

# COUNCIL COPY

## PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

10-0588R

RESOLUTION VACATING A PORTION OF THE 26 FOOT WIDE UTILITY EASEMENT IN BLOCK 69, ONEOTA DIVISION, BETWEEN 46TH AVENUE WEST AND THE NORTHEASTERLY LINE OF LOT 4, BLOCK 69, ONEOTA DIVISION, SUBJECT TO PETITIONER DEDICATING REPLACEMENT EASEMENTS AND RELOCATING EXISTING UTILITIES (VELMEIR COMPANIES).

### CITY PROPOSAL:

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city clerk requesting the vacation of a portion of the 26 foot wide utility easement in Block 69, Oneota Division, located between the northeasterly line of 46th Avenue West and the northeasterly line of Lot 4, Block 69, ONEOTA DIVISION (legal description subject to survey); and

(b) 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 (FN 10108) and such commission gave due notice of public hearing and did consider same in public hearing and the city planning commission found that the petitioned utility easement will be useless upon appropriate relocation of utilities currently sited in the easement as noted in

(c) below; and

(c) The city engineer has requested that the vacation be conditioned upon the relocation of utilities, including, but not limited to, water, storm sewer, electric power and telephone communication lines, impacted by the proposed vacation into easements, the location of which is approved by the city engineer and in a manner approved by the city engineer; and

(d) The city planning commission, at its November 9, 2010, regular meeting, recommended approval of the vacation petition subject to appropriate utility relocation and dedication of replacement easements; and

(e) The city council of the city of Duluth approves the vacation of the following petitioned utility easement more particularly described below and on Public Document No. \_\_\_\_\_, subject to the relocation of utilities

presently located in the easement to be vacated to locations and in a manner approved by the city engineer and the subsequent dedication of easements, acceptable to the city engineer, necessary to the construction, maintenance, operation, repair and replacement of said utilities:

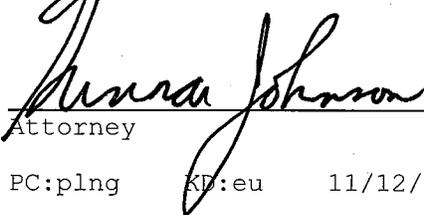
That part of the 26 foot wide utility easement in Block 69, Oneota Division, described as follows:

Beginning at the westerly corner of Lot 9, Block 69; thence continuing northeasterly along the northwesterly line of platted Lots 9 through 12 to the northerly corner of Lot 12, Block 69; thence deflecting to the left along the northeasterly line of Lot 4, Block 9, extended to the southeast, to a point on said northeasterly line of said Lot 4 ten feet northwesterly of the easterly corner of said Lot 4; thence deflecting to the left and continuing southwesterly on a line ten feet distant from and parallel with the southeasterly line of platted Lots 1 through 4, Block 9, to the southwest line of Lot 1, Block 69; thence deflecting to the left and continuing along the southwesterly line of said Block 69 to the point of beginning and there terminating; and

(f) That the city clerk is, pursuant to Section 100 (b) (7) of the Home Rule Charter of the city of Duluth, 1912, as amended, authorized to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution and Public Document No. \_\_\_\_\_ showing the portion of the utility easement to be vacated upon receipt of the dedications of replacement easements and relocation of all

utilities presently located in the vacated easement into said replacement easements in the manner approved by the city engineer.

Approved as to form:

  
\_\_\_\_\_  
Attorney

PC:plng KF:eu 11/12/2010

STATEMENT OF PURPOSE: This resolution vacates a portion of the 26' wide utility easement behind the ICO filling station at 4532 Grand Avenue in order to facilitate redevelopment of the ICO and lots behind it into a 13,225 square foot commercial building.

The petitioned vacation area contains a water line, a storm sewer line, a power line, and a phone line. The power and phone lines will not be needed once the ICO is removed as part of the site redevelopment. The City's storm sewer pipe would be relocated by the applicant to a replacement easement at the southeasterly end of Lots 9-12, Block 69, Oneota Division and the City's water line would be relocated by the applicant to a separate replacement easement located around the north side of the new commercial building. The City Engineer has requested that the final location of the replacement easements be determined after the utilities have been relocated to ensure that the easements fully enclose the relocated utilities.

This resolution makes the recording of the petitioned vacation subject to receipt of the dedication of replacement easements and relocation of all utilities presently located in the vacated easement into said replacement easements in the manner approved by the city engineer.

