



Public Works Utility Operations

DATE: April 23, 2024

FROM: Michelle Klose, Director Public Works Utilities

ITEM: Land Purchase Agreement for Future Lift Station

REQUEST:

Approval to finalize the purchase of property for future lift station.

BACKGROUND INFORMATION:

As the City of Bismarck continues to expand, a new lift station was planned as part of the Hay Creek Project approved by Commission in 2021. City departments have been working with a landowner to secure property for this need. The discussion has advanced to the point of consensus of all parties regarding the terms of the purchase agreement, as well as temporary and permanent easements for construction and maintenance, in the amount of \$149,850. Funding for this purchase will be from Public Works Utility Operations.

RECOMMENDED CITY COMMISSION ACTION:

Approve land purchase agreement and easements for future lift station in the amount of \$149,850 and execute accordingly.

STAFF CONTACT INFORMATION:

Amber Araujo, Executive Assistant, 701-355-1739, aaraujo@bismarcknd.gov

ATTACHMENTS:

1. Haycreek Warranty Deed

WARRANTY DEED, TEMPORARY CONSTRUCTION EASEMENT AND SANITARY SEWER EASEMENT

This INDENTURE, made this _____ day of _____, 2024, between **Timothy M. Schwab**, a single person, hereinafter referred to as the Grantor, whether plural or singular, whose post office address is 5425 Apple Creek Road, Bismarck, ND 58504 and the **City of Bismarck**, a North Dakota municipal corporation, Grantee, whose post office address is 221 N 5th St, Bismarck, ND 58501.

WITNESSETH, for and in consideration of the sum of one dollar (\$1.00) and other valuable consideration, the Grantor does hereby grant to the Grantee all of the following real property lying and being in the County of Burleigh, State of North Dakota and described as follows, to-wit:

A TRACT OF LAND IN THE NORTHEAST QUARTER OF SECTION 12, TOWNSHIP 138 NORTH, RANGE 80 WEST OF THE FIFTH PRINCIPAL MERIDIAN, BURLEIGH COUNTY, NORTH DAKOTA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 12; THENCE S00°51'27"W, ON THE EAST LINE OF SAID SECTION 12, A DISTANCE OF 60.00 FEET, TO THE POINT OF BEGINNING; THENCE S00°51'27"W, CONTINUING ON THE EAST LINE OF SAID SECTION 12, A DISTANCE OF 340.00 FEET; THENCE N89°32'47"W, BEING PARALLEL TO THE NORTH LINE OF SAID SECTION 12, A DISTANCE OF 250.00 FEET; THENCE N00°51'27"E, BEING PARALLEL TO THE EAST LINE OF SECTION 12, A DISTANCE OF 340.00 FEET, TO A POINT ON THE NORTH LINE OF SAID SECTION 12; THENCE S89°32'47" E, ON THE NORTH LINE OF SAID SECTION 12, A DISTANCE OF 250.00 FEET TO THE BEGINNING.

SAID PARCEL CONTAINS 84,998.57 SQUARE FEET (1.95 ACRES), MORE OR LESS.

The legal description was prepared by Brett Zeltinger, Registered Professional Land Surveyor, 600 South 2nd Street – Suite 145, Bismarck, ND 58504.

See Exhibit A

And the Grantor for itself, its successors and assigns forever, does covenant with the Grantee that it is well seized in fee of the land and premises aforesaid and has good right to sell and convey the same in manner and form aforesaid; that the same are free from all encumbrances, except installments of special assessments or assessments for special improvements which have not been certified to the County Auditor for collection, and the above granted lands and premises in the quiet and peaceable possession of the Grantee, against all persons lawfully claiming or to claim the whole or any part thereof, the Grantor will warrant and defend.

