

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

13-0144R

RESOLUTION VACATING PORTIONS OF PLATTED UNIMPROVED ROAD
EASEMENT OF SECOND AVENUE WEST BETWEEN WEST EIGHTH AND
WEST NINTH AVENUE (DEBORAH ANDERSON AND DIANNA HUNTER).

CITY PROPOSAL:

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city requesting the vacation 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 unimproved right of way is useless for all purposes; and

(c) The city planning commission, at its Tuesday, March 12, 2013, 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 platted road easement described below and as described and depicted on Public Document No. _____:

Legal Description; Vacation of Second Avenue West

That part of Second Avenue West adjacent to Lot 33, Block 113, and Lot 31, Block 114, DULUTH PROPER THIRD DIVISION, lying between a line ten feet southerly of the north line of Lot 33, Block 113, and north line of Lot 31, Block 114, AND a line lying 33 feet northerly of the centerline of West Eighth Street.

SUBJECT to a 20 foot wide utility easement for the city of Duluth, the centerline of said utility easement being the centerline of Second Avenue West as platted;

(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 platted easement to be vacated.

Approved as to form:



Attorney

PC/PLNG SR/cs 03/14/2013

STATEMENT OF PURPOSE: This resolution vacates a 66 foot wide road easement of Second Avenue West. This road easement has never been used for a public purpose and is not needed for the purpose that it was initially dedicated. The applicant is dedicating a 20 foot utility easement down the center of the right of way for future city use. The existing alley easement is being maintained. A portion of this right of way directly to the north was vacated by council action in April 1999.

On March 12, 2013, the Duluth city planning commission held a public hearing on the proposal and voted 9 yeas, 0 nay, and 0 abstentions to recommend 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: January 16, 2013

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



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	PL 13-011	Contact	Steven Robertson, 218 730-5295	
Application Type	Vacation of Unimproved Street Easement	Planning Commission Date	February 12, 2013	
Deadline for Action	Application Date	January 16, 2013	60 Days	N/A
	Date Extension Letter Mailed	February 19, 2013	120 Days	N/A
Location of Subject	200 Block of West 8th Street			
Applicant	Deborah Anderson and Dianna Hunter	Contact		
Agent	Karen Olson, Olson Law Office	Contact	olsonattorneys@yahoo.com	
Legal Description	See attached			
Site Visit Date	February 24, 2013	Sign Notice Date	February 26, 2013	
Neighbor Letter Date	February 19, 2013	Number of Letters Sent	34	

Proposal

Property owner is requesting a vacation of an unimproved street easement, adding that "the petitioners own both sides adjoining the requested vacation and that the upper section already vacated".

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	R-1	Vacant	Traditional Neighborhood
North	R-1	Vacant/Road	Traditional Neighborhood
South	R-1	Residential	Traditional Neighborhood
East	R-1	Vacant/Residential	Traditional Neighborhood
West	R-1	Vacant/Road	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 .

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

Comprehensive Plan, Governing Principles:

Principle #5 - Strengthen neighborhoods. The present city is an historical amalgam of villages and other independent units of government, contributing to the present condition of Duluth being strongly defined by its neighborhoods. This condition should be reinforced through land use, transportation and public service delivery patterns which strengthen neighborhood identity. New institutional expansions, major public infrastructure or large commercial or industrial uses should not divide historic neighborhood patterns.

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

Staff finds that:

- 1) The applicant owns the land adjacent (east and west) of the proposed vacation area. The remaining right of way to the north was vacated by Council resolution 99-0237 (on March 22, 1999). A condition of the previous vacation was that 20 foot easement been retained for future utility needs.
- 2) The proposed vacation, if approved, should be contingent upon maintaining the connection to the utility easement. This would still allow the property owners to enjoy the property, but they could not obstruct the easement by constructing a structure on top of the 20 foot being retained for future utility purposes.
- 3) The right of way easement is 66 feet wide. No utilities are currently located in the easement requested to be vacated. This vacation, if approved, will not create a new dead end (as a dead end currently exists), nor will it deprive any currently platted lots of access to a public right of way.
- 4) This easement 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; the right of way is not and will not be needed to provide pedestrian or recreational access to the water; and the public right of way is not otherwise needed to promote the public health, safety or welfare of the citizens of Duluth.
- 5) No comments were received from the city or government agencies on this proposal. There was a citizen question on what would happen on this lot if the right of way was vacated.
- 6) 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 street easement with the following conditions:

- 1) A 20 foot easement been maintained in the center line of the right of way for future utility needs (note: already indicated in applicant's vacation certificate of survey, along with preservation of the alley).
- 2) 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.

