File No: 02040

### CITY PLANNING DIVISION **EASEMENT VACATION PETITION** STAFF REPORT

Meeting Date: June 11, 2002

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	Ann	licant:
1.	ועעה	moant.

Dale M. Johnson

Phone 218-624-0582

Spirit Bay Development Company

8030 Spirit Cove Drive Duluth, MN 55807

2. a) Date Application Received: May 9, 2002

b) Action Deadline:

September 9, 2002

3. Requested vacation: Vacation of utility easement

4. Legal Description: Lots 1 & 6, Block 4, Spirit Cove Division

5. Number of Surrounding Property Owners Notified: 19

#### **BACKGROUND DATA:**

Proposal: To vacate an existing utility easement. The request is to have the existing water main replaced from A. the existing easement, which crosses the center of the lot, to the utility easement provided along the westerly lot frontage in Spirit Cove Drive. The easement was created and the water main installed based on the original development plan approved in 1982. This plan is completely different than the current plan of Spirit Cove.

#### В. **History of Past Actions:**

- 1. On September 27, 1971, the City council approved construction of a 205 unit mobile home park on this site (FN 1-71078)
- 2. On October 12, 1971, the Planning commission and on November 4, 1971, the City Council approved a rezoning of the subject property from M-2, manufacturing to R-1-c, Residential (FN 91169)
- 3. On November 12, 1974, the Planning Commission heard a presentation by H.N. Junti & Co. for development of this property (See November 12, 1974 minuets).
- On May 8, 1979, the Planning Commission approved the preliminary Community Unit Plan and on 4. September 24, 1979, the City Council approved Resolution 79-770 for the "Bayhill" Special Use Permit by H.N. Junti (see general notes).
- 5. On July 21, 1981, the Planning Commission and on January 25, 1982, the City Council approved Resolution 82-0027, which granted a special use permit for the Community Unit Plan for the H.N. Junti Co. for the construction of a 276 unit condominium development.
- 6. On July 14, 1987, the Planning Commission and on August 27, 1987, the City Council approved resolution 87-0700 which amended 82-0027 to provide for "Spirit Bay Development" as 62 townhouse/condominium units subject to 8 conditions. (see file no 87056).
- 7. On May 8,1990, the Planning Commission gave preliminary and on September 11, 1990 gave final plat approval of "Spirit Cove Division" (FN 90152).
- 8. In October 1990, the Planning Commission and on May 6, 1991, the City Council vacated a portion of Bayhill Drive in order to allow for platting of Spirit Cove Division (FN 90191).
- 9. On August 10, 1993, the Planning Commission and on October 18, 1993, the City Council approved Resolution 93-0802 which amended resolution 82-0027 to permit, among other things, the construction of not more than 24 units without construction of 80th Ave. West or 84th Ave. West to connect Bayhill Drive with Grand Avenue. (FN 93115)
- On February 24, 1999, the Planning Commission and on March 22, 1999 the City Council approved 10.

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Planning Commission:	Action _\	Meller AM VOIL		*	Date <u>June 11, 2002</u>
City Council: Action _		0.1 1/0	٧٠	*	Date
1200/17 FN 02040			1		

- Resolution 99-0186 which vacated the pedestrian use of joint use (pedestrian/ utility) easements legally described as: pedestrian and utility easements on Lots 3 and 5 Block 4, Spirit Cove Division. (FN 99019)
- 11. On November 17, 1999 the Planning Commission and on December 9, 1999 the City Council approved Resolution 99-0833 which vacated the utility easement common to Lots 3, 4 & 5 Spirit Cove Division, with the reservation of the portion currently occupied by the sanitary sewer. Re. FN 99129
- C. <u>Existing Area Zoning:</u> The subject property is zoned R-1-c and subject to Special Use Permit No. 82-0027 as amended.
- D. <u>Existing Area Development:</u> In Block 4; the former "common area", is undeveloped land owned by Spirt Cove Development.
- E. <u>Site Characteristics:</u> This is an unimproved easement, except for the intersection with an easement that runs west from the common east corner of lots 3 & 5.
- F. Reactions from Various Groups, Agencies and Individuals: See attachments.
- G. Conclusions:

Can it be shown that there will be no future need for this right-of-way? Yes. With the waterline relocated to the public street easement available at the front lot line there is no other use for the easement.

#### Points in favor:

With the relocation of the water line there is no other use for the easement.

#### Points in opposition:

None.