AND the Grantor also grants to Grantee an exclusive **TEMPORARY CONSTRUCTION EASEMENT** to use the designated easement area described below to facilitate construction of sewer facilities. Grantee shall have the right to ingress and egress across the real property of the Grantor for the purpose herein granted and may remove obstructions as necessary over land lying and being in the County of Burleigh and State of North Dakota described as follows, to wit:

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 12, TOWNSHIP 138 NORTH, RANGE 80 WEST OF THE FIFTH PRINCIPAL MERIDIAN, INCLUDING ALL OF TRACT 1 OF SAID SECTION 12, AND A PORTION OF TRACT 1 OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 138 NORTH, RANGE 79 WEST OF THE FIFTH PRINCIPAL MERIDIAN, BURLEIGH COUNTY, NORTH DAKOTA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 12; THENCE S00°51'27"W, ON THE EAST LINE OF SAID SECTION 12, A DISTANCE OF 60.00 FEET TO THE POINT OF BEGINNING; THENCE S89°20'25"E, BEING PARALLEL TO THE NORTH LINE OF SAID SECTION 7, A DISTANCE OF 343.78 FEET; THENCE S00°51'27"W, A DISTANCE OF 107.85 FEET; THENCE S17°41'48"E, A DISTANCE OF 411.00 FEET; THENCE S15°00'00"W, A DISTANCE OF 414.38 FEET; THENCE S45°00'00"W, A DISTANCE OF 335.00 FEET; THENCE N70°57'04"W, A DISTANCE OF 147.37 FEET; THENCE N51°43'26"W, A DISTANCE OF 478.46 FEET; THENCE N00°51'27"E, BEING PARALLEL TO THE EAST LINE OF SAID SECTION 12, A DISTANCE OF 799.11 FEET, TO A POINT ON A LINE PARALLEL TO AND 60.00 FEET SOUTH OF THE NORTH LINE OF SAID SECTION 12; THENCE S89°32'47"E, ON THE SAID PARALLEL LINE, A DISTANCE OF 380.01 FEET, TO THE POINT OF BEGINNING.

SAID DESCRIBED TRACT CONTAINS 784,531 SQUARE FEET OR 18.014 ACRES, MORE OR LESS AND IS SUBJECT TO ANY EASEMENTS OR RIGHTS OF WAY PREVIOUSLY ACQUIRED, SAID TRACT IS ALSO SUBJECT N.D.C.C. 47-05-02.1.

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See Exhibit B

AND

A TRACT OF LAND BEING 15.00 FEET LEFT AND RIGHT OF A DESCRIBED CENTERLINE IN THE NORTHEAST QUARTER OF SECTION 12, TOWNSHIP 138 NORTH, RANGE 80 WEST OF THE FIFTH PRINCIPAL MERIDIAN, BURLEIGH COUNTY, NORTH DAKOTA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 12; THENCE N89°32'47" W, ON THE NORTH LINE OF SAID SECTION 12, A DISTANCE OF 1958.47 FEET; THENCE S00°27'13"W, BEING PERPENDICULAR TO THE EAST LINE OF SAID SECTION 12, A DISTANCE OF 60.00 FEET TO THE DEED LINE ON FILE AT THE BURLEIGH COUNTY RECORDER AS DOCUMENT NUMBER 451605 WHICH IS ALSO THE POINT OF BEGINNING; THENCE S00°51'27"W, PARALLEL TO AND 30.00 FEET WEST OF THE WEST LINE OF A 25.00 FOOT COMMUNICATION EASEMENT, SAID EASEMENT ON FILE AT THE BURLEIGH COUNTY RECORDER AS DOCUMENT NUMBER 786302, A DISTANCE OF 930.61 FEET TO THE NORTH RIGHT OF WAY LINE OF BNSF RAILROAD AND POINT OF TERMINATION; SAID SIDELINES ARE TO BE EXTENDED AND SHORTENED TO SAID RIGHT OF WAY LINE OF BNSF RAILROAD AND SAID DEED LINE.

SAID PARCEL CONTAINS 27,918 SQUARE FEET (0.64 ACRES), MORE OR LESS, AND IS SUBJECT TO ANY EASEMENTS OR RIGHTS OF WAY PREVIOUSLY ACQUIRED, AND IS ALSO SUBJECT TO SEC. 47-05-02.1 OF THE NORTH DAKOTA CENTURY CODE.

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See Exhibit C

Grantee shall, after completing the above-described construction or installation, or after the exercise of any rights granted by this easement, restore the lands to as near their original condition as reasonably possible and remove all debris, spoils, and equipment resulting from or used in connection with the construction or installation or

access to the lands. Grantee agrees to pay for damage to fences and growing crops arising from the use of this easement.

The term of this temporary construction easement shall terminate upon completion of the one (1) year warranty period from the date of the final acceptance of the sewer facilities by the City of Bismarck, or five (5) years from the date of conveyance, whichever comes first.

