

## ZONING COMMITTEE STAFF REPORT

1. **FILE NAME:** 2446 University appeal **FILE #** 10-797-728
  2. **APPLICANT:** 2446 University Ave Llc **HEARING DATE:** September 16, 2010
  3. **TYPE OF APPLICATION:** Appeal of a decision by the Zoning Administrator
  4. **LOCATION:** 2446 University Avenue West
  5. **PIN & LEGAL DESCRIPTION:** 292923340081, Bakers Addition To Thecity O Subj To Esmts & Vac Alley Accruing; The Nwly 170.13 Ft Lying Swly Of The Nely 137.05 Ft Of Lot 29 In Auditor's Subd No.4 & In Sd Baker's Add; Part Of Lot 7 Blk 7 Lying Nely Of A Line Run From A Pt On N Line Of & 47.37 Ft E Fro
  6. **PLANNING DISTRICT:** 12 **PRESENT ZONING:** B3
  7. **ZONING CODE REFERENCE:** Section 61.701.c
  8. **STAFF REPORT DATE:** 9/10/10 **BY:** Tom Beach
  9. **DATE RECEIVED:** 8/29/10 **60-DAY DEADLINE FOR ACTION:** 10/28/10
- 

- A. **PURPOSE:** To consider an appeal of a determination by zoning staff (acting as the Zoning Administrator) that 10 parking spaces on the east side of the building at 2446 University Avenue are not legal parking spaces and cannot be used or counted for zoning purposes because the only access to these parking spaces is across the adjacent property.
- B. **PARCEL SIZE:** 69,400 square feet
- C. **EXISTING LAND USE:** Commercial (office, retail, and fast food restaurant)
- D. **SURROUNDING LAND USE:**
  - North Office, retail and parking lot (B3)
  - East: Commercial (B3)
  - South: Parking and industrial (I1)
  - West: Office and industrial (I1)
- E. **ZONING CODE CITATION:** The grant or denial of approval by the planning or zoning administrator of site plans, permits or other matters that the planning commission has, by rule, delegated to the planning or zoning administrator is subject to appeal to the planning commission. (Section 61.701.c)
- F. **DISTRICT COUNCIL RECOMMENDATION:** Staff has not received a recommendation from the District 12 Council at the time this staff report was sent out.
- G. **FINDINGS:**
  1. The building at 2446 University has a mix of commercial uses: retail, office and a small fast food restaurant. Parking for the building is provided in several locations: there is a large parking lot across University Avenue, a small parking lot in front of the building and other small parking areas at the back and side of the building.
  2. There are 10 parking spaces along the east side of the building at 2446 University. However, the only access to these spaces is across the neighboring property to the east (2420 University). There is an access easement in favor of 22446 University over the adjacent property at 2420 University. But his easement is not contiguous with the 10 parking spaces on the east side of the building at 2446 University and cars cannot get to the 10 parking spaces without driving outside of the easement area. (See attached survey and easement agreement.)

3. In October 2004 zoning staff approved a site plan showing parking spaces at 2446 University. The site plan shows new paving south of the building to create 16 parking spaces and striping for the area east of the building to provide 10 parking spaces. The site plan does not show any property lines but shows an area labeled "Approx. Alley Location (Irregular)" that appears to provide a way for cars to get to the 10 parking spaces on the east of the building. Staff did not have a survey of the property and was not aware of the location of the access easement when the site plan was approved.
4. Starting in 2008, the owner of the property at 2420 University raised questions with zoning staff about the status of the parking spaces on the east side of the building at 2446 University, claiming that there is no legal access to these spaces. The owner of 2420 University submitted a survey. It shows that there is not an alley near the 10 parking spaces in question and shows that an access easement in favor of 2446 University Avenue is not contiguous with the parking spaces: there is a strip approximately 20' wide between the easement and the property line shared by 2420 and 2446 University Avenue.
5. Aerial photos show the area east of the building was not used as a parking lot prior to 2006:  
2009 – Area is paved and striped for parking. 8 cars are parked.  
2008 – Area is paved and striped for parking. 8 cars are parked.  
2006 - Area is not striped. No cars are parked in the area.  
2003 – Area is not striped. No cars are parked in the area. Some cars are parked to the south.  
2001 - Area is not striped. No cars are parked in the area.  
1997 – Photo is not clear but there is no evidence that cars are parked in the area.  
1985 – Photo is not clear but there is no evidence that cars are parked in the area.
6. In August 2010 zoning staff wrote a letter to the owner of 2446 University Avenue. (See attached letter.) The letter makes the following determinations:
  - Staff's approval of the 10 spaces shown on the 2004 site plan was based on a plan that incorrectly shows access to the parking spaces on the east side of the building via an "Alley" that did not exist.
  - Because the plan was inaccurate and there is no legal access to the parking spaces, the City rescinds the 2004 approval of the parking spaces.
  - The use of the parking spaces must cease. In addition, the City would allow the owner of 2420 University to take actions that would block access to the parking spaces, including building a fence along the shared property line.
7. Staff later determined that the building at 2446 University has enough off-street parking without the 10 parking spaces along the east side of the building: 126 spaces are provided and 114 spaces are required.
8. On August 23, 2010, the owner of 2446 University Avenue filed an appeal of staff's determination that the parking spaces on the east side of the building were not legal and could not be used. The appeal contends that:

"The parking on the 2446 University Avenue property has been used this way since the building was constructed 50 years ago. The City previous[ly] provided its approval of the parking for 2446 University Avenue. If there is an issue with the use of the parking spaces, it is a private dispute between the 2446 University Avenue property owner and the neighboring property owner and does not and should not involve the City."
9. In response to the issues raised in the appeal:

- Staff did not find any evidence that the area east of the building was used for parking prior to a 2006 aerial photo that shows cars parked in the spaces that were shown on the 2004 site plan.
- The site plan approved by the City in 2004 was primarily about paving an area south of the building so it could be used for parking. The City accepted the parking spaces shown on the east side of the building based on the assumption that access was provided to these spaces over an area incorrectly identified on the plan as “Approx. Alley Location (Irregular)”
- The City became involved in the matter when the owner of 2420 University Avenue asked City staff about the status of the parking spaces and what the City’s position would be if he erected a fence along his property line or took steps to block access across his property to the spaces.

H. **STAFF RECOMMENDATION:** Based on the above findings, staff recommends denial of the appeal of a determination by the Zoning Administrator that 10 parking spaces on the east side of the building at 2446 University Avenue cannot be used or counted for zoning purposes because the only access to these parking spaces is across the adjacent property.

**WILKERSON & HEGNA, P.L.L.P.**

A PROFESSIONAL LIMITED LIABILITY PARTNERSHIP  
ATTORNEYS AT LAW

ONE CORPORATE CENTER III, SUITE 300  
7300 METRO BOULEVARD  
EDINA, MN 55439-2302

TELEPHONE 952-897-1707  
FAX 952-897-3534

EMAIL: KHEGNA@WILKERSONHEGNA.COM

ATTORNEYS:

GARY C WILKERSON, P.A.  
KYLE J HEGNA, P.A.  
JEFFREY W JACOBS  
TODD J BAUMGARTNER  
LISA M. ASHLEY  
CHRISTOPHER J JOHNSTON

OUR FILE NO 25169

PARALEGALS:

JOANN K BERG  
JOANN N YOUNG

September 16, 2010

**VIA PERSONAL DELIVERY**

City of Saint Paul  
Department of Planning and  
Economic Development  
Attn: Planning Commission  
25 West Fourth Street, 14<sup>th</sup> Floor  
Saint Paul, MN 55102-1634

**RE: 2446 UNIVERSITY AVENUE  
APPEAL OF A DECISION BY THE ZONING ADMINISTRATOR  
FILE NO.: 10-797-728**

**I. Factual Background**

**a. *Property History***

2446 University Ave., L.L.C. ("2446 University") owns the property at issue in this appeal, located at 2446 University Avenue, Saint Paul, MN 55114 (the "Property"). In 2004, Site Plan 04-147310 (the "Plan") was submitted to the City of Saint Paul (the "City") in order to obtain approval to create several parking spots located on the east side of the Property. The Plan was approved by Zoning Specialist Tom Beach (hereinafter "Mr. Beach") in a letter dated October 31, 2004. The approval was subject to certain conditions, including site improvements, permits from four different City departments, along with a time limit for completion and an inspection. The parking spaces were constructed, the Plan was approved and the parking spaces have been used ever since without incident.

Moreover, the area occupied by the parking spaces has been used to park vehicles since the building was constructed approximately fifty (50) years ago. In a letter dated August 12, 2010, Mr. Beach rescinded his approval of the Plan based on objections from the owner of the neighboring property located at 2420 University Ave. (hereinafter “2420 University”). Pursuant to section 61.701 of the Saint Paul City Municipal Code, 2446 University filed this appeal challenging Mr. Beach’s decision. The only reason the Zoning Committee Staff has given in support of its request to deny the appeal is because “. . . the only access to [the] parking spaces is across the adjacent property.”<sup>1</sup>

## **II. Issues**

1. Was Mr. Beach within his authority to rescind his 2004 site plan approval of the parking spaces and require 2446 University to obtain an easement from 2420 University?

*Under Title VIII of the Saint Paul City Code, Mr. Beach exceeded the scope of his authority by rescinding his 2004 approval of the parking spaces because the reasons for the rescission involves a private property dispute between 2446 University and 2420 University and the dispute is not a valid reason under the Zoning Code to rescind the approval. 2446 University does not have to obtain an easement in order to continue to use the parking spaces because 2446 University has lawful access to the parking spaces as they are located on the Property.*

## **III. Analysis**

### ***a. Standard of Review***

As a preliminary matter, it is important to note the standard of review that Minnesota courts use in reviewing the decisions of administrative agencies. In short, administrative agencies are prohibited from making decisions that are arbitrary and capricious.<sup>2</sup> An agency ruling is arbitrary and capricious if the agency (1) relied on factors not intended by the legislature; (2) entirely failed to consider an important aspect of the problem; (3) offered an explanation that runs counter to the evidence; or (4) the decision is so implausible that it could not be explained as a difference in view or the result of the

---

<sup>1</sup> Zoning Committee Staff Report, ¶ H.

<sup>2</sup> *VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503 (Minn. 1983).

agency's expertise.<sup>3</sup> Moreover, on appeal from a zoning decision, the courts determine whether the municipality's action was reasonable.<sup>4</sup> The decision by the municipality must be "legally sufficient and supported by the facts."<sup>5</sup> Zoning ordinances are strictly construed "against the city and in favor of the property owner."<sup>6</sup> In this case, the Planning Commission has failed to make a reasonable decision, and its conclusions are arbitrary and capricious because the Planning Commission has failed to consider important facts and has relied on factors that are outside the authority of the Planning Commission.

