

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

13-065-0

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE GRANTING TO WHOLE FOODS CO-OP A CONCURRENT  
USE PERMIT FOR THE INSTALLATION OF AN ELECTRICAL  
CONNECTION UNDER EAST FOURTH ALLEY.

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 the Whole Foods Co-op and its successor(s) in interests, referred to herein as the permittee, to construct and maintain the following:

(a) An underground electrical connection located in the right of way of East Fourth Alley (alley between East Fourth Street and East Third Street), as shown in Public Document No. \_\_\_\_\_.

Section 2. Before this ordinance shall be effective for any purpose whatsoever, the permittee 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.

Section 3. The permittee shall remain responsible for the ownership, operation and maintenance of the utilities, including performing utility locates in accordance with the Gopher State One Call rules.

Section 4. 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 5. 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 employees, agents, and assigns. The permittee agrees that the city of Duluth shall not be liable for damage caused to the private improvements while the city engages 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 6. 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 7. 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 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 8. 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.

Section 9. 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 10. The following events shall automatically cause the termination

of the term of this ordinance:

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

(b) 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 JRM:cs 9/12/2013

STATEMENT OF PURPOSE: The Co-op is requesting permission to install an underground electrical connection in the alley between its building and parking lot, which will provide service to the building from a generator in the parking lot in the event of a power failure.

On September 10, 2013, the planning commission held a public meeting on the proposal, and voted 8 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: August 6, 2013

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



**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 13-113	<b>Contact</b>	Jenn Reed Moses, 218-730-5328	
<b>Application Type</b>	Concurrent Use of Streets Permit	<b>Planning Commission Date</b>	September 10, 2013	
<b>Deadline for Action</b>	<b>Application Date</b>	August 6, 2013	<b>60 Days</b>	N/A
	<b>Date Extension Letter Mailed</b>	N/A	<b>120 Days</b>	N/A
<b>Location of Subject</b>	610 East 4th Street			
<b>Applicant</b>	Whole Foods Co-op	<b>Contact</b>	smurphy@wholefoods.coop	
<b>Agent</b>	Hugh Reitan	<b>Contact</b>	hugh@buildingcommonwealth.com	
<b>Legal Description</b>	010-3830-13890			
<b>Site Visit Date</b>	August 21, 2013	<b>Sign Notice Date</b>	August 23, 2013	
<b>Neighbor Letter Date</b>	N/A	<b>Number of Letters Sent</b>	N/A	

**Proposal**

Applicant is requesting a Concurrent Use of Streets Permit to allow the electrical connection for a proposed emergency generator to be underground and less vulnerable to damage.

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	F-6	Commercial	Neighborhood Mixed Use
<b>North</b>	F-6	Commercial	Neighborhood Mixed Use
<b>South</b>	MU-N	Commercial	Neighborhood Mixed Use
<b>East</b>	MU-N	Residential	Neighborhood Mixed Use/Preservation
<b>West</b>	MU-N	Commercial	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.

B-1

**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.

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

Staff finds that:

- 1) The applicant is proposing to install an electrical connection for a proposed emergency generator in the alley between Whole Foods Co-op and its parking lot.
- 2) The proposal will not harm or inconvenience the health, safety and general welfare of the city. Utilities will be located entirely underground and will not impact pedestrian or vehicular traffic.
- 3) Line will be owned and operated by the Co-op. Maintenance of the line (including locating) will be the responsibility of the Co-op. These conditions will also be included as part of the City Council ordinance for this concurrent use permit.
- 4) 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.
- 5) City Engineering staff approve location of electrical line as long as the Co-op maintains and locates.
- 6) No City, agency, or public comments have been received.

**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 project be limited to, constructed, and maintained according to the Site Plan dated August 6, 2013.
- 2) Maintenance of the lines (including locating) will be the responsibility of the Co-op