<u>Recommendation for Planning Commission approval:</u> Approve the vacation with subject to the relocation of the waterline.



### CITY OF DULUTH

CITY PLANNING COMMISSION 409 City Hall • Duluth, Minnesota 55802-1197 218/723-3328

Gerald M. Kimball

Secretary

August 31, 1993

Dale Johnson Spirit Bay Development Company 8050 East Spirit Cove Drive Duluth, MN 55807

RE: Special Use Permit Amendment - Our File No. 93115

Dear Mr. Johnson:

This is to advise you that the Duluth City Planning Commission at its regular meeting on August 10, 1993 heard and considered your request the conditions of Resolution #87-0700 to amend the terms and conditions of limitations on number of units permitted in phase I, as well as associated public and private improvements required.

Following the public hearing portion of the meeting and after careful evaluation, the Planning Commission resolved to recommend to the City Council that Resolution #87-0700 be amended to allow a maximum of 24 units in phase I, and that prior to any building permits being issued for the 25th unit, all private roadways must be under contract to be completed to City standards including bituminous surface, and curb and gutter.

The amendment also goes on to state that prior to the issuance of any building permits for unit 25, in phases II or III, 80th Avenue West or 84th Avenue West must be under contract for construction and all improvements, including landscaping and street improvements, for the previous phases, shall be completed as previously approved.

This action was taken by the Planning Commission at the August 10, 1993 meeting and attached herewith is a draft resolution which has been prepared and submitted to the City Council for their consideration at their next available meeting.

Should you have any questions, please feel free to contact Jim Mohn at the address or phone number listed above.

Sincere1

Gerald M. Kimball
Secretary, City Planning Commission

GMK:JEM:ps Enclosure

c: Bill Burns

Salo Engineering

RESOLUTION 93-0802

ADOPTED October 18, 1993

#### BY COUNCILOR PRETTNER:

WHEREAS, on September 24, 1979, the city council approved Resolution 79-770 granting to the H.N. Juntti Company, a special use permit for a community unit plan and on January 25, 1982, the city council amended said resolution by Resolution 82-0027 to allow the Juntti Company to construct 276 apartment/townhouse type condominium units; and on August 27, 1987, the council further amended said resolution by Resolution 87-0700 to allow Dale Johnson to construct 70 condominium/townhouse units on property legally described as: That part of the southwest quarter of the southwest quarter, Section 24, Township 49, Range 15, which lies south and east of the Burlington Northern Railroad right-of-way, south of Pulaski Street, and west of the Plat of Hunter's and Markell's Grassy Point Addition to Duluth; and

WHEREAS, Dale M. Johnson, doing business as Spirit Bay Development, ("developer") has submitted to the city council a request for the alteration of the approved community unit plan to revise the number of units to 70 units based on a new site plan, and said permit application was duly referred to the city planning commission for study, report and public hearing, and the city planning commission has subsequently reported its conditional approval to the city council.

NOW, THEREFORE, BE IT RESOLVED, that the special use permit granted by the city council on September 24, 1979; January 25, 1982; and August 27, 1987, are amended to read as follows:

- (a) That the special use permit (Resolution 82-0027) for a community unit plan be amended to provide for the "Spirit Bay Development" to construct 62 townhouse condominium units (in addition to the existing six unit structure), provided that the aforementioned development on all its aspects, including utility easements, recreational easements, building location, parking areas and land-scaping, are constructed and maintained in accordance with the detailed plan as submitted by Damberg, Scott Peck and Booker entitled "Spirit Bay Development grading and drainage plan," dated June 22, 1987, and amended June 27, 1987, and the landscape plan dated June 22, 1987, and provided that the following conditions are met:
- (1) The project shall be staged as indicated on the approved plans and further described herein:
- (A) That Phase I include units 1-24, however, only 18 units will be permitted to be constructed and/or sold until such time as all roadways in Phase I are under contract to be completed to city's standards including bituminous surface, and curb and gutter;
- (2) Prior to the issuance of any building permit for unit 25 in phases II or III, the developer shall have 80th Avenue West or 84th Avenue West under contract for construction and the shall have all improvements including landscaping and street improvements for the previous phase completed as shown on the plans. This provision applies only to the issuance of building permits for structures in a given phase, and the developer may proceed with road or landscaping improvements for other phases prior to the construction of all the buildings in one phase which is under construction;
- (3) Streets and driving areas may be constructed by the developer on an interim basis as indicated on the plans submitted, provided that within three

years of the date of completion of construction of each phase, final construction shall be accomplished including curb and gutter as specified on the plan;

