

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

14-0219R

RESOLUTION VACATING PORTIONS OF A PLATTED UNIMPROVED  
STREET EASEMENT OF PALMETTO STREET (DONALD ELLISON).

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 Wednesday, April 30, 2014, special 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:

A portion of the 80 foot wide Palmetto Street easement shown in Book P, Miscellaneous Records, page 18-19, more particularly described as follows:

An 80 foot wide street easement crossing the 'W 1/2 of W 1/2 of SE 1/4 of NW 1/4 lying South of State Trunk Highway No. 94 Section 20 Township 50 North Range 14 West of the Fourth Principal Meridian', the centerline of said street described as: Commencing at the center of said Section 20, thence northerly on the north-south quarter line of said Section 20 for a distance of 54 feet, more or less, to the center of the street shown in said Book P, said point being the point of beginning of the centerline to be described; thence westerly for a distance of 25 feet, more or less, along the center of the street shown in said Book P, to a point of curvature; thence on a curve to the right, said curve having a radius of 546.43 feet and a delta angle of 47°55'30" for a distance of

457.06 feet, more or less, along the center of the street shown in said Book P, to a point of common curvature; thence on a curve to the left, said curve having a radius of 546.43 feet and a delta angle of 101°27'00" for a distance of 967.53 feet, more or less, along the center of the street shown in said Book P, to a point of common curvature; thence on a curve to the right, said curve having a radius of 475.72 feet and a delta angle of 53°15'20" for a distance of 442.17 feet, more or less, along the center of the street shown in said Book P, to a point on the east-west quarter line of said Section 20, said point being the point of ending.

Sidelines of said street easement aka public highway easement to terminate on the west line of the Southeast Quarter of the Northwest Quarter of said Section 20 and on the southerly right-of-way line of State Trunk Highway No. 94.

(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 5/1/2014

STATEMENT OF PURPOSE: This resolution vacates a 300 foot by 80 foot street easement for the unimproved Palmetto Street. This street easement has never been used for a public purpose and is not needed for the purpose that it was initially dedicated. A portion of Palmetto Street was vacated by city council action in the past.

On April 30, 2014 the Duluth city planning commission held a public hearing on the proposal and voted 8 yeas, 0 nays, and 0 abstentions to recommend the city council approve the vacation without any conditions.

