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 15-129		**Contact**	Jenn Reed Moses, jmoses@duluthmn.gov	
Application Type	UDC Map Amendment		**Planning Commission Date**	September 8, 2015	
Deadline for Action	**Application Date**	August 7, 2015	**60 Days**	October 6, 2015	
	Date Extension Letter Mailed	August 19, 2015	**120 Days**	December 5, 2015	
Location of Subject	4258 Haines Road				
Applicant	Haines Road, LLC		**Contact**	Rich Merz, Rwmertz29@gmail.com	
Agent	N/A		**Contact**	N/A	
Legal Description	See attached				
Site Visit Date	August 24, 2015		**Sign Notice Date**	August 25, 2015	
Neighbor Letter Date	August 20, 2015		**Number of Letters Sent**	15	

Proposal

Applicant would like to rezone a portion of the property from Rural Residential 1 (RR-1) to Mixed Use-Commercial (MU-C).

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	RR-1	Undev portion of retail property	Auto Oriented Commercial
North	RR-1	Commercial	Auto Oriented Commercial
South	MU-C/RR-1	Commercial	Auto Oriented Commercial
East	RR-1	Undev/Residential	Urban Residential
West	MU-C/City of Hermantown	Commercial	Auto Oriented Commercial/City of Hermantown

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

UDC Sec. 50-37.3.A: Any property owner may petition the planning commission to amend the district boundaries in which the property is located.

UDC Sec. 50-37.3.B: Planning commission shall review the application, conduct a public hearing ... with public notice ... and make a written recommendation to council.

UDC Sec. 50-37.3.C: The planning commission shall review the application, and council shall approve the application or approve it with modifications, if it determines that the application:
1. Is consistent with the Comprehensive Land Use Plan;
2. Is reasonably related to the overall needs of the community, to existing land use, or to a plan for future land use;
3. Is required by public necessity, convenience, or general welfare, or good zoning practice;
4. Will not create material adverse impacts on nearby properties, or if material adverse impacts may be created they will be mitigated to the extent reasonably possible.

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

Future Land Use - Auto Oriented Commercial: Commercial and office development focused primarily on needs and convenience of the motorist, without losing pedestrian access and connection. No residential uses. Situated along arterial roads. Can include a mix of auto- and neighborhood-oriented commercial uses or transition into neighborhood commercial.

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

Staff finds that:

1.) The Minnesota Planning Act provides that zoning (an "official control") should implement the general objectives of the Comprehensive Plan and appellate courts have issued decisions that zoning must comply with the Comprehensive Plan or else be considered arbitrary and capricious.

2.) Good zoning practice requires that zone districts be consistent with the future land use category identified for the area. The land use designation of Auto-Oriented Commercial most closely aligns with the zone district of Mixed Use-Commercial (MU-C).

3.) Any future development or redevelopment on the property, including but not limited to a new primary building, parking lot, or exterior lighting, will have to comply with all UDC standards. These standards including landscaping and buffering to minimize impacts on surrounding residential properties.

4.) Because the application does not contain a petition with 2/3 of surrounding property owners, this will require a super majority vote of the city council to approve it (as opposed to the standard requirement of a simple majority vote).

5.) No agency or City comments have been received. One citizen letter was received (attached with staff report).

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 UDC Map Amendment, for the following reasons:

1.) This proposal is consistent with the Comprehensive Land Use Plan.

2.) The proposed MU-C is consistent with the future land use category of Auto-Oriented Commercial.

3.) Material adverse impacts on nearby properties are not anticipated.

