

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

11-0495R

RESOLUTION VACATING A PORTION OF THE UTILITY EASEMENT ON THE VACATED RIGHT-OF-WAY OF BIRCH AVENUE ADJACENT TO GOODWILL INDUSTRIES LOCATED AT 700 GARFIELD AVENUE (GOODWILL INDUSTRIES).

CITY PROPOSAL:

RESOLVED, that the city council hereby finds that:

(a) A sufficient petition was filed with the city requesting the vacation of a portion of the utility easement located on the vacated right-of-way of Birch Avenue adjacent Goodwill Industries on Block 27 of Rice's Point; 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 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 is useless for the initial intended purpose; and

(c) The city planning commission, at its Tuesday, September 13, 2011, regular meeting, recommended approval of the easement vacation petition, with a condition.

FURTHER RESOLVED, that the city council of the city of Duluth approves the vacation of the following described easement described below and as described and depicted on Public Document No. _____, subject to the condition below:

The westerly 20.00 feet of the northerly 37.40 feet of the southerly 37.50 feet Birch Avenue in the plat RICE'S POINT which lies between the extended westerly line of Garfield Avenue, formerly known as Third Street and the extended westerly line of the vacated alley lying between Blocks 25 and 27 of RICE'S POINT.

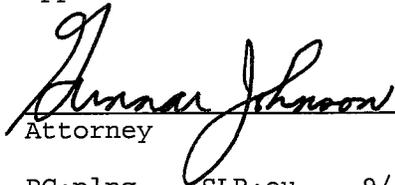
FURTHER RESOLVED, that the following condition to be satisfied before recording of the vacation by the city clerk:

The easement vacation be conditioned upon the relocation of existing city utilities to be impacted by the easement vacation, the location, construc-

tion and design of which to be approved by the city engineer and in a manner approved by the city engineer.

FURTHER RESOLVED, that, pursuant to Section 100(b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended, the city clerk is 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 utility easement to be vacated.

Approved as to form:



Attorney

PC:plng SLR:eu 9/16/2011

STATEMENT OF PURPOSE: This resolution vacates a portion of the utility easement on the previously vacated right of way of Birch Avenue adjacent to Goodwill Industries at 700 Garfield Avenue.

The city vacated the public right of way for Birch Avenue in November 2010; an easement for utility purposes was maintained. Goodwill Industries intends to expand their structure and is requesting a portion of the utility easement be vacated. The existing city sewer lines will need to be relocated to the City Engineer's standards. This resolution retains utility easements over the northwest half of the vacated right of way.

On September 13, 2011, the Duluth city planning commission held a public hearing on the proposal and voted unanimously (6-0) to recommend that the city council approve the easement vacation.

The motion to approve the vacation by the city council must prevail with at least six affirmative votes.

