

City of Scottsbluff, Nebraska

Monday, December 19, 2022

Regular Meeting

Item Subdiv.1

Council to discuss and consider action on the Final Plat of Lots 2 through 9, Block 1, Frank Properties subdivision and authorize the Mayor to sign the Resolution and Contract for Public Improvements.

Staff Contact: Zachary Glaubius, Planning Administrator

Agenda Statement

Item No.

For Meeting of: 12-19-22

AGENDA TITLE: Council to discuss and consider action on the Final Plat and Rezone Request of Lots 2-9, Block 1, Frank Properties located along 28th and 29th Street between Avenue I and Avenue K.

SUBMITTED BY DEPARTMENT/ORGANIZATION: Development Services

PRESENTATION BY: Zachary Glaubius, Planning Administrator

SUMMARY EXPLANATION: At the 7-11-22 Planning Commission meeting, the Planning Commission made positive recommendations on the approval of the Final Plat and Rezone Request for Lots 2-9, Block 1, Frank Properties. The rezone is from Agricultural to C-2 Neighborhood and Retail Commercial. The Final Plat has slightly changed since the Planning Commission meeting with the proposed sewer main along 29th Street be relocated to along Avenue K and in a utility easement the rear property line of Lots 3, 4, 5, and 6. The property owner does not desire to construct the public improvements at this time and as per 21-1-27, is has submitted a Contract for Public Improvements which meets the Planning Commission's conditions. Additionally, the applicant will be requesting the creation of a paving district and sewer district.

BOARD/COMMISSION/STAFF RECOMMENDATION: Positive recommendation on approval

Does this item require the expenditure of funds?

_____yes _____no

Are funds budgeted?

_____yes _____no

If no, comments:

Estimated Amount

Amount Budgeted

Department

Account Description

Approval of funds available

City Finance Director

EXHIBITS

Resolution ✓

Ordinance ✓

Contract ☐

Minutes ✓

Plan/Map ✓

Other (specify)

Staff Report

Rev: 12/14/ City Clerk

NOTIFICATION LIST: Yes ☐ No ☐ Further Instructions ☐
Please list names and addresses required for notification.

APPROVAL FOR SUBMITTAL: _____
City Manager

Rev: 12/14/ City Clerk

City of Scottsbluff City Council

Development Services Staff Report – Zachary Glaubius

Prepared on: December 12, 2022 For Hearing of: December 19, 2022



I. GENERAL INFORMATION

- A. Applicant:** Bryan Frank (Frank Properties 2, LLC)
PO Box 2395
Scottsbluff, NE 69361
- B. Property**
Owner: Same as Applicant
- C. Proposal:** Final of Lots 2-9, Block 1, Frank Properties subdivision
- D. Legal Description:** An addition to the City of Scottsbluff situated in the Southeast Quarter of the Southeast Quarter of Section 15, Township 22 North, Range 55 West of the 6th PM, Scotts Bluff County, Nebraska
- E. Location:** Approximately 3.5 acres of land located southeast of the intersection of Avenue K and 29th Street
- F. Existing Zoning & Land Use:** Ag – Agricultural
- G. Future Land Use Designation:** Automobile Commercial
- H. Size of Site:** Approximately 6.26 Acres

II. BACKGROUND INFORMATION

A. General Neighborhood/Area Land Uses and Zoning:

Direction From Subject Site	Future Land Use Designation	Current Zoning Designation	Surrounding Development
North	Northwest Commercial	C-2 Neighborhood and Retail Commercial	Home Depot
East	Northwest Commercial	C-2 Neighborhood and Retail Commercial R-1A Single Family Residential	Shaggy Buffalo Car Wash, Viaero Wireless & Multi-Family Residential Building
South	Highway 26 Commercial	C-2 Neighborhood and Retail Commercial	RCI, Taco Town, Domino's, Storage Units, Contryman Associates

West	Automobile Commercial	Ag – Agricultural	Farm ground
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B. Relevant Case History

1. The preliminary plat for the subdivision was approved by City Council on August 15, 2022.

III. ANALYSIS

A. Comprehensive Plan: The Future Land Use Map of the Comprehensive Plan currently shows the site as Automobile Commercial.

B. Traffic & Access:

1. Lots 2-4 are accessible via 29th Street.
2. Lots 5-9 will be accessible via 28th Street.
3. Lots 4 and 5 will also be accessible via Avenue K.
4. 29th Street is constructed to Avenue K.
5. 28th Street and Avenue K will be constructed prior to the issuance of a building permit as per the Contract for Public Improvements.
6. The first 263 feet of 28th Street were dedicated in 1989, however the street has not been constructed. Per an agreement found in Miscellaneous Book 123 Page 12, the subdivider and successors of the Baltes Addition subdivision were to have constructed this segment of street by December 1989.
7. A 29 feet wide utility and access easement is located where 28th Street will be constructed. The easement and alley will be vacated and the City will retain the land as public right-of-way for 28th Street.

C. Utilities:

1. 8-inch diameter water mains are located along both 28th and 29th Streets.
2. An 8-inch diameter sanitary sewer main is located where 28th Street will be dedicated and constructed.
3. A 30-inch diameter storm sewer main is located on the northside of 29th Street.
4. A 20 feet utility easement is proposed along the boundaries of between Lots 2, 3, 4, 5, 6, and 7 for a sewer main.

IV. STAFF COMMENTS

- A.** The developer, Frank Properties 2, LLC, is proposing a Developer's Agreement or Contract for Public Improvements, which would postpone the construction of 28th Street from Avenue I to Avenue K, Avenue K from 28th Street to 29th Street, and the sewer main extension.
 - a.** No building permit would be issued until all improvements are constructed or an agreement with a contractor for such construction has been signed.
- B.** With this plat, the applicant is requesting to rezone the land to C-2 Commercial. The 2016 Comprehensive Land Use Map identifies this area as Northwest Commercial and recommends the C-2 district in this area.
- C.** The developer will be requesting the creation of a Paving District and a Sanitary and Improvement District.

- D. The sidewalk along the southside of 29th Street will be required to be constructed prior to the issuance of a certificate of occupancy.

V. FINDINGS OF FACT

A. Findings of Fact to Recommend Its Approval May Include:

1. The Comprehensive Plan identifies the area as Northwest Commercial and the proposed rezone is to C-2 Neighborhood and Retail Commercial.
2. The proposed lots and use are consistent with the surrounding neighborhood.
3. The Developer's Agreement will cause compliance with Code 21-1-27 which requires the construction of all improvements in a subdivision.
4. The C-2 District does not require a minimum lot size.

B. Findings of Fact to Not Recommend Approval May Include:

1. None

VI. STAFF RECCOMENDATION

- A. Staff recommends the City Council Approval the Final Plat of Lots 2-9, Block 1, Frank Properties, an addition to the City of Scottsbluff situated in the southeast quarter of the southeast quarter of Section 15, Township 22 North, Range 55 West of the 6th PM, Scotts Bluff County, Nebraska, and associated developer's agreement which includes the installation of 28th Street from the eastern boundary of Avenue I to Avenue K, Avenue K from 28th Street to 29th Street, and the sewer main extension in the subdivision.

PLANNING COMMISSION MINUTES
REGULAR SCHEDULED MEETING
July 11, 2022
SCOTTSBLUFF, NEBRASKA

The Planning Commission for the City of Scottsbluff met in regular scheduled meeting on Monday, July 11, 2022 at 6:00 PM in the Scottsbluff City Council Chambers at 2525 Circle Drive, Scottsbluff, Nebraska. A notice of the meeting was published in the Star-Herald, a newspaper of general circulation in the city, on July 1, 2022. The notice stated the date, time, and location of the meeting, that the meeting was open to the public, and that anyone with a disability desiring reasonable accommodation to attend should contact the Development Services office. An agenda was kept current and available for public inspection at the Development Services office, provided the Planning Commission can modify the agenda at the meeting if it is determined that an emergency so required. A copy of the agenda packet was delivered to each Planning Commission member.

- 1 Chairman Dana Weber called the meeting to order at 6:00 PM. Roll call consisted of the following members being present, Becky Estrada, Dave Gompert, Callen Wayman, Henry Huber, Mark Westphal, Dana Weber, Linda Redfern (Alternate, Quorum present so excused). "Absent": Anita Chadwick, Angie Aguallo, Jim Zitterkopf. City Officials present were Taylor Stephens, GIS Analyst/Acting Secretary, Zachary Glaubius, Planning Administrator (via Zoom), and Kathleen Quintana, Fire Marshal.
- 2 Chairman Dana Weber informed those present of the Nebraska Open Meetings Act and that a copy was located on the south wall of the Council Chambers.
- 3 Acknowledgement of any changes in the agenda: None.
- 4 Business not on the agenda: None.
- 5 The minutes from the April 11, 2022 meeting were reviewed. Two corrections were noted by Weber and Stephens. Conclusion: a motion was made by Estrada and seconded by Westphal to approve the minutes from May 9, 2022 meeting with noted changes. "Yeas" Huber, Westphal, Wayman, Weber, Gompert, Estrada "Nays": "Absent": Chadwick, Aguallo, Zitterkopf "Excused": Redfern (alt.) The motion carried.
- 6 Item 6A & 6B: Chairman Weber opened a joint public hearing at 6:03 PM for Items 6A and 6B regarding the vacation of Lot 1B, Block 10, Imperial Subdivision and Final Plat of Lots 1 & 2, Block 1, Orphan Motors Subdivision situated in the public hearing regarding the vacation of Lot 1B, Block 10, Imperial Subdivision situated in the SW quarter of the SW quarter of section 24, Township 22 North, Range 55 West of the 6th P.M., Scotts Bluff County, NE. Chairman Weber notified the commissioners that items 6A and 6B be ran concurrently and asked if there was any issue with this. There was none. Glaubius then stated the reason for the plat vacation and new final plat was due to municipal code 21-1-68 as the property had already been re-platted twice and would need the plat vacation and new final plat to satisfy the code. Glaubius also stated that a sewer main will have to be extended to reach Lot 2 of the new subdivision. Glaubius also stated that the existing easement in the SW corner of the property will remain. Estrada noted a clerical error on the agenda that 6B should state Township 22 North. Weber closed the public hearing at 6:06 PM. Wayman then asked that the reason the property owner has to vacate the plat is because the property was replated twice. Glaubius confirmed this.
- 7 **Conclusion:** Motion by Gompert, seconded by Westphal to make a positive recommendation on the approval by the city council of the vacation of Lot 1B, Block 10, Imperial Subdivision and Final Plats of Lots 1 & 2, Block 1, Orphan Motors Subdivision situated in the vacation of Lot 1B,

- Block 10, Imperial Subdivision. "Yeas" Huber, Westphal, Wayman, Weber, Gompert, Estrada "Nays": "Absent": Chadwick, Aguillo, Zitterkopf "Excused": Redfern (alt.) The motion carried.
- 8 Item 6C, 6D, 6E: Chairman Weber opened a joint public hearing at 6:08 for a preliminary plat, final plat, and a rezone from Agriculture to C-2 Neighborhood Commercial for Lots 2-9, Block 1, Frank Properties Subdivision situated in the SE quarter of the SE quarter of section 15, township 22 North, range 55 West of the 6th P.M., Scotts Bluff County, NE. Chairman Weber notified the commissioners that item 6C, 6D, and 6E be ran concurrently and asked if there was any issue with this. There was none. Glaubius stated that this is a preliminary, final and rezone of lots just west of the new car wash on 29th Street. Glaubius noted that 28th street will need to be constructed and that there was a developer's agreement for the east portion of 28th Street between neighboring properties to construct that portion. Glaubius stated that this construction was supposed to be completed by the end of 1989. Glaubius stated that the remainder of 28th Street and Avenue K are dedicated in this plat. Glaubius stated that sewer will have to be extended along 29th street. Glaubius stated that a developer's agreement for public improvements has been proposed to construct 28th street with utilities, and staff are requesting Avenue K be included in the agreement. Glaubius stated that the C-2 is in character with the surrounding properties. Glaubius stated that staff is recommending that the planning commission make a positive recommendation on the condition the updated developer's agreement include Avenue K as well as 28th Street and the 29th Street sewer extension.
- 9 Greg Schilz from MC Schaff approached the commission on behalf of Mr. Frank. Schilz stated the developer has requested the creation of a paving district and sewer district. Schilz also stated that the developer's agreement is being completed and will be sent to Glaubius. Weber asked if the property owner is aware of the conditions for the contract and Schilz replied yes. Westphal asked if 29th street will be platted to Avenue M and Schilz responded that 29th street will go to Avenue K. Mike Hackett, owner of the Dominos property approached the commission and raised his concerns with storm water. Hackett stated that storm water currently flows to the north of his property into a retention pond and has concerns with the road possibly interfering with that. Schilz assured Hackett that storm water would runoff to the west towards Avenue K and would be temporarily contained on the south portion of Avenue K. Westphal stated that Hackett monitor his property as construction is on-going. Gompert requested Hackett not be afraid to ask questions as the street is constructed. Weber closed the public hearing at 6:20 PM. Wayman asked for further clarification on the area that would become the paving district of 28th Street and Avenue K. Schilz answered with how the developer's agreement will be written.
- 10 **Conclusion:** Motion by Estrada, seconded by Westphal to make a positive recommendation on the approval of preliminary plat, final plat and rezone from agriculture to C-2 neighborhood commercial by city council on the condition the proposed developer's agreement includes Avenue K, 28th Street, and the 29th Street sewer extension. "Yeas" Huber, Westphal, Wayman, Weber, Gompert, Estrada "Nays": "Absent": Chadwick, Aguillo, Zitterkopf "Excused": Redfern (alt.) The motion carried.
- 11 Item 6F: Chairman Weber opened a public hearing at 6:22 for proposed ordinance text change to Chapter 4 Article 1 regarding the International Building Code (IBC) and the International Residential Code (IRC). Glaubius stated staff had discovered that during the review of the code book that oversights were discovered. Glaubius stated 4-1-10 excludes an adopted section of the International Fire Code that was adopted in 2021. The code 4-1-2(A)(1) referenced the IBC Appendix F, and the code is supposed to reference IRC Appendix F as it relates to radon gas mitigation. The city staff has already been enforcing Appendix F from the IRC. Glaubius stated that city staff recommended that the planning commission make a positive recommendation to the city council to approve the proposed ordinance text amendment change to 4-1-10 and 4-1-

2. Chairman Weber closed the public hearing at 6:25 PM. Wayman asked to further clarify the information about mitigating radon. Glaubius stated that this was just an oversight to clean up the code book.

