

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

13-021-0

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO GREGORY KAMP/COLDWELL BANKER A CONCURRENT USE PERMIT FOR CONSTRUCTION OF A CANOPY TO PROJECT INTO THE LONDON ROAD RIGHT-OF-WAY AT 1732 LONDON ROAD.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. Under the authority of Section 100 of the 1912 Home Rule Charter of the city of Duluth, as amended, and subject to the conditions, limitations, and restrictions hereinafter set forth, permission is granted to Gregory Kamp/Coldwell Banker and its successor(s) in interests, referred to herein as the permittee, to construct and maintain the following: a canopy located 2.5 feet from the property line, as shown in Public Document No. _____, and described below:

Commencing at the most easterly corner of Block 21, Endion Division of Duluth; thence North 37°42'25" West on the northeasterly line of Block 21 for a distance of 291.00 feet to the point of beginning; thence continuing North 37°42'25" West for a distance of 2.50 feet; thence South 52°17'35" West on a line parallel with the northwesterly line of Block 21 for a distance of 50.15 feet to the southwesterly line of Lot 8, Block 21; thence South 37°42'25" East for a distance of 2.50 feet; thence North 52°17'35" East on a line parallel with the northwesterly line of Block 21 for a distance of 50.15 feet to the point of beginning.

Section 2. Before this ordinance shall be effective for any purpose whatsoever, the permittee shall file with the city clerk a duly executed and acknowledged written acceptance of the terms of this ordinance and shall file with the planning division a certification of insurance approved as to form by the city attorney evidencing that the permittee has in force a policy of insurance meeting the following requirements:

(a) Comprehensive general liability insurance in an amount not less than \$1,500,000 for bodily injuries and in an amount not less than \$500,000 for

property damage or \$1,500,000 single limit coverage; and

(b) Insurance coverage shall include all permittee's activities occurring upon or within public easement occupied pursuant to this ordinance whether said activities are performed by the permittee or its agents or representatives; and

(c) The insurance policy shall be approved by the city attorney; and

(d) The policy shall contain a condition that it may not be cancelled without 30 days written notice to the city of Duluth and directed to the attention of the city attorney; and

(e) The city of Duluth shall be named as an additional insured; and

(f) The certificate shall also reference this ordinance by its ordinance number.

Permittee shall cause a current version of the required insurance certificate to be filed with the planning division while permission granted by this ordinance is exercised.

Section 3. The permit granted by this ordinance may be terminated at any time by the city official exercising departmental authority of the public easement if the city of Duluth determines to use the area occupied by the permittee for any public purpose in accordance with the duly dedicated public easement or other lawful use.

Unless a shorter notice period is necessitated by emergency circumstances, or the violation of the conditions set forth in this ordinance, giving the permittee 30 days written notice delivered to the last known electronic address, facsimile number, or mailing address of the permittee shall be sufficient notice of termination.

Upon termination permittee shall cause all private improvements to be removed by the deadline provided in termination notice. Permittee shall be responsible for all costs incurred to remove the private improvements, including any costs associated with repairing damage caused to the public easement by the removal and without right to claim from the city of Duluth, or any of its officers, agents or servants, any compensation or reimbursement for damages of

any kind whatsoever.

Section 4. By accepting the terms of this ordinance, the permittee agrees to save harmless and defend and indemnify the city of Duluth against claims or demand which may arise against the city of Duluth by reason of the existence of private improvements, or any act or omission of the permittee, its agents, representatives, and assigns. The permittee agrees that the city of Duluth shall not be liable for damage caused to the private improvements while the city engage in the repair and maintenance to, or replacement of, the public improvements or public utilities, including any snow removal operations. The permittee agrees to pay to the city of Duluth all extra costs of installation of any public improvements or public utilities made necessary by the presence of the private improvements.

Section 5. The permittee shall, at its expense, protect, support, temporarily disconnect, or remove from the public easement, the private improvements when required by city officials by reason of snow removal, traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks, the installation or repair of any type of structures or improvements by governmental agencies, when acting in a governmental or proprietary capacity.

Section 6. Upon the sale or transfer of permittee's interest in the permit granted by this ordinance, the permittee shall provide written notice to the planning division within five days of such transfer. The permittee's successor(s) in interest shall file with the planning division within ten days of such transfer a duly executed and acknowledged written acceptance of the terms of this ordinance and the certificate of insurance required in Section 2 above.

Section 7. The permit granted by this ordinance is subject to termination by the city of Duluth upon permittee's failure to comply with any of the terms and conditions of this permit. Ten days' written notice, delivered as provided in Section 3, above shall be sufficient notice of termination. Upon termination,

permittee shall remove the private improvements as provided in Section 3 above.