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

← 7



City Planning

Proposed Vacation
13-011 Anderson and Hunter



V.2

Legend

Water Distribution System

- 30 - 60" Water Pipe
- 16 - 24" Water Pipe
- 4 - 6" Water Pipe

Gas Distribution Main

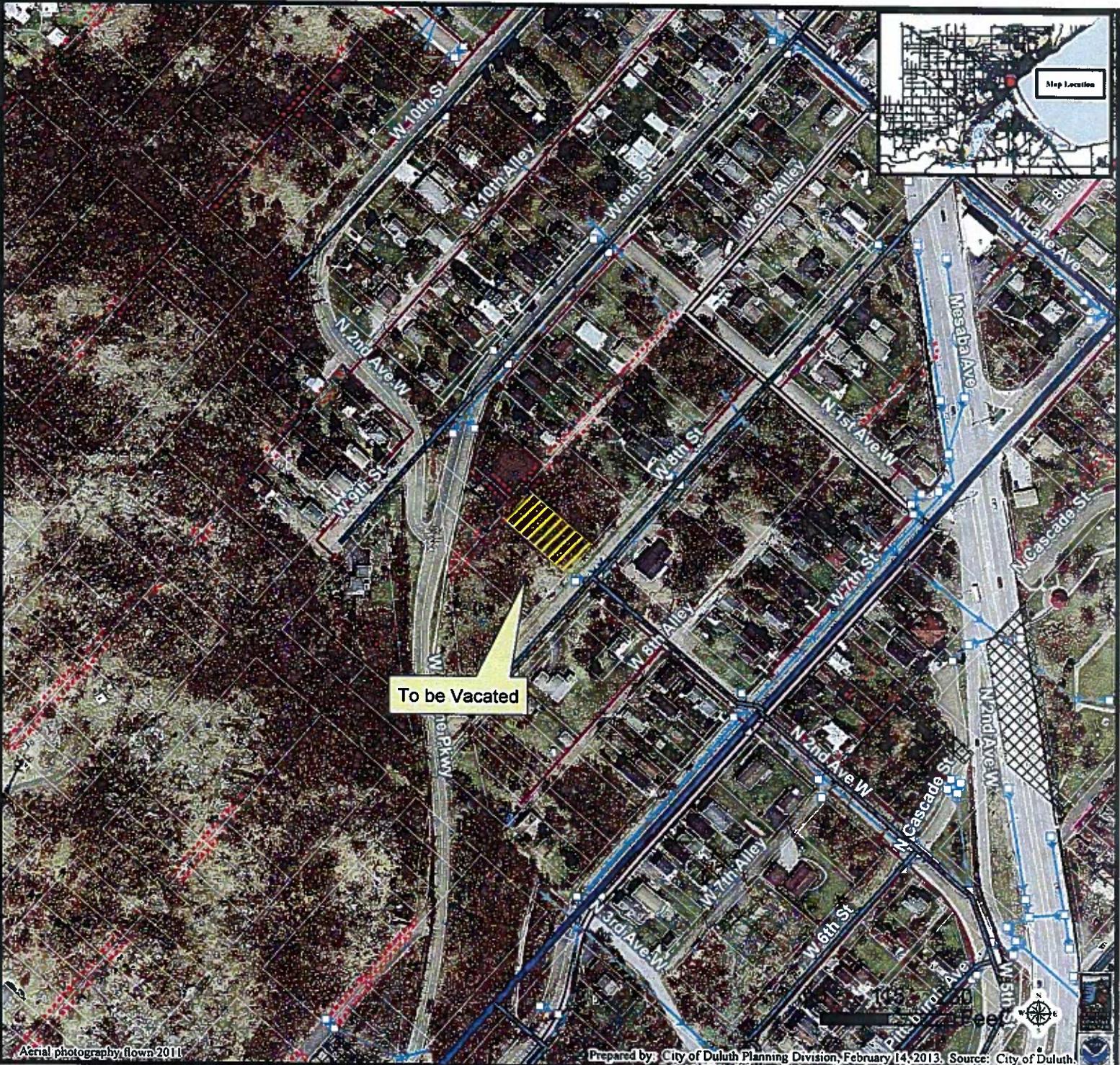
- 8" - 16" Gas Pipes
- 4" - 6" Gas Pipes
- 0" - 4" Gas Pipes

Storm Sewer Collection System

- Storm Sewer Pipe
- Storm Sewer Catch Basin
- Discharge Points
- Vacated ROW

Easement Type

- Utility Easement
- Other Easement



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.

