PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

13-0145R

RESOLUTION VACATING PORTIONS OF PLATTED UNIMPROVED ROAD EASEMENT OF 49TH AVENUE EAST BETWEEN WOODLAWN STREET AND KINGSTON STREET (JIM MAINELLA).

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:

That part of 49th Avenue East (the same being platted as "Spencer Avenue"), according to the plat, CROSLEY PARK ADDITION TO DULUTH, on file or of record in the office of the county recorder, St. Louis County, Minnesota. The area to be vacated is bounded as follows:

On the north: By the south right-of-way line of Woodlawn Street.

On the west: By the east line of Block 143.

On the east: By the west line of Block 144.

On the south: By the south line of Block 143 and its easterly prolongation to the centerline of said 49th Avenue East AND By the south line of Block 144 and its westerly prolongation to the centerline of said 49th Avenue East.

AND

That part of 49th Avenue East (the same being platted as "Spencer Avenue"), according to the plat, CROSLEY PARK ADDITION TO DULUTH, on file or of record in the office of the county recorder, St. Louis County, Minnesota. The area to be vacated is bounded as follows:

On the north: By the north line of Block 142 and its easterly prolongation to the centerline of said 49th Avenue East AND By the north line of Block 141 and its westerly prolongation to the centerline of said 49th Avenue East.

On the west: By the east line of Block 142.

On the east: By the west line of Block 141.

On the south: By the north right of way line of Kingston Street (the same being platted as "Clifton Street");

(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:

Shannar Johnson

Attorney

PC/PLNG SR:cs 3/14/2013

STATEMENT OF PURPOSE: This resolution vacates a 66 foot road easement of 49th Avenue East. This road easement has never been used for a public purpose and is not needed for the purpose that it was initially dedicated. The existing alley easement is being maintained. Portions of this 49th Avenue East right-of-way to the south of this proposal were vacated by council action in 2001, 1997, 1991, 1972 and 1964.

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 23, 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 13-015 | **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 23, 2013 | **60 Days** | N/A | |
| | **Date Extension Letter Mailed** | February 19, 2013 | **120 Days** | N/A | |
| **Location of Subject** | 4900 Block of Woodlawn Street | | | | |
| **Applicant** | Jim Mainella | **Contact** | sjmainella@aol.com | | |
| **Agent** | | **Contact** | | | |
| **Legal Description** | See attached | | | | |
| **Site Visit Date** | February 24, 2013 | **Sign Notice Date** | February 25, 2013 | | |
| **Neighbor Letter Date** | February 19, 2013 | **Number of Letters Sent** | 28 | | |

**Proposal**

Property owner is requesting a vacation of an unimproved street easement, adding that "vacating 49th Ave East will assist the construction of my new home and the permanent placement of a driveway for the entrance."

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

**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.

Recent History. An alley one block north of this site was vacated by Council resolution 03-0201 (3/24/2003). Various section of this street and adjoining rights of way were vacated in 1997 (97-0795), 1991 (91-0503), 1972, and 1964.

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

Staff finds that:

1) The applicant owns the land to the west of the proposed vacation area. The property owners submitted a petition that contained a majority of the affected property owners' signatures.

2) The unimproved right of way easement is 66 feet wide. No utilities are located in the easement requested to be vacated, with the exception of power lines running through the alley. This vacation, if approved, will not deprive any currently platted lots of access to a public right of way. It will create a dead end, but it should be noted that 49th Ave ends 1 block north of this site (Skyline Parkway), and 4 blocks south of this site (near Rock Ridge School).

3) 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.

4) No comments were received from the public or city or government agencies on this proposal. Minnesota Power was asked to verify if they had concerns with the vacation of the alley since there are currently power lines running through the alley; they have since asked that the alley be maintained as a public right of way to ensure access for private services.

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 street easement with the following condition:

1) The alley be maintained as public right of way for utility needs (note: preservation of the alley already indicated in applicant's vacation certificate of survey).

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)

# City Planning

Proposed Vacation
13-015 Mainella

## Legend

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.