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

City Planning

PL 15-129
4258 Haines Rd

Legend

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

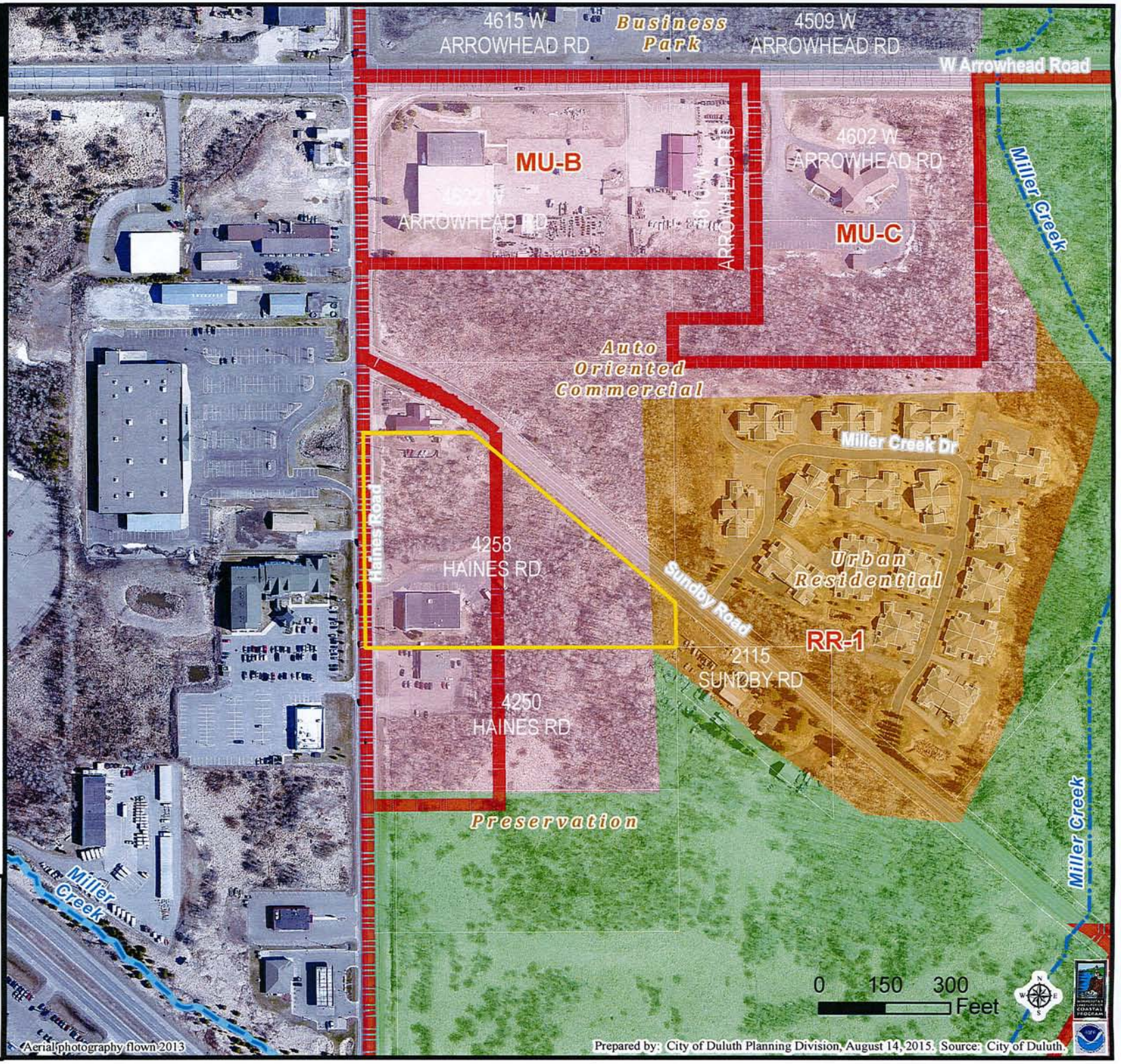
Zoning Boundaries

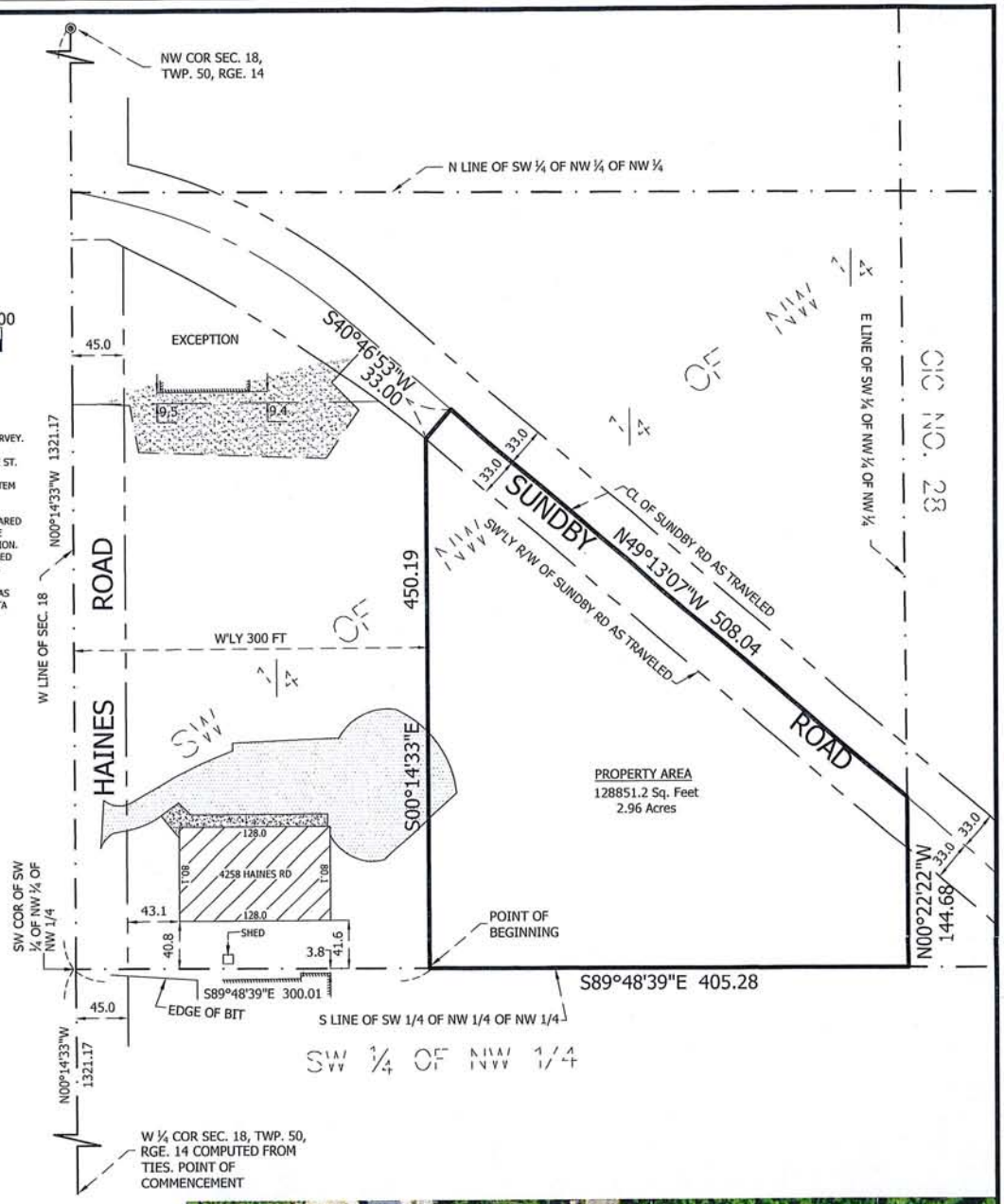
- Zoning Boundaries

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.





LEGAL DESCRIPTION OF AREA TO BE RE-ZONED

That part of the Southwest Quarter of the Northwest Quarter of the Northwest Quarter of Section 18, Township 50 North, Range 14 West of the Fourth Principal Meridian, St. Louis County, Minnesota, described as follows:

Commencing at the West Quarter corner of said Section 18; thence on an assumed bearing of North 00 degrees 14 minutes 33 seconds West, along the West line of said Section 18, a distance of 1321.17 feet to the South line of said Southwest Quarter of the Northwest Quarter of the Northwest Quarter; thence South 89 degrees 48 minutes 39 seconds East, along said South line, a distance of 300.00 feet to the intersection with a line 300 feet Easterly and parallel with the said West line of Section 18; thence South 89 degrees 48 minutes 39 seconds East, along said South line, a distance of 405.28 feet to the East line of said Southwest Quarter of Northwest Quarter of Northwest Quarter; thence North 00 degrees 22 minutes 22 seconds West, along said East line, a distance of 144.68 feet to the center line of Sundby Road as traveled; thence North 49 degrees 13 minutes 07 seconds West, along said center line, a distance of 508.04 feet; thence South 40 degrees 46 minutes 53 seconds West, a distance of 33.00 feet to the Southwesterly right of way line of said Sundby Road and the intersection with a line 300 feet Easterly and parallel with the said West line of Section 18; thence South 00 degrees 14 minutes 33 seconds East, along said parallel line, a distance of 450.19 feet to the Point of Beginning.

Said Property contains 128,851.2 sq. ft. or 2.96 acres.

RE-ZONING EXHIBIT	
CLIENT: RICH MERTZ	REVISIONS: XXX
DATE: 8-6-15	
ADDRESS: 4258 HAINES ROAD	
JOB NUMBER: 15-226	

ALTA
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Uses Allowed in Mixed Use-Commercial (MU-C) Zone District
Revised January 5, 2015

Permitted Uses

- Dwelling, multi family
- Dwelling, live-work
- Residential care facility/assisted living (7 or more)
- Rooming house
- Bus or rail transit station
- Club or lodge (private)
- Government building or public safety facility
- Museum, library or art gallery
- Park, playground or forest reserve
- Religious assembly, small (less than 50,000 sq ft)
- Religious assembly, large (50,000 sq ft or more)
- Business, art or vocational school
- School, elementary
- Medical or dental clinic
- Nursing home
- Veterinary or animal hospital
- Convention or event center
- Indoor entertainment facility
- Restaurant, small (less than 5,000 sq. ft.)
- Restaurant (5,000 sq. ft. or more)
- Theater
- Hotel or motel
- Bed and breakfast
- Bank
- Office
- Data center
- Preschool
- Day care facility, small (14 or fewer)
- Day care facility, large (15 or more)
- Funeral home or crematorium
- Personal service and repair, small (less than 10,000 sq. ft.)
- Personal service and repair, large (10,000 sq. ft. or more)
- Garden material sales
- Grocery store, small
- Grocery store, large
- Retail store not listed, small (less than 15,000 sq. ft.)
- Retail store not listed, large (15,000 sq. ft. or more)
- Automobile and light vehicle repair and service
- Automobile and light vehicle sales, rental, or storage
- Filing station
- Parking lot or parking structure (primary use)

Special Uses

- Cemetery or mausoleum
- School, middle or high
- Kennel
- Other outdoor entertainment or recreation use not listed
- Building materials sales
- Electric power transmission line or substation
- Major utility or wireless telecommunication facility
- Solar, geothermal, or biomass power facility (primary use)
- Water or sewer pumping stations/reservoirs
- Recycling collection point (primary use)

August 26, 2015

Dear Commissioners,

I would like to comment as part of the Public Hearing for Resolution PL 15-129 scheduled for the Sept. 8 Planning Commission Meeting.

I am thankful for this opportunity to be heard and for public notification via submission to the Duluth News Tribune.

As I interpret this resolution, it is a request(?) to change current zoning (R-1) to one more conducive to the business development of the Johnson-Mertz store (MU-C) by Richard Mertz and a pop-up LLC called Haines Road.

It is my historical observation that this type of zoning change request is common and usually recommended for approval.

I am asking you to carefully consider an economic development trend that must be curtailed for health of the natural environment.

A most basic principal directing future land use in Duluth's Comprehensive Plan was to "endorse the concept of first setting aside the City's green infrastructure in order to determine where to direct development" (pp. 11).

The Second Governing Principal is to "declare the necessity and secure the future of undeveloped places" (pp.15). Hence, the original, R-1 zoning of this parcel, the green color component of the property as "Preserved" on the Future Land Use Map and any hatched map designation of the Sensitive Lands Overlay (I am going by the Comp Plan Future Land Use Map and that is possibly not what you have presently before you).

