

FARGO CITY COMMISSION AGENDA
Monday, September 23, 2019 - 5:00 p.m.

City Commission meetings are broadcast live on TV Fargo Channel 56 and online at www.FargoND.gov/streaming. They are rebroadcast Mondays at 5:00 p.m., Thursdays at 7:00 p.m. and Saturdays at 8:00 a.m. They are also included in the video archive at www.FargoND.gov/citycommission.

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, September 9, 2019).

CONSENT AGENDA – APPROVE THE FOLLOWING:

- 1. 1st reading of an Ordinance Relating to Lodging Tax.
- 2. Waive requirement to receive and file an Ordinance one week prior to 1st reading and 1st reading of an Ordinance relating to Waterworks System.
- 3. 2nd reading and final adoption of the following Ordinances; 1st reading on 9/9/19:
 - a. Relating to Restrictions on Sale, Service or Dispensing of Alcoholic Beverages.
 - b. Rezoning Certain Parcels of Land Lying in The Pines at the District Addition.
 - c. Rezoning Certain Parcels of Land Lying in Scilley's Addition.
- 4. Applications for property tax exemptions for improvements made to buildings:
 - a. Paul Teunissen, 2509-2511 18th Street South (3 year).
 - b. Joseph and Jaime Foertsch, 104 Prairiewood Drive South (3 year).
 - c. Mark and Susan Howlett, 1429 10th Street North (5 year).
 - d. Eugene D. and Sandra L. Filley, 33 35th Avenue North (5 year).
 - e. Leslie A. and Barbara A. Herbranson, 1042 14th Street North (5 year).
 - f. Robert J. and Gloria Danielson, 1021 19th Street South (5 year).
 - g. Renee O'Brien, 820 2nd Street North (5 year).
- 5. Applications for Games of Chance:
 - a. 4 Luv of Dog Rescue for a raffle on 11/9/19.
 - b. Davies Eagle Elite for a raffle on 11/16/19.
 - c. Path of North Dakota, Inc. for a raffle on 11/26/19.
 - d. Fargo-Moorhead USBC Association for a calendar raffle from 1/11/20 to 1/26/20.
 - e. Fargo-Moorhead USBC Association for a calendar raffle from 10/5/19 to 2/16/20.
 - f. Homeward Animal Shelter for a raffle on 10/18/19.
 - g. Lewis & Clark Elementary School for a raffle on 10/25/19.
- 6. Access Agreement with Allison Kenninger for property at 901 42nd Avenue North (Project No. FM-19-A).
- 7. Access Agreement with Scott C. and Donna M. Seltveit for property at 906 41st Avenue North (Project No. FM-19-A).

8. Partial Release of Permanent Easement (Water and Sanitary Sewer) with Kevin J. and Cynthia L. Liedahl for property at 1440 12th Street South.
9. Change Order No. 2 for an increase of \$74,746.50 and a 41-day time extension for Project No. SN-19-A1.
10. Change Order No. 1 for interim time extension and design modifications for Project No. FM-15-J2.
11. Change Order No. 4 for an increase of \$25,339.00 and time extension to 6/15/20 for Project No. SN-18-C2.
12. Receive and file General Fund – Budget to Actual through August 2019 (unaudited).
13. Public Assistance Grant Program Subgrant Agreement for FEMA-4444-DR with the State of ND, Department of Emergency Services.
14. Third Amendment to Parking Management Agreement with Interstate Parking Company of North Dakota, LLC.
15. Amendment No. 4 to Agreement with First Transit.
16. Amendment No. 1 with KLJ in the amount of \$4,210.61 for the GTC Jefferson Ticketing/Storage Counter Project.
17. Change Order No. 10 for an increase of \$260,478.57 for Project No. WA1301 (electrical contract).
18. Payment to KPH in the amount of \$313,494.40 for emergency sanitary sewer repairs.
19. Bills.
20. Payment to KPH, Inc. in the amount of \$56,250.78 for Improvement District No. BN-18-A1.
21. Change Orders for Improvement District No. BR-18-A1:
 - a. No. 5 for an increase of \$8,296.07.
 - b. No. 6 for an increase of \$54,127.00.
22. Task Order No. 2 with Moore Engineering in the amount of \$350,000.00 for Improvement District No. BR-20-B0.

REGULAR AGENDA:

23. Adopt the 2020 City of Fargo budget and proposed tax levies.
24. Public Hearings - 5:15 pm:
 - a. Application filed by La Fiesta Mexican and American Grill LLC d/b/a La Fiesta Mexican and American Grill for a Class "F" Alcoholic Beverage License at 1109 38th Street South.
 - b. Resolution Approving the Issuance of Revenue Bonds by the Colorado Health Facilities Authority for the Benefit of Sanford and the Evangelical Lutheran Good Samaritan Society (Series 2019 (Sanford)).

- c. CONTINUE to 10/7/19 - Renaissance Zone Project for Great Plains Mercantile Holdings, LLC for a new construction project located at 401 Broadway Avenue; 410 and 412 5th Street North.
 - d. CONTINUE to 10/7/19 - Renaissance Zone Project for 201 Hospitality, LLC for a rehab project located at 201 5th Street North.
 - e. Right-of-Way Vacation of the alley between Lots A, B, C, D, E, F, T and U, the vacated 10 foot alley adjacent to Lots T and U, Hagaman's Subdivision of part of Block 2, Roberts Addition (624 2nd Avenue North and 613, 617 and 621 1st Avenue North); approval recommended by the Planning Commission on 4/2/19; continued from the 7/15/19, 8/12/19, 8/26/19 and 9/9/19 Regular Meetings.
 - f. Right-of-Way Vacation of a portion of 5th Street North between Blocks 21 and 22 Keeney and Devitt's Second Addition and lying North of 4th Avenue North and South of Lot B, Block 1, Great Northern Depot Addition (410 5th Street North); continued from the 8/12/19, 8/26/19 and 9/9/19 Regular Meetings.
 - g. Alley Vacation of the alley in Block 21, Keeney & Devitt's Second Addition (401 Broadway North).
 - h. Appeal of a Planning Commission decision on 8/6/19 to approve a Conditional Use Permit that would allow a bed and breakfast in the SR-3, Single-Dwelling Residential zoning district on Lots 2 and 3, Block F, Chas A. Roberts Addition (611 8th Street South); continued from the 9/9/19 Regular Meeting.
 - i. Amendments to the 2019 Action Plan Community Development Block Grant (CBDG)/HOME Investment Partnerships Programs.
 - j. Application filed by City Flats LLC for a payment in lieu of tax exemption (PILOT) for a project located at 1329 5th Avenue North, which the applicant will use in the operation of an affordable multi-family apartment building.
 - k. Application filed by Computer Telephony Innovations d/b/a Voxtel for a property tax exemption for a project located at 509 25th Avenue North, which the applicant will use in the operation of a telecommunications and software development company that manufactures telecommunications switching and billing software.
25. Proposed Ordinances related to e-cigarettes and e-liquids, and restricting the sale of e-liquids to minors.
26. Recommendations for appointments to the following Boards and Commissions:
- a. Housing and Redevelopment Authority.
 - b. MetroCOG Policy Board.
27. Construction Projects Update.

People with disabilities who plan to attend the meeting and need special accommodations should contact the Commission Office at 701.241.1310. Please contact us at least 48 hours before the meeting to give our staff adequate time to make arrangements.

Minutes are available on the City of Fargo website at www.FargoND.gov/citycommission.



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Dr. Timothy J. Mahoney, Mayor

Fargo City Hall
200 3rd Street North
Fargo, ND 58102
Phone 701.241.1310 | Fax: 701.476.4136
TMahoney@FargoND.gov

TO: BOARD OF CITY COMMISSIONERS
FROM: MAYOR TIMOTHY MAHONEY
DATE: SEPTEMBER 17, 2019
RE: 2020 BUDGET

The 2020 preliminary budget and taxation hearing was held on September 9th. The purpose of the hearing was to allow public input on the proposed tax levies and any comments on the preliminary budget.

The City Commission is required to approve a final budget no later than October 7th, therefore, I am asking for your consideration of these recommendations.

Suggested Motion: To approve the preliminary budget as the final budget for 2020 and proposed tax levies as presented.

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AUDITOR'S OFFICE

Fargo City Hall
225 4th Street North

PO Box 2471

Fargo, ND 58108

Phone: 701.241.8108 | Fax: 701.241.8184

www.FargoND.gov

MEMORANDUM

TO: Board of City Commissioners
FROM: Steven Sprague, City Auditor
SUBJECT: Liquor License Application – La Fiesta Mexican & American Grill
DATE: September 11, 2019

The following application for a liquor license was received by the Auditor's office and reviewed by the Liquor Control Board:

License Class: F Full Alcohol with food sales, no bar
Business Name: La Fiesta Mexican & American Grill
Location: 1109 38th Street South
Applicants: Samuel Bobadilla Angel

Being no significant concerns, the Liquor Control Board voted to approve the issuance of the license. The complete application is available for review in the Auditor's Office.

Recommended Motion:

Move to approve the issuance of a Class F alcoholic beverage license to La Fiesta Mexican & American Grill.

MEMORANDUM

TO: Chief David Todd

FROM: Sergeant Matt Christensen

DATE: September 3rd, 2019

SUBJECT: Application for a Class "F" Alcoholic Beverage License for La Fiesta Mexican and American Grill d/b/a: La Fiesta Mexican and American Grill to be located at 1109 38th Street South, Fargo, ND.

In accordance with Section 25-1505 of the Fargo Municipal Code, I have conducted an investigation into the character, reputation and fitness of the applicant(s) listed on the supplied application.

During this investigation I questioned the applicant's criminal background, credit history, past residence history as well as any interaction they have had with law enforcement in any state.

The following information was discovered through this investigation:

Samuel Bobadilla Angel- Owner

Criminal History- No areas of concern

Credit History- No areas of concern

Investigation

This application is for a new F license for a restaurant set to open near West Acres as well as several hotels, which will serve American and Mexican cuisine in a casual sit down atmosphere. This license requires 50% food sales and allows the "on sale" sale of alcohol at a table or both with no bar allowed. Through my investigation into the applicant I did not find any information which would lead me to believe granting this license would cause problems for the surrounding businesses or law enforcement.

Business Location


La Fiesta Crave will be located at 1109 38th Street South, Fargo, ND. Other businesses in the area with an alcoholic beverage license include: Chili's, Holiday Inn, Osaka's. Crave, Paradiso and The Box Sports Bar.

Conclusion

I believe I have discovered all information related to the listed applicant(s) and all information related to the transfer of the requested liquor license. I have provided this condensed background review to Fargo Police Chief David Todd for his review and recommendation.

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TO: BOARD OF CITY COMMISSIONERS

FROM: KENT COSTIN, DIRECTOR OF FINANCE 

RE: PUBLIC HEARING AND RESOLUTION AUTHORIZING THE ISSUANCE OF REVENUE BONDS BY THE COLORADO HEALTH FACILITIES AUTHORITY FOR THE BENEFIT OF SANFORD AND THE EVANGELICAL LUTHERAN GOOD SAMARITAN SOCIETY

DATE: SEPTEMBER 17, 2019

A public hearing is scheduled for September 23, 2019 for the issuance of revenue bonds by the Colorado Health Facilities Authority. The public hearing and related resolution authorizing the issuance are IRS compliance issues that are required.

The public hearing notice and the resolution are included.

Suggested Motion:

Conduct the public hearing on the issuance of revenue bonds by the Colorado Health Facilities Authority and approve a resolution authorizing the same.

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF REVENUE BONDS BY THE COLORADO HEALTH FACILITIES AUTHORITY FOR THE BENEFIT OF SANFORD AND THE EVANGELICAL LUTHERAN GOOD SAMARITAN SOCIETY

BE IT RESOLVED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF FARGO:

WHEREAS, on September 12, 2019, notice of a public hearing by the Board of City Commissioners of the City of Fargo (the "City") was published in *The Forum*, said hearing concerning the proposed plan of finance and the issuance of the Colorado Health Facilities Authority's Revenue Bonds, Series 2019 (Sanford) (the "Bonds"). Under this plan of finance, the Bonds will be issued in an aggregate principal amount not to exceed \$480,000,000. A portion of the Bond proceeds in an amount not to exceed \$8,000,000 will be used (a) in a principal amount not to exceed \$6,000,000 to refinance a loan, a portion of the proceeds of which were spent at Good Samaritan Society – Fargo ("*Good Samaritan Society – Fargo*"), a senior living facility owned by The Evangelical Lutheran Good Samaritan Society ("*Good Samaritan*") and located at 4502 37th Avenue South in the City of Fargo, and (b) in a principal amount not to exceed \$2,000,000 to finance or reimburse the costs of remodeling, renovating, furnishing and equipping Good Samaritan Society – Fargo; and

WHEREAS, the public hearing was held by the Board of City Commissioners on September 23, 2019 at which discussions were held concerning a request by Good Samaritan that the City approve the proposed plan of finance and the issuance of the Bonds by the Colorado Health Facilities Authority for the purposes described above;

NOW, THEREFORE, BE IT RESOLVED, BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF FARGO, NORTH DAKOTA, AS FOLLOWS:

Section 1. The proposed plan of finance and the issuance of the Bonds by the Colorado Health Facilities Authority for the purposes described above is hereby approved.

Section 2. This approval does not impose any liability on the City or in any way involve the City in the issuance of the Bonds or in connection with the purposes of the Bonds described above but is solely an accommodation by the City to satisfy the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended.

Adopted by the Board of City Commissioners of the City of Fargo, North Dakota, this
23rd day of September, 2019.

Mayor

ATTEST:

City Clerk

**AGREEMENT
REGARDING TEFRA HEARING
COLORADO HEALTH FACILITIES AUTHORITY ON BEHALF OF
THE EVANGELICAL LUTHERAN GOOD SAMARITAN SOCIETY
FOR FARGO, NORTH DAKOTA FINANCING PURPOSES**

THIS AGREEMENT is entered into as of the ____ day of September, 2019, between the City of Fargo, North Dakota ("*Fargo*") and The Evangelical Lutheran Good Samaritan Society, a North Dakota non-profit corporation, headquartered in Sioux Falls, South Dakota (the "*Society*") in connection with the issuance by the Colorado Health Facilities Authority ("*COHFA*"), on behalf of the Society, of tax-exempt health facility revenue bonds (the "*Bonds*") pursuant to Article 25, Title 25 of the Colorado Revised Statutes (the "*Act*").

A. Section 147(f) of the Internal Revenue Code of 1986, as amended (the "*Code*"), requires that COHFA obtain the approval of the governing body or chief elected representative of each state or local government jurisdiction in which the financed facilities are to be located, following a public hearing. The public hearing can be held following the provision of adequate notice with the publication of a notice of the public hearing in a newspaper serving the area where the project is located. A copy of the notice of public hearing, that was published in *The Forum* on September 12, 2019, is attached hereto as *Exhibit A*.

B. Under this plan of finance, the Bonds will be issued in an aggregate principal amount not to exceed \$480,000,000. A portion of the Bond proceeds in an amount not to exceed \$8,000,000 will be used (a) in a principal amount not to exceed \$6,000,000 to refinance a loan, a portion of the proceeds of which were spent at Good Samaritan Society – Fargo ("*Good Samaritan Society – Fargo*"), a senior living facility owned by the Society and located at 4502 37th Avenue South in the City of Fargo, and (b) in a principal amount not to exceed \$2,000,000 to finance or reimburse the costs of remodeling, renovating, furnishing and equipping Good Samaritan Society – Fargo (collectively, the "*Financing Purposes*").

C. The Bonds will constitute special limited obligations of COHFA payable solely from amounts received by COHFA pursuant to a loan agreement between COHFA and Sanford, the controlling member of the Society. Fargo will not issue the Bonds, nor will Fargo or the State of North Dakota have any liability with respect to the Bonds or the sale or offering thereof.

NOW THEREFORE, in consideration of the mutual undertakings and covenants set forth below and other good and valuable consideration, Fargo and the Society hereby represent and agree as follows:

1. Fargo has agreed and has held a public hearing with respect to the Financing Purposes as required by the Code.

2. Notwithstanding anything contained in any other document regarding the Financing Purposes or the financing of the Financing Purposes, the Bonds issued by COHFA shall not be payable from nor charged upon any funds of Fargo nor shall Fargo be subject to any liability thereon. No holder or holders of the Bonds shall ever have the right to compel any exercise of the taxing power of Fargo to pay the Bonds or the interest thereon, nor to enforce payment thereof against any property of Fargo. The Bonds shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of Fargo. The Bonds shall not constitute a debt of Fargo within the meaning of any constitutional or statutory limitation of indebtedness.

3. The Society hereby agrees to indemnify and hold Fargo harmless from any and all claims, demands, lawsuits, administrative or regulatory actions or investigations initiated toward or against Fargo as a result of the issuance of the Bonds, including any post-compliance obligations related thereto, and has agreed or will agree to fully reimburse Fargo for any and all costs, including attorneys' fees or other professional fees, incurred by Fargo in responding to such claims, demands, lawsuits, administrative or regulatory actions or investigations.

4. This Agreement may be executed in counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, each of the parties below has caused this Agreement to be executed on its behalf by its duly authorized officers, all as of the day and year first above written.

CITY OF FARGO, NORTH DAKOTA

By: _____
Its: President of the Board of City
Commissioners

By: _____
Its: City Auditor

THE EVANGELICAL LUTHERAN GOOD
SAMARITAN SOCIETY

By: _____
Its:

NOTICE OF PUBLIC HEARING

Notice is hereby given that a public hearing, as required by Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”), will be held by the City of Fargo, North Dakota on September 23, 2019, at 5:15 pm local time, or as soon thereafter as the matter can be heard, at City Commission Chambers, 225 4th Street North, Fargo, North Dakota, regarding the proposed issuance by the Colorado Health Facilities Authority (the “Authority”) of its revenue bonds in one or more series in an aggregate principal amount not to exceed \$480,000,000 (the “Series 2019 Bonds”). The proceeds of the Series 2019 Bonds will be loaned to Sanford, a North Dakota nonprofit corporation and an organization described in Section 501(c)(3) of the Code (“Sanford”). The proceeds of the Series 2019 Bonds will be applied, together with other available funds, (a) in a principal amount not to exceed \$65,000,000, to refund all or a portion of the outstanding \$70,565,000 original principal amount South Dakota Health and Educational Facilities Authority Revenue Bonds, Series 2009 (Sanford Health) (the “Sanford Series 2009 Bonds”); (b) in a principal amount not to exceed \$45,000,000, to refinance indebtedness of The Evangelical Lutheran Good Samaritan Society (“Good Samaritan”), a North Dakota nonprofit corporation and an organization described in Section 501(c)(3) of the Code (the “Bank Loans”); (c) in a principal amount not to exceed \$350,000,000, to refinance a portion of a loan (the “Acquisition Bridge Loan”), the proceeds of which were used by Sanford to acquire a controlling membership interest in Good Samaritan for an acquisition price in an amount necessary to redeem a portion of the (i) \$169,955,000 original principal amount Colorado Health Facilities Authority Health Facilities Revenue Bonds (The Evangelical Lutheran Good Samaritan Society Project) Series 2012 (the “Series 2012 Bonds”), (ii) \$63,675,000 original principal amount Colorado Health Facilities Authority Health Facilities Revenue Bonds (The Evangelical Lutheran Good Samaritan Society Project) Series 2013 (the “Series 2013 Bonds”), (iii) \$204,290,000 original principal amount Colorado Health Facilities Authority Health Facilities Revenue and Revenue Refunding Bonds (The Evangelical Lutheran Good Samaritan Society Project) Series 2015A (the “Series 2015 Bonds”) and (iv) \$220,720,000 original principal amount Colorado Health Facilities Authority Health Facilities Revenue and Revenue Refunding Bonds (The Evangelical Lutheran Good Samaritan Society Project) Series 2017 Bonds (the “Series 2017 Bonds”), all previously issued for the benefit of Good Samaritan; (d) in a principal amount not to exceed \$10,000,000, to refund all or a portion of the outstanding \$9,309,427.76 original principal amount Morton County, North Dakota Nursing Facilities Revenue Refunding Bonds (Sanford Living Centers Project), Series 2014C (the “Sanford Series 2014C Bonds”) and \$2,137,912.42 original principal amount Morton County, North Dakota Nursing Facilities Revenue Refunding Bonds (Sanford Living Centers Project), Series 2014E (the “Sanford Series 2014E Bonds”) and, together with the Sanford Series 2014C Bonds, the “Sanford Series 2014 Bonds”), (e) in a principal amount not to exceed \$10,000,000, to finance or reimburse the cost of remodeling, renovating, furnishing and equipping certain of Sanford’s or Good Samaritan’s (or any tax-exempt affiliate thereof) health care and/or senior living facilities located in several jurisdictions throughout the United States, including in the City of Fargo; (f) to pay a portion of the interest on the Series 2019 Bonds, if deemed necessary or advisable by the Authority or Sanford; (g) to provide working capital, if deemed necessary or advisable by the Authority or Sanford; (h) to fund a debt service reserve fund, if deemed necessary or advisable by the Authority or Sanford; and (i) to pay certain expenses incurred in connection with the issuance of the Series 2019 Bonds (collectively, the “Financing Purposes”).

Public approval by each local jurisdiction has been or will be obtained following a public notice and public hearing regarding the Series 2019 Bonds and the facilities financed and/or refinanced in that local jurisdiction. A portion of the proceeds of the Series 2019 Bonds (a) in a principal amount not to exceed \$6,000,000 will be used to refinance the Acquisition Bridge Loan, a portion of the proceeds of which were spent at Good Samaritan Society – Fargo (“*Good Samaritan Society – Fargo*”), a senior living facility owned by Good Samaritan and located at 4502 37th Avenue South in the City of Fargo, and (b) in a principal amount not to exceed \$2,000,000 will be used to finance or reimburse the costs of remodeling, renovating, furnishing and equipping Good Samaritan Society – Fargo.

The proceeds of the Series 2012 Bonds were used, among other things, to finance and refinance the costs of the acquisition, construction, improvement and equipping of certain skilled nursing facilities and other health care and senior living facilities owned and operated by Good Samaritan, fund a debt service reserve fund and pay costs of issuance.

The proceeds of the Series 2013 Bonds were used, among other things, to finance and refinance the costs of the acquisition, construction, improvement and equipping of certain skilled nursing facilities and other health care and senior living facilities owned and operated by Good Samaritan, fund a debt service reserve fund and pay costs of issuance.

The proceeds of the Series 2015 Bonds were used, among other things, to finance and refinance the costs of the acquisition, construction, improvement and equipping of certain skilled nursing facilities and other health care and senior living facilities owned and operated by Good Samaritan, including at Good Samaritan Society - Fargo described above, fund a debt service reserve fund and pay costs of issuance.

The proceeds of the Series 2017 Bonds were used, among other things, to finance and refinance the costs of the acquisition, construction, improvement and equipping of certain skilled nursing facilities and other health care and senior living facilities owned and operated by Good Samaritan, including at Good Samaritan Society - Fargo described above, fund a debt service reserve fund and pay costs of issuance.

The proceeds of the Sanford Series 2009 Bonds were used, among other things, to pay or reimburse Sanford and its affiliates for the payment of the costs of acquiring, constructing, renovating, remodeling and equipping certain of the health facilities owned and operated by Sanford or its affiliates.

The proceeds of the Sanford Series 2014 Bonds were used, among other things, to refinance indebtedness used to finance or reimburse the cost of the acquisition, construction, expansion, remodeling, renovation, furnishing and equipping of skilled nursing facilities owned and operated by Sanford Living Centers, an affiliate of Sanford.

The Bank Loans were used, among other things, to finance, refinance indebtedness used to finance, or reimburse the cost of the acquisition, construction, expansion, remodeling, renovation, furnishing and equipping of senior living facilities owned and operated by Good Samaritan or its affiliates.

All property and facilities to be financed or refinanced with the proceeds of the Series 2019 Bonds have been and will be owned and operated by Sanford, Good Samaritan or a tax-exempt affiliate thereof.

The Series 2019 Bonds will constitute special limited obligations of the Authority payable solely from amounts received by the Authority pursuant to a loan agreement between the Authority and Sanford. The City of Fargo will not issue the Series 2019 Bonds, nor will the City of Fargo nor the State of North Dakota have any liability with respect to the Series 2019 Bonds or the sale or offering thereof.