# City Planning

Proposed Vacation
13-015 Mainella

## Legend

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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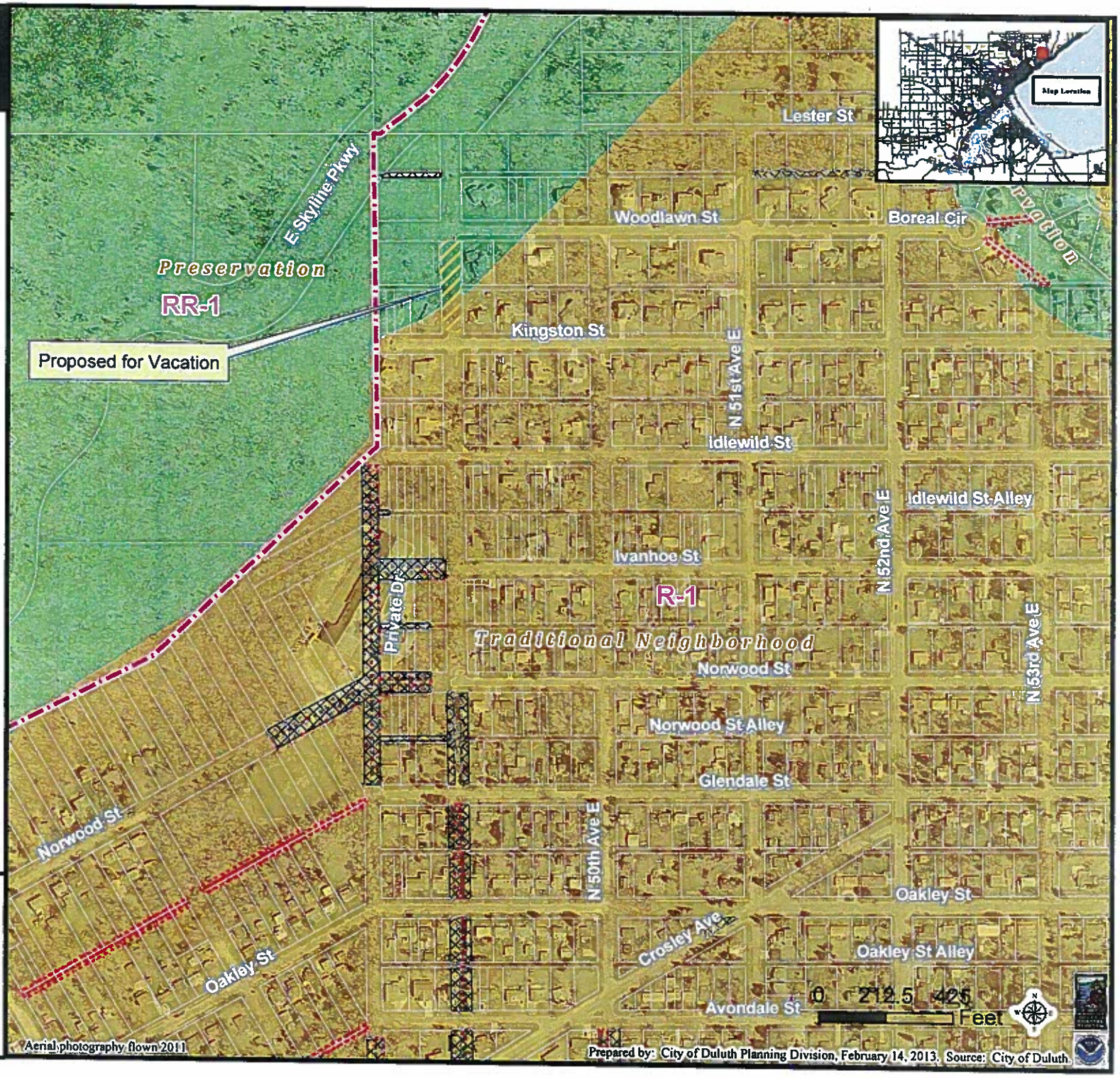
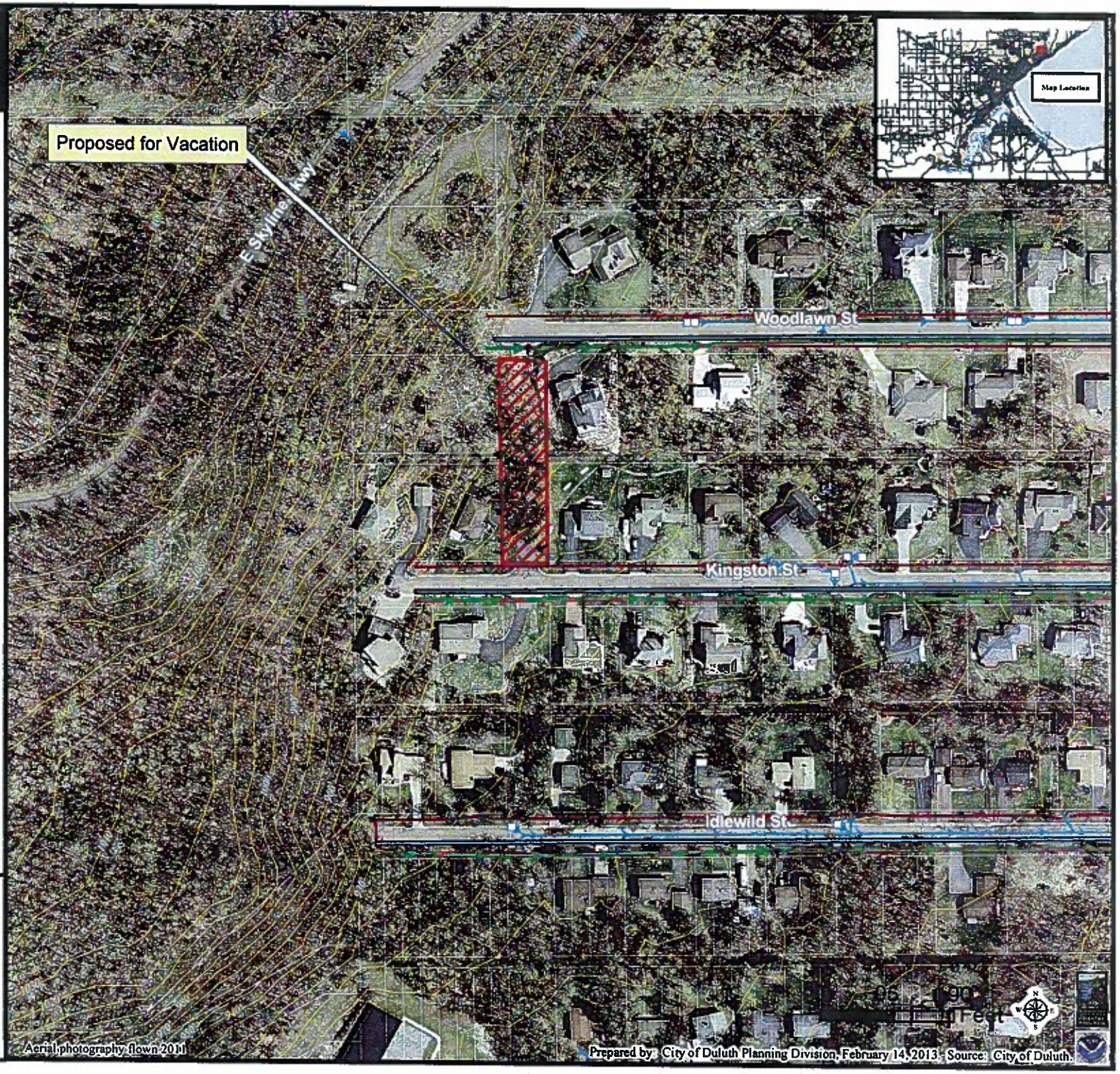


