

**Planning and Zoning Public Hearing
Agenda for Wednesday, February 19th, 2025
5:00 PM**

1. **Board of Adjustment Call to Order**
2. Roll call: **Prioreschi, Anderson, Hernesmaa, Burke, Councilor Roose, Palcher. Staff Kochendorfer. Excused: White**
3. **Additions or Deletions from Agenda**
4. **Public Hearing Right of Way Vacation for the area of E 10th St and S 1st Ave E- The Ely Planning and Zoning Commission will be holding a public hearing on Wednesday, February 19th, 2025 at 5:00 pm in the City Hall council chambers. The public hearing will be held to gather input in consideration of a request made by Warren Johnson, property owner at 1003 S 2nd Ave E, requesting that the City of Ely vacate platted, but unimproved Street Right-of Way, described as: E 10th St S from S 1st Ave E, to S 3rd Ave E, Tower View Estates Addition, from Block 1, Lot 5, to Block 1, Lot 4.**
5. **The applicant or PZ admin will explain the request**
6. **Letters and or phone call comments read into the record**
7. **Those in support may comment**
8. **Those opposed may comment**
9. **Comments from those who wish to provide any additional information**
10. **Applicant will have the opportunity to answer additional questions**
11. **Closure of the hearing**
12. **Staff Analysis/ Finding of Facts read**
13. **Recommendation rendered by the Planning and Zoning Commission**
14. **Adjournment**

Staff Analysis (Updated 1-28-2025)

Staff Analysis for ROW Vacation Application for **the platted but unimproved Street Right-of Way**, on behalf of **Warren Johnson**

FACTS

1. The property described as East 10th St S from S 1st Ave E, to S 3rd Ave E, Tower View Estates Addition, from Block 1, Lot 5, to Block 1, Lot 4. Warren Johnson, the requestor of the Vacation, intends to develop the adjacent parcels of lots 3, 4, 5 & 6 of Tower View Estates. (see map)

2. The subject property is described as:

Platted, but unimproved Street Right-of-Way; E 10th St S from S 1st Ave E, to S 3rd Ave E, Tower View Estates Addition, from Block 1, Lot 5, to Block 1, Lot 4 (total area 33 feet by 450 feet +/- (0.34 acres)

3. This Property is located in the Residential (R1) zoning district.

4. Warren Johnson (prospective developer) has applied to the city for a Right-of-Way Vacation to allow for future development of lots 3,4,5, and 6, in Tower View Estates.

5. The property is zoned Residential (R1), and this type of development is allowed.

APPLICABLE LAW

6. Minnesota Statute: 412.851 VACATION OF STREETS.

The council may by resolution vacate any street, alley, public grounds, public way, or any part thereof, on its own motion or on petition of a majority of the owners of land abutting on the street, alley, public grounds, public way, or part thereof to be vacated. When there has been no petition, the resolution may be adopted only by a vote of four-fifths of all members of the council. No vacation shall be made unless it appears in the interest of the public to do so after a hearing preceded by two weeks published and posted notice. The council shall cause written

notice of the hearing to be mailed to each property owner affected by the proposed vacation at least ten days before the hearing. The notice must contain, at minimum, a copy of the petition or proposed resolution as well as the time, place, and date of the hearing. In addition, if the street, alley, public grounds, public way, or any part thereof terminates at, abuts upon, or is adjacent to any public water, written notice of the petition or proposed resolution must be served by certified mail upon the commissioner of natural resources at least 60 days before the hearing on the matter. The notice to the commissioner of natural resources does not create a right of intervention by the commissioner. At least 15 days prior to convening the hearing required under this section, the council or its designee must consult with the commissioner of natural resources to review the proposed vacation. The commissioner must evaluate:

- (1) the proposed vacation and the public benefits to do so;
- (2) the present and potential use of the land for access to public waters;
and
- (3) how the vacation would impact conservation of natural resources.

The commissioner must advise the city council or its designee accordingly upon the evaluation. After a resolution of vacation is adopted, the clerk shall prepare a notice of completion of the proceedings which shall contain the name of the city, an identification of the vacation, a statement of the time of completion thereof, and a description of the real estate and lands affected thereby. The notice shall be presented to the county auditor who shall enter the same in the transfer records and note upon the instrument, over official signature, the words "entered in the transfer record." The notice shall then be recorded with the county recorder. Any failure to file the notice shall not invalidate any vacation proceedings.

7. Adopted City Procedure for Request to Vacate a Right-of-Way.

- (a) A request for a right-of-way vacation is submitted to the Planning & Zoning office (the letter of request to include minimally: name, address, phone no., map and reason for request).
- (b) A public hearing will be set up and conducted by the Planning Commission.
- (c) A public hearing notice will be published in the official newspaper 10 days prior to the hearing date.
- (d) A letter and map describing / showing the proposed vacation will be sent to property owners within 350' of the rights-of-way, 10 days prior to the hearing date.
- (e) The request will be forwarded to the Streets & Infrastructure Committee for comment.
- (f) A recommendation from the Planning Commission will be made to the City Council.
- (g) The Council may adopt the Commission recommendation with an approval of at least five Council members. The proceedings are then recorded with the County Recorder's office (City Charter, Sec. 12.06).
- (h) The fee will be published on the City of Ely current fee schedule, and re-assessed on an annual basis. Applicant will be responsible for the filing fees with St. Louis County, as well as any Official Survey Fees.

STAFF ANALYSIS

- **Summary:** Applicant, Warren Johnson (prospective developer) currently owns Lots 3, 4, 5 & 6 of Tower View Estates Addition, as well as adjacent property at PID 030-0017-00130. The applicant is looking to vacate the City Right-of-Way as described above. Currently, the ROW is undeveloped, but platted. Vacating the ROW would allow reconfiguration of current parcels, and allow future development of the properties. There are currently no utilities in the ROW, and no plans to develop the ROW as a Street.

- **(1) No vacation shall be made unless it appears in the interest of the public to do so:**

No vacation shall be made unless it appears in the interest of the public to do so after a hearing proceeded by two weeks published and posted notice. By allowing the vacation of the ROW, it allows for future housing to be built, which promotes the accessibility to housing in Ely. The current ROW is not a legal roadway, but only a platted street. Neighboring property access will not be affected by this vacation proposal.

