

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

11-0006R

RESOLUTION VACATING THE PORTION OF BIRCH AVENUE LOCATED BETWEEN BLOCKS 26 AND 27, RICE'S POINT DIVISION, AND RETAINING A UTILITY EASEMENT OVER THE NORTHWEST HALF OF THE RIGHT-OF-WAY AND THE SOUTHWESTERLY 20 FEET OF THE VACATION AREA (PETITIONED BY GOODWILL INDUSTRIES INC.).

CITY PROPOSAL:

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city clerk requesting the vacation of the portion of Birch Avenue located between the southwest line of Garfield Avenue and the southwest line of the alley west of Garfield Avenue (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 10102) 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 street is useless for vehicular and pedestrian purposes, but that portions of the street are needed for utility purposes as noted in (c) below; and

(c) Minnesota Power has requested a utility easement be retained over the northwest half of the vacation area to preserve access to an existing power distribution line and the city engineer has requested a utility easement for a portion of the requested vacation area to preserve access to a sanitary sewer force main running approximately in the alley; and

(d) The city planning commission, at its October 12, 2010, regular meeting, recommended approval of the vacation petition and easement reservation; and

(e) The city council of the city of Duluth approves the vacation of the following-described portion of platted Birch Avenue as more particularly described below and as described and depicted on Public Document No. _____:

All that part of the northwesterly 74.90 feet of Birch Avenue in the

plats of RICE'S POINT and NORTH ALBERT POSEY TRACT which lies between Line A and Line B, described as follows:

Line A: Beginning at the most easterly corner of Lot 80, Second Street, NORTH ALBERT POSEY TRACT, thence southeasterly on the southeasterly extension of the northeasterly line of said Lot 80, to the most northerly corner of Block 25, RICE'S POINT, and there terminating;

Line B: Beginning at the most easterly corner of Block 26, RICE'S POINT, thence southeasterly on the southeasterly extension of the southwesterly right-of-way of Garfield Avenue (formerly Third Street) to the most northerly corner of Block 27, RICE'S POINT, and there terminating;

Subject to the retention of an easement for utility purposes over the following-described parts of said portion of platted Birch Avenue as more particularly described below and as described and depicted on Public Document No. _____:

The northwesterly 37.50 feet of Birch Avenue in the plat of RICE'S POINT and NORTH ALBERT POSEY TRACT which lies between Line A and Line B, as described hereinbefore;

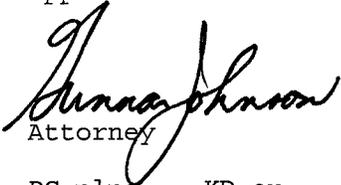
AND

The southwesterly 20.00 feet of the northwesterly 37.40 feet of the southeasterly 37.50 feet of that portion of Birch Avenue in the plat of RICE'S POINT which lies between Line A and Line B, as described hereinbefore; 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 street to be vacated and utility easements retained.

Approved as to form:


Attorney

PC:plng KD:eu 12/28/2010

STATEMENT OF PURPOSE: This resolution vacates that part of Birch Avenue located between Garfield Avenue and the alley southwest of Garfield Avenue. The purpose of the vacation is to allow Goodwill Industries to expand a loading dock at the northwest end of their building.

This section of street has not been improved for vehicular or pedestrian use, but it does contain a power line and a sanitary sewer force main. This resolution retains utility easements over the northwest half of the street and the southwesterly 20 feet.

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

On October 12, 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 and easement retention.

Petition Received: August 31, 2010

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

Legal Descriptions:

Area to be vacated: 

All that part of the Northwestery 74.90 feet of Birch Avenue in the plats of RICE'S POINT and NORTH ALBERT POSEY TRACT which lies between Line A and Line B, described as follows:

Line A: Beginning at the most easterly corner of Lot 80, Second Street. NORTH ALBERT POSEY TRACT, thence southeasterly on the southeasterly extension of the northeasterly line of said Lot 80, to the most northerly corner of Block 25, RICE'S POINT, and there terminating.

