



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 16-035	Contact	Steven Robertson, 218-730-5295	
Application Type	Vacation of Public Right of Way	Planning Commission Date	April 25, 2016	
Deadline for Action	Application Date	April 15, 2016	60 Days	
	Date Extension Letter Mailed	April 19, 2016	120 Days	
Location of Subject	2 N 2nd Avenue E ("NorShor Theatre")			
Applicant	DEDA	Contact		
Agent	NorShor Theatre LLC	Contact	sfauver@sherman-associates.com	
Legal Description	See attached			
Site Visit Date	April 19, 2016	Sign Notice Date	April 11, 2015	
Neighbor Letter Date	N/A	Number of Letters Sent	N/A	

Proposal

Applicant is seeking a partial vacation of the three public rights of way, where the current structure was originally constructed and exists partially in the public right of way.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	F-7	Mixed Use	Central Business Primary
North	F-8	Mixed Use	Central Business Primary
South	F-7	Mixed Use	Central Business Primary
East	F-7	Mixed Use	Central Business Primary
West	F-7	Mixed Use	Central Business Primary

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.

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

Governing Principle #1 - Reuse previously developed lands: Reuse of previously developed lands, including adaptive reuse of existing building stock and historic resources.

Governing Principle #6 - Reinforce the place-specific: Public and private actions should reinforce cultural, physical and economic features which have traditionally defined Duluth.

Future Land Use - Central Business Primary: Encompasses a broad range of uses and intensities. Comprehensive plan notes protection of historic buildings, form-based guidelines, and pedestrian-oriented design.

Recent History: the City Council passed ordinances approving concurrent use permits for this project (PL14-184, 185, and 186) on June 1, 2015 (bus shelter, Superior Street, and First Street Alley). The Planning Commission approved a Registered Land Survey for this property (RLS 132) on September 8, 2015.

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

1) Applicant is seeking a partial vacation of the three public rights of way, where the current structure was originally constructed and exists partially in the public right of way. The Duluth Economic Development Authority and Sherman Associates (current and future owners of the property) are co-applicants of the vacation request.

2) Two of the requests are for partial vacations of approximately 1 foot each. The other vacation request is for the former bus shelter now used by the NorShor Theatre. The bus shelter protrudes about 10 feet into the sidewalk, leaving approximately 8 feet between the shelter and the top of curb. Approximately 6 feet of space exists between the shelter and existing light poles; 5 feet is the minimum distance specified by ADA requirements. The bus shelter has existed in this location for many years without detriment to public use of the right of way, and the shelter is instrumental to the overall principle building's integrity. Staff finds that the proposed vacation will not harm or inconvenience the health, safety and general welfare of the city.

3) This vacation, if approved, will not deprive any currently platted lots of access to a public right of way, and will not result in any dead-ends.

4) Staff believe these minor vacation requests of public of right of way will not impact the safe and efficient circulation of automobiles, trucks, bicycles or pedestrians or the efficient supply of utilities or public services in the City; the portion of 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. The City has in the past approved similar minor vacation requests, when buildings (with legal building permits) have been found to have been mistakenly partially constructed in the public right of way.

