

FARGO PLANNING COMMISSION AGENDA  
Tuesday, February 5, 2019 at 3:00 p.m.

- A: Approve Order of Agenda
- B: Minutes: Regular Meeting of January 3, 2019
- C: Brown Bag Luncheon - Wednesday, February 20, 2019
- D: Public Hearing Items:
1. Continued hearing on an application requesting an Institutional Master Plan within a portion of the boundaries of the pending **NSC Addition** on the unplatted portion of land in the Northwest Quarter and the Northwest Quarter of the Southwest Quarter of Section 10, Township 140 North, Range 49 West of the 5th Principal Meridian, Cass County, North Dakota. (Located at 6101 45th Street North) (City of Fargo/Fargo Park District) (me): CONTINUED TO MARCH 5, 2019
  - 2a. Continued hearing on an application requesting a Zoning Change from AG, Agricultural to LC, Limited Commercial with a C-O, Conditional Overlay within the boundaries of the proposed **Rocking Horse Farm 6th Addition**. (Located at 5801 52nd Avenue South) (Janice L. Promersberger/Houston Engineering) (me): WITHDRAWN
  - 2b. Continued hearing on an application requesting a Plat of **Rocking Horse Farm 6th Addition** (Minor Subdivision) on a portion of the Southeast Quarter of Section 32, Township 139 North, Range 49 West of the 5th Principal Meridian, Cass County, North Dakota. (Located at 5801 52nd Avenue South) (Janice L. Promersberger/Houston Engineering) (me): WITHDRAWN
  - 3a. Continued hearing on an application requesting a Zoning Change from SR-2, Single-Dwelling Residential to SR-4, Single-Dwelling Residential on the proposed **Timber Creek Ninth Addition**. (Located at 4726, 4736, 4746, 4756, 4766, 4776, and 4786 34th Street South) (Nate Vollmuth/PLC Investments) (dk)
  - 3b. Continued hearing on an application requesting a Plat of **Timber Creek Ninth Addition** (Minor Subdivision) a replat of Lots 16-22, Block 3, Timber Creek First Addition, City of Fargo, Cass County, North Dakota. (Located at 4726, 4736, 4746, 4756, 4766, 4776, and 4786 34th Street South) (Nate Vollmuth/PLC Investments) (dk)
  4. Continued hearing on an application requesting a Plat of **Timber Creek Tenth Addition** (Minor Subdivision) a replat of Lots 1-7, Block 1, Timber Creek Third Addition, City of Fargo, Cass County, North Dakota. (Located at 3431, 3445, 3457, 3469, 3483, 3495, 3509 47th Avenue South) (Nate Vollmuth/PLC Investments) (dk): WITHDRAWN

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Planning Commission meetings are broadcast live on cable channel TV Fargo 56 and online at [www.FargoND.gov/streaming](http://www.FargoND.gov/streaming). They are rebroadcast each Wednesday at 8:00 a.m. and Sunday at 8:00 a.m.; and are also included in our video archive at [www.FargoND.gov/PlanningCommission](http://www.FargoND.gov/PlanningCommission).

People with disabilities who plan to attend the meeting and need special accommodations should contact the Planning Office at 701.241.1474 or TDD at 701.241.8258. 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 Web site at [www.FargoND.gov/planningcommission](http://www.FargoND.gov/planningcommission).

- 5a. Hearing on an application requesting a Zoning Change from MR-2, Multi Dwelling Residential to MR-2, Multi-Dwelling Residential and SR-4, Single-Dwelling Residential on the proposed **Eagle Valley Third Addition**. (Located at 7301 23rd Street South) (Jon Youness) (dk)
- 5b. Hearing on an application requesting a Plat of **Eagle Valley Third Addition** (Major Subdivision) a replat of Lot 1, Block 6, Eagle Valley Addition, City of Fargo, Cass County, North Dakota. (Located at 7301 23rd Street South) (Jon Youness) (dk)
6. Hearing on an application requesting a Zoning Change to repeal and reestablish a C-O, Conditional Overlay on **Schatz Fourth Addition**. (Located at 5622, 5630, 5650 34th Avenue South; 5621, 5631, and 5651 36th Avenue South; and 3435, 3475, and 3501 56th Avenue South) (Jon Youness) (kb)
7. Hearing on an application requesting a Plat of **Prairie Farms Second Addition** (Minor Subdivision) a replat of Lots 1-3, Block 4, Prairie Farms Addition, City of Fargo, Cass County, North Dakota. (Located at 6059, 6069, and 6087 Prairie Grove Court South) (Bronson Mathiason/Prairie Grove Inc. and Dietrich Homes Inc.) (an)
8. Hearing on an application requesting a Conditional Use Permit to allow Manufacturing and Production in the GC, General Commercial zoning district on Lot 1, Block 1, **Liberty Square Addition**. (Located at 2121 43rd Street South) (Global Development LLC) (an)
9. Hearing on an application requesting a Plat of **The Basins at 39th Addition** (Minor Subdivision) a replat of Lot 2, Block 1, Commerce on I-29 Addition, City of Fargo, Cass County, North Dakota. (Located at 9600 39th Street South) (Jesse Riley) (dk)
- 10a. Hearing on an application requesting a Zoning Change from LI, Limited Industrial to LC, Limited Commercial on the South 125 feet of Lot 4, Block 3, **Airport First Addition**. (Located at 2102 12th Street North) (Rich Meier/YHR Partners) (dk)
- 10b. Hearing on an application requesting a Conditional Use Permit to allow residential living in a LC, Limited Commercial zoning district on the South 125 feet of Lot 4, Block 3, **Airport First Addition**. (Located at 2102 12th Street North) (Rich Meier/YHR Partners) (dk)

E: Other Items:

1. Request for Planning Commission approval of a variance to restrictive covenants on the South 125 feet of Lot 4, Block 3, Airport First Addition. (Located at 2102 12th Street North) (Rich Meier/YHR Partners) (dk)
2. Overview of Land Development Code (LDC) Analysis and Core Neighborhood Plan

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**BOARD OF PLANNING COMMISSIONERS  
MINUTES**

**Regular Meeting:**

**Thursday, January 3, 2019**

The Regular Meeting of the Board of Planning Commissioners of the City of Fargo, North Dakota, was held in the City Commission Room at City Hall at 3:00 p.m., Thursday, January 3, 2019.

The Planning Commissioners present or absent were as follows:

Present: Shara Fischer, Mike Magelky, Dawn Morgan, Rocky Schneider, Melissa Sobolik, Scott Stofferahn, Maranda Tasa, Brad Bachmeier, Jennifer Holtz

Absent: John Gunkelman, Mary Scherling

Chair Fischer called the meeting to order.

**Business Items:**

**Item A: Approve Order of Agenda**

Chair Fischer noted the following Agenda items:

- Item 2a, 2b, and 3 have been continued to February 5, 2019

Member Sobolik moved the Order of Agenda be approved as presented. Second by Member Stofferahn. All Members present voted aye and the motion was declared carried.

**Item B: Minutes: Regular Meeting of December 4, 2018**

Member Stofferahn moved the minutes of the December 4, 2018 Planning Commission meeting be approved. Second by Member Tasa. All Members present voted aye and the motion was declared carried.

**Item C: Wednesday January 16, 2019 Brown Bag Luncheon**

Topic: To Be Determined

**Item D: Public Hearing Items:**

**Item 1: BLU Water Creek 4th Addition**

**1a. Hearing on an application requesting a Zoning Change to repeal and reestablish a C-O, Conditional Overlay on the proposed BLU Water Creek 4th Addition. (Located at 4609 33rd Avenue South) (Nate Vollmuth/Brandt Crossing LLC): APPROVED**

**1b. Hearing on an application requesting a Plat of BLU Water Creek 4th Addition (Minor Subdivision) a replat of Lot 6, Block 1, BLU Water Creek Addition,**

**City of Fargo, Cass County, North Dakota. (Located at 4609 33rd Avenue South)  
(Nate Vollmuth/Brandt Crossing LLC): APPROVED**

Assistant Planner Kylie Bagley presented the staff report stating all approval criteria have been met and staff is recommending approval.

Member Holtz present.

Discussion was held regarding the reduction of rooftop screening requirements in the conditional overlay.

Member Schneider moved the findings and recommendations of staff be accepted and approval be recommended to the City Commission of the proposed 1) Zoning Change from LC, Limited Commercial with a C-O, Conditional Overlay to LC, Limited Commercial, with a C-O, Conditional Overlay and 2) Subdivision Plat, BLU Water Creek 4th Addition as outlined within the staff report as the proposal complies with the Adopted Area Plan, the Standards of Article 20-06, and all other applicable requirements of the Land Development Code. Second by Member Magelky. On call of the roll Members Sobolik, Tasa, Morgan, Bachmeier, Stofferahn, Holtz, Schneider, Magelky, and Fischer voted aye. Absent and not voting: Members Gunkelman and Scherling. The motion was declared carried.

**Item 2: Timber Creek Ninth Addition**

**2a. Hearing on an application requesting a Zoning Change from SR-2, Single-Dwelling Residential to SR-4, Single-Dwelling Residential on the proposed Timber Creek Ninth Addition. (Located at 4726, 4736, 4746, 4756, 4766, 4776, and 4786 34th Street South) (Nate Vollmuth/PLC Investments): CONTINUED TO FEBRUARY 5, 2019**

**2b. Hearing on an application requesting a Plat of Timber Creek Ninth Addition (Minor Subdivision) a replat of Lots 16-22, Block 3, Timber Creek First Addition, City of Fargo, Cass County, North Dakota. (Located at 4726, 4736, 4746, 4756, 4766, 4776, and 4786 34th Street South) (Nate Vollmuth/PLC Investments): CONTINUED TO FEBRUARY 5, 2019**

A Hearing had been set for this date and time; however, the applicant has requested this item be continued to February 5, 2019.

**Item 3: Timber Creek Tenth Addition**

**Hearing on an application requesting a Plat of Timber Creek Tenth Addition (Minor Subdivision) a replat of Lots 1-7, Block 1, Timber Creek Third Addition, City of Fargo, Cass County, North Dakota. (Located at 3431, 3445, 3457, 3469, 3483, 3495, 3509 47th Avenue South) (Nate Vollmuth/PLC Investments): CONTINUED TO FEBRUARY 5, 2019**

A Hearing had been set for this date and time; however, the applicant has requested this item be continued to February 5, 2019.

**Item 4: Rocking Horse East Fourth Addition**

**Hearing on an application requesting a Plat of Rocking Horse East Fourth Addition (Minor Subdivision) a replat of Lot 4, Block 2, Rocking Horse East Second Addition, City of Fargo, Cass County, North Dakota. (Located at 5518 51st Avenue South) (Tyler Brandt/Vets 52 LLC): APPROVED**

Planning Coordinator Maegin Elshaug presented the staff report stating all approval criteria have been met and staff is recommending approval. She noted that an updated plat was submitted to the Board.

Member Sobolik moved the findings and recommendations of staff be accepted and approval be recommended to the City Commission of the proposed subdivision plat Rocking Horse East Fourth Addition as outlined within the staff report as the proposal complies with the Standards of Article 20-06, and all other applicable requirements of the Land Development Code. Second by Member Morgan. On call of the roll Members Sobolik, Stofferahn, Holtz, Magelky, Tasa, Morgan, Bachmeier, Schneider, and Fischer voted aye. Absent and not voting: Members Gunkelman and Scherling. The motion was declared carried.

**Item 5: King Third Addition**

**Hearing on an application requesting a Plat of King Third Addition (Major Subdivision) a replat of Lot 6, Block 1, King Second Addition, City of Fargo, Cass County, North Dakota. (Located at 3173 43rd Street South) (Matt Ness): APPROVED**

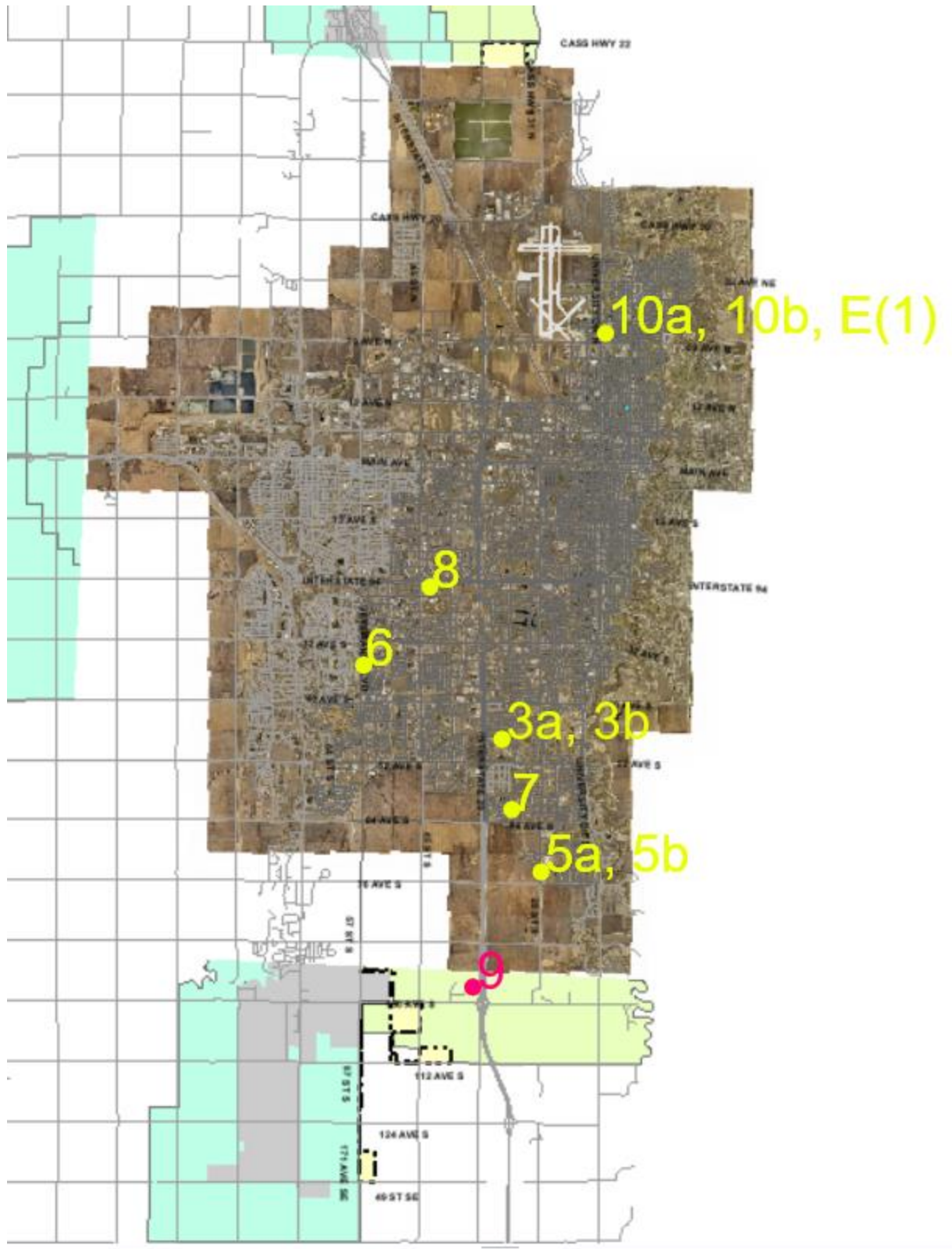
Planning Coordinator Aaron Nelson presented the staff report stating all approval criteria have been met and staff is recommending approval. He noted that an updated plat was submitted to the Board.

Discussion was held regarding the location of this property in the floodplain.

Member Schneider moved the findings and recommendations of staff be accepted and approval be recommended to the City Commission of the proposed subdivision plat King Third Addition as the proposal complies with the 2007 Growth Plan, the Standards of Article 20-06, and all other applicable requirements of the Land Development Code. Second by Member Stofferahn. On call of the roll Members Bachmeier, Magelky, Morgan, Schneider, Sobolik, Holtz, Stofferahn, Tasa, and Fischer voted aye. Absent and not voting: Members Gunkelman and Scherling. The motion was declared carried.

The time at adjournment was 3:11 p.m.

MAP OF AGENDA ITEM LOCATIONS—Items 1, 2a, 2b, and 4 continued or withdrawn



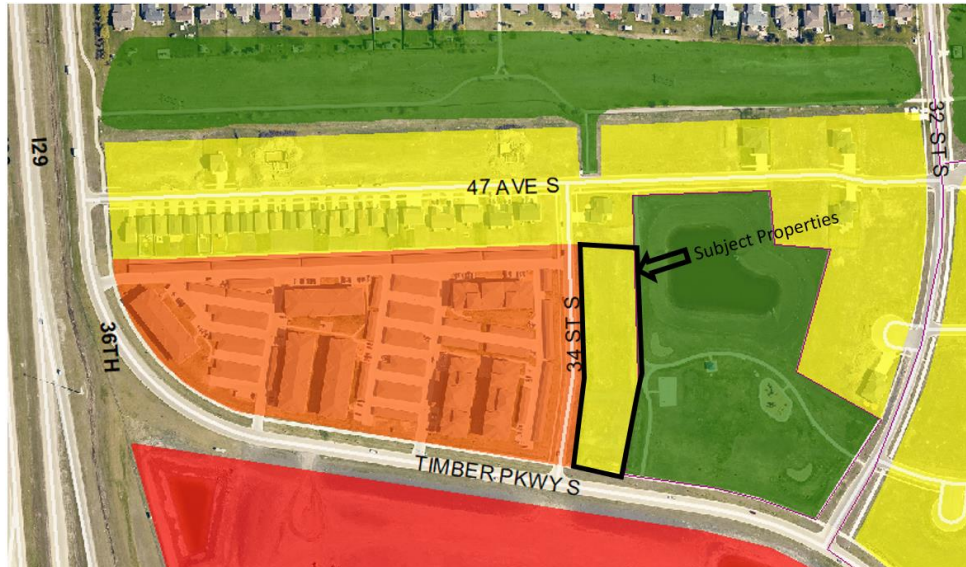
<b>City of Fargo Staff Report</b>			
<b>Title:</b>	Timber Creek 9 <sup>th</sup> Addition	<b>Date:</b>	1/30/2019
<b>Location:</b>	4726, 4736, 4746, 4756, 4766, 4776, and 4786 34 <sup>th</sup> Street South	<b>Staff Contact:</b>	Donald Kress, planning coordinator
<b>Legal Description:</b>	Lots 16 through 22, Block 3, Timber Creek First Addition		
<b>Owner(s)/Applicant:</b>	PLC Investments, LLC / Nate Vollmuth	<b>Engineer:</b>	Bolton & Menk
<b>Entitlements Requested:</b>	<b>Minor Subdivision</b> (Replat of Lots 16 through 22, Block 3, Timber Creek First Addition) <b>Zone Change</b> (from SR-2, Single Dwelling Residential to SR-4, Single-Dwelling Residential)		
<b>Status:</b>	Planning Commission Public Hearing: February 5 <sup>th</sup> , 2019		

<b>Existing</b>	<b>Proposed</b>
<b>Land Use:</b> Platted for residential; not developed	<b>Land Use:</b> Residential
<b>Zoning:</b> SR-2, Single Dwelling Residential	<b>Zoning:</b> SR-4, Single Dwelling Residential
<b>Uses Allowed:</b> Allows detached houses, daycare centers up to 12 children, parks and open space, religious institutions, safety services, schools, and basic utilities	<b>Uses Allowed:</b> Allows detached houses, daycare centers up to 12 children, attached houses, duplexes, parks and open space, religious institutions, safety services, schools, and basic utilities
<b>Maximum Density:</b> 5.4 Dwelling Units Per Acre	<b>Maximum Density:</b> 12.1 dwelling units per acre

<b>Proposal:</b>
<p>The applicant requests two entitlements:</p> <ol style="list-style-type: none"> <li>1. A minor subdivision, entitled <b>Timber Creek 9<sup>th</sup> Addition</b>, a one block, 14 lot subdivision, which is a replat of Lots 16 through 22, Block 3, Timber Creek First Addition</li> <li>2. A zoning change from SR-2, Single Dwelling Residential to SR-4, Single Dwelling Residential.</li> </ol> <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> <p><b>Surrounding Land Uses and Zoning Districts:</b></p> <ul style="list-style-type: none"> <li>• North: SR-2 with detached single-dwelling residences</li> <li>• East: P/I, Public/Institutional, Timber Creek Park</li> <li>• South: GC, General Commercial with a C-O, Conditional Overlay with several commercial businesses including a grocery store</li> <li>• West: MR-3, Multi-Dwelling Residential with apartments; SR-4, Single Dwelling Residential with twinhomes.</li> </ul> <p><b>Area Plans:</b></p> <p>The 2001 Growth Plan designates the area of this project as “Low to Medium Density Residential.” This land use designation includes the proposed SR-4 zone. The 2001 Growth Plan in this area was updated in 2007 and 2014. However, the land use designation on these properties did not change from “Low to Medium Density Residential.”</p>

Land\_Use

- Low Med Res or Med High Res
- Low Med Res or Parkland
- Commercial or Office
- Commercial
- Low Med Res
- Med High Res or Office
- Med High Res
- Office
- Parkland
- Public and Inst



**Context:**

**Schools:** The subject property is located within the Fargo School District and is served by Centennial Elementary, Discovery Middle and Davies High schools.

**Neighborhood:** The subject property is located within the Centennial Neighborhood.

**Parks:** The east side (rear) of the lots abuts Timber Creek Park which provides the amenities of: playground for ages 2-5; playground for ages 5-12; recreational trails; and a shelter.

**Pedestrian / Bicycle:** There is a recreational trail that is along 36<sup>th</sup> Street South that is a component of the metro area bikeways system.

**Staff Analysis:**

The plat will replat seven 80-foot wide lots into 14 40-foot wide lots for residential development. A zone change from the current SR-2 zone to the SR-4 zone is required, as the new lots are designed to meet the dimensional standards of the SR-4 zone. Detached houses, attached houses (townhouses, twinhomes) and duplexes are allowed in the SR-4 zone.

**UTILITY PLACEMENT:** The water and sewer connections from the individual lots to the mains in the street are configured for seven lots. The developer is required to revise the water and sewer connections so that each of the 14 new lots is individually served by its own water and sewer connection. The developer is also required to remove any unused water or sewer connections. This will require cutting into the roadway. The developer is working on a plan for these utilities with the Engineering Department, and shall sign an agreement with the City regarding these utility connections prior to City Commission approval of the subdivision plat.

**TIMBER CREEK PLATTING HISTORY:** In response to an inquiry, Planning staff prepared a short history of the platting of the residential area of Timber Creek. That history is attached for reference.



PUBLIC COMMENT: Planning staff has received detailed public comment from neighbors opposing this project. Major concerns are that the project

- will negatively affect the property value of existing residences;
- will change the character of the neighborhood;
- will increase traffic;
- will decrease on-street parking; and
- cannot satisfy the required criteria for a zone change (LDC Section 20-0906. F (1-4)).

Further concerns are that

- the applicant has been deceptive in his characterization of proposed development in this residential portion of Timber Creek; and
- the current residents of Timber Creek neighborhood purchased their homes with the understanding that Timber Creek neighborhood would contain a variety of home types/sizes.

A copy of public comments received is attached.

### **Subdivision**

The LDC stipulates that the following criteria are met before a minor plat can be approved:

**1. Section 20-0907.B.3 of the LDC stipulates that the Planning Commission recommend approval or denial of the application, based on whether it complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code. Section 20-0907.B.4 of the LDC further stipulates that a Minor Subdivision Plat shall not be approved unless it is located in a zoning district that allows the proposed development and complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code.**

The proposed zoning for the project site is SR-4, Single Dwelling Residential. This zoning is consistent with the 2001 Growth Plan Land Use designation of this area as “lower to medium density residential.” This zoning will accommodate the proposed lot sizes created by this plat, as the new lots are smaller in area and narrower in width than the current SR-2 zoned lots. In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. Staff has received detailed public comment, as noted above. The project has been reviewed by the city’s Planning, Engineering, Public Works, Inspections, and Fire Departments and found to meet the standards of Article 20-06 and other applicable requirements of the Land Development Code. **(Criteria Satisfied)**

**2. Section 20-0907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision.**

While this section of the LDC specifically addresses only major subdivision plats, staff believes it is important to note that any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure improvements are proposed to be spread by the front footage basis and storm sewer by the square footage basis as is typical with the City of Fargo assessment principles. **(Criteria Satisfied)**

### **Zoning**

Section 20-906. F (1-4) of the LDC stipulates the following criteria be met before a zone change can be approved:

**1. Is the requested zoning change justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map?**

Staff is unaware of any error in the zoning map as it relates to this property. The property is currently zoned SR-2. The proposed zoning of SR-4 is consistent with the 2001 Growth Plan designation of “lower

to medium density residential.” As the plat divides each of the existing lots approximately in half, the SR-4 zoning is required to accommodate the smaller lots **(Criteria Satisfied)**

**2. Are the City and other agencies able to provide the necessary public services, facilities, and programs to serve the development allowed by the new zoning classifications at the time the property is developed?**

City staff and other applicable review agencies have reviewed this proposal. Staff finds no deficiencies in the ability to provide all of the necessary services to the site. However, the developer is required to revise the public water and sewer connections from the street to the individual lots so that each lot has its own individual water and sewer connection directly to the mains in the street. The existing lots front on dedicated public streets. These streets will provide access and public utilities to serve the development. **(Criteria satisfied)**

**3. Will the approval of the zoning change adversely affect the condition or value of the property in the vicinity?**

Staff has no documentation or evidence to suggest that the approval of this zoning change would adversely affect the condition or value of the property in the vicinity. Written notice of the proposal was sent to all property owners within 300 feet of the subject property. Planning staff has received detailed public comment, as noted above. Staff finds that the approval of the zoning change will not adversely affect the condition or value of the property in the vicinity. **(Criteria satisfied)**

**4. Is the proposed amendment consistent with the purpose of this LDC, the Growth Plan, and other adopted policies of the City?**

The LDC states “This Land Development Code is intended to implement Fargo’s Comprehensive Plan and related policies in a manner that protects the health, safety, and general welfare of the citizens of Fargo.” The Growth Plan that applies to this property is the 2001 Growth Plan; this plan designates this property as appropriate for lower to medium density residential development, which would include the SR-4 zone. Staff finds this proposal is consistent with the purpose of the LDC, the applicable growth plan, and other adopted policies of the City. **(Criteria satisfied)**

**Staff Recommendation:**

Suggested Motion: “To accept the findings and recommendations of staff and move to recommend approval to the City Commission of the proposed 1) Zoning Change from SR-2, Single Dwelling Residential to SR-4, Single-Dwelling Residential and 2) a plat of the **Timber Creek 9th Addition**, as the proposal complies with the Go2030 Fargo Comprehensive Plan, 2001 Growth Plan, Standards of Article 20-06, and Section 20-0906.F (1-4) of the LDC and all other applicable requirements of the LDC.”