- **(2) DNR Commissioner Review:**

This proposal has no effect on public water or land access, or natural resources, therefore the DNR is not required to be notified, or involved in the decisions of this ROW Vacation.

Applicant Reasoning/ explanation:

1. I would like to re-configure lots 3-6 to make them larger. Currently they are too small and too steep of a grade to build on.
2. By vacating Tenth Street, it would provide 16.5 feet to each lot on the south side of lots 4 & 5. It will also provide 16.5 feet to the north end of all 4 landowners in the Ahola Plat; Owners being Brauns, Johnsons, Ely Methodist Church and the Neminichs.
3. This would allow our lot that we have our house located on, to be connected to Lot 5.
4. It would be very difficult to construct a useable safe roadway on Tenth street with such a steep grade on the 33 feet of the ROW.
5. There are no utilities on Tenth Street. If building sites were to be constructed, utilities are accessible from 1st Ave E, Second Ave E, and 3rd Ave E.

City of Ely Requirements/Input:

1. No restrictions/ No concerns with the proposal.

Does this proposal align with the City of Ely Comprehensive Plan?

Comp Plan Vision Statement

1. The City of Ely provides unique opportunities for recreation, culture, and work not often seen in a city of its size
2. Ely continues to offer an excellent quality of life to residents of the region. We strive to maintain our outstanding educational opportunities, a full range of medical services, exceptional outdoor experiences, and an unequalled sense of community spirit
3. Ely provides a safe and friendly atmosphere, in affordable neighborhoods that complement their natural surroundings
4. Ely supports business, industry, and entrepreneurship, providing long-term, quality employment and economic vitality
5. Historically rich and naturally pure, Ely will gain strength as a regional leader and an anchor to Minnesota Northwood's tourism where residents can "play where they work."

Comp Plan Summary: The Vision of the current comprehensive plan is to provide tourism, recreation, maintaining natural spaces, promote economic development, business support, and develop less developed properties. This proposal fits the vision and goals of the current Ely Comprehensive Plan.

STAFF ANALYSIS RECOMMENDATION

Staff finds that the applicant's proposal meets the requirements for the ROW Vacation, pending public interest input. Staff recommends **APPROVAL** of the Right-of-Way Vacation as proposed.

CONCLUSIONS OF LAW No Street or Right-of-Way Vacations will be approved unless the requirements under state statute 412.851 (Vacation of Streets) is met.



209 E. Chapman St. Ely, MN 55731

DATE: January 29th, 2025

SUBJECT: Public Hearing Notice-

The Ely Planning and Zoning Commission will be holding a public hearing on Wednesday, February 19th, 2025 at 5:00 pm in the City Hall council chambers. The public hearing will be held to gather input in consideration of a request made by Warren Johnson, property owner at 1003 S 2nd Ave E, requesting that the City of Ely vacate platted, but unimproved Street Right-of Way, described as: E 10th St S from S 1st Ave E, to S 3rd Ave E, Tower View Estates Addition, from Block 1, Lot 5, to Block 1, Lot 4.

Public comment will be heard on the date of the hearing and/or may be submitted to any of the following addresses below before February 17th to be included in the public hearing. Names and addresses must be submitted in order for comments to be recorded into the hearing minutes. Please visit our website at ely.mn.us/notices for more information, including a map of the proposed location.

Any questions should be directed to the Planning and Zoning Administrator, 218-365-3224, Ext 3 or email pzadmin@ely.mn.us

Scott Kochendorfer
Zoning Administrator
209 E Chapman St
Ely MN 55731
pzadmin@ely.mn.us
218-365-3224, Ext 3

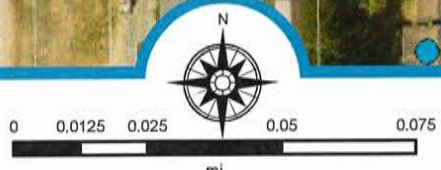


County Land Explorer

St. Louis County, Minnesota



Title...



County Land Explorer

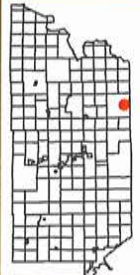
St. Louis County www.stlouiscountymn.gov/explorer Minnesota

Disclaimer

This is a compilation of records as they appear in the Saint Louis County Offices affecting the area shown. This drawing is to be used only for reference purposes and the County is not responsible for any inaccuracies herein

Map created using County Land Explorer
www.stlouiscountymn.gov/explorer

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209 E Chapman Street, Ely, MN 55731 (218) 365-3224 • FAX (218) 365-7811

City of Ely Planning & Zoning

SUBDIVISION/LOT LINE SPLIT APPLICATION

Property Owner: Warren Johnson
Address: 1003 S 2ND AVE EAST
City, State, Zip Code: Ely, MN 55731
Phone #: 218-343-6397
Email: wdjsolutions@outlook.com

Applicant:
Address:
City, State, Zip Code:
Phone #
Email:

Site Location/Address: Tenth Street
PIN: Multi - See Attachment
Legal Description (Attach if Necessary): - See Attached

Acreage: 0.34 Acre **Zoning:** R1

Proposal Explanation: - See email dated 1-8-25

Variation from Subdivision Requirements (if applicable). Please explain the variation (width, size, street frontage, etc.) and reasoning for the variation:

wdjsolutions@outlook.com

From: wdjsolutions@outlook.com

01-08-2025

Ely City Council,

RE: Vacate of Tenth Street area of 33 feet x 450' +/- (0.34 Acre)

My wife and I recently purchased Lots 3, 4, 5 & 6 of Tower View Estates. We own the property south of Lot 5. Zoned Residential.

Reasons.

- 1) I would like to re-configure lots 3-6 to make them larger. Currently they are too small and too steep of a grade to build on.
- 2) By vacating Tenth Street, it would provide 16.5 feet to each lot on the south side of lots 4 & 5. It will also provide 16.5 feet to the north end of all 4 landowners in the Ahola Plat; Owners being Brauns, Johnsons, Ely Methodist Church and the Neminichs.
- 3) This would allow our lot that we have our house located on, to be connected to Lot 5.
- 4) It would be very difficult to construct a usable safe roadway on Tenth Street with such a steep grade on the 33 feet of the ROW.
- 5) There are no utilities on Tenth Street. If building sites were to be constructed, utilities are accessible from 1st Ave. East, Second Ave. East, and 3rd Ave. East.