The motion to approve the vacation by the city council must prevail with at least six affirmative votes according to Section 45-44.

On November 9, 2010, the Duluth city planning commission held a public hearing on the proposal and voted 9-0 to recommend that the city council approve the vacation subject to appropriate utility relocation and dedication of replacement easements.

Petition Received: October 11, 2010

Action Deadline: There is no action deadline for this resolution.

Applicant:

Kevin McGhee  
The Velmeir Companies  
7201 West 78<sup>th</sup> Street, Suite 205  
Bloomington, MN 55489  
953-345-7022  
[kmcghee@velmeir.com](mailto:kmcghee@velmeir.com)



**CITY OF DULUTH**

Community Resources Department  
 Planning Division  
 411 W 1<sup>st</sup> St, Rm 402 \* Duluth, Minnesota 55802-1197  
 Phone: 218/730.5580 Fax: 218/730.5904

**STAFF REPORT**

<b>File Number</b>	10108	<b>Contact</b>	Kyle Deming, kdeming@duluthmn.gov	
<b>Application Type</b>	Utility Easement Vacation	<b>Planning Commission Date</b>	11-09-2010	
<b>Deadline for Action</b>	<b>Application Date</b>	10-11-2010	<b>60 Days</b>	N/A
	<b>Date Extension Letter Mailed</b>	N/A	<b>120 Days</b>	N/A
<b>Location of Subject</b>	In the former alley south of the ICO filling station at 4532 Grand Avenue (Oneota)			
<b>Applicant</b>	Velmeir Companies - Kevin McGhee	<b>Contact</b>	952-345-7022, kmcghee@velmeir.com	
<b>Agent</b>	RLK, Inc. - John Jamnick	<b>Contact</b>	218-720-6219, jjamnick@rlkinc.com	
<b>Legal Description</b>	Part of utility easement in Block 69, Oneota Div., lying between 46th Ave. W. and the east line of Lot 4			
<b>Neighbor Letter Date</b>	10-26-2010	<b>Number of Neighbor Letters Sent</b>	46	

**Proposal**

Vacate part of a utility easement in Block 69, Oneota Division behind the ICO filling station at 4532 Grand Avenue. The purpose of the vacation is to facilitate construction of a 13,600 square foot commercial building. The applicant is proposing to demolish the ICO filling station and relocate existing water, storm sewer, phone, and electric facilities currently located in the vacation area to replacement easements as part of the development.

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	M-1	Vacant	Neighborhood Commercial
<b>North</b>	M-1	Commercial, ICO filling station	Neighborhood Commercial
<b>South</b>	M-1	Vacant	Neighborhood Commercial
<b>East</b>	M-1	Vacant	Neighborhood Commercial
<b>West</b>	M-1	Shopping Center	Neighborhood Commercial

**Summary of Code Requirements (reference section with a brief description):**

Vacation of public rights of way and/or easements requires 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.

Code Requirements are found in Legislative Code, Article IV, Sections 45-37 to 45-48 and in City Charter, Chapter XIII, Section 100.

The standard for evaluating vacations is "uselessness," that the proposed right of way is not needed for the purposes for which it was dedicated.

III C I

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

- 1. Governing Principles:
  - Principle #7 - Create and maintain connectivity.
  - Principle #12 - Create efficiencies in delivery of public services.
- 2. The Comprehensive Plan defines "Neighborhood Commercial" as small- to moderate-scale commercial, serving primarily the adjacent neighborhood(s). May include specialty retail; community gathering businesses such as coffee shops or lower intensity entertainment; offices; studios or housing above retail (storefront retail with vertical mixed use). Typically situated in or adjacent to residential neighborhoods. May transition to neighborhood mixed use.
  - FAR: 0.3 to 0.5, • Building footprints generally less than 20,000 sq. ft., individual storefronts as small as 3,000 sq. ft.;
  - Larger stores with liner buildings; • Parking is less prominent than pedestrian or bicycle features;
  - Generally a 'node' rather than strictly a corridor; • Edge or buffer standards along residential areas.