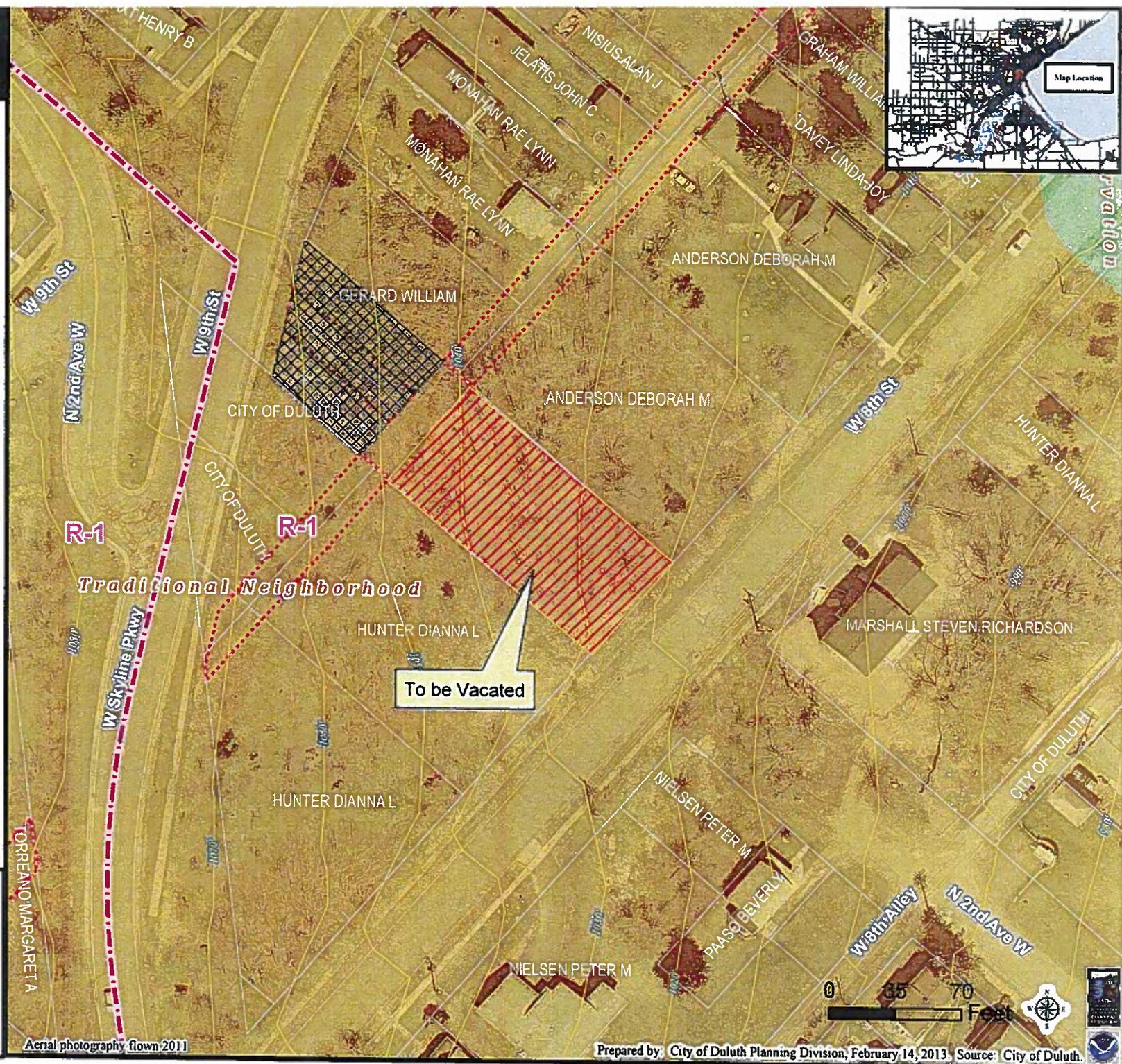
Aerial photography, flown 2011

Prepared by: City of Duluth Planning Division, February 14, 2013. Source: City of Duluth.



Legend

- 10' Contour (elev. change)
- Vacated ROW
- Easement Type**
- Utility Easement
- Other Easement
- 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



