



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

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<b>File Number</b>	PL 20-111; Ordinance 20-48-O		<b>Contact</b>	Kris Liljeblad, 218-730-5338	
<b>Type</b>	Concurrent Use Permit		<b>Planning Commission Date</b>		August 11, 2020
<b>Deadline for Action</b>	<b>Application Date</b>		July 9, 2020	<b>60 Days</b>	September 7, 2020
	<b>Date Extension Letter Mailed</b>		N/A	<b>120 Days</b>	November 6, 2020
<b>Location of Subject</b>		36 <sup>th</sup> Avenue East between London and Greysolon Roads, Duluth, MN			
<b>Applicant</b>	Bob Manzoline, St. Louis & Lake Co. Railroad Authority		<b>Contact</b>		
<b>Agent</b>	Kristy Marken, Krech Ojard & Associates		<b>Contact</b>		
<b>Legal Description</b>		Public right of way on either side of NSSR Bridge 4C. See attached.			
<b>Site Visit Date</b>		July 22, 2020	<b>Sign Notice Date</b>		July 28, 2020
<b>Neighbor Letter Date</b>		July 27, 2020	<b>Number of Letters Sent</b>		36

**Proposal:** The applicant is proposing to install an active pre-warning sign system on both sides of the low clearance (10'6") North Shore Scenic Railroad Bridge 4C crossing 36<sup>th</sup> Avenue East between London and Greysolon Roads in Duluth, MN. The active warning signs would be triggered by a laser system, mounted on vertical supports located between the back of curb and sidewalk on both sides of the avenue near each of the London Road and Greysolon Road intersections. Signs with flashing lights would be located on the railroad bridge and on the roadside for the downhill (southbound approach). The signs are intended to prevent high-profile vehicle impacts to the bridge structure and to improve safety for the traveling public. The applicant St. Louis and Lake County Railroad Authority will be financially responsible for the project, not the City or adjacent land owners. This is a companion proposal with PL-112, Ordinance 20-49-O located on 32<sup>nd</sup> Avenue East.

**Staff Recommendation:** Approval by City Council; Planning Commission recommended approval on August 11, 2020.

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	R-1	Single Family Dwelling	Traditional Neighborhood
<b>North</b>	R-1	Single Family Dwelling	Traditional Neighborhood
<b>South</b>	R-1	Single Family Dwelling	Traditional Neighborhood
<b>East</b>	R-1	Single Family Dwelling	Traditional Neighborhood
<b>West</b>	R-1	Single Family Dwelling	Traditional Neighborhood

**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:**

The Transportation Mission cited in the *Imagine Duluth 2035 Plan* is: “Duluth’s transportation system will connect all users in a way that promotes safety, health, and quality of life.”

Policy #1 – “Improve street conditions to function better for everyone”; Strategy 9. “Adopt measures to reduce vehicular travel speed and improve intersection safety...to improve overall safety conditions, reduce injuries, and eliminate deaths.”

Policy #6 – “Protect and enhance regional transportation networks, especially for the purposes of expanding opportunities for movement of freight.” Strategy 6. “Expand public-private partnerships with rail freight companies to maintain, improve and expand rail infrastructure.”

Funding & Projects – Specific projects include: “Transportation infrastructure that facilitates uphill/downhill mobility.”

### **Review and Discussion Items**

Staff finds that:

- 1.) The applicant is seeking a concurrent use permit to install an active pre-warning sign system, with vertical supports on both approaches to the roadway undercrossing of North Shore Scenic Railroad Bridge 4C on 36<sup>th</sup> Avenue East between London Road and Greysolon Road. The sign structures are proposed to be located close to the intersections of each cross street to permit oversize vehicles to stop and re-route before becoming committed to going under the low clearance (10’ 6”) railroad bridge. High visibility warning signage, triggered by the active sensors, will be added on the downhill (southbound) approach and to the railroad bridge itself.
- 2.) The applicant has identified a history of oversize vehicles striking the bridge and/or becoming lodged underneath it, including recreational vehicles, a pontoon boat, cement and garbage trucks, and a mobile crane. In most cases this causes vehicle damage but has at times required street closure and engineering inspection of the bridge to ensure its structural integrity. This causes disruption for users of both the public roadway and NSRR operations.
- 3.) City Engineering has determined that the specified sign structures satisfy City and MUTCD standards. The proposed use of public right of way will not impede snow removal on the street or sidewalk.
- 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 sign structure bases will be located in the boulevard between the back of the curb and sidewalk, so the area proposed for the concurrent use permit (sign structures) will not take away from the public’s ability to use the public right of way, nor will it harm or inconvenience the health, safety, and general welfare of the city. It will improve health and safety by reducing or eliminating vehicle collisions with the fixed object, NSRR Bridge 4C.
- 6.) Several neighborhood residents approached Councilor Sipress to oppose Ordinance 20-48-O following approval of the CUP by the Planning Commission on August 11, 2020 prompting two meetings of neighbors with the RR Authority and city representatives. The active warning system described here is a product of those neighborhood meetings.

### **Staff Recommendation**

Based on the above findings, Staff recommends that Council approve the concurrent use permit with the following conditions:

- 1.) Applicant shall construct any structures within the limits identified in the attached Exhibit A.
- 2.) The structure will need to comply with any applicable engineering standards, and building or fire code 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 obstructions 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 structure 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 or Council approval; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50.

## Legal Description

Public right-of-way located on either side of RR Bridge 4C:

**Sign 36A** - Commencing at the northwesterly corner of Lot 8, Block 28 of the Part of East Duluth and of First Addition to East Duluth Plat, City of Duluth, St. Louis County, Minnesota; which is also 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 36<sup>th</sup> Avenue East, thence northerly along said right-of-way a distance of 10.00 feet; thence easterly at a right angle 66.00 feet, more or less, to the point of beginning.

**Sign 36 B** - Commencing at the northwesterly corner of Lot 9, Block 34 of the Part of East Duluth and of First Addition to East Duluth Plat, City of Duluth, St. Louis County, Minnesota; Thence southerly 120.00 feet, along the easterly right-of-way line of 36<sup>th</sup> 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 36<sup>th</sup> 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.