Section 8. The permittee shall observe the following conditions:

(a) Permittee's use of the public easement shall be limited to the designated area described in Section 1 above and further shown on Public Document No. _____; and

(b) Permittee agrees that the private improvements shall be constructed and maintained in such a manner so as in no way interfere with or damage any portion of any public improvement, or other public utilities now or to hereinafter located in any part of said public easement.

Section 9. The following events shall automatically cause the termination of the term of this ordinance:

(a) The failure by the permittee to file acceptance of this ordinance as specified in Section 2 within 30 days after this ordinance takes effect; or

(b) The failure by the permittee to file the required insurance certificate as specified in Section 2 30 days after this ordinance takes effect;
or

(c) The failure of the permittee to commence the improvements authorized by this ordinance within 120 days after this ordinance takes effect.

Section 10. That this ordinance shall take effect 30 days after its passage and publication.

Approved as to form:


Attorney

PC/PLNG SR:cs 3/14/2013

STATEMENT OF PURPOSE: This ordinance is to build a canopy/protected entry for the Coldwell Banker building at 1732 London Road. The canopy would be 2-1/2 feet into the London Road public right-of-way. Note that there is a companion request to vacate one foot of the London right-of-way being submitted by the applicant along with this request for a concurrent use permit.

On March 12, 2013, the planning commission held a public meeting on the proposal, and voted 9 yeas, 0 nays, and 0 abstentions to recommend that the city council approve the request for a concurrent use of streets as requested.

Petition received: February 11, 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	PL13-032		Contact	Steven Robertson, 218-730-5295	
Application Type	Concurrent Use of Streets Permit		Planning Commission Date	March 12, 2013	
Deadline for Action	Application Date	February 11, 2013	60 Days	N/A	
	Date Extension Letter Mailed	N/A	120 Days	N/A	
Location of Subject	1732 London Road				
Applicant	Coldwell Banker/Greg Kamp		Contact		
Agent	Greg Strom		Contact	gps-foundations@gmail.com	
Legal Description					
Site Visit Date	February 23, 2013		Sign Notice Date	February 25, 2013	
Neighbor Letter Date	February 19, 2013		Number of Letters Sent	38	

Proposal

Applicant requesting a Concurrent Use of Streets Permit to allow the construction of a protected entry (canopy) in the public right of way of London Road.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	F-2	Commercial	Neighborhood Mixed Use
North	F-2	Commercial	Neighborhood Mixed Use
South	F-2	Residential	Neighborhood Mixed Use
East	F-2	Commercial	Neighborhood Mixed Use
West	F-2	Commercial/Residential	Neighborhood Mixed Use

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

UDC Section. 50-37.7C. The planning commission shall review the application, and council shall approve the application or approve it with modifications, if it determines that:

1. The proposed concurrent use will not harm or inconvenience the health, safety and general welfare of the city;
2. Any proposed skywalk will significantly improve the circulation of pedestrians in the city without exposure to weather conditions;
3. No portion of a public easement proposed for use is being physically used or occupied by the public.

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

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.

Principle #3 - Support traditional economic base

Supporting Duluth's traditional economic foundation maintains jobs, tax base, and opportunity. Economic activity with specific location requirements may be subject to displacement or site competition with changes in real estate values. This traditional economic activity faces change as result of global economic patterns, changing markets, new regulation and aging of extensive infrastructure. Nevertheless, fundamentals remain and the economic contribution, sometimes taken for granted, is significant.

Note, this item is related to PL 12-033, request for a partial vacation of right of way (1 foot).

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

- 1) The applicant is proposing to build a protected entry (canopy) over the right of way of London Road.
- 2) The proposal will not harm or inconvenience the health, safety and general welfare of the city. While the right of way is currently being physically used by the public, the proposal project will not interfere with the public's ability to use the right of way (sidewalk or street).
- 3) The proposal is a reasonable use of public right of way and can be terminated if the City of Duluth desires to use the area for any public purpose.
- 4) Only one comment was received from the public or city or government agencies on this proposal. There was some confusion between MnDOT and the City of who had jurisdiction of this section of the London Road. It was resolved that this section was formally turned back to the City in 1995.