***b. Saint Paul Zoning Code***

Title VIII, Chapters 60 through 69 of the Saint Paul City Municipal Code (the "Zoning Code") governs Mr. Beach's decision to approve, and then rescind, the Plan at issue on this appeal. To begin with, section 60.103 provides the intent and purpose of the Zoning Code. The intent and purpose of the Zoning Code is outlined in several paragraphs of section 60.103, but generally the primary purpose is "to promote and to protect the public health, safety, morals, aesthetics, economic viability and general welfare of the community" and "to regulate the location, construction, reconstruction, alteration and use of buildings, structures and land."<sup>7</sup> Specifically as it applies to this appeal, the stated purpose of the Zoning Code is "[t]o lessen congestion in the public streets by providing for off-street parking of motor vehicles and for off-street loading and unloading of commercial vehicles."<sup>8</sup> Furthermore, section 63.304 of the Zoning Code provides that parking location for nonresidential off-street parking "shall be...on the same zoning lot as the building it is intended to serve."

***c. The Planning Commission has exceeded its authority under Title VIII***

Section 61.402 of the Zoning Code details the requirements for submitting a Site Plan Review, along with the standards of review and approval that must be used by the Planning Commission. In

---

<sup>3</sup> *In re Administrative Order Issued to Wright County*, 2010 WL 2650520.

<sup>4</sup> *Honn v City of Coon Rapids*, 313 N.W.2d 409, 417 (Minn. 1981)

<sup>5</sup> *C.R. Investments, Inc. v. Village of Shoreview*, 304 N.W.2d 320, 325 (Minn. 1981)

<sup>6</sup> *Amcon Corp. v City of Eagan*, 328 N.W.2d 66 (Minn. 1984).

<sup>7</sup> See § 60.103(a) – (t); 60.103(a) and (d).

<sup>8</sup> § 60.103(g).

reviewing a site plan, the Planning Commission “shall consider and find that the site plan is consistent with: the City’s comprehensive plan, applicable ordinances, preservation of the City’s historical characteristics,” among other important considerations.<sup>9</sup> Nothing in the Plan violated the City’s comprehensive plan, local ordinances, or undermines the City’s historical characteristics.

Moreover, specifically at issue in this appeal, the planning commission must also consider: (i) protection of adjacent and neighboring properties through reasonable provision for such matters as surface water drainage, sound and sight buffers, preservation of views, light and air, and those aspects of design which may have substantial effects on neighboring land uses; (ii) the arrangement of buildings, uses and facilities of the proposed development in order to assure abutting property and/or its occupants will not be unreasonably affected; and (iii) safety and convenience of both vehicular and pedestrian traffic both within the site and in relation to access streets, including traffic circulation features, the locations and design of entrances and exits and parking areas within the site.<sup>10</sup> The Zoning Code directs the Planning Commission to consider the above-listed factors – they are not mere suggestions.

*i. There is no substantial effect on 2420 University*

As to the first factor listed above, the Planning Commission simply cannot point to any substantial effects on the neighboring land use. There is an access easement along the neighboring property to the east of the Property. 2420 University’s tenants actually park within the access easement cited in the Zoning Committee Staff Report, and they have done so for years. If 2420 University’s tenants were to actually park within the small strip of land cited in the Staff Report, traffic flow from the alley would be severely hampered.<sup>11</sup> All the current property owners have used the alley for parking in its current configuration for years without any problems. The Staff Report focuses on cars

---

<sup>9</sup> § 61.402 (c)(1), (2) and (3) (Factors such as energy conservation, sewer run-off needs, landscaping, site accessibility in accordance with ADA, and erosion control; such factors are inapplicable to this appeal).

<sup>10</sup> § 61.402 (c)(4), (5) and (7).

<sup>11</sup> § 61.402 (c)(7) (Such an arrangement would not be safe or convenient and violate section 61.402(c)(7)).

parked along the building on the Property, but there are several cars noticeably parked within the access easement, which appear to be vehicles from 2420 University.<sup>12</sup> Not only does this violate the access easement, but such parking violates section 63.304 of the Zoning Code.<sup>13</sup> As the parking is currently configured, there is simply *no effect* on 2420 University in order to reach the parking spaces on the Property.

*ii. There is no unreasonable affect on 2420 University*

As to the second factor, there must be an unreasonable affect on the abutting property. 2420 University uses the easement area to park along the neighboring property's building, just as the Property uses its parking spaces. 2446 University's tenants do not block the alley for any extended period of time, nor is it used to store any materials. The affect on 2420 University is purely negligible. Somewhat outlandishly, the owner of 2420 has stated that he is considering "building a fence along the shared property line."<sup>14</sup> At the same time, the owner of 2420 University continues, as it has for years, to park in the easement area preventing any use of the easement area. Notwithstanding possible Fire Code violations, such a fence would cause unnecessary congestion in the alley, and limit access for trucks and other vehicles accessing other portions of parking and loading docks within the Property. Put simply, the parking spaces at issue do not have a substantial effect on the neighboring land use, or create an unreasonable burden on the neighboring property. In fact, the effects of a few parking spaces are insignificant, and any issue over the location of an easement is a purely private dispute between neighbors. As the Planning Commission can see, this creates a situation of the committee over stepping its authority and acting as a court of law if it rules on the rights of the property owners. Nothing in the Zoning Code authorizes the Planning Commission to rescind its approval based on the requirement that the property owner must obtain an easement to access her own property.

---

<sup>12</sup> Zoning Committee Staff Report, Satellite Picture 2009; *See* Attached photos, 2010

<sup>13</sup> "Off-street parking for other than residential use shall be . . . on the same zoning lot as the building it is intended to serve."

<sup>14</sup> Zoning Committee Staff Report, ¶ G(6).



**iii. Use of the parking spaces is safe and convenient**

The third factor the Planning Commission must consider is the safety and convenience of both vehicular and pedestrian traffic.<sup>15</sup> It is safe and convenient to allow 2446 University to use the parking spaces as currently configured because they allow 2446 University tenants to pull right up along side the Property and ease congestions in other areas. It is convenient for 2446 University tenants to continue using the parking spaces as they have been used for years. The reason cited by Mr. Beach for revoking the Plan is based purely on a private property dispute and had nothing to do with the safety and convenience of the Plan.

**iv. The grounds for revocation are unreasonable under Minnesota law**

The Minnesota Court of Appeals has previously held that when a local municipality bases its zoning decision on grounds that are “private matters to be resolved by [private] parties,” the municipality does not have a reasonable basis on which to base their decision.<sup>16</sup> In *Odell v. City of Eagan*, the landowners sought a variance from the City of Eagan and were denied. The denial was based on the fact that the variance would violate a restrictive covenant within the subdivision. The Court found that fact to be an insufficient basis on which to deny the landowner’s application for a variance, because the City of Eagan did not have any authority to base its decision on purely private party interests, nor would the City of Eagan even be a party to that potential dispute between private parties.

*Odell* is similar to this case because Mr. Beach based his decision to rescind the parking spots based on the complaints of another private property owner, rather than under any legal authority. Title VIII does not give the City the authority to mandate that a private real estate transaction take place between two private property owners, under the veil of the zoning ordinance, that in no way furthers

---

<sup>15</sup> § 61.402 (c)(7).

<sup>16</sup> *Odell v. City of Eagan*, 348 N.W.2d 792 (Minn. App. 1984).

the purpose of the ordinance. If the owner of 2420 University has a problem with the parking spaces on 2446 University, then that is an issue to be taken up by 2420 University, not the City.

The requirement that 2446 University must obtain an easement from the neighboring property owners is arbitrary and capricious and not supported by law. Title VIII does not authorize or require the City to be the guardians of Ramsey County's Recording Office, nor ensure that every piece of private property has the proper documentation on record in order to cross onto another's land. If the owner of 2420 University disputed 2446 University's use of the property, it would be up to them to initiate an action against 2446 University in court. Nowhere in Title VIII does it allow a zoning specialist to revoke a previously approved site plan due to the fact that a private real estate transaction has not taken place. Furthermore, the Planning Commission has failed to even consider the actions of the owner of 2420 University, and question why it is acceptable to block the access easement in the first place. Cars have parked along the east side of the Property for over fifty years without issue. Notwithstanding a few blurry satellite pictures from unspecified dates, the Zoning Committee cannot provide any basis for its conclusion that no cars parked in the area. Simply put, the best they could do was state a year along with a blanket conclusory statement. Even worse, the Zoning Committee admits that their own satellite photos are "not clear," but then go on to state that there is "no evidence that cars have been parked in the area."<sup>17</sup> What is clear is that the Zoning Committee has taken sides in a private property dispute based solely on the complaints of a private citizen without any regard for the Zoning Code.

#### **IV. Conclusion**

In conclusion, the Planning Commission has reached an unreasonable and arbitrary conclusion in this matter. Not only has the Planning Commission failed to consider all facts in this matter, it has also failed to cite to applicable law justifying its decision. In fact, its decision runs counter to

---

<sup>17</sup> Zoning Committee Staff Report, ¶ G(5).