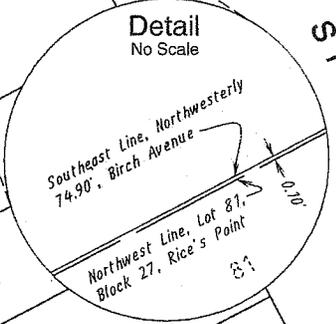
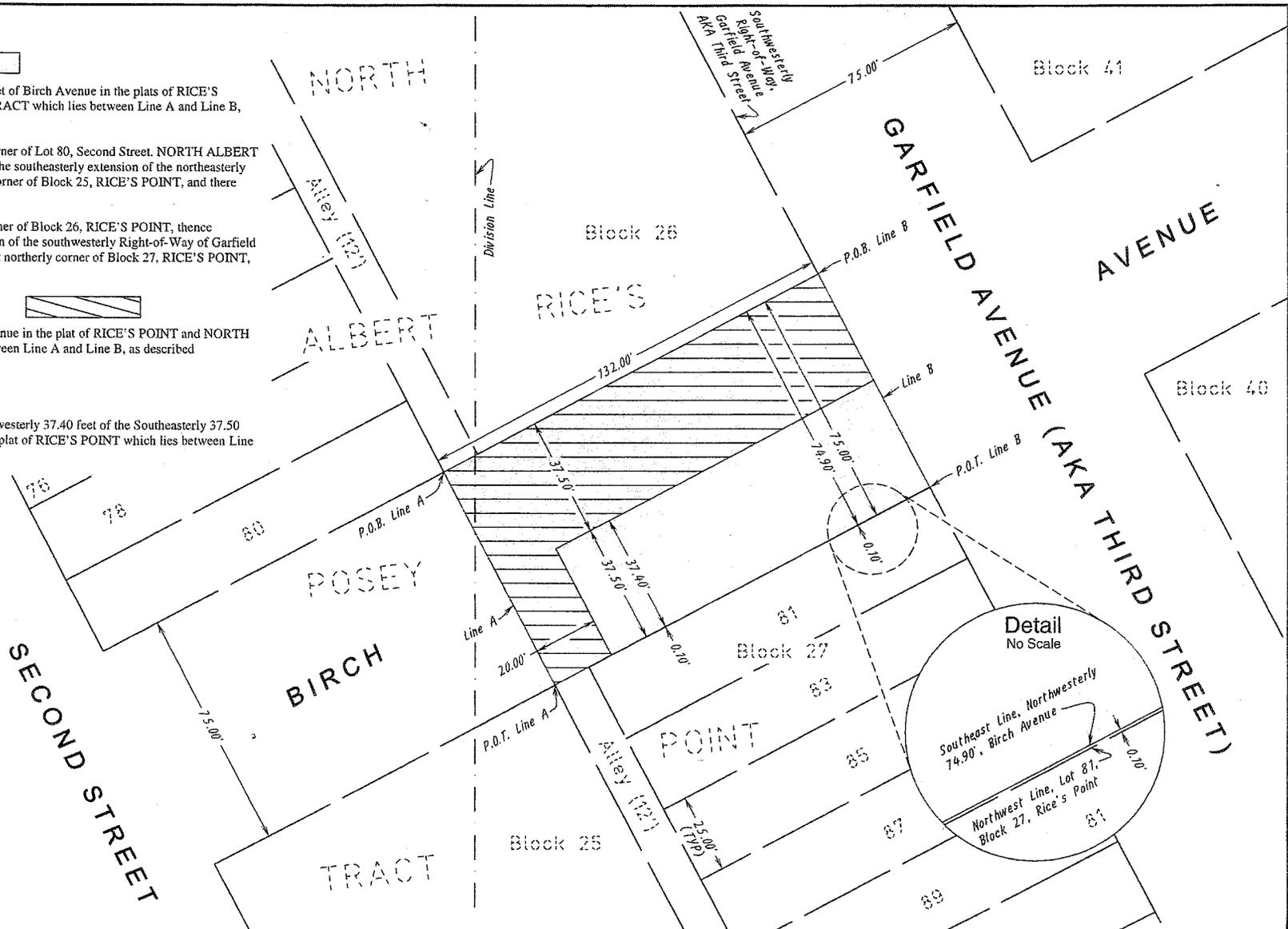
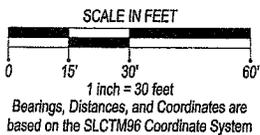
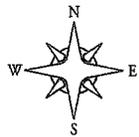
Line B: Beginning at the most easterly corner of Block 26, RICE'S POINT, thence southeasterly on the southeasterly extension of the southwesterly Right-of-Way of Garfield Avenue (formerly Third Street) to the most northerly corner of Block 27, RICE'S POINT, and there terminating.

Area to be retained for utility easement: 

The Northwestery 37.50 feet of Birch Avenue in the plat of RICE'S POINT and NORTH ALBERT POSEY TRACT which lies between Line A and Line B, as described hereinbefore.

AND

The Southwestery 20.00 feet of the Northwestery 37.40 feet of the Southeastery 37.50 feet of that portion of Birch Avenue in the plat of RICE'S POINT which lies between Line A and Line B, as described hereinbefore.



 ENGINEERS • SURVEYORS • PLANNERS SALO ENGINEERING, INC. 4560 Norway Pines Place • Duluth, Minnesota 55811 • 218/727-8796	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. <i>David M. Szyszkoski</i> DATE 12/21/2010	1 2 3	Exhibit of Vacation of a portion of Birch Avenue, being in RICES POINT and NORTH ALBERT POSEY TRACT, Duluth, St. Louis County, Minnesota For: Goodwill Industries
	DAVID SZYSZKOSKI MINNESOTA LICENSE NUMBER 47046	NO DATE REVISION	JOB NO. L1897G DATE: 12/21/2010
	4560 Norway Pines Place • Duluth, Minnesota 55811 • 218/727-8796		



CITY OF DULUTH

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

STAFF REPORT

File Number	10102	Contact	Kyle Deming, kdeming@duluthmn.gov	
Application Type	Street Vacation	Planning Commission Date	10-12-2010	
Deadline for Action	Application Date	08-31-2010	60 Days	N/A
	Date Extension Letter Mailed	N/A	120 Days	N/A
Location of Subject	Birch Avenue west of Garfield Avenue (Rice's Point)			
Applicant	Doug Carlson, Goodwill Industries, Inc.	Contact	218-722-6351, dcarlson@goodwillduluth.org	
Agent		Contact		
Legal Description	That part of Birch Avenue between Blocks 26 and 27, Rice's Point Division.			
Neighbor Letter Date	06-28-2010	Number of Neighbor Letters Sent	5	

