



Memo

To: Mayor and Hayden City Council

From: Robert B. Wright, P.E., City Engineer

RBR 2-3-25

Date: 2-3-2025

Agenda Item: Approval of Hayden Business Center, LLC Deferred Improvement Agreement

Agenda Item Location

Consent

Background and Recommended Action or Motion

As part of the site development of 1469 W. Hayden Avenue (Parcel Number H405014183DA), Building Permit No. PB23-0611, the property owner is required to construct frontage improvements along Hayden Avenue in accordance to the City of Hayden Transportation Master Plan. Future centerline alignment and profile is not yet established and this work would be more appropriate to be completed as part of a larger project. The property owner has agreed to the terms of the agreement. Please refer to the attached vicinity map and Deferred Improvement Agreement.

Staff recommends approval of Hayden Business Center, LLC Deferred Improvement Agreement and authorization of the Mayor to sign the agreement prior to recordation with Kootenai County.

Functional Impact of Authorizing

Authorization of this agreement would keep the responsibility of constructing the frontage improvements with the property owner in accordance with city code.

Functional Impact of Authorizing

A decision to not authorize this agreement could place the burden of funding the frontage improvements on the city as a whole.

Fiscal Impact

There is no fiscal impact as the property owner remains responsible for the widening improvements when constructed.

Budget Funding Source / Transfer Request

N/A

Attachment

Vicinity Map

Deferred Improvement Agreement

VICINITY MAP



**DEFERRED IMPROVEMENT AGREEMENT
HAYDEN BUSINESS CENTER, LLC
1469 W. HAYDEN AVENUE**

This agreement is entered into between Hayden Business Center, LLC, 6038 Heine Road, Coeur d'Alene, Idaho 83814, hereinafter "Developer", and the City of Hayden, an Idaho municipal corporation of the state of Idaho, 8930 N. Government Way, Hayden, Idaho 83835, hereinafter "City."

WHEREAS, Developer is the owner of Kootenai County Parcel Number H-4050-14-183-DA more commonly known as 1469 W. Hayden Avenue and more particularly described in Warranty Deed Kootenai County Recording No. 2915225000 as shown in Exhibit "A".

WHEREAS, Hayden Municipal Code 11-4-7.C requires the construction/installation of frontage improvements in accordance to the adopted Transportation Plan or Corridor Plan which is in effect at the time of application; and

WHEREAS, the Hayden Municipal Code 11-4-7-C provides that in areas where the final, finish grade and/or street section cannot be established; where a frontage improvement has been installed at a prior time which is not fully consistent, but is generally consistent, with currently adopted standards; where there are safety concerns; or if there are other factors, which, as determined by the city, merit waiving or deferring the obligation to construct said improvements and instead provide related dedications and easements to the city, the obligation(s) may be deferred or waived in whole or in part by the city engineer. If deferred, the Developer shall be required to enter into a deferred improvement agreement incorporating the approved deferral(s) as a condition of approval for the application; and

WHEREAS, future roadway centerline elevation of Hayden Avenue has not been established and it appears that frontage improvements along the Developer's frontage could not be reasonably completed independent of a larger construction project on Hayden Avenue.

WHEREAS, the description of said frontage improvements from the conditions of approval for Building Permit PB23-0611 are as follows:

- a) Along the frontage of Hayden Avenue, the following is required:
 - i. Roadway pavement widening to 24' from center line, curb and gutter, 10' storm water swale and 8' sidewalk, and associated landscaping.

NOW THEREFORE, the parties agree as follows:

1. City agrees to process Building Permit #PPB23-0611 and other building permits on the site and allow Developer to defer the frontage improvements described herein until one of the following triggers occurs:

- a. The City initiates a construction project on Hayden Avenue in the vicinity of the subject parcel.
 - b. Private development occurs adjacent to the subject parcel on Hayden Avenue wherein centerline elevation has been established.
 - c. Developer initiates another project on the subject property.
 - d. In the event that none of the above triggers occur, construction of said improvements shall commence by April 1, 2030 and shall be completed by October 1, 2030 if center line elevations have been established.
2. The Developer will dedicate to the City right of way and grant a 10-foot permanent roadway, drainage, utility and snow storage easement in accordance with the current strategic Transportation Master Plan prior to issuance of a Certificate of Occupancy.
3. The Developer acknowledges that a large project on Hayden Avenue could be completed with a Local Improvement District (LID) and hereby waives the right to contest the formation of a LID to complete road improvements on Hayden Avenue. This waiver does not prohibit the Developer from challenging the amount of the individual LID assessment.
4. The Developer acknowledges that it is possible the City will improve and/or reconstruct Hayden Avenue without the use of a LID. In this case the Developer shall reimburse the City the actual costs to construct the frontage improvements that were deferred pursuant to the agreement. Said payment shall be made within one hundred eighty (180) days of the Developer being provided written notice of the project completion and the dollar amount associated with the frontage improvements.
5. Developer may continue to use the property over which the easements and the right-of-way are granted, for purposes other than the installation of structures and any required site improvements, until the Frontage Improvements are installed or the City determines, in its sole discretion, it is not in the best interest of the City and/or the public for the use to continue, on the following conditions:
 - a. Developer shall maintain the area at Developer's sole expense;
 - b. Developer shall discontinue the use of the right-of-way and easement area upon thirty (30) day's written notice of the City;
 - c. Developer agrees to indemnify and hold the City, its elected officials, officers and employees harmless for any and all claims of damage or injury to persons or property resulting from Developer's use of the right-of-way or for the City allowing Developer to use the property.
 - d. Notwithstanding the scenario set out in Paragraph 1, Developer agrees that at such time as Developer, or any subsequent owner of the subject property or a portion thereof, applies for any subsequent building permits, site reviews, or subdivision, Developer, or any subsequent owner of the subject property or a portion thereof, shall comply with the code in effect at the time of that application.
6. All parties agree that this agreement shall run with the land and shall be binding upon their heirs and assigns and shall be recorded in the Kootenai County Recorder's office.

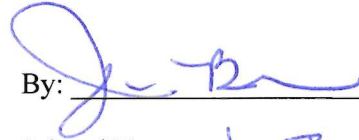
7. The agreement is hereby declared severable. Should any portion of this agreement be declared invalid by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect and shall be read to carry out the purpose(s) of the agreement before the declaration of partial invalidity.

CITY OF HAYDEN

HAYDEN BUSINESS CENTER, LLC

By: _____

Alan Davis, Mayor

By:  _____

Printed Name: Jan Brown

ATTEST:

Abbi Sanchez, City Clerk

STATE OF IDAHO)
) ss:
County of Kootenai)

On this 27 day of Jan, 2025 before me, a Notary for the State of Idaho, personally appeared Alan Davis and Abbi Sanchez known, or identified to me to be the Mayor and City Clerk, of the City of Hayden, Kootenai County, Idaho executing the herein instrument, and acknowledged to me that such city of Hayden executed the same.

IN WITNESS WHEREOF, I have hereto set my hand affixed my official seal the date and year in this certificate first above written.

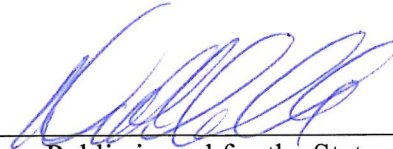
Notary Public for the State of Idaho
Residing at: _____
My commission expires: _____

STATE OF IDAHO)
) ss
County of Kootenai)

On this 27 day of Jan 20 25, before me, a Notary for the state of Idaho, personally appeared Jim Brown known, or identified to be the manager or a member of Hayden Business Center L.L.C., a limited liability company that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said Limited Liability Company, for the uses and purposes therein mentioned, and on oath stated that are authorized to execute said instrument.

GIVEN under my hand and official seal the day and year last above written.





Notary Public in and for the State of Idaho,
Residing at: Coeur d'Alene
My commission expires: 2/18/28



EXHIBIT A

WARRANTY DEED

Alliance Title & Escrow, LLC Order No.:620454

FOR VALUE RECEIVED

3C Properties, LLC, an Idaho Limited Liability Company

the grantor(s), do(es) hereby grant, bargain, sell and convey unto

James R. Brown and Lynette G. Brown, husband and wife as community property with right of survivorship

whose current address is

**6038 W. Henie Rd
Coeur d'Alene, ID 83814**

the grantee(s), the following described premises, in Kootenai County, Idaho, TO WIT:

See attached Exhibit 'A'

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee(s), that (s)he is/are the owner(s) in fee simple of said premises; that they are free from all encumbrances Except: Current Year Taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record. Good and Valuable Consideration paid to a Qualified Intermediary pursuant to an IRC Section 1031 Tax Deferred Exchange

And that (s)he will warrant and defend the same from all lawful claims whatsoever.

Dated: September 9, 2022

3C Properties, LLC, an Idaho Limited Liability Company

By: [Signature]
Michael E. Kuhns, Member

State of Idaho } ss
County of Kootenai }

On this 14 day of September, 2022, before me, W. Maki, a Notary Public in and for said state, personally appeared Michael E. Kuhns known or identified to me to be the Managing Member in the Limited Liability Company known as 3C Properties, LLC who executed the foregoing instrument in said LLC name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Signature]
W. Maki
Notary Public for the State of Idaho
Residing at: Rathdrum, ID
Commission Expires: 02/02/2024