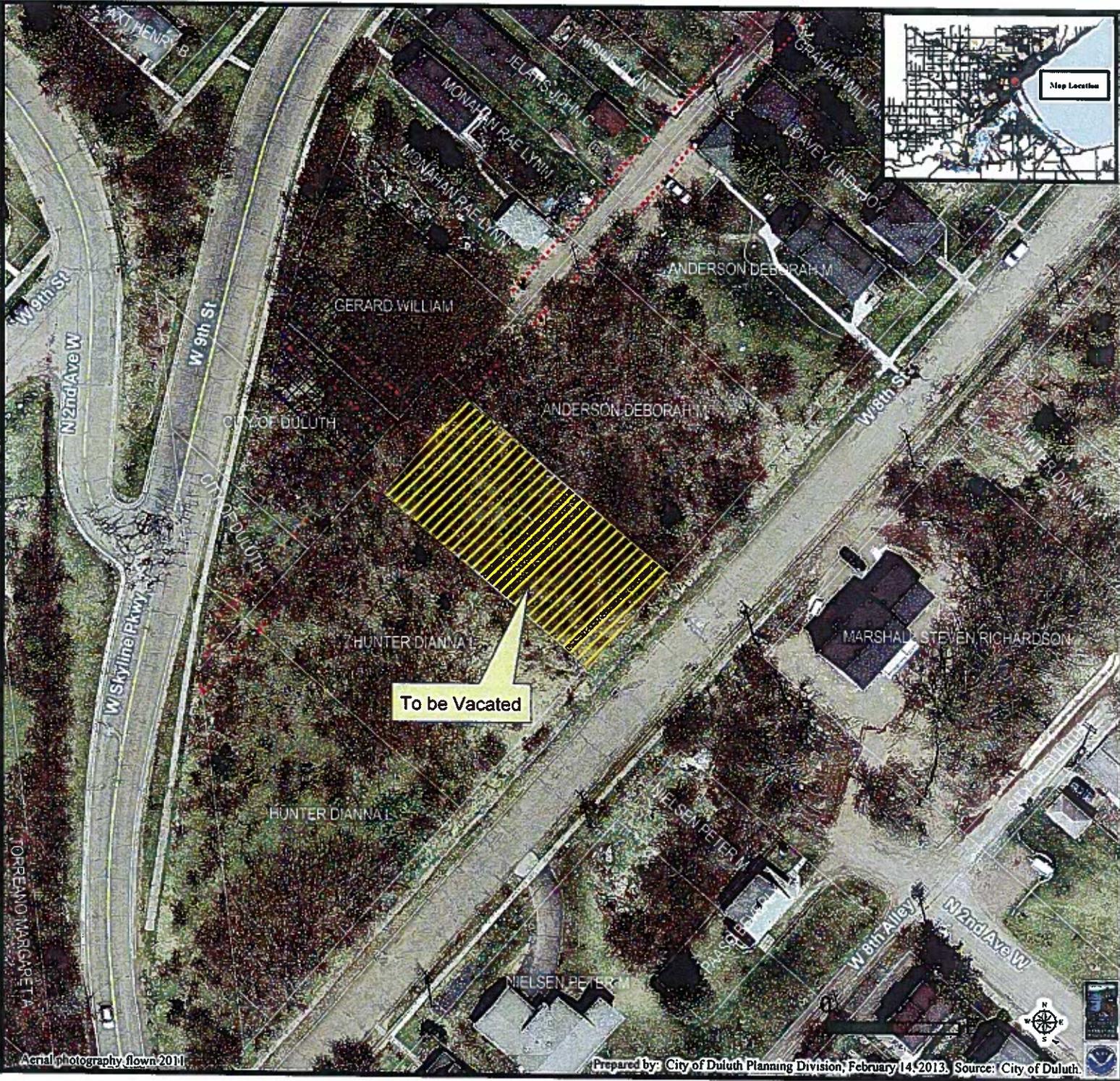
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Aerial photography flown 2011



City Planning

Proposed Vacation
13-011 Anderson and Hunter



K-5

Legend

 Vacated ROW

Easement Type

 Utility Easement

 Other Easement

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Aerial photography flown 2011

Prepared by: City of Duluth Planning Division, February 14, 2013. Source: City of Duluth.



