

FARGO PLANNING COMMISSION AGENDA
Tuesday, May 5, 2020 at 3:00 p.m.

A: Approve Order of Agenda

B: Minutes: Regular Meeting of March 3, 2020

C: Brown Bag Luncheon - Wednesday, May 20, 2020

D: Public Hearing Items:

1. Hearing on an application requesting a Zoning Change to repeal and reestablish a C-O, Conditional Overlay on Lot 1, Block 1, **Brandt Crossing 14th Addition** and the south 60 feet of Lot 2, Block 1, **Brandt Crossing 6th Addition**. (Located at 3244 51st Street South) (M & L Enterprises LLC/Tanner Brandt) (me)
- 2a. Hearing on an application requesting a Zoning Change from GI, General Industrial to LI, Limited Industrial on the proposed **Northern Sheyenne Land Third Addition**. (Located at 1805, 1810, 1820, 1821, 1840, and 1841 Sheyenne Loop North) (Kelmar Property 6, LLC/Houston Engineering) (dk)
- 2b. Hearing on an application requesting a Plat of **Northern Sheyenne Land Third Addition** (Major Subdivision) a replat of Lot 1, Block 3, 19th Avenue Southwest Pond Addition; Lots 5-7, Block 1 and Lots 2-3, Block 2, Northern Sheyenne Land Second Addition; and a Vacation and replat of part of 19th Avenue North dedicated as part of Northern Sheyenne Land Addition to the City of Fargo, Cass County, North Dakota. (Located at 1805, 1810, 1820, 1821, 1840, and 1841 Sheyenne Loop North) (Kelmar Property 6, LLC/Houston Engineering) (dk)
- 3a. Hearing on an application requesting a PUD, Planned Unit Development Master Land Use Plan within the boundaries of the proposed **Touchmark Addition**. (Located at 1201 35th Avenue South and 1200 Harwood Drive South) (Touchmark LLC/Waterford at Harwood Groves LLC) (dk)
- 3b. Hearing on an application requesting a Zoning Change from AG, Agricultural and MR-3, Multi-Dwelling Residential with a PUD, Planning Unit Development to MR-3 with a PUD, Planned Unit Development on the proposed **Touchmark Addition**. (Located at 1201 35th Avenue South and 1200 Harwood Drive South) (Touchmark LLC/Waterford at Harwood Groves LLC) (dk)
- 3c. Hearing on an application requesting a Plat of **Touchmark Addition** (Minor Subdivision) an unplatted portion of the Section 25, Township 139 North, Range 49 West and Lots 1, 15, and

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16, Block 1, Replat of Waterford Addition, of the Fifth Principal Meridian, Cass County, North Dakota. (Located at 1201 35th Avenue South and 1200 Harwood Drive South) (Touchmark LLC/Waterford at Harwood Groves LLC) (dk)

- 4a. Hearing on an application requesting a Growth Plan Amendment on Lot 9, Block 1, **Osgood Townsite 11th Addition** and Lot 2, Block 2, **Osgood Townsite 12th Addition**. (Located at 4850 and 4800 46th Street South) (45th Street Group Apartments #4, LLC/Houston Engineering) (kb)
- 4b. Hearing on an application requesting a Zoning Change from GC, General Commercial with a C-O, Conditional Overlay to MR-3, Multi-Dwelling Residential with a request to repeal the C-O, Conditional Overlay on Lot 9, Block 1, **Osgood Townsite 11th Addition** and Lot 2, Block 2, **Osgood Townsite 12th Addition**. (Located at 4850 and 4800 46th Street South) (45th Street Group Apartments #4, LLC/Houston Engineering) (kb)
- 5a. Hearing on an application requesting a Zoning Change from SR-4, Single-Dwelling Residential, and GC, General Commercial, to GC, General Commercial on Lots 1A and 1B, Block 25, **Egbert, O'Neil, and Haggarts Addition**. (Located at 421 and 425 24th Street South and 424 25th Street South) (Mike and Kelly Hoffman/Todd Jelinski) (kb)
- 5b. Hearing on an application requesting a Conditional Use Permit to allow household living in the GC, General Commercial zoning district on Lot 1B, Block 25, **Egbert, O'Neil, and Haggarts Addition**. (Located at 424 25th Street South and 425 24th Street South) (Mike and Kelly Hoffman/Todd Jelinski) (kb)
- 6a. Hearing on an application requesting a Zoning Change from SR-3, Single-Dwelling Residential to SR-5, Single-Dwelling Residential on the proposed **RTFMA Addition**. (Located at 1326 16 ½ Street South) (Rebuilding Together F-M Area/Nathan G. Anderson) (ms)
- 6b. Hearing on an application requesting a Plat of **RTFMA Addition** (Minor Subdivision) a replat of Lot 19, Block 6, Morton and Doty's Addition to the City of Fargo, Cass County, North Dakota. (Located at 1326 16 ½ Street South) (Rebuilding Together F-M Area/Nathan G. Anderson) (ms)
7. Hearing on an application requesting a Plat of **Epic Gateway Addition** (Minor Subdivision) a replat of Lot 1, Block 4, North Dakota R2 Urban Renewal Addition to the City of Fargo, Cass County, North Dakota. (Located at 44 4th Street South and 300 Main Avenue) (EPIC Gateway, LLC/MBN Engineering) (ms)
8. Hearing on an application requesting a Plat of **Aldi First Addition** (Minor Subdivision) a replat of part of Lot 1, Block A, Replat of Part of Village West Second Addition to the City of Fargo, Cass County, North Dakota. (Located at 4303 and 4305 13th Avenue South) (Fargo Enterprises/Nathan G. Anderson) (dk)

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- 9a. Hearing on an application requesting a Conditional Use Permit to allow residential living in the GC, General Commercial zoning district in the proposed **Urban Plains by Brandt Fifth Addition**. (Located at 2867 55th Street South) (Urban Plains Land Company, LLC/Houston Engineering) (kb)
- 9b. Hearing on an application requesting a Plat of **Urban Plains by Brandt Fifth Addition** (Minor Subdivision) a replat of Lot 1, Block 2, Urban Plains by Brandt Third Addition to the City of Fargo, Cass County, North Dakota. (Located at 2867 55th Street South) (Urban Plains Land Company, LLC/Houston Engineering) (kb)
10. Hearing on an application requesting a Zoning Change from GC, General Commercial to LI, Limited Industrial on Lot 1, Block 1, **Asleson Industrial Park Third Addition**. (Located at 3345, 3357, and 3369 39th Street South and 4013 34th Avenue South) (Choice Investments LLC/Prairie Commons Partners, LLC) (kb)
11. Hearing on an application requesting a Conditional Use Permit to allow an Alternative Access Plan on Lot 3, Block 2, **Calico Prairie Addition**. (Located at 4462 30th Avenue South) (Housing Authority of the City of Fargo) (ms)
12. Hearing on an application requesting a Conditional Use Permit to allow for a Telecommunication Support Structure (TSS) 199 feet in height in the GC, General Commercial zoning district on Lot 2, Block 2, **Richard 3rd Subdivision**. (Located at 6120 53rd Avenue South) (Magnum Properties/Scott Jones) (ms): CONTINUED TO JUNE 2, 2020
13. Hearing on an application requesting a Plat of **Corwin Second Addition** (Minor Subdivision) a replat of Lots 1 and 2, Block 1, Corwin Addition to the City of Fargo, Cass County, North Dakota. (Located at 222 40th Street South and 301 38th Street South) (Tim Corwin Family Limited Partnership and Corwin Holdings, Inc./Houston Engineering) (an)
14. Hearing on an application requesting a Land Development Code Text Amendment to amend Section 20-0402(T)(3) and repeal Section 20-0403(C)(5)(e) of the Fargo Municipal Code (Land Development Code) relating to the prohibition of firearm and ammunition sales as a non-farm commercial use or as a home occupation. (City of Fargo/Peter McDonald) (an)
15. Hearing on an application requesting a Plat of **Tice Addition** (Minor Subdivision) a replat of a portion of Lot 6, and all of Lots 11 and 12, Block 4, Harry A. Schnell Addition to the City of Fargo, Cass County, North Dakota. (Located at 714 and 718 19th Avenue South) (Kenneth and Kimberly Anderson) (dk): CONTINUED TO JUNE 2, 2020
- 16a. Hearing on application requesting a Zoning Change from AG, Agricultural to LI, Limited Industrial on the proposed **Luxsun 25th Street North Addition**. (Located at 4764 25th Street North) (Luxsun Investments, LLC/Thad Thorsness) (dk)

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16b. Hearing on an application requesting a Plat of **Luxsun 25th Street North Addition** (Major Subdivision) a replat of Auditors Lot 2, Section 14, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota. (Located at 4764 25th Street North) (Luxsun Investments, LLC/Thad Thorsness) (dk)

E: Other Items:

1. Annexation of approximately 1.83 acres of all of Auditor's Lot 2, Section 14, Township 140 North, Range 49 West of the 5th Principal Meridian, Cass County, North Dakota. (Luxsun Investments, LLC/Thad Thorsness) (dk)

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BOARD OF PLANNING COMMISSIONERS MINUTES

Regular Meeting:

Tuesday, March 3, 2020

The Regular Meeting of the Board of Planning Commissioners of the City of Fargo, North Dakota, was held in the Commission Chambers at City Hall at 3:00 p.m., Tuesday, March 3, 2020.

The Planning Commissioners present or absent were as follows:

Present: John Gunkelman, Mary Scherling, Rocky Schneider, Scott Stofferahn, Maranda Tasa, Brad Bachmeier, Jennifer Holtz, Dawn Morgan, Art Rosenberg

Absent: Mike Magelky, Melissa Sobolik

Chair Gunkelman called the meeting to order.

Business Items:

Item A: Approve Order of Agenda

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

Member Scherling present.

Item B: Minutes: Regular Meeting of February 4, 2020

Member Stofferahn moved the minutes of the February 4, 2020 Planning Commission meeting be approved. Second by Member Tasa. All Members present voted aye and the motion was declared carried.

Item C: March 18, 2020 Brown Bag Luncheon: Cancelled

Item D: Public Hearing Items:

Item 1: Commerce on 12th Fifth Addition

Continued hearing on an application requesting a Plat of Commerce on 12th Fifth Addition (Minor Subdivision) a replat of Lots 4-5, Block 1, Commerce on 12th Third Addition, to the City of Fargo, Cass County, North Dakota. (Located at 5570 and 5590 13th Avenue North) (Fargo Commercial Properties/PRG): WITHDRAWN

A Hearing had been set for October 1, 2019. At the October 1, 2019 meeting, the Hearing was continued to November 5, 2019. At the November 5, 2019 meeting, the Hearing was continued to December 3, 2019. At the December 3, 2019 meeting, the Hearing was continued to February 4, 2020. At the February 4, 2020 meeting, the

Hearing was continued to this date and time; however, the applicant has requested this item be withdrawn.

Item 2: 701 Brew Addition

2a. Continued hearing on an application requesting a Zoning Change from MR-3, Multi-Dwelling Residential and DMU, Downtown Mixed-Use, to DMU, Downtown Mixed-Use on the proposed 701 Brew Addition. (Located at 702 and 706 12th Street North; 701 University Drive North) (701 Brew LLC/CHA Architecture + Construction): APPROVED

2b. Continued hearing on an application requesting a Plat of 701 Brew Addition (Minor Subdivision) a replat of Lot 1 and the East half of Lot 2, Block 7 Harwoods Addition, to the City of Fargo, Cass County, North Dakota. (Located at 702 and 706 12th Street North; 701 University Drive North) (701 Brew LLC/CHA Architecture + Construction): APPROVED

A hearing had been set for February 4, 2020. At the February 4, 2020 meeting, the Hearing was continued to this date and time.

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

Discussion was held on the DMU, Downtown Mixed-Use zoning district boundary.

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 DMU, Downtown Mixed-Use and MR-3, Multi-Dwelling Residential, to DMU, Downtown Mixed-Use, and 2) Subdivision Plat 701 Brew Addition as outlined within the staff report, as the proposal satisfactorily complies with the GO2030 Fargo Comprehensive Plan, the Roosevelt Neighborhood Plan, the Standards of Section 20-0906.F (1-4), and all other applicable requirements of the Land Development Code. Second by Member Morgan. On call of the roll Members Schneider, Scherling, Holtz, Stofferahn, Morgan, Bachmeier, Rosenberg, Tasa, and Gunkelman voted aye. Absent and not voting: Members Sobolik and Magelky. The motion was declared carried.

Item 3: Brunsdale Second Addition

3a. Continued hearing on an application requesting a Plat of Brunsdale Second Addition (Minor Subdivision) a replat of Lot 9, Block 1, less the West 100 feet and the North 10 feet of Lot 13, less the West 100 feet, to the City of Fargo, Cass County, North Dakota. (Located at 2851 University Drive South) (Robert A. Bond, DDS/Steve Iverson): APPROVED

A hearing had been set for February 4, 2020. At the February 4, 2020 meeting, the Hearing was continued to this date and time.

3b. Hearing on an application requesting a Conditional Use Permit to allow an Alternative Access Plan on the proposed Brunsdale Second Addition. (Located at 2851 University Drive South) (Robert A. Bond, DDS/Steve Iverson): APPROVED

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

Discussion was held on the proposed plan for the site.

Member Tasa moved the findings and recommendations of staff be accepted and approval be recommended to the City Commission of the proposed Subdivision Plat Brunsdale Second Addition, and 2) the Conditional Use Permit be approved to allow an Alternative Access Plan as outlined within the staff report, as the proposal complies with the Adopted Area Plan, the Standards of Article 20-06, Section 0909.D(1-6), and all other applicable requirements of the Land Development Code with the following conditions for the Conditional Use Permit:

- 1) Medical office uses will be evaluated at a ratio of one parking stall per 300 square feet of building area.
- 2) The Conditional Use Permit will cease if the land use changes from medical office.
- 3) Expansion of any proposed or existing uses will trigger a reevaluation of off-street parking requirements on site.

Second by Member Rosenberg. On call of the roll Members Schneider, Bachmeier, Scherling, Stofferahn, Rosenberg, Holtz, Tasa, Morgan, and Gunkelman voted aye. Absent and not voting: Members Sobolik and Magelky. The motion was declared carried.

Item 4: Four Walls Addition

4a. Hearing on an application requesting a Zoning Change from SR-3, Single-Dwelling Residential, to SR-5, Single-Dwelling Residential on the Proposed Four Walls Addition. (Located at 702 and 704 31st Street North) (Four Walls 1 LLC/Charles Shaffer): APPROVED

4b. Hearing on an application requesting a Plat of Four Walls Addition (Minor Subdivision) a replat of Lot 8, less the West 15 feet, Block 3, Model Cities Subdivision to the City of Fargo, Cass County, North Dakota. (Located at 702 and 704 31st Street North) (Four Walls 1 LLC/Charles Shaffer): APPROVED

Ms. Squyer presented the staff report stating all approval criteria have been met and staff is recommending approval.

Discussion was held on the work being done to the property.

Applicant Charles Schaffer spoke on behalf of the application.

Member Scherling moved the findings and recommendations of staff be accepted and approval be recommended to the City Commission of the proposed 1) Zoning Change

from SR-3, Single-Dwelling Residential to SR-5, Single-Dwelling Residential and 2) Subdivision Plat Four Walls Addition as outlined within the staff report, as the proposal complies with the GO2030 Fargo Comprehensive Plan, the Standards of Article 20-06 and Section 20-0906(F)(1-4) of the Land Development Code, and all other applicable requirements of the Land Development Code. Second by Member Schneider. On call of the roll Members Scherling, Stofferahn, Holtz, Rosenberg, Tasa, Morgan, Bachmeier, Schneider, and Gunkelman voted aye. Absent and not voting: Members Magelky and Sobolik. The motion was declared carried.

Item 5: Aldevron First Addition

Hearing on an application requesting a Plat of Aldevron First Addition (Minor Subdivision) a replat of all of Lots 5 and 6 and a portion of Lot 3, Block 1, Woodhaven Plaza Addition and Auditors Lot 13 of Woodhaven Plaza Addition to the City of Fargo, Cass County, North Dakota. (Located at 4040 and 4055 41st Avenue South; 4137 and 4175 40th Street South) (Aldevron, LLC/Vogel Law Firm): APPROVED

Planning Coordinator Maegin Elshaug presented the staff report stating all approval criteria have been met and staff is recommending approval.

Member Rosenberg moved the findings and recommendations of staff be accepted and approval be recommended to the City Commission of the proposed Subdivision Plat Aldevron First 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 Schneider. On call of the roll Members Bachmeier, Scherling, Morgan, Rosenberg, Schneider, Holtz, Stofferahn, Tasa, and Gunkelman voted aye. Absent and not voting: Members Magelky and Sobolik. The motion was declared carried.

Other Business presented:

Planning and Development Assistant Director Mark Williams provided the Board an update on flood preparations. He noted that volunteers are needed to fill sandbags and that Sandbag Central will be open March 10-13 from 7:00 a.m. to 7:00 p.m., and those interested in volunteering can go to www.FargoND.gov/floodvolunteers to sign up.

Member Morgan stated the Fargo Neighborhood Coalition will be having a meeting on Saturday, March 7 at 12:00 p.m. at the Spirit Room (111 Broadway). Planning Coordinator Aaron Nelson will be presenting an overview of the progress of the Fargo Core Neighborhoods Plan.

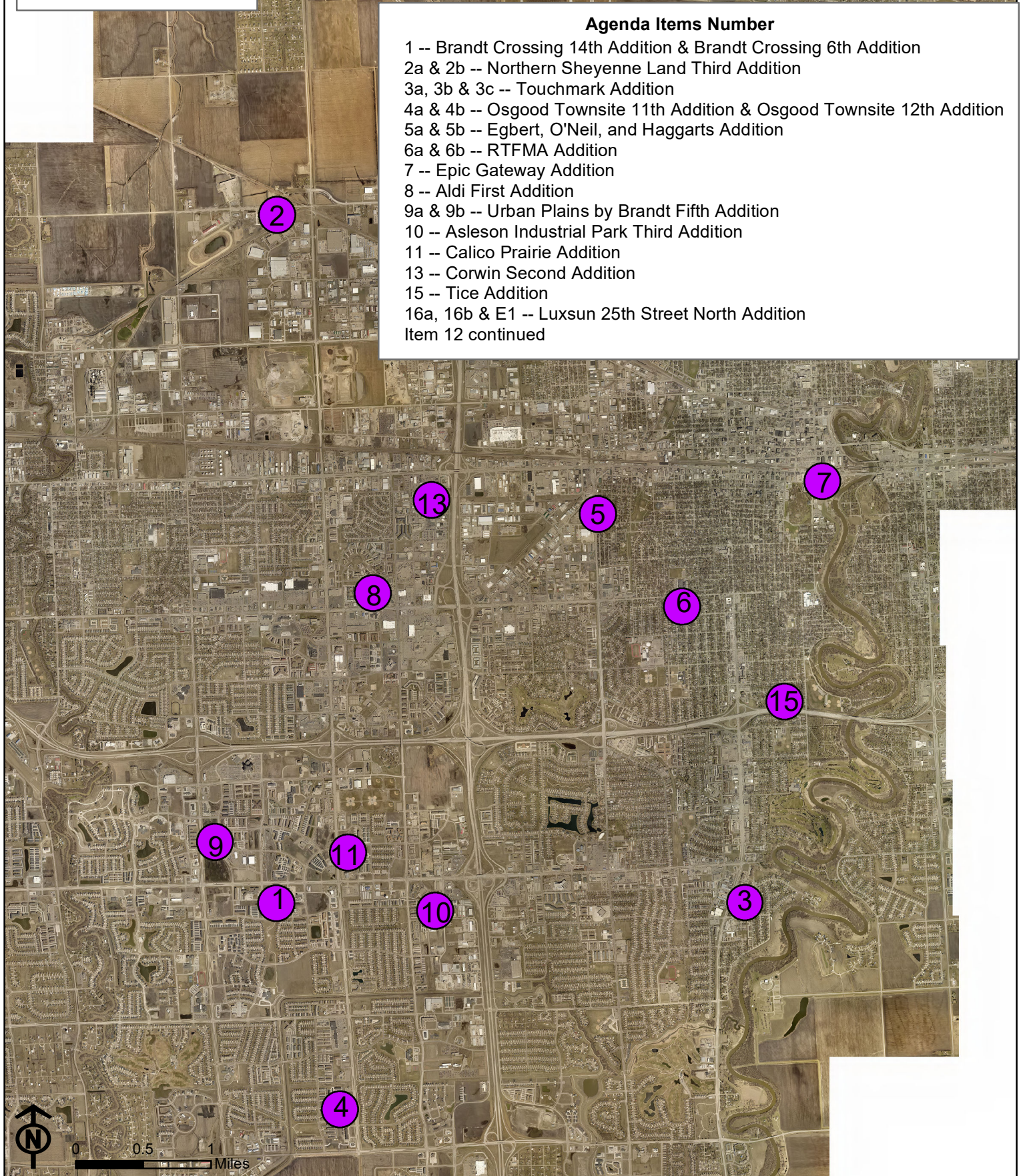
The time at adjournment was 3:24 p.m.

Agenda Items Map

Fargo Planning Commission
May 5, 2020

Agenda Items Number

- 1 -- Brandt Crossing 14th Addition & Brandt Crossing 6th Addition
- 2a & 2b -- Northern Sheyenne Land Third Addition
- 3a, 3b & 3c -- Touchmark Addition
- 4a & 4b -- Osgood Townsite 11th Addition & Osgood Townsite 12th Addition
- 5a & 5b -- Egbert, O'Neil, and Haggarts Addition
- 6a & 6b -- RTFMA Addition
- 7 -- Epic Gateway Addition
- 8 -- Aldi First Addition
- 9a & 9b -- Urban Plains by Brandt Fifth Addition
- 10 -- Asleson Industrial Park Third Addition
- 11 -- Calico Prairie Addition
- 13 -- Corwin Second Addition
- 15 -- Tice Addition
- 16a, 16b & E1 -- Luxsun 25th Street North Addition
- Item 12 continued



**City of Fargo
Staff Report**

Title:	Brandt Crossing 14th Addition and Brandt Crossing 6th Addition	Date:	4/29/2020
Location:	3244 51 st Street South	Staff Contact:	Maegin Elshaug
Legal Description:	Lot 1, Block 1, Brandt Crossing 14 th Addition and on the south 60 feet of Lot 2, Block 1, Brandt Crossing 6 th Addition		
Owner(s)/Applicant:	M & L Enterprises LLC	Engineer:	N/A
Entitlements Requested:	Zoning Change (to repeal and re-establish a C-O, Conditional Overlay)		
Status:	Planning Commission Public Hearing: May 5, 2020		

Existing	Proposed
Land Use: Vacant	Land Use: Unknown
Zoning: LC, Limited Commercial with a C-O, Conditional Overlay	Zoning: LC, Limited Commercial with a C-O, Conditional Overlay
Uses Allowed: 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. With a C-O that restricts other uses not allowed by-right.	Uses Allowed: unchanged
Maximum Lot Coverage Allowed: 55% building coverage	Maximum Lot Coverage Allowed: unchanged

Proposal:

The applicant is requesting a zoning amendment to repeal and re-establish a C-O, Conditional Overlay, on Lot 1, Block 1, Brandt Crossing 14th Addition and on the south 60 feet of Lot 2, Block 1, Brandt Crossing 6th Addition. The subject property is located at 3244 51st Street South and encompasses approximately 1.95 acres. There are two conditional overlays, which are Ordinances 4900 and 5066.

In February of 2020, a boundary line adjustment with the subject property and adjacent property to the north was approved and recorded. The property to the north was previously Lot 2, Block 1, Brandt Crossing 6th Addition whose address is 3230 51st Avenue South. The boundary line adjustment essentially moved the south 60 feet of the adjacent property to the subject property. The two properties had a different ordinance with conditional overlay, Ordinances 4900 and 5066. The properties were zoned at different times, which is why the ordinance numbers are different. The boundary line adjustment made it so that both Ordinances 4900 and 5066 were associated with the subject property. The requirements of the conditional overlay are exactly the same, and the applicant is proposing to repeal and reestablish the conditional overlay in order to retain one single conditional overlay that is the same as two the currently exist on the property. The draft conditional overlay is attached for review.

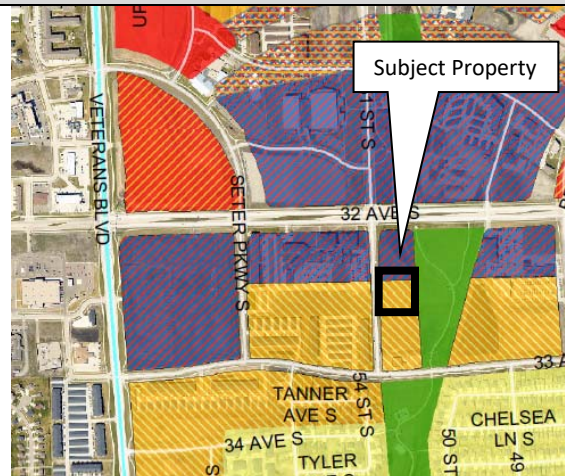
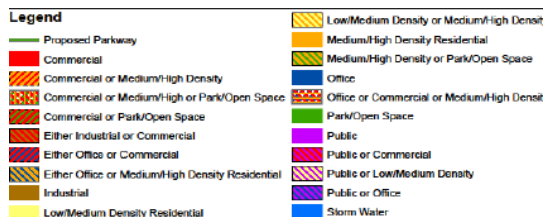
This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.

Surrounding Land Uses and Zoning Districts:

- North: LC with a C-O, vacant;
- East: P/I, Public & Institutional with a park;
- South: LC with a C-O;
- West: Across 51st Street South is LC with a C-O.

Area Plans:

The subject property was originally part of the Southwest Area Plan as designated within the *Urban Fringe and Extraterritorial Area of the City of Fargo* land use plan adopted in 2003. This area was most recently updated in 2010 (see exhibit to right), which shows a majority of the subject property as being appropriate for Office or Commercial uses. These plans are intended to be general in nature and used as a framework for the development pattern, such as the mix and approximate size of land uses and street connections.



Context:

Neighborhood: Brandt Crossing

Schools: The subject property is located within the West Fargo school district, specifically the Freedom elementary, Liberty middle and Sheyenne high schools.

Parks: Directly west of the subject property is Brandt Crossing Park (5009 33rd Avenue South), providing amenities of playgrounds, recreational trails, basketball, dog park and shelters.

Pedestrian / Bicycle: Shared use facilities are located along the north side of 32nd Avenue South and also the adjacent park. These facilities connect to 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 error in the zoning map as it relates to this property. The properties are currently zoned LC, Limited commercial. Due to the recent boundary line adjustment, the property has to conditional overlays on it. The applicant is proposing to have a single conditional overlay on the property, consistent with the existing conditional overlays which are the same. **(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 subject property fronts an existing, developed public right-of-way which provides access and public utilities to serve the property.

(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 approval will not adversely affect the condition or value of property within 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 protect the health, safety, and general welfare of the citizens of Fargo. Staff finds that the proposal is consistent with the purposes of the LDC, the Growth Plan, 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 re-establish the C-O, Conditional Overlay, 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: May 5, 2020

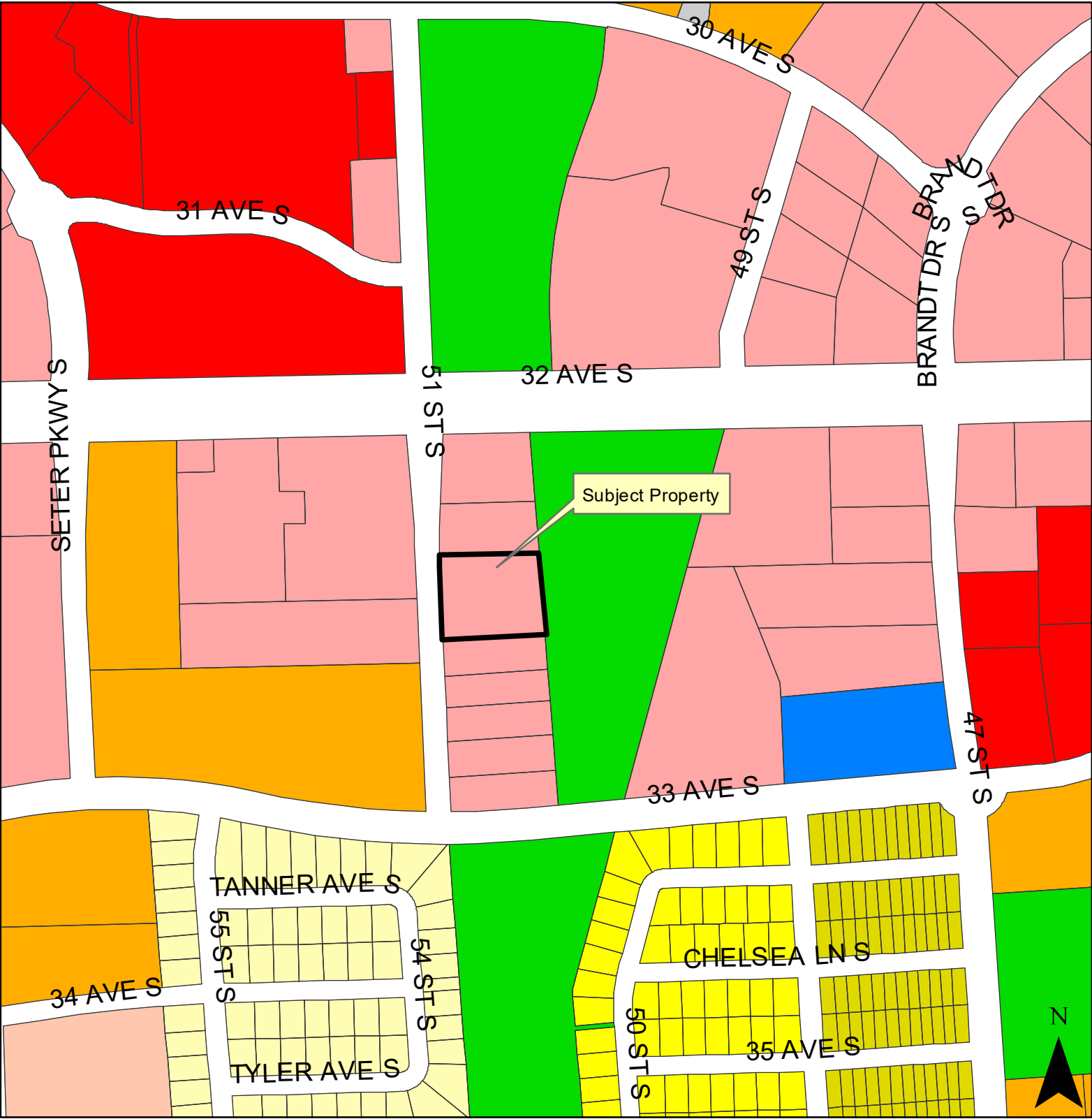
Attachments:

1. Zoning Map
2. Location Map
3. Draft Conditional Overlay

Zone Change (repeal and re-establish a Conditional Overlay)

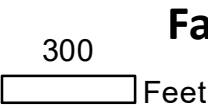
Brandt Crossing 14th Addition
Brandt Crossing 6th Addition

3244 51st St S



Legend

AG	DMU	GC	GO	LC	MR-1	MR-2	MR-3	MHP	NZC	P/I	UML	SP-2	SP-3	SP-4	SP-5	City Limits
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Fargo Planning Commission
May 5, 2020

Zone Change (repeal and re-establish a Conditional Overlay)

Brandt Crossing 14th Addition
Brandt Crossing 6th Addition

3244 51st St S



DRAFT CONDITIONAL OVERLAY

- 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 façade, and extending at least 20 percent of the length of the façade. No uninterrupted length of any façade 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 face public streets 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. Loading facilities shall not be located at the front of structures where it is difficult to adequately screen them from view. All loading and service areas shall be screened from the view of adjacent public streets through a structure and/or landscaping.
8. 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 services side does not face any public right-of-way or residentially zoned property the metal gate shall not be required.
9. Separate vehicular and pedestrian circulation systems shall be provided. An on-site 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.

