

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

13-0388R

RESOLUTION VACATING AN UTILITY EASEMENT ALONG LOTS 2 AND 3, BLOCK 2, VILLAGE MALL AND ADDRESSED AS 2102 MAPLE GROVE ROAD (MHM 22, LLC).

CITY PROPOSAL:

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city requesting the vacation of the easement described below 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 utility easement is useless for all purposes; and

(c) The city planning commission, at its Tuesday, April 9, 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 utility easement described below and as described and depicted on Public Document No. _____:

The West 25.00 feet of the East 35.00 feet of the Utility & Storm Drain Easement described in document number 433793 lying South of the Southerly right of way line of Maple Grove Road and North of the North line of the South 10.00 feet of the North 22.00 feet of Lot 2, Block 2, VILLAGE MALL, according to the recorded plat thereof St. Louis County, Minnesota

And:

The West 25.00 feet of the East 35.00 feet of the Utility & Storm Drain Easement described in document number 433793 lying North of the Northerly right of way line of Mountain Shadow Drive and South of the South line of the North 22.00 feet of Lot 2, Block 2, VILLAGE MALL, according to the recorded plat thereof 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

PC/PLNG SR:cs 7/5/2013

STATEMENT OF PURPOSE: This resolution vacates a portion of an existing utility easement, while retaining a 10 foot easement for utility purposes. The site is addressed as 2102 Maple Grove Road, and was formerly the site of the Ground Round restaurant. The vacation of the easement is necessary for the redevelopment of the site.

On April 9, 2013, the Duluth city planning commission held a public hearing on the proposal and voted 6 yeas, 0 nays, and 0 abstentions to recommend that the city council approve easement vacation. At the same public hearing, the Planning Commission also approved a Quick Plat and Shoreland Setback Variance for the same property.

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

Petition Received: March 8, 2013

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

VACATION SKETCH FOR: DJR ARCHITECTURE, INC.

LEGEND

These standard symbols will be found in the drawing.



UTILITY & STORM DRAIN EASEMENT TO REMAIN



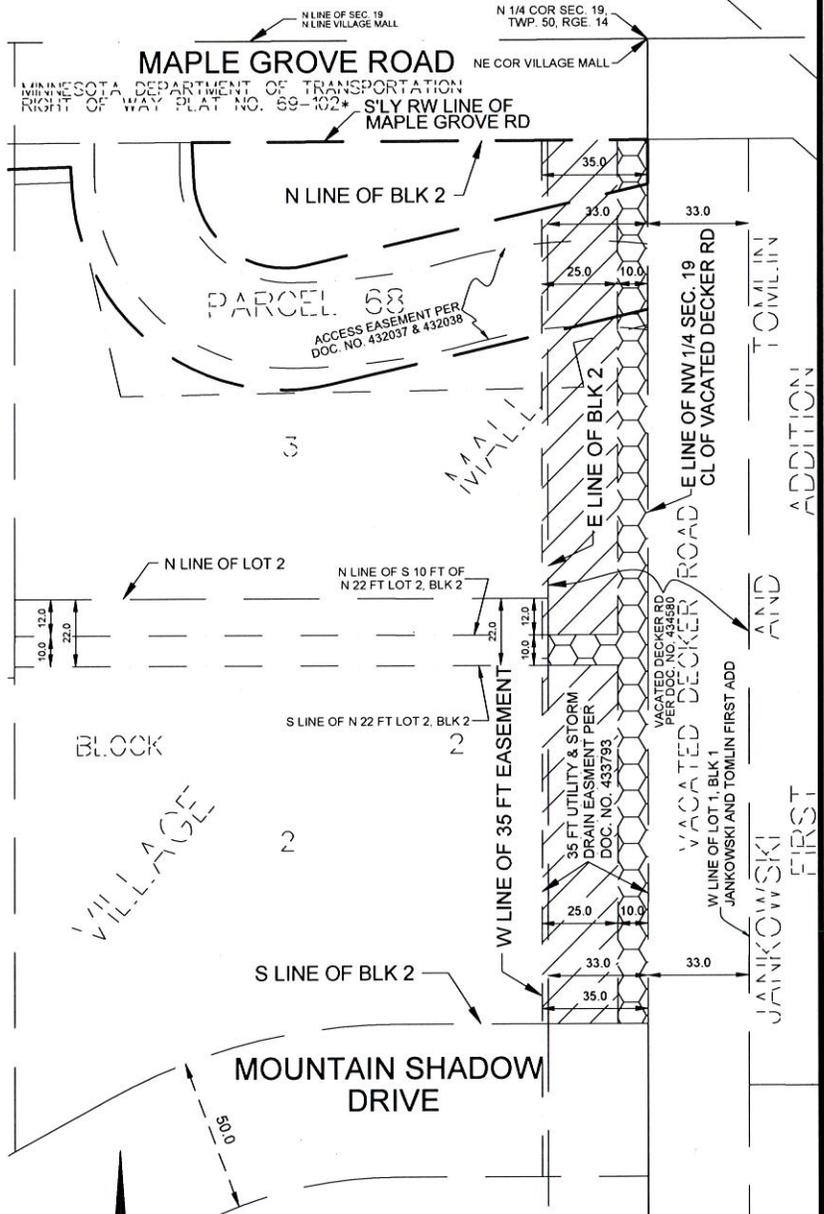
UTILITY & STORM DRAIN EASEMENT TO BE VACATED