Thank you for your consideration,

Warren Johnson
1003 South 2nd Ave. East
Ely, MN 55731
218-343-6397
wdjsolutions@outlook.com



209 E Chapman Street, Ely, MN 55731 (218) 365-3224 • FAX (218) 365-7811

City of Ely Planning & Zoning

SUBDIVISION/LOT LINE SPLIT APPLICATION

(For subdivision variation applications only) Variation from Subdivision requirement would result in substantial hardship or injustice. Please explain how the subdivision variation meets these three requirements:

1. Nature of the proposed use of land and the existing use of land in the vicinity:

2. The number of persons to reside or work in the proposed subdivision and the probable effect of the proposed subdivision upon traffic conditions in the vicinity:

3. Those variations that will allow the subdivider to develop his property in a reasonable manner and at the same time preserve the general intent and spirit of this chapter and protect the public welfare and interests of the City and surrounding area:

Required Submittals:

One 11"x17" hard copy or emailed pdf of the Preliminary Plat from a certified surveyor

Applicant Signature: Warren Johnson

Date: 01-08-2025

Owner Signature: Warren Johnson


Date: 01-08-2025



209 E Chapman Street, Ely, MN 55731 (218) 365-3224 • FAX (218) 365-7811

City of Ely Planning & Zoning

SUBDIVISION/LOT LINE SPLIT APPLICATION

<i>CITY USE ONLY</i>	
Date received by Planning and Zoning Department: <u>1-9-25</u>	
The Subdivision Application is complete:	<input type="checkbox"/>
The Subdivision requires the modifications listed below:	<input type="checkbox"/>
Further information needed:	<input type="checkbox"/>
The Subdivision is not Permitted:	<input type="checkbox"/>
* Subdivision Variation required, and subdivision variation box filled out:	
Review completed by City Clerk/Treasurer and City Engineer	<input type="checkbox"/>
Signature of Zoning Administrator 	Date <u>1-9-25</u>
Planning and Zoning Hearing Scheduled: <u>2-18-25 @ 5:00 PM</u>	Date: _____
Subdivision (Approved) or (Denied)	Date: _____

OFFICIAL PLAT

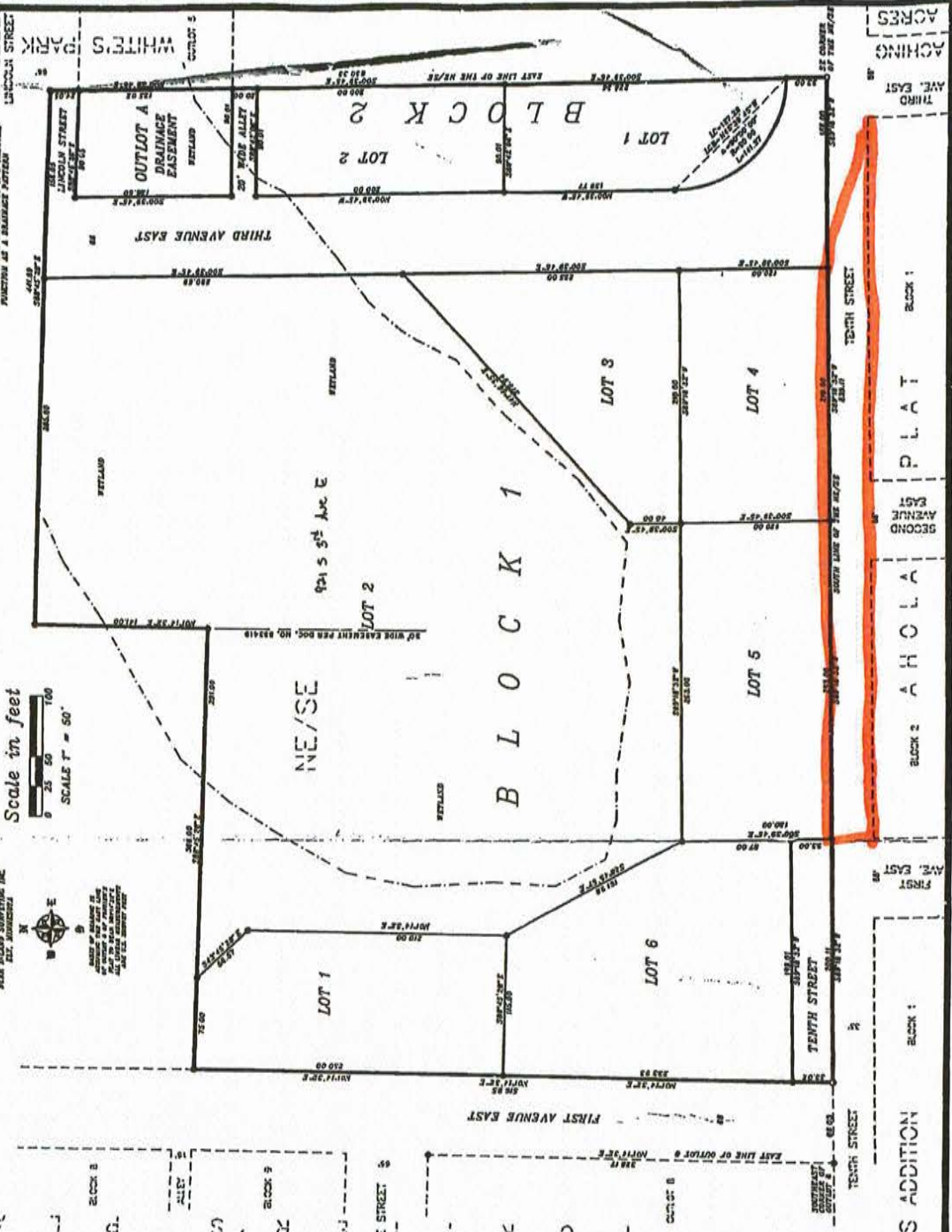
TOWER VIEW ESTATES

927691

LOCATED IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER, SECTION 33, TOWNSHIP 63 NORTH, RANGE 12 WEST ALL OF THE FOURTH PRINCIPAL MERIDIAN, ST. LOUIS COUNTY, MINNESOTA