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

Petition Received: February 19, 2014

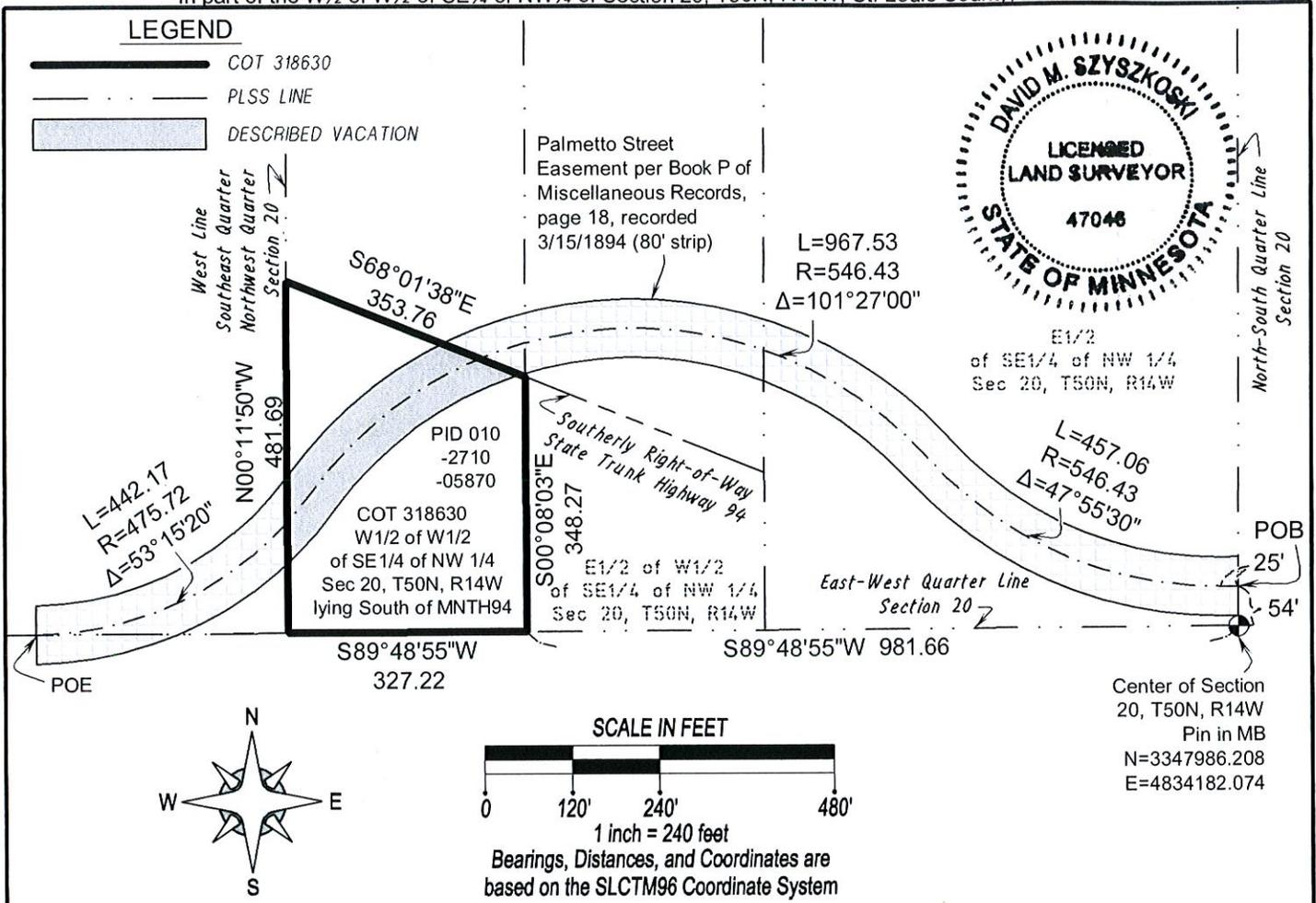
Action Deadline: There is no action deadline for this resolution.

Petitioner:  
Robert Kanuit  
302 West Superior Street, Suite 700  
Duluth, MN 55802

PL 14-013

# Street Vacation Exhibit

in part of the W $\frac{1}{2}$  of W $\frac{1}{2}$  of SE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 20, T50N, R14W, St. Louis County, Minnesota



## Legal Description:

A portion of the 80 foot wide Palmetto Street easement shown in Book P, Miscellaneous Records, page 18-19, more particularly described as follows:

An 80 foot wide street easement crossing the 'W 1/2 of W 1/2 of SE 1/4 of NW 1/4 lying South of State Trunk Highway No. 94 Section 20 Township 50 North Range 14 West of the Fourth Principal Meridian', the centerline of said street described as: Commencing at the center of said Section 20, thence northerly on the north-south quarter line of said Section 20 for a distance of 54 feet, more or less, to the center of the street shown in said Book P, said point being the point of beginning of the centerline to be described; thence westerly for a distance of 25 feet, more or less, along the center of the street shown in said Book P, to a point of curvature; thence on a curve to the right, said curve having a radius of 546.43 feet and a delta angle of 47°55'30" for a distance of 457.06 feet, more or less, along the center of the street shown in said Book P, to a point of common curvature; thence on a curve to the left, said curve having a radius of 546.43 feet and a delta angle of 101°27'00" for a distance of 967.53 feet, more or less, along the center of the street shown in said Book P, to a point of common curvature; thence on a curve to the right, said curve having a radius of 475.72 feet and a delta angle of 53°15'20" for a distance of 442.17 feet, more or less, along the center of the street shown in said Book P, to a point on the east-west quarter line of said Section 20, said point being the point of ending.

Sidelines of said street easement aka public highway easement to terminate on the west line of the Southeast Quarter of the Northwest Quarter of said Section 20 and on the southerly right-of-way line of State Trunk Highway No. 94.