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

Staff recommends that the Planning Commission recommend approval of the requested Concurrent Use Permit to the City Council with the following condition:

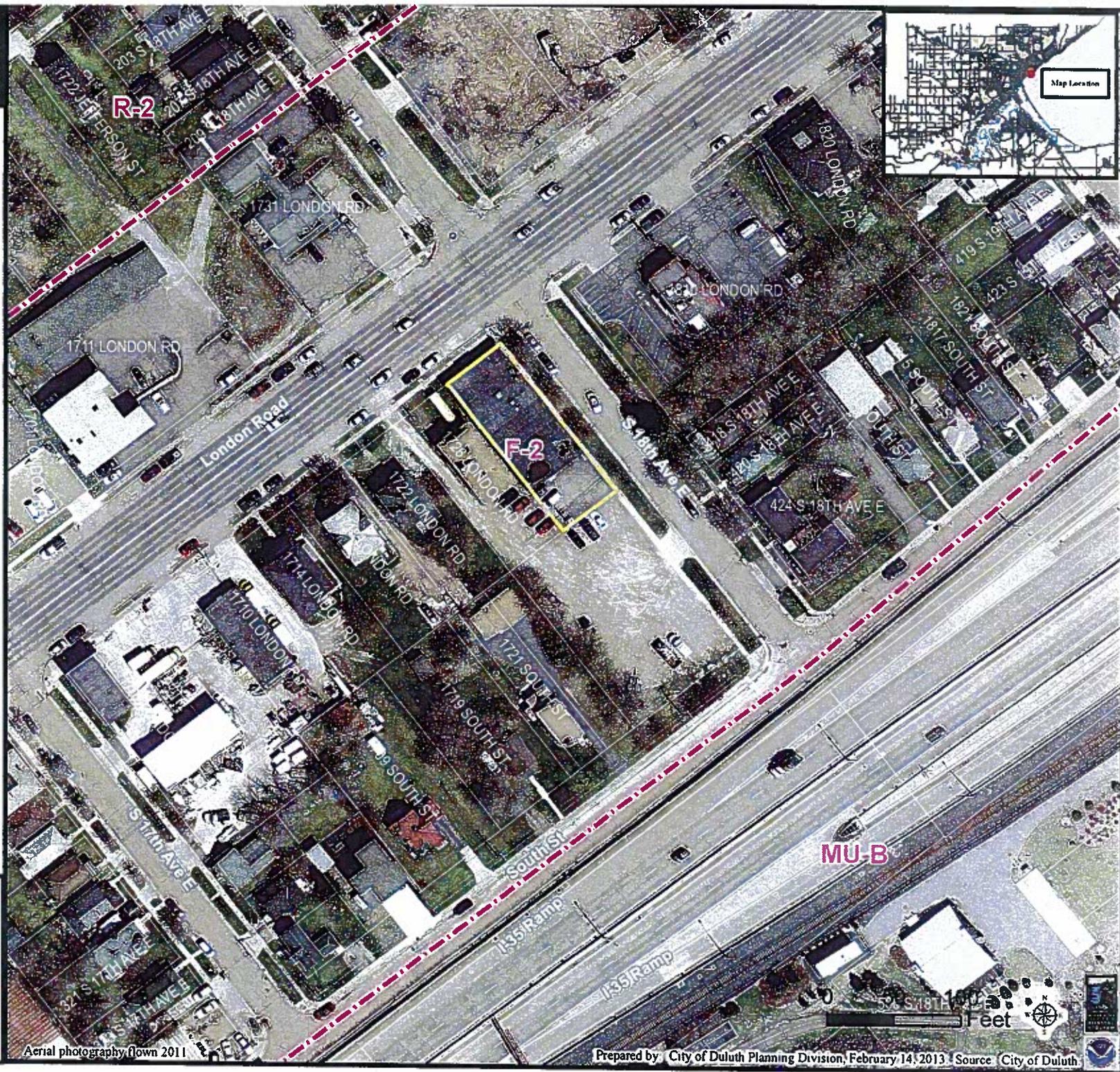
- 1) The applicant construct the canopy as indicated on the plan titled "Storefront Renovation for Coldwell Banker" stamped February 21, 2013.

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



City Planning

13-032 and 33
Vacation and Concurrent Use
Coldwell Banker



Legend

 Zoning (Final)

