

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

12-0471R

RESOLUTION VACATING PORTIONS OF PLATTED UTILITY  
EASEMENTS AT 3780 AND 3820 LONDON ROAD (CHATEAU MANOR  
LLC).

CITY PROPOSAL:

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city requesting the vacations described in (d) below; and

(b) Pursuant to Section 100 of the City Charter and Section 50-37.6 of Chapter 50 of the Duluth City Code, 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 easements are useless for all purposes; and

(c) The city planning commission, at its Tuesday, September 11, 2012, regular meeting, recommended approval of the vacation petition; and

(d) The city council of the city of Duluth approves the vacation of the easements described below and as described and depicted on Public Document No. \_\_\_\_\_:

All that part of the dedicated ten foot wide utility easement lying within Lot 2, LONDON ADDITION TO DULUTH & EAST DULUTH REARRANGEMENT, filed in Plat Book No. 16, Page 30, St. Louis County, Minnesota, that lies northeasterly of the southwesterly 10.00 feet of said Lot 2;

and

All of the dedicated ten foot wide electrical utility easement lying within Lot 3, LONDON ADDITION TO DULUTH & EAST DULUTH REARRANGEMENT, filed in Plat Book No. 16, Page 30, St. Louis County, Minnesota;

(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 utility easement to be vacated.

Approved as to form:

  
Attorney

STATEMENT OF PURPOSE: This resolution vacates two easements located at 3780 and 3820 London Road. These easement has never been used for public purposes and are not needed for the purpose that they were initially dedicated.

On September 11, 2012, the Duluth city planning commission held a public hearing on the proposal and voted 8 yeas, 0 nays, and 0 abstentions to recommend that the city council approve the vacation.

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

Petition Received: July 30, 2012

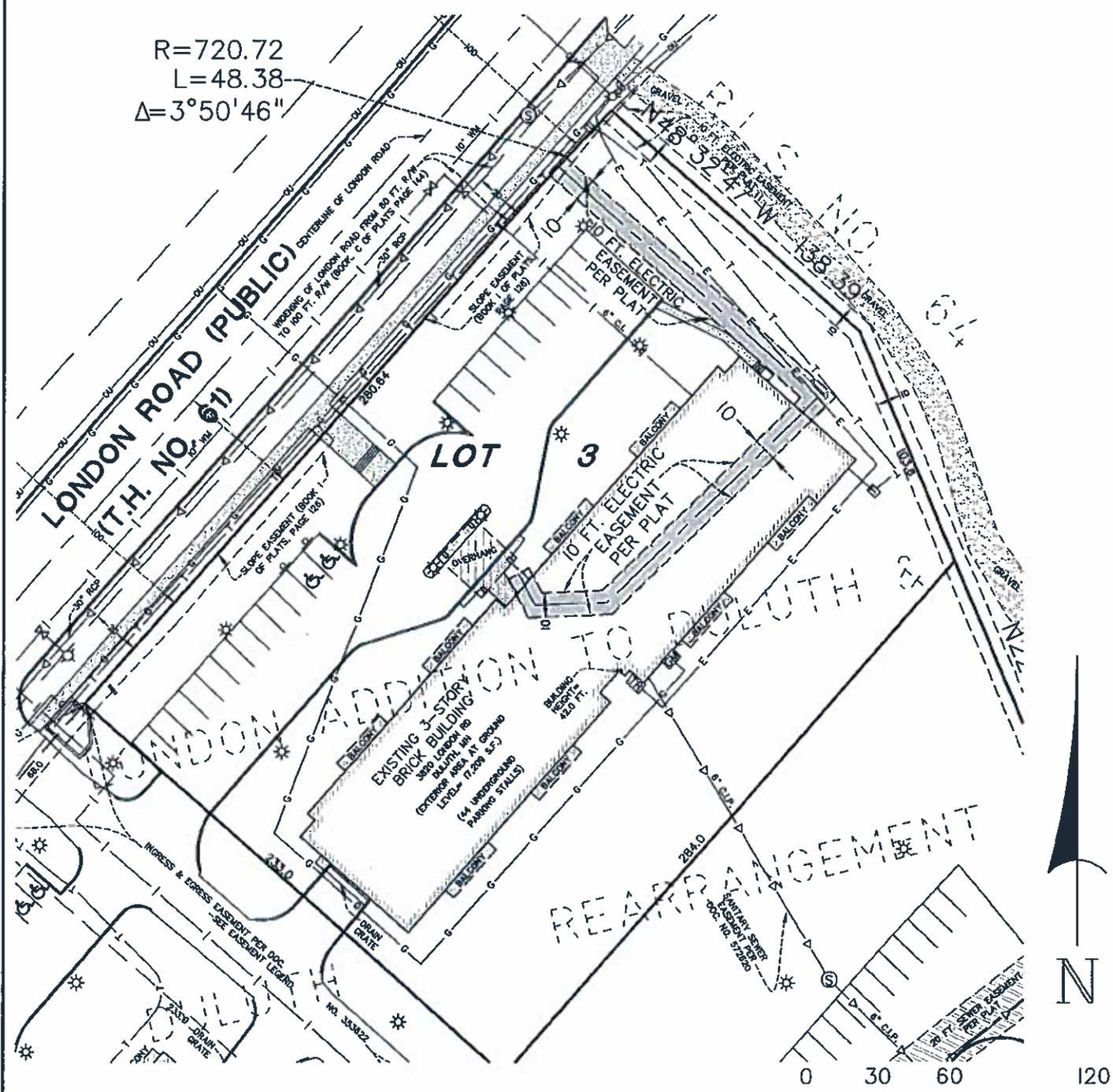
Action Deadline: There is no action deadline for this resolution.