Petition Received: August 2, 2011

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

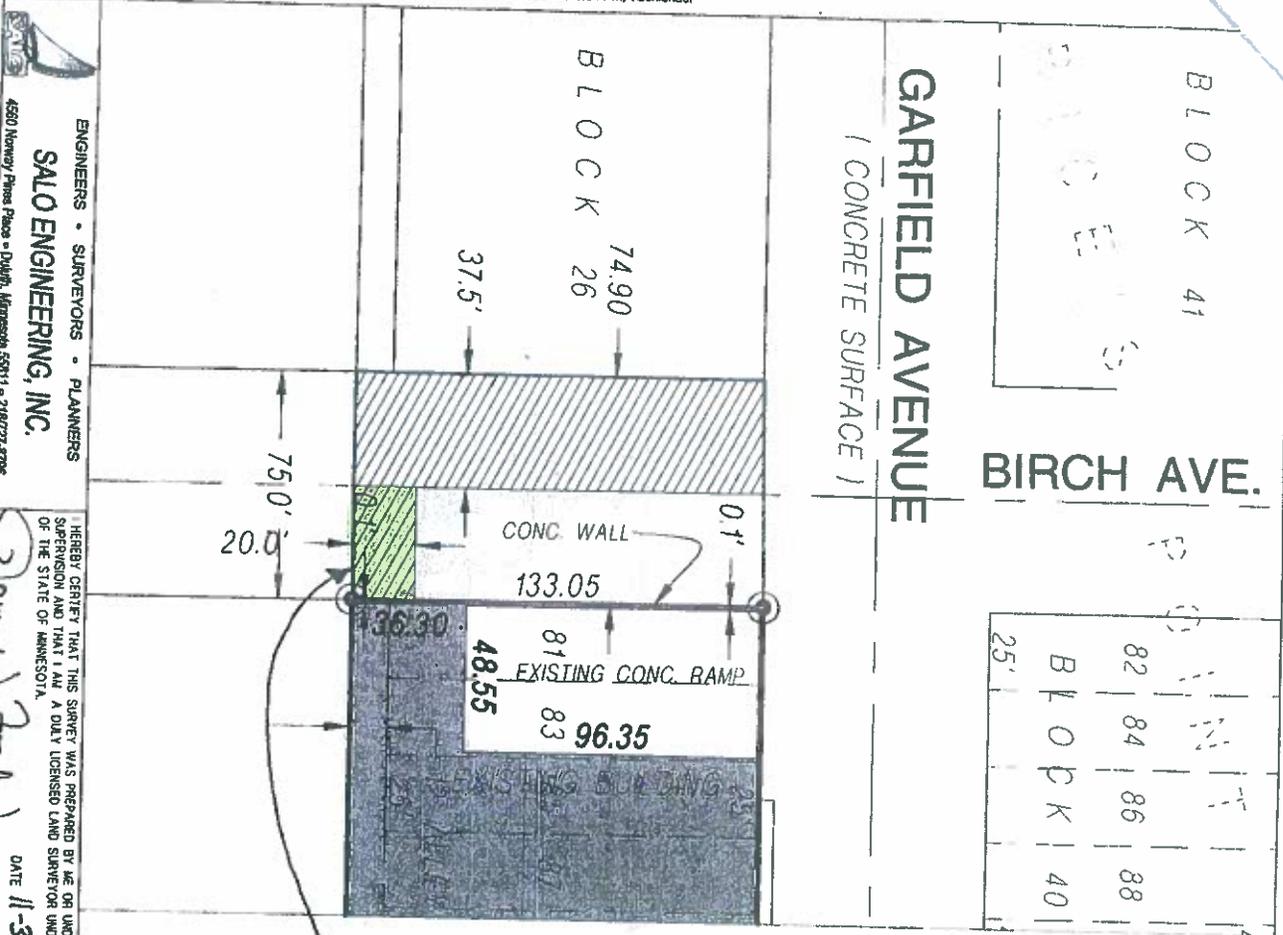
Doug Greene, Representative of Goodwill Industries

Krech Ojard

227 West First Street

Duluth, Minnesota 55802

doug.greene@krechojard.com



BIRCH AVE.

GARFIELD AVENUE

(CONCRETE SURFACE)

B L O C K 26

B L O C K 41

B L O C K 40

CONC. WALL
133.05
EXISTING CONC. RAMP
81
83
96.35
EXISTING BUILDING

750'
20.0'



III 0.6

CURRENT UTILITY EASEMENT REQUESTED TO BE VACATED

LEGEND

- AREA TO BE VACATED
- AREA TO BE RETAINED FOR UTILITY EASEMENT

AREA TO BE VACATED
All that part of the Northerly 74.90 feet of Birch Avenue in the plat of RICE'S POINT which lies between the extended Westerly line of Garfield Avenue formerly known as Third Street and the extended Westerly line of the Vacated Alley lying between Blocks 25 and 27, said RICE'S POINT.

AREA TO BE RETAINED FOR UTILITY EASEMENT
The Northerly 37.50 feet of Birch Avenue in the plat of RICE'S POINT which lies between the extended Westerly line of Garfield Avenue, formerly known as Third Street and the extended Westerly line of the Vacated Alley lying between Blocks 25 and 27, said RICE'S POINT.