- LEGEND
- - SET 3/4" PLASTIC CAPPED REBAR
 - - SET 3/4" PLASTIC CAPPED GEAR SPIKE
 - - STAMPED BLS #28883
 - - STAMPED BLS #28885
 - - FOUND U.S.S. BRASS CAPPED PIPE
 - - FOUND 1" DRILL ROD
 - - FOUND 1" IRON PIN
 - - FOUND 3/4" REBAR
 - - VETLAND BOUNDARY

THIS PLAT BEING A PART OF THE NE/SE SECTION 33, TOWNSHIP 63 NORTH, RANGE 12 WEST, ALL OF THE FOURTH PRINCIPAL MERIDIAN, ST. LOUIS COUNTY, MINNESOTA, AS TO LAYERS OR INSTRUMENTS TO BE FILED AS A TRAILBLAZE INSTRUMENT.



ALL RIGHTS RESERVED
 This plat is a part of the NE/SE Section 33, Township 63 North, Range 12 West, All of the Fourth Principal Meridian, St. Louis County, Minnesota, as to layers or instruments to be filed as a trailblaze instrument.

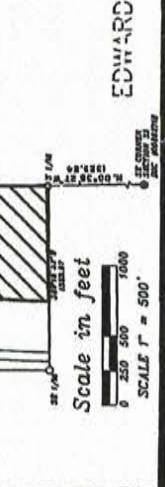
BY: **MARSHA L. WARDNEY**
 Surveyor
 State of Minnesota
 My commission expires 03/31/2025

BY: **Thomas Schulte**
 Attorney
 My commission expires 03/31/2025

BY: **Thomas Schulte**
 Attorney
 My commission expires 03/31/2025

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 Attorney
 My commission expires 03/31/2025

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5827-2-26-0

EDWARD'S ADDITION BLOCK 1

EDWARD'S ADDITION BLOCK 2

EDWARD'S ADDITION BLOCK 3

EDWARD'S ADDITION BLOCK 4







209 E. Chapman St. Ely, MN 55731

DATE: January 28th, 2025

SUBJECT: Public Hearing Notice

To whom it may concern,

The Ely Planning and Zoning Commission will be holding a public hearing on Wednesday, February 19th, 2025 at 5:00 pm in the City Hall council chambers. The public hearing will be held to gather input in consideration of a request made by Warren Johnson, property owner at 1003 S 2nd Ave E, requesting that the City of Ely vacate platted, but unimproved Street Right-of Way, described as: E 10th St S from S 1st Ave E, to S 3rd Ave E, Tower View Estates Addition, from Block 1, Lot 5, to Block 1, Lot 4. (Map included)

As a property owner within 350 feet of the proposed action, you are receiving this letter and have the right to comment at the public hearing, and/or submit correspondence relating to this application. The public hearing will take place February 19th, at 5:00 pm in the City Hall council chambers. Names and addresses must be submitted in order for comments to be recorded into the hearing minutes. Correspondence can be submitted to any of the following addresses below before February 17th to be included in the public hearing.

Any questions should be directed to the Planning and Zoning Administrator, 218-365-3224, Ext 3 or email pzadmin@ely.mn.us

Respectfully,

Scott Kochendorfer / Zoning Administrator
209 E Chapman St / Ely MN 55731
pzadmin@ely.mn.us
218-365-3224, Ext 3



209 E Chapman Street, Ely, MN 55731 (218) 365-3224 • FAX (218) 365-7811

*Paid
1-27-25
\$300*

City of Ely Planning & Zoning

SUBDIVISION/LOT LINE SPLIT APPLICATION

Property Owner: Warren Johnson

Address: 1003 S 2ND AVE EAST

City, State, Zip Code: Ely, MN 55731

Phone #: 218-343-6397

Email: wdjsolutions@outlook.com

Applicant: _____

Address: _____

City, State, Zip Code: _____

Phone # _____

Email: _____

Site Location/Address: Tenth Street

PIN: Multi - See Attachment

Legal Description (Attach if Necessary): - See Attached

Acreage: 0.34 Acre **Zoning:** R1

Proposal Explanation: - See email dated 1-8-25

Variation from Subdivision Requirements (if applicable). Please explain the variation (width, size, street frontage, etc.) and reasoning for the variation:

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Reasons.

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Thank you for your consideration,

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1003 South 2nd Ave. East
Ely, MN 55731
218-343-6397
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City of Ely Planning & Zoning

SUBDIVISION/LOT LINE SPLIT APPLICATION

(For subdivision variation applications only) Variation from Subdivision requirement would result in substantial hardship or injustice. Please explain how the subdivision variation meets these three requirements:

1. **Nature of the proposed use of land and the existing use of land in the vicinity:**

2. **The number of persons to reside or work in the proposed subdivision and the probable effect of the proposed subdivision upon traffic conditions in the vicinity:**

3. **Those variations that will allow the subdivider to develop his property in a reasonable manner and at the same time preserve the general intent and spirit of this chapter and protect the public welfare and interests of the City and surrounding area:**

Required Submittals:

One 11"x17" hard copy or emailed pdf of the Preliminary Plat from a certified surveyor

Applicant Signature: Warren Johnson

Date: 01-08-2025

Owner Signature: Warren Johnson


Date: 01-08-2025



209 E Chapman Street, Ely, MN 55731 (218) 365-3224 • FAX (218) 365-7811

City of Ely Planning & Zoning

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CITY USE ONLY	
Date received by Planning and Zoning Department: <u>1-9-25</u>	
The Subdivision Application is complete:	<input type="checkbox"/>
The Subdivision requires the modifications listed below:	<input type="checkbox"/>
Further information needed:	<input type="checkbox"/>
The Subdivision is not Permitted:	<input type="checkbox"/>
* Subdivision Variation required, and subdivision variation box filled out:	
Review completed by City Clerk/Treasurer and City Engineer	<input type="checkbox"/>
Signature of Zoning Administrator 	Date <u>1-9-25</u>
Planning and Zoning Hearing Scheduled: <u>2-18-25 @ 5:00 PM</u>	Date: _____
Subdivision (Approved) or (Denied)	Date: _____