Petitioner:

Michele Miller  
Johnson, Killen, & Seiler, P.A.  
230 West Superior Street  
323 Plum Street, Suite 800  
Duluth, MN 55802

PL 12-124

$R=720.72$   
 $L=48.38$   
 $\Delta=3^{\circ}50'46''$



EASEMENT AREA TO BE VACATED

0 30 60 120  
 SCALE IN FEET

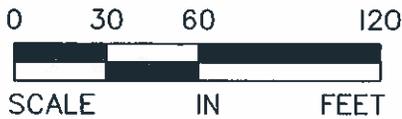
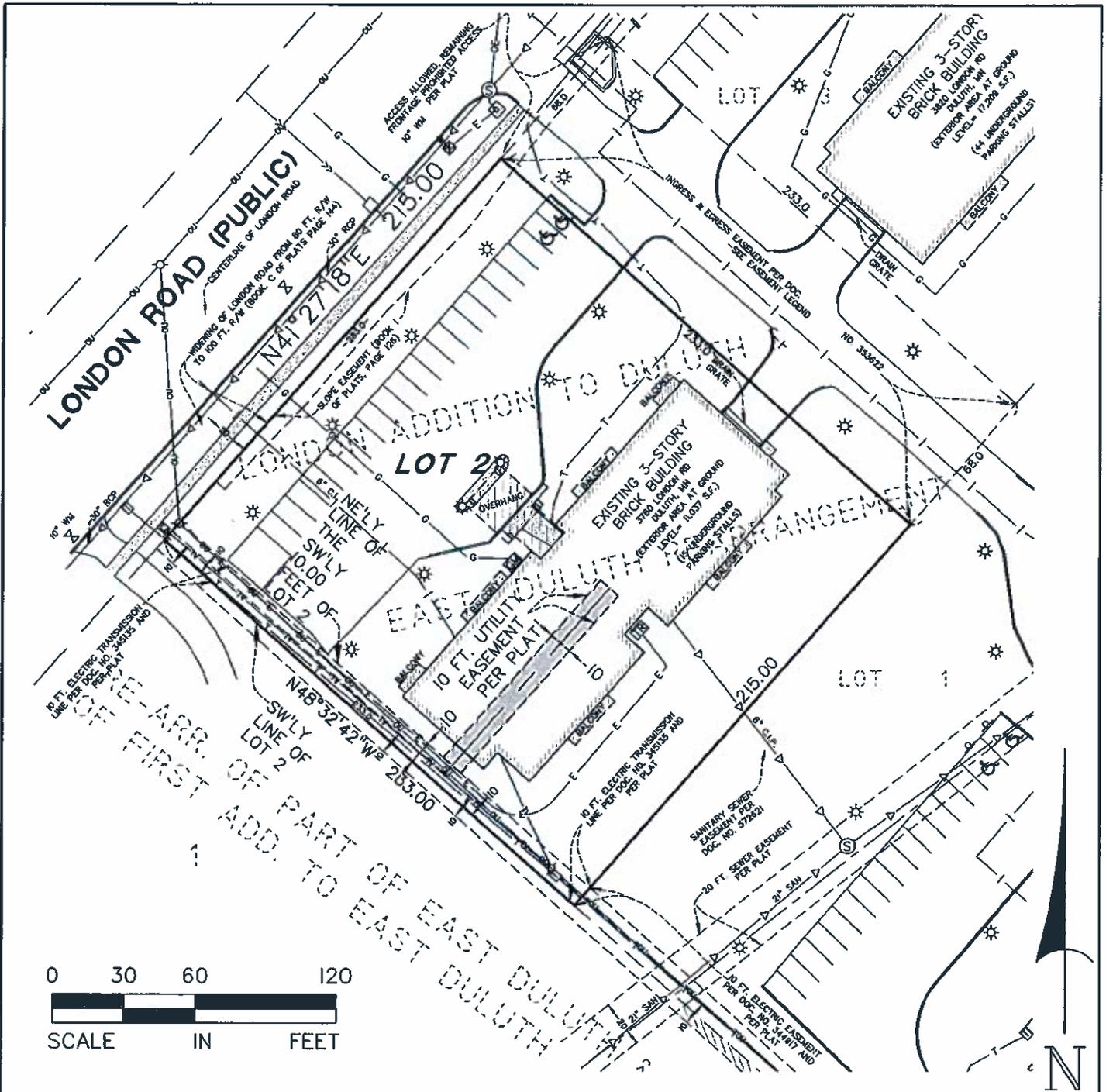
**VACATION OF ELECTRICAL EASEMENT:**  
 All of the dedicated 10 foot wide electrical easement lying within Lot 3, LONDON ADDITION TO DULUTH & EAST DULUTH REARRANGEMENT, filed in Plat Book No. 16, Page 30, St. Louis County, Minnesota.

