

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

11-0529R

REPLACEMENT
AS AMENDED

RESOLUTION GRANTING AN ~~INTERIM~~ SPECIAL USE PERMIT TO
D.M.A. & ASSOCIATES FOR A JUNK AND SALVAGE SERVICES AT
306 SOUTH CENTRAL AVENUE.

CITY PROPOSAL:

RESOLVED, that:

(a) The city council grants D.M.A. & Associates an ~~interim~~ special use permit to operate a junk and salvage service on Tax Parcel No. 010-0130-00190, located at 306 South Central Avenue and as described as subject property:

All that part of Outlot 1, Rearrangement of Auditor's Plat of West Duluth Outlots, lying south of line parallel to and 807 feet south of the south line of Blocks 51, 50, 49, 48 West Duluth, First Division and Blocks 218, 219, and 249 West Duluth, Third Division, extended, including easterly 40 feet vacated Central Avenue abutting thereon, according to the recorded plat thereof;

(b) Pursuant to Section 50-20.4.D and Section 50-37.10 of the Duluth City Code, 1959, as amended, the applicant applied for a special use permit and the application was duly referred to the city planning commission (File No. 11-110). The commission gave due notice of public hearing and considered the application during a public hearing occurring on September 13, 2011;

(c) As an alternative to a special use permit, Minnesota Statutes Section 462.3597 authorizes the city to issue an interim use permit that authorizes a special use to exist until a specified date or until an amendment to this Chapter authorizes or prohibits that use. Section 50-37.10.D of the Duluth City Code, 1959, as amended, grants to the city the authority to issue an interim use permit as an alternative to a special use permit. The commission may recommend to the city council an interim use permit even if the application is for a special use permit;

(d) The city planning commission, at their regular meeting on September 13, 2011, considered the application's consistency with the comprehensive land use plan and voted to recommend approval of an interim use permit for a junk and

salvage service with conditions;

(e) The city council finds that a time limit is not needed to protect the public health, safety and welfare from potential longer term impacts of the requested use location.

FURTHER RESOLVED, that an interim special use permit for the subject property, is approved subject to the following conditions:

(a) The interim special use permit is effective only on the subject parcel; and

~~(b) The interim use permit will expire on December 31, 2014; and~~

~~(c) The applicant must apply for renewal of the permit no less than 120 days prior to expiration of the permit; and~~

~~(d)~~ (db) The interim special use permit shall not issue until the subject parcel is rezoned to I-G; and

~~(e)~~ (ec) The project shall be limited to, constructed, and maintained according to the site plan entitled "Site Survey for DMA & Associates" dated August 22, 2011, for Parcel 010-1300-00190; and

~~(f)~~ (fd) The applicant shall obtain and maintain all licenses required by applicable city, state and federal law for operation of the facility; and

~~(g) No permit shall issue and the applicant has no authority to operate until the applicant enters into a development agreement with the city as required by Section 50-37.10.E.2.~~

PLNG/PC SR:eu 10/6/2011

STATEMENT OF PURPOSE: This resolution grants an interim special use permit to D.M.A. & Associates for a junk and salvage service use at 306 South Central Avenue.

The applicant's previous permit expired. The applicant applied for a special use permit for a junk and salvage service use. The planning commission concluded that an interim use permit was more appropriate for this location . This action will allow the applicant to continue to operate their existing business, ~~but require that the continued suitability of the operation at the site be subject to periodic review.~~

On September 13, 2011, the city planning commission held a public hearing on the proposal, heard testimony from citizens and representatives of the neighborhood organization, and voted 5-1 to recommend that the city council approve the interim use permit, with conditions.

Request filed: August 2, 2011
Action deadline: November 30, 2011

Petitioner:
William Burns, Representing D.M.A. & Associates
Hanft Fride
1000 U.S. Bank Bldg
130 W. Superior Street
Duluth, Minnesota 55802

FN 11-110



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 11-110	Contact	Steven Robertson	
Application Type	Special Use Permit: Junk and Salvage	Planning Commission Date	September 13, 2011	
Deadline for Action	Application Date	August 2, 2011	60 Days	October 1, 2011
	Date Extension Letter Mailed	August 24, 2011	120 Days	November 30, 2011
Location of Subject	306 South Central Avenue			
Applicant	D.M.A. & Associates	Contact	Diane Anderson, dianne@demolicious.com	
Agent	William M Burns, Hanft Fride PA	Contact	wmb@hanftlaw.com	
Legal Description	See attached legal description			
Site Visit Date	August 28 & 31, 2011	Sign Notice Date	August 29, 2011	
Neighbor Letter Date	August 25, 2011	Number of Letters Sent	26	

Proposal

The applicant is requesting a Special Use Permit for a Junk and Salvage Service.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	MU-B/R-1	Industrial	General Mixed Use/Traditional Neighborhood
North	MU-B	Industrial	General Mixed Use
South	I-G	Industrial/Rail Transportation	General Mixed Use
East	I-G	Industrial/Rail Transportation	General Mixed Use
West	R-1	Residential	Traditional Neighborhood

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

-UDC Section 50-20.4.D. Junk and Salvage Services. 1. Junk and salvage service operations and facilities shall comply with all state and Western Lake Superior Sanitary District requirements. 2. No junk or salvage service facilities, shall be permitted in a designated shoreland or flood plain zone nor in an identified wetland as these are defined or shown in Section 50-18.1, Natural Resources Overlay. 3. There shall be no burning of materials.