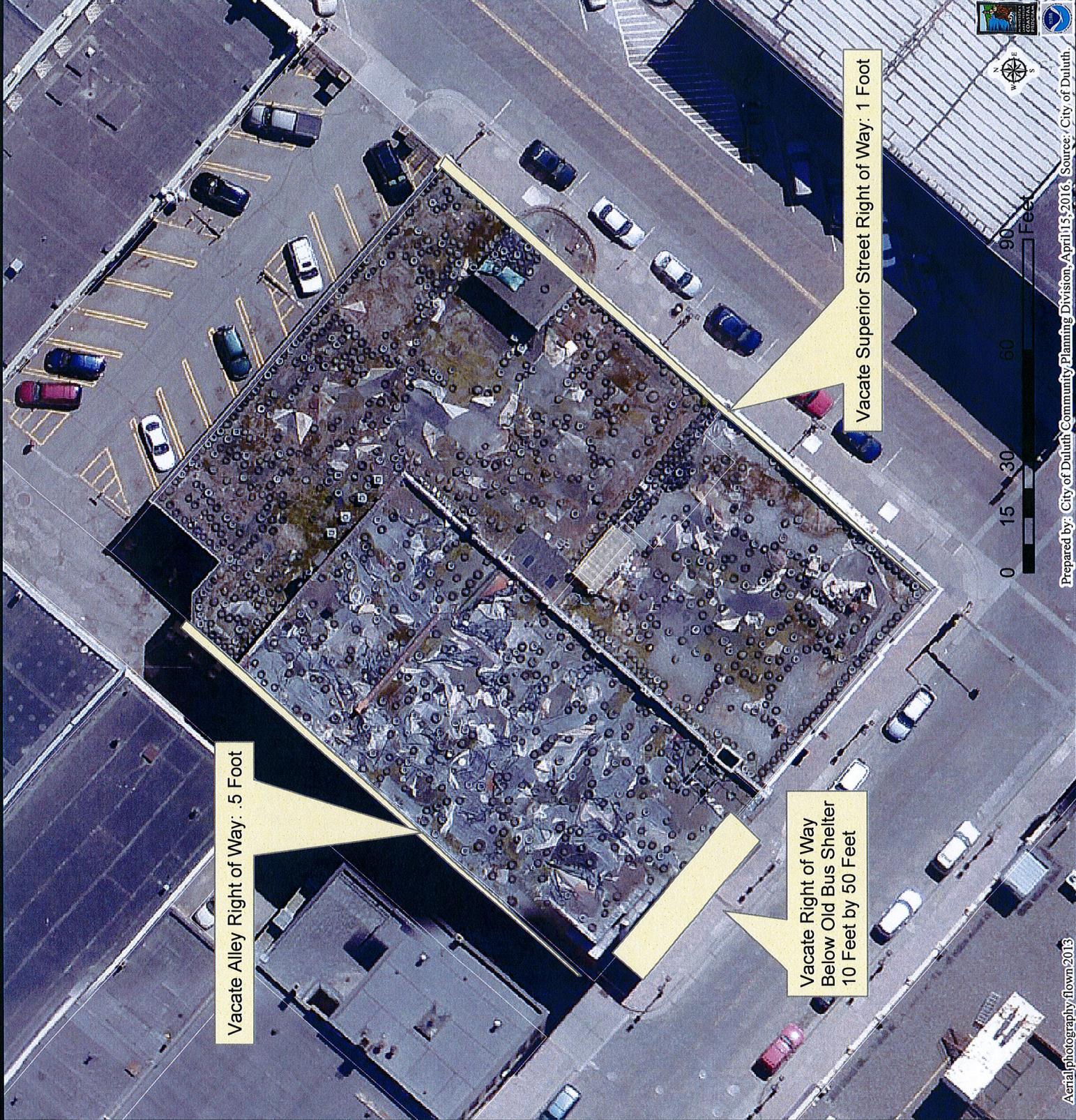
5) No public, agency, or other City comments were received. City Engineering does not oppose the three partial vacation requests.

6) Vacations are approved by the City Council via a resolution. Vacations 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):