AND the Grantor also grants to Grantee an exclusive **SANITARY SEWER EASEMENT** to use the designated easement areas described below to facilitate construction of sewer facilities. Grantor grants to Grantee an exclusive easement to construct, operate, maintain, and repair public utility facilities including sanitary sewer under or upon the real property hereinafter described, together with the right to remove trees, brush, undergrowth, and other obstructions interfering with the location, construction, and maintenance of said utility. Grantee shall have the right to ingress and egress across real property of Grantor for the purpose herein granted. This easement is, except for the right of access, limited to land lying and being in the County of Burleigh and State of North Dakota described as follows, to wit:

A TRACT OF LAND BEING 7.5 FEET LEFT AND RIGHT OF A DESCRIBED CENTERLINE IN THE NORTHEAST QUARTER OF SECTION 12, TOWNSHIP 138 NORTH, RANGE 80 WEST OF THE FIFTH PRINCIPAL MERIDIAN, BURLEIGH COUNTY, NORTH DAKOTA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 12; THENCE N89°32'47" W, ON THE NORTH LINE OF SAID SECTION 12, A DISTANCE OF 250.00 FEET; THENCE S00°51'27"W, BEING PERPENDICULAR TO THE EAST LINE OF SAID SECTION 12, A DISTANCE OF 67.50 FEET TO THE POINT OF BEGINNING; THENCE N89°32'47"W, BEING PARALLEL TO THE NORTH LINE OF SAID SECTION 12, A DISTANCE OF 1685.55 FEET; THENCE S00°51'27"W, PARALLEL TO AND 7.5 FEET WEST OF THE WEST LINE OF A 25.00 FOOT COMMUNICATION EASEMENT, SAID EASEMENT ON FILE AT THE BURLEIGH COUNTY RECORDER AS DOCUMENT NUMBER 786302, A DISTANCE OF 925.67 FEET TO THE NORTH RIGHT OF WAY LINE OF BNSF RAILROAD AND POINT OF TERMINATION; SAID SIDELINES ARE TO BE EXTENDED AND SHORTENED TO SAID RIGHT OF WAY LINE OF BNSF RAILROAD.

SAID PARCEL CONTAINS 39,160 SQUARE FEET (0.90 ACRES), MORE OR LESS, AND IS SUBJECT TO ANY EASEMENTS OR RIGHTS OF WAY PREVIOUSLY ACQUIRED, AND IS ALSO SUBJECT TO SEC. 47-05-02.1 OF THE NORTH DAKOTA CENTURY CODE.