- 12 **Conclusion:** Motion by Westphal, seconded by Gompert to make a positive recommendation to the city council to approve the proposed ordinance text amendment change to 4-1-10 and 4-1-2. "Yeas" Huber, Westphal, Weber, Gompert, Estrada "Nays": Wayman "Absent": Chadwick, Aguillo, Zitterkopf "Excused": Redfern (alt.) The motion carried.
- 13 Item 7: No Information
- 14 Item 8: No Other Business
- 15 Weber introduced Item 9 regarding scheduling the next Planning Commission meeting on August 8th, 2022
- 16 Item 10: Adjournment
- 17 Adjournment: Motion by Estrada, seconded by Westphal to adjourn the meeting at 6:27 PM. "Yeas" Huber, Westphal, Wayman, Weber, Gompert, Estrada "Nays": "Absent": Chadwick, Aguillo, Zitterkopf "Excused": Redfern (alt.) The motion carried.

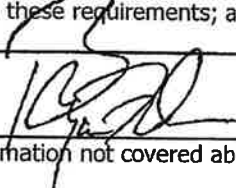

Chairman Dana Weber

Zachary Glaubius, Secretary



City of Scottsbluff, Nebraska

Application for a Preliminary Plat Subdivision

Date: 05-11-2022			DO NOT WRITE IN THIS BLOCK	
Address (Location): West 29th Street (Proposed Lots 2-9, Block 1, Frank Properties)			Permit Number:	
Applicant's Name Bryan Frank (Frank Properties 2, LLC.)			Plat Approved Denied	
Applicant's Address: PO Box 2395			Date Issued:	
City: Scottsbluff	State: Nebraska	Zip: 69363	Comp. Plan Land Use:	Zone:
Telephone: 308-631-8350	Mobile: 308-631-8350	Email: bryanfrank@bfenterprising.com	Attached: Plot Plan Legal Description (in Word) \$100.00 filing fee \$3.00 per property owner within 300-feet Receipt # _____	
Property Owner: Frank Properties 2, LLC.				
Property Owner's Address: PO Box 2395				
City: Scottsbluff	State: Nebraska	Zip: 69363		
Telephone: 308-631-8350	Mobile: 308-631-8350	Email: bryanfrank@bfenterprising.com		
Engineer or Surveyor: Gregg M. Schilz LS-785			Total Acreage: ±4.80 Acres	
Engineer or Surveyor Address: 818 South Beltline Highway East			Proposed number of lots: 8	
City: Scottsbluff	State: Nebraska	Zip: 69361	Present Use of Property: Agriculture Zone A	
Telephone: 308-635-1926	Mobile: 308-631-7099	Email: gschilz@mcschaff.com	Proposed Use of Property: Commercial Proposed Zone C2	
Location of property: West of Viaero Wireless and south of Home Depot on 29th Street			Present Zoning: Agriculture Zone A	
Please provide the following: Copy of Preliminary Plan (showing future & current property lines, fence lines, irrigation canals, future street widths, dimensions, existing structures, proposed structures, easements, etc..) Legal Description on a CD/Disk (in Word) \$100.00 filing fee Proof of Ownership of Property (See 21-1-50, Title Insurance, Attorney's opinion, Certificate of registered abstracter)				
The undersigned, hereby certify that he/she is familiar with all the requirements of Ordinance No. 3410 and amendments thereto, establishing minimum subdivision design standards to be installed by the subdivision and that he/she has caused said preliminary plat and plan to be prepared. He/she certifies that all requirements of Ordinance No. 3410 and amendments there to have been met and submits this application for approval subject to the requirements of said ordinance. I have also read and am familiar with the City Ordinances and will comply with these requirements; and that the statements herein contained are true and correct to the best of my knowledge and belief.				
Applicant's Signature: 			Date:  5-12-2022	
Remarks: (Insert here any information not covered above)				

Development Services Department

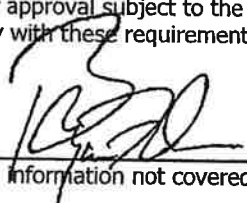

2525 Circle Drive, Scottsbluff, NE 69361

(308) 630-6243



City of Scottsbluff, Nebraska

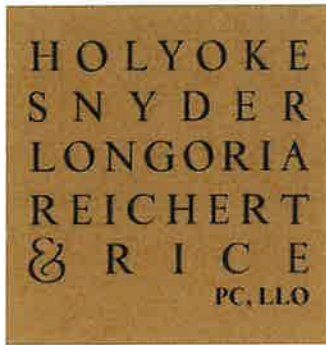
Application for a Final Plat Subdivision

Date: 05-11-2022			DO NOT WRITE IN THIS BLOCK	
Address (Location): West 29th Street (Proposed Lots 2-9, Block 1, Frank Properties)			Permit Number:	
Applicant's Name Bryan Frank (Frank Properties 2, LLC.)			Plat Approved _____ Denied _____	
Applicant's Address: PO Box 2395			Date Issued:	
City: Scottsbluff	State: Nebraska	Zip: 69363	Comp. Plan Land Use:	Zone:
Telephone: 308-631-8350	Mobile: 308-631-8350	Email: bryanfrank@bfenterprising.com	Attached: Final Plat Legal Description (in Word) \$100.00 filing fee Letter of transmittal Receipt # _____	
Property Owner: Frank Properties 2, LLC.				
Property Owner's Address: PO Box 2395				
City: Scottsbluff	State: Nebraska	Zip: 69363		
Telephone: 308-631-8350	Mobile: 308-631-8350	Email: bryanfrank@bfenterprising.com		
Engineer or Surveyor: Gregg M. Schilz LS-785			Total Acreage: ±4.80 Acres	
Engineer or Surveyor Address: 818 South Beltline Highway East			Proposed number of lots: 8	
City: Scottsbluff	State: Nebraska	Zip: 69361	Present Use of Property: Agriculture Zone A	
Telephone: 308-635-1926	Mobile: 308-631-7099	Email: gschilz@hotmail.com	Proposed Use of Property: Commercial Proposed Zone C2	
Location of property: West of Viaero Wireless and south of Home Depot on 29th Street			Present Zoning: Agriculture Zone A	
Please provide the following: Copy of Final Plat (Mylar and 3.5" diskette or CD-ROM in AutoCAD format) Copy of Preliminary Plat (showing future & current property lines, fence lines, irrigation canals, future street widths, dimensions, existing structures, proposed structures, easements, etc.) Legal Description on a CD/Disk (in Word) \$100.00 filing fee (if not submitted with approval of Preliminary Plat) Letter of transmittal				
The undersigned, hereby certify that he/she is familiar with all the requirements of Ordinance No. 3410 and amendments thereto, establishing minimum subdivision design standards to be installed by the subdivision and that he/she has caused said preliminary plat and plan to be prepared. He/she certifies that all requirements of Ordinance No. 3410 and amendments there to have been met and submits this application for approval subject to the requirements of said ordinance. I have also read and am familiar with the City Ordinances and will comply with these requirements; and that the statements herein contained are true and correct to the best of my knowledge and belief.				
Applicant's Signature: 			Date:  5-12-2022	
Remarks: (Insert here any information not covered above)				

Development Services Department

2525 Circle Drive, Scottsbluff, NE 69361

(308) 630-6243



Attorneys At Law
1714 Second Avenue
Post Office Box 2424
Scottsbluff, NE 69363-2424

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Facsimile: (308) 635-8000
www.panhandlejustice.com

Thomas T. Holyoke
Andrew W. Snyder
Jonas I. Longoria
Katy A. Reichert
Brendan J. Rice*

*Licensed in Nebraska & Wyoming

May 16, 2022

Via E-Mail Only

Mr. Gregg Schilz
MC Schaff
gschilz@mcschaff.com

Re: Opinion of Ownership
Real Property located within the SE1/4SE1/4, Section 15, Township 22 North,
Range 55 West of the 6th P.M., Scotts Bluff County, Nebraska.

Dear Mr. Schilz:

On behalf of Frank Properties 2, LLC, a Nebraska limited liability company, I have reviewed the records of the Register of Deeds of Scotts Bluff County, Nebraska, in connection with the ownership of real property located in the SE1/4SE1/4 of Section 15, Township 22 North, Range 55 West of the 6th P.M., Scotts Bluff County, Nebraska, further identified by its parcel number 010000972.

From a review of the records of the Register of Deeds it is clear that Frank Properties 2 LLC, a Nebraska limited liability company received title to the subject premises via Warranty Deed dated December 11, 2020, and recorded on December 11, 2020, as Instrument Number 2020-6193.

As such, it is my conclusion that Frank Properties 2 LLC is the lawful owner of record of the subject premises. Please feel free to contact me with any further comments or questions. Thank you.

Very Truly Yours,

Brendan J. Rice

BJR:sq

June 27, 2022

Mr. Zach Glabius
Planning Administrator
City of Scottsbluff, Nebraska
2525 Circle Drive
Scottsbluff, Nebraska 69361

Mr. Gladius:

On behalf of our client, Frank Properties 2, LLC., we would like to request that a Paving District be created for the paving on 28th Street, in Frank Properties Subdivision.

The district would be to pave 28th Street beginning at the intersection of 28th Street and Avenue I and continuing west on 28th Street to the future Avenue K intersection.

We are requesting M.C. Schaff & Associates be designated the Special Engineer for the project. They will provide more information if needed at this time.

Requested by Brendan Rice representing Frank Properties 2.

Brendan Rice

June 27, 2022

Mr. Zach Glabius
Planning Administrator
City of Scottsbluff, Nebraska
2525 Circle Drive
Scottsbluff, Nebraska 69361

Mr. Gladius:

On behalf of our client, Frank Properties 2, LLC., we would like to request that a Sewer District be created for the installation of sewer along 29th Street in Frank Properties Subdivision.

The district would include the installation of 8-inch sewer main beginning along the north property line within a utility easement from lot 2, Block 1 Frank Properties subdivision and extend west to service Lot 4, Block 1 Frank Properties subdivision.

We are requesting M.C. Schaff & Associates be designated the Special Engineer for the project. They will provide more information if needed at this time.

Requested by Brendan Rice representing Frank Properties 2.

Brendan Rice

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Scottsbluff City Zoning Map (Rezone) Application

2525 Circle Drive, Scottsbluff, NE 69361
Telephone (308) 630-6243 Fax (308) 630-6204
www.scottsbluff.org

Project Information

Application Date:	5-11-2022		Number (Office Use Only):
Property Address:	West 29th Street (Proposed Lots 2-9, Block 1, Frank Properties)		
Current Zone:	Proposed Zone:	Acreage of Property:	
A	C2	±4.80 Acres	
Comprehensive Plan Designation:	Comprehensive Plan Amendment Required?		
Highway 26 Commercial	No		

Applicant Information

Applicant:	Property Owner:		
Bryan Frank (Frank Properties 2, LLC.)	Frank Properties 2, LLC.		
Address:	Telephone:		
PO Box 2395	308-631-8350		
City:	State:	Zip:	Alt. Telephone:
Scottsbluff	Ne	69363	

City Development Process and Requirements

- Staff Review Time:** Approximately 4 to 5 weeks prior to the Public Hearing date.
- Planning Commission:** Held the second Monday of each month at 6:00 p.m.
- City Council:** Held the first and third Mondays of each month at 6:00 p.m.

All meetings are held in the City Council Chambers at 2525 Circle Drive in Scottsbluff.

REQUIREMENTS

- ☐ Pre-application meeting with City Planner
- ☐ Rezone Fees \$100.00 plus
- ☐ Cost of postage for everyone within 300 feet + \$3.00 per property owner
- ☐ Provide a list (in mailing label format) of property owners within 300 feet of the exterior boundaries of the property to be rezoned together with:
 - ☐ A map(s) that clearly show the ownership within the 300 feet

- ☐ A letter from the property owner giving permission that their property maybe rezoned.
- ☐ Legal description of the property - on disk or emailed to the City Development Service Department in Word format and a map of property to be rezoned.
- ☐ A Letter from the petitioner that the proposed use:
 - ☐ Would provide a service required by the neighborhood and/or community and be consistent with sound land use.
 - ☐ Would not be injurious to the adjacent properties or uses
 - ☐ That rezoning the property would not create special hazards or problems for the neighborhood or community
 - ☐ Would be harmonious and consistent with the plan for the area in the Comprehensive Plan
 - ☐ Why the rezone of the property should be granted.

If any of these items are not submitted with the application City Staff maintains the right to return the application as incomplete.

Rezone Process

After staff receives a completed application the staff will write a report to the Planning Commission including their recommendation. The Planning Commission will then hold a public hearing (which must be noticed in newspaper 10 days prior to the hearing) pertaining to the Zone Change and either recommend supporting the zone change or not to the City Council. After the Planning Commission the City Council will also hold a public hearing on the rezone request and either approve, approve with conditions or deny the request.