EXHIBIT A

Certificate of Survey

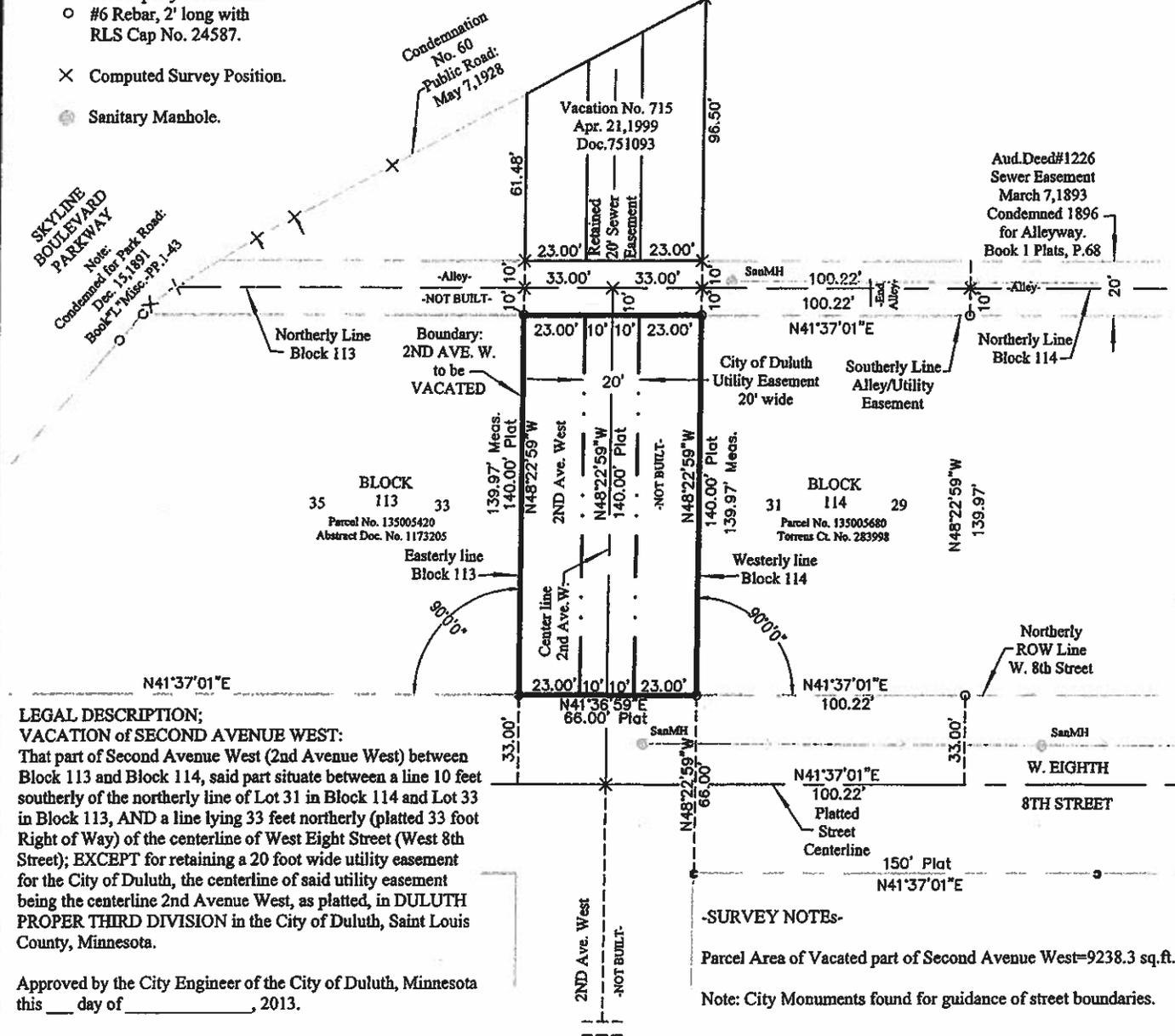
Survey for Vacation of 2nd Avenue West
 lying between Block 113 and Block 114
 lying Southerly of the Alley/Utility
 Easement and the Northerly Right of Way
 line of West 8th Street in the plat of
DULUTH PROPER 3RD DIVISION
 City of Duluth, St. Louis County,
 Minnesota



SCALE IN FEET
 St. Louis County Coordinate
 SLCTM(96)-NAD83
 VRS-GPS Survey

LEGEND

- Found Survey Monument:
- Private Survey Records.
- Set Property Monument:
- #6 Rebar, 2' long with RLS Cap No. 24587.
- × Computed Survey Position.
- Sanitary Manhole.



LEGAL DESCRIPTION;
VACATION of SECOND AVENUE WEST:
 That part of Second Avenue West (2nd Avenue West) between Block 113 and Block 114, said part situate between a line 10 feet southerly of the northerly line of Lot 31 in Block 114 and Lot 33 in Block 113, AND a line lying 33 feet northerly (platted 33 foot Right of Way) of the centerline of West 8th Street (West 8th Street); EXCEPT for retaining a 20 foot wide utility easement for the City of Duluth, the centerline of said utility easement being the centerline 2nd Avenue West, as platted, in DULUTH PROPER THIRD DIVISION in the City of Duluth, Saint Louis County, Minnesota.

Approved by the City Engineer of the City of Duluth, Minnesota
 this ___ day of _____, 2013.

-SURVEY NOTES-
 Parcel Area of Vacated part of Second Avenue West=9238.3 sq.ft.
 Note: City Monuments found for guidance of street boundaries.

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 Land Surveyor UNDER THE LAWS OF THE STATE OF Minnesota

NAME: Anthony Lueck

SIGNATURE: Anthony Lueck

DATE: 12/26/2012 Rev. 2/15/2013 LIC. No. 24587

Survey for Vacation for part of
 2nd Avenue West in the Plat of
DULUTH PROPER 3RD DIV.
 Deb Anderson-Dianna Hunter
 127 West 7th Street
 Duluth, MN 55806

NORTH COUNTRY
 LAND SURVEYOR, INC.