-UDC Section 50-37.10.D. Interim Use Permits. As an alternative to a special use permit, MSA 462.3597 authorizes the city to issue an interim use permit that authorizes a special use to exist until a specified date or until an amendment to this Chapter authorizes or prohibits that use. An applicant may apply for an interim use permit, and the commission may decide to recommend an interim use permit even if the application is for a special use permit.

-UDC Section 50-37.10.E. Criteria For Interim Use Permits. A time limit is needed to protect the public health, safety and welfare from potential longer term impacts of the requested use in that location or to allow the city time to develop a regulation addressing the potential longer term impacts of the requested use in that location.

III E.1

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

1. Governing Principles:

Principle #4 - Support emerging economic growth sectors.

Principle #10 - Take sustainable actions

Future Land Use Map: General Mixed Use. The broadest mix of uses, including light industrial, office, commercial, and residential use, with performance standards to ensure compatibility. Includes areas that are in transition from industrial uses and large redevelopments that require master plans and phased development. General or heavy industrial can be included when a large site is master planned to allow appropriate separation of uses.

Future Land Use Map: Traditional Neighborhood. Characterized by grid or connected street pattern, houses oriented with shorter dimension to the street and detached garages, some with alleys. Limited commercial, schools, churches, and home-businesses. Parks and open space areas are scattered through or adjacent to the neighborhood. Includes many of Duluth's older neighborhoods, infill projects and neighborhood extensions, and new traditional neighborhood areas.

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

1. A Junk and Salvage Services is described as: A facility or area for storing, keeping, selling, dismantling or salvaging scrap or discarded material or equipment, including ore and elevators. The term "scrap or discarded materials" includes but is not limited to metal, paper, rags, tires, bottles or inoperable or wrecked motor vehicles, motor vehicle parts, machinery, structural steel, equipment and appliances. This definition includes indoor facilities for recycling recoverable resources, such as newspapers, magazines, books and other paper products, glass, metal cans and other products, to return such products to a condition in which they may again be used for production.

2. The applicant wishes to continue their existing business, but they may have plans to expand it in 3 years with regards to how they process cardboard, depending on future market forces. The business has received an MPCA permit for a "Solid Waste Transfer Area" for 90 cubic yards a day, on an area of 0.3 acres (about 13,000 square feet). Demo-Licious received a variance in July 2000 that was to "expire in two years, unless renewed". The variance was renewed in March 2005 that was "to expire every 5 years and will expire on March 31, 2010". Both these approvals were for parcel 010-0130-00190.

3. City staff conducted a site visit on September 1, 2011, with Diane and Roger Anderson. The site does generate noise (during active operation of the wood chipper), but the sound is mostly buffered by the structures on the western edge of parcel 010-0130-00190. Diane Anderson has take over management of the facility from Norman Opack, the former manager. While not directly pertinent to this application, it should be noted that the adjacent property is used by Harbor City Masonry, a "Contractor's Shop and Storage Yard", which is a permitted use in a MU-B district, but is not allowed in an R-1.

4. Staff received several phone calls and emails from citizens interested in both this Special Use Permit application and the accompanying Rezoning application. Citizens were made aware of the fact that staff reports are published on the division's web site prior to the Public Hearing, and were also invited to attend the Planning Commission if interested. Background information on the Solid Waste Permit was received from the MPCA. No additional comments were received from other city departments, other utilities, or governmental agencies.

5. Due to potential impacts on land uses in the area, staff recommend that in lieu of a Special Use Permit, the Planning Commission recommend an Interim Use Permit for a Junk and Salvage Yard until December 31, 2014, subject to renewal.

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

Staff recommend that the Planning Commission recommend approval to the City Council of an Interim Use Permit, with the following conditions:

- 1) The Interim Use Permit is effective only on the parcel that has historically been the approved location of Demo-Licious, 010-1300-001900.
- 2) The Interim Use Permit will expire on December 31, 2014, unless renewed.
- 3) The Interim Use Permit is contingent upon the parcel being rezoned I-G.
- 4) The project be limited to, constructed, and maintained according to the site plan titled "Site Survey for DMA & Associates" dated August 22, 2011, for parcel 010-1300-00190.

III E.2



City Planning

FN 11-106 and FN 11-110

Legend

- Trout Stream (GPS)
- Other Stream (GPS)
- Zoning (Final)
- 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

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.





City Planning

FN11-106 and FN11-110
2000 Aerial Map



0 100 200 400 600

Aerial photography: flown 2007

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

III E.5

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.