Approved by the City Engineer of Duluth, MN

Date: 5/1/14 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: 4/15/2014

4560 Norway Pines Place  
Duluth, MN 55811  
218-727-8796  
tkda.com

**TKDA**

Job Number: 15513.007 / SS0062A

Palmetto Street  
Vacation Exhibit

For : Fryberger c/o Bob Kanuit  
RE : Don Ellison



**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 14-013	<b>Contact</b>	Steven Robertson	
<b>Application Type</b>	Vacation of Street Easement	<b>Planning Commission Date</b>	April 8, 2014	
<b>Deadline for Action</b>	<b>Application Date</b>	February 19, 2014	<b>60 Days</b>	N/A
	<b>Date Extension Letter Mailed</b>	March 19, 2014	<b>120 Days</b>	N/A
<b>Location of Subject</b>	714 West Central Entrance			
<b>Applicant</b>	Donald Ellison	<b>Contact</b>		
<b>Agent</b>	Robert Kanit, Fryberger	<b>Contact</b>	rkanuit@fryberger.com	
<b>Legal Description</b>	010-2710-05870, see attached			
<b>Site Visit Date</b>	March 29, 2014	<b>Sign Notice Date</b>	March 25, 2014	
<b>Neighbor Letter Date</b>	March 26, 2014	<b>Number of Letters Sent</b>	21	

**Proposal**

Applicant is proposing to vacate unimproved public right of way. According to the applicant, "this easement was created in 1894 as a means of providing public highway access from Central Duluth and Duluth Heights to the Haines road. Since then, other road corridors have been developed which make this easement unnecessary and impractical for public use".

	<b>Current Zoning</b>	<b>Existing Land Use</b>	<b>Future Land Use Map Designation</b>
<b>Subject</b>	MU-N	Residential	Neighborhood Mixed use
<b>North</b>	MU-C	Highway, Commercial	Large Scale Commercial
<b>South</b>	R-1	Open Space, Residential	Preservation, Traditional Neighborhood
<b>East</b>	MU-N, R-1	Residential	Neighborhood Mixed Use, Traditional Neighborhood
<b>West</b>	MU-C	Commercial	Large Scale Commercial

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

Vacation of public rights of way and/or easements require 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 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.

1-7

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

Governing Principle #1: Reuse previously developed lands.  
Governing Principle #7: Create and maintain connectivity.

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.

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

- 1) Applicant is proposing a vacation of a street easement for an unimproved street. The unimproved street to be vacated is approximately 80 feet wide and 330 feet long.
- 2) The applicant owns the land surrounding the proposed vacation area. If the vacation request is granted by the City, the applicant intends to sell his property.
- 3) According to the applicant, the records available indicate this easement was dedicated to the city in 1894 "in favor of the public for highway purposes".
- 4) To the best of City staff's knowledge, there are no current public or private utilities in the public right of way.
- 5) This vacation, if approved, will not deprive any currently platted lots of access to a public right of way.
- 6) 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; 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.
- 7) No comments from the public. Mn Power and City engineering did not have a concern with this vacation.
- 8) 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 above findings, Staff recommends that Planning Commission recommend approval of the vacation, without conditions.