10. A minimum of 5 percent 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 percent of the total property acreage.

11. The following uses are prohibited:

- a. Detention facilities
- b. Adult entertainment center
- c. Off-premise advertising signs (directional signs that are less than 50 square feet in size are exempt from this prohibition)
- d. Portable signs
- e. Vehicle repair
- f. Industrial service
- g. Manufacturing and production
- h. Warehouse and freight movement
- i. Aviation/surface transportation

City of Fargo Staff Report			
Title:	Northern Sheyenne Land Third Addition	Date:	4/29/2020
Location:	1805, 1810, 1820, 1821, 1840, and 1841 Sheyenne Loop North	Staff Contact:	Donald Kress, planning coordinator
Legal Description:	Lot 1, Block 3, 19th Avenue Southwest Pond Addition; Lots 5-7, Block 1 and Lots 2-3, Block 2, Northern Sheyenne Land Second Addition; and a Vacation and replat of part of 19th Avenue North dedicated as part of Northern Sheyenne Land Addition to the City of Fargo, Cass County, North Dakota		
Owner(s)/Applicant:	Kelmar Property 6, LLC/Houston Engineering	Engineer:	Houston Engineering, Inc.
Entitlements Requested:	Major Subdivision Including Vacation of ROW (replat of Lot 1, Block 3, 19th Avenue Southwest Pond Addition; Lots 5-7, Block 1 and Lots 2-3, Block 2, Northern Sheyenne Land Second Addition; and a Vacation and replat of part of 19th Avenue North dedicated as part of Northern Sheyenne Land Addition to the City of Fargo, Cass County, North Dakota); Zoning Change from GI, General Industrial to LI, Limited Industrial		
Status:	Planning Commission Public Hearing: May 5, 2020		
Existing		Proposed	
Land Use: Undeveloped		Land Use: Industrial	
Zoning: GI, General Industrial		Zoning: LI, Limited Industrial	
Uses Allowed: GI - General Industrial. Allows detention facilities, health care facilities, safety services, adult entertainment centers, off-premise advertising, commercial parking, industrial service, manufacturing and production, warehouse and freight movement, waste related use, wholesale sales, aviation, surface transportation, and mining		Uses Allowed: 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.	
Maximum Building Coverage: 85%		Maximum Building Coverage: 85%	
Proposal:			
<p>The applicant requests two entitlements:</p> <ol style="list-style-type: none"> 1. A major subdivision, including vacation of right of way, entitled Northern Sheyenne Land Third Addition, which is a replat of Lot 1, Block 3, 19th Avenue Southwest Pond Addition; Lots 5-7, Block 1 and Lots 2-3, Block 2, Northern Sheyenne Land Second Addition; and a Vacation and replat of part of 19th Avenue North dedicated as part of Northern Sheyenne Land Addition to the City of Fargo, Cass County, North Dakota 2. A zoning change from GI, General Industrial to LI, Limited Industrial for all lots in the Northern Sheyenne Land Third Addition. <p>Surrounding Land Uses and Zoning Districts:</p> <ul style="list-style-type: none"> • North: AG—undeveloped; LI--undeveloped; P/I , Public/Institutional—City-owned stormwater detention basin • East: GI—undeveloped, and railroad • South: GI—industrial uses • West: GI—industrial uses 			

Area Plans:

The subject property is included in the North Fargo Tier 1 West area of the 2007 Growth Plan.

The subject property was rezoned from AG, Agricultural and GC, General Commercial to GI, General Industrial in 2012 with the Northern Sheyenne Land Addition. Staff supported the rezone with the following analysis:

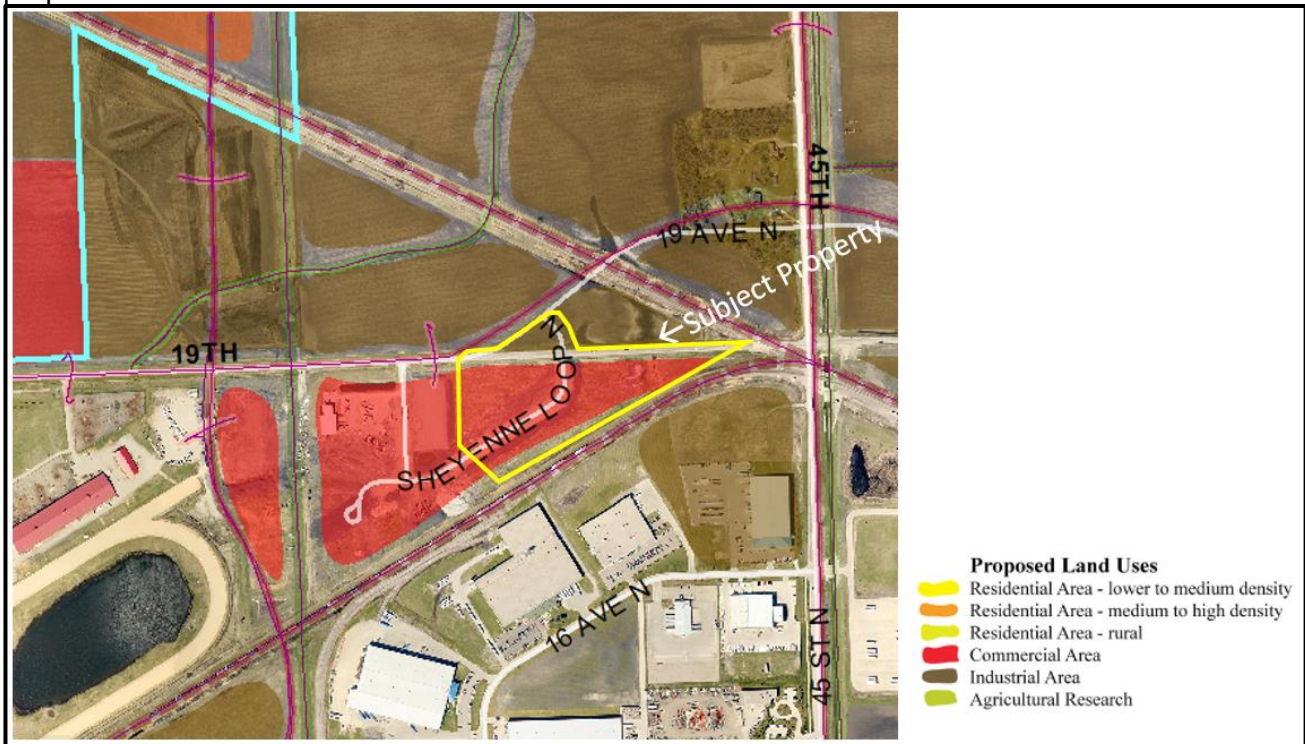
“The subject property is located within the North Fargo Tier One West area as identified within the 2007 Growth Plan as shown below. The plan is intended to be used as a framework for development, setting forth the general mix of land uses, approximate size of each land use mass, street connections and so forth. Development must be accepted as being in compliance with the plan prior to being reviewed for zoning compliance and compliance with the Land Development Code (LDC). According to the plan, commercial/industrial development in this area is an appropriate future land use.

Several properties directly to the east of the subject property have recently been re-zoned to accommodate industrial uses. On October 3, 2011, the Fargo City Commission approved, as part of the Phoenix International proposal, Light Industrial zoning and subdivision at the north east corner of 45th Street North and 19th Avenue North. Similarly, on January 1st, 2010 and on November 1st, 2010, the Fargo City Commission approved the Light Industrial zoning of two parcels within Hector's Subdivision, located at the southeast corner of 45th Street North and 19th Avenue North. With this in mind, and in conjunction with the realignment of 19th Avenue corridor, it makes sense to shift the retail and service industry further north to the main intersection and to keep the industrial land uses with access to the rail road.”

Staff supported continuing the existing industrial zoning with this analysis as part of the Northern Sheyenne Land Second Addition in 2016:

“While the subject property is identified as being suitable for commercial land-use, the 19th Avenue North corridor west of I-29 has continued to develop as industrial. This has been supported by several approved growth plan amendments along this portion of 19th Avenue North in recent years since the adoption of the 2007 Growth Plan.”

The proposed rezone to LI, Limited Industrial is consistent with these analyses in continuing an “industrial” zoning designation on the subject property. The LI zone does allow a greater variety of uses beyond the strictly industrial uses allowed in the GI zone, which may spur the development of these properties.



Schools and Parks:

Schools: The subject property is located within the West Fargo School District, specifically within the Harwood and Westside Elementary, Cheney Middle and West Fargo High schools.

Neighborhood: The subject property is located is not within a named neighborhood.

Parks: The subject property is not within a mile of a public park.

Pedestrian / Bicycle: A six-foot wide multi-use path that is a component of the metro area trail system is included in the current 19th Avenue North right of way along the north side of the subject property.

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: The plat will create seven lots in two blocks.

ZONING: These properties are currently zoned GI, General Industrial. The proposed zone change is to LI, Limited Industrial, as the applicant believes that the greater and more varied uses that the LI zoning allows will provide more flexibility for the development of these lots. The existing lots are undeveloped.

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

VACATION OF RIGHT OF WAY: The project includes vacation of right of way for former 19th Avenue North, which has been re-routed to the north. Right of way vacated by this plat will be incorporated into the proposed lots on the plat. Vacation of right of way has separate findings, as noted below.

STATUS OF LOT 1, BLOCK 3, 19th AVENUE SOUTHWEST POND ADDITION: This small lot is currently owned by the City of Fargo, though a purchase agreement with the applicant is in place. This purchase will be completed prior to plat recordation.

FINDINGS

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 existing zoning on this property is GI, General Industrial. The proposed zoning is LI, Limited Industrial. The LI zoning designation is consistent with the land use designation for this property in the 2007 Growth Plan as noted above. **(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. Lots in the subdivision will 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. To date, Planning staff has received no comment or inquiry from the public. 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--North Fargo Tier 1 West. As noted in the "Area Plan" section above, the "Industrial" land use designation of that plan has been applied to this area. The proposed LI zoning is consistent with that land use designation. 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)**

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 existing zoning on this property is GI, General Industrial. The proposed zoning is LI, Limited Industrial. The Growth Plan that applies to this property is the 2007 North Fargo Tier 1 West Growth Plan, part of the 2007 Growth Plan. As noted in the "Area Plan" section above, the "Industrial" land use designation of that plan has been applied to this area. 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 no public comments.

(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 existing zoning on this property is GI, General Industrial. The proposed zoning is LI, Limited Industrial. The LI zoning will accommodate the proposed limited industrial development. 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.

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)

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

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

There are no remaining utilities in the area of right of way proposed to be vacated. (Criteria Satisfied)

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

In accordance with the requirement of this section, this information is included in the plat and its application. (Criteria Satisfied)

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

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

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

This procedure---hearing by the City Commission following the appropriate notice period, is the next step in the vacation process. (Criteria Satisfied)

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 a plat of the **Northern Sheyenne Land Third Addition**, including vacation of right of way; and 2) zone change from GI, General Industrial to LI, Limited Industrial, as the proposal complies with the Go2030 Fargo Comprehensive Plan, 2007 Growth Plan, Standards of Article 20-06, Section 20-0906.F (1-4) and all other applicable requirements of the LDC, and the right-of-way vacation findings of NDCC 40-39-04 through -07."

Planning Commission Recommendation: May 5, 2020

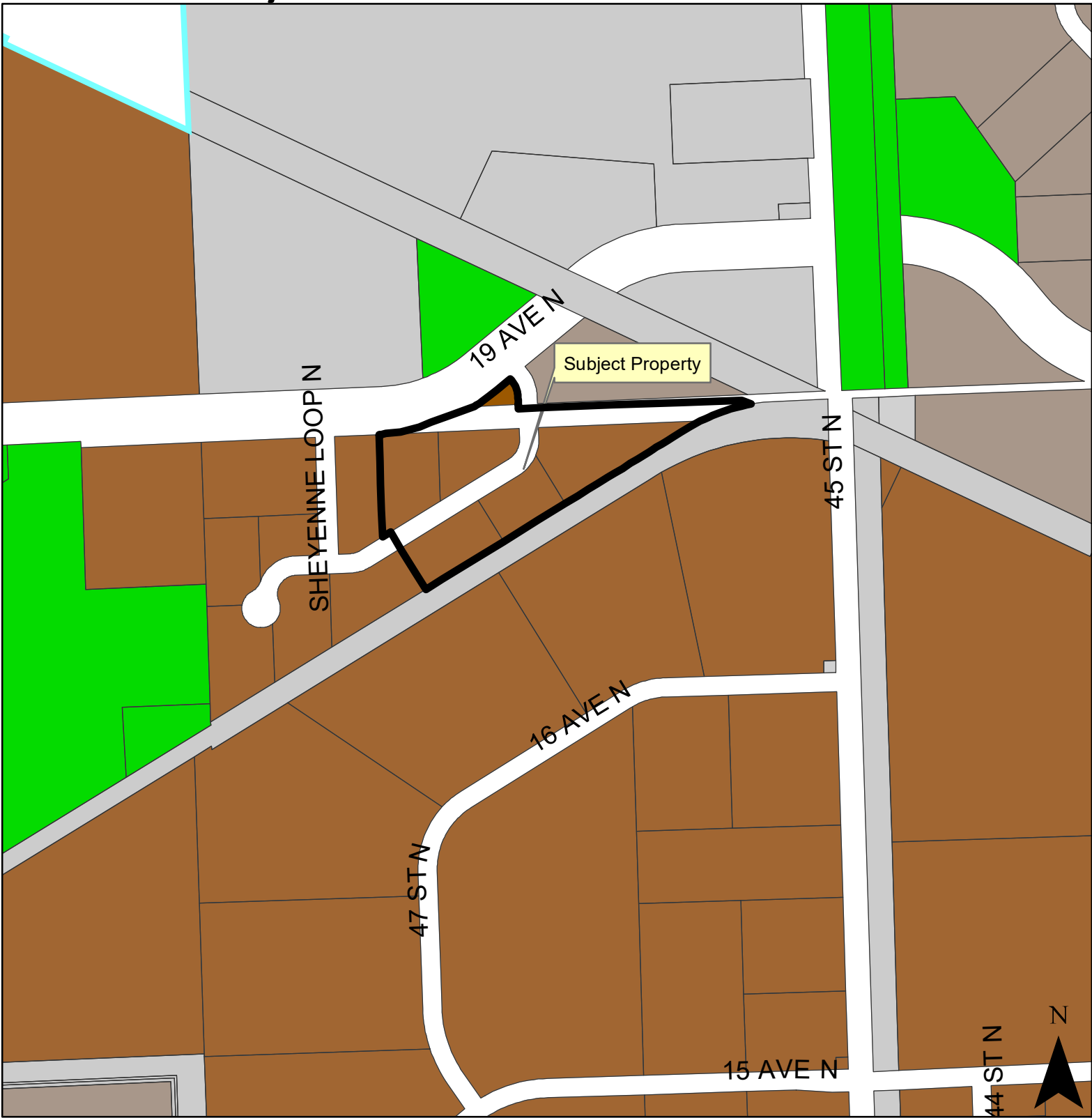
Attachments:

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

Zone Change (GI to LI) Plat (Major) & Vacation

Northern Sheyenne Land Third Addition

1805, 1821, 1841, 1810, 1820
& 1840 Sheyenne Loop N



Zone Change (GI to LI) Plat (Major) & Vacation

Northern Sheyenne Land Third Addition

1805, 1821, 1841, 1810, 1820
& 1840 Sheyenne Loop N



NORTHERN SHEYENNE LAND THIRD ADDITION

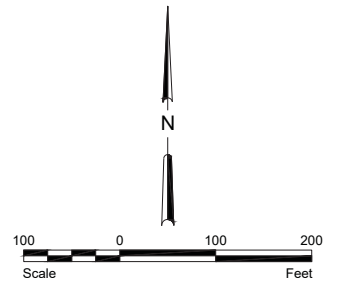
A MAJOR SUBDIVISION

BEING A REPLAT OF LOT 1, BLOCK 3, 19TH AVENUE SOUTHWEST POND ADDITION,
A REPLAT OF LOTS 5, 6, AND 7, BLOCK 1 AND LOTS 2 AND 3, BLOCK 2,
NORTHERN SHEYENNE LAND SECOND ADDITION, AND A VACATION PLAT AND REPLAT OF PART
OF 19TH AVENUE NORTH DEDICATED AS PART OF NORTHERN SHEYENNE LAND ADDITION

CITY OF FARGO,
CASS COUNTY, NORTH DAKOTA

NOTES:

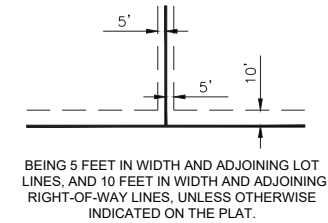
1. NEGATIVE ACCESS EASEMENT, AS NOTED ON THIS PLAT, IS AN EASEMENT DEDICATED AS PART OF THE RIGHT-OF-WAY DEDICATION WHICH EASEMENT DENIES DIRECT VEHICULAR ACCESS TO A STREET OR PUBLIC WAY FROM THE LOT OR LOTS ADJACENT TO SUCH STREET OR WAY. THE NEGATIVE ACCESS EASEMENT IS NOT A STRIP OF LAND OF ANY CERTAIN WIDTH, BUT IS A LINE COTERMINOUS WITH THE BOUNDARY OF THE ADJACENT LOT OR LOTS.
2. PROPERTY IS SITUATED IN ZONE AE (100-YEAR FLOODPLAIN) AND ZONE X (AREAS OF 0.2% ANNUAL CHANCE FLOOD; AREAS OF 1% ANNUAL CHANCE FLOOD WITH AVERAGE DEPTHS OF LESS THAN 1 FOOT OR WITH DRAINAGE AREAS LESS THAN 1 SQUARE MILE; AND AREAS PROTECTED BY LEVEES FROM 1% ANNUAL CHANCE FLOOD) AS DEPICTED ON FEMA FIRM PANEL 38017C 0588G, DATED JANUARY 16, 2015.
3. BASE FLOOD ELEVATION = 895.0' (NAVD 1988)



LEGEND

IRON MONUMENT FOUND	●
1/2" I.D. PIPE SET	○
MEASURED BEARING	N00°00'00"E
PLAT BEARING	(N00°00'00"E)
MEASURED DISTANCE	100.00'
PLAT DISTANCE	(100.00')
PLAT BOUNDARY	—————
LOT LINE	—————
UTILITY EASEMENT	—————
EXISTING LOT LINE	—————
EXISTING UTILITY EASEMENT	—————
NEGATIVE ACCESS EASEMENT	▨
AREA WITHIN FEMA 100-YEAR FLOODPLAIN	▨
PUBLIC STREET VACATED BY THIS PLAT	▨

BEARINGS SHOWN ARE BASED ON THE CITY OF FARGO HORIZONTAL DATUM



UTILITY EASEMENTS
ARE SHOWN THUS

PROJECT BENCHMARK
TOP NUT OF HYDRANT
901.59 (NAVD 1988)

EXISTING RIGHT OF WAY
EASEMENT
(DOC. NO. 455340)



DOC. NO. 101202

SECTION LINE

Curve Table

Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	71.08	110.00	37°01'23"	N20°59'44"W	69.85
C2	102.72	775.00	7°35'40"	S54°17'24"W	102.65
C3	398.06	775.00	29°25'42"	S72°48'05"W	393.70
C4	106.23	100.00	60°51'59"	N27°56'57"E	101.31
C5	191.22	180.00	60°51'59"	S27°56'57"W	182.35
C6	70.81	794.10	5°06'33"	N60°56'12"E	70.79
C7	270.76	794.10	19°32'08"	N73°15'43"E	269.45
C8	348.13	775.00	25°44'13"	S63°21'40"W	345.21
C9	152.65	775.00	11°17'09"	S81°52'21"W	152.41
C10	106.23	100.00	60°51'59"	N27°56'57"E	101.31
C11	50.66	180.00	16°07'35"	N05°34'45"E	50.50
C12	92.00	180.00	29°17'04"	S28°17'04"W	91.00
C13	48.55	180.00	15°27'19"	S50°39'16"W	48.41



Sheet 1 of 2
Project No. 10577-0001

NORTHERN SHEYENNE LAND THIRD ADDITION
A MAJOR SUBDIVISION
BEING A REPLAT OF LOT 1, BLOCK 3, 19TH AVENUE SOUTHWEST POND ADDITION,
A REPLAT OF LOTS 5, 6, AND 7, BLOCK 1 AND LOTS 2 AND 3, BLOCK 2,
NORTHERN SHEYENNE LAND SECOND ADDITION, AND A VACATION PLAT AND REPLAT OF PART
OF 19TH AVENUE NORTH DEDICATED AS PART OF NORTHERN SHEYENNE LAND ADDITION
CITY OF FARGO,
CASS COUNTY, NORTH DAKOTA

OWNER:
Kelmar Property 6, LLC

Nathan Everson, Managing Partner

State of
County of
)
) ss
)

On this day of , 20 before me personally appeared Nathan Everson,
Managing Partner of Kelmar Property 6, LLC, a North Dakota limited liability company, known to me to
be the person who is described in and who executed the within instrument and acknowledged to me
that he executed the same on behalf of said limited liability company.

Notary Public:

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT:
I, James A. Schlieman, Professional Land Surveyor under the laws of the State of North Dakota, do
hereby certify that this plat is a true and correct representation of the survey of said subdivision; that the
monuments for the guidance of future surveys have been located or placed in the ground as shown.

Dated this day of , 20.

James A. Schlieman, Professional Land Surveyor No. 6086

State of North Dakota
County of Cass
)
) ss
)

On this day of , 20 before me personally appeared James A.
Schlieman, Professional Land Surveyor, known to me to be the person who is described in and who
executed the within instrument and acknowledged to me that he executed the same as his free act and
deed.

Notary Public:

CITY ENGINEER'S APPROVAL:
Approved by the Fargo City Engineer this day of ,
20.

Brenda E. Derrig, City Engineer

State of North Dakota
County of Cass
)
) ss
)

On this day of , 20 before me personally appeared Brenda E. Derrig,
Fargo City Engineer, known to me to be the person who is described in and who executed the within
instrument and acknowledged to me that she executed the same as her free act and deed.

Notary Public:

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

John Gunkelman, Chair
Fargo Planning Commission

State of North Dakota
County of Cass
)
) ss
)

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

Notary Public:

FARGO CITY COMMISSION APPROVAL:
Approved by the Board of City Commissioners and ordered filed this day
of , 20.

Timothy J. Mahoney, Mayor

Attest:
Steven Sprague, City Auditor

State of North Dakota
County of Cass
)
) ss
)

On this day of , 20, before me personally appeared Timothy J.
Mahoney, Mayor, City of Fargo; and Steven Sprague, City Auditor, City of Fargo, 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:

OWNER'S CERTIFICATE AND DEDICATION:

KNOW ALL PERSONS BY THESE PRESENTS: That Kelmar Property 6, LLC, a North Dakota limited liability company, is the owner and proprietor of that part of
Block 3, 19th Avenue Southwest Pond Addition and that part of Blocks 1 and 2, Northern Sheyenne Land Second Addition, and is the XXXXXXXX of a portion of 19th
Avenue North dedicated as part of Northern Sheyenne Land Addition, all in the City Fargo, Cass County, North Dakota, and all being more particularly described as
follows:

Beginning at the southeast corner of said Block 3, 19th Avenue Southwest Addition; thence North 02°29'03" West (assumed bearing), along the easterly line of said
Block 3, for a distance of 33.01 feet to a point of tangential curve to the left, having a radius of 110.00 feet; thence northerly along said curve and along the easterly
line of said Block 3, for a distance of 71.08 feet, through a central angle of 37°01'23"; thence North 39°30'26" West, along the easterly line of said Block 3, for a
distance of 10.78 feet to the most northerly corner of said Block 3; thence South 50°29'34" West, along the northerly line of said Block 3, for a distance of 85.71 feet
to a point of tangential curve to the right, having a radius of 775.00 feet; thence southwesterly along said curve and along the northerly line of said Block 3, for a
distance of 102.72 feet, through a central angle of 7°35'40" to the southwest corner of said Block 3, said point also lying on the northerly line of said Northern
Sheyenne Land Addition; thence southwesterly, continuing along the last described curve, for a distance of 398.06 feet, through a central angle of 29°25'42" to a
point of intersection with the northerly line of said Block 2, Northern Sheyenne Land Second Addition; thence South 87°30'57" West, along the northerly line of said
Block 2, for a distance of 20.10 feet to the northwest corner of Lot 2, said Block 2; thence South 01°55'55" East, along the westerly line of said Lot 2, for a distance
of 425.31 feet to the southwest corner of said Lot 2; thence North 58°22'56" East, along the southerly line of said Lot 2, for a distance of 38.90 feet; thence South
31°37'04" East for a distance of 80.00 feet to the most westerly corner of Lot 5, Block 1, said Northern Sheyenne Land Second Addition; thence South 31°37'04"
East, along the southwesterly line of said Lot 5, for a distance of 199.99 feet to the most southerly corner of said Lot 5, said point also lying on the northerly line of
Burlington Northern Santa Fe Railway Company right-of-way; thence North 58°22'56" East along the southerly line of said Northern Sheyenne Land Second
Addition and along said right-of-way line, for a distance of 1271.94 feet to a point of tangential curve to the right, having a radius of 794.10 feet; thence
northeasterly along said curve and along said right-of-way line, for a distance of 70.81 feet, through a central angle of 05°06'33" to the northeast corner of said
Northern Sheyenne Land Second Addition, and a point along the southeasterly boundary of said Northern Sheyenne Land Addition; thence northeasterly continuing
along the last described curve, along the southeasterly line of said Northern Sheyenne Land Addition, and along said right-of-way line, for a distance of 270.76 feet,
through a central angle of 19°32'08" to the most easterly corner of said Northern Sheyenne Land Addition; thence North 64°43'11" West, along the easterly line of
said Northern Sheyenne Land Addition and along said right-of-way line, for a distance of 72.25 feet to the northeast corner of said Northern Sheyenne Land
Addition; thence South 87°30'57" West, along the northerly line of said Northern Sheyenne Land Addition, for a distance of 953.92 feet to the point of beginning.

Said tract of land contains 13.692 acres, more or less.

And that said party has caused the same to be surveyed and replatted as Northern Sheyenne Land Third Addition to the City of Fargo, Cass County, North
Dakota, and does hereby dedicate to the public, for public use, the public street and utility easements shown on the plat.

City of Fargo Staff Report			
Title:	Touchmark Addition	Date:	4/29/2020
Location:	1201 35th Avenue South and 1200 Harwood Drive South	Staff Contact:	Donald Kress, planning coordinator
Legal Description:	Unplatted portion of the Section 25, Township 139 North, Range 49 West and Lots 1, 15, and 16, Block 1, Replat of Waterford Addition, of the Fifth Principal Meridian, Cass County, North Dakota		
Owner(s)/Applicant:	Touchmark LLC/Waterford at Harwood Groves LLC / Houston Engineering	Engineer:	Houston Engineering
Entitlements Requested:	Minor Plat (plat of unplatted portion of the Section 25, Township 139 North, Range 49 West and replat of Lots 1, 15, and 16, Block 1, Replat of Waterford Addition, of the Fifth Principal Meridian, Cass County, North Dakota) Zoning Change (From AG, Agricultural and MR-3, Multi-Dwelling Residential with a PUD, Planned Unit Development to MR-3 with a PUD, Planned Unit Development) and a PUD Master Land Use Plan		
Status:	Planning Commission Public Hearing: May 5, 2020		

Existing	Proposed
Land Use: Continuing care retirement community	Land Use: Continuing care retirement community
Zoning: MR-3, Multi-Dwelling Residential with a PUD, Planned Unit Development Overlay; AG, Agricultural	Zoning: MR-3, Multi-Dwelling Residential with a PUD, Planned Unit Development Overlay
Uses Allowed: MR-3 allows detached houses, attached houses, duplexes, multi-dwelling structures, daycare centers up to 12 children or adults, group living, parks and open space, religious institutions, safety services, schools, and basic utilities; plus additional uses noted in the PUD ; AG – Agricultural. Allows detached houses, parks and open space, safety services, basic utilities, and crop production.	Uses Allowed: Allows detached houses, attached houses, duplexes, multi-dwelling structures, daycare centers up to 12 children or adults, group living, parks and open space, religious institutions, safety services, schools, and basic utilities. Plus additional uses noted in PUD
Maximum Density Allowed: MR-3: 24 dwelling units per acre (du/ac); AG: 1 dwelling unit per 10 acres	Maximum Density Allowed: 24 dwelling units per acre PUD proposes increased density of 26 du/ac

Proposal:
<p>The applicant requests approval of three entitlements:</p> <ol style="list-style-type: none"> 1. A zoning change from AG, Agricultural and MR-3, Multi-Dwelling Residential with a PUD, Planned Unit Development Overlay; I to MR-3, Multi-Dwelling Residential with a PUD, Planned Unit Development Overlay; and 2. PUD Master Land Use Plan within the boundaries of the proposed Touchmark Addition; and

3. A plat of the **Touchmark Addition**, plat of an unplatted portion of the Section 25, Township 139 North, Range 49 West and replat of Lots 1, 15, and 16, Block 1, Replat of Waterford Addition, of the Fifth Principal Meridian, Cass County, North Dakota

Note that the twinhomes that border the north, east, and part of the south sides of the subject property, while included in the retirement community, are not included in this plat, PUD, or zone change.

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: MR-3 with duplexes; LC, Limited Commercial across Harwood Drive with small strip malls
- East: MR-3 with duplexes
- South: MR-3 with duplexes; AG with single-dwelling residences; MR-3 with multi-dwelling residences and P/I, Public/Institutional with elementary school (Eagles)
- West: GC, General Commercial across University Drive with various commercial establishments

Plat:

The plat will replat Lots 1, 15, and 16 of Replat of Waterford Addition together with an adjacent unplatted property into a single block and lot for the expansion of the existing continuing care retirement community currently in place on this lot.

Zoning:

Existing Zoning---PUD:

Lots 1, 14, and 15 of Replat of Waterford Addition are zoned MR-3 with a PUD, Planned Unit Development Overlay. The existing PUD was created and amended in two separate actions:

On August 26, 1996, the City Commission approved a PUD to allow a continuing care retirement community on this location. However, the property remained zoned AG, Agricultural. Note that this action was taken in 1996, before the current Land Development Code (LDC) became effective (1999). In 1996, the 1965 zoning ordinance was still in effect. PUD's under that ordinance differ from the PUD's now in use. Particularly,

- The issuance of a planned unit development permit shall not be deemed to be a change in zoning, and the zoning of the property prior to the planned unit development permit will remain unchanged; and
- The board of city commissioners may issue a planned unit development permit allowing substantial variances from the provisions of this ordinance relating to uses, setbacks, height and similar regulations, but not including parking requirements, off-street loading, necessary screening and similar requirements for the protection of adjoining properties.
(1965 zoning ordinance Sec. 23-0323.C (2 and 3)).

PUD's created under the current LDC require a zone change to go with the PUD. Parking, screening, and similar requirements can be modified with the PUD.

On June 5, 2006, the City Commission approved a zone change from AG, Agricultural to MR-3, Multi-Dwelling Residential with an amendment to the 1996 PUD to allow "uses permitted in an "LC" (Limited Commercial) District so long as those uses are accessory to, or associated with, the use of the property as a continued care retirement facility." (Ord. 4524)

Existing Zoning—AG-zoned property:

The AG-zoned property in this project is a property adjacent to the south side of the current continuing care retirement community that the applicant has purchased to include in the Touchmark Addition. It was not part of the original PUD, but will be included in the proposed plat, zone change, and PUD.

Existing Conditional Use Permit---Alternate Access (parking reduction)

On June 14, 2006, the Planning Commission approved a conditional use permit (CUP) for an alternative access plan for Lot 1, Block 1, replat of Waterford Addition, to

- reduce the number of required parking spaces from 2.25 per dwelling unit to 0.75 spaces per dwelling unit; and
- reduce the number of required parking spaces for the commercial fitness center from one space per 200 square feet to one space per 267 square feet (this commercial fitness center was added in 2006).

Need for a New PUD

The applicant is intending to expand the continuing care retirement community by:

- Demolishing an existing building used for parking;
- Building a new building that expands the services provided by the community and the resident capacity and also accommodates parking; and
- Expanding the overall size the property by incorporating a property adjacent to the south of the current property (the AG-zoned property).

In order to facilitate this expansion, the applicant proposes a new PUD that

- Updates the existing PUD to the current PUD style and standards;
- Incorporate the parking ratio established in 2006 into the PUD; and
- Requests certain modifications to the general development standards and development standards of the MR-3 zone as the proposed addition to the existing facility exceeds 10% of the existing building square footage, so the entire site is required to be brought into compliance with the current Land Development Code (LDC).

If this PUD is approved, it will replace the existing PUD and CUP for this property.

A chart provided by the applicant of the proposed PUD modifications is below. The applicant has submitted a project narrative and PUD Master Land Use Plan, which further describe the proposed development. These documents are attached. Additional graphics may be presented at the May 5th Planning Commission hearing.