**Discussion (use numbered or bullet points; summarize and attach department, agency and citizen comments):**

- Staff finds as follows:
- 1. Both abutting property owners (Inter City Oil and J&S V LLC) have signed the vacation petition.
  - 2. The utility easement proposed for vacation has been improved with a 16 inch water distribution pipe, a storm sewer collection pipe, a MN Power electric cable, and Quest phone cable.
  - 3. The electric and phone cables serve only the ICO filling station at 4532 Grand Avenue and will no longer be needed when the ICO is removed as proposed by the development. MN Power anticipates serving the new commercial building with power via the replacement utility easements described in #4 below.
  - 4. Prior to beginning work on the site, the City Engineer and the developer will create an agreement that will require the 16 inch water distribution pipe to be relocated by the developer around the north side of the proposed building and the storm sewer to be relocated by the developer around the rear of the building. The agreement will also require the developer to dedicate utility easements for the relocated utilities (see attached map showing proposed replacement utility easements). The vacation will not be complete until the utilities are relocated, the City has accepted them, and the City has received the replacement utility easements. It will be at that point that the utility easement petitioned for vacation will be useless.
  - 5. Comments were received verbally from Eric Shaffer, City Engineering; and via e-mails (attached) from Rick Nelson, MN Power; and Becky Moore, Quest.
  - 6. An e-mail in support of the vacation was received by Ron Johnson, Johnson Wilson Constructors, Inc.

**Staff Recommendation (include Planning Commission findings, i.e., recommend to approve):**

Recommend to the City Council, based on the findings above, that the petitioned utility easement be vacated, conditioned upon the relocation of utilities impacted by the vacation in a manner approved by the City Engineer and dedication of all utility easements necessary to the relocated utilities.

III C 2

**Attachments (aerial photo with zoning; future land use map; site plan; copies of correspondence)**

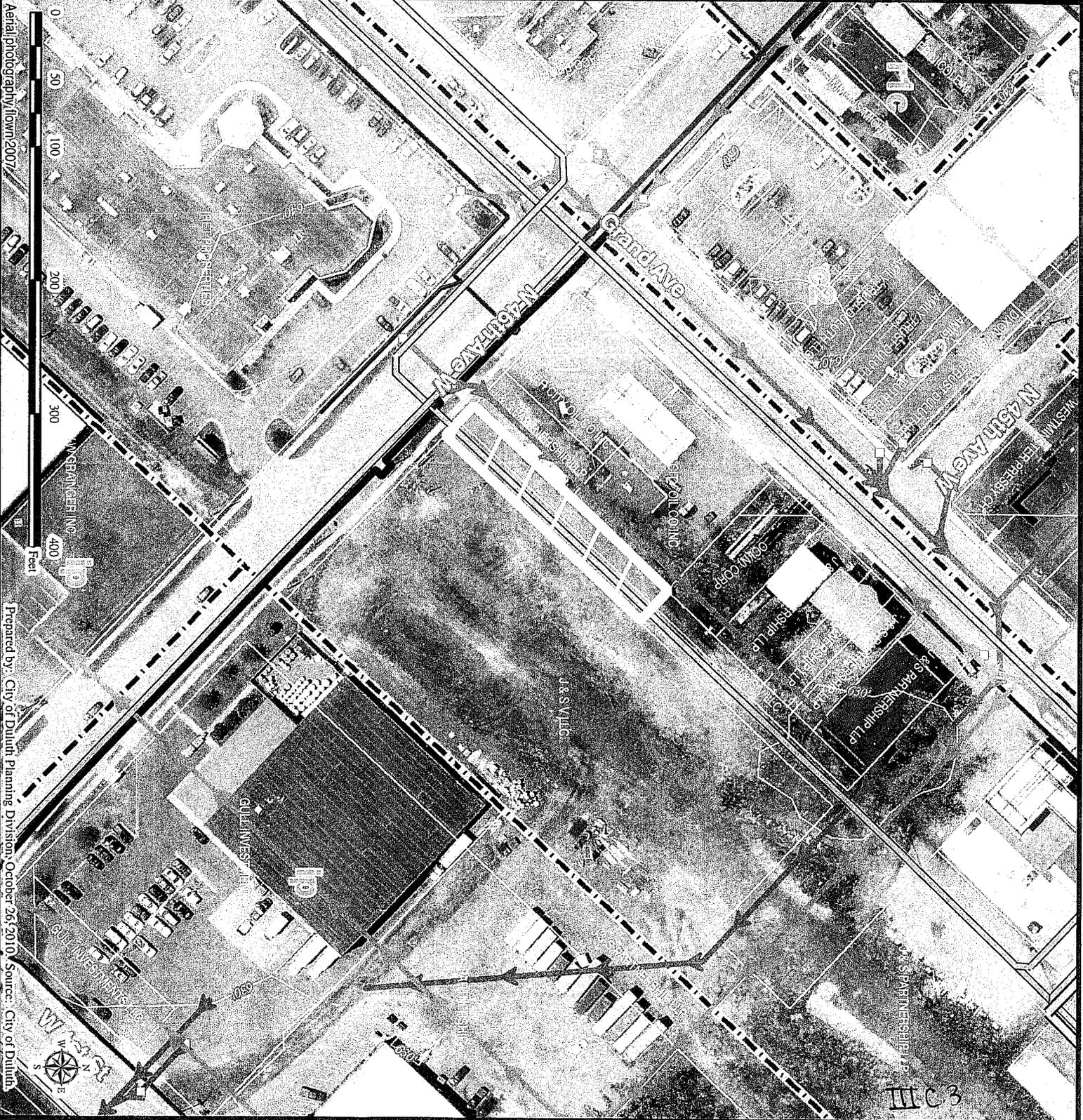
**FN 10108**  
**Velmeir Companies**  
**Vacate utility easement**  
**Subject Site**