2-7

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



**Legend**

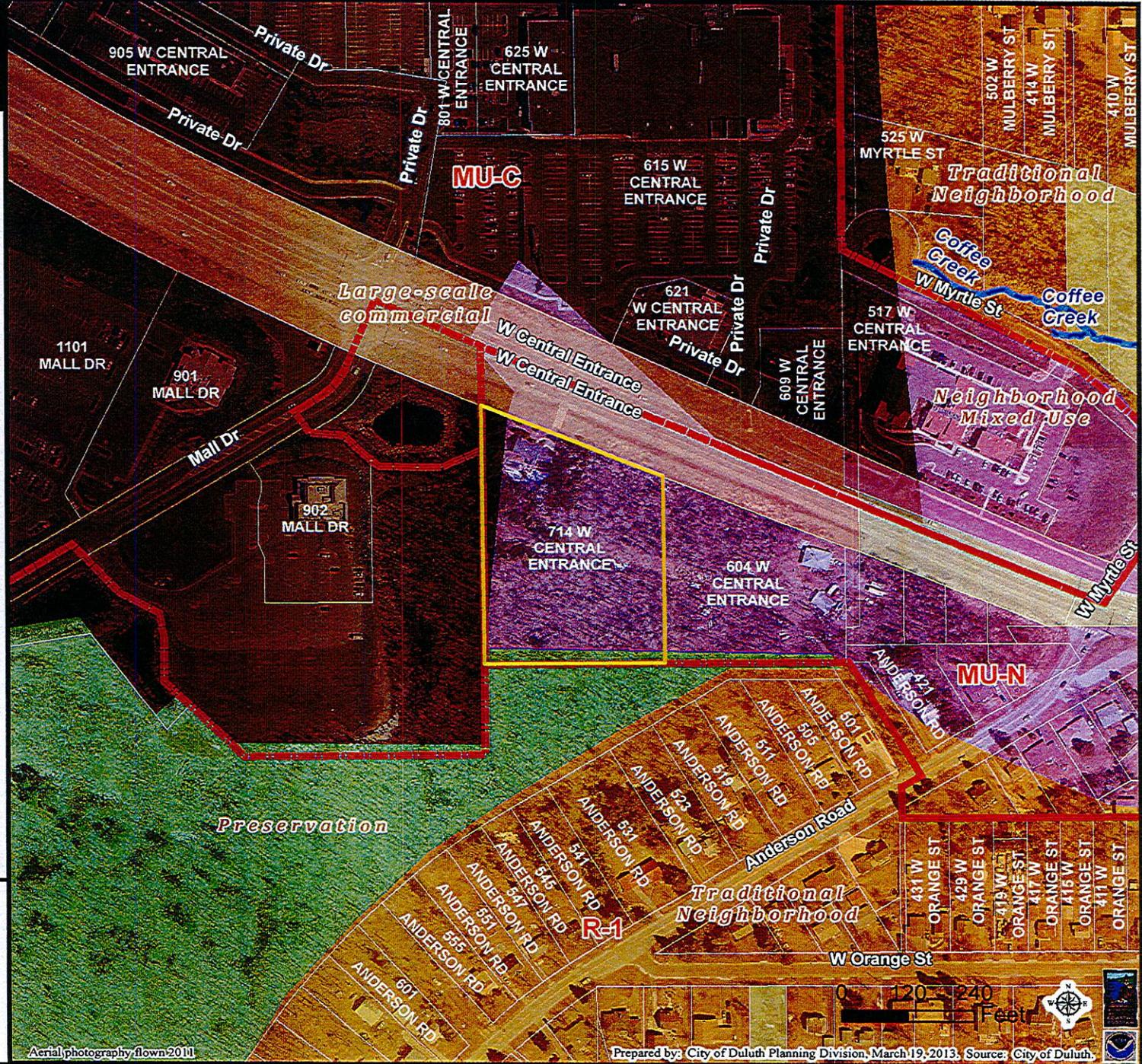
- Trout Stream (GPS)
- Other Stream (GPS)

**Zoning Boundaries**

- Zoning Boundaries

**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.

1-3

Aerial photography flown 2011



**Legend**

 Vacated ROW

**Easement Type**

 Utility Easement

 Other Easement

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1-4

Aerial photography flown 2011

Prepared by: City of Duluth Planning Division, March 11, 2013. Source: City of Duluth