City of Scottsbluff
2525 Circle Drive
Scottsbluff, NE 69361

RE: Rezoning of Proposed Lots 2-9, Block 1, Frank Properties

To whom it may concern:

This letter is written in order to ensure that the rezoning of this property would provide a service required by the community, is consistent with sound land use, will not be injurious to the adjacent property owners, will not create a special hazard or problem for the community or neighborhood, and will be harmonious and consistent with the plan for the area.

The planned development is for commercial lots that will fall within the zoning of C-2. The property is bordered to the east and north by C-2 zoned properties. In addition, approximately 200 feet south of the property the zoning is C-2. The City's comprehensive plan indicates that the property falls within the Highway 26 Commercial designation. One of the appropriate zones for Highway 26 Commercial is C-2, of which we are requesting this property be re-zoned to.

Given this, we request that our request to rezone the property to C-2 be granted.

Thank you for your consideration,

Bryan Frank
Frank Properties 2

City of Scottsbluff Planning Commission

Development Services Staff Report – Zachary Glaubius

Prepared on: June 30, 2022 For Hearing of: March 14, 2022



I. GENERAL INFORMATION

- A. Applicant:** Bryan Frank (Frank Properties 2, LLC)
PO Box 2395
Scottsbluff, NE 69361
- B. Property Owner:** Same as Applicant
- C. Proposal:** Preliminary and Final Plats of Lots 2-9, Block 1, Frank Properties subdivision
Rezone Lots 2-9, Block 1, Frank Properties from Agricultural to C-2 Neighborhood and Retail Commercial
- D. Legal Description:** An addition to the City of Scottsbluff situated in the Southeast Quarter of the Southeast Quarter of Section 15, Township 22 North, Range 55 West of the 6th PM, Scotts Bluff County, Nebraska
- E. Location:** Approximately 4.58 acres of land located southeast of the intersection of Avenue K and 29th Street
- F. Existing Zoning & Land Use:** Ag – Agricultural
- G. Future Land Use Designation:** Automobile Commercial
- H. Size of Site:** Approximately 4.58 Acres

II. BACKGROUND INFORMATION

A. General Neighborhood/Area Land Uses and Zoning:

Direction From Subject Site	Future Land Use Designation	Current Zoning Designation	Surrounding Development
North	Northwest Commercial	C-2 Neighborhood and Retail Commercial	Home Depot
East	Northwest Commercial	C-2 Neighborhood and Retail Commercial R-1A Single Family Residential	Shaggy Buffalo Car Wash, Viaero Wireless & Multi-Family Residential Building

South	Highway 26 Commercial	C-2 Neighborhood and Retail Commercial	RCI, Taco Town, Domino's, Storage Units, Contryman Associates
West	Automobile Commercial	Ag – Agricultural	Farm ground

B. Relevant Case History

1. N.A.

III. ANALYSIS

A. Comprehensive Plan: The Future Land Use Map of the Comprehensive Plan currently shows the site as Automobile Commercial.

B. Traffic & Access:

1. Lots 2-4 are accessible via 29th Street.
2. Lots 5-9 will be accessible via 28th Street.
3. Lots 4 and 5 will also be accessible via Avenue K.
4. 29th Street is constructed to Avenue K.
5. 28th Street and Avenue K shall be constructed prior to the issuance of a building permit in the subdivision as per the Contract for Public Improvements/Developer's Agreement.
6. The first 263 feet of 28th Street were dedicated in 1989, however the street has not been constructed. Per an agreement found in Miscellaneous Book 123 Page 12, the subdivider and successors of the Baltes Addition subdivision were to have constructed this segment of street by December 1989.
7. A 29 feet wide utility and access easement is located where 28th Street will be constructed. The easement and alley will be vacated and the City will retain the land as public right-of-way for 28th Street.

C. Utilities:

1. 8-inch diameter water mains are located along both 28th and 29th Streets.
2. An 8-inch diameter sanitary sewer main is located where 28th Street will be dedicated and constructed.
3. A 30-inch diameter storm sewer main is located on the northside of 29th Street.
4. A 20 feet utility easement is proposed along the southside of 29th Street for the extension of the sanitary sewer main.
5. Further storm sewer infrastructure will be installed as this part of the City becomes more developed.

IV. STAFF COMMENTS

- A.** The developer, Frank Properties 2, LLC, has proposed a Developer's Agreement also known as a Contract for Public Improvements, which would postpone the construction of 28th Street and the sanitary sewer main along 29th Street. The current agreement excludes Avenue K.
- a. No building permit would be issued until all improvements are constructed or an agreement with a contractor for such construction has been signed.
 - b. Staff has requested Avenue K between 28th and 29th Street be included in this Developer's Agreement.

- B. With this plat, the applicant is requesting to rezone the land to C-2 Commercial. The 2016 Comprehensive Land Use Map identifies this area as Automobile Commercial and recommends the C-2 district in this area.
- C. The developer is requesting the creation of a Paving District and a Sewer District to pay for the construction of 28th Street and the 29th Street sewer main. Staff has requested Avenue K be included in the Paving District.
- D. The sidewalk along the southside of 29th Street will be required to be constructed prior to the issuance of a building permit.

V. FINDINGS OF FACT

A. Findings of Fact to Recommend Its Approval May Include:

- 1. The Comprehensive Plan identifies the area as Automobile Commercial and the proposed rezone is to C-2 Neighborhood and Retail Commercial.
- 2. The proposed lots and use are consistent with the surrounding neighborhood.
- 3. The Developer's Agreement will result in compliance with Code 21-1-27 which requires the construction of all improvements in a subdivision.
- 4. The C-2 District does not require a minimum lot size.

B. Findings of Fact to Not Recommend Approval May Include:

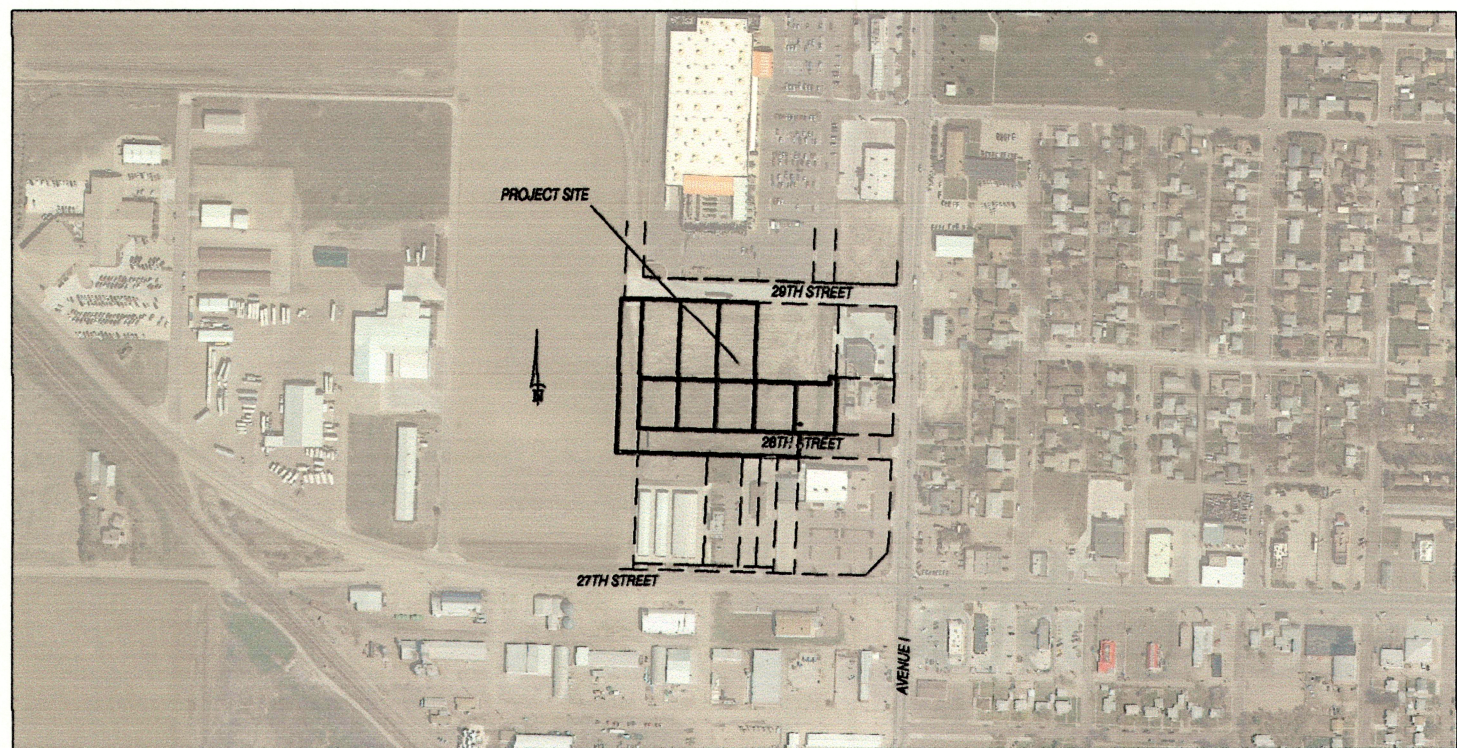
- 1. The current draft of Developer's Agreement does not include the completion of Avenue K between 28th and 29th Street.

VI. STAFF RECOMMENDATION

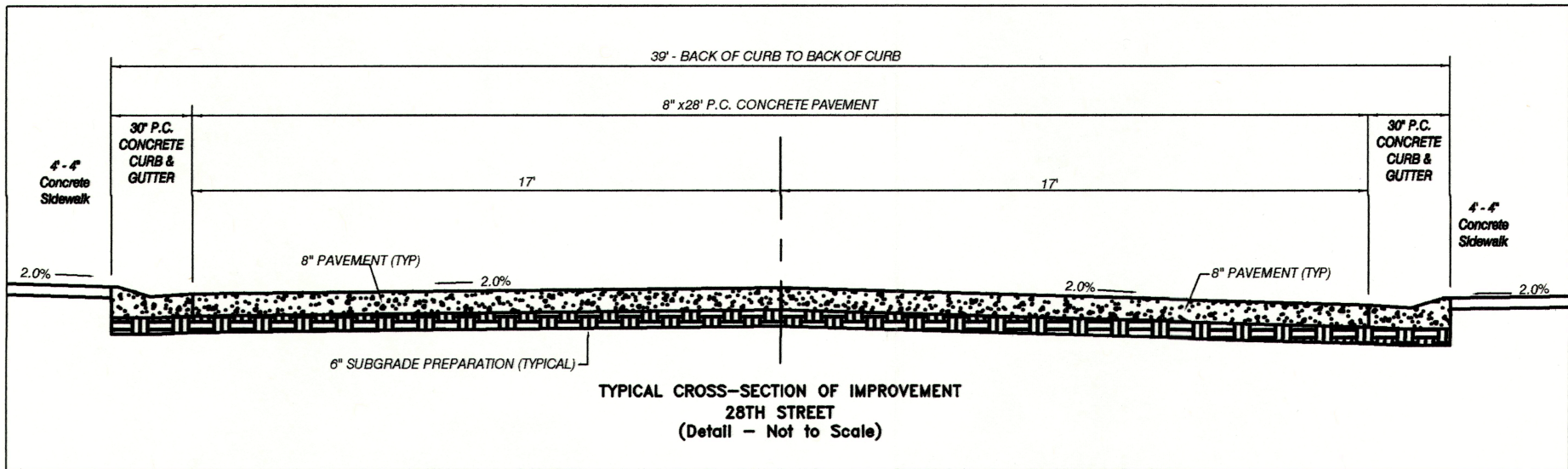
- A. Staff recommends Planning Commission recommend the approval of the Preliminary and Final Plat of and Rezone from Ag to C-2 Commercial for Lots 2-9, Block 1, Frank Properties, an addition to the City of Scottsbluff situated in the southeast quarter of the southeast quarter of Section 15, Township 22 North, Range 55 West of the 6th PM, Scotts Bluff County, Nebraska, on the condition the revised developer's agreement includes the installation of 28th Street from the eastern boundary of Lot 9 to Avenue K, Avenue K from 28th Street to 29th Street, and the sewer main along W. 29th Street within the subdivision.