	Current LDC development standards for MR-3	<i>PUD modifications to MR-3 development standards</i>	NOTES
Allowed Uses	Detached houses, attached houses, duplexes, multi-dwelling structures, daycare centers up to 12 children or adults, group living, parks and open space, religions	<i>Include Retail Sales & Services, and Office Uses as accessory uses to, or associate with, the use of the property as a continued care retirement facility</i>	<i>Actually reduces the number of uses allowed—only retail sales and office uses will be allowed, rather than all uses in the LC, Limited Commercial zone.</i>

	institution, safety services, schools, and basic utilities		
Residential Density	24 du/acre	26 units/acre	<i>Small increase unit density allows expansion of existing building and reuse of existing facility and infrastructure. Allows for infill on existing open space of site and shared use of supporting facilities</i>
Building Coverage	35% of lot area	<i>Increase to 38%</i>	<i>Allows the expansion of the existing facility at its current location. Allowing increase building coverage for the site allows the new addition to continue to use the existing facility serve both the existing building and the new additions.</i>
Minimum open space	35% of lot area	<i>Decrease to 32%</i>	<i>Decrease in open space requirements is accommodate the increase building coverage of the site.</i>
Parking-Residential—Multi-dwelling	2.25 spaces per unit	<i>0.75 spaces per dwelling unit</i>	<i>Continues the parking ratio approved in 2006 for this facility.</i>
Parking--Retail	1 space per 200 SF	<i>1 space per 267 SF</i>	<i>Continues the parking ratio approved in 2006 for this facility.</i>
Landscaping—Open Space	3 plant units per 1,000 SF of area; 8 sf per unit,	<i>No Change to plant unit requirements, Remove requirement of 70% of plant units located in front of building and</i>	<i>Limited open space along University Drive will make placement of 70% of plant units in front of building</i>

		<i>redistribute these plant units throughout the site.</i>	<i>unfeasible without remove of existing fire access roadway.</i>
Landscaping— Parking Lot Perimeter	Buffers shall be located between adjacent streets rights of way and off-street parking areas and all vehicular circulation areas within the front or streetside setback per Table 20-0705(D)(3)	<i>Modify parking buffer requirements along existing vehicle circulation routes to 1' minimum width with fence and 6 shrubs/perennial grasses per 25 linear feet. New pavement areas along University Drive to have 6' buffer with Decorative metal fence and 1 small tree or 6 shrubs/perennial grasses per 25 linear feet</i>	<i>The existing vehicle circulation located in the setback along the west side of the site is currently approximately one foot from the property line. As the existing pavement serves as both fire access and vehicular circulation, relocation/removal of the existing pavement cannot be done. Thus, modification of the minimum width and buffer requirements is proposed.</i> <i>New fire access routes constructed as part of the addition would have a parking lot buffer meeting the 6' buffer requirements for lots between 1 and 50 spaces.</i>

Area Plans:

This subject property is not covered by an adopted growth plan or neighborhood plan.

Schools and Parks:

Schools: The subject property is located within the Fargo School District and is served by Eagles Elementary, Carl Ben Eielson Middle, and South High schools.

Parks: Lemke Park (1000 32nd Avenue South) is approximately 0.16 mile northeast of the subject property. This park offers the amenities of multipurpose field, outdoor skating rinks, picnic table, playground---ages 5-12, rentals, soccer, warming houses.

Neighborhood: The subject property is located within the River Drive neighborhood.

Pedestrian / Bicycle: There is a 10-foot wide off-road multi-use trail located along the west side of the project site along University Drive South that is a component of the metro area bikeways system.

Staff Analysis:

Zoning

Section 20-0906. 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. Staff finds that the requested zoning change is justified by change in conditions since the previous zoning classification was established. The applicant has added a property, currently zoned AG, to the site that must be rezoned to MR-3 with a PUD to match the rest of the site, and the new PUD requires an accompanying rezone. Note that, other than for the AG-zoned property, MR-3 is the existing zoning. The proposed PUD Overlay zoning district is intended to accommodate the expansion of the facilities on this property. **(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 subject property fronts on existing developed public rights-of-way which provide access and public utilities to serve the property. **(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 supporting evidence to suggest that the approval of this zoning change would adversely affect the condition or value of the property in the vicinity. In accordance with the notification requirements of the Land Development Code, notice was provided to neighboring property owners within 300 feet of the project site. To date, staff has received no public comment or inquiries. 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 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. Redevelopment and expansion of this site, which is already served by public infrastructure, is a form of infill development. Staff finds that the proposed PUD is in keeping with Fargo's Comprehensive Plan. Specifically, the City's Go2030 Comprehensive Plan supports development within areas of the City that are already serviced with utilities. 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)**

Master Land Use Plan: The LDC stipulates that the Planning Commission and Board of City Commissioners shall consider the following criteria in the review of any Master Land Use Plan.

1. The plan represents an improvement over what could have been accomplished through strict application of otherwise applicable base zoning district standards, based on the purpose and intent of this Land Development Code;

The plan represents an improvement over what could have been accomplished through strict application of the base zoning district. It modifies development standards of the MR-3 zone in order to allow an expansion of the current continuing care retirement community on this site, as the original development of the site was done under an earlier zoning ordinance. **(Criteria Satisfied)**

2. **The PUD Master Land Use Plan complies with the PUD standards of Section 20-0302;**
Staff has reviewed the PUD Master Land Use Plan and found that it complies with the PUD standards of Section 20-0302. The PUD modifies some standards of the MR-3 zone as noted above. All other standards and requirements as set forth in the LDC have been met. **(Criteria Satisfied)**
3. **The City and other agencies will be able to provide necessary public services, facilities, and programs to serve the development proposed, 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 subject property fronts on existing developed public rights-of-way which provide access and public utilities to serve the property. **(Criteria satisfied)**
4. **The development is consistent with and implements the planning goals and objectives contained in the Area Plan, Comprehensive Plan and other adopted policy documents;**
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 finds that the proposed PUD is in keeping with Fargo's Comprehensive Plan. 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)**
5. **The PUD Master Land Use Plan is consistent with sound planning practice and the development will promote the general welfare of the community.**
The PUD is consistent with sound planning practice and the development will promote the general welfare of the community by allowing the expansion of capacity and services of the existing continuing care retirement community. **(Criteria Satisfied)**

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 subject property is not covered by an area plan or neighborhood future land use plan. The subject property is proposed to be rezoned from the existing AG and MR-3 with a PUD to MR-3 with a PUD that has been updated to style and standards of the current LDC. The PUD proposes to modify certain development standards of the MR-3 zone as indicated above in order to accommodate the proposed 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. To date, staff has no comments. 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)**

Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of staff and move to recommend approval to the City Commission of 1) zone change from AG, Agricultural and MR-3, Multi-Dwelling Residential with a PUD, Planning Unit Development to MR-3 with a PUD, Planned Unit Development; 2) PUD Master Land Use Plan; and 3) plat of the proposed **Touchmark Addition**; as the proposal complies with the Go2030 Fargo Comprehensive Plan, Standards of Article 20-06, Section 20-0906.F (1-4), Section 20-0908.B (7), and all other applicable requirements of the LDC."

Planning Commission Recommendation: May 5, 2020

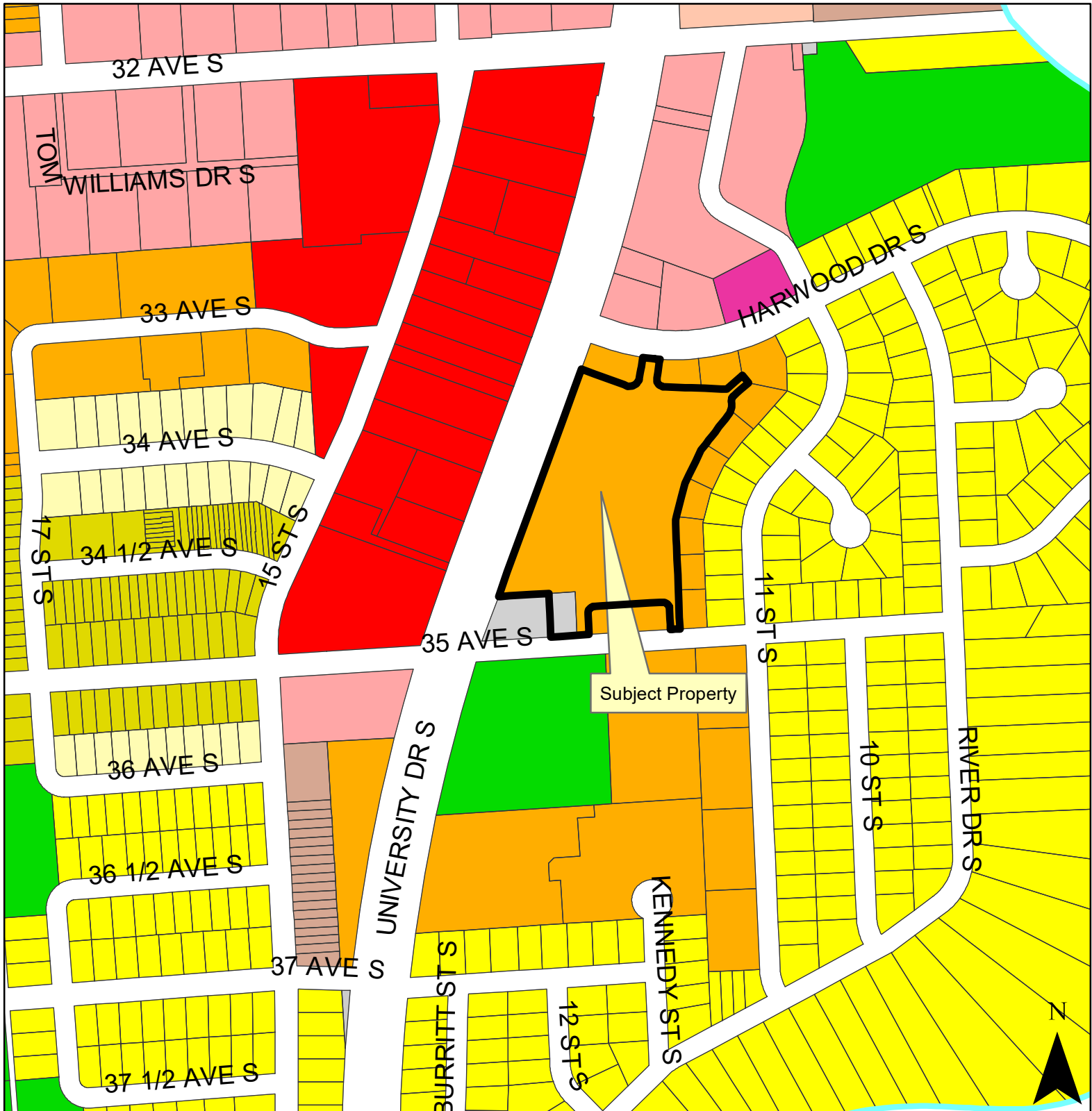
Attachments:

1. Zoning Map
2. Location Map
3. Preliminary Plat
4. PUD Master Land Use Plan (site plan)
5. PUD narrative, including Developer's Statement of Intent and PUD chart

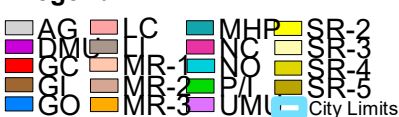
Zone Change (AG to MR-3 with PUD Overlay), Planned Unit Development Master Plan & Plat (Minor)

Touchmark Addition

1201 35th Ave S
1200 Harwood Dr S



Legend



Fargo Planning Commission

May 5, 2020

500

Feet

Zone Change (AG to MR-3 with PUD Overlay), Planned Unit Development Master Plan & Plat (Minor)

Touchmark Addition

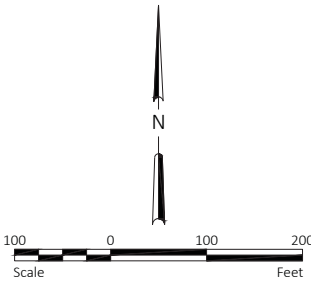
1201 35th Ave S
1200 Harwood Dr S



TOUCHMARK ADDITION

A MINOR SUBDIVISION

BEING A REPLAT OF LOTS 1, 15 AND 16, BLOCK 1
OF WATERFORD ADDITION TO THE CITY OF FARGO
AND PART OF THE SOUTHEAST QUARTER OF THE
NORTHEAST QUARTER OF SECTION 25, T139N, R49W, 5th P.M.
TO THE CITY OF FARGO,
CASS COUNTY, NORTH DAKOTA



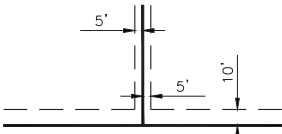
LEGEND

IRON MONUMENT FOUND	●
1/2" I.D. PIPE SET	○
MEASURED BEARING	N00°00'00"E
PLAT BEARING	(N00°00'00"E)
MEASURED DISTANCE	100.00'
PLAT DISTANCE	(100.00')
PLAT BOUNDARY	—————
LOT LINE	—————
UTILITY EASEMENT	—————
EXISTING LOT LINE	—————
EXISTING UTILITY EASEMENT	—————
NEGATIVE ACCESS EASEMENT	▨
AREA WITHIN FEMA 100-YEAR FLOODPLAIN	▤

BEARINGS SHOWN ARE BASED ON THE CITY OF FARGO HORIZONTAL DATUM

NOTES:

1. 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.
2. PROPERTY IS SITUATED IN ZONE AE (100-YEAR FLOODPLAIN) AS DEPICTED ON FEMA FIRM PANEL 38017C0783G, DATED JANUARY 16, 2015.
3. BASE FLOOD ELEVATION = 905.0' (NAVD 1988)



BEING 5 FEET IN WIDTH AND ADJOINING LOT LINES, AND 10 FEET IN WIDTH AND ADJOINING RIGHT-OF-WAY LINES, UNLESS OTHERWISE INDICATED ON THE PLAT.

UTILITY EASEMENTS ARE SHOWN THUS

Curve Table					
Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	58.79	33.42	100°46'56"	S59°33'49"W	51.49
C2	59.15	750.00	4°31'06"	N83°43'42"W	59.13
C3	44.03	26.00	97°01'27"	N39°20'23"W	38.95
C4	23.07	22.03	59°59'49"	N19°01'24"E	22.03
C5	47.25	55.50	48°46'48"	N13°24'54"E	45.84
C6	35.83	22.50	91°13'54"	S48°00'23"E	32.16
C7	34.85	22.50	88°43'58"	N42°00'42"E	31.47
C8	7.21	5629.65	0°04'24"	S20°01'31"W	7.20

TOUCHMARK ADDITION

A MINOR SUBDIVISION

BEING A REPLAT OF LOTS 1, 15 AND 16, BLOCK 1
OF WATERFORD ADDITION TO THE CITY OF FARGO
AND PART OF THE SOUTHEAST QUARTER OF THE
NORTHEAST QUARTER OF SECTION 25, T139N, R49W, 5th P.M.
TO THE CITY OF FARGO,
CASS COUNTY, NORTH DAKOTA

OWNER'S CERTIFICATE:

KNOW ALL PERSONS BY THESE PRESENTS: The Waterford at Harwood Groves, LLC, an Oregon limited liability company, and Touchmark, LLC, an Oregon limited liability company, are the owners and proprietors, and that Security First Bank of North Dakota, A North Dakota State Bank, is the mortgagees of Lots 1, 15 and 16, Block 1, Replat of Waterford Addition to the City of Fargo, Cass County, North Dakota together with an unplatted portion of the Southeast Quarter of the Northeast Quarter of Section 25, Township 139 North, Range 49 West of the 5th Principal Meridian, Cass County, North Dakota, all being more particularly described as follows:

Commencing at the Northeast corner of said Northeast Quarter; thence Southerly on an assumed Azimuth from North of 179°52'53" along the East line of said Northeast Quarter 2019+/- feet, to the North line of Lemke Addition, according to the pat thereof on file in the Register of Deeds Office, Cass County, North Dakota; thence Westerly 268°43'03" Azimuth along said North line of Lemke Addition, 403.84 feet to a point 323.07 feet East of the East right-of-way line of U.S. Highway Number 81, the Point of Beginning; thence Northerly 359°52'53" Azimuth, parallel to the East line of Said Northeast Quarter 150.00 feet; thence Westerly 268°43'04" Azimuth parallel to the North line of said Lemke Addition 90.00 feet; thence Southerly 179°52'53" Azimuth parallel to the East line of said Northeast Quarter 150.00 feet to the North line of Lemke Addition according to the plat thereof on file in the Register of Deeds Office; thence Easterly 88°43'03" Azimuth 90.00 feet to the Point of Beginning.

Said tract contains 9.889 acres, more or less.

And that said parties have caused the same to be surveyed and platted as **TOUCHMARK ADDITION** to the City of Fargo, Cass County, North Dakota, and do hereby dedicate to the public, for public use, the utility easements shown on the plat.

OWNER:

Waterford at Harwood Groves, LLC, an Oregon limited liability company
(Lots 1, 15 and 16, Block 1, Replat of Waterford Addition)

OWNER:

Touchmark, LLC, an Oregon limited liability company
(unplatted portion of the SE 1/4 NE 1/4 of Section 25, T139N, R49W)

Richard M. Wessell, Senior Vice President, Director of Construction

Richard M. Wessell, Senior Vice President, Director of Construction

State of _____)
) ss
County of _____)

On this _____ day of _____, 20____ before me personally appeared Richard M. Wessell, Senior Vice President of Waterford at Harwood Groves, LLC, an Oregon limited liability company, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same on behalf of said limited liability company.

Notary Public: _____

Mortgagee: Security First Bank of North Dakota

ITS:

State of North Dakota)
) SS
County of Cass)

On this _____ day of _____, 20____, before me, personally appeared _____,

Security First Bank of North Dakota, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same on behalf of Security First Bank of North Dakota.

Notary Public: _____
Cass County, ND

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT:

I, Charles L. Rebsch, Professional Land Surveyor under the laws of the State of North Dakota, do hereby certify that this plat is a true and correct representation of the survey of said subdivision; that the monuments for the guidance of future surveys have been located or placed in the ground as shown.

Dated this _____ day of _____, 20____.

Charles L. Rebsch, Professional Land Surveyor No. 6610

State of North Dakota)
) ss
County of Cass)

On this _____ day of _____, 20____ before me personally appeared Charles L. Rebsch, Professional Land Surveyor, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same as his free act and deed.

Notary Public: _____

CITY ENGINEER'S APPROVAL:

Approved by the Fargo City Engineer this _____ day of _____, 20____.

Brenda E. Derrig, City Engineer

State of North Dakota)
) ss
County of Cass)

On this _____ day of _____, 20____ before me personally appeared Brenda E. Derrig, Fargo City Engineer, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same as his free act and deed.

Notary Public: _____

FARGO PLANNING COMMISSION APPROVAL:

Approved by the City of Fargo Planning Commission this _____ day of _____, 20____.

John Gunkelman, Chair
Fargo Planning Commission

State of North Dakota)
) ss
County of Cass)

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

Timothy J. Mahoney, Mayor

Attest: _____
Steven Sprague, City Auditor

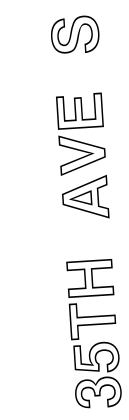
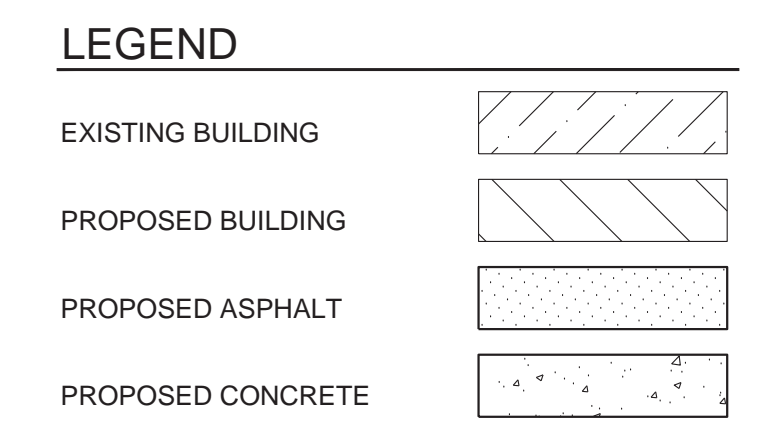
State of North Dakota)
) ss
County of Cass)

On this _____ day of _____, 20____, before me personally appeared Timothy J. Mahoney, Mayor, City of Fargo; and Steven Sprague, City Auditor, City of Fargo, 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: _____



for May 5, 2020 Planning Commission



UNIVERSITY DRIVE S

PRELIMINARY
NOT FOR CONSTRUCTION

PUD NARRATIVE
Touchmark at Harwood Groves

DEVELOPER'S STATEMENT OF INTENT: An expanding aging and elderly population requires an expansion of existing facilities to provide for the specialized needs and requirements of this population. The existing facility was constructed prior to the current Land Development Code. This PUD allows for the continued use of existing supporting facilities to support the expanded capacity of the facility as the existing site cannot be brought into compliance with the current Land Development Code.

The PUD will include a site plan for the development that is incorporated here by reference. The PUD will, generally, apply the MR-3 development standards, except as otherwise provided below:

	Current LDC development standards for MR-3	<i>PUD modifications to MR-3 development standards</i>	NOTES
Allowed Uses	Detached houses, attached houses, duplexes, multi-dwelling structures, daycare centers up to 12 children or adults, group living, parks and open space, religions institution, safety services, schools, and basic utilities	<i>Include Retail Sales & Services, and Office Uses as accessory uses to, or associate with, the use of the property as a continued care retirement facility</i>	See Attached
Minimum Lot Area	5,000 SF	<i>No Change</i>	
Minimum Lot Width	50'	<i>No Change</i>	
Residential Density	24 du/acre	26 units/acre	See Attached
Setbacks	Front: 25' Interior: 10' Street Side: 12.5 Rear: 20'	<i>No Change</i>	
Max. Height	60 feet	<i>No Change</i>	
Building Coverage	35% of lot area	<i>Increase to 38%</i>	See Attached
Minimum open space	35% of lot area	<i>Decrease to 32%</i>	See Attached
Parking-Residential—Multi-dwelling	2.25 spaces per unit	<i>0.75 spaces per dwelling unit</i>	See Attached
Parking--Retail	1 space per 200 SF	<i>1 space per 267 SF</i>	See Attached
Landscaping—Street Trees	1 per every 50 feet on arterials; 1 per every 35 feet on locals	<i>No Change</i>	

Landscaping—Open Space	3 plant units per 1,000 SF of area; 8 sf per unit,	<i>No Change to plant unit requirements, Remove requirement of 70% of plant units located in front of building.</i>	Limited open space along University Drive will make placement of 70% of plant units in front of building unfeasible without remove of existing fire access roadway.
Landscaping—Parking Lot Perimeter	Buffers shall be located between adjacent streets rights of way and off-street parking areas and all vehicular circulation areas within the front or streetside setback per Table 20-0705(D)(3)	<i>Modify parking buffer requirements along existing vehicle circulation routes to 1' minimum width with fence and 6 shrubs/perennial grasses per 25 linear feet. New pavement areas along University Drive to have 6' buffer with Decorative metal fence and 1 small tree or 6 shrubs/perennial grasses per 25 linear feet</i>	See Attached
Paving Setbacks	Parking lots and vehicular circulation areas shall provide a a paving setback per Table 20-0705(D)(4)	<i>No Changes</i>	
Residential Protection Standards (RPS)—Setback from abutting side and rear lot line	Development on lots adjacent to side or rear lines of lots in the SR or MR zoning district must meet the setbacks per Table 20-0704(B)(1)	<i>No Changes</i>	
RPS—Front Setback	For new multi-family or nonresidential development occurs on lots adjacent to the side lot in any SR or MHP district, see 20-0704(B)(2) for setback requirements.	<i>No Changes</i>	
RPS—Visual screening of dumpsters and outdoor storage areas	Required on all dumpsters and storage areas	<i>No Changes</i>	
RPS—building height, 75 feet from residential	35 feet max	<i>No Changes</i>	

RPS—building height 76-100 feet from residential	45 feet max	<i>No Changes</i>	
RPS—building height 101--150 feet from residential	55 feet max	<i>No Changes</i>	
RPS-residential protection buffers	At least 10 feet with 1 tree and 20 shrubs per 50 lineal feet	<i>No Changes</i>	
RPS—operating hours	No garbage or recycling services between 10:00 p.m. and 6:00 a.m.	<i>No Changes</i>	
RPS--lighting	No light more than 0.4 footcandles one foot inside SR-zoned lot	<i>No Changes</i>	
RPS--odor	See 20-0704(H)— <i>usually not a problem on residential and commercial developments</i>	<i>No Changes</i>	

Allowed Uses Notes:

The existing PUD for the property Ordinance No 4524 allows additional used in the MR-3 zoning “Said PUD is hereby amended to allow those uses permitted in an “LC” (Limited Commercial) District so long as those uses are accessory to, or associated with, the used of the property as a continued care retirement facility.” Based on the current Land Development Code and uses at the facility adding the Office Uses and Retail Sales & Services as permitted accessory uses to the MR-3 zoning allows for the provision of services to the Residents of the facility on site.

Residential Density Notes:

Small increase unit density allows expansion of existing building and reuse of existing facility and infrastructure. Allows for infill on existing open space of site and shared use of supporting facilities. Expansion of site allows for centralized location for services.

Building Coverage Notes:

The increase in the building coverage allows the expansion of the existing facility at its current location. Allowing increase building coverage for the site allows the new addition to continue to use the existing facility serve both the existing building and the new additions. The existing facility also provides services for the surrounding lots of Replart of Waterford Addition and serves the entire development of surrounding twin homes.

Minimum Open Space Notes:

The decrease in open space requirements is accommodate the increase building coverage of the site. Additionally, this lot of the development serves as access for the surrounding twin homes and due to the existing access roads and lot line places additional burden on this lot from the surrounding lots.

Parking-Residential—Multi-dwelling Notes:

The facility is used as continued care retirement facility. Current PUD for an Alternative Access Plan has a parking lot reduction to 0.75 spaces per dwelling unit. Reduction to 0.75 spaces per dwelling unit is acceptable as current usage for the facility has excess parking capacity based on staff level and visitor parking. Residents of the of the facility typically do not have personal vehicles so parking is primarily used by staff and visitors.

Parking—Retail Notes:

The facility is used as continued care retirement facility. Current PUD for an Alternative Access Plan has a parking lot reduction to 1.00 spaces per 267 square feet for the commercial fitness center. Proposed PUD would maintain this reduced ratio as the fitness center provide services to the Residents of the facility. As the residents are located on site the reduction in parking requirements is justified.

Landscape Parking Lot Perimeter Notes:

Front of parcel is located along University Drive South on the west side of the property. The existing site was constructed before the 1998 adoption of the zoning code. Due to the proposed addition to the existing facility exceeding 10% of the existing building square footage the entire site is required to be brought into compliance with the current Land Development Code (LDC). The existing vehicle circulation located in the front setback along the west side of the site is currently approximately 1' off of the front property line. As the existing pavement serves as both fire access and vehicular circulation relocation/removal of the existing pavement cannot be done. Due to the inability to relocate the vehicle circulation routes modification of the minimum with and buffer requirements is proposed.

New fire access routes constructed as part of the addition would have a parking lot buffer meeting the 6' buffer requirements for lots between 1 and 50 spaces.

**City of Fargo
Staff Report**

Title:	Osgood Townsite Eleventh and Twelfth Addition	Date:	04-28-2020
Location:	4800 and 4850 46 th St S	Staff Contact:	Kylie Bagley
Legal Description:	Lot 9, Block 1, Osgood Townsite Eleventh Addition and Lot 2, Block 2, Osgood Townsite Twelfth Addition		
Owner(s)/Applicant:	Houston Engineering	Engineer:	N/A
Entitlements Requested:	Zoning Change (from GC, General Commercial, with a C-O, Conditional Overlay to MR-3, Multi-Dwelling Residential) and a Growth Plan Amendment from Commercial to Medium/High Density Residential		
Status:	Planning Commission Public Hearing: May 5, 2020		

Existing	Proposed
Land Use: Vacant	Land Use: Multi-Dwelling Building
Zoning: GC, General Commercial, with a C-O, Conditional Overlay	Zoning: MR-3, Multi-Dwelling Residential
Uses Allowed: 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. With a C-O Conditional Overlay	Uses Allowed: Detached houses, attached houses, duplexes, multi-dwelling structures, daycare centers up to 12 children or adults, group living, parks and open space, religious institutions, safety services, schools, and basic utilities. With a C-O Conditional Overlay
Maximum Lot Coverage Allowed: Maximum 85% building coverage	Maximum Dwelling Units Allowed: Maximum 24 units per acre

Proposal:

The applicant is seeking approval of a zone change from GC, General Commercial, with a C-O, Conditional Overlay to MR-3, Multi-Dwelling Residential. This zone change will also remove the Conditional Overlay in its entirety on the subject property located at 4800 and 4850 46th Street South. The applicant is also requesting a growth plan amendment from Commercial to Medium/High Density Residential land uses.

The applicant is proposing a multi-dwelling apartment building; the zone change to MR-3 is consistent with the surrounding area. The adjacent properties to the north, south and west are zoned MR-3 with multi-dwelling apartment buildings.

Staff and the applicant held a neighborhood growth plan meeting.

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: MR-3, Multi-Dwelling Residential, zoning district with multi-dwelling structures.
- East: LC, Limited Commercial, zoning districts with retail sales and service land use

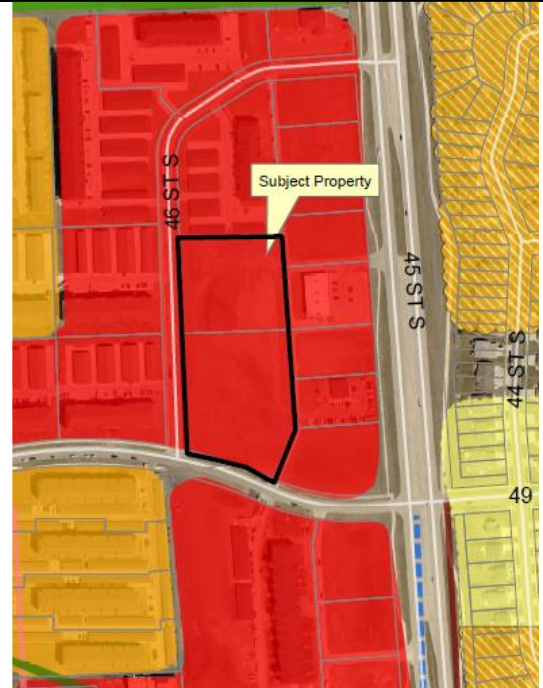
- South: Across 49th Avenue South is zoned MR-3, Multi-Dwelling Residential, zoning district with multi-dwelling structures.
- West: MR-3, Multi-Dwelling Residential, zoning district with multi-dwelling structures.

Area Plans:

The subject property was originally part of the 2003 Southwest Future Land Use Plan. Within this growth plan, the subject property is identified as being suitable for commercial uses. The applicant is proposing to amend the growth plan to low to medium density residential in order to allow the proposed MR-3 zoning.

Future Land Use

- 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 West Fargo School District, more specifically within the Osgood Elementary, Liberty Middle and Sheyenne High schools.

Parks: The subject property is located within a quarter mile of the Osgood Park which provides playgrounds, large multipurpose fields, a basketball court and a small shelter.

Neighborhood: The subject property is located in the Osgood Neighborhood.

Pedestrian / Bicycle: To the south of the subject property is an off road bike facility that runs along 42nd Ave S, which connects to 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. The requested zoning change is justified by a change in conditions since the previous zoning classification was established. The applicant has a clear picture of the type of development for the property.

(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?**

The development will be served with city services (water, sewer, streets, police/fire protection, etc.) as well as other needed utility services as needed. The City Engineer and other applicable review agencies have

reviewed this proposal.

(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 that the approval of this zoning change would adversely affect the condition or value of the property in the vicinity. The proposed zone change is in keeping with adopted plans approved via public process. In addition, 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 verbal concerns or written comments regarding the proposed overlay zoning change. 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. The growth plan amendment will be consistent with the proposed zoning.

(Criteria Satisfied)

Growth Plan Evaluation Criteria: Section 20-0905(H) of the LDC states that the Planning Commission and City Commission shall consider whether the Growth Plan is consistent with and serves to implement adopted plans and policies of the city.

The 2003 Growth Plan sets forth the following criteria that should be used to evaluate any proposed growth plan amendment:

1. Is the proposed change consistent with surrounding land uses, both existing and future? The proposed growth plan amendment is generally consistent and compatible with the city's 2007 Growth Plan and provides an appropriate land use transition into adjacent land uses (both platted and future land uses as set forth within the growth plan).

(Criteria Satisfied)

2. Does the proposed change involve a street alignment or connection? If so, how does this change affect the transportation system and the land uses in the surrounding area, both existing and future.

There has been no change in the existing street layout and alignment with this application. Staff believes that the growth plan amendment would continue to be consistent with city adopted plans and policies.

(Criteria Satisfied)

3. How does the proposed change work with the larger area in terms of land use balance and other factors that could influence the proposed change? Are there physical features or developments in the vicinity that make the change positive or negative for the City and the area in general?

The proposed amendment will match the properties to the north and west. The proposed medium/high density residential will create the opportunity for different types of living structures.

(Criteria Satisfied)

4. How does the proposed change impact the long term sustainability of the city? Does the change contribute to or detract from the walkability and livability of the city?

