

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

13-0329R

RESOLUTION VACATING PORTIONS OF PLATTED UNIMPROVED ROAD EASEMENT OF WEBER AVENUE LOCATED BETWEEN THE 200 AND 300 BLOCK OF WEST BUFFALO STREET (BILLMAN CONSTRUCTION, INC.).

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, June 11, 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. \_\_\_\_\_:

VACATION LEGAL DESCRIPTION:

Beginning at the southeast corner of Block 27, Myers and Whipple's Addition to Duluth; thence easterly on the easterly extension of the southerly line of Block 27 to the southwest corner of Block 26, Myers and Whipple's Addition to Duluth; thence northerly on the west line of Block 26 to the northwest corner of Block 26; thence westerly on the westerly extension of the northerly line of Block 26 to the northeast corner of Block 27; thence southerly along the easterly line of Block 27 to the point of beginning.

UTILITY EASEMENT LEGAL DESCRIPTION:

Beginning at the southeast corner of Block 27, Myers and Whipple's Addition to Duluth; thence easterly on the easterly extension of the southerly line of Block 27 to the southwest corner of Block 26, Myers and

Whipple's Addition to Duluth; thence northerly on the west line of Block 26 to the northwest corner of Block 26; thence westerly on the westerly extension of the northerly line of Block 26 for a distance of ten (10) feet; thence southerly on a line parallel to and ten (10) feet westerly of the westerly line of Block 26 for a distance of one hundred five (105) feet; thence westerly on a line parallel to and twenty (20) feet northerly of the easterly extension of the southerly line of Block 27 for a distance of fifty six (56) feet to a point on the east line of Block 27 twenty (20) feet northerly of the point of beginning; thence southerly twenty (20) feet along the east line of Block 27 to the point of beginning.

(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 6/13/2013

STATEMENT OF PURPOSE: This resolution vacates a half block segment of 66 foot road easement for the unimproved Weber Avenue between the 200 and 300 block of Buffalo Street. This road easement has never been used for a public purpose and is not needed for the purpose that it was initially dedicated. A 10 foot utility easement is being maintained on the eastern portion of the right of way, and a 20 foot utility easement is being maintained on the southern portion of the right of way.

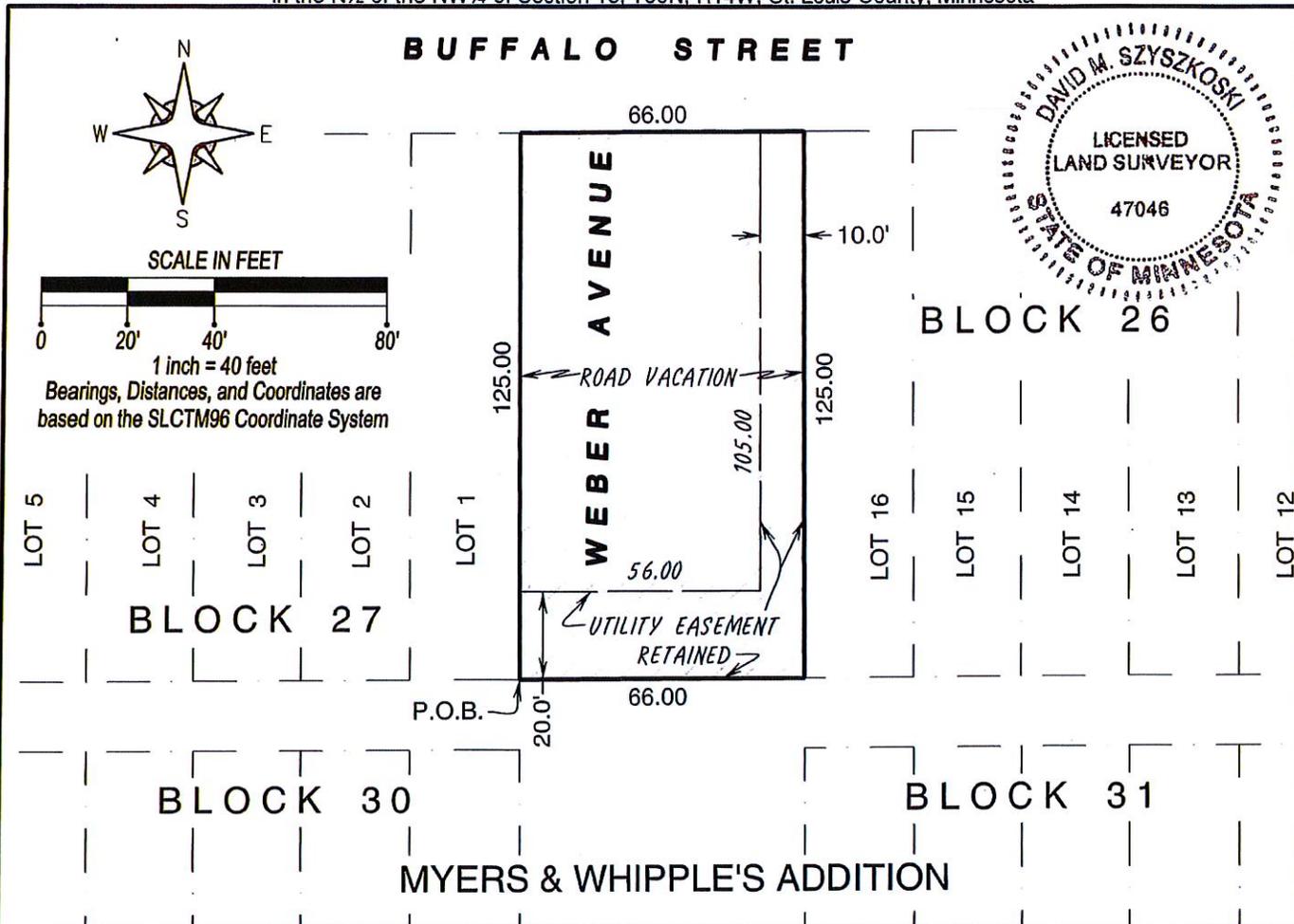
On June 11, 2013, the Duluth city planning commission held a public hearing on the proposal and voted 7 yeas, 2 nays and 0 abstentions to recommend the city council approve the vacation.