Proposal

Vacate Birch Avenue from Garfield Avenue to the west line of the alley west of Garfield Avenue. The purpose of the vacation is to allow Goodwill Industries to expand a loading dock at the north end of their building.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	M-2	Vehicle storage	General Industrial
North	M-2	Commercial/Industrial	General Industrial
South	M-2	Goodwill Industries	General Industrial
East	M-2	Commercial/Industrial	General Industrial
West	M-2	Railroad Yard	Transportation/Utilities

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 CI

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

1. Governing Principles:

- Principle #7 - Create and maintain connectivity.
- Principle #11- Include consideration for education systems in land use actions.
- Principle #12 - Create efficiencies in delivery of public services.

2. The Comprehensive Plan defines "General Industrial" as areas for manufacturing, processing and other activities that may have off-site impacts and are generally isolated from other uses or buffered from them. Sites should have direct access to major regional transportation facilities and other infrastructure.

- Larger parcels;
- Variable densities;
- Performance standards for environmental effects and nuisance mitigation.

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

Staff finds as follows:

1. Both abutting property owners have signed the vacation petition.
2. The right of way proposed for vacation has not been improved as a public street for vehicular or pedestrian purposes. It is currently used by the abutting property owners for vehicle parking. It is not likely to be needed for vehicular and pedestrian access in the future redevelopment of the area according to Andy McDonough from the Duluth Seaway Port Authority (see attached e-mail). Fire Marshal Pete Dane has advised (see attached e-mail) that it is not necessary to keep the street right of way intact as long as the abutting property owners maintain adequate fire lanes to allow a fire rig to get to within 150' of all points of the buildings' exterior, per MN State Fire Code.
3. Portions of the right of way are needed for utility purposes and staff recommends retaining utility easements over the areas described below and on the attached map.
 - a. MN Power has requested that, if the petitioned vacation is granted, that a utility easement be retained over the northerly half of the current right of way (37.5' wide) to maintain access to electric service lines (see attached e-mail from Rick Nelson).
 - b. The City of Duluth has a sanitary sewer force main running in the alley area that needs to be preserved according to the attached e-mail from Eric Shafer, City Engineering Division. We recommend that, if the petitioned vacation is granted, that a utility easement be retained over the westerly 20' of the vacation area, measured from the west line of the existing alley extended.
4. No additional comments were received.

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

Recommend to the City Council, based on the findings above, that the petitioned street be vacated, subject to retaining utility easements over the northerly half of the right of way and the westerly 20' of the right of way as measured from the west line of the alley extended.

III C 2

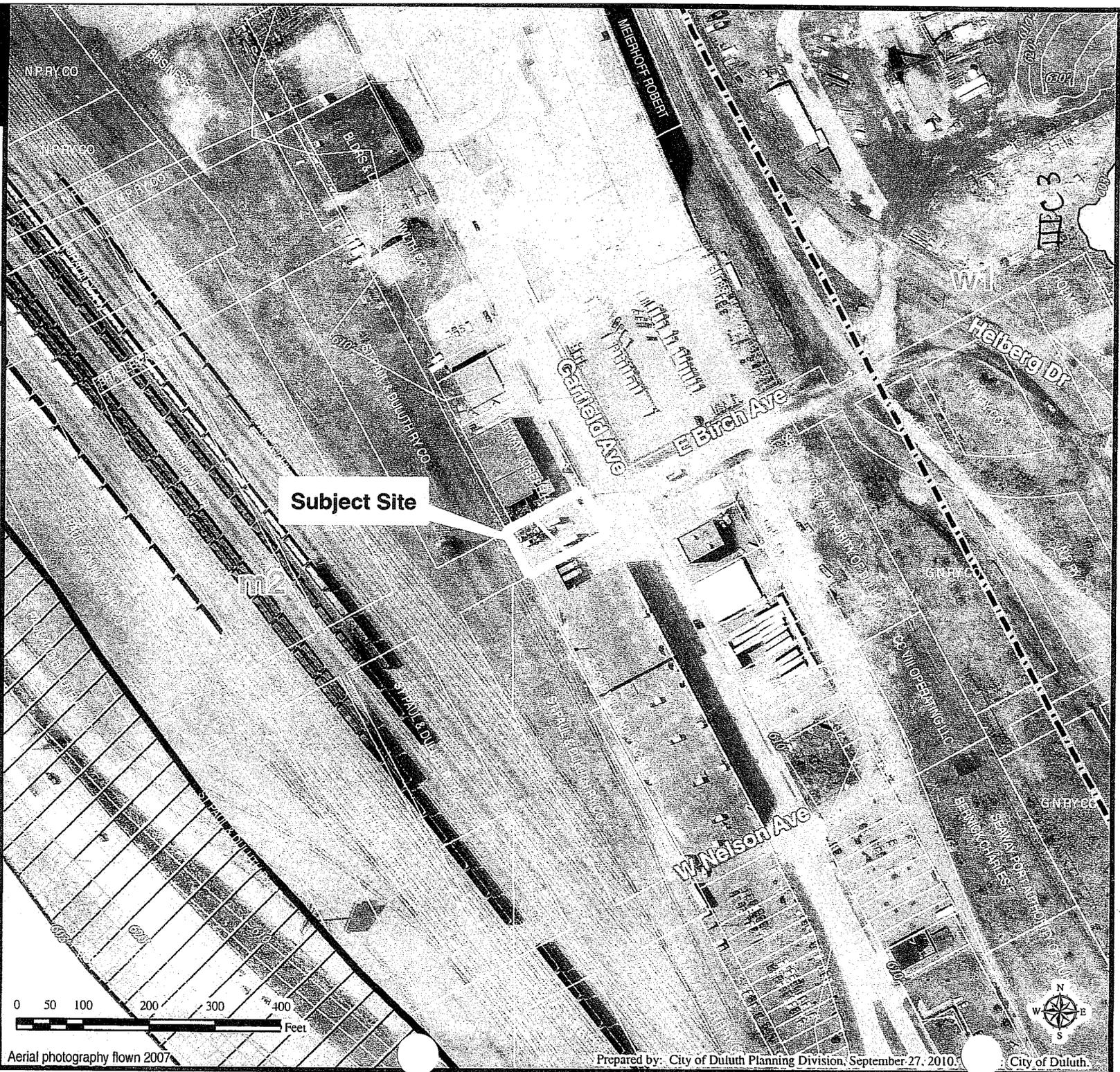
Attachments (aerial photo with zoning; future land use map; site plan; copies of correspondence)