**Planning Commission Recommendation:** February 5th, 2019

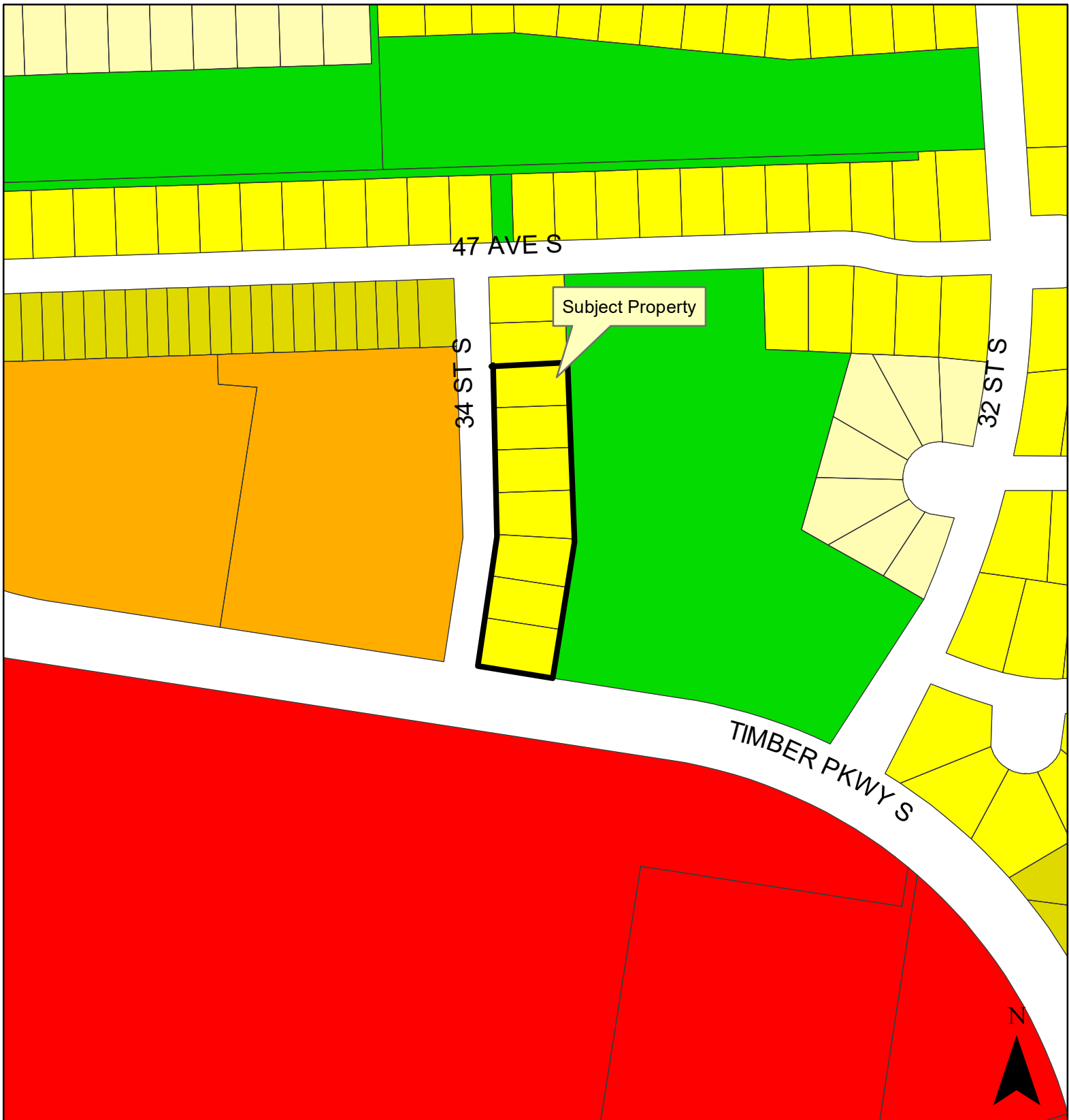
**Attachments:**

1. Zoning Map
2. Location Map
3. Preliminary Plat
4. History of Timber Creek platting
5. Public Comment

# Plat (Minor) and Zone Change (SR-2 to SR-4)

## Timber Creek 9th Addition

4726, 4736, 4746, 4756, 4766,  
4776, 4786 34th Street South



### Legend

AG	LC	MHP	SR-2
DMU	MR-1	NC	SR-4
GC	MR-2	NO	SR-5
GI	MR-3	P/T	SR-14
GO		UMU	SR-15
			City Limits

300

Feet

Fargo Planning Commission

January 3, 2019

# Plat (Minor) and Zone Change (SR-2 to SR-4)

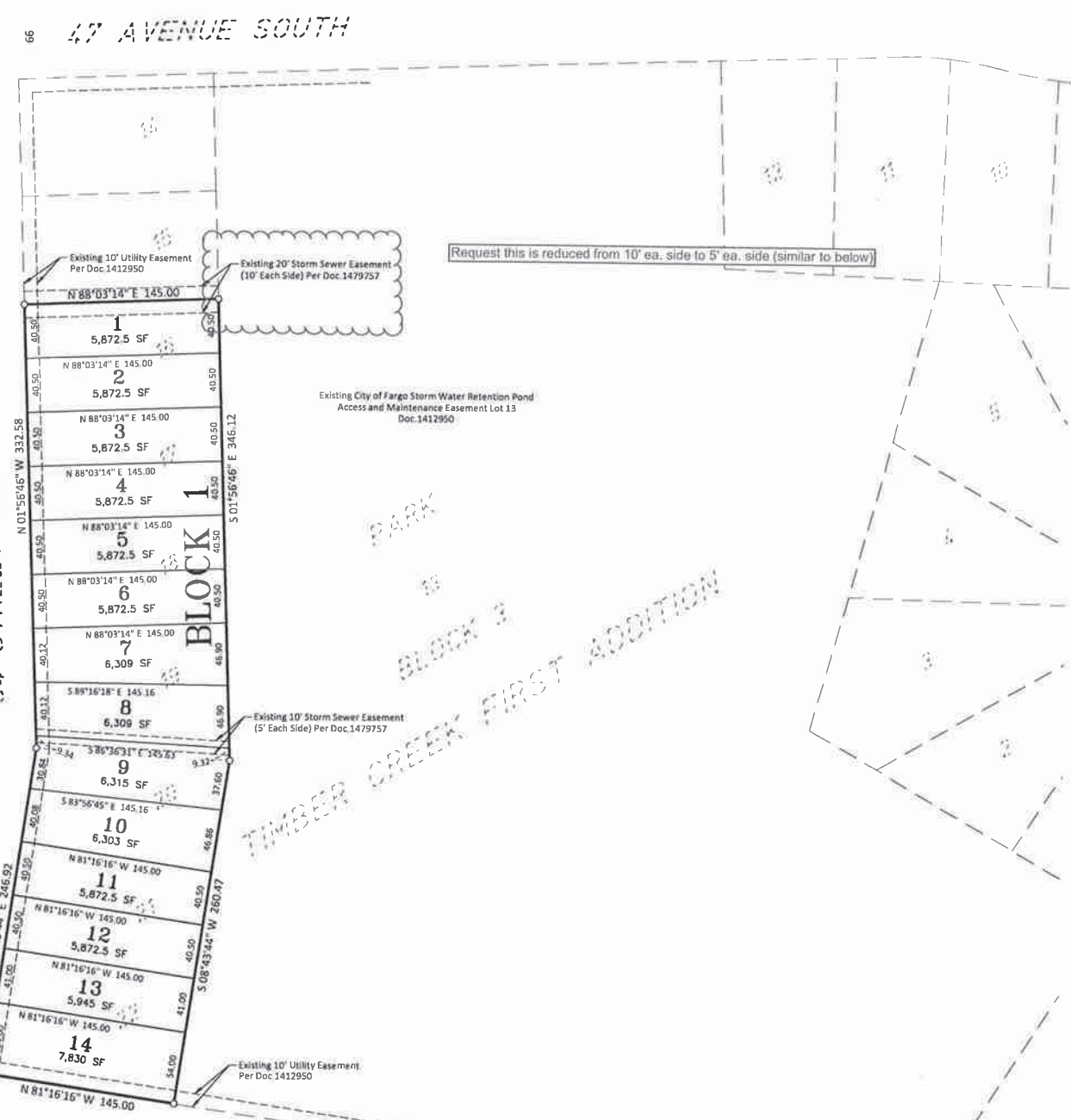
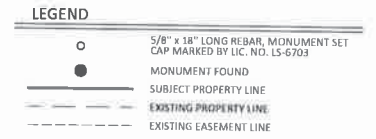
## Timber Creek 9th Addition

4726, 4736, 4746, 4756, 4766,  
4776, 4786 34th Street South



# TIMBER CREEK NINTH ADDITION

A REPLAT OF LOTS 16, 17, 18, 19, 20, 21 & 22, BLOCK 3 OF TIMBER CREEK FIRST ADDITION  
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA  
(A MINOR SUBDIVISION)



### OWNERS DESCRIPTION AND DEDICATION

KNOW ALL MEN BY THESE PRESENTS, That PLC Investments, LLC a North Dakota Limited Liability Company as owner of a parcel of land located in the Southwest Quarter of Section 35, Township 139 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, and more particularly described as follows:

Lots 16, 17, 18, 19, 20, 21 and 22, Block 3, of TIMBER CREEK FIRST ADDITION to the City of Fargo, according to the record plat thereof on file in the office of the County Recorder, Cass County, North Dakota.

Containing 85,991 square feet or 1.974 acres more or less.

Said owner has caused the above described parcel of land to be surveyed and platted as "TIMBER CREEK NINTH ADDITION" to the City of Fargo, Cass County, North Dakota.

OWNER: PLC Investments, LLC

By: Kevin Christanson, President

State of North Dakota }  
County of Cass }SS

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year 2019 before me personally appeared Kevin Christanson, President, PLC Investments, LLC, 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 PLC Investments, LLC

Notary Public

Mortgagee: First International Bank & Trust

By: Brian Hagen, East Market President

State of North Dakota }  
County of Cass }SS

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year 2019 before me personally appeared Brian Hagen, East Market President, First International Bank & Trust, 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 First International Bank & Trust

Notary Public

### SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT

I, Gregg Stroeing, Registered Professional Land Surveyor under the laws of the State of North Dakota do hereby certify that this plat is a correct representation of the survey, that all distances shown are correct and that the monuments for the guidance of future surveys have been located or placed in the ground as shown and that the outside boundary lines are correctly designated on the plat.

Gregg Stroeing, Professional Land Surveyor  
North Dakota License Number LS-6703

State of North Dakota }  
County of Cass }SS

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year 2019 before me personally appeared Gregg Stroeing, 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.

Notary Public

### CITY OF FARGO ENGINEERING DEPARTMENT APPROVAL

Approved by City Engineer this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Brenda E. Derrig, City Engineer

State of North Dakota }  
County of Cass }SS

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year 2019 before me personally appeared Brenda E. Derrig, City Engineer known to me to be the person who is described in and who executed the within instrument, and acknowledged to me that she executed the same.

Notary Public

### CITY OF FARGO PLANNING COMMISSION APPROVAL

Approved by the City of Fargo Planning Commission this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Shara Fischer, Planning Commission Chair

State of North Dakota }  
County of Cass }SS

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year 2019 before me personally appeared Shara Fischer, Planning Commission Chair, known to me to be the person who is described in and who executed the within instrument, and acknowledged to me that she executed the same on behalf of the Fargo Planning Commission.

Notary Public

### FARGO CITY COMMISSION APPROVAL

Approved by the Board of City Commissioners and ordered filed this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Timothy J. Mahoney, Mayor

Attest: Steven Sprague, City Auditor

County of Cass }  
State of North Dakota }SS

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year 2019 before me personally appeared Timothy J. Mahoney, Mayor, and Steven Sprague, City Auditor known to me to be the persons who are described in and who executed the within instrument, and acknowledged to me that they executed the same on behalf of the City of Fargo.

Notary Public

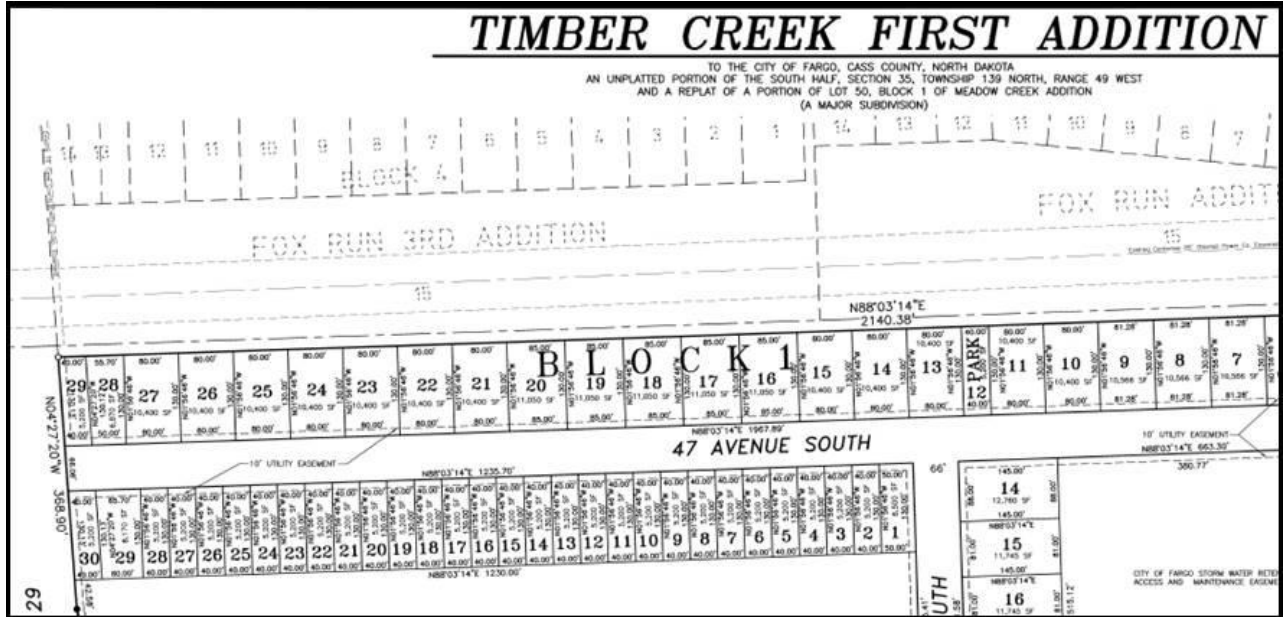
# preliminary



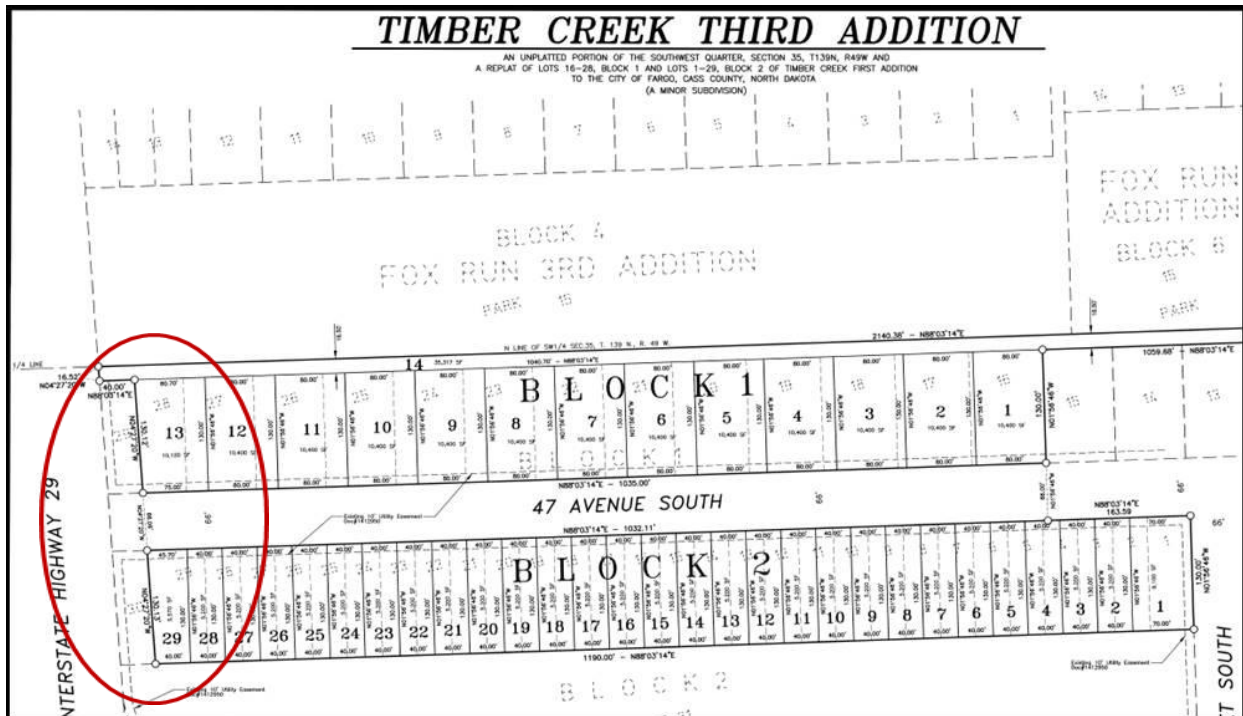
# HISTORY OF TIMBER CREEK RESIDENTIAL AREA PLATS

There are eight recorded plats of the Timber Creek area.

**Timber Creek 1<sup>st</sup> Addition** (recorded 3/20/2014) created the Timber Creek area and zoned the area along the north side of 47<sup>th</sup> Avenue to SR-2 (minimum lot size 8,000 square feet) and the south side of 47<sup>th</sup> to SR-4 (minimum lot size 3600 square feet). See excerpt from plat below (zoning does not appear on plats).

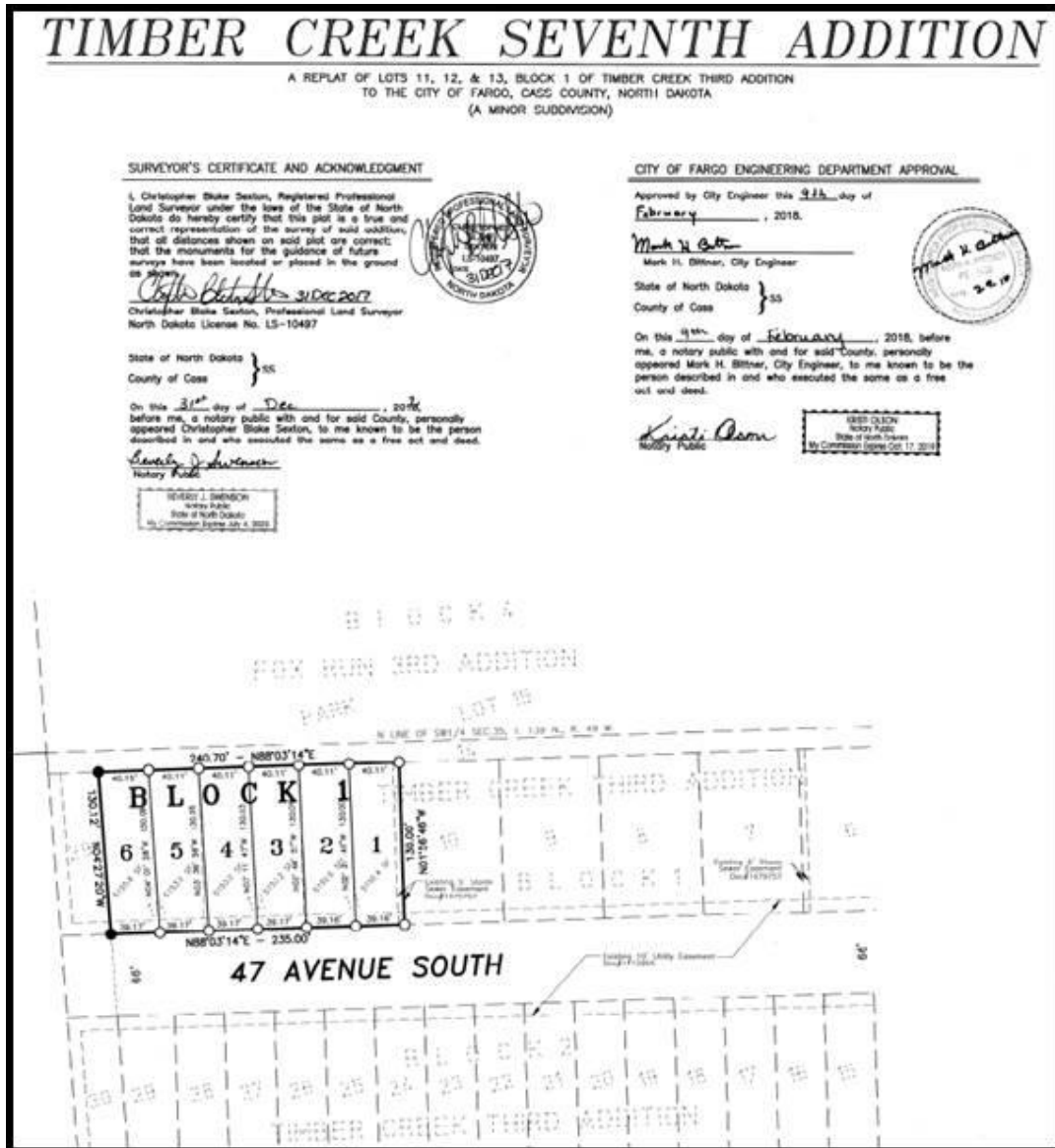


**Timber Creek 3<sup>rd</sup> Addition** (recorded 8/17/2014) did not affect the residential zoning along 47<sup>th</sup> Avenue. This plat took what had been two lots on the west end of the street and combined them with an adjacent lot to make an additional residential lot, and left a remaining piece outside the plat that is owned by the City of Fargo. See excerpt from the plat below with area of change from the First Addition circled.



# HISTORY OF TIMBER CREEK RESIDENTIAL AREA PLATS

Timber Creek 7<sup>th</sup> Addition (recorded 4/12/2018) took the west three lots on the north side of 47<sup>th</sup> Avenue, split them into six lots, and changed the zoning to SR-4. See excerpt from the plat below—this is a replat of Lots 11, 12, and 13 of Block 1 from Timber Creek 3<sup>rd</sup> above.



Timber Creek 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 8<sup>th</sup> Additions deal with the commercial area on the east side of Timber Creek Parkway.

Timber Creek 2nd Addition rearranged the 10 lots of the original Block 4 of Timber Creek 1<sup>st</sup> Addition (the block in the middle of Timber Creek Circle) into nine lots

The lots along the east side of 34<sup>th</sup> Street south of 47<sup>th</sup> Avenue have not been replatted or rezoned from the original plat, though that is what the Timber Creek 9<sup>th</sup> Addition proposes.

**From:** Erika Hanson <buckhousept@yahoo.com>

**Sent:** Monday, January 7, 2019 2:22 PM

**To:** Donald Kress <dkress@FargoND.gov>

**Subject:** opposition to zoning changes Timber Creek Ninth and tenth addition

Mr Kress:

I am beyond sick of this leap-frogging sprawl impacting already established neighborhoods and pushing newer, single-family homes south. Walking through Bennett schools (south, near Davies) is like walking through a private school with the privileged, white students all attending that school. Put your duplexes and twin homes and apartments out in the Bennett school boundaries; diversify that school's socio-economic status. Put the nice houses further north in whatever space is left and prevent the schools constantly having to play catch-up.

It is frustrating that the city plans one thing, and the school system then needs to adjust accordingly. In other words, the business owners get to make money by getting whatever zoning requests they like. Then the school system has to change boundary lines to attempt to fill schools equally and fairly and redistribute families with different socio-economic issues. Schools become known for being "rough" and families move away from those areas. Business owners swoop in and put up more high-density projects and make money, and the schools again lose money with needing to rezone and add-on to schools like Discovery. Since tax payers are responsible for paying for schools, STOP letting the business owners determine what should be built where.

**Erika Hanson**



**From:** Peggy Holum <holump@hotmail.com>  
**Sent:** Tuesday, January 22, 2019 10:37 PM  
**To:** Donald Kress <dkress@FargoND.gov>  
**Subject:** Zoning change

Mr. Kress -

I am writing to you concerning the latest request by PACES Lodging to rezone portions of the Timber Creek development.

I was at the City Commission meeting last spring concerning the 3 lots on 47th avenue, where the representative for the developer was asked if he was going to be coming back to ask for any additional changes. He assured the commission that he would not be returning. Obviously, that was not the truth.

I would like information on how many times this developer has asked for, and received, changes to the original plans/agreements for the area between 47th and 52nd avenues and 32nd and 36th streets. This includes all types of amendments that have been made (e.g., the original agreement stated for no buildings over 30 feet tall and there are 4-story apartment buildings; there were to be no 24-hour businesses and we have Anytime Fitness and Cashwise).

If you are not able to provide me with this information, could you please direct me to the correct person or office who could furnish me with a list and timeline of these amendments?

Thank you for your help.  
Peggy Holum  
3550 46th Ave S

**From:** Peggy Holum <holump@hotmail.com>  
**Sent:** Thursday, January 24, 2019 11:17 PM  
**To:** Donald Kress <dkress@FargoND.gov>  
**Subject:** Timber Creek Zoning Change

Mr. Kress -

Thank you for including me in the email string concerning the Timber Creek Tenth Addition. While this may seem, on the surface, to be good news for the neighborhood, you will have to forgive my cynicism that it may be just another ploy by this developer - either to sway the planning commission to approve the Ninth Addition application or because he may have found a more lucrative and egregious plan to present at a later date.

Either way, it does not affect my earlier request of being provided a list of all amendments that have been applied for and approved for this area by this developer since its inception.

I look forward to hearing from you concerning this information.

Again, thank you for your help.  
Peggy Holum  
3550 46<sup>th</sup> Ave S

## PROTEST TO PROPOSED ZONING CHANGES

This document shall serve as a formal protest petition to the following requested changes currently pending before the Fargo Planning Commission:

1. The zoning change from SR-2 to SR-4 on the proposed Timber Creek Ninth Addition (hereinafter “request #1”); and
2. The plat of Timber Creek Ninth Addition, a replat of Lots 16-22, Block 3, Timber Creek First Addition (“request #2”).

At the time of the notice of these proposals, there was an additional proposal to replat Lots 1-7, Block 1, Timber Creek Third Addition (“Timber Creek Tenth Addition” or “request #3”). As such, the attached objections from nearby homeowners reference both proposals. As noted in an email from Donald Kress on January 23, 2019, this proposal has since been withdrawn by the applicant.<sup>1</sup> Should the applicant renew this request or seek similar changes in the future, the opposition of the affected homeowners to both projects should be noted by the Fargo Planning Commission.

### Standing / Interest

This protest is being filed by Alyson Bring and Matthew Bring, owners of the affected property at 4706 34th Street South. (Exhibit 1). The property at 4706 is less than 100 feet from the nearest property affected by request #1 and request #2, and is within 300 feet of the nearest property that would have been affected by since-withdrawn Timber Creek Tenth Addition proposal.

For purposes of qualifying as a “valid protest” under Land Development Code §20-0906(G) with respect to request #1 and request #2, it is noteworthy that there appears to be only six unique property owners within 300 feet, with the applicant itself<sup>2</sup> and another business (Meridian Mortgage LLC) owning many of the lots in the area. Apart from those two businesses and the undersigned homeowners, there remain only three other property owners, at least two of whom are apparently renting to the residents currently occupying the homes. Should the applicant itself be excluded from this calculation, the protest filed by the undersigned homeowners would itself constitute 20%, being one of the only five remaining affected homeowners. Therefore, a super-majority vote shall be required of the Fargo City Commission prior to the approval of any such change.

The undersigned homeowners have been unable to reach these remaining three homeowners. However, their support in opposition to these proposals will be sought in the event the Fargo Planning Commission votes to recommend these proposals.

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1 For simplicity, the term “applicant” shall hereinafter be interpreted to include Paces Lodging Corporation, PLC Holdings, PLC Investments, Property Resources Group, Dakota Real Estate Investment Trust, Fargo Apartment Homes, Timber Creek Investments, Timber Creek Commercial Property Owners Association, Timber Creek Retail Center, and any other associated or commonly owned entities.

2 The apartment complex to the west of 34th Street is owned by Fargo Apartment Homes, which has the same registered agent as the applicant (Kevin Christianson).

### **Burden of Proof**

Pursuant to Land Development Code §20-0902, the burden of demonstrating that an application meets applicable review and approval criteria is on the *applicant* alone, and not on the city or other affected parties.

### **Standard of Review**

Pursuant to Land Development Code §20-0906(F), all four of the following criteria must be met before any request can be approved:

1. The requested zoning change is justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map;
2. The City and other agencies will be able to provide necessary public services, facilities, and programs to serve the development allowed by the new zoning classification at the time the property is developed;
3. The approval will not adversely affect the condition or value of property in the vicinity; and
4. The proposed amendment is consistent with the purpose of this Land Development Code, the applicable Growth Plan and other adopted policies of the City.

In the present matter, these factors cannot be demonstrated. Once again, it is the burden of the requesting party to establish *all* four of these criteria. Absent a showing of doing so, the requests cannot be approved.

### **Change in Conditions / Error in Zoning Map**

The undersigned homeowners are unaware of any errors in the zoning map, or of a “change in conditions” that would justify this proposal. It is of particular note that the use of the term “justify” in the §20-0906(F)(1) dictates that even if a change in conditions *was* present, the request must be connected to the change in some way. The simple existence of a change in conditions alone is insufficient. Instead, the change in conditions must *justify* the requested zoning change. Apart from the applicant’s presumptive desire to maximize their investment in this development, it is unclear what justification exists for such a request.

The undersigned homeowners also note that the vast majority of the property in and around the affected area is (or has been) owned by the applicant. As such, any change in conditions in the surrounding area, has, in effect, been made by the same entity currently requesting the zoning change. Allowing a party to rely upon its own actions to justify future actions violates public policy and the public trust.

Also of note is that the applicant has previously requested similar changes to other properties in the same neighborhood. On March 12, 2018, the City Commission considered Timber Creek Seventh Addition, a similar request to replat and rezone three SR-2 lots into six SR-4 lots. As noted in the official minutes of this meeting:

“Nate Vollmuth, Paces Lodging Corporation, said their request sounds worse than it is. He said it is a maximum of three twin homes or six split twin homes; it is not an apartment building. He said directly north of the lots there is a landscape buffer which is owned by the City.”

Now, less than a year later, there are additional requests affecting properties in the same neighborhood. What was then described as “sound[ing] worse than it is” and “a maximum of three twin homes or six split twin homes” has now expanded into a request to replat 7 large traditional lots (currently SR-2) into 14 high-density twin home lots (SR-4) along 34th Street.<sup>3</sup>

The totality of circumstances reveals that the applicant gained approval to develop the area under the guise of one type of neighborhood (i.e., a mixed development with numerous SR-2 lots), and now seeks to change a large section of the area from low-density individual homes to high-density twin homes.

#### Affect on Necessary Public Services/Facilities

Empirical evidence of the extent to which the proposed changes will affect public services is extraordinarily difficult for the undersigned homeowners to obtain, particularly in light of the limited notice period. However, should the Fargo Planning Commission vote to recommend the requested changes, further such evidence will be sought to the extent available.

However, anecdotally, the undersigned homeowners note that parking along the west side of 34th Street is already at or near its capacity. The residents of Timber Creek Apartments<sup>4</sup> frequently park along this street. For whatever reason, adequate parking within the property itself is apparently not readily available to the residents of these apartments. During the evening, most, if not all, of the entire side of 34th Street is filled with vehicles. Many of these vehicles include commercial vehicles (e.g., box trucks, as well as pickups with trailers hauling skid-steers and other construction equipment) owned by the residents of these apartments. Frequently, residents park in front of the shared USPS mailboxes along this street. The undersigned homeowners have been informed by USPS employees that they will not guarantee mail delivery to that location if cars are blocking the mailboxes and that delivery of mail is dependent upon the mail carrier's access to the mailboxes.

