



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

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

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**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.

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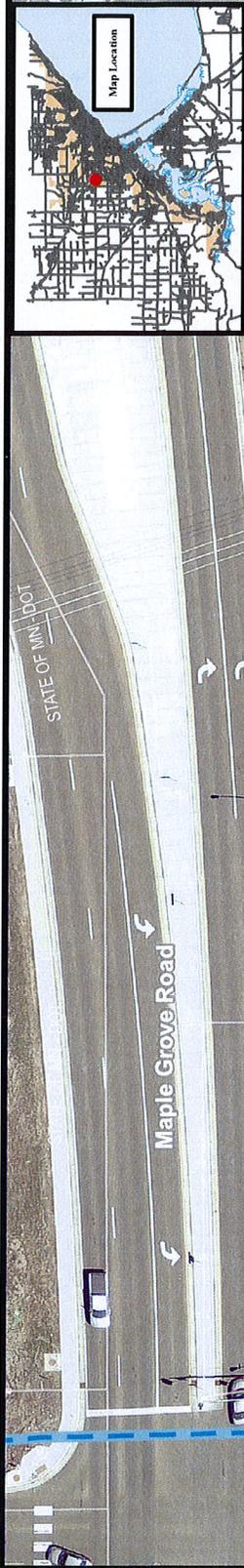
**Attachments (aerial photo with zoning; future land use map; site plan; copies of correspondence)**