Staff has no evidence to suggest the land use change would negatively impact the long term sustainability 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 GC, General Commercial, with a C-O, Conditional Overlay to MR-3, Multi-Dwelling Residential and 2) Growth Plan Amendment from "commercial" to "medium-high density residential", as the proposal complies with the Go2030 Fargo Comprehensive Plan, 2003 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: May 5, 2020

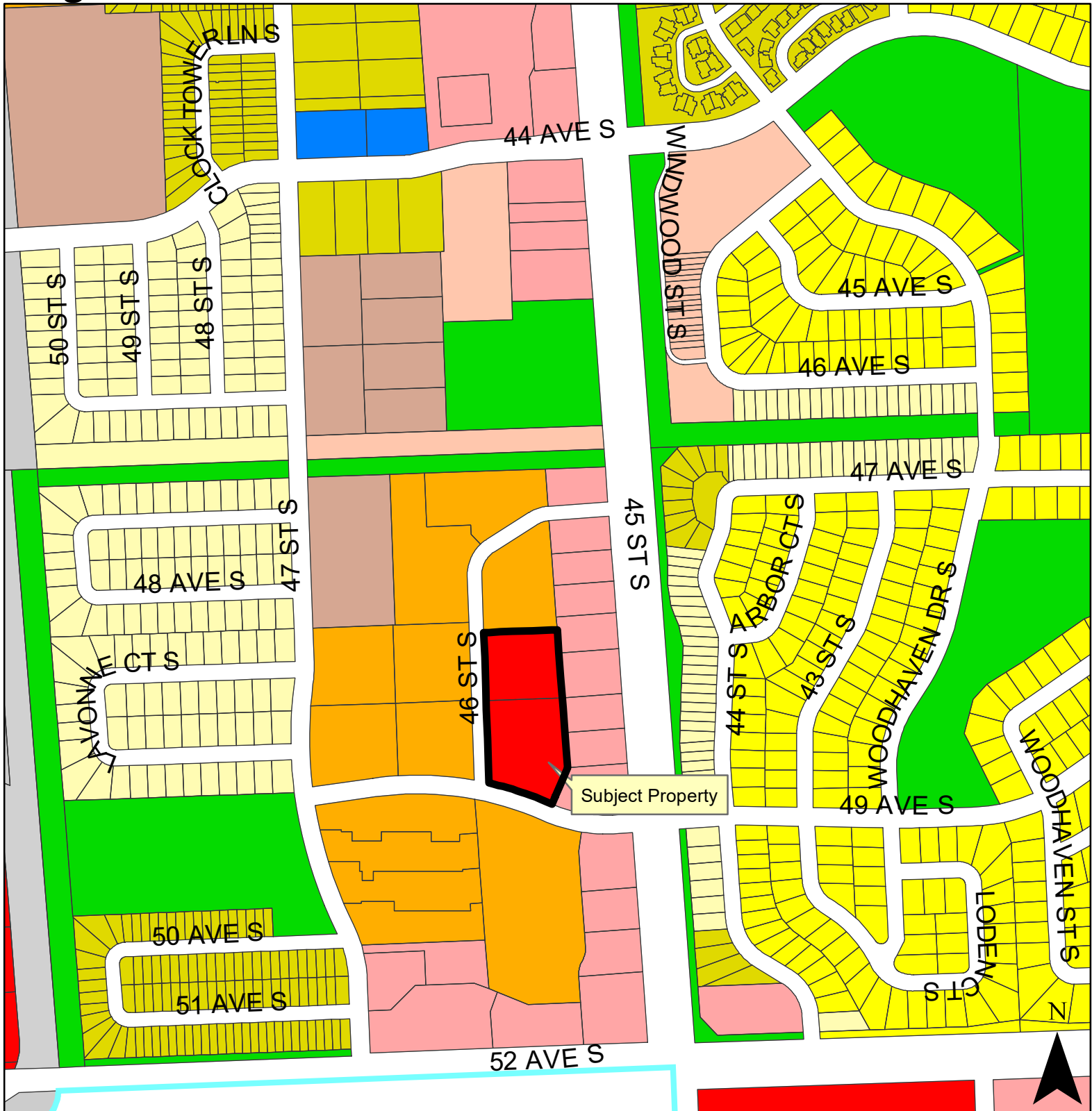
Attachments:

1. Zoning Map
2. Location Map
3. Growth Plan Amendment Map

Growth Plan Amendment & Zone Change (GC to MR-3)

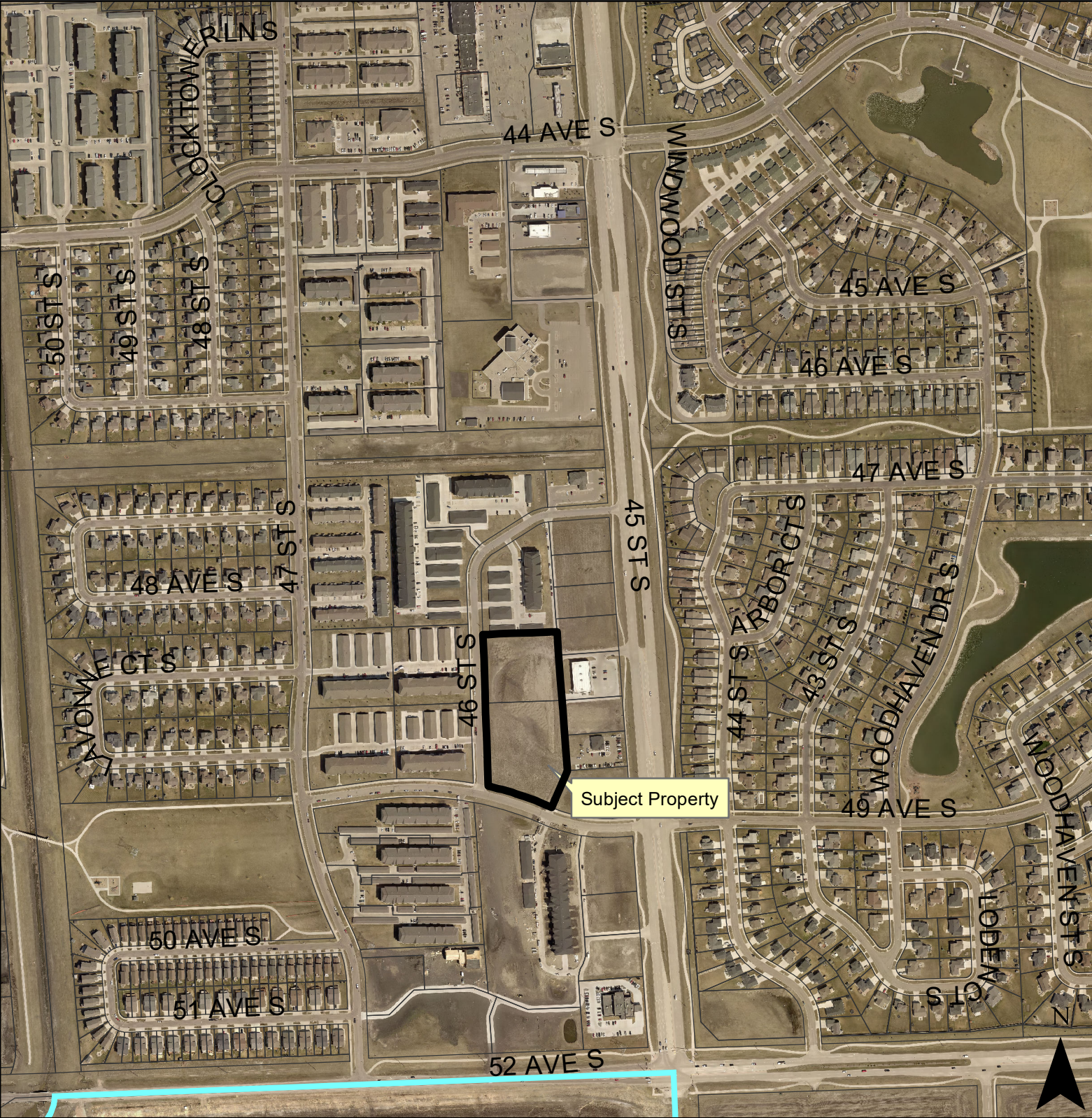
Osgood Townsite 11th and 12th Additions

4800 & 4850 46th St S



Growth Plan Amendment & Zone Change (GC to MR-3)

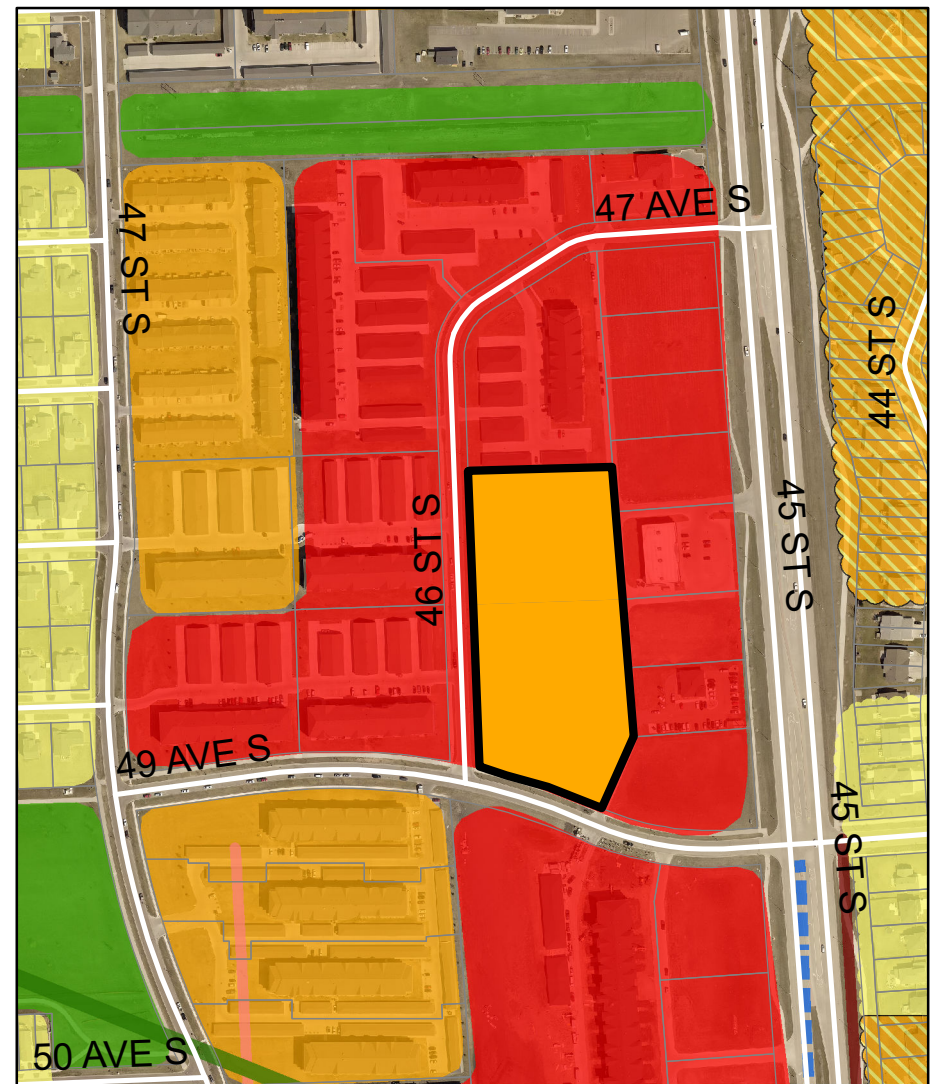
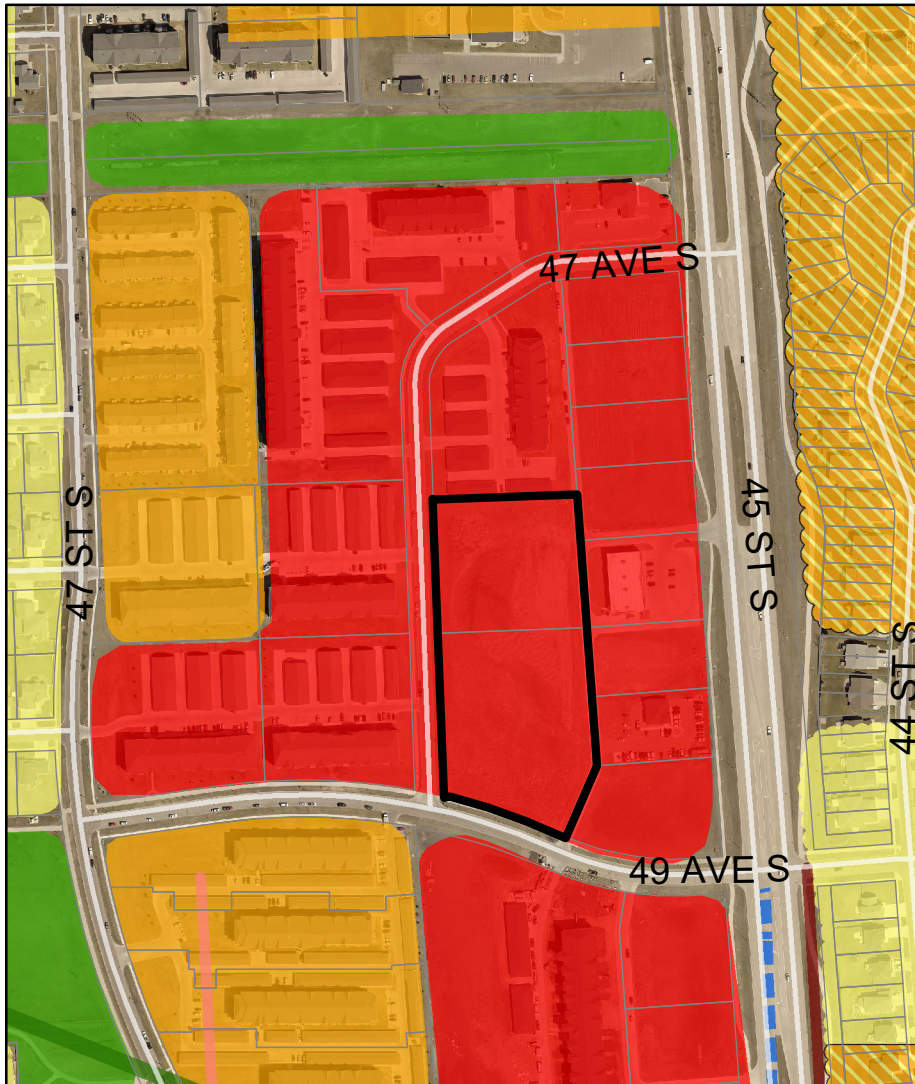
Osgood Townsite 11th and 12th Additions 4800 & 4850 46th St S



Growth Plan Amendment; Zone Change (GC w/ a C-O to MR-3)

Osgood Townsite 11th & 12th Addition

4800 & 4850 46th Street South



Future Land Uses

- Commercial
- Low/Medium Density Residential
- Low/Medium Density or Medium/High Density

- Medium/High Density Residential
- Park/Open Space

**City of Fargo
Staff Report**

Title:	Egbert, O'Neil and Haggarts Addition	Date:	April 29 2020
Location:	421 and 425 24 th Street South and 424 25 th Street South	Staff Contact:	Kylie Bagley
Legal Description:	Lots 1A and 1B, Block 25 Egbert, O'Neil and Haggarts Addition		
Owner(s)/Applicant:	Mike and Kelly Hoffman	Engineer:	N/A
Entitlements Requested:	Zoning Change (from SR-4, Single-Dwelling Residential and GC, General Commercial to GC, General Commercial) and a Conditional Use Permit to allow household living in the GC, General Commercial zoning district.		
Status:	Planning Commission Public Hearing: May 5, 2020		

Existing	Proposed
Land Use: Commercial Parking, Retail Sales and Services, and Household Living	Land Use: Commercial Parking, Retail Sales and Services, and Household Living
Zoning: GC, General Commercial and SR-4, Single-Dwelling Residential	Zoning: GC, General Commercial
<p>Uses Allowed: GC 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, aviation, surface transportation, and major entertainment events.</p> <p>SR-4 allows detached houses, daycare centers up to 12 children, attached houses, duplexes, parks and open space, religious institutions, safety services, schools, and basic utilities</p>	<p>Uses Allowed: 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.</p> <p>CUP for household living in the GC, General Commercial, zoning district</p>
Maximum Density Allowed (Residential): Maximum 12.1 units per acre	Maximum Lot Coverage Allowed: Maximum 85% building coverage
Maximum Lot Coverage Allowed: Maximum 85% building coverage	

Proposal:

The applicant, Mike and Kelly Hoffman, are requesting a zone change from SR-4, Single-Dwelling Residential and GC, General Commercial to GC, General Commercial for the properties located at 421 and 425 24th Street South and 424 25th Street South. The applicant is also requesting a conditional use permit to allow household living in the GC, General Commercial zoning district for the properties located at 424 25th Street South and 425 24th Street South.

The two properties in question are zoned GC on the west half and SR-4 on the east half. When the parcels were originally zoned there were single family homes on the east half and commercial business on the west half. Currently the property at 424 25th Street South and 425 24th Street South has an existing single family home and a

retail sales and service business with a residential unit on the second floor. The property at 421 24th Street South is used for a commercial parking lot for the business. The applicant is proposing to rezone both properties to match the current and future land uses proposed for the property, which is eventually to remove the single family home and keep the business, residential unit within the business and the commercial parking lot.

The existing residential unit within the business is currently on the existing GC property and therefore needs a conditional use permit for residential living to have the property be in compliance.

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: GC, General Commercial, zoning district with multi-dwelling residential uses
- East: Across 24th Street South is zoned SR-4, Single-Dwelling Residential, with single family residential uses
- South: GC, General Commercial, zoning district, with office uses
- West: Across 25th Street South is zoned LI, Limited Industrial, with warehouse uses

Area Plans:

The subject property is within the Jefferson Neighborhood plan, which does not designate future land uses.

Schools and Parks:

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

Parks: The property is located within a quarter-mile of the Jefferson West Park (1904 4th Avenue South), which provides amenities of sports fields, and courts, trails, playground and shelters.

Pedestrian / Bicycle: A shared use path is located adjacent to the property on 25th Street South, which is a component of the metro area trail system.

Neighborhood: Jefferson

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. The request is justified as there has been a change in conditions. The property was recently acquired and will be used to expand improvements for the business. The requested zoning change is for the property to have one zoning district, GC, General Commercial.

(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?

The development is served with city services (water, sewer, streets, police/fire protection, etc.) as well as other needed utility services as needed. The City Engineer and other applicable review agencies have reviewed this proposal. No deficiencies to provide the necessary public services, facilities and programs to this development have been identified.

(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 that the approval of this zoning change would adversely affect the condition or value of the property in the vicinity. In addition, 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 verbal concerns or written comments regarding the proposed overlay zoning change. 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)

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?

The purpose of the LDC is to implement Fargo's Comprehensive Plan in a way that will protect the general health, safety, and welfare of the citizens. Promoting infill development is a key initiative in the Comprehensive Plan. Table 20-0401 of the LDC states that household living is allowed in the GC zoning district with a conditional use permit. The CUP is for household living, and with the zoning district of GC with the CUP, the property could be built as residential, commercial, or a combination. Staff finds this proposal is consistent with the purpose of the LDC, the Go2030 Comprehensive Plan, and other adopted policies of the City.

(Criteria Satisfied)

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

Staff finds that this proposed conditional use permit to allow for residential use to be located within this area will contribute to and promote the welfare of the public.

(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 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 proposed use were sent out to property owners within 300 feet of the subject property. To date, staff has received no inquiries of calls, walk-ins and emails, with no noted concern.

(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 finds that the proposed conditional use permit to allow household living should not dominate the immediate neighborhood or prevent any other sites from being used due to the fact that currently there is a residential dwelling on the property, staff finds that the proposed conditional use permit meets this criterion.

(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 is 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)

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 subject property has vehicular access to 25th and 24th Street South. The Engineering Department has had an opportunity to review the proposal and no comments or concerns have been forthcoming to indicate that there is a deficiency with the access roads or entrances and exit drives. To that end, staff finds that the proposed conditional use will not create traffic hazards or traffic congestion in the public streets.

(Criteria Satisfied)

Recommended Conditions:

- 1) The maximum residential density shall be limited to one residential unit

Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of staff and recommend approval to the City Commission of the proposed zoning change from GC, General Commercial and SR-4, Single-Dwelling Residential to GC, General Commercial, with a C-O, Conditional Overlay; and approval of a Conditional Use Permit for household living on the basis that it satisfactorily complies with the Go2030 Fargo Comprehensive Plan, Standards of Section 20-0906.F (1-4), Section 20-0909.D (1-6) and all other applicable requirements of the LDC, with the following conditions:

- 1) The maximum residential density shall be limited to one residential unit

Planning Commission Recommendation: May 5, 2020

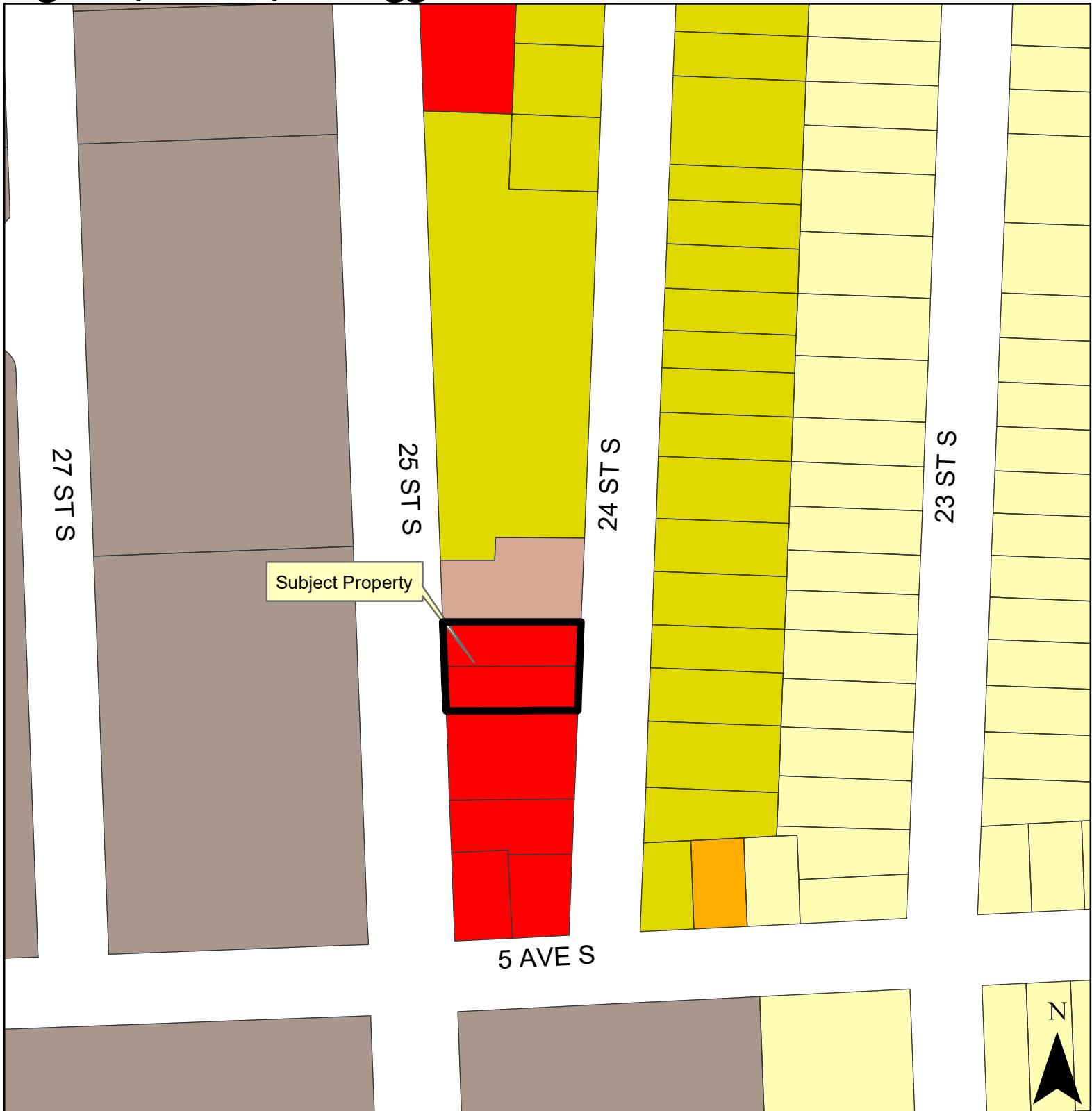
Attachments:

1. Zoning Map
2. Location Map

Zone Change (SR-4 to GC) & Conditional Use Permit

Egbert, O'Neil, & Haggarts Addition

424 25th St S
421 & 425 24th St S



Legend

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

200

Feet

Fargo Planning Commission

April 7, 2020

Zone Change (SR-4 to GC) & Conditional Use Permit

Egbert, O'Neil, & Haggarts Addition

424 25th St S
421 & 425 24th St S



City of Fargo Staff Report			
Title:	RTFMA Addition	Date:	4/28/2020
Location:	1326 16 ½ Street South	Staff Contact:	Maggie Squyer
Legal Description:	Lot 19, Block 6, Morton & Doty's Addition		
Owner(s)/Applicant:	Rebuilding Together Fargo-Moorhead Area/Nathan G. Anderson	Engineer:	Nile
Entitlements Requested:	Zoning Map Amendment (from SR-3, Single-Dwelling Residential to SR-5, Single-Dwelling Residential) and Minor Subdivision (A replat of Lot 19, Block 6, Morton & Doty's Addition)		
Status:	Planning Commission Public Hearing: May 5, 2020		

Existing
Land Use: Household Living
Zoning: SR-3, Single-Dwelling Residential
Uses Allowed: detached housing, attached housing, duplexes, day care facilities of limited size, parks and open areas, religious institutions, safety services, schools and basic utilities
Maximum Density Allowed: 8.7 units per acre

Proposed
Land Use: Household Living
Zoning: SR-5, Single-Dwelling Residential
Uses Allowed: No Change
Maximum Density Allowed: 14.5 units per acre

Proposal:
<p>The applicant is seeking approval of 1) a Zoning Map Amendment, and 2) a Minor Subdivision entitled RTFMA Addition. The proposed zoning map amendment would rezone the lot from SR-3, Single-Dwelling Residential, to SR-5, Single-Dwelling Residential, to increase the maximum density allowed per acre. The proposed minor subdivision would replat the subject property into two lots.</p> <p>Staff received one letter of opposition in response to this request for zone change. The author of the letter states concerns about unfair approval processes conducted by the City. A copy of the letter is attached below. It is worth noting that variances are reviewed by the Board of Adjustment, not the Planning Commission.</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>Surrounding Land Uses and Zoning Districts:</p> <ul style="list-style-type: none"> • North: SR-3, Single-Dwelling Residential with a duplex • East: SR-3, Single-Dwelling Residential • South: SR-3, Single-Dwelling Residential • West: SR-3, Single-Dwelling Residential
Area Plans:
<p>The Lewis and Clark Neighborhood is currently undergoing planning efforts as part of the City's Core Neighborhood Plan.</p>

Schools and Parks:

Schools: The subject property is located within the Fargo School District, specifically Lewis and Clark Elementary, Carl Ben Eielson Middle, and South High schools.

Neighborhood: The subject property is located in Lewis & Clark Neighborhood.

Parks: The subject property is located within half of a mile from Tharaldson Little League Complex (1804 17th Avenue South) which offers playground equipment, picnic tables, and softball fields, among other amenities.

Pedestrian / Bicycle: The subject property is not connected to bike facilities.

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. The property owner is interested in constructing a twin home on the subject property. For the twin home to be compliant with the Land Development Code, the minimum lot width must decrease from the existing 50 foot requirement in the SR-3 zoning district. At this time, SR-5 is the proper zoning district to accommodate single-dwelling developments on 25-foot wide lots. The smallest lot in the proposed subdivision is currently 3,746 square feet, which meets the minimum required lot area for the SR-5 zone. Staff finds that the requested zone change is justified by a change in conditions at this location since the previous zoning classification was established.

(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?

The development is served with city services (water, sewer, streets, police/fire protection, etc.) as well as other utility services as needed. The City Engineer and other applicable review agencies have reviewed this proposal. No deficiencies to provide the necessary public services, facilities and programs to this development have been identified.

(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 received three inquiries and one letter of opposition in response to these notices. The letter of opposition is attached below. 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 in a way that will protect the general health, safety, and welfare of the citizens. The Go2030 Comprehensive Plan supports infill and density in developed neighborhoods. Staff contends that the SR-5 zoning district is intended to provide pockets of higher density affordable housing which promotes a mix of housing options and increased opportunity for home ownership. Staff finds that the proposal is consistent with the purposes of the LDC, the Growth Plan, and other adopted policies of the City.

(Criteria Satisfied)

Subdivision

The LDC stipulates that the following criteria be met before a major 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 subject property is located in the Lewis & Clark Neighborhood, which is currently under evaluation as part of the City's Core Neighborhood Plan. The proposed use is consistent with the existing zoning in the area. The proposed subdivision will replat one existing lot into two new 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. To date, staff has received three inquiries and one letter of opposition, as noted above. 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)

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 principals.