- (b) Building permits shall not be issued for construction of any unit in Phase I until the following conditions have been met:
- (1) That the developer shall submit a draft of the community association agreements and the condominium plat to the land use committee of the planning commission for their review and approval prior to the developer filing these documents. The condominium bylaws shall also be submitted to such committee for review and approval upon making the determination that assurances are made for the completion of all roadways;
- (c) The architectural plans which are a part of this submittal are intended only to indicate the character and general architectural style for this project. Minor alterations to these plans by the developer are permitted and may be required by the building inspection department. Such alterations shall first be approved by the secretary of the planning commission after said secretary has determined that the changes did not materially alter the intent of the improved plans;
- (d) The community facilities (tennis court, pool or equivalent facility) as desired by the homeowners association and approved by the secretary of the planning commission be completed prior to the issuance of building permits for Phase III;
- (e) The proposed marina shall be approved in concept only, and before any construction of such marina is initiated, a special use permit shall be reviewed and approved under the terms of chapters 50 and 51 of the Duluth City Code;
- (f) Before any construction is initiated, the secretary of the planning commission shall review and approve detail grading plans for each unit initiated, and the city engineer shall approve an overall storm water runoff plan providing proper collection and disposal of storm water. This special use permit shall not act as an exemption for any required grading permits under Chapter 51 of the Duluth City Code.

BE IT FURTHER RESOLVED, that such special use permit for a community unit plan shall expire 40 years from the date of approval by the city council.

Resolution 93-0802 was unanimously adopted.

Approved October 18, 1993

GARY L. DOTY, Mayor

I, JEFFREY J. COX, city clerk of the city of Duluth, Minnesota, do hereby certify that I have compared the foregoing resolution passed by the city council on the 18th day of October, 1993, with the original in my custody as city clerk of said city, and that the same is a true and correct transcript therefrom.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said city of Duluth, this 19th day of October, 1993.

JEFFREY J. COX City Clerk

by

TY OF DULUTH, MINNESOTA

## CITY PLANNING DEPARTMENT SPECIAL USE PERMIT

#### AMENDMENT

STAFF REPORT
Date: July 23, 1993

- 1. Applicant's Name(s):

  Dale Johnson
  8050 East Spirit Cove Drive
  Duluth, MN 55807
- Proposed Use: An amendment to the terms and conditions of Resolution No. 87-0700, Subsection I.b., relating to street improvements.
   Zoning Code Sect: 50-35
- 3. Location: Approximately 79th Avenue West and Bayhill Drive
- 4. <u>Legal Description:</u> Spirit Bay Cove Division in Government Lot 2, Section 24, Township 49 North, Range 15 West.
- 5. Number of Surrounding Property Owners Notified: 1

#### BACKGROUND DATA:

- A. The Proposal: The proposal calls for removal of the requirement from Special Use Permit Resolution No. 87-0700 which required the construction or improvements under contract for construction of either 80th Avenue West or 84th Avenue West prior to the issuance of Building Permit for Unit No. 13 of the Spirit Bay development.
- B. Reason for Planning Commission Action: Special use permits and subsequent amendments to special use permits are made by resolution by the City Council following a public hearing and recommendation from the City Planning Commission. This amendment does require the sequence of actions, meetings and recommendations.
- C. History of Past Actions:
  - 1. On September 27, 1971, the City Council approved construction of a 205-unit mobile home park on this site (Ref. File No. 1-71078).
  - 2. On October 12, 1971, the Planning Commission and on November 4, 1971, the City Council approved a rezoning from "M-2" Manufacturing to "R-1-c" Residential, on the subject property (Ref. File No. 1-71169).