Minnesota law in that a municipality cannot make its zoning decision based on “private matters to be resolved by private parties.”<sup>18</sup> The parking spaces comply with section 63.304 Zoning Code as the parking spaces are nonresidential, off-street parking, and they are on the same zoning lot as the building it is intended to serve. Certainly, keeping the parking spaces as they have been used will lessen congestion in the public streets by providing for off-street parking of motor vehicles and for off-street loading and unloading of commercial vehicles, as intended by the Zoning Code.<sup>19</sup>

Respectfully submitted,

**WILKERSON & HEGNA, P.L.L.P.**

By: 

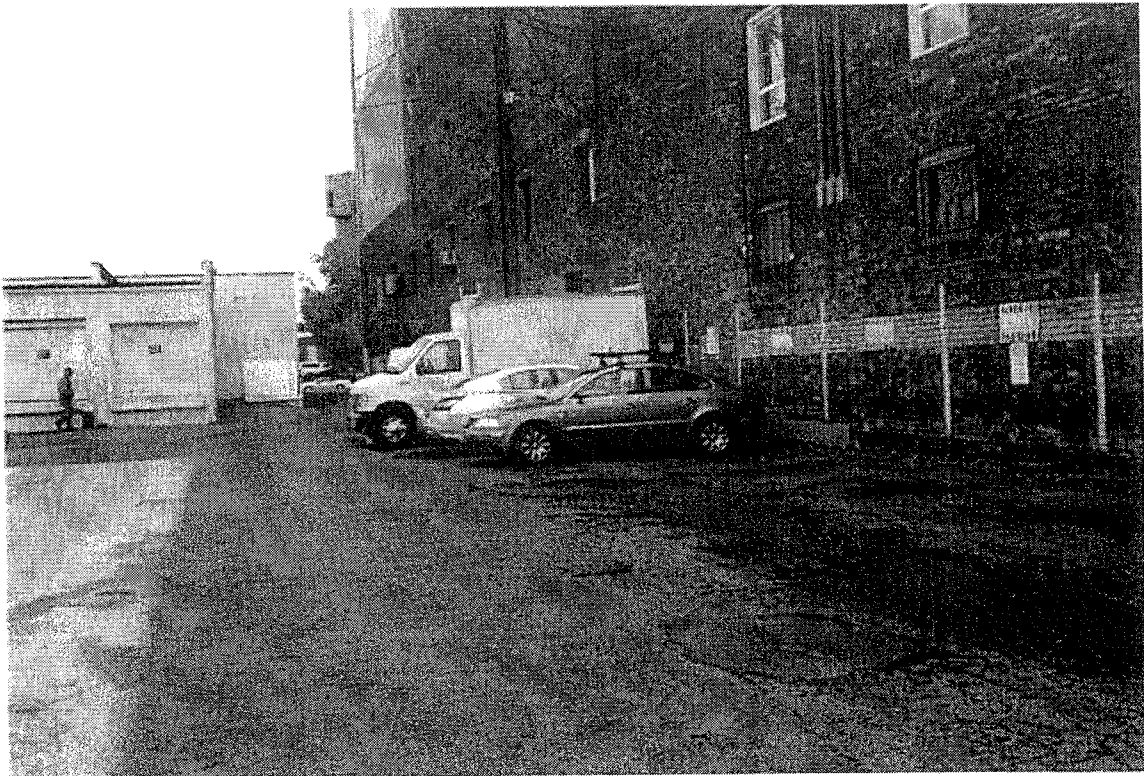
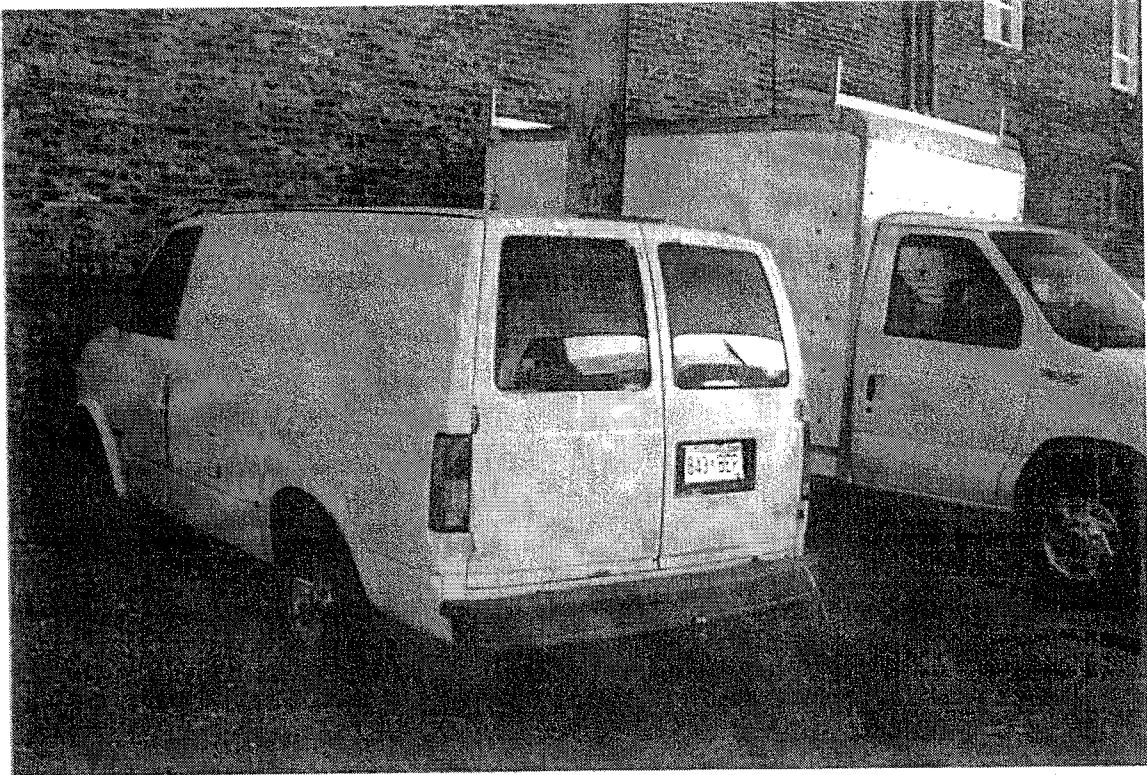
Kyle J. Hegna (#20240X)  
One Corporate Center III  
7300 Metro Blvd., Suite 300  
Edina, MN 55439  
Phone: (952) 897-1707

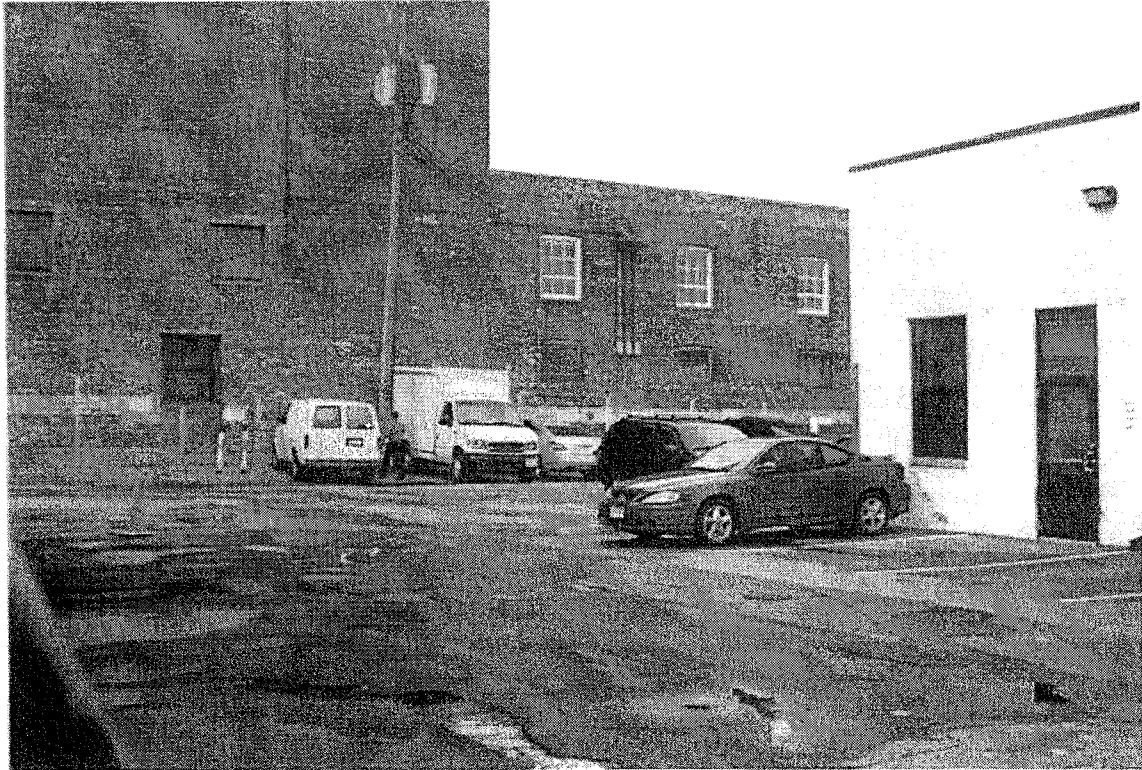
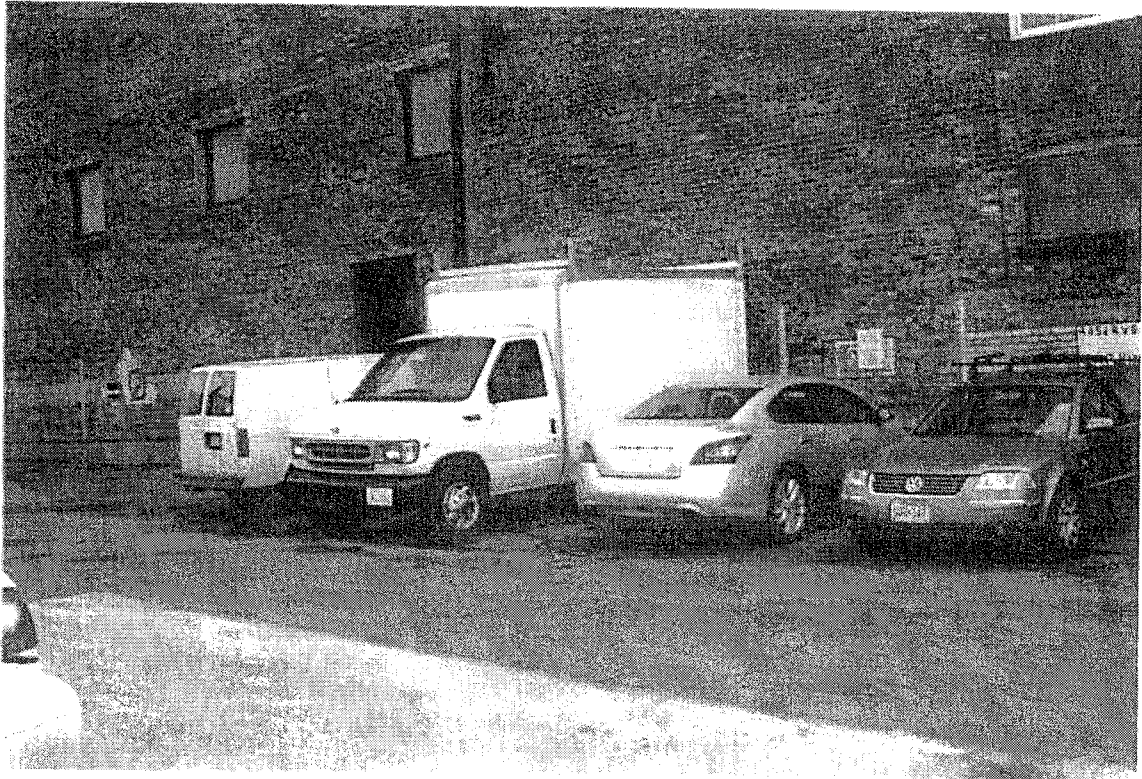
9-15-10