**Legend**

-  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
-  Gas Distribution Main
-  8" - 16" Gas Pipes
-  4" - 6" Gas Pipes
-  0" - 4" Gas Pipes
-  Storm Sewer Pipe
-  Floodplain (FEMA)
-  Wetlands (NRRI)
-  10' Contour (elev. change)
-  Zoning (Final)
-  Public Owned Land
-  Tax Forfeited
-  City
-  School
-  County
-  State
-  Federal



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 2007

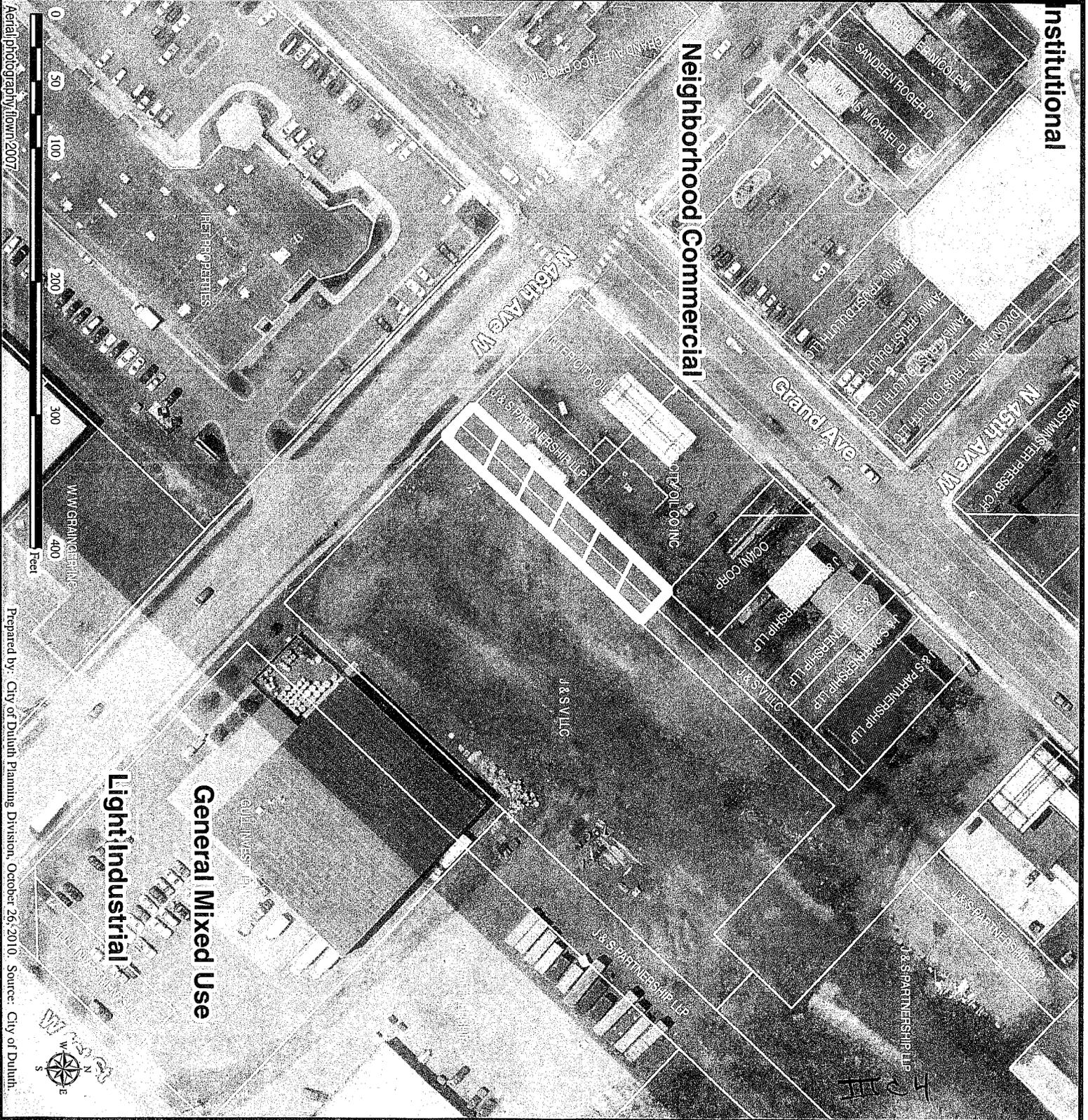
Prepared by: City of Duluth Planning Division, October 26, 2010. Source: City of Duluth