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See Exhibit D

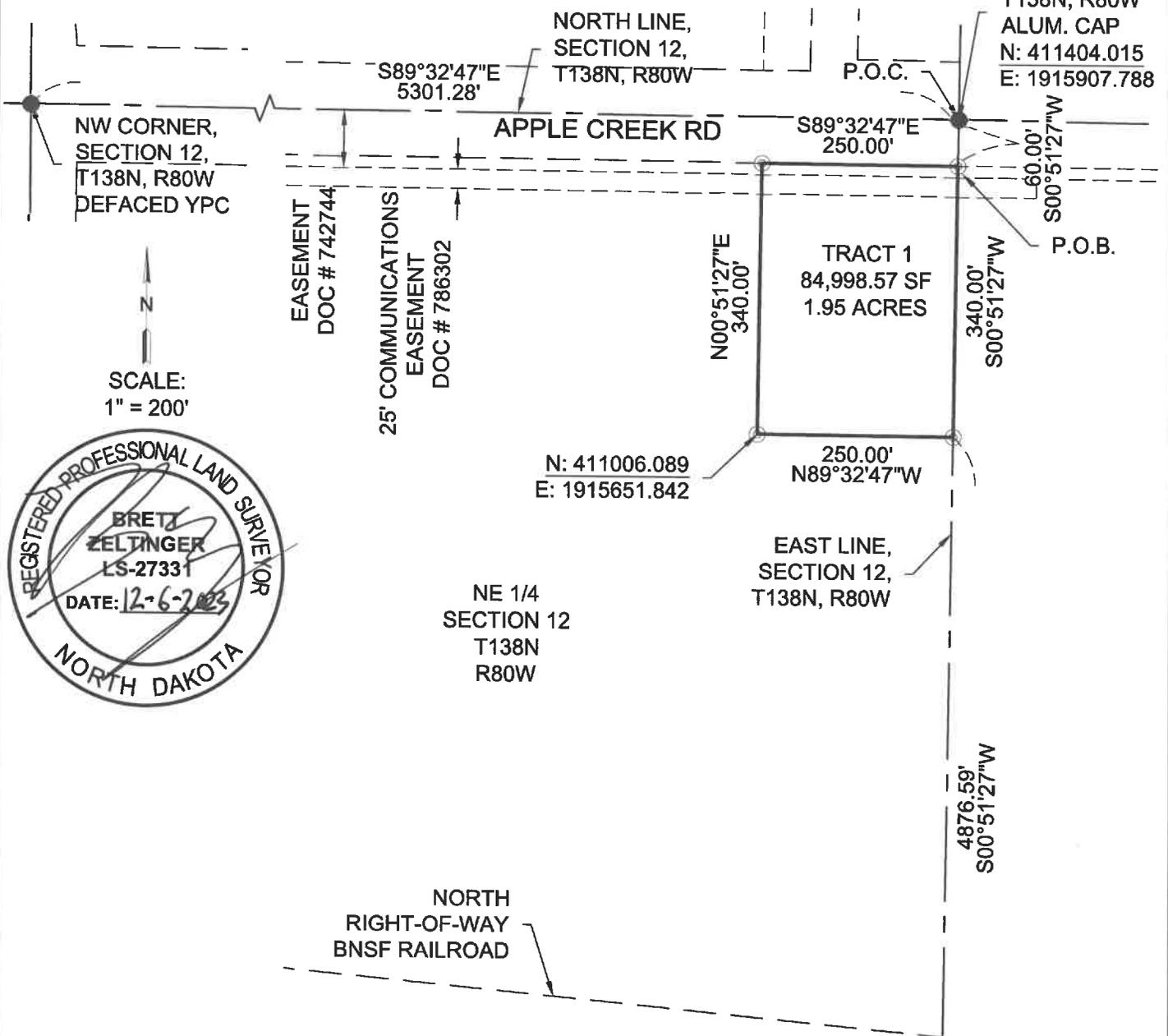
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Grantor agrees to not erect or permit any new structure or obstruction other than fences or driveways, change the ground elevation, or perform any act that interferes with Grantee's rights under this easement, except with the written consent of Grantee. The term of this easement herein reserved is ninety-nine (99) years, beginning upon execution of this easement. Grantor hereby reserves title to and any interest in any and all archeological and paleontological materials, whether located on or below the surface of said land.

CERTIFICATE OF SURVEY

NE 1/4, SECTION 12, TOWNSHIP 138 NORTH,
RANGE 80 WEST, OF THE FIFTH PRINCIPAL
MERIDIAN, BURLEIGH COUNTY, NORTH DAKOTA

NE CORNER,
SECTION 12,
T138N, R80W
ALUM. CAP
N: 411404.015
E: 1915907.788



SCALE:
1" = 200'



NE 1/4
SECTION 12
T138N
R80W

EAST LINE,
SECTION 12,
T138N, R80W

LEGEND

- FOUND MONUMENT
- ⊙ SET 18" #5 REBAR
OPC STAMPED LS-27331

NOTES:
SURVEY IS BASED ON NAD83(86), NORTH DAKOTA SOUTH ZONE,
GEOID12B, INTERNATIONAL FEET.

DISTANCES SHOWN ARE AT GROUND SCALE FACTOR OF
1.0001485221.

COORDINATES SHOWN ON PLAT ARE GRID, NAD83 (2011), NORTH
DAKOTA SOUTH ZONE.

PLAT IS SUBJECT TO ANY PRIOR EASEMENTS OR CONVEYANCES
OF RECORD.

BEARINGS AND DISTANCES MAY VARY FROM PREVIOUS PLATS
DUE TO DIFFERENT METHODS OF MEASUREMENT.

CERTIFICATE OF SURVEY
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MERIDIAN, BURLEIGH COUNTY, NORTH DAKOTA

TRACT 1:

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SURVEYOR'S CERTIFICATE

I, BRETT ZELTINGER, ND PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT I MADE THE WITHIN AND FOREGOING PLAT AND DESCRIPTION OF LAND AS HEREIN DESCRIBED, AND THAT THE LOTS, DISTANCES, AREA AND LOCATION, AS INDICATED ON SAID PLAT AND CONTAINED IN SAID DESCRIPTION, ARE TRUE AND CORRECT, TO THE BEST OF MY KNOWLEDGE AND BELIEF.