FN 10102
Vacate Birch Ave
Goodwill Industries
 Subject Site

Legend

-  Trout Stream (GPS)
-  Other Stream (GPS)
-  Floodplain (FEMA)
-  Wetlands (NRR1)
-  10' Contour (elev. change)
-  Zoning (Final)
- Shorland Management Zones**
-  Natural Environment
-  Recreational Development
-  General Development- Class 1
-  General Development- Class 2
- 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.



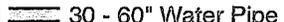
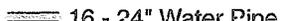
Aerial photography flown 2007

Prepared by: City of Duluth Planning Division, September 27, 2010.

City of Duluth.

Legend

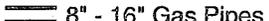
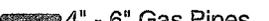
Water Distribution System

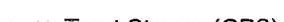
-  30 - 60" Water Pipe
-  16 - 24" Water Pipe
-  4 - 6" Water Pipe

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
-  Trout Stream (GPS)
-  Other Stream (GPS)

Floodplain (FEMA)

Wetlands (NRR)

10' Contour (elev. change)

 Zoning (Final)

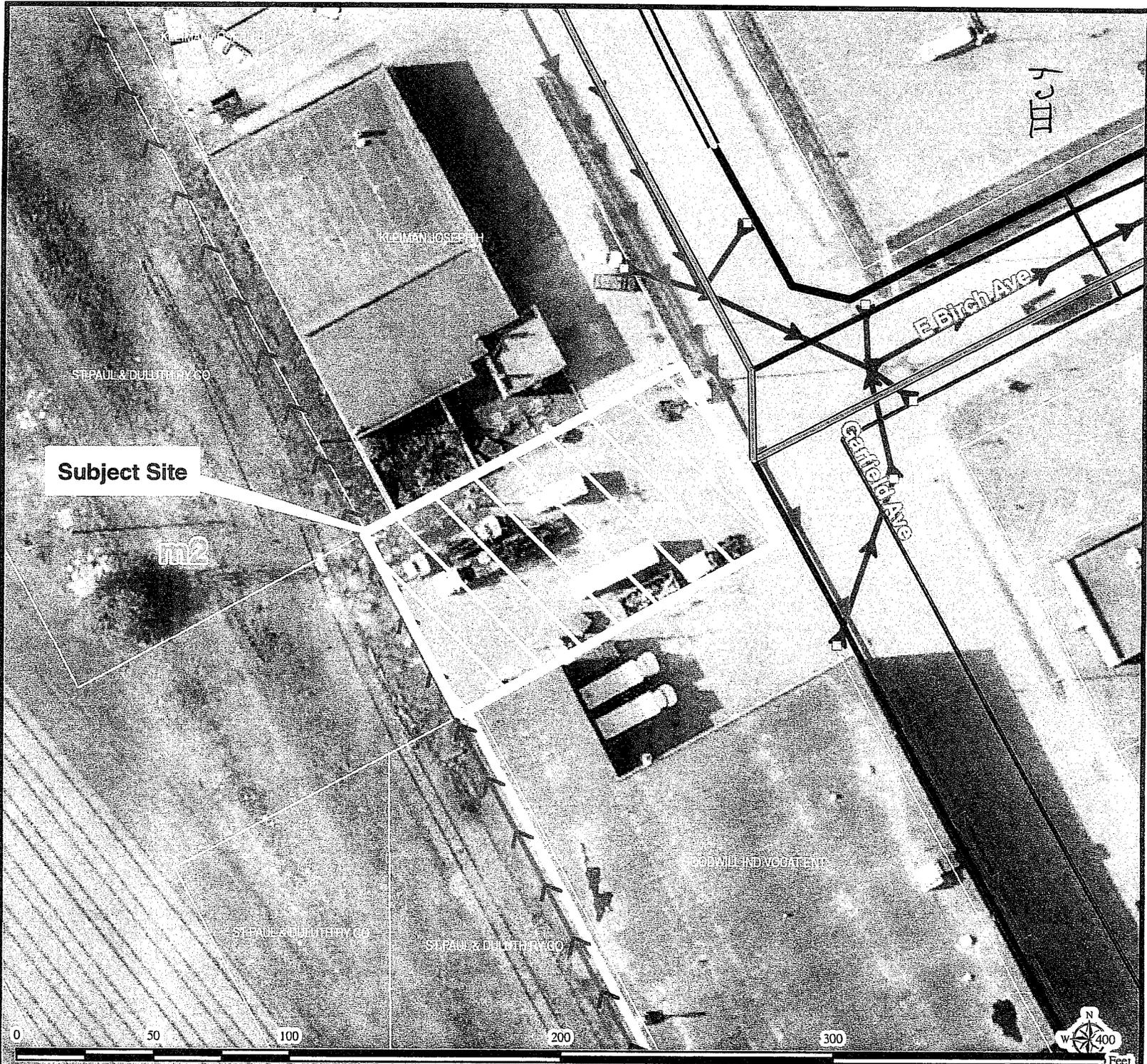
Shorland Management Zones

-  Natural Environment
-  Recreational Development
-  General Development- Class 1
-  General Development- Class 2

Public Owned Land

- Tax Forfeited
- City
- School
- County
- State
- Federal

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Aerial photography flown 2007

Prepared by: City of Duluth Planning Division, September 27, 2010.

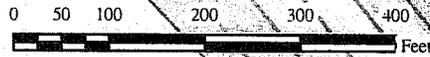
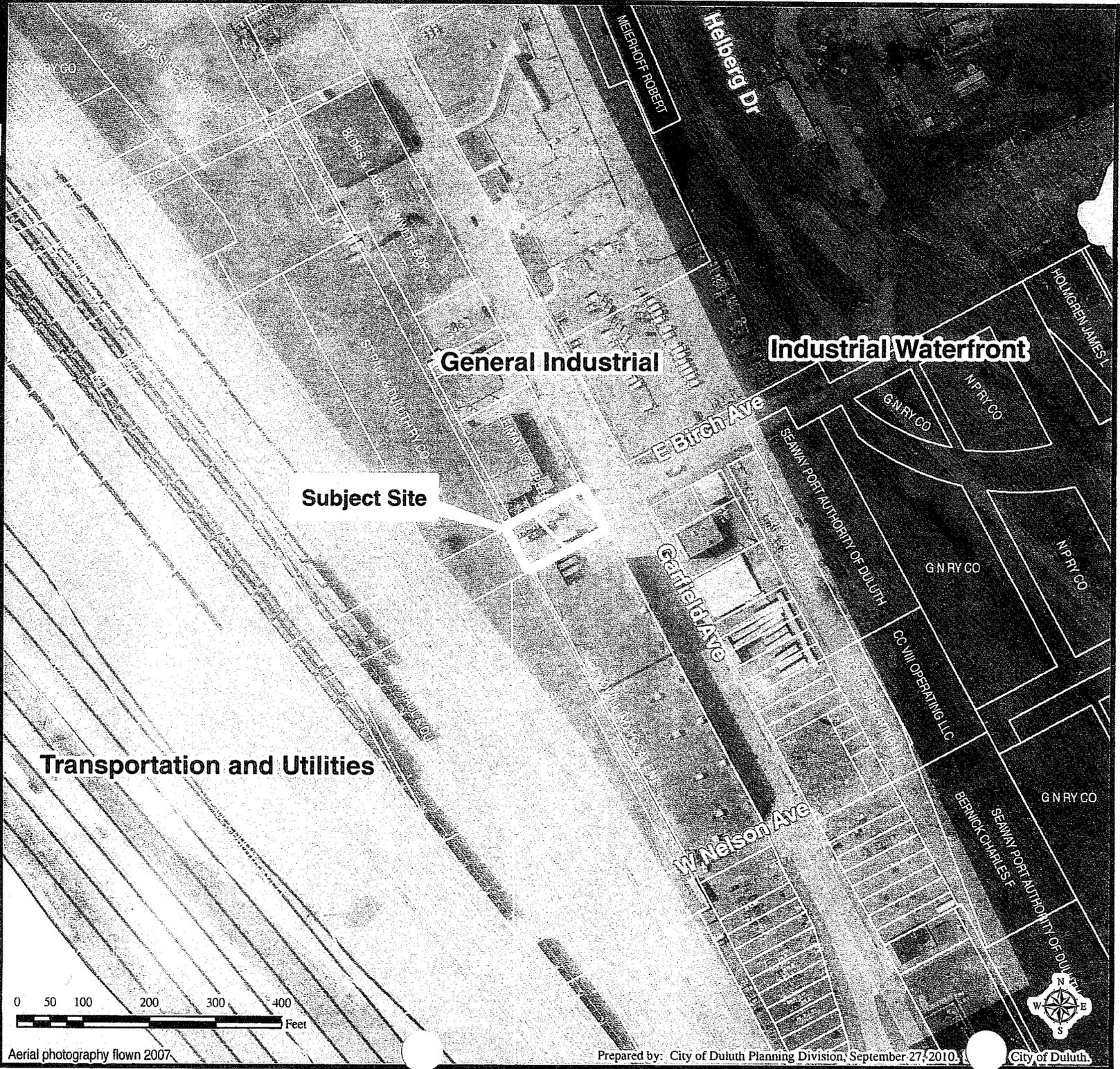
City of Duluth

FN 10102
Vacate Birch Ave
Goodwill Industries
 Future Land Use

Legend

-  Sensitve 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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Aerial photography flown 2007.