AND

The Westerly 20.00 feet of the Northerly 37.50 feet of the Southernly 37.50 feet of Birch Avenue in the plat of RICE'S POINT which lies between the extended Westerly line of Garfield Avenue, formerly known as Third Street and the extended Westerly line of the Vacated Alley lying between Blocks 25 and 27, said RICE'S POINT.

ENGINEERS • SURVEYORS • PLANNERS
SALO ENGINEERING, INC.
4580 Norway Pines Place • Duluth, Minnesota 55811 • 218/277-8795

HEREBY CERTIFY THAT THIS SURVEY 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.
Donald J. Tozola
DATE **11-30-10**
MIL. LIC. NO. 8164

NO.	DATE	REVISION
1		
2		
3		

STREET VACATION-EXHIBIT DRAWING
BIRCH AVENUE
BETWEEN GARFIELD AVE AND B.N. RAILROAD ROW

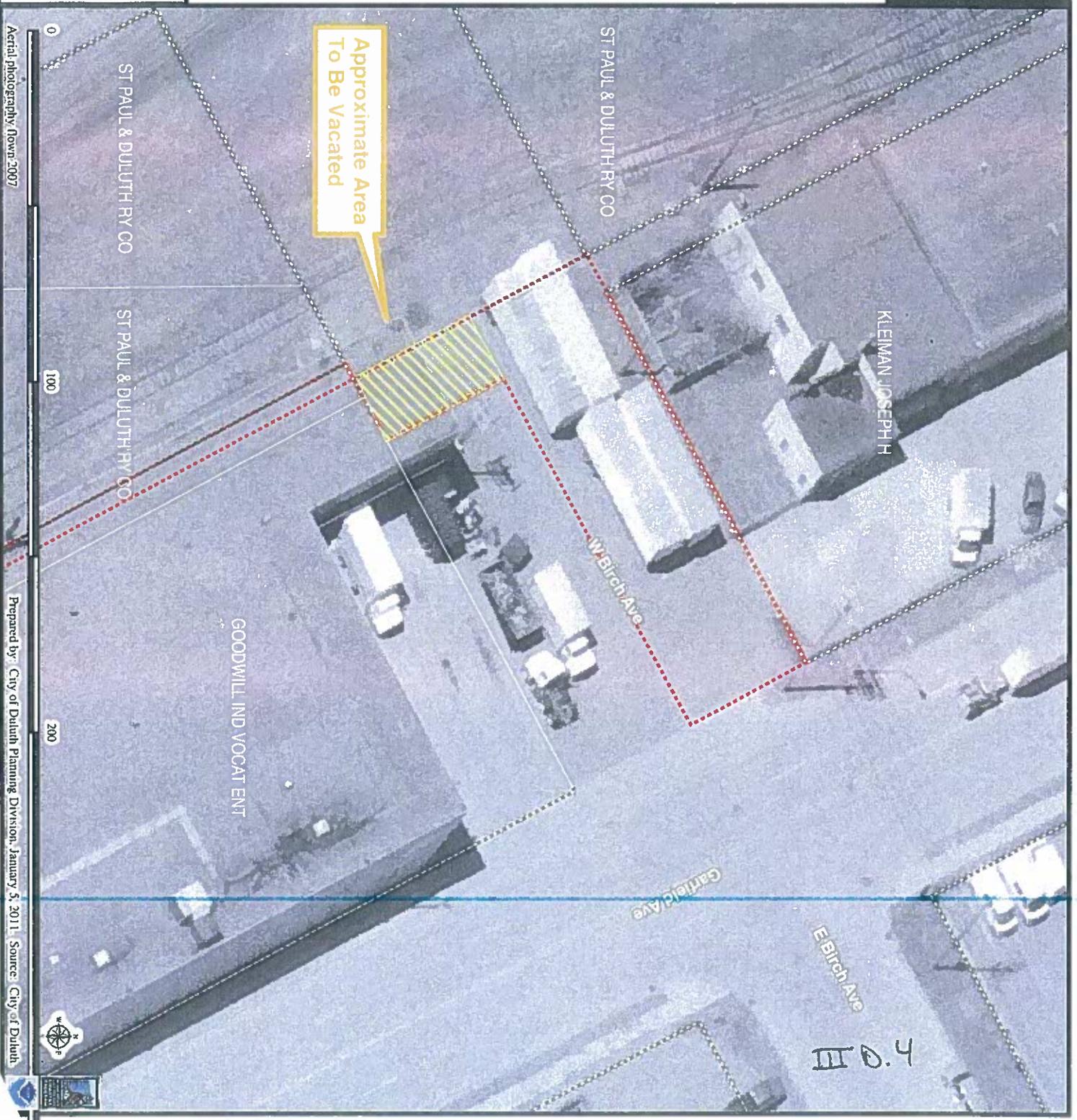
RECEIVED AUG 02 2011

Legend

Right-of-Way Type
..... Road or Alley ROW

Easement Type
□ Utility Easement
□ Other Easement

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Aerial photography: Novm. 2007

Prepared by: City of Duluth Planning Division, January 5, 2011. Source: City of Duluth





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 11-107	Contact	Steven Robertson	
Application Type	Vacation: Utility Easement	Planning Commission Date	September 13, 2011	
Deadline for Action	Application Date	August 2, 2011	60 Days	N/A
	Date Extension Letter Mailed	N/A	120 Days	N/A
Location of Subject	700 Garfield Avenue			
Applicant	Goodwill Industries	Contact	Marge Bray, mbray@goodwillduluth.org	
Agent	Doug Greene, Krech Ojard Associates	Contact	doug.greene@krechojard.com	
Legal Description	Westerly 20 feet of the Northerly 37.4 feet of the Southerly 37.5 feet of Birch Avenue, Rice's Point.			
Site Visit Date	August 28 & September 2, 2011	Sign Notice Date	August 29, 2011	
Neighbor Letter Date	August 25, 2011	Number of Letters Sent	11	

Proposal

Applicant is asking to vacate a portion of a public utility easement. The intent is to relocate a sanitary sewer force main and then build a second loading dock for the Goodwill Industries' facility. According to the applicant, "this addition (to) Goodwill Industries requires vacation of an existing utility easement which (is) no longer required since utility is to be relocated."