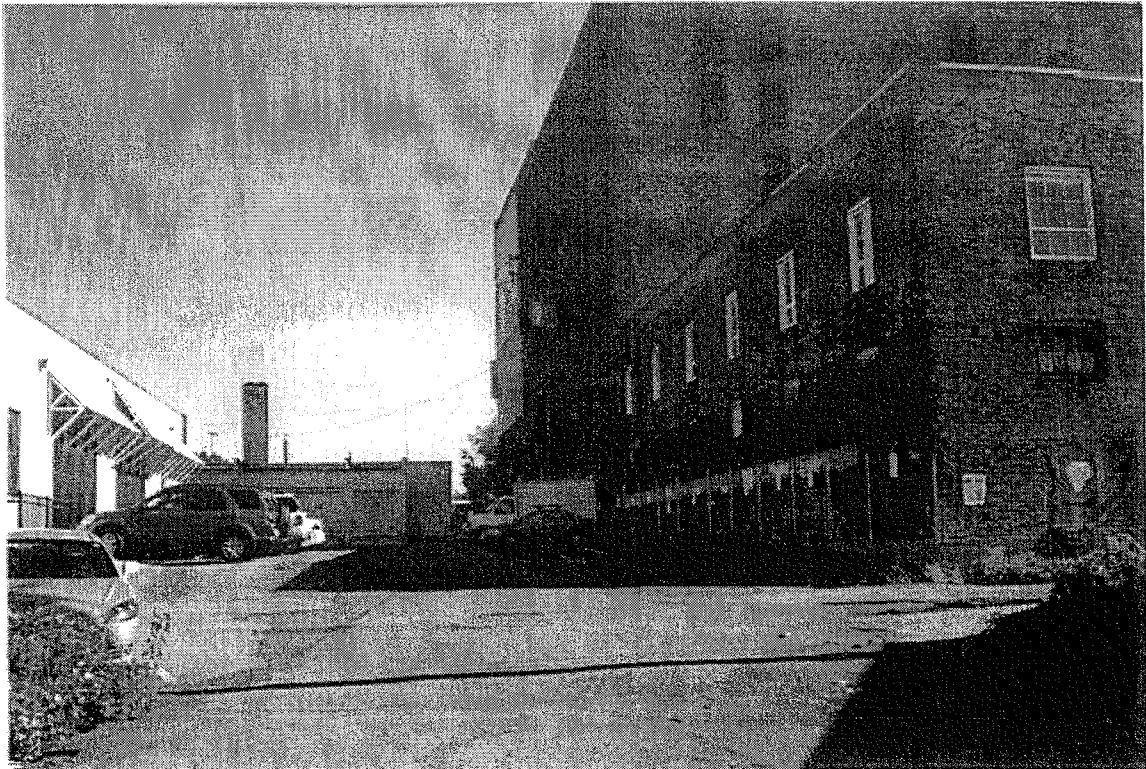
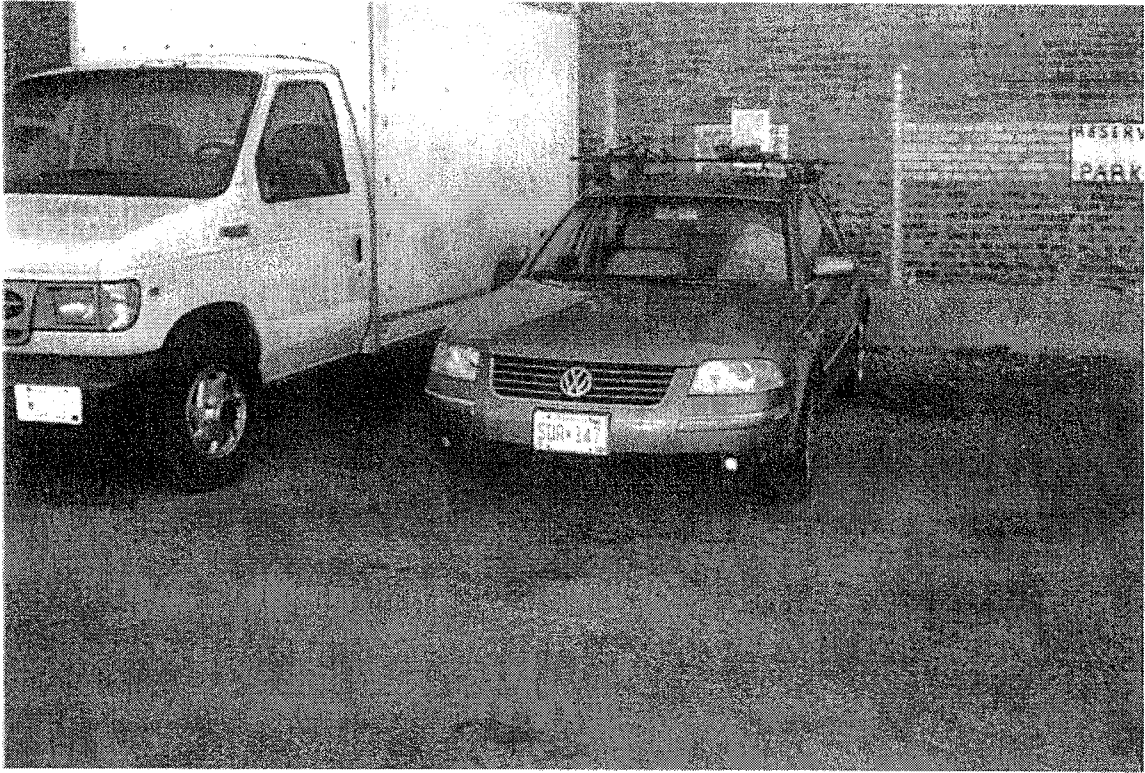
Dated

<sup>18</sup> See *Odell v. City of Eagan*, 348 N.W.2d 792 (Minn. App. 1984).

<sup>19</sup> See § 60.103(g).









**WILKERSON & HEGNA, P.L.L.P.**

A PROFESSIONAL LIMITED LIABILITY PARTNERSHIP  
ATTORNEYS AT LAW

ONE CORPORATE CENTER III, SUITE 300  
7300 METRO BOULEVARD  
EDINA, MN 55439-2302

TELEPHONE: 952-897-1707

FACSIMILE: 952-897-3534

EMAIL: LASHLEY@WILKERSONHEGNA.COM

ATTORNEYS:

GARY C WILKERSON, P A  
KYLE J HEGNA, P A  
JEFFREY W JACOBS  
TODD J BAUMGARTNER  
LISA M ASHLEY  
CHRISTOPHER J JOHNSTON

OUR FILE NO 25169

PARALEGALS:

JOANN K BERG  
JOAN N YOUNG

August 23, 2010

**VIA HAND DELIVERY**

Zoning Administration  
Department of Safety and Inspections (DSI)  
375 Jackson Street, Suite 220  
St. Paul, MN 55101

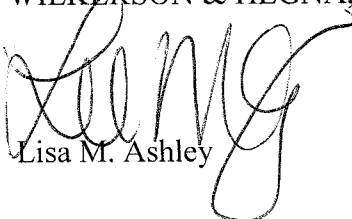
**RE: APPEAL: Parking Spaces for 2446 University Avenue**

Dear Sir or Madam:

This firm represents the owner of the 2446 University Avenue property, with respect to the above-referenced matter. Our client hereby appeals the decision contained in your August 12, 2010 correspondence, rescinding a 2004 approval regarding the parking spaces, and requests a hearing before the Board of Zoning Appeals. The Application for Appeal and applicable fee are enclosed. Please contact me if you have any questions.

Very truly yours,

WILKERSON & HEGNA, P.L.L.P.



Lisa M. Ashley

LMA\lma  
Enclosures





**APPLICATION FOR APPEAL**

*Department of Safety and Inspections*  
375 Jackson Street, Suite 220  
Saint Paul, MN 55101-1806  
651-266-9008

**Zoning office use only**

File no. 10-797728

Fee 435

Tentative hearing date:

9/18/10

*at Zoning Comm. Hec*

**APPLICANT**

Name Wilkerson & Hegna, PLLP - Kyle J. Hegna  
Address 7300 Metro Blvd., Suite 300  
City Edina St. MN Zip 55439 Daytime phone 952-897-1707  
Name of owner (if different) Patricia Jordan

**PROPERTY LOCATION**

Address 2446 University Avenue, St. Paul, MN  
Legal description: See attached Exhibit A.  
*(attach additional sheet if necessary)*

**TYPE OF APPEAL:** Application is hereby made for an appeal to the:

- <sup>Planning Commission</sup> Board of Zoning Appeals       City Council

under the provisions of Chapter 61, Section 701, Paragraph \_\_\_\_\_ of the Zoning Code, to appeal a decision made by the Zoning Specialist, Tom Beach

on August 12, 2010, 200\_\_\_\_. File number: 04-147310  
*(date of decision)*

**GROUND FOR APPEAL:** Explain why you feel there has been an error in any requirement, permit, decision or refusal made by an administrative official, or an error in fact, procedure or finding made by the Board of Zoning Appeals or the Planning Commission.

See attached Exhibit B.

*(attach additional sheet if necessary)*

Applicant's signature

Date 08-23-10 City agent

Exhibit A  
Grounds for Appeal

The grounds for this appeal include, but are not limited to the following: The parking on the 2446 University Avenue property has been used this way since the building was constructed approximately fifty (50) years ago. The City previously provided its approval of the parking for 2446 University Avenue. If there is any issue with the use of the parking spaces, it is a private dispute between the 2446 University Avenue property owner and the neighboring property owner, and does not and should not involve the City.

570684

Document# 2094316  
Certified Filed On 11/30/2009 1600  
Registrar of Titles, Ramsey County, MN  
Certificate# 570684  
1.2.3 474675

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (the "Agreement") by and between 2446 University Avenue, LLC, a Minnesota limited liability company, ("Grantee") and Mark R. Cemensky and Carol A. Cemensky, husband and wife, ("Grantor") (collectively, the "Parties" or individually a "Party") is effective on the date last executed by Grantor and Grantee.

RECITALS:

A. Grantee is the owner of certain real property legally described on Exhibit A, attached hereto and made a part hereof by this reference, (the "2446 Property").

B. Grantor is the owner of certain real property legally described on Exhibit B, attached hereto and made a part hereof by this reference, (the "Cemensky Property", collectively, the 2246 Property and the Cemensky Property are referred to herein as the "Properties").

G. There is an existing driveway located on the land legally described on Exhibit C, attached hereto and made a part hereof by this reference, (the "Easement Area"), which historically has been and currently is used for access purposes.