AS TO IMPROVE OR DESTROY IT'S NATURAL FUNCTION AS A DRAINAGE PATTERN

BEAR ISLAND SURVIVING, INC.
ELY, MINNESOTA

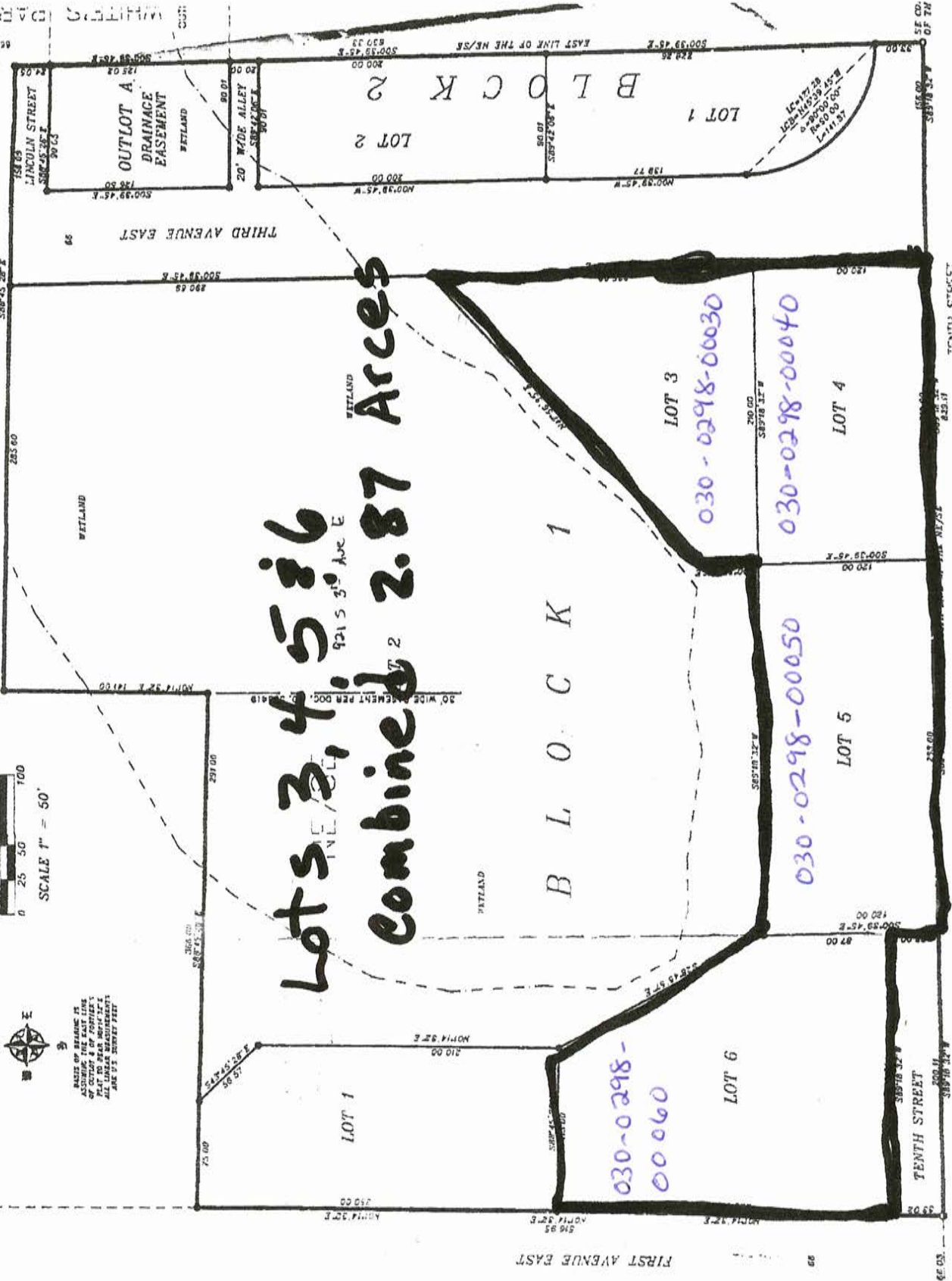
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SCALE 1" = 50'



BASED ON BEARING IT
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AND U.S. SURVEY FEET