		_
Planning Commission:	Action Date	
City Council: Action	Date	

- 3. On November 12, 1974, the Planning Commission heard a presentation by H. N. Gentti & Company for development of this property (see November 12, 1974, Minutes).
- 4. On May 8, 1979, the Planning Commission approved the preliminary Community Unit Plan for the Bayhill special use permit by H. N. Gentti (see general notes).
- 5. On July 21, 1981, the Planning Commission and on July 25, 1982, the City Council granted a special use permit for the Community Unit Plan for the H. N. Gentti Company for the construction of a 276-unit apartment/townhouse-type condominium development on the project site, provided that the development and all of its aspects including utility easements, recreation easements, building location, parking lots and landscaping, are constructed and maintained in accordance with the detailed plans as indicated on City Public Document No. 82-0125-19, subject to six conditions.
- 6. On July 14, 1987, the Planning Commission and on August 27, 1987, the City Council adopted Resolution 87-0700 as follows:
  - I. That the Special Use Permit (Resolution 82-0027) for a Community Unit Plan be amended to provide for the Spirit Bay development to construct 62 townhouse/condominium units (in addition to the existing 6-unit structure), provided that the development and all its aspects, including utility easements, etc. are constructed and maintained in accordance with plans as submitted by Damberg, Scott, Peck & Booker entitled "Spirit Bay Development", grading and drainage plan dated 6/22/87 and amended 6/27/87, and the landscape plan dated 6/22/87, provided that the following conditions are met:
    - a. The project shall be staged as indicated on the approved plans and further described herein:
      - 1) That Phase I shall include Units 1-18; however, only 12 units will be permitted to be constructed and/or sold until such time as private roadways in Phase I are completed to City standards including bituminous surface, curb-and-gutter, and either 80th Avenue West or 84th Avenue West is scheduled for construction.
    - b. Prior to the issuance of any building permit for Unit 13 in Phase I or Phases II or III, 80th Avenue West and/or 84th Avenue West must be under contract for construction and all improvements including landscaping and street improvements for the previous phase shall be completed as shown on the approved plans. This provision applies only to the issuance of building permits for structures in a given phase, and the developer may proceed with road or landscaping improvements for other phases prior to the construction of all the buildings in one phase which is under construction.

c. Streets and driving areas may be constructed on an interim basis as indicated on the plans submitted, provided that within three years of the date of completion of construction of each phase, final construction shall be accomplished including curb-and-gutter as specified on the plans.

There are an additional five points outlined in this permit (Ref. File No. 87056) for details.

- 7. On May 8, 1990, the City Planning Commission gave preliminary plat approval to the plat of Spirit Cove Division, subject to four conditions (Ref. File No. 90054).
- 8. On September 11, 1990, the Planning Commission gave unconditional approval to the final plat of Spirit Cove Division (Ref. File No. 90152).
- 9. In October, 1990, the Planning Commission and on May 6, 1991, the City Council vacated portions of Bayhill Drive in order to allow for platting of Spirit Cove Division (Ref. File No. 90191).
- D. Existing Area Zoning: The subject site is zoned "R-1-c"; lands to the west are zoned "M-2" Manufacturing and "C-2" Commercial; lands to the east are zoned "R-1-c", "W-1" Waterfront and "R-2" Residential Apartment.
- E. Existing Area Development: One 6-unit condominium module has been constructed onsite in accordance with previously approved special use permits. Twelve (12) units in 6 structures have been developed along the Spirit Circle in Block 1 of Spirit Cove Division. The balance of the tract is vacant.
- F. <u>Site Characteristics:</u> The total site is trapezoidal in shape, measuring approximately 1,400' and 2,000' on the sides, and sloping 40' in elevation with an average lot depth of 750' from west to east. The topography consists of a high plateau (following an auto racetrack) and low swampy areas on the east and west ends of the development. Scattered portions of the site are covered with popple, birch and alder.
- G. Reactions from Various Groups, Agencies and Individuals:
  - 1. Personal communication from Minnesota Power on 8-2-93 stating no objection.
  - 2. Personal communication from City Engineer on 8-2-93 stating considerable objection to the proposed deletion, noting that elimination of this second access to the project site will result in the equivalent of a cul-de-sac greater than 1/2 mile in length with no other means of emergency access or service.
  - 3. Personal communication with Fire Marshall on 8-5-93 stated: 80th or 84th should be provided to give adequate access to this project. A 1/2 mile long cul-de-sac is unacceptable.
- H. Conclusions:

#### Points in opposition:

Elimination of this requirement will result in the potential of 50 units being located at the end of a 1/2-mile-long cul-de-sac. The City's maximum standards for cul-de-sacs state that no "dead-end street" shall be longer than 1,300'.