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

Petition received: May 16, 2013

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

**Exhibit of part of Weber Avenue in Myers and Whipple's Addition to Duluth**  
 in the N½ of the NW¼ of Section 15, T50N, R14W, St. Louis County, Minnesota



**Vacation Legal Description:**

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**Utility Easement Legal Description:**

Beginning at the southeast corner of Block 27, Myers and Whipple's Addition to Duluth; thence easterly on the easterly extension of the southerly line of Block 27 to the southwest corner of Block 26, Myers and Whipple's Addition to Duluth; thence northerly on the west line of Block 26 to the northwest corner of Block 26; thence westerly on the westerly extension of the northerly line of Block 26 for a distance of ten (10) feet; thence southerly on a line parallel to and ten (10) feet westerly of the westerly line of Block 26 for a distance of one hundred five (105) feet; thence westerly on a line parallel to and twenty (20) feet northerly of the easterly extension of the southerly line of Block 27 for a distance of fifty six (56) feet to a point on the east line of Block 27 twenty (20) feet northerly of the point of beginning; thence southerly twenty (20) feet along the east line of Block 27 to the point of beginning.

Approved by the City Engineer of Duluth, MN

Date: 6/13/13 by: [Signature]

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.

DAVID SZYSZKOSKI  
 MINNESOTA LICENSE NO. 47046

Date: 5/24/2013



ENGINEERS • SURVEYORS • PLANNERS  
**SALO ENGINEERING, INC.**  
 4560 Norway Pines Place - Duluth, MN 55802  
 SALO JOB NUMBER: E1719 ph 218/727-8796

Vacation & Utility Easement  
 Exhibit in Myers & Whipple's  
 Addition to Duluth  
 For: Gregg Billman



**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 13-078	<b>Contact</b>	Steven Robertson	
<b>Application Type</b>	Vacation of Street Easement	<b>Planning Commission Date</b>	June 11, 2013	
<b>Deadline for Action</b>	<b>Application Date</b>	May 16, 2013	<b>60 Days</b>	N/A
	<b>Date Extension Letter Mailed</b>	May 21, 2013	<b>120 Days</b>	N/A
<b>Location of Subject</b>	Weber Avenue between 200 and 300 Buffalo Street			
<b>Applicant</b>	Billman Construction, Inc.	<b>Contact</b>	glbillman@msn.com	
<b>Agent</b>	Gregg Billman	<b>Contact</b>	glbillman@msn.com	
<b>Legal Description</b>	Between 010 3410 0431 and 010 3410 04190			
<b>Site Visit Date</b>	June 3, 2013	<b>Sign Notice Date</b>	May 27, 2013	
<b>Neighbor Letter Date</b>	May 23, 2013	<b>Number of Letters Sent</b>	42	

**Proposal**

To vacate Weber Avenue and construct new homes along newly constructed Buffalo Street. The applicant wishes to build a new home on the vacated right of way.