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 from 2011



City Planning

13-032 and 33
Vacation and Concurrent Use
Coldwell Banker



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

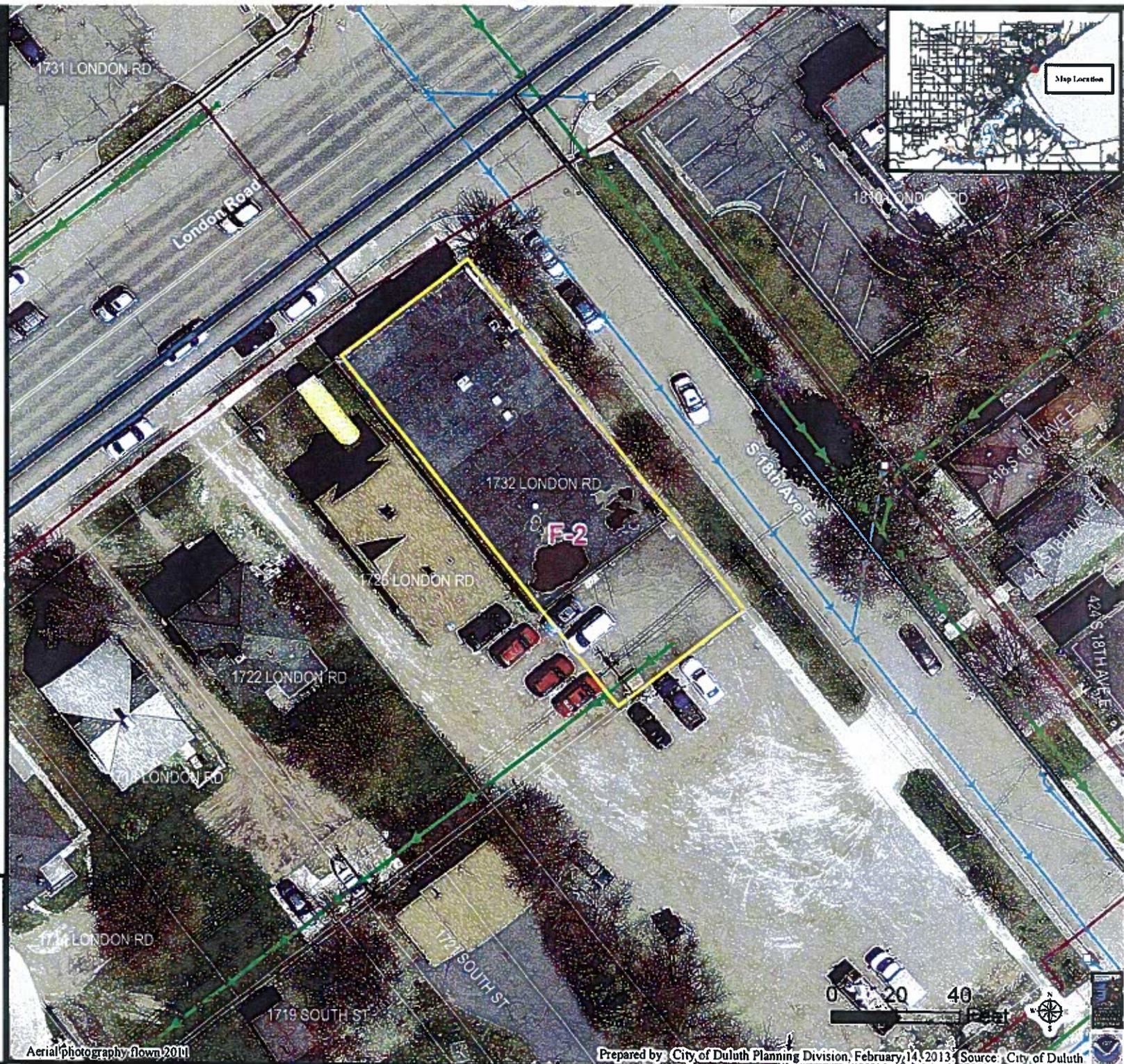
- Storage Basin
- Pump Station

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
- Zoning (Final)



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Aerial photography flown 2011