(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 1) zoning map amendment from SR-3, Single-Dwelling Residential to SR-5, Single-Dwelling Residential and 2) **RTFMA Addition** plat, as the proposal satisfactorily complies with the Go2030 Fargo Comprehensive 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: May 5, 2020

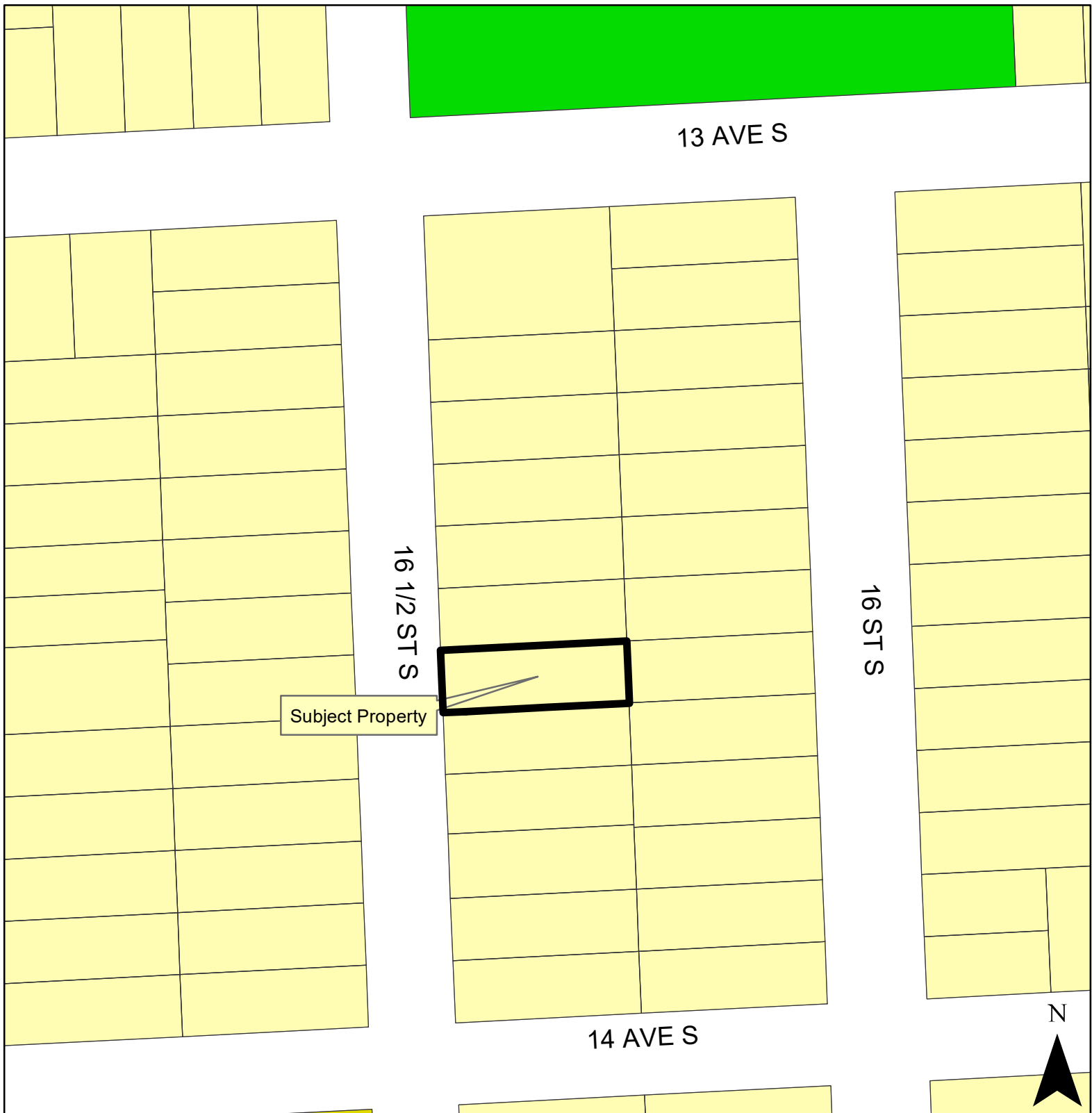
Attachments:

1. Zoning Map
2. Location Map
3. Preliminary Plat
4. Letter of Opposition

Zone Change (SR-3 to SR-5) & Plat (Minor)

RTFMA Addition

1326 16 1/2 St S



Legend

AG	LC	MHP	SR-2
DMU	LI	NC	SR-3
GC	MR-1	NO	SR-4
GL	MR-2	P/I	SR-5
GO	MR-3	UMU	City Limits

100

Feet

Fargo Planning Commission

April 7, 2020

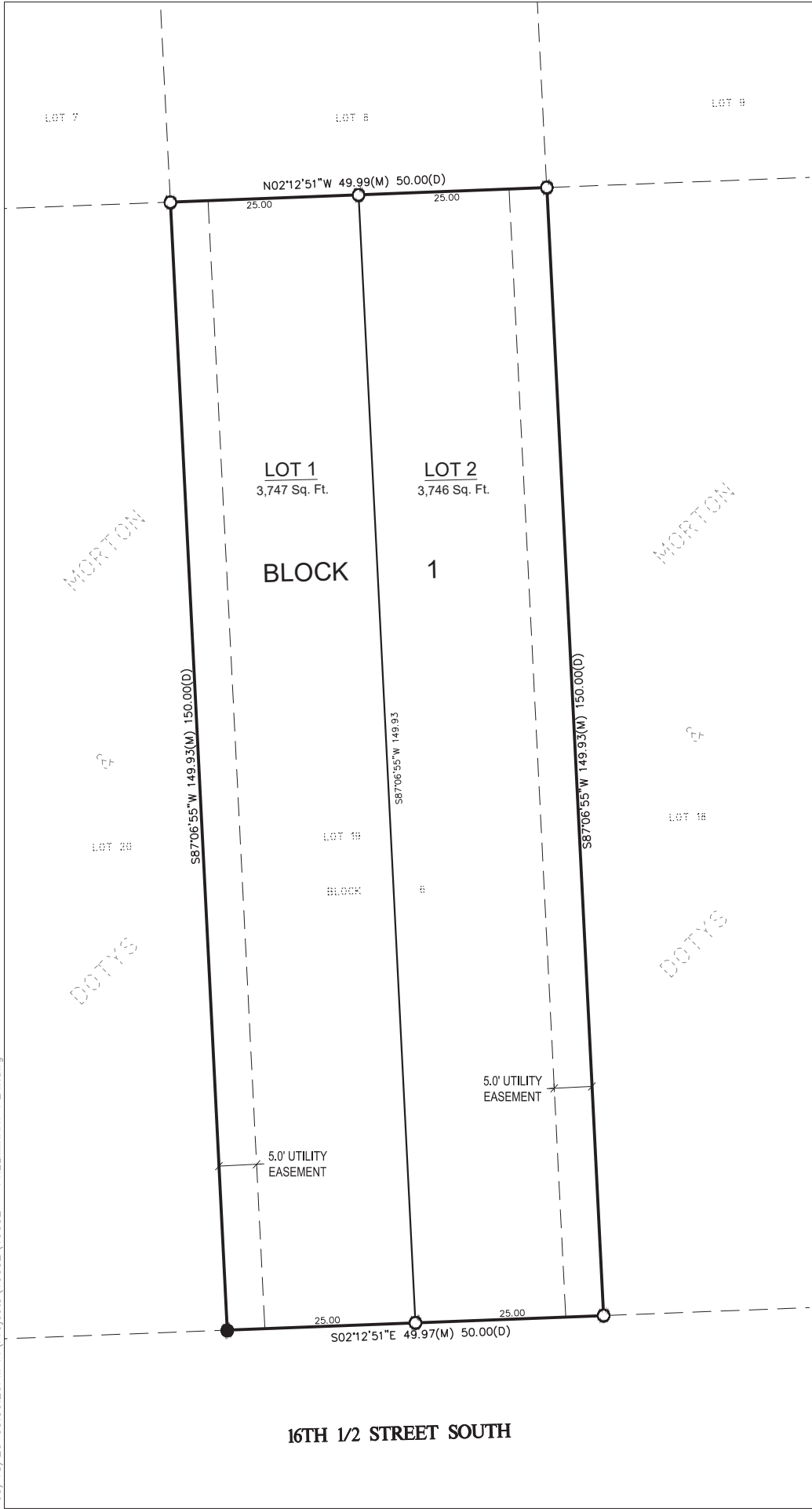
Zone Change (SR-3 to SR-5) & Plat (Minor)

RTFMA Addition

1326 16 1/2 St S



03/18/20 03:50:26PM F:\Projects\19052\19052 - PRELIMINARY PLAT.dwg



RTFMA ADDITION
ALL OF LOT 19, BLOCK 6 OF MORTON & DOTY'S ADDITION
TO CITY OF FARGO, COUNTY OF CASS, STATE OF NORTH DAKOTA
(A MINOR SUBDIVISION)

OWNERS' CERTIFICATE

Known all men by these presents, that Rebuilding Together Fargo-Moorhead Area, Inc., is the owner of a tract of land in the City of Fargo, County of Cass, State of North Dakota and more particularly described as follows:

All of Lot 19, Block 6 MORTON AND DOTY'S ADDITION

Said owner has caused the above described tract of land shown on this plat to be surveyed and platted as RTFMA ADDITION to the City of Fargo, North Dakota, said owner also hereby dedicates and conveys to the public, for public use, all street Right of Ways and Utility Easements shown on said plat. Said RTFMA ADDITION, consists of two lots and one block, and contains 0.17 acres, more or less.

Rebuilding Together Fargo-Moorhead Area, Inc.:

By: _____
Tom Newburger, Board President

State of _____)
County of _____)SS

On this _____ day of _____, 2020, before me, a notary public within and for said county and state, personally appeared Tom Newburger, Board President, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed same as their Free Act and Deed.

Notary Public, County: _____ State: _____
My Commission Expires: _____

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGMENT

I, Nathan G. Anderson, Registered Professional Land Surveyor under the laws of the state of North Dakota, do hereby certify that i have surveyed and platted the property described on this plat as RTFMA ADDITION to the City of Fargo, Cass County, North Dakota; that this plat is a correct representation of said survey; that all distances are shown correctly on said plat in feet and hundredths of a foot; that all monuments are or will be installed correctly in the ground as shown; and that the exterior boundary lines are correctly designated, dated
This _____ Day of _____, 2020.

PRELIMINARY

Nathan G. Anderson,
Registered Professional Land Surveyor
North Dakota Registration NO. LS-8064

State of North Dakota)
County of Cass)SS

On this _____ day of _____, 2020, before me, a notary public within and for said county and state, personally appeared Nathan G. Anderson, Registered Land Surveyor, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed same as his Free Act and Deed.

Notary Public, Cass County, ND
My Commission Expires: _____

Fargo City Engineer's Approval

This plat in the City of Fargo is hereby approved This _____ Day of _____, 2020.

Brenda E. Derrig
Acting City Engineer

State of North Dakota)
County of Cass)SS

On this _____ day of _____, 2020, before me, a Notary Public within and for said county and state, personally appeared Brenda E. Derrig, Acting City Engineer, to me known to be the Described in and who executed the foregoing instrument and acknowledged that she executed same as her Free Act and Deed.

Notary Public, Cass County, ND
My Commission Expires: _____

Fargo City Commission Approval

This plat in the City of Fargo is hereby approved this _____ day of _____, 2020.

Timothy J. Mahoney, Mayor

Steven Sprague
City Auditor

State of North Dakota)
County of Cass)SS

On this _____ day of _____, 2020, before me, a Notary Public within and for said county and state, personally appeared Timothy J. Mahoney, Mayor and Steven Sprague, City Auditor, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed same as his Free Act and Deed.

Notary Public, Cass County, ND
My Commission Expires: _____

City of Fargo Planning Commission Approval

This plat in the City of Fargo is hereby approved this _____ day of _____, 2020.

John Gunkelman
Chairman Fargo Planning Commission

State of North Dakota)
County of Cass)SS

On this _____ day of _____, 2020, before me, a Notary Public within and for said county and state, personally appeared John Gunkelman, Chairman, Fargo Planning Commission, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed same as his Free Act and Deed.

Notary Public, Cass County, ND
My Commission Expires: _____

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N

NORTH DAKOTA
700 Main Avenue
Fargo, ND 58103
(701) 293-1350
MINNESOTA
381 East Kellogg Boulevard
Saint Paul, MN 55101
(651) 227-0644

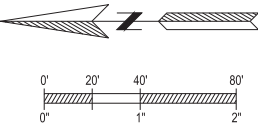
WEDDING AND NOTARY

LEGEND

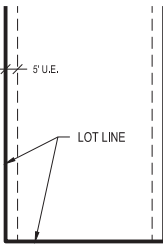
- PROPERTY PIN FOUND
- PROPERTY PIN PLACED - RLS No.2349
- POINT OF BEGINNING
- UTILITY EASEMENT
- 23rd AVE. S. RIGHT OF WAY
- PARCEL BOUNDARY LINE
- LOT LINE
- ADJACENT PROPERTY LINE
- UTILITY EASEMENT LINE

BASIS OF BEARING

THE WEST LINE OF BLOCK 6 OF MORTON & DOTY'S
WITH AN ASSUMED BEARING OF S02°12'51"E



UTILITY EASEMENTS



BEING 10.00 FEET IN WIDTH ADJACENT TO RIGHT OF WAYS
AND 5.00 FEET ALONG ADJACENT PROPERTIES, UNLESS
OTHERWISE NOTED ON THE PLAT.

FOR RECORDING PURPOSES

Dear Ms. Squyer,

I received this letter about property at 1326 16 ½ Street South to change zoning from SR3 to SR5. I am opposed to the proposed change of this property from SR3 to SR5.

Back in 2000-2001, I tried to put a house on a lot at 305 21st Street South. I tried to get a variance to make this house a duplex and was denied, stating that I was required to have a 7500 square foot yard per unit. I was also denied when I tried to get a variance to build on a lot at 121 23rd Street South, stating I had to stay 10 feet off side lot (this made my driveway 8 feet wide). I haven't built and won't. I stated at the time that the city was going to lose money and I believe the city still is losing money to this day. It appears that the rules can be changed for some people but not for others. It seems that the people the city changes the rules for are the ones that we have to pay later (example: millions of dollars to buy out Oxbow to build a golf course and pool that only certain people can use). There is a reason the cities outside of Fargo and Moorhead are growing. I was told by a city employee that Fargo doesn't want single family housing as the city can make more money with multiple -family units and apartment buildings.

This meeting is a waste of time and money; we already know that it will be approved. When I applied for the variances noted above, I was told that everything would be approved. However, at the last minute, a city of Fargo planning employee addressed the Board and told them she didn't want the variances approved. The variances were denied. It seems unusual that one employee has that much say in the process.

I know that this is probably a waste of time and the proposed variances will be approved.

Any questions give me a call Roger Unterseher

**City of Fargo
Staff Report**

Title:	Epic Gateway Addition	Date:	4/28/2020
Location:	300 Main Avenue & 44 4 th Street South	Staff Contact:	Maggie Squyer
Legal Description:	Lot 1, Block 4, North Dakota R2 Urban Renewal Addition		
Owner(s)/Applicant:	Epic Gateway LLC/ Tony Sager	Engineer:	Mead & Hunt
Entitlements Requested:	Minor Subdivision (Replat Lot 1, Block 4, North Dakota R2 Urban Renewal Addition)		
Status:	Planning Commission Public Hearing: May 5, 2020		

Existing	Proposed
Land Use: Mixed-Use	Land Use: Unchanged
Zoning: DMU, Downtown Mixed-Use	Zoning: Unchanged
Uses Allowed: DMU, Downtown Mixed-Use allows detached housing, attached housing, duplexes, multi-dwelling structures, colleges, community services, day care facilities of unlimited size, health care facilities, parks and open areas, religious institutions, safety services, basic utilities, offices, commercial parking, retail sales and services, self-service storage, vehicle repair, limited vehicle service, and limited telecommunications facilities.	Uses Allowed: Unchanged
Maximum Building Coverage: 100%	Maximum Building Coverage: Unchanged

Proposal:

The applicant is requesting a minor subdivision plat, entitled **Epic Gateway Addition**, which would replat Lot 1, Block 4 of North Dakota R2 Urban Renewal Addition into three new lots. Proposed Lot One will have access off Main Avenue while Lots Two and Three will have access off 4th Street South. The property is currently zoned DMU, Downtown Mixed-Use, and no change in zoning is requested.

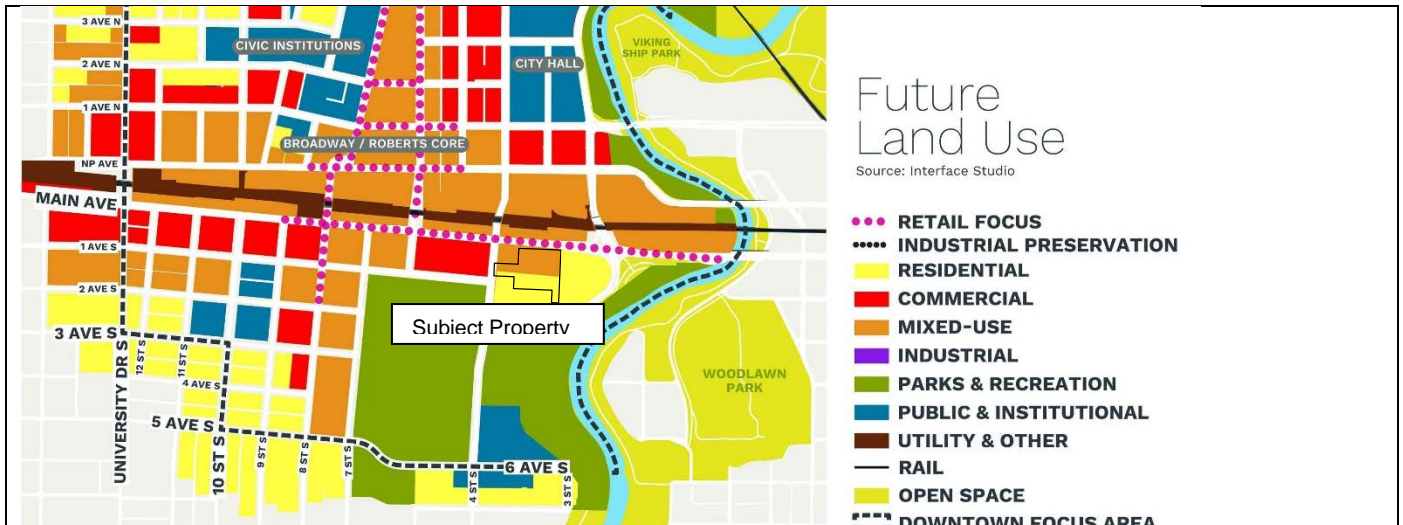
This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.

Surrounding Land Uses and Zoning Districts:

- North: DMU, Downtown Mixed-Use with commercial
- East: DMU, Downtown Mixed-Use that is currently vacant
- South: DMU, Downtown Mixed-Use with multi-dwelling housing
- West: DMU, Downtown Mixed-Use with a bank

Area Plans:

The subject property is located within the Downtown InFocus plan and is identified for mixed-use and residential uses.



Schools and Parks:

Schools: The subject property is located in the Fargo Public School District and is served by Clara Barton Hawthorne Elementary, Ben Franklin Middle, and North High Schools.

Neighborhood: Downtown

Parks: The subject property is within a quarter-mile of Island Park (302 7th Street South), Dike West (310 4th Street South), Dike East (100 2nd Street South), Statue of Liberty Park (100 Main Avenue), and Riverside/Civic Gardens (345 2nd Street North).

Pedestrian / Bicycle: A bike route begins just south of the subject property at the intersection of 1st Avenue South and 4th Street South.

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.**

This subdivision is intended to plat three legal lots for mixed-use development. The proposed use is consistent with the existing zoning and the growth plan for the area. 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 no inquiries about the application. 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)**

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 principals. **(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 **Epic Gateway Addition** subdivision as presented; as the proposal complies with the Standards of Article 20-06 and all other applicable requirements of the Land Development Code."

Planning Commission Recommendation: May 5, 2020

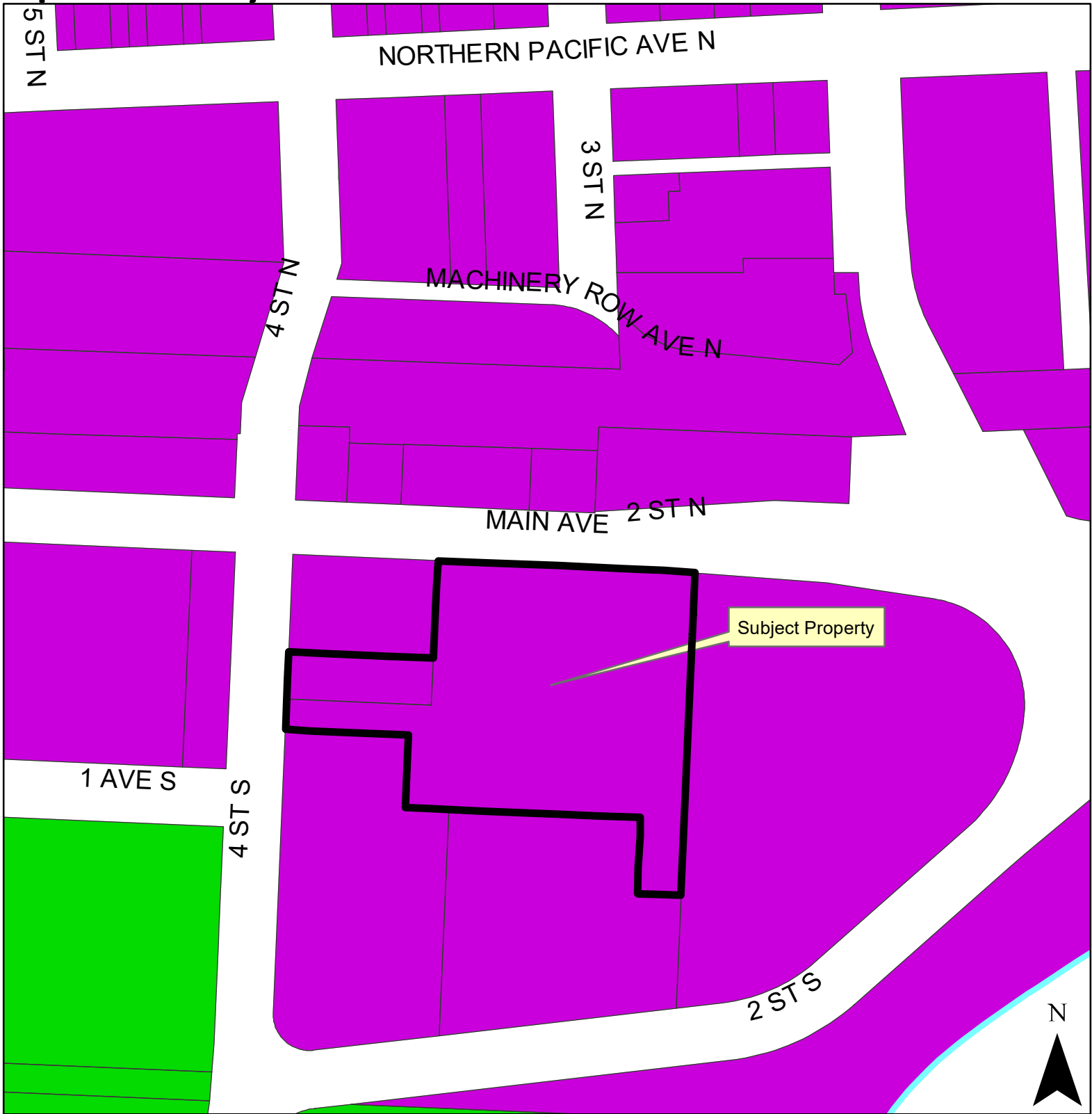
Attachments:

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

Plat (Minor)

Epic Gateway Addition

44 4th St S
300 Main Ave



Legend

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

Plat (Minor)

Epic Gateway Addition

44 4th St S
300 Main Ave



Legend

AG	LC	MHP	SR-2
DMU	LI	NC	SR-3
GC	MR-1	PA	SR-4
GO	MR-2	UM	SR-5
	MR-3		City Limits

EPIC GATEWAY ADDITION

A REPLAT OF LOT 1, BLOCK 4 OF NORTH DAKOTA R-2 URBAN RENEWAL ADDITION TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA
(A MINOR SUBDIVISION)

OWNER'S CERTIFICATE:

KNOW ALL PERSONS BY THESE PRESENTS: That EPIC Companies, LLC are the owners of a parcel of land located in that part of the North Half of Section 7, Township 139 North, Range 48 West of the Fifth Principal Meridian, Cass County, North Dakota, being more particularly described as follows:

Lot 1, Block 4 of **North Dakota R-2 Urban Renewal Addition** to the City of Fargo, as filed and on record at the office of the County Recorder, as Document #420026 Cass County, North Dakota.

Containing 153,119 SQ. FT., more or less.

Said owner have caused the above described parcel of land to be surveyed and replatted as **EPIC GATEWAY ADDITION** to the City of Fargo, Cass County, North Dakota.

Owner
EPIC Companies, LLC
Todd Berning, President

State of North Dakota)
County of Cass)ss

On this _____ day of _____, 20____, before me personally appeared Todd Berning, President, 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 EPIC Companies. LLC.

Notary Public: _____

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT:

I, Joshua J. Nelson, Professional Land Surveyor under the laws of the State of North Dakota, do hereby certify that this plat is a true and correct representation of the survey of said subdivision; that the monuments for the guidance of future surveys have been located or placed in the ground as shown.

Dated this _____ day of _____, 20____.

Joshua J. Nelson
Professional Land Surveyor No. LS-27292

State of North Dakota)
County of Cass)ss

On this _____ day of _____, 20____, before me personally appeared Joshua J. Nelson, Professional Land Surveyor, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same as his free act and deed.

Notary Public: _____

CITY ENGINEER'S APPROVAL:

Approved by the Fargo City Engineer this _____ day of _____, 20____.

Brenda E. Derrig, P.E., City Engineer

State of North Dakota)
County of Cass)ss

On this _____ day of _____, 20____, before me personally appeared Brenda E. Derrig, Fargo City Engineer, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that she executed the same as her free act and deed.

Notary Public: _____

FARGO PLANNING COMMISSION APPROVAL:

Approved by the City of Fargo Planning Commission this _____ day of _____, 20____.

John Gunkelman, Chair
Fargo Planning Commission

State of North Dakota)
County of Cass)ss

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

Notary Public: _____

FARGO CITY COMMISSION APPROVAL:

Approved by the Board of City Commissioners and ordered filed
this _____ day of _____, 20____.

Timothy J. Mahoney, Mayor

Attest: _____
Steven Sprague, City Auditor

State of North Dakota)
County of Cass)ss

On this _____ day of _____, 20____, before me personally appeared Timothy J. Mahoney, Major, City of Fargo; and Steven Sprague, City Auditor, City of Fargo, 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: _____



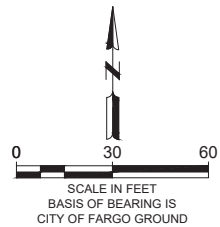
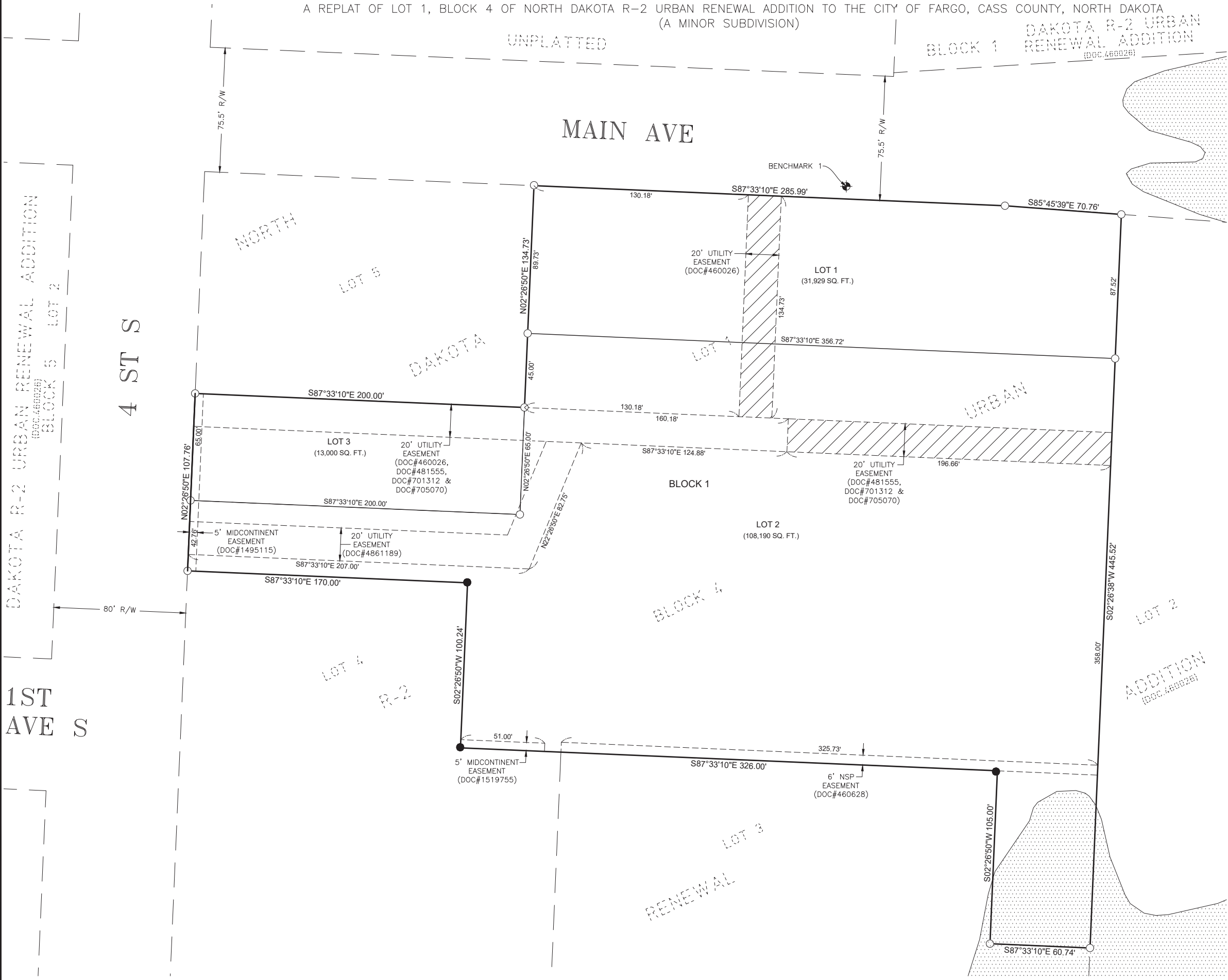
Phone: 701-566-6450
meadhunt.com

PROJECT NO.
4289700-200685.01
SHEET 1 OF 2

PRELIMINARY

EPIC GATEWAY ADDITION

A REPLAT OF LOT 1, BLOCK 4 OF NORTH DAKOTA R-2 URBAN RENEWAL ADDITION TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA
(A MINOR SUBDIVISION)



- NOTES:
- GROUND DISTANCES ARE SHOWN AND ARE IN TERMS OF U.S. SURVEY FEET.
 - PART OF THIS PLAT FALLS IN FLOODPLAIN ZONE 'AE' ACCORDING TO THE FEMA FIRM MAPS 38017C0781G WITH AN EFFECTIVE DATE 1/16/2015. THE BASE FLOOD ELEVATION IN THIS AREA IS 901' (NAVD88) ACCORDING TO FEMA. CONTOUR INFORMATION SHOWN IS DERIVED FROM FIELD SURVEY CONDUCTED DEC. 4, 2019.
 - BENCHMARK TOP NUT HYDRANT LOCATED ± 425' EAST OF THE INTERSECTION OF MAIN AVENUE AND 4TH STREET SOUTH. ELEVATION = 906.59 (NAVD88)

LEGEND	
●	MONUMENT IN PLACE
○	SET MONUMENT (5/8" REBAR CAPPED PLS-27292)
---	EXISTING PROPERTY LINE
---	EXISTING EASEMENT LINE
---	NEW LOT LINE
---	PLAT BOUNDARY
---	NEW EASEMENT LINE
---	MAJOR CONTOUR
---	MINOR CONTOUR
---	100 YR. FLOODPLAIN
---	EXISTING EASEMENT TO BE VACATED BY THIS PLAT

Mead & Hunt
Phone: 701-566-6450
meadhunt.com

PRELIMINARY

PROJECT NO.
4289700-200685.01
SHEET 2 OF 2

City of Fargo Staff Report			
Title:	Aldi First Addition	Date:	4/29/2020
Location:	4303 and 4305 13th Avenue South	Staff Contact:	Donald Kress, planning coordinator
Legal Description:	Part of Lot 1, Block A, Replat of Part of Village West Second Addition to the City of Fargo, Cass County, North Dakota		
Owner(s)/Applicant:	Fargo Enterprises/Nathan G. Anderson	Engineer:	Nile
Entitlements Requested:	Minor Subdivision (Replat of a part of Lot 1, Block A, Replat of Part of Village West Second Addition to the City of Fargo, Cass County, North Dakota)		
Status:	Planning Commission Public Hearing: May 5, 2020		
Existing		Proposed	
Land Use: Retail		Land Use: No change	
Zoning: GC, General Commercial		Zoning: No change	
Uses Allowed: GC – General Commercial. 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, aviation, surface transportation, and major entertainment events.		Uses Allowed: No change	
Maximum Building Coverage Allowed: 85%		Maximum Building Coverage Allowed: No change	

Proposal:

The applicant requests one entitlement:

1. A minor subdivision, entitled **Aldi First Addition** which is a replat of a part of Lot 1, Block A, Replat of Part of Village West Second Addition to the City of Fargo, Cass County, North Dakota.

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: GC with retail uses; MR-3, Multi-Dwelling Residential with apartment uses
- East: (across 43rd Street South) GC with retail uses
- South: (across 13th Avenue South) GC with retail uses
- West: GC with retail uses

Area Plans:

The subject property is not included within any area plans or neighborhood plans.

Schools and Parks:

Schools: The subject property is located within the West Fargo School District and is served Eastwood Elementary, Cheney Middle and West Fargo High schools.

Neighborhood: The subject property is located within the Village West neighborhood.

Parks: Village West Park and Dog Park (4415 9th Avenue Circle South) is located approximately 0.50 mile east of the subject property and offers the amenities of multi-purpose field; picnic tables; playgrounds for ages 5-12; recreational trails; skate park; soccer field; dog park; basketball courts

Pedestrian / Bicycle: There are no trails in the adjacent public rights of way.

Staff Analysis:

The plat will replat the existing lots into two lots, so that each retail store is on its own lot.

The street access and utility connections that are in place on the current lots will not change.

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 subject property is not located within an area plan. All of the properties within this plat are currently zoned GC, General Commercial. No zone change is proposed. 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 two phone calls from the public regarding this property. The callers had no objection. The project has been reviewed by the city's Planning, Engineering, Public Works, Inspections, and Fire Departments. **(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)**

Suggested Motion: "To accept the findings and recommendations of staff and move to recommend approval to the City Commission of the proposed **Aldi First Addition** subdivision plat, as presented, as the proposal complies with the Standards of Article 20-06, and all other applicable requirements of the LDC."