H. The Parties desire to create an easement to allow Grantee to continue to use the Easement Area for access purposes.

I. The Parties desire to set forth the various rights and responsibilities of each with respect to the use, repair and maintenance of the Easement.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee, its successors and/or assigns, a non-exclusive, perpetual easement for ingress and egress purposes over, under and across the Easement Area subject to the terms and conditions hereof (the "Easement").

29.29.23.34. 0059  
29.29.23.34. 0081

2. Permitted Users. The Easement may be used by the Parties, their successors and/or assigns, and their tenants, employees and invitees in common.

3. Maintenance and Repair of the Easement Area. Grantor shall be responsible for the maintenance and repair of the Easement Area, including, but not limited to, striping, repaving and snow removal. All costs and expenses related to said maintenance and repair of the Easement Area shall be shared equally by Grantor and Grantee. Notwithstanding the foregoing, any repair or maintenance costs exceeding \$10,000.00 for a single project or \$10,000.00 for any calendar year shall require the prior, written approval of Grantee, which approval shall not be unreasonably withheld.

4. Enforcement. Each Party shall have the right to enforce, by any proceeding by law or in equity, against any person or persons violating or attempting or threatening to violate any term or condition in this Agreement, either to restrain or prevent the violation or to obtain any other relief. Failure by a Party to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. If a suit is brought to enforce this Agreement, the prevailing Party shall be entitled to recover its costs, including reasonable attorney fees, from the non-prevailing Party.

5. Covenants Run with Land. All of the terms and conditions in this Agreement, including the benefits and burdens, shall run with the Properties and shall be binding upon, inure to the benefit of, and be enforceable by the Parties, their successors and/or assigns. The Easement is an easement appurtenant to the 2446 Property and may not be transferred separately, or severed therefrom. Furthermore, the benefits of the Easement shall not be extended to any property other than the 2446 Property without the written consent of the Parties. A Party, its successor and/or assign, shall cease to have further liability under this Agreement with respect to facts or circumstances first arising after such Party has transferred its fee simple interest in its portion of the Properties, except, however, for obligations that accrued during the Party's period of ownership.

6. Non-Use. Non-use or limited use of the easement rights granted in this Agreement shall not prevent a Party from later use of the easement rights to the fullest extent authorized in this Agreement.

7. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Minnesota.

8. Entire Agreement. This Agreement sets forth the entire understanding of the Parties and may not be changed except by a written document executed and acknowledged by the Parties and duly recorded in both the office of the Ramsey County, Minnesota Recorder and Registrar of Titles.

9. Notices. All notices shall be delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the other Party at that Party's last known address. If the other Party's address is not known to the Party desiring to send a notice, the Party sending the

notice may use the address to which the other Party's property tax bills are sent. A Party may change its address for notice by providing written notice to the other Party.

10. Invalidity. If any term or condition of this Agreement, or the application of this Agreement to any person or circumstance, shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.

11. Waiver. No delay or omission by a Party in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement shall be construed to be a waiver of the right or power. A waiver by a Party of any of the obligations of the other Party shall not be construed to be a waiver of any breach of any other terms or conditions of this Agreement.

12. No Public Dedication. Nothing in this Agreement shall be deemed to be a gift or dedication of any portion of the Easement to the general public or for any public purpose whatsoever. The Parties agree to cooperate with each other and to take such measures as may be necessary to prevent the dedication to the public of the Easement Area, whether by express grant, implication, or prescription. Such measures shall not, however, unreasonably interfere with the easement rights granted in this Agreement.

13. Authority. The undersigned persons executing this Agreement represent and certify that: (i) they are duly authorized and fully empowered to execute and deliver this Agreement, (ii) they have full power and authority to create, declare and convey the easements granted herein and (iii) that all necessary action for the creation and declaration of this Agreement has been taken and done.

14. Headings. The headings used in this Agreement are used for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision or paragraph of thereof.

15. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original and all of which together constitute one and the same instrument. In addition, signature and acknowledgment pages from any counterpart may be removed and attached to any other counterpart so that any counterpart with all such signature and acknowledgment pages attached shall be deemed to be a complete and fully executed original.

16. Registration. Grantor hereby agrees to allow Grantee to register the Easement in a torrens proceeding, at Grantee's sole expense. Grantor hereby further agrees to execute any and all documents required of Grantor, as the owner of the Cemensky Property, by the Registrar of Titles to complete said easement registration.

IN WITNESS WHEREOF, the parties have hereunto set their hands effective the date and year last written below.

[Remainder of page purposely blank. Signature pages follow.]

7

2446 UNIVERSITY AVENUE, LLC'S  
SIGNATURE PAGE  
TO  
EASEMENT AGREEMENT BY AND BETWEEN

2446 UNIVERSITY AVENUE, LLC  
AND  
MARK R. CEMENSKY AND CAROL A. CEMENSKY

2446 UNIVERSITY AVENUE, LLC,  
a Minnesota limited liability company

By: Patricia J. Jordan  
Patricia J. Jordan

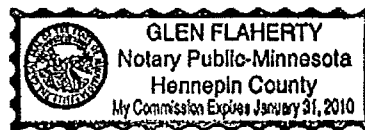
Its: Chief Manager

Date: June 24, 2009

STATE OF MINNESOTA )  
                                  )ss.  
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this 24th day of JUNE, 2009, by Patricia J. Jordan, the Chief Manager of 2446 University Avenue, LLC, a Minnesota limited liability company, on behalf of said entity. :

Glen Flaherty  
Notary Public



MARK R. CEMENSKY AND CAROL A. CEMENSKY'S  
SIGNATURE PAGE  
TO  
EASEMENT AGREEMENT BY AND BETWEEN  
2446 UNIVERSITY AVENUE, LLC  
AND  
MARK R. CEMENSKY AND CAROL A. CEMENSKY

Mark R. Cemensky  
Mark R. Cemensky  
Carol A. Cemensky  
Carol A. Cemensky  
Date: 10/19, 2009

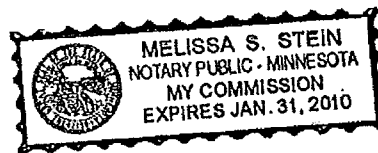
STATE OF MN )  
COUNTY OF Dakota )ss.

The foregoing instrument was acknowledged before me this 19 day of Oct., 2009, by Mark R. Cemensky and Carol A. Cemensky, husband and wife.

Melissa S. Stein  
Notary Public

This instrument was drafted by:

WILKERSON & HEGNA, P.L.L.P.  
One Corporate Center III, Suite 300  
7300 Metro Boulevard  
Edina, MN 55439-2302



M:\Clients\Jordan, Patricia\24604 Jordan-2446 Univ Quiet Title\24604 Driveway Esmt (5).doc



EXHIBIT A  
Legal Description of the 2446 Property

Parcel 1:

Lots 1, 2, 3, 4 and 5, Block 7, Baker's Addition and the adjoining alley, vacated, which alley lies between the extension across it of the West line of said Lot 4 and the Westerly line of said Lot 1, and

Lot 6, Block 7, Baker's Addition, and

That part of Lot 7, Block 7, Baker's Addition, lying Northeasterly of a line extending Southeasterly, parallel to the Northeasterly line of Lot 1, from a point on the North line of said Lot 7 distant 47.37 feet East from the Northwest corner of said Lot 7, and

That part of the Southeast Quarter of the Southeast Quarter of the Southwest Quarter of Section 29, Township 29, Range 23 described as beginning at the angle point in the East line of Lot 7, Block 7, Baker's Addition; thence Northeasterly along the Easterly line of said Block 7 to a point 137.05 feet Southwesterly from the most Easterly corner of Lot 1, said Block 7; thence at a right angle Southeasterly 170.13 feet; thence at a right angle Southwesterly to the Easterly line of said Block 7; thence Northwesterly to the point of beginning.

AND

Parcel 2:

That part of the Northwesterly 18 feet of Lot 23, Auditor's Subdivision No. 4, that lies Southwesterly of a line drawn parallel with and 150 feet Southwesterly of the Northeasterly line of said Lot 23, and

That part of Lot 23, Auditor's Subdivision No. 4, that lies Southeasterly of the Northwesterly 18 feet thereof, and

Lot 24, Auditor's Subdivision No. 4,

all in Ramsey County, Minnesota

**EXHIBIT B**

**Legal Description of the Cemensky Property**

**The East 94.0 feet of Lot 29, Auditor's Subdivision No. 4, except therefrom the West 57.8 feet of the South 162.95 feet, Ramsey County, Minnesota**

EXHIBIT C  
Legal Description of the Easement Area

An easement 20 feet in width over, under and across the southerly 35 feet of Lot 29, Auditor's Subdivision No. 4, Ramsey County, Minnesota, the centerline of which is described as follows:

Commencing at the point of intersection of the centerline of the 20 foot dedicated alley lying westerly of and adjoining Lot 13, Block 7, Baker's Addition, Ramsey County, Minnesota and the North line of Myrtle Avenue, thence North 117 feet along the centerline of said alley to the point of beginning of said driveway easement centerline, thence northeasterly to a point on the northerly line of the southerly 35 feet of said Lot 29 a distance of 10.37 feet northwesterly at right angles from the southeasterly line of said Lot 29 and there terminating.

AND

An easement over, under and across the South 20 feet of the North 137.05 feet of the West 78 feet of the East 94 feet of Lot 29, Auditor's Subdivision No. 4, Ramsey County, Minnesota.

AND

An easement over, under and across a turning arc on that part of Lot 29, Auditor's Subdivision No. 4, Ramsey County, Minnesota, lying southeasterly of an arc of a circle with a radius of 10 feet, the center point of said arc being 107.05 feet, measured at right angles, southerly of the north line of said Lot 29 and Westerly 26 feet, measured at right angles, of the east line of said Lot 29.

AND

An easement over, under and across a turning arc on that part of Lot 29, Auditor's Subdivision No. 4, Ramsey County, Minnesota, lying northeasterly of an arc of a circle with a radius of 10 feet, the center point of said arc being 147.05 feet, measured at right angles, southerly of the north line of said Lot 29, and Westerly 26 feet, measured at right angles, of the east line of said lot 29.

AND

An easement over, under and across the East 16 feet of the North 265 feet of Lot 29, Auditor's Subdivision No. 4, Ramsey County, Minnesota.







CITY OF SAINT PAUL  
Christopher B. Coleman, Mayor

375 Jackson Street, Suite 220  
St Paul, Minnesota 55101-1806

Telephone: 651-266-8989  
Facsimile: 651-266-9124  
Web: [www.stpaul.gov/dsi](http://www.stpaul.gov/dsi)

August 12, 2010

Patricia Jordan  
2446 University Avenue LLC  
400 Lake Street East  
Minneapolis, MN 55108

RE: Parking spaces for 2446 University Avenue

Dear Ms. Jordan:

In October 2004 I approved a site plan showing parking spaces for your building at 2446 University Avenue, including 10 parking spaces along the east side of the building. These 10 parking spaces are on the 2446 University Avenue property. But cars need to drive on an adjacent area labeled on the site plan as "Approx. Alley Location (Irregular)" to get to these spaces. (See attached site plan and my approval letter.)