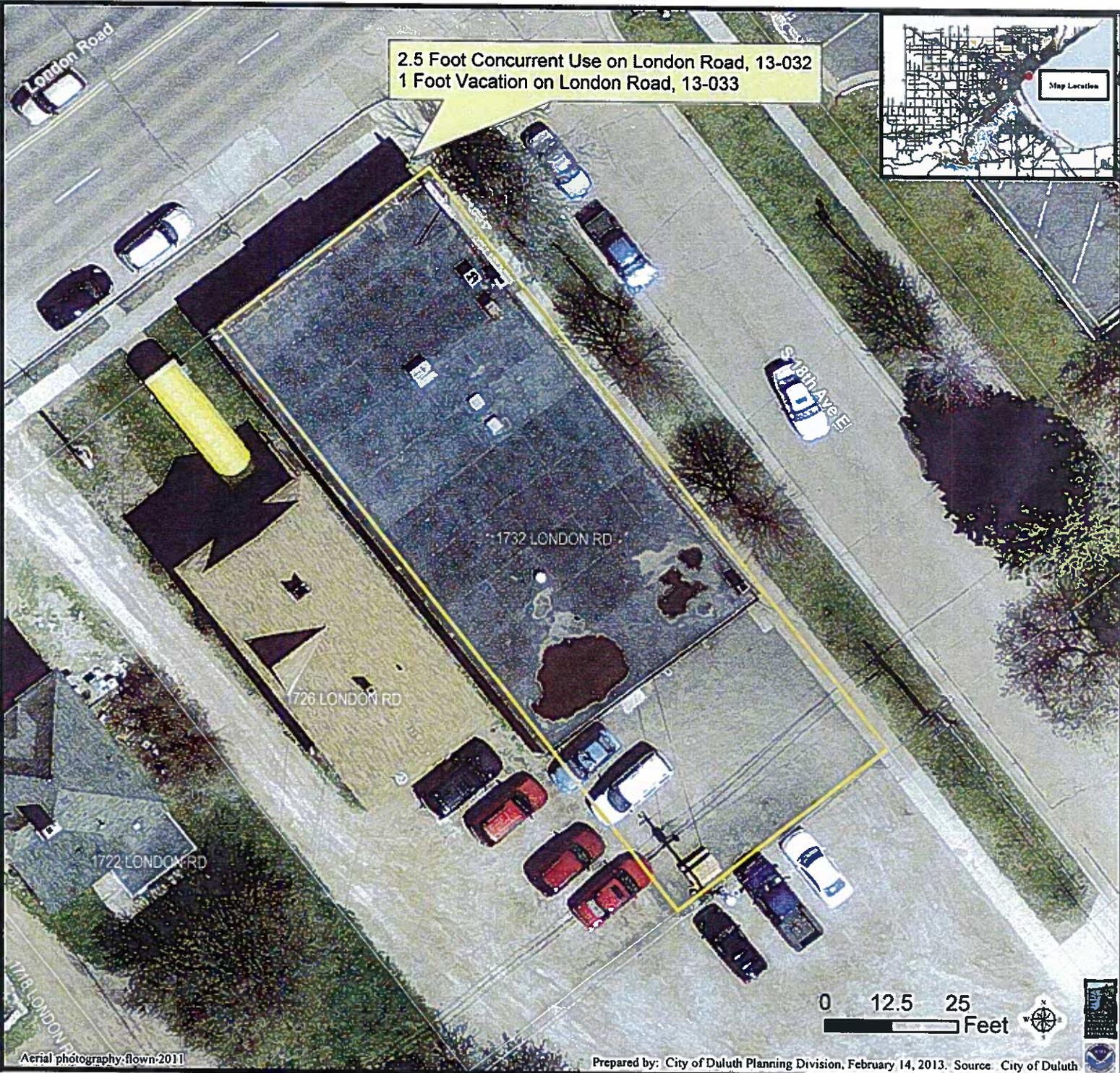
Prepared by: City of Duluth Planning Division, February 14, 2013. Source: City of Duluth