LEGAL DESCRIPTION

PANEL 1:

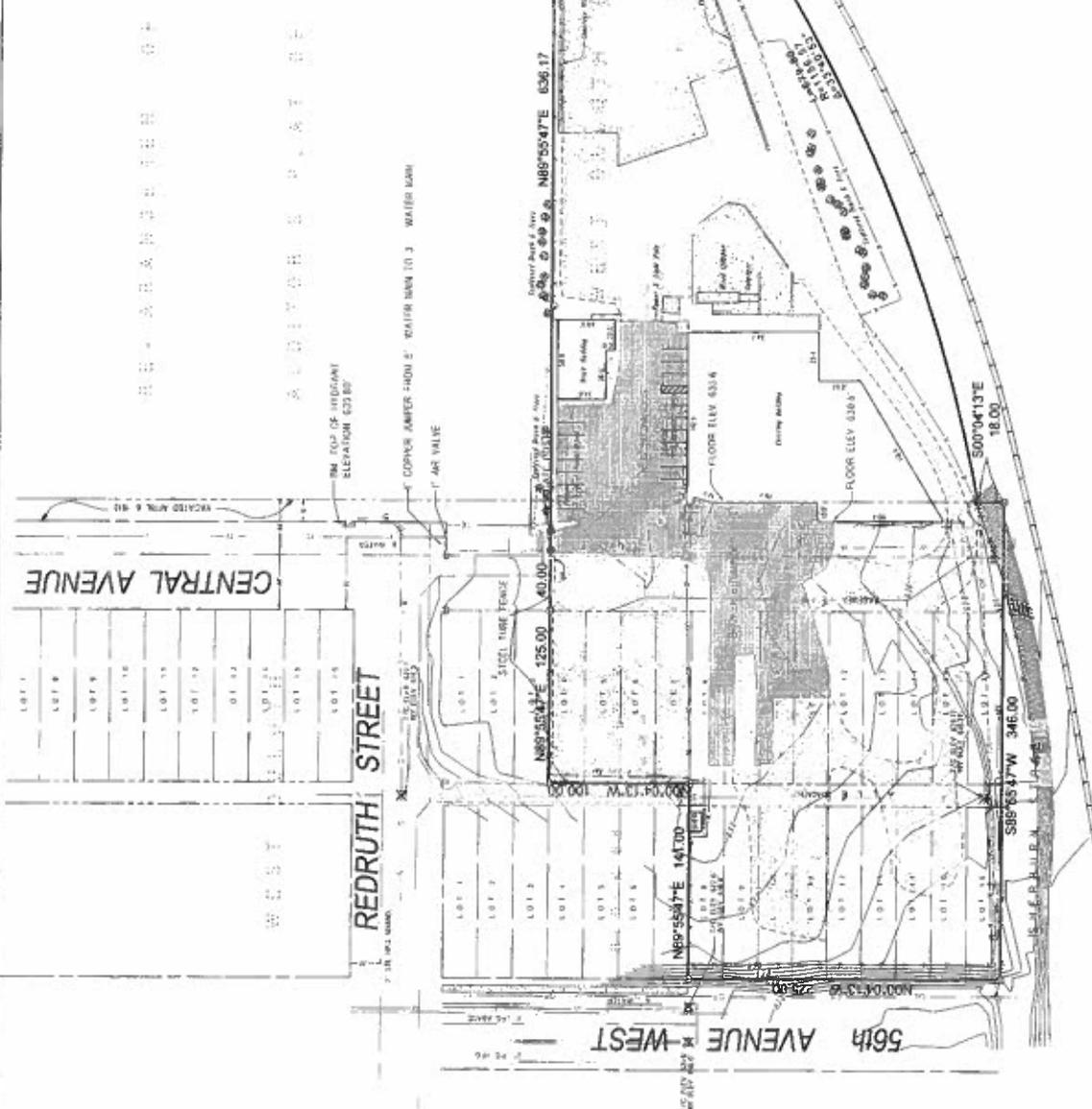
ALL PARTS OF LOT 1, BEARING (RIGHT) OF ALCOCK'S PLAT OF WEST
 MILLVILLE OUTLOTS, lying north of the road for and 400 feet north of the road for
 of Blocks 51, 56, 48, 49, West Parish, First Division and Blocks 218, 219 and 249, West
 Parish, Third Division, extended, including easterly 40 feet of Central Avenue
 starting from the intersection of the road for the road.

Said land is SUBJECT to easements for conduits for wires, pipes, water and gas lines
 and other public utilities in various portions of Central Avenue, to the same as reserved
 and conveyed by the various proceedings filed in the office of the Registrar of Titles April
 19, 1918, in Document No. 31472.

PANEL 2:

Lot Five (A) through Seven (7) inclusive, Block Sixty-seven (67), WEST MILLVILLE,
 SECOND DIVISION, including westerly 40 feet of Central Avenue abutting
 between and Lots Eight (8) to Sixteen (16) inclusive, Block Sixty-seven (67), WEST
 MILLVILLE, SECOND DIVISION, including westerly 40 feet of Central Avenue
 abutting between and Lots Eight (8) to Sixteen (16) inclusive, Block Sixty-seven (67),
 WEST MILLVILLE, SECOND DIVISION, including westerly 40 feet of Central Avenue
 abutting between and Lots Eight (8) to Sixteen (16) inclusive, Block Sixty-seven (67),
 WEST MILLVILLE, SECOND DIVISION, including westerly 40 feet of Central Avenue,
 according to the records of the Registrar.

EXCEPT all interests in Lot Eight (8), Block Sixty-eight (68), West Parish, Second
 Division, All of said Land is SUBJECT to an easement for utilities in various portions
 of Central Avenue, to the same as reserved and conveyed by the various proceedings to said Central
 Avenue, recorded in the Office of Registrar of Titles, in Book 19 of Miscellaneous, page
 314.