# City Planning

Proposed Vacation
13-015 Mainella




## 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
- 10' Contour (elev. change)

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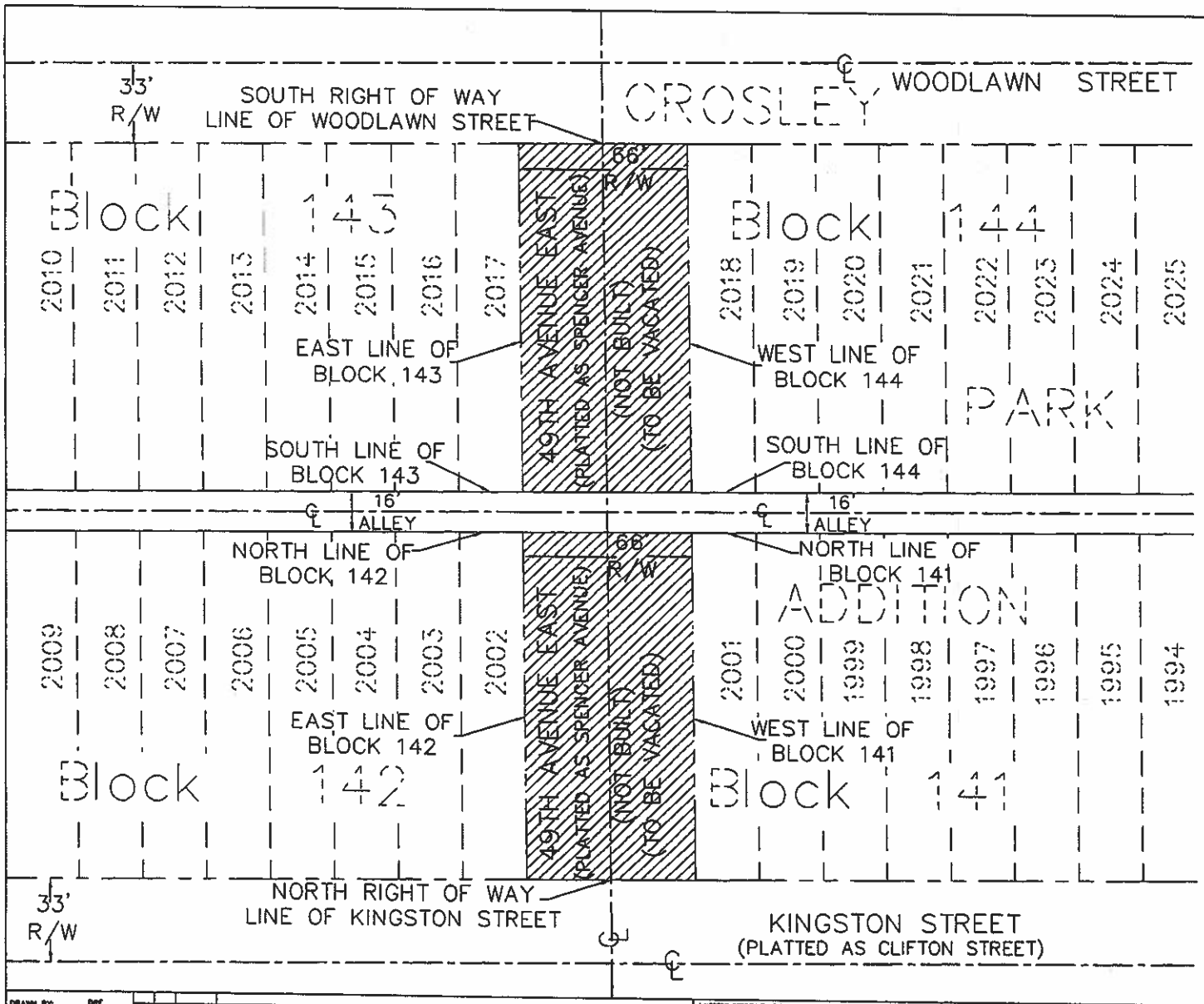


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On the north: By the south right of way line of Woodlawn Street.

