

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

11-023-0

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO ODYSSEY DEVELOPMENT A CONCURRENT USE PERMIT FOR PARKING IN THE RIGHT-OF-WAY LOCATED ON AN 18 FOOT STRIP ON THE NORTH SIDE OF SOUTH STREET ADJACENT TO PROPERTY AT 431 SOUTH 23RD AVENUE EAST.

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 Odyssey Development and its successor(s) in interests, referred to herein as the permittee, to construct and maintain parking on and provide an easement for public sidewalk on the south ten feet of Lots 9 and 10 referred to herein as private improvements, upon or within the following described areas of the public easement and temporarily occupy such easement for such purpose:

an 18 foot strip in the right-of-way of South Street abutting from the west line of Lot 10 to the east line of Lot 9, Block 26, Endion Division, as shown in Public Document No. _____.

Section 2. Before this ordinance shall be effective for any purpose whatsoever, the permittee shall file with the city clerk a duly executed and acknowledged written acceptance of the terms of this ordinance and 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 the 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 easement occupied pursuant to this ordinance whether said activities are performed by the permittee or its employees, agents or

contractors; and

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

(d) The policy shall contain a condition that may not be cancelled 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.

Current ISO additional insured endorsement CG 20 10 is not acceptable. If the ISO 20 10 is used, it must be pre-2004 edition.

Permittee shall cause a current version of the required insurance certificate to be filed with the city clerk while permission granted by this ordinance is exercised.

Section 3. 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 4. By accepting the terms of this ordinance, the permittee agrees to save 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. The permittee agrees that the city of Duluth shall not be liable for damage caused to the private improvements while the city engage in the repair and maintenance to, or replacement of, the public improvements or public utilities, including any snow removal operations. 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 5. 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, 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.

Section 6. Upon the sale or transfer of permittee's interest in the permit granted by this ordinance, the permittee shall provide written notice to the city clerk within five days of such transfer. The permittee's successor in interest shall file with the city clerk 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 7. 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. above.

Section 8. The permittee shall observe the following conditions:

(a) Permittee's use of the public easement shall be limited to the designated area shown on page III E8 FN11-055 of the June 14, 2011 staff report to the planning commission (Public Document No. _____); 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 agrees to convey to the city a pedestrian easement ten feet wide along the southerly portion of Lots 9 and 10, Block 26, Endion Division.

Section 9. The following events shall automatically cause the termination

of the term of this ordinance:

(a) the failure by the permittee to file acceptance of this ordinance as specified in Section 2 within 30 days after this ordinance takes effect; or

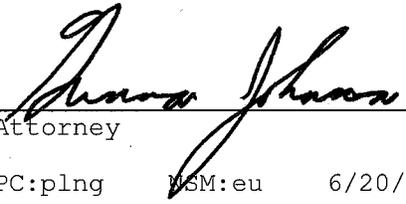
(b) the failure by the permittee to file the required insurance certificate as specified in Section 2 30 days after this ordinance takes effect; or

(c) the failure of the permittee to commence the improvements authorized by this ordinance within 120 days after this ordinance takes effect; or

(d) the failure of the permittee to convey the pedestrian easement described in Section 8, paragraph ©) above within 60 days of the effective date of this ordinance;

Section 10. This ordinance shall take effect and be in force 30 days from and after its passage and publication.

Approved as to form:



Attorney

PC:plng WSM:eu 6/20/2011

STATEMENT OF PURPOSE: On June 14, 2011 the planning commission held a public meeting on the proposal, and voted 9 yeas, 0 nays, and 0 abstentions to recommend that the city council approve the request for a concurrent use of streets as requested.

Petition Received: May 03, 2011

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



City Planning

HKTC, LLC
Concurrent Use Permit
North Side of South Street.
FN11-055

III E 4



Legend

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.