LEGAL DESCRIPTION OF UTILITY & STORM DRAIN EASEMENT TO BE VACATED

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Approved by the City Engineer of the City of Duluth, MN. this 8 day of July 2013

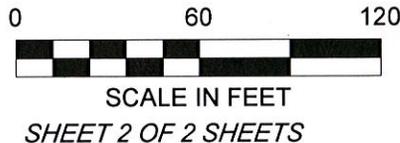
By [Signature]

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.

Date: 7-8-13

[Signature]
Ronald L. Krueger MN License No. 14374

REV: 7-8-13 (CITY COMMENTS)
REV: 6-28-13 (SHOW EASEMENT)
DATE: 4-3-13
SCALE: 1 IN = 60 FEET
PROJECT NO: 13-028



ALTA
SURVEY COMPANY, INC.
Residential/Commercial Land Surveying-Land
Development-Legal Descriptions
P.O. BOX 161138 Duluth, MN 55806
Phone: 218-727-5211 Fax: 218-727-3798



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 13-045		Contact	Steven Robertson	
Application Type	Vacation of Easement		Planning Commission Date	April 9, 2013	
Deadline for Action	Application Date	March 8, 2013	60 Days	May 7, 2013	
	Date Extension Letter Mailed	March 25, 2013	120 Days	July 6, 2013	
Location of Subject	2012 Maple Grove Road				
Applicant	MHM 22, LLC		Contact		
Agent	Sheldon Berg		Contact	sberg@djr-inc.com	
Legal Description	N/A				
Site Visit Date	March 23, 2013		Sign Notice Date	April 23, 2012	
Neighbor Letter Date	March 25, 2013		Number of Letters Sent	17	

Proposal

Applicant is requesting a partial abandonment of the utility easement. The applicant states that "the requested easements would be reduced to 10 feet from the current 33 and 35 feet easements. The owner will help coordinate and pay for the relocation of any utilities in the vacated portion of the easement."

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	MU-C	Commerical	Large-Scale Commercial
North	MU-C	Commerical	Large-Scale Commercial
South	MU-C	Commerical	Large-Scale Commercial/Preservation
East	MU-C	Commerical	Large-Scale Commercial
West	MU-C	Commerical	Preservation/Large-Scale Commercial

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.