L-5



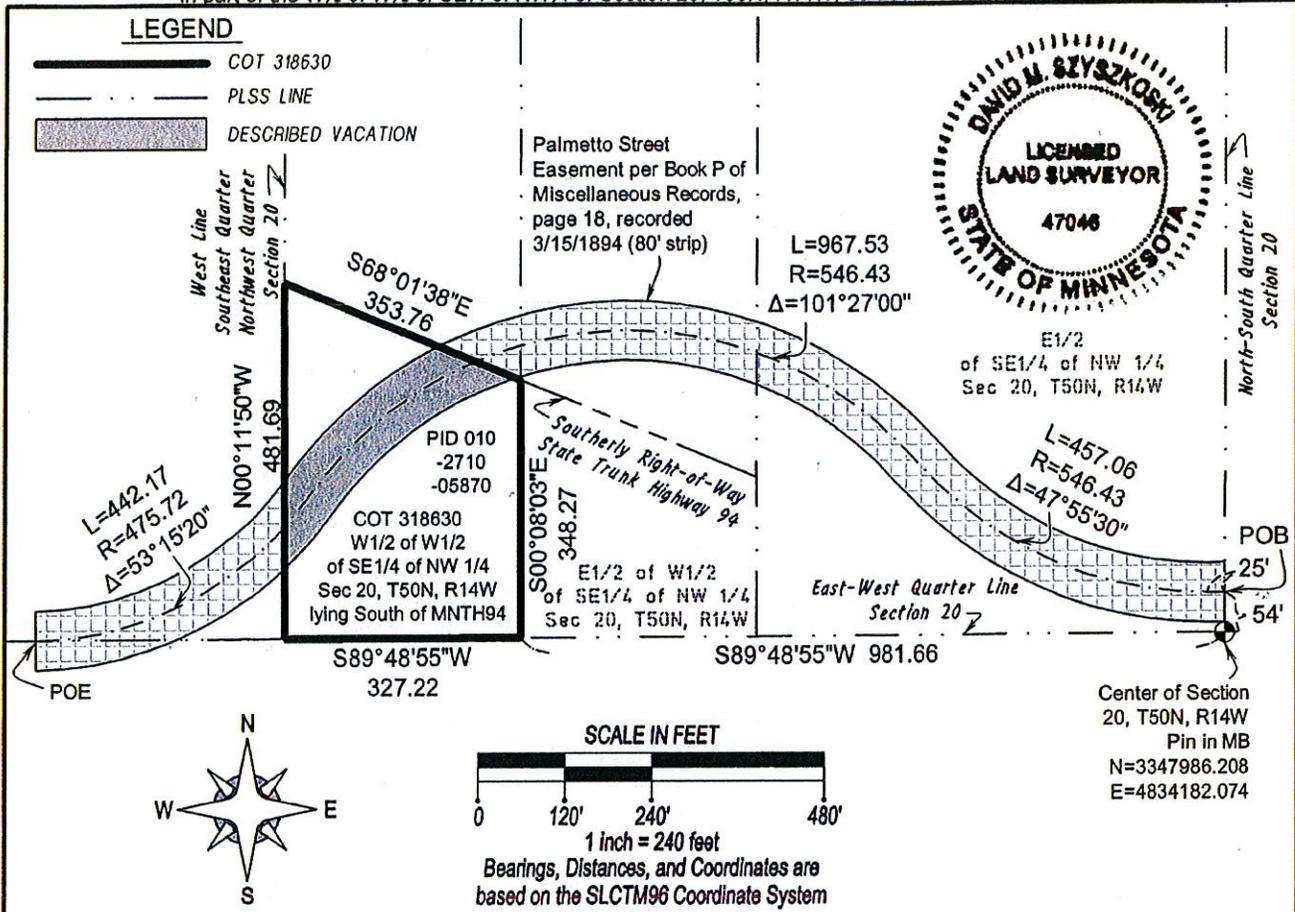
Reason for Request:

This easement was created in 1894 as a means of providing public highway access from Central Duluth and Duluth Heights to the Haines Road. Since then, other road corridors have been developed which make this easement unnecessary and impractical for public use. In addition, a large portion of the easement to the west of the applicant's property was vacated several decades ago, which is further evidence that this portion of the easement is no longer necessary or practical.

The existence of the easement essentially precludes applicant's use of the portion of his property containing the easement.