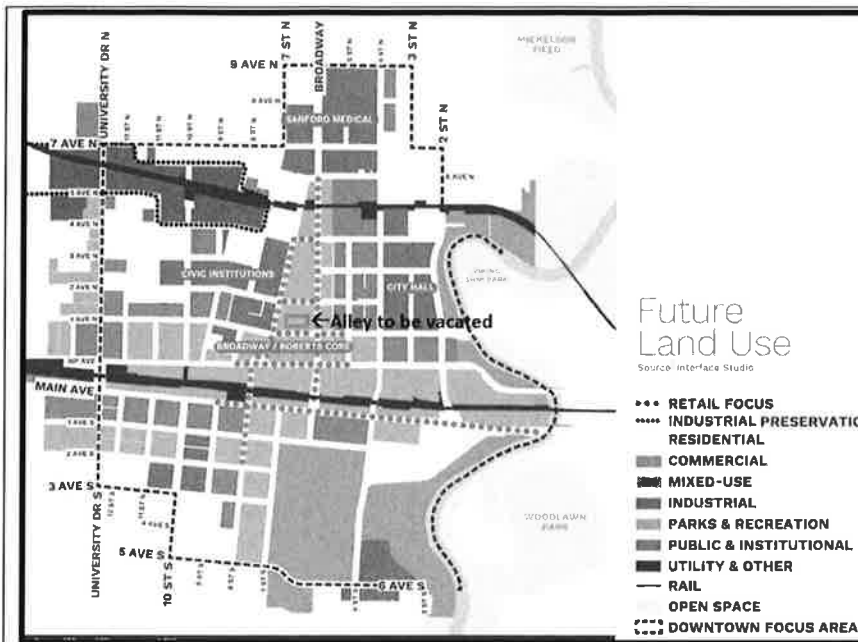
Interested persons wishing to express their views on the issuance of the Series 2019 Bonds or on the nature and location of the senior living facility in the City of Fargo proposed to be financed or refinanced may attend the public hearing or, prior to the time of the hearing, submit written comments. Subsequent to the public hearing, the members of the Board of City Commissioners will meet to consider approval of the execution and delivery of the Series 2019 Bonds.

Additional information concerning the above matter may be obtained from and written comments should be addressed to the City Auditor.

NOTICE DATED: September 16, 2019.

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City of Fargo Staff Report			
Title:	Roberts Addition	Date: Update:	3/28/2019 7/10/2019 8/7/2019 9/18/2019
Location:	624 2nd Avenue North and 613, 617, and 621 1st Avenue North	Staff Contact:	Donald Kress, planning coordinator
Legal Description:	Alley between Lots A, B, C, D, E, F, T, and U, the vacated 10 foot alley adjacent to Lots T and U, Hagaman's Subdivision of part of Block 2, Roberts Addition.		
Owner(s)/Applicant:	DFI Kesler LLC, DFI BJ LLC, DFI BG LLC, Swanson Properties LLC/ Kilbourne Group—Mike Zimney	Engineer:	Moore Engineering
Entitlements Requested:	Vacation of Right of Way (Alley between Lots A, B, C, D, E, F, T, and U, the vacated 10 foot alley adjacent to Lots T and U, Hagaman's Subdivision of part of Block 2, Roberts Addition)		
Status:	City Commission Public Hearing: September 23, 2019		
Proposal:			
<p><i>PROJECT HISTORY NOTE: This vacation was originally scheduled for City Commission hearing on July 15, 2019. This case has been continued from previous City Commission agendas as the applicant has had ongoing negotiations with private utility providers in order to secure easements and agreements regarding those utilities.</i></p> <p>The applicant requests one entitlement:</p> <ol style="list-style-type: none"> 1. A vacation of right of way (alley) between Lots A, B, C, D, E, F, T, and U, the vacated 10 foot alley adjacent to Lots T and U, Hagaman's Subdivision of part of Block 2, Roberts Addition <p>The plat will vacate an existing alley located between Lots A, B, C, D, E, F, T, and U, the vacated 10 foot alley adjacent to Lots T and U, Hagaman's Subdivision of part of Block 2, Roberts Addition to allow the full width of the block between 1st and 2nd Avenue North to be developed with a single mixed use building.</p> <p>This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.</p>			
Area Plans:			
<p>The alley to be vacated is included in the Downtown In Focus Master Plan. Vacation of this alley helps facilitate the development of this property as a mixed-use project, consistent with the "mixed-use" land use designation of the Downtown In Focus future land use plan (see graphic below).</p>			
(continued on next page)			



Schools and Parks:

Schools: The subject property is located within the Fargo School District and is served by Roosevelt Elementary, Ben Franklin Middle and North High schools.

Neighborhood: The subject property is located within the Downtown neighborhood.

Parks: Ole Tangen Park (10 Roberts Street) is located approximately 650 feet southwest of the subject property and offers the amenities of a park bench.

Pedestrian / Bicycle: There right of way proposed to be vacated does not include any bicycle facilities or multi-use trails.

Staff Analysis:

ROW Vacation Approval Criteria: The City of Fargo does not currently have any adopted regulation dealing with the vacation of rights-of-way. However, city policy dictates that any applicant wishing to vacate right-of-way must submit a Vacate Application—a one-page form wherein the petitioner provides: a description of the area to be vacated and signatures of all property owners adjoining the area to be vacated. In addition, the applicant must submit a vacation plat (a major subdivision). Notwithstanding the Land Development Code's (LDC) silence on the matter, the North Dakota Century Code (N.D.C.C) does address the opening and vacating of roadways in Chapter 24-07 (outside of municipal limits) and Chapter 40-39 (inside municipal limits). To that end, the balance of this report will focus on the specific approval criteria outlined within Chapter 40-39 of the N.D.C.C.

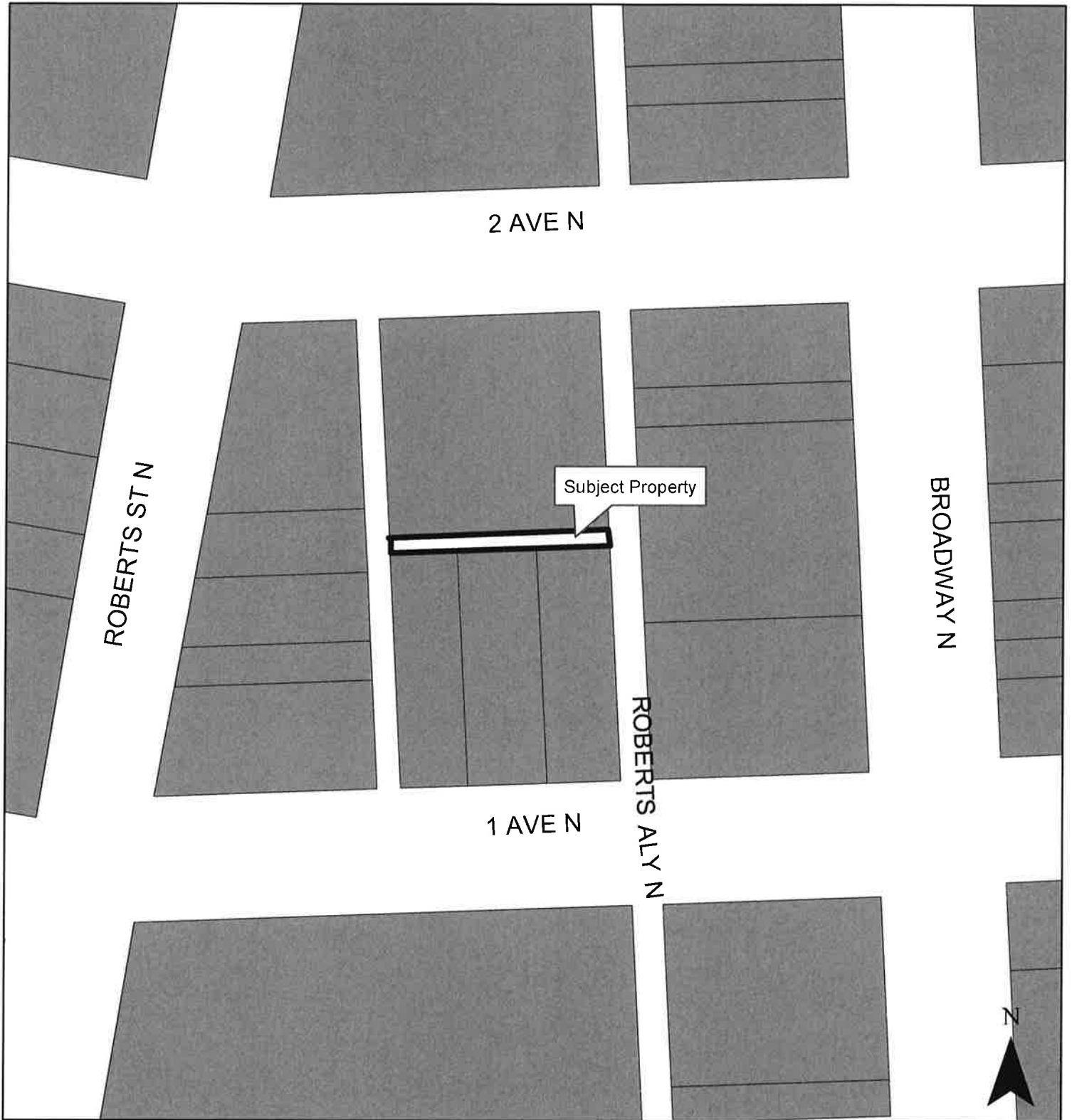
N.D.C.C. 40-39-04. Vacation of streets and alleys where sewers, water mains, pipes, and lines located – Conditions. No public grounds, streets, alleys, or parts thereof over, under, or through which have been constructed, lengthwise, any sewers, water mains, gas, or other pipes or telephone, electric, or cable television lines, of the municipality or the municipality's grantees of the right of way thereof, may be vacated unless the sewers, mains, pipes, or lines have been abandoned and are not in use, or unless the grantee consents, thereto, or unless perpetual easements for the maintenance of sewers, water mains, gas, or other pipes, or telephone, electric facilities, whether underground or aboveground, is subject to the continued right of location of such electric facilities in the vacated streets.

<p>The right-of-way in question has no street improvements or City underground utilities. No easement for the City is required. The applicant has accounted for private utilities in the area to be vacated by relocation agreements with those utilities or easements granted to those utilities. (Criteria Satisfied)</p> <p><i>N.D.C.C. 40-39-05. Petition for vacation of streets, alleys, or public grounds – Contents – Verification. No public grounds, streets, alleys, or parts thereof within a municipality shall be vacated or discontinued by the governing body except on a petition signed by all of the owners of the property adjoining the plat to be vacated. Such petition shall set forth the facts and reasons for such vacation, shall be accompanied by a plat of such public grounds, streets, or alleys proposed to be vacated, and shall be verified by the oath of at least one petitioner.</i></p> <p>In accordance with the requirement of this section, a petition signed by all adjacent owners has been submitted for review and consideration, along with a plat of such public street. (Criteria Satisfied)</p> <p><i>N.D.C.C 40-39-06. Petition filed with city auditor – Notice published – Contents of notice. If the governing body finds that the petition for vacation is in proper form and contains the requisite signatures, and if it deems it expedient to consider such petition, it shall order the petition to be filed with the city auditor who shall give notice by publication in the official newspaper of the municipality at least once each week for four weeks. The notice shall state that a petition has been filed and the object thereof, and that it will be heard and considered by the governing body or a committee thereof on a certain specified day which shall not be less than thirty days after the first publication of the notice.</i></p> <p>Documentation of said action is located within both the Planning project file and Auditor's file. (Criteria Satisfied)</p> <p><i>N.D.C.C. 40-39-07. Hearing on petition – Passage of resolution declaring vacation by governing body. The governing body, or such committee as may be appointed by it, shall investigate and consider the matter set forth in the petition specified in section 40-39-05 and, at the time and place specified in the notice, shall hear the testimony and evidence of persons interested. After hearing the testimony and evidence or upon the report of the committee favoring the granting of the petition, the governing body, by a resolution passed by a two-thirds vote of all its members, may declare the public grounds, streets, alleys, or highway described in the petition vacated upon such terms and conditions as it shall deem just and reasonable.</i></p>
<p>Recommended Motion</p>
<p>Suggested Motion: "To accept the findings and recommendations of staff and the Planning Commission and move to approve the proposed alley vacation in Hagaman's Subdivision of a portion of Block 2 of Roberts Addition, as presented, as the proposal complies with the Downtown In Focus master plan and standards of Chapter 40-39 of the North Dakota Century Code."</p>
<p>Planning Commission Recommendation: April 2, 2019</p>
<p>On April 2, 2019, by a vote of 11-0,, the Planning Commission voted to accept the findings and recommendations of staff and moved to recommend approval to the City Commission of the proposed alley vacation in Hagaman's Subdivision of a portion of Block 2 of Roberts Addition, as presented, as the proposal complies with the Downtown In Focus master plan and standards of Chapter 40-39 of the North Dakota Century Code.</p>
<p>Attachments:</p>
<ol style="list-style-type: none"> 1. Zoning Map 2. Location Map 3. Vacation Plat

Plat (Vacation)

624 2nd Avenue North and
621 & 617 1st Avenue North

Roberts - Hagaman Subdivision



Legend

- | | | | |
|-----|------|-------------|------|
| AG | LC | MHP | SR-2 |
| DMU | MR-1 | NC | SR-3 |
| GC | MR-2 | P/I | SR-4 |
| GO | MR-3 | UMI | SR-5 |
| | | City Limits | |

Fargo Planning Commission

April 2, 2019

300



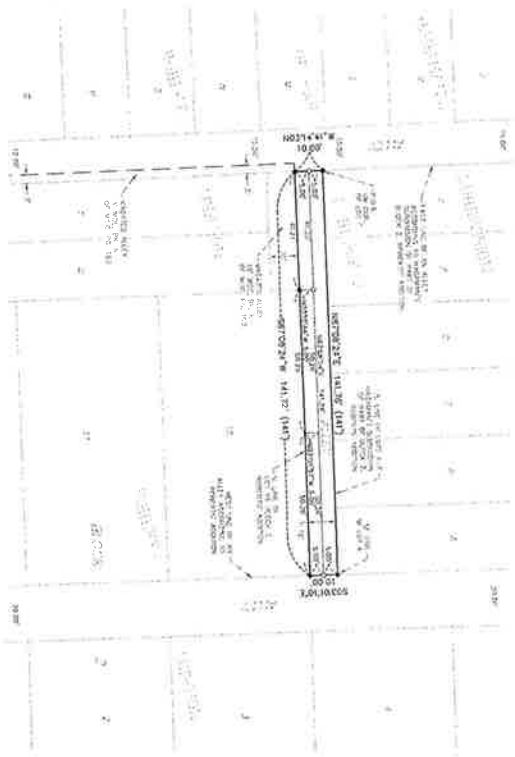
Plat (Vacation)

Roberts Addition

624 2nd Avenue North and
621 & 617 1st Avenue North

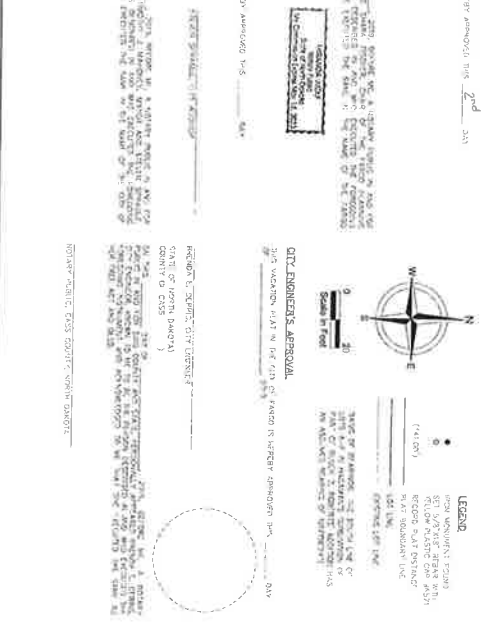


ALLEY VACATION PLAT
OF A DEDICATED ALLEY BETWEEN LOTS A THROUGH F, LOT T AND LOT U OF
HAGAMANN'S SUBDIVISION OF PART OF BLOCK 2, ROBERTS' ADDITION
AND LOT 10, BLOCK 2, ROBERTS' ADDITION TO THE CITY OF FARGO,
CASS COUNTY, NORTH DAKOTA



CASS PLANNING COMMISSION APPROVAL
 This plan was reviewed and approved by the Planning Commission on the 20th day of August, 2018.
Shirley W. Walker
 Mayor, City of Fargo

PLANNING COMMISSION APPROVAL
 This plan was reviewed and approved by the Planning Commission on the 20th day of August, 2018.
Shirley W. Walker
 Mayor, City of Fargo



CITY ENGINEER'S APPROVAL
 This plan was reviewed and approved by the City Engineer on the 20th day of August, 2018.
John J. O'Connell
 City Engineer

REGISTERED PROFESSIONAL ENGINEER'S APPROVAL
 This plan was reviewed and approved by the Registered Professional Engineer on the 20th day of August, 2018.
David A. Smith
 Registered Professional Engineer

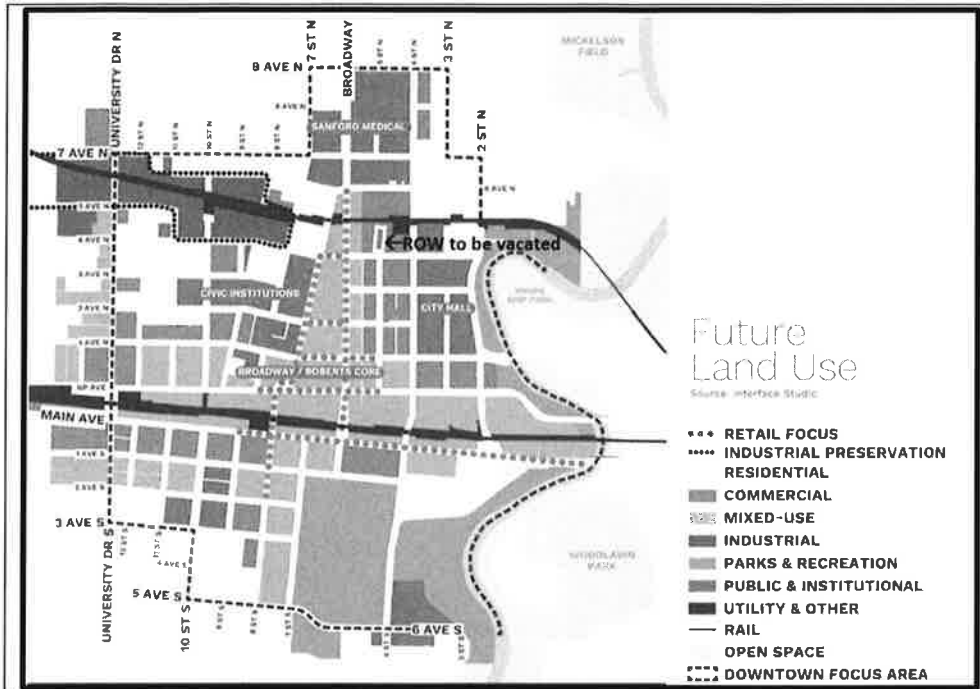
RECORDING INFORMATION
 This plat is subject to the recording of the following:

- 1. A plat of Block 2, Roberts' Addition, Cass County, North Dakota, recorded in the Register of Deeds for Cass County, North Dakota, on the 28th day of January, 1904.
- 2. A plat of Lot 10, Block 2, Roberts' Addition, Cass County, North Dakota, recorded in the Register of Deeds for Cass County, North Dakota, on the 28th day of January, 1904.
- 3. A plat of Hagamann's Subdivision, recorded in the Register of Deeds for Cass County, North Dakota, on the 28th day of January, 1904.

MOORE ENGINEERING INC.
 REGISTERED PROFESSIONAL ENGINEER
 1001 E. MAIN ST. FARGO, ND 58102
 701-799-3434
David A. Smith
 Registered Professional Engineer
 License No. 18715
 State of North Dakota

244

City of Fargo Staff Report			
Title:	Keeney and Devitts Second Addition	Date: Updated:	7/31/2019 8/7/2019 9/18/2019
Location:	410 5 th Street North	Staff Contact:	Donald Kress, planning coordinator
Legal Description:	Portion of 5th Street North between Blocks 21 and 22, Keeney and Devitt's Second Addition and lying North of 4th Avenue North and South of Lot B, Block 1, Great Northern Depot Addition to the City of Fargo, Cass County, North Dakota		
Owner(s)/Applicant:	DFI Mercantile, LLC/ Kilbourne Group—Keith Leier	Engineer:	Houston Engineering
Entitlements Requested:	Vacation of Right of Way (major subdivision) (Portion of 5th Street North between Blocks 21 and 22, Keeney and Devitt's Second Addition and lying North of 4th Avenue North and South of Lot B, Block 1, Great Northern Depot Addition to the City of Fargo, Cass County, North Dakota)		
Status:	City Commission Public Hearing: September 23, 2019		
Proposal:			
<p><i>PROJECT HISTORY NOTE: This vacation was originally scheduled for City Commission hearing on August 12, 2019. This case has been continued from previous City Commission agendas as the applicant has had ongoing negotiations with private utility providers in order to secure easements and agreements regarding those utilities.</i></p> <p>The applicant requests one entitlement: A vacation of right of way (portion of 5th Street North) between Blocks 21 and 22, Keeney and Devitt's Second Addition and lying North of 4th Avenue North and South of Lot B, Block 1, Great Northern Depot Addition to the City of Fargo, Cass County, North Dakota</p> <p>The plat proposes to vacate a portion of 5th Street North between Blocks 21 and 22, Keeney and Devitt's Second Addition and lying North of 4th Avenue North and South of Lot B, Block 1, Great Northern Depot Addition to allow the area of that vacation area to be added to the adjacent lot. This street vacation helps facilitate the development of this property as a project known as "The Mercantile," which is intended to be a parking ramp surrounded by retail and residential uses, having parking entrances on 5th Street, with parking garage extending to 5th Street. This project is similar to the recently developed Roberts Commons (or "RoCo") structure on 2nd Avenue North and Roberts Street.</p> <p>The portion of 5th Street not being vacated will remain a dedicated public street.</p> <p>This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.</p>			
Area Plans:			
<p>The area of the right of way (ROW) to be vacated is included in the Downtown In Focus Master Plan. Vacation of this ROW helps facilitate the development of this property as a commercial/mixed-use project, consistent with the "commercial" and "mixed-use" land use designations of the Downtown In Focus future land use plan for this property between Broadway and 5th Street North (see graphic below).</p>			
(continued on next page)			



Schools and Parks:

Schools: The subject property is located within the Fargo School District and is served by Roosevelt Elementary, Ben Franklin Middle and North High schools.

Neighborhood: The subject property is located within the Downtown neighborhood.

Parks: The Civic Plaza (200 3rd Street North) is located approximately 0.20 miles southeast of the subject property and is being developed as an interactive public space.

Pedestrian / Bicycle: There right of way proposed to be vacated does not include any bicycle facilities or multi-use trails.

Staff Analysis:

ROW Vacation Approval Criteria: The City of Fargo does not currently have any adopted regulation dealing with the vacation of rights-of-way. However, city policy dictates that any applicant wishing to vacate right-of-way must submit a Vacate Application—a one-page form wherein the petitioner provides: a description of the area to be vacated and signatures of all property owners adjoining the area to be vacated. In addition, the applicant must submit a vacation plat (a major subdivision). Notwithstanding the Land Development Code's (LDC) silence on the matter, the North Dakota Century Code (N.D.C.C) does address the opening and vacating of roadways in Chapter 24-07 (outside of municipal limits) and Chapter 40-39 (inside municipal limits). To that end, the balance of this report will focus on the specific approval criteria outlined within Chapter 40-39 of the N.D.C.C.

N.D.C.C. 40-39-04. Vacation of streets and alleys where sewers, water mains, pipes, and lines located – Conditions. No public grounds, streets, alleys, or parts thereof over, under, or through which have been constructed, lengthwise, any sewers, water mains, gas, or other pipes or telephone, electric, or cable television lines, of the municipality or the municipality's grantees of the right of way thereof, may be vacated unless the sewers, mains, pipes, or lines have been abandoned and are not in use, or unless the grantee consents, thereto, or unless perpetual easements for the maintenance of sewers, water

mains, gas, or other pipes, or telephone, electric facilities, whether underground or aboveground, is subject to the continued right of location of such electric facilities in the vacated streets.

The right-of-way in question has no street improvements or City underground utilities. No easement for the City is required. The applicant must account for private utilities that are within the area to be vacated by relocation agreements with those utilities or easements granted to those utilities. **(Criteria Satisfied—see approval motion)**

N.D.C.C. 40-39-05. Petition for vacation of streets, alleys, or public grounds – Contents – Verification. No public grounds, streets, alleys, or parts thereof within a municipality shall be vacated or discontinued by the governing body except on a petition signed by all of the owners of the property adjoining the plat to be vacated. Such petition shall set forth the facts and reasons for such vacation, shall be accompanied by a plat of such public grounds, streets, or alleys proposed to be vacated, and shall be verified by the oath of at least one petitioner.

In accordance with the requirement of this section, a petition signed by all adjacent owners has been submitted for review and consideration, along with a plat of such public street. **(Criteria Satisfied)**

N.D.C.C 40-39-06. Petition filed with city auditor – Notice published – Contents of notice. If the governing body finds that the petition for vacation is in proper form and contains the requisite signatures, and if it deems it expedient to consider such petition, it shall order the petition to be filed with the city auditor who shall give notice by publication in the official newspaper of the municipality at least once each week for four weeks. The notice shall state that a petition has been filed and the object thereof, and that it will be heard and considered by the governing body or a committee thereof on a certain specified day which shall not be less than thirty days after the first publication of the notice.

Documentation of said action is located within both the Planning project file and Auditor's file. **(Criteria Satisfied)**

N.D.C.C. 40-39-07. Hearing on petition – Passage of resolution declaring vacation by governing body. The governing body, or such committee as may be appointed by it, shall investigate and consider the matter set forth in the petition specified in section 40-39-05 and, at the time and place specified in the notice, shall hear the testimony and evidence of persons interested. After hearing the testimony and evidence or upon the report of the committee favoring the granting of the petition, the governing body, by a resolution passed by a two-thirds vote of all its members, may declare the public grounds, streets, alleys, or highway described in the petition vacated upon such terms and conditions as it shall deem just and reasonable.