0-1

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

Future Land Use - Large Scale Commercial. Mall, shopping center and big box retail development, with associated surrounding retail and service uses, but only ancillary office uses and no residential uses. Oriented primarily to the motorist, with planned internal circulation patterns while still accommodating pedestrian movement. Requires access to regional transportation routes. May include regional green infrastructure for watershed protection.

Future Land Use - Preservation. Lands with substantial restrictions. High natural resource or scenic value, or severe development limitations. Primarily public lands but limited private use is anticipated subject to use and design controls. Examples include: most city parklands and primary viewsheds; shorelands of lake, rivers, streams; wetlands and floodplains; high-value habitat; low-intensity private or public uses.

Current History: this site applied for (and received) a MU-C Plan Review, easement vacation, boundary line adjustment, and shoreland variance in May 2013. This site experienced flooding during the June 19/20 rain event last summer.

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

1) Applicant is requesting a partial easement vacation. The easement is currently being used/occupied.

2) The City received no comments from citizens. However, Minnesota Power had some comments. Representatives from MN Power have been in contact with the applicant's representative, and have provided them with cost estimates for relocating the power line facilities in order to accommodate the Hansen Center development. As of the date of this memo, there is no written agreement with them or the underlying landowner assuring that MN Power that would be paid for any relocation expense. MN Power has requested that "any and all utility relocation expense associated with the subject development to be the responsibility of the landowner/developer and/or assigns" including a notation stipulating that "said utility's estimated relocation expense shall be paid in full prior to MN Power moving its power line facilities." The applicant's agent, Sheldon Berg, has indicated that the applicant is willing to agree to pay relocation costs.

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 utility easement with the following conditions:

- 1) That the utility easement be rededicated as indicated on "Vacation Sketch for: DJR Architecture, Inc" revised 4/3/13
- 2) Applicant pay for expenses related to the relocation of utilities.
- 3) The applicant shall prepare a vacation plat that is approved by the City Engineer and that is in a form that is recordable by the County Recorder's Office prior to the proposed vacation application going before the City Council. Failure to present a vacation plat meeting the City Engineer's requirements to the Land Use Supervisor within 90 days of the Planning Commission's recommendation shall result in the application being denied.