Anthony Lueck
 Surveyor

675
 Drafting
 Mapping
 Property Lines

Minnesota/Wisconsin
 MIN. LIC. 24587 / WIS. LIC. 2366
 605 TEL. 218-348-6037
 anthonylueck@northc.com

609B Ryan Road
 Duluth, MN 55806

LEGAL DESCRIPTION FOR VACATED PORTION OF 2ND AVENUE W

DEBORAH M. ANDERSON and DIANNA L. HUNTER

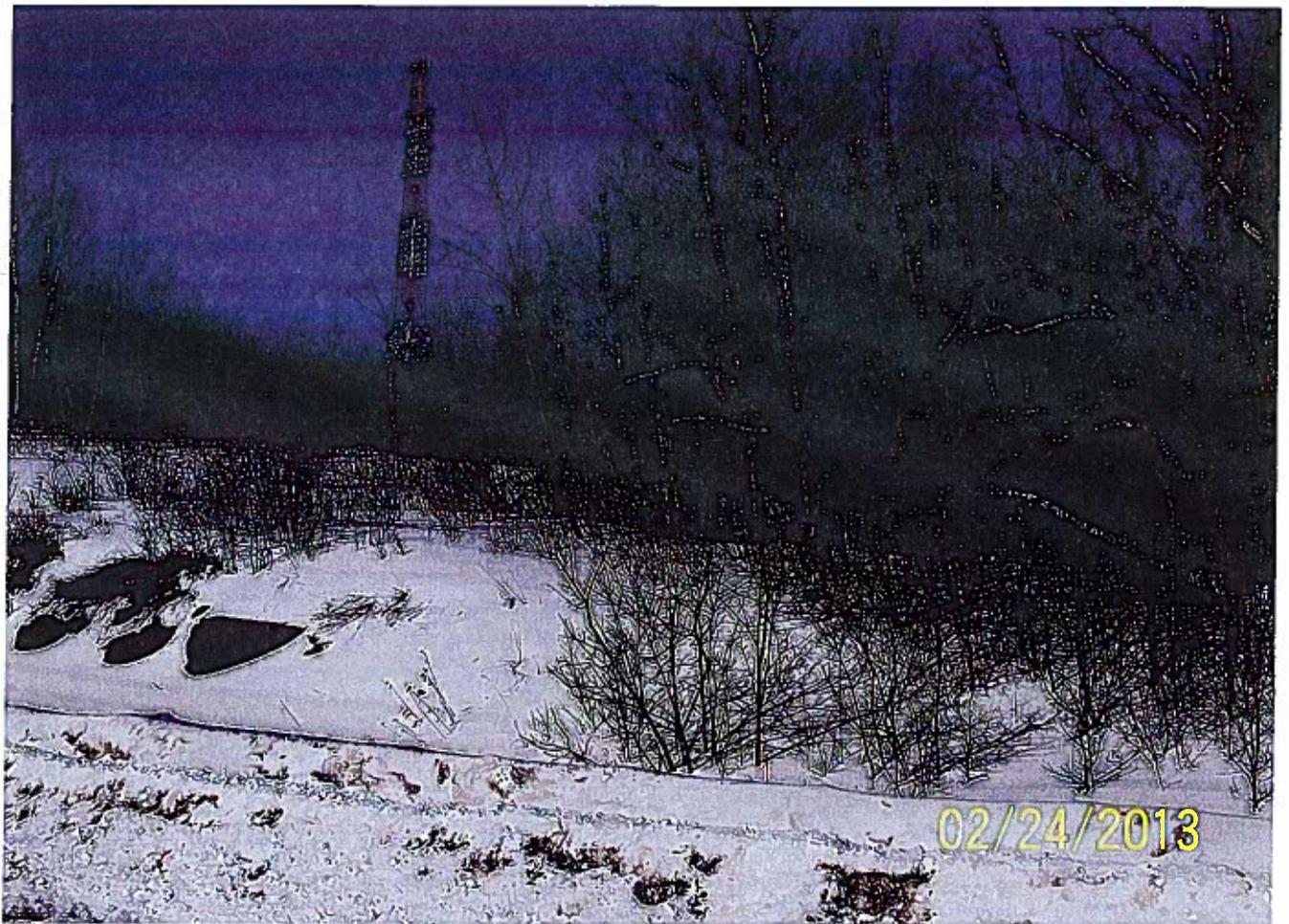
That part of Second Avenue West adjacent to Lot 33, Block 113, and Lot 31, Block 114, DULUTH PROPER THIRD DIVISION lying between a line 10 feet southerly of the north line of Lot 33, Block 113, and north line of Lot 31, Block 114, AND a line lying 33 feet northerly of the centerline of West Eighth Street.

SUBJECT to a 20 foot wide utility easement for the City of Duluth, the centerline of said utility easement being the centerline of 2nd Avenue West as platted.