(Criteria Satisfied)

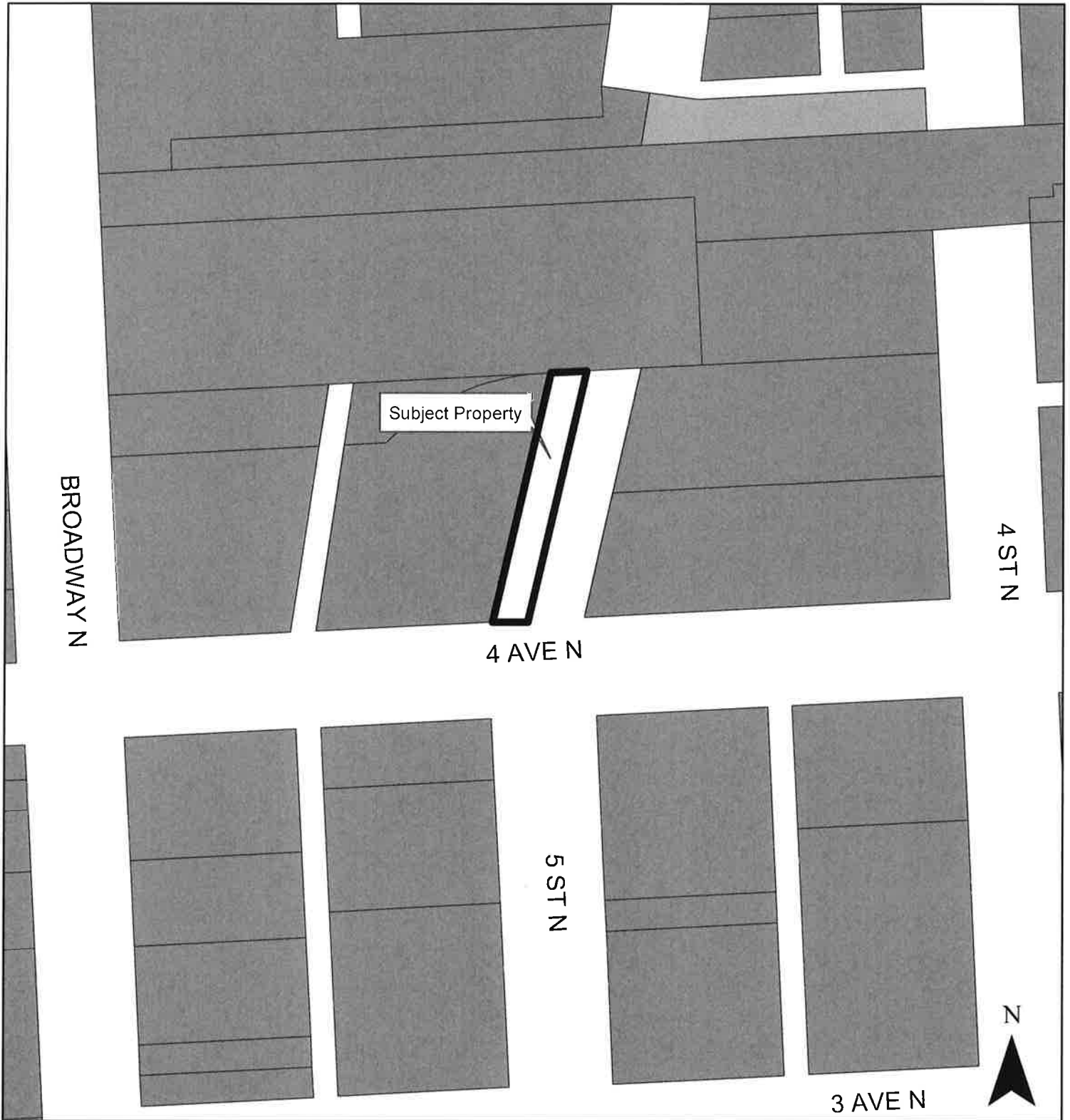
NOTE ON CONTINGENT APPROVAL: The suggested motion below includes a contingency that the applicant must provide executed easements or relocation agreements regarding the private utilities to the City, in order to account for those existing private utilities as required by the NDCC sections cited above. The applicant has been working with the utilities, but the City Engineer cannot sign the plat until the executed agreements or easements have been received and reviewed. However, the contingent motion below allows the City Commission to approve the actual vacation at this time. Once the City Engineer receives and reviews the executed utility easements, then the City can sign the plat and the City can then proceed with recording the plat, if approval is received as referenced below. Please note, that all future permits, such as building permits are on hold until the plat can be recorded. Planning staff will provide any updated information on this matter at the September 23, 2019 City Commission hearing.

City Commission Recommendation:
Suggested Motion: "To accept the findings and recommendations of staff and the Planning Commission and move to approve the proposed vacation of a portion of 5th Street North between Blocks 21 and 22, Keeney and Devitt's Second Addition and lying North of 4th Avenue North and South of Lot B, Block 1, Great Northern Depot Addition to the City of Fargo, Cass County, North Dakota, contingent on the applicant providing executed easements or relocation agreements regarding the private utilities to the City, as presented, as the proposal complies with the Downtown In Focus master plan and standards of Chapter 40-39 of the North Dakota Century Code."
Planning Commission Recommendation: August 6, 2019
At the August 6, 2019 Planning Commission meeting, by a vote of 8-0 with three Commissioners absent, the Commission moved to accept the findings and recommendations of staff and move to recommend approval to the City Commission of the proposed vacation of a portion of 5th Street North between Blocks 21 and 22, Keeney and Devitt's Second Addition and lying North of 4th Avenue North and South of Lot B, Block 1, Great Northern Depot Addition to the City of Fargo, Cass County, North Dakota , as presented, as the proposal complies with the Downtown In Focus master plan and standards of Chapter 40-39 of the North Dakota Century Code."
Attachments:
<ol style="list-style-type: none">1. Zoning Map2. Location Map3. Vacation Plat

Street Vacation

Keeney and Devitts Addition

410 5th Street N



Legend

AG	DMU	GGC	GO	LC	MR-1	MR-2	MR-3	MHP	NO	P/I	UML	SR-2	SR-3	SR-4	SR-5	City Limits
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100
 Feet

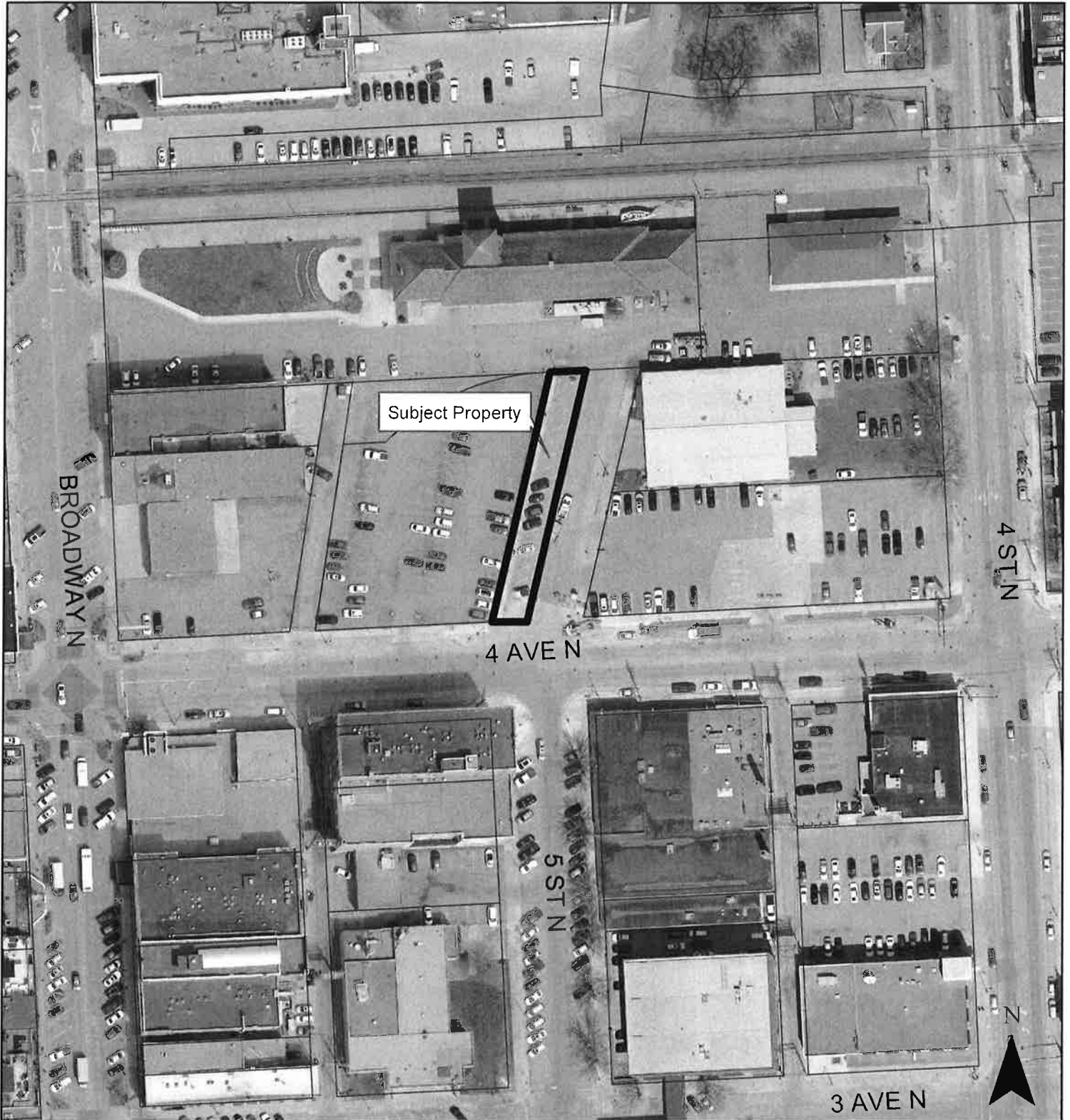
Fargo Planning Commission

August 6, 2019

Street Vacation

Keeney and Devitts Addition

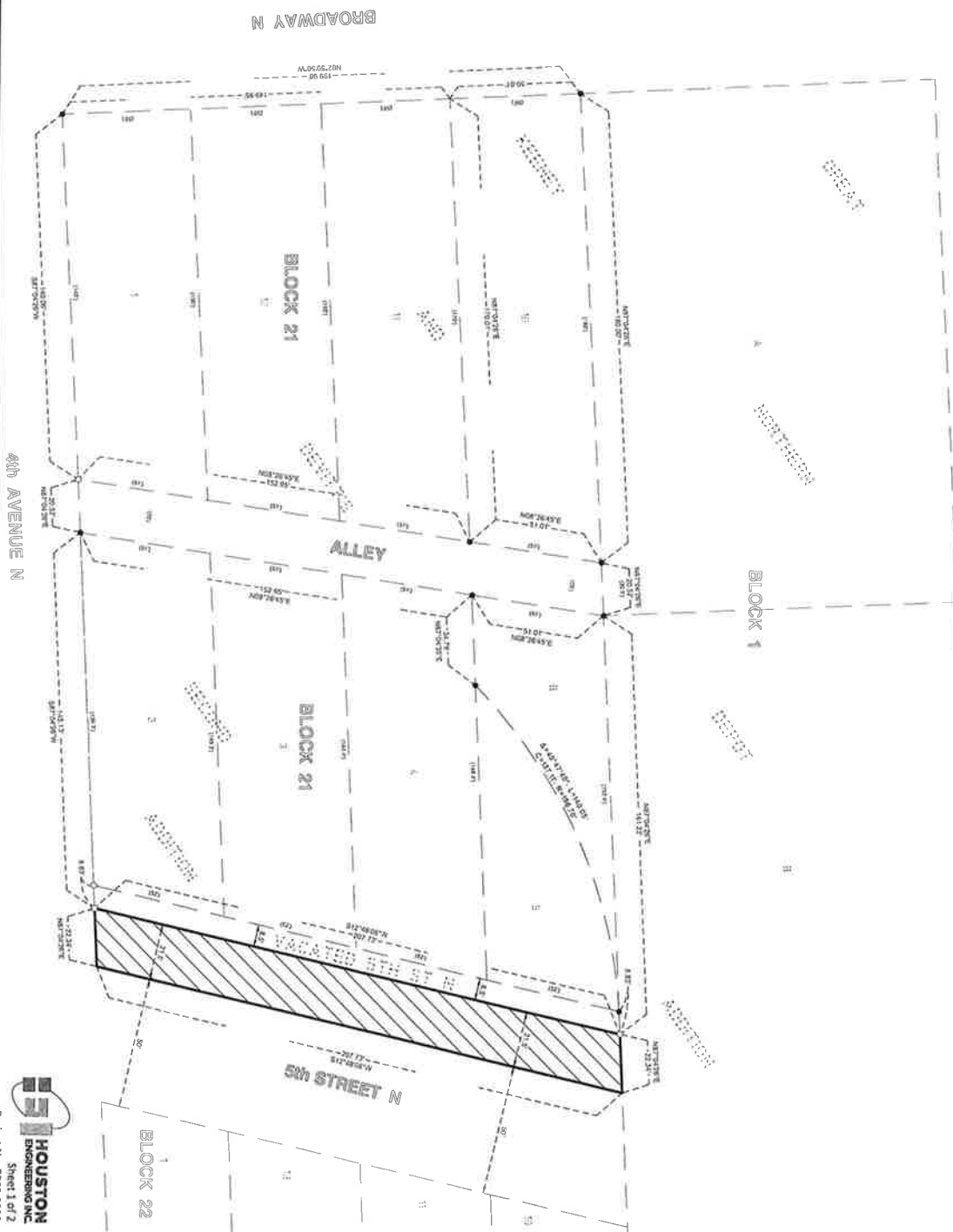
410 5th Street N



H:\V\p\AVN\7820\812\FILE_2008\CAO\Plan\STREET VACATION PLAT Meri\title.dwg Layout(1-6) 1/2018 4:03 PM (broad)

STREET VACATION PLAT

A PORTION OF 5TH STREET NORTH BETWEEN BLOCKS 21 & 22,
KEENEY AND DEVITT'S SECOND ADDITION
CITY OF FARGO,
CASS COUNTY, NORTH DAKOTA



LEGEND

- IRON MONUMENT FOUND
- 1/2" I.D. PIPE SET
- INDICATES STREET AREA VACATED WITH THIS PLAT

REBAR IS SHOWN AS BASED ON FARGO GIS INFORMATION. DATUM

HOUSTON
ENGINEERING INC.
Sheet 1 of 2
Project No. 7862-0008

H:\Fargo\BIM\B08\7862\7862_008\CAD\PLAT\STREET VACATION PLAT Mercantile.dwg Layout 1 [2] 6/13/2019 4:03 PM (broudr)

OWNER
DWAU LLC
Owner of Lots 2, 5, Block 21, Kenney and Devitt's Second Addition

NAME TITLE

OWNER
Thomas K. and Ken D. Smith, husband and wife
Owner of part of lot B, Block 1, Great Northern Depot Addition

NAME TITLE

OWNER
DWAU LLC, a North Dakota Limited Liability Company
Owner of Lots 10 & 11, Block 22, Kenney and Devitt's Second Addition

NAME TITLE

OWNER
American Federal Bank
Owner of Lots 1 & 2, Block 22, Kenney and Devitt's Second Addition

NAME TITLE

OWNER
Curtis A. Stapprol
Registered Land Surveyor No. 4723

DATE THIS

APPROVED BY

DATE THIS

APPROVED BY

FARGO PLANNING COMMISSION APPROVAL
Approved by the City of Fargo Planning Commission this _____ day of _____, 20____

DATE THIS

APPROVED BY

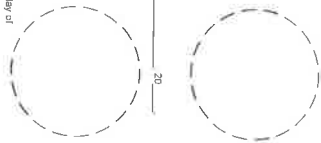
DATE THIS

APPROVED BY

DATE THIS

APPROVED BY

SUBSCRIBER'S CERTIFICATE AND ACKNOWLEDGEMENT
I, Curtis A. Stapprol, Registered Land Surveyor, for and in the name of the State of North Dakota, do hereby certify that this plat is a true and correct representation of the area vacated.



State of North Dakota }
County of Cass } SS

On this _____ day of _____, 20____, before me personally appeared MALE, TITLE of DWAU LLC, a North Dakota Limited Liability Company, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same on behalf of said Limited Liability Company.

Notary Public _____

State of North Dakota }
County of Cass } SS

On this _____ day of _____, 20____, before me personally appeared Thomas K. and Ken D. Smith, husband and wife, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same on behalf of said Limited Liability Company.

Notary Public _____

State of North Dakota }
County of Cass } SS

On this _____ day of _____, 20____, before me personally appeared MALE, TITLE of American Federal Bank, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same on behalf of said Limited Liability Company.

Notary Public _____

State of North Dakota }
County of Cass } SS

On this _____ day of _____, 20____, before me personally appeared MALE, TITLE of American Federal Bank, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same on behalf of said Limited Liability Company.

Notary Public _____

State of North Dakota }
County of Cass } SS

On this _____ day of _____, 20____, before me personally appeared Curtis A. Stapprol, Registered Land Surveyor, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same on behalf of the State of North Dakota.

Notary Public _____

State of North Dakota }
County of Cass } SS

On this _____ day of _____, 20____, before me personally appeared Bercas E. Deng, Fargo City Engineer, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same on behalf of the City of Fargo.

Notary Public _____

State of North Dakota }
County of Cass } SS

On this _____ day of _____, 20____, before me personally appeared John Gustafson, Chair, Fargo Planning Commission, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same on behalf of the Fargo Planning Commission.

Notary Public _____

On this _____ day of _____, 20____, before me personally appeared _____, Mayor, City of Fargo, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same on behalf of the City of Fargo.



HOUSTON ENGINEERING INC.
Sheet 2 of 2
Project No. 7862-0008

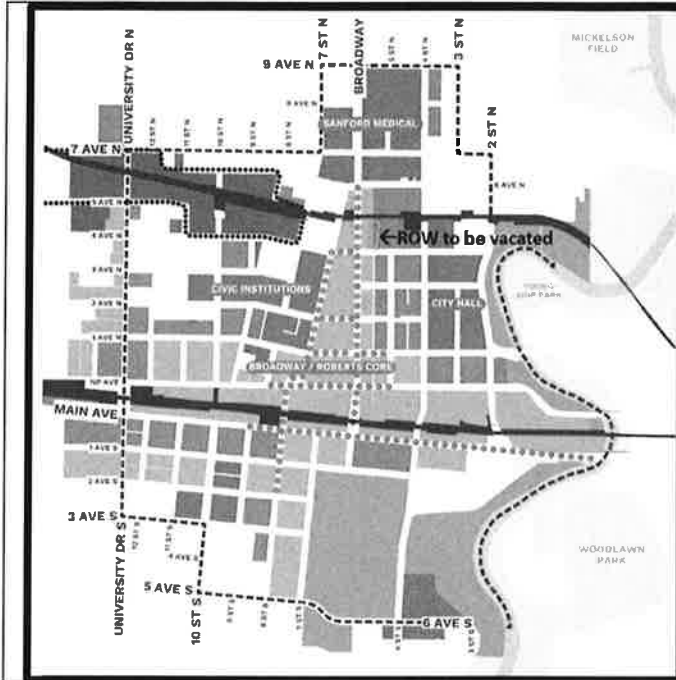
STREET VACATION PLAT
A PORTION OF 5TH STREET NORTH BETWEEN BLOCKS 21 & 22,
KENNEY AND DEWITT'S SECOND ADDITION
CITY OF FARGO,
CASS COUNTY, NORTH DAKOTA

DESCRIPTION OF AREA TO BE VACATED
The West 21.50 feet of the East 71.50 feet of 5th Street North, generally defined as A Street by the City of Fargo, Cass County, North Dakota, lying between Block 21 and Block 22 and lying north of Avenue North and south of Lots 5, Block 1, Great Northern Depot Addition.

OWNER'S CERTIFICATE
DWAU LLC, a North Dakota Limited Liability Company, Thomas K. and Ken D. Smith, husband and wife, DWAU LLC, a North Dakota Limited Liability Company, and American Federal Bank, jointly and severally are the owners of the property adjoining the area to be vacated and that this plat and description are correct.

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City of Fargo Staff Report			
Title:	Keeney and Devitts Second Addition	Date:	8/28/2019
		Updated:	9/18/2019
Location:	401 Broadway North	Staff Contact:	Donald Kress, planning coordinator
Legal Description:	Vacation of the alley in Block 21, Keeney & Devitt's Second Addition to the City of Fargo, Cass County, North Dakota		
Owner(s)/Applicant:	DFI Mercantile, LLC/ Kilbourne Group—Keith Leier	Engineer:	Houston Engineering
Entitlements Requested:	Vacation of Right of Way (major subdivision) (alley in Block 21, Keeney & Devitt's Second Addition to the City of Fargo, Cass County, North Dakota)		
Status:	City Commission Public Hearing: September 23, 2019		
Proposal:			
<p><i>PROJECT HISTORY NOTE: This vacation was originally scheduled for City Commission hearing on September 9 2019. This case has been continued from that agenda as the applicant has had ongoing negotiations with private utility providers in order to secure easements and agreements regarding those utilities.</i></p> <p>The applicant requests one entitlement:</p> <ol style="list-style-type: none"> 1. A vacation of alley in Block 21, Keeney & Devitt's Second Addition to the City of Fargo, Cass County, North Dakota <p>The plat proposes to vacate the alley in Block 21 Keeney and Devitt's Second Addition. This alley vacation helps facilitate the development of this property as a project known as "The Mercantile," which is intended to be a parking ramp surrounded by retail and residential uses, similar to the recently developed Roberts Commons (or "RoCo") structure on 2nd Avenue North and Roberts Street.</p> <p>This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.</p>			
Area Plans:			
<p>The area of the right of way (ROW) to be vacated is included in the Downtown In Focus Master Plan. Vacation of this ROW helps facilitate the development of this property as a commercial/mixed-use project, consistent with the "commercial" and "mixed-use" land use designations of the Downtown In Focus future land use plan for this property between Broadway and 5th Street North (see graphic below).</p>			
(continued on next page)			



Schools and Parks:

Schools: The subject property is located within the Fargo School District and is served by Roosevelt Elementary, Ben Franklin Middle and North High schools.

Neighborhood: The subject property is located within the Downtown neighborhood.

Parks: The Civic Plaza (200 3rd Street North) is located approximately 0.20 miles southeast of the subject property and is being developed as an interactive public space.

Pedestrian / Bicycle: There right of way proposed to be vacated does not include any bicycle facilities or multi-use trails.

Staff Analysis:

ROW Vacation Approval Criteria: The City of Fargo does not currently have any adopted regulation dealing with the vacation of rights-of-way. However, city policy dictates that any applicant wishing to vacate right-of-way must submit a Vacate Application—a one-page form wherein the petitioner provides: a description of the area to be vacated and signatures of all property owners adjoining the area to be vacated. In addition, the applicant must submit a vacation plat (a major subdivision). Notwithstanding the Land Development Code's (LDC) silence on the matter, the North Dakota Century Code (N.D.C.C) does address the opening and vacating of roadways in Chapter 24-07 (outside of municipal limits) and Chapter 40-39 (inside municipal limits). To that end, the balance of this report will focus on the specific approval criteria outlined within Chapter 40-39 of the N.D.C.C.

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The right-of-way in question has no street improvements or City underground utilities. No easement for the City is required. The applicant has accounted for private utilities in the area to be vacated by relocation agreements with those utilities or easements granted to those utilities. **(Criteria Satisfied)**

N.D.C.C. 40-39-05. Petition for vacation of streets, alleys, or public grounds – Contents – Verification. No public grounds, streets, alleys, or parts thereof within a municipality shall be vacated or discontinued by the governing body except on a petition signed by all of the owners of the property adjoining the plat to be vacated. Such petition shall set forth the facts and reasons for such vacation, shall be accompanied by a plat of such public grounds, streets, or alleys proposed to be vacated, and shall be verified by the oath of at least one petitioner.

The right-of-way in question has no street improvements or City underground utilities. No easement for the City is required. The applicant must account for private utilities that are within the area to be vacated by relocation agreements with those utilities or easements granted to those utilities. **(Criteria Satisfied—see approval motion)**

N.D.C.C 40-39-06. Petition filed with city auditor – Notice published – Contents of notice. If the governing body finds that the petition for vacation is in proper form and contains the requisite signatures, and if it deems it expedient to consider such petition, it shall order the petition to be filed with the city auditor who shall give notice by publication in the official newspaper of the municipality at least once each week for four weeks. The notice shall state that a petition has been filed and the object thereof, and that it will be heard and considered by the governing body or a committee thereof on a certain specified day which shall not be less than thirty days after the first publication of the notice.

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N.D.C.C. 40-39-07. Hearing on petition – Passage of resolution declaring vacation by governing body. The governing body, or such committee as may be appointed by it, shall investigate and consider the matter set forth in the petition specified in section 40-39-05 and, at the time and place specified in the notice, shall hear the testimony and evidence of persons interested. After hearing the testimony and evidence or upon the report of the committee favoring the granting of the petition, the governing body, by a resolution passed by a two-thirds vote of all its members, may declare the public grounds, streets, alleys, or highway described in the petition vacated upon such terms and conditions as it shall deem just and reasonable.