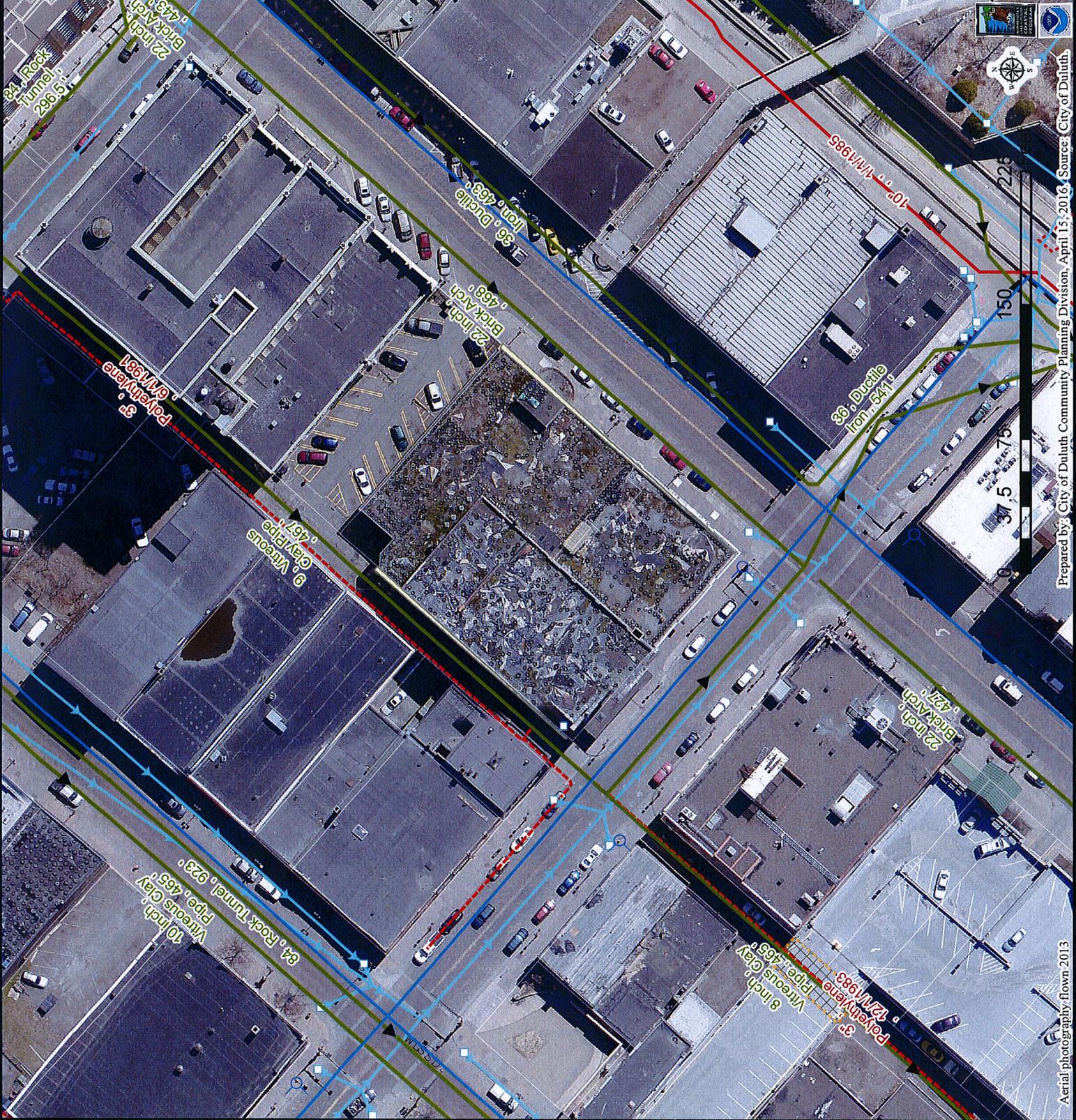
Based on the above findings, Staff recommends that Planning Commission recommend approval of the requested vacation without conditions.

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



Legend

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.



Aerial photography, flown 2013

Prepared by: City of Duluth Community Planning Division, April 15, 2016. Source: City of Duluth.

Legend

- Water Distribution Main**
 - Active
 - Hydrant
- Sanitary Sewer Mains**
 - CITY OF DULUTH
 - WLSDD; PRIVATE; RICE LAKE TWP
 - Sanitary Sewer Forced Main
 - Storage Basin
 - Pump Station
- Storm Sewer Mains**
 - Storm Sewer Pipe
 - Storm Sewer Catch Basin
- Gas Distribution Main**
 - Coated Steel
 - Plastic
 - Vacated ROW
 - Utility Easement
 - Other Easement

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.