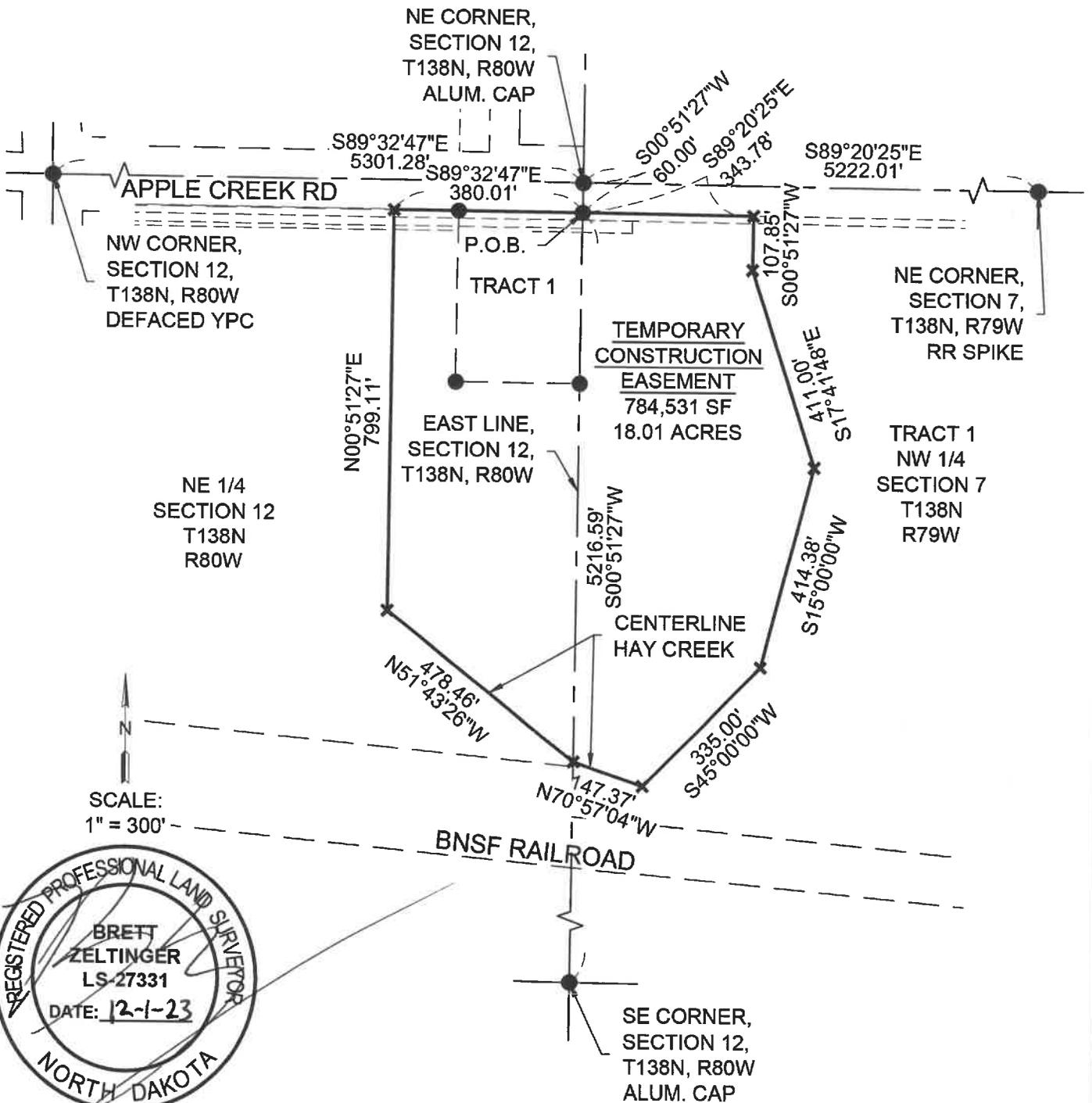


BRETT ZELTINGER LS-27331 N.D. PROFESSIONAL LAND SURVEYOR

SUBSCRIBED AND SWORN ON BEFORE ME THIS 12 DAY OF December, 2023.