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 Professional Land Surveyor under Minnesota statutes 326.02 to 326.16.  
SCHEIDT & QUINTER  
 Print Name: Dave Bilal  
 Signature: [Signature]  
 Date: 9/10/12 License Number: 18425

Design File: 12001surv	Checked By: DBO
Dwg Name: vacation.dwg	Drawn By: GJB
Date: 4/10/12	Scale: 1"=60'

**EXHIBIT  
 EASEMENT VACATION  
 DULUTH, MN**

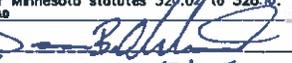

**ALLIANT  
 ENGINEERING, INC.**  
 233 PARK AVE. SOUTH, SUITE 300  
 MINNEAPOLIS, MN 55415  
 PHONE (612) 768-3080  
 FAX (612) 768-3099



 EASEMENT AREA TO BE VACATED

**VACATION OF UTILITY EASEMENT:**

All that part of the dedicated 10 foot wide utility easement lying within Lot 2, LONDON ADDITION TO DULUTH & EAST DULUTH REARRANGEMENT, filed in Plat Book No. 16, Page 30, St. Louis County, Minnesota, that lies northeasterly of the southwesterly 10.00 feet of said Lot 2.

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 Professional Land Surveyor under Minnesota statutes 326.02 to 326.16.  
 DENNIS E. OLSTEAD  
 Print Name:   
 Signature:   
 Date: 9/10/12 License Number: 18425

Design File: 12001surv	Checked By: DBO
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**CITY OF DULUTH**

Planning Division

411 W 1<sup>st</sup> St, Rm 208 \* Duluth, Minnesota 55802-1197

Phone: 218/730.5580 Fax: 218/723-3559

**STAFF REPORT**

<b>File Number</b>	PL 12-124	<b>Contact</b>	Steven Robertson, 219 730-5295	
<b>Application Type</b>	Vacation of Easement (Utility)	<b>Planning Commission Date</b>	September 11, 2012	
<b>Deadline for Action</b>	<b>Application Date</b>	April 30, 2012	<b>60 Days</b>	N/A
	<b>Date Extension Letter Mailed</b>	N/A	<b>120 Days</b>	N/A
<b>Location of Subject</b>	3780 and 3820 London Road			
<b>Applicant</b>	Chateau Manor, LLC	<b>Contact</b>	612-626-0565	
<b>Agent</b>	Michele Miller, Johnson, Killen & Seiler P.A.	<b>Contact</b>	mmiller@duluthlaw.com	
<b>Legal Description</b>	See attached			
<b>Site Visit Date</b>	August 30, 2012	<b>Sign Notice Date</b>	August 27, 2012	
<b>Neighbor Letter Date</b>	August 22, 2012	<b>Number of Letters Sent</b>	7	

**Proposal**

Applicant proposes to vacate two utility easements. According to the applicant "the electrical easements are useless as the apartment buildings are built over a portion or all of the easements and the electrical utilities are located elsewhere".

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	MU-N	Multi Family Residential	Urban Residential
<b>North</b>	R-1	Residential/Institutional	Institutional/Traditional Neighborhood
<b>South</b>	R-1	Residential	Urban Residential
<b>East</b>	R-2	Institutional/Residential	Urban Residential
<b>West</b>	R-1	Residential	Urban Residential/Traditional Neighborhood

**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.

Essentially, the standard for evaluating vacations is "uselessness," that the proposed easement is not needed for the purposes for which it was dedicated.

IV. D. 1

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

Governing Principle #7 - Create and maintain connectivity.