# Street Vacation Exhibit

In part of the W 1/2 of W 1/2 of SE 1/4 of NW 1/4 of Section 20, T50N, R14W, St. Louis County, Minnesota



## Legal Description:

Portion of Palmetto Street per Book P, Page 18, Misc. aka Public Highway per COT 318630.0 crossing property:

A portion of the 80 foot wide Palmetto Street easement shown in Book P, Miscellaneous Records, page 18-19, more particularly described as follows:

An 80 foot wide street easement crossing the 'W 1/2 of W 1/2 of SE 1/4 of NW 1/4 lying South of State Trunk Highway No. 94 Section 20 Township 50 North Range 14 West of the Fourth Principal Meridian', the centerline of said street described as: Commencing at the center of said Section 20, thence northerly on the north-south quarter line of said Section 20 for a distance of 54 feet, more or less, to the center of the street shown in said Book P, said point being the point of beginning of the centerline to be described; thence westerly for a distance of 25 feet, more or less, along the center of the street shown in said Book P, to a point of curvature; thence on a curve to the right, said curve having a radius of 546.43 feet and a delta angle of 47°55'30" for a distance of 457.06 feet, more or less, along the center of the street shown in said Book P, to a point of common curvature; thence on a curve to the left, said curve having a radius of 546.43 feet and a delta angle of 101°27'00" for a distance of 967.53 feet, more or less, along the center of the street shown in said Book P, to a point of common curvature; thence on a curve to the right, said curve having a radius of 475.72 feet and a delta angle of 53°15'20" for a distance of 442.17 feet, more or less, along the center of the street shown in said Book P, to a point on the east-west quarter line of said Section 20, said point being the point of ending.

Sidelines of said street easement aka public highway easement to terminate on the west line of the Southeast Quarter of the Northwest Quarter of said Section 20 and on the southerly right-of-way line of State Trunk Highway No. 94.

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.

Date: 3/5/2014  
  
 DAVID SZYSZKOSKI  
 MINNESOTA LICENSE NO. 47046



4560 Norway Pines Place  
 Duluth, MN 55811  
 218-727-8796  
 tkda.com

Job Number: 15513.007 / SS0062A

Palmetto Street  
 Vacation Exhibit  
 For: Fryberger c/o Bob Kanutt  
 RE: Don Ellison

1-2

Petition to Vacate Public Highway Easement

Name: DONALD G. ELLISON

Description of street, alley, or easement to vacate: Portion of public highway easement dated January 10, 1894, recorded March 15, 1894 in Book P of Misc. Records, Page 18.

My request for this vacation is to (indicate purpose of vacation):  
Remove portion of easement that bisects my property, so I can use the property.

The City of Duluth will not need this street, alley, or easement in the future because:  
Other access roads and easements have been constructed in the area making this easement unnecessary and impractical for public use.

**PLEASE TAKE NOTICE:** Pursuant to Section 50-37.6 of the Duluth City Code, the above-identified applicant(s) petition the Duluth City Council to vacate the street, alley, or easement described in the attached legal description.

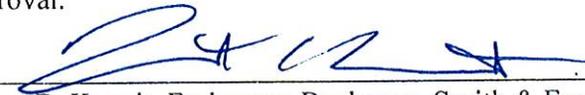
This petition is made upon the following facts and reasons (Identify the factual basis and reasons supporting the petition):

This easement was created in 1894 as a means of providing public highway access from Central Duluth and Duluth Heights to the Haines Road. Since then, other road corridors have been developed which make this easement unnecessary and impractical for public use. In addition, a large portion of the easement to the west of the applicant's property was vacated several decades ago, which is further evidence that this portion of the easement is no longer necessary or practical.

The existence of the easement essentially precludes applicant's use of the portion of his property containing the easement.

This petition is supported by a majority of the person(s) who own a majority of the lineal frontage of the land abutting upon the portion of the public easement proposed to be vacated.

The petitioner agrees to provide the city with a plat of the easement as required by Section 50-37.6B(3) of the Duluth City Code upon approval of the vacation. I understand that the vacation cannot occur without the submission of the required plat. I understand that the cost of producing the plat is the responsibility of the petitioner. I also understand that the approval will lapse and be of no effect if the plat and clerk certification is not recorded with the county recorder within 90 days after final approval.