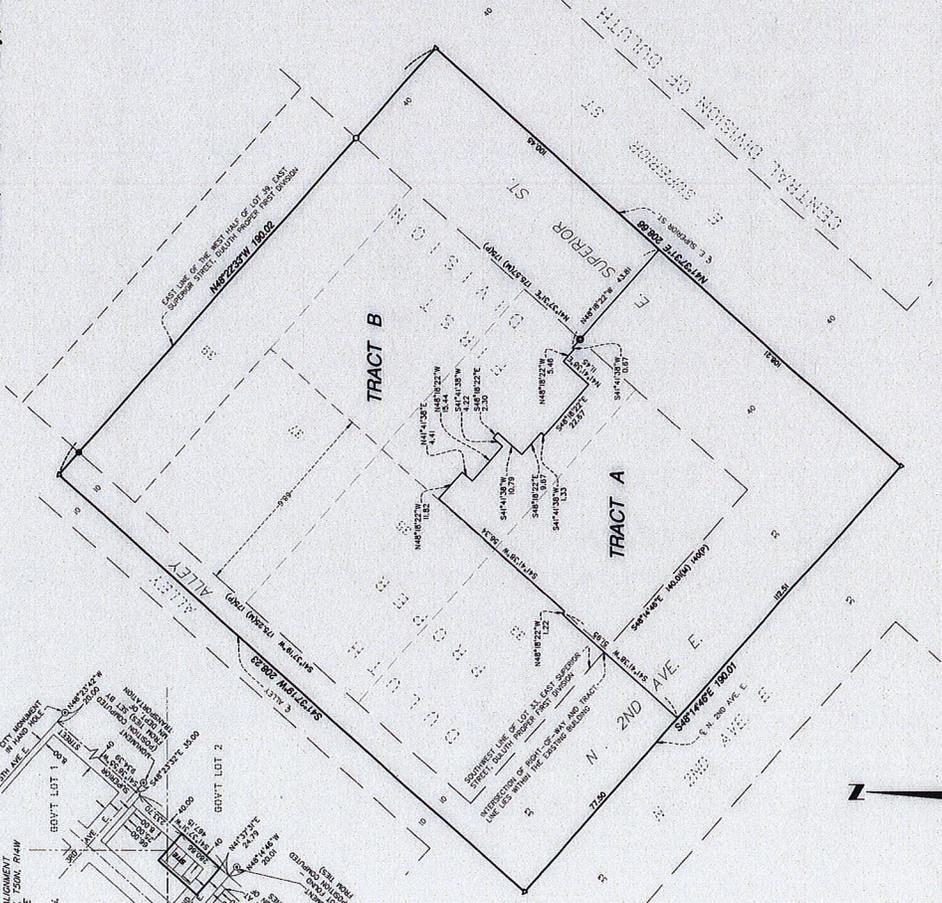
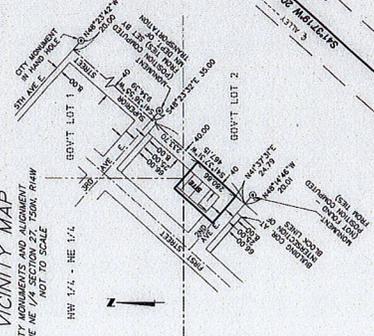
12/11/15

OFFICIAL PLAT

REGISTERED LAND SURVEY NO. 132

Survey of Lots 33, 35, and 37; the West Half of Lot 39; and a portion of adjoining alley and street, East Superior Street, Duluth Proper First Division, Section 27, T. 50N., R. 14W., 4th P.M., St. Louis County, Minnesota

VICINITY MAP
CITY MEMORANDUM ALIGNMENT
ON THE 1/4 - HE 1/4
NOT TO SCALE



I, Dennis B. Olmsted, hereby certify that, in accordance with the provisions of Minnesota Statutes, Section 508.47, I have surveyed the following described tracts of land located in the County of St. Louis, State of Minnesota:

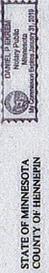
The Northerly 68.60 feet of Lots 33, 35 and 37, East Superior Street, Duluth Proper First Division, St. Louis County, Minnesota.

AND
Certificate of Title No. 330773.0
Lots 33, 35 and 37, except the Northerly 68.60 feet, and the West Half of Lot 39, East Superior Street, Duluth Proper First Division, St. Louis County, Minnesota.

I hereby certify that this Registered Land Survey was prepared by me or under my direct supervision; that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota and that this Registered Land Survey is a correct representation of said tracts of land.

Dated this 15th day of December, 2015.

Dennis B. Olmsted
Dennis B. Olmsted, Land Surveyor
Minnesota License Number 18425



STATE OF MINNESOTA
COUNTY OF HENNEPIN

The foregoing surveyor's certificate was acknowledged before me this 15th day of December, 2015, by Dennis B. Olmsted, Minnesota License Number 18425.

Dennis B. Olmsted
Notary Public for the State of Minnesota
My Commission Expires January 31, 2019

CITY OF DULUTH PLANNING COMMISSION

Approved by the City of Duluth Planning Commission this 17th day of December, 2015.

Freight of the Planning Commission
Freight of the Planning Commission
Secretary of the Planning Commission

ST. LOUIS COUNTY SURVEYOR

I hereby certify that this REGISTERED LAND SURVEY NO. 132 has been checked and approved this 18th day of December, 2015.