Future Land Use - Neighborhood Mixed Use. A transitional use between more intensive commercial uses and purely residential neighborhoods. Includes conversions of houses to office or live-work spaces. May include limited commercial-only space oriented to neighborhood or specialty retail markets.

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

Staff finds that:

- 1) The applicant owns all property affected by the proposed easement vacation.
- 2) No utilities are located in the easement requested to be vacated.
- 3) These utility easements are not needed for the efficient supply of utilities or public services in the city, and the public right of way is not otherwise needed to promote the public health, safety or welfare of the citizens of Duluth.
- 4) No comments were received from citizens or other public agencies on the specific vacation.
- 5) Vacations of streets lapse unless a plat showing the vacation is recorded with the county recorder within 90 days after final approval. The Duluth City Clerk facilitates the recording process.

**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 easements with the following conditions:

- 1) Vacation goes into effect after being recorded at the County Recorder's office. Applicant will work with Duluth City Clerk's office if needed to assist in the recording process.

IV.D.2

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



# City Planning

Chateau Apartments  
3780 and 3820 London Road

## 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

Storage Basin

Pump Station

### 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

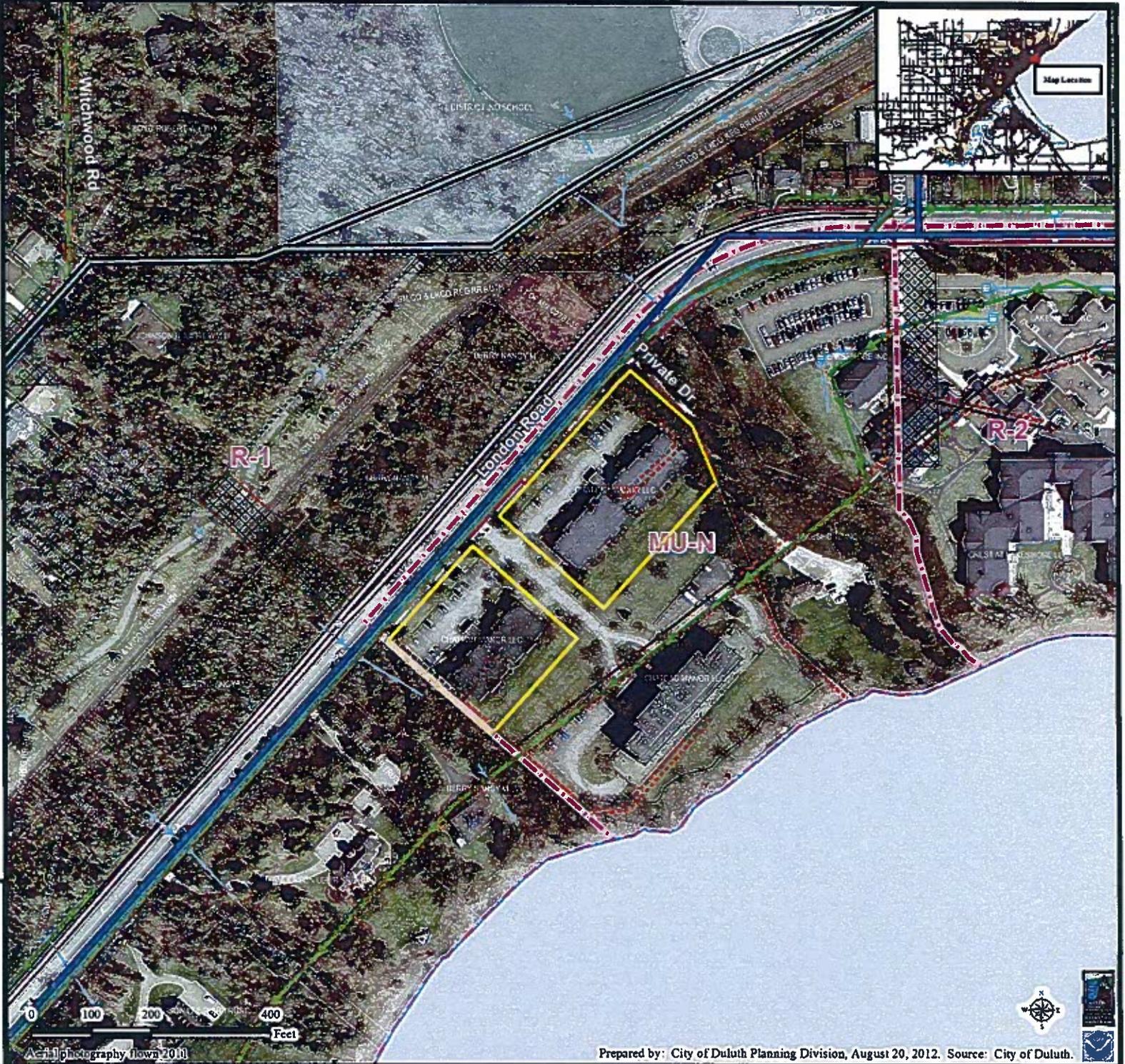
- Utility Easement
- Other Easement
- Zoning (Final)