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	I-G	Industrial	General Industrial
North	I-G	Industrial	General Industrial
South	I-G	Industrial	General Industrial
East	I-G	Industrial	General Industrial
West	I-G	Industrial/Rail Transportation	Transportation and 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.

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

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.

III D. I

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

1. Governing Principles:

Principle #7 - Create and maintain connectivity.

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):

1. Abutting property owners (Goodwill Industries and Joseph and Rose Kleinman) have signed the vacation petition.

2. This segment of Birch Avenue was an existing public right of way until last October. At the October 2010 Planning Commission meeting, for FN 10-102, the Planning Commission voted to: "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." The applicant is now asking to vacate a small segment (20' x 37.4') of the retained utility easement; a new loading dock would be located in this area.

3. The City of Duluth has a sanitary sewer force main in the utility easement to be vacated. Goodwill Industries will relocate the portion of the force main in order to vacate the utility easement in the previously vacated Birch Street. The applicant's engineer, Krech Ojard & Associates, will produce construction and bid documents for relocation of that portion of the utility main. The City Engineer will review and approve construction plans, and utility main will be relocated to the City Engineer's satisfaction. The applicant can then file the vacation with the County Recorder and proceed with construction plans for their addition.

3. Portions of the right of way are still needed for utility purposes. MN Power had requested last fall 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. This portion of the easement will not be affected by the applicant's request.

5. No additional comments were received from residents, other city departments, other utilities, or governmental agencies.