Driving by 4258 Haines Road, one can see native greenspace to the east and up to the very edge of the asphalt parking lot behind the store. This green infrastructure is the headwaters of the Chester Creek and proximal to Miller Creek--both DNR designated trout streams and "impaired" for pollution—largely due to development.

Construction and expansion of impervious surface as well as securing increased economic opportunity for business owners should not infringe on the greenspace citizens need for quality of life and quality of surface water.

A negative vote on Commissioner's part would affirm this.

I am including a recent "Local View" piece I submitted to the Duluth News Tribune for your review. It may provide further clarification and is pertinent due to geographic connectivity.

Respectfully Submitted,

Linda Ross Sellner

402 W. Arrowhead Rd. Duluth, MN 55803

DNT
8.5.15

LOCAL VIEW

Keeping Duluth's wetlands intact should be a priority

Linda Ross Sellner

I was pleased to read of Rep. Erik Simonson's initiative to bring concerned parties together for an open discussion before a new charter high school is built ("School leaders consider effects of more competition," July 29). It is only prudent to consider all outcomes before a project of this potential impact goes forward.

I can understand the impetus for the continuation of a preferred curriculum for students coming from charter elementary and middle grades and was not surprised by the Duluth Edison board's recommendation to move ahead with the high school.

It is unfortunate Independent School District 709 cannot sell any of its closed school campuses to the charter school group. Renovating these campuses for other purposes has not seemed feasible to developers, and taxpayers have ended up, so far, with little return for them. Beautifully constructed buildings are being landfilled as waste.

Rep. Simonson said in the News Tribune that the charter school "business model says that (a high school is) needed." But what exactly is a charter school business model?

Charter schools are taxpayer-funded, privately run schools not regulated by many of the rules that apply to traditional public schools. Charter schools are "regulated" by entities known as "authorizers." In the case of Edison, the authorizer is a developer of housing and charter schools — Pacific Cos. of Idaho. Since charter schools cannot own their school building, Pacific Cos. would build one to Edison's specifications and essentially charge rent. A News Tribune article last winter noted that there would be limited input into what Pacific Cos. does with the rest of the 170-acre site beyond the 90,000-square-foot high school. The developer used that often-repeated but dubiously substantiated statistical assessment that Duluth has a "housing shortage" and so justified a potential intent to build multi-unit housing on the site as well.

Here is the problem as I see it: This location is essentially undeveloped because it consists of steep slopes and numerous wetlands. It also is the headwaters of both Chester and Tischer creeks. I believe recent utility extensions up Rice Lake Road facilitated a June Planning Commission unanimous vote to rezone a similar plot of land just to the north that falls under the "Sensitive Lands Overlay" of Duluth's Comprehensive Plan. The change was from RR-1 (Rural Residential) to MU-B (Mixed Use-Business Park). Greenspace is up for grabs.

In Minnesota, we develop raw land under a Wetland Conservation Act that stipulates a no-net-loss of wetland; if filled or dredged, the wetlands must be replaced. Within city boundaries, most of our native wetlands have been replaced elsewhere. If they had been truly conserved and functioning, the damage to infrastructure and buildings in the 2012 flood would have been significantly less. Wetlands retain excess water and slow-moving water; that water is cleaned before being released. We need every last bit of wetlands that still remain with heavier precipitation expected in the near future.

While I admire Rep. Simonson's effort to realistically assess logistical implications of a new high school, I vehemently disagree with the environmental destruction of native greenspace and wetlands.

"We know that Edison is going to build a new high school," Simonson said. "There's no reason that that's not happening."

Our survival in future flood events with the help of intact wetlands has got to become a reason.

LINDA ROSS SELLNER *has served on Duluth's Environmental Advisory Council, serves on the Duluth Public Utilities Commission and is educated as a land use planner. She frequently speaks out for the protection of green infrastructure and Duluth's Comprehensive Plan.*

READER'S VIEW

Readers' Views