Prepared by: City of Duluth Planning Division, September 27, 2010.



City of Duluth

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Avenue SW
 Garfield
 Second

VACATION AREA
 AREA TO BE RETAIN FOR UTILITY EASEMENT

Vacated & rearranged AS 1st SUB DIV OF RIGHT OF WAY REAR BOOK #349

Cond. - Ded. #349

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 30/100 A.

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120	119

OutLot 1.
 A. 0.38
 17/100 A.

OutLot 2.
 A. 0.18
 41/100 A.

OutLot 3.
 A. 0.34

Nelson
 VAC #795
 IICC6

(379)

FILE NO. 271
 RECEIVED 12-11-67

Kyle Deming - RE: possible vacation of Birch St.

From: "Andy McDonough" <amcdonough@duluthport.com>
To: <KDEMING@duluthmn.gov>
Date: 8/19/2010 9:38 AM
Subject: RE: possible vacation of Birch St.

Kyle,

I don't think there will be any development of this site in the foreseeable future unless it involved the expansion/redevelopment of one of the buildings that have frontage on Garfield. The 2,500 foot strip is too narrow to accommodate development on its own. It would only be a problem if the railroad decided to abandon the yard in which case Birch street would provide additional circulation. This event is highly unlikely. I would not oppose the vacation.

Andy McDonough

From: KDEMING@duluthmn.gov [mailto:KDEMING@duluthmn.gov]
Sent: Wednesday, August 18, 2010 11:19 AM
To: Andy McDonough
Subject: possible vacation of Birch St.

Hi Andy,

Hope all is well with you.

Goodwill Industries has contacted us about the possibility of vacating Birch St. beside their building where they have their loading dock. They want to add an additional loading dock at the 1st floor elevation in the area of the street easement. Please see the attached map.

I am concerned that this vacation will reduce access to the railroad parcel to the west of Goodwill and, possibly, hamper redevelopment of the site in the future. Nelson St. has been vacated where Goodwill's front entrance is located and the plat ends near the new building that George Sherman put up on former RR land. So my concern is that there would be an area 2,500 feet long along Garfield Ave. where you could no longer access the RR parcel.

My questions to you are:

- 1) What is the likelihood that the RR parcel will redevelop at sometime in the reasonable future?
- 2) Do you share my concern about reduced access hampering redevelopment of the RR parcel?
- 3) Would you support or oppose the proposed vacation of Birch St?
- 4) Any other thoughts on the matter?

IIIc7

Thanks,
--Kyle

Kyle Deming, Planner II
City of Duluth
Planning Division
411 West First Street, Room 402
Duluth, Minnesota 55802
Phone: 218-730-5580, Fax: 218-730-5904
kdeming@duluthmn.gov

III C 8

From: Pete Dane
To: Ulrich, Edna
Date: 9/28/2010 4:20 PM
Subject: Re: Petition to Vacate birch Ave from Garfield Ave to alley

Edna, I have met with the folks from Goodwill on this matter. They are aware of the need for fire access to be maintained if the street is vacated. The Fire Marshal's Office has no objection as long as we can get a fire rig within 150 ft. of all points of the building as per the Minnesota State Fire Code.
Thanks,
Pete

>>> Edna Ulrich 9/28/2010 2:27 PM >>>
Please review the technical aspects and desirability of this proposal and provide your comments by Monday, October 4, 2010.

Edna Ulrich
Administrative Specialist
Planning Division
730-5335
eulrich@duluthmn.gov

ITC9

Kyle Deming - Minnesota Power facilities in Birch Ave - FN 10102 (Goodwill Industries request)

From: "Rick Nelson (MP)" <RNELSON@mnpower.com>
To: "KDEMING@duluthmn.gov" <KDEMING@duluthmn.gov>
Date: 10/4/2010 1:17 PM
Subject: Minnesota Power facilities in Birch Ave - FN 10102 (Goodwill Industries request)
CC: "eshaffer@duluthmn.gov" <eshaffer@duluthmn.gov>, "dcarlson@goodwillduluth.org" <dcarlson@goodwillduluth.org>, "doug.greene@krechojard.com" <doug.greene@krechojard.com>, "Jon Peterson (MP)" <jpeterson2@mnpower.com>, "Tom Leines (MP)" <TLEINES@mnpower.com>
Attachments: Aerial of Minnesota Power facilities in Birch Ave - FN 10102 .doc

Dear Mr. Deming,

In response to your below e-mail request and upon further discussions with Doug Carlson, Goodwill Industries and Doug Greene, Krech and Ojard, Minnesota Power (MP) is agreeable to vacate the entire Birch Ave right-of-way contingent upon retaining utility easement coverage over the northerly one-half of said Birch Ave. right-of-way.