It was recently brought to my attention that there is not an alley adjacent to these 10 parking spaces and that cars must drive across your neighbor's property to get to the parking spaces.

My original approval of these parking spaces was based on incorrect information on the site plan that identified an alley. I have not found any evidence that you have an easement or other permission to drive across your neighbor's property to get to these spaces.

*Therefore I am rescinding my 2004 approval of the 10 parking spaces along the east side of the building unless you demonstrate that you have permission for cars to drive on the adjacent property to get to these spaces.*

You must discontinue use of these parking spaces unless you can show that you have legal access to them. In addition, the city will not prohibit the adjacent property owner from taking actions that would physically block access to the 10 parking spaces on the east side your building such as building a fence along the shared property line.

If you feel this decision is in error, you may file an appeal and obtain a hearing before the Board of Zoning Appeals by filing an Application for Appeal and paying the application fees to the Zoning Administrator within (10) days of the date these orders were mailed.

If you have questions, please contact me at 651-266-9086 or [tom.beach@ci.stpaul.mn.us](mailto:tom.beach@ci.stpaul.mn.us)

Sincerely,

Tom Beach  
Zoning Specialist

J:\site plan\Preliminary plans\University 2418 and 2446\Aug 2010 letter about parking and easement.DOC



CITY OF SAINT PAUL  
Randy C. Kelly, Mayor

LOWRY PROFESSIONAL BUILDING  
350 St. Peter Street, Suite 300  
Saint Paul, Minnesota 55102-1510

Telephone: 651-266-9090  
Facsimile: 651-266-9124  
Web: [www.liep.us](http://www.liep.us)

October 31, 2004

Michael Crowe  
Crowe Construction Mangement  
350 St Peter Street Suite 240  
St Paul MN 55102

RE: Approval of Site Plan 04 - 147310  
University Pelham Parking Lot at 2446 University Ave W

Dear Mr. Crowe:

The site plan referenced above is approved subject to the following conditions:

1. **Site improvements** The proposed new parking lot and other site improvements must be installed as shown on the approved site plan.

Existing curb cuts on Pelham that will not be used must be removed and replaced with curb to match the adjacent street frontage. A permit from Public Works is required for this work.

The sidewalk grade must be carried across the new curb cut leading from Pelham to the new parking lot.

2. **Permits** The City permits listed below are required for the work shown on the approved site plan.
  - **Building permit** A permit from this department (651-266-9007) is required.
  - **Sidewalk permit** Work on curbs, driveways and sidewalks in the public right-of-way must be done by a licensed contractor under a permit from Public Works Sidewalk Section (651-266-6120)
  - **Tree planting permit** A permit from the City Forester (651-632-5129) is required for planting trees in the boulevard. There is no charge for this permit.
  - **Obstruction permit** An Obstruction Permit must be obtained from Public Works (651-266-6151) if trucks/equipment will be driving over curbs or if construction will block City streets, sidewalks or alleys.

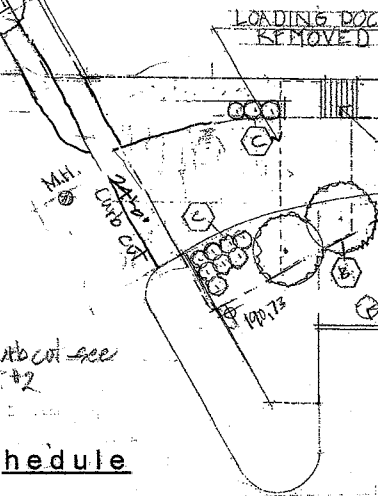
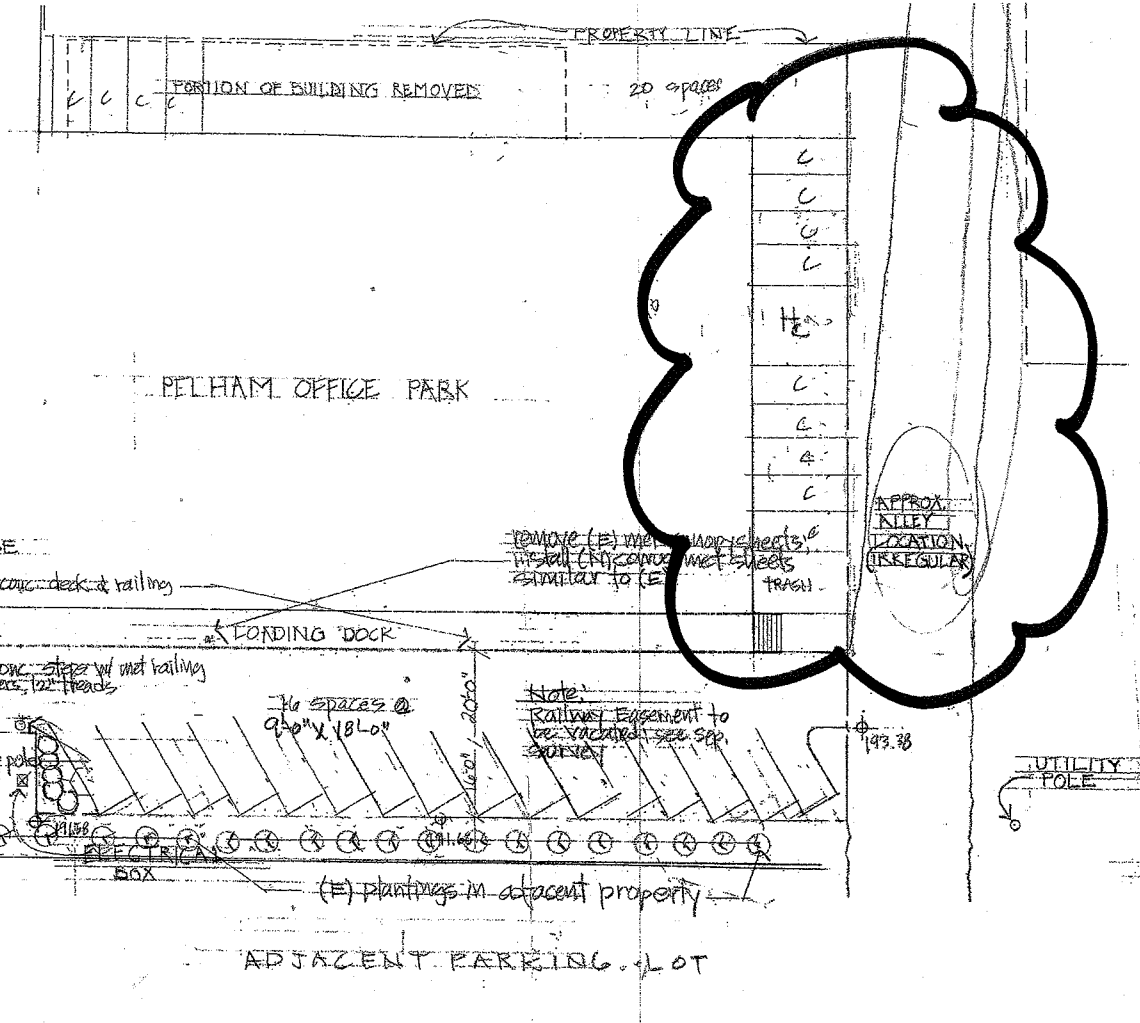
3. **Time limit and inspection** Work covered by this site plan must be completed no later than 7/1/05. A site inspection will be scheduled based on this date. Please call me if you finish before this date.

If you have any questions, you can reach me at 651-266-9086 (phone), 651-266-9099 (fax) or [tom.beach@ci.stpaul.mn.us](mailto:tom.beach@ci.stpaul.mn.us) (e-mail)

Sincerely,

Tom Beach  
Zoning Specialist

yard trees planted in 8' x 20' bed cut out from surface, w/ wet chip bed



Abol see #2

- chedule**
- 2 1/2" diameter
  - 2 1/2" diameter
  - 3'-4' 3' spacing
  - 18" height 3' spacing
  - 3 1/2' 6' spacing

**SITE PLAN APPROVED**  
**DIVISION OF PLANNING**  
**CITY OF ST. PAUL**

By Tom Beach  
 File # 04-147319 Date 10/31/04  
 Any alterations from this plan must be approved by the Planning Commission

SITE PLAN: 1"=30'

onymus, semi-evergreen, fortunei, is 24";  
 canadele gold is 4'