### Public Owned Land

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

IV.D.3

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 2011



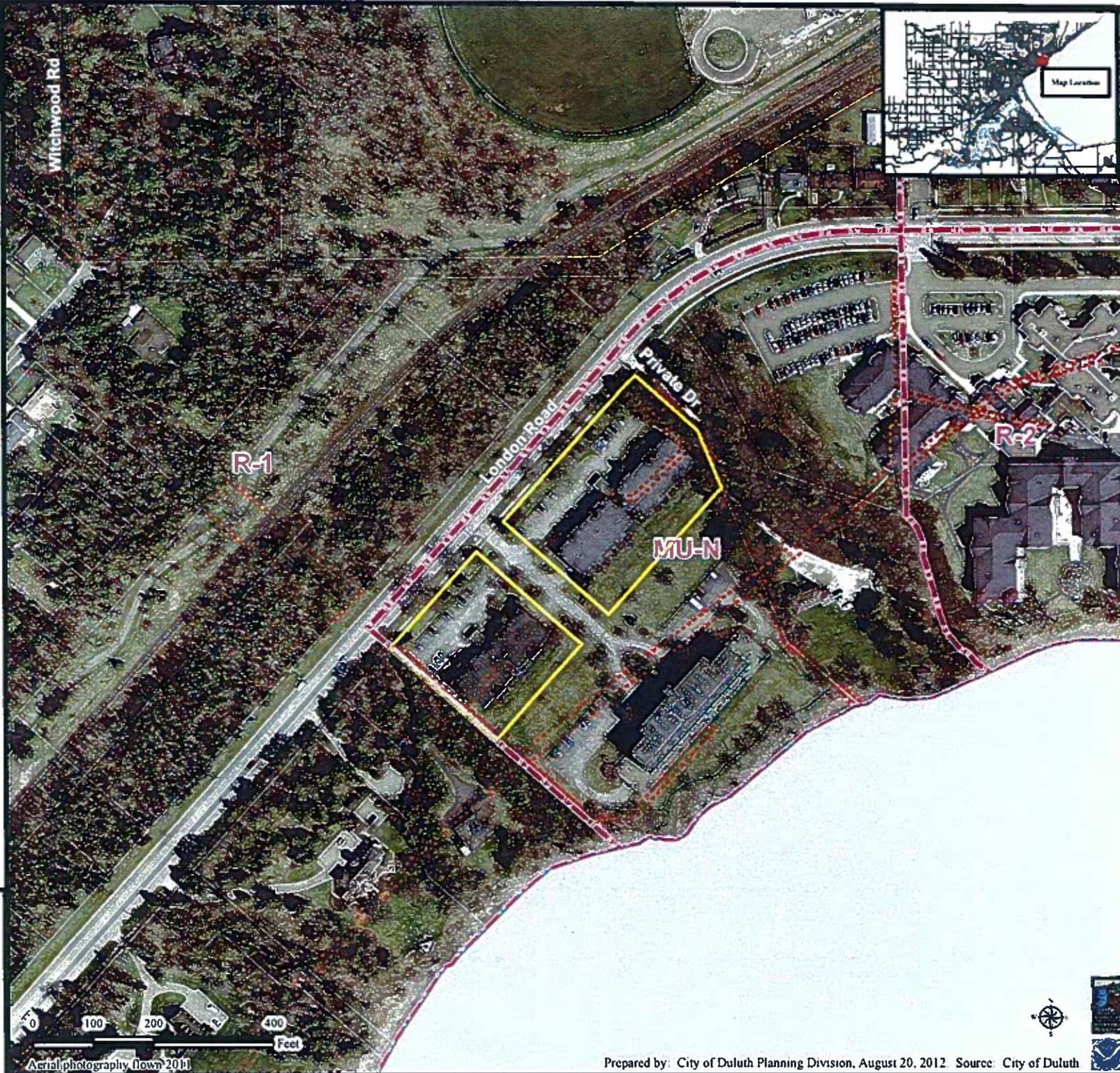
### Legend

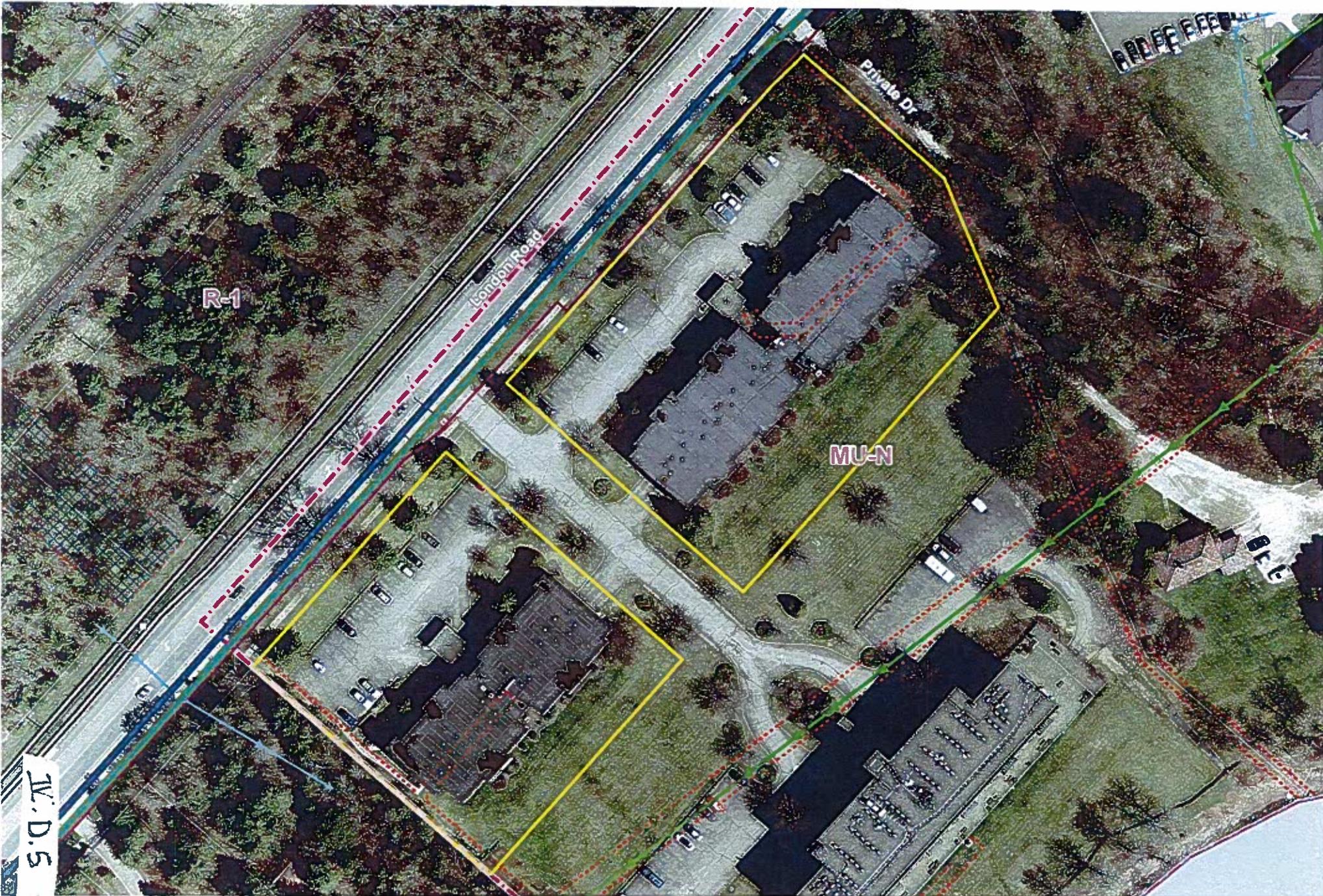
