



## COMMUNITY DEVELOPMENT DEPARTMENT

**DATE:** November 8, 2016  
**FROM:** Carl D. Hokenstad, AICP, Director of Community Development  
**ITEM:** Vacation of a Part of Ottawa Street Right of Way

### REQUEST

Two landowners have petitioned to vacate the east 35 feet of the Ottawa Street right of way adjacent to Lots 19 - 22, Block 1, Wutzke's 2nd Subdivision, leaving a remainder of 80 feet of right of way for Ottawa Street.

Please place this item on the November 8, 2016 City Commission meeting.

### BACKGROUND INFORMATION

Vacation of public right of way requires a public hearing, preceded by four weeks of legal ads.

### RECOMMENDED CITY COMMISSION ACTION

Call for a public hearing to vacate the east 35 feet of the Ottawa Street right of way adjacent to Lots 19 - 22, Block 1, Wutzke's 2nd Subdivision, leaving a remainder of 80 feet of right of way for Ottawa Street.

### STAFF CONTACT INFORMATION

Please contact Daniel Nairn, AICP the planner in our office assigned to this request, at 355-1854 or [dnairn@bismarcknd.gov](mailto:dnairn@bismarcknd.gov), or Kim L. Lee, AICP, Planning Manager, at 355-1846 or [klee@bismarcknd.gov](mailto:klee@bismarcknd.gov). Planning Manager Kim Lee will present this item at the meeting.



# STAFF REPORT

City of Bismarck  
Community Development Department  
Planning Division

November 8, 2016

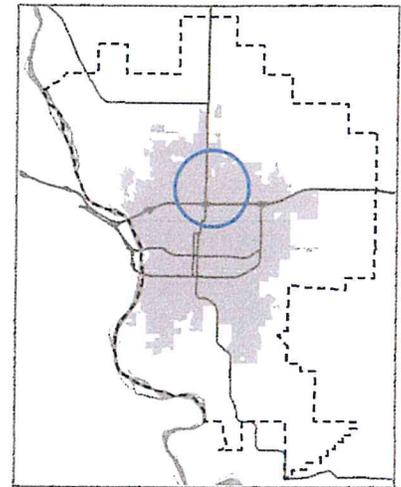
**Application for: Plat Modification – Right of Way Vacation  
Plat Modification – Right of Way Vacation**

TRAKiT Project ID: PLMD2016-009

TRAKiT Project ID: PLMD2016-010

## Project Summary

<b>Title:</b>	Vacation of a portion of Ottawa Street
<b>Status:</b>	Board of City Commissioners - Consideration
<b>Owner(s):</b>	Bergen Real Estate LLC Boustead Enterprises LLC
<b>Project Contact:</b>	Toni Haider, PE, SEH Engineering Daniel Nairn, AICP, City of Bismarck
<b>Location:</b>	In North Bismarck, west of US Highway 83 and north of 43 <sup>rd</sup> Avenue NW.
<b>Project Size:</b>	A 35' strip of the Ottawa Street right of way for a length of 500 feet, more or less.
<b>Request:</b>	Schedule a public hearing to vacate the east 35' of the Ottawa Street right of way adjacent to Lots 19-22, Block 1, Wutzke's 2 <sup>nd</sup> Subdivision, leaving a remainder of 80' of right of way for Ottawa Street.



## Staff Analysis

In 2011, portions of the Ottawa Street right of way that were no longer needed for public use were vacated throughout Sonnet Heights Subdivision and Wutzke's Subdivision. Two property owners of lots in Wutzke's 2<sup>nd</sup> Subdivision are now petition to vacate a similar portion of the Ottawa Street right of way adjacent to their property, essentially extending the previous vacation further to the south and additional 500 feet.

The proposed vacation is adjacent to a previous vacation of an access roadway that was approved by the City Commission in 1997.

If the vacation is approved, the right of way of Ottawa Street would be reduced to 80 feet. The street is a local road that functions as a "backage" roadway to US Highway 83. A right of way of 80 feet conforms to current design standards for a roadway of this classification.

North Dakota Century Code requires four weeks of legal ads before a public hearing to vacate public right of way. If the Board of City of Commissioners wishes to proceed with this hearing, the ads will be placed and the hearing would be scheduled for December 13, 2016. A draft of the resolution to vacate is attached. However this resolution would not be signed until after the hearing is held and a decision is made.