Nick C. Stewart
County Surveyor

ST. LOUIS COUNTY AUDITOR

Pursuant to Minnesota Statutes, Section 272.12, there are no delinquent taxes for all years prior to 2015 and including 2015 for land described in this REGISTERED LAND SURVEY NO. 132.

Donald Dicklich
County Auditor

ST. LOUIS COUNTY REGISTRAR OF TITLES

I hereby certify that this Registered Land Survey was filed in this office as Registered Land Survey No. 132 on the 15th day of December, 2015, as required by Minnesota Statutes, Section 508.47, affecting Certificates of Title Numbers 330773.0 and 330773.0.

R. MacDermid
Mark A. Monacelli
Registrar of Titles
Deputy

BEARINGS ARE BASED ON THE ASSUMED TRUE LINE OF LOT 33, EAST SUPERIOR STREET, DULUTH PROPER FIRST DIVISION WHICH IS ASSUMED TO HAVE A BEARING OF SOUTH 46 DEGREES 14 MINUTES 46 SECONDS EAST.

LEGEND

- Denotes Measurement Found 1/2 inch from Pipe
- Denotes High Nail Set
- Denotes set gpr corner plug marked by license no. 18425
- Denotes 1/2 inch x 1/8 inch iron pipe set marked by license no. 18425
- (M) Denotes Measured Distance
- (P) Denotes Plat Distance



C10-3957



April 14, 2016

VIA EMAIL AND U.S. MAIL

Mr. Steven Robertson, Senior Planner
City of Duluth – Planning Division
411 West 1st Street, Room 208
Duluth, MN 55802

**Re: NorShor Theatre Project
Duluth, MN**

Dear Mr. Robertson:

I am writing regarding the proposed vacation proceeding for the bus shelter that is attached to the NorShor Theatre building. As you are aware, we are working toward a closing at or near the end of April on financing for the rehabilitation of the historic theater. The bus shelter structure is going to be integrated into and become part of the NorShor Theatre Project.

In order to obtain financing for the theater rehabilitation, NorShor Theatre LLC (the "Developer") needs to have fee title to the theater property, including the bus shelter and the property upon which it is located. All lenders require mortgages filed against the entire theater property and they require title insurance covering those mortgages. The Project's title insurance company cannot and will not insure title to the theater property unless the entire building, including the bus shelter and the property under it, is held in fee title by the Developer. The Concurrent Use Permit issued previously simply does not work with the Project's financing structure.

I am hopeful this information is helpful. Please contact me with any further questions or concerns. My phone is 612-332-3000 and my email is sfauver@sherman-associates.com. Thank you.

Sincerely,

SHERMAN ASSOCIATES, INC.

A handwritten signature in blue ink, appearing to read "Susan S. Fauver".

Susan S. Fauver
General Counsel



EXHIBIT A

1ST STREET ALLEY

BUILDING LINE

NORTHWESTERLY
LINE OF LOT 33

POINT OF COMMENCEMENT

WEST CORNER OF LOT 33

10.05

POINT OF BEGINNING

1.0

4.0

0.8

4.4

4.5

1.0

9.3

1.0

18.7

1.0

9.2

4.7

4.7

1.0

3.9

0.6

0.7

S' WLY LINE OF LOT 33

B

LOT 33

EAST SUPERIOR STREET

DULUTH PROPER FIRST DIVISION

N48°14'46"W 140.01

46.7

TRACT

N 2ND AVENUE EAST

BUS SHELTER VACATION EXHIBIT

That part of the dedicated North 2nd Avenue East embraced within Tract B, Registered Land Survey No. 132, described as follows:

Commencing at the west corner of Lot 33, East Superior Street, Duluth Proper First Division, St. Louis County, Minnesota; thence southeasterly along the southwesterly line of said Lot 33 a distance of 10.05 feet to the point of beginning; thence deflecting to the right 90 degrees 0.7 feet; thence deflecting to the left 90 degrees 1.0 feet; thence deflecting to the right 90 degrees 4.0 feet; thence deflecting to the right 90 degrees 0.8 feet; thence deflecting to the left 90 degrees 4.4 feet; thence deflecting to the left 90 degrees 4.5 feet; thence deflecting to the left 90 degrees 1.0 feet; thence deflecting to the right 90 degrees 9.3 feet; thence deflecting to the right 90 degrees 1.0 feet; thence deflecting to the left 90 degrees 18.7 feet; thence deflecting to the left 90 degrees 1.0 feet; thence deflecting to the right 90 degrees 9.2 feet; thence deflecting to the right 90 degrees 1.1 feet; thence deflecting to the left 90 degrees 4.7 feet; thence deflecting to the left 90 degrees 4.7 feet; thence deflecting to the left 90 degrees 1.0 feet; thence deflecting to the right 90 degrees 3.9 feet; thence deflecting to the right 90 degrees 1.1 feet; thence deflecting to the left 90 degrees 0.6 feet to the southwesterly line of said Lot 33; thence deflecting to the left 90 degrees 46.7 feet to the point of beginning.

I hereby certify that this survey, plan, 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.

DENNIS B. OLMSTEAD
Print Name

Signature

4/14/16 18425
Date License Number

Approved by the City Engineer of Duluth, MN.

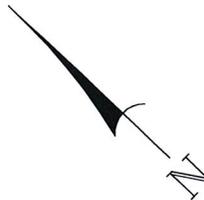
this _____ day of _____ 20__

By _____

0 5 10 20



SCALE IN FEET



Design File: 120096	Checked By: DBO
Dwg Name: bus shelter exhibit	Drawn By: DPE
Date: 4/14/16	Scale: 1"=10'

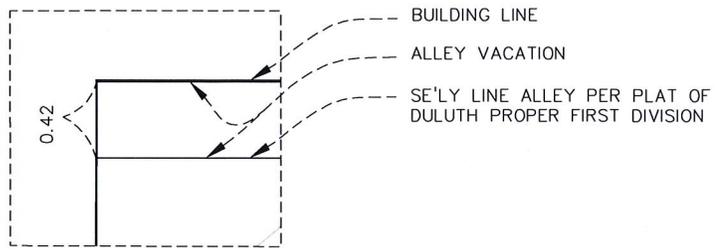
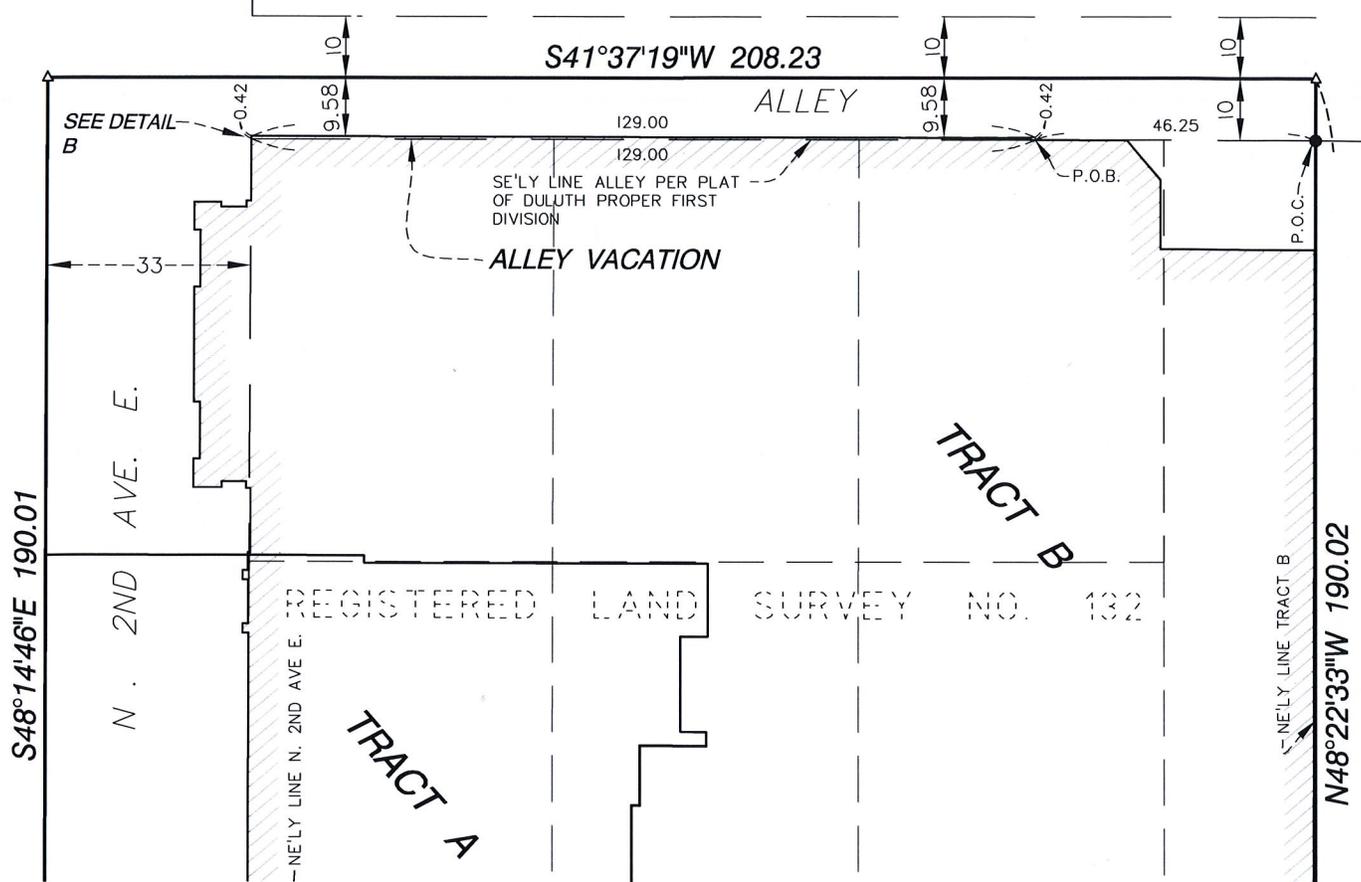
BUS SHELTER VACATION EXHIBIT