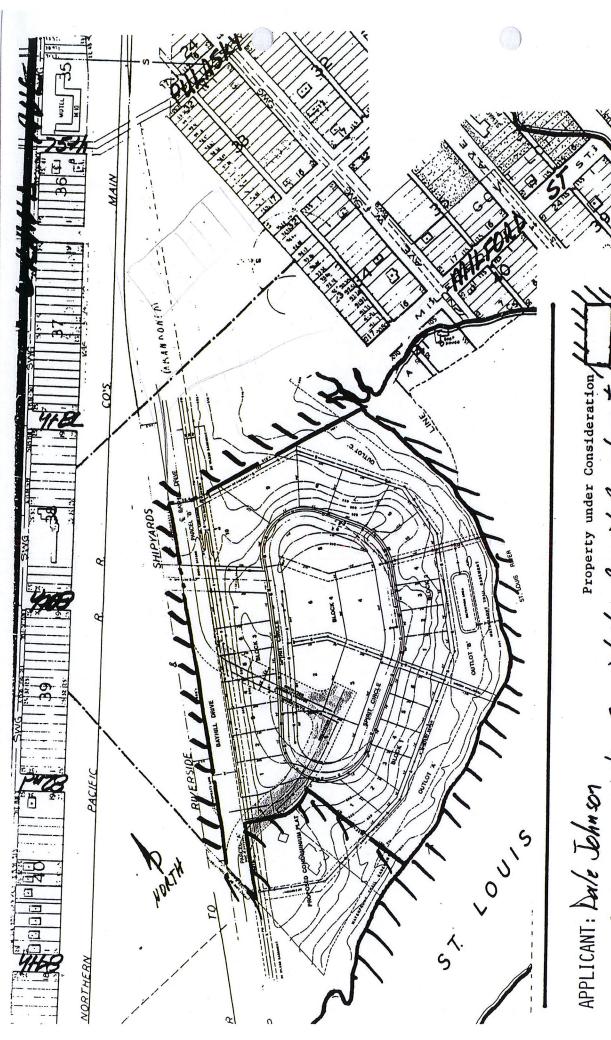
This proposal is not acceptable under standards of good planning public service or life safety.

Suggested Conditions if the Planning Commission is inclined to approve:

None.

#### Comments

Allowing an extension of time, such as not more than 3 years or an additional 6 units may allow time for economic circumstances to change in a manor favorable to this improvement obligation.



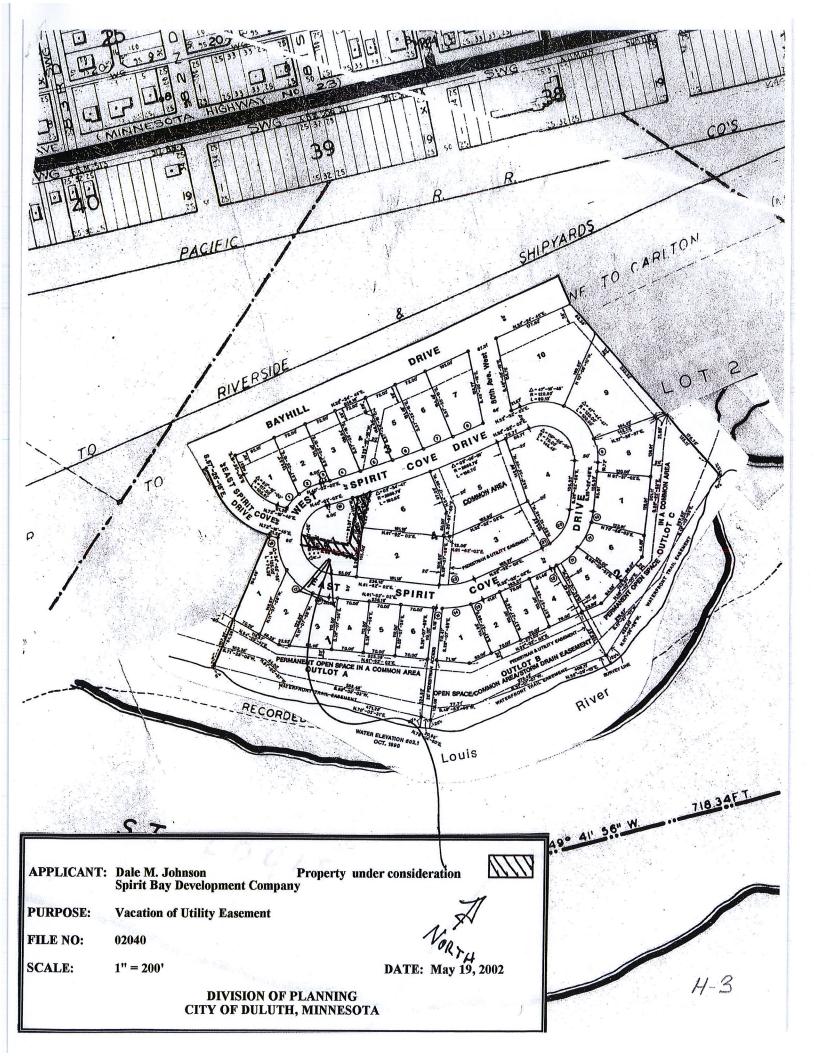
PURPOSE: Preliminary Plat - Special Use Permit Amediner

