

MOTION TO AMEND ORDINANCE 20-049

BY COUNCILOR SIPRESS:

I move to amend Ordinance 20-049 as follows (proposed amendment **in red**):

AN ORDINANCE GRANTING THE ST. LOUIS AND LAKE COUNTIES REGIONAL RAILROAD AUTHORITY A CONCURRENT USE PERMIT FOR **ACTIVE** LOW CLEARANCE WARNING SIGNS IN THE PLATTED STREET RIGHT-OF-WAY OF 32 AVENUE EAST BETWEEN GREYSOLON ROAD AND LONDON ROAD.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. Under the authority of Section 100 of the 1912 Home Rule Charter of the city of Duluth, as amended, and subject to the conditions, limitations and restrictions hereinafter set forth, permission is granted to the St. Louis and Lake Counties Regional Railroad Authority, and its successor(s) in interests, referred to herein as the permittee, to construct and maintain **an ~~passive~~active** low clearance warning sign system on that property legally described in subsections (a) and (b) below and as shown in Exhibit A:

That part of the 66 foot wide platted Right-of-Way of 32nd Avenue East within Blocks 24 and 38 of the Part of East Duluth and of First Addition to East Duluth Plat, City of Duluth, as depicted on the recorded plat thereof, Saint Louis County, Minnesota described as follows:

(a) Concurrent Use Area 1 (Sign 32A) - Commencing at the northwesterly corner of Lot 12, Block 24 of the Part of East Duluth and of First Addition to East Duluth Plat, City of Duluth, St. Louis County, Minnesota; thence southerly 16.00 feet along the easterly right-of-way line of 32nd Avenue East to the point of beginning; Thence southerly along the easterly right-of-way line, 10.00 feet, thence westerly at a right angle, 66.00 feet, more or less, to the westerly right-of-way line of 32nd Avenue East; thence northerly along said right-of-way line a distance of 10.00 feet; thence easterly at a right angle 66.00 feet, more or less, to the point of beginning.

(b) Concurrent Use Area 2 (Sign 32 B) - Commencing at the southwesterly corner of Lot 14 Block 38 of the Part of East Duluth and of First Addition to East Duluth Plat, City of Duluth, St. Louis County, Minnesota; Thence southerly 190.00 feet along the easterly right-of-way line of 32nd Avenue East to the point of beginning; Thence southerly along the easterly right-of-way line a distance of 10.00 feet; thence westerly at a right angle 66.00 feet, more or less, to the westerly right-of-way line of 32nd Avenue East, thence northerly along said right-of-way line a distance of 10.00 feet; thence easterly at a right angle, 66.00 feet, more or less, to the point of beginning.

Section 2. The City Council finds that existing signage adjacent to the railroad bridge at 32nd Avenue East and adjacent to the Concurrent Use Areas is inadequate to protect the bridge and traveling public from collisions causing damage to the bridge and disruptions of traffic and that therefore the granting of the Concurrent Use Permit for the erection of signage in the Concurrent Use Areas will promote the health, safety and general welfare of the City; and said Council finds that Concurrent Use Areas are not being used or occupied by the public.

Section 3. Before this ordinance shall be effective for any purpose whatsoever, the permittee shall file with the planning and development division a certification of insurance approved as to form by the city attorney evidencing that the permittee has in force a policy of insurance meeting the following requirements:

(a) Comprehensive general liability insurance in an amount not less than \$1,500,000 for bodily injuries and in an amount not less than \$500,000 for property damage or \$1,500,000 single limit coverage; and

(b) Insurance coverage shall include all permittee's activities occurring upon or within public right of way or easement occupied pursuant to this ordinance whether said activities are performed by the permittee or its agents or representatives; and

(c) The insurance policy shall be approved by the city attorney; and

- (d) The policy shall contain a condition that it may not be canceled without 30 days written notice to the city of Duluth and directed to the attention of the city attorney; and
- (e) The city of Duluth shall be named as an additional insured; and
- (f) The certificate shall also reference this ordinance by its ordinance number.

Section 4. The permit granted by this ordinance may be terminated at any time by the city official exercising departmental authority of the public easement if the city of Duluth determines to use the area occupied by the permittee for any public purpose in accordance with the duly dedicated public easement or other lawful use.

Unless a shorter notice period is necessitated by emergency circumstances, or the violation of the conditions set forth in this ordinance, giving the permittee 30 days written notice delivered to the last known electronic address, facsimile number, or mailing address of the permittee shall be sufficient notice of termination.

Upon termination permittee shall cause all private improvements to be removed by the deadline provided in termination notice. Permittee shall be responsible for all costs incurred to remove the private improvements, including any costs associated with repairing damage caused to the public easement by the removal and without right to claim from the city of Duluth, or any of its officers, agents or servants, any compensation or reimbursement for damages of any kind whatsoever.