Parking and traffic along this street will no doubt increase as the affected lots are sold and additional houses are built. The additional 7 homes (as currently platted) will certainly affect this to some extent, pushing the capacity of this street to its maximum. Increasing from 7 homes to 14 smaller homes or twin-homes, most of which would no longer be anticipated to have large garages, will increase the parking congestion to untenable levels.

As noted above, this neighborhood was originally designed as containing a number of SR-2 lots. Given the increased number of lots (and by extension, traffic) sought by the applicant (both

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<sup>3</sup> Request #3 would have changed 7 traditional lots to 9 high-density lots along 47th Avenue, with only three lots between the properties affected by the since-withdrawn proposal and those affected by Timber Creek Seventh.

<sup>4</sup> These apartments are owned by Fargo Apartment Homes LLC, an extension of the applicant.

currently and in the past), the burden rests upon the applicant to demonstrate that the existing street design in the area is sufficient. At present, the affected homeowners are unaware of any such studies or other evidence showing that the current parking and streets would meet the demands of the increased traffic that would result from rezoning this area. by applicant. Once again, it is the applicant's burden to do so, and absent such a showing thereof, the request cannot be approved.

#### Adverse Affects on Property Value

Again, given the limited notice available to the affected homeowners, limited formal research or studies can be submitted as to this factor at this time, but will be provided to the extent possible should the matter proceed before the Fargo City Commission. However, it is once again noted that the burden rests not upon the affected homeowners to demonstrate a potential decrease in property value. Instead, the applicant again bears the burden of *affirmatively* demonstrating that the proposed change will not adversely affect the value of the surrounding properties. It is not unreasonable to assume that the neighboring properties changing from single homes to twin-homes will negatively affect property values. In addition to the fact that the neighborhood simply cannot sustain the parking and traffic such a change will bring, the overall character of the neighborhood will change significantly. In outreach to the neighborhood, one of the points consistently raised by nearby homeowners was that of the potential increase in the number of renters in the area. Beyond the intrinsic value of developing a lasting neighborhood and community, the potential increase in the number of rental properties will also diminish property values.<sup>5</sup>

As currently platted, the properties along 34th Street are relatively large lots backing to green space, a pond, and/or a park area.<sup>6</sup> This is precisely the basis upon which the property at 4706 was purchased by the undersigned homeowners – that this neighborhood would contain some high-density twin homes and apartments to the West, but would sit adjacent to a number of higher-end homes backing to a pond. Similarly, many of the owners of the current properties along 47th Avenue purchased their twin homes with the understanding that there would be a number of more expensive homes to the East. This is precisely the mix of high-, medium-, and low-cost homes the vast majority of new developments in Fargo contain. If the requested changes are approved, it appears that many of the larger lots will be changed to much smaller lots and that far fewer larger homes will be constructed beyond those already built. Changing these seven lots will also affect the marketability of the vacant lots north of 47th Avenue and East of 34th Street. Frankly, it would be incredible to assert that the proposed changes will not adversely affect the surrounding property values; and again, absent such a showing, the proposed changes cannot be approved under §20-0906(F)(3).

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5 Research performed by Realtor.com suggested that “ZIP codes with a higher-than-average concentration of renters have lower property values compared to the county they are located in...by 14%.” Pan, Qyqing (2016, March 28), *The Neighborhood Features That Drag Down Your Home Value – Ranked*. Retrieved from <https://www.realtor.com/news/trends/things-that-affect-your-property-value>

6 The average size of the seven affected lots is 12,285 square feet.

## Other Relevant Considerations

As noted above, the requested changes are likely to increase traffic, strain available parking, and decrease surrounding property values. Moreover, it is against the public's interest to allow a property developer to gain approval for a development based upon one representation of a neighborhood, only to later drastically change the overall character of the neighborhood. Quite simply, the undersigned homeowners would have not have purchased the home at 4706 if the lots along 34th Street had been zoned SR-4. The undersigned homeowners detrimentally relied on the existing plat when purchasing the home. For the City to approve the requested changes would not only violate the requirements of §20-0906(F), but also expose the City to potential legal action.

As noted above, the applicant sought a similar change in early-2018 with respect to three (now six) lots along 47th Avenue, which was ultimately approved by the Fargo City Commission on March 12, 2018. As part of the discussion, Mr. Vollmuth (representing the applicant) was specifically questioned by Mayor Timothy Mahoney as to whether the applicant was going to stop at that request, or “come back piece by piece” with further similar requests.<sup>7</sup> Mr. Vollmuth replied, “we are only looking at these three lots” and “we're not gonna try to fit anything else in there other than hopefully three twin homes.” Among Mr. Vollmuth's other stated rationale for the request was that these three lots would act as a “buffer” between the interstate and the rest of the lots along that street. These rationales were subsequently relied on by the Fargo City Commission when approving the request at that time. Now, less than a year later, the applicant seeks to do *precisely* what its representative previously asserted it would *not* do when arguing in favor of the the prior requested changes.

As also noted above, the undersigned homeowners have engaged much of the local neighborhood concerning the applicant's proposals. In speaking with these individuals, their sentiment toward the proposals was overwhelmingly negative. To date, the owners of 15 nearby homes have returned signed statements expressing their opposition to the proposed changes. (Exhibits 2-16). Maps showing the location of each of these individuals' homes has also been included. (Exhibit 17-18). The undersigned homeowners respectfully request the members of the Fargo Planning Commission consider the views and opinions of the residents who actually live in the area.

## Conclusion

The relevant criteria is *not* whether the applicant asserts that it wants or needs the requested changes. It is also not whether the applicant has struggled to sell the lots in question or whether its business interests are served by such a change.<sup>8</sup> It is not whether a specific percentage of people have objected. Instead, the relevant criteria are found at §20-0906(F), which the *applicant*

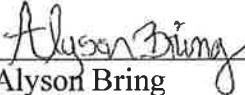
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7 This discussion can be found at approximately 34 minutes into the meeting. Retrieved from: <http://download.fargond.gov/k/151-1.mp4>


8 It is important to recognize that, as the primary developer of this neighborhood, the applicant assumes not only the opportunity for profit, but also the risk of loss. In the event it has struggled to sell the lots in question, the fair and logical solution would be to lower the price of the lots, rather than to rezone/replat much of the neighborhood. To approve such a change essentially absolves the applicant of the risks assumed in such a project.

bears the burden of establishing.

The applicant – and *not* the other affected homeowners – must demonstrate that the change is justified by a change in conditions, will not unduly stress public services, and will not adversely affect the value of surrounding properties. Absent a showing of all these criteria, the request cannot be approved. The applicant has not, and cannot, make such a showing. As such, the Fargo Planning Commission must decline to recommend the requested changes.

  
Alyson Bring  
4706 34th St S  
Fargo, ND 58104

1/24/19  
date

  
Matthew Bring  
4706 34th St S  
Fargo, ND 58104

1/24/19  
date





4706



**EXHIBIT**  
**1**

City of Fargo, ND

These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

**Matthew and Alyson Bring, 4706 34th St S**

1:4,179

This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features.



**OPPOSITION TO PROPOSED ZONING CHANGES**

I, KELLY + JOE LEARY, am submitting this document to express my  
print name(s)  
opposition to the proposed "Timber Creek Ninth Addition" and "Timber Creek Tenth Addition."

I object to these projects for the following reasons:

- These projects will negatively affect my property value
- These projects will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The projects will increase traffic
- The projects will decrease parking
- Other: THIS IS NOT HOW THE TIMBER CREEK ADDITIONS WERE ORIGINALLY PRESENTED

Signature: [Handwritten Signature] 1-13-19

Name: KELLY LEARY

Address: 3552 46<sup>TH</sup> AVENUE S, FARGO, SD 58104

Phone: 701-388-8430

**OPPOSITION TO PROPOSED ZONING CHANGES**

I, Erika Hanson, am submitting this document to express my  
print name(s)  
opposition to the proposed "Timber Creek Ninth Addition" and "Timber Creek Tenth Addition."

I object to these projects for the following reasons:

- These projects will negatively affect my property value
- These projects will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The projects will increase traffic
- The projects will decrease parking

Other: I have lived here +10 years. We were initially told Dave H&S would be in our backyard. I'm so disgusted with the sprawl and "leapfrog" development of this city.

Signature: Erik Hanson  
Name: Erika Hanson  
Address: 3510 46<sup>th</sup> Ave S Fargo ND 58102  
Phone: 701-361-0639

**OPPOSITION TO PROPOSED ZONING CHANGES**

I, Jerry Leier, MARY LEIER, am submitting this document to express my  
print name(s)  
opposition to the proposed "Timber Creek Ninth Addition" and "Timber Creek Tenth Addition."

I object to these projects for the following reasons:

- These projects will negatively affect my property value
- These projects will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes Fox Run
- The projects will increase traffic
- The projects will decrease parking
- Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: Jerry Leier, Mary Leier  
Name: Jerry Leier, MARY C LEIER  
Address: 3502 46th Ave South  
Phone: 701-388-0230

**OPPOSITION TO PROPOSED ZONING CHANGES**

I, Joe and Angie Schwab  
print name(s) am submitting this document to express my opposition to the proposed "Timber Creek Ninth Addition" and "Timber Creek Tenth Addition."

I object to these projects for the following reasons:

- These projects will negatively affect my property value
- These projects will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The projects will increase traffic
- The projects will decrease parking

Other: We bought our lot 18 years ago. We built our home with the promise it would be single family housing and a school at the time. We have continually fought to keep Walmart out, massive apartment complexes, and now too many twin homes. This is not something we will quit fighting.

Signature: Angie Schwab / Joe Schwab

Name: Joe and Angie Schwab

Address: 3432 46th Ave S.

Phone: 218-790-6204


218-790-7577

**OPPOSITION TO PROPOSED ZONING CHANGES**

I, Chris Kraft  
print name(s), am submitting this document to express my  
opposition to the proposed "Timber Creek Ninth Addition" and "Timber Creek Tenth Addition."

I object to these projects for the following reasons:

- These projects will negatively affect my property value
- These projects will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The projects will increase traffic
- The projects will decrease parking
- Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

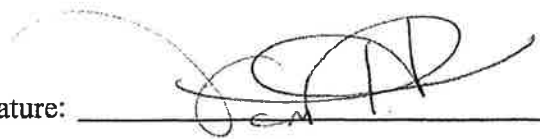
Signature:   
Name: Chris Kraft  
Address: 3416 46<sup>th</sup> Ave S.  
Phone: 701-799-0937

**OPPOSITION TO PROPOSED ZONING CHANGES**

I, Valerie Parrett, am submitting this document to express my  
print name(s)  
opposition to the proposed "Timber Creek Ninth Addition" and "Timber Creek Tenth Addition."

I object to these projects for the following reasons:

- These projects will negatively affect my property value
- These projects will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The projects will increase traffic
- The projects will decrease parking
- Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_


Signature:   
Name: Valerie Parrett  
Address: 3408 46 Ave S, Fargo  
Phone: 701-361-1397

**OPPOSITION TO PROPOSED ZONING CHANGES**

I, BRIAN DRISCOLL, am submitting this document to express my  
print name(s)  
opposition to the proposed "Timber Creek Ninth Addition" and "Timber Creek Tenth Addition."

I object to these projects for the following reasons:

- These projects will negatively affect my property value
- These projects will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The projects will increase traffic
- The projects will decrease parking
- Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature:   
Name: BRIAN DRISCOLL  
Address: 3340 46<sup>TH</sup> AVE S  
Phone: 201-367-6380



**OPPOSITION TO PROPOSED ZONING CHANGES**

I, Kelly Morehouse, am submitting this document to express my  
print name(s)  
opposition to the proposed "Timber Creek Ninth Addition" and "Timber Creek Tenth Addition."

I object to these projects for the following reasons:

- These projects will negatively affect my property value
- These projects will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The projects will increase traffic
- The projects will decrease parking
- Other: Snow removal will become an issue - we  
already have limited space to push and  
move snow to


Signature: Kelly Morehouse  
Name: Kelly Morehouse  
Address: 3558 47<sup>th</sup> Ave S  
Phone: 701-936-5017

**OPPOSITION TO PROPOSED ZONING CHANGES**

I, OSMAN KERIC, am submitting this document to express my  
print name(s)  
opposition to the proposed "Timber Creek Ninth Addition" and "Timber Creek Tenth Addition."

I object to these projects for the following reasons:

- These projects will negatively affect my property value
- These projects will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The projects will increase traffic
- The projects will decrease parking
- Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature:   
Name: OSMAN KERIC  
Address: 3526 47<sup>th</sup> AVES  
FARGO, ND 58104  
Phone: 701 729-2697

**OPPOSITION TO PROPOSED ZONING CHANGES**

I, Joseph & Emily Hoehne, am submitting this document to express my  
print name(s)  
opposition to the proposed "Timber Creek Ninth Addition" and "Timber Creek Tenth Addition."

I object to these projects for the following reasons:

- These projects will negatively affect my property value
- These projects will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The projects will increase traffic
- The projects will decrease parking
- Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: *Joe Hoehne* *Emily*  
Name: Joseph Hoehne Emily Hoehne  
Address: 3508 47th Ave S, Fargo  
Phone: 701-404-9869

**OPPOSITION TO PROPOSED ZONING CHANGES**

I, Minh Tran, am submitting this document to express my  
opposition to the proposed "Timber Creek Ninth Addition" and "Timber Creek Tenth Addition."  
print name(s)

I object to these projects for the following reasons:

- These projects will negatively affect my property value
- These projects will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The projects will increase traffic
- The projects will decrease parking
- Other: \_\_\_\_\_

Signature: Minh Tran  
Name: Minh Tran  
Address: 3488 - 47th Ave S.  
Phone: (832) 660-1011

**OPPOSITION TO PROPOSED ZONING CHANGES**

I, Patrick LaDouceur, am submitting this document to express my  
print name(s)  
opposition to the proposed "Timber Creek Ninth Addition" and "Timber Creek Tenth Addition."

I object to these projects for the following reasons:

- These projects will negatively affect my property value
- These projects will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The projects will increase traffic
- The projects will decrease parking

Other: Traffic in our area is already heavy and congested. Cutting lots in half to benefit real estate developers will only add to traffic and congestion as well as dampen the potential of what the neighborhood could be.

Signature: 

Name: Patrick LaDouceur

Address: 3482 47th Ave S Fargo

Phone: 218-791-5145


**OPPOSITION TO PROPOSED ZONING CHANGES**

I, MASROUR AYUB  
print name(s), am submitting this document to express my opposition to the proposed "Timber Creek Ninth Addition" and "Timber Creek Tenth Addition."

I object to these projects for the following reasons:

- These projects will negatively affect my property value
- These projects will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The projects will increase traffic
- The projects will decrease parking

Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature:   
Name: MASROUR AYUB  
Address: 3470 4TH AVE  
Phone: (918) 521-0901

OPPOSITION TO PROPOSED ZONING CHANGES

I, Georgia Meyer  
print name(s), am submitting this document to express my opposition to the proposed "Timber Creek Ninth Addition" and "Timber Creek Tenth Addition."

I object to these projects for the following reasons:

- These projects will negatively affect my property value
- These projects will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The projects will increase traffic
- The projects will decrease parking
- Other: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: Georgia Meyer  
Name: Georgia Meyer  
Address: 3464 47th Ave S  
Phone: 701-866-0105

**OPPOSITION TO PROPOSED ZONING CHANGES**

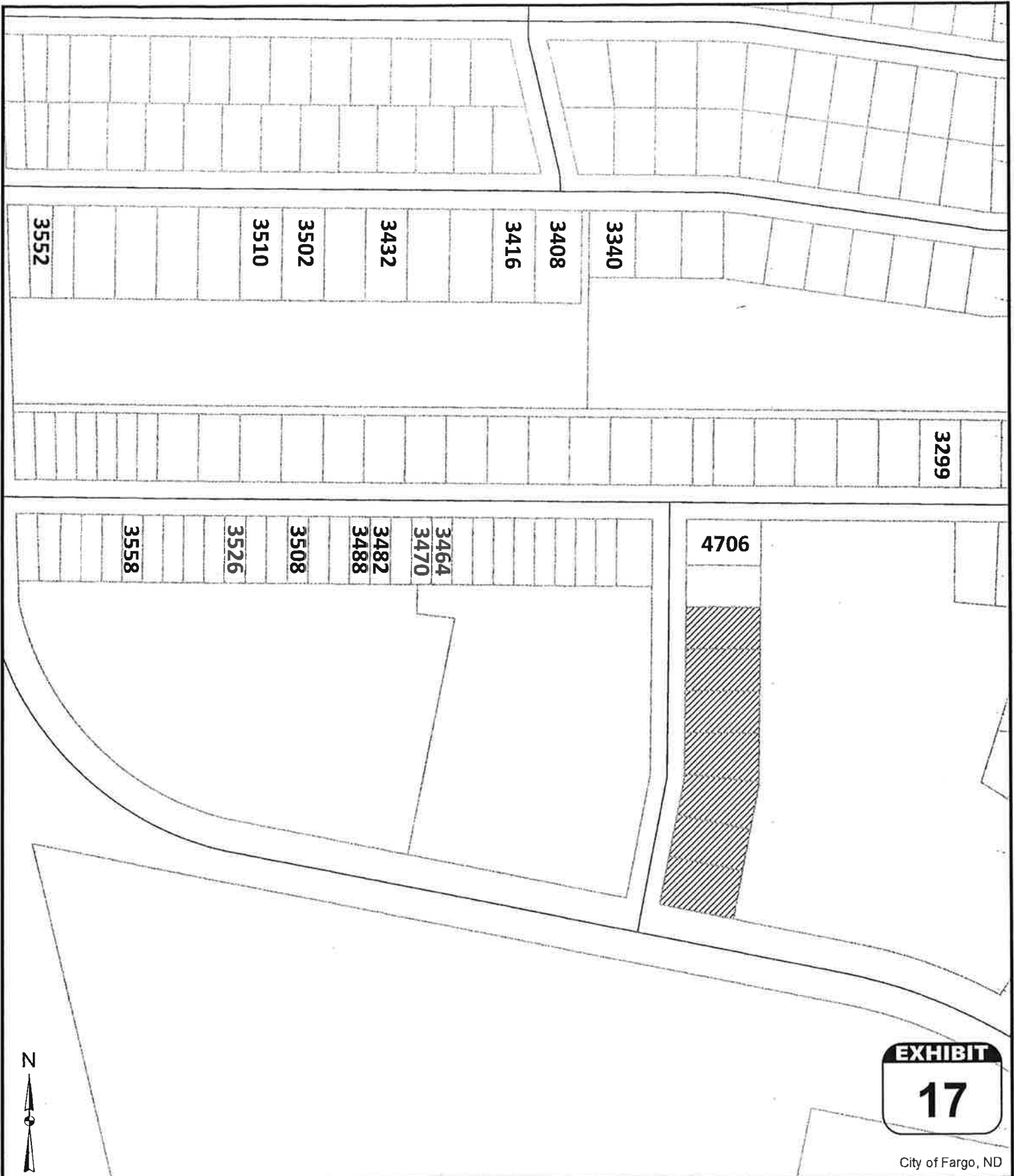
I, Jeff & Toleen Greenheck, am submitting this document to express my  
print name(s)  
opposition to the proposed "Timber Creek Ninth Addition" and "Timber Creek Tenth Addition."

I object to these projects for the following reasons:

- These projects will negatively affect my property value
- These projects will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The projects will increase traffic
- The projects will decrease parking
- Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: Jeff Greenheck  
Name: Jeff Greenheck  
Address: 3299 47th Ave S, Fargo  
Phone: 701-371-7817





**EXHIBIT**  
**17**

City of Fargo, ND

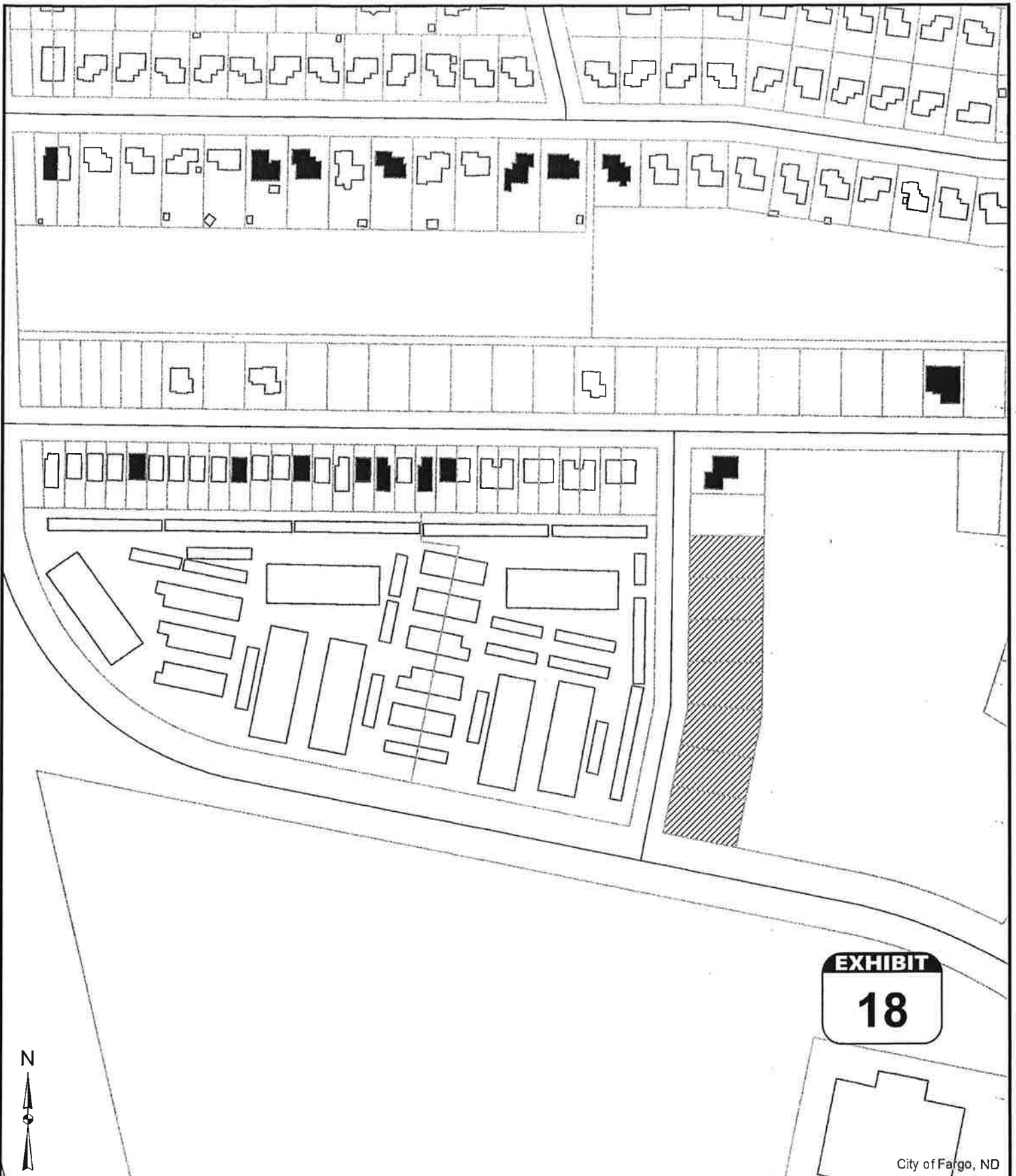
These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

**Addresses of homeowners objecting to proposed changes**

1:4,179

This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features.





City of Fargo, ND

These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

**Locations of homeowners objecting to proposed changes**

1:4,179

This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features.

**EXHIBIT**  
**18**

THE CITY OF  
**Fargo**  
FAR MORE

<b>City of Fargo Staff Report</b>			
<b>Title:</b>	Eagle Valley 3 <sup>rd</sup> Addition	<b>Date:</b>	1/28/2019
<b>Location:</b>	7301 23 <sup>rd</sup> Street South	<b>Staff Contact:</b>	Donald Kress, planning coordinator
<b>Legal Description:</b>	Lot 1, Block 6, Eagle Valley Addition		
<b>Owner(s)/Applicant:</b>	76 <sup>th</sup> Street Holding, LLC / Jon Youness	<b>Engineer:</b>	Moore Engineering, Inc.
<b>Entitlements Requested:</b>	<b>Major Subdivision</b> (Plat of <b>Eagle Valley Third Addition</b> , a replat of Lot 1, Block 6, Eagle Valley Addition to the City of Fargo, Cass County, North Dakota) and <b>Zoning Change</b> (from MR-2, Multi-Dwelling Residential to SR-4, Single-Dwelling Residential and MR-2, Multi Dwelling Residential)		
<b>Status:</b>	Planning Commission Public Hearing: February 5, 2019		

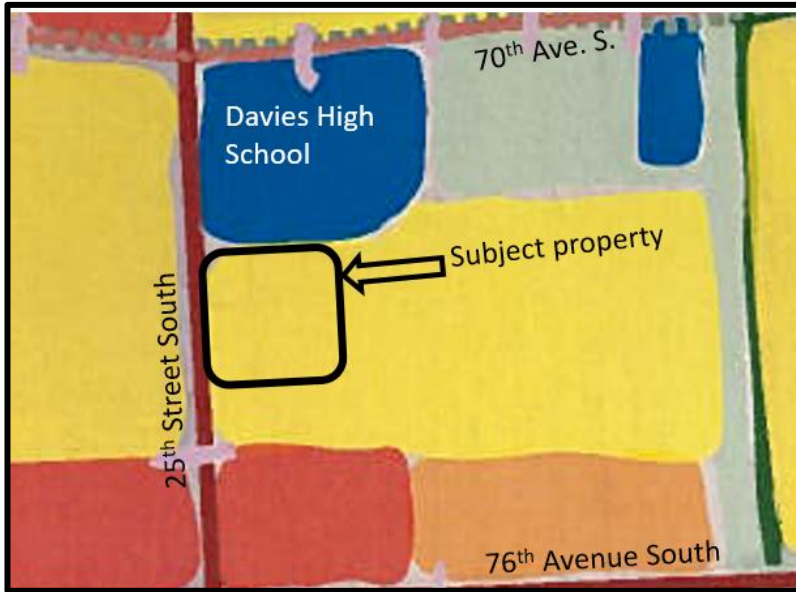
<b>Existing</b>	<b>Proposed</b>
<b>Land Use:</b> Undeveloped	<b>Land Use:</b> Residential
<b>Zoning:</b> MR-2, Multi Dwelling Residential	<b>Zoning:</b> SR-4, Single-Dwelling Residential; MR-2, Multi Dwelling Residential
<b>Uses Allowed:</b> MR-2 Allows detached houses, attached houses, duplexes, multi-dwelling structures, daycare centers up to 12 children, group living, parks and open space, religious institutions, safety services, schools, and basic utilities	<b>Uses Allowed:</b> <u>SR-4 - Single-Dwelling Residential</u> allows detached houses, daycare centers up to 12 children, attached houses, duplexes, parks and open space, religious institutions, safety services, schools, and basic utilities; <u>MR-2, Multi-Dwelling Residential</u> Allows detached houses, attached houses, duplexes, multi-dwelling structures, daycare centers up to 12 children, group living, parks and open space, religious institutions, safety services, schools, and basic utilities
<b>Maximum Density Allowed:</b> 20 dwelling units per acre.	<b>Maximum Density Allowed:</b> SR-4 allows a maximum 12.1 units per acre; MR-2 allows a maximum of 20 dwelling units per acre

<b>Proposal:</b>
<p>The applicant requests two entitlements:</p> <ol style="list-style-type: none"> <li>1. A major subdivision, entitled <b>Eagle Valley Third Addition</b>, which is a replat of Lot 1, Block 6, Eagle Valley Addition.</li> <li>2. A zoning change from MR-2, Multi Dwelling Residential to SR-4, Single-Dwelling Residential and MR-2, Multi Dwelling Residential</li> </ol> <p><b>Surrounding Land Uses and Zoning Districts:</b></p> <ul style="list-style-type: none"> <li>• North: P/I, Public/Institutional: Davies High School</li> <li>• East: AG, Agricultural: undeveloped; in the extra-territorial jurisdiction</li> <li>• South: MR-3 and LC, Limited Commercial: currently not developed</li> <li>• West: P/I: Parks/Institutional; owned by Fargo Park District, currently not developed</li> </ul> <p>(continued on next page)</p>

**Area Plans:**

The subject property is located within the 2007 Tier 1 Southeast Land Use Plan. This plan designates the subject property as “Residential Area—Lower to Medium Density.” This land use designation includes the proposed SR-4 zoning.

- Commercial Area
- Future School
- Proposed Park
- Residential Area - lower to medium density
- Residential Area - medium to high density
- Residential Area - rural



**Schools and Parks:**

**Schools:** The subject property is located within the Fargo School District, specifically within the Bennett Elementary, Discovery Middle and Davies High schools.

**Parks:** Davies Athletic Complex (1880 70th Avenue S) is located north across 73<sup>rd</sup> Avenue from the subject property and offers baseball/softball amenities. Davies Recreational Pool (7150 25th Street S) is also located across 73<sup>rd</sup> Avenue from the subject property and offers concessions, restrooms, and swimming pool amenities.

**Pedestrian / Bicycle:** On the east of the property, there are off road bike facilities that run along 25<sup>th</sup> Street South that are components 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.