City Planning

13-032 and 33
Vacation and Concurrent Use
Coldwell Banker

2.5 Foot Concurrent Use on London Road, 13-032
1 Foot Vacation on London Road, 13-033

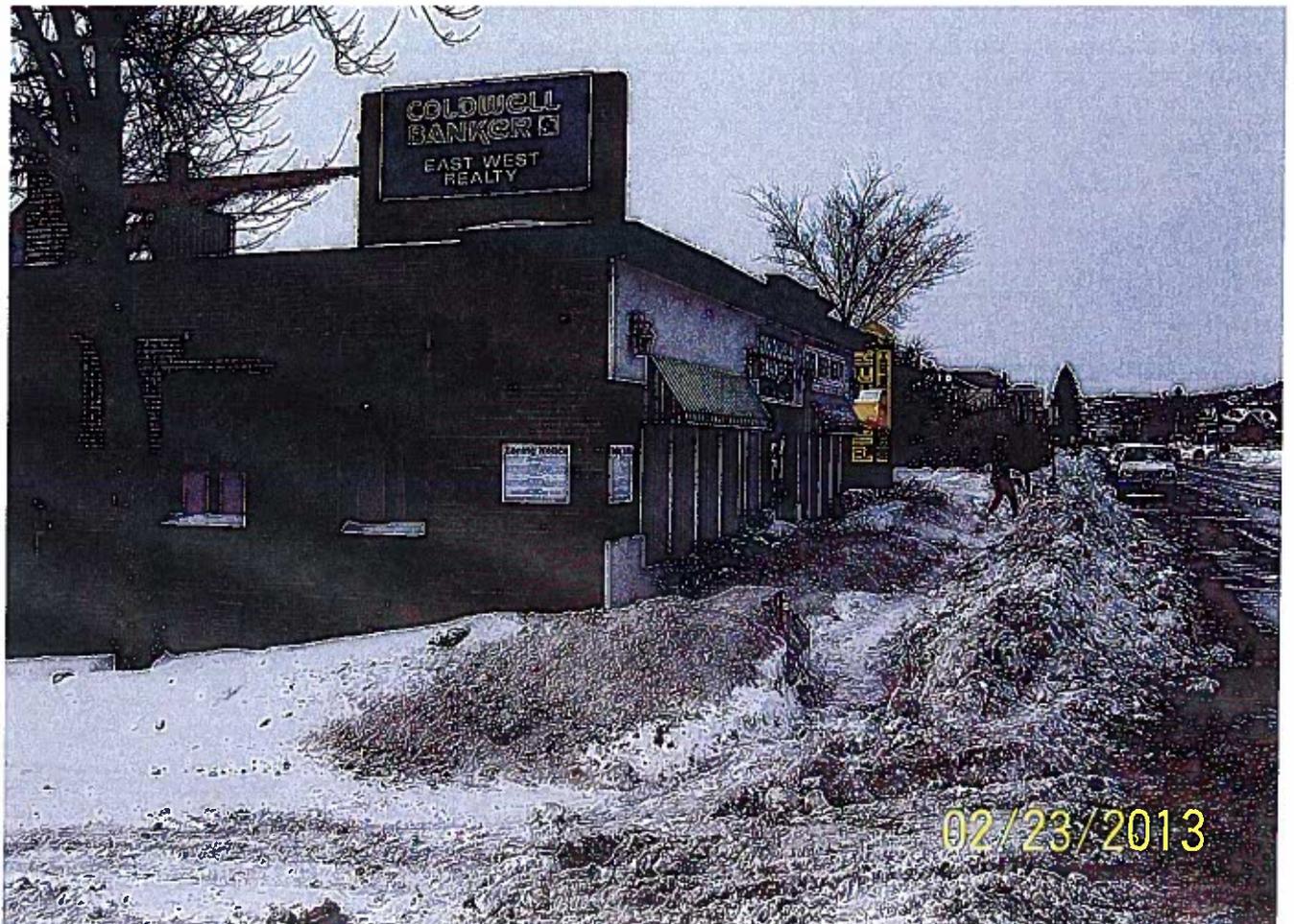


Legend

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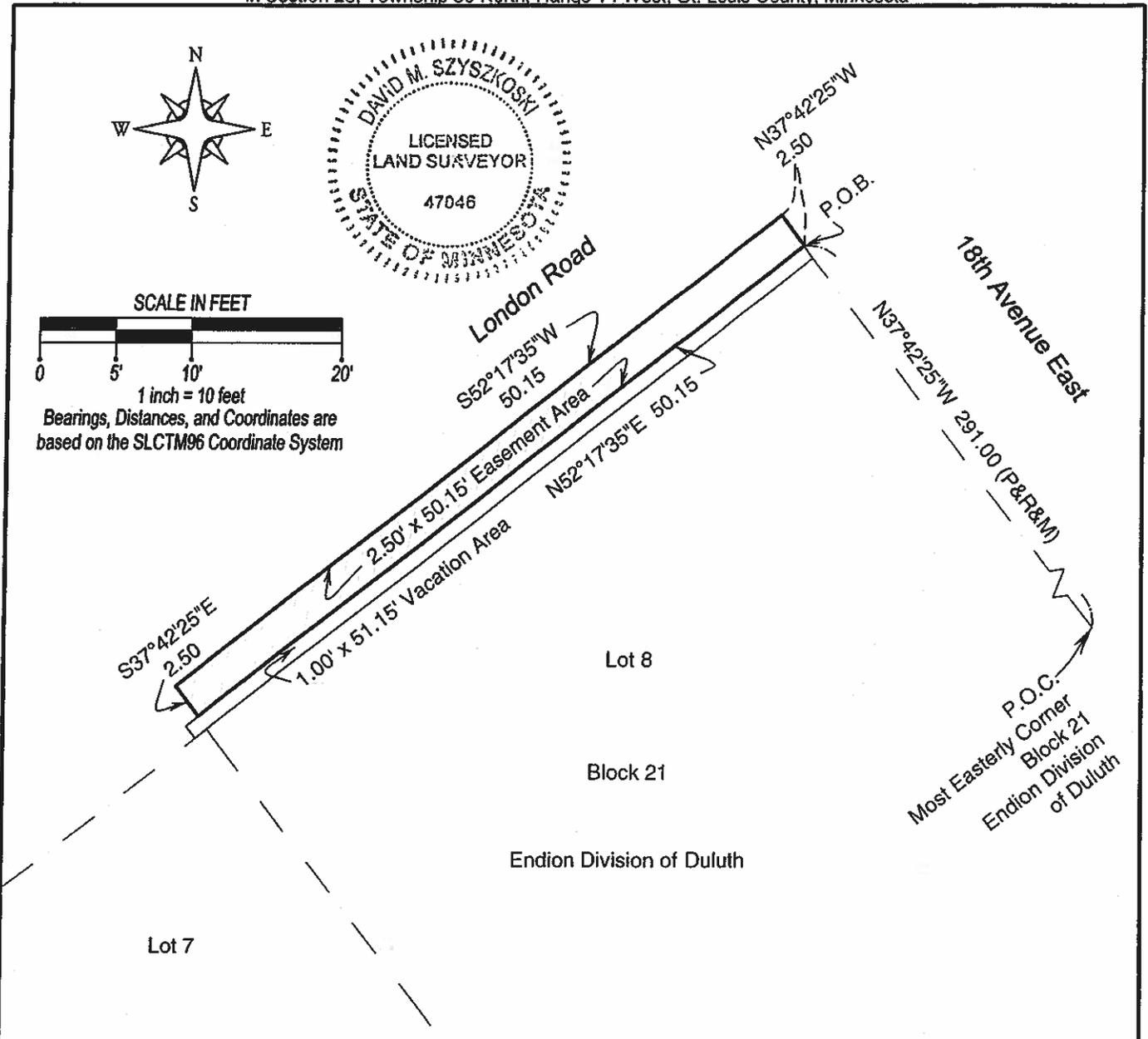
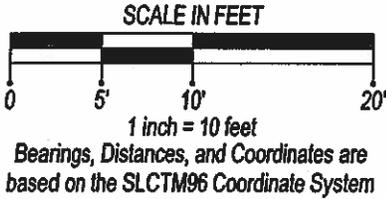
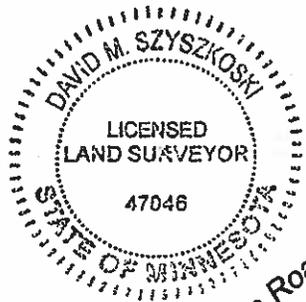
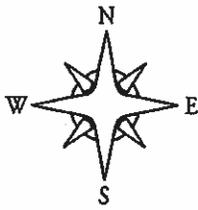
Aerial photography: flown-2011





Easement Exhibit

in Section 23, Township 50 North, Range 14 West, St. Louis County, Minnesota



**Proposed Easement Legal Description
(for Concurrent Use Permit):**

Commencing at the most easterly corner of Block 21, Endion Division of Duluth; thence North 37°42'25" West on the northeasterly line of Block 21 for a distance of 291.00 feet to the point of beginning; thence continuing North 37°42'25" West for a distance of 2.50 feet; thence South 52°17'35" West on a line parallel with the northwesterly line of