(Criteria Satisfied)

NOTE ON CONTINGENT APPROVAL: The suggested motion below includes a contingency that the applicant must provide executed easements or relocation agreements regarding the private utilities to the City, in order to account for those existing private utilities as required by the NDCC sections cited above. The applicant has been working with the utilities, but the City Engineer cannot sign the plat until the executed agreements or easements have been received and reviewed. However, the contingent motion below allows the City Commission to approve the actual vacation at this time. Once the City Engineer receives and reviews the executed utility easements, then the City can sign the plat and the City can then proceed with recording the plat, if approval is received as referenced below. Please note, that all future permits, such as building permits are on hold until the plat can be recorded. Planning staff will provide any updated information on this matter at the September 23, 2019 City Commission hearing.

Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff and move to approve the proposed vacation of alley in Block 21, **Keeney & Devitt's Second Addition** to the City of Fargo, Cass County, North Dakota, contingent on the applicant providing executed easements or relocation agreements regarding the private utilities to the City, as presented, as the proposal complies with the Downtown In Focus master plan and standards of Chapter 40-39 of the North Dakota Century Code."

(continued on next page)

Planning Commission Recommendation: September 3, 2019

On September 3, 2019, by a vote of 9-0 with one Commissioner absent and one vacant position, the Planning Commission voted to accept the findings and recommendations of staff and moved to recommend approval to the City Commission of the proposed **alley vacation in Block 21, Keeney & Devitt's Second Addition**, as presented, as the proposal complies with the Downtown In Focus master plan and standards of Chapter 40-39 of the North Dakota Century Code.

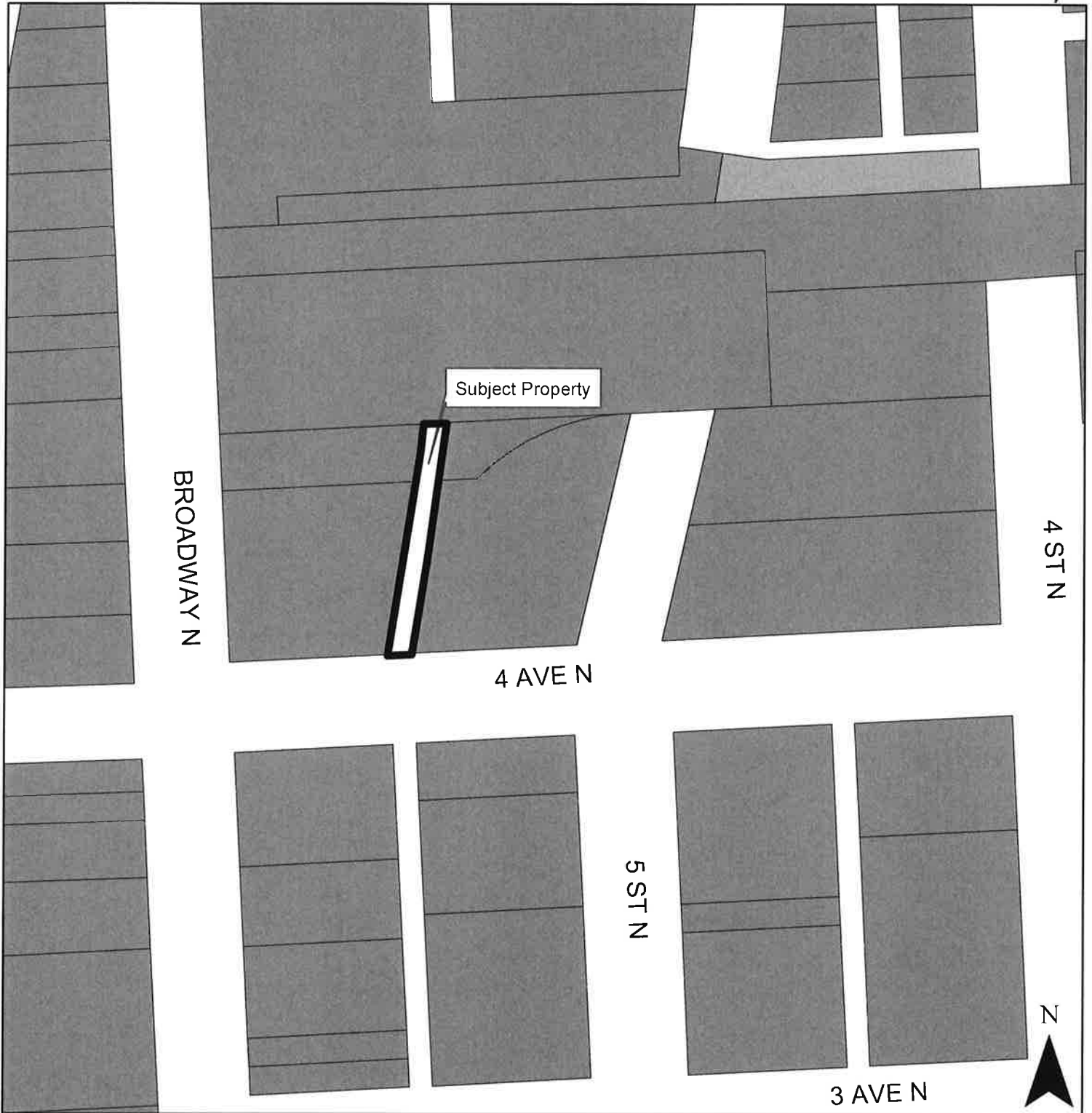
Attachments:

1. Zoning Map
2. Location Map
3. Vacation Plat

Alley Vacation

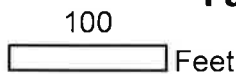
Keeney and Devitts Second Addition

401 Broadway N



Legend

AG	LC	MHP	SR-2
DM	MR-1	NO	SR-3
GC	MR-2	PA	SR-4
GO	MR-3	UMU	SR-5
			City Limits

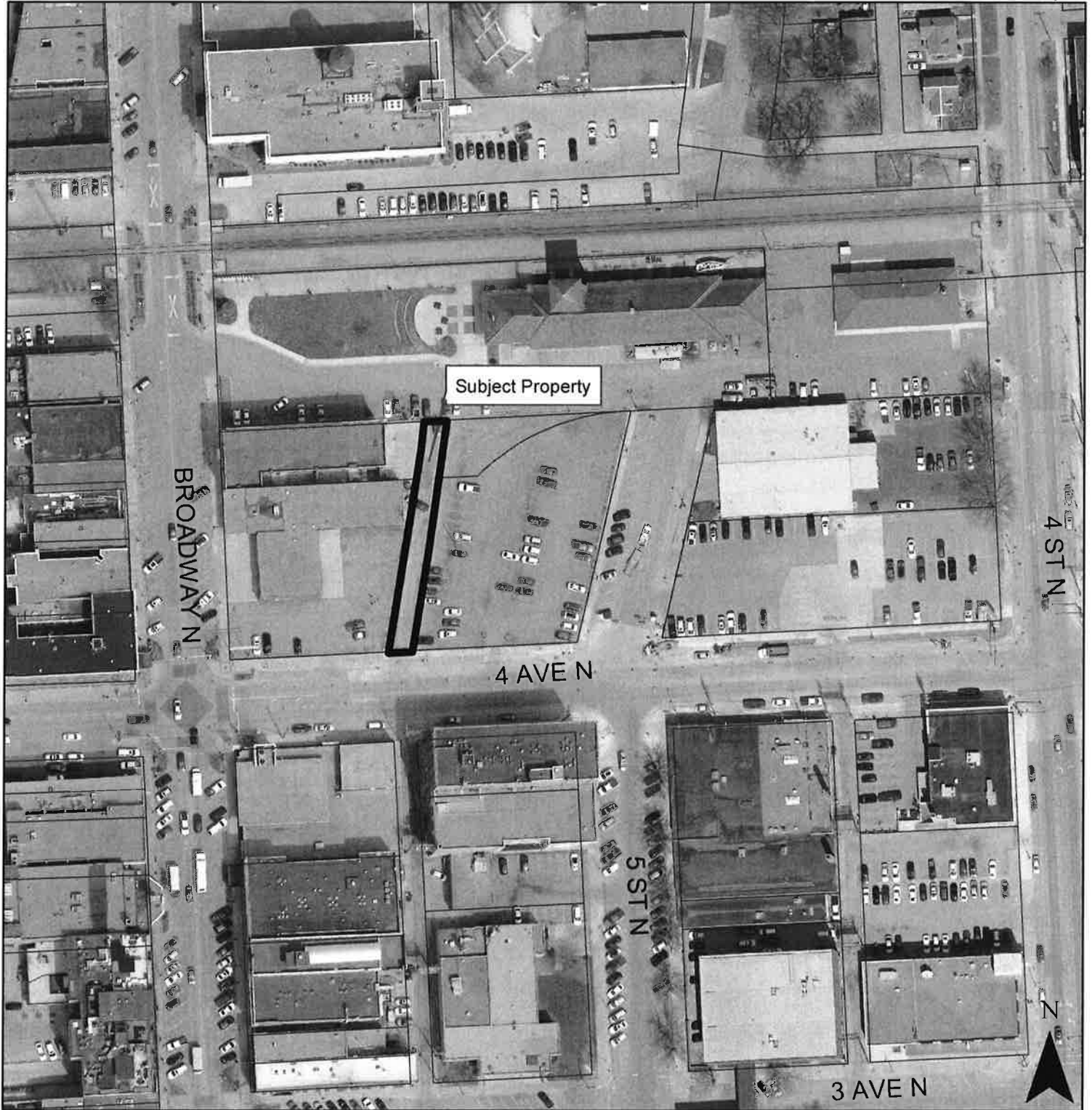


Fargo Planning Commission
September 3, 2019

Alley Vacation

Keeney & Devitt's Second Addition

401 Broadway N



VACATION PLAT
THE ALLEY IN BLOCK 21,
KENEY AND DEVITT'S SECOND ADDITION
CITY OF FARGO,
CASS COUNTY, NORTH DAKOTA



HOUSTON
ENGINEERS & ARCHITECTS
 SHEET 1 OF 2
 PROJECT NO. 7852-0008

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OWNER:
 CRI Investments, LLC
 Owner of Lot 1, 5 acre to 12, Block 21, Alleyway and Devitt's Second Addition,
 and part of Lot 8 Block 1, Street Number Debit Addition,
 Owner of Lot 10, Block 21, Keeney and Devitt's Second Addition

OWNER:
 CRI Investments, LLC
 Owner of Lot 10, Block 21, Keeney and Devitt's Second Addition

OWNER:
 CRI Investments, LLC
 Owner of Lot 10, Block 21, Keeney and Devitt's Second Addition

OWNER:
 CRI Investments, LLC
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OWNER:
 CRI Investments, LLC
 Owner of Lot 10, Block 21, Keeney and Devitt's Second Addition

State of North Dakota } SS
 County of Cass }
 On this _____ day of _____, 20____, before me personally appeared _____, Title of Position _____, a North Dakota Limited Liability Company, known to me and whose authority to execute this instrument and who executed the within instrument and acknowledged to me that he executed the same as that of said limited liability company.

State of North Dakota } SS
 County of Cass }
 On this _____ day of _____, 20____, before me personally appeared _____, Title of Position _____, a North Dakota Limited Liability Company, known to me and whose authority to execute this instrument and who executed the within instrument and acknowledged to me that he executed the same as that of said limited liability company.

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 County of Cass }
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VACATION PLAT
THE ALLEY IN BLOCK 21,
KEENEY AND DEVITT'S SECOND ADDITION
CITY OF FARGO,
CASS COUNTY, NORTH DAKOTA

DESCRIPTION OF ALLEY TO BE VACATED:
 The alley situated in Block 21 of Keeney and Devitt's Second Addition is the City of Fargo, Cass County, North Dakota, being part of 6th Avenue North and part of Block 1, Street Number Debit Addition.

OWNERS CERTIFICATE:
 I, _____, of the County of _____, State of _____, do hereby certify that the above described alley is not being used for any purpose other than as a driveway and that the fee fee and

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 I, _____, of the County of _____, State of _____, do hereby certify that the above described alley is not being used for any purpose other than as a driveway and that the fee fee and



24h

City of Fargo Staff Report			
Title:	Chas A Roberts Addition	Date:	7-19-2019
		Update:	9-4-2019
		Update:	9-19-2019
Location:	611 8 th Street South	Staff Contact:	Kylie Bagley
Legal Description:	Lots 2 and 3, Block F, Chas A Roberts Addition		
Owner(s)/Applicant:	Roger and Margaret Nelson	Engineer:	N/A
Entitlements Requested:	Conditional Use Permit for a Bed and Breakfast in the SR-3 zoning district		
Status:	City Commission Public Hearing: September 9, 2019		

Existing	Proposed
Land Use: Detached House	Land Use: Detached House with Bed and Breakfast
Zoning: SR-3, Single-Dwelling Residential	Zoning: SR-3, Single-Dwelling Residential, with a Conditional Use Permit
Uses Allowed: Detached houses, daycare centers up to 12 children, attached houses, duplexes, parks and open space, religious institutions, safety services, schools, and basic utilities	Uses Allowed: Detached houses, daycare centers up to 12 children, attached houses, duplexes, parks and open space, religious institutions, safety services, schools, and basic utilities A Conditional Use Permit for a Bed and Breakfast with permissions to have private events
Maximum Density Allowed (Residential): 8.7 units per acre	Maximum Density Allowed (Residential): 8.7 units per acre

Proposal:

The applicant is requesting a Conditional Use Permit to allow a bed and breakfast in the SR-3, Single-Dwelling Residential, zoning district located on Lots 2 and 3, Block F, Chas A Roberts Addition. The applicant will continue to live in the residence and will convert 5 bedrooms for the bed and breakfast operation. There will be five dedicated parking spots for the bed and breakfast customers to be located on-site, plus three parking spaces for residents.

As part of this Conditional Use Permit the applicant is also requesting that receptions, private parties or similar activities be permitted. The applicant has stated that he does not anticipate any large functions that would disrupt the neighborhood. The Land Development Code allows for this provision as long as it's explicitly included within the Conditional Use Permit. As an update to the public hearings, between the September 9th City Commission meeting and the September 23rd City Commission additional coordination occurred among city staff, the owner and some of the abutting property owners in order to further define additional parameters to the private event discussion. An additional condition to limit the number of events to no more than 24 events, on average 2 per month has been included.

This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report. (See updated section below for details about the Planning Commission hearing, held at the August public hearing.)

Surrounding Land Uses and Zoning Districts:

- North: SR-3, Single-Dwelling Residential, zoned properties with detached houses
- East: Across 8th St S properties are zoned MR-2, Multi-Dwelling Residential, MR-3, Multi-Dwelling Residential and SR-3, Single-Dwelling Residential, with detached houses and multi-dwelling structures
- South: MR-2, Multi-Dwelling Residential and SR-3, Single-Dwelling Residential, with detached houses and multi-dwelling structures

<ul style="list-style-type: none">• West: MR-2, Multi-Dwelling Residential and SR-3, Single-Dwelling Residential, with detached houses and multi-dwelling structures
Area Plans:
The subject property is located within the Hawthorne Neighborhood Plan but this plan does not include a future land use plan.
Schools and Parks:
Schools: The subject property is located within the Fargo School District and is served by Clara Barton Hawthorne Elementary, Ben Franklin Middle and North High schools.
Neighborhood: The subject property is located within the Hawthorne Neighborhood.
Parks: The subject property is within a quarter mile to Island Park
Pedestrian / Bicycle: There is an on road bike facility that is a component of the metro area bikeways system.
Staff Analysis:
This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.
Conditional Use Permit Approval Criteria (Section 20-0909.D)
The following is a list of criteria that must be determined satisfied in order for a Conditional Use Permit to be approved:
<ol style="list-style-type: none">1. Does the proposed conditional use comply with all applicable provisions of the LDC and will it conform to the general intent and purpose of this LDC? The purpose of the LDC is to implement Fargo's Comprehensive Plan in a way that will protect the general health, safety, and welfare of the citizens. Promoting infill development is a key initiative in the Comprehensive Plan. Table 20-0401 of the LDC states that a Bed and Breakfast is a permitted land use in the SR-3 zoning district with a conditional use permit. Use Standards for a Bed and Breakfast are defined in Section 20-0402,S. These are copied from the Land Development Code and displayed below for reference:

S. Bed and Breakfast – All bed and breakfast uses shall be subject to the following standards:

1. Bed and breakfast uses shall be subject to a Conditional Use Permit in accordance with Section 20-0909.
2. Structures shall not be altered in a way that changes their general residential appearance.
3. A minimum of one off-street parking space shall be provided for each guest bedroom, plus spaces required for the principal residence in accordance with Section 20-0701.B. Additional parking shall be required if reception or party space is available. If four or more off-street parking spaces are provided, visual screening from adjacent residential uses shall be required.
4. One sign shall be allowed, with a size limit of two square feet. Internally illuminated signs are not allowed.
5. Receptions, private parties, or similar activities shall not be permitted unless expressly approved as part of the Conditional Use Permit.
6. No long-term rental shall be permitted. The maximum length of stay shall be 30 days.
7. All guest rooms shall be located within the principal structure.
8. Other than registered guests, no meals shall be served to the general public unless expressly approved as part of the Conditional Use Permit.
9. No cooking facilities shall be allowed in the guest rooms.
10. All bed and breakfast establishments must comply with the Fargo Health Department Regulations.
11. All bed and breakfast establishments shall comply with Fire Code Requirements.

Staff finds this proposal is consistent with the purpose of the LDC, the Go2030 Comprehensive Plan, and other adopted policies of the City. (Criteria Satisfied)

2. Will the proposed conditional use at the specified location contribute to and promote the welfare or convenience of the public?

Staff believes that the location of the proposed conditional use will contribute to and promote the welfare and convenience of the public. The proposed use will allow for additional economic benefits for the community, allow for an attraction near downtown, as well as potentially limit the transition of the property into decline. This is a historic structure, referenced as the Roberts House, and is important historical reference for our community and for the neighborhood.

(Criteria Satisfied)

3. Will the proposed conditional use cause substantial injury to the value of other property in the neighborhood in which it is to be located?

Staff has no reason to believe the proposed use will cause injury to the value of other property in the vicinity. In accordance with the notification requirements of the City, notice of the proposal was sent to surrounding property owners as well as published in the Forum newspaper. To date, staff has received 4 complaints and two letters of support for this project. Testimony has been received at the previous public hearings as well. Opposition which constitutes an equivalent to 20% against the project has been received and noted at the previous city commission hearing. Since then discussion has continued been the staff, the owners, and opposition. Please see updates referenced below for details on these communications.

(Criteria Satisfied)

4. Is the location and size of the conditional use, the nature and intensity of the operation conducted in connection with it, and the location of the site with respect to streets giving access to it such that the conditional use will not dominate the immediate neighborhood so as to prevent the development and use of

the neighboring property in accordance with the applicable zoning district regulations? In considering this criteria, location, nature, and height of buildings, structures, walls, and fences on the site are to be considered, as well as the nature and extent of proposed landscaping and buffering on the site. Staff does not believe that the location, size, nature or intensity of the use will prevent development and use of neighboring property in accordance with applicable zoning districts. In addition to the proposed CUP conditions, use-specific standards of LDC Section 20-0402(S) apply to a bed and breakfast. Bed and Breakfasts must also be licensed and inspected by the State of North Dakota. Testimony has been received that the abutting neighbor to the north would like additional screening. Any visual screening from the parking areas, are provided by the shrubs and trees that are on the neighbor's property to the north. The neighbor to the north is seeking a fence for permanent screening. A fence is not required based on the Land Development Code. Currently it is questionable if a fence can fit based on the existing conditions on the site and the narrow area between the two properties. To rectify this the owner proposes to have as many cars as possible within the on-site carriage house, leaving only three cars outside behind the house. (Criteria Satisfied)

5. Are adequate utility, drainage, and other such necessary facilities and services provided or will they be at the time of development?
The subject property has access to all necessary utilities and services. Staff is not aware of any deficiencies regarding drainage or utilities that would limit the ability to utilize the property as proposed. Based on this information staff finds that adequate utility, drainage, and other such necessary facilities and services are in place.
(Criteria Satisfied)

6. Have adequate access roads or entrances and exit drives been provided and are they designed to prevent traffic hazards and to minimize traffic congestion in public streets?
The property has access of 8th Street South. The Engineering Department has had an opportunity to review the proposal and no comments or concerns have been forthcoming to indicate that there is a deficiency with the access roads or entrances and exit drives. To that end, staff finds that the proposed conditional use will not create traffic hazards or traffic congestion in the public streets.
(Criteria Satisfied)

Recommended Conditions (as originally proposed in August 2019):

1. Allow for receptions, private parties or similar activities on site
2. The Conditional Use Permit will cease if the land use changes from a bed and breakfast

Update 9/4/2019:

At the August 6th Planning Commission hearing testimony in opposition was heard by three residents. The primary concerns were related to the change to a commercial use, parking issues, conflicts with events in conflict with the residential neighborhood and screening. The Planning Commission supported the applicant with a vote in favor of the request 5-3.

Appeal: The Conditional Use Permit was formally appealed on August 6, 2019 by a resident who lives within the 300 ft notice boundary, Mr. Rich Nelson. The appellant states that three criteria of the conditional use permit criteria has not been met: 1) regarding occupancy, 2) visual screening of required parking and 3) failure to demonstrate additional parking for reception or party. The appellant's letter is attached as part of this packet.

On September 4th, the City Planning Department hosted a neighborhood meeting, in which the appellant, neighborhood members and the applicant could further discuss the details of the case and the concerns related to

the proposal. This allowed for an opportunity for the applicant (the Roger Nelson family) and neighbors to talk in more detail about possible conditions that would be acceptable for the Conditional Use Permit. The Nelson family offered the following additional conditions:

1. No more than 5 overnight room rentals, with no more than 5 parking stalls occupied on site.
2. Allow for receptions, private parties or similar activities on site. These events are further defined to be no larger than 25 attendees and to cease by 10 p.m. The nature of the events are typically to be hosted by a reputable business, such as a local caterer.
3. Health and Noise ordinances and all building codes are to apply for all commercial business operations.
4. An owner or operations manager will be on-site during all commercial operations.
5. The bed and breakfast operations are transferrable upon sale. The provision to host private events is not transferrable upon sale.
6. The Conditional Use Permit will cease if the land use changes from a bed and breakfast

UPDATE: 9/19/19

At the City Commission hearing on September 3, the City Commission took two actions. 1) Based on staff presenting the percentage of protest received, there was question and interpretation on whether a super majority vote was needed or desired by the City Commission. After statements by both Planning Director and City Attorney, in recommending to support the super-majority, the City Commission voted to confirm that they indeed will NOT seek a super majority on this case. 2) Based on testimony received by three surrounding property owners in addition to the owner and their daughter, the City Commission voted to table the item.

Over the course of the past two weeks, daily discussions occurred between staff and the various property owners to determine if a level of compromise could occur. Unfortunately it was difficult to find a meeting time that worked with everyone and staff to meet in person. However, at this point in time no additional compromises can be affirmed at the writing of this staff report. There was some discussion about limiting the number of events to 24 a month, but at the writing of this report it was determined that was not doable. The owners respectfully request consideration of the compromises that were already agreed upon, such as the number of attendees and the hours of operation for the events. Additional correspondence among staff Mr. Rich Nelson and Mr. Scott Neal are in the packet. A verbal conversation occurred between staff and Mr. Jim Baum regarding the continued concern about a commercial operation and change in the neighborhood not being supported.

Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of staff and the Planning Commission and hereby move to approve the Conditional Use Permit to allow a bed and breakfast with the stated conditions as modified after the Planning Commission hearing, as the proposal complies with Section 20-0909.D (1-6) , 20-0404.S (1-11) and all other requirements of the LDC. The stated conditions are as follows:

1. No more than 5 overnight room rentals, with no more than 5 parking stalls occupied on site.
2. Allow for receptions, private parties or similar activities on site. These events are further defined to be no larger than 25 attendees and to cease by 10 p.m.
3. Health and Noise ordinances and all building codes are to apply for all commercial business operations.
4. An owner or operations manager will be on-site during all commercial operations.
5. The bed and breakfast operations are transferrable upon sale. The provision to host private events is not transferrable upon sale.
6. The Conditional Use Permit will cease if the land use changes from a bed and breakfast

Planning Commission Recommendation: August 6, 2019

With a 5-3 vote, on August 6, 2019 the Planning Commission accepted the findings and recommendations of staff approved the Conditional Use Permit to allow a bed and breakfast as the proposal complies with Section 20-0909.D (1-6), 20-0404.S (1-11) and all other requirements of the LDC, with the following conditions:

1. Allow for receptions, private parties or similar activities on site
2. The Conditional Use Permit will cease if the land use changes from a bed and breakfast

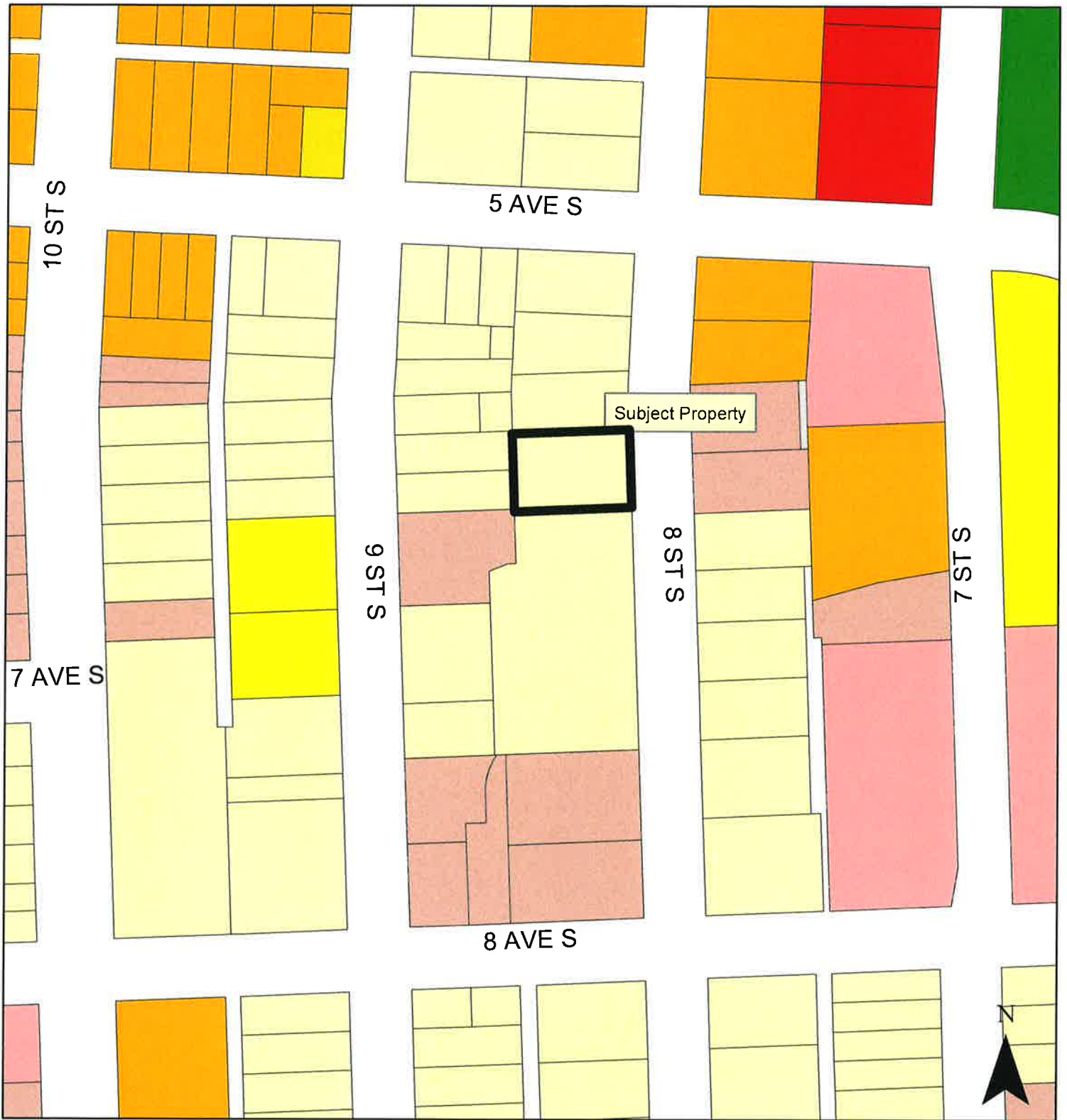
Attachments:

1. Zoning Map
2. Location Map
3. Site Plan
4. Letter of Appeal
5. Public Comment Letters

Conditional Use Permit

Chas A Roberts Addition

611 8th Street S



Legend

AG	DMU	LC	MHP	SS-2
GC	GI	MRR-1	PZC	SS-3
GO	MR-2	MR-3	UMU	SS-4
				SS-5
				City Limits

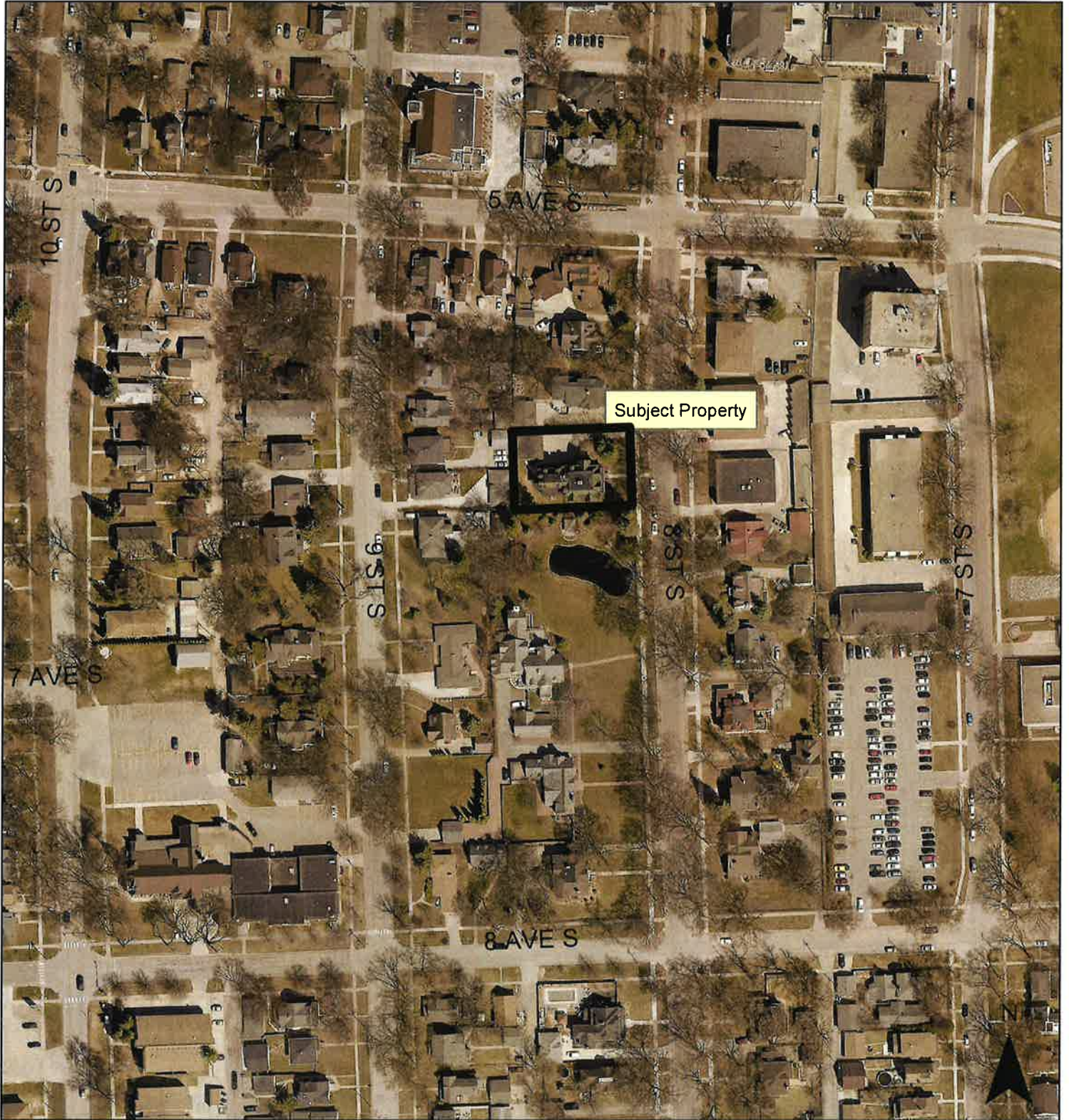
100 Feet

Fargo Planning Commission
August 6, 2019

Conditional Use Permit

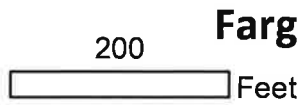
Chas A Roberts Addition

611 8th Street S



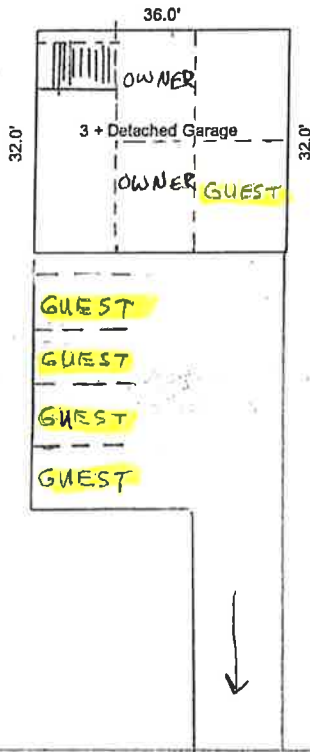
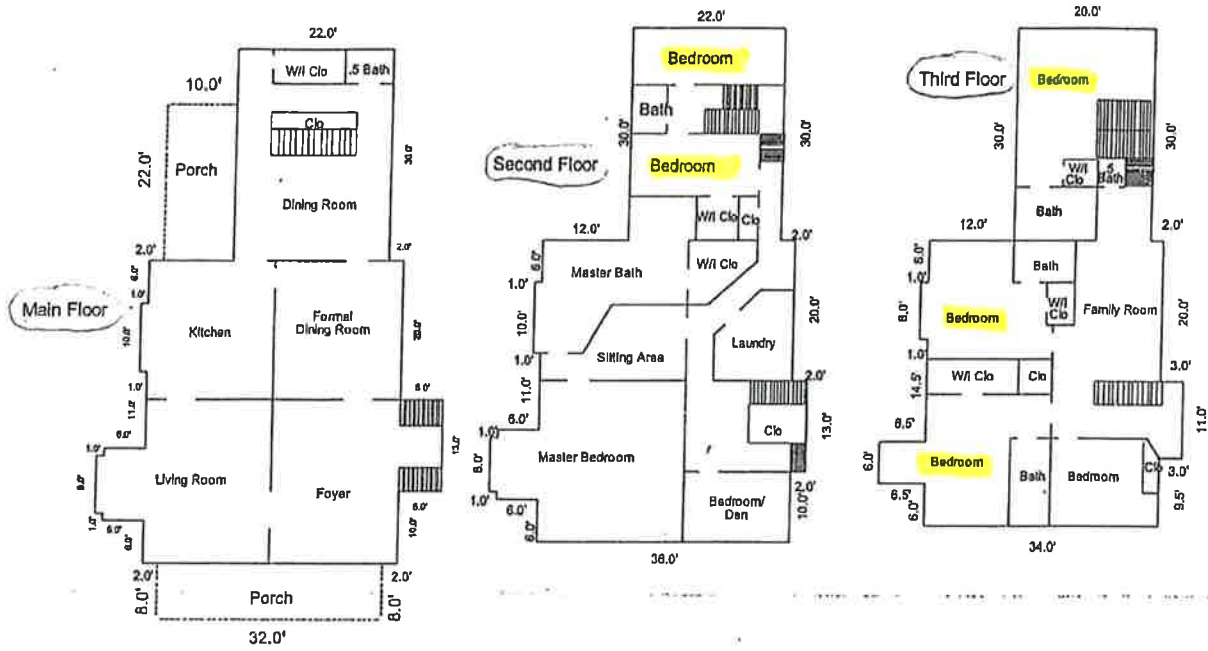
Legend

AG	LC	MHP	SR-2
DMU	NC	SR-3	SR-4
GC	MR-1	SR-5	SR-6
GO	MR-2	PT	SR-7
	MR-3	UML	SR-8
			City Limits

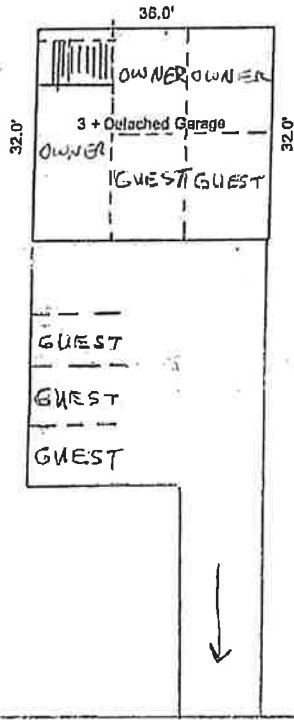
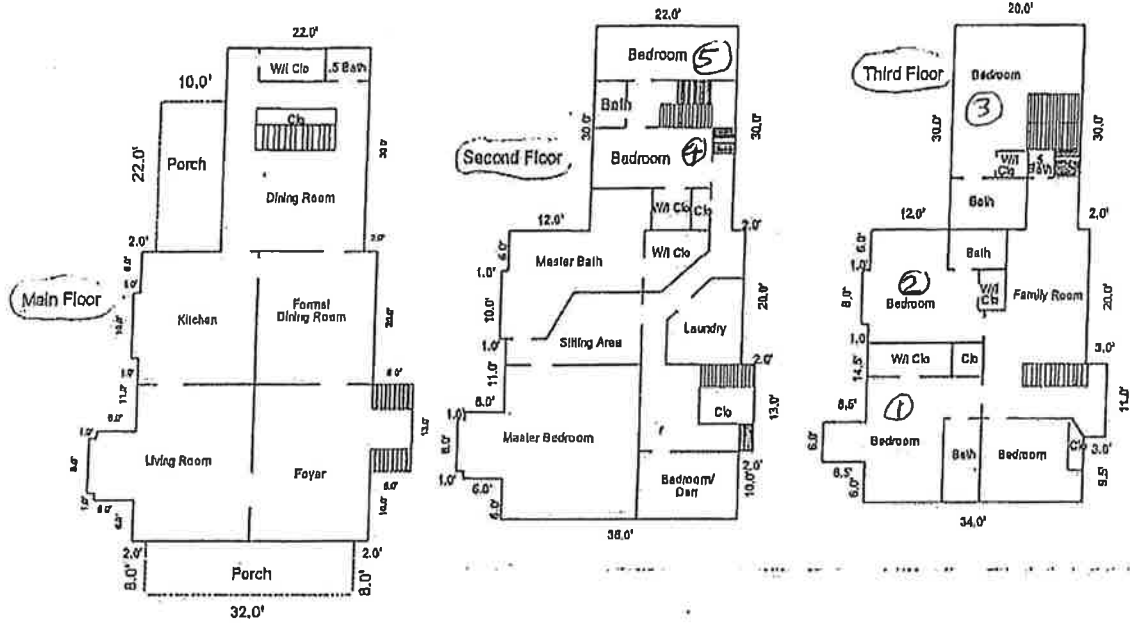


Fargo Planning Commission

August 6, 2019



8TH STREET SOUTH



8TH STREET SOUTH

From: [rich.nelson](#)
To: [Kylene Bagley](#)
Subject: 611 8th ST S zoning change
Date: Tuesday, August 6, 2019 11:21:09 PM

Kylie,

I'm emailing you to let you know I will be filing an appeal within the 10 days as outlined in the LDC.

My grounds are:

section 20-0902 states

"The burden of demonstrating that an application complies with applicable review and approval criteria is on the applicant. The burden is not on the City or other parties to show that the criteria have not been met."

The applicant failed to prove the required visual screening component has been met for the number of off street parking spaces needed, 5.

The applicant also has failed to demonstrate "additional parking shall be required if reception or party space is available." Applicants own rendering indicates additional off street parking is not available.

The applicant misrepresented their occupancy as 611 8th St S. The applicants surrogate lied at the hearing today. Roger and Margaret Nelson moved into a condo just off 2nd Ave on 8th St S in July. Again per 20-0902 the burden is not on opponets to disprove where one lives but the applicant.

So far I count 3 material defects with this application.

Most importantly, I intend to raise a conflict of interest violation as Dawn Morgan should have recused herself. She outlined a very similar proposal to area homeowners in March but defined her venture as a community service with conditional use permit for overnight guests. WDAY even announced these plans on TV with the assistance of John Wheelers wife.

I believe the language of "receptions, private parties, and similar activities" are code words for community organization type activities onsite and a smoke screen around the residential protection standards and prohibition of overnight guests.

May I receive a copy of applicants application? Was today's hearing recorded? If so, how may I receive recording or transcript?

Thank you,
Rich Nelson

R.D. OFFUTT COMPANY

August 6, 2019

City of Fargo

Planning & Development

Attn: Kylie Bagley, Planner

225 4th Street North

Fargo, ND 58102

RE: Conditional Use Permit / Bed & Breakfast

Lots 2 and 3, Block F, Chas A Roberts Addition – 611 8th Street South

Dear Ms. Bagley:

This letter is in response to your letter dated July 19, 2019, regarding the above-described matter coming before the Planning Commission August 6, 2019.

My name is Scott Neal. My wife and I Shelly live next door. We are very concerned about the change in use and are hoping that this request is **DENIED**. While many variances are technical in nature and/or are asking for minor changes, this variance request is a complete change of use and will have a significant negative impact on the neighboring properties. Following are a few of the larger reasons for denial:

- Needless to say, the property is located in a residential area with no businesses on our particular block or all the way south to 18th Ave. Changing from an residence to a commercial hotel business is akin to a zoning change in the sense of how it looks and operates
- A bed and breakfast offers nightly stays. We are very concerned about the transient nature of their customers and the possibility of "strangers" around our kids. There are many children living in the neighborhood. At least an SR-3 apartment unit is rented monthly and typically credit and background checks are made. A daily rental/hotel is not the same!
- There is no room for additional parking which the proposed use would need. Across the street are two smaller multi-family units which also do not have adequate on-site parking. Many of those tenants park along the street and most if not all of the street parking is taken nightly.
- 8th Street South is a snow emergency route.

- From November to April, there is no overnight parking in some of the area mentioned above. This further exacerbates the already congested parking.
- From a technical standpoint, parking has been taking place on both sides of the street. There have been many occasions when the street gets very narrow and during the winter becomes very dangerous.
- Adding more cars to the area, whether driving or parking simply makes an already busy street busier and more dangerous.
- The inherent nature of a B&B is that it is a business. It will have employees whom will need to park and be at the business all day. Its customers will be coming and going at all hours. Yes, residences may come and go as well, but the hours are typically much different. In other words, the "feel" of the neighborhood changes.

In summary, we believe the "feel" of a B&B will significantly negatively affect the neighborhood. It will negatively affect property values, it will negatively affect whom lives in the area, it will have a negative effect on families with children, and it will negatively affect traffic and parking which is already overburdened.

THEREFORE, WE RESPECTFULLY ASK THAT THIS CONDITIONAL USE PERMIT BE **DENIED.**

Respectfully,



F. Scott Neal
President – Real Estate

From: [rich nelson](#)
To: [Kylene Bagley](#)
Subject: 611 8th ST
Date: Thursday, September 5, 2019 5:08:15 PM

Kylie,

We don't agree to the conditions drafted by the planning department.

We object to the conditional use permit for anything more than 3 bedroom B&B. If we forego our objections now, we may not be able to assert them at a later date or when a new owner takes over.

There is not adequate parking for 5 B&B units especially when a 3rd resident vehicle (daughter) enters the mix. When this code was written, the intent was to have the owners be a full participant. Acting as a cutout for Nicole's pastries events may not meet the requirements and certainty doesn't meet the spirit. The text of the code is vague in respect reception parking. Section 3 makes no mention of on street parking. The absence of clear and concise intent leaves open to bureaucratic judgement followed by court action. No one at the planning department has attempted to explain a not so random ".B." and how the requirement was originally drafted. The applicants haven't provided visual screening to go beyond 3 parking spaces. Relying on our property where 7 months of the year provides no visual screening again should necessitate the approval be limited to 3 vehicles. As the applicants told the group last night they have not determined if they do or do not meet health codes, a reasonable person should find applicants have not met all conditions. I'll conclude by referencing ND law on the matter. ND century code 23-09.1-01 defines what a bed and breakfast is in the state. "Bed and breakfast facility" means a private home that is used to provide accommodations". The only permissible food are "family meals". "Family-style meal" means a meal ordered by persons staying at a bed and breakfast facility". A discrepancy exists whether or not food may be offered to anyone other than an overnight guests and whether Fargo land code permitting other events is permissible. I strongly urge the planning department request a delay to seek a legal opinion by the ND Attorney Generals office for the full meaning in 20-0402 (5)(3) and if 20-0402(5)(5) is allowed under ND century code, what constitutes visual screening, and may an applicant uses 3rd party property for visual screening.

Again, I'll reiterate we have no objection to a permit for a 3 room B&B. Fargo LDC states the burden of proof is on the applicant. Applicant provided no proof they met the requirements to exceed 3.

Thank you,
Rich Nelson

From: [Jan Feder](#)
To: [Kylene Bagley](#)
Subject: Conditional Use Permit in the SR-3, Single-Dwelling Residential Zoning District on Lots 2 and 3, Block F, Chas A Roberts Addition
Date: Thursday, September 5, 2019 9:46:45 AM

Thank you Kylie for the opportunity to respond to the application to permit using a home in my neighborhood as a bed and breakfast. I live at 716 South 8th Street. As you likely know, the homes from 5th Ave to 8th South are essentially one continuous block. I believe I have lived in this neighborhood the longest. My husband and I moved into our home in 1978 and I have watched the neighborhood homes change ownership since then. In fact, I recall visiting the Nelsons, whose home is at issue, in the midst of their remodel as they moved from floor to floor. They did an admirable job restoring the home. I am sad that they have been unable to sell it over these many years.

In your letter to the property owners (those within 300 feet, of which I am not one) you say the application is for a bed and breakfast. When I spoke with you yesterday, you said the application also included receptions and other gatherings. Receptions and other gatherings aren't mentioned in the letter. Because Nelsons are friends, and because they have been friends for many years I am willing to give support to the bed and breakfast. I would rather not have one on my block, but I want them to be able to move forward with their lives. However, I am not supportive of using this home as an event or reception center. This will increase parking on our street and traffic through a residential area. There is already substantial traffic during the typical high traffic times. Living next door to an event center in a residential neighborhood will have a negative impact on those of us who call our homes, "Home". It will start to impact the neighborhood network that has been established over the years - the holiday party, the summer picnics, etc. It will start change our historic neighborhood that Fargo has been proud of.

Thank you for the opportunity to respond.

Jan Feder

From: [Carol Huhner](#)
To: [Kylene Bagley](#)
Subject: BED AND BREAKFAST
Date: Tuesday, September 10, 2019 1:09:15 PM

I reside at 604 9 St S in Fargo. The proposed B & B is across my back yard. I feel that a venture like this would have no negative impact on the neighborhood and I would support the Nelsons 100%. It sounds like this project would be top notch and in no way attract any unsavory persons to the area. I feel that we should support the Nelsons and hope the decision will be made to allow to proceed with this project.

Carol Huhner
604 9 St S
Fargo, ND 58103

August 6, 2019

City of Fargo

Planning & Development

Attn: Kylie Bagley, Planner

225 4th Street North

Fargo, ND 58102

RE: Conditional Use Permit / Bed & Breakfast

Lots 2 and 3, Block F, Chas A Roberts Addition – 611 8th Street South

Dear Ms. Bagley:

This letter is in response to your letter dated July 19, 2019, regarding the above-described matter coming before the Planning Commission August 6, 2019.

My name is Scott Neal. My wife and I Shelly live next door. We are very concerned about the change in use and are hoping that this request is **DENIED**. While many variances are technical in nature and/or are asking for minor changes, this variance request is a complete change of use and will have a significant negative impact on the neighboring properties. Following are a few of the larger reasons for denial:

- Needless to say, the property is located in a residential area with no businesses on our particular block or all the way south to 18th Ave. Changing from an residence to a commercial hotel business is akin to a zoning change in the sense of how it looks and operates
- A bed and breakfast offers nightly stays. We are very concerned about the transient nature of their customers and the possibility of “strangers” around our kids. There are many children living in the neighborhood. At least an SR-3 apartment unit is rented monthly and typically credit and background checks are made. A daily rental/hotel is not the same!
- There is no room for additional parking which the proposed use would need. Across the street are two smaller multi-family units which also do not have adequate on-site parking. Many of those tenants park along the street and most if not all of the street parking is taken nightly.
- 8th Street South is a snow emergency route.

- From November to April, there is no overnight parking in some of the area mentioned above. This further exacerbates the already congested parking.
- From a technical standpoint, parking has been taking place on both sides of the street. There have been many occasions when the street gets very narrow and during the winter becomes very dangerous.
- Adding more cars to the area, whether driving or parking simply makes an already busy street busier and more dangerous.
- The inherent nature of a B&B is that it is a business. It will have employees whom will need to park and be at the business all day. Its customers will be coming and going at all hours. Yes, residences may come and go as well, but the hours are typically much different. In other words, the “feel” of the neighborhood changes.

In summary, we believe the “feel” of a B&B will significantly negatively affect the neighborhood. It will negatively affect property values, it will negatively affect whom lives in the area, it will have a negative effect on families with children, and it will negatively affect traffic and parking which is already overburdened.

THEREFORE, WE RESPECTFULLY ASK THAT THIS CONDITIONAL USE PERMIT BE **DENIED.**

Sincerely,

F. Scott Neal

Dear Commissioners,

RE: Sept 9th commission meeting - 611 8th St S Conditional Use permit

I urge the application for the Bed and Breakfast at 611 8th St S be limited to 3 rooms and no additional permit for receptions or private parties.

The city planning department and the planning commission ignored the criteria established in recommending this Bed and Breakfast conditional use permit at 611 8th ST South. Fargo LDC use regulations regarding Bed and Breakfast standards are vague, undefined, and contravene at least one portion of North Dakota Century code.