B-2

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

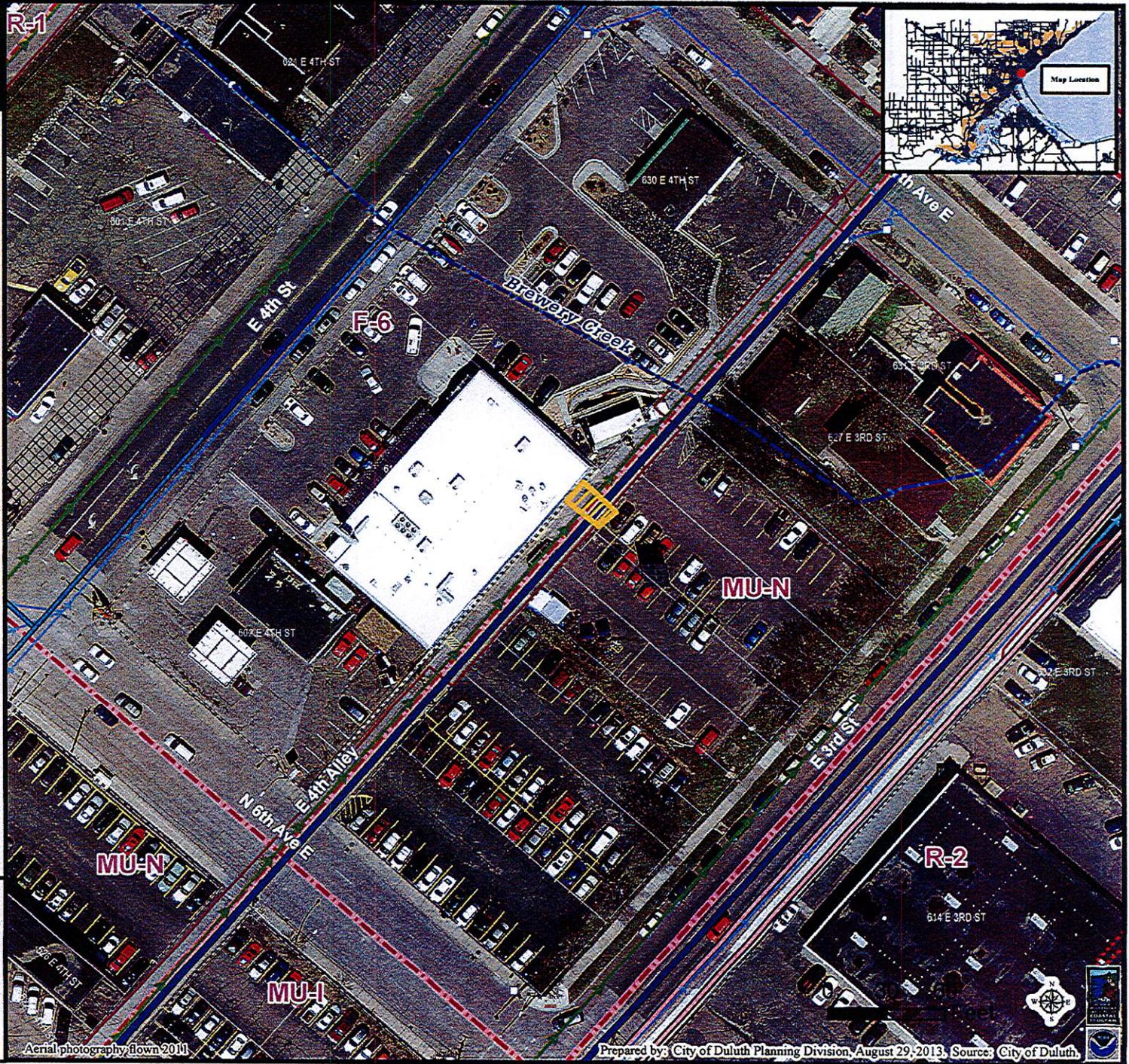


# City Planning

Concurrent Use Permit  
Whole Foods Co-op  
610 E 4th St

## Legend

- DuluthStream\_cl**  
**TROUT\_FLAG**
- 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
- Right-of-Way Type**
- Road or Alley ROW
  - Vacated ROW
- Easement Type**
- Utility Easement
  - Other Easement
  - Zoning (Final)
- Shoreland Overlay Zone**
- Cold Water
  - Natural Environment
  - General Development
- Floodplain Type**
- General Flood Plain
  - Flood Way
  - Flood Fringe