LEGEND

—	PROPERTY LINE BY LEGAL DESCRIPTION
- - -	FOUND LINE
—	WATER LINE
—	SANITARY LINE
—	GAS LINE
—	OVERHEAD ELECTRIC, POWER POLE W/ANCHOR
—	FENCE
—	BUILDING LINE
—	CONCRETE
—	GRATEL

Exhibit A
UDC SPECIAL PERMIT APPLICATION

Briefly Described the Reasons for this Request:

This is a demolition, recycling and transfer station, which does not handle garbage or other household waste. Applicant takes everything but household garbage, chemicals, and hazardous material. Attached is a copy of information from Demolicious' website for further information. There is no burning of materials. Access to Demolicious is via South Central Avenue which is a dust-free material. Applicant has recently done significant resurfacing of the site. All vehicles transporting materials to and from the facility are covered. Noise emanating from the site does not and shall not exceed state noise requirements. It is an existing operation and includes MPCA and WLSSD permits. It is located in MU-B pending rezoning to I-G. The special use permit under I-G is in the public interest because:

- This service is a useful service, utilized by local residents on an extensive basis.
- This service employs a number of persons and pays property taxes and contributes significantly to the economy.
- The use is appropriate in an I-G zone.

The applicant has asserted that it has grandfathered rights, even though the permit has expired in the existing MU-B. MU-B does not allow a facility like this without it being "covered." Planning has indicated they are unable to waive that requirement, even though that requirement appears to assume that household waste is involved. It is an economic impossibility for the applicant to cover its operation.

III E.7

RECEIVED AUG 02 2011



Minnesota Pollution Control Agency

Duluth Office | 525 Lake Avenue South | Suite 400 | Duluth, MN 55802 | 218-723-4660

800-657-3864 | 651-282-5332 TTY | www.pca.state.mn.us | Equal Opportunity Employer

May 12, 2011

Ms. Dianne Anderson
DMA Demolicious
306 South Central Avenue
Duluth, MN 55807

RE: Notification for Extended Permit Status, SW-577

Dear Ms. Anderson:

The Minnesota Pollution Control Agency (MPCA) has received your Solid Waste Transfer Facility Extended Permit Notification form signed and dated on March 15, 2011. The MPCA staff has reviewed your notification form and hereby approves your extended permit status.

Please find your extended permit enclosed. The permit has been modified to update rule references. The enclosed permit has been extended from June 30, 2011 to June 30, 2016. Under the extended permit status, you must submit a notification form every five years upon the anniversary of the expiration date of the permit. Your next notification will be due by June 30, 2016.

If you have any questions, please feel free to contact me at 218-302-6615.

Sincerely,

A handwritten signature in black ink that reads "Timothy A. Musick".

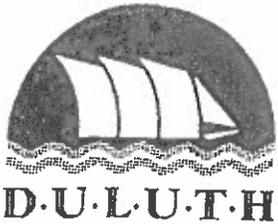
Timothy A. Musick
Pollution Control Specialist, Senior
Policy, Local Government Assistance, and Solid Waste Section
Municipal Division

TAM:kmk

cc: Don Ness, Mayor, City of Duluth
Dan Belden, WLSSD, Duluth

III E.9

Waste Activity Type	WA ID	Waste Activity Category	Status	Total Permitted Size		Total Permitted Capacity		Ultimate Capacity		Entry Date	Source
				Units	Area	Amount	Units	Amount	Units		
Solid Waste Transfer Area	TR001	Processing	Open	acres	0.30	90.00 cubic yards/day	90.00 cubic yards/day	28,080.00 cubic yards/year	28,080.00 cubic yards/year	04/18/2011	Facility Correspondence



BOARD OF ZONING APPEALS ACTION

210 City Hall
Duluth, MN 55802

Date: July 25, 2000
File Number: 00030
Green Number:
35-43

Appellant: Demo-licious, Norm Opack, President
Location: 310 S. Central Ave.

Legal Description: Rearrangement of Auditors Plat West Duluth Outlots, Outlot I Ex Nly 607' including part of vacated avenue adjoining

The above matter came on for hearing before the Board of Zoning Appeals in City Hall on July 25, 2000, notice of said hearing having been given to all interested parties in accordance with the rules of said Board. All parties interested in the matter having been heard at such hearing and the premises affected by the appeal having been inspected by the Board in accordance with its rules, the Board of Zoning Appeals now makes the findings and conclusions as indicated below:

Appeal Approved: To declare the operation of a demolition, recycling and transfer station to be a similar use to those listed as permitted in an M-1 zoning district, on property located at 310 S. Central Ave., with the following stipulations:

- This request is to be declared specific to this site and not determined for all M-1 zones;
- This variance must be renewed every 2 years and will expire on July 25, 2002, unless renewed; and
- At the transfer of ownership, any new owner must reapply to the board for a renewal of the variance.

Decided at Duluth, Minnesota on July 25, 2000.

BY ORDER OF THE BOARD OF ZONING APPEALS,

Marlene Bach
Zoning Coordinator

NOTE: The action taken herein by this Board shall be final unless within ten (10) days of mailing of this notice, further appeal is filed with the Building Inspector by any person aggrieved or by any officer, agency, department, board or bureau of the City Council, stating the grounds upon which further appeal to the City Council is desired. However, the City Council is also required to make the findings as stated above.

