

To: City Council
From: P. McGinnis, City Manager
Date: July 1, 2020
RE: Comstock Property



Marilyn Crowley of Michigan Community Capital (MCC), Ryan Kilpatrick of Ottawa Housing Next and Hadley Streng of the Grand Haven Area Community Foundation presented a project concept for a 32 unit single family home development on Comstock to City Council on Monday, June 1. The minutes from that meeting follow at the end of this memo.

We left that meeting with two objectives in mind:

1. Nail down the fiscal impact to the City and MCC
2. Develop a purchase agreement to give MCC the assurance they need to start incurring pre-development costs (survey, design, legal, etc)

The proposed Purchase Agreement (attached) provides:

- City would agree to selling the 7.5 acre property to MCC for \$1,000 per home (\$32,000)
- Connection fees of \$500 for water and \$500 for sewer for each home (\$32,000)
- Brownfield TIF to cover all eligible expenses, local capture only, financed by MCC at 5% interest

I am meeting with Ron Bultje tomorrow to review the proposed agreement and will then meet with the Brownfield Redevelopment Authority to refine our position before Monday night. There will likely be an amended agreement presented on Monday night following input from the Attorney and the BRA.

Minutes from June 1, 2020:

WORK SESSION

Comstock Property Proposal

- Marilyn Crowley, Michigan Community Capital
- Ryan Kilpatrick, Housing Next

A presentation was given regarding a potential affordable housing project with Michigan Community Capital for a development on City property located on Comstock Street. The presentation was continued during the following City Council meeting.

CONTINUATION OF WORK SESSION

Comstock Property Proposal (cont'd)

Mr. Ryan Kilpatrick, of Housing Next, noted this housing price point was most critical. It did not make financial sense for private developers. The average household size in Ottawa County was 2.2 people and the proposed floorplans were very efficient.

Council Member Dora stated he had belonged to an affordable housing task force a few years ago. There was definitely a need for "entry level" housing. He was interested in pursuing this proposal and seeing some calculations.

Council Member Cummins was also interested in seeing calculations. He believed the BLP would also have to be involved regarding the waiving of connection fees.

Ms. Marilyn Crowley, of Michigan Community Capital (MCC), stated she wanted to get a better handle on Brownfield costs and to bid out designs. The next steps would be to work on purchase and development agreements so MCC would be more comfortable investing in studies. The zoning ordinance had not yet been analyzed and unit size may be an issue. They hoped to see how single-family homes would perform but would be willing to do "attached" housing, if necessary. Garages would not be built due to the price point. They were looking at reduced cost of capital through the Community Foundation but would also love to find other grant funding sources. MCC was proposing \$32,000 to purchase the property and have a Brownfield TIF. She acknowledged that this was asking a lot from the City.

Ms. Hadley Streng, Grand Haven Area Community Foundation, stated the Foundation had approved a \$1.5 million investment to MCC.

Council Member Fritz was enthused to see how this project would work out and believed it would be a good housing base for the community. He was pleased that the Community Foundation was also involved.

Mayor Monetza heard the presentation at the Brownfield board this afternoon. It sounded like a good fit and a good project with long-term benefits to the City.

City Manager McGinnis noted that the neighboring industrial owner expressed interest in purchasing a portion of the property, but that was speculative right now. MCC's proposal was not speculative. If the City goes forward, he wanted to ensure that property owners were aware that the airport was nearby. There needed to be a discussion with the City, Housing Next, MCC, and the Community Foundation and a couple of weeks would be needed to negotiate. He would plan on this issue coming back to either the June 15 or July 6 council meetings.

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (*Agreement*) is made as of June __, 2020 (the *Effective Date*), by and between **MICHIGAN COMMUNITY CAPITAL**, a Michigan nonprofit corporation (*Buyer*), with a mailing address at 507 S. Grand Avenue, Lansing, Michigan 48993 and the **CITY OF GRAND HAVEN**, a Michigan municipal corporation (the *Seller*), with a mailing address at 519 Washington Street, Grand Haven, Michigan 49417.

RECITALS

A. Seller owns certain real property and improvements in the City of Grand Haven, Ottawa County, Michigan and more particularly described on attached **Exhibit A** (the *Property*).