- Applicant has not provided visual screening to earn more than 3 off street parking spaces
 - LDC doesn't define visual screening
 - When asked if City Planning has even asked for or received a legal opinion if a 3rd parties property may be used to meet visual screening criteria, City Planning responded with a meeting request.

- 20-0402(5)(5) states "Receptions, private parties, or similar activities shall not be permitted unless expressly approved as part of the Conditional Use Permit. 20-0402(5)(8) Other than registered guests, no meals shall be served to the general public unless expressly approved as part of the Conditional Use Permit
 - Has the City Planning department ever ask for or received a legal opinion from the ND Attorney General's office if these activities are permissible under ND Century Code 23-09.1? The ordinary and customary language suggests lodging for overnight guests.
 - Bismarck and Grand Forks do not permit such activities.
 - ND Century code 23-09.1-01 Definitions of "'Family-style meal" means a meal ordered by persons staying at a bed and breakfast facility".
 - I read the statute as ND law does NOT permit any food to be served unless ordered by an overnight guest.

- 20-0402(5)(3)

A minimum of one off-street parking space shall be provided for each guest bedroom, plus spaces required for the principal residence in accordance with Section 20-0701.B. Additional parking shall be required if reception or party space is available. If four or more off-street parking spaces are provided, visual screening from adjacent residential uses shall be required

 - What legal basis does city planning use to assert on-street parking meets criteria when the entire section only states off street parking.

- 20-0402(5)(10) All bed and breakfast establishments must comply with the Fargo Health Department Regulations.
 - ND Century code 23-09.1-02. Bed and breakfast facilities - Powers of state department of health. The department shall establish by rule the procedures for licensing, qualifying, classifying, inspecting, and regulating persons providing bed and breakfast facilities in private homes, including rules affecting the health and safety of the facility and the persons using the facility. No political subdivision, including a home rule city or county, may impose health and safety, licensure, or inspection requirements that exceed the requirements of this chapter or rules adopted by the department.
 - Clearly standard 10 is in conflict with ND century code.
 - At a city sponsored community meeting held on 9/4, applicants stated they have not contact the ND health department to determine if they meet health codes.

During a private meeting with two City Planning members, a question proposing a win-win scenario response was to approve a 3 Bedroom and Bed and Breakfast conditional use permit. There is no ambiguity in Fargo's LDC or ND century code over the scope of an operation that size.

City planning drafted 6 bullet points from a community meeting held on September 4th. Again, no correction to the fallacy applicants meet visual screening requirements for bullet point 1. Again, 5 of the 8 people within a 300ft radius of the applicant's property who attended the meeting disagree with the City Planning department and Planning Commission.

Again, I urge you to limit the scope and size of this Bed and Breakfast operation to 3 rooms with no additional permit for receptions or private parties.

Thank you for your time,

Rich Nelson

515 8th St S

Fargo, ND 58103

From: [Jan Feder](#)
To: [Kylene Bagley](#)
Subject: Conditional Use Permit in the SR-3, Single-Dwelling Residential Zoning District on Lots 2 and 3, Block F, Chas A Roberts Addition
Date: Monday, September 9, 2019 11:29:43 AM

Dear Kylie,

Since I talked with you and I sent an email, I have received a report of the meeting that was held. It was clarified that the Nelsons would be owning and running the Bed and Breakfast and that there would be agreed upon restrictions about the size and timing of events. I also understand that these provisions would fall away should / when the Nelsons sell the property. Given my current understanding, I can support the new permit and change in wording.

Jan Feder

From: [Katherine DeLaPointe](#)
To: [Kylene Bagley](#)
Subject: Eighth Street Bed and Breakfast
Date: Tuesday, September 10, 2019 1:36:33 PM

To Whom it May Concern,

My husband and I recently received an letter regarding a proposed bed and breakfast at the Roger Nelson residence on 8th street. We have not objections the proposed project. It is a beautiful Victorian historic house that would represent the city of Fargo admirably as a Bed and Breakfast.

Katherine DeLaPointe
615 South 9th Street
Fargo, ND

Sent from [Mail](#) for Windows 10

From: [Nicole Crutchfield](#)
To: [Kylene Bagley](#)
Subject: Fwd: Support for Nelson CUP Bed and Breakfast
Date: Friday, September 13, 2019 6:43:20 AM

Begin forwarded message:

From: Christine Kloubec <back400@centurylink.net>
Date: September 13, 2019 at 12:27:35 AM EDT
To: Nicole Crutchfield <ncrutchfield@FargoND.gov>
Subject: **Support for Nelson CUP Bed and Breakfast**

Dear Nicole,

I write to express to you and convey to the City Commission my support of the Nelson's (located at 611 S 8th St, Fargo, ND) CUP for a bed and breakfast. I know the issuance of the City vetted application and Planning Commission's approval that this CUP meets the highest standards with respect to neighborhood consideration. The concerns of those opposed to this CUP I heard at the open house meeting were, to me, abstract. If parking is as great an issue as it seems, might I suggest limited parking (during the winter/snowy months) on west side of 8th street rather than the east be reversed. Just a thought.

This B&B will be a win-win for the neighborhood and the City of Fargo. I am confident that continued approval of the granted CUP will be good for all.

Thank you for the good work you do on our behalf.

Christine Kloubec
620 8th St S
Fargo, ND

September 12, 2019

Dear Mr and Mrs Nelson:

I am writing you as a concerned person dealing with the approval of your lovely home becoming a Bed and Breakfast.

I am appalled at your neighbors for not being considerate of your plan to open up this lovely historic place for many to enjoy.

This has been on my mind since reading the article in the Forum on Tuesday that I should send you this letter.

I do recall I think I may have seen and met you two while I was a hostess at the Fireside in Detroit lakes many years ago. Anyway, your home reminds me of a B & B in Sturgeon Bay WI or better know to everyone Door County. When I was growing up in Sturgeon Bay my Aunt and Uncle bought and lived in the Scofield House on 9th and Michigan in a residential area. I was fortunate to spend a lot of time in the mansion as we called it. I even had my own bedroom as they had two boys. Many years later it became a B & B in this residential area. Plus other B & B 's in Sturgeon bay like the White Lace Inn is also in residential area. People who use B & B's are not the roudy type and I can't see any problems. Do these Fargo people who object to this have other motives why they do not want you to have this? Well, anyway, I do hope your Fargo commissioners will see this as a wonderful endeavor and I hope someday I can see it for myself. I have also seen some very positive remarks on Facebook.

Best of luck to you and will watch for further articles about getting your permit.

Sincerely,

Seegarn Boon
Perham MN



SMALL BUSINESS | Sep 11th 2019 - 7am

Fargo's Moler Barber College gets new owner, keeps Mad Men style

Should the city of Fargo do more to protect historic properties?

Yes

No

VOTE

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Entertainment

RADIO | Sep 11th 2019 - 11am

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Fargo's Moler Barber College gets new owner, keeps Mad Men style

Thank you for voting!

Yes 68%



No 32%



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Entertainment

RADIO | Sep 11th 2019 - 11am

Hot Mic with Dom Izzo: Ioe



From: [Nicole Crutchfield](#)
To: [Kylene Bagley](#)
Subject: FW: 611 8th ST S Bed and Breakfast
Date: Thursday, September 19, 2019 9:01:11 AM
Attachments: [applicable CUP zoning.pdf](#)

From: rich nelson <richn91@gmail.com>
Sent: Wednesday, September 18, 2019 4:37 PM
To: Nicole Crutchfield <ncrutchfield@FargoND.gov>
Subject: Fwd: 611 8th ST S Bed and Breakfast

----- Forwarded message -----
From: rich nelson <richn91@gmail.com>
Date: Wed, Sep 18, 2019, 12:51 AM
Subject: 611 8th ST S Bed and Breakfast
To: <ejohnson@lawfargo.com>

Erik,

Thank you for speaking to me this afternoon. I apologize for not having the material available when you called. Below is what I was attempting to convey.

All Bed and Breakfasts are a hotel / motel but not all hotels / motels are Bed and Breakfast. Bed and Breakfast must have residential characteristics . The use category for Bed and Breakfasts are residential per table 20-0401. Another truth is conditional uses are subject to all other applicable regulations on the Land Development Code. Residential use categories clearly and concisely state short term lodging is not considered residential but fall under Retail Sales and service and / or Community Service categories.

Under the commercial use category, retail sales and service, hotel / motel and other temporary lodging with an average length under 30 days are listed as examples. Table 20-0401 does not permit any retail sales and service establishments in SR zones.

Subjecting the proposed Bed and Breakfast at 611 8th ST to the Major Home Occupation regulations, they may have no more than 12 customers or clients in a day or have no offsite employees even if related. As stated by Roger Nelson at the City Commission meeting, Amanda Nelson lives their part time. The time range may only be from 7am to 9pm. The maximum square foot allowed is 25% which would include the parking space allocated to a "5th" off street parking space.

I'd like to add that the LDC defines the minimum requirements necessary to advance the LDC's stated purposes(20-0105). I'll also add (20-0106) states the more restrictive provision applies when provisions within the Land Development Code are inconsistent.

Given the properties zoning does not permit retail sales and service, the size of the operation

would have too many people, not permitted to have an offsite employee, and exceed size requested, I see no path how this application should be permitted.

I've based the above conclusion on the extracted information contained within the attachment labeled "applicable CUP zoning.pdf".

Other than a section listing Bed and Breakfast conditions and a table showing permitted zoning, what overrides the regulations indicating they're not met? Is it the Cities position only sections 20-0401 and 20-0402 matter and the remaining LDC sections are irrelevant?

Changing gears to the Planning Commission meeting, is their a process to have their decision be vacated, altered, or outright reversed?

The notice we received does not state the scope of the request which is required by 20-0901 F (3). Per section H, review and decision making bodies may take any action on an application that is consistent with the notice given. Knowingly ignoring the LDC requirements to pass a CUP, should not have an injurious effect on any party to this action. At 1:04:45 of the video recording, Dawn Morgan states she believes Roger and Margaret Nelson live in an apartment, not at 611 8th St S. As the applicant provided no proof, they could not have met the definition of a Bed and Breakfast.

Thank you for your time,
Rich Nelson

https://library.municode.com/nd/fargo/codes/code_of_ordinances?nodeId=CH20LADECO_ART20-12DE_S20-1203USCA

20-1202 Words Defined

72 Bed and Breakfast:

A facility of residential character that provides sleeping accommodations and breakfast for hire on a day-to-day basis in which the proprietor resides.

20-1203 Use Categories

A. Basis for Classifications

Use categories classify land uses and activities into use categories based on common functional, product, or physical characteristics. Characteristics include the type and amount of activity, the type of customers or residents, how goods or services are sold or delivered and site conditions. The use categories provide a systematic basis for assigning present and future land uses into appropriate zoning districts.

1. Principal Uses

Principal uses are assigned to the category that most closely describes the nature of the principal use. The "Characteristics" subsection of each use category describes the common characteristics of each principal use.

b Accessory Uses

Accessory uses are allowed by-right in conjunction with a principal use unless otherwise stated in the regulations. Also, unless otherwise stated, accessory uses are subject to the same regulations as the principal use. Common accessory uses are listed as examples in the use category descriptions.

C Residential Use Categories

2 Household Living

a Characteristics

Household Living is characterized by the residential occupancy of a dwelling unit by a household. Tenancy is arranged on a month-to-month or longer basis. **Uses where tenancy may be arranged for a shorter period are not considered residential. They are considered to be a form of transient lodging (see the Retail Sales and Service and Community Service categories).**

b Accessory Uses

Accessory uses commonly associated with Household Living are recreational activities, raising of pets, hobbies and parking of the occupants' vehicles. Home occupations are accessory uses that are subject to additional regulations (See Sec. 20-0403).

d Exceptions

Lodging in a dwelling unit or where less than two thirds of the units are rented on a monthly or longer basis is considered a hotel or motel use and is classified in the Retail Sales and Service category.

D Commercial Use Categories

6 Retail Sales and Service

a Characteristics

Retail Sales and Service firms are involved in the sale, lease or rent of new or used products to the general public. They may also provide personal services or entertainment, or provide product repair or services for consumer and business goods.

b Accessory Uses

Accessory uses may include offices, storage of goods, manufacture or repackaging of goods for on-site sale and parking.

c Examples

(3) Entertainment-Oriented:

Restaurants, cafes, delicatessens, bars and taverns; indoor continuous entertainment activities such as bowling alleys, ice rinks and game arcades; pool halls; dance halls; indoor firing ranges; theaters, health clubs, gyms, membership clubs and lodges; hotels, motels, recreational vehicle parks and other temporary lodging with an average length of stay of less than 30 days.

d Exceptions

(5) In certain situations, hotels and motels may be classified as a Community Service use, such as short-term housing or mass shelter. See "Community Services."

20-0401 Use Table

Table 20-0401 lists the uses allowed within zoning districts.

Use Category	Definition (Excerpt; See Sec. 20-1203)	Specific Use Type	Zoning Districts				
			A G	S R 0	S R 1	S R 2	S R 3
Residential							
Household Living	residential occupancy of a dwelling unit by a "household"	House, Detached	P	P	P	P	P
		House, Attached	-	-	-	-	P
		Duplex	-	-	-	-	P
		Multi-Dwelling Structure	-	-	-	-	-
		Mobile Home Park	-	-	-	-	-
Group Living	residential occupancy of a structure by a group of people who do not meet the definition of "Household Living"		C/C [E]	C/C [E]	C/C [E]	C/C [E]	C/C [E]
Bed and Breakfast	A facility of residential character that provides sleeping accommodations and breakfast		C/C [S]	C/C [S]	C/C [S]	C/C [S]	C/C [S]

Use Category	Definition (Excerpt; See Sec. 20-1203)	Specific Use Type	Zoning Districts				
			A G	S R 0	S R 1	S R 2	S R 3
Commercial							
Adult Entertainment Center	an adult bookstore, adult cinema or adult entertainment facility		-	-	-	-	-
Office	Activities conducted in an office setting and generally focusing on business, government, professional, medical, or financial services		-	-	-	-	-
Off-Premise Advertising Signs	Billboard		-	-	-	-	-
Parking, Commercial	parking that is not accessory to a specific use...fees may or may not be charged		-	-	-	-	-
Recreation and Entertainment, Outdoor	large, generally commercial uses that provide continuous recreation or entertainment oriented activities		-	-	-	-	-
Retail Sales and Service	firms involved in the sale, lease or rental of new or used products to the general public...they may also provide personal services or entertainment, or provide product repair or services for consumer and business goods		-	-	-	-	-

C Conditional Uses

A "C" indicates that a use category is allowed only if reviewed and approved as a Conditional Use, in accordance with the Conditional Use review procedures of Sec. 20-0909. Conditional Uses are subject to all other applicable regulations of this Land Development Code.

20-0403 Accessory Uses

A General

Permitted uses and approved conditional uses shall be deemed to include accessory uses and accessory structures. Accessory uses and structures will be subject to the same regulations as apply to principal uses and structures in each district, unless otherwise stated in this Land Development Code. Examples of customary accessory uses can be found in use category descriptions of Sec. 20-1203.

20-1202 - Words Defined

The following terms shall have the meanings ascribed to them:

1. Accessory Use: a use or structure that:

- a. Is clearly incidental to and customarily found in connection with a principal structure or use;
- b. Is subordinate in area, extent and purpose to the principal building or use;
- c. Contributes to the comfort, convenience or necessity of occupants of the principal use; and
- d. Is located on the same lot and in the same zoning district as the principal use.

20-0403

C Home Occupations

Many types of work can be conducted at home with little or no effect on the surrounding neighborhood. The home occupation regulations of this section are intended to permit residents to engage in home occupations, while ensuring that home occupations will not be a detriment to the character and livability of the surrounding neighborhood. The regulations require that home occupations (an accessory use) remain subordinate to the allowed principal use (household living) and that the residential viability of the dwelling unit is maintained.

1. Types of Home Occupations

There are two types of home occupations - Major Home Occupations and Minor Home Occupations. Both types are considered an accessory use to an allowed household living use. Unless otherwise expressly stated, the regulations of this Land Development Code apply to both types of home occupations.

2. Minor Home Occupations - Defined

A Minor Home Occupation is one in which residents use up to 25 percent of the floor area of their home as a place of work, but in which no employees come to the site. Minor Home Occupations allow up to four customers per day, with a maximum of 12 customers per week, only between the hours of 7:00 a.m. and 9:00 p.m. No more than one customer is permitted on the site at any given time. Examples include, but are not limited to, artists, crafts people, writers, professional consultants personal care and grooming services, and employees of off-site businesses who work from their home. In addition, tutors, such as piano or other music teachers, who provide lessons to no more than 60 students per week and do not have non-resident employees coming to the site, shall be

deemed minor home occupations. In addition, dog grooming services that would qualify as a Minor Home Occupation as a result of percentage of floor area of the home, customer activity and hours of operation may be allowed after it has been reviewed and approved in accordance with Conditional Use Review procedures of Sec. 20-0909. Unless otherwise expressly stated, any Conditional Use Permit for such dog grooming service granted pursuant to Section 20-0909 shall automatically terminate upon sale or transfer of the property. For purposes of calculating floor area of a minor or major home occupation in which the home occupation occupies a garage that is attached or detached from the primary home structure, the sum of the home and garage square footage shall be included in the total square footage from which the 25 percent maximum floor area is computed.

12. Major Home Occupations

The following regulations apply only to Major Home Occupations.

a. Conditional Use Permits

No Major Home Occupation is allowed unless it has been reviewed and approved in accordance with Conditional Use Review procedures of Sec. 20-0909. Unless otherwise expressly stated, any Conditional Use Permit for such Major Home Occupation granted pursuant to Section 20-0909 shall automatically terminate upon sale or transfer of the property.

b. Employees

A maximum of one nonresident employee is allowed with a Major Home Occupation provided no customers come to the site. Major Home Occupations that have customers coming to the site are not allowed to have nonresident employees. For the purpose of this provision, the term "nonresident employee" includes an employee, business partner, co-owner, or other person affiliated with the home occupation, who does not live at the site, but who visits the site as part of the home occupation.

c. Customers

Customers may visit the site only during the hours of 7 a.m. to 9 p.m., and no more than 12 customers or clients may visit the site in any single day.

d. Number

No more than one Major Home Occupation may be conducted on a single site. A Minor Home Occupation may be conducted on the site of a Major Home Occupation.

ARTICLE 20-01 - GENERAL PROVISIONS

20-0105 - Minimum Requirements

The provisions of this Land Development Code are to be interpreted as the minimum requirements necessary to advance the Land Development Code's stated purposes. No building or structure may be erected, converted, enlarged, reconstructed or altered and no land use may occur except in accordance with all of the regulations established by this Land Development Code for the zoning district in which the building, structure or land use is located.

20-0106 - Conflicting Provisions

A. Conflict with State or Federal Regulations

If the provisions of this Land Development Code are inconsistent with those of the state or federal government, the more restrictive provision will control, to the extent permitted by law.

B. Conflict with Other City Regulations

If the provisions of this Land Development Code are inconsistent with one another, or if they conflict with provisions found in other adopted ordinances or regulations of the City, the more restrictive provision will control.

From: rich nelson
To: Kylene Bagley
Subject: 611 8th ST S zoning change
Date: Tuesday, August 6, 2019 11:21:09 PM

Kylie,

I'm emailing you to let you know I will be filing an appeal within the 10 days as outlined in the LDC.

My grounds are:

section 20-0902 states

"The burden of demonstrating that an application complies with applicable review and approval criteria is on the applicant. The burden is not on the City or other parties to show that the criteria have not been met."

The applicant failed to prove the required visual screening component has been met for the number of off street parking spaces needed, 5.

NOT NECESSARY PARKING WITH REVISED PLAN

The applicant also has failed to demonstrate "additional parking shall be required if reception or party space is available." Applicants own rendering indicates additional off street parking is not available.

STREET PARKING IS AVAILABLE.

NOT TRUE!

The applicant misrepresented their occupancy as 611 8th St S. The applicants surrogate lied at the hearing today. Roger and Margaret Nelson moved into a condo just off 2nd Ave on 8th St S in July. Again per 20-0902 the burden is not on opponets to disprove where one lives but the applicant.

WE LIVE & RESIDE AT 611 8th ST S AND WILL CONTINUE TO DO SO!

So far I count 3 material defects with this application.

B+B and private events in completely different

Most importantly, I intend to raise a conflict of interest violation as Dawn Morgan should have recused herself. She outlined a very similar proposal to area homeowners in March but defined her venture as a community service with conditional use permit for overnight guests. WDAY even announced these plans on TV with the assistance of John Wheelers wife.

IRRELEVANT

I believe the language of "receptions, private parties, and similar activities" are code words for community organization type activities onsite and a smoke screen around the residential protection standards and prohibition of overnight guests.

May I receive a copy of applicants application? Was today's hearing recorded? If so, how may I receive recording or transcript?

Thank you,
Rich Nelson

From: rich_nelson
To: Kylene Bagley
Subject: 611 8th ST
Date: Thursday, September 5, 2019 5:08:15 PM

Kylie,

We don't agree to the conditions drafted by the planning department.

We object to the conditional use permit for anything more than 3 bedroom B&B. If we forego our objections now, we may not be able to assert them at a later date or when a new owner takes over.

There is not adequate parking for 5 B&B units especially when a 3rd resident vehicle (daughter) enters the mix. When this code was written, the intent was to have the owners be a full participant. Acting as a cutout for Nicole's pastries events may not meet the requirements and certainty doesn't meet the spirit. The text of the code is vague in respect reception parking. Section 3 makes no mention of on street parking. The absence of clear and concise intent leaves open to bureaucratic judgement followed by court action. No one at the planning department has attempted to explain a not so random ".B." and how the requirement was originally drafted. The applicants haven't provided visual screening to go beyond 3 parking spaces. Relying on our property where 7 months of the year provides no visual screening again should necessitate the approval be limited to 3 vehicles. As the applicants told the group last night they have not determined if they do or do not meet health codes, a reasonable person should find applicants have not met all conditions. I'll conclude by referencing ND law on the matter. ND century code 23-09.1-01 defines what a bed and breakfast is in the state. "Bed and breakfast facility" means a private home that is used to provide accommodations". The only permissible food are "family meals". "Family-style meal" means a meal ordered by persons staying at a bed and breakfast facility". A discrepancy exists whether or not food may be offered to anyone other than an overnight guests and whether Fargo land code permitting other events is permissible. I strongly urge the planning department request a delay to seek a legal opinion by the ND Attorney Generals office for the full meaning in 20-0402 (5)(3) and if 20-0402(5)(5) is allowed under ND century code, what constitutes visual screening, and may an applicant uses 3rd party property for visual screening.

SEE REVISED SITE DRAWING
WE ARE
- GUEST OPTION
- CLEARED WITH HAMMERS @ BISMARCK HEALTH + FIRE

Again, I'll reiterate we have no objection to a permit for a 3 room B&B. Fargo LDC states the burden of proof is on the applicant. Applicant provided no proof they met the requirements to exceed 3.

Thank you,
Rich Nelson

- SEE REVISED SITE PARKING
- FOOD FOR EVENTS IS THE RESPONSIBILITY OF THE SPONSOR OF THE EVENT - NOT US. THEY CAN COOK OR CATER THEIR OWN IF THEY WANT FOOD/BEVERAGE.

24i

MEMORANDUM

TO: Board of City Commissioners

FROM: Nicole Crutchfield, Planning Director
Tia Braseth, Community Development Planning Coordinator *TB*

DATE: September 16, 2019

RE: Public Hearing for Amendments to Community Development Block Grant (CDBG)/HOME 2019 Action Plan

The Department of Planning & Development is considering amendments to the City of Fargo's Community Development Block Grant (CDBG)/HOME 2019 Action Plan, previously approved by the Planning Commission (5/7/19), Community Development Committee (4/23/19), and the City Commission (6/17/19). Proposed amendments include:

- Identified scope, location, and budget for activities under the previously approved HOME Senior Affordable Housing Development project

Each proposed amendment is detailed in the attached public notice, which was published in the August 26, 2019 Forum newspaper. This proposal was presented to and approved by the Community Development Committee on August 20 and the Planning Commission on September 3. The timeline for this amendment, including the 30-day public comment period, is outlined in the attached public notice. Once approved by citizens and the City, the amendment will be submitted to HUD for approval.

It is part of the City's adopted Citizen Participation Plan to take all substantial amendments to the Community Development Committee, Planning Commission, and City Commission as part of the review and approval process.

Recommended Motion: This meeting is for a public hearing only, no action is required at this time. Final consideration of the amendments is scheduled for October 7, 2019.



**Notice of Public Hearing & Public Comment Period
Amendments to 2019 Action Plan
Community Development Block Grant (CDBG)
& HOME Investment Partnerships Programs**

The City of Fargo is considering amendments to its 2019 Action Plan, previously approved by City Commission on June 17, 2019. Specific locations have recently been identified for 2019 projects and must be included in the plan. Location updates are considered substantial amendments and must go through a citizen participation process. The details and timeline for this process are outlined below. Upon City Commission action on October 7, 2019, a recommendation regarding these amendments will be forwarded to HUD for their consideration and approval.