A city water main exists on the east side of Ottawa Street in the approximate location being proposed for vacation. The resolution would maintain an easement over any existing utilities after the vacation takes effect.

## Required Findings of Fact

1. The right-of-way proposed to be vacated does not substantially contribute to the function or

(continued)

safety of the overall roadway network in the area;

2. The right-of-way proposed to be vacated is not needed by the City of Bismarck or any affiliated entities for public utilities, and/or easements have been granted for any existing utility infrastructure in use within the right-of-way;
3. The proposed vacation of right-of-way would not adversely affect property in the vicinity;
4. The proposed vacation of right-of-way is consistent with the general intent and purpose of the zoning ordinance;
5. The proposed vacation of right-of-way is consistent with the master plan, other adopted plans, policies and accepted planning practice; and

6. The proposed vacation of right-of-way would not adversely affect the public health, safety and general welfare.

#### **Staff Recommendation**

Based on the above findings, staff recommends calling for a public hearing to vacate the east 35' of the Ottawa Street right of way adjacent to Lots 19-22, Block 1, Wutzke's 2<sup>nd</sup> Subdivision, leaving a remainder of 80' of right of way for Ottawa Street.

#### **Attachments**

1. Draft Resolution
2. Location Map
3. Excerpt from plat
4. Exhibit of Changes
5. Petitions

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Staff report prepared by: Daniel Nairn, AICP, Planner  
701-355-1854 | [dnairn@bismarcknd.gov](mailto:dnairn@bismarcknd.gov)

## RESOLUTION

### VACATION OF RIGHT-OF-WAY

WHEREAS, the owner of property described as Lot 19, Block 1, Wutzkes 2<sup>nd</sup> Subdivision and the owner of the property described as Lots 20-22, Block 1, Wutzkes 2<sup>nd</sup> Subdivision, both adjoining and contiguous to the right-of-way described as Ottawa Street, have heretofore joined in petitions requesting that the portion of the right-of-way contiguous to these lots be vacated and setting forth the facts and reason for said vacation. Said petitions were verified by oath of at least one petitioner and was accompanied by a plat of said right-of-way to be vacated.

WHEREAS, the Board of City Commissioners of the City of Bismarck, North Dakota, deemed it expedient that said matter be preceded with, ordered said petition to be filed in the office of the City Administrator.

WHEREAS, the Board of City Commissioners ordered that notice be given on hearing the aforesaid petitions and the same was so given by publication in the official newspaper of said City on November 11, November 18, November 25 and December 2, 2016, in accordance with law. The Board of City Commissioners at the time appointed, investigated and considered the matter and heard testimony of the persons interested therein.

NOW, THEREFORE, BE IT RESOLVED by the Board of City Commissioners of the City of Bismarck, North Dakota:

1. Petitions heretofore described praying for the vacation of that portion of the right-of-way described as the east 35 feet of Ottawa Street adjacent to Lots 19-22, Block 1, Wutzke's 2<sup>nd</sup> Subdivision and all previously vacated right of way adjacent to said lots in the City of Bismarck, North Dakota, is in all things allowed and granted.
2. That said right-of-way is hereby declared vacated, subject to a utility easement over the entire width of the vacated right-of-way to preserve the rights of any public or private utility or franchise, their successors and assigns, heretofore granted by the City of Bismarck or another party and not heretofore waived or abandoned and subject to a grading and slope easement in favor of the City of Bismarck to grade and shape the easement area to match the future urban section of the right-of-way.
3. That the City Administrator be and is hereby authorized to publish this resolution in the manner prescribed by law and file a transcript thereof for record in the office of the County Recorder, Burleigh County, North Dakota.

Adopted this 13<sup>th</sup> day of December, 2016.

STATE OF NORTH DAKOTA     )  
  )ss  
COUNTY OF BURLEIGH     )

I, Jason Tomanek, do hereby certify that I am the duly appointed, qualified City Administrator of the City of Bismarck, North Dakota, and that the foregoing is a full, true, and correct copy of a resolution adopted by the Board of City Commissioners at its regular meeting of December 13, 2016.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Bismarck, North Dakota, this 13<sup>th</sup> day of December, 2016.