**FN 10108**  
**Velmeir Companies**  
**Vacate utility easement**  
**Future Land Use**

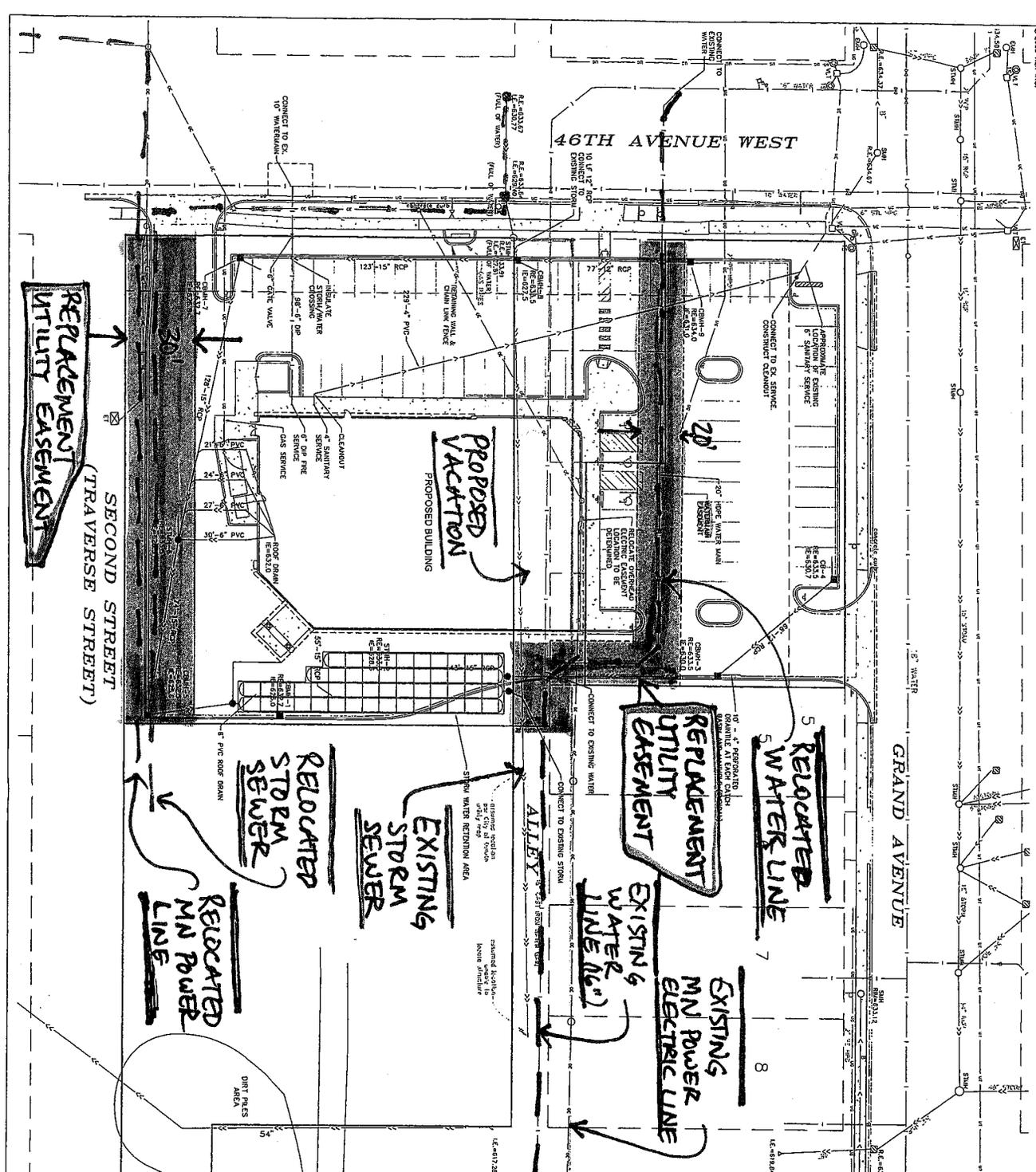
**Legend**

-  Sensitive Lands Overlay
-  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

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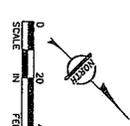
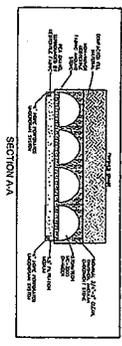




Call 48 hours before digging  
**GOPHER STATE ONE CALL**  
 Mn. Call # 651-454-1002  
 Mo. Call # 651-454-1002  
 Fax # 651-454-1002

**UTILITY NOTES**

CONTRACTOR SHALL FIELD VERIFY LOCATIONS AND ELEVATIONS OF EXISTING UTILITIES. THE CONTRACTOR SHALL IMMEDIATELY NOTIFY THE ENGINEER OF DISCREPANCIES OR VARIATIONS FROM THE PLANS.  
 ALL EXISTING UTILITY LOCATIONS SHOWN ARE APPROXIMATE. CONTRACTOR SHALL VERIFY LOCATIONS AND ELEVATIONS OF EXISTING UTILITIES PRIOR TO EXCAVATION.  
 WATER MAIN, SANITARY SEWER & STORM SEWER CONSTRUCTION SHALL CONFORM TO THE CURRENT EDITION OF STANDARD INSTALLATION AND SANITARY SEWER AND STORM SEWER ASSOCIATION OF MINNESOTA.  