# PARCEL 1

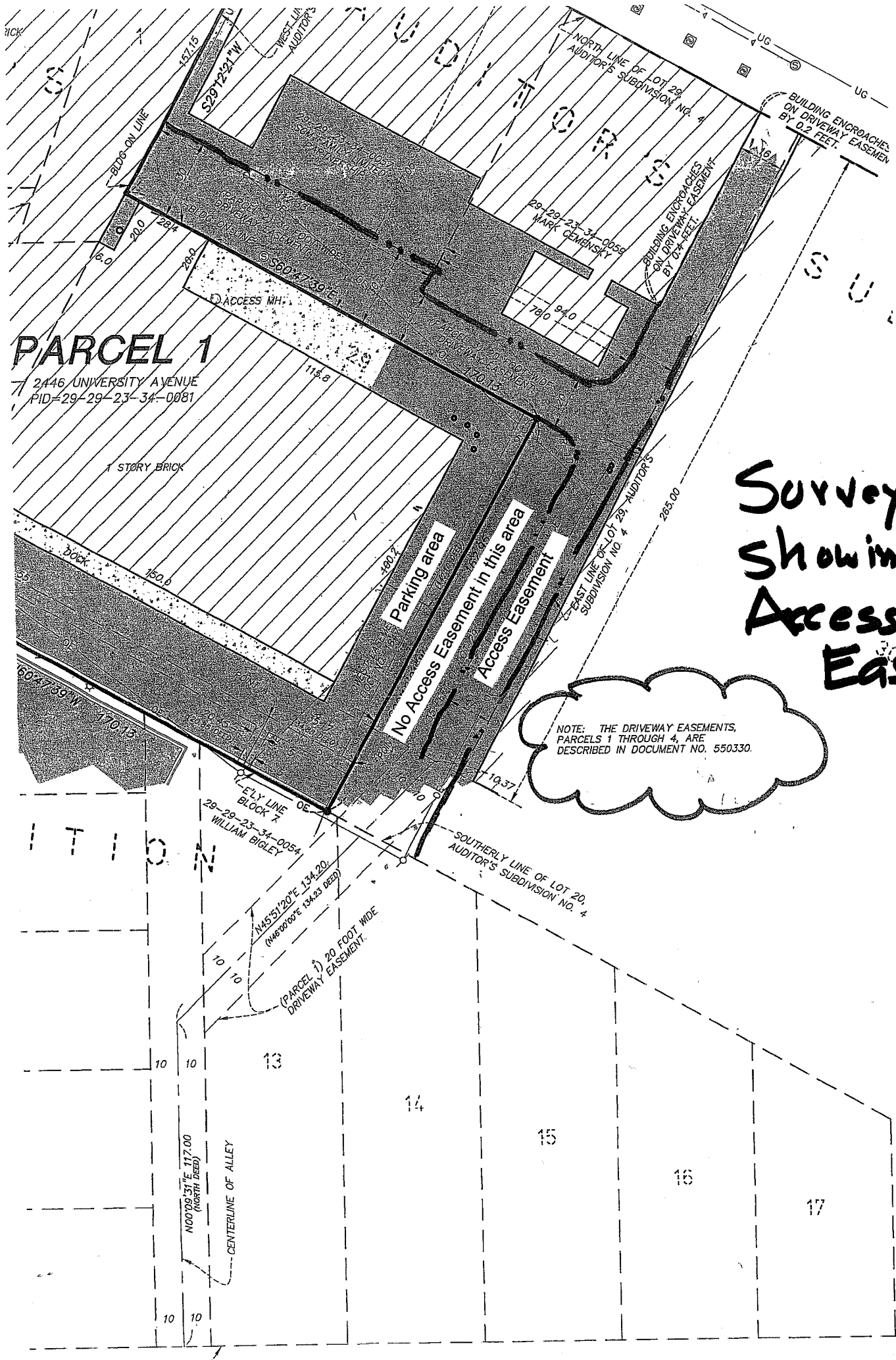
2446 UNIVERSITY AVENUE  
PID=29-29-23-34-0081

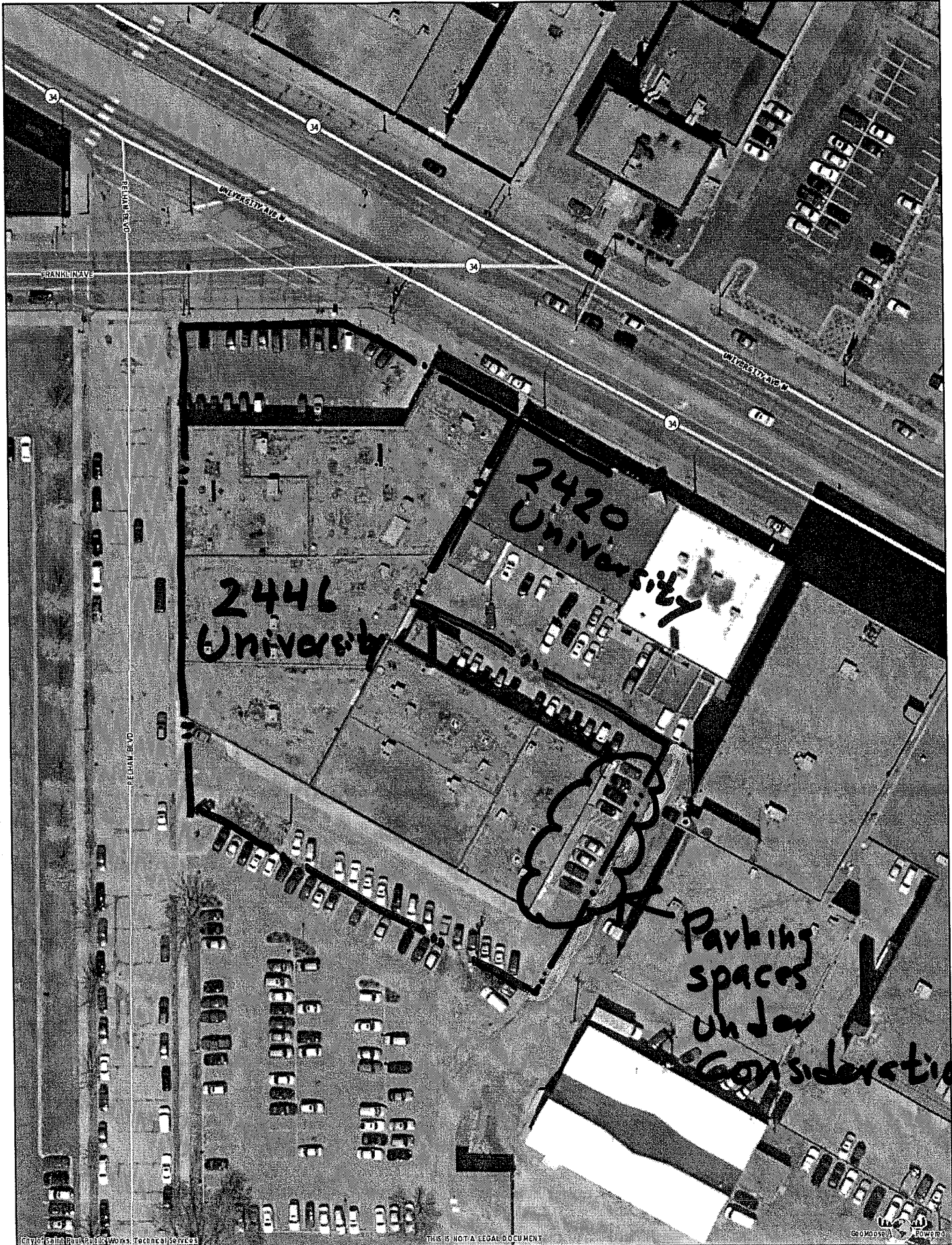
1 STORY BRICK

Parking area  
No Access Easement in this area  
Access Easement

## Survey showing Access Easement

NOTE: THE DRIVEWAY EASEMENTS, PARCELS 1 THROUGH 4, ARE DESCRIBED IN DOCUMENT NO. 550330.