Approved this ____ day of _____, 2013, by the City of Duluth Engineer's Office

By _____

Printed Name: _____



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00751093

** CONFORMING COPY **

ST. LOUIS COUNTY RECORDER
STATE OF MINNESOTA

DOCUMENT NO. 00751093

ON 04/29/1999
AT 08:52AM

MARK A. MONACELLI
COUNTY RECORDER

** CONFORMING COPY **
A2699164

CERTIFIED COPY OF RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DULUTH, MINNESOTA

RESOLUTION 99-0237R

ADOPTED: March 22, 1999

BY COUNCILOR PRETTNER SOLON:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of Second Avenue West between West Ninth Street and Ninth Alley described as: Second Avenue West adjacent to Lot 34, Block 113 and Lot 32 Block 114, Duluth Proper, Third Division; and

WHEREAS, 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

WHEREAS, the city planning commission approved the vacation petition at its March 9, 1999, meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of Second Avenue West: lying south of West Ninth Street/ Skyline Parkway and northerly of a line 10' north of the south line of Lot 32, Block 114, extended westerly as more particularly described on Public Document No. 99-0322-13.

BE IT FURTHER RESOLVED, that a 20 foot wide utility easement ten feet each side of the centerline of Second Avenue West be retained.

K-9

CERTIFIED COPY OF RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DULUTH, MINNESOTA

BE IT FURTHER RESOLVED, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the street to be vacated and the easement being retained.

Resolution 99-0237 was unanimously adopted.

Approved March 22, 1999

GARY L. DOTY, Mayor

I, JEFFREY J. COX, city clerk of the city of Duluth, Minnesota, do hereby certify that I have compared the foregoing resolution passed by the city council on the 22nd day of March, 1999, with the original in my custody as city clerk of said city, and that the same is a true and correct transcript therefrom.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said city of Duluth, this sixth day of April, 1999.

JEFFREY J. COX
City Clerk

by *Rutha Oswald*
Assistant
CITY OF DULUTH, MINNESOTA

CITY PLANNING DIVISION
STREET VACATION PETITION
STAFF REPORT

Meeting Date: March 9, 1999

- 1. Applicant: William Gerard Sylvia Reasor
52 Stillmeadow Rd. 120 West 9th Street
Esko, MN 55733 879-8514 Duluth, MN 55806
- 2. Proposed Vacation: Second Avenue West between West 9th Street and 9th Alley.
- 3. Legal Description: 2nd Avenue West adjacent to Lot 34, Block 113 and Lot 32 Block 114, Duluth Proper, Third Division.
- 4. Number of Surrounding Property Owners Notified: 32

5. BACKGROUND DATA:

- A. Proposed Use: add to adjoining lot to enlarge building site.
- B. History of Past Actions: None
- C. Existing Area Zoning: The area below Skyline and east of 2nd Avenue is R-2 Two Family Residential, the area above Skyline and west of 2nd Avenue is R-1-b, Single Family Residential.
- D. Existing Area Development: The lands below Skyline along both sides of 2nd Avenue area vacant. Lands to the east are residential. Lands above 9th Street and west of 2nd Street are residential.
- E. Site Characteristics: The right of way is 66 feet in width and extends(from the rear lot line/ alley) 132.37 feet on the east side and 106.57 feet on the west side. The right of way drops approximately 30 feet from 9th Street to 9th alley. The area is wooded with mature trees up to 40-50' in height and underbrush. The topography does not lend itself to future street construction between 9th Street and the alley below. The grade from 8th Street up to the alley appears to be suitable for future roadway connection to the dead end alley in block 114.
- F. Reactions from Various Groups, Agencies and Individuals: See Attachments.
1. e-mail from: MARK WINSON date: 2/26/99 Subject: Street Vacation W. 9th Street FN 99022
The City has a sanitary sewer manhole located within an easement in Lot 32, Block 114. We would request that the vacation end 10 feet to the northwest from the back property line of Lot 32 Block 114 and Lot 34 Block 113 to allow access to this manhole.
- H. Conclusions:
Can it be shown that there will be no future need for this right-of-way? As a street, Yes. However, accommodation of existing and future utility corridor needs to be addressed. There is a sanitary sewer located in the south west corner of the area requested for vacation which needs to be addressed. Also, with the potential for storm water utility needs, an easement for future infrastructure needs to be considered. Also, as a side note, the property located west of this right of way is held by the city for "Skyline Parkway view protection". Vacating this right of way allows for development to

Planning Commission: Action Johanna + Director Aff to 1 Bureau Date March 9, 1999
 City Council: Action _____ Date _____
 1200/17 FN 99022

K-11
TL B-1

extend into the vacated area.

At the present time, the petitioners property consists of a 50 foot wide lot. The zoning setbacks (R-2 zone) call for 25' front, 6' side and 15' side corner. This results in a buildable lot width of 29'. With the vacation as requested, the lot width will increase to 83' and setbacks change to 25' front, 6' each side for a buildable lot width of 71'.