Signature(s):   
Robert R. Kanuit, Fryberger, Buchanan, Smith & Frederick, P.A.,  
Attorneys for Applicant, Donald G. Ellison

Date: 2/17/14

L-9

Legal-rev

Legal Description - Portion of Palmetto Street per Book P, Page 18, Misc. aka Public Highway per COT 318630.0 crossing property:

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Sidelines of said street easement aka public highway easement to terminate on the west line of the Southeast Quarter of the Northwest Quarter of said Section 20 and on the southerly right-of-way line of State Trunk Highway No. 94.

RECEIVED FEB 19 2014

6-10

# HOME DEPOT DULUTH ADDITION

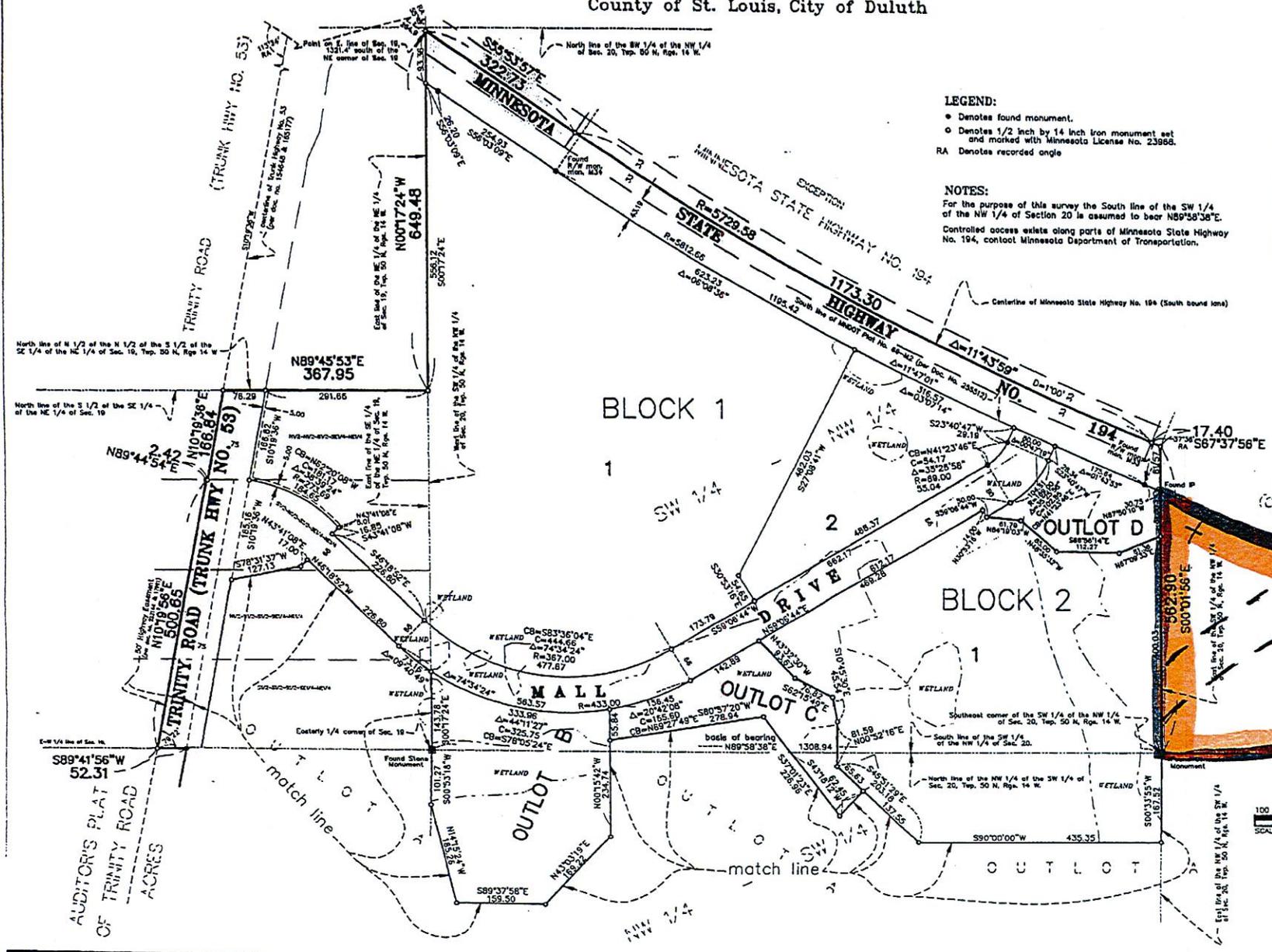
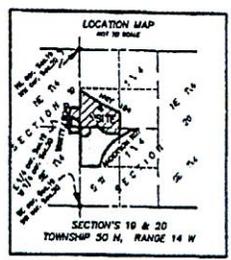
Sections 19 & 20, Township 50 North, Range 14 West  
County of St. Louis, City of Duluth