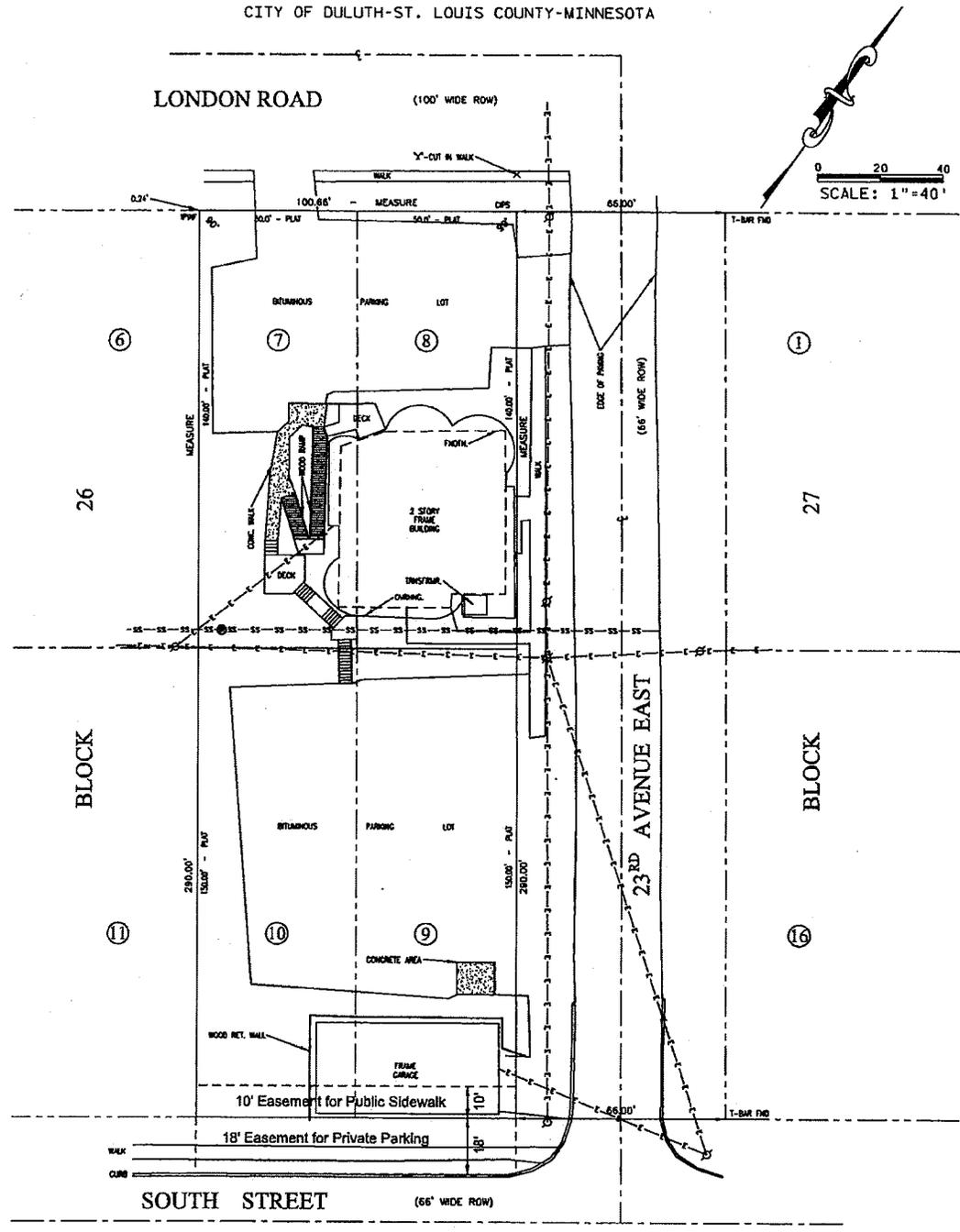
FN-11-055-7

RECEIVED APR 28 2011

AYRES ASSOCIATES
4602 Grand Avenue, Suite 300
Duluth, MN 55807

270137E\exhibit1.DGN

EXHIBIT FOR ODYSSEY BUILDING PROPERTY
LOTS 7-10, BLOCK 26, ENDION DIVISION OF DULUTH
CITY OF DULUTH-ST. LOUIS COUNTY-MINNESOTA



III E 11

FN.1-055

RECEIVED APR 28 2011

An easement for private parking area lying on South Street Right-of-Way and adjoining Lots 9 and 10, Block 26, Endion Division of Duluth, Located in the City of Duluth, St. Louis County, Minnesota.

Said easement being described as follows.

An 18 foot strip of land lying South of and adjoining the South line of said Lots 9 and 10. The east and west limits of said easement shall intersect the west limit of Lot 10 extended southerly and the east limit of Lot 9 extended southerly.

III E9

FN 11-055

RECEIVED APR 28 2011

An easement for public sidewalk lying across part of Lots 9 and 10, Block 26, Endion Division of Duluth, Located in the City of Duluth, St. Louis County, Minnesota.

Said easement being described as follows.
The South 10 feet of said Lots 9 and 10.

III E 10