30-Day Public Comment Period: August 27, 2019 through September 26, 2019

Send written comments or phone: City of Fargo
Planning and Development Department
Attn: Community Development Planning Coordinator
225 4th Street North, Fargo ND 58102
701.476.4144

Electronic Comments: planning@FargoND.gov

Public Hearing: Monday, September 23, 2019 - 5:15 p.m.
Fargo City Commission Chambers
225 4th Street North, Fargo ND 58102

Final City Commission Consideration: Monday, October 7, 2019

Summary of Proposed Amendments:

1. Amendments to 2019 HOME Senior Affordable Housing Activity

- a. **Project site/budget identified – 3129 7 Avenue North – \$350,000**
Activities include acquisition and future construction of a multi-family senior rental housing complex in partnership with Craig Properties (LLC).
- b. **Project site/budget identified – 4225 28 Avenue South – \$347,826**
Activities include construction of a multi-family senior rental housing complex in partnership with Homefield 3/Beyond Shelter, Inc. Full request was for \$515,000. If other HOME senior affordable housing activities are cancelled, those funds will be reallocated to this project up to the full request and be subject to a substantial amendment and 30-day public comment period if change exceeds \$50,000.

Comments & Suggestions

Comments and suggestions from the public are encouraged through a public comment period and/or at the public hearing. The 2019 amended draft plan and activity amendments are available online at



www.fargond.gov/planninganddevelopment/plansandstudies or by request through the Planning and Development Department. See contact information below.

The facility is accessible and can accommodate persons with disabilities. Alternative formats of this information or reasonable accommodations for persons with hearing loss, vision loss, disabilities or limited English proficiency, including the availability of interpretation and translation services, will be made upon request (48 hours notice is required). Anyone who requires these services or an auxiliary aid to fully participate should contact the Planning and Development Department at 701.241.1474/Planning@FargoND.gov, or the City of Fargo's Section 504/ADA Coordinator Brock Morrison at 701.298.6966 to arrange for services. To access TDD/Relay service dial 701.241.8258. In accordance with Federal regulations and City of Fargo policies, the City of Fargo provides services without regard to race, color, national origin, sex, disability, age, familial status, religion, marital status, veteran status, sexual orientation, gender identity, public assistance, domestic violence, lawful activity, or condition protected by applicable federal and state laws. The City is an equal employment/equal housing opportunity agency.





24j

September 17, 2019

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Attached is an application made by City Flats, LLC, for a payment in lieu of tax (PILOT) according to N.D.C.C. Chapter 40-57.1. The PILOT requested is for a new 42 unit, low income housing project at 1329 5 Ave. N. The applicant is in the application process with the North Dakota Housing Finance Agency for Low Income Housing Tax Credit funds.

Notices to competitors have been published. The Tax Exempt Review Committee has met to consider this application. No potential competitors appeared at the Tax Exempt Review meeting. This project meets our current policy as stated below.

Qualifying projects under the federal Low Income Housing Tax Credit (LIHTC) program will be considered for a 15 year PILOT according to the following:

- *City of Fargo must approve the LIHTC participation.*
- *PILOT payment schedule will be established based on a value of the project determined by using a gross rent multiplier (GRM) of 5.5 times the gross rents received from the project imposed by the low income credit program in the initial year.*
- *An annual inflation factor of 2% will be applied to the PILOT payment schedule.*

SUGGESTED MOTION:

Approval of a 15 year, payment in lieu of tax for City Flats, LLC for a low income housing project at 1329 5 Ave. N. according to the attached payment schedule.

Sincerely,

A handwritten signature in black ink that reads "Ben Hushka". The signature is written in a cursive style.

Ben Hushka
Tax Exempt Review Committee

Payment In Lieu of Property Tax
Payment Schedule

Pursuant to N.D.C.C. Chapter 40-57.1

PROJECT OPERATOR: City Flats, LLC

ASSUMPTIONS: **\$5,700,000** improvement value

Initial year payment based on tax on the value of \$1,600,000 determined at 5.5 times gross restricted rent under LIHTC program, less projected land tax.

Annual PILOT Growth = 2%

PAYMENT SCHEDULE:

<u>YEAR</u>	<u>IN LIEU PAYMENT</u>
1	\$ 17,919
2	\$ 18,278
3	\$ 18,643
4	\$ 19,016
5	\$ 19,396
6	\$ 19,784
7	\$ 20,180
8	\$ 20,583
9	\$ 20,995
10	\$ 21,415
11	\$ 21,843
12	\$ 22,280
13	\$ 22,726
14	\$ 23,180
15	\$ 23,644

****Note** - The applicant will pay property tax on the land in addition to these in lieu payments.

Application For Property Tax Incentives For New or Expanding Businesses

N.D.C.C. Chapter 40-57.1

Project Operator's Application To City of Fargo
City or County

RECEIVED

AUG 20 2019

FARGO ASSESSOR

File with the City Auditor for a project located within a city; County Auditor for locations outside of city limits.

A representative of each affected school district and township is included as a non-voting member in the negotiations and deliberation of this application.

This application is a public record

Identification Of Project Operator

1. Name of project operator of new or expanding business City Flats LLC

2. Address of project 1329 5th Avenue North
City Fargo County Cass

3. Mailing address of project operator 24 S. Brooke Street
City Fond du Lac State WI Zip 54935

4. Type of ownership of project
 Partnership Subchapter S corporation Individual proprietorship
 Corporation Cooperative Limited liability company

5. Federal Identification No. or Social Security No. application in process

6. North Dakota Sales and Use Tax Permit No. not applicable

7. If a corporation, specify the state and date of incorporation Not applicable

8. Name and title of individual to contact Erin Anderson
Mailing address 260 Wentworth Avenue E., Suite 130
City, State, Zip West St. Paul, MN 55118 Phone No. 612.791.0496

Project Operator's Application For Tax Incentives

9. Indicate the tax incentives applied for and terms. Be specific.

<input type="checkbox"/> Property Tax Exemption	<input checked="" type="checkbox"/> Payments In Lieu of Taxes
<u> </u> Number of years	<u>2021</u> Beginning year <u>2036</u> Ending year
<u> </u> Percent of exemption	<u> </u> Amount of annual payments (attach schedule if payments will vary)

10. Which of the following would better describe the project for which this application is being made:
 New business project Expansion of a existing business project

Description of Project Property

11. Legal description of project real property
Lot 1, Block 1, The Edge Addition, Fargo, ND

12. Will the project property be owned or leased by the project operator? Owned Leased

If the answer to 12 is leased, will the benefit of any incentive granted accrue to the project operator?
 Yes No

If the property will be leased, attach a copy of the lease or other agreement establishing the project operator's benefits.

13. Will the project be located in a new structure or an existing facility? New construction Existing facility

If existing facility, when was it constructed? _____

If new construction, complete the following:

a. Estimated date of commencement of construction of the project covered by this application September 2019

b. Description of project to be constructed including size, type and quality of construction
City Flats LLC will be a five-story, wood frame constructed apartment building with 42 units, first floor covered parking and surface parking. The site improvements will include significant landscaping and a playground. The apartments will be affordable to residents at 80 percent area income and lower and will be financed through the low-income housing tax credit program. The building will have a mix of 1, 2 and 3

c. Projected number of construction employees during the project construction 90

14. Approximate date of commencement of this project's operations September 2020

15. Estimated market value of the property used for this project:

a. Land \$ 358,200

b. Existing buildings and structures for which an exemption is claimed..... \$ _____

c. Newly constructed buildings and structures when completed \$ 5,700,000

d. Total \$ 5,700,000

e. Machinery and equipment \$ _____

16. Estimate taxable valuation of the property eligible for exemption by multiplying the market values by 5 percent:

a. Land (not eligible) 

b. Eligible existing buildings and structures \$ _____

c. Newly constructed buildings and structures when completed \$ 285,000

d. Total taxable valuation of property eligible for exemption (Add lines b and c) \$ 285,000

e. Enter the consolidated mill rate for the appropriate taxing district 288.60

f. Annual amount of the tax exemption (Line d multiplied by line e) \$ 82,251.00

Continuation Sheet to PILOT Application as information is cut off:

Question 13.b. Project description:

City Flats will be a five-story, wood frame constructed apartment building with 42 units, first floor covered parking and surface parking. The site improvements will include significant landscaping and a playground. The apartments will be affordable to residents at 80 percent area income and lower and will be financed through the low-income housing tax credit program. The building will have a mix of 1, 2- and 3-bedroom units.

Description of Project Business

Note: "project" means a newly established business or the expansion portion of an existing business. Do not include any established part of an existing business.

17. Type of business to be engaged in: Ag processing Manufacturing Retailing
 Wholesaling Warehousing Services

18. Describe in detail the activities to be engaged in by the project operator, including a description of any products to be manufactured, produced, assembled or stored (attach additional sheets if necessary).

The proposed use will be an affordable multifamily apartment building which will be operated by the applicant.

19. Indicate the type of machinery and equipment that will be installed

Not applicable

20. For the project only, indicate the projected annual revenue, expense, and net income (before tax) from either the new business or the expansion itself for each year of the requested exemption.

Year (12 mo. periods)	New/Expansion Project only	New/Expansion Project only	New/Expansion Project only	New/Expansion Project only	New/Expansion Project only
	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Annual revenue	<u>284,942</u>	<u>290641</u>	<u>296454</u>	<u>302383</u>	<u>308430</u>
Annual expense	<u>251,980</u>	<u>258,540</u>	<u>265,239</u>	<u>272,177</u>	<u>279,299</u>
Net income	<u>32,962</u>	<u>32,101</u>	<u>31,194</u>	<u>30,205</u>	<u>29,131</u>

21. Projected number and salary of persons to be employed by the project for the first five years:

Current positions & positions added the initial year of project

# Current Positions	New Positions Under \$13.00	New Positions \$13.01-\$15.00	New Positions \$15.01-\$20.00	New Positions \$20.01-\$28.00	New Positions \$28.01-\$35.00	New Positions Over \$35.00
0				2		

Year	(Before project)	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
No. of Employees	(1) _____	_____	_____	_____	_____	_____
	(2) <u>0</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>
Estimated payroll	(1) _____	_____	_____	_____	_____	_____
	(2) _____	<u>43,000</u>	<u>44,290</u>	<u>45,619</u>	<u>46,987</u>	<u>48,397</u>

(1) - full time
(2) - part time

Previous Business Activity

- 22. Is the project operator succeeding someone else in this or a similar business? Yes No
- 23. Has the project operator conducted this business at this or any other location either in or outside of the state?
 Yes No
- 24. Has the project operator or any officers of the project received any prior property tax incentives? Yes No

If the answer to 22, 23, or 24 is yes, give details including locations, dates, and name of former business (attach additional sheets if necessary).

Payment in Lieu of Taxes for Historic Apartments on 4th in Mandan, ND and The Edge Artist Flats in Fargo, ND

Business Competition

- 25. Is any similar business being conducted by other operators in the municipality? Yes No

If YES, give name and location of competing business or businesses

Other affordable housing LIHTC development in Fargo include Herald Square, Dakota Pioneer Center and Graver Inn.

Percentage of Gross Revenue Received Where Underlying Business Has ANY Local Competition _____ %

Property Tax Liability Disclosure Statement

- 26. Does the project operator own real property in North Dakota which has delinquent property tax levied against it? Yes No
- 27. Does the project operator own a greater than 50% interest in a business that has delinquent property tax levied against any of its North Dakota real property? Yes No

If the answer to 26 or 27 is Yes, list and explain

Use Only When Reapplying

- 28. The project operator is reapplying for property tax incentives for the following reason(s):
 - To present additional facts or circumstances which were not presented at the time of the original application
 - To request continuation of the present property tax incentives because the project has:
 - moved to a new location
 - had a change in project operation or additional capital investment of more than twenty percent
 - had a change in project operators
 - To request an additional annual exemption for the year of _____ on structures owned by a governmental entity and leased to the project operator. (See N.D.C.C. § 40-57.1-04.1)

Notice to Competitors of Hearing

Prior to the hearing, the applicant must present to the governing body of the county or city a copy of the affidavit of publication giving notice to competitors unless the municipality has otherwise determined there are no competitors.

I, Kristi Morgan, do hereby certify that the answers to the above questions and all of the information contained in this application, including attachments hereto, are true and correct to the best of my knowledge and belief and that no relevant fact pertaining to the ownership or operation of the project has been omitted.


Signature

Vice President
Title

8/20/19
Date

The Edge 2

PROFORMA ANALYSIS
CITY, STATE

79.76

INCOME	Unit Type	# Units	Rent Rate	2018 Limit	Annual	Avail. for Utility	Weighted Unit
30% County Median Income	One-Bedroom - Permanent Supportive Housing Trust Fund	3		468	-	468	3.00
	Two-Bedroom - Permanent Supportive Housing Trust Fund	4		560	-	-	
	Three-Bedroom - Permanent Supportive Housing Trust Fund	2		846	-	-	
	Two Bedroom	2	463	560	11,112	97	2.00
30.95%	Three Bedroom	2	537	646	12,888	109	2.58
	One Bedroom	1	541	622	-	81	0.00
	Two Bedroom	1	650	747	7,800	97	1.00
40% County Median Income	Three Bedroom	3	753	862	27,108	109	3.90
	One Bedroom	4	697	778	33,456	81	4.00
	Two Bedroom	2	795	933	19,080	138	2.560 1BR
9.52%	Three Bedroom	3	875	1,078	31,500	203	3.87 2BR
	One Bedroom	8	750	1,245	72,000	485	10
	Two Bedroom	4	850	1,484	40,800	644	5 1BR
21.43%	Three Bedroom	4	1,000	1,725	48,000	725	2BR
	Two Bedroom	4					3BR
38.1%	Three Bedroom	4					
	Two Bedroom	4					
Gross Rental	Total/Average	42	603		303,744		33.25
	100.00% Add: Misc	5	Unit		2,520		
	Add:		mo		-		
Net Rental Income					306,264		
	Less: Vacancy	7.00%			(21,438)		(12,992)
Effective Gross Income					284,826		205,074

EXPENSES							
Office/Advertising	340	Unit	14,280	Utility Allowance	1BR	2BR	3BR
Personnel (Site Manager and Maintenance)	1,024	Unit	43,000	Heat - Natural Gas	48	55	59
Utilities (Sewer/Water, Common Area, Trash)	857	Unit	39,000	Cooking - Electric	4	6	7
Property Taxes	1,958	Unit	82,251	Other Electric	11	14	16
Insurance	349	Unit	14,660	Air Conditioning			
Other: Support Services	571	Unit	20,000	Water Heating - Electric	17	22	27
Repairs & Maint	850	Unit	31,500	Ranges/Microwave	-	-	-
Property Mgmt	7%		19,938	Refrigerator	0	-	-
Accounting/Audit	130.95		5,500	Total	81	97	109
NDHFA Compliance	35	Unit	2,025				
Replacement Reserve	400	Unit	16,800				618
Total Operating Expenses	573.32	Unit	288,954				547
Expense Ratio			101%				
Expense Per Unit	573	PUPM	6,880				
NET OPERATING INCOME			(4,128)				
Debt Service (Hard)			27,358				
Debt Coverage			1,20000			(405)	
NOI Available for Debt Service			27,358.34				

First Mortgage:	
Rate:	1.000%
OCR:	1.2000
Amort:	25
Constant:	4.5225%
Annual Debt Service:	27,358
Mortgage Amount:	604,943
Loan to Cost:	6%

955,819

SOFT LOAN:	
Rate:	3.000%
DCR (Combined):	(0.1509)
Amort:	21
Constant:	6.4241%
Annual Debt Service:	-
Mortgage Amount:	-
Loan to Cost:	0%

SOURCES AND USES OF FUNDS

Sources of Funds

Equity			6,941,308
First Mortgage	Affordable Flexpace		604,943
Other: Soft debt	Housing Incentive Fund	4.2%	400,000
Other: City (TIF)	SOFT		-
Other: Housing Trust Fund	SOFT - 30 year deferred	0.00%	1,250,000
Other:			
Total Third Party Sources			9,196,248
FUNDING GAP		33.56%	260,391
TOTAL			9,456,639

	776,000
33.56%	(260,391)
	515,609
DFR	#DIV/0!

TOTAL USES	9,456,639
SURPLUS/DEFICIT	-

8,206,639
0.867817732

Use of Funds

Amount	Unit	Cost	9% Basis	4% Basis	Fed Hist	State Hist
A. Land & Buildings						
Land	/unit	592,467	-	-	-	-
House & Lot	0%	-	-	-	-	-
Building	/unit	-	-	-	-	-
Subtotal		592,467	-	-	-	-
B. Site Work						
Environmental Remediation- In soft costs	/unit	-	-	-	-	-
Off-site improvements	/unit	50,000	-	-	-	-
Landscaping	/unit	100,000	-	-	-	-
Subtotal		150,000	-	-	-	-
C. Rehab & New Construction						
Rehab Construction Costs	/unit	-	-	-	-	-
New Construction	132,000.00	5,544,000	5,544,000	-	-	-
Contingency		-	-	-	-	-
General Requirements	5.30%	301,782	301,782	301,782	-	-
Overhead	2.00%	113,880	113,880	113,880	-	-
Contractor P & L	5.50%	313,170	313,170	313,170	-	-
Subtotal	728,832.00	149,353	6,272,832	6,272,832	-	-
Construction Contract Amount including Contingency		152,924.57	6,422,832	-	-	-
Land & Hard Cost Subtotal		167,031	7,015,299	6,272,832	-	-
D. Architectural						
Architect - Design		175,000	175,000	-	-	142,778.00
Architect - Supervision	3.77%	4,861	30,000	30,000	-	152,925
Surveying		12,000	12,000	12,000	-	10,147
Engineering		25,000	25,000	25,000	-	5,956
Geotech		15,000	15,000	15,000	-	-
Plan Review		2,500	2,500	2,500	-	65,818
Third Party Fees		-	-	-	-	77,460
Subtotal		259,500	259,500	-	-	-

Keep Contingenc

5,853,958
588,874
9.7%
142,778.00
152,925
10,147
5,956
65,818
77,460

	Amount	Unit	Cost	3% Basis	4% Basis		
E. Interim Costs							
Contingency		5.0%	321,142	321,142			
Construction Insurance			24,073	24,073			
Construction Period Interest			225,000	200,000			
Construction Loan Fee			80,000	80,000			
Real Estate Taxes			8,000	8,000			
Special Inspections			20,000	20,000			
Subtotal			658,215	633,215			CDC pays Specia
F. Financing Fees & Exp.							
Permanent Loan Fee			8,049	-			
Construction Inspections			10,000	10,000			
Title & Recording	0.0030		17,000	-			
Other: Syndication Fees			25,000	-			
Subtotal			58,049	10,000			
G. Soft Costs							
Appraisal			8,000	8,000			
Market Study			6,500	6,500			
Environmental Assessment & Mitigation			80,000	80,000			CDC pays fret \$6
NDHFA Fees	1,889	Unit	78,500	-			
Rent-up Marketing			50,000	-			
Cost Certification			15,000	15,000			
Misc- balancing with application			-	-			
Furniture			30,000	30,000			
Green Communities			23,420	23,420			
Legal			80,000	55,000			
Subtotal			331,420	197,920			
H. 221(d)(4) Costs							
SJC Fees			-	-			
HUD MIP			-	-			
HUD Exam Fee			-	-			
HUD Inspection Fee			-	-			
Subtotal			-	-			
I. Developer's Fee							
Developer's Overhead			-	-			
Developer's Profit			776,000	776,000			
Other: Consultant -			-	-			
Subtotal			776,000	776,000			
J. Development Reserves							
Operating Reserve		Unit	158,158	-			(28,580)
Housing Trust Fund Reserve			200,000	-			
Subtotal			358,158	-			
Intermediary Cost Total			2,441,340	1,876,835	0		
TOTAL DEVELOPMENT COST		225.158	9,456,638	8,149,487	0	(200,000)	-
Eligible Basis:				8,149,487	0	(200,000)	(200,000)
% Low-Income Units (Commercial Space Taken Out of Basis)				1.00			
Minus Housing Trust Fund				8,149,486.60			
Minus Developer Fee				7,373,467			
State Designated Basis Boost (30% Units)				130.05%	100.0%	100.0%	100.0%
Bonus Basis				9,585,507	0	(200,000)	(200,000)
Add Back in Developer Fee				10,381,507			
Rate			932.936	9.000%	3.100%	20.000%	0.000%
Annual Credit Amount		23,459	780,000	\$ 780,000	\$ 0	\$ 0	\$ 0
Price				\$ 0.8900	\$ 0.870	\$ 0.890	\$ 0.920
Equity Proceeds			8,941,306	8,941,306	0	-	-

PROJECT FINANCIAL ANALYSIS
15 YEAR PRO FORMA

FOR

Rate:	1.000%
DCR:	1.200
Amort:	25
Constant:	4.5225%
Annual Debt Service:	27,358
Mortgage Amount:	604,943

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	
Rental Income from Units																
Average Annual % Inflation																
Average Monthly Rental Rates																
Housing Trust Fund																
Two Bedroom	8	11,334.24	11,560.92	11,792.14	12,027.99	12,268.55	12,513.92	12,764.20	13,019.48	13,279.87	13,545.47	13,816.38	14,092.70	14,374.56	14,662.05	
Three Bedroom	2	12,886	13,145.76	13,408.68	13,676.85	13,950.39	14,229.39	14,513.98	14,804.26	15,100.35	15,402.35	15,710.40	16,024.61	16,345.10	17,005.44	
One Bedroom	4	697	33,456	34,125.12	34,807.62	35,503.77	36,213.85	36,938.13	37,676.89	38,430.04	39,198.04	40,762.68	42,430.30	44,144.48	44,144.48	
Two Bedroom	2	795	19,080	19,451.80	19,850.63	20,247.85	20,652.81	21,065.66	21,487.18	21,916.92	22,355.26	22,802.37	24,198.05	24,662.01	25,175.65	
Three Bedroom	3	875	31,500	32,177.3	33,428	34,097	35,474	36,978	38,398	37,645	38,398	39,166	39,950	40,749	41,564	
One Bedroom	-	782	-	-	-	-	-	-	-	-	-	-	-	-	-	
Two Bedroom	-	850	-	-	-	-	-	-	-	-	-	-	-	-	-	
Three Bedroom	-	975	-	-	-	-	-	-	-	-	-	-	-	-	-	
One Bedroom	6	72,000	73,440	74,909	76,407	77,935	79,494	82,705	84,359	86,047	87,768	89,523	91,313	93,140	95,002	
Two Bedroom	4	40,800	41,616	42,448	43,297	44,163	45,046	46,866	47,804	48,760	49,735	50,730	51,744	52,779	53,835	
Three Bedroom	1,000	48,000	48,960	49,939	50,938	51,957	52,996	55,137	56,240	57,364	58,512	59,682	60,876	62,093	63,335	
Total Gross Rent Revenue		303,744	309,819	316,015	322,336	328,782	335,358	348,906	355,885	363,002	370,262	377,867	385,221	392,925	400,784	
Commercial Space - Daycare	5	2,460	2,509	2,559	2,611	2,663	2,716	2,826	2,882	2,940	2,999	3,059	3,120	3,182	3,246	
Laundry & Garage Income	7%	(21,262)	(21,637)	(22,121)	(22,563)	(23,015)	(23,475)	(24,423)	(24,912)	(25,410)	(25,919)	(26,437)	(26,965)	(27,505)	(28,055)	
Less Vacancy		294,942	290,641	286,454	302,363	308,430	314,599	320,891	327,309	333,855	340,532	347,343	354,289	361,375	368,603	375,975
Total Income																
Operating Expenses and Real Estate Taxes																
Annual % escalation																
Office/Leasing	340	14,280	14,708	15,150	15,604	16,072	16,554	17,051	18,089	18,632	19,191	19,767	20,360	20,971	21,600	
Personnel (Site Manager and Maintenance)	1,024	43,000	44,290	45,619	46,987	48,387	49,849	51,344	52,885	54,471	56,105	57,788	59,522	61,308	63,147	
Utilities (Sewer Water, Common Area, Trash)	657	39,000	40,170	41,375	42,616	43,895	45,212	46,568	48,040	49,540	51,066	52,619	54,200	55,808	57,447	
Property Taxes	1,958	82,251	83,896	85,541	87,219	88,930	90,674	92,453	94,266	96,115	98,001	99,923	101,883	103,881	105,919	
Property Tax Exemption		(64,332)	(65,618.64)	(66,931.01)	(68,269.63)	(69,635.03)	(71,027.73)	(72,448.28)	(73,897.25)	(75,375.19)	(76,882.70)	(78,420.35)	(79,988.76)	(81,588.53)	(83,220.30)	
Insurance	349	14,660	15,100	15,553	16,019	16,500	16,995	17,505	18,030	18,571	19,128	19,702	20,293	20,902	21,529	
Other Support Services	571	20,000	20,600	21,218	21,855	22,510	23,185	23,881	24,597	25,335	26,095	26,878	27,685	28,515	29,371	
Repairs & Maint	850	31,500	32,445	33,418	34,421	35,454	36,517	38,741	39,903	41,100	42,333	43,603	44,911	46,259	47,647	
Property Mgmt	0	19,938	20,538	21,152	21,787	22,440	23,113	23,807	24,521	25,257	26,014	26,795	27,599	28,427	29,279	
Accounting/Audit	131	5,000	5,665	6,010	6,190	6,376	6,567	6,764	6,967	7,176	7,392	7,613	7,839	8,077	8,319	
NDHFA Compliance	35	2,062	2,088	2,148	2,213	2,279	2,348	2,490	2,565	2,642	2,721	2,803	2,887	2,974	3,063	
Replacement Reserve	400	16,800	17,304	17,823	18,358	18,909	19,476	20,060	21,282	21,920	22,578	23,255	23,953	24,671	25,412	
Total Operating Expenses	6,516	224,622	231,161	237,901	244,819	251,941	259,272	266,818	274,587	282,525	289,294	308,019	317,002	326,249	334,145	
Net Operating Income		60,320	59,460	59,553	57,564	56,490	55,327	54,072	51,270	49,714	48,049	46,270	44,374	42,354	40,280	
Total Debt Service Payment by Partnership		27,358	27,358	27,358	27,358	27,358	27,358	27,358	27,358	27,358	27,358	27,358	27,358	27,358	27,358	
Cash Flow		32,962	32,101	31,194	30,205	29,131	27,969	26,714	25,363	23,912	22,355	20,890	19,415	17,915	16,396	
Accumulated Cash Flow		32,962	65,063	96,257	126,462	155,593	183,658	210,677	236,650	261,581	285,471	308,319	329,124	347,885	364,591	
Debt Service Coverage - Hard Only		2.20	2.17	2.14	2.10	2.06	2.02	1.98	1.93	1.87	1.82	1.76	1.69	1.62	1.55	

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ASSESSMENT DEPARTMENT

Handwritten initials "ZAK" inside a hand-drawn circle.