TEMPORARY CONSTRUCTION EASEMENT

NE 1/4, SECTION 12, TOWNSHIP 138 NORTH, RANGE 80 WEST AND TRACT I OF NW 1/4, SECTION 7, TOWNSHIP 138 NORTH, RANGE 79 WEST OF THE FIFTH PRINCIPAL MERIDIAN, BURLEIGH COUNTY, NORTH DAKOTA



LEGEND

- EXISTING MONUMENT
- × CALCULATED EASEMENT CORNER

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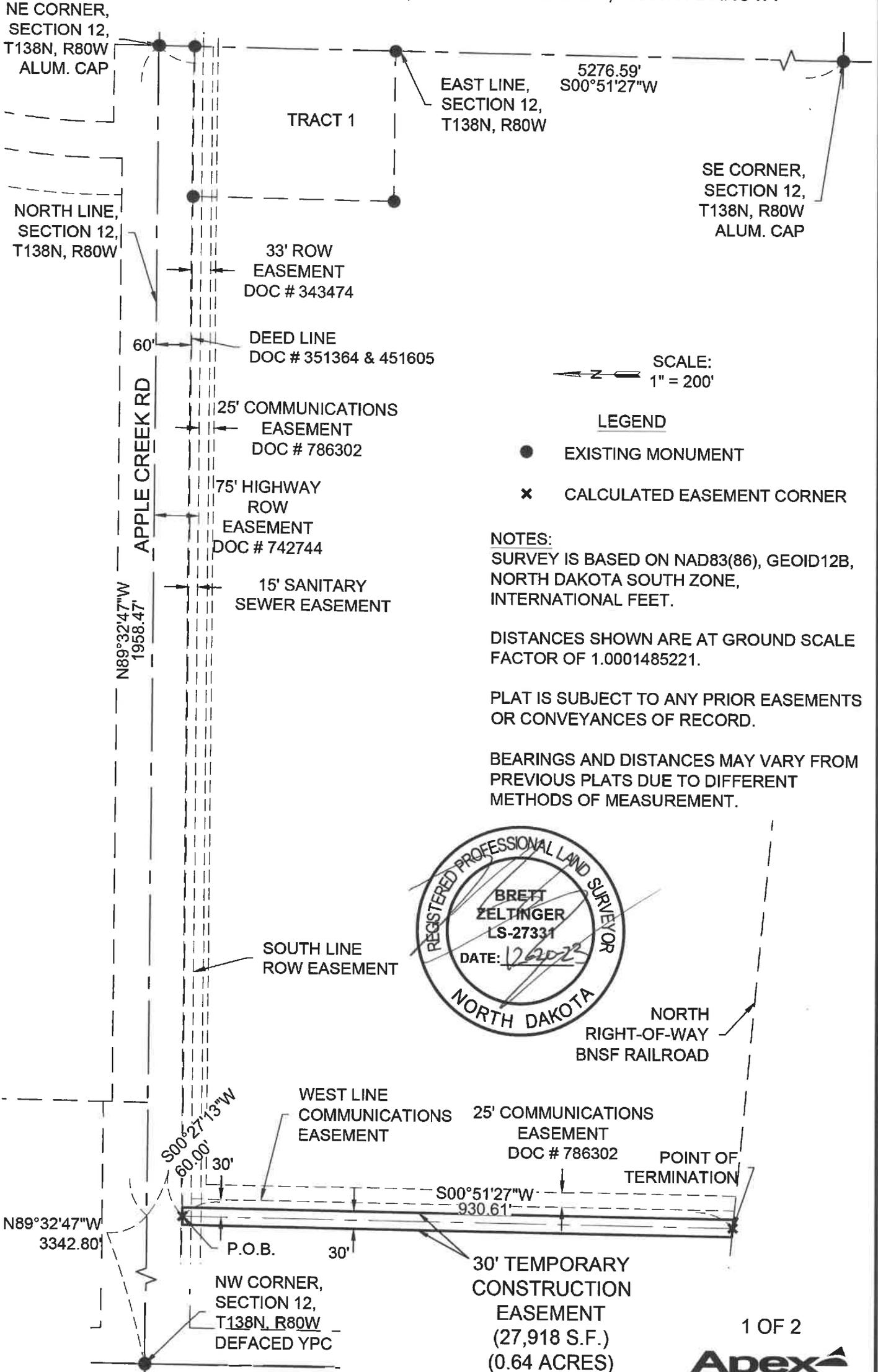
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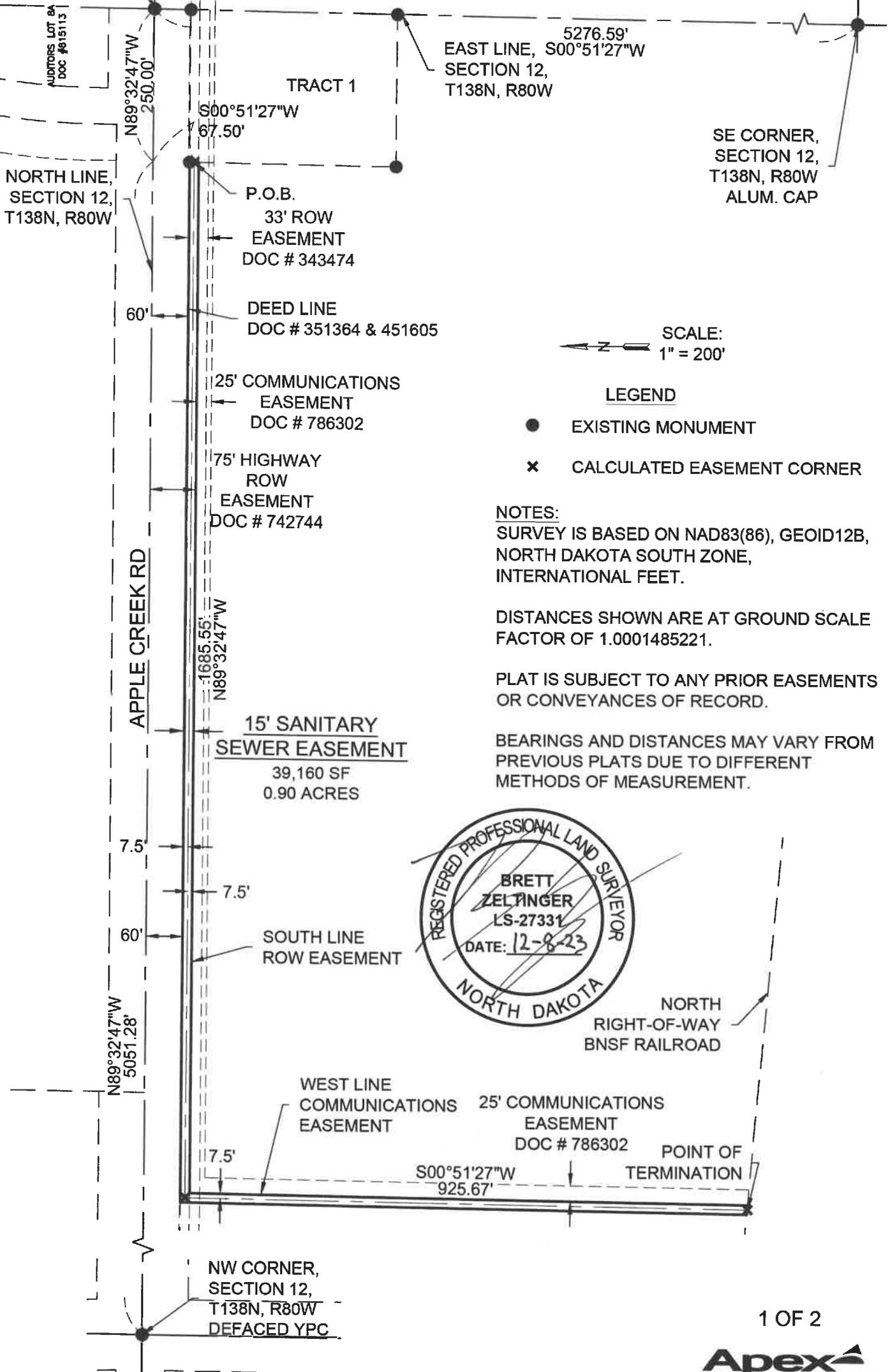
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