Planning Commission Recommendation: May 5, 2020

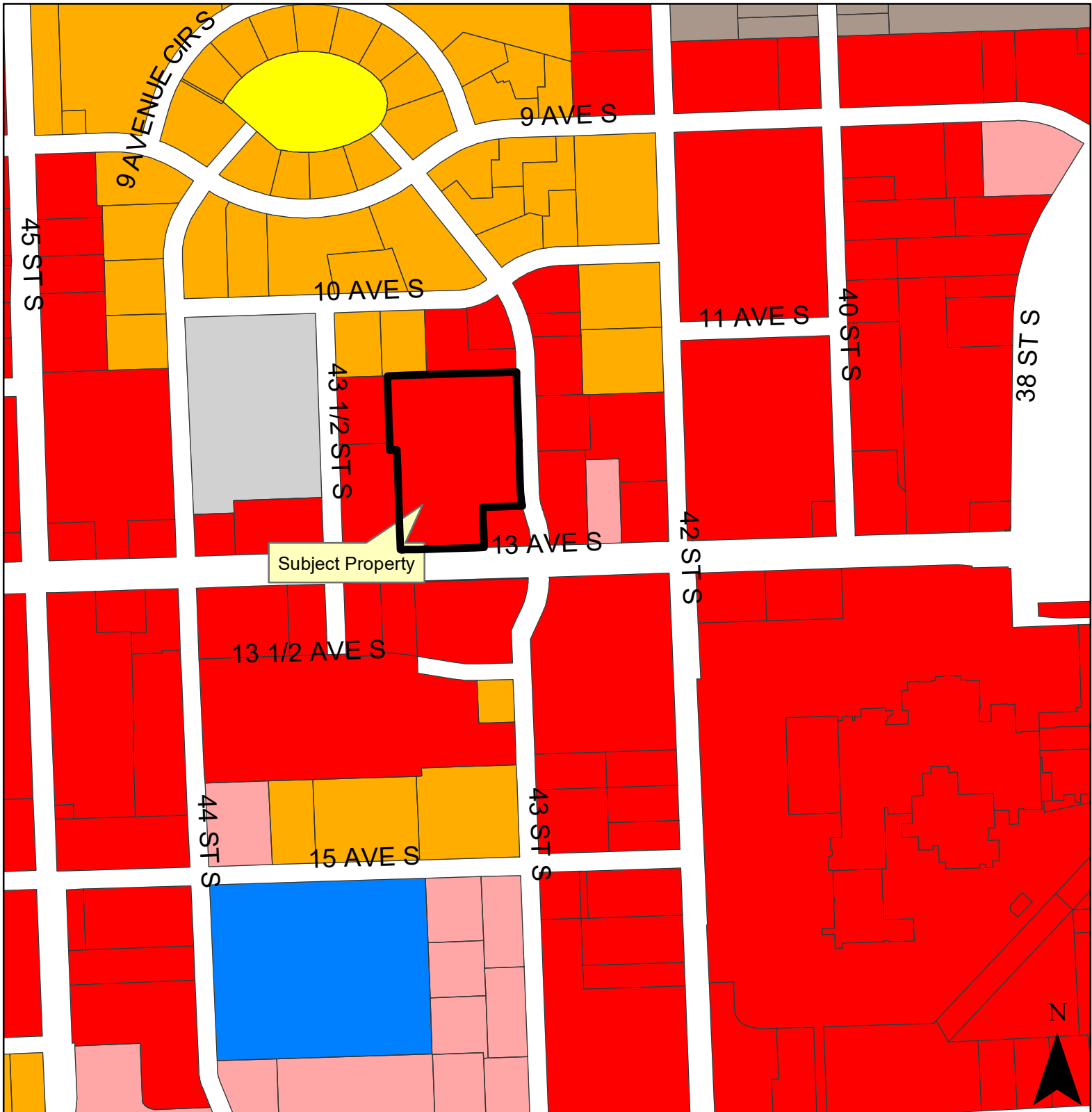
Attachments:

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

Plat (Minor)

Aldi First Addition

4303 & 4305 13th Ave S



Legend

AG	LC	MHP	SR-2
DMC	MR-1	NO	SR-3
GC	MR-2	P/I	SR-4
GL	MR-3	UML	SR-5
GO			City Limits

500

Feet

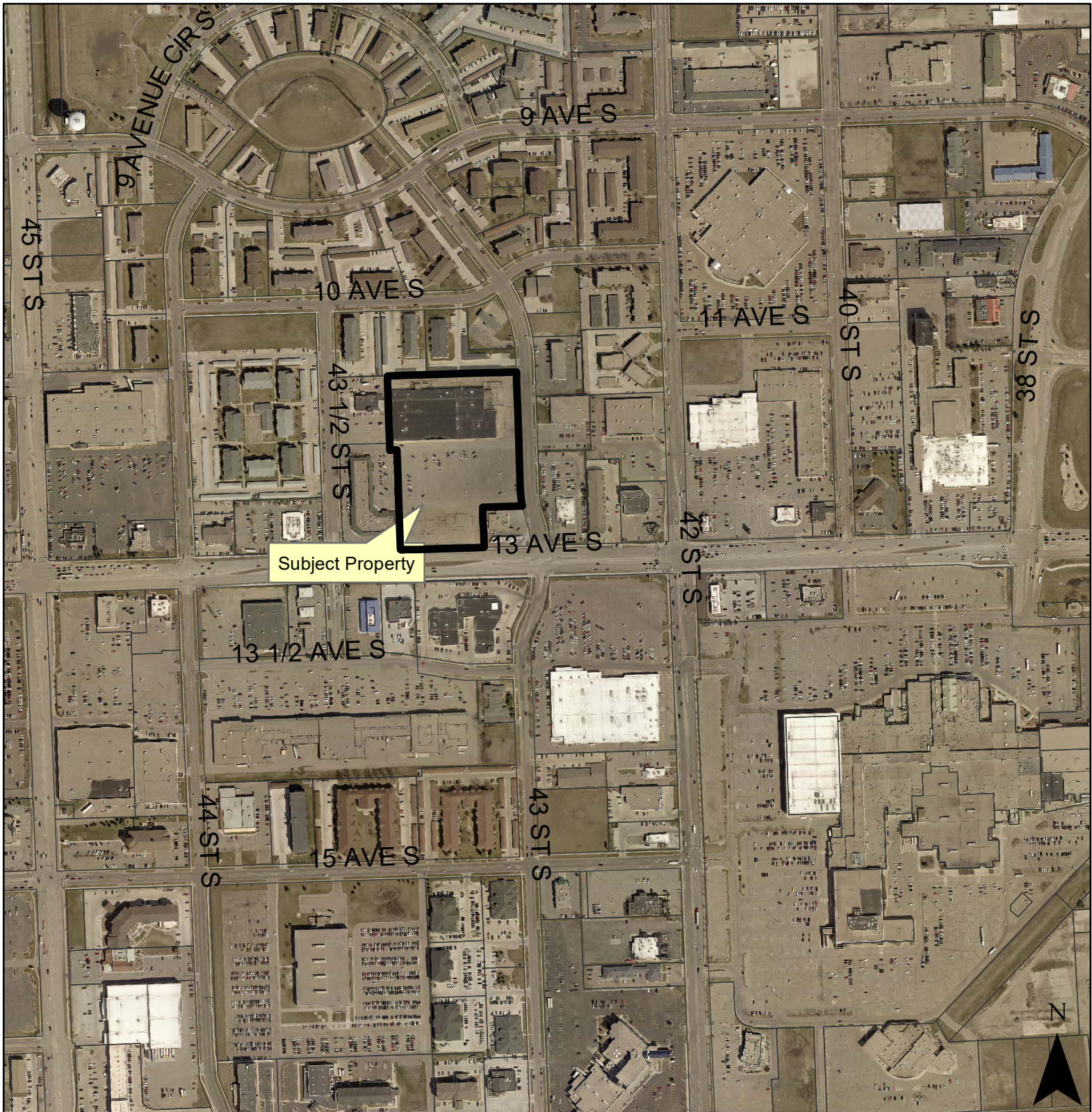
Fargo Planning Commission

April 7, 2020

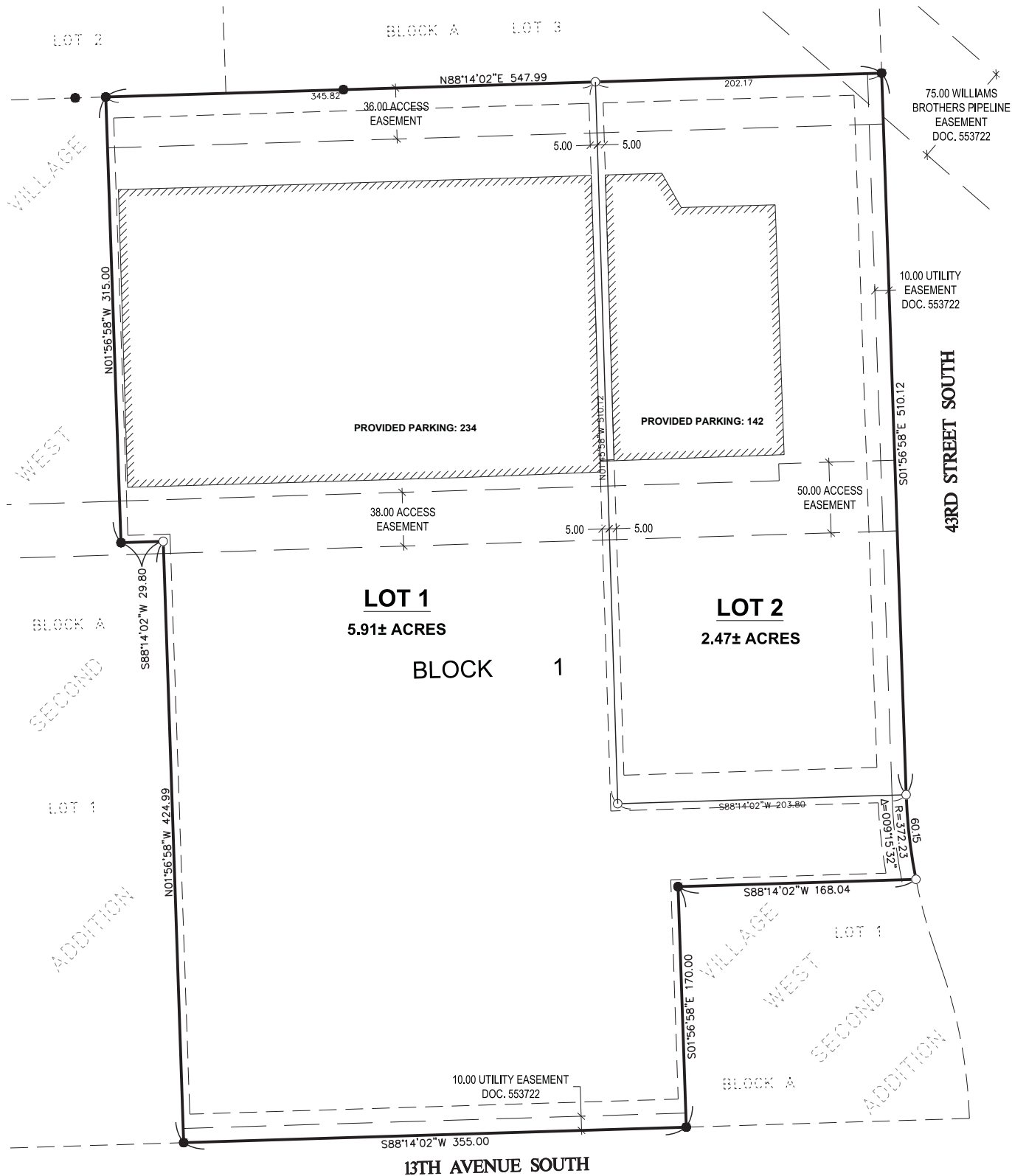
Plat (Minor)

Aldi First Addition

4303 & 4305 13th Ave S



ALDI FIRST ADDITION
A REPLAT PART OF LOT 1, BLOCK A
REPLAT OF PART OF VILLAGE WEST SECOND ADDITION
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA
(A MINOR SUBDIVISION)



OWNERS' CERTIFICATE

Known all men by these presents, that Fargo Enterprises, Daniel G. Kamin is the owner of a tract of land in the City of Fargo, County of Cass, State of North Dakota and more particularly described as follows:

That part of Lot 1, Block A, REPLAT OF PART OF VILLAGE WEST SECOND ADDITION, City of Fargo, County of Cass, State of North Dakota, described as follows:

Beginning at the northeasterly corner of Lot 1, Block A of REPLAT OF PART OF VILLAGE WEST SECOND ADDITION to the City of Fargo, Cass County, North Dakota; thence S01°56'58"E along the easterly line of said Lot 1 also known as the westerly Right of Way of 43rd Street South a distance of 510.12 feet; thence southerly 60.15 feet along a tangential curve concave to the east having a radius of 372.23 feet and a central angle of 009°15'32"; thence S88°14'02"W, non tangential to said curve, parallel to the northerly lot line of said Lot 1, a distance of 168.04 feet; thence S01°56'58"E parallel to the easterly lot line of said Lot 1, a distance of 170.00 feet to the northerly Right of Way of 13th Avenue South; thence S88°14'02"W along the northerly Right of Way of said 13th Avenue South, a distance of 355.00 feet; thence N01°56'58"W parallel to the easterly lot line of said Lot 1, a distance of 424.99 feet; thence S88°14'02"W parallel to the northerly lot line of said Lot 1, a distance of 29.80 feet; thence N01°56'58"W parallel to the easterly lot line of said Lot 1, a distance of 315.00 feet to the northerly line of said Lot 1; thence N88°14'02"E along said northerly line of Lot 1, A a distance of 547.99 feet to the Point of Beginning.

Said parcel containing 8.38 acres, more or less.

Said owner has caused the above described tract of land to be surveyed and platted as ALDI FIRST ADDITION to the City of Fargo, North Dakota, containing 1 Block and 2 Lots and do hereby dedicate to the public, for public use, all utility easements as shown on this plat.

Fargo Enterprises, Daniel G. Kamin

STATE OF NORTH DAKOTA
COUNTY OF CASS

On this ____ day of ____, 20____, before me, a Notary Public within and for said County and State, personally appeared Fargo Enterprises, Daniel G. Kamin, to me known to be the person described in and who executed the foregoing instrument and acknowledged that they executed same as their free act and deed.

Notary Public, Cass County, ND

My Commission Expires ____

SURVEYORS CERTIFICATE AND ACKNOWLEDGEMENT

I, Nathan G. Anderson, Registered Professional Land Surveyor under the laws of the state of North Dakota, do hereby certify that I have surveyed and platted the property described on this plat as ALDI FIRST ADDITION to the City of Fargo, Cass County, North Dakota; that this plat is a correct representation of said survey; that all distances are shown correctly on said plat in feet and hundredths of a foot; that all monuments are or will be installed correctly in the ground as shown; and that the exterior boundary lines are correctly designated, dated This ____ Day of ____, 2020.

PRELIMINARY

Nathan G. Anderson,
Registered Professional Land Surveyor
North Dakota Registration NO. LS-8064

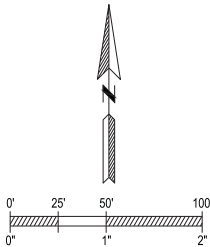
State of North Dakota)
County of Cass)SS

on This ____ Day of ____, 2020, before me, a notary public within and for said county and state, personally appeared Nathan G. Anderson, Registered Land Surveyor, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed same as his Free Act and Deed.

Notary Public, Cass County, ND
My Commission Expires: ____

LEGEND

- DENOTES FOUND SURVEY MONUMENT
- DENOTES 5/8" REBAR SET AND MARKED LS-8064
- DENOTES BOUNDARY LINE
- - - - - DENOTES ADJACENT LOT LINE
- - - - - DENOTES EASEMENT LINE



FARGO CITY ENGINEERS APPROVAL

This plat in the City of Fargo is hereby approved This ____ Day of ____ 2020.

Brenda E. Derrig
Acting City Engineer

State of North Dakota)
County of Cass)SS

On this ____ day of ____, 2020, before me, a Notary Public within and for said county and state, personally appeared Brenda E. Derrig, Acting City Engineer, to me known to be the Described in and who executed the foregoing instrument and acknowledged that she executed same as her Free Act and Deed.

Notary Public, Cass County, ND
My Commission Expires: ____

FARGO CITY COMMISSION APPROVAL

This plat in the City of Fargo is hereby approved this ____ day of ____ 2020.

Timothy J. Mahoney, Mayor

Steven Sprague
City Auditor

State of North Dakota)
County of Cass)SS

On this ____ day of ____, 2020, before me, a Notary Public within and for said county and state, personally appeared Timothy J. Mahoney, Mayor and Steven Sprague, City Auditor, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed same as his Free Act and Deed.

Notary Public, Cass County, ND
My Commission Expires: ____

CITY OF FARGO PLANNING COMMISSION APPROVAL

This plat in the City of Fargo is hereby approved this ____ day of ____ 2020.

John Gunkelman
Chairman Fargo Planning Commission

State of North Dakota)
County of Cass)SS

On this ____ day of ____, 2020, before me, a Notary Public within and for said county and state, personally appeared John Gunkelman, Chairman, Fargo Planning Commission, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed same as his Free Act and Deed.

Notary Public, Cass County, ND
My Commission Expires: ____

FARGO

NORTH DAKOTA
700 Main Avenue
Fargo, ND 58103
(701) 293-1350

MINNESOTA
381 East Kellogg Boulevard
Saint Paul, MN 55101
(651) 227-0644

www.fargo.nd.gov

**City of Fargo
Staff Report**

Title:	Urban Plains by Brandt Fifth Addition	Date:	04/29/2020
Location:	2867 55 th Street South	Staff Contact:	Kylie Bagley
Legal Description:	Lot 1, Block 2, Urban Plains by Brandt Third Addition		
Owner(s)/Applicant:	Urban Plains Land Company, LLC	Engineer:	Houston Engineering, Inc.
Entitlements Requested:	Minor Subdivision (Replat of Lot 1, Block 2, Urban Plains by Brandt Third Addition to the City of Fargo, Cass County, North Dakota) and a Conditional Use Permit for household living in the LC, Limited Commercial, zoning district.		
Status:	Planning Commission Public Hearing: May 5, 2020		

Existing	Proposed
Land Use: Vacant	Land Use: Commercial
Zoning: LC, Limited Commercial with C-O, Conditional Overlay	Zoning: No Change
Uses Allowed: 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.	Uses Allowed: No Change CUP to allow household living
Maximum Lot Coverage Allowed: Maximum 55% building coverage	Maximum Lot Coverage Allowed: Maximum 55% building coverage and a maximum 24 dwelling units per acre

Proposal:

The applicant is seeking City approval of a minor subdivision plat entitled *Urban Plains by Brandt Fifth Addition*, which would replat one existing lots into five new lots. The subject property encompasses approximately 9.58 acres. The applicant is also seeking approval of a conditional use permit to allow household living in the LC, Limited Commercial, zoning district.

According to the applicant, the intent of this application is to continue the Uptown and Main Development that is to the north of the subject property. The applicant is proposing 5 new lots with a 30' private street which will connect to the private street to the north, across 28th Ave S. The applicant is also proposing an apartment building which will have walk up ground floor units along 55th Street South as well as commercial development along Veterans Blvd.

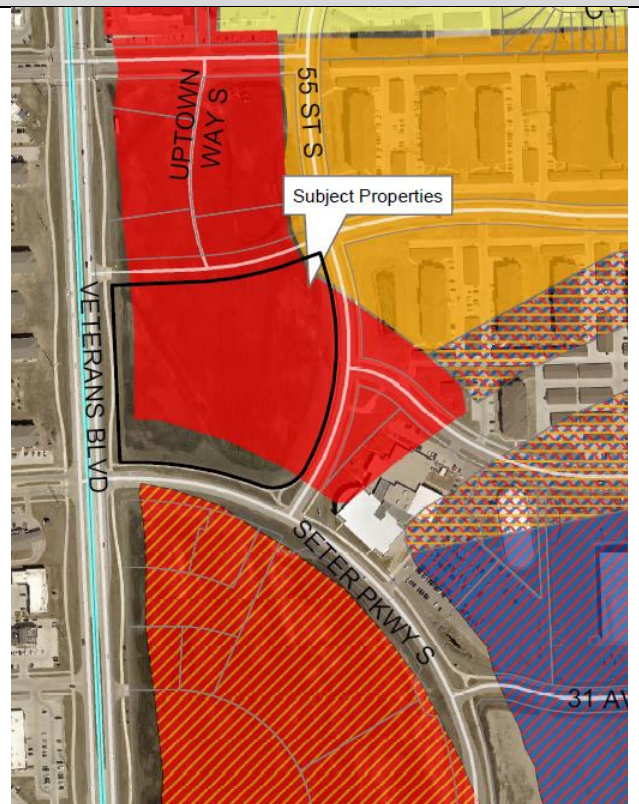
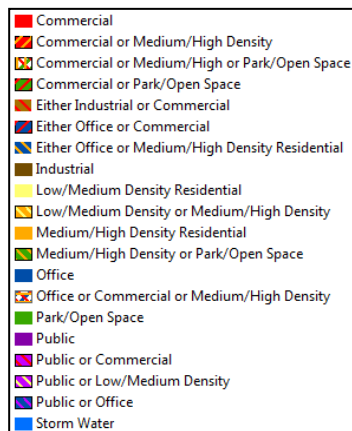
This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.

Surrounding Land Uses and Zoning Districts:

- North: LC, Limited Commercial with mixed-uses (multi-dwelling residential and retail sales & services)
- East: LC, Limited Commercial with mixed-uses (multi-dwelling residential and retail sales & services)
- South: LC, Limited Commercial with vacant land
- West: Across Veterans Boulevard, City of West Fargo with multi-dwelling residential and retail sales & service land uses.

Area Plans:

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



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.

Neighborhood: The subject property is located in the Urban Plains Neighborhood.

Parks: Urban Plains Park (5050 30th Avenue S) is located approximately 0.3 miles east of the subject property and offers playground amenities and picnic shelters.

Pedestrian / Bicycle: There are off-road bike facilities located along Veterans Boulevard and Seter Parkway South. Both facilities are components of the metro area bikeways system.

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.**

This subdivision is intended to adjust the layout of one legal lot by replatting one existing lots into five new 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 no comments regarding this application. 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)**

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 principals. **(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:

1. Does the proposed conditional use comply with all applicable provisions of the LDC and will it conform to the general intent and purpose of this LDC?

The purpose of the LDC is to implement Fargo's Comprehensive Plan in a way that will protect the general health, safety, and welfare of the citizens. Promoting infill development is a key initiative in the Comprehensive Plan. Table 20-0401 of the LDC states that household living is allowed in the LC zoning district with a conditional use permit. The CUP is for household living, and with the zoning district of LC with the CUP, the property could be built as residential, commercial, or a combination. Staff finds this proposal is consistent with the purpose of the LDC, the Go2030 Comprehensive Plan, and other adopted policies of the City.

(Criteria Satisfied)

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

Staff finds that this proposed conditional use permit to allow for residential use to be located within this area will contribute to and promote the welfare of the public.

(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 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 proposed use were sent out to property owners within 300 feet of the subject property. To date, staff has received no inquires of calls, walk-ins and emails, with no noted concern.

(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 finds that the proposed conditional use permit to allow household living should not dominate the immediate neighborhood or prevent any other sites from being used due to the fact that there are multiple multi-dwelling units in the surrounding are, staff finds that the proposed conditional use permit meets this criterion.

(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 is 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)

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 subject property has vehicular access to 55th Street South, 28th Avenue South and Seter Parkway South, which connect to Veterans Blvd. 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 maximum residential density shall be a maximum of 24 units per acre

Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of staff and hereby recommend approval to the City Commission of the proposed 1) **Urban Plains by Brandt Fifth Addition** subdivision plat as presented and 2) to approve a Conditional Use Permit for household living on the basis that it satisfactorily complies with the 2007 Growth Plan, Standards of Article 20-06, the Go2030 Fargo Comprehensive Plan, Section 20-0909.D (1-6) and all other applicable requirements of the LDC, with the following conditions:

- 1) The maximum residential density shall be a maximum of 24 units per acre

Planning Commission Recommendation: May 5, 2020

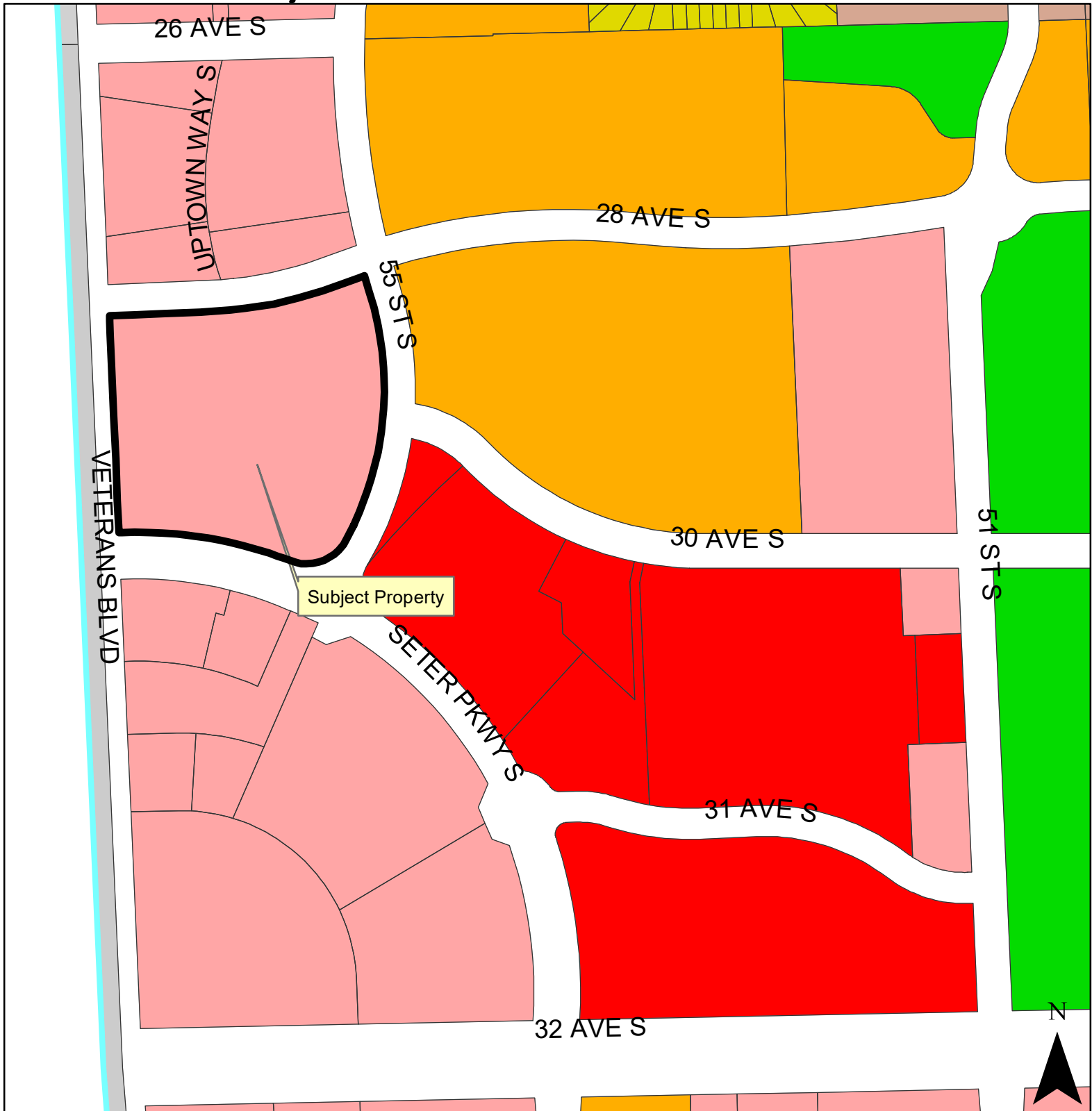
Attachments:

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

Plat (Minor) & Conditional Use Permit

Urban Plains by Brandt Fifth Addition

2867 55th St S



Legend

AG	LC	MHP	SR-2
DMU	LI	NNO	SR-3
GC	MR-1	NO	SR-4
GL	MR-2	P-1	SR-5
GO	MR-3	UMU	City Limits

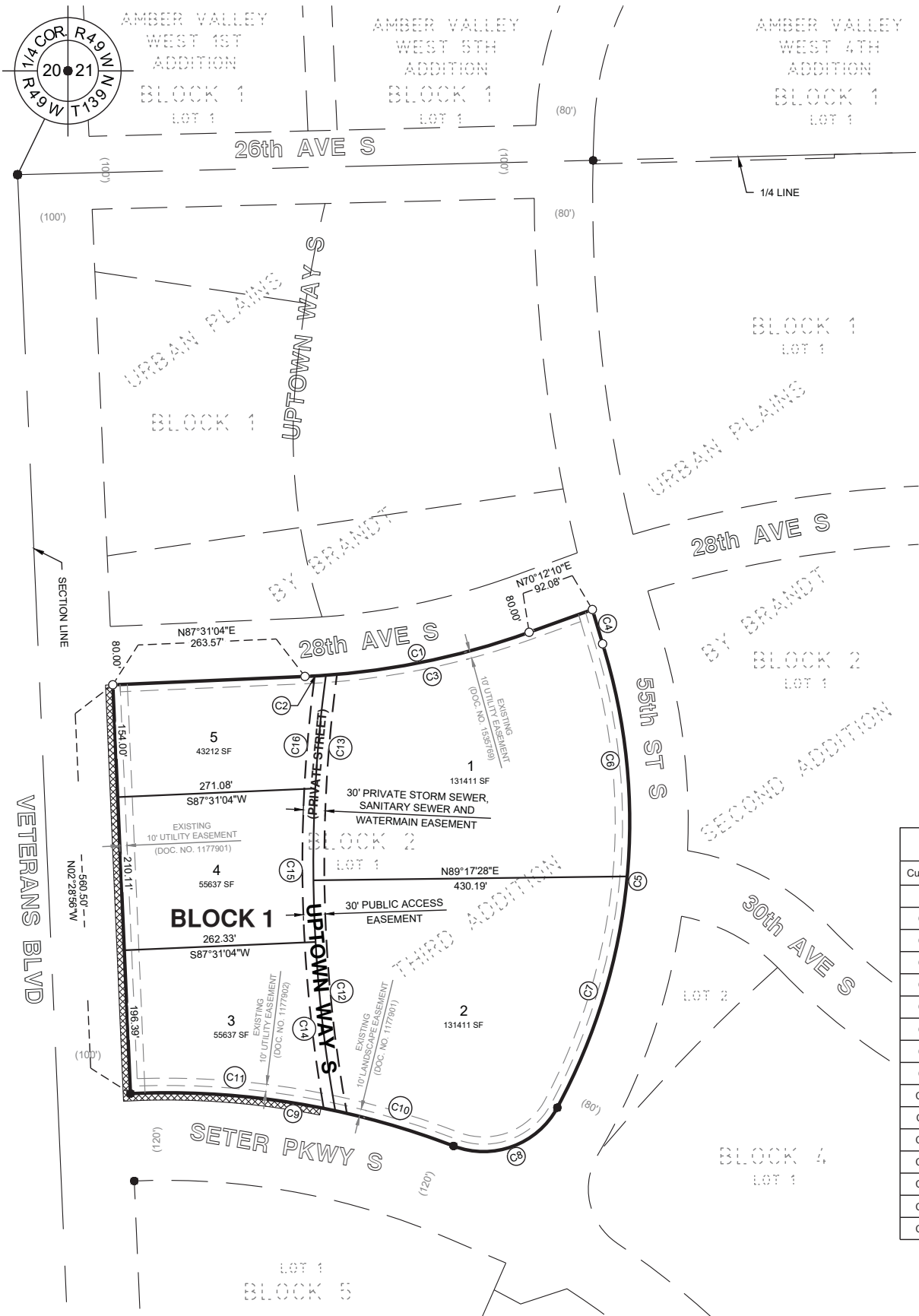
Plat (Minor) & Conditional Use Permit

Urban Plains by Brandt Fifth Addition

2867 55th St S



URBAN PLAINS BY BRANDT FIFTH ADDITION
A MINOR SUBDIVISION
BEING A REPLAT OF LOT 1, BLOCK 2, URBAN PLAINS BY BRANDT THIRD ADDITION,
TO THE CITY OF FARGO,
CASS COUNTY, NORTH DAKOTA



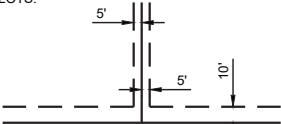
LEGEND

IRON MONUMENT FOUND	●
1/2" I.D. PIPE SET	○
MEASURED BEARING	N00°00'00"E
PLAT BEARING	(N00°00'00"E)
MEASURED DISTANCE	100.00'
PLAT DISTANCE	(100.00')
PLAT BOUNDARY	—————
LOT LINE	—————
UTILITY EASEMENT	- - - - -
EXISTING LOT LINE	—————
EXISTING UTILITY EASEMENT	- - - - -
NEGATIVE ACCESS EASEMENT	XXXXX

BEARINGS SHOWN ARE BASED ON THE CITY OF FARGO HORIZONTAL DATUM

NOTE:

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.



BEING 5 FEET IN WIDTH AND ADJOINING LOT LINES, AND 10 FEET IN WIDTH AND ADJOINING RIGHT-OF-WAY LINES, UNLESS OTHERWISE INDICATED ON THE PLAT.