**PLAT AND ZONING CHANGE**

The plat will create 28 single-dwelling lots and one multi-dwelling lot, zoned as follow

BLOCK	LOTS	ZONING	LAND USE
1	1-8	SR-4	Detached single family
1	9	MR-2	Multi dwelling residential
1	10-14	SR-4	Detached single family
2	1-15	SR-4	Detached single family

The single-family lots range in size from approximately 5,200 square feet to over 7,700 square feet, with most lots in the 5,400 to 6,200 square foot range. All meet the minimum required lot area of the SR-4 zone. The multi-dwelling lot (Lot 9, Block 1) has an area of 33,207 square feet (0.76 acre), which would allow 15 dwelling units.

Note that the property is currently all zoned MR-2. The proposed project creates more restrictive zoning (SR-4) on all but one lot of the project.

All the lots in Block 1 are double-fronting. The owners of the lots that have frontage on 73<sup>rd</sup> Avenue South will be responsible for snow removal on the public sidewalk and mowing of the boulevard along 73<sup>rd</sup> Avenue. The City is responsible for snow removal along 25<sup>th</sup> Street South, an arterial street, but the property owners are required to mow the boulevard. Statements to this effect are in the amenities plan.

ACCESS: All lots in Block 1 and Lots 1 through 8 in Block 2 will take access from the internal street, to be known as Eagle Valley Drive South, dedicated with this plat. This street connects 23<sup>rd</sup> Street South with 74<sup>th</sup> Avenue South. Lots 9 through 16 will take access from 23<sup>rd</sup> Street South. None of the lots will take access direction from 74<sup>th</sup> Avenue South, 73<sup>rd</sup> Avenue South, or 25<sup>th</sup> Street South.

PUBLIC WATER and SEWER: Public water and sewer will be provided in the dedicated public streets.

### Zoning

Section 20-906. F (1-4) of the LDC stipulates the following criteria be met before a zone change can be approved:

1. **Is the requested zoning change justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map?**

Staff is unaware of any error in the zoning map as it relates to this property. The property is currently zoned MR-2, Multi-Dwelling Residential. The applicant requests a zoning change to SR-4: Single Dwelling Residential for the proposed new single-dwelling lots while retaining the MR-2 zoning on one lot (Lot 9, Block 1). The proposed SR-4 zoning are consistent with the 2007 Land Use Plan designation of "lower to medium density residential." **(Criteria Satisfied)**

2. **Are the City and other agencies able to provide the necessary public services, facilities, and programs to serve the development allowed by the new zoning classifications at the time the property is developed?**

City staff and other applicable review agencies have reviewed this proposal. Staff finds no deficiencies in the ability to provide all of the necessary services to the site. The individual lots will front on a new dedicated public street which will provide access and public utilities to serve the development. **(Criteria satisfied)**

3. **Will the approval of the zoning change adversely affect the condition or value of the property in the vicinity?**

Staff has no documentation or evidence to suggest that the approval of this zoning change would adversely affect the condition or value of the property in the vicinity. Written notice of the proposal was sent to all property owners within 300 feet of the subject property. To date, Planning staff has received one phone inquiry about the project. Staff finds that the approval of the zoning change will not adversely affect the condition or value of the property in the vicinity. **(Criteria satisfied)**

4. **Is the proposed amendment consistent with the purpose of this LDC, the Growth Plan, and other adopted policies of the City?**

The LDC states "This Land Development Code is intended to implement Fargo's Comprehensive Plan and related policies in a manner that protects the health, safety, and general welfare of the citizens of Fargo." The Growth Plan that applies to this property is the 2007 Growth Plan.

This property is designated "lower to medium density residential" on the 2007 Growth Plan. The 2007 Growth Plan includes the SR-4 designation in that the "low to medium density" residential designation. One lot (Lot 9, Block 1) will retain the current MR-2 zoning. Staff finds this proposal is consistent with the purpose of the LDC, the applicable growth plan, and other adopted policies of the City, contingent on Commission approval of the proposed Growth Plan Amendment. **(Criteria satisfied)**

## Major Subdivision

The LDC stipulates that the following criteria is met before a major subdivision plat can be approved

- 1. Section 20-0907. of the LDC stipulates that no major subdivision plat application will be accepted for land that is not consistent with an approved Growth Plan or zoned to accommodate the proposed development.**

The requested zoning for the residential development on this property is SR-4: Single-Dwelling Residential. The SR-4 zoning will accommodate the proposed single-family development. The SR-4 zoning designations is consistent with the "lower to medium density" designation for this property in the 2007 Growth Plan as noted in the zoning change findings above. One lot (Lot 9, Block 1) will retain the current MR-2 zoning. In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. To date, staff has received one call of inquiry with no comment on the application.

**(Criteria Satisfied)**

- 2. Section 20-0907.4 of the LDC further stipulates that the Planning Commission shall recommend approval or denial of the application and the City Commission shall act to approve or deny, based on whether it is located in a zoning district that allows the proposed development, complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code.**

The property is proposed to be zoned SR-4: Single-Dwelling Residential. As noted in the zone change findings above, these zones are consistent with the 2007 Growth Plan designation of "lower to medium density residential." The project has been reviewed by the city's Planning, Engineering, Public Works, Inspections, and Fire Departments.

**(Criteria Satisfied)**

- 3. Section 20-907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision.**

The applicant has provided a draft amenities plan that specifies the terms or securing installation of public improvements to serve the subdivision. This amenities plan will be reviewed by the Public Works Project Evaluation Committee (PWPEC) prior to the plat going to City Commission for final approval. Any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure improvements are proposed to be spread by the front footage basis and storm sewer by the square footage basis as is typical with the City of Fargo assessment principles

**(Criteria Satisfied)**

### Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of staff and move to recommend approval to the City Commission of the proposed 1) Zoning Change from MR-2, Multi Dwelling Residential to SR-4, Single-Dwelling Residential and MR-2, Multi-Dwelling Residential and 2) a plat of the **Eagle Valley Third Addition**, as the proposal complies with the Go2030 Fargo Comprehensive Plan, 2007 Growth Plan, Standards of Article 20-06, and Section 20-0906.F (1-4) of the LDC and all other applicable requirements of the LDC."

**Planning Commission Recommendation:** February 5, 2019

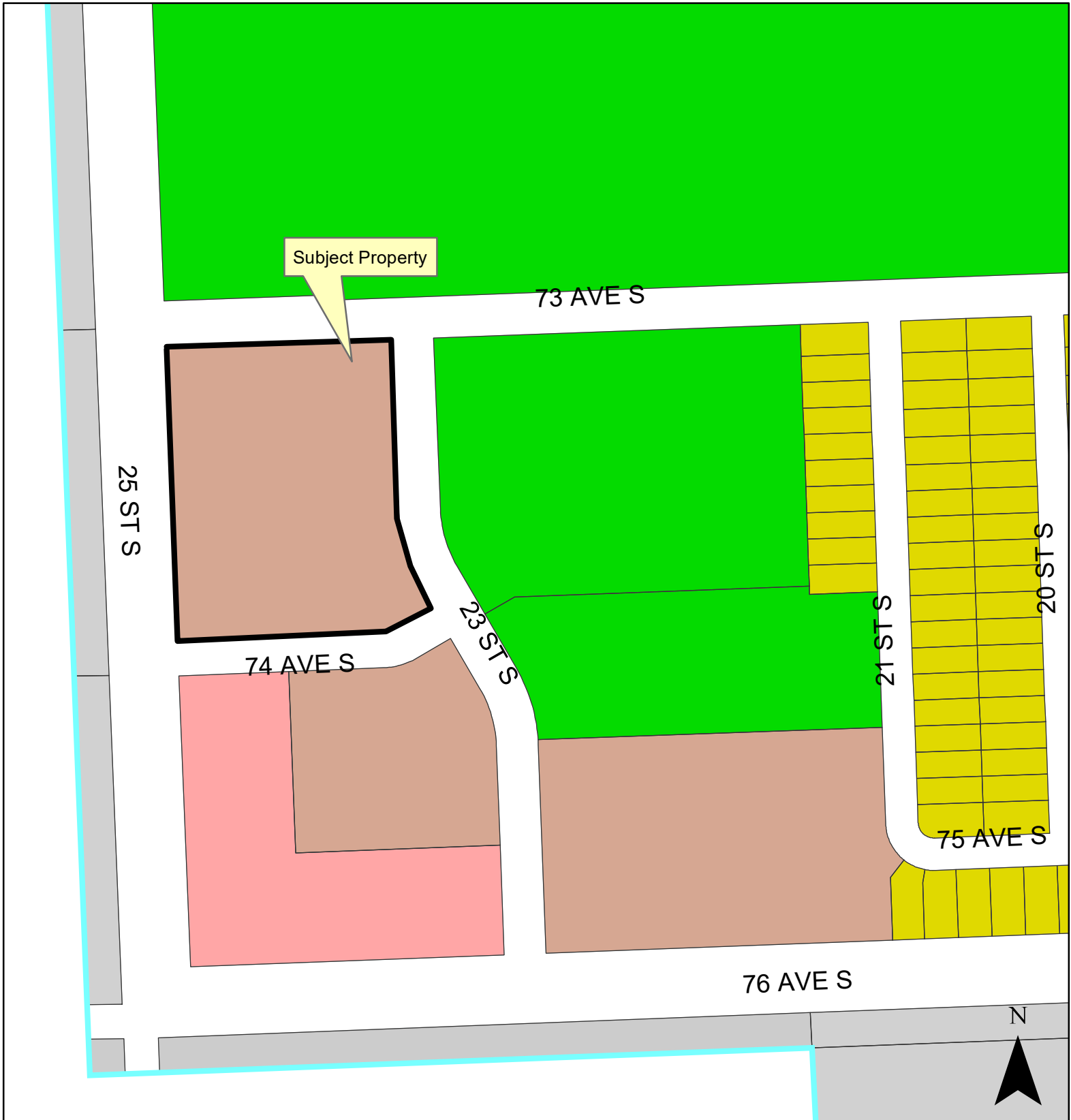
### Attachments:

1. Zoning map
2. Location map
3. Preliminary plat

# Plat (Major) & Zone Change (MR-2 to MR-2 & SR-4)

## Eagle Valley 3rd Addition

7301 23rd Street South



### Legend

AG	LC	MHP	SR-2
DMU	LJ	NC	SR-3
GC	MR-1	NO	SR-4
GO	MR-2	PL	SR-5
	MR-3	UML	City Limits

300

Feet

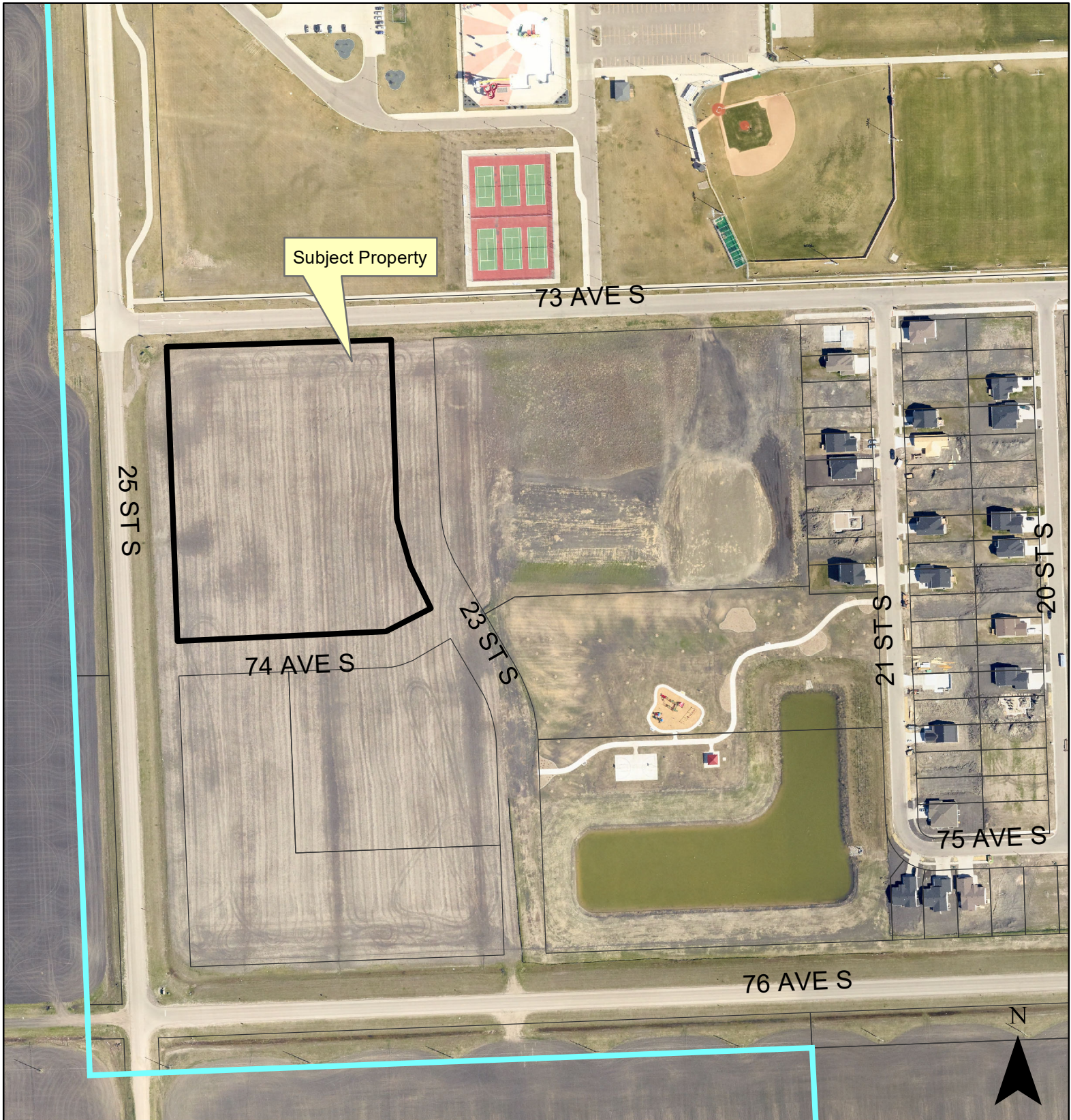
Fargo Planning Commission

February 5, 2019

# Plat (Major) & Zone Change (MR-2 to MR-2 & SR-4)

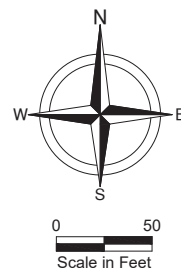
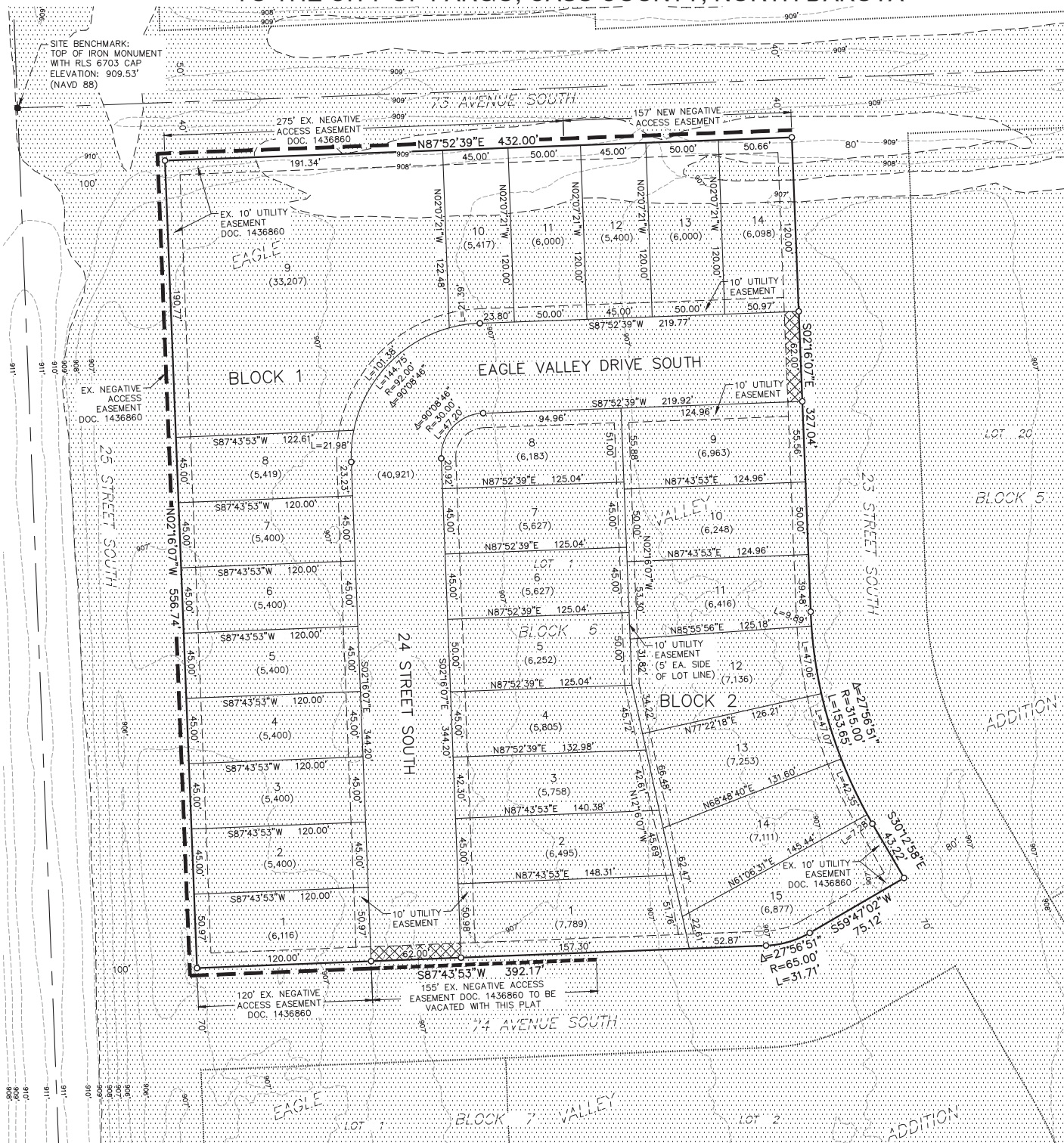
## Eagle Valley 3rd Addition

7301 23rd Street South





# A MAJOR SUBDIVISION PLAT OF EAGLE VALLEY THIRD ADDITION A REPLAT OF LOT 1, BLOCK 6, EAGLE VALLEY ADDITION TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA



BASIS OF BEARINGS: EAGLE VALLEY ADDITION TO THE CITY OF FARGO ACCORDING TO THE RECORDED PLAT THEREOF.

"NEGATIVE ACCESS EASEMENT, AS NOTED ON THIS PLAT, IS AN EASEMENT DEDICATED AS PART OF THE RIGHT OF WAY DEDICATION WHICH EASEMENT DENIES DIRECT VEHICULAR ACCESS TO A STREET OR PUBLIC WAY FROM THE LOT OR LOTS ADJACENT TO SUCH STREET OR WAY. THE NEGATIVE ACCESS EASEMENT IS NOT A STRIP OF LAND OF ANY CERTAIN WIDTH, BUT IS A LINE COTERMINOUS WITH THE BOUNDARY OF THE ADJACENT LOT OR LOTS".

LEGEND	
●	IRON MONUMENT FOUND
○	SET 5/8"x18" REBAR WITH YELLOW PLASTIC CAP #6571
L	ARC LENGTH
R	RADIUS LENGTH
Δ	CENTRAL ANGLE
---	EXISTING NEGATIVE ACCESS EASEMENT
---	EXISTING NEGATIVE ACCESS EASEMENT TO BE VACATED WITH THIS PLAT
---	SECTION LINE
---	PLAT BOUNDARY LINE
---	LOT LINE
---	EASEMENT LINE
---	EXISTING LOT LINE
---	EXISTING UTILITY EASEMENT TO BE VACATED WITH THIS PLAT
---	ZONE AE, FIRM MAP NO. 38017C07906, BASE FLOOD ELEVATION = 908.5' (NAVD88)

### CERTIFICATE

STEVEN W. HOLM, BEING DULY SWORN, DEPOSES AND SAYS THAT HE IS THE REGISTERED LAND SURVEYOR WHO PREPARED AND MADE THE ATTACHED PLAT OF "EAGLE VALLEY THIRD ADDITION", A REPLAT OF LOT 1, BLOCK 6, EAGLE VALLEY ADDITION TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA; THAT SAID PLAT IS A TRUE AND CORRECT REPRESENTATION OF THE SURVEY THEREOF; THAT ALL DISTANCES ARE CORRECTLY SHOWN ON SAID PLAT; THAT MONUMENTS HAVE BEEN PLACED IN THE GROUND AS INDICATED FOR THE GUIDANCE OF FUTURE SURVEYS AND THAT SAID ADDITION IS DESCRIBED AS FOLLOWS, TO WIT:

LOT 1, BLOCK 6, EAGLE VALLEY ADDITION TO THE CITY OF FARGO, ACCORDING TO THE RECORDED PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE RECORDER, CASS COUNTY, NORTH DAKOTA.

SAID TRACT CONTAINS 5.61 ACRES, MORE OR LESS, AND IS SUBJECT TO ALL EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS OF WAY OF RECORD, IF ANY.



STEVEN W. HOLM  
REGISTERED LAND SURVEYOR  
REG. NO. LS-6571

STATE OF NORTH DAKOTA )  
COUNTY OF CASS )

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED STEVEN W. HOLM, REGISTERED LAND SURVEYOR, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME AS HIS FREE ACT AND DEED.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

### DEDICATION

WE, THE UNDERSIGNED, DO HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE LAND DESCRIBED IN THE PLAT OF "EAGLE VALLEY THIRD ADDITION", A REPLAT OF LOT 1, BLOCK 6, EAGLE VALLEY ADDITION TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA; THAT WE HAVE CAUSED IT TO BE PLATTED INTO LOTS AND BLOCKS AS SHOWN BY SAID PLAT AND CERTIFICATE OF STEVEN W. HOLM, REGISTERED LAND SURVEYOR, AND THAT THE DESCRIPTION AS SHOWN IN THE CERTIFICATE OF THE REGISTERED LAND SURVEYOR IS CORRECT. WE HEREBY DEDICATE ALL STREETS, DRIVES AND UTILITY EASEMENTS SHOWN ON SAID PLAT TO THE USE OF THE PUBLIC.

OWNER: 76TH STREET HOLDINGS, LLC

MORTGAGEE: FIRST INTERNATIONAL BANK & TRUST

JAMES R. BULLIS, PRESIDENT

MATT MUELLER, VICE PRESIDENT

STATE OF NORTH DAKOTA )  
COUNTY OF CASS )

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED JAMES R. BULLIS, PRESIDENT, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN THE NAME OF 76TH STREET HOLDINGS, LLC.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

STATE OF NORTH DAKOTA )  
COUNTY OF CASS )

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED MATT MUELLER, VICE PRESIDENT, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE EXECUTED THE SAME IN THE NAME OF FIRST INTERNATIONAL BANK & TRUST.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

### FARGO PLANNING COMMISSION APPROVAL

THIS PLAT IN THE CITY OF FARGO IS HEREBY APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

SHARA FISCHER, CHAIR

STATE OF NORTH DAKOTA )  
COUNTY OF CASS )

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED SHARA FISCHER, CHAIR OF THE FARGO PLANNING COMMISSION, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT SHE EXECUTED THE SAME IN THE NAME OF THE FARGO PLANNING COMMISSION.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

### FARGO CITY COMMISSION APPROVAL

THIS PLAT IN THE CITY OF FARGO IS HEREBY APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

TIMOTHY J. MAHONEY, MAYOR

STEVEN SPRAGUE, CITY AUDITOR

STATE OF NORTH DAKOTA )  
COUNTY OF CASS )

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED TIMOTHY J. MAHONEY, MAYOR AND STEVEN SPRAGUE, CITY AUDITOR, KNOWN TO ME TO BE THE PERSONS DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME IN THE NAME OF THE CITY OF FARGO.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

### CITY ENGINEER'S APPROVAL

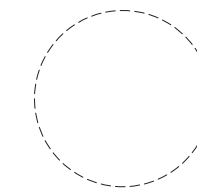
THIS PLAT IN THE CITY OF FARGO IS HEREBY APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

BRENDA E. DERRIG, CITY ENGINEER

STATE OF NORTH DAKOTA )  
COUNTY OF CASS )

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED BRENDA E. DERRIG, CITY ENGINEER, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT SHE EXECUTED THE SAME AS HER FREE ACT AND DEED.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA



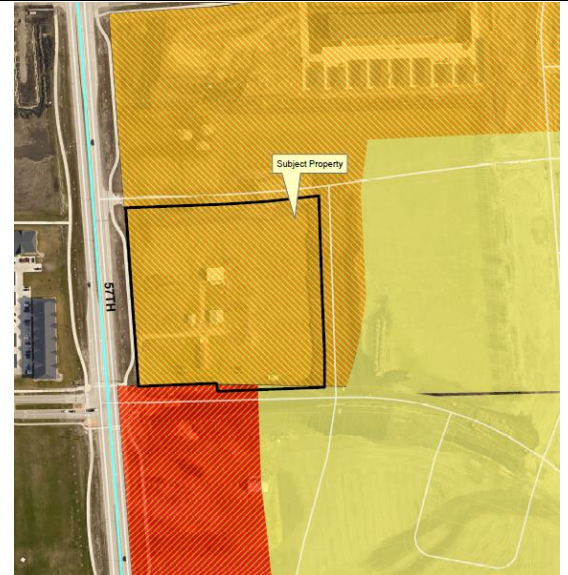
<b>City of Fargo Staff Report</b>			
<b>Title:</b>	Schatz 4th Addition	<b>Date:</b>	1/17/2019
<b>Location:</b>	5622, 5630, 5650 34 <sup>th</sup> Avenue South; 5621, 5631, and 5651 36 <sup>th</sup> Avenue South; and 3435, 3475, and 3501 56 <sup>th</sup> Street South	<b>Staff Contact:</b>	Kylie Murphy
<b>Legal Description:</b>	Lots 1-4, Block 1, Schatz 4th Addition		
<b>Owner(s)/Applicant:</b>	Jon Youness	<b>Engineer:</b>	N/A
<b>Entitlements Requested:</b>	<b>Zoning Change</b> (to repeal and reestablish a C-O, Conditional Overlay on Lots 1-4, Block 1, Schatz 4 <sup>th</sup> Addition)		
<b>Status:</b>	Planning Commission Public Hearing: February 5, 2019		

<b>Existing</b>	<b>Proposed</b>
<b>Land Use:</b> Office and Retail Sales and Services	<b>Land Use:</b> No Change
<b>Zoning:</b> LC, Limited Commercial, with a C-O, Conditional Overlay	<b>Zoning:</b> No Change
<b>Uses Allowed:</b> Allows colleges, community service, daycare centers of unlimited size, health care facilities, parks and open space, religious institutions, safety services, offices, <del>off premise advertising signs</del> , commercial parking, retail sales and service, <del>self-service storage, vehicle repair</del> , limited vehicle service.	<b>Uses Allowed:</b> No Change
<b>Maximum Lot Coverage Allowed:</b> 55% building coverage	<b>Maximum Lot Coverage Allowed:</b> No change

<b>Proposal:</b>
<p>The applicant is seeking a zoning change to repeal and reestablish a C-O, Conditional Overlay on Lots 1-4, Block 1, Schatz 4<sup>th</sup> Addition. The subject property is located at 5622, 5630, 5650 34<sup>th</sup> Avenue South; 5621, 5631 and 5651 36<sup>th</sup> Avenue South; and 3435, 3475, 3501 56<sup>th</sup> Street South.</p> <p>The original C-O on the subject property is intended for commercial development, however, the applicant has a more detailed development plan for the area. The proposed C-O maintains all of the original C-O requirements, while seeking to extend the use of portable signs until June 30, 2021 or until the development has been completed and issued certificates of occupancy within the completed development, whichever comes first. A draft of the proposed C-O language is attached to this staff report.</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> <p><b>Surrounding Land Uses and Zoning Districts:</b></p> <ul style="list-style-type: none"> <li>• North: Across 34<sup>th</sup> Avenue South, MR-3, Multi-Dwelling Residential, with attached residential (multi-dwelling structure) use</li> <li>• East: Across 56<sup>th</sup> Street South, MR-1, Multi-Dwelling Residential, with attached residential (multi-dwelling structure) use</li> <li>• South: LC, Limited Commercial with daycare, retail, and office uses</li> <li>• West: Across Veterans Blvd is West Fargo, ND</li> </ul>

**Area Plans:**

The subject property is located in the 2003 Southwest Future Land Use Plan. The property is designated as the most suitable for “Low/Medium Density or Medium/High Density” land use.



**Schools and Parks:**

**Schools:** The subject property is located within the West Fargo School District and is served by Independence Elementary, Liberty Middle and Sheyenne High schools.

**Parks:** Brandt Crossing Park (5009 33rd Avenue S) is located about 0.29 miles east of the subject property and offers the amenities of basketball, dog park, playground, recreational trails, and shelter amenities.

**Pedestrian / Bicycle:** Off-road bike facilities are located along Veterans Boulevard adjacent of the subject property to the west. Off-road bike facilities are a component of the metro area trail system.

**Staff Analysis:**

**Zoning**

Section 20-906. F (1-4) of the LDC stipulates the following criteria be met before a zone change can be approved:

- 1. Is the requested zoning change justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map?**

Staff is unaware of any zoning map error in regard to the subject property. Staff finds that the requested zone change is justified by a change in conditions, as the developer has a clearer picture of the type of development. The proposed C-O zoning is requested in order to keep the development compatible with the existing and emerging development in the area.