In the case of an approved appeal, action of this Board does not in itself constitute a building permit. Your permit must be procured from the Building Inspection Department after the ten (10) day period stipulated immediately above has expired.

B:ek

III E.12

**DEMO-LICIOUS
CONSTRUCTION/DEMOLITION-DEBRIS
TRANSFER FACILITY
310 S. CENTRAL AVE. W.
DULUTH, MN. 55807
349-5181/6068**

**Board of Zoning Appeals
Attention: Board Members
Duluth, Mn. 55802**

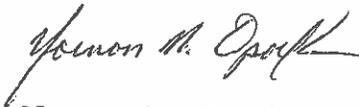
Dear Board Members,

After many meetings and phone calls concerning the zoning issue over a business that is new to this area, a solution was presented that your board had the authority to issue the zoning acceptance, while placing restrictions on the zoning to keep it site specific and not change the M-1 zoning city wide.

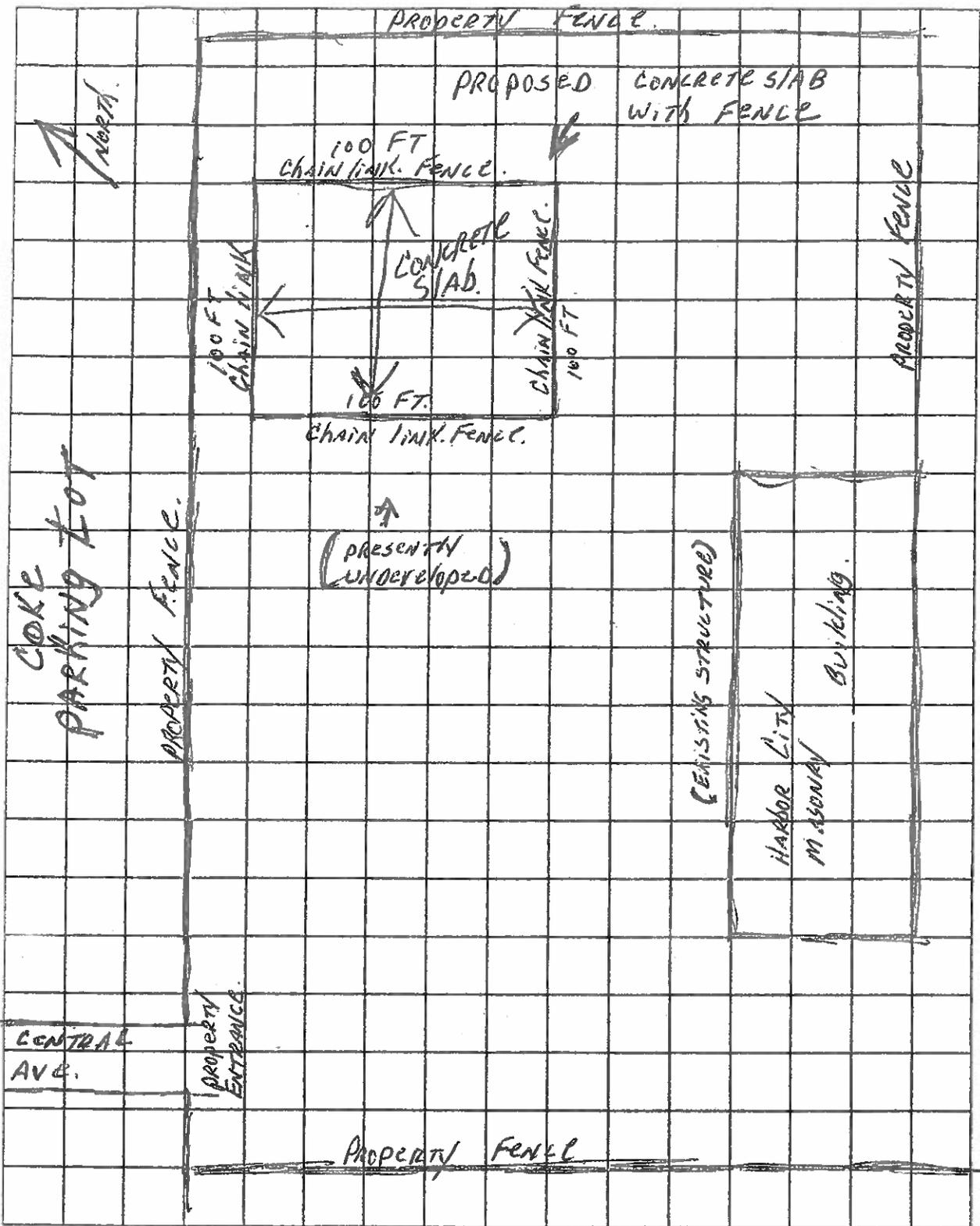
My desire in starting my business in the West Duluth area, is to work with the communities. They in turn, have given their written support to this project, in mutual aggriance, to not increase commercial traffic through residential nieighborhoods. This support also includes the City of Duluth Planning and Zoning office. As there is already demolition waste generated and stored on site, thus making our construction and demolition transfer and recycling business a comprable use with commercial roads in place and no residential areas surrounding the proposed site. The following community organizations support my business endeavor: the Irving community (in which I plan on locating), the Spirit Valley Economic Development, and the West Duluth Nieighborhood Association.