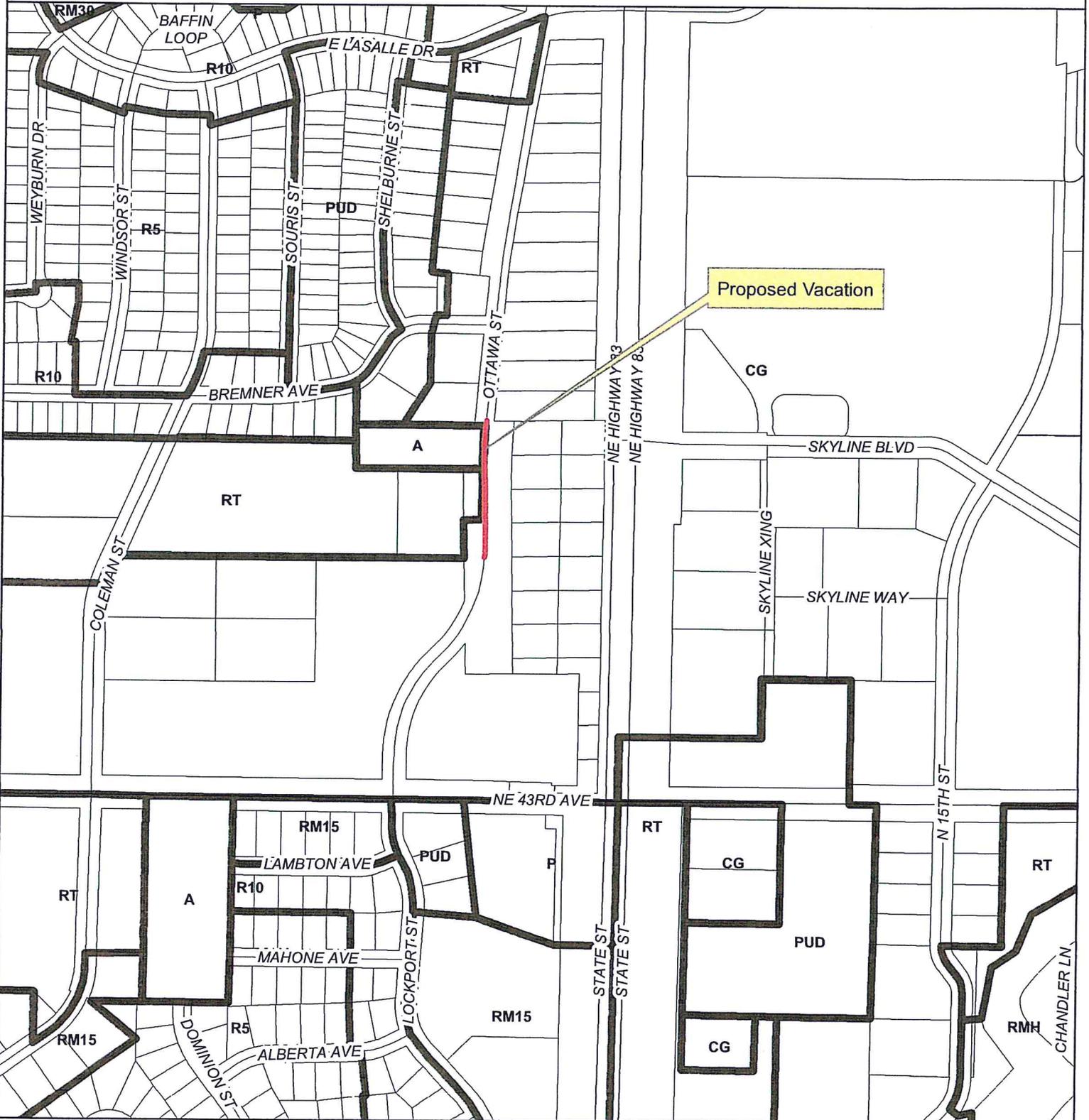
(SEAL)

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Jason Tomanek  
Assistant City Administrator  
Bismarck, North Dakota