PRELIMINARY PLAT

LOTS 2 THROUGH 9, BLOCK 1, FRANK PROPERTIES,
AN ADDITION TO THE CITY OF SCOTTSBLUFF,
SITUATED IN THE SOUTHEAST QUARTER OF THE
SOUTHEAST QUARTER OF SECTION 15,
TOWNSHIP 22 NORTH, RANGE 55 WEST
OF THE 6TH P.M., SCOTTS BLUFF COUNTY, NEBRASKA



VICINITY MAP



TYPICAL CROSS-SECTION OF IMPROVEMENT

28TH STREET
(Detail - Not to Scale)

LEGAL DESCRIPTION
LOTS 2 THROUGH 9, BLOCK 1, FRANK PROPERTIES, AN ADDITION TO THE CITY OF SCOTTSBLUFF, SITUATED IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 22 NORTH, RANGE 55 WEST OF THE 6TH P.M., SCOTTS BLUFF COUNTY, NEBRASKA

BEGINNING AT THE NORTHWEST CORNER OF LOT 1, BLOCK 1, FRANK PROPERTIES TO THE CITY OF SCOTTSBLUFF, AS RECORDED IN INSTRUMENT 2021-343, SCOTTS BLUFF COUNTY, NEBRASKA, THENCE SOUTHERLY ON THE WEST LINE OF SAID LOT 1, BLOCK 1, FRANK PROPERTIES, ON AN ASSUMED BEARING OF S02°05'00"W, A DISTANCE OF 220.00 FEET, THENCE BEARING S88°21'39"E, ON THE SOUTH LINE OF SAID LOT 1, BLOCK 1, FRANK PROPERTIES, A DISTANCE OF 212.00 FEET, THENCE BEARING N02°05'00"E, ON THE EAST LINE OF SAID LOT 1, BLOCK 1, FRANK PROPERTIES, A DISTANCE OF 17.01 FEET TO THE SOUTHWEST CORNER OF LOT 1, BLOCK 1, FRANK PROPERTIES, AS RECORDED IN DEED BOOK 207, PAGE 383, SCOTTS BLUFF COUNTY, NEBRASKA, THENCE BEARING S88°21'16"E, ON THE SOUTH LINE OF SAID LOT 1, BLOCK 1, FRANK PROPERTIES, A DISTANCE OF 15.85 FEET TO THE NORTHWEST CORNER OF LOT 1, BLOCK 1, FRANK PROPERTIES, AS RECORDED IN DEED BOOK 189, PAGE 312, SCOTTS BLUFF COUNTY, NEBRASKA, THENCE BEARING S02°01'53"W, ON THE WEST LINE OF SAID LOT 1, BLOCK 1, FRANK PROPERTIES, A DISTANCE OF 161.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 1, BLOCK 1, FRANK PROPERTIES, AS RECORDED IN DEED BOOK 189, PAGE 312, SCOTTS BLUFF COUNTY, NEBRASKA, THENCE BEARING S02°07'53"W, ON THE WESTERN TERMINATION LINE OF 28TH STREET, AS PLATTED IN DEED BOOK 189, PAGE 312, SCOTTS BLUFF COUNTY, NEBRASKA, A DISTANCE OF 66.00 FEET, SAID POINT ALSO BEING THE NORTHEAST CORNER OF LOT 1, BLOCK 5, BALTES SECOND ADDITION TO THE CITY OF SCOTTSBLUFF, AS RECORDED IN DEED BOOK 102, PAGE 169, SCOTTS BLUFF COUNTY, NEBRASKA, THENCE BEARING N88°26'05"W, ON THE NORTH LINE OF SAID BLOCK 5 BALTES SECOND ADDITION, A DISTANCE OF 260.20 FEET TO THE NORTHEAST CORNER OF BLOCK 1 ALF ADDITION TO THE CITY OF SCOTTSBLUFF, AS RECORDED IN INSTRUMENT 2002-4942, SCOTTS BLUFF COUNTY, NEBRASKA, THENCE BEARING N88°25'28"W, ON THE NORTH LINE OF SAID BLOCK 1, ALF ADDITION, A DISTANCE OF 197.97 FEET TO THE NORTHWEST CORNER OF SAID BLOCK 1, ALF ADDITION, THENCE CONTINUING ON THE WESTERLY EXTENSION OF THE NORTH LINE OF SAID BLOCK 1, ALF ADDITION, A DISTANCE OF 60.00 FEET, THENCE BEARING N02°04'46"E, A DISTANCE OF 430.78 FEET TO THE POINT OF INTERSECTION WITH THE SOUTH RIGHT OF WAY LINE OF 29TH STREET, AS PLATTED IN INSTRUMENT 2004-490, SCOTTS BLUFF COUNTY, NEBRASKA, THENCE BEARING S88°21'39"E, ON THE SOUTH RIGHT OF WAY LINE OF SAID 29TH STREET, A DISTANCE OF 387.06 FEET, TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 4.80 ACRES, MORE OR LESS

LEGEND	
	EXISTING SECTION CORNER, AS NOTED
	EXISTING QUARTER SECTION CORNER, AS NOTED
	EXISTING 5/8" REBAR, OR AS NOTED
	SET 5/8" x 24" REBAR
	RIGHT OF WAY RECORD
	UTILITY EASEMENT
	LIGHT POLE
	MANHOLE, AS NOTED
	STORM SEWER INLET
	FIRE HYDRANT
	WATER VALVE
	GUY WIRE
	BOLLARD
	ELECTRICAL BOX
	RIGHT OF WAY BUILDING SETBACK LINE
	GAS MARKER
	TELEPHONE PESTAL
	TREE WITH TRUNK DIAMETER SHOWN
	STREET SIGN, AS NOTED
	TELEPHONE MARKER
	PROPERTY LINE
	UTILITY EASEMENT
	SANITARY SEWER LINE
	STORM SEWER LINE
	WATER LINE
	BUILDING SETBACK LINE
	FENCE LINE

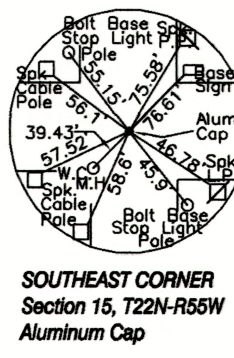
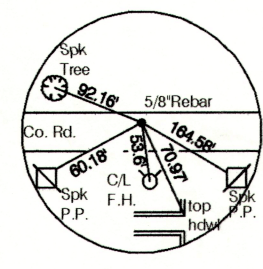
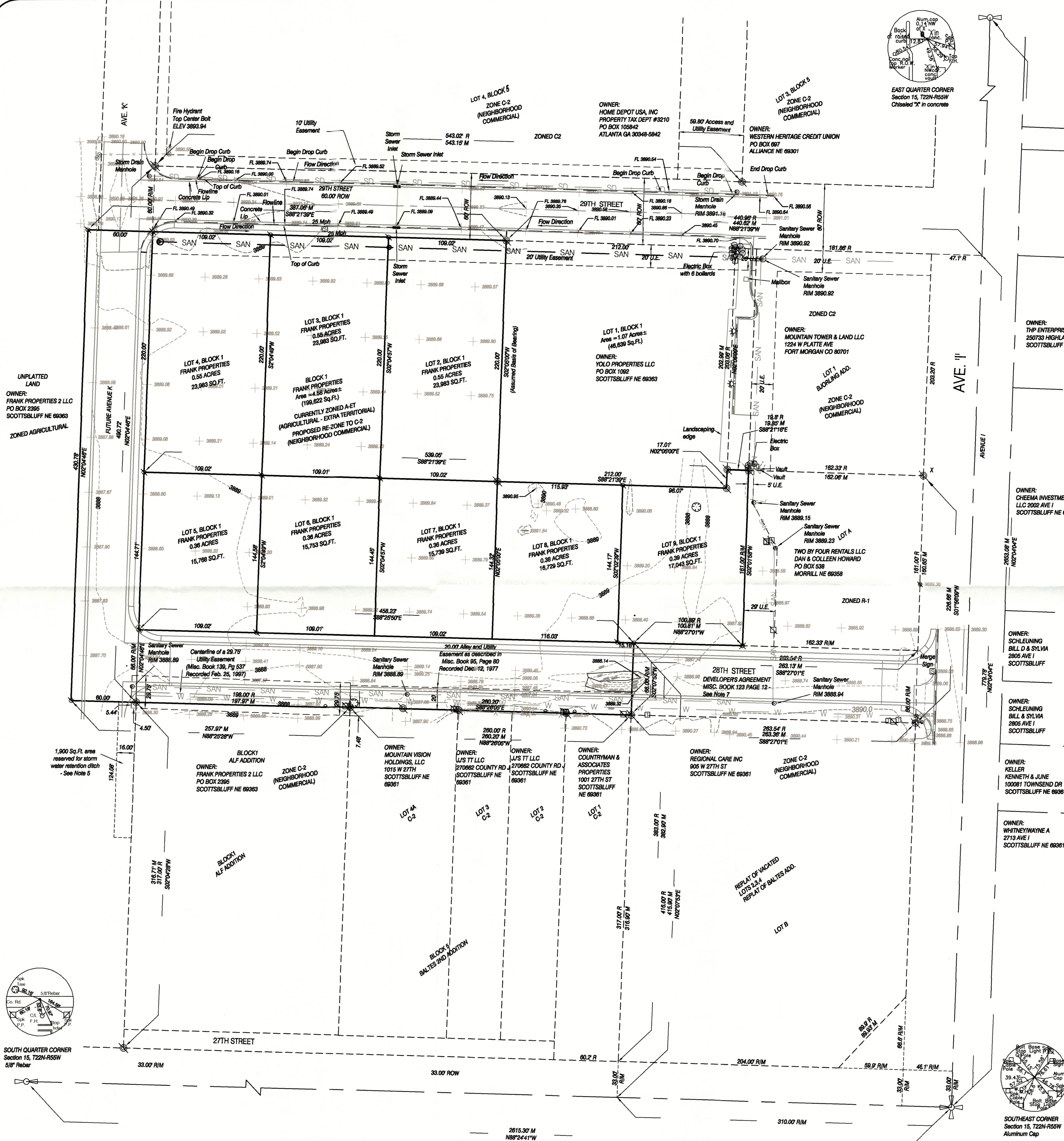
General Notes:

- All easements, restrictions and other documents that may affect these platted lots, that are of record or not of record, may not be shown on this plat.
- Flood Plain Information:
This property has been designated as Flood Zone B as shown on FIRM Map, Community Panel No. 310206-0005-C, effective date June 15, 1979.
Zone B refers to areas between limits of the 100-year flood and 500 year flood; or certain areas subject to 100-year flooding with average depths less than one (1) foot or where the contributing drainage area is less than one square mile; or areas protected by levees from the base flood.
- Zoning Information: The Building Setback requirements as per zoning designation is as follows:

SETBACK REQUIREMENTS FOR ZONE C2 (NEIGHBORHOOD AND RETAIL COMMERCIAL)

Front yard setback - None or 25' abutting R-Zone
Rear yard setback - None or 15' abutting R-Zone
Interior side yard setback - None or 5' abutting R-Zone
Side street setback - None
The maximum height of building allowed - 35 feet
(source: Scottsbluff Municipal Code Section 25-3-14)

- Developer's Address: Bryan Frank, PO Box 2396, Scottsbluff, Nebraska 69361
- This area will be used for storm water retention for Lots 2 through 9, Block 1, Frank Properties until city storm sewer is developed.
- In order to extend 28th Street to the west edge of Avenue K right of way, Frank Properties 2 LLC, would like to request the vacation of the 20-foot alley and utility easement as described in Miscellaneous Book 95, Page 80, Recorded on December 12, 1977, and also that part of a 29.75-foot utility easement, described in Miscellaneous Book 139, Page 537, recorded February 25th, 1997, lying North of the North property line of Block 1, Alf Addition, and retain said easement for the extension of road right of way of 28th Street.
- There is an existing Developers Agreement in place for the already dedicated section of 28th Street, recorded in Miscellaneous Book 123, Page 12-17.



M. C. SCHAFF & ASSOCIATES, INC.
818 SOUTH BELTLINE HIGHWAY EAST
SCOTTSBLUFF, NEBRASKA 69361



ENGINEERS ♦ PLANNERS ♦ DESIGNERS ♦ LAND SURVEYORS
PH: 308-635-1926 FAX: 308-635-7807 INTERNET: WWW.MCSCHAFF.COM

PROJECT: PROPOSED PRELIMINARY
PLAT OF LOTS 2-9, BLOCK 1,
FRANK PROPERTIES
SCOTTSBLUFF, NE

CLIENT: FRANK ENTERPRISES, INC
BRYAN FRANK

PROJECT NUMBER:
RM220095-00
PROJECT DATE:
APRIL 25, 2022
PROJECT MGR:
D.P.S.
PROJECT TEAM:
GS-TD

SEAL

DATE	REVISION

SHEET 1 OF 1
P-1

LOT 1, BLOCK 1,
FRANK PROPERTIES
SCOTTSBLUFF, NEBRASKA
SHEET 2 OF 2
JOB# RM220095-00

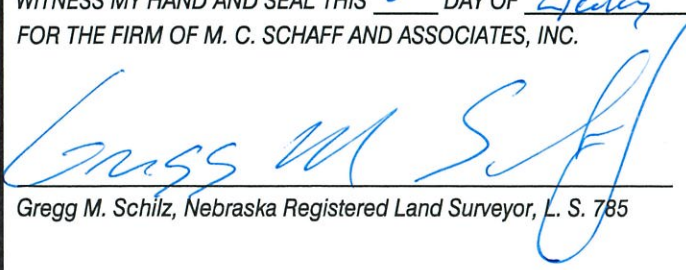
SURVEYOR'S CERTIFICATE

I, Gregg M. Schilz, a Nebraska Registered Land Surveyor, hereby certify that I, or under my direct supervision, have surveyed and prepared a plat of LOTS 2 THROUGH 9, BLOCK 1, FRANK PROPERTIES, AN ADDITION TO THE CITY OF SCOTTSBLUFF, SITUATED IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 22 NORTH, RANGE 55 WEST OF THE 6TH P.M., SCOTTS BLUFF COUNTY, NEBRASKA

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That the accompanying plat is a true delineation of such survey drawn to a scale of 80 feet to the inch. That all dimensions are in feet and decimals. That each lot and block has its own number and that the boundary of the plat is shown with a heavy solid line with dashed lines being for orientation purposes only. That all corners found or set are marked as shown.

WITNESS MY HAND AND SEAL THIS 5TH DAY OF July, 2022.
FOR THE FIRM OF M. C. SCHAFF AND ASSOCIATES, INC.


Gregg M. Schilz, Nebraska Registered Land Surveyor, L. S. 785



OWNER'S STATEMENT

We, the undersigned, being the owners of unplatted land situated in the Southeast Quarter of the Southwest Quarter of Section 15, Township 22 North, Range 55 West of the 6th P.M., Scotts Bluff County, Nebraska, as described in the foregoing 'Surveyor's Certificate' and shown on the accompanying plat have caused such real estate to be platted as LOTS 2 THROUGH 9, BLOCK 1, FRANK PROPERTIES, an Addition to the City of Scottsbluff, situated in the Southeast Quarter of the Southeast Quarter of Section 15, Township 22 North, Range 55 West of the 6th P.M., Scotts Bluff County, Nebraska.

That the foregoing plat is made with the free consent and in accordance with the desires of the undersigned owners. We hereby dedicate these streets and easements shown for the use and benefit of the public.
Dated this _____ day of _____, 2022.