0-2

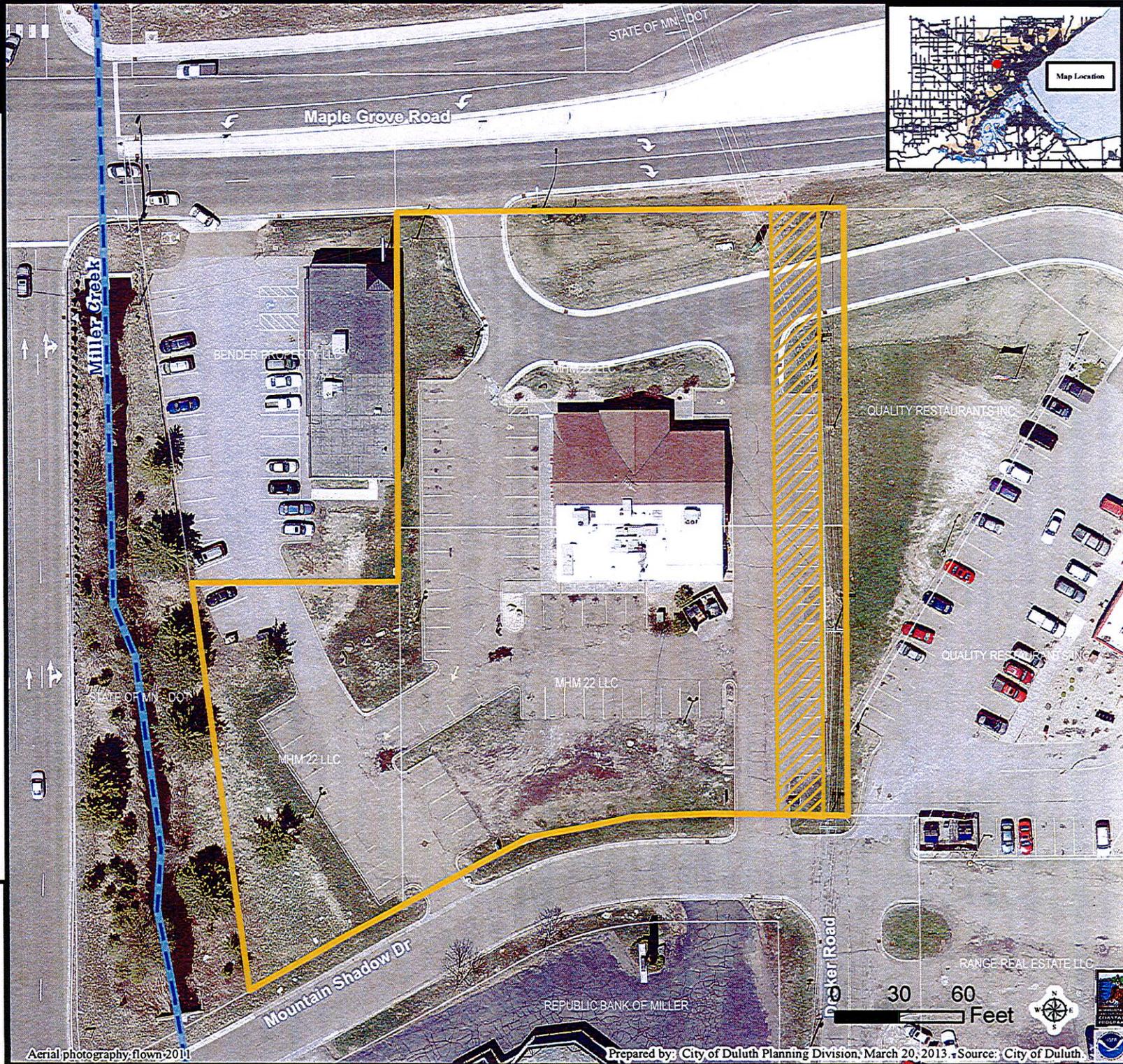
Attachments (aerial photo with zoning; future land use map; site plan; copies of correspondence)



City Planning

PL 13-045

Vacation of Utility Easement
2012 Maple Grove Road



Map Location

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.