NORSHOR THEATRE RESTORATION
211 E. SUPERIOR ST, DULUTH, MN



Alliant Engineering, Inc.
233 Park Ave S, Ste 300
Minneapolis, MN 55415
612.758.3080 MAIN
612.758.3099 FAX
www.alliant-inc.com

EXHIBIT B



I hereby certify that this survey, plan, 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.

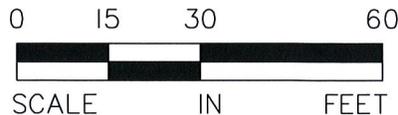
DENNIS B. OLMSTEAD

 Print Name

Signature
 4/14/16 18425
 Date License Number

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

By _____



Design File: 120096	Checked By: DBO
Dwg Name: enc. exhibit	Drawn By: DPE
Date: 4/14/16	Scale: 1"=30'

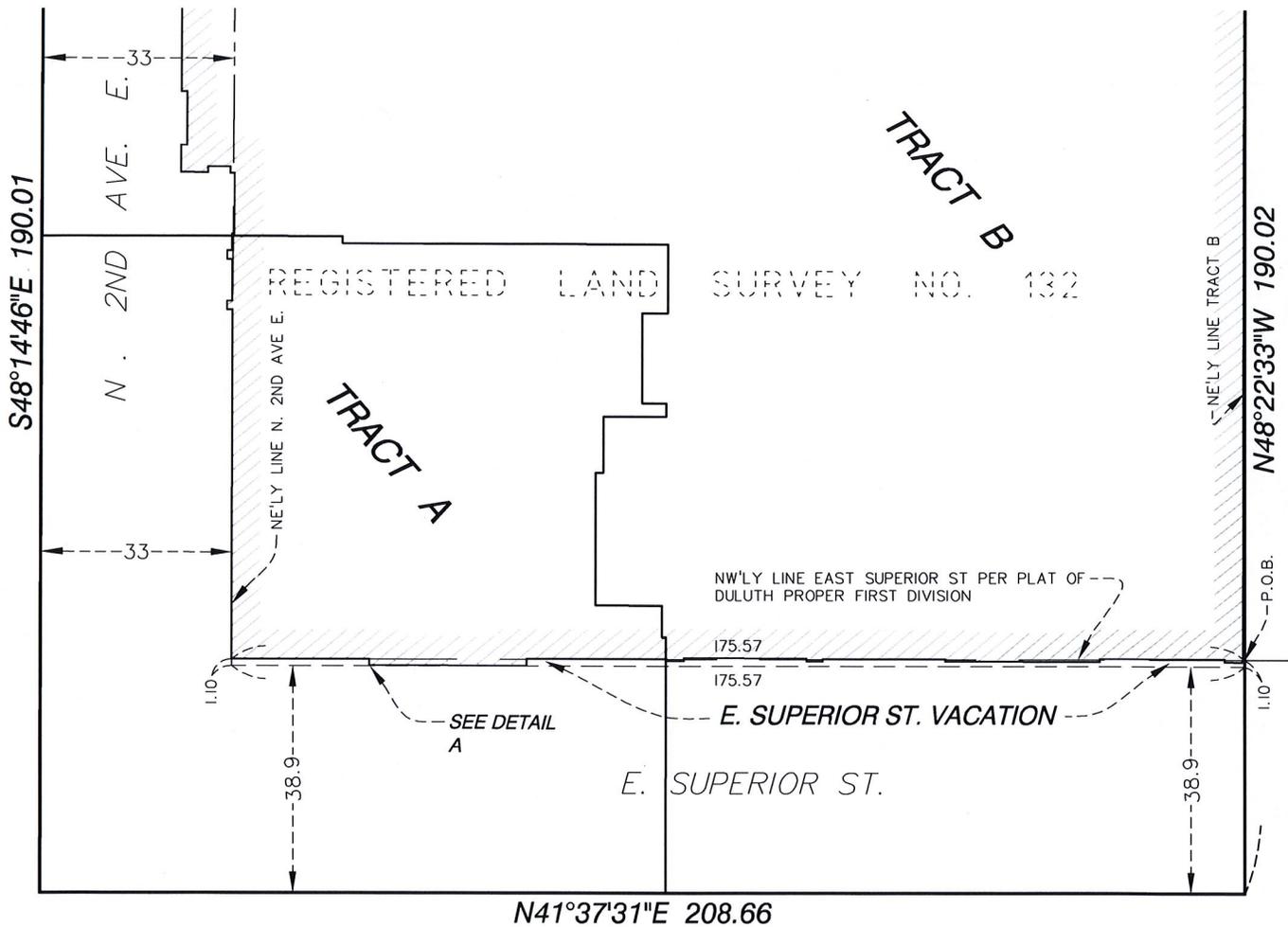
EAST SUPERIOR STREET AND ALLEY VACATION EXHIBIT

NORSHOR THEATRE RESTORATION
 211 E. SUPERIOR ST, DULUTH, MN



Alliant Engineering, Inc.
 233 Park Ave S, Ste 300