Owner: Frank Properties 2, LLC

By: Bryan Frank, Member

ACKNOWLEDGEMENT

STATE OF NEBRASKA)
COUNTY OF SCOTTS BLUFF)

Before me, a Notary Public, qualified and acting in said County, personally came Bryan Frank, Member of Frank Properties 2, LLC, to me known to be the identical person whose signature is affixed to the foregoing 'Owner's Statement' and acknowledged the execution thereof to be his voluntary act and deed, and the voluntary act and deed of Frank Properties 2, LLC.

WITNESS MY HAND AND SEAL THIS _____ DAY OF _____, 2022.

Notary Public

My Commission Expires _____

APPROVAL AND ACCEPTANCE

The foregoing plat of LOTS 2 THROUGH 9, BLOCK 1, FRANK PROPERTIES, an Addition to the City of Scottsbluff, situated in the Southeast Quarter of the Southeast Quarter of Section 15, Township 22 North, Range 55 West of the 6th P.M., Scotts Bluff County, Nebraska, is hereby approved by the Mayor and City Council of the City of Scottsbluff, Scotts Bluff County, Nebraska, by resolution duly passed

this _____ day of _____, 2022.

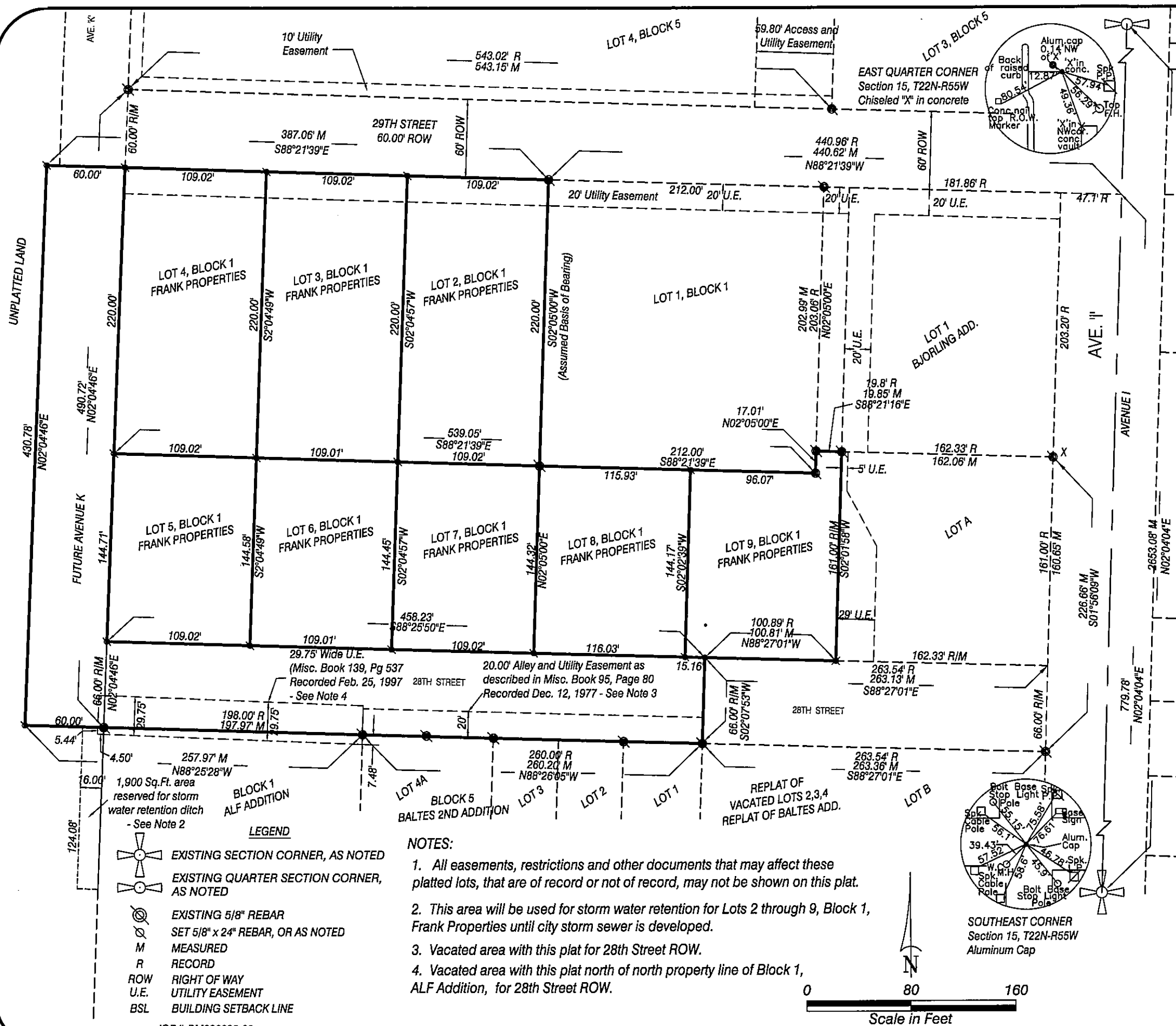
Mayor: Jeanne McKerrigan

ATTEST: _____
City Clerk

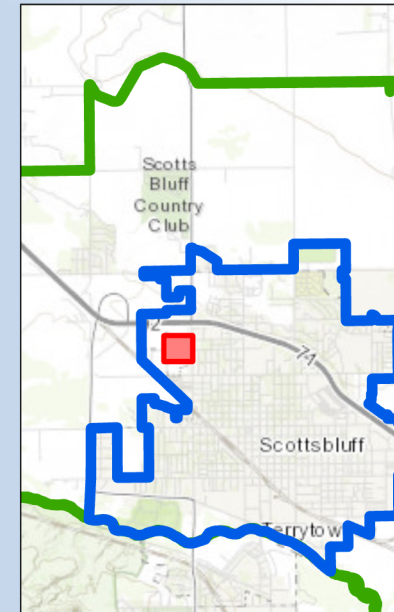
FINAL PLAT

LOTS 2 THROUGH 9, BLOCK 1, FRANK PROPERTIES, AN ADDITION TO THE CITY OF SCOTTSBLUFF,

SITUATED IN THE SOUTHEAST QUARTER OF THE
SOUTHEAST QUARTER OF SECTION 15,
TOWNSHIP 22 NORTH, RANGE 55 WEST
OF THE 6TH P.M., SCOTTS BLUFF COUNTY, NEBRASKA



Plat: Frank Properties Blk 1 Lots 2-9

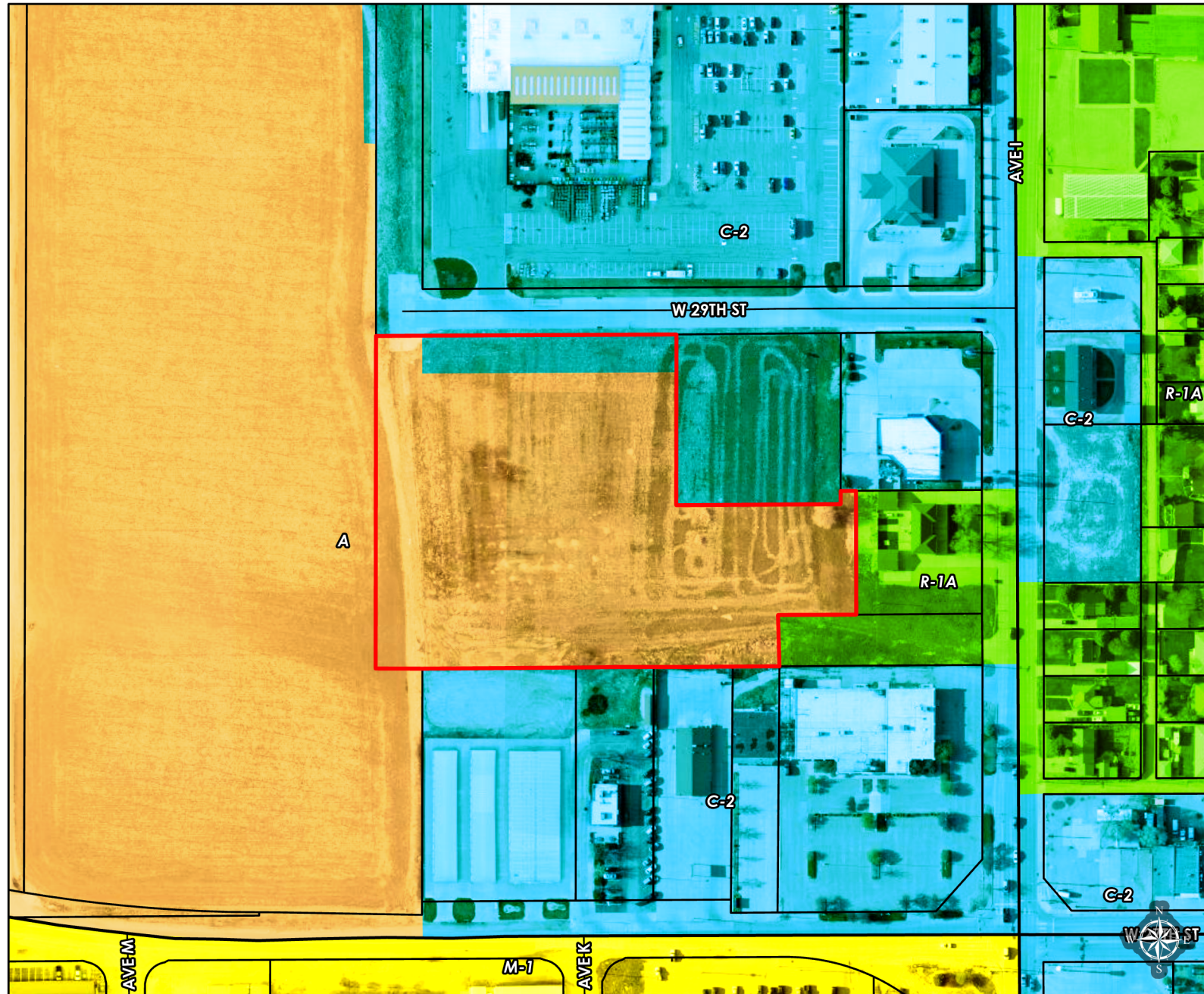


- Corporate Limits
- Extended Jurisdiction
- Proposed Changes
- Street Centerline
 - Highway
 - Main Road
 - Residential
 - Parcels

Taylor Stephens
City of Scottsbluff GIS
Created on 7/5/2022
Coordinate System: NAD 1983 (2011)
StatePlane Nebraska FIPS 2600 Feet
Lambert Conformal Conic

The City makes no representation or warranty as to the accuracy, timeliness, or completeness, and in particular, its accuracy in labeling or displaying dimensions, contours, property boundaries, or placement or location of any map features thereon.

Plat: Frank Properties Blk 1 Lots 2-9

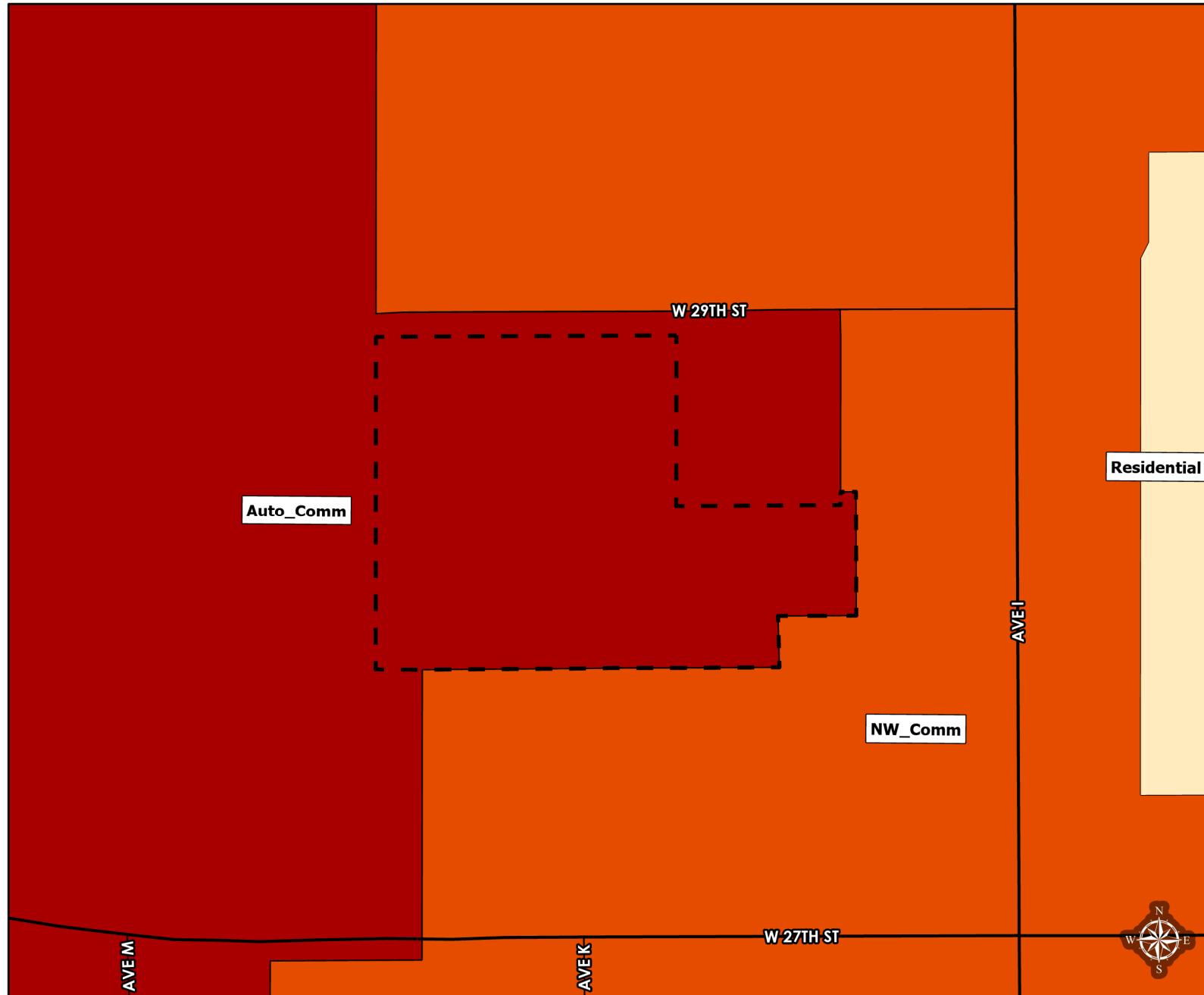


- Parcels
 - Proposed Changes
 - Corporate Limits
 - Extended Jurisdiction
- City Zoning**
- (A)Agriculture
 - (AR)Ag Residential
 - (C-1)Central Business District
 - (C-2)Neighborhood Com
 - (C-3)Heavy Com
 - (M-1)Light Man & Ind
 - (M-2)Heavy Man & Ind
 - (O-P)Office and Professional
 - (PBC) Planned Business
 - (R-1)Single Family
 - (R-1A)Single Family Med Dens
 - (R-1B)Rural Residential
 - (R-4)Heavy Dens Multiple
 - (R-6)Mobile Home
- Street Centerlines**
- Highway
 - Main Road
 - Residential/Rural