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	R-1	Vacant/ROW	Traditional Neighborhood
<b>North</b>	R-1	Residential	Traditional Neighborhood
<b>South</b>	R-1	Vacant/ROW	Preservation
<b>East</b>	R-1	Residential	Traditional Neighborhood
<b>West</b>	R-1	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 .

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

Traditional Neighborhood Future Land Use. 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.

Note about Department Process: the Planning Division encourages vacations of right of ways for the entire length of a block. This particular vacation is only for half of the block.

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

- 1) The applicant owns the land to the southwest 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. There are some utilities located in the easement requested to be vacated. Minnesota Power has requested a 10 foot easement be maintained on the eastern portion of the right of way, and the City Engineering has requested that a 20 foot easement be maintained on the southern portion of the right of way.
- 3) This vacation, if approved, will not deprive any currently platted lots of access to a public right of way.
- 4) Staff believe this right of way 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 (as long as an easement is maintained); 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) Comments were received from the public on the requested right of way vacation, mostly relating to current concerns over stormwater impacts and concerns over future stormwater impacts when the right of way is developed for additional housing (see attached citizen letter).
- 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 condition:

- 1) Easements be maintained as requested by City Engineering and Minnesota Power (note: easements are already reflected in submitted exhibit).
- 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.

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

**Legend**

**Stream**

- Trout Stream (GPS)
- Other Stream (GPS)