Section 5. By accepting the terms of this ordinance, the permittee agrees to hold harmless and defend and indemnify the city of Duluth against claims or demand which may arise against the city of Duluth by reason of the existence of private improvements, or any act or omission of the permittee, its employees, agents, and assigns or of the city of Duluth and its employees, agents, contractors, and assigns. The permittee agrees that the city of Duluth shall not be liable for damage caused to the private improvements or to improvements on permittee's adjacent property while the city engages in the repair and maintenance to, or replacement of, the public improvements or public utilities, including any snow removal operations and any costs

to repair or replace of any of the permittee's property or improvements thereto. The permittee agrees to pay to the city of Duluth all extra costs of installation of any public improvements or public utilities made necessary by the presence of the private improvements.

Section 6. The permittee shall, at its expense, protect, support, temporarily disconnect, or remove from the public easement, the private improvements when required by city officials by reason of snow removal, traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, sidewalks, installation of sewers, drains, water pipes, power lines, signal lines and tracks, the installation or repair of any type of structures or improvements by governmental agencies, when acting in a governmental or proprietary capacity. Permittee shall immediately reimburse City for any costs incurred by City arising out of permittee's failure to fulfill its obligations under the section.

Section 7. The terms and conditions of this ordinance shall be deemed to run with the land. Upon the sale or transfer of permittee's interest in the permit granted by this ordinance, the permittee shall provide written notice to the planning and development division within ten days of such transfer. The permittee's successor in interest shall file with the planning and development division within ten days of such transfer a duly executed and acknowledged written acceptance of the terms of this ordinance and the certificate of insurance required in Section 2 above.

Section 8. The permit granted by this ordinance is subject to termination by the city of Duluth upon permittee's failure to comply with any of the terms and conditions of this permit. Ten days written notice, delivered as provided in Section 3 above shall be sufficient notice of termination. Upon termination, permittee shall remove the private improvements as provided in Section 3.

Section 9. The permittee shall observe the following conditions:

(a) Permittee's use of the public right of way or easement shall be limited to the designated area described in Section 1 above and further shown on the exhibit; and

(b) Permittee agrees that the private improvements shall be constructed and maintained in such a manner so as in no way interfere with or damage any portion of any public improvement, or other public utilities now or to hereinafter located in any part of said public easement; and.

(c) Permittee will be responsible for the ownership, operation, and maintenance of the private improvements; and

(e) The private improvements shall be designed to comply with any applicable engineering standards, building code, and fire code requirements; and

(f) Permittee shall be responsible for responding to requests for the location of the private improvements including marking their location on the ground.

(g) If the Permittee shall determine that the ~~passive~~active warning sign system is no longer used or required for operations, Permittee shall notify the City and shall remove the warning sign system within 60 days at no cost to the City.

Section 10. The following events shall automatically cause the termination of the term of this ordinance:

(a) The failure by the permittee to file the required insurance certificate as specified in Section 2 within 60 days after this ordinance takes effect; or

(b) The failure of the permittee to commence the improvements authorized by this ordinance within 180 days after this ordinance takes effect.

Section 11. By accepting the permit authorized by this ordinance, permittee, for itself and its successors in interest, is agreeing to be bound by its terms.

Section 12. This ordinance shall take effect and be in force the later of 30 days from and after its passage and publication.

..Statement of Purpose

STATEMENT OF PURPOSE: This ordinance grants the St. Louis and Lake Counties Regional Railroad Authority a concurrent use permit for ~~an~~ passive active low clearance warning sign system in advance of, and on both the north and south sides of the North Shore Scenic Railroad Bridge 4A over 32nd Avenue East between Greysolon and London Roads. The private improvement consists of two sign structures, located over the entire roadway, with vertical supports between the back of curb and sidewalk on both sides of 32nd Avenue East near each of the intersections with London Road and Greysolon Road. The signs are intended to prevent high-profile vehicle impacts to the bridge structure and to improve safety for the traveling public.

On August 11, 2020, the planning commission held a public hearing on the proposal as shown in Exhibit B, and voted 8 yeas, 0 nays, 0 abstentions, to recommend that the city council approve the request for a concurrent use permit (file number PL 20-112).

Petition received: July 15, 2020

Action deadline: November 6, 2020

Applicant:

St. Louis and Lake Counties Regional Railroad Authority - Bob Manzoline

111 Station 44 Road

Eveleth, MN 55734

Permit Property:

32nd Avenue East Right-of-Way between London and Greysolon Roads

Complete legal description of Concurrent Use Area provided in Section 1 above

A Companion CUP is 20-111 located at 36th Avenue East