6. Staff finds that once the sanitary sewer force main is relocated, the utility easement is useless, will not be needed for the efficient supply of utilities or public services in the city, and is not otherwise needed to promote the public health, safety or welfare of the citizens of Duluth.

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

Based on the findings, Staff recommends that the Planning Commission recommend approval to the City Council for the petition to vacate the right-of-way with the following conditions:

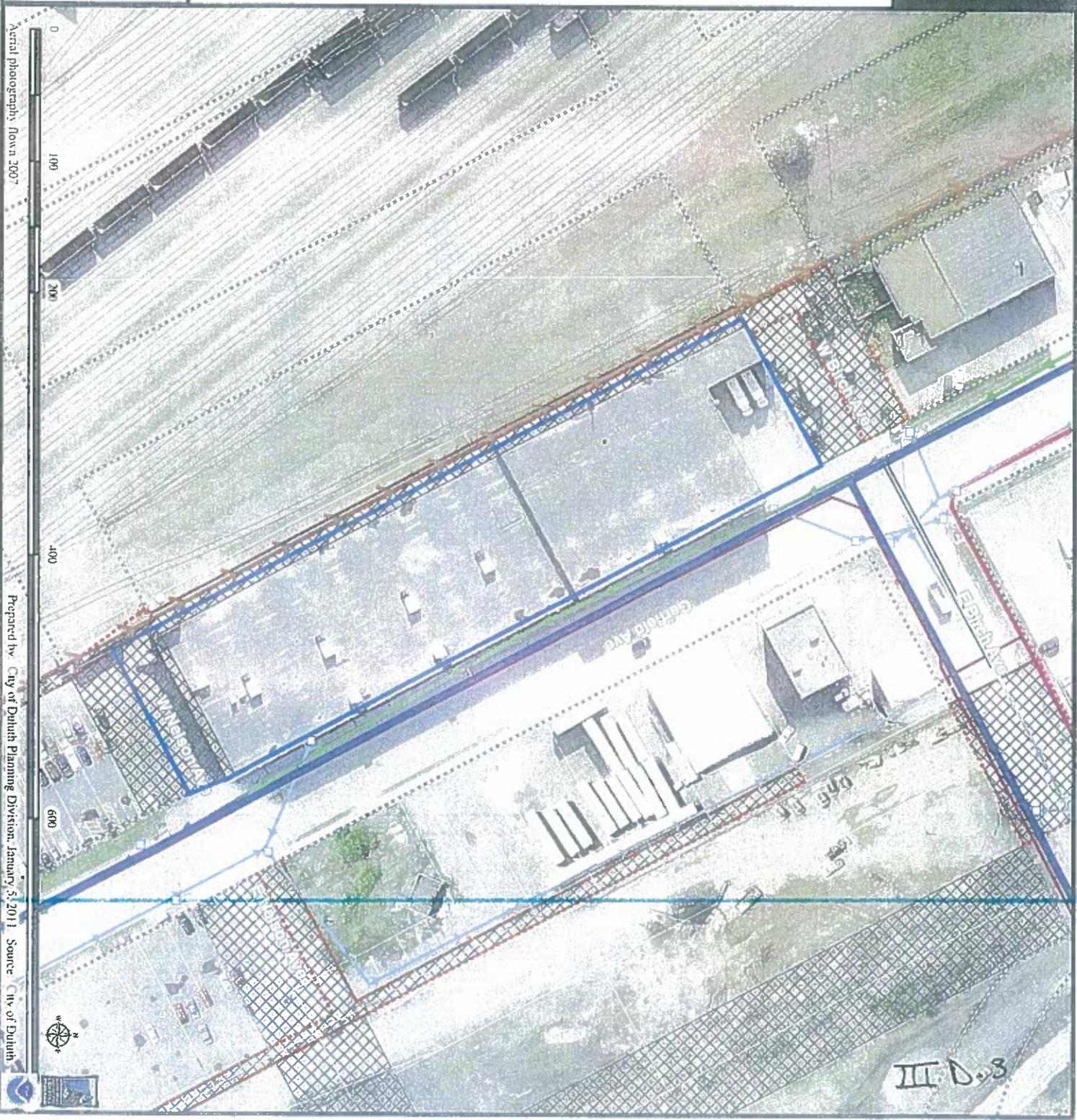
1) A plat showing the vacation is to be recorded with the office of the county recorder within 90 days after the utility main being relocated to the City Engineer's satisfaction.