# City Planning

PL 13-045

Vacation of **Maple Grove Road**  
2012 Maple Grove Road

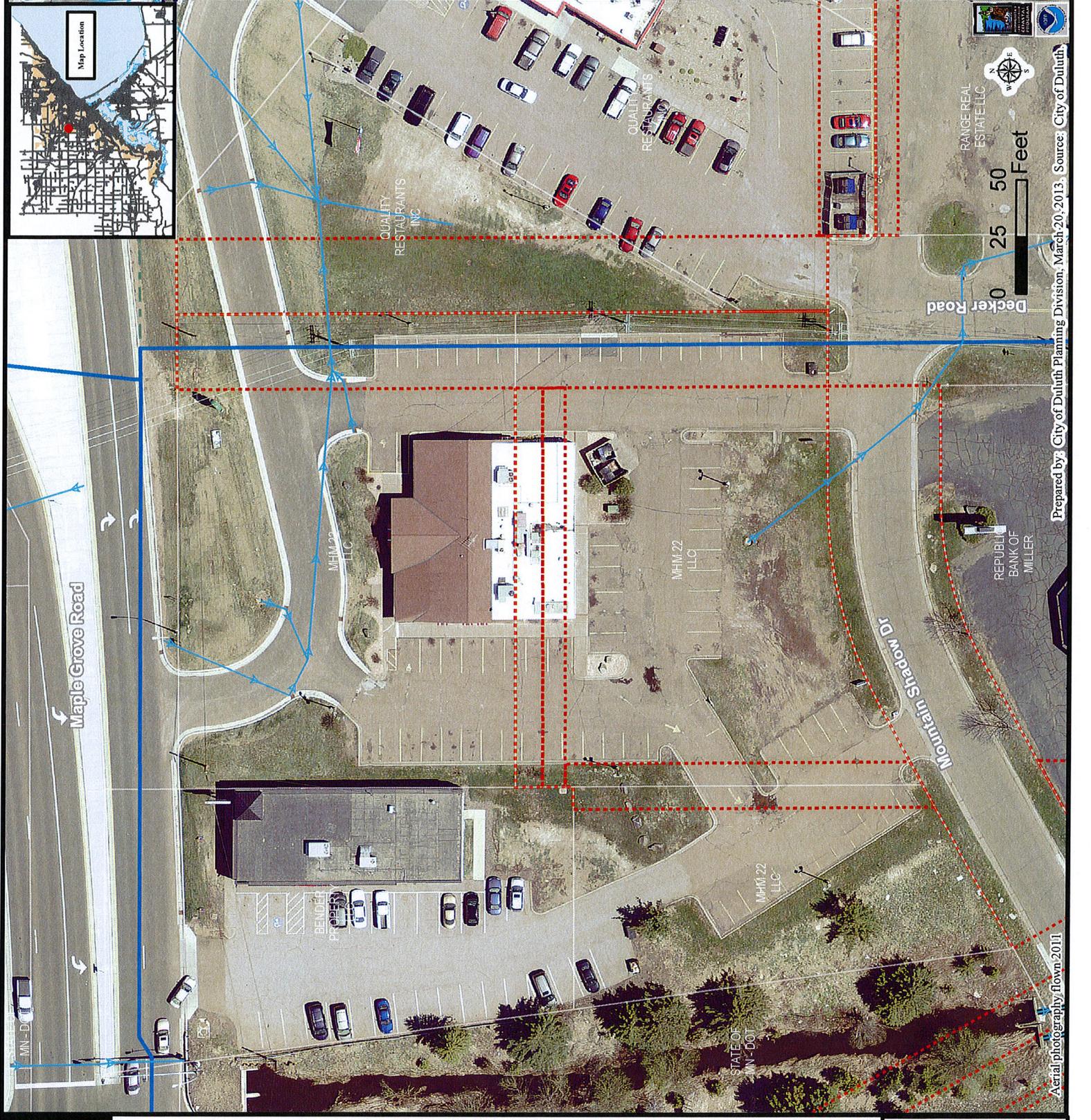


The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used 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, March 20, 2013. Source: City of Duluth.



**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 Lifecycle Status**

- Active; Repaired
- Proposed
- Abandoned

**Easement Type**

- Utility Easement
- Other Easement

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# 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**  
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

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# VACATION SKETCH FOR: DJR ARCHITECTURE, INC.

## LEGEND

These standard symbols will be found in the drawing.



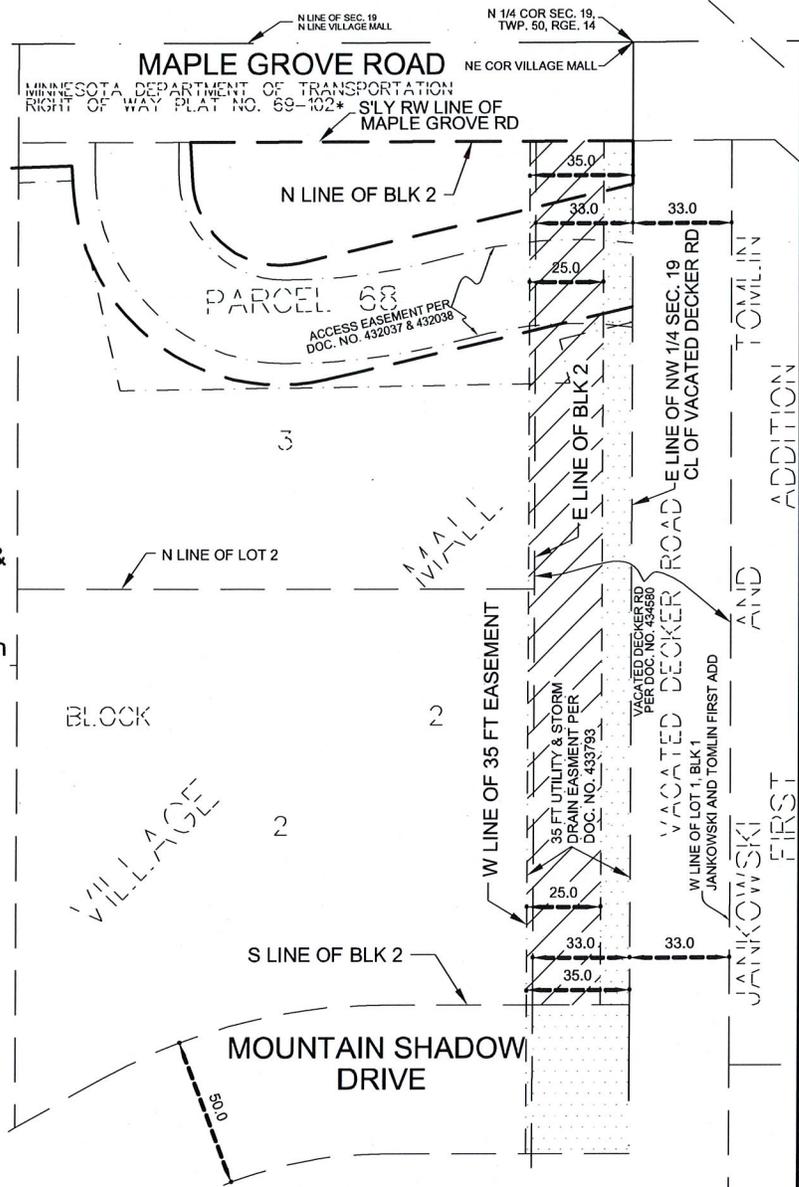
UTILITY & STORM DRAIN EASEMENT TO REMAIN



UTILITY & STORM DRAIN EASEMENT TO BE VACATED

### LEGAL DESCRIPTION OF UTILITY & STORM DRAIN EASEMENT TO BE VACATED

The West 25.00 of the East 35.00 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 Northerly right of way line of Mountain Shadow drive.



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

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

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