**Right-of-Way Type**

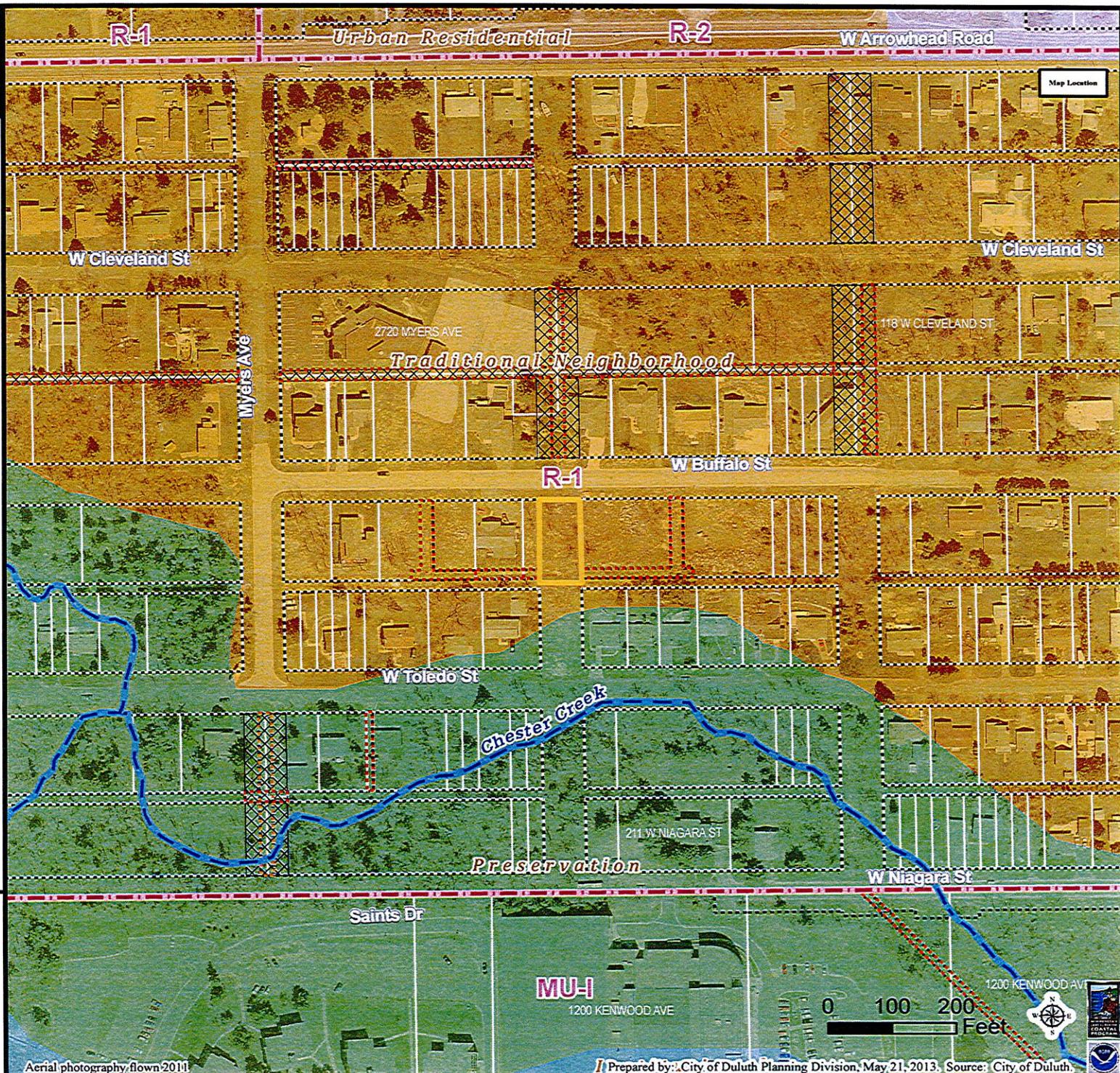
- Road or Alley ROW
- Vacated ROW

**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



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.

6-3

Aerial photography, flown 2011

Prepared by: City of Duluth Planning Division, May 21, 2013. Source: City of Duluth.



# City Planning

PL 13-078  
Vacation  
200 Buffalo Street

## Legend

### DuluthStream\_cl TROUT\_FLAG

- Trout Stream (GPS)
- Other Stream (GPS)

- Trout Stream (GPS)
- Other Stream (GPS)

### 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

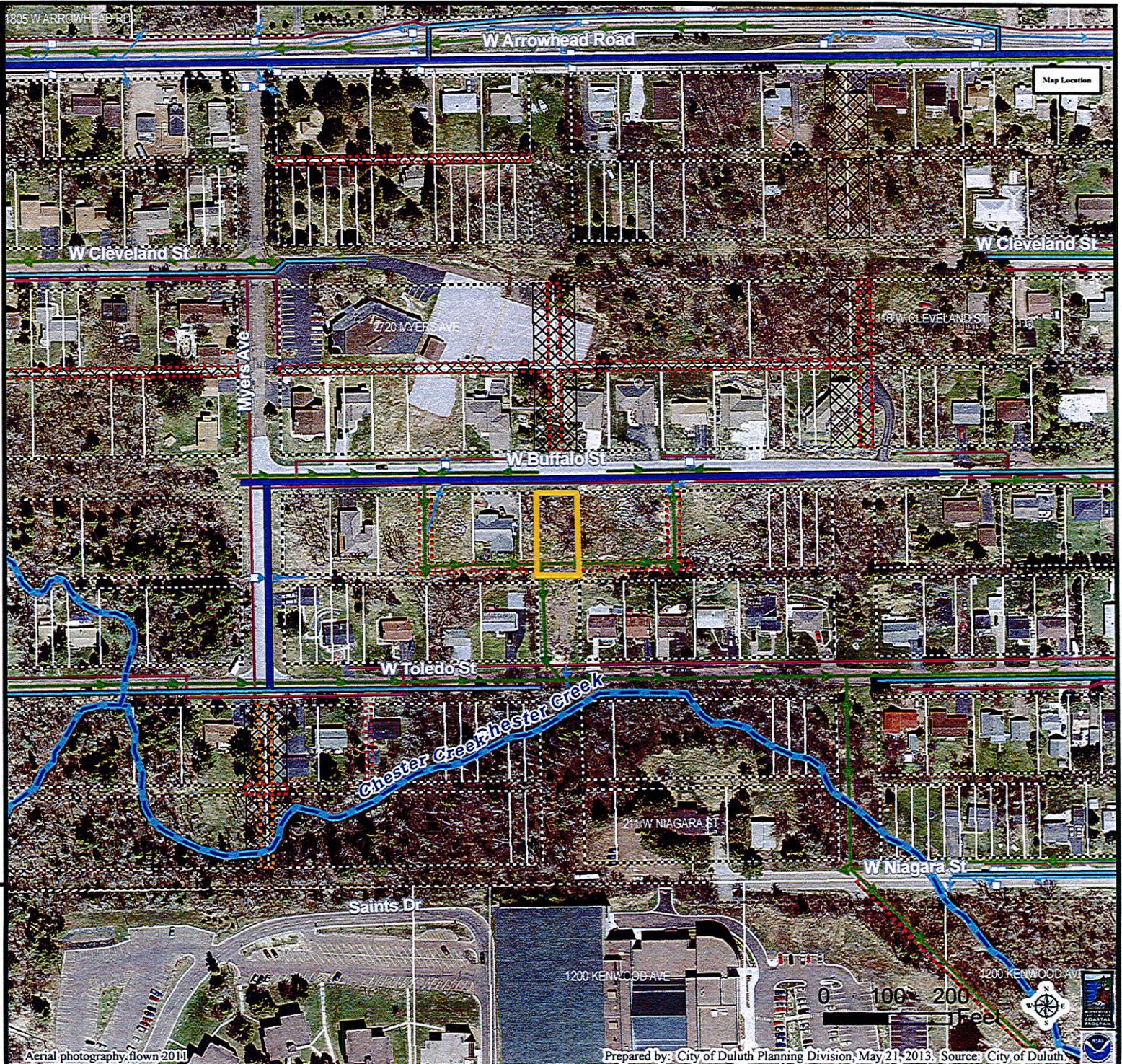
- Storm Sewer Pipe
- Storm Sewer Catch Basin
- Discharge Points
- Wetlands (NRR1)

