



Engineering Department

DATE: May 17, 2019
FROM: Gabe Schell, City Engineer
ITEM: Development Agreement-Huntington Plaza

REQUEST

Approve Development Agreement with Boustead Enterprises, LLC for Huntington Plaza.
Please place this item on the 5/28/2019 City Commission meeting agenda.

BACKGROUND INFORMATION

Huntington Plaza is single parcel development in north Bismarck on the east side of Ottawa Street, north of 43rd Avenue. There is approximately 2,600 feet of Ottawa Street that is currently constructed as a ditch section roadway, of which approximately 90 feet of that is adjacent to Huntington Plaza.

The City of Bismarck development policy would require that Ottawa Street adjacent to Huntington Plaza site be constructed to the current City standard as part of this development. This seems impractical given that there is no mechanism to complete the improvements for the remainder of Ottawa Street at this time and the pavement is currently in good condition.

This development agreement, along with a companion petition for street improvements, allows the developer to forego the improvement of Ottawa Street at this time until such time that the City receives additional petitions from other properties adjacent to the unimproved Ottawa Street.

RECOMMENDED CITY COMMISSION ACTION

Approve the Development Agreement with Boustead Enterprises, LLC.

STAFF CONTACT INFORMATION

Linda Oster, PE, Design and Construction Engineer 355-1505, loster@bismarcknd.gov

DEVELOPMENT AGREEMENT

The City of Bismarck (the "City") and Boustead Enterprises, LLC make this Development Agreement with regard to the development of a parcel (the Parcel) located in Bismarck, North Dakota and described as follows:

Block 1, west 68' of Lot 4, Lot 19 and the east 35' of the vacated Ottawa Street adjacent to Lot 19, Wutzkes 2nd Addition to the City of Bismarck, Burleigh County, North Dakota.

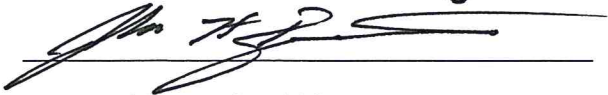
Boustead Enterprises, LLC desires to develop the Parcel as commercial lot. The Parcel is located on the east side of Ottawa Street. The City would normally require the improvement of Ottawa Street adjacent to the Parcel at the time of the development of the Parcel. The parties are in agreement that the improvement of Ottawa Street adjacent to the Parcel is not necessary for the development of the Parcel at this time and can be delayed until such time as the City receives a petition to improve Ottawa Street from any parcel located on Ottawa Street between 43rd Avenue and Canada Avenue.

In exchange for the City's agreement to delay the requirement of the improvement of Ottawa Street between 43rd Avenue and Canada Avenue, the parties agree as follows:

1. The City will approve the site plan and issue building permits in its normal course of business. Prior to such approvals or permits being issued, Boustead Enterprises LLC will execute and deliver a petition for the improvement of Ottawa Street for that portion adjacent to the Parcel. The petition will be conditioned that it will be deemed to be submitted upon the receipt of another valid petition for improvement of any portion of Ottawa Street between 43rd Avenue and Canada Avenue. By entering into this Agreement Boustead Enterprises LLC also agrees to waive their right to protest a special assessment district former to improve Ottawa Street that includes the roadway between 43rd Avenue and Canada Avenue. This agreement will be placed of record in the title for the Parcel, and all successors in interest agree to waive their right to protest the special assessment district under N.D.C.C. Ch 40-22 by accepting delivery of title. The City also agrees that in order to activate the petition, any project for the improvement of Ottawa Street between 43rd Avenue and Canada Avenue must include the entire width of the roadway.
2. It is the intention of the parties that this Agreement will run with the land as to the parcel and that Boustead Enterprises LLC will have the obligation to inform any successor in interest of the terms of this Agreement and the successor's obligation to abide by this Agreement and include compliance with this Agreement as a condition in any written instrument of conveyance of real property regarding the Parcel
3. The terms of this agreement shall be considered a covenant running with the land and bind all future owners in the same manner as if they had personally entered this agreement.

This Agreement shall bind the parties, their successors, assigns and heirs.

Dated this 8th day of May, 2019



Boustead Enterprises LLC

STATE OF NORTH DAKOTA)

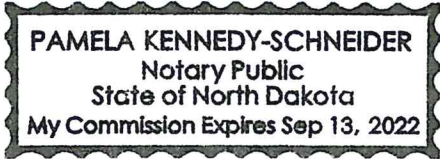
) ss.

COUNTY OF BURLEIGH)

On this 8th day of May, 2019, before me personally appeared John H. Boustead, known to me to be the person who is described in and who executed the within and foregoing instrument, and acknowledged to me that s/he executed the same.



Notary Public
State of North Dakota



(SEAL)

Dated this _____ day of _____, 2019

Steve Bakken
President, Board of City Commissioners

Attest: _____

Keith J. Hunke
City Administrator

STATE OF NORTH DAKOTA)

) ss.

COUNTY OF BURLEIGH)

On this _____ day of _____, 2019, before me personally appeared _____, known to me to be the person who is described in and who executed the within and foregoing instrument, and acknowledged to me that s/he executed the same.

Notary Public
State of North Dakota

(SEAL)

PETITION FOR PERMANENT STREET IMPROVEMENT
For lots not zoned R5, R10, RM, or RT Residential

DATE: 5/8/19

To the Honorable Board of City Commissioners
Bismarck, North Dakota

Commissioners:

The undersigned owners of the property liable to be assessed for the improvement respectfully petition your Honorable Board to have permanent street improvements completed on:

Ottawa Street – 735' south of Bremner Avenue to 860' south of Bremner Avenue

It is agreed that the necessary permanent street improvements be completed following the installation of the necessary water and sewer service line stubouts by the abutting property owner(s). It is agreed that 100% of any temporary street improvements, and 40% of all of the permanent street improvement costs will be prepaid by the benefited petitioned property. The remaining costs shall be assessed to or other arrangements made by the benefited property according to the Current Development Costs Policy.

PROPERTY DESCRIPTION

**SIGNATURE and ADDRESS
(Property Owner/s)**

Block 1, west 68' of Lot 4, Lot 19 and
the east 35' of the vacated Ottawa Street
adjacent to Lot 19, Wutzkes 2nd Addition

Boustead Enterprises, LLC



631 Cody Dr.
Bismarck, ND 58503

For City Engineer Use Only

Approved by Gabe J. Schell, PE
City Engineer, Bismarck, ND

Date