B. Buyer desires to purchase the Property from Seller for the purpose of developing the Property with approximately 32 single-family homes, the majority of which shall be restricted to income certified persons (i.e., average income no greater than 80 percent of the Area Median Income in the City of Grand Haven); and

C. Seller desires to sell the Property to Buyer for such development purposes on the terms and conditions contained in this Agreement.

AGREEMENT

In consideration of the recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Sale.** For the consideration set forth in this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the Property, on the terms and conditions set forth in this Agreement. The Property is being conveyed in its “as is” condition, and Seller makes no representations or warranties regarding the habitability of the improvements or their suitability for any particular use or purpose.

2. **Purchase Price.** The purchase price for the Property shall be Thirty-Two Thousand and 00/100 Dollars (the *Purchase Price*), payable in cash or immediately available funds at Closing (defined herein).

3. **Title.**

a. Seller represents that Seller is the fee title owner of the Property. Seller shall convey to Buyer at Closing fee simple title to the Property by general warranty deed in recordable form acceptable to Buyer containing no exceptions other than Permitted Exceptions.

D
R
A
F
T

b. Buyer shall obtain within 21 days after the Effective Date, a commitment for an ALTA Owner's Policy of Title Insurance (the **Title Commitment**) from a title insurance company selected by Buyer (the **Title Company**), committing to insure fee simple title to the Property in the full amount of the Purchase Price, certified to a date after the Effective Date. The Title Commitment shall show fee simple title to the Property to be held by Seller. The Title Commitment shall disclose no easements, liens or encumbrances whatever (**Unpermitted Exceptions**), other than normal and usual utility easements which Buyer determines do not adversely affect Buyer's intended use of the Property, exceptions for which Seller has given Buyer assurance, to Buyer's sole satisfaction, that the exceptions will be and in fact are discharged at or prior to the Closing Date, and such other matters as Buyer may approve in writing (collectively, the **Permitted Exceptions**). If Unpermitted Exceptions are disclosed, Buyer shall notify Seller with 30 days after receipt of the Title Commitment, and Seller shall have 30 days to remove them (or cause them to be removed) at Seller's cost (in the event 30 days would extend beyond the Closing Date, the Closing Date may be extended accordingly at Buyer's option); if additional time for Seller to remove Unpermitted Exceptions is reasonably required, Buyer may, in its sole discretion, agree to give Seller until the end of the Inspection Period to cause the removal of record of any use restrictions that would prohibit or adversely impact Buyer's intended use. If Seller fails to remove such Unpermitted Exceptions or use restrictions within the periods provided, Buyer may at any time prior to the Closing Date either terminate this Agreement in writing and be returned all payments made hereunder or waive any Unpermitted Exceptions in writing and proceed to closing. At closing, Buyer shall be entitled to receive an Owner's Policy of Title Insurance without standard exceptions, together with such additional endorsements as Buyer determines to be necessary.

4. **Survey.** Buyer may obtain, at its cost, a new or recertified ALTA/NSPS survey (the **Survey**) of the Property, which shall be certified to Buyer, Seller, and the Title Company. If the Survey shows any conditions which render the Property unusable for Buyer's intended use, or if the Survey indicates that the Property does not cover the area anticipated by, or represented to, Buyer, then Buyer shall notify Seller within 30 days after Buyer has received both the Survey and the Title Commitment, and Seller shall have 30 days after receipt of such notice to remove the condition or otherwise remedy the situation. If Seller fails or elects not to cure such condition or situation, Buyer may elect to terminate this Agreement by written notice to Seller. If Buyer does not terminate the Agreement and instead proceeds to Closing, then Buyer shall be deemed to have waived its objections under this Section.

5. **Taxes and Assessments.** To the extent applicable, Seller shall pay all real property taxes and assessments which are due and payable with respect to the Property as of the Closing Date. Real property taxes and assessments which become

due on or within the 365 days after the Closing Date shall be prorated on a due date basis (based upon a 365-day year) as if paid in arrears. All tax prorations shall presume that Buyer is the owner of the Property on the Closing Date.