### Right-of-Way Type

- Road or Alley ROW
- Vacated ROW

### Easement Type

- Utility Easement
- Other Easement



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G-4

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# City Planning

PL 13-078  
Vacation  
200 Buffalo Street

## Legend

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- Other Stream (GPS)
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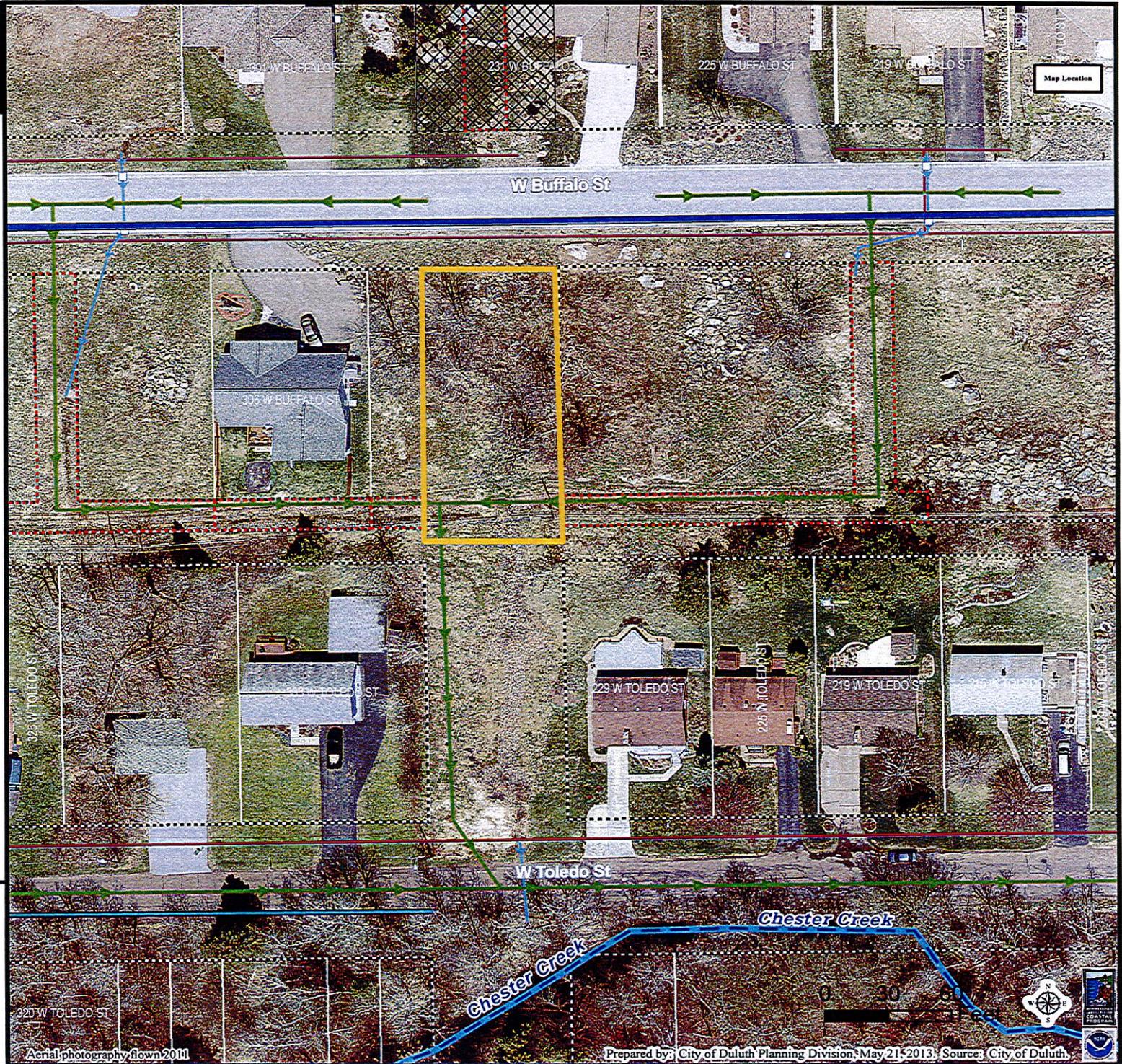
- Storm Sewer Pipe
- Storm Sewer Catch Basin
- Discharge Points
- Wetlands (NRR1)