 CATCH BASINS AND MANHOLES IN PAVED AREAS SHALL BE SLOPED 0.04 FEET PER FOOT. ALL CATCH BASINS IN CEMENT SHALL BE SLOPED 0.04 FEET PER FOOT. ALL CATCH BASINS IN CONCRETE SHALL BE SLOPED 0.04 FEET PER FOOT. ALL CATCH BASINS IN THIS PLAN DO NOT REFLECT SLOPED ELEVATIONS UNLESS OTHERWISE NOTED.  
 ALL WATER PIPES TO BE DUCTILE IRON PIPE (D.I.P.) CLASS 52 UNLESS OTHERWISE NOTED.  
 ALL RIGID HYDRANTS SHALL BE LOCATED 5 FEET BEHIND BACK OF CURB UNLESS OTHERWISE NOTED.  
 TYPICAL HYDRANT CONSISTS OF: HYDRANT, GATE VALVE, 2.5" DRIP WATERMAIN AND AIR HYDRANT EXTENSION.  
 HYDRANT EXTENSIONS SHALL BE INCIDENTAL.  
 A MINIMUM OF 7.5 FEET OF COVER IS REQUIRED OVER ALL UTILITIES. A MINIMUM OF 18 INCHES OF COVER IS REQUIRED OVER ALL UTILITIES. A MINIMUM OF 18 INCHES OF COVER IS REQUIRED OVER ALL UTILITIES. UNLESS OTHERWISE NOTED.  
 ALL SANITARY SEWER PIPE TO BE POLYPROPYLENE CHLORIDE PIPE (P.V.C.) SDR 35 UNLESS OTHERWISE NOTED.  
 CONTRACTOR SHALL MAINTAIN AS-BUILT PLANS THROUGHOUT CONSTRUCTION AND SUBMIT THESE PLANS TO ENGINEER UPON COMPLETION OF WORK.