# Proposed Right-of-Way Vacation

## Part of Ottawa Street adjacent to Lots 19-22, Block 1 Wutzke's 2nd Subdivision

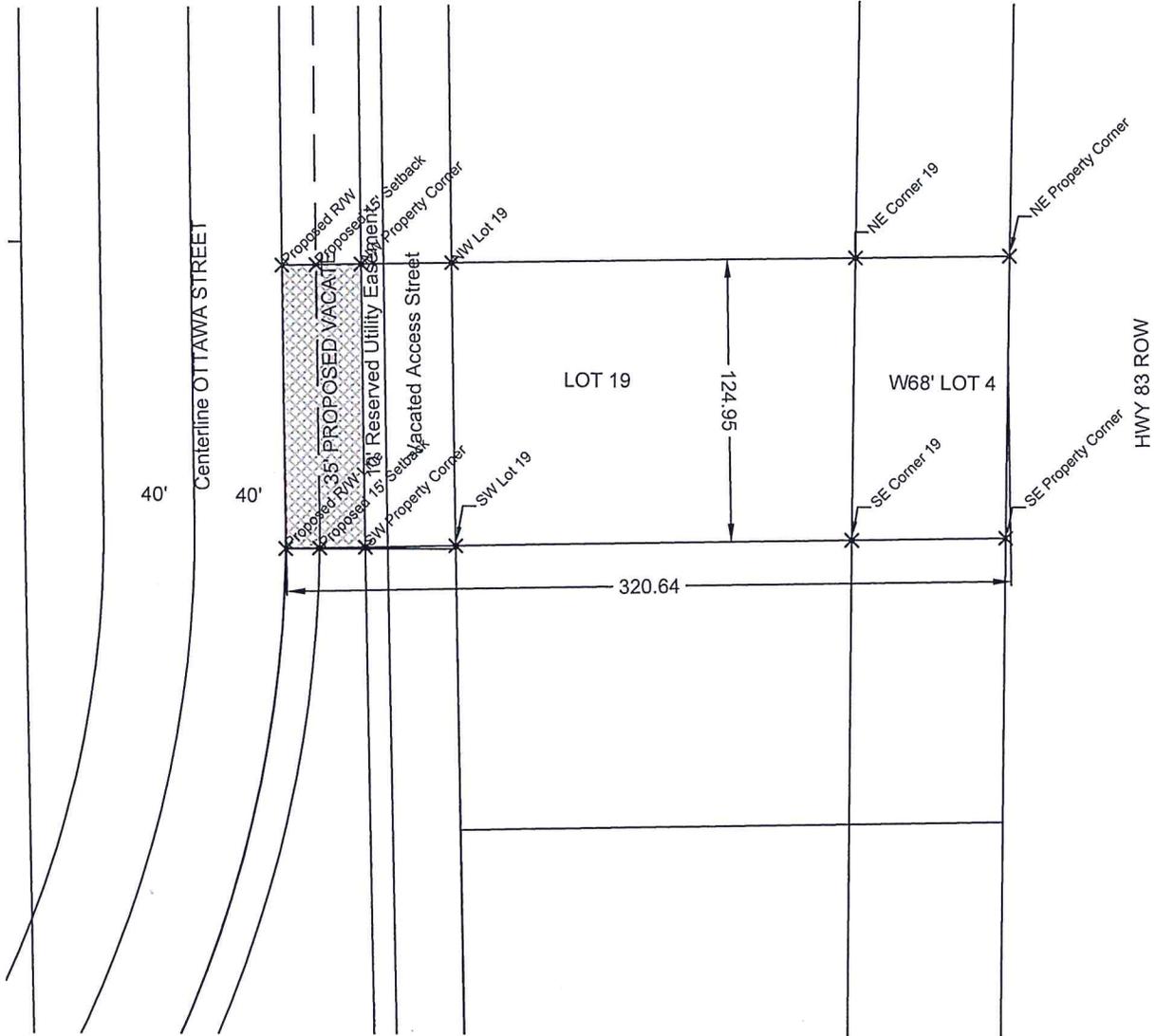
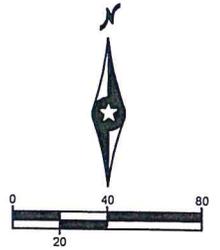


October 31, 2016 (hlb)

This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.