Block 21 for a distance of 50.15 feet to the southwesterly line of Lot 8, Block 21; thence South 37°42'25" East for a distance of 2.50 feet; thence North 52°17'35" East on a line parallel with the northwesterly line of Block 21 for a distance of 50.15 feet to the point of beginning.

Approved by the City Engineer of Duluth, MN

Date: _____ by: _____

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.

2/15/2013
David Szyszkoski
DAVID SZYSZKOSKI
MINNESOTA LICENSE NO. 47046

ENGINEERS • SURVEYORS • PLANNERS
SALO ENGINEERING, INC.
4560 Norway Pines Place • Duluth, MN 55802
SALO JOB NUMBER: L4676 ph 218/727-8796

Easement Exhibit over part of London Road near Block 21, Endion Division For : Gregory Kamp

Coldwell Banker – East West Realty

1732 London Road

Property and proposed concurrent use easement descriptions:

Existing Property:

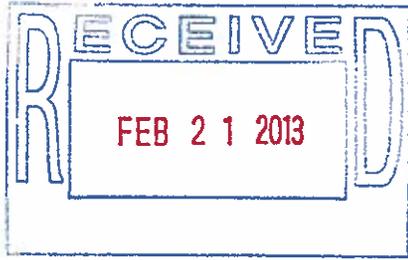
Lots 7-10, Block 21, Endion Division of Duluth. Section 23, T50N, R14W, St. Louis County, MN.