On the west: By the east line of Block 143.

On the east: By the west line of Block 144.

On the south: By the south line of Block 143 and its easterly prolongation to the centerline of said 49th Avenue East AND By the south line of Block 144 and its westerly prolongation to the centerline of said 49th Avenue East.

AND

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On the west: By the east line of Block 142.

On the east: By the west line of Block 141.

On the south: By the north right of way line of Kingston Street (the same being platted as "Clifton Street").

Approved by the City Engineer of the City of Duluth, MN
this _____ day of _____ 20____.

_____

The area to be vacated is shown as

DRAWN BY: DRF
SURVEYOR: DRF
CHECKED BY: RLA

| NO. | BY | DATE | REVISIONS |
|---|---|---|---|

I 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.
Date: 03/01/13 Lic. No. 49505

SEH
PHONE: 218.279.3600
418 W SUPERIOR ST STE 200
DULUTH, MN 55802-1512

DULUTH, MINNESOTA

EXHIBIT A

FILE NO. MAN/123206

1/1

LEGAL DESCRIPTION:
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On the south: By the north right of way line of Kingston Street (the same being platted as "Clifton Street").

Approved by the City Engineer of the City of Duluth, MN
this ____ day of _____, 20___.

_____

January 14, 2013

To whom it may concern,

The intent of this letter is to further describe the reason for my request to vacate undeveloped 49th Avenue East from Woodlawn Street to Kingston Street.

I purchased parcel 10 790 February 19, 1999 from the St. Louis County Land Department. On May 10, 1999, this lot was surveyed by SEH. I recently sold my home at 5003 Woodlawn Street in order to build a new home at 4828 Woodlawn Street. I have been current with the assessment payments and property taxes since my ownership and street construction. (Please review attached documents ).

I was the catalyst that prompted the City of Duluth to construct Woodlawn Street. I attended many meetings and helped with the decisions to develop once barren and untaxed land to what it is today.

There has been other landowners who requested undeveloped parcels to be vacated, as seen in the supporting documents. Although Mr. Levine was granted the vacation, to this date there is not a residence on the property. That has been 10 years. On the other hand, I am looking to build as soon as possible.

Vacating 49th Avenue East will assist the construction of my new home and the permanent placement of a driveway for the entrance. I am aware of the criteria for using driveway permits within right-of-way, but I hope to seek a more permanent solution for the future of this residence.

Sincerely,

James Mainella

RECEIVED JAN 23 2013

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

RESOLUTION 03-0201R ADOPTED: MARCH 24, 2003

BY PRESIDENT STENBERG:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of the alleyway between Woodlawn and Lester streets and between Skyline Parkway and 49th Avenue East, legally described as the alley adjoining Blocks 154 and 155, Crosley Park Addition, excepting that portion for Skyline Parkway; 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 unanimously approved the street vacation petition at its March 11, 2003, meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of the alleyway between Woodlawn and Lester streets and between Skyline Parkway and 49th Avenue East described above and as more particularly described on Public Document No. 03-0324-22.

RESOLVED FURTHER, 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 portion of the alley easement to be vacated.

Resolution 03-0201 was unanimously adopted.