**(Criteria Satisfied)**
- 2. Are the City and other agencies able to provide the necessary public services, facilities, and programs to serve the development allowed by the new zoning classifications at the time the property is developed?**

City Staff and other applicable review agencies have reviewed this proposal. No deficiencies have been noted in the ability to provide all of the necessary services to the site. The subject property abuts public right-of-way.

**(Criteria Satisfied)**
- 3. Will the approval of the zoning change adversely affect the condition or value of the property in the vicinity?**

Staff has no evidence that would suggest this proposal would adversely affect the condition or value of the property in the vicinity. Written notice of the proposal was sent to all property owners within 300 feet of the

subject property. To date, staff has not received any phone calls or comments in response to these notices. Staff finds that the approval will not adversely affect the condition or value of the property in the vicinity.  
**(Criteria Satisfied)**

**4. Is the proposed amendment consistent with the purpose of this LDC, the Growth Plan, and other adopted policies of the City?**

The purpose of the LDC is to implement Fargo's Comprehensive Plan and related policies in a manner that protects the health, safety, and general welfare of the citizens of Fargo. Staff finds that the proposal is consistent with the purposes of the LDC and other adopted policies of the City.  
**(Criteria Satisfied)**

**Staff Recommendation:**

Suggested Motion: "To accept the findings and recommendations of staff and recommend approval to the City Commission of the proposed zoning change to repeal and reestablish a C-O, Conditional Overlay on Lots 1-4, Block 1, Schatz 4<sup>th</sup> Addition, on the basis that it satisfactorily complies with the Go2030 Fargo Comprehensive Plan, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC."

**Planning Commission Recommendation: February 5, 2019**

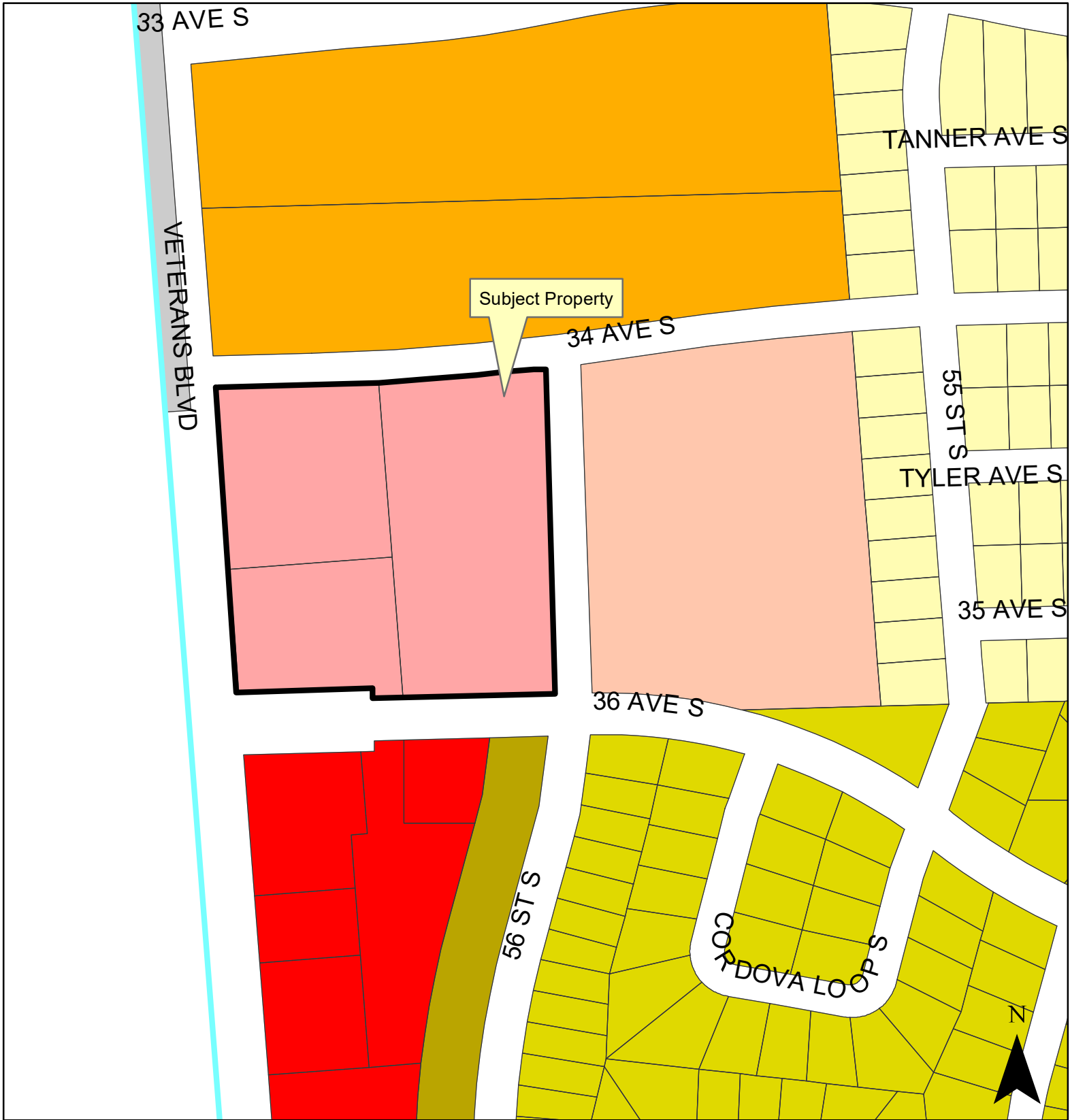
**Attachments:**

1. Zoning Map
2. Location Map
3. Draft C-O

# Zone Change (Repeal & Reestablish C-O)

## Schatz 4th Addition

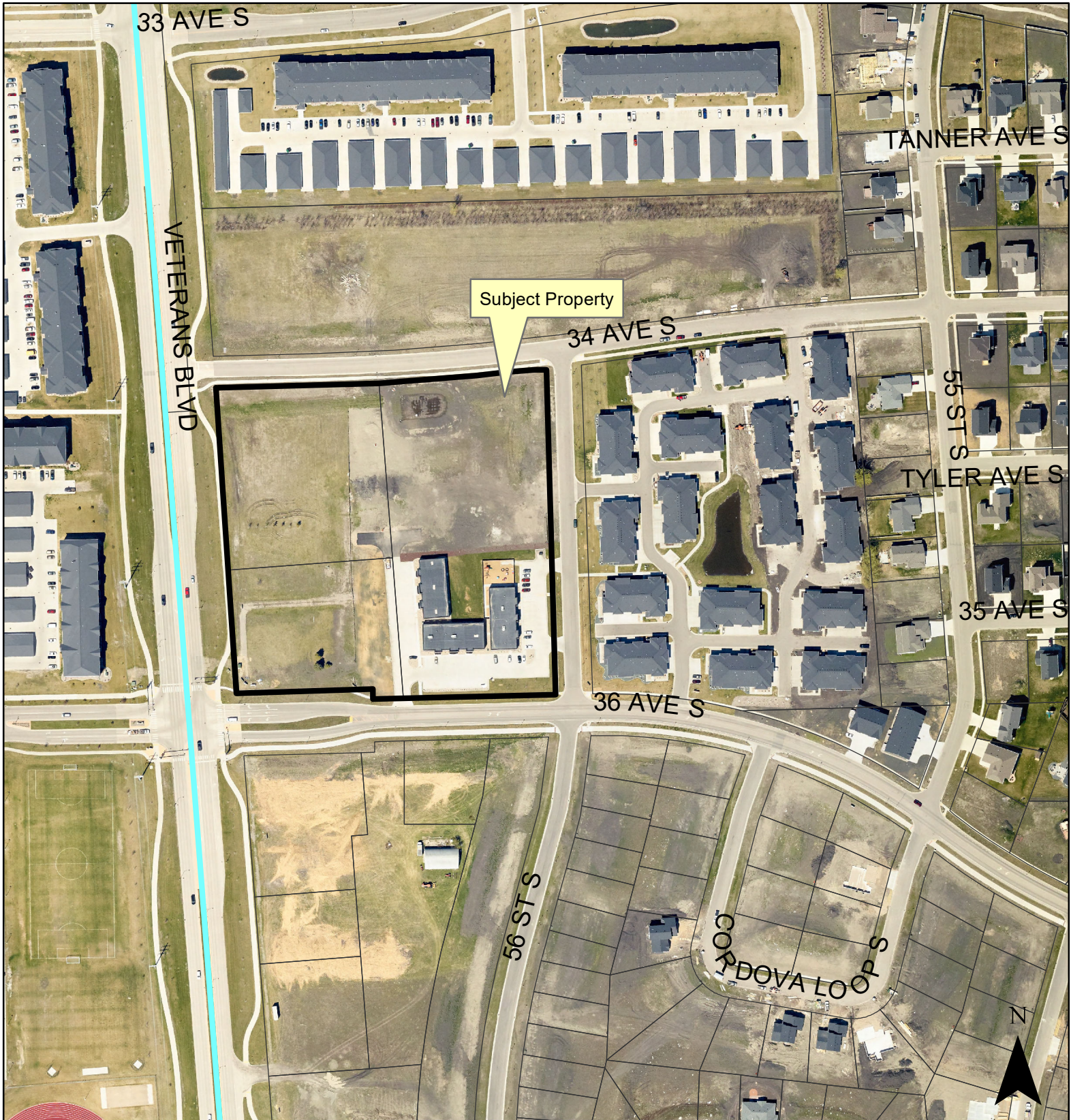
5622, 5630, & 5650 34th Ave S; 5621, 5631, & 5651  
36th Ave S; 3435, 3475, & 3501 56th Ave S



# Zone Change (Repeal & Reestablish C-O)

## Schatz 4th Addition

5622, 5630, & 5650 34th Ave S; 5621, 5631, & 5651  
36th Ave S; 3435, 3475, & 3501 56th Ave S



1. This Conditional Overlay is intended to provide for a higher quality of design than is afforded by the City of Fargo Land Development Code regarding future commercial and residential development within the described property.

2. All primary buildings shall be constructed or clad with materials that are durable, economically-maintained, and of a quality that will retain their appearance over time, including but not limited to natural or synthetic stone; brick; stucco; integrally-colored, textured or glazed concrete masonry units; high-quality pre-stressed concrete systems; EIFS (exterior insulation finishing system), glass, metal panes similar to 'Aluco Bond' and synthetic panels similar to 'Trespa'. Natural wood or wood paneling shall not be used as a principal exterior wall material, but durable synthetic materials with the appearance of wood may be used. Horizontal metal lap siding and vertical metal batten shall be allowed on residential and commercial structures but shall not exceed 75% of the building elevation for residential structures and 50% for commercial.

3. Color schemes shall tie building elements together, relate pad buildings within the same development to each other, and shall be used to enhance the architectural form of a building.

4. All building facades greater than 150 feet in length, measured horizontally, shall incorporate wall plane projections or recesses having a depth of at least three percent of the length of the facade, and extending at least 20 percent of the length of the facade. No uninterrupted length of any facade shall exceed 150 horizontal feet. An articulated façade would emphasize elements on the face of a wall including change in setback, materials, roof pitch or height.

5. Ground floor facades that front Veterans Blvd shall have arcades, display windows, entry areas, awnings, or other such features along no less than 60 percent of their horizontal length. If the façade facing the street is not the front, it shall include the same features and/or landscaping in scale with the façade.

6. Flat roofs and rooftop equipment, such as HVAC units, shall be concealed from public view by parapets, including but not limited to the back of the structure. The average height of such parapets shall not exceed one third of the height of the supporting wall, and such parapets shall not be of a constant height for a distance of greater than 150 feet.

7. Dumpsters and outdoor storage areas must be completely screened from view. Collection area enclosures shall contain permanent walls on at least three (3) sides. The fourth side shall incorporate a metal gate to visually screen the dumpster or compactor; however, if the service side does not face any public right-of-way or residentially zoned property the metal gate shall not be required.

8. Separate vehicular and pedestrian circulation systems shall be provided. An onsite system of pedestrian walkways shall be designed to provide direct access and connections to and between the following:

- a. The primary entrance or entrances to each commercial building, including pad site buildings.
- b. Any sidewalks or walkways on adjacent properties that extend to the boundaries shared with the commercial development.
- c. Parking areas or structures that serve such primary buildings.
- d. Connections between the on-site (internal) pedestrian walkway network and any public sidewalk system located along adjacent perimeter streets shall be provided at regular intervals

along the perimeter street as appropriate to provide easy access from the public sidewalks to the interior walkway network.

e. Any public sidewalk system along the perimeter streets adjacent to the commercial development.

f. Where practical and appropriate, adjacent land uses and developments, including but not limited to residential developments, retail shopping centers, office buildings.

9. A minimum of 5% of the internal surface area of the parking lot shall be landscaped. The cumulative open space (green space) of each property shall consist of at least 10% of the total property acreage.

10. The following uses are prohibited.

a. Detention Facilities

b. Self Service Storage

c. Adult Entertainment Center

d. Off-Premise Advertising Signs (directional signs that are less than 50 square feet in size are exempt for this prohibition)

e. Portable Signs (portable signs will be allowed until ~~June 30, 2018~~ June 30, 2021 or until the development has been completed and issued certificates of occupancy within the completed development, whichever comes first)

f. Vehicle Repair

g. Industrial Service

h. Manufacturing and Production

i. Warehouse and Freight Movement

j. Aviation/Surface Transportation



<b>City of Fargo Staff Report</b>			
<b>Title:</b>	Prairie Farms Second Addition	<b>Date:</b>	1/29/2019
<b>Location:</b>	6059, 5069, & 6087 Prairie Grove Court South	<b>Staff Contact:</b>	Aaron Nelson
<b>Legal Description:</b>	Lots 1-3, Block 4, Prairie Farms Addition		
<b>Owner(s)/Applicant:</b>	Prairie Grove Inc, Dietrich Homes Inc./Designer Homes FM (Bronson Mathiason)	<b>Engineer:</b>	Moore Engineering
<b>Entitlements Requested:</b>	<b>Minor Subdivision</b> (Replat of Lots 1-3, Block 4, Prairie Farms Addition)		
<b>Status:</b>	Planning Commission Public Hearing: February 5, 2019		

<b>Existing</b>	<b>Proposed</b>
<b>Land Use:</b> Vacant & Household Living	<b>Land Use:</b> Household Living
<b>Zoning:</b> SR-4, Single-Dwelling Residential with C-O, Conditional Overlay	<b>Zoning:</b> No Change
<b>Uses Allowed:</b> SR-4 allows detached houses, daycare centers up to 12 children, <del>attached houses, duplexes,</del> parks and open space, religious institutions, safety services, schools, and basic utilities.	<b>Uses Allowed:</b> No Change
<b>Maximum Density:</b> SR-4 allows a maximum 12.1 units per acre	<b>Maximum Density:</b> No Change

<b>Proposal:</b>
<p>The applicant is seeking City approval of a minor subdivision, which would replat three existing lots into two new lots for detached single-dwelling residential development. The subject property encompasses approximately 1.3 acres.</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> <p><b>Surrounding Land Uses and Zoning Districts:</b></p> <ul style="list-style-type: none"> <li>• North: Vacant within SR-4, Single-Dwelling Residential;</li> <li>• East: Vacant within SR-4, Single-Dwelling Residential;</li> <li>• South: Household living within SR-2, Single-Dwelling Residential;</li> <li>• West: Household living within SR-4, Single-Dwelling Residential;</li> </ul>

**Area Plans:**

The subject property is located within the bounds of the 2003 Southwest Future Land Use Plan. This plan identifies “Low/Medium Density Residential” use as the preferred land uses for this area and is included by reference within the 2007 Growth Plan.

Commercial
Commercial or Medium/High Density
Commercial or Medium/High or Park/Open Space
Commercial or Park/Open Space
Either Industrial or Commercial
Either Office or Commercial
Either Office or Medium/High Density Residential
Industrial
Low/Medium Density Residential
Low/Medium Density or Medium/High Density
Medium/High Density Residential
Medium/High Density or Park/Open Space
Office
Office or Commercial or Medium/High Density
Park/Open Space
Public
Public or Commercial
Public or Low/Medium Density
Public or Office
Storm Water



**Schools and Parks:**

**Schools:** The subject property is located within the Fargo Public School District and is served by Centennial Elementary, Discovery Middle, and Davies High schools.

**Neighborhood:** The subject property is located in the Maple Valley Neighborhood.

**Parks:** Prairie Farms Park (5970 31 Street South) is located northeast of the subject property.

**Pedestrian / Bicycle:** An off-street bike facility runs along Drain 53, east of the subject property, and is a component of the metro area trail system.

**Staff Analysis:**

**Minor Subdivision**

The LDC stipulates that the following criteria is met before a minor plat can be approved:

- Section 20-0907.B.3 of the LDC stipulates that the Planning Commission recommend approval or denial of the application, based on whether it complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code. Section 20-0907.B.4 of the LDC further stipulates that a Minor Subdivision Plat shall not be approved unless it is located in a zoning district that allows the proposed development and complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code.**

This subdivision is intended to create two residential lots through the replatting of three existing residential lots. The proposed use is consistent with the existing zoning. In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. To date, staff has received one inquiry regarding this application and no comments. Additionally, the property owner to the south is working with the applicant to participate in modifications to the storm sewer inlet located on their shared property line, as detailed below. Staff has reviewed this request and finds that this application complies with standards of Article 20-06 and all applicable requirements of the Land Development Code. **(Criteria Satisfied)**

- Section 20-907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve**

**the subdivision.**

While this section of the LDC specifically addresses only major subdivision plats, staff believes it is important to note that any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure improvements are proposed to be spread by the front footage basis and storm sewer by the square footage basis as is typical with the City of Fargo assessment principals.

There is a storm sewer inlet and pipe located along the shared interior-side lot line of the existing two easternmost lots (Lots 1 & 2, Block 4, Prairie Farms Addition). Since the location of this lot line will become part of the proposed Lot 2 upon replat, the storm sewer will need to be relocated. As such, the owners of the subject property have been working with the neighboring property owner to the south and the City of Fargo Engineering Department to relocate this storm sewer in a manner that improves drainage for all adjacent lots. As of the writing of this staff report, the Engineering Department is currently drafting an agreement to be signed by the adjacent property owners regarding the planned relocation of this storm sewer inlet and pipe. Staff's intent would be for this agreement to be signed prior to final approval of the proposed plat. **(Criteria Satisfied)**

**Staff Recommendation:**

Suggested Motion: "To accept the findings and recommendations of staff and hereby recommend approval to the City Commission of the proposed *Prairie Farms Second Addition* subdivision plat as presented; as the proposal complies with the 2007 Growth Plan, Standards of Article 20-06 of the LDC, and all other applicable requirements of the LDC."

**Planning Commission Recommendation:** February 5, 2019

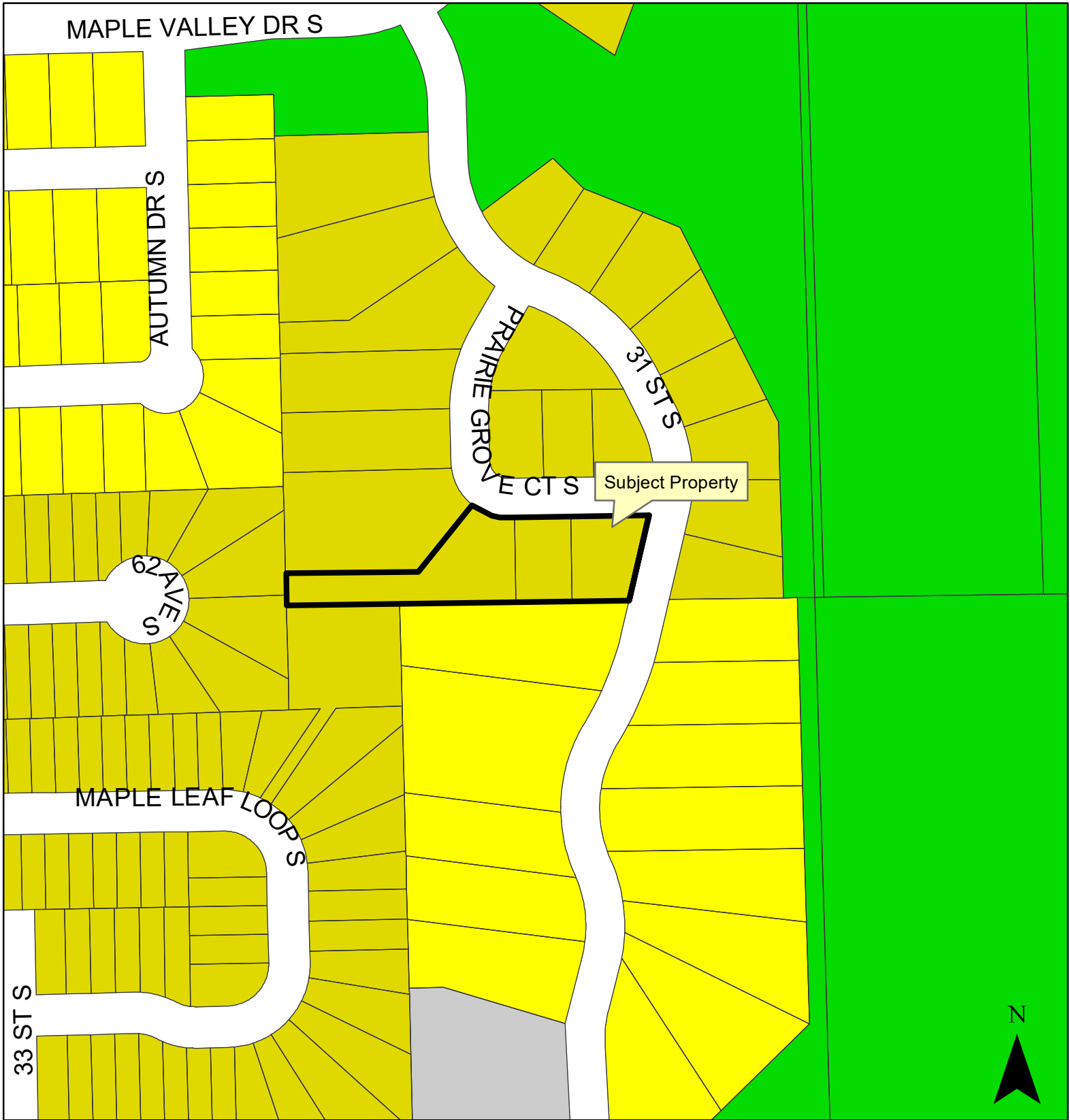
**Attachments:**

1. Zoning Map
2. Location Map
3. Preliminary Subdivision Plat

# Plat (Minor)

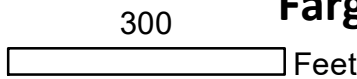
## Prairie Farms 2nd Addition

6087, 6069, 6059 Prairie Grove Ct S



**Legend**

- |     |      |     |             |
|-----|------|-----|-------------|
| AG  | LC   | MHP | SR-2        |
| DMU | M    | NO  | SR-1        |
| GC  | MR-1 | NC  | SR-1.5      |
| GL  | MR-2 | P/U | SR-5        |
| GO  | MR-3 | UML | SR-5.5      |
|     |      |     | City Limits |



**Fargo Planning Commission**

**February 5, 2019**

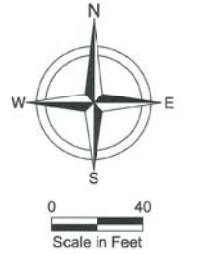
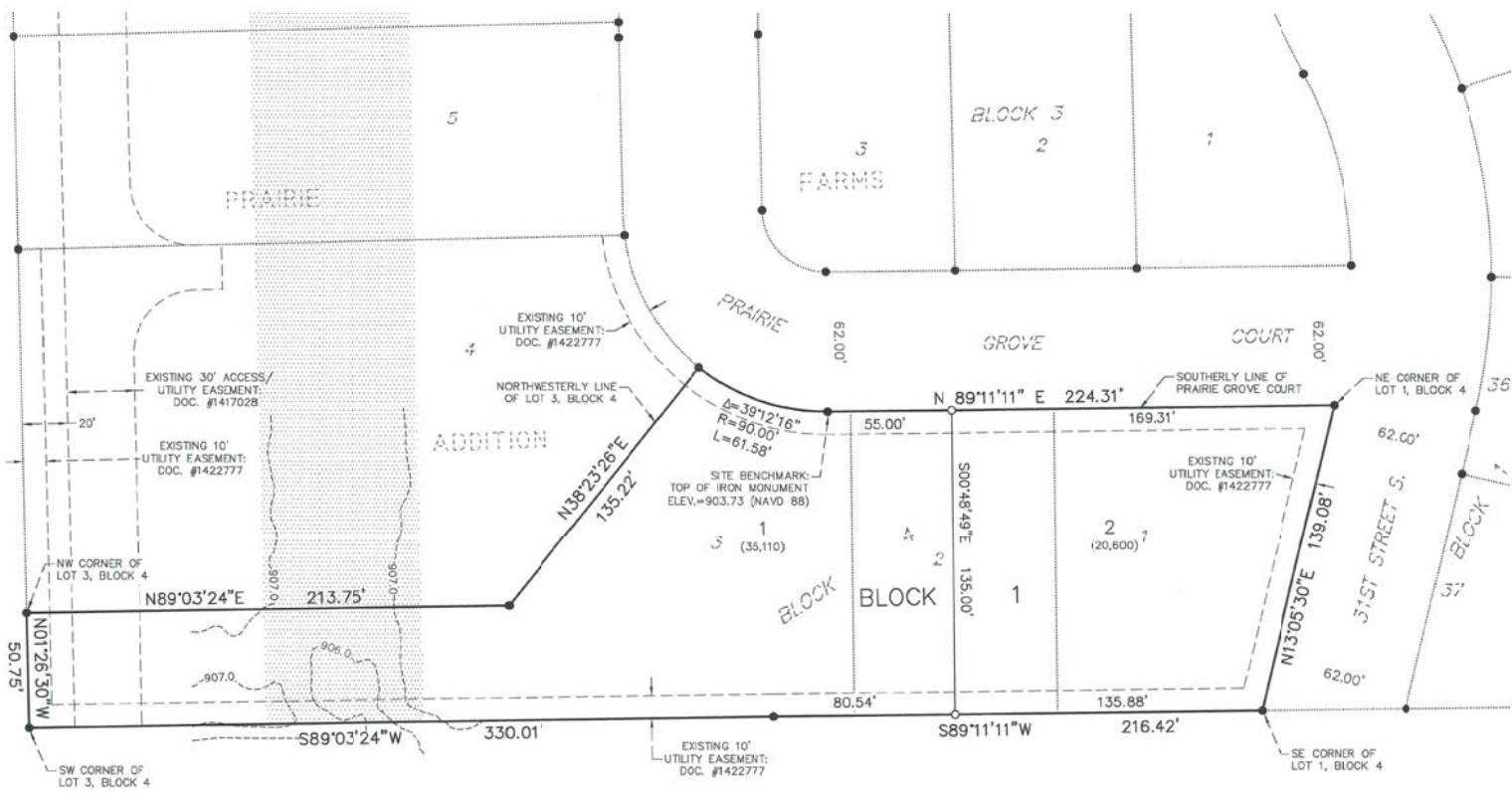
# Plat (Minor)

## Prairie Farms 2nd Addition

6087, 6069, 6059 Prairie Grove Ct S



**A MINOR SUBDIVISION PLAT OF  
PRAIRIE FARMS SECOND ADDITION  
TO THE CITY OF FARGO, A REPLAT OF LOTS 1 THROUGH 3, BLOCK 4, PRAIRIE FARMS ADDITION  
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA.**



BASIS OF BEARINGS: THE PLAT OF PRAIRIE FARMS ADDITION AS RECORDED.

- LEGEND**
- IRON MONUMENT FOUND
  - SET 5/8"X18" REBAR WITH YELLOW PLASTIC CAP #5900
  - (31,963) LOT AREAS IN SQ. FT.
  - L ARC LENGTH
  - R RADIUS LENGTH
  - Δ CENTRAL ANGLE
  - PLAT BOUNDARY LINE
  - LOT LINE
  - EXISTING EASEMENT LINE
  - EXISTING LOT LINE
  - ZONE AE, FIRM MAP NO. 38017C0787G, BASE FLOOD ELEVATION = 906.7' (NAVD88)
  - -907.00'--- CONTOUR LINE WITH ELEVATION 907.00' (NAVD 88)

**NOTES:**  
1. LOMR-F DATED NOVEMBER 17, 2015 WITH CASE NO. 16-08-0054A REMOVING PORTIONS OF THE SUBJECT PROPERTY FROM THE SFHA TO ZONE X (SHADED).

**EASEMENTS OF RECORD:**  
1. ALLEYWAY ACCESS EASEMENT AGREEMENT RECORDED MAY 13, 2014 AS DOCUMENT NO. 141662.  
2. DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS RECORDED MAY 16, 2016 AS DOCUMENT NO. 1477339.

**CERTIFICATE**

SHAWN M. THOMASSON, BEING DULY SWORN, DEPOSES AND SAYS THAT HE IS THE REGISTERED LAND SURVEYOR WHO PREPARED AND MADE THE ATTACHED PLAT OF "PRAIRIE FARMS SECOND ADDITION" TO THE CITY OF FARGO, A REPLAT OF LOTS 1 THROUGH 3, BLOCK 4, PRAIRIE FARMS ADDITION TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA; THAT SAID PLAT IS A TRUE AND CORRECT REPRESENTATION OF THE SURVEY THEREOF; THAT ALL DISTANCES ARE CORRECTLY SHOWN ON SAID PLAT; THAT MONUMENTS HAVE BEEN PLACED IN THE GROUND AS INDICATED FOR THE GUIDANCE OF FUTURE SURVEYS AND THAT SAID ADDITION IS DESCRIBED AS FOLLOWS, TO WIT:

ALL OF LOTS 1 THROUGH 3, BLOCK 4, PRAIRIE FARMS ADDITION TO THE CITY OF FARGO, ACCORDING TO THE RECORDED PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE RECORDER, CASS COUNTY, NORTH DAKOTA.  
SAID TRACT CONTAINS 1.28 ACRES, MORE OR LESS, AND IS SUBJECT TO ALL EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS OF WAY OF RECORD, IF ANY.