In closing, I am requesting that the Board of Zoning Appeals grant my request based upon the above stated reasons, the respect for the Irving Communities request, support of other West Duluth groups, and the City of Duluth Planing and Zoning's belief in this being a comprable use.

Thank You,



**Norman M. Opack
DEMO-LICIOUS**



I, the undersigned hereby certifies that he is the owner of Demo-ligious leased AREA AT
310 S. CENTRAL AVE.

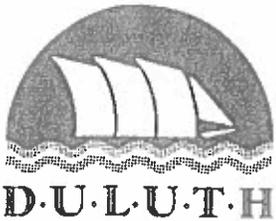
and hereby agrees to locate the proposed FACILITY

shown by diagram above, and futher certifies that the block plan shown above is a correct setback plan of dwelling
 III E.16
 until prior to passage of Zoning Ordinance, in Block _____

Date 9/23/08 Signature [Handwritten Signature] Division _____

BOARD OF ZONING APPEALS ACTION

210 City Hall
Duluth, MN 55802



Date: March 22, 2005
File Number: 05005
Green Number:

Appellant: Demo-licious, Norm Opack, President
Location: 306 S. Central Ave.

Legal Description: Rearrangement of Auditors Plat West Duluth Outlots, Outlot I Ex Nly 607' including part of vacated avenue adjoining

The above matter came on for hearing before the Board of Zoning Appeals in City Hall on March 22, 2005, notice of said hearing having been given to all interested parties in accordance with the rules of said Board. All parties interested in the matter having been heard at such hearing and the premises affected by the appeal having been inspected by the Board in accordance with its rules, the Board of Zoning Appeals now makes the findings and conclusions as indicated below:

Appeal Approved: To renew the approval of the operation of a demolition, recycling and transfer station to be a similar use to those listed as permitted in an M-1 zoning district with the following conditions:

1. This request is to be declared specific to this site and not determined for all M-1 zones;
2. This variance must be renewed every 5 years and will expire on March 31, 2010, to coincide with the next renewal year for the MPCA permit;
3. At transfer of ownership, any new owner must apply to the board to amend this variance; and
4. The applicant maintains all permits and complies with all regulations as imposed by state and federal law.

Decided at Duluth, Minnesota on March 22, 2005.

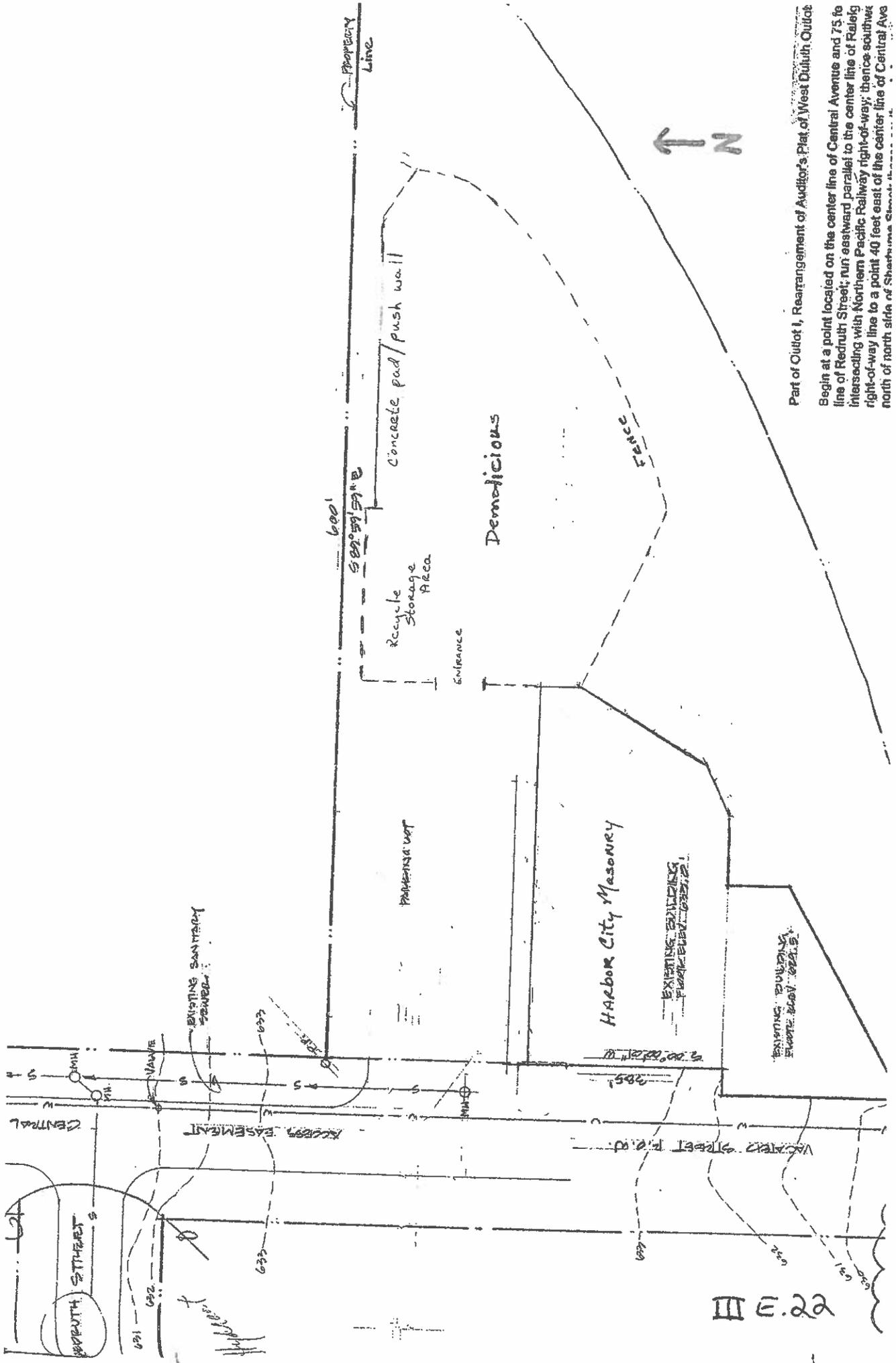
BY ORDER OF THE BOARD OF ZONING APPEALS,