#### Easement Type

-  Utility Easement
-  Other Easement

IV. D.4

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R-1

London Road

Private Dr

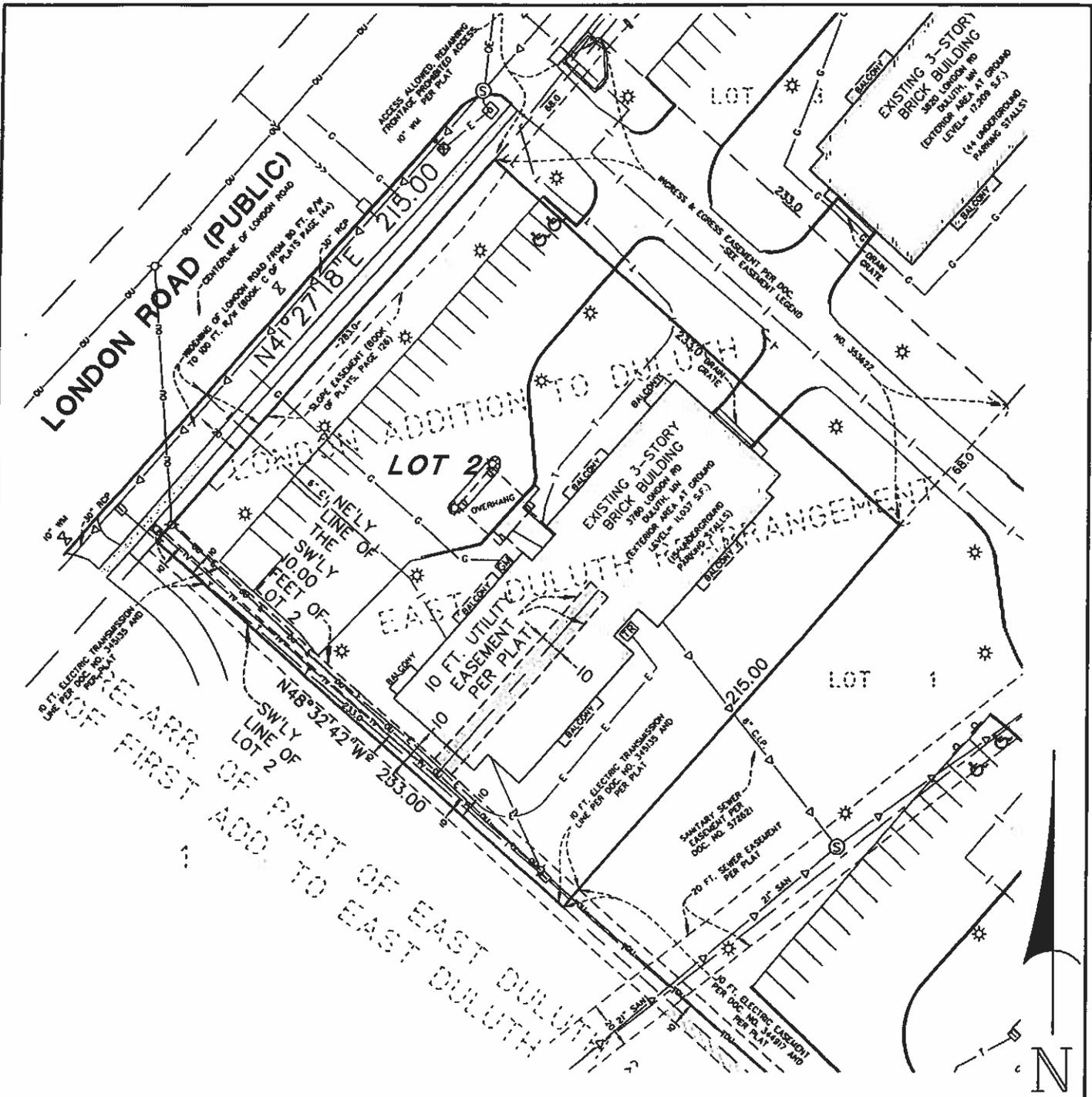
MU-N

W.D.5

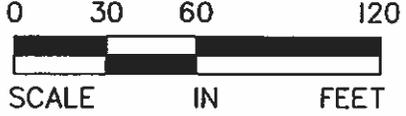
RIDGE ESTATE







 EASEMENT AREA TO BE VACATED



**VACATION OF UTILITY EASEMENT:**  
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Design File: 12001surv	Checked By: DBO
Dwg Name: vacation.dwg	Drawn By: GJB
Date: 4/10/12	Scale: 1"=60'