Vacation Legal Description being processed simultaneously w/ concurrent use:

Commencing at the most easterly corner of Block 21, Endion Division of Duluth; thence North 37°42'25" West on the northeasterly line of Block 21 for a distance of 290.00 feet to a point at the intersection of the northeasterly line of Block 21 and the Right-of-Way of London Road, said point being the point of beginning; thence continuing North 37°42'25" West for a distance of 1.00 foot; thence South 52°17'35" West on a line parallel with the northwesterly line of Block 21 for a distance of 51.15 feet; thence South 37°42'25" East for a distance of 1.00 foot to the Right-of-Way of London Road; thence North 52°17'35" East on a line parallel with the northwesterly line of Block 21 for a distance of 51.15 feet to the point of beginning.

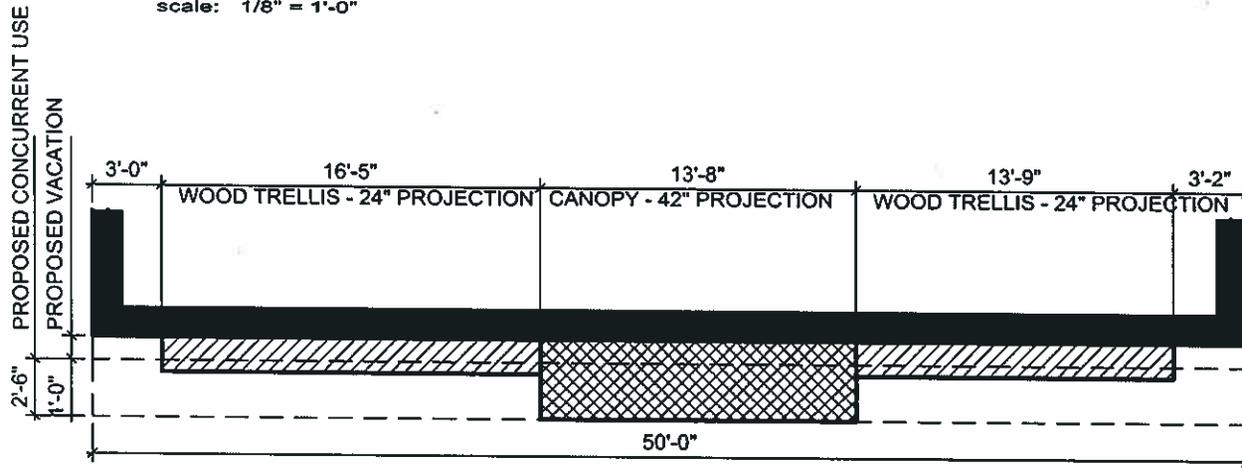
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Proposed Front Elevation

scale: 1/8" = 1'-0"



Proposed Plan at Building Front

scale: 1/8" = 1'-0"

STOREFRONT RENOVATION FOR:

COLDWELL BANKER

1732 LONDON ROAD

DULUTH, MINNESOTA

FOUNDATIONS

ARCHITECTURE
GREGORY P. STRONACH ARCHITECT

2150 CULAS ROAD
DULUTH, MN 55804

PH: 218 635-4336
CELL: 218 391-7334

gpx_foundations@gmail.com



Minnesota Department of Transportation

Transportation Building
395 John Ireland Boulevard
Saint Paul, Minnesota 55155-1899

December 12, 1995

296-6967

Mr. Jeffrey Cox
City Clerk of Duluth
C. Hall: 411 West 1st Street
Duluth, MN 55802-1101

In reply refer to: 7300
State Project No. 6925
County of St. Louis
Notice of Release of a portion
of Trunk Highway No. 61
Release No. 1086

Dear Mr. Cox:

Attached is a Notice of Release of a portion of Trunk Highway No. 61. This will be effective December 15, 1995, and the description reads as follows:

Beginning in the City of Duluth at the junction of Old Trunk Highway No. 23 (2nd Street) and Old Trunk Highway No. 61 (12th Avenue East); thence easterly and northeasterly along the centerline of said Old Trunk Highway No. 61 (12th Avenue East and London Road) to its intersection with 26th Avenue East and there terminating. Also including all that portion of Old Trunk Highway No. 61 (14th Avenue East) between 3rd Street and London Road.

The subject portion of road reverts to the jurisdiction of the City of Duluth in accordance with Minnesota Statutes, Section 161.16 and 161.24 (and Acts amendatory thereto).

If you require additional information, call Mr. Neal Bartelt, Office of Right of Way and Surveys, at the above number, or write this office.

Sincerely,

A handwritten signature in black ink that reads "Karl F. Rasmussen".

K. F. Rasmussen, Director
Office of Right of Way and Surveys

Enclosure:
Release No. 1086
R29977G.R1W