 Minneapolis, MN 55415
 612.758.3080 MAIN
 612.758.3099 FAX
 www.alliant-inc.com

EXHIBIT B



I hereby certify that this survey, plan, 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.

DENNIS B. OLMSTEAD

Print Name

Signature

4/14/16

18425

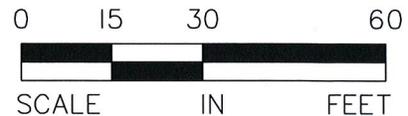
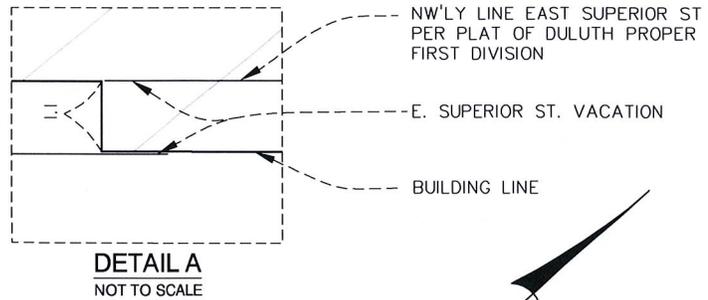
Date

License Number

Approved by the City Engineer of Duluth, MN.

this _____ day of _____ 20____

By _____



Design File: I20096	Checked By: DBO
Dwg Name: exhibit	Drawn By: DPE
Date: 4/12/16	Scale: 1"=30'

EAST SUPERIOR STREET AND ALLEY VACATION EXHIBIT

NORSHOR THEATRE RESTORATION
211 E. SUPERIOR ST, DULUTH, MN



Alliant Engineering, Inc.
233 Park Ave S, Ste 300
Minneapolis, MN 55415
612.758.3080 MAIN
612.758.3099 FAX
www.alliant-inc.com

Images: Bing Streetside, July 2015