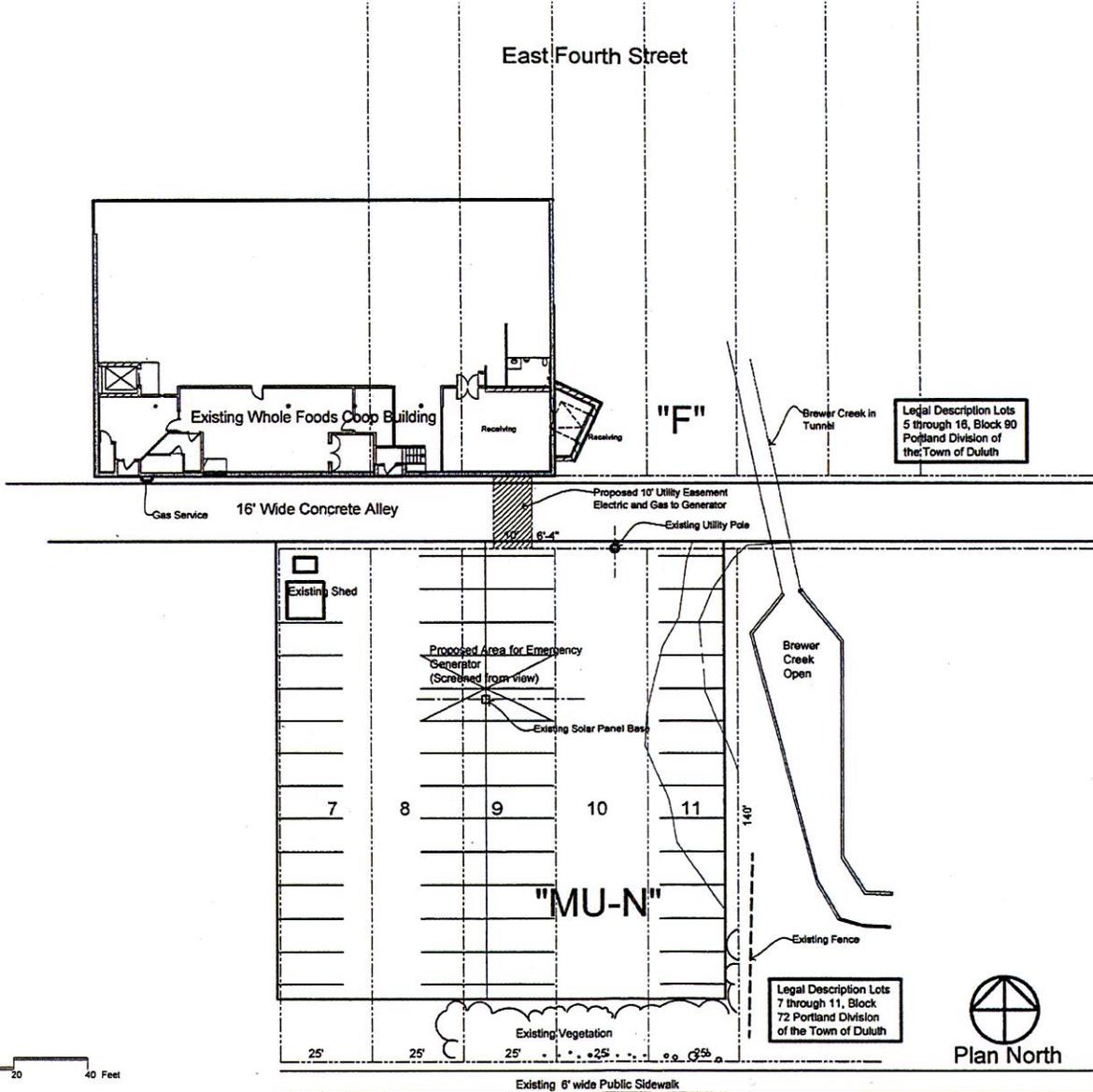


The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used 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.

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Aerial photography, flown 2011

Prepared by: City of Duluth Planning Division, August 29, 2013. Source: City of Duluth.