Cindy Hall
Zoning Coordinator

NOTE: The action taken herein by this Board shall be final unless within ten (10) days of mailing of this notice, a further appeal is filed with the Building Inspector by any person aggrieved or by any officer, agency, department, board or bureau of the City Council, stating the grounds upon which further appeal to the City Council is desired. However, the City Council is also required to make the findings as stated above. The law does not allow each person who lives near a particular land use, or proposed use, to appeal the city's action that approved or rejected the land use. Nor does the law allow any individuals or groups that believe they are helping a cause, or the public interest, to appeal. Only an "aggrieved person" can appeal. The courts have held that a person becomes an "aggrieved person" when the city's action operates to damage his/her rights of property, or bears directly upon his/her personal interest and damages it. In other words, in order to appeal, a person must show that his/her land or possessions are lost or damaged; or that his/her money, or ability to use his/her land or personal rights are adversely affected. This adverse effect must be personal and unique and not the same effect that will be experienced by the public. In the case of an appeal to the City Council, the appellant must explain the loss that has made them an "aggrieved person," as set out above. In the case of an approved appeal, action of this Board does not in itself constitute a building permit. Your permit must be procured from the Building Safety Division after the ten (10) day period stipulated immediately above has expired.

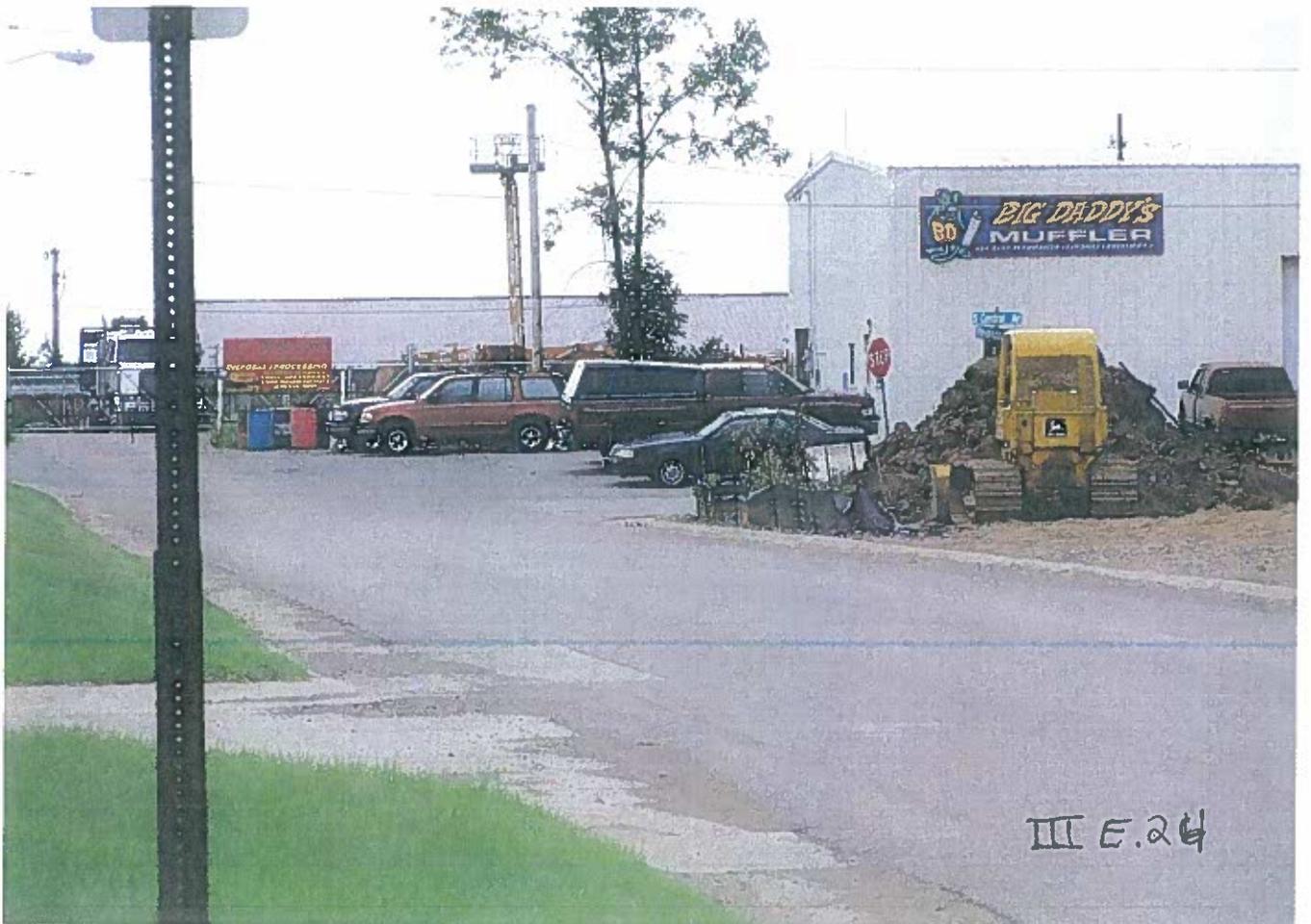
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III E.17