September 17, 2019

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Attached is a copy of an application made by Computer Telephony Innovations dba Voxtelesys for a property tax exemption according to N.D.C.C. Chapter 40-57.1. This application is for the purchase and remodeling of an existing building at 509 25th Ave. N. for an expansion to their operation where the applicant will operate a telecommunications and software development company that manufactures telecommunications switching and billing software.

Notices to competitors have been published and the Tax Exempt Review Committee has met to consider this application. The application contains information regarding the projected value of the expansion and the nature of the jobs to be created.

The committee feels that this request does meet the necessary criteria to be eligible for this exemption for the project improvements.

SUGGESTED MOTION:

Approval of a 5 year, 100% exemption on the project improvements for the expansion of Voxtelesys at 509 25th Ave. N.

Sincerely,

Handwritten signature of Ben Hushka in black ink.

Ben Hushka

Tax Exempt Review Committee

RECEIVED

Application For Property Tax Incentives For New or Expanding Businesses

SEP 14 2019

N.D.C.C. Chapter 40-57.1

Project Operator's Application To Fargo City or County

FARGO ASSESSOR

File with the City Auditor for a project located within a city; County Auditor for locations outside of city limits.

A representative of each affected school district and township is included as a non-voting member in the negotiations and deliberation of this application.

This application is a public record

Identification Of Project Operator

1. Name of project operator of new or expanding business Computer Telephony Innovations dba Voxtel... 2. Address of project 509 25th AVE N City Fargo County Cass 3. Mailing address of project operator 1801 23rd Ave N City Fargo State ND Zip 58102 4. Type of ownership of project [X] Subchapter S corporation [] Partnership [] Corporation [] Cooperative [] Individual proprietorship [] Limited liability company 5. Federal Identification No. or Social Security No. 47-0840510 6. North Dakota Sales and Use Tax Permit No. 31062500 7. If a corporation, specify the state and date of incorporation North Dakota 8. Name and title of individual to contact Bruce Burke, Owner/Manager Mailing address 1801 23rd Ave N City, State, Zip Fargo, ND 58102 Phone No. 7012648100

Project Operator's Application For Tax Incentives

9. Indicate the tax incentives applied for and terms. Be specific. [X] Property Tax Exemption [] Payments In Lieu of Taxes 5 Number of years Beginning year Ending year 100% Percent of exemption Amount of annual payments (attach schedule if payments will vary) 10. Which of the following would better describe the project for which this application is being made: [] New business project [X] Expansion of a existing business project

Description of Project Business

Note: "project" means a newly established business or the expansion portion of an existing business. Do not include any established part of an existing business.

17. Type of business to be engaged in: Ag processing Manufacturing Retailing
 Wholesaling Warehousing Services
18. Describe in detail the activities to be engaged in by the project operator, including a description of any products to be manufactured, produced, assembled or stored (attach additional sheets if necessary).

CTI is a telecommunications service and a software development company. In 2018 we partnered with the ND Center of Excellence and NDSU to work on a joint research project. Voxtelays & the ND Center of Excellence have hired, through NDSU, five software engineers and adding a sixth engineer this month (4 - full-time and 2 - part-time). The grant for this project runs out on May 31, 2020 at which time five of the six NDSU engineers will become employees of Voxtelays. The project is to combine the current Voxtelays custom services and make them available through mobile apps.

19. Indicate the type of machinery and equipment that will be installed
Computer networking servers and a software development lab. We have outgrown of current office and are in desperate need of additional space. We found a building to purchase that will fit our current and long term plans perfectly. The finished space will meet our current requirement with additional room to add more office space as needed.

20. For the project only, indicate the projected annual revenue, expense, and net income (before tax) from either the new business or the expansion itself for each year of the requested exemption.

Year (12 mo. periods)	New/Expansion Project only	New/Expansion Project only	New/Expansion Project only	New/Expansion Project only	New/Expansion Project only
	Year 1	Year 2	Year 3	Year 4	Year 5
Annual revenue	<u>2,450,000</u>	<u>2,700,000</u>	<u>3,000,000</u>	<u>3,500,000</u>	<u>4,000,000</u>
Annual expense	<u>2,175,000</u>	<u>2,376,000</u>	<u>2,610,000</u>	<u>3,010,000</u>	<u>3,360,000</u>
Net income	<u>275,000</u>	<u>324,000</u>	<u>390,000</u>	<u>490,000</u>	<u>640,000</u>

21. Projected number and salary of persons to be employed by the project for the first five years:

Current positions & positions added the initial year of project

# Current Positions	New Positions Under \$13.00	New Positions \$13.01-\$15.00	New Positions \$15.01-\$20.00	New Positions \$20.01-\$28.00	New Positions \$28.01-\$35.00	New Positions Over \$35.00
11.5			1	1	1	5

Year	(Before project)	Year 1	Year 2	Year 3	Year 4	Year 5
No. of Employees	(1) <u>11</u>	<u>19</u>	<u>22</u>	<u>27</u>	<u>32</u>	<u>40</u>
	(2) _____	_____	_____	_____	_____	_____
Estimated payroll	(1) <u>770,000</u>	<u>140000C</u>	<u>155000C</u>	<u>183000C</u>	<u>210500C</u>	<u>250000C</u>
	(2) _____	_____	_____	_____	_____	_____

(1) - full time
 (2) - part time

Description of Project Property

11. Legal description of project real property
509 25th Ave N, Fargo, ND 58102

W 61 FT OF 14 & ALL OF 15, Block 4, Addition: Oral A Holm

12. Will the project property be owned or leased by the project operator? Owned Leased

If the answer to 12 is leased, will the benefit of any incentive granted accrue to the project operator?

Yes No

If the property will be leased, attach a copy of the lease or other agreement establishing the project operator's benefits.

13. Will the project be located in a new structure or an existing facility? New construction Existing facility

If existing facility, when was it constructed? 1965

If new construction, complete the following:

a. Estimated date of commencement of construction of the project covered by this application Nov. 1, 2019

b. Description of project to be constructed including size, type and quality of construction
Purchase and remodel 3946 sq ft of existing offices and convert into a space suitable for software development, software testing, marketing and customer support.

c. Projected number of construction employees during the project construction 3 - 5

14. Approximate date of commencement of this project's operations December 16, 2019

15. Estimated market value of the property used for this project:

a. Land..... \$ 57,000

b. Existing buildings and structures for which an exemption is claimed..... \$ 261,000

c. Newly constructed buildings and structures when completed \$ 77,000

d. Total \$ 395,000

e. Machinery and equipment \$ 0

16. Estimate taxable valuation of the property eligible for exemption by multiplying the market values by 5 percent:

a. Land (not eligible) [REDACTED]

b. Eligible existing buildings and structures \$ 13,050

c. Newly constructed buildings and structures when completed..... \$ 3,850

d. Total taxable valuation of property eligible for exemption (Add lines b and c)..... \$ 16,900

e. Enter the consolidated mill rate for the appropriate taxing district 288.60

f. Annual amount of the tax exemption (Line d multiplied by line e) \$ 4,877.34

Previous Business Activity

22. Is the project operator succeeding someone else in this or a similar business? Yes No

23. Has the project operator conducted this business at this or any other location either in or outside of the state?
 Yes No

24. Has the project operator or any officers of the project received any prior property tax incentives? Yes No
 If the answer to 22, 23, or 24 is yes, give details including locations, dates, and name of former business (attach additional sheets if necessary).
We moved our office and State of corporation from Nebraska to North Dakota on 12/31/2015 under the the same name.

Business Competition

25. Is any similar business being conducted by other operators in the municipality? Yes No

If YES, give name and location of competing business or businesses
NO: In regards to software development, we are not aware of any companies in Fargo developing telecommunications switching and billing software.

Percentage of Gross Revenue Received Where Underlying Business Has ANY Local Competition _____ %

Property Tax Liability Disclosure Statement

26. Does the project operator own real property in North Dakota which has delinquent property tax levied against it? Yes No

27. Does the project operator own a greater than 50% interest in a business that has delinquent property tax levied against any of its North Dakota real property? Yes No

If the answer to 26 or 27 is Yes, list and explain

Use Only When Reapplying

28. The project operator is reapplying for property tax incentives for the following reason(s):

- To present additional facts or circumstances which were not presented at the time of the original application
- To request continuation of the present property tax incentives because the project has:
 - moved to a new location
 - had a change in project operation or additional capital investment of more than twenty percent
 - had a change in project operators
- To request an additional annual exemption for the year of _____ on structures owned by a governmental entity and leased to the project operator. (See N.D.C.C. § 40-57.1-04.1)

Notice to Competitors of Hearing

Prior to the hearing, the applicant must present to the governing body of the county or city a copy of the affidavit of publication giving notice to competitors unless the municipality has otherwise determined there are no competitors.

I, Bruce Burke, do hereby certify that the answers to the above questions and all of the information contained in this application, including attachments hereto, are true and correct to the best of my knowledge and belief and that no relevant fact pertaining to the ownership or operation of the project has been omitted.

Bruce Burke Signature Owner/Manager Title 9-14-2019 Date

Voxtelesys Software Development Services

Examples of custom designed telecommunications applications and services:

Product: Emergency Alert Notification Platform

Description: This started out as a custom design for a business in St. Louis, MO and has developed into a Voxtelesys marketable API. The MO business provides emergency notification services for municipalities and counties across the country. We developed a multi-media platform with SMS messaging and voice notifications for weather alerts and disaster notifications.

Customer type and location: St. Louis, MO

Product: GEO-Routing Program

Description: Custom routing and reporting software for a media marketing company designed to route calls based on the originating caller location, as apposed to the dialed number. Our client manages inbound marketing campaigns for their customers across the nation. The application is configurable to route calls to multiple call centers base on geographical origination, time-of-day and capacity limitations. This design has proven to work well for insurance providers that have different policies for each State need to respond accordingly based on the callers location.

Customer type and location: Marketing company in CA. & Insurance companies in multiple States.

Product: Cell Number Scrubbing (CNI)

Description: The FCC has issued a TCPA compliance policy to businesses making it illegal to machine dial cell phones. Voxtelesy developed an application for call centers to identify and block cell phone numbers from their list of numbers with a desktop application or we can block cell numbers on the fly while they are dialing.

Customer type and location: Call Centers across US and International

Product: Disaster Recovery/Advanced Fail-over Routing

Description: This feature is designed for those companies where it is mission critical that they do not miss a single phone call. We created an application that will allow multiple options to connect calls in the event of an Internet outage or disaster situation. If the normal connection path is broken, our app will attempt a second IP, route to another phone line or route to a cell phone. Customers can configure any or all of the options listed.

Customer type and location: Any businesses in US & International

Product: Custom Inbound Voice Response (IVR)

Description: This is a product we developed for another emergency alert company in CA that manages alerts for large utilities on both coasts and the Caribbean. We delivered a high-capacity IVR platform that will handle large spikes of inbound calls during these emergency events.

Customer type and location: Emergency Messaging business in CA

Exemption Evaluation Calculator 2019				101.5	
CTI dba Voxtelaysys				Points	
Project Type Code (Ctrl-C to view)			1	38.0	
Current Number Of Employees			11.5		
Hourly Salary Without Benefits		# Jobs			
Under \$13.00		0			
\$13.01-\$15.00		0			
\$15.01-\$20.00		1			
\$20.01-\$28.00		1	Pts. For # Jobs->	20.0	
\$28.01-\$35.00		1	Pts. For \$ Jobs->	8.5	
Over \$35.00		5			
TOTAL # OF JOBS CREATED			8		
% GI w/ Local Competition (not downtown)			0%	25.0	
Value of Proposed Buildings			\$ 535,000	10.0	
Downtown Location (Y/N)			N	0.0	
Exemption Needed (Y/N)			N		
Startup Firm (Y/N)			N	0.0	
Has Const Started or Has Bldg Been Occupied If Existing (Y/N)			N	0.0	
Number of Years (Exemption)			5		
Building Age (if substantial renovation)			0	0.0	
RECOMMENDATION IS TO				APPROVE	
Description			Manufacturing		
Estimated New Annual Payroll			\$527,280		
Estimated Annual Real Estate Tax			\$12,499		
Estimated PV of Exemption			\$54,114		
Payroll / PV of Exemption			9.7		
Property Value / # of Jobs			\$ 66,875		

Code **Description**

- 1 Manufacturing, remanufacturing or processing of raw material or base product
- 2 Provide products or support services to local original equipment manufacturers
- 3 Primary sector packaging or distribution of a product not manufactured locally
- 4 Packaging or distribution of a product not manufactured locally
- 5 Service industry WITH NO LOCAL COMPETITION that serves a support function of which at least 70% of service is provided outside of a 250 mile radius
- 6 Housing Units under management of the FHRA built solely for low income residents
- 7 LIHTC projects built for low income residents and constructed to specific design specs
- 8 Housing Units built in the Downtown Area Plan
- 9 Projects engaging in new technology research
- 10 Common service (accountants, marketing, developers, legal, etc)
- 11 Facilities that consist of storage-only warehousing.
- 12 Retail projects
- 13 Hotels & motels
- 14 Health Care
- 15 Education

25

Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

September 19, 2019

Board of City Commissioners
City Hall
225 4th Street North
Fargo, ND 58102

RE: Proposed enacting and amending ordinances related to e-cigarettes and e-liquids and restricting the sale of e-liquids to minors.

Dear Commissioners:

Presented for your consideration today is the culmination of several meetings and discussions following your directive to Larry Anenson, Fargo Cass Public Health, to review and consider ordinance revisions in light of recent State Legislation, and a Board of Health discussion regarding the increase of vaping and smoking by minors.

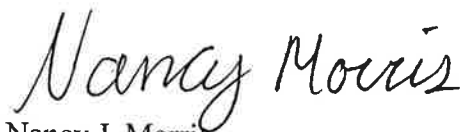
Fargo Cass Public Health is proposing a number of ordinance revisions, and the enactment of a new ordinance in conformance with recent state legislation. Enclosed are ordinances recognizing "vaping" in city ordinances and addressing both the sale and procurement of vaping products, clarifying that minors between the ages of 14 and 18 who are determined to be selling, purchasing or using these prohibited products are in violation of law, are subject to a \$25 non-criminal fee and must attend a tobacco education program. There is no distinction in the educational and cessation program provided by FCPH, eliminating the need for the additional program language. At your next city commission meeting, we will be presenting a new ordinance that will essentially parrot state legislation by prohibiting unauthorized sale of flavored e-liquids to minors and establishing a penalties for violation, with escalated penalties for repeated violations. With your permission, when we submit this new ordinance to you, we will ask that you waive the requirement of receipt and filing one week before first reading.

SUGGESTED MOTION: I move to receive and file the following Ordinances Amending Section 10-0103, Section 10-0105 and Section 1-0305 of the Fargo Municipal Code Relating to the Sale of Tobacco and to place the ordinances on for first reading at the next regularly-scheduled city commission meeting.



Please feel free to contact me if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Nancy Morris". The signature is written in a cursive, flowing style.

Nancy J. Morris
Assistant City Attorney

NJM/al
Enclosures

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 AN ORDINANCE AMENDING SECTION 10-0103 OF ARTICLE 10-01 OF CHAPTER 10
2 RELATING TO THE SALE OF TOBACCO, SALE OF TOBACCO TO MINORS AND USE
3 AND POSSESSION BY MINORS PROHIBITED, AND
4 SALE OF FLAVORED E-LIQUID TO MINORS PROHIBITED

5 WHEREAS, the electorate of the city of Fargo has adopted a home rule charter in
6 accordance with Chapter 40-05.1 of the North Dakota Code; and,

7 WHEREAS, Section 40-05.1-06 of the North Dakota Century Code provides that the City
8 shall have the right to implement home rule powers by ordinance; and,

9 WHEREAS, Section 40-05.1-05 of the North Dakota Century Code provides that said
10 home rule charter and any ordinances made pursuant thereto shall supersede state laws in conflict
11 therewith and shall be liberally construed for such purposes; and,

12 WHEREAS, the Board of City Commissioners deems it necessary and appropriate to
13 implement such authority by the adoption of this ordinance;

14 NOW, THEREFORE,

15 Be It Ordained by the Board of City Commissioners of the City of Fargo:

16 Section 1. Amendment.

17 Section 10-0103(B) of Article 10-01 of Chapter 10 of the Fargo Municipal Code is
18 hereby amended to read as follows:

- 19
- 20 B. No person shall sell or furnish to a minor, or procure for a minor, cigarettes,
21 including clove cigarettes, cigarette papers, cigars, e-cigarettes, snuff, or tobacco
22 products in any other form in which it may be utilized for smoking, vaping, or
23 chewing. As used in this section, "sell" includes dispensing from a vending machine

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 under the control of the vendor. It shall be a defense to this subsection if the person
2 furnishing tobacco to a minor did so as part of a cultural or religious practice;
3 provided, however, that in no event shall any sale or other exchange for value be
4 lawful. A person in violation of this subsection shall be guilty of an infraction.

5 Section 2. Amendment.

6 Section 10-0103(C) of Article 10-01 of Chapter 10 of the Fargo Municipal Code is
7 hereby amended to read as follows:

8 C. No person under the age of 18 shall sell, possess, purchase, attempt to purchase,
9 smoke, or use cigarettes, including clove cigarettes, cigars, cigarette papers, e-
10 cigarettes, snuff, or tobacco products in any other form in which it may be utilized
11 for smoking, vaping, or chewing.

12 Section 3. Amendment.

13 Section 10-0103(C)(4) of Article 10-01 of Chapter 10 of the Fargo Municipal Code is
14 hereby amended to read as follows:

15 4. Non-criminal violation. Minors fourteen (14) years of age or older found to have
16 violated subsection (B) or (C), above, must pay a fee of \$25 and must attend and
17 complete within sixty (60) days of the date of offense a tobacco education
18 program approved by the Fargo Municipal Court. ~~Minors fourteen (14) years of
19 age or older found to have violated subsection (B), above, three times within any
20 twelve consecutive month period may be ordered by the court to attend a tobacco
21 cessation program instead of a tobacco education program.~~

22 Section 4. Penalty.

23 A person who willfully violates Section 10-0103(B) and Section 10-0103(C) of this
Ordinance is guilty of an infraction. Every person, firm or corporation violating an ordinance which
is punishable as an infraction shall be punished by a fine not to exceed \$1,000; the court to have

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

power to suspend said sentence and to revoke the suspension thereof. A person who willfully
violates Section 10-0103(C)(4) of this Ordinance is guilty of a non-criminal offense carrying a fee
of \$25.

Section 5. Effective Date.

This ordinance shall be in full force and effect from and after its passage, approval and
publication.

Timothy J. Mahoney, Mayor

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE ENACTING SECTION 10-0105 OF ARTICLE 10-01 OF CHAPTER 10,
RELATING TO THE SALE OF FLAVORED E-LIQUID TO MINORS PROHIBITED

1
2 WHEREAS, the electorate of the city of Fargo has adopted a home rule charter in
3 accordance with Chapter 40-05.1 of the North Dakota Code; and,

4 WHEREAS, Section 40-05.1-06 of the North Dakota Century Code provides that the City
5 shall have the right to implement home rule powers by ordinance; and,

6 WHEREAS, Section 40-05.1-05 of the North Dakota Century Code provides that said
7 home rule charter and any ordinances made pursuant thereto shall supersede state laws in conflict
8 therewith and shall be liberally construed for such purposes; and,

9
10 WHEREAS, the Board of City Commissioners deems it necessary and appropriate to
11 implement such authority by the adoption of this ordinance;

12 NOW, THEREFORE,

13 Be It Ordained by the Board of City Commissioners of the City of Fargo:

14 Section 1. Enactment.

15 Section 10-0105 of Article 10-01 of Chapter 10 of the Fargo Municipal Code is hereby
16 enacted as follows:

17 10-0105. – Sale of flavored e-liquids to minors prohibited.

- 18
- 19 1. No person shall sell, offer for sale, or distribute in this city any flavored e-liquid
20 or electronic smoking device containing flavored e-liquid to a minor.
 - 21 2. “E-liquids” include the solution, liquid, or flavor agent in electronic cigarettes,
22 which are vaporized. “E-liquids” may or may not include nicotine.
- 23

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

- 3. A person that violates subsection 1 and is not a manufacturer is subject to a fine of five hundred dollars (\$500) for each individual package of flavored e-liquid product or electronic smoking device containing flavored e-liquid sold or offered for sale.
- 4. A person in violation of this subsection shall be guilty of an infraction and shall be fined \$500.

Section 2. Penalty.

A person who willfully violates this ordinance is guilty of an infraction. Every person, firm or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed \$1,000; the court to have power to suspend said sentence and to revoke the suspension thereof.

Section 3. Effective Date.

This ordinance shall be in full force and effect from and after its passage, approval and publication.

Timothy J. Mahoney, Mayor

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 AN ORDINANCE AMENDING SECTION 1-0305(C)(3) OF ARTICLE 1-03 OF
2 CHAPTER 1 OF THE FARGO MUNICIPAL CODE RELATING TO
3 CLASSIFICATION OF ORDINANCE VIOLATIONS

4 WHEREAS, the electorate of the city of Fargo has adopted a home rule charter in
5 accordance with Chapter 40-05.1 of the North Dakota Code; and,

6 WHEREAS, Section 40-05.1-06 of the North Dakota Century Code provides that the City
7 shall have the right to implement home rule powers by ordinance; and,

8 WHEREAS, Section 40-05.1-05 of the North Dakota Century Code provides that said
9 home rule charter and any ordinances made pursuant thereto shall supersede state laws in conflict
10 therewith and shall be liberally construed for such purposes; and,

11 WHEREAS, the Board of City Commissioners deems it necessary and appropriate to
12 implement such authority by the adoption of this ordinance;

13 NOW, THEREFORE,

14 Be It Ordained by the Board of City Commissioners of the City of Fargo:

15 Section 1. Amendment.

16 Section 1-0305(C)(3) of Article 1-03 of Chapter 1 of the Fargo Municipal Code is hereby
17 amended to read as follows:
18

- 19 3. For a violation of the following ordinance, a fee of \$25.00.
20 Section 8-0931 (child restraint devices required), section 10-0103(BC) (tobacco
21 possession by minors prohibited).
22
23

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 2. Effective Date.

This ordinance shall be in full force and effect from and after its passage and approval.

Timothy J. Mahoney, Mayor

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

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Dr. Timothy J. Mahoney, Mayor

Fargo City Hall
200 3rd Street North
Fargo, ND 58102

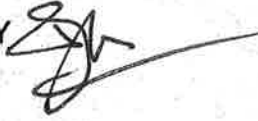
Phone 701.241.1310 | Fax: 701.476.4136

TMahoney@FargoND.gov

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MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: MAYOR TIMOTHY J. MAHONEY 

DATE: SEPTEMBER 10, 2019

SUBJECT: APPOINTMENTS TO THE HOUSING AND REDEVELOPMENT AUTHORITY

The terms of Michael Leier and Tonna Horsley on the Housing and Redevelopment Authority expire on September 30, 2019. Both Mr. Leier and Ms. Horsley are willing to serve another term and I am, therefore, recommending their reappointment.

Your favorable consideration of this recommendation will be greatly appreciated.

RECOMMENDED MOTION: To approve the reappointment of Michael Leier and Tonna Horsley to the Housing and Redevelopment Authority for three-year terms ending September 30, 2022.

mmappt19hra



Dr. Timothy J. Mahoney, Mayor

Fargo City Hall
200 3rd Street North
Fargo, ND 58102

Phone 701.241.1310 | Fax: 701.476.4136

TMahoney@FargoND.gov

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MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: MAYOR TIMOTHY J. MAHONEY

DATE: SEPTEMBER 17, 2019

SUBJECT: APPOINTMENT TO THE METROPOLITAN COUNCIL OF GOVERNMENTS POLICY BOARD

With the resignation of Shara Fischer from the Planning Commission, a vacancy exists on the Metropolitan Council of Governments Policy Board. Planning Director Nicole Crutchfield has recommended the appointment of Maranda Tasa to fill the vacancy.

Your favorable consideration of this recommendation will be greatly appreciated.

RECOMMENDED MOTION: Approve the appointment of Maranda Tasa to the Metropolitan Council of Governments Policy Board.

mmappt19cog