D
R
A
F
T

6. **Seller Materials.** Within 15 days after the Effective Date, Seller shall deliver or cause to be delivered to Buyer copies of all documents within Seller's possession or control, if any, concerning the condition of the Property and which are pertinent to Buyer's inspections of the Property, including but not limited to preliminary title reports and surveys; physical reports pertaining to the Property; engineering studies, building and improvements plans and specifications, environmental reports and assessments, and incentive and entitlement agreements (collectively, the **Seller Materials**). Seller shall cooperate with Buyer and cause Seller's consultants, designers, engineers and surveyors to recertify their reports, plans and materials to Buyer upon Buyer's request.

7. **Inspection Period.** From the Effective Date and continuing until up to 365 days after the Effective Date (or such earlier date upon which Buyer gives Seller written notice ending such review period) (the **Inspection Period**), Buyer shall be entitled to inspect the Property.

a. During the Inspection Period (including any extension), Buyer may, at its sole cost and expense, have its employees, agents and contractors go upon the Property during normal business hours and upon reasonable notice to Seller for the purposes of performing such inspections and studies as it may determine with respect to the condition of the Property, and verify Buyer's ability to timely obtain all necessary approvals to occupy, build upon, and use the Property for Buyer's intended uses at a cost Buyer deems acceptable, including but not limited to site plan approvals, building permits and zoning approvals. In the event Buyer's Phase I Report recommends a Phase II Assessment be performed and/or a Baseline Environmental Assessment be filed and Buyer proceeds with such Phase II Assessment, Seller shall cooperate as to such additional work.

b. If Buyer's inspections disclose any environmental or other condition or impact which is unacceptable to Buyer, in Buyer's sole discretion, or if the Property is otherwise unacceptable to Buyer or Buyer otherwise elects not to purchase the Property, in its sole discretion, then Buyer may terminate this Agreement during the Inspection Period by written notice to Seller.

8. **Conditions Precedent to Obligations of Buyer.** The obligation of Buyer to close on under this Agreement is subject to the satisfaction at or prior to the Closing of the following conditions, unless waived in writing by Buyer:

a. **Accuracy of Representations and Warranties.** The representations and warranties of Seller contained in this Agreement shall be true

and correct in all material respects at and as of the Closing Date as though such representations and warranties were made on the Closing Date.

b. **Performance of Covenants.** Unless otherwise agreed or waived, Seller shall have in all respects performed and complied with all covenants, agreements, and conditions that this Agreement requires to be performed or complied with before or on the Closing Date.

c. **No Material Adverse Change.** There shall have been no material adverse change to the Property or Seller's title thereto or ability to complete the transaction, and no fact or condition shall exist or be contemplated or threatened which will, or in Buyer's reasonable judgment will be likely to, cause such a change or development.

d. **Inspection Results.** Buyer shall have determined the Property to be acceptable under the site inspection provisions of this Agreement and shall be satisfied, in its sole discretion, with the results of its due diligence investigation of the Property and the transaction contemplated by this Agreement.

e. **Zoning and Development Approvals.** Buyer shall have received final approvals (including not being subject to further appeals or referenda) that include the following entitlements, approved as necessary by such governmental unit with the relevant authority:

(i) Approval of a site condominium for approximately 32 units, each to be improved with a single-family home for residential use (whether owner-occupied or leased under a ground lease), including site plan approval and/or approval as a planned unit development as may be required by local ordinance;

(ii) Approval of reduced public water and sewer connection fees in an amount not to exceed \$500 per unit for water connections and \$500 per unit for sewer connections;

(iii) Approval for the public acceptance of all roads, water lines, and sewer lines to be constructed by Buyer as to the Property, subject only to completion of the improvements as specified by the governing municipal authority;

(iv) Approval of any zoning amendments or variances necessary for the above; and

(v) Eligibility for and approval of a Brownfield reimbursement plan as provided in Public Act 381 of 1996 for such period as necessary for reimbursement of all eligible activities, including 5% interest.