0-3

Aerial photography: ftown2011



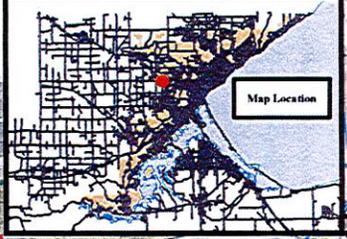
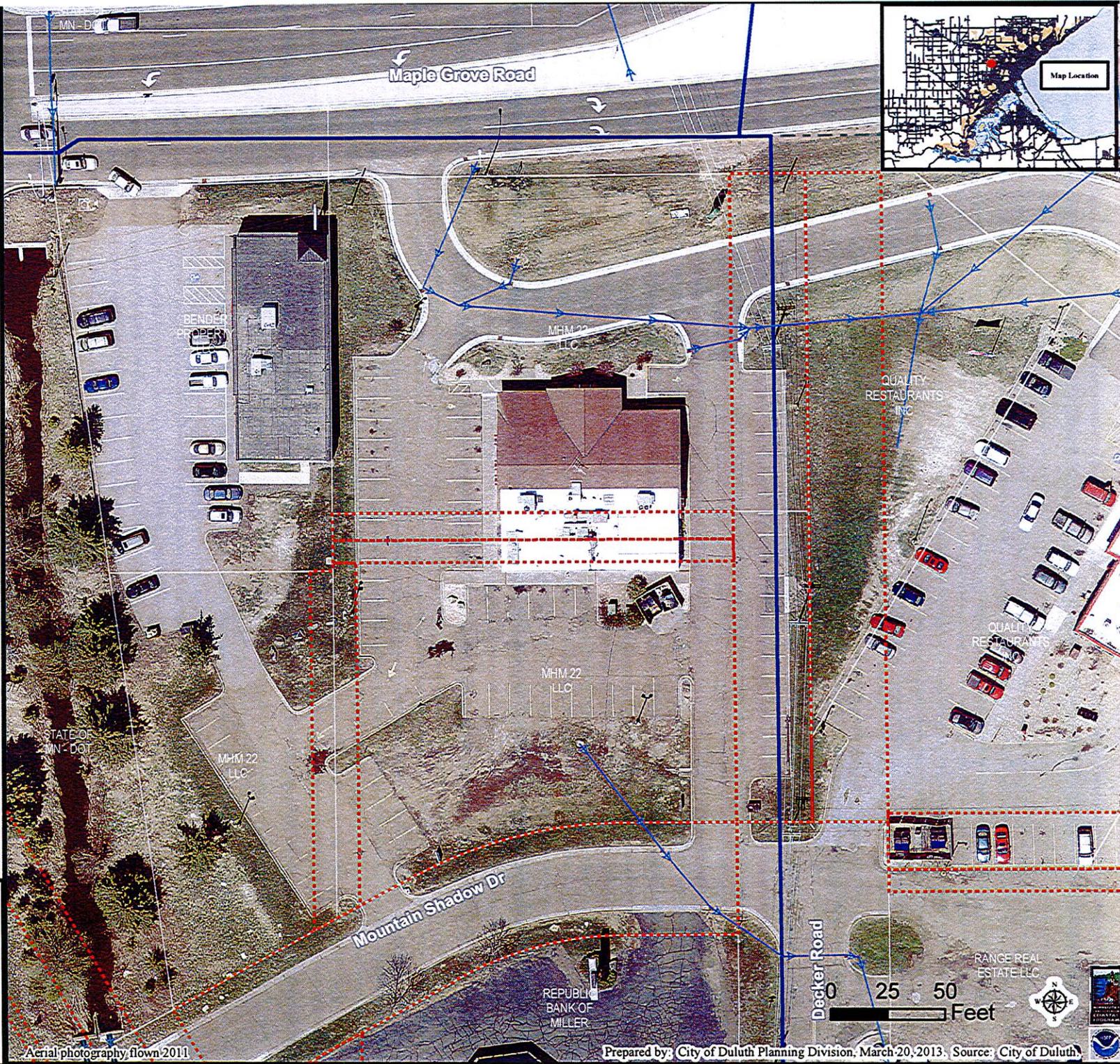
Prepared by: City of Duluth Planning Division, March 20, 2013. Source: City of Duluth



City Planning

PL 13-045

Vacation



Legend

Storm Gravity Main
 — <all other values>

Subtype

- Swale (BMP)
- Ditch
- Curb Drain
- Collector
- Culvert
- Inline Storage
- Interceptor
- Inverted Siphon
- Network Connection (No Pipe)
- Open Channel
- Outfall
- Overflow
- Sedimentation Channel
- Trench Drain
- Tunnel

Gravity Main LifecycleStatus

- Active; Repaired
- Proposed
- Abandoned

Easement Type

- - - Utility Easement
- - - Other Easement

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0-4

Aerial photography, flown 2011

Prepared by: City of Duluth Planning Division, March 20, 2013. Source: City of Duluth.



VACATION SKETCH FOR: DJR ARCHITECTURE, INC.



VICINITY MAP



NO SCALE

NOTES

THIS IS NOT A BOUNDARY SURVEY.

BEARINGS ARE BASED ON THE ST. LOUIS COUNTY TRANSVERSE
MERCATOR COORDINATE SYSTEM OF 1996.

THIS SURVEY HAS BEEN PREPARED WITHOUT BENEFIT OF A TITLE
COMMITMENT OR TITLE OPINION. A TITLE SEARCH FOR RECORDED OR
UNRECORDED EASEMENTS WHICH MAY BENEFIT OR ENCUMBER THIS
PROPERTY HAS NOT BEEN COMPLETED BY ALTA SURVEY COMPANY, INC.