# Site Plan

Design Drawing Only - Not a Survey

Scale 1" = 30'

East Third Street



Plan North

**COMMONWEALTH DESIGN**

**BUILDERS COMMONWEALTH**  
 517 GARFIELD AVENUE  
 DULUTH, MN 55802  
 PH: (218) 756-1192  
 FAX: (218) 724-0824

Whole Foods Coop  
 610 East 4th Street  
 Duluth MN  
 Emergency Generator

DATE: 8-4-13
JOB NO.:
DRAWN BY:
REVISED:
APPROVED BY:

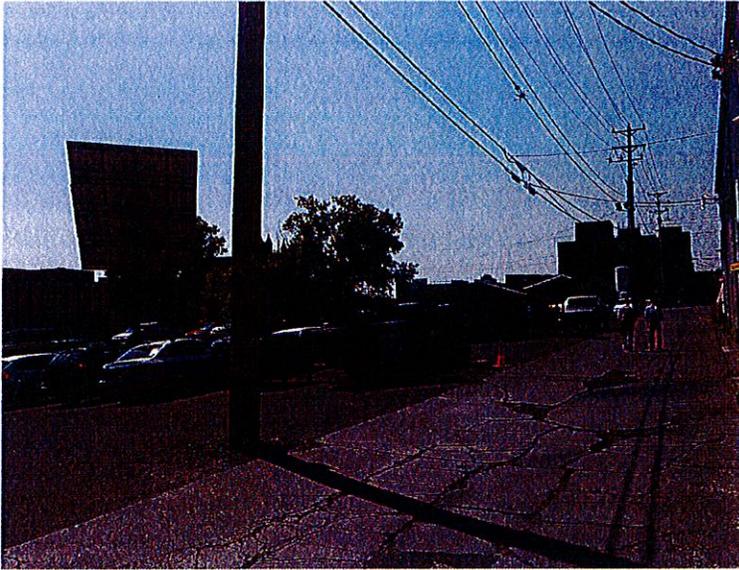
SHEET:

B-4

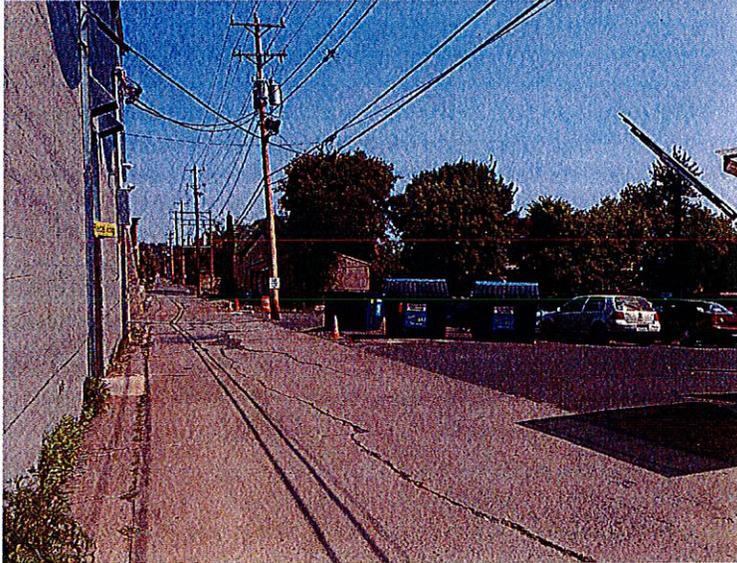


610 E 4<sup>th</sup> St

Site Photos



Alley, facing west



Alley, facing east

B-6

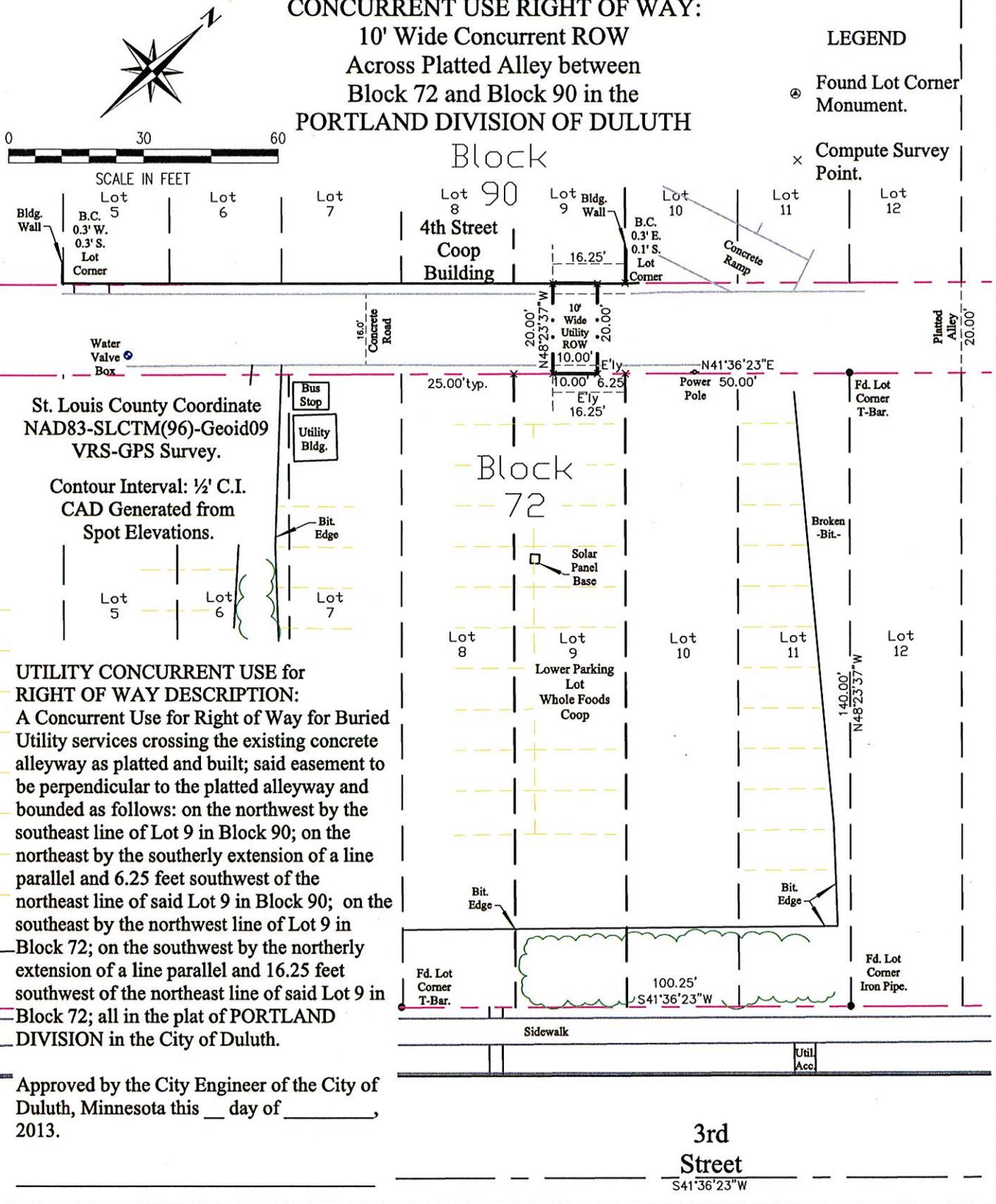
# CONCURRENT USE RIGHT OF WAY EXHIBIT

**CONCURRENT USE RIGHT OF WAY:  
10' Wide Concurrent ROW  
Across Platted Alley between  
Block 72 and Block 90 in the  
PORTLAND DIVISION OF DULUTH**

**LEGEND**

⊙ Found Lot Corner Monument.

× Compute Survey Point.



St. Louis County Coordinate  
NAD83-SLCTM(96)-Geoid09  
VRS-GPS Survey.

Contour Interval: 1/2' C.I.  
CAD Generated from  
Spot Elevations.

**UTILITY CONCURRENT USE for  
RIGHT OF WAY DESCRIPTION:**  
A Concurrent Use for Right of Way for Buried  
Utility services crossing the existing concrete  
alleyway as platted and built; said easement to  
be perpendicular to the platted alleyway and  
bounded as follows: on the northwest by the  
southeast line of Lot 9 in Block 90; on the  
northeast by the southerly extension of a line  
parallel and 6.25 feet southwest of the  
northeast line of said Lot 9 in Block 90; on the  
southeast by the northwest line of Lot 9 in  
Block 72; on the southwest by the northerly  
extension of a line parallel and 16.25 feet  
southwest of the northeast line of said Lot 9 in  
Block 72; all in the plat of PORTLAND  
DIVISION in the City of Duluth.

Approved by the City Engineer of the City of  
Duluth, Minnesota this \_\_\_ day of \_\_\_\_\_,  
2013.

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: 8/12/2013 Rev. 9/10/2013 LIC. No: 24587

Utility Concurrent Use ROW  
Survey for Alleyway:  
Builders Commonwealth  
517 Garfield Avenue  
Duluth, MN 55802

NORTH COUNTRY  
LAND SURVEYOR, INC.

**Anthony Lueck  
Surveyor**

Minnesota/Wisconsin  
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