D
R
A
F
T

9. **Closing.** The Closing on the purchase and sale of the Property (the **Closing**) shall occur 15 days after the expiration of the Inspection Period (including any extension) or such earlier date as Buyer may designate (the **Closing Date**). At Closing, Seller shall execute and deliver to Buyer (i) a warranty deed in recordable form as to the Property, conveying title in the manner required under this Agreement, free of violations and in compliance with Federal, State and local laws, ordinances and regulations; (ii) if the Property is a part of a larger parcel, evidence that the Property has been properly split from the larger parcel with a separate tax parcel number assigned to the Property; (iii) an Affidavit of Seller acceptable to Buyer and the Title Company that there are no outstanding, unsatisfied judgments, tax liens, or bankruptcies against or involving Seller or the Property, unpaid claims which have created or could lead to the creation of construction or other liens on the Property, and no unrecorded interests in the Property; and (iv) such other documentation customary for a transaction of this type and which is reasonably requested by Buyer or the Title Company. Buyer shall tender the Purchase Price to Seller as provided in Section 2 hereof, together with such other documentation customary for a transaction of this type and which is reasonably requested by Seller, and one-half of the closing fee charged by the Title Company. Seller shall pay all unpaid expenses for which Seller is responsible under the terms of this Agreement and all closing costs which are customarily paid by a seller, including without limitation state and county transfer taxes, the premium for the Title Policy without standard exceptions (with Buyer to pay for all additional endorsements), one-half of the closing fees charged by the Title Company, and the cost of recording the warranty deeds. Each party shall execute a closing statement to evidence the transaction. The Closing shall be held on the Closing Date at the office of the Title Company or at such other location as may be agreed upon by the parties. At the Closing, the parties shall execute all documents reasonably necessary to put into effect the terms of this Agreement.

T

10. **Possession.** Upon Closing Buyer shall have the right to possession of the Property, and Seller shall deliver sole and exclusive possession of the Property to Buyer in broom-clean condition, with all personal property and debris removed. Seller shall deliver the Property in substantially the same or better condition than the Property existed on the Effective Date, subject to normal wear and tear, and changes arising out of Buyer's inspection of the Property.

12. **Eminent Domain.** Seller shall notify Buyer within two days if the Property, or any portion thereof, shall be taken or is threatened to be taken through the exercise of the power of eminent domain. This notice shall contain all of the information known to the Seller about the taking or threatened taking. Within five days of Buyer receiving such notice, the Buyer and Seller shall each have the right to terminate this Agreement, in which event any payments made by Buyer shall be forthwith returned to Buyer. If Buyer or Seller should elect to terminate this Agreement, all of the proceeds of the taking shall become the property of Seller. If neither Buyer nor Seller elects to terminate this Agreement, then the proceeds of taking shall belong to Buyer, and Buyer shall have the right to negotiate, settle and

resolve with such condemning authority the amount of such condemnation award. As long as this Agreement remains in effect, prior to the Closing Date, Seller shall not designate counsel, appear in, or otherwise act with respect to the condemnation proceedings without Buyer's prior written consent.

13. Brokers. Buyer represents and warrants to Seller it has not utilized or contracted any broker or finder in connection with the sale of the Property. Seller represents and warrants to Buyer that Seller has not utilized or contracted any broker or finder in connection with the sale of the Property. Each party shall be solely responsible for any commissions or finder's fees owed to any broker or finder with which it has a contractual relationship as to this transaction. Seller shall indemnify Buyer from and against any and all claims, judgments or awards to any real estate agent, broker or finder retained by Seller with regard to this transaction or which arise or result from Seller's actions with regard to this transaction. Buyer shall indemnify Seller from and against any and all claims, judgments or awards to any real estate, broker or finder retained by Buyer with regard to this transaction or which arise or result from Buyer's actions with regard to this transaction.

14. Election of Remedies. If Seller defaults in its obligations hereunder, then Buyer may terminate this Agreement, Buyer may in its sole discretion seek specific performance of the Agreement.

15. Like Kind Exchange. Buyer and Seller may each elect, at their option, to close this transaction, in whole or in part, to qualify as a "Like Kind Exchange" as permitted under Section 1031 of the Internal Revenue Code of 1986, as amended. Each party agrees to execute all documents and instruments reasonably requested by the other party in connection with any such tax free exchange. The provisions of this Section shall not otherwise delay the Closing Date or impose any additional costs or financial obligations on the cooperating party. In the event that the cooperating party incurs any cost or expense in assisting the exchanging party in completing a Like Kind Exchange transaction, the exchanging party shall reimburse the cooperating party for any such expenses.