**Lots 3, 4, 5 & 6
Combined 2.87 Acres**

921 S 31st Ave E



EDWARD'S ADDITION
BLOCK 1

BRAUN
BLOCK 2

Johnson
BLOCK 1

Methodist
BLOCK 1

Neminich
BLOCK 1

EDWARD'S ADDITION
BLOCK 1





S 3rd Ave E

236 E 10TH ST S

1019 S 3RD AVE E

1006 S 2ND AVE E

1546

S 2nd Ave E

1003 S 2ND AVE E

123 BEACON HILL RD E

1006 S 1ST AVE E

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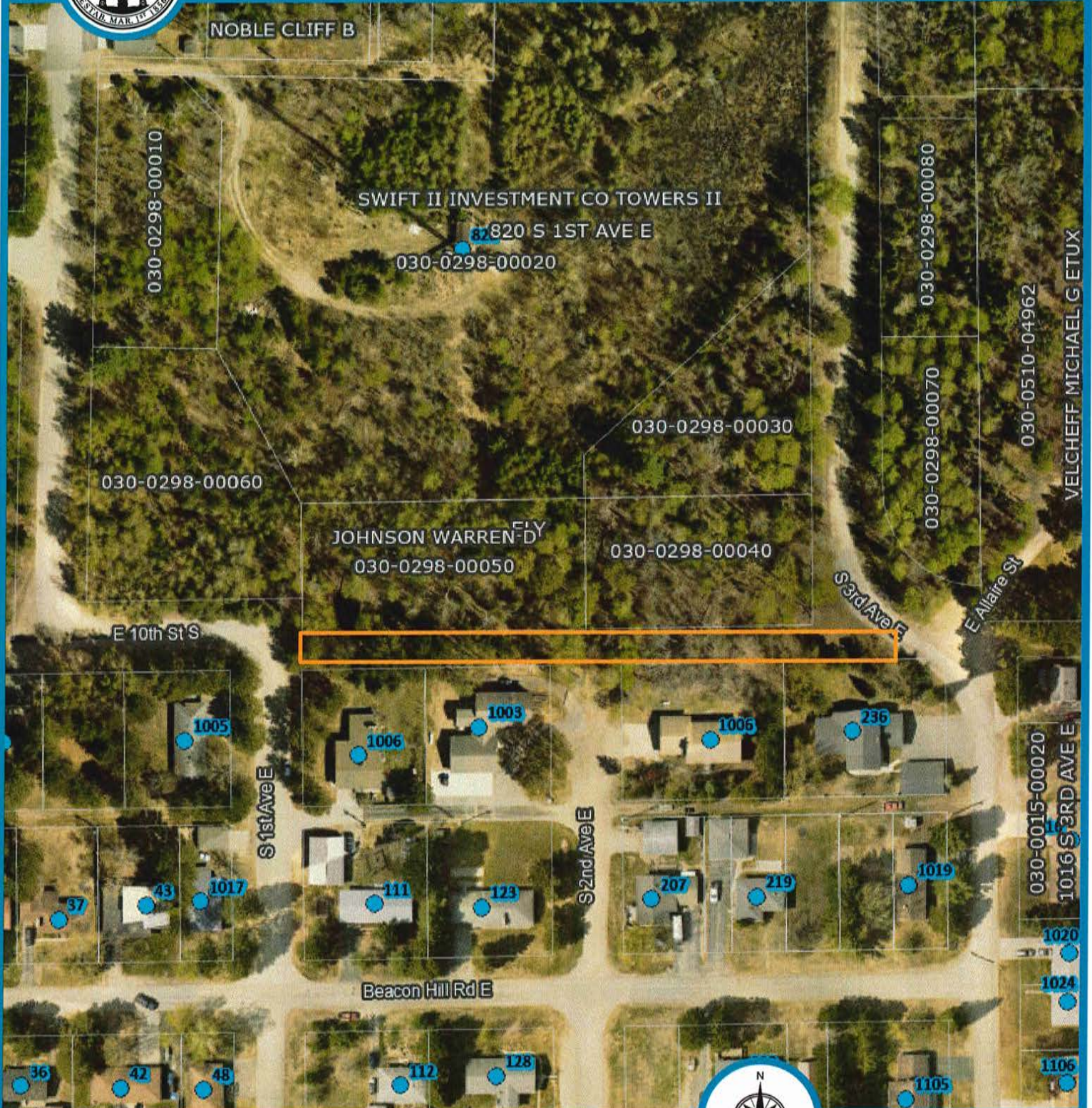
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944 -91.86548 Degrees



County Land Explorer

St. Louis County, Minnesota



Title...



County Land Explorer

St. Louis County www.stlouiscountymn.gov/explorer Minnesota

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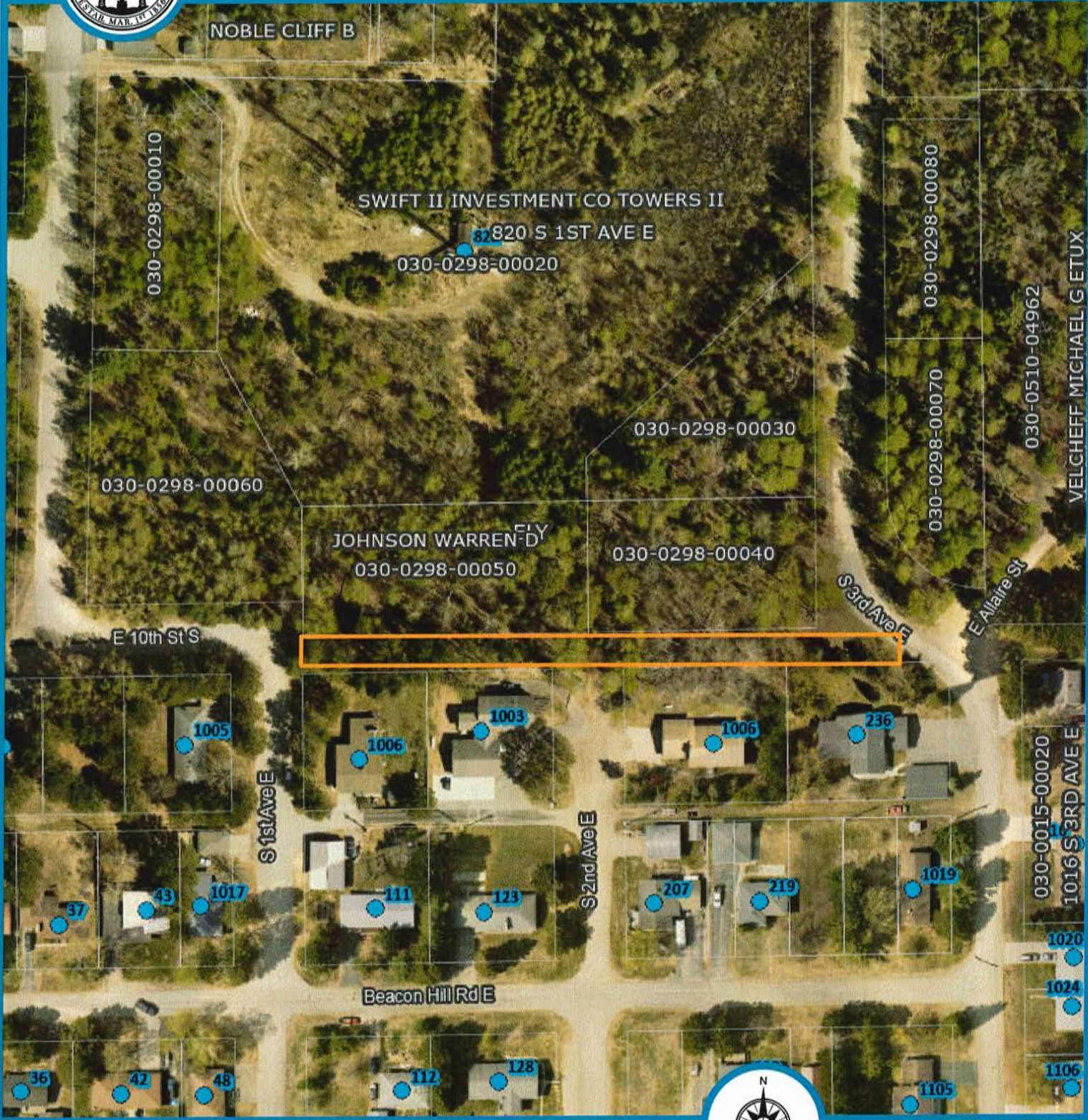


County Land Explorer

St. Louis County, Minnesota



St. Louis County MN



Title...