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Plat: Frank Properties Blk 1 Lots 2-9

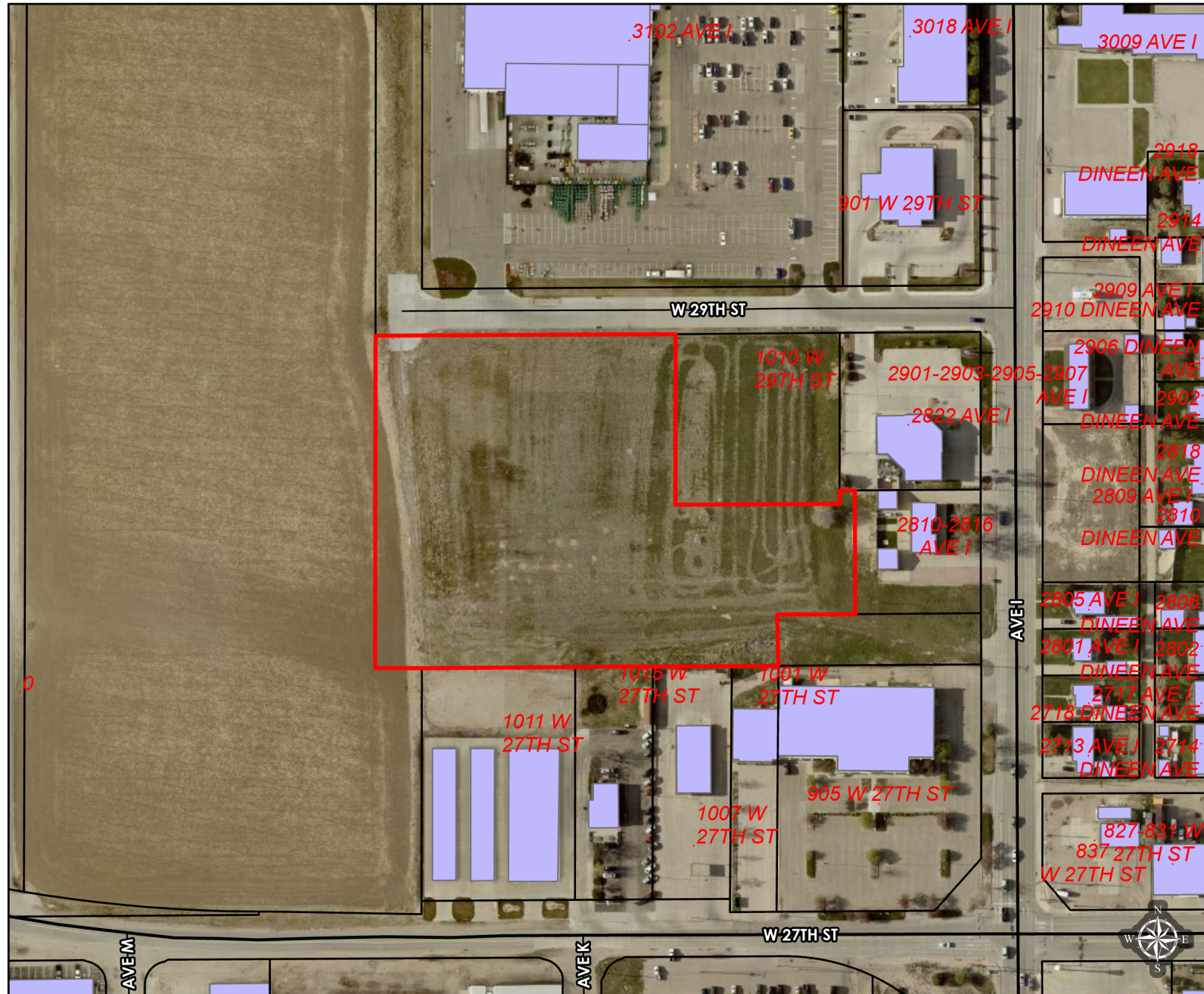


- Proposed Changes
- 2016 Comp. Plan Land Use**
- Automobile Commercial
 - Avenue B and Hospital Campus
 - Central Business District
 - East Overland
 - Highway 26 Commercial
 - Northwest Commercial
 - Residential
 - Rural
 - Rural Residential
 - SE Industrial and Commercial
 - South Broadway
 - WNCC and Surrounding Area
- Street Centerlines**
- Highway
 - Main Road
 - Residential/Rural
- 2016 Comp. Plan Development**
- LTD (10 - 20 yrs)
 - NTD (Less than 5 yrs)
 - STD (5 - 10 yrs)

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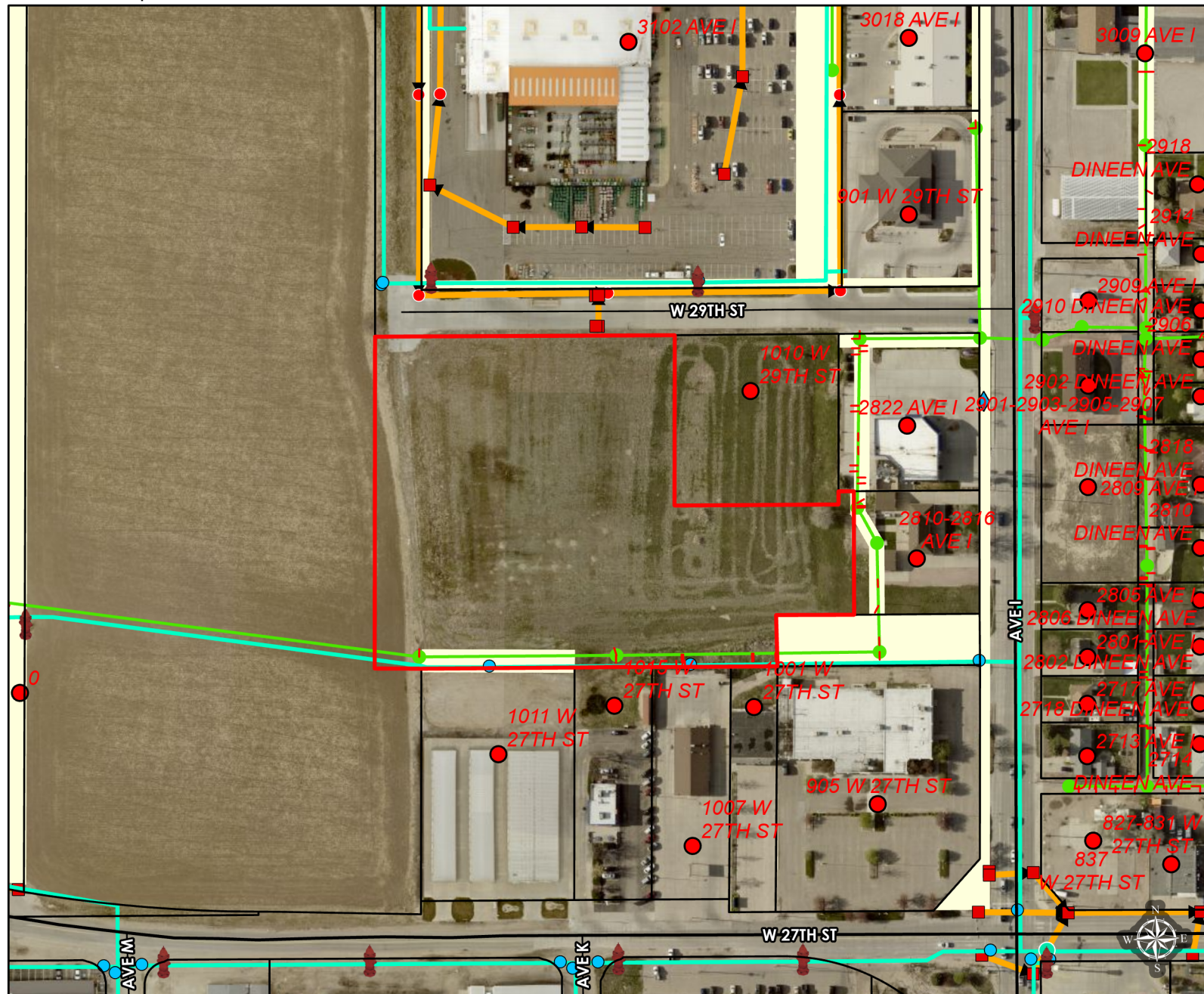





















- Proposed Changes
- Building
- Parcels
- Street Centerlines**
- Highway
- Main Road
- Residential/Rural

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Plat: Frank Properties Blk 1 Lots 2-9



-  Proposed Changes
- Street Centerlines
 -  Highway
 -  Main Road
 -  Residential/Rural
-  GEODATA.GISMGR.BEEHIVE_ADDRESSES
-  Fire Hydrants
-  Water Curbstop
-  Water Valve
-  Water Manhole
-  Water Lines
-  GEODATA.GISMGR.Ww_Laterals
-  Verified_Manhole
-  Wastewater Lines
-  Outfall
-  Stormwater Inlet
-  Stormwater Manhole
-  Stormwater Arc
-  Easement
-  Parcels

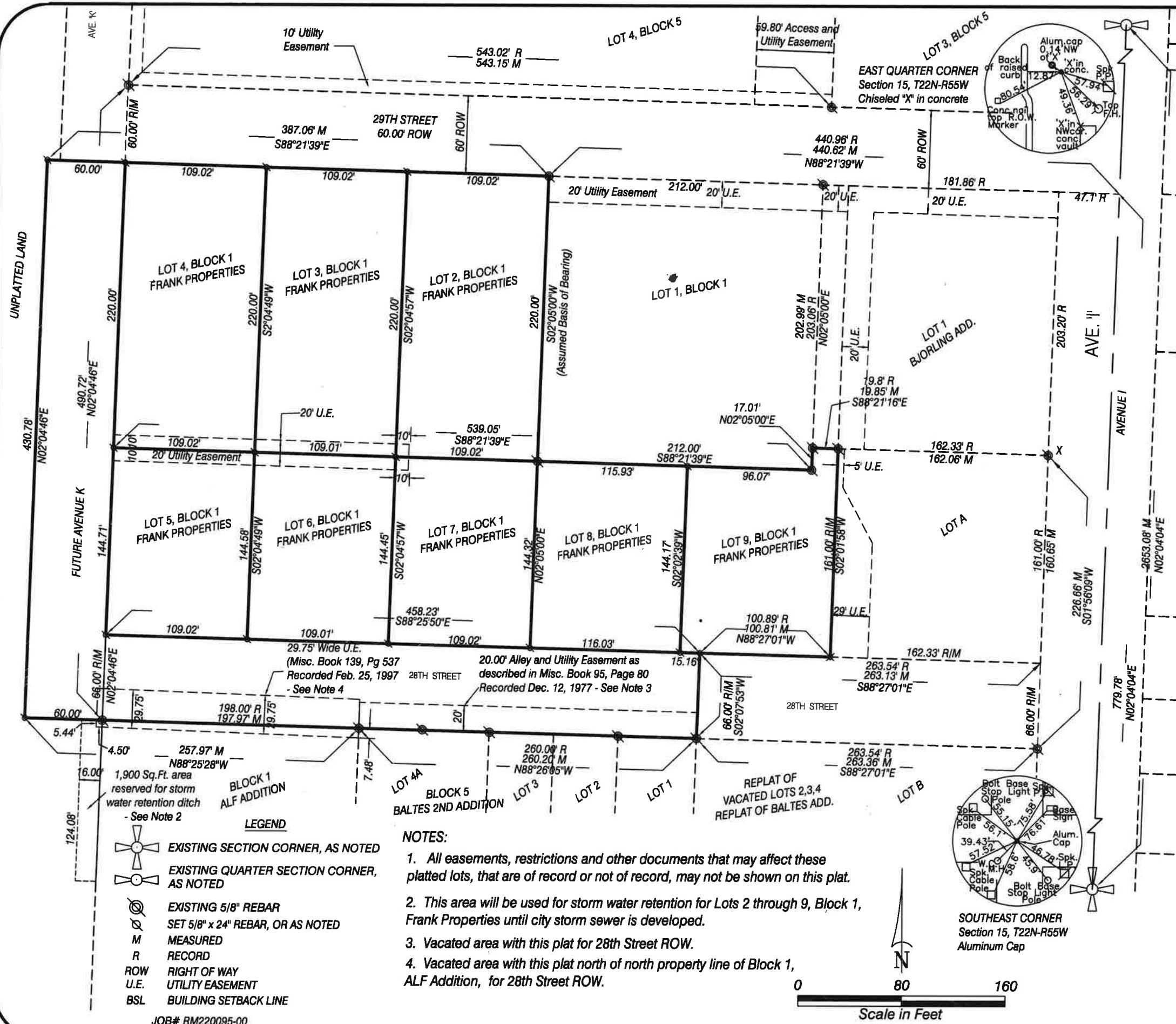
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FINAL PLAT