ASCALE: 1"= 250' DATE: 2/28/90

FILE NO: 90054

DIVISION OF PHYSICAL PLANNING

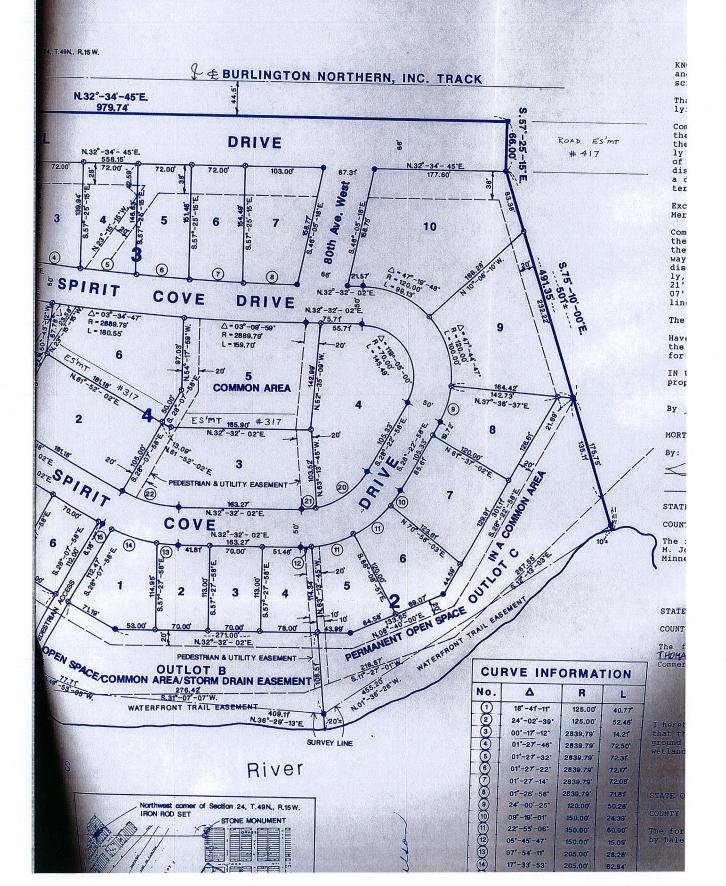
CITY OF DIRITH MINNESOTA



Located in par NORTHWEST CORNER OF SECTION 24, T.49N., R.15 W. IRON ROD SET N.32°-34'-45'E, 979.74' BAYHILL 212.00' N.32°-34'-45"E C. IRON ROD SET SPIRIT FAST & 1'-80' SCALE IN FEET EN SPACE/COMMON OCT. 1890 N 802.7 160 - LEGEND -IRON SURVEY MARKER SET Louis IRON ROD SET UTILITY EASEMENT (UNLESS OTHERWISE NOTED) LOT LINE PLAT BOUNDARY

# SPIRIT COVE DIVISION

ocated in part of Government Lot 2, Section 24, Township 49 North
City of Duluth, County of St. Louis, State of Minnesota



## VISION

57

Township 49 North, Range 15 West

State of Minnesota.

# 417

COPY

PLAT DEDICATION
SPIRIT COVE DIVISION
DULUTH, ST. LOUIS COUNTY, MINNESOTA

KNOW ALL MEN BY THESE PRESENTS: That Spirit Bay Development Company, a Minnesota Co and proprietor and North Shore Bank of Commerce, a Minnesota Corporation, being mortgagee of scribed property situated in the City of Duluth, County of St. Louis, State of Minnesota to

That part of Government Lot 2, Section 24, Township 49 North, Range 15 West of the Fourth Pilying Southeasterly and Southerly of a line described as follows:

Commencing at the Northwest corner of said Section 24, thence South 0'-29'-58" East (assume the West line of said Section 24, a distance of 1177.03 feet to the beginning of the line thence North 32'-34'-45" East, along the Southeasterly right of way line of Burlington Norther ly the Duluth transfer track of the Northern Pacific Railway), also being the Northwesterly of the Lake Superior and Mississippi Railroad as described in deed recorded in Book K of distance of 979.74 feet; thence South 57'-25'-15" East a distance of 66.00 feet; thence South the Northwesterly bank of the St. Louis River, and terminating.