UTILITY EASEMENTS ARE SHOWN THUS

Curve Table					
Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	314.29	1040.00	17°18'54"	N78°51'37"E	313.10
C2	28.68	1040.00	1°34'48"	N86°43'40"E	28.68
C3	285.61	1040.00	15°44'06"	N78°04'13"E	284.72
C4	49.08	2062.64	1°21'48"	S16°39'20"E	49.08
C5	655.79	820.00	45°49'18"	S05°34'25"W	638.45
C6	322.45	820.00	22°31'50"	S06°04'19"E	320.38
C7	333.34	820.00	23°17'28"	S16°50'20"W	331.05
C8	165.59	115.00	82°30'05"	S69°44'07"W	151.65
C9	451.65	1100.22	23°31'13"	N80°46'27"W	448.48
C10	169.27	1100.22	8°48'54"	N73°25'18"W	169.10
C11	282.38	1100.22	14°42'19"	N85°10'54"W	281.60
C12	317.58	1934.20	9°24'27"	S05°24'45"E	317.22
C13	281.64	1934.20	8°20'34"	S03°27'45"W	281.39
C14	232.94	1934.20	6°54'00"	S06°39'59"E	232.79
C15	210.40	1934.20	6°13'57"	S00°06'00"E	210.30
C16	155.88	1934.20	4°37'03"	S05°19'30"W	155.84

OWNER'S CERTIFICATE:

KNOW ALL PERSONS BY THESE PRESENTS: That Urban Plains Land Company LLC, a North Dakota limited liability company, is the owner and proprietor of Lot 1, Block 2, Urban Plains By Brandt Third Addition, all situated in the City of Fargo, Cass County, North Dakota.

Said tract contains 9.580 acres, more or less.

And that said party has caused the same to be surveyed and platted as URBAN PLAINS BY BRANDT FIFTH ADDITION to the City of Fargo, Cass County, North Dakota, and does hereby dedicate to the public, for public use, the 30' wide access easement shown on the plat. Said party also hereby dedicates, to the owners of Lots 1-5, Block 1, a private 30' wide easement for storm sewer, sanitary sewer and watermain purposes, as shown on the plat.

OWNER:
Urban Plains Land Company, LLC
(Lot 1, Block 2)

Ace A. Brandt, President

State of _____)
County of _____) ss

On this _____ day of _____, 20____, before me personally appeared Ace A. Brandt, President of Urban Plains Land Company, LLC, a North Dakota limited liability company, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same on behalf of said limited liability company.

Notary Public: _____

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT:

I, James A. Schlieman, Professional Land Surveyor under the laws of the State of North Dakota, do hereby certify that this plat is a true and correct representation of the survey of said subdivision; that the monuments for the guidance of future surveys have been located or placed in the ground as shown.

Dated this _____ day of _____, 20____.

James A. Schlieman, Professional Land Surveyor No. 6086

State of North Dakota)
County of Cass) ss

On this _____ day of _____, 20____, before me personally appeared James A. Schlieman, Professional Land Surveyor, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same as his free act and deed.

Notary Public: _____

CITY ENGINEER'S APPROVAL:

Approved by the Fargo City Engineer this _____ day of _____, 20____.

Brenda E. Derrig, City Engineer

State of North Dakota)
County of Cass) ss

On this _____ day of _____, 20____, before me personally appeared Brenda E. Derrig, Fargo City Engineer, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that she executed the same as her free act and deed.

Notary Public: _____

FARGO PLANNING COMMISSION APPROVAL:

Approved by the City of Fargo Planning Commission this _____ day of _____, 20____.

John Gunkelman, Chair
Fargo Planning Commission

State of North Dakota)
County of Cass) ss

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

Notary Public: _____

FARGO CITY COMMISSION APPROVAL:

Approved by the Board of City Commissioners and ordered filed this _____ day of _____, 20____.

Timothy J. Mahoney, Mayor

Attest: _____
Steven Sprague, City Auditor

State of North Dakota)
County of Cass) ss

On this _____ day of _____, 20____, before me personally appeared Timothy J. Mahoney, Mayor, City of Fargo; and Steven Sprague, City Auditor, City of Fargo, 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: _____

Project No. 7489-0072

**City of Fargo
Staff Report**

Title:	Asleson Industrial Park Third Addition	Date:	4/22/2020
Location:	3345, 3357, 3369 39 th Street South and 4013 34 th Avenue South	Staff Contact:	Kylie Bagley
Legal Description:	Lot 1, Block 1, Asleson Industrial Park Third Addition		
Owner(s)/Applicant:	Prairie Commons Partners LLC and Choice Investments LLC	Engineer:	N/A
Entitlements Requested:	Zoning Change (from GC, General Commercial, to LI, Limited Industrial, zoning district)		
Status:	Planning Commission Public Hearing: May 5, 2020		

Existing	Proposed
Land Use: Office and Vacant	Land Use: Office and Warehouse
Zoning: GC, General Commercial	Zoning: LI, Limited Industrial
Uses Allowed: 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.	Uses Allowed: 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.
Maximum Lot Coverage Allowed: 85% building coverage	Maximum Lot Coverage Allowed: 85% building coverage

Proposal:

The applicant is seeking a rezone from GC, General Commercial, to LI, Limited Industrial, at 3345, 3357, 3369 39th Street South and 4013 34th Avenue South. The applicant is proposing to construct an office building with a warehouse for his construction business. The existing buildings located at 3345, 3357 and 3369 39th Street South are permitted by right within the LI zoning district.

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 warehouse and office uses
- East: Across 39th Street South is zoned LI, Limited Industrial with warehouse and office uses
- South: Across 34th Avenue South is zoned GC, General Commercial
- West: MR-2, Multi-Dwelling Residential, with apartment buildings with vacant land and office uses

Area Plans:

The subject property is not within an area plan and there are no future land uses designated.

Schools and Parks:

Schools: The subject property is located within Kennedy Elementary, Discovery Middle and Davies High School

Parks: The subject property is located within a quarter mile of the Pointe West Park which provides playgrounds and a small shelter.

Neighborhood: The subject property is located in the Pointe West Neighborhood.

Pedestrian / Bicycle: To the west of the subject property is a shared use path that runs along 42nd St S, which connects to 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. The requested zoning change is justified by a change in conditions since the previous zoning classification was established. The applicant has a clear picture of the type of development for the property.

(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?

The development will be served with city services (water, sewer, streets, police/fire protection, etc.) as well as other needed utility services as needed. The City Engineer and other applicable review agencies have reviewed this proposal.

(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 that the approval of this zoning change would adversely affect the condition or value of the property in the vicinity. The proposed zone change is in keeping with adopted plans approved via public process. In addition, 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 verbal concerns or written comments regarding the proposed overlay zoning change. 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:

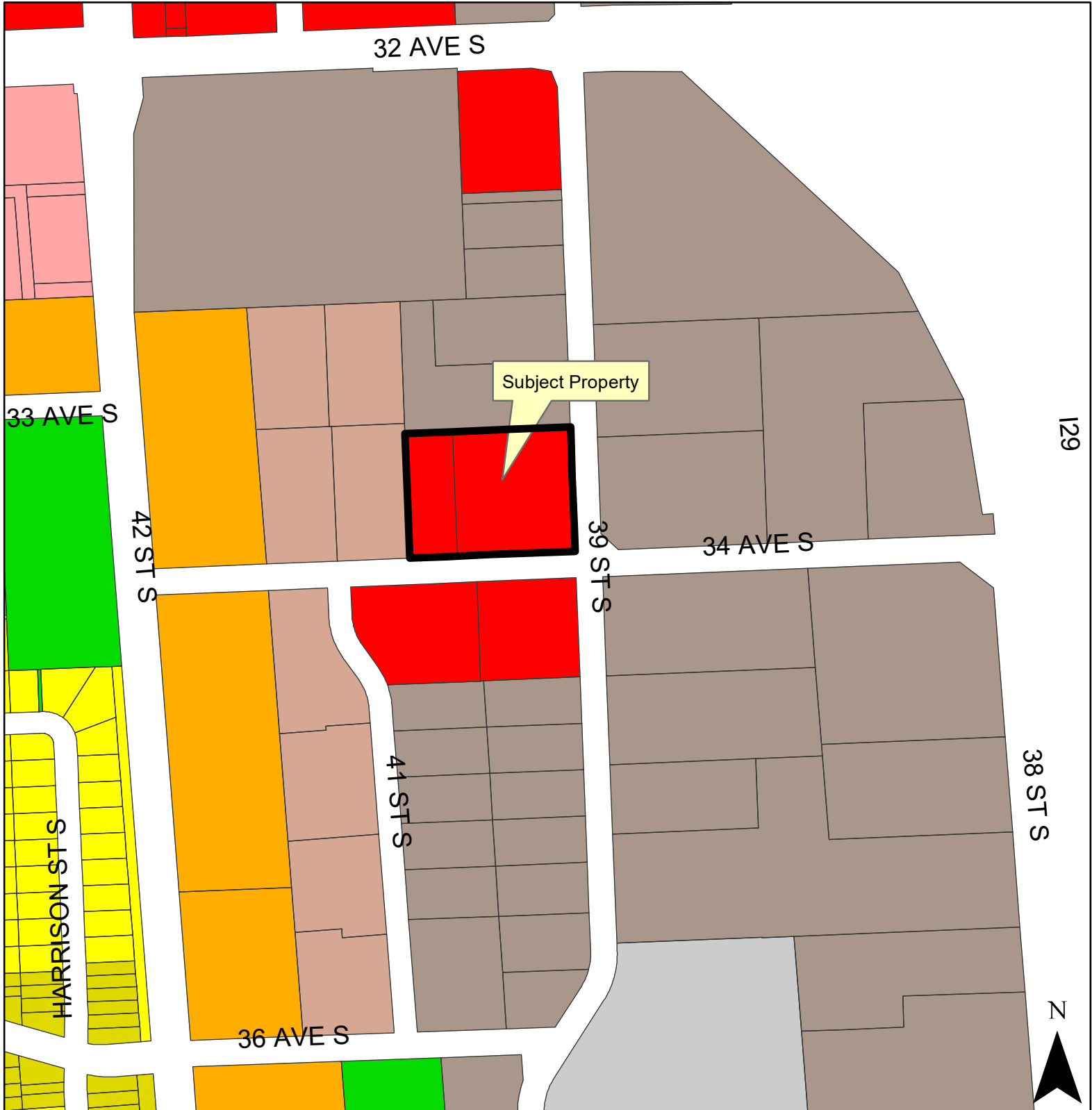
Suggested Motion: "To accept the findings and recommendations of staff and recommend approval to the City Commission of the proposed zoning change from GC, General Commercial to LI, Limited Industrial, on the basis that it satisfactorily complies with the Go2030 Fargo Comprehensive Plan, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC."

Planning Commission Recommendation: May 5, 2020
Attachments:
1. Zoning Map 2. Location Map

Zone Change (GC to LI)

Asleson Industrial Park Third Addition

3345, 3357 & 3369 39th St S
4013 34th Ave S



Legend



300

Feet

Zone Change (GC to LI)

Asleson Industrial Park Third Addition

3345, 3357 & 3369 39th St S
4013 34th Ave S



**City of Fargo
Staff Report**

Title:	Calico Prairie Addition	Date:	4/28/2020
Location:	4462 30 th Avenue South	Staff Contact:	Maggie Squyer
Legal Description:	Lot 3, Block 2, Calico Prairie Addition		
Owner(s)/Applicant:	Housing Authority of the City of Fargo	Engineer:	N/A
Entitlements Requested:	Conditional Use Permit for an alternative access plan to allow a parking reduction in the MR-3, Multi-Dwelling Residential zoning district		
Status:	Planning Commission Public Hearing: May 5, 2020		

Existing	Proposed
Land Use: Vacant	Land Use: Senior Assisted Living Facility
Zoning: MR-3, Multi-Dwelling Residential	Zoning: MR-3, Multi-Dwelling Residential
Uses Allowed: Multi-Dwelling Residential allows detached housing, attached housing, duplexes, multi-dwelling structures, group living, community services, day care facilities of limited size, parks and open areas, religious institutions, safety services, schools, basic utilities and limited telecommunications facilities.	Uses Allowed: No change
Maximum Density: 24 units per acre	Maximum Density: 24 units per acre

Proposal:

The applicant is seeking a Conditional Use Permit (CUP) for an alternative access plan in order to reduce the number of parking stalls required on site. The owner, Housing Authority of the City of Fargo, intends to construct a senior assisted living facility. The facility will be four stories tall and will consist of 84 residential units, central common spaces, and support spaces with various amenities. Based on the requirements of the Land Development Code, 189 parking stalls would typically be required for this type of development. Alternatively, the applicant is proposing that 73 parking stalls will provide adequate on-site parking at 4462 30th Avenue South.

On-site parking at 4462 30th Avenue South:

Use	Ratio	Required	Proposed
Assisted Living	2.25 parking stalls per unit	189 stalls	42 stalls
Administration/Building Services	Accessory to primary use		10 stalls
Visitor Parking	Accessory to primary use		21 stalls
Total Stalls Proposed			73 stalls

The Engineering Department determined that the 73 off-street parking spots would meet the facility's parking needs based on information provided by the applicant, including supporting information from the Parking Generation Manual by the Institute of Transportation Engineers.

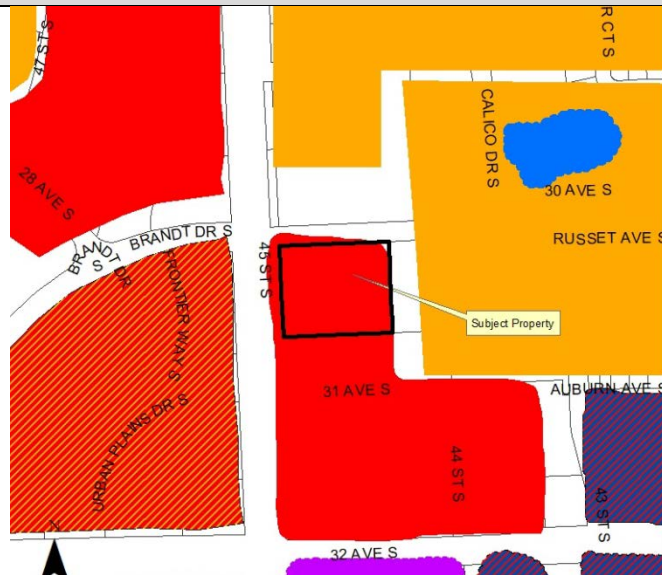
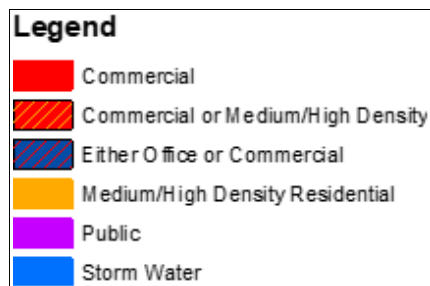
This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.

Surrounding Land Uses and Zoning Districts:

- North: LC, Limited Commercial that is currently vacant,
- East: MR-2, Multi-Dwelling Residential with apartments,
- South: LC, Limited Commercial and MR-3, Multi-Dwelling Residential with a fast-food restaurant and apartments;
- West: LC, Limited Commercial with offices

Area Plans:

The subject property was part of the 2001 Growth Plan and was identified on the Proposed Future Land Use in Southwest Fargo map as commercial land use near high-density residential.



Context:

Neighborhood: Anderson Park Neighborhood

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

Parks: The project site is located within a quarter-mile of Autumn Fields Park (2951 Saffron Drive South) which offers playground equipment and public benches, among other amenities.

Pedestrian / Bicycle: A shared use path runs along the west side of the property on 45th Street South and along the north side of 30th Avenue South as part of the metro area bikeways system.

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?**
The purpose of the LDC is to implement Fargo's Comprehensive Plan in a way that will protect the general health, safety, and welfare of the citizens. Promoting infill development and exploring reductions in minimum parking standards are both key initiatives meant to promote the Plan's guiding principles. Staff

finds this proposal is consistent with the purpose of the LDC, the GO2030 Comprehensive Plan, and other adopted policies of the City.

(Criteria Satisfied)

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

Staff suggests that this proposed CUP for an alternative access plan for reduced parking will promote the welfare of the public by supporting the development of an affordable senior assisted living facility. Staff believes that the applicant is providing adequate and convenient on-site parking for residents, employees, and visitors.

(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 data to suggest 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 proposed use were sent out to property owners within 300 feet of the subject property. To date, staff has received one inquiry about the project and no letters of opposition.

(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.

The proposed alternative access plan for parking reduction will not dominate the immediate neighborhood or prevent any other sites from being used in the manner allowed by zoning district regulations. The proposed conditions of the CUP are specifically meant ensure off-street parking stalls will be available to citizens frequenting the property and to trigger a review of the CUP if the proposed use is intensified.

(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 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 of the applicant to utilize the property as proposed. Based on this information, staff finds that the 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 Engineering Department determined that the 73 off-street parking spots would meet the facility's parking needs based on information provided by the applicant, including supporting information from the Parking Generation Manual by the Institute of Transportation Engineers.

(Criteria Satisfied)

Recommended Conditions:

- A minimum of 73 parking stalls to be provided on site
- Bicycle parking facilities, such as bike racks or bike lockers, shall be provided on-site
- The Conditional Use Permit will cease if the land use changes from senior assisted living facility
- Expansion of any proposed or existing use will trigger a reevaluation of off-street parking requirements on site

Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of staff and hereby move to approve the Conditional Use Permit to allow an alternative access plan as the proposal complies with Section 20-0909.D (1-6) and all other requirements of the LDC, with the following conditions:

- A minimum of 73 parking stalls to be provided on site
- Bicycle parking facilities, such as bike racks or bike lockers, shall be provided on-site
- The Conditional Use Permit will cease if the land use changes from senior assisted living facility
- Expansion of any proposed or existing use will trigger a reevaluation of off-street parking requirements on site

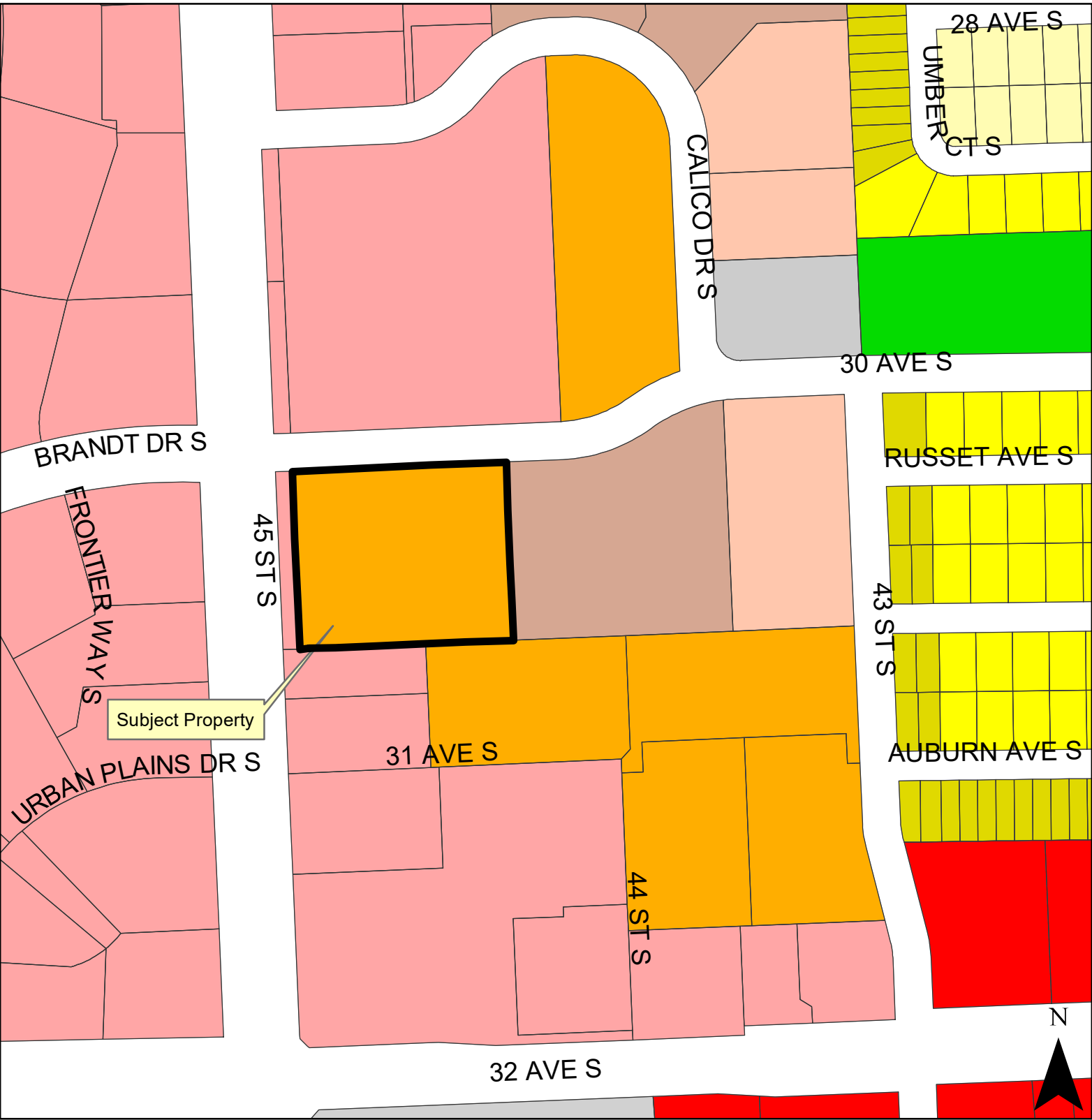
Planning Commission Recommendation: May 5, 2020

Attachments:

1. Zoning Map
2. Location Map

Conditional Use Permit

Calico Prairie Addition



Conditional Use Permit

Calico Prairie Addition

4462 30th Ave S



**City of Fargo
Staff Report**

Title:	Corwin 2 nd Addition	Date:	4/28/2020
Location:	222 40th Street S & 301 38th Street S	Staff Contact:	Aaron Nelson
Legal Description:	Lots 1 and 2, Block 1, Corwin Addition		
Owner(s)/Applicant:	Tim Corwin Family, LTD Partnership & Corwin Holdings, In./Brian Pattengale	Engineer:	Houston Engineering
Entitlements Requested:	Minor Subdivision (Replat of Lots 1 and 2, Block 1, Corwin Addition to the City of Fargo, Cass County, North Dakota)		
Status:	Planning Commission Public Hearing: May 5, 2020		

Existing	Proposed
Land Use: Retail Sales & Services and Vehicle Repair	Land Use: No change
Zoning: LI, Limited Industrial	Zoning: No change
Uses Allowed: 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.	Uses Allowed: No change
Maximum Density: Maximum 85% building coverage	Maximum Density: No change

Proposal:

The applicant requests one entitlement:

1. A minor subdivision, entitled **Corwin 2nd Addition** which is a replat of Lots 1 and 2, Block 1, Corwin Addition to the City of Fargo, Cass County, North Dakota.

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 & GC with Retail Sales & Services and Vehicle Repair
- East: LI & GC with Retail Sales & Services, Vehicle Repair, and Interstate 29
- South: LI & GC with Retail Sales & Services and Vehicle Repair
- West: LI & GC with Retail Sales & Services and Vehicle Repair

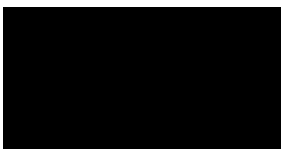
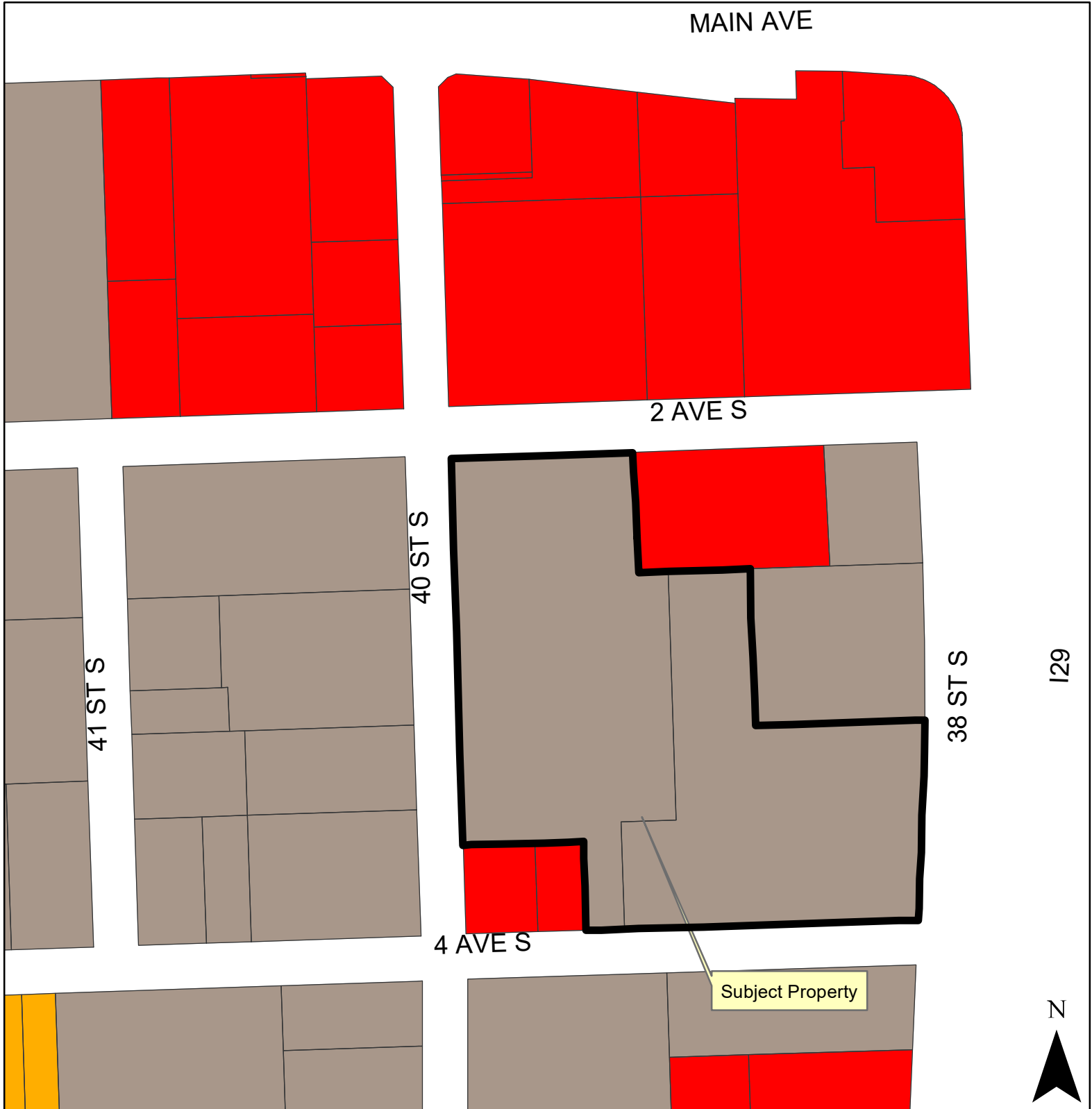
Area Plans:
The subject property is not included within any area plans or neighborhood plans.
Schools and Parks:
<p>Schools: The subject property is located within the West Fargo School District and is served by L. E. Berger Elementary, Cheney Middle and West Fargo High schools.</p> <p>Neighborhood: The subject property is located within the Village West neighborhood.</p> <p>Parks: The subject property is located approximately ¾ mile northeast of the Village West dog Park (4415 9 Avenue Cir S) and ¾ mile west of the Metro Rec Center (3110 Main Ave).</p> <p>Pedestrian / Bicycle: There is standard sidewalk within the adjacent right-of-way and 40th Street S is a bike route, having a street shoulder of 4+ feet in width.</p>
Staff Analysis:
<p>The subdivision will replat the two existing lots into a different configuration, so that Lot 2 (addressed at 301 38th Street S), will absorb a portion of Lot 1 (addressed at 222 40th Street S), which currently contains a small accessory car wash building.</p> <p>The street access and utility connections that are in place on the current lots will not change.</p> <p>SUBDIVISION</p> <p>The LDC stipulates that the following criteria are met before a minor plat can be approved:</p> <ol style="list-style-type: none"> 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 subject property is not located within an area plan. All of the properties within this plat are currently within the LI, Limited Industrial zoning district. No zone change is proposed. 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 from the public regarding this property, with no objection. The project has been reviewed by the city's Planning, Engineering, Public Works, Inspections, and Fire Departments. (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)
<p>Suggested Motion: "To accept the findings and recommendations of staff and move to recommend approval to the City Commission of the proposed Corwin 2nd Addition subdivision plat, as presented, as the proposal complies with the Go2030 Plan, Standards of Article 20-06, and all other applicable requirements of the LDC."</p>

Planning Commission Recommendation: May 5, 2020
Attachments:
<ol style="list-style-type: none">1. Zoning Map2. Location Map3. Preliminary Plat

Plat (Minor)

Corwin Second Addition

301 38th St S
222 40th St S



Legend

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

200

Feet

Fargo Planning Commission

April 7, 2020

Plat (Minor)

Corwin Second Addition

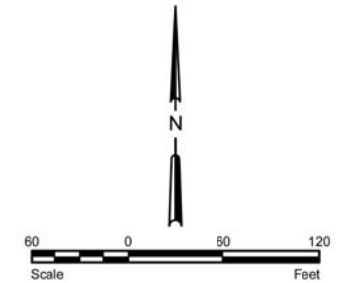
301 38th St S
222 40th St S



CORWIN 2ND ADDITION

A MINOR SUBDIVISION

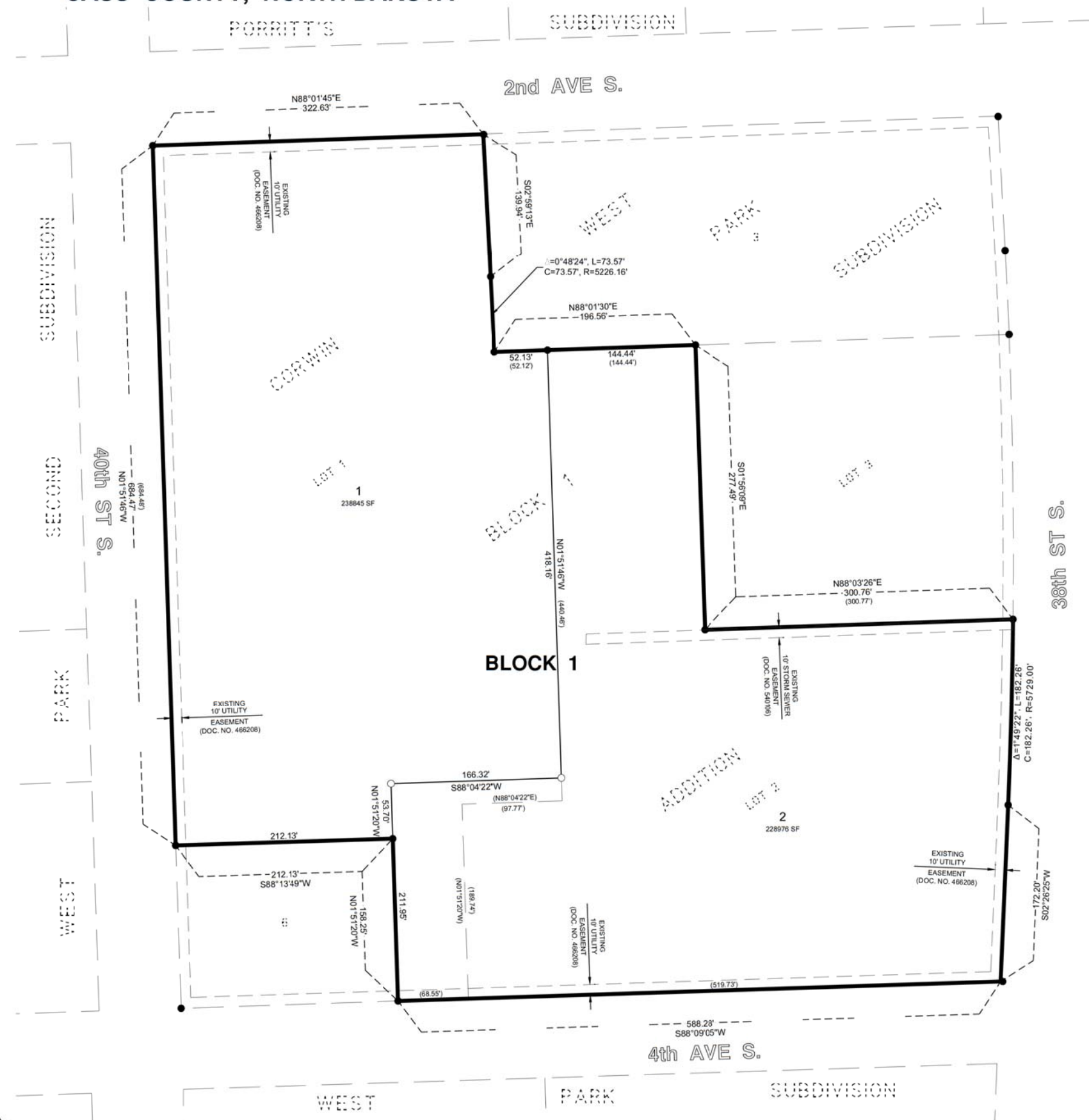
BEING A REPLAT OF LOTS 1 AND 2,
BLOCK 1, CORWIN ADDITION,
TO THE CITY OF FARGO,
CASS COUNTY, NORTH DAKOTA



LEGEND

IRON MONUMENT FOUND	●
1/2" I.D. PIPE SET	○
MEASURED BEARING	N00°00'00"E
PLAT BEARING	(N00°00'00"E)
MEASURED DISTANCE	100.00'
PLAT DISTANCE	(100.00')
PLAT BOUNDARY	—————
LOT LINE	—————
UTILITY EASEMENT	- - - - -
EXISTING LOT LINE	—————
EXISTING UTILITY EASEMENT	- - - - -

BEARINGS SHOWN ARE BASED ON THE
CITY OF FARGO HORIZONTAL DATUM



CORWIN 2ND ADDITION
A MINOR SUBDIVISION
BEING A REPLAT OF LOTS 1 AND 2,
BLOCK 1, CORWIN ADDITION,
TO THE CITY OF FARGO,
CASS COUNTY, NORTH DAKOTA

OWNER'S CERTIFICATE AND DEDICATION:

Know all persons by these presents: that Corwin Holdings, Inc. is the owner and proprietor of Lot 1, and Tim Corwin Family Limited Partnership is the owner and proprietor of Lot 2; all in Block 1, Corwin Addition, in the City of Fargo, Cass County, North Dakota, being more particularly described as follows:

Lot 1 and Lot 2, Block 1, Corwin Addition to the City of Fargo, Cass County, North Dakota.