P:\A\B\BOUSEY\138996\survey\92-CAD115-dwg\BDRY.dwg 10/19/2016 10:26 AM mgall



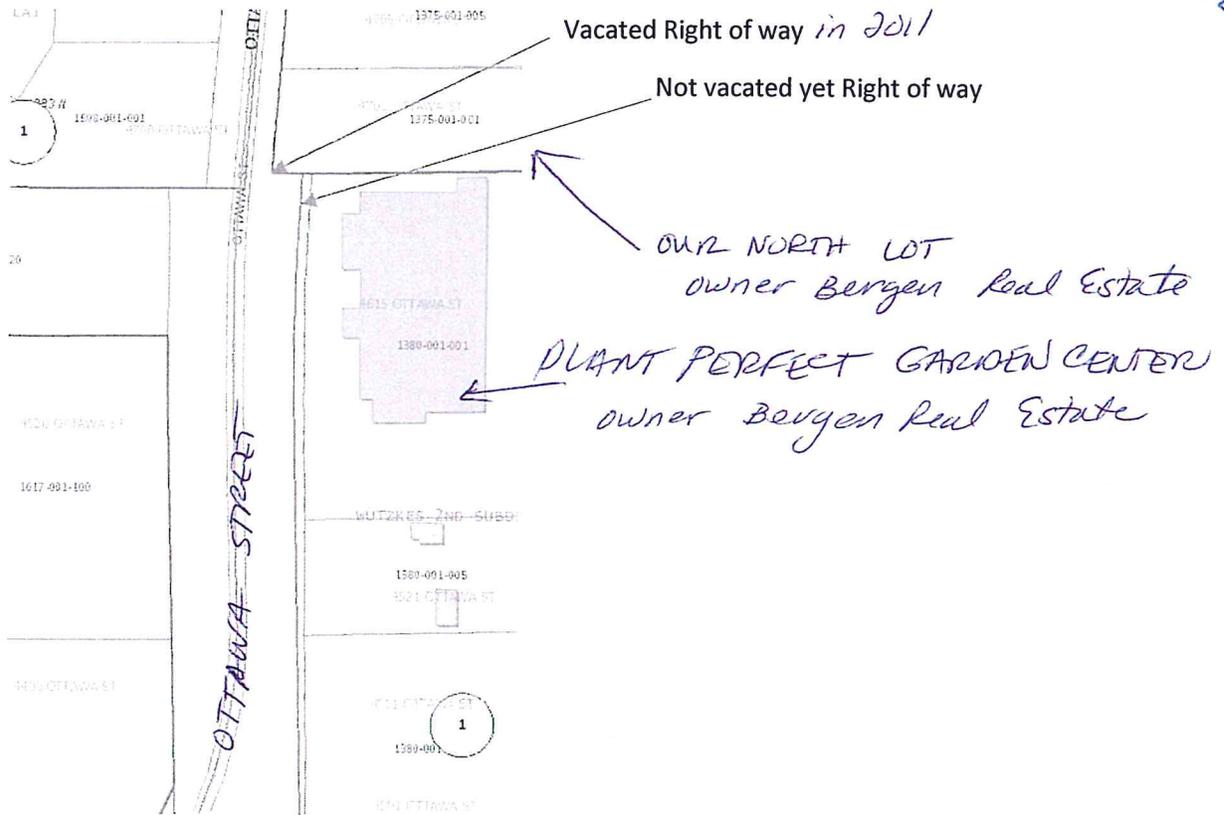
**SEH**  
 PHONE: 701.354.7121  
 4719 SHELburnE ST, SUITE 6  
 BISMARCK, ND 58503-5677  
 www.sehinc.com

LOT SURVEY  
 EXHIBIT

4521 OTTOWA ST  
 LOT 19, BLOCK 1,  
 WUTZKE'S 2ND  
 SUBDIVISION

FILE NO. 138996
DATE 10/19/16
DRAWN BY: MSG CHECKED BY: RMI SURVEYED BY: LMA

RECEIVED  
OCT 31 2010



This application is filed complete with the required information as outlined in the attached submission checklist. If a subdivision plat application: because of scheduling and calendar considerations, your subdivision plat may not be finally approved within 30 days as per NDCC Section 40-48-21. I hereby waive said requirements in return for expeditious consideration of my application by the City. If an annexation application: the City will post legal notice of public hearing on behalf of the applicant rather than the applicant as specified in NDCC Section 40-51.2-05. I understand the regulations of the Bismarck Zoning Ordinance and the NDCC as they pertain to this request(s). I certify that all property owners have signed or ratified this application. I hereby request favorable consideration of the above described development application.

