by the encroachment plus 2 feet.



APPLICANT: Lois Lindskog &
Lynn Peterson

Property under consideration ☐

PURPOSE: Street Vacation

FILE NO: 00120

SCALE: 1" = 200'

DATE: September 13, 2000

DIVISION OF PLANNING
CITY OF DULUTH, MINNESOTA

C-3

Ronald Dagle, 6720 Fremont, said he has worked with the LS&MR and they have done a good job with meeting with the neighbors. He is in support of the green strip which will help control the problem of four wheel drive vehicles racing on the existing sidewalk and down both sides of the railroad tracks.

Richard Hanson, 9403 Boyd Avenue said he has been with the Lake Superior & Mississippi Railroad since 1980. He agreed with Webb that it is very important that this facility be located at this site. He said that the visibility and accessibility was poor at the original site and that is when they decided to negotiate a trackage agreement with the BN to start out at the zoo. At that point is when the ridership drastically increased.

Jackson said that this facility is a great addition to the area and commended the volunteers for working as hard as they do. He was impressed how LS&MR worked with the neighborhood making sure they with comfortable with the facility. He said that the only reason he is not suggesting the commission extend the 10 year permit is because the area is in somewhat of a transition.

Schnell commended the organization for working so well with neighborhood.

In the Planning Deliberative Session:

MOTION: Jackson moved approval of the permit for a period of 10 years, at which time renewal may be requested.

SECOND: Thomson

MOTION PASSED: Unanimously

C. **FN 00120 Street Vacation Petition by Lois Lindskog & Lynn Peterson to vacate a portion of 21st Street South on Park Point adjacent to 2040 Minnesota Avenue. The purpose of the vacation is to deal with a building encroachment into the street right of way.**

Mohn outlined this matter as indicated in the staff report, dated September 27, 2000, and attached to this file. He referred to a letter in opposition from Rod & Connie Johnson, dated September 25, 2000 which is a part of this file. Staff recommended approval of this vacation in order to clear the cloud on the title.

Thomson asked what the alternative is if a vacation is not granted where an "unauthorized" encroachment occurred.

Mohn said they would have to live with the cloud on the title and deal with the financial ramifications or remove the encroachment.

Welles commented that a cloud on a title is extremely difficult and strenuous for someone to remove. If we do not grant these types of vacations, we are inhibiting people from moving forward with their property and substantially devaluing it. He believes this was an unintentional encroachment and does not see how we could deny this vacation.

Larson felt that the likelihood of this street being developed is extremely remote and, even with this vacation, there is plenty of pedestrian access to the beach on 21st Street. He supports approving this vacation.

Lynn Peterson, 2040 Minnesota Avenue, said this house was built in 1947 and the occupants lived there for 50 years. He purchased it this past July and would like to have access and use of the deck and the garage and to clear the cloud on title. He said he has no interest in developing and the encroachments were there when they purchased the property.

In the Planning Deliberative Session:

MOTION: Shefchik moved approval to vacate the area occupied by the encroachment plus two feet.

SECOND: Welles

MOTION PASSED: Unanimously

- D. **FN 00121 Street Vacation Petition by the University of Minnesota, to vacate a portion of Elizabeth Street at the Waverly Avenue intersection. The purpose of the vacation is to allow for new building construction.**

Mohn outlined this matter as indicated in the staff report dated, September 27, 2000, and attached to this file. Staff recommended approval of this request.

Welles abstained because he owns the adjoining property.

Christopher Welles said he owns the adjoining property and asked who will own the property when it is vacated.

Mohn said the University will own it. He said we are giving away the City's public easement across their property.

In the Planning Deliberative Session:

MOTION: Eaton moved approval for vacation as petitioned subject to any necessary utility easements

SECOND: Thomson

MOTION PASSED: 9 ayes
1 abstention (Welles)

- E. **FN 00122 Water Resources Management Ordinance Variance Request, by Blesener Dahlberg Prestidge Architects for Inn on Lake Superior, 350 Canal Park Drive to allow for an impervious surface in excess of 30% in a general development shoreland zone. The variance is requested to facilitate an expansion of the Inn on Lake Superior.**

Mohn outlined this matter as indicated in the staff report dated, September 27, 2000, and attached to this file. He pointed out that the DWMX-D reviewed and approved this request at their September 26th meeting.

Thomson asked if there is a variance on the existing property by the former owner, does the original variance go with property.

Mohn said it does not because in this case, we are dealing with two separate properties, one of which has had a variance on it and the other has had no action taken on it. He said there has actually been a net gain overall in pervious surface as a result of this development.

Thomson asked if 56% impervious surface is applicable to the entire complex or just the one parcel.