In consideration of a future utility easement centered on the centerline of the vacated avenue (20 feet total width, 10' each side of the centerline), the buildable lot width is 67'. The building height limitations of 30 feet do not change and do not appear to affect the views from Skyline Parkway at this location. Existing trees on this site are higher than the permitted building height.

Points in favor:

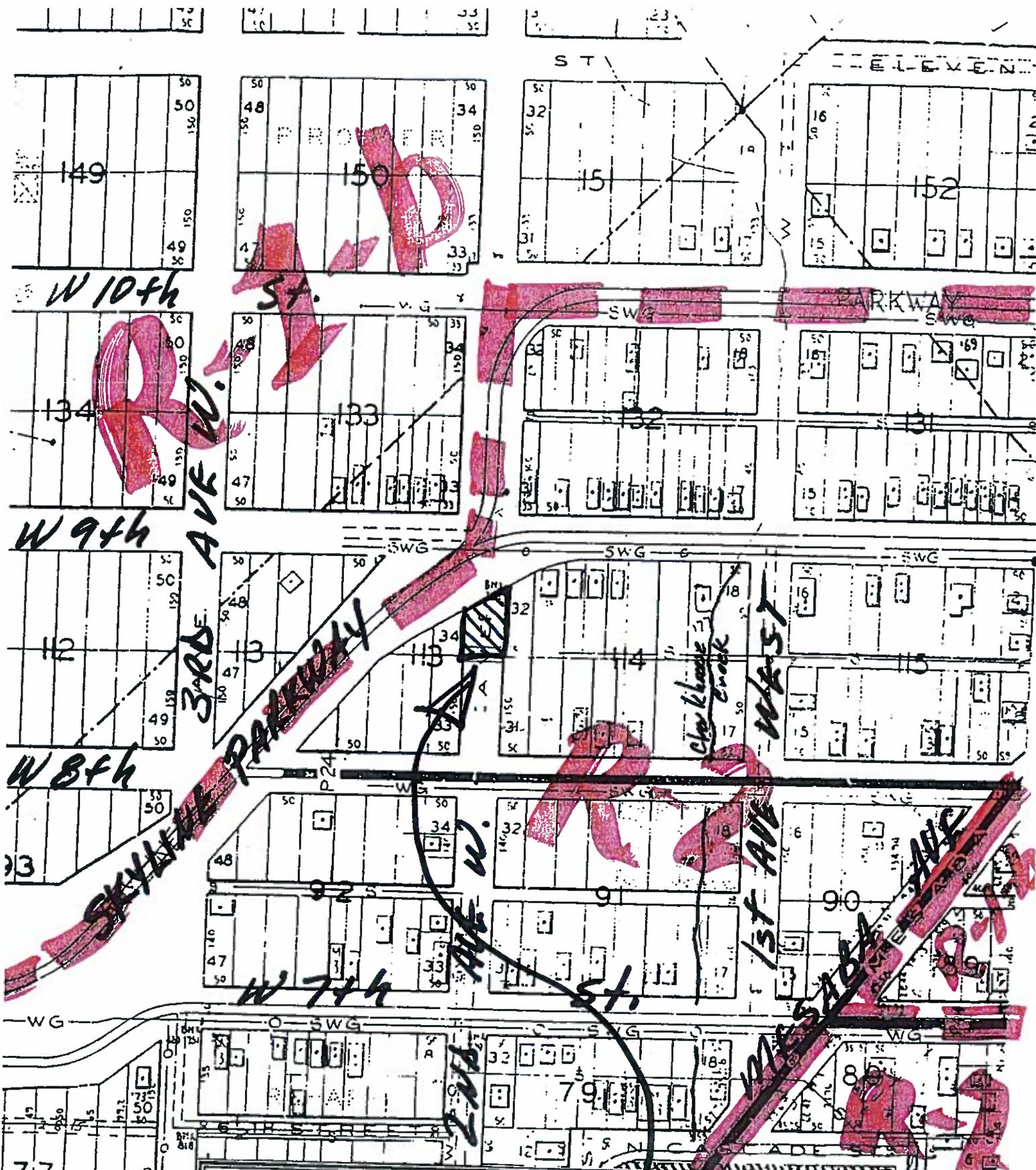
1. The right of way is not needed for street or pedestrian use.

Points in opposition:

1. Easements for existing and future utilities need to be retained.

Recommendations for Planning Commission action:

Approve the vacation lying northerly of a line 10' north of the south line of Lot 32, Block 114, extended westerly and with the retention of a 20 foot utility easement 10 feet each side of the centerline of 2nd Avenue West and retain the southerly 10 feet of the



APPLICANT: William Gerard
PURPOSE: Street Vacation
FILE NO: 99022
SCALE: 1" = 200'
DATE: February 12, 1999

DIVISION OF PLANNING
 CITY OF DULUTH, MINNESOTA

NORTH
 K-13