*[Handwritten Signature]*  
 (Applicant's Signature)

10/24/16  
 (Date)

\_\_\_\_\_  
 (Owner's Signature, if different)

\_\_\_\_\_  
 (Date)

\_\_\_\_\_  
 (Additional Owner's Signature, if applicable)

\_\_\_\_\_  
 (Date)

\_\_\_\_\_  
 (Additional Owner's Signature, if applicable)

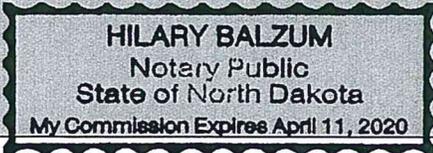
\_\_\_\_\_  
 (Date)

**VERIFICATION FOR PLAT MODIFICATION REQUESTS:**

The oath of at least one petitioner is required for **plat modification requests only**  
 (vacation of street/alley, release of non-access line or release of easement)

STATE OF NORTH DAKOTA )  
   : SS  
 COUNTY OF BURLEIGH    )

On this 24<sup>th</sup> day of October, 2016, before me, a notary public in and for said county and state, appeared John H. Bairstead, known to be personally to be the same person described in and whom executed the above instrument, and severally acknowledged that he/she executed the same.



*[Handwritten Signature]*  
 Notary Public  
 Burleigh County, State of North Dakota

**Submission Deadlines:**

The Planning and Zoning Commission regularly meets on the fourth Wednesday of each month. All development applications - except for variances, lot modifications and plat modifications - are due at 12:00 noon on the Friday that is 33 calendar days prior to the meeting.

The Board of Adjustment regularly meets on the first Thursday of each month. All development applications for variances are due at 5:00 p.m. on the Monday that is 17 calendar days prior to the meeting.

The Board of City Commissioners regularly meets on the second and fourth Tuesdays of each month. All development applications for plat modifications (street/alley vacation, non-access line release, easement release) are due at 5:00 p.m. on the Tuesday that is 14 calendar days prior to the meeting.

Development applications for lot modifications are processed administratively and may be submitted at any time.

This application is filed complete with the required information as outlined in the attached submission checklist. If a subdivision plat application: because of scheduling and calendar considerations, your subdivision plat may not be finally approved within 30 days as per NDCC Section 40-48-21. I hereby waive said requirements in return for expeditious consideration of my application by the City. If an annexation application: the City will post legal notice of public hearing on behalf of the applicant rather than the applicant as specified in NDCC Section 40-51.2-05. I understand the regulations of the Bismarck Zoning Ordinance and the NDCC as they pertain to this request(s). I certify that all property owners have signed or ratified this application. I hereby request favorable consideration of the above described development application.

Mara A Bergen  
 (Applicant's Signature) *owner*

10/26/2016  
 (Date)

\_\_\_\_\_  
 (Owner's Signature, if different)

\_\_\_\_\_  
 (Date)

\_\_\_\_\_  
 (Additional Owner's Signature, if applicable)

\_\_\_\_\_  
 (Date)

\_\_\_\_\_  
 (Additional Owner's Signature, if applicable)

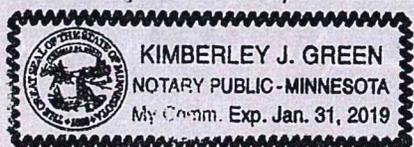
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 (Date)

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*Minnesota*  
 STATE OF NORTH DAKOTA )  
   : SS  
 COUNTY OF BURLEIGH )  
*Becker*

On this *26<sup>th</sup>* day of *October*, 20*16* before me, a notary public in and for said county and state, appeared *Mara Bergen*, known to be personally to be the same person described in and whom executed the above instrument, and severally acknowledged that he/she executed the same.



*Kimberley J. Green*  
 Notary Public  
 Burleigh County, State of North Dakota

Submission Deadlines: *Becker County, State of MN*

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