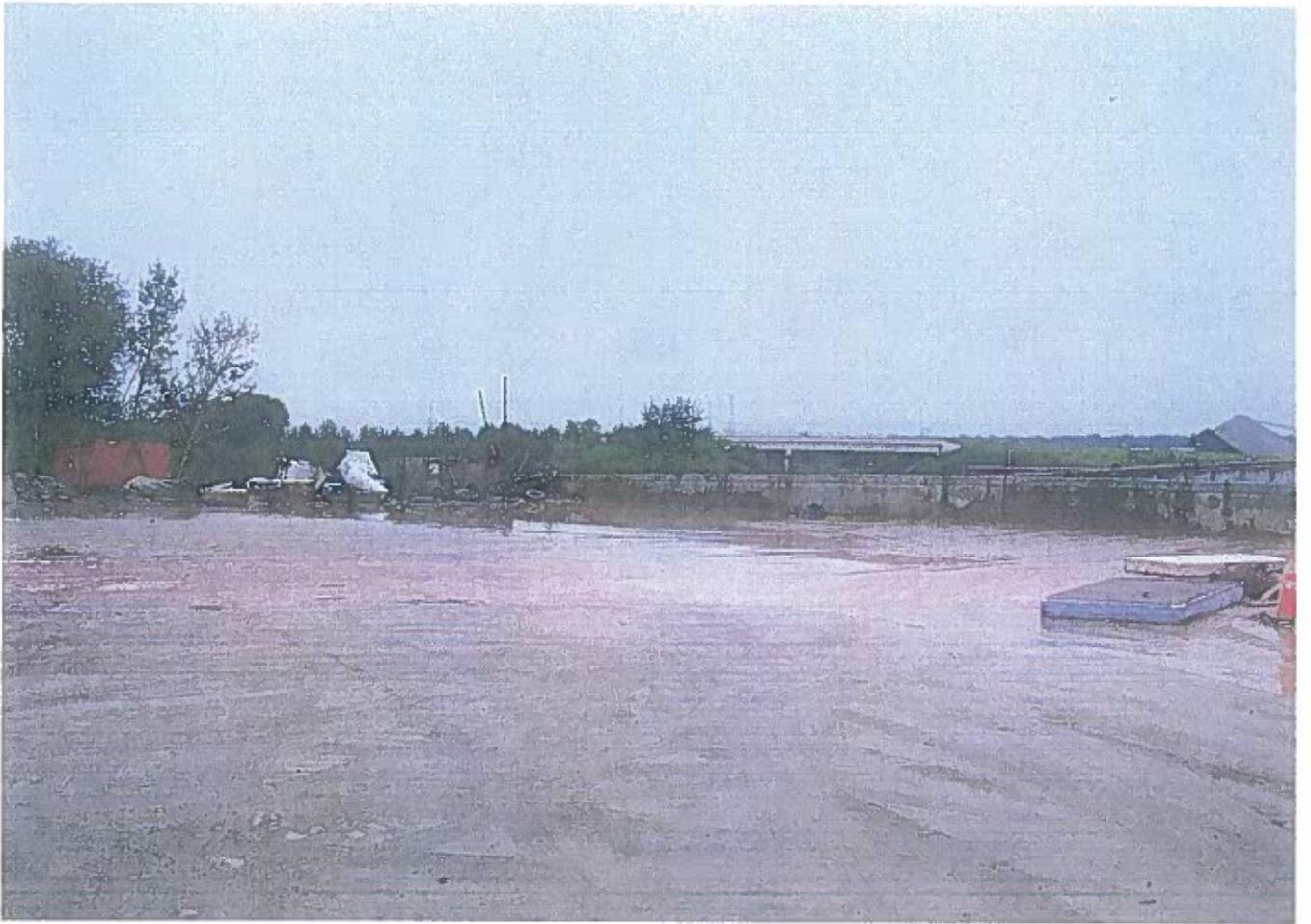


Part of Outlot 1, Rearrangement of Auditor's Plat of West Duluth Outlot
 Begin at a point located on the center line of Central Avenue and 75 to
 line of Recruth Street; run eastward parallel to the center line of Raleigh
 intersecting with Northern Pacific Railway right-of-way; thence southw
 right-of-way line to a point 40 feet east of the center line of Central Ave
 north of north side of Shawanunga Street, S.

III E.22









III E.27