Except: that part of Government Lot 2, Section 24, Township 49 North, Range 15 West of the Meridian, lying Southeasterly, Southerly and Westerly of a line described as follows:

Commencing at the Northwest corner of said Section 24, thence South 0'-29'-58" East (assumed the West line of said Section 24, a distance of 1297.96 feet to the beginning of the line way line of Burlington Northern, Inc. (formerly the Duluth Transfer track of the Northern Pa distance of 212.00 feet; thence South 57'-25'-15" East, a distance of 46.51 feet; thence South 21'-28", a distance of 46.51 feet; thence South 75'-28", a distance of 46.51 feet; thence South 21'-28", a distance of 307 feet and the chord of said curve bears South 82'-05'-59" East; t line there terminating.

The above described property contains 16.8 acres of land, more or less, except all minerals.

Have caused the same to be surveyed and platted as SPIRIT COVE DIVISION and do hereby donate the public, for public use forever the thoroughfares and also dedicating the easements as sho for trail, pedestrian and utility purposes only.

IN WITNESS WHEREOF said Spirit Bay Development Company proper officers this 1777 day of HIRIC. has caused these presents to be , 1991.

Valin Go Dale M. Johnson, President

By Marian C. Johnson, Sec/Treas

MORTGAGEE:

North Shore Bank of Commerce

Thomas Honral Vice President

STATE OF MINNESOTA ) COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this 17th day of AFRIC M. Johnson, President, and Marian C. Johnson, Secretary/Treasurer, of Spirit Bay Development Commission Corporation, on behalf of the corporation.

ion.

Saurale U. Bangle

Notary Public, St. Louis County
My Commission Expires 1/3/93

STATE OF MINNESOTA) COUNTY OF ST LOUIS

The foregoing instrument was acknowledged before me this \_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_. Commerce, a Minnesota Corporation, on behalf of the Corporation.

VICE PRESIDENT OF North APRIL

Notary Public, St Jouis County, My Commission Expires 18/18/9/

I hereby certify that I have surveyed and platted the property described on this plat as SPIRIT CO that this plat is a correct representation of the survey, that all monuments have been correctly pround as shown, that the outside boundary lines are correctly designated on this plat and that we wetlands or public highways to be designated other than as shown.

Dale L. Berntsen, Land Surveyor Minnesota Registration No. 13794

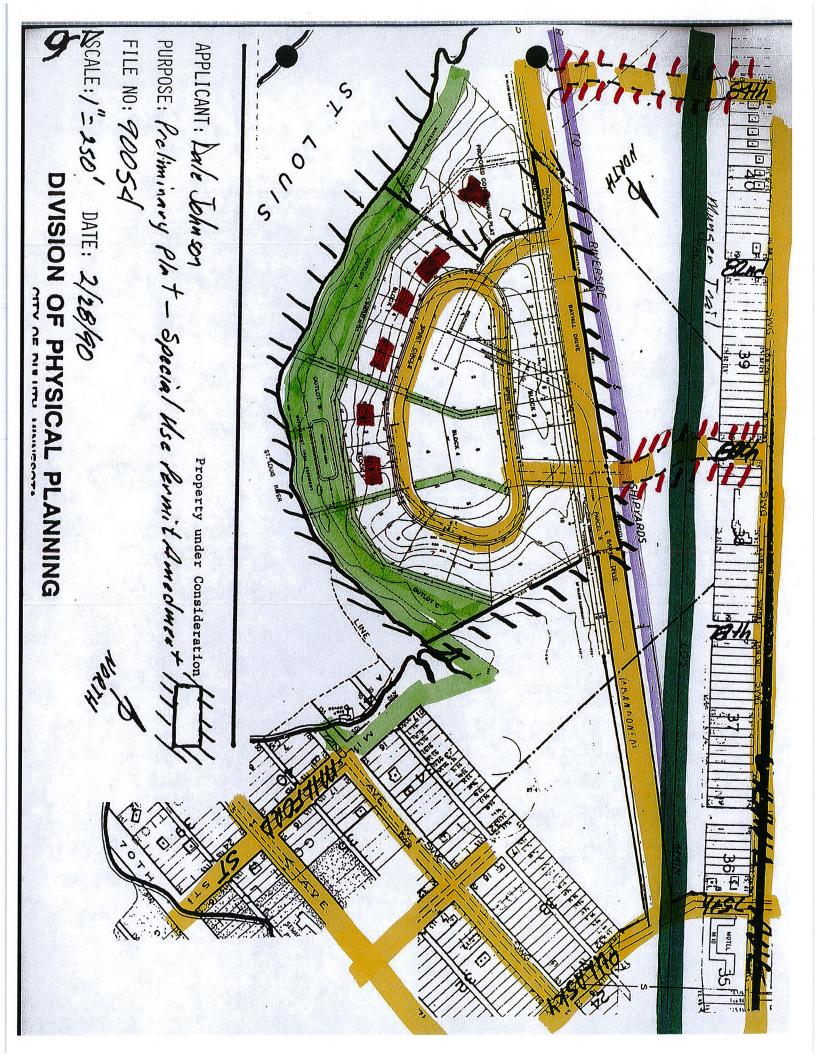
STATE OF MINNESOTA ) COUNTY OF ST. LOUIS)