16. Assignment of Warranties, Service Contracts. Seller shall deliver to Buyer a copy of existing warranties and third party service contracts with respect to the Property, if any. To the extent desired by Buyer, at Closing Seller shall assign to Buyer all of such contracts (if assignable).

17. Representations and Warranties. Seller represents and warrants to Buyer as follows, which representations and warranties shall survive Closing:

- a. That Seller is the fee title owner of the Property and is in a position to satisfy all of its obligations under this Agreement as to the conveyance of the Property.

b. There are no claims, actions, suits or proceedings pending or to the knowledge of Seller, threatened against or affecting Seller that will or could involve or affect the Property.

D
R
A
F
T
c. To the best of Seller's knowledge, there has been no release of any hazardous substance, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC 9601 et seq. (**CERCLA**), as amended, or as defined in the Michigan Environmental Response Act, MCLA 299.601, et seq. (**MERA**), or other similar law, on, upon or into the Property, or property adjacent to the Property; that Seller is not aware of any underground storage tanks on or in the Property, that the Property contain no electric transformers or capacitors which contain PCB in a concentration greater than 100 parts per million, and that Seller is not aware of any present or past use, storage or disposal upon the Property of any pesticide as defined by the Federal Insecticide, Fungicide and Rodenticide Act, at 7 USC 136, et seq., all except as may be disclosed on reports or other written material provided to Buyer by Seller.

d. Seller shall not sell, convey, mortgage or otherwise encumber the Property, or any portion of it, except as provided in this Agreement; Seller has not made a contract to convey the Property or any portion thereof to any person other than Buyer; there are no unpaid claims for labor, services or materials furnished in connection with construction of any improvement on the Property; there is no judgment that is or may become a lien against the Property; there is no bankruptcy proceeding involving either the Seller or the Property; the transaction will not violate any laws, ordinances, rule or regulation; and Seller has authority to transfer all available property divisions as to the Property.

e. Seller agrees to cooperate with Buyer and join in any application process to obtain utilities, zoning, and other permits and approvals deemed necessary by Buyer to enable the Property to be used for Buyer's intended use; Buyer shall be responsible for any application fees and expenses in connection therewith.

f. Buyer shall not, by entering into this Agreement or consummating the Closing hereunder, acquire or assume from Seller any liability arising as a result of Seller's ownership of the Property in respect to the period of Seller's ownership of the Property.

18. Miscellaneous.

D
a. **Notices.** All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) immediately if delivered in person or via facsimile or email or (ii) within two days if mailed, first-class postage prepaid, to the address given in this Agreement or to any other address that Buyer or Seller shall designate in writing. For purposes of terminating this Agreement pursuant to any right given to it hereunder, Buyer's legal counsel may deliver such notice of termination via email delivery to Seller or Seller's legal counsel.

R
A
b. **Indemnity.** Each party will indemnify and hold harmless each other party from and against all obligations, liabilities, damages, penalties, claims, costs, charges and expenses, including reasonable attorneys' fees, which are imposed upon or incurred by another party by reason of any failure of that party to perform or comply with any of the covenants, agreements, terms, provisions or conditions of this Agreement on its part to be performed or complied with.

F
T
c. **Assignment.** Except as otherwise provided herein, neither party may assign its rights in this Agreement without the written consent of the other party, such consent not to be unreasonably withheld. Buyer may, without Seller's consent, assign this Agreement to an entity owned or controlled by Buyer. Seller may, without Seller's consent, convey the Property to the Ottawa County Land Bank Authority, provided that this Agreement is assigned to and accepted by the Ottawa County Land Bank Authority as the Seller as a condition of any such conveyance.

d. **Binding Effect; Successors.** This Agreement, inclusive of its terms and provisions, shall survive the Closing and shall be binding on and inure to the benefit of, and be enforceable by, the respective legal representatives, successors, and assigns of the parties.

e. **Authorization.** By executing this Agreement, each party to this Agreement which is a corporation or other entity warrants and represents that it is properly authorized by its board of directors, stockholders, members, partners and/or holders of beneficial interest to enter into this Agreement.

f. **Choice of Law.** This Agreement shall be governed in all respects by the internal laws of the State of Michigan without regard to choice-of-law principles.

g. **Amendment.** This Agreement shall not be amended, altered, or terminated except by a writing executed by each party.