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SITUATED IN THE SOUTHEAST QUARTER OF THE
SOUTHEAST QUARTER OF SECTION 15,
TOWNSHIP 22 NORTH, RANGE 55 WEST
OF THE 6TH P.M., SCOTTS BLUFF COUNTY, NEBRASKA



LOTS 2-9, BLOCK 1,
FRANK PROPERTIES
SCOTTSBLUFF, NEBRASKA
SHEET 2 OF 2
JOB# RM220095-00

SURVEYOR'S CERTIFICATE

I, Gregg M. Schilz, a Nebraska Registered Land Surveyor, hereby certify that I, or under my direct supervision, have surveyed and prepared a plat of LOTS 2 THROUGH 9, BLOCK 1, FRANK PROPERTIES, AN ADDITION TO THE CITY OF SCOTTSBLUFF, SITUATED IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 22 NORTH, RANGE 55 WEST OF THE 6TH P.M., SCOTTS BLUFF COUNTY, NEBRASKA

BEGINNING AT THE NORTHWEST CORNER OF LOT 1, BLOCK 1, FRANK PROPERTIES TO THE CITY OF SCOTTSBLUFF, AS RECORDED IN INSTRUMENT 2021-343, SCOTTS BLUFF COUNTY, NEBRASKA, THENCE SOUTHERLY ON THE WEST LINE OF SAID LOT 1, BLOCK 1, FRANK PROPERTIES, ON AN ASSUMED BEARING OF S02°05'00"W, A DISTANCE OF 220.00 FEET, THENCE BEARING S88°21'39"E, ON THE SOUTH LINE OF SAID LOT 1, BLOCK 1, FRANK PROPERTIES, A DISTANCE OF 212.00 FEET, THENCE BEARING N02°05'00"E, ON THE EAST LINE OF SAID LOT 1, BLOCK 1, FRANK PROPERTIES, A DISTANCE OF 17.01 FEET TO THE SOUTHWEST CORNER OF LOT 1, BJORLING ADDITION TO THE CITY OF SCOTTSBLUFF, AS RECORDED IN DEED BOOK 207, PAGE 383, SCOTTS BLUFF COUNTY, NEBRASKA, THENCE BEARING S88°21'16"E, ON THE SOUTH LINE OF SAID LOT 1, BJORLING ADDITION, A DISTANCE OF 19.85 FEET TO THE NORTHWEST CORNER OF LOT A, A REPLAT OF VACATED LOTS 2,3, AND 4, REPLAT OF BALTES ADDITION TO THE CITY OF SCOTTSBLUFF, AS RECORDED IN DEED BOOK 189, PAGE 312, SCOTTS BLUFF COUNTY, NEBRASKA, THENCE BEARING S02°01'58"W, ON THE WEST LINE OF SAID LOT A, A DISTANCE OF 161.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT A, THENCE BEARING N88°27'01"W, ON THE NORTH RIGHT OF WAY LINE OF 28TH STREET, AS PLATTED IN DEED BOOK 189, PAGE 312, SCOTTS BLUFF COUNTY, NEBRASKA, A DISTANCE OF 100.81 FEET, THENCE BEARING S02°07'53"W, ON THE WESTERN TERMINATION LINE OF 28TH STREET, AS PLATTED IN DEED BOOK 189, PAGE 312, SCOTTS BLUFF COUNTY, NEBRASKA, A DISTANCE OF 66.00 FEET, SAID POINT ALSO BEING THE NORTHEAST CORNER OF LOT 1, BLOCK 5, BALTES SECOND ADDITION TO THE CITY OF SCOTTSBLUFF, AS RECORDED IN DEED BOOK 102, PAGE 169, SCOTTS BLUFF COUNTY, NEBRASKA, THENCE BEARING N88°26'05"W, ON THE NORTH LINE OF SAID BLOCK 5 BALTES SECOND ADDITION, A DISTANCE OF 260.20 FEET TO THE NORTHEAST CORNER OF BLOCK 1 ALF ADDITION TO THE CITY OF SCOTTSBLUFF, AS RECORDED IN INSTRUMENT 2002-4942, SCOTTS BLUFF COUNTY, NEBRASKA, THENCE BEARING N88°25'28"W, ON THE NORTH LINE OF SAID BLOCK 1, ALF ADDITION, A DISTANCE OF 197.97 FEET TO THE NORTHWEST CORNER OF SAID BLOCK 1, ALF ADDITION, THENCE CONTINUING ON THE WESTERLY EXTENSION OF THE NORTH LINE OF SAID BLOCK 1, ALF ADDITION, A DISTANCE OF 60.00 FEET, THENCE BEARING N02°04'46"E, A DISTANCE OF 430.78 FEET TO THE POINT OF INTERSECTION WITH THE SOUTH RIGHT OF WAY LINE OF 29TH STREET, AS PLATTED IN INSTRUMENT 2004-490, SCOTTS BLUFF COUNTY, NEBRASKA, THENCE BEARING S88°21'39"E, ON THE SOUTH RIGHT OF WAY LINE OF SAID 29TH STREET, A DISTANCE OF 387.06 FEET, TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 4.80 ACRES, MORE OR LESS

That the accompanying plat is a true delineation of such survey drawn to a scale of 80 feet to the inch. That all dimensions are in feet and decimals. That each lot and block has its own number and that the boundary of the plat is shown with a heavy solid line with dashed lines being for orientation purposes only. That all corners found or set are marked as shown.

WITNESS MY HAND AND SEAL THIS 5th DAY OF July, 2022.
FOR THE FIRM OF M. C. SCHAFF AND ASSOCIATES, INC.


Gregg M. Schilz, Nebraska Registered Land Surveyor, L.S. 785



OWNER'S STATEMENT

We, the undersigned, being the owners of unplatted land situated in the Southeast Quarter of the Southwest Quarter of Section 15, Township 22 North, Range 55 West of the 6th P.M., Scotts Bluff County, Nebraska, as described in the foregoing 'Surveyor's Certificate' and shown on the accompanying plat have caused such real estate to be platted as LOTS 2 THROUGH 9, BLOCK 1, FRANK PROPERTIES, an Addition to the City of Scottsbluff, situated in the Southeast Quarter of the Southeast Quarter of Section 15, Township 22 North, Range 55 West of the 6th P.M., Scotts Bluff County, Nebraska.

That the foregoing plat is made with the free consent and in accordance with the desires of the undersigned owners. We hereby dedicate these streets and easements shown for the use and benefit of the public.
Dated this 11 day of July, 2022.

Owner: Frank Properties 2, LLC

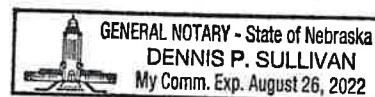

By: Bryan Frank, Member

ACKNOWLEDGEMENT

STATE OF NEBRASKA)
COUNTY OF SCOTTS BLUFF)

Before me, a Notary Public, qualified and acting in said County, personally came Bryan Frank, Member of Frank Properties 2, LLC, to me known to be the identical person whose signature is affixed to the foregoing 'Owner's Statement' and acknowledged the execution thereof to be his voluntary act and deed, and the voluntary act and deed of Frank Properties 2, LLC.

WITNESS MY HAND AND SEAL THIS 11th DAY OF July, 2022.




Notary Public

My Commission Expires Aug. 26, 2022

APPROVAL AND ACCEPTANCE

The foregoing plat of LOTS 2 THROUGH 9, BLOCK 1, FRANK PROPERTIES, an Addition to the City of Scottsbluff, situated in the Southeast Quarter of the Southeast Quarter of Section 15, Township 22 North, Range 55 West of the 6th P.M., Scotts Bluff County, Nebraska, is hereby approved by the Mayor and City Council of the City of Scottsbluff, Scotts Bluff County, Nebraska, by resolution duly passed

this _____ day of _____, 2022.

Mayor: Jeanne McKerrigan

ATTEST: _____
City Clerk

RESOLUTION NO. 22-__

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SCOTTSBLUFF, NEBRASKA:

WHEREAS, BE IT RESOLVED, the Final Plat of Lots 2 through 9, Block 1, Frank Properties, an Addition to the City of Scottsbluff, situated in the Southeast Quarter of the Southeast Quarter of Section 15, Township 22 North, Range 55 West of the 6th P.M., Scotts Bluff County, Nebraska, dated July 11, 2022 duly made, acknowledged and certified, is approved. Approval is made on the condition that a Contract for Public Improvements be signed by the Owner and approved by the City Council for construction of Avenue K, 28th Street and sanitary sewer improvements. Approval is also condition on the Owner signing and submitting a Deed of Trust to secure the cost of the construction. Upon the conditions being met, the Mayor is authorized to sign the Final Plat on behalf of the City of Scottsbluff, Nebraska. Such Final Plat and related documents are ordered to be filed and recorded in the office of the Register of Deeds, Scotts Bluff County, Nebraska.

Passed and approved this 19th day of December 2022.

Mayor

ATTEST:

City Clerk

CONTRACT FOR PUBLIC IMPROVEMENTS

This Contract for Public Improvements ("Agreement") is made this _____ day of _____, 2022, between **City of Scottsbluff, Nebraska**, a Municipal Corporation, hereafter called "**City**", and **Frank Properties 2, LLC**, hereafter called "**Owner**".

RECITALS

1. Frank Properties 2, LLC, owns real estate described as follows:

**Lots 2-9 Block 1, Frank Properties Subdivision,
a Subdivision of Scotts Bluff County, State of Nebraska
as shown by attached "Exhibit A"**

This real estate will hereafter be called Frank Properties Lots

2. Certain improvements in the area which are required by the Scottsbluff Municipal Code to be constructed by the Owner have not been constructed. Those would include streets and sanitary sewer. The parties desire to memorialize their agreement with respect to the construction of these improvements. For that purpose, Owner desires to bind itself and its successors in interest to construct the improvements in accordance with the Scottsbluff Municipal Code as hereinafter provided.

AGREEMENTS OF THE PARTIES

In consideration of the mutual promises of the parties, it is agreed as follows:

3. The Owner, or its assignee, shall agree to construct all improvements required by the City in accordance with the plans and specifications to be approved by the City, which approval will not be unreasonably withheld. The Owner, or its assignees will pay for the improvements, or agree not to contest the creation of special improvement districts for the purpose of constructing the following:

A full street improvement, curb and gutter and sidewalk on the south edge of lots 5-9, Block 1 Frank Properties, a subdivision of the City of Scottsbluff, Scotts Bluff County, State of Nebraska. A full street improvement, curb, gutter, and sidewalk on the west edge of lots 4 and 5, Block 1, Frank Properties, a subdivision of the City of Scottsbluff, Scotts Bluff County, Nebraska (establishing Avenue K between 28th and 29th streets). The streets shall be designed and installed per the City of Scottsbluff construction standards. Total length of the improvements are approximately 1,809 lineal feet of street improvements.

In addition, the owner agrees to construct approximately 430 of sanitary sewer and two 48-inch manholes along the north boundary of Lots 5 and 6 and south boundary of Lots 3 and 4, and west boundary of Lot 5, Block 1, Frank Properties within the newly platted utility easement. The sanitary sewer shall be of appropriate size and materials outlined within the City of Scottsbluff construction standards. The Owner understands and agrees a building permit will not be issued for construction on lots 2-9 Frank Properties until the approved infrastructure has been constructed or an agreement has been signed with a contractor for such construction.

4. The location, size and layout of the improvements shall be as provided for in the plat. All improvements described in this Agreement, which the Owners agree and acknowledge must be constructed in order to obtain the City's approval for the plat and subdivision plat shall be constructed in accordance with plans and specifications approved by the City and in accordance with all ordinances and codes adopted by the City. All the improvements shall become the property of the City immediately upon acceptance of the improvements by the City Council. Owner warrants such improvements for a period of one year from the date of the acceptance of the improvements or as outlined in special improvement district documents.

5. Should Owner fail to construct the improvements, the City may do so. Owner shall reimburse the City for all costs expended by the City in constructing such improvements or the City may decide, in its sole discretion, to create special improvement districts to construct the improvements and the improvements may be included in the district. All improvements described in this Agreement shall be constructed in accordance with plans and specifications approved by the City and in accordance with all ordinances and codes adopted by the City. The City may at its option, assess all or any part of the unreimbursed cost of the improvements against the properties benefitted by the improvements. When any installment of special assessments is unpaid for a period of six (6) months after the same is delinquent, the City may mail written notice to Owner of that fact and demand that Owner pay such installment. If Owner fails to do so within thirty (30) days after such notice is mailed, the City may proceed by appropriate action to enforce Owner's liability as described in this paragraph. In any such action the City shall not be limited to the installments which are currently due but shall be entitled to collect the entire cost of the improvements, plus interest, less sums previously paid. Any forbearance by the City to exercise any right granted to it in this Agreement shall not be considered a waiver of the City's rights. Any notice under this paragraph shall be deemed properly sent if sent by certified U.S. mail, postage prepaid, to Owner at the following address:

Frank Properties 2
PO Box 2395
Scottsbluff, NE 69363
or as later amended

6. To secure Owner's liability, Owner agrees to provide security consistent with the policies established by the City, by providing the City with a Deed of Trust recorded against the real estate subject to this Agreement. The estimated cost of the improvements contemplated by Owner are agreed to be \$703,909.50.00, of which the total for Frank Properties is \$491,607.70 based on proportioned lot lineal footage for both improvement districts. The parties recite their understanding that this is an estimate only and that the actual cost of the improvements may differ from the estimate. The security furnished by Owner will be in the amount of the actual cost of the improvements. It is contemplated that Owner will enter into a contract for the construction of the improvements. The actual cost of the improvements will be determined by the provisions of such contract. The City may, at its option, assess all or any part of the amounts owed for the improvements described in paragraph 3 hereof and not paid for by Owner.