**LEGEND:**

- Denotes found monument.
- Denotes 1/2 inch by 14 inch iron monument set and marked with Minnesota License No. 23968.
- RA Denotes recorded angle.

**NOTES:**

For the purpose of this survey the South line of the SW 1/4 of the NW 1/4 of Section 20 is assumed to bear N89°58'38"E. Controlled access exists along parts of Minnesota State Highway No. 194, contact Minnesota Department of Transportation.



100 0 100 200  
SCALE  
IN FEET  
Scale: 1 inch = 100 Feet

RECEIVED FEB 19 2014  
(MILLER TRUNK HIGHWAY)  
(CENTRAL ENTRANCE HIGHWAY)



RLK - Kuusisto, Ltd.

L-11

<b>C O P Y</b>	
District Court 2777	Certificate 318630.0
File No. 875859 Registered 10/12/2009	LINC Number 18804
Transfer from Certificate Number(s): all of 221116.0	
Originally registered December 11, 1922 Volume 157 Page 188.0	

STATE OF MINNESOTA }  
COUNTY OF ST. LOUIS } ss.

**REGISTRATION**

This is to certify  
DONALD G ELLISON, 714 WEST CENTRAL ENTRANCE, City of DULUTH, County of ST LOUIS, State of MN

is now the owner of an estate, to-wit, **IN FEE SIMPLE**  
of and in the following described land situated in the County of St. Louis and State of Minnesota, to-wit:

W1/2 of W1/2 of SE1/4 of NW1/4 lying South of State Trunk Highway No. 94 Section 20 Township 50 North Range 14 West of the Fourth Principal Meridian

EXCEPT minerals.

SUBJECT to an easement in favor of the public for highway purposes, as such easement was condemned by City of Duluth in that certain condemnation proceedings, in which the confirmation of award, dated January 10, 1894, was recorded in the office of the Register of Deeds on March 15, 1894, in Book P of Miscellaneous records, on page 18.

SUBJECT to an easement in favor of the public for highway purposes, as such easement was condemned by City of Duluth in that certain condemnation proceeding, in which the award dated September 17, 1909 was recorded in the office of said Register of Deeds on October 13, 1909, in Book 292 of Deeds, on page 120.

Subject to encumbrances, liens, and interest noted by memorial underwritten or endorsed hereon: and subject to the following rights or encumbrances subsisting.

- as provided in laws 1905, chapter 305, section 24, namely:
- (1) Liens, claims, or rights arising under the laws or the Constitution of the United States, which the statutes of this state cannot require to appear of record;
- (2) Any real property tax or special assessment;
- (3) Any lease for a period not exceeding three years, when there is actual occupation of the premises under the lease;
- (4) All rights in public highways upon the land;
- (5) Such right of appeal or right to appear and contest the application as is allowed by law;
- (6) The rights of any person in possession under deed or contract for deed from the owner of the certificate of title;
- (7) Any outstanding mechanics lien rights which may exist under sections 514.01 to 514.17.

That the said  
DONALD G ELLISON, is of the age of 18 years or older is not married and is under no legal incapacity.

In witness whereof, I have hereunto subscribed my name and affixed the seal of my office, this October 12, 2009  
MARK A. MONACELLI  
Registrar of Titles  
in and for the County of St. Louis and State of Minnesota  
By K HAYES, Deputy

Certificate Number: 318630.0

LINC Number: 18804

11/14/2013

Page 1 of 2

RECEIVED FEB 19 2014

6-12