Approved March 24, 2003

GARY L. DOTY, Mayor

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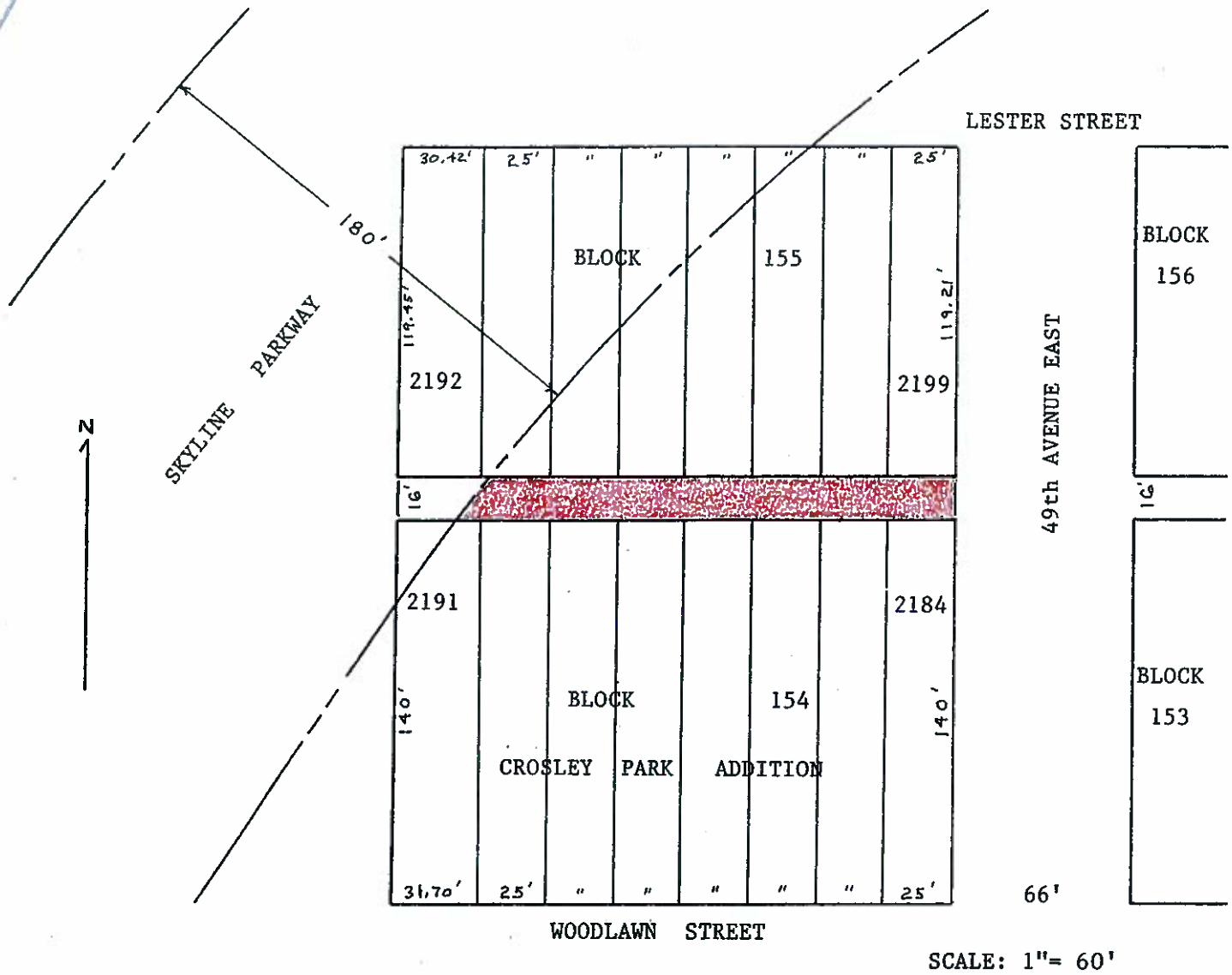
**I, JEFFREY J. COX, city clerk of the city of Duluth, Minnesota, do hereby certify that I have compared the foregoing resolution passed by the city council on the 24th day of March, 2003, with the original in my custody as city clerk of said city, and that the same is a true and correct transcript therefrom.**

**IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said city of Duluth, this 16th day of April, 2004.**

**JEFFREY J. COX**
**City Clerk**

by Martha A. Oswald
**Assistant**
**CITY OF DULUTH, MINNESOTA**

1-a




Plat showing the vacation of the alley adjoining Blocks 154 and 155, Crosley Park Addition, excepting that portion for Skyline Parkway.

The portion to be vacated is shown colored RED on the above plat.

CITY ENGINEER

1/26/04
DATE

View looking north west from the corner of Woodlawn Street and 49th Avenue East.

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