I'm forwarding an aerial depiction of Birch Ave. right-of-way looking from south to north for your ease of reference.

Minnesota Power (MP) is requesting the City to retain utility easement over the northerly one-half of Birch Ave. right-of-way in order to provide easement coverage over its exiting power line placement as shown depicted/labeled Pole #1 and Pole #2 on the attached aerial.

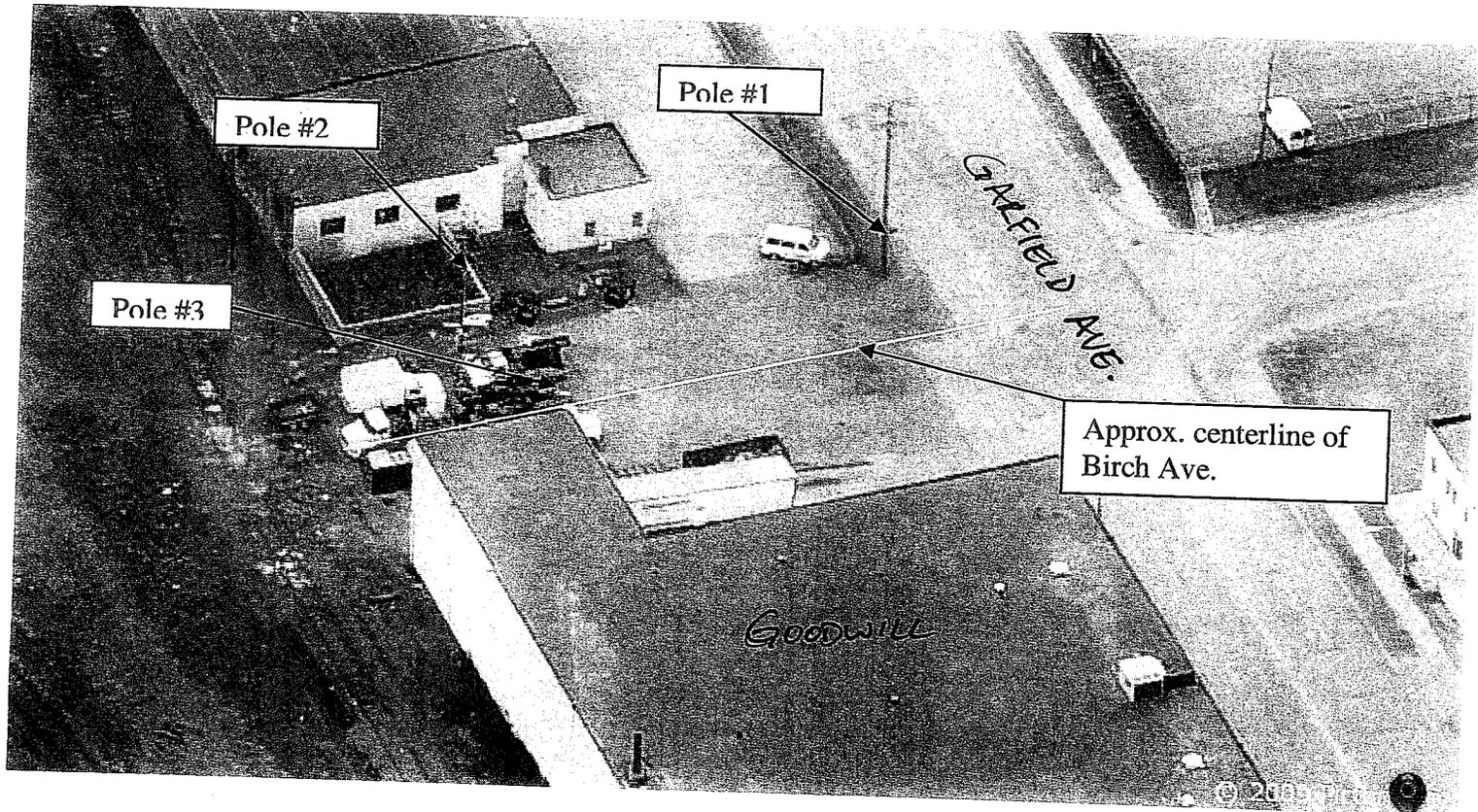
Pole #3 is specifically serving Goodwill Industries and is located within the southerly one-half of Birch Ave. right-of-way.

MP is not concerned about retaining (platted) utility easement coverage over Pole #3 because (according to MP's Line Extension Rules) Goodwill Industries must provide MP with right-of-way to serve their facility.

I hope this helps.

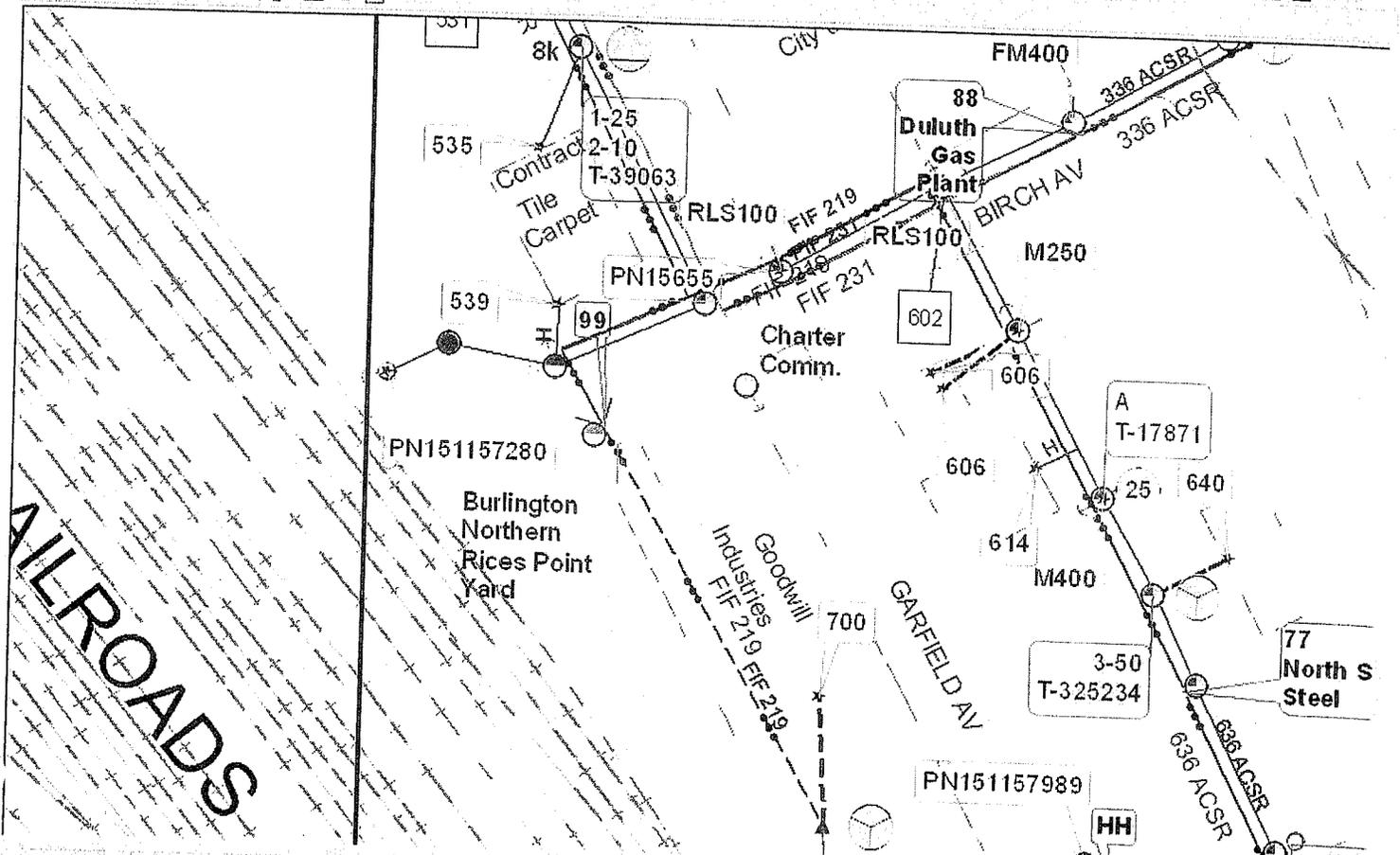
Rick Nelson
355-2555

III C 16



N





III 12

From: Eric Shaffer
To: Kyle Deming
Date: 10/1/2010 12:08 PM
Subject: Re: FW: FW: Fwd: Petition to Vacate birch Ave from Garfield Ave toalley

without more detail, we are not ready to agree to relocate the forcemain. I am not saying it is not possible, but would need more detail. As such, I would like to request that we maintain a utility easement in the alley for 10 feet on either side of the forcemain.

>>> Kyle Deming 10/1/2010 12:05 PM >>>
Eric,

See attached.

--Kyle

>>> "Doug Carlson" <dcarlson@goodwillduluth.org> 10/1/2010 12:00 PM >>>
Kyle: Please forward this on to Eric Schaffer as I do not have an e-mail address for him.

Doug Carlson, Assistant Director
Safety Director
Goodwill Industries
700 Garfield Avenue
Duluth, MN 55802
218.722.6351
dcarlson@goodwillduluth.org

-----Original Message-----

From: Doug Greene [<mailto:doug.greene@krechojard.com>]
Sent: Friday, October 01, 2010 9:37 AM
To: Doug Carlson
Cc: Marge Bray; Greg Conkins
Subject: Re: FW: Fwd: Petition to Vacate birch Ave from Garfield Ave toalley

Greetings all;

We will be contacting the railroad property owner to discuss purchase of their southernly portion of the vacated alley in order to build the loading dock addition for Goodwill straight out from the backside (opposite side from Garfield Avenue). This will include the relocation of the force main to the backside of the loading dock (straight to the assumed North). In the event that an agreement is not possible with the railroad regarding this scenario the a redesign would be required moving the loading dock addition 6 feet closer to Garfield Avenue which should not effect the existing force main. This is my understanding of the matter at this time.

Respectfully,

Douglas L. Greene, AIA
Project Architect
Krech Ojard & Associates