2446  
University

2420  
University

Parking  
spaces  
under  
consideration



2009

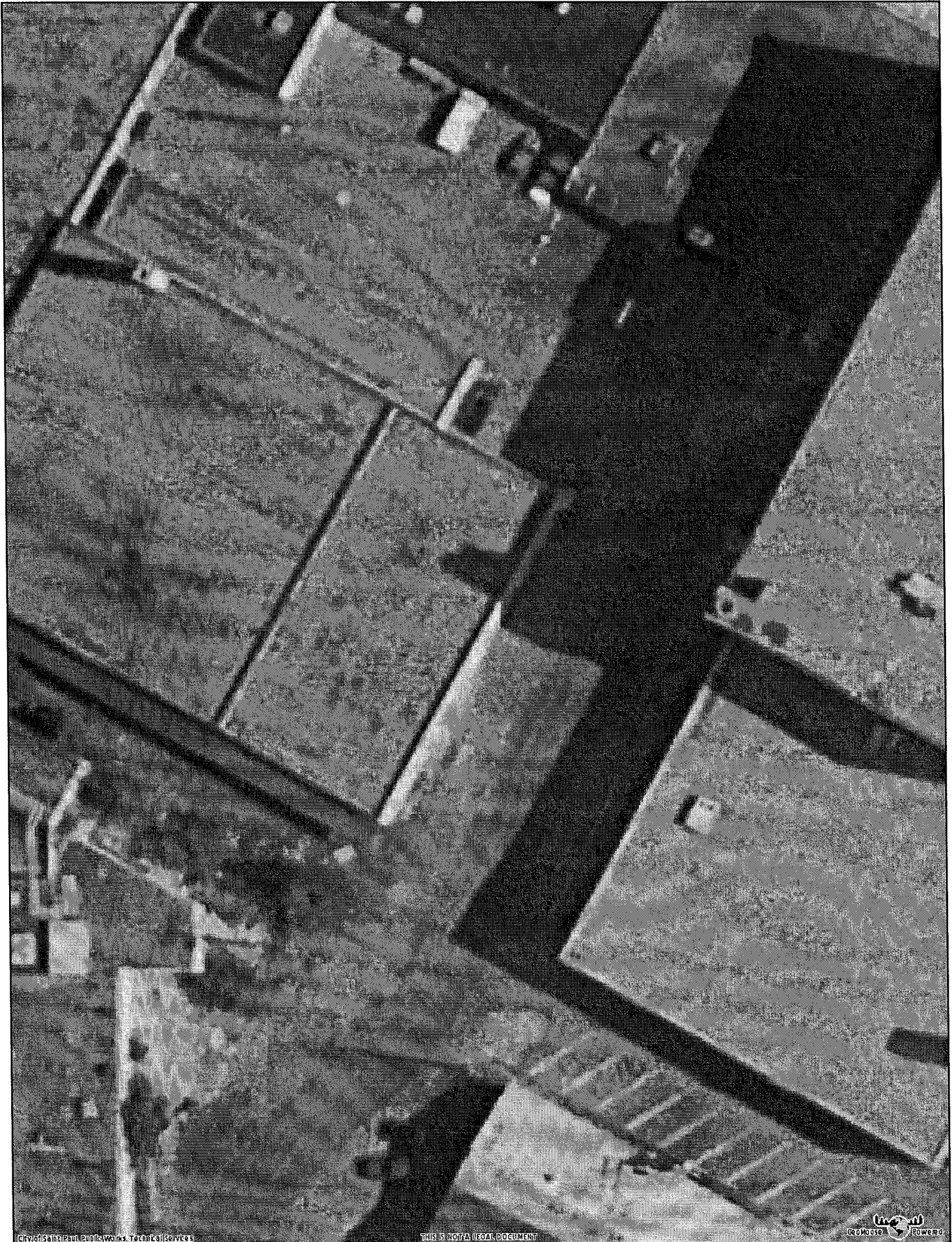




2006

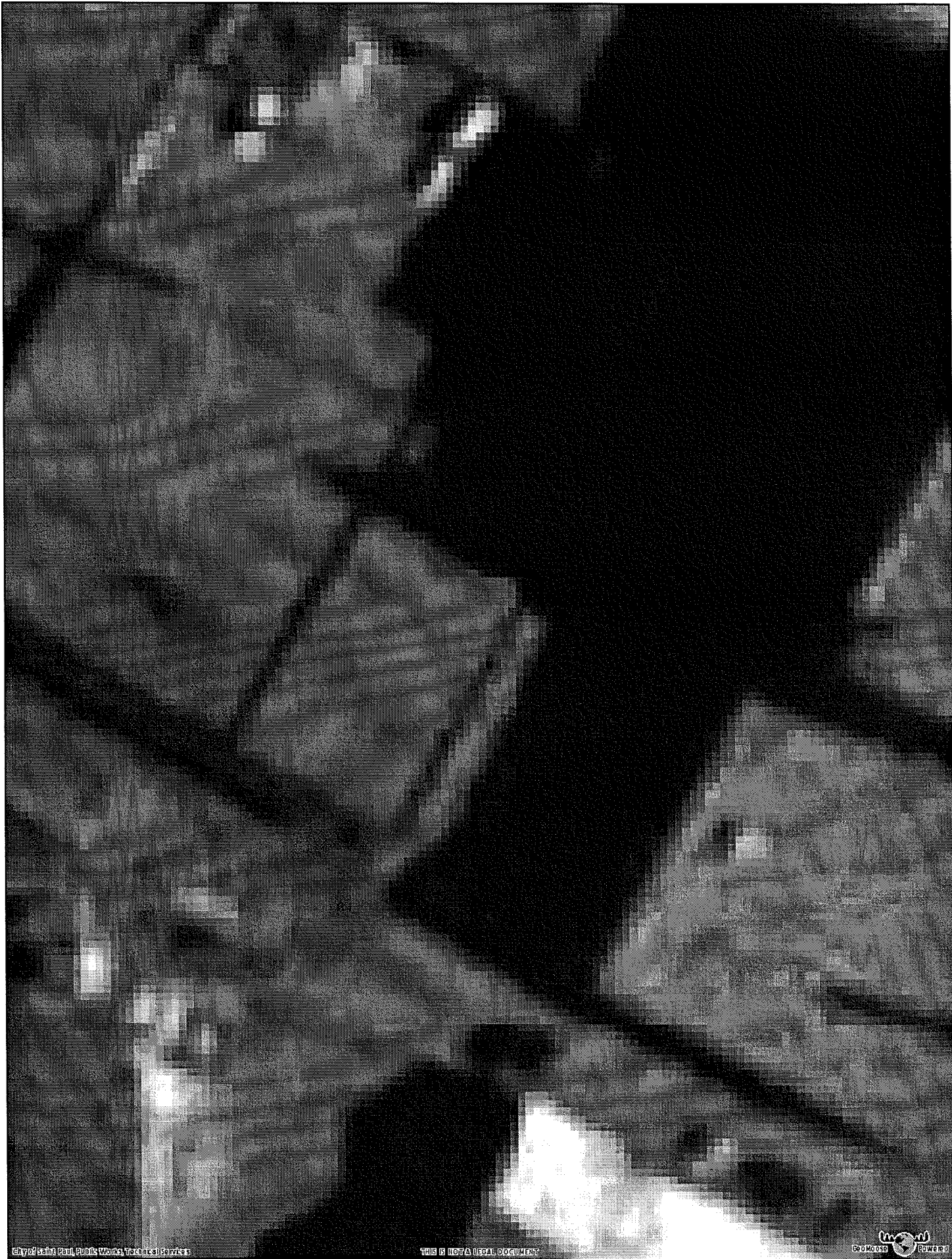


2003

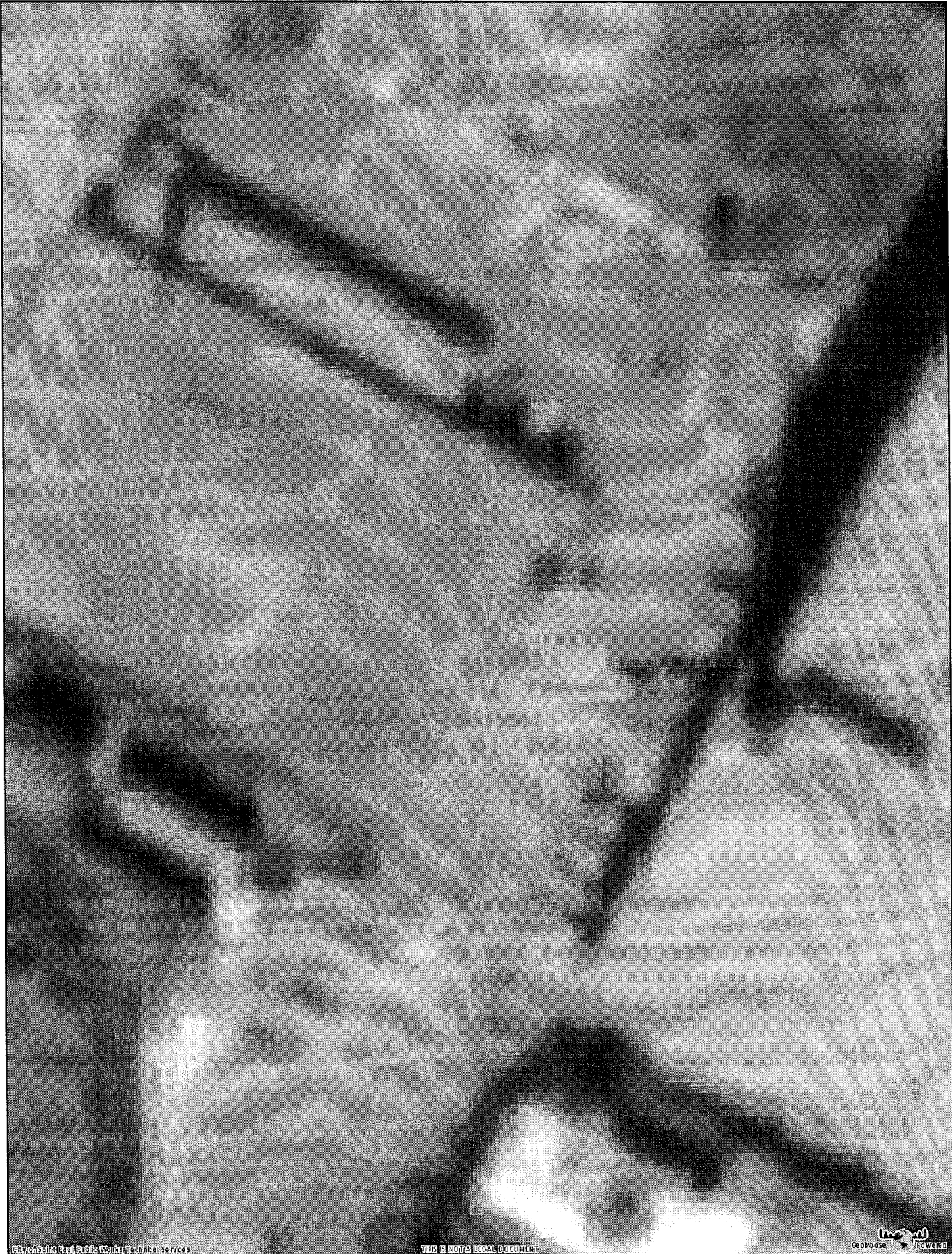


2001

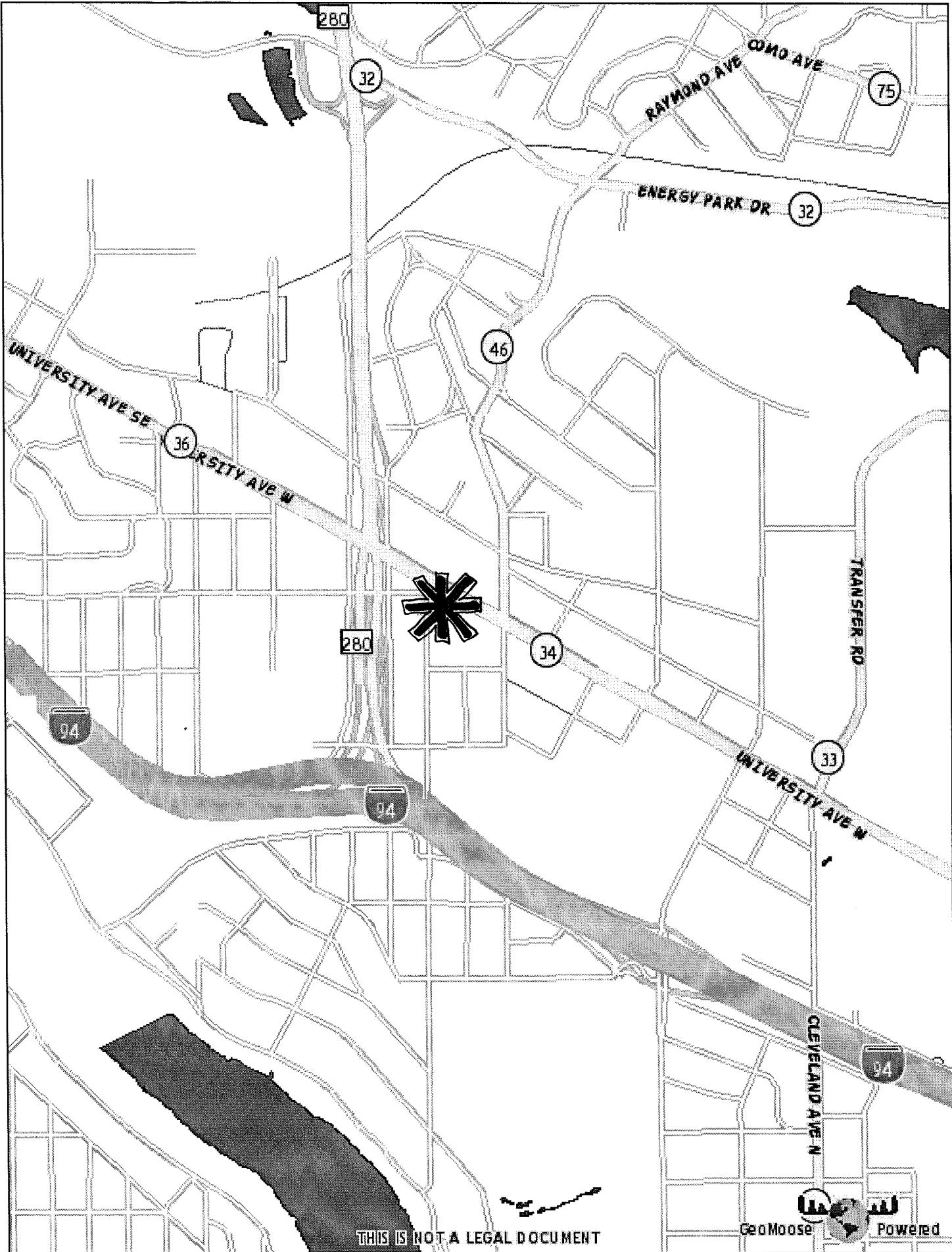




1997



1985



THIS IS NOT A LEGAL DOCUMENT