**LEGEND**

PROPOSED	EXISTING
PROPOSED LINE	EXISTING LINE
PROPOSED MANHOLE	EXISTING MANHOLE
PROPOSED CATCH BASIN	EXISTING CATCH BASIN
PROPOSED 12" DIA. 12" COVER	EXISTING 12" DIA. 12" COVER
PROPOSED 18" DIA. 18" COVER	EXISTING 18" DIA. 18" COVER
PROPOSED 24" DIA. 24" COVER	EXISTING 24" DIA. 24" COVER
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SHEET # C6.0  
 PROJECT # 2010145M  
 CVS. PHARMACY  
 GRAND AVE. & 45TH AVE. W.  
 CALUMET, MINNESOTA

THE VELMIR COMPANIES  
 7201 WEST 78TH STREET, SUITE 205  
 BLOOMINGTON, MN 55439

**REVISIONS**

DATE	BY	DESCRIPTION
	RLK	DESIGNED
	ALH	DRAWN
	TBR	CHECKED

I hereby certify that this plan was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.

**RLK ENGINEERS**  
 1122 Garfield Avenue • Suite 1115 • Duluth, MN 55812  
 Phone 218-262-5551  
 Fax 218-262-5552  
 www.rlk-engineers.com

III C5

**Kyle Deming - File No. 10108 - Petition to vacate alley in Block 69 Oneota Division by Velmeir Companies**

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**From:** "Rick Nelson (MP)" <RNELSON@mnpower.com>  
**To:** "KDEMING@duluthmn.gov" <KDEMING@duluthmn.gov>  
**Date:** 11/1/2010 8:23 AM  
**Subject:** File No. 10108 - Petition to vacate alley in Block 69 Oneota Division by Velmeir Companies  
**CC:** "Eric Berube (MP)" <eberube@mnpower.com>, "Tom Leines (MP)" <TLEINES@mnpower.com>, "Jon Peterson (MP)" <jpeterson2@mnpower.com>, "ReedRosandich (MP)" <RROSANDICH@mnpower.com>, "Jim Peck (MP)" <japeck@mnpower.com>, "becky.moore@qwest.com" <becky.moore@qwest.com>  
**Attachments:** Minnesota Power request to re-dedicate a part of vacated 2nd Street (Traverse St).pdf; FN 10108 - Utility Letter.pdf

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Dear Mr. Deming,

In response to the above referenced File Number 10108, Minnesota Power (MP) has reviewed this proposal and is agreeable to vacate the entire alley right-of-way contingent upon the following...1) the existing electric service to the ICO Service Station is no longer needed and 2) a new Utility Easement will be provided by Velmeir Companies for new power line placement in the vacated Second Street (formerly Traverse St.) right-of-way.

The new Utility Easement is necessary to serve the proposed CVS Pharmacy (as shown on the above attached pdf/drawing) with electric power and will allow MP to continue through the property to serve adjoining landowners to the East - within the J&S Development.

Minnesota Power does hereby request the City to re-dedicate a fifteen foot wide utility easement within the north one-half of vacated Second Street (formerly Traverse St.) as shown depicted on the attached pdf/drawing.

To date, MP has not been contacted by the applicant Velmeir Companies regarding the subject alley vacation proposal or relocation of the existing power line facilities that currently serve the ICO Service Station.

Thank you for the opportunity to review this proposal.

Sincerely,



Rick Nelson  
 Minnesota Power  
 Facility Operations  
 3215 Arrowhead Road  
 Duluth, MN 55811  
 218-355-2555

III C 6

**Kyle Deming - petition to vacate a utility easement**

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**From:** "Moore, Becky" <Becky.Moore@qwest.com>  
**To:** "KDEMING@duluthmn.gov" <KDEMING@duluthmn.gov>  
**Date:** 11/2/2010 8:54 AM  
**Subject:** petition to vacate a utility easement

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Kyle,

I have had a chance to review the petition to vacate a utility easement in Block 69, Oneota Division behind ICO by Velmeir Companies (FN 10108) that you sent out. No arrangements have been made to date regarding a relocation as I have not been contacted by Velmeir Companies. Based upon the sketch you sent, Qwest would need to maintain the existing facilities until disconnections were requested by the customers and completed for the address of 4532 Grand Avenue. After that time, Qwest would be willing to vacate the easement if provided a new location with a utility easement that could be used to provide service to the proposed development in the area. A suitable location would be along the south side of the property (along the vacated Second St or Traverse St) in a 30' utility easement. Qwest would seek relocation costs from Velmeir Companies. If you have any questions, please do not hesitate to contact me.

Thank you,  
Becky Moore  
Engineer, Qwest Communications  
218-723-4381

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III C 7