III D.2

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
 - Sanitary Sewer Forced Main
- Gas Distribution Main**
 - 8" - 16" Gas Pipes
 - 4" - 6" Gas Pipes
 - 0" - 4" Gas Pipes
- Storm Sewer Collection System**
 - Storm Sewer Pipe
 - Storm Sewer Catch Basin
 - Discharge Points
- Right-of-Way Type**
 - Road or Alley ROW
 - Vacated ROW
- Easement Type**
 - Utility Easement
 - Other Easement

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Aerial photography: Nov. 2007

Petition to Vacate Street, Alley, or Utility Easement

Name: GOODWILL INDUSTRIES, 700 GARFIELD AVE., DULUTH, MN 55802

Description of street, alley, or easement to vacate: WESTERLY 20 FEET OF NORTHERLY 37.4 FEET OF SOUTHERLY 37.5 FEET OF VACATED BIRCH AVENUE - SEE ATTACHED STREET VACATION EXHIBIT DRAWING

My request for this vacation is to (indicate purpose of vacation):
TO ALLOW CONSTRUCTION OF A LOADING DOCK ADDITION TO THE GOODWILL BUILDING

The City of Duluth will not need this street, alley, or easement in the future because:

THIS EASEMENT WAS CREATED FOR ACCESS TO A CITY SEWER FORCE MAIN WHICH WILL BE RELOCATED TO ADJACENT GOODWILL PROPERTY IN OCTOBER OF THIS YEAR

PLEASE TAKE NOTICE: Pursuant to Section 50-37.6 of the Duluth City Code, the above-identified applicant(s) petition the Duluth City Council to vacate the street, alley, or easement described in the attached legal description.

This petition is made upon the following facts and reasons (Identify the factual basis and reasons supporting the petition)¹:

THE CITY OF DULUTH PLANS TO MOVE THIS SEWER FORCE MAIN OUT OF THIS AREA IN OCTOBER OF THIS YEAR. THIS EASEMENT WILL NO LONGER BE NEEDED. GOODWILL NEEDS THIS LOCATION TO CONSTRUCT A LOADING DOCK TO SERVE THIS FLOOR LEVEL IN ORDER TO UPGRADE THEIR FREIGHT ELEVATOR WITHOUT SERIOUSLY IMPACTING THEIR ABILITY TO MOVE PRODUCT BETWEEN THE BUILDINGS TWO FLOOR LEVELS.

This petition is supported by a majority of the person(s) who own a majority of the lineal frontage of the land abutting upon the portion of the public easement proposed to be vacated. A copy of the signatures of these persons is attached hereto and made a part hereof.²

The petitioner(s) agree to provide the city with a plat of the easement(s) as required by Section 50-37.6B(3) of the Duluth City Code upon approval of the vacation. We understand that the vacation cannot occur without the submission of the required plat. We understand that the cost of producing the plat is the responsibility of the petitioner(s). We also understand that the approval will lapse and be of no effect if the plat and clerk certification is not recorded with the county recorder within 90 days after final approval.

Signature(s):

Margery E Gray, Executive Director

Date:

8/2/11

Notice: This is public data.

III D.5

¹ In order to vacate a public easement it must be demonstrated that the easement is useless for the purpose for which it was dedicated.

² If a property is owned in joint tenancy or by tenants in common, each individual with an ownership interest will be counted to determine if a majority of owners have signed the petition. An owner cannot sign for another owner unless legally authorized to do so, i.e. power of attorney, trustee, or court approved guardianship or conservatorship.