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Procedure for a Request to Vacate a Right-of-Way

Updated by City Council on November 12th, 2024

- (a) A request for a right-of-way vacation is submitted to the Planning & Zoning office (the letter of request to include minimally: name, address, phone no., map and reason for request).**
- (b) A public hearing will be set up and conducted by the Planning Commission.**
- (c) A public hearing notice will be published in the official newspaper 10 days prior to the hearing date.**
- (d) A letter and map describing / showing the proposed vacation will be sent to property owners within 350' of the rights-of-way, 10 days prior to the hearing date.**
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- (f) A recommendation from the Planning Commission will be made to the City Council.**
- (g) The Council may adopt the Commission recommendation with an approval of at least five Council members. The proceedings are then recorded with the County Records office (City Charter, Sec. 12.06).**
- (h) The fee will be published on the City of Ely current fee schedule, and re-assessed on an annual basis. Applicant will be responsible for the filling fees with St. Louis County, as well as any Official Survey Fees.**

This process allows property owners who may be affected by the right-of-way vacation the ability to voice comments or concerns.

412.851 VACATION OF STREETS.

The council may by resolution vacate any street, alley, public grounds, public way, or any part thereof, on its own motion or on petition of a majority of the owners of land abutting on the street, alley, public grounds, public way, or part thereof to be vacated. When there has been no petition, the resolution may be adopted only by a vote of four-fifths of all members of the council. No vacation shall be made unless it appears in the interest of the public to do so after a hearing preceded by two weeks' published and posted notice. The council shall cause written notice of the hearing to be mailed to each property owner affected by the proposed vacation at least ten days before the hearing. The notice must contain, at minimum, a copy of the petition or proposed resolution as well as the time, place, and date of the hearing. In addition, if the street, alley, public grounds, public way, or any part thereof terminates at, abuts upon, or is adjacent to any public water, written notice of the petition or proposed resolution must be served by certified mail upon the commissioner of natural resources at least 60 days before the hearing on the matter. The notice to the commissioner of natural resources does not create a right of intervention by the commissioner. At least 15 days prior to convening the hearing required under this section, the council or its designee must consult with the commissioner of natural resources to review the proposed vacation. The commissioner must evaluate:

- (1) the proposed vacation and the public benefits to do so;
- (2) the present and potential use of the land for access to public waters; and
- (3) how the vacation would impact conservation of natural resources.

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History: 1949 c 119 s 102; 1953 c 735 s 12; 1957 c 383 s 1; 1967 c 289 s 15; 1969 c 9 s 85; 1973 c 123 art 2 s 1 subd 2; 1973 c 494 s 11; 1976 c 181 s 2; 1986 c 444; 1989 c 183 s 4; 1990 c 433 s 2; 2005 c 4 s 105; 2005 c 117 s 2

RELEVANT LINKS:

Schaller v. Town of Florence, 193 Minn. 604, 259 N.W. 529 (1935).
Application of Baldwin, 281 Minn. 11, 15 N.W.2d 184 (1944).
In re Hull, 163 Minn. 439, 204 N.W. 534 (1925). A.G. Op. 396-G-16, (Sept. 18, 1958).

Application of Baldwin, 281 Minn. 11, 15 N.W.2d 184 (1944). *Petition of Krebs*, 213 Minn. 344, 6 N.W.2d 803 (1942).

Kangas v. Blueberry Tp., 264 N.W.2d 389 (Minn. 1978). *Rader v. East Side Twp.*, C3-87-744 (Minn. Ct. App. Nov. 17, 1987) (unpublished decision).

[Vacating a Street on Council Initiative.](#), LMC Model Resolution. Minn. Stat. § 412.851.
[Vacating a Street Upon Petition](#), LMC Model Resolution.

A public hearing must also include an opportunity for affected landowners and the interested public to see and hear all available information and to ask questions, provide additional information, express support or opposition, or to suggest modifications to the proposal. The primary focus of a public hearing should be to solicit public comment, not to persuade the public towards a particular viewpoint.

If the council does not agree with sentiments expressed at the public hearing, the council should incorporate its position into its findings of fact in the formal resolution approving or denying the vacation.

B. Standards for granting a vacation

Minnesota statutes establish that the city council may vacate a street only upon a finding that the vacation is “in the interest of the public.” This means the public must benefit, in some manner, from the vacation. The public includes persons other than those in the immediate vicinity of the vacation. A private benefit derived from the vacation does not bar the vacation, so long as a concurrent benefit to the public can be substantiated.

Mere long-term, non-use of a street by the public does not necessarily equate with a finding that the vacation is in the interest of the public. In reviewing vacations, Minnesota courts have emphasized that the future benefit to maintaining the dedicated property should be given consideration. For example, the Minnesota Supreme Court once overturned a vacation because the potential future use of the public grounds as public lake access was not properly considered. In another example, the Court upheld a denial of a petition for a vacation, because preservation of the underutilized property would help lessen the effects of future population growth in the area.

The decision to grant or deny a vacation is legislative in character. As a result, a reviewing court will only set aside a vacation if it appears that the evidence is practically conclusive against the city, or that the council proceeded on an erroneous theory of law, or that it acted arbitrarily and capriciously against the best interests of the public.

1. Adoption of a resolution granting or denying a vacation

Vacations must be approved by a city council resolution. A vacation commenced solely on the initiative of the city council requires a four-fifths majority vote in favor of the resolution. A vacation commenced by petition of a majority of abutting landowners requires a simple majority of the quorum present at the meeting to pass a favorable resolution.