*Shawn M. Thomasson*  
SHAWN M. THOMASSON  
REGISTERED LAND SURVEYOR  
REG. NO. LS-5900



STATE OF NORTH DAKOTA)  
COUNTY OF CASS )  
ON THIS 30<sup>th</sup> DAY OF January, 2019, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED SHAWN M. THOMASSON, REGISTERED LAND SURVEYOR, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME AS HIS FREE ACT AND DEED.

*Jessica Martin*  
JESSICA MARTIN  
Notary Public  
State of North Dakota  
My Commission Expires Sept. 8, 2021

JESSICA MARTIN  
Notary Public  
State of North Dakota  
My Commission Expires Sept. 8, 2021

**DEDICATION**

WE, THE UNDERSIGNED, DO HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE LAND DESCRIBED IN THE PLAT OF "PRAIRIE FARMS SECOND ADDITION" TO THE CITY OF FARGO, A REPLAT OF LOTS 1 THROUGH 3, BLOCK 4, PRAIRIE FARMS ADDITION TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA; THAT WE HAVE CAUSED IT TO BE PLATTED INTO LOTS AND BLOCKS AS SHOWN BY SAID PLAT AND CERTIFICATE OF SHAWN M. THOMASSON, REGISTERED LAND SURVEYOR, AND THAT THE DESCRIPTION AS SHOWN IN THE CERTIFICATE OF THE REGISTERED LAND SURVEYOR IS CORRECT.  
OWNER OF LOT 1, BLOCK 1: DIETRICH HOMES, INC. OWNER OF LOT 2, BLOCK 1: PRAIRIE GROVE, INC.

CLAY C. DIETRICH, PRESIDENT  
STATE OF NORTH DAKOTA)  
COUNTY OF CASS )

OLE ROMMESMO, PRESIDENT

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED CLAY C. DIETRICH, PRESIDENT, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN THE NAME OF DIETRICH HOMES, INC.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA  
STATE OF NORTH DAKOTA)  
COUNTY OF CASS )

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED OLE ROMMESMO, PRESIDENT, KNOWN TO ME TO BE THE PERSONS DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME IN THE NAME OF PRAIRIE GROVE, INC.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

**FARGO PLANNING COMMISSION APPROVAL**

THIS PLAT IN THE CITY OF FARGO IS HEREBY APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

SHARA FISCHER, CHAIR  
STATE OF NORTH DAKOTA)  
COUNTY OF CASS )

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED SHARA FISCHER, CHAIR OF THE FARGO PLANNING COMMISSION, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT SHE EXECUTED THE SAME IN THE NAME OF THE FARGO PLANNING COMMISSION.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

**FARGO CITY COMMISSION APPROVAL**

THIS PLAT IN THE CITY OF FARGO IS HEREBY APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

TIMOTHY J. MAHONEY, MAYOR  
STATE OF NORTH DAKOTA)  
COUNTY OF CASS )

STEVEN SPRAGUE, CITY AUDITOR

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED TIMOTHY J. MAHONEY, MAYOR AND STEVEN SPRAGUE, CITY AUDITOR, KNOWN TO ME TO BE THE PERSONS DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME IN THE NAME OF THE CITY OF FARGO.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

**CITY ENGINEER'S APPROVAL**

THIS PLAT IN THE CITY OF FARGO IS HEREBY APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

BRENDA E. DERRIG, CITY ENGINEER  
STATE OF NORTH DAKOTA)  
COUNTY OF CASS )

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED BRENDA E. DERRIG, CITY ENGINEER, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT SHE EXECUTED THE SAME AS HER FREE ACT AND DEED.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

City of Fargo Staff Report			
<b>Title:</b>	Liberty Square Addition	<b>Date:</b>	1-28-2019
<b>Location:</b>	2121 43 <sup>rd</sup> Street South	<b>Staff Contact:</b>	Aaron Nelson
<b>Legal Description:</b>	Lot 1, Block 1, Liberty Square Addition		
<b>Owner(s)/Applicant:</b>	Global Development, LLC	<b>Engineer:</b>	N/A
<b>Entitlement(s) Requested:</b>	<b>Conditional Use Permit</b> to allow Manufacturing and Production in the GC, General Commercial, zoning district.		
<b>Status:</b>	Planning Commission Public Hearing: February 5, 2019		

Existing
<b>Land Use:</b> Vacant (former retail sales & services)
<b>Zoning:</b> GC, General Commercial
<b>Uses Allowed:</b> Colleges, community service, daycare centers of unlimited size, detention facilities, health care facilities, parks and open space, religious institutions, safety services, adult entertainment centers, offices, off-premise advertising, commercial parking, outdoor recreation and entertainment, retail sales and service, self-storage, vehicle repair, limited vehicle service, aviation, surface transportation, and major entertainment events
<b>Maximum Building Coverage Allowed:</b> Maximum 85% building coverage

Proposed
<b>Land Use:</b> Manufacturing & Production
<b>Zoning:</b> GC, General Commercial with a Conditional Use Permit (CUP)
<b>Uses Allowed:</b> Colleges, community service, daycare centers of unlimited size, detention facilities, health care facilities, parks and open space, religious institutions, safety services, adult entertainment centers, offices, off-premise advertising, commercial parking, outdoor recreation and entertainment, retail sales and service, self-storage, vehicle repair, limited vehicle service, aviation, surface transportation, and major entertainment events
<b>Plus CUP to allow for manufacturing &amp; production uses.</b>
<b>Maximum Building Coverage Allowed:</b> Maximum 85% building coverage

Proposal:
<p>The applicant is seeking approval of a Conditional Use Permit (CUP) to allow Manufacturing &amp; Production uses in the GC, General Commercial, zoning district, on Lot 1, Block 1, Liberty Square Addition. The applicant intends to repurpose a vacant retail building (formerly occupied by Gander Mountain) for use by CI Sport, a business specializing in the production of print and embroidered apparel.</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> <p><b>Surrounding Zoning and Land Uses Include:</b></p> <ul style="list-style-type: none"> <li>• North: Interstate 94, Retail Sales &amp; Services, and Day Care uses within GC, General Commercial</li> <li>• East: Red River Zoo, within P/I, Public &amp; Institutional</li> <li>• South: Retail Sales &amp; Services within GC, General Commercial</li> <li>• West: Retail Sales &amp; Services within GC, General Commercial</li> </ul> <p><b>Area Plans:</b></p> <p>The subject property is located within an area identified as the Southwest Area Plan as contained within the <i>Growth Plan for the Urban Fringe and Extraterritorial Area of the City of Fargo</i>. This plan recommends commercial as an appropriate land use for this property.</p>

**Schools and Parks:**

**Schools:** The subject property is located within the West Fargo School District, specifically within the Freedom Elementary school, Liberty Junior High school and Sheyenne High school boundaries.

**Neighborhood:** The subject property is located within the bounds of the Anderson Park Neighborhood.

**Parks:** The subject property is located north of Anderson Softball and Tharaldson Baseball Complex.

**Pedestrian/Bicycle:** There are off-street bike facilities located along the nearby streets of 42 St S, 45 St S, and 23 Ave S.

**Staff Analysis:**

**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:

**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?**

According to Section 20-0104 of the LDC, the purpose of the LDC is to implement Fargo's Comprehensive Plan and related policies in a manner that protects the health, safety, and general welfare of the citizens of Fargo. The proposed Conditional Use Permit would support the adaptive reuse of a currently vacant building and make use of existing public infrastructure without the need for expansion of city services.

Section 20-0402(R) of the LDC includes the following use-specific standards for manufacturing & production uses located within the GC zoning district:

- a) *The proposed facility may not be within 300 feet of any residentially zoned property, measured from proposed industrial development to the property line of the residentially zoned property.*
- b) *All outdoor storage areas must be screened with an opaque fence, building, wall, berm or landscape buffer that is at least six feet in height.*
  - 1) *Outdoor storage areas shall not cover more than 50 percent of the open space of the development.*
  - 2) *Outdoor storage areas shall not be located within the front setback area of the development.*
- c) *No truck parking will be allowed in the front setback area, or on any side of the development directly visible from residentially zoned property. Truck parking areas directly visible from rights-of-way shall be buffered with an opaque fence or continuous hedge and large tree species placed 35 feet on center. Trees shall be a minimum of 1.5 inch caliper at the time of installation and do not count toward open space or parking lot buffer requirements.*
- d) *No truck docks or unloading areas will be allowed in the front, or any side of the development directly visible from residentially zoned property or street rights-of-way. Unloading and docking areas visible from rights-of-way shall be buffered with an opaque fence or continuous hedge and large tree species placed 35 feet on center. Trees shall be a minimum of 1.5 inch caliper at the time of installation and do not count toward open space or parking lot buffer requirements.*
- e) *Residential protection standards for landscaping buffers shall apply to any side of the development within 600 feet of residential zoning districts, or within 600 feet of vacant land illustrated as residential in the Growth Plan.*



- f) *These standards do not apply to aggregate or soil and/or construction debris storage, concrete batching, or asphalt mixing uses listed under industrial service. Therefore, aggregate storage, concrete batching, and asphalt mixing are prohibited in the GC zoning district.*

Staff finds that the subject property meets, or can be modified to meet these use-specific standards. The existing building includes a truck dock at the rear of the property, which is screened from view by an opaque wall. The applicant intends to enclose the existing outdoor storage area on the north side of the building, which would include the addition of a garage door on either side of the enclosure. Additionally, the applicant has stated that if the fenced area outside of the planned enclosure is to be utilized for outdoor storage, that it would be screened from view.

In addition to the use-specific standards of the LDC, staff recommends conditions for the CUP that are intended to address and mitigate, to the extent practical, the potential negative impact on adjacent properties. Therefore, staff finds that the proposal is consistent with the purpose of the LDC. **(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 business and jobs for the community. **(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 not received any comments or concerns related to the proposal. In addition, staff believes that the recommended conditions of approval of the Conditional Use Permit further ensure that the industrial uses will not negatively affect the value of the surrounding property over the long term. **(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(R) apply to manufacturing & production uses in the GC zoning district and provide for additional protection of the surrounding area. **(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 to the public street system at 43<sup>rd</sup> St S, as well as 23<sup>rd</sup> Ave S via a private street which services the area. There is an existing truck dock at the rear of the property along 43<sup>rd</sup> St S, which will accommodate shipments by truck. According to the applicant, the anticipated level of truck shipments should be comparable to that of a big-box retail store. 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:**

- 1) The property shall not be used in whole or in part for storage of rubbish or debris of any kind whatsoever nor for the storage of any property or items that will cause such lot to appear untidy, unclean or unsightly as determined by the Zoning Administrator; nor shall any substance, item or material be kept on any lot that will emit foul odors, including compost sites and fertilizer. All garbage containers, including dumpsters, shall be concealed from public view by fence, screen wall or building extension.
- 2) Off-street parking, loading, and vehicular circulation areas (including circulation areas internal to storage areas) shall have an all-weather surface, as defined by the LDC.
- 3) The manufacturing, production, or processing of food and/or animal products shall not be permitted.
- 4) The manufacturing, production, or processing of hazardous chemicals or materials shall not be permitted.
- 5) The Conditional Use Permit shall terminate if the manufacturing and production use cease for a period of more than 12 consecutive months.

**Staff Recommendation:**

Suggested Motion: "To accept the findings and recommendations of staff and hereby approve the Conditional Use Permit to allow Manufacturing and Production in the GC, General Commercial, zoning district as the proposal complies with Section 20-0909.D (1-6) and all other requirements of the LDC, with the following conditions:

- 1) The property shall not be used in whole or in part for storage of rubbish or debris of any kind whatsoever nor for the storage of any property or items that will cause such lot to appear untidy, unclean or unsightly as determined by the Zoning Administrator; nor shall any substance, item or material be kept on any lot that will emit foul odors, including compost sites and fertilizer. All garbage containers, including dumpsters, shall be concealed from public view by fence, screen wall or building extension.
- 2) Off-street parking, loading, and vehicular circulation areas (including circulation areas internal to storage areas) shall have an all-weather surface, as defined by the LDC.
- 3) The manufacturing, production, or processing of food and/or animal products shall not be permitted.
- 4) The manufacturing, production, or processing of hazardous chemicals or materials shall not be permitted.
- 5) The Conditional Use Permit shall terminate if the manufacturing and production use cease for a period of more than 12 consecutive months.

**Planning Commission Recommendation:** February 5, 2019

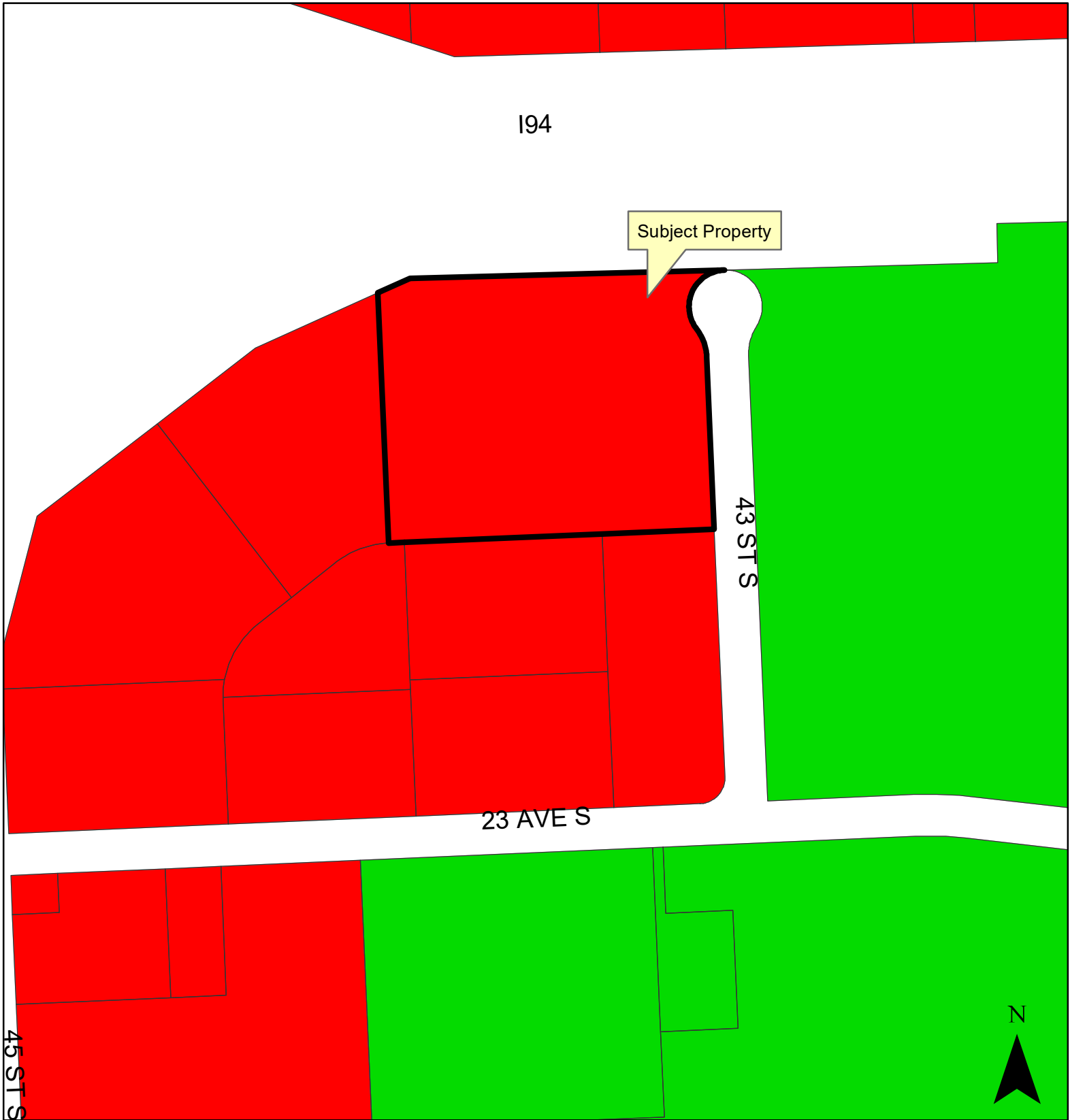
**Attachments:**

1. Zoning Map
2. Location Map
3. Preliminary Site Plan

# CUP (Manufacturing and Production)

## Liberty Square Addition

2121 43rd Street South



### Legend

AG	LC	MHP	SSR-2
DMU	LI	NCO	SSR-3
GC	MJ	NO	SSR-4
GO	MPR-1	PA	SSR-5
	MPR-2	UMU	City Limits
	MPR-3		

300

Feet

Fargo Planning Commission

February 5, 2019

# CUP (Manufacturing and Production)

## Liberty Square Addition

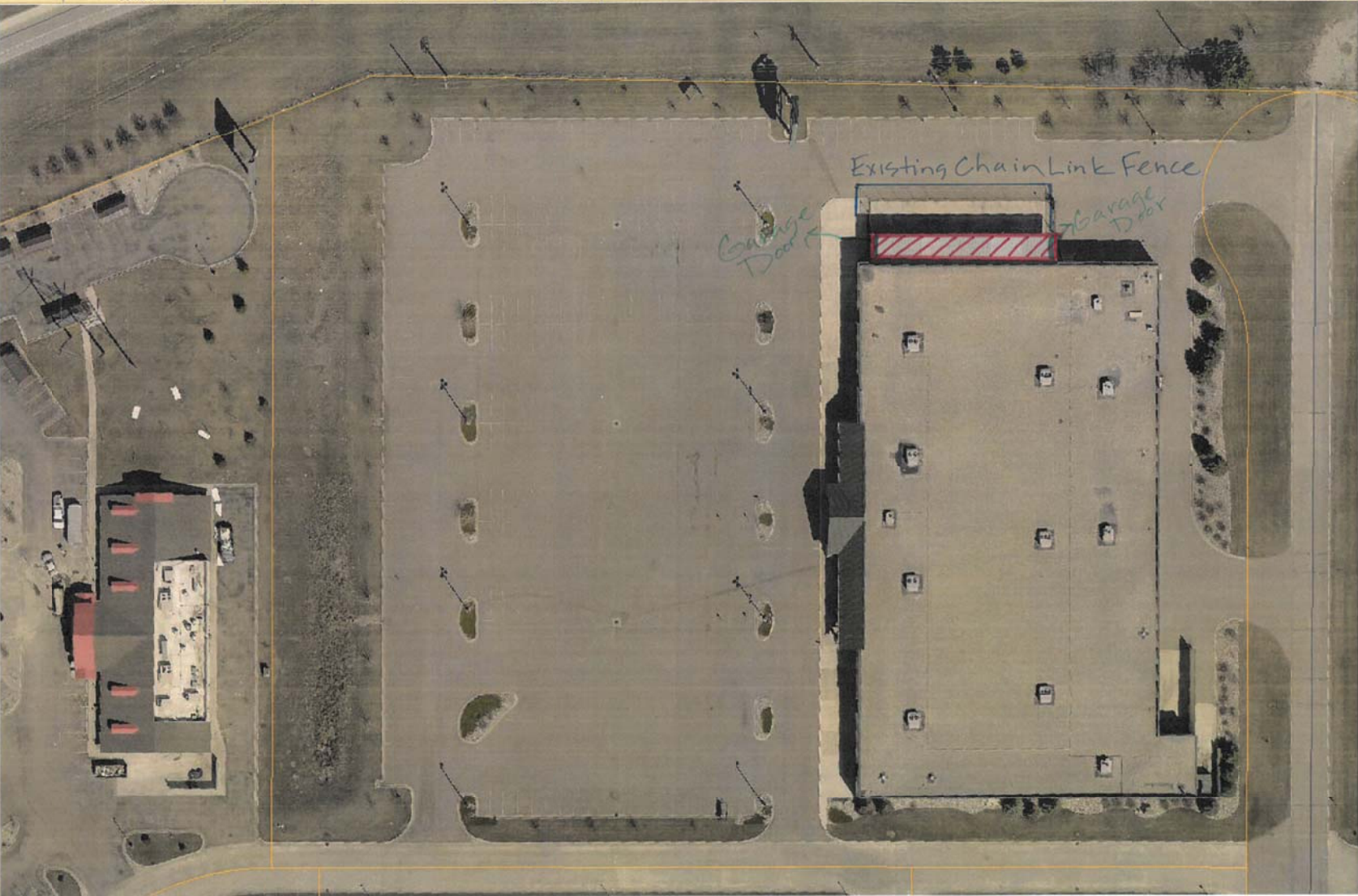
2121 43rd Street South



N



- Layers**   **Transparency**
- City Limits
  - Imagery 1995
  - Imagery 1997
  - Imagery 1999
  - Imagery 2002
  - Imagery 2004
  - Imagery 2005
  - Imagery 2006
  - Imagery 2008
  - Flood Imagery 2009
  - Flood Imagery 2010
  - Flood Imagery 2011
  - Imagery 2011
  - Imagery 2014
  - Imagery 2015
  - Imagery 2016
  - Imagery 2017
  - Imagery 2018
  - Contours 2017
  - Previous FEMA Floodplains
  - Current/Effective FEMA Floodplains
  - 41 Foot WSEIA
  - Flood Stages
  - Setbacks
  - Historic Overlays
  - Neighborhoods
  - Parks
  - Zoning
  - Land Use



Scale 1: 1128

<b>City of Fargo Staff Report</b>			
<b>Title:</b>	The Basins At 39th Addition	<b>Date:</b>	1/28/2019
<b>Location:</b>	9600 39 <sup>th</sup> Street South	<b>Staff Contact:</b>	Donald Kress
<b>Legal Description:</b>	Lot 2, Block 1, Commerce on I-29 Addition		
<b>Owner(s)/Applicant:</b>	RI Properties, LLC /Jesse Riley	<b>Engineer:</b>	Moore Engineering, Inc.
<b>Entitlements Requested:</b>	<b>Minor Subdivision</b> (Replat of Lot 2, Block 1, Commerce on I-29 Addition, to the City of Fargo, Cass County, North Dakota)		
<b>Status:</b>	Planning Commission Public Hearing: February 5, 2019		

<b>Existing</b>
<b>Land Use:</b> Undeveloped
<b>Zoning:</b> LI, Limited Industrial
<b>Uses Allowed:</b> Colleges, community service, daycare centers of unlimited size, detention facilities, health care facilities, parks and open space, religious institutions, safety services, adult entertainment centers, offices, off-premise advertising, commercial parking, outdoor recreation and entertainment, retail sales and service, self-storage, vehicle repair, limited vehicle service, industrial service, manufacturing and production, warehouse and freight movement, wholesale sales, aviation, surface transportation.
<b>Maximum Lot Coverage Allowed:</b> 85% building coverage

<b>Proposed</b>
<b>Land Use:</b> No Change
<b>Zoning:</b> No Change
<b>Uses Allowed:</b> No Change
<b>Maximum Lot Coverage Allowed:</b> No Change

<b>Proposal:</b>
<p>The applicant is seeking approval of a minor subdivision, entitled <b>The Basins At 39th Addition</b>, which is a replat of Lot 2, Block 1, Commerce on I-29 Addition. The subject property is located at 9600 39<sup>th</sup> Street South and encompasses approximately 10.05 acres. The property is zoned LI: Limited Industrial. No zone change is proposed.</p> <p>This project is located with Fargo’s extra-territorial jurisdiction; it is not within city limits. Pursuant to North Dakota Century Code, the City has the responsibility for subdivision regulation in this area. The water provider is Cass Rural Water. Sewer is handled on-site.</p> <p>The plat proposes to create four lots for limited industrial development. All four lots touch public right of way; note that Lots 3 and 4 are flag lots. The lots range from 2.19 to 2.86 acres in area. There is no minimum required lot area in the LI zone.</p> <p><b>ACCESS:</b> The lots are accessed from 39<sup>th</sup> Street South. A private cul-de-sac driveway provides access to Lots 3 and 4. This cul-de-sac meets the diameter requirement (96 feet) to be consistent with fire code. No access from Lot 3 and 4 is allowed onto the frontage road adjacent on the east, as the frontage road is in North Dakota Department of Transportation right of way. It is staff’s understanding that this frontage road will eventually be eliminated by the ND DOT.</p>

**UTILITIES:** The applicant must provide a plat to revise the public water and sewer connections to the public street, as each lot must have its own individual connections. The applicant is working with the City Engineer's office to develop a plan for this utility separation.

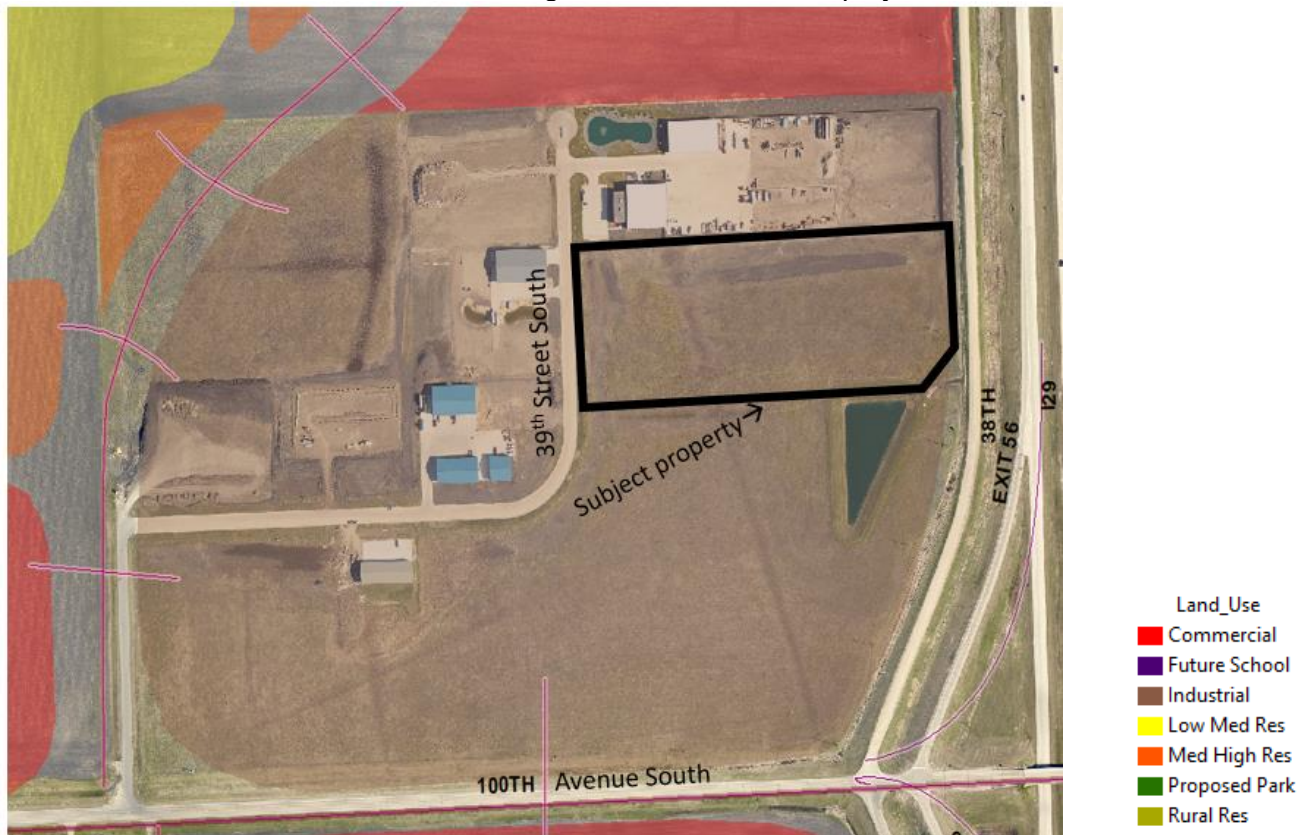
This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.

**Surrounding Land Uses and Zoning Districts:**

- North: LI, Limited Industrial with vacant land use
- East: Interstate 29 right of way
- South: LI, Limited Industrial with vacant land use
- West: Across 39<sup>th</sup> Street South; LI, Limited Industrial with vacant land

**Area Plans:**

The 2007 Tier 2 South Land Use Plan designates the area of this project as "Industrial."



**Schools and Parks:**

**Schools:** The subject property is located within Fargo School District, including Kennedy Elementary, Discovery Middle, and Davies High schools.

**Neighborhood:** The subject property is not located within the bounds of a designated neighborhood.

**Parks:** The Fargo Park District has acquired land for the future Rutten Family Park along 88<sup>th</sup> Avenue South on the east side of I-29, approximately a half mile northeast of the subject property. This park has not yet been developed.