7. Owner agrees to participate in and not object to the creation of any special improvement districts that may be subsequently created to construct and improve a street, curb and gutter within the platted 28th Street right of way and the Avenue K right of way abutting Frank Properties as well as the sanitary utility easement dedicated and shown on the preliminary plat of Frank Properties Subdivision, a subdivision of the City of Scottsbluff, Scotts Bluff County, State of Nebraska. This paragraph will not be

deemed a waiver of Owner's right to contest the extent to which it is benefitted by such special improvement district, or to contest the amount of any assessments levied against the Owner's property.

8. Owner requests that the City create a Paving District for the paving on Avenue K and 28th Street in Frank Properties Subdivision. The district would begin at the intersection of 28th Street & Avenue I, continuing west to the intersection of 28th Street and Avenue K, then extending north to the intersection of Avenue K and 29th Street. Owner further requests that MC Schaff & Associates be designated the Special Engineer for the project.

9. Owner requests that the City create a Sewer District for the installation of sewer along 29th Street in Frank Properties Subdivision. The district would include the installation of 8-inch sewer main construct approximately 430 of sanitary sewer and two 48-inch manholes along the north boundary of Lots 5 and 6 and south boundary of Lots 3 and 4, and west boundary of Lot 5, Block 1, Frank Properties. Owner further requests that MC Schaff & Associates be designated the Special Engineer for the project

10. This Agreement shall run with the land and shall bind, in addition to the parties, the successors and assigns of the respective parties.

11. The parties agree to execute a Memorandum of Contract suitable for filing in the Office of the Register of Deeds of Scotts Bluff County, Nebraska, to give notice of the fact that this Agreement has been executed. Owner shall reimburse the City for the costs of filing this Memorandum of Contract.

IN WITNESS WHEREOF, the parties have set their hands the day and year first herein written.

CITY OF SCOTTSBLUFF, NEBRASKA

Jeanne McKerrigan, Mayor

Dated _____

Attest:

City Clerk

Frank Properties 2, LLC. Owner

By  _____
Bryan Frank, President

Dated _____

- 4 -

AFTER RECORDING, RETURN TO: BRENDAN J. RICE, HOLYOKE, SNYDER, LONGORIA, REICHERT & RICE, PC, LLO
1714 SECOND AVENUE, P.O. BOX 2424, SCOTTSBLUFF, NE 69363-2424

DEED OF TRUST
INCLUDING ASSIGNMENT OF RENTS

THIS DEED OF TRUST is made this _____ day of _____, 2022, by and among:

TRUSTOR: FRANK PROPERTIES, LLC,
A Nebraska limited liability company,
416 Valley View Drive, Suite 100
P.O. Box 2395
Scottsbluff, NE 69363-2395

BENEFICIARY: The City of Scottsbluff, Nebraska
2525 Circle Drive
Scottsbluff, NE 69361

TRUSTEE: Kent Hadenfeldt, Attorney at Law
1502 2nd Avenue
Scottsbluff, NE 69361

FOR VALUABLE CONSIDERATION, TRUSTOR irrevocably transfers, conveys and assigns to TRUSTEE, IN TRUST, WITH POWER OF SALE, for the benefit and security of BENEFICIARY, under and subject to the terms and conditions of this Deed of Trust, the real property described as follows (the "Property"):

Lots 2 – 9, Block 1, Frank Properties Subdivision, a Subdivision of Scotts Bluff County, State of Nebraska.

TOGETHER with all easements, appurtenances, hereditaments, interests in adjoining roads, streets and alleys, improvements and buildings of any kind situated thereof and all personal property that may be or hereafter become an integral part of such buildings and improvements, together with the leases, rents, issues, profits or income therefrom, all crops raised thereon, and all water rights. The Property and the entire estate and interest conveyed to the TRUSTEE are referred to herein

collectively as the "Trust Estate." This Deed of Trust, the Contract for Public Improvements, and any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby are referred to herein collectively as the "Loan Instruments."

THIS DEED OF TRUST IS MADE FOR THE PURPOSE OF SECURING:

- A. Performance of each agreement of TRUSTOR herein contained:
- B. Payment of indebtedness in the total principal amount of \$703,909.50 with interest thereon, as evidenced by that certain Contract for Public Improvements entered into between TRUSTOR and BENEFICIARY, and which by this reference is hereby made a part hereof, and any and all modifications thereof; and
- C. Payment of any and all future advances made by BENEFICIARY necessary to protect the Trust Estate together with any future advances to be made at the option and agreement of the parties, BENEFICIARY not having any obligation to make any such advances for any purpose.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST:

- 1. PAYMENT OF INDEBTEDNESS. TRUSTOR shall pay when due the indebtedness evidenced by the Contract for Public Improvements, and charges, fees, and all other sums as provided in the Loan Instruments.
- 2. TAXES. TRUSTOR shall pay each installment of all taxes and special assessments of every kind, now or hereafter levied against the Trust Estate or any part thereof, before delinquency, without notice or demand, and shall provide BENEFICIARY with evidence of the payment of same. TRUSTOR shall pay all taxes and assessments which may be levied upon BENEFICIARY's interest herein or upon this Deed of Trust or the debt secured hereby, without regard to any law imposing payment of the whole or any part thereof upon the BENEFICIARY.
- 3. INSURANCE AND REPAIRS. TRUSTOR shall maintain fire and extended coverage insurance insuring the improvements and buildings constituting part of the Trust Estate for an amount not less than the amount of the unpaid principal balance of the Contract for Public Improvements. Such insurance policy shall contain a standard mortgage clause in favor of BENEFICIARY and shall not be cancelled, terminated or modified without ten (10) days prior written notice to BENEFICIARY. TRUSTOR shall promptly repair, maintain and replace the Trust Estate or any part thereof so that, except for ordinary wear and tear, the Trust Estate shall not deteriorate. In no event shall the TRUSTOR commit waste on or to the Trust Estate.
- 4. ACTIONS AFFECTING TRUST ESTATE. TRUSTOR shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of BENEFICIARY or TRUSTEE, and shall pay all costs and expenses, including cost of evidence of title and attorney's fees, in any such action or proceeding in which BENEFICIARY or TRUSTEE may appear or be named as a party. Should TRUSTOR fail to make any payment or to do any act as and in the manner provided in any of the Loan Instruments, BENEFICIARY and/or TRUSTEE without obligation so to do and without notice to or demand upon TRUSTOR and without releasing TRUSTOR from any obligation, may make or do the same in such manner and to such extent as

either may deem necessary to protect the security hereof. TRUSTOR shall, immediately upon demand therefor by BENEFICIARY, pay all costs and expenses incurred by BENEFICIARY in connection with the exercise by BENEFICIARY of the foregoing rights, including without limitation costs of evidence of title, court costs, appraisals, surveys and attorneys fees. Any such costs and expenses not paid within ten (10) days of written demand shall draw interest at the default rate provided in the Contract for Public Improvements.

5. EMINENT DOMAIN. Should the Trust Estate, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner including deed in lieu of condemnation ("Condemnation"), or should Trustor receive any notice or other information regarding such proceeding, TRUSTOR shall give prompt written notice thereof to BENEFICIARY. BENEFICIARY shall be entitled to all compensation, awards and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceedings. BENEFICIARY shall also be entitled to make any compromise or settlement in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds awarded to TRUSTOR (the "Proceeds") are hereby assigned to BENEFICIARY and TRUSTOR agrees to execute such further assignments of the Proceeds as BENEFICIARY or TRUSTEE may require.

6. APPOINTMENT OF SUCCESSOR TRUSTEE. BENEFICIARY may at any time appoint a successor trustee in accordance with the applicable provisions of the Nebraska Trust Deeds Act as now in effect or hereafter amended.

7. SUCCESSORS AND ASSIGNS. This Deed of Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, personal representatives, successors and assigns. The term "BENEFICIARY" shall include the owner and holder of the Contract for Public Improvements, whether or not named as BENEFICIARY herein. Notwithstanding the foregoing, in the event TRUSTOR transfers any interest in the Property, BENEFICIARY shall have the option to declare all sums secured by this Deed of Trust to be immediately due and payable. If BENEFICIARY exercises the option to so accelerate, failure of TRUSTOR to pay the entire sum so secured within five (5) days of receipt of written notice of such acceleration shall be deemed to be an event of default hereunder.

8. INSPECTIONS. BENEFICIARY, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Trust Estate for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Instruments.

9. HAZARDOUS MATERIALS. TRUSTOR shall keep the Property in compliance with all applicable laws, ordinances and regulations relating to environmental protection (environmental laws). TRUSTOR shall keep the Property free from all substances deemed to be hazardous or toxic under any environmental laws (hazardous materials). TRUSTOR hereby agrees to indemnify and hold harmless BENEFICIARY, any successor to BENEFICIARY's interest and TRUSTEE from and against any and all claims, damages, losses and liabilities arising in connection with the presence, use, disposal or transport of any hazardous materials on, under, from

or about the Property. The foregoing warranties and representations and TRUSTOR's obligations pursuant to the foregoing indemnity shall survive reconveyance of this Deed of Trust.

10. EVENTS OF DEFAULT. Any of the following events shall be deemed an event of default hereunder:

a. TRUSTOR shall have failed to make payment of any installment of interest, principal, or principal and interest or any other sum secured hereby when due; or

b. TRUSTOR sells, leases or rents, transfers or assigns all or any part of the Property or any interest therein without first obtaining BENEFICIARY's written consent, which consent may be withheld for any reason; or

c. There has occurred a breach of or default under any term, covenant, agreement, condition, provision, representation or warranty contained in any of the Loan Instruments.

11. ACCELERATION UPON DEFAULT, ADDITIONAL REMEDIES. Should an event of default occur, BENEFICIARY may declare all indebtedness secured hereby to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter, BENEFICIARY may do any or all of the following:

a. Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court (the appointment of a receiver being hereby specifically consented to by TRUSTOR) and without regard to the adequacy of its security, enter upon and take possession of the Trust Estate, or any part thereof, in its own name or in the name of TRUSTEE, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Estate, or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Trust Estate, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including attorney's fees, upon any indebtedness secured hereby, all in such order as BENEFICIARY may determine. The entering upon and taking possession of the Trust Estate, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default hereunder or invalidate any act done in response to such default. Notwithstanding the continuance in possession of the Trust Estate or the collection, receipt and application of rents, issues or profits, TRUSTEE or BENEFICIARY shall be entitled to exercise every right provided for in any of the Loan Instruments or by law upon occurrence of any event of default, including the right to exercise the power of sale;

b. Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

c. Deliver to TRUSTEE a written declaration of default and demand for sale.

12. POWER OF SALE. Should BENEFICIARY elect to demand sale:

a. Upon receipt of such demand from BENEFICIARY, TRUSTEE shall cause to be recorded, published and delivered to TRUSTOR such Notice of Default and Notice of Sale as then required by law and by this Deed of Trust. TRUSTEE shall proceed to, without demand

on TRUSTOR after such time as may be required by law, sell the Trust Estate at the time and place of sale fixed by it in such Notice of Sale, either as a whole, or in separate lots or parcels or items as TRUSTEE shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. TRUSTEE shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, TRUSTOR, TRUSTEE and BENEFICIARY, may purchase at such sale and TRUSTOR hereby covenants to warrant and defend the title of such purchaser or purchasers.

b. As may be permitted by law, after deducting all costs, fees and expenses of TRUSTEE and of this Trust, including costs of evidence of title in connection with sale, TRUSTEE shall apply the proceeds of sale to payment of (i) all sums expended under the terms hereof, not then repaid, with accrued interest at the maximum rate per annum then allowed by the laws of the State of Nebraska, (ii) all other sums then secured hereby, and (iii) the remainder, if any, to the person or persons legally entitled thereto.

13. REMEDIES NOT EXCLUSIVE. The acceptance of this Deed of Trust and its enforcement whether by court action or pursuant to the power of sale or other powers herein contained, shall not prejudice or in any manner affect TRUSTEE's or BENEFICIARY's right to rely upon or enforce any other security now or hereafter held by TRUSTEE or BENEFICIARY's right to rely upon or enforce any other security now or hereafter held by BENEFICIARY or TRUSTEE in such order and manner as they or either of them may determine. No remedy herein conferred upon or reserved to TRUSTEE or BENEFICIARY is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. Every power or remedy given by any of the Loan Instruments to TRUSTEE or BENEFICIARY or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by TRUSTEE or BENEFICIARY and either of them may pursue inconsistent remedies. Nothing herein shall be construed as prohibiting BENEFICIARY from seeking a deficiency judgment against the TRUSTOR to the extent such action is permitted by law.

14. REQUEST FOR NOTICE. TRUSTOR and all other parties hereto hereby request that a copy of any notice of default and any notice of sale hereunder be mailed to them at the address set forth in the first paragraph of this Deed of Trust in the manner provided by law.

15. GOVERNING LAW. This Deed of Trust shall be governed by the laws of the State of Nebraska. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by all the parties.

16. RECONVEYANCE BY TRUSTEE. Upon written request of BENEFICIARY stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Contract for Public Improvements to TRUSTEE for cancellation and payment by TRUSTOR

Notary Public

My commission expires:

