



Engineering Department

DATE: January 23, 2024

FROM: Gabe Schell, City Engineer

ITEM: Approval of the Development Agreement with COM Properties, LLC.

REQUEST:

Consider approval of Development Agreement with COM Properties, LLC.

BACKGROUND INFORMATION:

COM Properties, LLC is expanding their existing commercial property (Plant Perfect) on a single parcel in north Bismarck located on the east side of Ottawa Street. There are approximately 2,650 feet of Ottawa Street that are currently constructed as a ditch section of roadway, of which approximately 470 feet are adjacent to the COM Properties site. See attached Exhibit 1.

The City of Bismarck's development policy would require that Ottawa Street adjacent to COM Properties site be constructed to the current City standard as part of this development. However, without adequate petitions for the remainder of Ottawa Street, the reconstruction would not take place at this time.

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 COM Properties, LLC

STAFF CONTACT INFORMATION:

Gabe Schell, City Engineer, 701-355-1507, gschell@bismarcknd.gov

ATTACHMENTS:

1. Agreement and Location Map - COM Properties LLC

Above this line used for recordation purposes only.

DEVELOPMENT AGREEMENT

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

Lot 1 & east 35' of vacated Ottawa St. adjacent to Wutzkes Subdivision and the west 68' of lot 1 less east 15' of north 63.2', west 68' of lots 2-3, Addition to the City of Bismarck, Burleigh County, North Dakota

The Owner desires to develop this Property for commercial use. The Property is located on the east side of Ottawa Street north of 43rd Avenue. The city would normally require the improvement of Ottawa Street adjacent to the site 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 further development of the site 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:

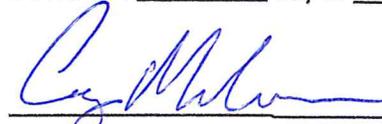
1. The City will approve the site plan and issue building permits in its normal course of business. Prior to such approvals or permits being issued, the Owner will execute and deliver a petition for the improvement of Ottawa Street for that portion adjacent to the parcel. The petition will be conditioned 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, the Owner also agrees to waive their right to protest a special assessment district formed 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 Property, 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 parcels within the plat and that the Owner 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 for the site.
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 22 day of Dec, 2023

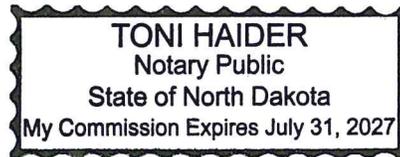


Casey McCollum
Owner
COM Properties, LLC

STATE OF NORTH DAKOTA)

) ss.

COUNTY OF BURLEIGH)



On this 22 day of December, 2023, before me personally appeared Casey McCollum, 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

DATE: _____

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:

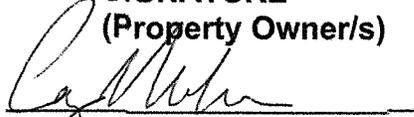
Ottawa Street between 43rd Avenue and Canada Avenue

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) and that 100% of the paving cost of said permanent street improvements be assessed to or other funding arrangements made by the benefitted property according to the Current Development Costs Policy. For parcels not zoned residential, 40% of the permanent street improvement cost will be prepaid by the benefitted petitioned property. It is agreed that 100% of any temporary street improvements shall be prepaid by the benefited petitioned property.

PROPERTY DESCRIPTION

Lot 1 & east 35' of vacated Ottawa St.
Adjacent to Wutzkes Subdivision and the
west 68' of lot 1 less east 15' of north 63.2',
west 68' of lots 2-3, Addition to the City of
Bismarck, Burleigh County, North Dakota

**SIGNATURE
(Property Owner/s)**



Casey McCollum
Owner
COM Properties, LLC

For City Engineer Use Only

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

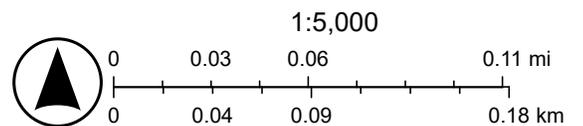
Date

COM Properties, LLC



1/17/2024

Exhibit 1



Maxar, Esri Community Maps Contributors, City of Bismarck, State of North Dakota, © OpenStreetMap, Microsoft, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, USFWS