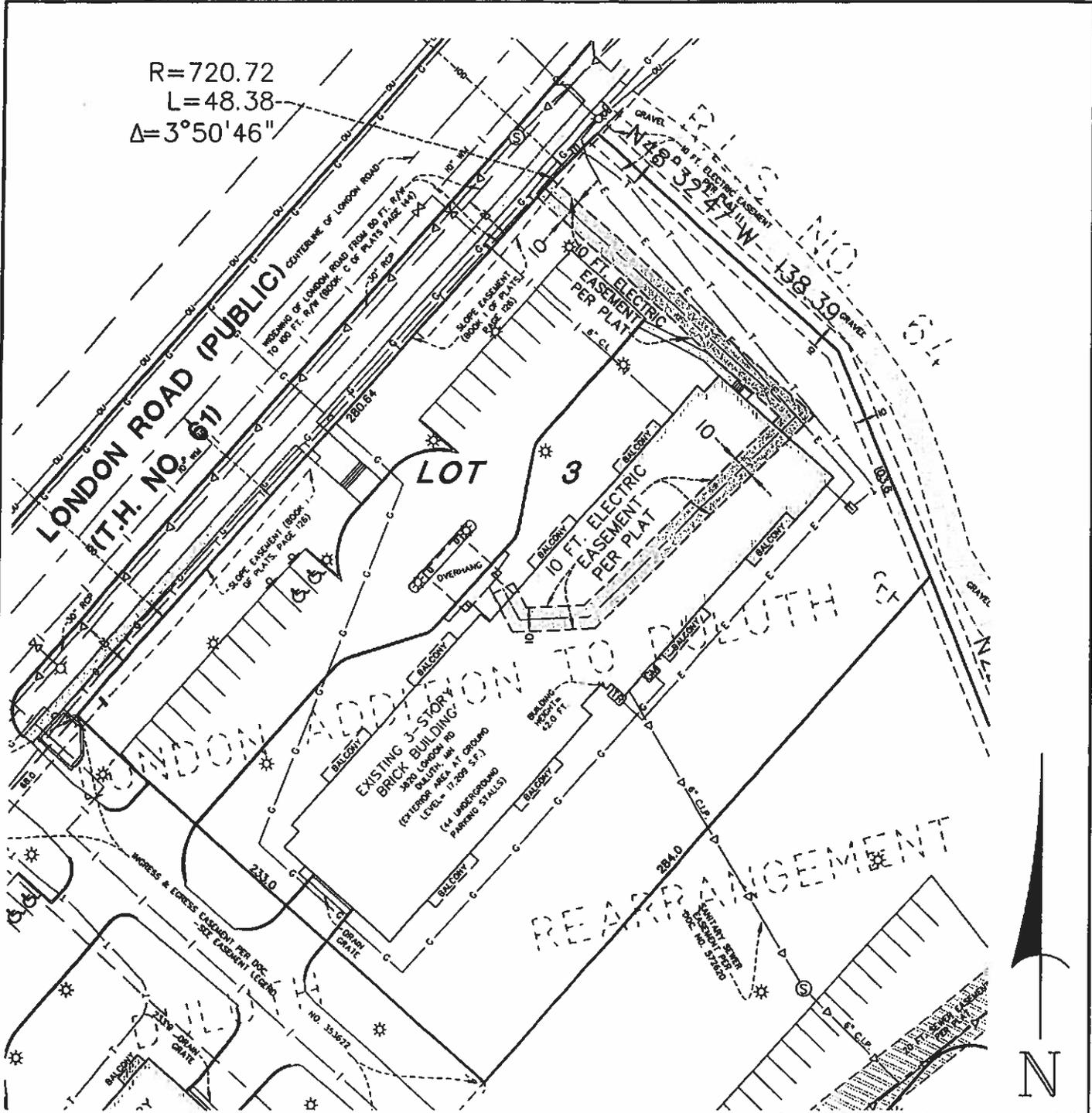
**EXHIBIT  
EASEMENT VACATION  
DULUTH, MN**

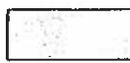
**IV.D.8**



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 EASEMENT AREA TO BE VACATED

0 30 60 120  
 SCALE IN FEET

VACATION OF ELECTRICAL EASEMENT:  
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IV.D.9

Design File: I2001surv	Checked By: DBO
Dwg Name: vocation.dwg	Drawn By: GJB
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EXHIBIT  
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 DULUTH, MN

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**LEGAL DESCRIPTIONS FOR  
ELECTRICAL EASEMENTS TO BE VACATED**

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AND

All of the dedicated 10 foot wide electrical utility easement lying within Lot 3, LONDON ADDITION TO DULUTH & EAST DULUTH REARRANGEMENT, filed in Plat Book No. 16, Page 30, St. Louis County, Minnesota.

This document was drafted by:  
Steven J. Seiler, Esq.  
Johnson, Killen & Seiler, P.A.  
230 West Superior Street  
Suite 800  
Duluth, MN 55802

## Petition to Vacate Street, Alley, or Utility Easement

Name: Chateau Manor, LLC

Description of street, alley, or easement to vacate: 10 foot electrical easements on Lot 2 and Lot 3, LONDON ADDITION TO DULUTH & EAST DULUTH REARRANGEMENT dedicated to the public by plat.

My request for this vacation is to (indicate purpose of vacation):

Clear burden of easements from title to Lots 2 and 3.

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

The easements are useless as the buildings are built over a portion or all of the electrical easements.

**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)<sup>1</sup>:

Chateau Manor, LLC is the owner of record of Lots 2 and 3, LONDON ADDITION TO DULUTH & EAST DULUTH REARRANGEMENT. Because the easements, or portions thereof, lie under the buildings located on those lots, the easements are useless. The electrical lines and utilities are located elsewhere on the properties. Chateau Manor, LLC does not want its property burdened with useless easements. The easements are not needed for the purposes for which they were dedicated.

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.<sup>2</sup>

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):  Chief Manager

Date: 7-22-12

**Notice: This is public data.**

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

<sup>2</sup> 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. IV.D.11