DATE: 3-7-13
SCALE: 1 IN = 60 FEET
PROJECT NO: 13-028

SHEET 1 OF 2 SHEETS

ALTA
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Residential/Commercial Land Surveying-Land
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0-5

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LEGEND

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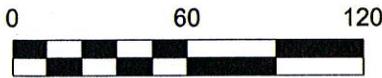
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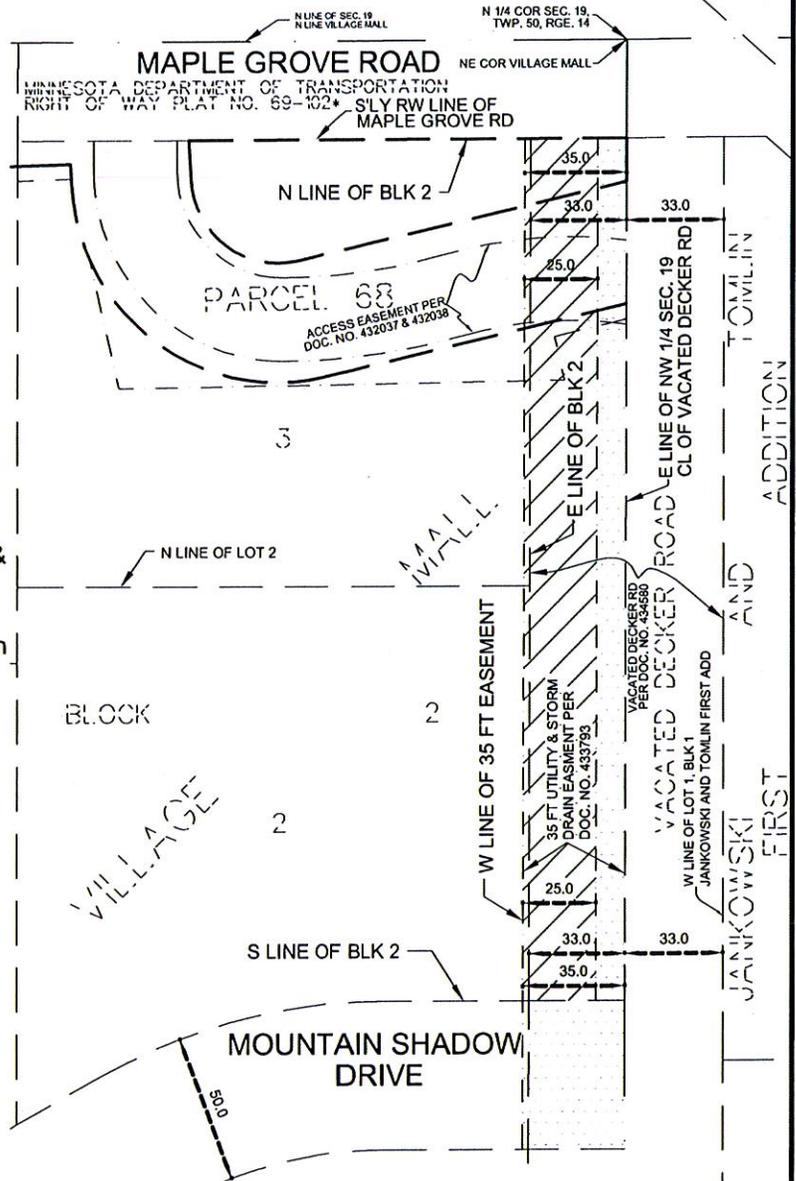
SCALE IN FEET

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

By _____

DATE: 4-3-13
SCALE: 1 IN = 60 FEET
PROJECT NO: 13-028

SHEET 2 OF 2 SHEETS



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.

Date: 4-3-13

Ronald L. Krueger MN License No. 14374

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0-6