RELEVANT LINKS:

[Minn. Stat. § 412.851.](#)

[Minn. Stat. § 412.851.](#)

[Minn. Stat. § 410.33.](#)

See Handbook, *The Home Rule Charter City*.

[Minn. Stat. § 440.13.](#) [Minn. Stat. § 440.135.](#)

As previously discussed, the resolution should include the city’s reasons for granting the vacation and detailed findings of fact.

When a city denies a vacation petition, the city should adopt a resolution setting forth its reasons for the denial including a written findings of fact. As previously discussed, detailed findings build a record necessary to support the city’s decision and refute allegations that the decision was arbitrary or capricious.

After a resolution granting a vacation is adopted, the city clerk must prepare a notice of completion of the proceedings containing the following:

- The name of the city.
- Identification of the street vacated.
- A statement of the time of completion of the vacation.
- A description of the real estate and lands affected thereby.

The notice must be presented to the county auditor, who will enter the notice in the transfer records and note upon the instrument, over official signature, the words “entered in the transfer record.” The notice must then be recorded with the county recorder. The county auditor in your county may have a preferred form for the notice of completion in your jurisdiction. It is advisable to check with your county auditor regarding the preferred format at the beginning of a vacation proceeding.

Provided that all the other elements of a valid vacation proceeding exist, mere failure to file the notice will not invalidate the vacation.

II. Home rule charter cities

Many home rule cities have charter provisions that establish a process for the vacation of city streets. If a charter is silent on the issue, the general statutory provisions previously discussed may be used.

Home rule charters may supplement, but not contradict state statute. The general rule is that when a charter provision is in conflict with state law, the statutory provision prevails, and the charter provision is ineffective to the extent that it conflicts with state policy.

Unique statutory provisions favoring petitioners and property owners in home rule charter cities of the fourth- and third-class must also be considered. As discussed below, these provisions only apply in certain limited circumstances. Third- and fourth-class charter cities should consult their attorney regarding the applicability of these provisions to their fact situation. In addition, the League of Minnesota Cities recommends that special attention be given to due process and notice issues, despite the statutes’ silence on these issues.

RELEVANT LINKS:

[Minn. Stat. § 440.13.](#)

[A.G. Op. 396-C-1, \(May 22, 1961\). A.G. Op. 396-C-18, \(May 16, 1958\).](#)

[See discussion and sample forms to modify in Section I-A-2 above.](#)

[Etzler v. Mondale, 266 Minn. 353, 123 N.W.2d 603 \(1963\).](#)

[Notice for Public Hearing Vacating a Street Near Water. LMC Model Form.](#)

A. Fourth-class charter cities

A home rule charter city of the fourth class, (i.e., cities with a population of 10,000 or less), notwithstanding any contrary charter provision, must follow a separate statute in vacating any street or highway “wherein one end of the street or highway, or part thereof proposed to be vacated does not connect with any other street or highway” (i.e., a “dead-end” street).

The statute provides stringent protections to property owners in home rule charter cities of the fourth class who live on such “dead-end” roads. These roads may only be vacated when all the owners of lands abutting both sides of the street or highway have signed a petition requesting the vacation.

The Minnesota Attorney General has opined that the application of this statute is limited to “streets and highways.” As a result, the Minnesota Attorney General does not believe the protections of the statute apply to property owners on dead-end alleys. Presumably, such protections do not apply to property owners on other types of dead-end public grounds or public ways.

This unique statute for fourth class charter cities does not require a public hearing or published notice of the vacation in the manner otherwise required under the general vacation statute. However, the League of Minnesota Cities (“LMC”) recommends the city provide notice to the affected public of the proposed vacation.

In addition, LMC recommends the city hold a public hearing providing affected parties an opportunity to comment on the vacation. While the statute does not explicitly require notice and a hearing, Minnesota courts have imposed such due process considerations in the past under the 14th Amendment of the U.S. Constitution.

The statute also does not require a finding of public benefit as discussed above. However, the permissive language of the statute does not require the city to vacate the street or highway upon receipt of a lawful petition.

A city’s refusal to grant a vacation in such circumstances will be upheld by the courts unless the city proceeded on an erroneous theory of law, or that it acted arbitrarily and capriciously against the best interests of the public.

Finally, if the dead-end road terminates at or abuts upon any public water, the petitioners who are requesting the vacation must serve notice of the petition by certified mail upon the commissioner of natural resources at least 30 days before the council hearing on the matter. The notice is for notification purposes only and does not create a right of intervention by the Commissioner.

RELEVANT LINKS:

[Minn. Stat. § 440.135.](#)

B. Third-class charter cities

A home rule charter city of the third class (i.e., a city with more than 10,000 in population, but less than 20,000) possesses an additional unique power of vacation.

Upon the petition of any one owner, natural or corporate, of any real estate abutting a street, a city council may vacate a street, segment or portion of a street so long as the street to be vacated is no longer than the distance intervening between any two adjacent intersecting streets.

If the street to be vacated terminates at or abuts upon any public water, the petitioners requesting the vacation must serve notice of the petition by certified mail upon the commissioner of Natural Resources at least 30 days before the city council hearing on the matter. The notice is for notification purposes only and does not create a right of intervention by the commissioner.

The vacation of any street or segment under these provisions cannot destroy or interfere with the right of any person, corporation or municipality owning or having control of any electric light or telephone pole or lines existing upon such street at the time of the vacation, or with any sewer or water pipes, mains or hydrants thereon or thereunder to enter upon such street or portion thereof vacated for the purpose of repairing the same or otherwise attending thereto.

City council action on the petition for vacation under this unique statute may be taken at any regular or special meeting duly called for considering the vacation. The statute does not require a public hearing or published notice of the vacation. However, the LMC recommends the city provide notice to the affected public of the proposed vacation for due process reasons.

In addition, LMC recommends that cities hold a public hearing on the vacation, providing affected parties an opportunity to comment on the vacation. While the statute does not require notice and a hearing, Minnesota courts have imposed such due process considerations in the past under the 14th Amendment of the U.S. Constitution.

Approval of the vacation under these provisions must be by resolution. A copy of the resolution, duly certified by the city clerk, must be recorded in the office of the county recorder in the county where such city is located before the action is effective.

Etzler v. Mondale, 266 Minn. 353, 123 N.W.2d 603 (1963).

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