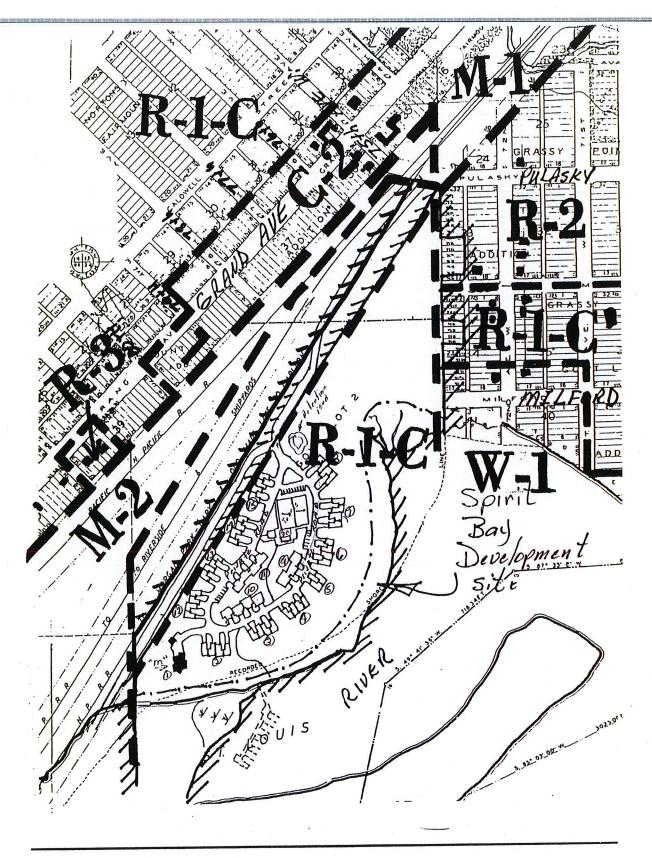
The foregoing Surveyor's Certificate was acknowledged before me this 17th day of Appen by Dale L. Berntsen, MN Reg. No. 13794.

Laurela W. Sande

## E INFORMATION

Δ	R	L	
-41-11	125.00	40.77	
-02'-39'	125.00	52.46	
-17'-12"	2839.79	14.21	
-27-46	2839.79	72.50	
-27-32	2839.79	72.31	
-27 -22	2839.79	72.17	
-27'-14"	2839.79'	72.06	
-26'-56"	2839.79'	71.81	
-00'-25"	120.00	50.28'	
-19'-01"	150.00'	24.39'	
-55'-06'	150.00	60.00'	
-45'-47'	150.00'	15.09'	
-54'-11"	205.00	28,28'	
-33'-53'	205.00'	62.84	
-51-56°	205 00'	19 90'	





APPLICANT:

Dale Johnson by Damberg, Scott,
Peck & Booker, Inc. by John Scott

Property under Consideration



**PURPOSE:** 

Special Use Permit

FILE NO:

87056

**SCALE:** 1'' = 300' **DATE:** July 1, 1987

**DIVISION OF PHYSICAL PLANNING** CITY OF DULUTH, MINNESOTA