**Pedestrian / Bicycle:** No bike facilities are available at this location.

**Staff Analysis:**

**Minor Subdivision**

The LDC stipulates that the following criteria is met before a minor plat can be approved:

- 1. Section 20-0907.B.3 of the LDC stipulates that the Planning Commission recommend approval or denial of the application, based on whether it complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code. Section 20-0907.B.4 of the LDC further stipulates that a Minor Subdivision Plat shall not be approved unless it is located in a zoning district that allows the proposed development and complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code.**

The adopted area plan for this property, the 2007 Tier 2 South Land Use Plan, designates this property for "industrial" land use. The zoning for the project site is LI, Limited Industrial. This zoning will accommodate the proposed limited industrial development. In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. No comments have been received. The project has been reviewed by the city's Planning, Engineering, Public Works, Inspections, and Fire Departments and found to meet the standards of Article 20-06 and other applicable requirements of the Land Development Code.

**(Criteria Satisfied)**

- 2. Section 20-907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision.**

While this section of the LDC specifically addresses only major subdivision plats, staff believes it is important to note that any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure improvements are proposed to be spread by the front footage basis and storm sewer by the square footage basis as is typical with the City of Fargo assessment principles.

**(Criteria Satisfied)**

**Staff Recommendation:**

Suggested Motion: "To accept the findings and recommendations of staff and hereby recommend approval to the City Commission of the proposed subdivision plat, **The Basins At 39th Addition** as outlined within the staff report, as the proposal complies with the adopted Area Plan, the standards of Article 20-06, and all other applicable requirements of the Land Development Code."

**Planning Commission Recommendation:** February 5, 2019

**Attachments:**

1. Location Map
2. Preliminary Plat



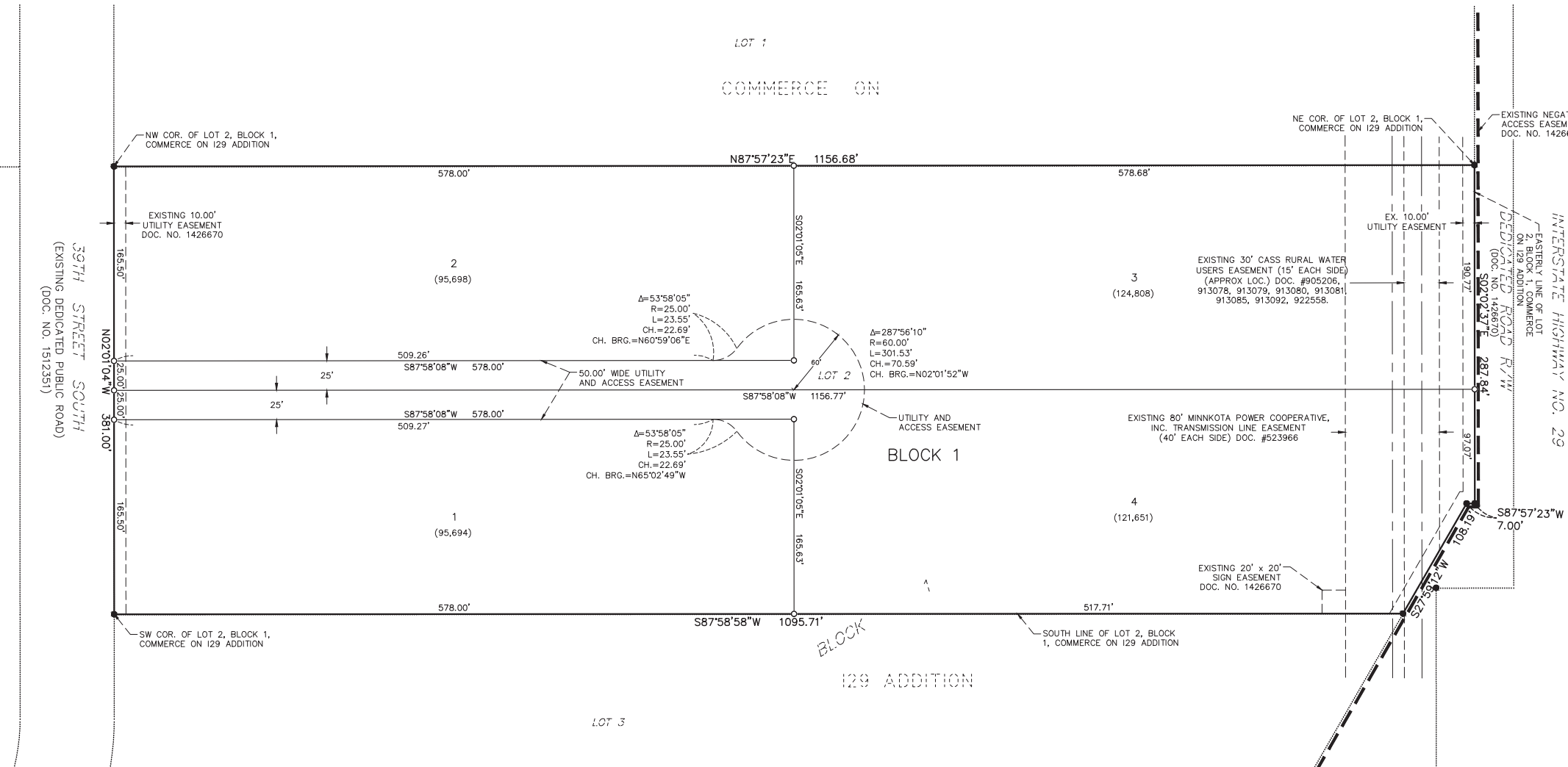
# Plat (Minor)

## The Basins at 39th Addition

9600 39th Street South



**PLAT OF  
THE BASINS AT 39TH ADDITION  
(A MINOR SUBDIVISION)  
A REPLAT OF LOT 2, BLOCK 1, COMMERCE ON I29 ADDITION TO THE CITY OF FARGO, CASS COUNTY NORTH DAKOTA**



**CERTIFICATE**

SHAWN M. THOMASSON, BEING DULY SWORN, DEPOSES AND SAYS THAT HE IS THE PROFESSIONAL LAND SURVEYOR WHO PREPARED AND MADE THE ATTACHED PLAT OF "THE BASINS AT 39TH ADDITION" TO THE CITY OF FARGO, A REPLAT OF LOT 2, BLOCK 1 OF THE PLAT OF COMMERCE ON I29 ADDITION TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA. THAT SAID PLAT IS A TRUE AND CORRECT REPRESENTATION OF THE SURVEY THEREOF; THAT ALL DISTANCES ARE CORRECTLY SHOWN ON SAID PLAT; THAT MONUMENTS HAVE BEEN PLACED IN THE GROUND AS INDICATED FOR THE GUIDANCE OF FUTURE SURVEYS AND THAT SAID ADDITION IS DESCRIBED AS FOLLOWS, TO WIT:

LOT 2, BLOCK 1, COMMERCE ON I29 ADDITION TO THE CITY OF FARGO, ACCORDING TO THE RECORDED PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE RECORDER, CASS COUNTY, NORTH DAKOTA.

SAID TRACT CONTAINS 10.05 ACRES, MORE OR LESS, AND IS SUBJECT TO ALL EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS OF WAY OF RECORD, IF ANY.



SHAWN M. THOMASSON  
REGISTERED LAND SURVEYOR  
REG. NO. LS-5900

STATE OF NORTH DAKOTA)  
COUNTY OF CASS )

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED SHAWN M. THOMASSON, PROFESSIONAL LAND SURVEYOR, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME AS HIS FREE ACT AND DEED.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

**DEDICATION**

WE, THE UNDERSIGNED, DO HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE LAND DESCRIBED IN THE PLAT OF "THE BASINS AT 39TH ADDITION" TO THE CITY OF FARGO, A REPLAT OF LOT 2, BLOCK 1 OF THE PLAT OF COMMERCE ON I29 ADDITION TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA; THAT WE HAVE CAUSED IT TO BE PLATTED INTO LOTS AND BLOCKS AS SHOWN BY SAID PLAT AND CERTIFICATE OF SHAWN M. THOMASSON, PROFESSIONAL LAND SURVEYOR, AND THAT THE DESCRIPTION AS SHOWN IN THE CERTIFICATE OF THE PROFESSIONAL LAND SURVEYOR IS CORRECT. WE HEREBY DEDICATE THE UTILITY EASEMENT TO THE USE OF THE PUBLIC AND THE ACCESS EASEMENT TO THE USE OF THE OWNERS, SUCCESSORS AND ASSIGNS OF LOTS 1 THROUGH 4 AS SHOWN ON SAID PLAT.

OWNER: RI PROPERTIES 3, LLC

JESSE M. RILEY, MANAGER

STATE OF NORTH DAKOTA)  
COUNTY OF CASS )

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED JESSE M. RILEY, MANAGER OF RI PROPERTIES 3, LLC, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING DEDICATION AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME IN THE NAME OF RI PROPERTIES 3, LLC.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

MORTGAGEE: BELL BANK

ANDY LERUD, VICE PRESIDENT

STATE OF NORTH DAKOTA)  
COUNTY OF CASS )

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED ANDY LERUD, VICE PRESIDENT OF BELL BANK, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING DEDICATION AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME IN THE NAME OF BELL BANK.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

**FARGO PLANNING COMMISSION APPROVAL**

THIS PLAT IN THE CITY OF FARGO IS HEREBY APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

SHARA FISCHER, CHAIR

STATE OF NORTH DAKOTA)  
COUNTY OF CASS )

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED SHARA FISCHER, CHAIR OF THE FARGO PLANNING COMMISSION, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT SHE EXECUTED THE SAME IN THE NAME OF THE FARGO PLANNING COMMISSION.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

**FARGO CITY COMMISSION APPROVAL**

THIS PLAT IN THE CITY OF FARGO IS HEREBY APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

TIMOTHY J. MAHONEY, MAYOR

STATE OF NORTH DAKOTA)  
COUNTY OF CASS )

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED TIMOTHY J. MAHONEY, MAYOR AND STEVEN SPRAGUE, CITY AUDITOR, KNOWN TO ME TO BE THE PERSONS DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME IN THE NAME OF THE CITY OF FARGO.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

STEVEN SPRAGUE, CITY AUDITOR

**CITY ENGINEER'S APPROVAL**

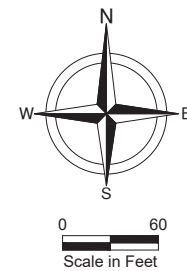
THIS PLAT IN THE CITY OF FARGO IS HEREBY APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

BRENDA E. DERRIG, CITY ENGINEER

STATE OF NORTH DAKOTA)  
COUNTY OF CASS )

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED BRENDA E. DERRIG, CITY ENGINEER, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT SHE EXECUTED THE SAME AS HER FREE ACT AND DEED.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA



BASIS OF BEARINGS:  
THE PLAT OF COMMERCE ON I29  
ADDITION ACCORDING TO THE  
RECORDED PLAT THEREOF.

- LEGEND**
- IRON MONUMENT FOUND
  - SET 5/8"x18" REBAR WITH YELLOW PLASTIC CAP #5900
  - PLAT BOUNDARY LINE
  - LOT LINE
  - EXISTING LOT LINE
  - - - EASEMENT LINE
  - - - EXISTING NEGATIVE ACCESS EASEMENT

**DOCUMENT OF RECORD**

1. DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTION COMMERCE ON I29 ADDITION, DOC. NO. 1431597.

<b>City of Fargo Staff Report</b>			
<b>Title:</b>	Airport First Addition	<b>Date: Updated:</b>	1/28/2019
<b>Location:</b>	2102 12 <sup>th</sup> street North	<b>Staff Contact:</b>	Donald Kress, planning coordinator
<b>Legal Description</b>	South 125 feet of Lot 4, Block 3, Airport First Addition		
<b>Owner(s)/Applicant:</b>	Brickstone Plaza LLP/ Rich Meier—YHR Partners	<b>Engineer:</b>	None
<b>Entitlements Requested:</b>	<b>Zone Change</b> (from LI, Limited Industrial to LC, Limited Commercial) <b>Conditional Use Permit</b> (to allow residential living in the LC, Limited Commercial zone)		
<b>Status:</b>	Planning Commission Public Hearing: February 5, 2019		

<b>Existing</b>	<b>Proposed</b>
<b>Land Use:</b> Commercial	<b>Land Use:</b> Commercial; multi-dwelling residential
<b>Zoning:</b> LI, Limited Industrial	<b>Zoning:</b> LC, Limited Commercial
<b>Uses Allowed:</b> LI – Limited Industrial. Allows colleges, community service, daycare centers of unlimited size, detention facilities, health care facilities, parks and open space, religious institutions, safety services, adult entertainment centers, offices, off-premise advertising, commercial parking, outdoor recreation and entertainment, retail sales and service, self storage, vehicle repair, limited vehicle service, industrial service, manufacturing and production, warehouse and freight movement, wholesale sales, aviation, surface transportation.	<b>Uses Allowed:</b> LC – Limited Commercial. Allows colleges, community service, daycare centers of unlimited size, health care facilities, parks and open space, religious institutions, safety services, offices, off premise advertising signs, commercial parking, retail sales and service, self service storage, vehicle repair, limited vehicle service. <b>The CUP would allow residential living in the LC zone.</b>
<b>Maximum Lot Coverage</b> 85%	<b>Maximum Lot Coverage</b> 55%

<b>Proposal:</b>
<p>The applicant requests two entitlements:</p> <ol style="list-style-type: none"> <li>1. A zoning change from LI, Limited Industrial to LC, Limited Commercial.</li> <li>2. A conditional use permit (CUP) to allow residential living in the LC zone</li> </ol> <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> <p><b>Surrounding Land Uses and Zoning Districts:</b></p> <ul style="list-style-type: none"> <li>• North: AG, Agricultural; undeveloped</li> <li>• East: P/I, Public/Institutional; city-owned water storage</li> <li>• South: SR-2, Single-Dwelling Residential; residential use</li> <li>• West: AG, Agricultural; residential use; Sheyenne River (area to the west is in the extra-territorial jurisdiction)</li> </ul>

<b>Area Plans:</b>
No area plans or growth plans apply
<b>Context:</b>
<p><b>Schools:</b> The subject property is located within the Fargo School District and is served by Washington Elementary, Ben Franklin Middle and North High schools.</p> <p><b>Neighborhood:</b> The subject property is located within Northport neighborhood.</p> <p><b>Parks:</b> Yunker Farm is located approximately 0.36 miles north of the project site and provides playgrounds for ages 5-12, picnic table, and dog park.</p> <p><b>Pedestrian / Bicycle:</b> There is an off-road bike facility along the west side of University Drive that is a component of the metro area bikeways system.</p>
<b>Staff Analysis:</b>
<p><b>ZONE CHANGE AND CONDITIONAL USE PERMIT:</b> This project proposes a zone change of the existing lot from LI, Limited Industrial to LC, Limited Commercial and also a conditional use permit (CUP) to allow residential living in the LC zone. The applicant plans to add two additional stories to the existing building. The first floor would remain commercial/office; the second and third floors would each have four apartment units, for a total of eight residential units. This would create a density of approximately 17 dwelling units per acre (this lot is slightly less than one-half acre in area). The LC zone does not have a development standard for density. The CUP, which allows the residential use in the LC zone, generally allows a density not greater than the MR-3 zone, 24 dwelling units per acre. This proposed density is consistent with that MR-3 density. Proposed CUP conditions are listed below.</p> <p>Graphics of the proposed building are attached.</p> <p><b>COMPLIANCE WITH CURRENT STANDARDS:</b> At the time of building permit review, the project site will have to meet all current development standards, including parking, setbacks, landscaping, and street trees.</p> <p><b>MODIFICATION OF COVENANTS:</b> This project is within the Airport First Addition, which has covenants to which the City of Fargo is a party. These covenants date from 1969. One of the covenants prohibits any residential use in this subdivision. The applicant has undertaken the covenant amendment procedure that is stated in the covenants to remove this restriction. Planning staff has determined that the applicant has met the requirements to modify the covenant. However, amendment requires Planning Commission approval. This covenant modification is a separate entitlement that is addressed in agenda item E(1) of this February 5<sup>th</sup>, 2019 Planning Commission agenda. Planning staff would request that the Commission decide on item E(1), which is not a public hearing item, before proceeding to items 10a and 10b, the zone change and CUP for this project, as these two entitlements cannot go forward without Planning Commission approval of the covenant change.</p> <p><b>Zoning</b></p> <p>Section 20-906. F (1-4) of the LDC stipulates the following criteria be met before a zone change can be approved:</p> <p><b>1. Is the requested zoning change justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map?</b></p> <p>Staff is unaware of any error in the zoning map as it relates to this property. The property is currently zoned LI, Limited Industrial. The proposed zoning of LC, Limited Commercial would be the same as the zoning south across 21<sup>st</sup> Avenue North. The applicant proposes the LC zone with a CUP to allow residential living, in order to create a mixed use project by</p>

expanding the existing commercial building with two stories of residential. **(Criteria Satisfied)**

**2. Are the City and other agencies able to provide the necessary public services, facilities, and programs to serve the development allowed by the new zoning classifications at the time the property is developed?**

City staff and other applicable review agencies have reviewed this proposal. Staff finds no deficiencies in the ability to provide all of the necessary services to the site. The existing lot fronts on dedicated public streets. These streets will provide access and public utilities to serve the development. **(Criteria satisfied)**

**3. Will the approval of the zoning change adversely affect the condition or value of the property in the vicinity?**

Staff has no documentation or evidence to suggest that the approval of this zoning change would adversely affect the condition or value of the property in the vicinity. Written notice of the proposal was sent to all property owners within 300 feet of the subject property. To date, Planning staff has received no comment about the project. Staff finds that the approval of the zoning change will not adversely affect the condition or value of the property in the vicinity. **(Criteria satisfied)**

**4. Is the proposed amendment consistent with the purpose of this LDC, the Growth Plan, and other adopted policies of the City?**

The LDC states "This Land Development Code is intended to implement Fargo's Comprehensive Plan and related policies in a manner that protects the health, safety, and general welfare of the citizens of Fargo." No growth plan applies to this area. This project does implement one goal of the Go2030 plan which is higher quality affordable housing near NDSU. As this area is already developed and outside of the flood plain, the development of this site from purely commercial to commercial/residential mixed use can be considered infill, another goal of Go2030. Staff finds this proposal is consistent with the purpose of the LDC, the applicable comprehensive plan, and other adopted policies of the City. **(Criteria satisfied)**

**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:

**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. Staff believes this proposal is in keeping with adopted plans and policies of the City. The CUP would create a mixed used (commercial/residential) project in this area, which has historically been only industrial. The proposed CUP would allow for both residential and commercial development of this property. 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)**

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

This proposed conditional use permit to allow for residential dwellings to be located within this area will contribute to and promote the welfare of the public. The proximity of the subject property to existing businesses, schools—particularly NDSU and NDSCS--and amenities provides an opportunity for residents to live and work within close proximity, reducing the

need to commute via automobile. Staff finds that the proposed conditional use permit at this location will contribute to and promote the welfare of the public.

**(Criteria Satisfied)**

**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 data to suggest that the proposed use would cause substantial injury to the value of other property in the neighborhood. In accordance with Section 20-0901.F of the LDC, notices of the CUP were sent out to property owners within 300 feet of the subject property. To date, staff has received no protest regarding the proposed use.

**(Criteria Satisfied)**

**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.**

The proposed conditional use permit to allow residential living should not dominate the immediate neighborhood or prevent any other sites from being used due to the fact that 1) other buildings in this area would seem to be eligible for similar development and 2) the proposed conditions of the CUP seek to preserve open space and to provide for efficient connectivity for both people and vehicles in relation to surrounding properties. Based on this information, staff finds that the proposed conditional use permit meets this criterion.

**(Criteria Satisfied)**

**Are adequate utility, drainage, and other such necessary facilities and services provided or will they be at the time of development?**

The subject properties are located within an area of the City that is largely developed with public infrastructure. Staff is not aware of any deficiencies regarding drainage or utilities that would limit the ability of the petitioner to utilize the property as proposed. In addition, the requested CUP has been reviewed by staff from other applicable departments and no concerns have been raised. Based on this information, staff finds that adequate utility, drainage, and other such necessary facilities and services are in place.

**(Criteria Satisfied)**

**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 subject property has vehicular access to 21<sup>st</sup> Avenue North and 12<sup>th</sup> Street North. Additionally, the proposed mix of commercial and residential and the proximity to commercial uses, particularly along 19<sup>th</sup> Avenue North, uses reduces the dependency on vehicular transportation for residents of the development. Staff suggests that the proposed conditional use will not create traffic hazards or traffic congestion in the public streets.

**(Criteria Satisfied)**

Recommended Conditions:

- The maximum residential density shall be that of the MR-3 zoning district (24 units per acre).
- A minimum of 30% of the lot shall remain as open space.
- Bicycle parking facilities, such as bike racks or bike lockers, shall be provided on-site.

(continued on next page)

**Staff Recommendation:**

Suggested Motion: "To accept the findings and recommendations of staff and move to recommend approval to the City Commission of 1) the proposed zone change from LI, Limited Industrial to LC, Limited Commercial, for Airport First Addition, and 2) the conditional use permit to allow residential living in the LC zone, as presented, as the proposal complies with the Go2030 Fargo Comprehensive Plan, Section 20-0906.F (1-4) of the LDC, and all other applicable requirements of the LDC, with the following conditions for the CUP:

- The maximum residential density shall be that of the MR-3 zoning district (24 units per acre).
- A minimum of 30% of the lot shall remain as open space.
- Bicycle parking facilities, such as bike racks or bike lockers, shall be provided on-site.

**Planning Commission Recommendation:** February 5, 2019

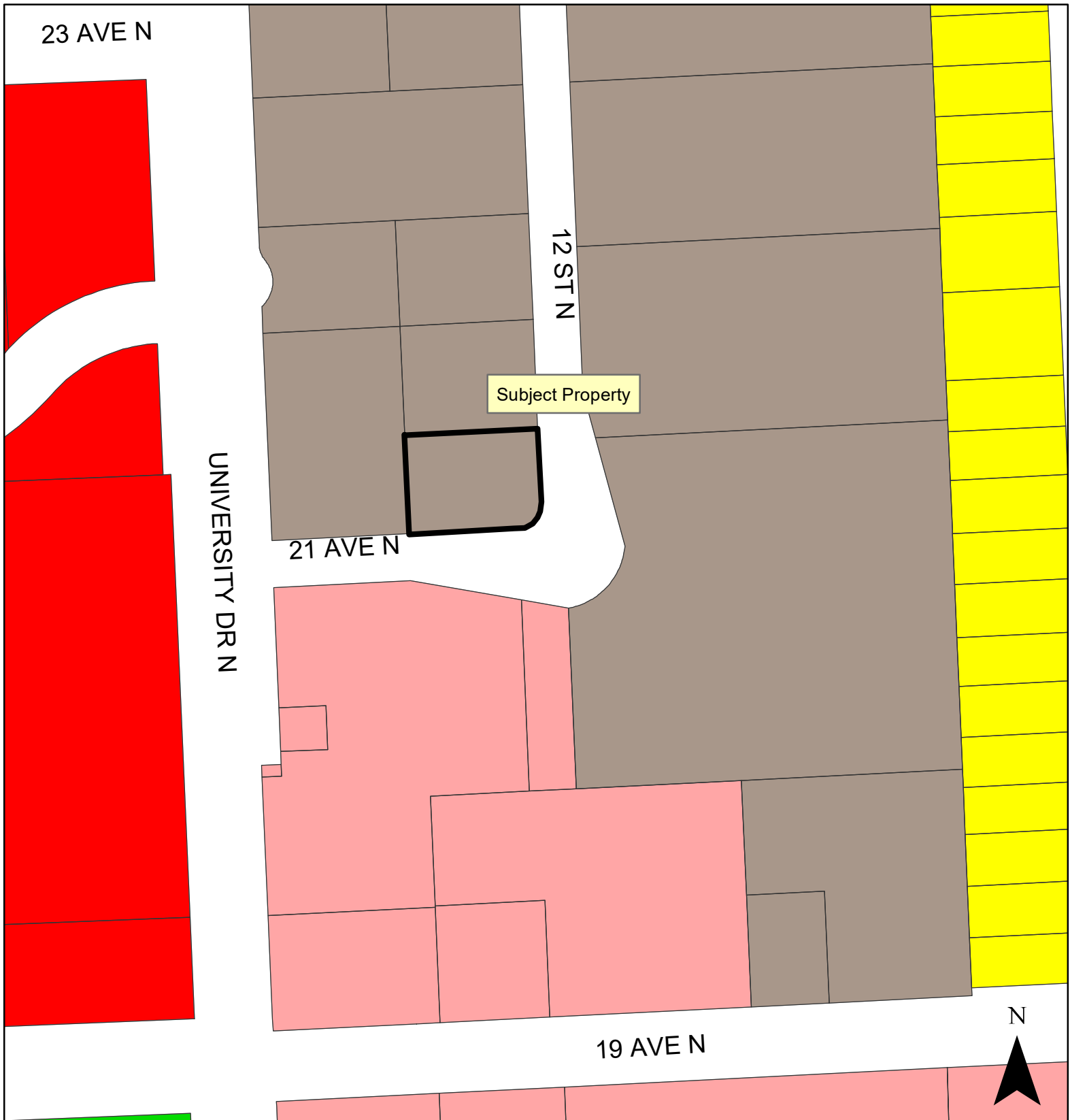
**Attachments:**

1. Zoning Map
2. Location Map
3. Graphics of proposed site development

# Zone Change (LI to LC) & CUP (Residential Living in LC)

## Airport 1st Addition

2102 12th Street North



### Legend

AG	LC	MHP	SR-2
DMU	LI	NC	SR-3
GC	MR-1	NO	SR-4
GO	MR-2	PL	SR-5
	MR-3	UML	City Limits



Fargo Planning Commission

February 5, 2019

300

Feet



# Zone Change (LI to LC) & CUP (Residential Living in LC)

## Airport 1st Addition

2102 12th Street North





# BUSY BUBBLES REMODEL

BILL PROPERTIES

FARGO, NORTH DAKOTA

07/12/18

© 2018 BILL PROPERTIES, LLC



# BUSY BUBBLES REMODEL

BILL PROPERTIES

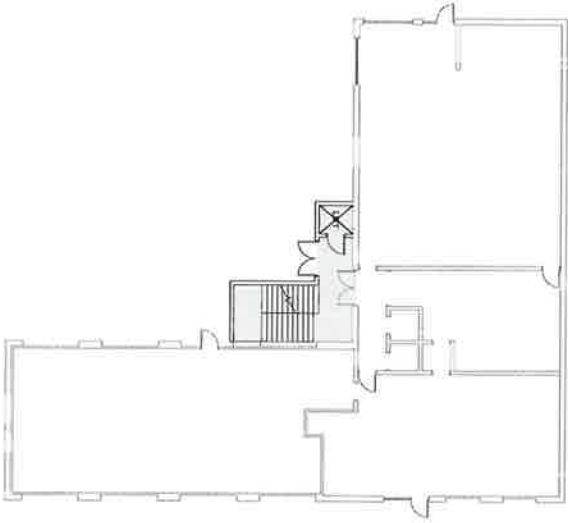
FARGO, NORTH DAKOTA

07/12/18

© 2018 WJR PARTNERS, LLC



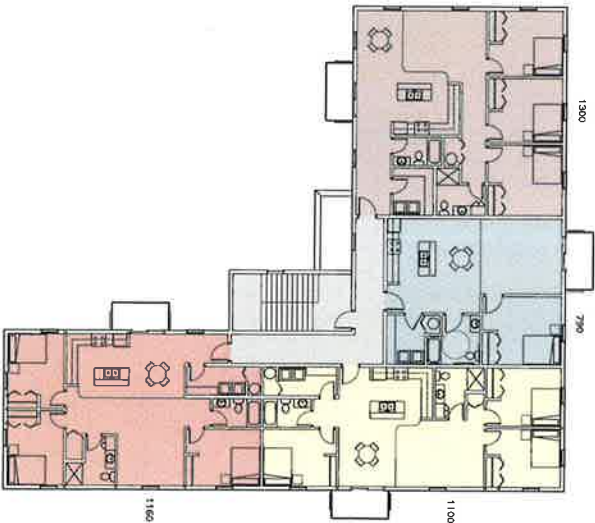
FIRST FLOOR PLAN - OPTION 4



SECOND FLOOR PLAN - OPTION 4



THIRD FLOOR PLAN - OPTION 4





# BUSY BUBBLES REMODEL

BILL PROPERTIES

FARGO, NORTH DAKOTA

07/12/18

© 2018 BILL PROPERTIES



<b>City of Fargo Staff Report</b>			
<b>Title:</b>	Airport First Addition	<b>Date:</b>	1/30/2019
<b>Location:</b>	2102 12 <sup>th</sup> street North	<b>Staff Contact:</b>	Donald Kress, planning coordinator
<b>Legal Description</b>	South 125 feet of Lot 4, Block 3, Airport First Addition		
<b>Owner(s)/Applicant:</b>	Brickstone Plaza, LLP/ Rich Meier—YHR Partners	<b>Engineer:</b>	None
<b>Entitlements Requested:</b>	<b>Modification of Airport 1<sup>st</sup> Addition Covenants Section 10(A)</b> to remove the prohibition on residential uses in this subdivision		
<b>Status:</b>	Planning Commission Meeting: February 5, 2019 (this is <i>not</i> a public hearing item)		

<b>Existing</b>	<b>Proposed</b>
<b>Airport 1<sup>st</sup> Addition covenants Section 10(A)</b> prohibits any residential use within this subdivision	<b>Modify covenants</b> using the modification mechanism stated in Section 11 of the covenants to allow residential use within this subdivision

**Proposal:**

The applicant proposes a modification of the Airport 1<sup>st</sup> Addition covenants to allow residential use within this subdivision.