D
R
A
F
T

h. **Severability.** In the event any of the provisions of this Agreement are deemed to be invalid or unenforceable, those provisions shall be deemed severable from the remainder of this Agreement and shall not cause the invalidity of unenforceability of the remainder of the Agreement. If any provision of the Agreement shall be deemed invalid due to its scope or breadth, such provisions shall be deemed valid to the extent of the scope or breadth permitted by law.

i. **Counterparts.** This Agreement may be executed in any number of identical counterparts, including electronic counterparts, each of which shall be considered an original but together shall constitute but one and the same Agreement.

j. **Headings.** The paragraph headings used in this Agreement are included solely for convenience.

k. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties; further, this Agreement shall supersede and/or replace any oral or written agreement(s) relating to this subject matter entered into by the parties before the Effective Date of this Agreement.

l. **Waiver.** The waiver by any party of any breach or breaches of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach of any provision of this Agreement.

m. **Construction of Agreement.** Each party and its legal counsel have reviewed and revised this Agreement and have had equal opportunity for input into this Agreement. No party or its legal counsel shall be construed to be the drafter or primary drafter of this Agreement. In the event of any dispute regarding the construction of this Agreement or any of its provisions, ambiguities or questions of interpretation shall not be construed more in favor of one party than the other; rather, questions of interpretation shall be construed equally as to each party.

Signatures on following page

Signature Page to Real Estate Purchase and Sale Agreement

The parties have executed this Agreement as of the date first written above.

D

BUYER:

MICHIGAN COMMUNITY CAPITAL,
a Michigan nonprofit corporation

SELLER:

CITY OF GRAND HAVEN,
a Michigan municipal corporation

R

Eric Hanna, President & CEO

Signature

A

Print Name

F

Title

T

EXHIBIT A
Legal Description
Vacant (Comstock), Grand Haven, Michigan

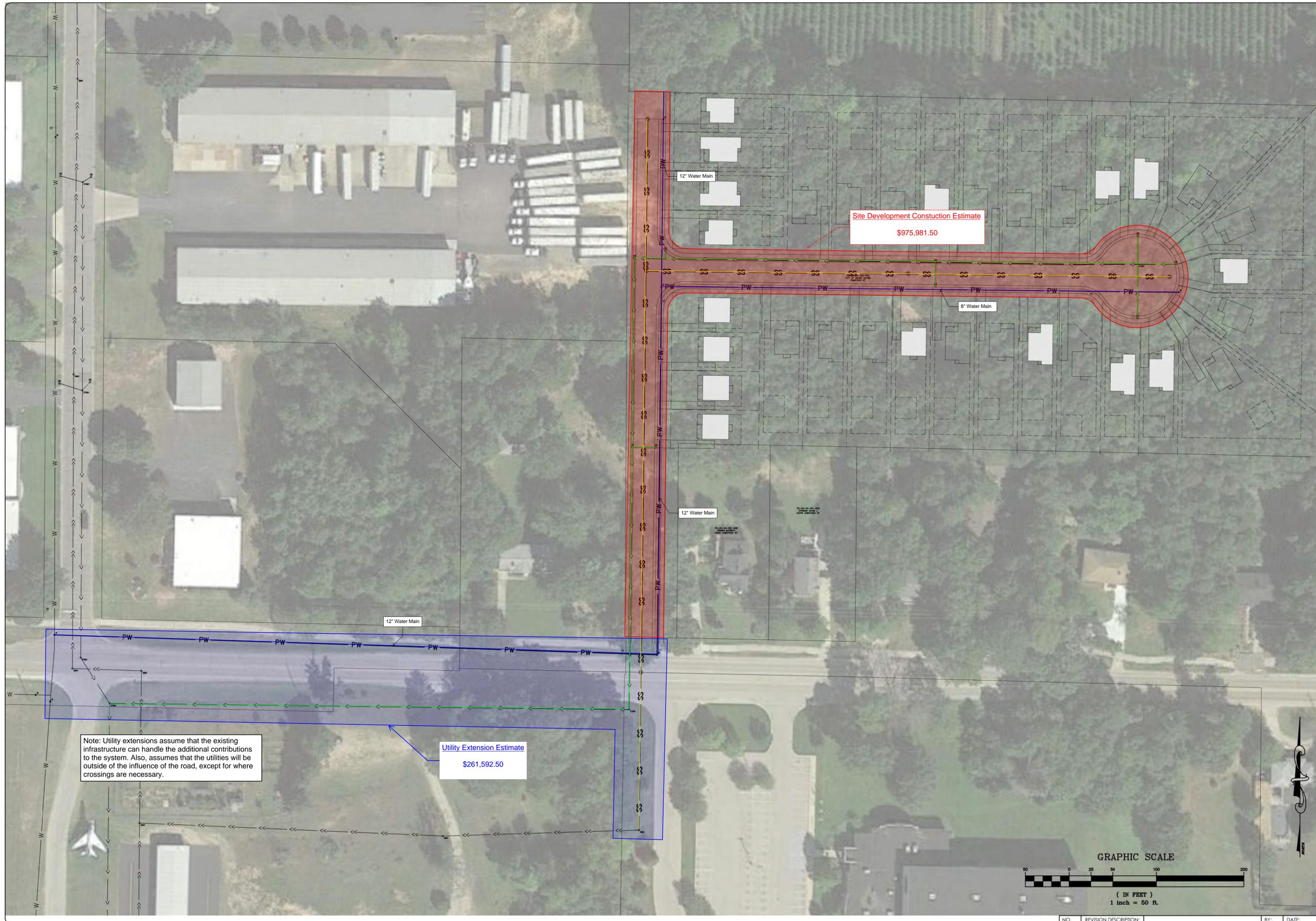
Description: The land situated in the City of Grand Haven, Ottawa County, Michigan, described as follows:

The West 48 rods of the South ½ of the South ½ of the Northeast ¼ of Section 34, Town 8 North, Range 16 West, EXCEPT the South 16 rods thereof.

ALSO: Outlot "A" of COMSTOCK SUBDIVISION according to the plat thereof recorded in Liber 15 of Plats, page 25 of Ottawa County Records, EXCEPT the East 6 feet thereof.

Tax Parcel ID: 70-03-34-200-042

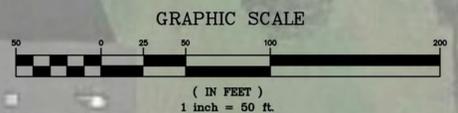
© Proprietary. Michigan Government City of Grand Haven 2020 Comstock Redevelopment CAD/CIM/COMSTOCK REDEVELOPMENT.dwg, 2/23/24, 4:12:20PM, 11:57:51 PM, James, J.F.



Note: Utility extensions assume that the existing infrastructure can handle the additional contributions to the system. Also, assumes that the utilities will be outside of the influence of the road, except for where crossings are necessary.

Utility Extension Estimate
\$261,592.50

Site Development Construction Estimate
\$975,981.50



ABONMARCHÉ
 95 West Main Street
 Benton Harbor, MI 49023
 abonmarche.com
 269.922.1017

Cochran
 Benton Harbor
 South Bend
 Valparaiso

Engineering | Architecture | Land Surveying

PROJECT: CITY OF GRAND HAVEN

SHEET TITLE: COMSTOCK STREET REDEVELOPMENT

SHEET NO. 1 of 1

DRAWN BY: _____

DESIGNED BY: _____

PM REVIEW: _____

QA/QC REVIEW: _____

DATE: _____

SEAL: _____

SIGNATURE: _____

DATE: _____

SCALE: _____

HOR: 1" = 50'

VERT: N/A

ACI JOB # _____

NO. REVISION DESCRIPTION: _____ BY: _____ DATE: _____