

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

11-0204R

RESOLUTION VACATING THE PORTION OF STREET AND ALLEY
LOCATED NEAR BLOCKS 10 AND 11, CLAGUE AND PRINDLE'S
ADDITION (MILLER-DWAN FOUNDATION HOSPICE HOUSE LLC).

CITY PROPOSAL:

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city planning division requesting the vacation of the 33 foot wide Kentucky Avenue located between Blocks 11 and 10 of Clague and Prindle's Addition to Duluth, and the 16 foot wide alley located within Block 10 of Clague and Prindle's Addition to Duluth; 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 11033) 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 avenue and alley will be useless for vehicular, utility and pedestrian purposes; and

(c) The city planning commission, at its April 12, 2011, regular meeting recommended approval of the vacation petition; and

(d) The city council of the city of Duluth approves the vacation of the following-described avenue and alley described below and as described and depicted on Public Document No. _____:

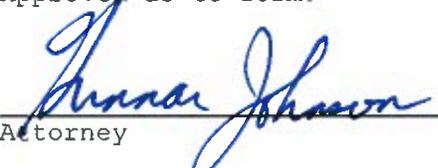
The south half of Davis Street lying between the centerline of Rice Lake Road and the extended centerline of Kentucky Avenue; and

The east half of Kentucky Avenue adjacent to Lots 1, 3, 5, 7, 9, 11, 13 and 15, Block 10, Clague and Prindle's Addition to Duluth; and

Block 10 Alley laying between the centerline of Rice Lake Road and the extended southerly lines of Lots 15 and 16, Block 10, Clague and Prindle's Addition to Duluth; and

(e) 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 alley to be vacated and utility easements retained.

Approved as to form:



Attorney

PC:plng SR:eu 4/14/2011

STATEMENT OF PURPOSE: This resolution vacates the 33 foot wide Kentucky Avenue located between blocks 11 and 10 of Clague and Prindle's Addition to Duluth and the 16 foot wide alley located between block 10 of Clague and Prindle's Addition to Duluth.

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

On April 12, 2011, the Duluth city planning commission held a public hearing on the proposal and voted 6-0 to recommend that the city council approve the vacation and easement retention.

Petition Received: March 1, 2011

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

Applicant:

Miller-Dwan Foundation Hospice House, LLC
c/o Pat burns
502 East Second Street
Duluth, Minnesota 55805

Owners Agent:

William Burns
1000 US Bank Place
Duluth, MN 55802



CITY OF DULUTH
Planning Division

411 W 1st St, Rm 208 * Duluth, Minnesota 55802-1197
Phone: 218/730.5580 Fax: 218/723-3559

STAFF REPORT

File Number	FN 11-033	Contact	Steven Robertson	
Application Type	Vacation of Public Right of Way	Planning Commission Date	April 12, 2011	
Deadline for Action	Application Date	March 1, 2011	60 Days	April 30, 2011
	Date Extension Letter Mailed	March 10, 2011	120 Days	June 30, 2011
Location of Subject	Northwest corner of Pecan Avenue and Rice Lake Road (Duluth Heights)			
Applicant	Miller-Dwan Foundation Hospice House LLC	Contact		
Agent	William M. Burns	Contact	wmb@hanftlaw.com	
Legal Description	See Attachment			
Site Visit Date	March 25, 2011	Sign Notice Date	March 28, 2011	
Neighbor Letter Date	March 25, 2011	Number of Letters Sent	14	

Proposal

Applicant wishes to vacate land dedicated for public right-of-way. According to the applicant, "None of these streets are in use; and we obviously willing to discuss any utility or issues that may arise from the County, given the Rice Lake Road status, etc".

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	RR-1	Vacant	Preservation
North	R-2	Apartments	Urban Residential
South	R-1	Vacant and One Home	Preservation
East	R-1	Single Family Homes	Low-Density Neighborhood
West	R-1	Hospice House	Preservation

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 the UDC Section 50-37.6. The Planning Commission shall review the proposed vacation, and council shall approve the proposed vacation, or approve it with modifications, if it determines that the street, highway or easement proposed for vacation:

1. Is not and will not be needed for the safe and efficient circulation of automobiles, trucks, bicycles or pedestrians or the efficient supply of utilities or public services in the city;
2. Where the street terminates at a waterfront or shoreline, the street is not and will not be needed to provide pedestrian or recreational access to the water;
3. Is not otherwise needed to promote the public health, safety or welfare of the citizens of Duluth.

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

III E I

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

1. The site was rezoned to S-Suburban on 02/08/2010 in preparation for the proposed project. Suburban zoning allowed "hospitals or institutions of an educational, religious, charitable or philanthropic nature; provided, that such buildings shall not occupy more than 10% of the total area of the lot and be set back a distance of not less than 2' for each 1' of building height."
2. Council approved on 02/08/2010 the sale of slightly less than one acre of land along the eastern end of the site to Miller-Dwan Foundation. The land is to be used only for a driveway and sign.

Governing Principles: Principle #9 - Support private actions that contribute to the public realm.

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

Staff finds as follows:

1. The only affected property owner of the vacation is the applicant.
2. The right of way proposed for vacation has not been improved, and it will not be needed in the future.
3. There are no utilities in the right of way proposed to be vacated.
4. No comments were received from utilities or governmental agencies on the proposed vacation. There were two questions from citizens on the vacation process.

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

Staff recommends that the Planning Commission recommend approval to the City Council, based on the findings above, that the petitioned public right of way be vacated without any conditions.

III E2

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

EXHIBIT A

- The South half of Davis Street lying between the centerline of Rice Lake Road and the extended centerline of Kentucky Avenue;
- The East half of Kentucky Avenue adjacent to Lots 1, 3, 5, 7, 9, 11, 13 and 15, Block 10, Clague and Prindle's Addition to Duluth; and
- Block 10 Alley lying between the centerline of Rice Lake Road and the extended Southerly lines of Lots 15 and 16, Block 10, Clague and Prindle's Addition to Duluth.