**Background:**

The Airport 1<sup>st</sup> Addition plat was recorded in 1969, and the covenants were established at that time. This is a rare situation where the City of Fargo is a party to such covenants. At the time, the City was the primary owner of the property. As stated within the restrictive covenants, the City’s intent was to protect the owners of residential property adjacent to Airport First Addition, which was to be primarily industrial in nature. To this end, the restrictive covenants contain many restrictions and requirements on the property identified within Airport First Addition. These restrictions and requirements include such things as building setbacks, dimensional standards, maintenance of a landscape buffer adjacent to abutting residential lots, and prohibited uses.

Section 11 of these covenants allows for a property owner within the subdivision to modify one or all of the requirements of the restrictive covenants upon written approval from:

- a majority of property owners within the Airport 1st Addition subdivision (*bounded by 19<sup>th</sup> Avenue North, University Drive North, 28<sup>th</sup> Avenue North, and the west side of Peter Sway 5<sup>th</sup> Addition*);
- a majority of property owners of Lots 1-13, Block 3; Lots 1-13, Block 6; & Lots 1-11, Block 10, Peter Sway Fifth Addition (*bounded by 19<sup>th</sup> Avenue North; 10<sup>th</sup> Street North; 28<sup>th</sup> Avenue North; and the east side of Airport 1<sup>st</sup> Addition*); and
- the Fargo Planning Commission.

The owner/applicant is requesting a modification of Section 10(A) of the restrictive covenants. The request, if granted, would allow residential uses within the Airport 1<sup>st</sup> Addition.

A map showing the properties included in the Airport 1<sup>st</sup> Addition and Peter Sway 5<sup>th</sup> Addition is attached.

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.

**Surrounding Land Uses and Zoning Districts:**

- North: AG, Agricultural; undeveloped
- East: P/I, Public/Institutional; city-owned water storage
- South: SR-2, Single-Dwelling Residential; residential use
- West: AG, Agricultural; residential use; Sheyenne River (area to the west is in the extra-territorial jurisdiction)

**Area Plans:**

No area plans or growth plans apply

**Context:**

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

**Neighborhood:** The subject property is located within Northport neighborhood.

**Parks:** Yunker Farm is located approximately 0.36 miles north of the project site and provides playgrounds for ages 5-12, picnic table, and dog park.

**Pedestrian / Bicycle:** There is an off-road bike facility along the west side of University Drive that is a component of the metro area bikeways system.

**Staff Analysis:**

To meet the requirement that the applicant must obtain written approval for the proposed change of covenants from a majority of property owners in the Airport 1<sup>st</sup> Addition and portions of the Peter Sway 5<sup>th</sup> Addition as noted above, he would need approval from

- 21 of 40 owners in the Airport 1<sup>st</sup> Addition
- 19 of 36 owners in the specified portions of the Peter Sway Addition

At the time of this staff report, the applicant had obtained signatures of 19 of the 36 property owners to meet the requirement for the Peter Sway Addition. The applicant needed to obtain three more signatures from owners in the Airport 1<sup>st</sup> Addition to meet the requirement. The applicant is expected to confirm these signatures supporting the proposed covenant change by the time of the February 5<sup>th</sup>, 2019 Planning Commission hearing.

Because there is no entitlement request related to the Land Development Code, Fargo Municipal Code, or any other applicable laws, there are no standard review criteria. Staff finds that the request does not violate the intent or requirements of the Land Development Code, and that the request will not detract from the existing character of the area.

Planning staff contacted the director of the Airport Authority, who stated he had no opposition to this proposed modification of the Airport 1<sup>st</sup> Addition covenants as long as the applicant followed the modification procedure stated in the covenants, which he has done.

Attachments include a copy of the Airport 1<sup>st</sup> Addition covenants and an example signature page which the applicant sent to property owners.

In addition to this request for modification of covenants, the applicant has also applied for a zone change to change the zoning on this property from LI, Limited Industrial to LC, Limited Commercial and a conditional use permit (CUP) to allow residential living in the LC zone. These entitlements appear as items 10(a) and 10(b) on the February 5<sup>th</sup>, 2019 Planning Commission agenda. Planning staff will request that the Planning Commission review this item (E1) prior to hearing the entitlement, as approval of the modification of covenants is necessary before the zone change and CUP can be acted on.

**Staff Recommendation:**

Suggested Motion: "To accept the findings and recommendations of staff and hereby approve the proposed variance to the restrictive covenants of Airport 1st Addition, as presented, on Lot 2, Block 2, Airport 1st Addition, contingent upon the applicant confirming sufficient signatures supporting the proposed change from property owners in the Airport 1<sup>st</sup> Addition."

**Planning Commission Recommendation:** February 5, 2019

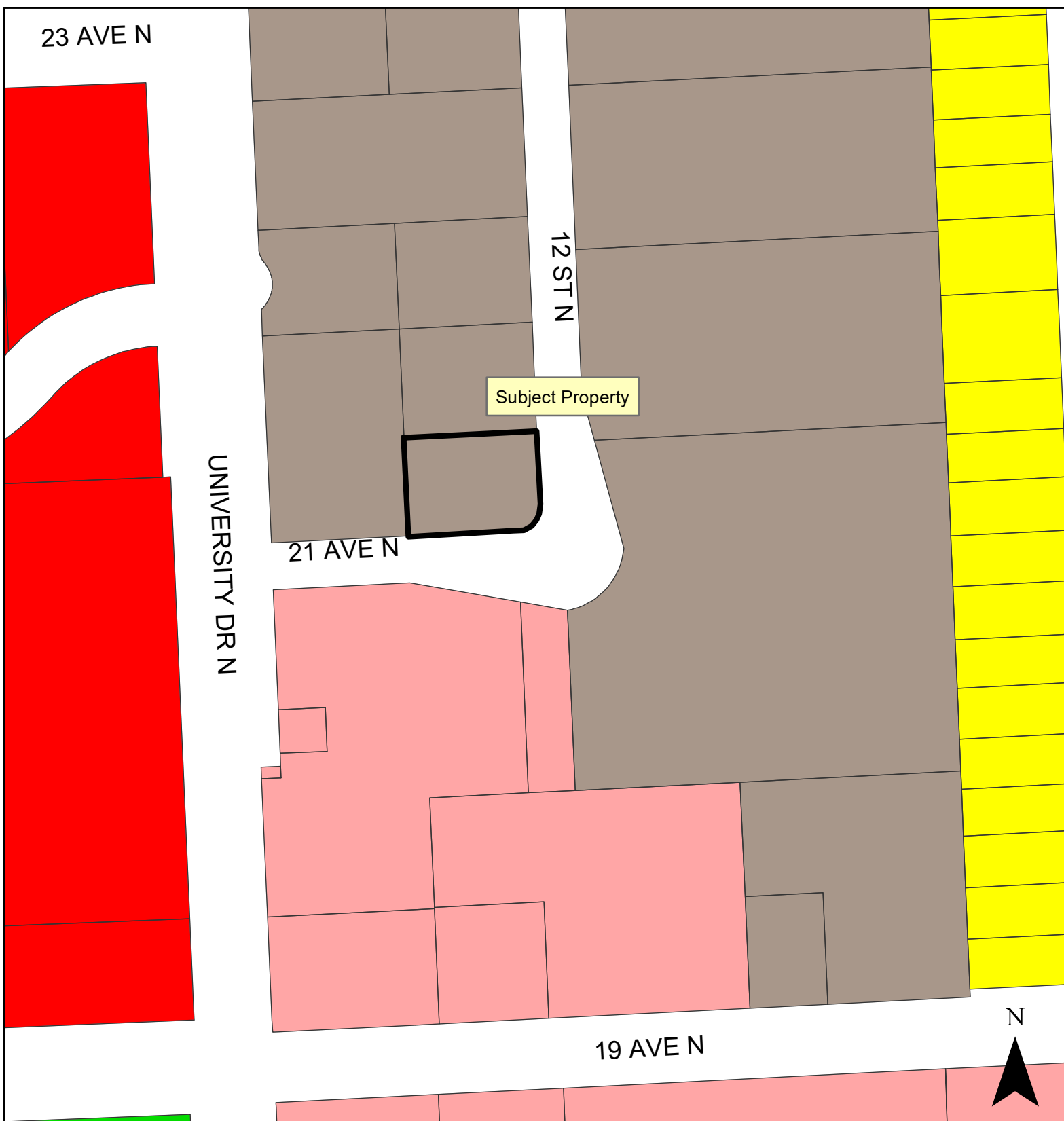
**Attachments:**

1. Zoning Map
2. Location Map
3. Map of properties in Airport 1<sup>st</sup> Addition and Blocks 3, 6, and 11 of Peter Sway Addition
4. Copy of Restrictive Covenants for Airport 1st Addition
5. Copy of Applicant's Property Owner Approval Form

# Zone Change (LI to LC) & CUP (Residential Living in LC)

## Airport 1st Addition

2102 12th Street North



**Legend**

AG	LC	MHP	SR-2
DMU	LI	NC	SR-3
GC	MR-1	NO	SR-4
GO	MR-2	PL	SR-5
	MR-3	UML	City Limits



Fargo Planning Commission

February 5, 2019

300

Feet

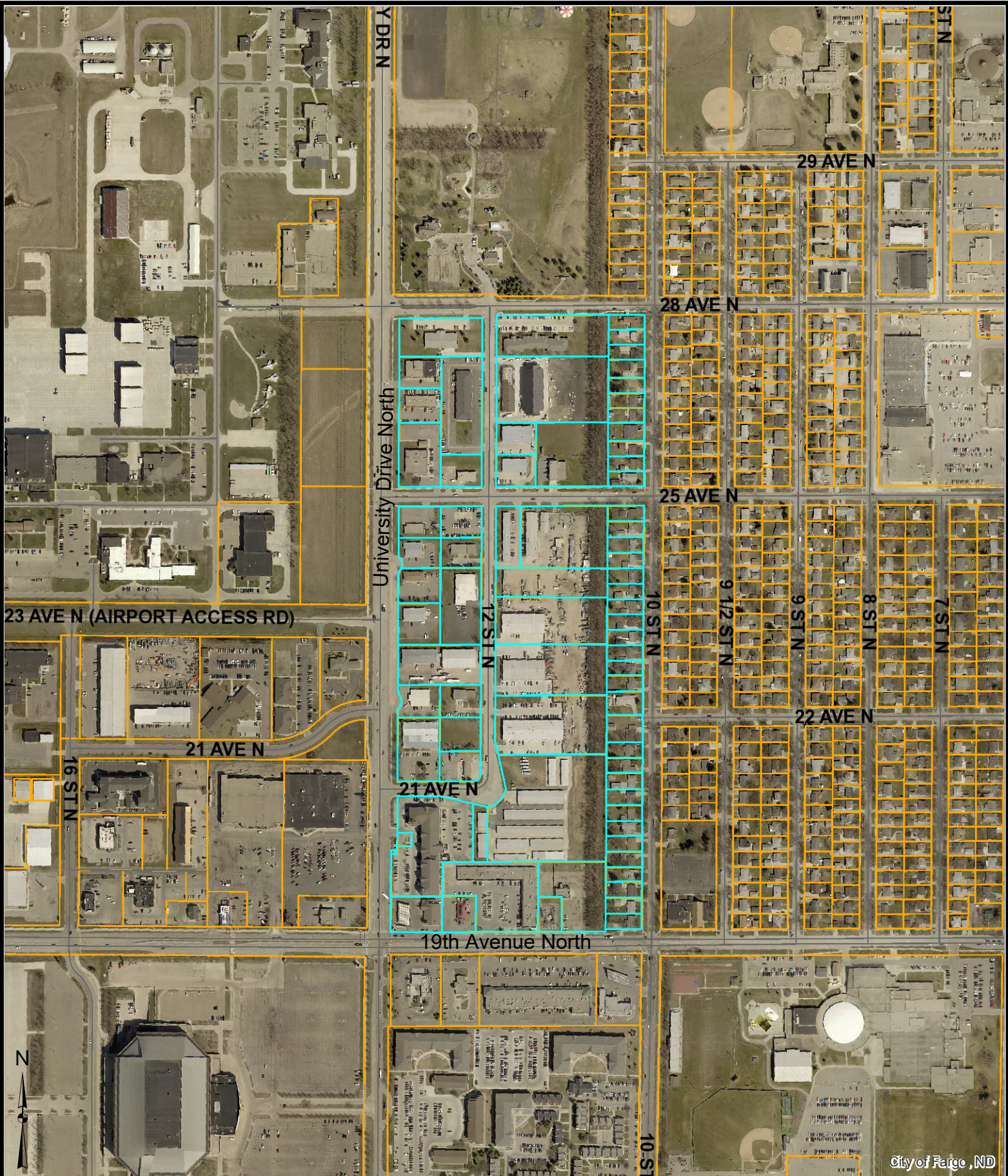


# Zone Change (LI to LC) & CUP (Residential Living in LC)

## Airport 1st Addition

2102 12th Street North





City of Fargo, ND

These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

# Airport 1st & Peter Sway 5th

1:9,028

1/31/2019 10:44:06 AM

This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features.



Deb @ Engineering 8101		Date	5/25	# of pages	4
Post-It® Fax Note	7671	To	Barb Grande		
		From	Shawn Dobberstein		
		Co./Dept.	Co. Airport		
		Phone #	293-4001		
		Fax #	293-3423		
		Phone #	241-1501		
		Fax #	241-1538		

RESTRICTIVE COVENANTS

AIRPORT FIRST ADDITION  
TO THE CITY OF FARGO

WHEREAS, The City of Fargo, a municipal corporation is the owner of all of Airport First Addition to the City of Fargo except Lots 8, 9, 10, 11 and 12 in Block 4 and,

WHEREAS, Said City of Fargo is desirous of protecting the community home owners near said Airport First Addition and subsequent purchasers of lots in this addition.

NOW THEREFORE, The City of Fargo does hereby prescribe and declare that all of said Airport First Addition except Lots 8, 9, 10, 11, 12, 14, 15 and 16 in Block 4 shall be subject to the restrictions and conditions as hereinafter set forth, and that such restrictions and conditions shall apply to and be a part of every conveyance or deed to said property or any part thereof, the same as though fully incorporated in any deed or conveyance thereof. Said restrictions and conditions shall be deemed and considered as covenants running with the land when conveyed or deeded, and shall be binding on the heirs, executors, administrators, successors and assigns of any person to whom said land may be conveyed until January 1, 1975, at which time said covenants shall be automatically extended for successive periods of ten years unless by a vote of the majority of the then owners, it is agreed to change or modify said covenants.

Any violation or attempted violation of any of the conditions, restrictions or prohibitions hereinafter set forth shall entitle any owner of the above described property to institute and prosecute appropriate proceedings, at law or in equity, for said violation or attempted violation. Invalidation of any of these covenants by judgement or court order shall in no way affect any of the other covenants which shall remain in full force and effect.

1. Front, Rear and Side Yards:

A. No structure shall be permitted nearer than twenty-five (25) feet to the front lot line nor nearer than twenty-five (25) feet to the rear lot line.

B. Side yard shall be ten percent (10%) of the width of the lot with a maximum requirement of twenty-five (25) feet.

C. Those properties containing the buffer easement shall not build closer than twenty-five (25) feet west of the line of the buffer easement.

2. Height Restrictions: No building, smoke stack, sign, antenna, materials storage, or any other appurtenance in connection with the use of the property shall be in excess of thirty-five (35) feet above the ground.

3. Architectural Treatment: All buildings shall have a finished appearance and architectural treatment acceptable to the City of Fargo. No structure shall be commenced or erected, nor shall any addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, plan and location of such structure shall have been submitted to and approved in writing by the undersigned City of Fargo, a municipal corporation, its successors and assigns. In the event said parties fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to them and receipted therefor, or in the event that no suit to enjoin the erection of such building or the making of such alteration has been commenced prior to the completion thereof, such approval will not be required and said covenant will be deemed to have been fully complied with.

4. Parking and Loading Requirements: Each property shall provide sufficient off-street parking for all personnel and clients plus adequate space for loading and unloading of trucks and other carriers used in connection with the property. All parking and loading areas shall be hard surfaced with a material suitable to prevent structural failure and the raising of any dust.

5. Landscaping and Buffer Easements:

A. Each designated lot owner or sub-lot owner shall devote a minimum of ten percent of the area of said lot or sub-lots to grass, trees, shrubs, flowers or other forms of ornamental landscaping.

B. The owners of property containing the buffer easement, with the exception of the City of Fargo, a municipal corporation, shall in addition maintain that easement with grass, shrubs, flowers and six (6) rows of trees in healthy condition suitable for a visual screen. The buffer strip shall also be kept free of weeds, debris and any other unsightly substance and the grass, trees and shrubs thereon shall be maintained and trimmed in a manner similar to park property in the City of Fargo.

6. Underground Utilities:

A. All electrical, telephone, telegraph or other wires, shall be placed underground. Transformers and other hardware connected with the previously mentioned wires may be mounted on grade if screened with a well constructed ornamental fence or high shrubbery.

7. Outdoor Lighting: No outdoor lighting, including signs, shall be arranged so as to cause any annoyance or inconvenience to residential properties in the vicinity. No blinking or flashing lights or signs nor any lights which shine on residential property may be used.

B. Claims for Damages: No owner, lessee, or other user of land in the Airport First Addition to the City of Fargo shall have any claim against the City of Fargo or the airport utility for damages due to noise, vibrations or any other factor related in any way to the use of the airport.

**9. Permitted Uses:**

A. Business, professional, governmental or institutional offices.

B. Light manufacturing, except those types which by virtue of emission of odor, dust, smoke, gas, steam, vibrations or noise would impair the health, safety, value or amenity of the residential property in the vicinity.

C. Wholesaling or shipping, with the condition that an outdoor storage yards used in connection with such enterprises shall be hard surface and kept free of junk, cars, machinery and other objects which are likely to be stored indefinitely.

D. Public and Semi-public Utilities.

E. Sales, Service and Housing of Aircraft or Airport Related products and Facilities for use in training of aircraft or airport related personnel.

F. Warehousing, provided any structure used for this purpose shall meet the requirements of paragraph three above.

**10. Prohibited uses:**

A. Homes, apartments, trailer courts, dormitories or any other use which is residential in nature.

B. All stores and shops which sell any commodity to the final user or which is otherwise retail in nature.

C. The manufacturing, processing or selling of any food or drink product, whether for human or animal consumption.

D. Bowling alleys, pool halls, amusement centers or any other type of commercial recreation.

E. Lodges, churches, schools, meeting rooms, auditoriums, theaters or any other type of buildings used for assembly purposes.

F. Hotels, motels, tourist courts or any other type of lodging facilities.

G. Any use which by virtue of emission of odor, dust, smoke, gas, steam, vibration or noise would impair the health, safety, value or amenity of residential property in the vicinity.

**11. Variance:** The covenants, agreements, conditions, reservations, restrictions and charges created and established herein for the benefit of said tract, and each lot therein, may be waived, abandoned and terminated, modified, altered or changed as to the whole of said tract or a portion thereof with the written consent of the owners of a majority of the owners of all the lots in

Airport First Addition together with a majority of the owners of Lots 1 through 13 in Block 3, Lots 1 through 13 in Block 6, and Lots 1 through 11 in Block 10, of Peter Sway Fifth Addition and the approval of the Fargo Zoning Commission. No such waiver, abandonment, termination, modification, or alteration shall become effective until the proper instrument in writing shall be executed and recorded in the office of the Recorder of Deeds for Cass County, North Dakota.

IN TESTIMONY WHEREOF, The said municipal corporation has caused these presents to be executed in its corporate name by its President and City Auditor and its corporate seal to be hereunto affixed the day and year first above written.

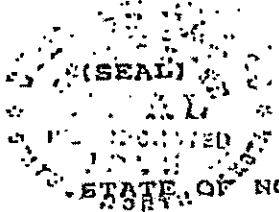
CITY OF FARGO, a municipal corporation

By Herschel Lashkowitz  
Herschel Lashkowitz, President of the Board of City Commissioners of the City of Fargo, North Dakota

Signed, Sealed and Delivered in the presence of:

[Signature]

ATTEST:  
Frank R. Fahrlander  
Frank R. Fahrlander, City Auditor



STATE OF NORTH DAKOTA ) ss.  
COUNTY OF CASS )

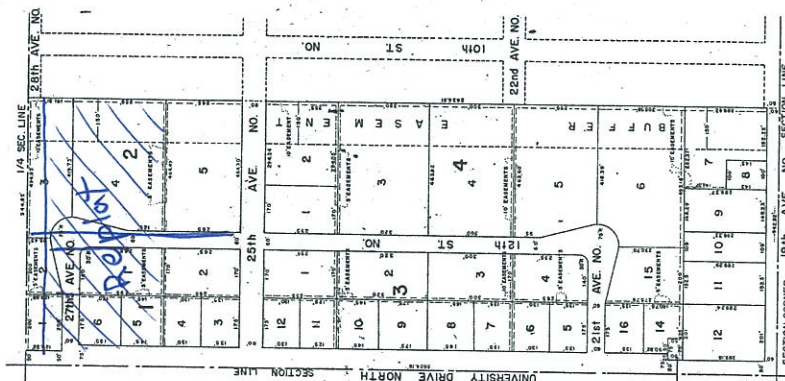
On this 21<sup>st</sup> day of August, 1967, before me a Notar Public in and for said County and State personally appeared HERSCHEL LASHKOWITZ and FRANK R. FAHRLANDER, to me known to be the President of the Board of City Commissioners and City Auditor, respectively, of the City of Fargo, and the persons described in and who executed the above and foregoing instrument and acknowledged to me that such corporation executed the same.

Carol J. Kraft  
Notary Public

My Commission Expires: \_\_\_\_\_

CAROL J. KRAFT  
Notary Public, CASS COUNTY, N. DAK.  
My Commission Expires SEPT. 11, 1973

DOCUMENT No. \_\_\_\_\_ Filed for record on the 21<sup>st</sup> day of Aug,  
A. D. 1967, at 1:22 o'clock P.M.  
R. Friedman  
RECORDING CLERK



A PLAT OF  
 AIRPORT 1st ADDITION  
 TO  
 TO THE CITY OF FARGO, CASS  
 COUNTY, NORTH DAKOTA  
 being a part of the West 1/2  
 Southwest 1/4 Section 30 T140N  
 R48W of the 5th P.M.

**MANUVER'S CERTIFICATE**  
 STATE OF NORTH DAKOTA }  
 COUNTY OF CASS }

I, CAROL J. HEST, REGISTERED LAND SURVEYOR, UNDER LAWS OF THE STATE OF NORTH DAKOTA, DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT WAS FILED FOR RECORD IN THE OFFICE OF THE COUNTY CLERK OF CASS COUNTY, NORTH DAKOTA, ON THIS 27th DAY OF SEPTEMBER, 1923, AND THAT THE PERSON OR PERSONS WHO EXECUTED THE FOREGOING INSTRUMENT AND WHO ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME, ARE THE SAME AS THE PERSONS WHO EXECUTED AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME, AND THAT HE EXECUTED THE SAME, AND THAT HE EXECUTED THE SAME.

*Carol J. Hest*  
 REG. LAND SURVEYOR  
 25th AVE. N. FARGO, N. D.

STATE OF NORTH DAKOTA }  
 COUNTY OF CASS }

ON THIS 27th DAY OF SEPTEMBER, 1923, BEFORE ME, A NOTARY PUBLIC, IN AND FOR THE COUNTY OF CASS, NORTH DAKOTA, CAROL J. HEST, A REGISTERED LAND SURVEYOR, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO ACKNOWLEDGED TO ME THAT HE EXECUTED THE FOREGOING INSTRUMENT AND WHO ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME.

*Carol J. Hest*  
 NOTARY PUBLIC  
 25th AVE. N. FARGO, N. D.

STATE OF NORTH DAKOTA }  
 COUNTY OF CASS }

IN WITNESS WHEREOF, I, the undersigned, Notary Public, in and for the County of Cass, North Dakota, have hereunto set my hand and the seal of my office, at Fargo, North Dakota, this 27th day of September, 1923.

*Wendell Parkhurst*  
 NOTARY PUBLIC  
 FARGO, N. D.



**SILENT CONDEMNOR'S APPROVAL**  
 APPROVED BY THE CITY ENGINEER THIS 27th DAY OF SEPTEMBER, 1923.

*Geo. G. Bracke*  
 CITY ENGINEER  
 FARGO, N. D.

STATE OF NORTH DAKOTA }  
 COUNTY OF CASS }

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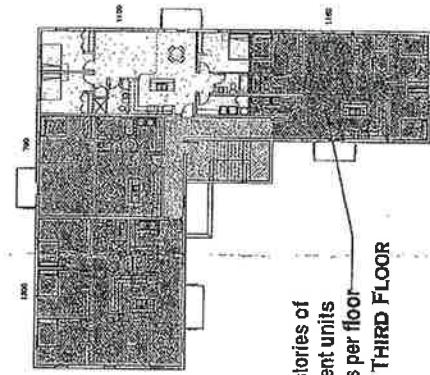
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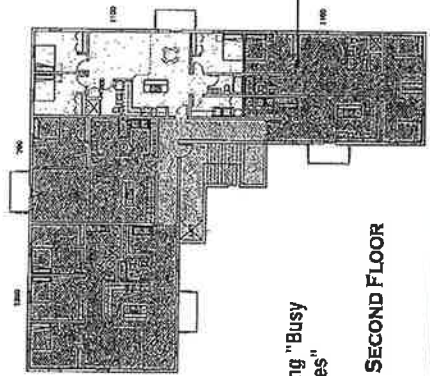
*Wendell Parkhurst*  
 NOTARY PUBLIC  
 FARGO, N. D.

I-9



Add 2 stories of apartment units - 4 units per floor

THIRD FLOOR

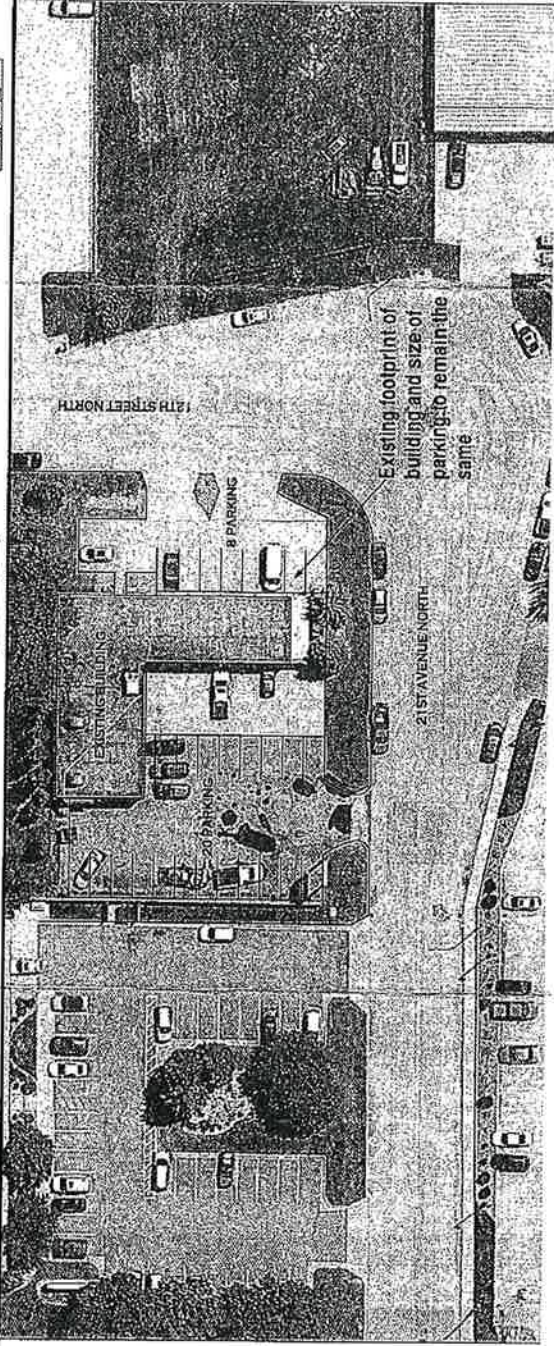


Existing "Busy Bubbles"

SECOND FLOOR



FIRST FLOOR



EXISTING FOOTPRINT OF BUILDING AND SIZE OF PARKING TO REMAIN THE SAME

**VARIANCE PETITION:** The variance is for addition of apartment units to be built on top of the existing building. Housing is currently not allowed in the neighborhood

~~2321 12th St~~ ~~2219 12th St~~  
~~2301 12th St~~ ~~2201 12th St~~

The undersigned as Owner or authorized agent for the Owner(s) of the property with the address of All **DARCO PROPERTIES** Fargo, ND, hereby approve the requested variance of the restrictive covenants for the Airport First Addition per the information on this document.

DARCO Investments by: *Glenn K. Keener Partner*

Property Owner Printed Name

**4 PROPERTIES.**

✓





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## MEMORANDUM

**TO:** Fargo Planning Commission

**FROM:** Aaron Nelson, Planning Coordinator *AN*

**DATE:** January 31, 2019

**SUBJECT:** Planning Department Work Plan – LDC Analysis & Core Neighborhoods Plan

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Planning staff is in the process of initiating two projects on the 2019 Planning Department Work Plan: 1) an LDC Analysis and 2) a Core Neighborhoods Plan. Staff intends to contract with professional consultants for each of these projects. It is anticipated that both projects would follow a similar two-year timeline from 2019 to 2020. Staff's goal would be to develop requests for proposals within the next few months in order to have contracts awarded in the fall of this year. Staff will present an overview of these two projects at the February 5 Planning Commission meeting.