### Right-of-Way Type

- Road or Alley ROW
- Vacated ROW

### Easement Type

- Utility Easement
- Other Easement



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G-5

Aerial photography flown 2011

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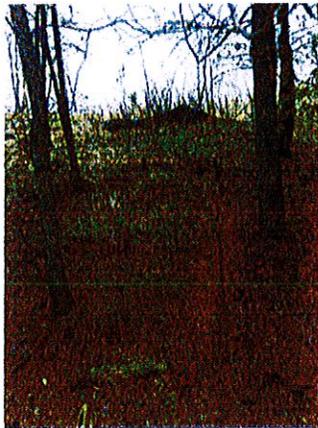
Mr. Steven Robertson  
Senior Planner  
City of Duluth

Dear Mr. Robertson

RE: 6/11 Public Hearing on the vacation of Weber Avenue between 200 and 300 Buffalo Street (PL 13-078).

My wife and I are unable to attend this meeting but we would like to go on record as being in opposition to any additional vacation of Weber Avenue. We do so citing ten years of a lack of follow up from the initial West Buffalo Street development on the part of Billman Construction:

1) Billman Construction promised to remove silt fences erected during 2000-2002 construction. In the following pictures you can see 2 that remain in place today, there are more.



2) Billman Construction promised to remove boulders that tumbled onto our property as a result of their blasting. They still remain in place today.



3) The few remaining trees and vegetation located in the Weber Avenue easement provide some protection to the residents of West Toledo Street from run off and erosion. We've seen the result of the clear cutting of the development without promised replanting as stated by Billman Construction in their original site development plan



All of the homes immediately below the West Buffalo Street development suffered considerable damage during the June 2012 flooding. Some was the result of an overburdened sanitary sewer system and some was a result of runoff from the development itself. Removing more natural vegetation and adding more homes to an already overtaxed sanitary sewer system will just exacerbate the problems of existing homeowners.

4) During the construction of the runoff basin pictured above (below the trees) Billman Construction removed a storm drain from the intersection of Weber Avenue and West Toledo Street. I met with Mr. Billman and a representative from City Public Works (2001 or 2002) regarding this issue. Mr. Billman indicated he would replace the drain. 10 years later that has yet to happen.

Considering Billman Construction's lack of follow up, unfulfilled promises, and poor neighborhood stewardship we would question how the City can possibly reward them with additional building opportunities? Add to this the increased risk placed on existing residences and rejecting this application would seem to be a no-brainer.

Sincerely,

  
-----  
Jay Rud

  
-----  
Sharon Rud

225 West Toledo Street  
Duluth, MN 55811

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