Said tract of land contains 10.739 ACRES, more or less.

And that said parties have caused the same to be surveyed and re-platted as CORWIN 2ND ADDITION to the City of Fargo, Cass County, North Dakota.

OWNERS:
Corwin Holdings, Inc.
(Owner of proposed Lot 1, Block 1)

Timothy F. Corwin, President

Tim Corwin Family Limited Partnership.
(Owner of proposed Lot 2, Block 1)

Timothy F. Corwin, General Partner

SURVEYOR'S CERTIFICATE:

I, Charles L. Rebsch, Professional Land Surveyor under the laws of the State of North Dakota, do hereby certify that this plat is a true and correct representation of the survey of said subdivision; that the monuments for the guidance of future surveys have been located or placed in the ground as shown.

Dated this day of , 20.

Charles L. Rebsch,
Professional Land Surveyor No. 6610

CITY ENGINEER'S APPROVAL:

Approved by the Fargo City Engineer this day of ,
20.

Brenda E. Derrig, City Engineer

FARGO PLANNING COMMISSION APPROVAL:

Approved by the City of Fargo Planning Commission this day of , 20.

John Gunkelman, Chair
Fargo Planning Commission

FARGO CITY COMMISSION APPROVAL:

Approved by the Board of City Commissioners and ordered filed this
day of , 20.

Timothy J. Mahoney, Mayor

Attest:
Steven Sprague, City Auditor

State of North Dakota)
) ss
County of Cass)

On this day of , 20, before me personally appeared Timothy J. Mahoney, Mayor, City of Fargo; and Steven Sprague, City Auditor, City of Fargo, 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:

State of North Dakota)
) ss
County of Cass)

On this day of , 20, before me personally appeared Timothy F. Corwin, President of Corwin Holdings, Inc., 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 as his free act and deed.

Notary Public:

State of North Dakota)
) ss
County of Cass)

On this day of , 20, before me personally appeared Timothy F. Corwin, General Partner of Tim Corwin Family Limited Partnership, 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 as his free act and deed.

Notary Public:

State of North Dakota)
) ss
County of Cass)

On this day of , 20, before me personally appeared Charles L. Rebsch, Professional Land Surveyor, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same as his free act and deed.

Notary Public:

State of North Dakota)
) ss
County of Cass)

On this day of , 20, before me personally appeared Brenda E. Derrig, Fargo City Engineer, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that she executed the same as her free act and deed.

Notary Public:

State of North Dakota)
) ss
County of Cass)

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

Notary Public:



**City of Fargo
Staff Report**

Title:	Text Amendment	Date:	4-28-2020
Location:	N/A	Staff Contact:	Aaron Nelson
Owner(s)/Applicant:	City of Fargo/Zoning Administrator/Peter McDonald	Engineer:	N/A
Entitlements Requested:	Text Amendment (amend Section 20-0402(T)(3) and repeal Section 20-0403(C)(5)(e) of the Fargo Municipal Code (Land Development Code) relating to the prohibition of firearm and ammunition sales as a non-farm commercial use or as a home occupation)		
Status:	Planning Commission Public Hearing: May 5, 2020		

Proposed Text Amendment

The proposed text amendment would amend Section 20-0402(T)(3) and repeal Section 20-0403(C)(5)(e) of the Fargo Municipal Code (Land Development Code) relating to the prohibition of firearm and ammunition sales as a non-farm commercial use or as a home occupation. Specifically, the following edits are proposed to Section 20-0402.T of the LDC:

- 3. Prohibited Uses.** Dispatch Centers, ~~Firearms and Ammunition Sales~~ and Adult Entertainment Centers Uses as defined in Section 20-0403.C.5 are prohibited uses.

And the following edits are proposed to Section 20-0403.C of the LDC:

5. Prohibited Uses

a. Vehicle and Large Equipment Repair

Any type of repair or assembly of vehicles or equipment with internal combustion engines (such as autos, motorcycles, scooters, snowmobiles, outboard marine engines, lawn mowers, chain saws, and other small engines) or of large appliances (such as washing machines, dryers, and refrigerators) or any other work related to automobiles and their parts is prohibited.

b. Dispatch Centers

Dispatch centers, where employees come to the site to be dispatched to other locations, are not allowed as home occupations.

c. Mortuaries

Mortuaries are not allowed as home occupations.

d. Animal Care, Grooming, or Boarding Facilities

Animal care or boarding facilities are not allowed as home occupations. This includes animal hospitals, kennels, stables and all other types of animal boarding and care facilities. Dog grooming services are also included as prohibited animal care or boarding facilities; however, to the extent such services would otherwise qualify as a Minor Home Occupation, dog grooming services may be allowed upon application as provided in paragraph 2, regarding Minor Home Occupations, above. In no event may dog grooming be allowed as a Major Home Occupation.

~~e. Firearms and Ammunition Sales~~

~~The sale of firearms and/or ammunition, and the production of ammunition for sale or resale are prohibited as home occupations.~~

f. Adult Entertainment Center Uses

Entertainment or sale of goods defined as adult bookstore, adult cinema, adult entertainment facility, or adult entertainment center as defined in Sec. 20-1202 are not allowed as a home occupation.

Background

In order for an individual to legally sell firearms or ammunition, they must first obtain a Federal Firearms License (FFL) from the US Bureau of Alcohol, Tobacco, Firearms, & Explosives (ATF). The ATF administers the FFL application and approval process, and provides oversight for compliance with federal firearms regulations, including the Gun Control Act of 1968. The application review process involves background checks and interviews, among other things. While local jurisdictions do not approve or deny FFL applications, the ATF can deny an FFL application for failure to comply with state or local laws, including zoning laws.

On multiple occasions in past years, the City of Fargo has received requests from individuals seeking documentation of zoning compliance as part of the FFL application process. Based on the Fargo Land Development Code's prohibition of firearms and ammunition sales as a home occupation, staff has denied such requests for confirmation of zoning approval when such requests are for a private residence.

On one such occasion in 2016, an FFL applicant appealed staff's decision not to provide confirmation of zoning compliance for a firearm business as a home occupation. The appellant claimed that state law prohibits the City's ability to regulate firearm sales as a home occupation, citing North Dakota Century Code §62.1-01-03 (this section of the North Dakota Century Code is discussed further within the Staff Analysis section of this report, below).

This appeal of administrative decision was heard by the Fargo Board of Adjustment on May 24, 2016. For this appeal, the City Attorney provided a legal opinion regarding the appellant's claim. In summary, the City of Fargo is exercising its right to regulate land use through zoning controls, which includes regulation of where various uses (including firearm sales) are allowed to take place, which is different than an ordinance directly regulating the sale of firearms and ammunition more restrictively than state law. A copy of this legal opinion is attached for reference. The Board of Adjustment ultimately denied the appeal, affirming staff's decision.

More recently, the question as to the validity of the City's prohibition of firearm and ammunition sales as a home occupation in relation to state law was raised by Commissioner Gehrig at the January 27, 2020 City Commission meeting. Some of the Commissioners noted having received calls and inquiries regarding this zoning provision. After some discussion, the Commission voted 3-2 to direct the Planning Department and City staff to review the history of this ordinance and to consider an LDC text amendment to remove this prohibition on firearm and ammunition sales from the LDC.

Around this same time, the City of Fargo also received an LDC text amendment application from Peter McDonald to remove the prohibition on firearm and ammunitions sales from the LDC.

History of the Existing Ordinances:

The current Land Development Code was rewritten and adopted by the City in 1998. Within the LDC, home occupation are considered to be an accessory use that is subordinate to the principle use of household living. While there is no list of specific allowable home occupations, the LDC contains performance standards which outline specific limitations and parameters that home occupations must abide by. For example, limitations on hours of operation, customers, employees, exterior appearance of the home, etc. Additionally, the 1998 Land Development code expressly prohibited four different uses from being operated as a home occupation:

- 1) Vehicle and large equipment repair;
- 2) Dispatch centers;
- 3) Mortuaries; and
- 4) Animal care or boarding facilities.

Any other uses could be allowed as a home occupation as long as the use complied with all of the home occupation standards of the LDC and any other applicable regulations.

In the years following the adoption of the LDC, there were many text amendments made as the new code was implemented and problem areas were ironed out. One such problem area was related to the large number of

applications for home occupations that the City was receiving and processing via Conditional Use Permit (CUP). At the time, a CUP was required if a home occupation were to have any customers coming to the home. Consequently, in 2000-2001, there was an effort to modify the home occupation regulations of the LDC to allow more types of home occupations by right, without requiring a CUP and the associated public hearing process. This effort culminated primarily in the adoption of Ordinance No. 4180. Specifically, this ordinance allowed home occupations a limited number of customer visits, by right, and also added two new uses to the list of prohibited home occupations:

- 1) Firearms and Ammunition Sales; and
- 2) Adult Entertainment Center Uses.

A copy of Ordinance No. 4180 is attached to this staff report, along with the cover memo that accompanied the amendment application at the time. Meeting minutes from the first reading of the ordinance at the July 9, 2001 City Commission meeting and the June 13, 2001 Planning Commission meetings, where this text amendment was discussed, do not specifically reference firearms and ammunition sales.

A few years later, in 2007, there was a push to review policies and regulation regarding development within the City's extraterritorial area in order to allow additional flexibility and oversight for limited development within the City's growth area. This effort resulted in the adoption of Ordinance No. 4613, which added the "non-farm commercial" use category to the LDC. In summary, that ordinance provided an option for commercial use within the AG (Agricultural) zoning district via the Conditional Use Permit process. Along with establishing the non-farm commercial use category, the ordinance also included a list of prohibited uses, including:

- 1) dispatch centers;
- 2) firearms and ammunition sales; and
- 3) adult entertainment centers.

The meeting minutes of the June 13, 2007 Planning Commission meeting and the July 2, 2007 City Commission meeting contain no reference to any discussion relating to the prohibition of firearms and ammunition sales. A copy of Ordinance No. 4613 is attached to this staff report, along with the staff report that accompanied the amendment application for the July 2, 2007 City Commission meeting.

Staff Analysis:

In reviewing the proposed LDC text amendment, staff has reached out to the Bureau of Alcohol, Tobacco, Firearms, & Explosives (ATF) regarding federal firearm and ammunition sales regulations. According to the ATF:

- The Gun Control Act of 1968 is administered by the ATF, including regulation of federal firearm licenses (FFL) for firearm and ammunition sales.
- Under federal law, any person who engages in the business of dealing in firearms must be licensed.
- In some limited cases, an FFL is not required for an individual to sell a firearm. For example, an individual who occasionally sells a firearm from their personal collection. (Similar to how individuals might occasionally sell a personal used car, but are not considered to be used car dealers.)
- FFL is required even if only dealing in firearms over the internet or at temporary locations such as gun shows.
- FFL applicants are required to supply photos and fingerprints, undergo an on-site inspection of the business premises, interview, complete an acknowledgement of federal firearm regulations with the ATF, and undergo a background check through the Federal Bureau of Investigation's (FBI) National Instant Criminal Background Check System (NICS).
- FFLs can be denied by the ATF for non-compliance with state or local laws. (Although confirming zoning compliance with the local zoning authority may be a relatively newer practice.)
- FFLs must be renewed with the ATF every three years.
- There are approximately seven home based FFL's currently in Fargo—one of which dates back to 1976.

In speaking with a representative of the ATF, when asked, the only two considerations they suggested for home-based sales versus retail-based sales relate to 1) gun storage and security and 2) manufacturing of ammunition. It was noted that gun theft from home invasion is one of the ways in which firearms are illegally obtained. Some states have regulations for gun storage and security associated with retail stores, but most often those same

regulations don't apply to non-retail sales. The ATF does require secure gun storage or safety devices for all FFL dealers, which can include something like a trigger lock or a gun safe. Regarding ammunition manufacturing, it was noted that due to the presence of explosive material, there should be some consideration regarding Fire Code provisions.

The Fargo Police Chief noted that the Police Department has had zero issues with FFL dealers in the past, and that the Police Department has no concerns if the City were to approve this text amendment removing the prohibition of firearm and ammunition sales for the LDC. It was noted that most of the FFL dealer's business is related to the paperwork involved in transfer of ownership and that these individuals are extensively backgrounded by the federal government.

During the initial review of the proposed LDC text amendment, the Building Inspections and Fire departments both raised concerns regarding the potential for storage of large quantities of explosive materials associated with ammunition manufacturing. It was discussed that these safety concerns exist regardless of whether or not the ammunition manufacturing is taking place for purpose of sales to the public or for personal use. The manufacturing or reloading of ammunition for personal use would not be considered a home occupation and would not require an FFL from the ATF. The Fire Code currently contains provisions for the handling and storage of explosive materials, including limitations on the quantities that may be within the property. One concern raised is that existing Fire Code regulations such as these are much easier to inspect and enforce in a retail setting as opposed to a home-business setting, where there is a higher expectation of privacy. The Fire Department does not conduct routine inspections of home occupation business, except where required for certain types of licensing. However, those conducting business from their home need to be aware that these Fire Codes still apply.

In addition to City staff, the ATF plans on having a representative attend the May 5 Planning Commission meeting. Additionally, the ATF has provided a number of resources for additional information, one of which is attached for reference.

The Second Amendment, State Law, the LDC, & Restrictive Covenants

The Second Amendment to the United States Constitution reads:

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

It should be noted that zoning regulations affecting firearm and ammunition sales do not regulate individual rights to own firearms and ammunition. US Courts have drawn a distinction between regulating the use of property for sales versus Second Amendment rights to keep and bear arms. Specifically, the US Court of Appeals for the Ninth Circuit, in *Teixeira v. County of Alameda*, held that zoning requirements of Alameda County, CA regarding suitable locations for gun shops did not infringe on Second Amendment rights of their potential customers, and that there is no freestanding right conferred by the Constitution on commercial proprietors to sell firearms.

As has been noted by many parties in recent years, North Dakota Century Code §62.1-01-03 places limitations on the authority of political subdivisions, such as the City of Fargo, to enact any ordinance relating to the sale of firearms and ammunition, stating:

"62.1-01-03. Limitation on authority of political subdivision regarding firearms.

A political subdivision, including home rule cities or counties, may not enact any ordinance relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition which is more restrictive than state law. All such existing ordinances are void."

The question as to this statute's implications on the LDC's regulation on the location of firearm and ammunition sales was evaluated by staff, the City Attorney, and the Board of Adjustment in 2016, as detailed in the previous section, above.

The Land Development Code currently regulates all home occupations, as described within Section 20-0403.C. This section contains performance requirements for all home occupations, including limitations on number of customers, exterior appearance, outdoor activities, signage, deliveries, vehicles, and operational impacts to adjacent properties. It should be noted that this section includes the following language: "No hazardous substances may be used or stored in conjunction with a home occupation." While there is no definition of "hazardous substance" within the LDC, this could be interpreted to include gunpowder and similar substances involved in the manufacturing of ammunition. In which case, manufacturing of ammunition would still be prohibited as a home occupation even if the proposed text amendment were to be approved. As such, it is advisable to clarify this point in some way if there is to be an amendment to the LDC.

The LDC contains two classifications of home occupations: *minor* home occupations and *major* home occupations. The primary difference between the two is that major home occupations require approval of the Fargo Planning Commission via Conditional Use Permit in order to exist, whereas minor home occupations are permitted by right, provided they comply with all of the performance standards outlined within the LDC. Major home occupations are allowed some additional latitude in terms of a non-resident employee and additional number of customer visits per day.

If the proposed text amendment were to be approved, the sale of firearms and ammunition from a residence would be considered a home occupation and would still need to meet all of the performance standards outlined within the LDC, just like any other home-based business would. Additionally, firearm and ammunition sales would be eligible as a conditional use within the AG (Agricultural) zoning district, as a type of non-farm commercial use. It should be noted that other types of retail sales are not prohibited as a home occupation or non-farm commercial use, and that the LDC does not regulate the number of firearms or the amount of ammunition that individuals or households privately own or store within their home.

Lastly, it should be mentioned that private agreements, such as development covenants, conditions, or restrictions, are a form of property rights that are often used to control allowable land uses, among other things. As such, these types of private agreements are another avenue by which the sale of firearms and ammunition might be regulated, independent from municipal ordinance.

Discussion on Staff Recommendations

Staff has prepared this staff report based on direction from the City Commission at their regular meeting of January 27, 2020. The criteria and recommendation below are formatted in such a way so that the Planning Commission and City Commission are able to take action to approve this amendment to the LDC if so desired.

However, it is recognized that there are multiple positions and options available regarding this topic. As such, staff has identified a few such alternative options here as well:

- Amend the LDC to remove the prohibition of firearm and ammunition sales as outlined within this staff report
- Amend the LDC to remove specific references to firearm and ammunition sales, and to add language relating to specific safety concerns, such as explosive materials.
- Leave the LDC as-is and continue to use zoning to regulate the land use of firearm and ammunition sales.

Regardless of which direction the Planning Commission or City Commission would like to go, staff is available to provide any additional research, resources, or alternative LDC language for additional consideration.

Approval Criteria

In accordance with §20-0904.E Review Criteria of the Land Development Code, proposed text amendments that satisfy all of the following criteria may be approved.

1. The amendment must be consistent with the purpose of this Land Development Code;

Section 20-0104 of the LDC stipulates that the purpose and intent of the Land Development Code 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 ability to establish zoning regulations to protect health, safety, and general welfare is granted to the City by the State of North Dakota. The proposed amendment is consistent with the intent and purpose of the LDC because it seeks to align the LDC with State statutes regarding the sale of firearms and ammunition. **(Criteria Satisfied)**

2. The amendment must not adversely affect the public health, safety, or general welfare;

Staff finds that the amendment does not adversely affect the public health, safety, or general welfare. The proposed amendment is intended to align the LDC with State statutes regarding the sale of firearms and ammunition. Staff has no evidence to suggest the proposed amendment would adversely affect the public health, safety, or general welfare. **(Criteria Satisfied)**

3. The amendment is necessary because of changed or changing social values, new planning concepts or other social or economic conditions in the areas affected.

Staff finds that the proposed amendment is necessary because of social values and conditions relating to State law. As described above, the proposed amendment seeks to align the LDC with State statutes regarding the sale of firearms and ammunition. **(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 text amendment to Section 20-0402(T)(3) and Section 20-0403(C)(5)(e) of the Fargo Municipal Code (Land Development Code) relating to the prohibition of firearm and ammunition sales as a non-farm commercial use or as a home occupation, as the proposal meets the approval criteria of §20-0904.E(1-3) of the LDC."

Planning Commission Recommendation: May 5, 2020

Attachments:

1. Section 20-0402.T & 20-043.C of the Land Development Code with proposed amendments
2. Item 30 from the Jan 27, 2020 City Commission meeting materials relating to discussion on the current restrictions on firearm and ammunition sales within the LDC
3. City Attorney's legal opinion from 2016 Appeal of Administrative Decision relating to firearm sales as a home occupation
4. Ordinance No. 4180 & Staff Cover Memo from 2001 relating to Home Occupations
5. Ordinance No. 4613 & Staff Report from 2007 relating to Non-farm Commercial Uses
6. ATF Publication – Do I need a license to buy and sell firearms?

§20-0402 - Use Standards

T. Non-farm Commercial Uses

1. A Non-farm Commercial Use shall not be allowed unless it has been reviewed and approved in accordance with the Conditional Use Review procedures of Sec. 20-0909. In acting upon Conditional Use Permit requests for such use, the Planning Commission shall consider the following factors:
 - a. The factors identified in Section 20-0909 (Conditional Use Permits).
 - b. Whether adequate facilities and services including, but not limited to, sewage and waste disposal, domestic water, building construction and inspection, flood protection, gas, electricity, police and fire protection, and roads, as may be applicable are adequate under the circumstances. As part of the application for the Conditional Use Permit, the Zoning Administrator may require the applicant to obtain written comment from such facility and service providers as may be applicable.
2. The City Planner shall provide written notice of the Planning Commission public hearing in accordance with Section 20-0901-F except that the written notice shall be mailed to property owners within one (1) mile of the subject property. Notice of the Planning Commission's public hearing shall be published in accordance with Section 20-0901-F.
3. **Prohibited Uses.** Dispatch Centers, ~~Firearms and Ammunition Sales~~ and Adult Entertainment Centers Uses as defined in Section 20-0403.C.5 are prohibited uses.
4. Unless otherwise expressly stated, Conditional Use Permits for Non-farm Commercial uses granted pursuant to Section 20-0909 shall automatically terminate upon sale or transfer of the property.

§20-0403 – Accessory Uses

C. Home Occupations

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

1. **Types of Home Occupations**
There are two types of home occupations - Major Home Occupations and Minor Home Occupations. Both types are considered an accessory use to an allowed household living use. Unless otherwise expressly stated, the regulations of this Land Development Code apply to both types of home occupations.
2. **Minor Home Occupations - Defined**
A Minor Home Occupation is one in which residents use up to 25 percent of the floor area of their home as a place of work, but in which no employees come to the site. Minor Home Occupations allow up to four customers per day, with a maximum of 12 customers per week, only between the hours of 7:00 a.m. and 9:00 p.m. No more than one customer is permitted on the site at any given time. Examples include, but are not limited to, artists, crafts people, writers, professional consultants personal care and grooming services, and employees of off-site businesses who work from their home. In addition, tutors, such as

piano or other music teachers, who provide lessons to no more than 60 students per week and do not have non-resident employees coming to the site, shall be deemed minor home occupations. In addition, dog grooming services that would qualify as a Minor Home Occupation as a result of percentage of floor area of the home, customer activity and hours of operation may be allowed after it has been reviewed and approved in accordance with Conditional Use Review procedures of Sec. 20-0909. Unless otherwise expressly stated, any Conditional Use Permit for such dog grooming service granted pursuant to Section 20-0909 shall automatically terminate upon sale or transfer of the property. For purposes of calculating floor area of a minor or major home occupation in which the home occupation occupies a garage that is attached or detached from the primary home structure, the sum of the home and garage square footage shall be included in the total square footage from which the 25 percent maximum floor area is computed.

3. **Major Home Occupations - Defined**

A Major Home Occupation is one in which residents use up to 25 percent of the floor area of their home as a place of work and that has a nonresident employee and/or customers coming to the site. Examples are counseling, tutoring, and hair cutting and styling.

4. **Allowed Uses**

The home occupation regulations of this Land Development Code establish performance standards for accessory home occupations rather than defining a list of allowed home occupations. Uses that comply with all of the standards of this section will be allowed as home occupations unless they are specifically prohibited.

5. **Prohibited Uses**

a. **Vehicle and Large Equipment Repair**

Any type of repair or assembly of vehicles or equipment with internal combustion engines (such as autos, motorcycles, scooters, snowmobiles, outboard marine engines, lawn mowers, chain saws, and other small engines) or of large appliances (such as washing machines, dryers, and refrigerators) or any other work related to automobiles and their parts is prohibited.

b. **Dispatch Centers**

Dispatch centers, where employees come to the site to be dispatched to other locations, are not allowed as home occupations.

c. **Mortuaries**

Mortuaries are not allowed as home occupations.

d. **Animal Care, Grooming, or Boarding Facilities**

Animal care or boarding facilities are not allowed as home occupations. This includes animal hospitals, kennels, stables and all other types of animal boarding and care facilities. Dog grooming services are also included as prohibited animal care or boarding facilities; however, to the extent such services would otherwise qualify as a Minor Home Occupation, dog grooming services may be allowed upon application as provided in paragraph 2, regarding Minor Home Occupations, above. In no event may dog grooming be allowed as a Major Home Occupation.

~~e. **Firearms and Ammunition Sales**~~

~~The sale of firearms and/or ammunition, and the production of ammunition for sale or resale are prohibited as home occupations.~~

f. **Adult Entertainment Center Uses**

Entertainment or sale of goods defined as adult bookstore, adult cinema, adult entertainment facility, or adult entertainment center as defined in Sec. 20-1202 are not allowed as a home occupation.

6. **Signs**

No more than one sign shall be allowed on the site of a home occupation. The maximum

size of the sign shall be one square foot. It may not be illuminated, and it must be attached to the dwelling unit.

7. **Outdoor Activities**

All activities and storage areas must be conducted in completely enclosed structures.

8. **Exterior Appearance**

There may be no change in the exterior appearance of the dwelling unit that houses the home occupation or the site upon which it is conducted that will make the dwelling appear less residential in nature or function. Examples of such prohibited alterations include construction of parking lots, paving of required setbacks, or adding commercial-like exterior lighting. There may be no visible evidence of the conduct of a home occupation when viewed from the street right-of-way or from an adjacent lot.

9. **Operational Impacts**

No home occupation or equipment used in conjunction with a home occupation may cause odor, vibration, noise, electrical interference or fluctuation in voltage that is perceptible beyond the lot line of the lot upon which the home occupation is conducted. No hazardous substances may be used or stored in conjunction with a home occupation.

10. **Trucks and Vehicles**

No truck or van with a payload rating of more than 1 ton may be parked at the site of a home occupation, and no more than one truck or van with a payload rating of less than 1 ton is allowed at the site of a home occupation.

11. **Deliveries**

Deliveries or pick-ups of supplies or products associated with business activities are allowed only between 8 a.m. and 6 p.m. Vehicles used for delivery and pick-up are limited to those normally servicing residential neighborhoods.

12. **Major Home Occupations**

The following regulations apply only to Major Home Occupations.

a. **Conditional Use Permits**

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

b. **Employees**

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

c. **Customers**

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

d. **Number**

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



Office of the City Attorney**City Attorney**
Erik R. Johnson**Assistant City Attorney**
Nancy J. Morris

January 23, 2020

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

RE: Proposed elimination of Firearm and Ammunition Sales as prohibited home occupation

Dear commissioners,

The City's Land Development Code (LDC) currently prohibits the sale of firearms as a home occupation. Commissioner Gehrig has received inquiry regarding this prohibition and he asks that the City Commission review this particular provision of the LDC, and consider repealing the prohibition. Of course, such repeal would occur by an amendment of the LDC by the City Commission after the Planning Commission has held a public hearing on the matter and submitted its recommendation to the City Commission. Commissioner Gehrig asked that I placed this letter before you for your consideration.

Traditional, old-style city zoning laws prohibit virtually all commercial activities in residentially-zoned areas with certain professions being carved out as a permitted "accessory use" to the residential use of the property. Thus, dentists, doctors, chiropractors, massage therapists, lawyers, morticians and such were able to practice their profession out of their personal residences under the traditional "home occupation" definition. You are probably aware that the City undertook a major re-write of the City's zoning laws and subdivision requirements in the mid-1990s, culminating in the adoption of the Land Development Code in 1998. With the new LDC, the City's "home occupation" rules were converted from the traditional model to a more "functional assessment" model--one by which home occupations were placed into one of two categories: Minor Home Occupations and Major Home Occupations. A Minor Home Occupations allowed use of the home for any occupation so long as no employees or customers come to the site and provided the occupation consumed less than one-fourth of the floor area of the home. Such Minor Home Occupations were permitted by right--there was no need for a hearing or special approval in advance. Home occupations other than "Minor" fell into the Major Home Occupation category. Major Home Occupations

must first be approved by the Planning Commission, after an application is filed, notice is given to neighboring property owners and a public hearing is held. Certain occupations are completely prohibited. Those include vehicle repair, dispatch centers, mortuaries and animal care and boarding facilities. In 2001, the City's Home Occupation law was revised and firearm sales and ammunition sales were added to the list of prohibited occupations. City of Fargo Ordinance No. 4180 (Aug. 6, 2001).

The City's current home occupation law is set forth in the appendix to this letter, attached with the relevant portion, dealing with firearms and ammunition sales, being provided as follows:

5. Prohibited Uses

* * *

- e. Firearms and Ammunition Sales. The sale of firearms and/or ammunition, and the production of ammunition for sale or resale are prohibited as home occupations.

Should the City Commission wish to review the treatment of firearms and or ammunition sales as a prohibited home occupation, I recommend that the Commission refer the matter to the Planning Department as a proposed text amendment to the Land Development Code (as provided under LDC §20-0904) and to direct the City Attorney to work with the Planning Department regarding such process.

SUGGESTED MOTION: I move to authorize and direct the Planning Department to initiate a text amendment to the Land Development Code to amend Fargo Municipal Code (LDC) Section 20-0403, regarding Accessory Uses, to revise or eliminate the prohibition of firearms and ammunition sales as a home occupation and to direct the City Attorney to work with the Planning Department for such purposes.

Sincerely,



Erik R. Johnson

Enclosure

APPENDIX TO CITY ATTORNEY LETTER TO CITY COMMISSION

LDC §20-0403. Accessory Uses.

* * *

C. Home Occupations

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

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c. Mortuaries

Mortuaries are not allowed as home occupations.

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e. Firearms and Ammunition Sales

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All activities and storage areas must be conducted in completely enclosed structures.

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No home occupation or equipment used in conjunction with a home occupation may cause odor, vibration, noise, electrical interference or fluctuation in voltage that is perceptible beyond the lot line of the lot upon which the home occupation is conducted. No hazardous substances may be used or stored in conjunction with a home occupation.

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No truck or van with a payload rating of more than 1 ton may be parked at the site of a home occupation, and no more than one truck or van with a payload rating of less than 1 ton is allowed at the site of a home occupation.

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

c. Customers

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

d. Number

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



Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

April 18, 2016

Jim Gilmour
Director of Planning and Development
City Hall
200 Third Street North
Fargo, ND 58102

RE: Appeal to Andrew Curtis to Board of Adjustment-Home Occupations

Dear Mr. Gilmour:

This opinion concerns Andrew Curtis' appeal to the Board of Adjustment of the City of Fargo, North Dakota, to hear and decide an appeal of a decision made by an administrative official of the City of Fargo.

Factual and Procedural Background

Andrew Curtis is a Fargo resident residing at 3420 Birdie Street North in the City of Fargo. Mr. Curtis is attempting to obtain a federal firearm license from the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") in order to process internet firearm sale transactions from his residence in the City of Fargo. Mr. Curtis has described the contemplated business operating in the following manner: a buyer would order the firearm online and the firearm would be shipped to the Mr. Curtis's residence. The buyer would then proceed to Mr. Curtis's residence where the buyer would complete necessary paperwork and a background check for the firearm transaction. Once all of the paperwork and other federal requirements were satisfied, Mr. Curtis would provide the buyer with the firearm at his residence. In short, Mr. Curtis wishes to sell firearms out of his residence in the City of Fargo.

The ATF raised concerns to Mr. Curtis about the City of Fargo's zoning ordinances prohibiting the home occupation of selling firearms. Thereafter, Mr. Curtis requested

permission from a City of Fargo administrative official to operate his contemplated business as a home occupation (i.e., from his residence). The administrative official informed Mr. Curtis that Mr. Curtis cannot operate an internet firearm sales business from his residence as Fargo Municipal Code Ordinance § 20-0403(C)(5)(e) prohibits the sale of firearms and/or ammunition as a home occupation.

On March 9, 2016, Mr. Curtis filed an Appeal of an Administrative Decision which appealed the administrative official's decision that he could not operate an internet firearm sales business out of his residence in the City of Fargo. Mr. Curtis argues in his Appeal that North Dakota Century Code provision 62.1-01-03 prohibits the City of Fargo from enacting a zoning ordinance such as Fargo Municipal Code section 20-0403(C)(5)(e). For the reasons set forth below, it is my opinion that the City of Fargo had the authority to enact Fargo Municipal Code § 20-0403(C)(5)(e) and that the Board of Adjustment should affirm the administrative official's decision to not allow Mr. Curtis to operate his contemplated business at his residence in the City of Fargo.

Opinion

Municipalities, such as the City of Fargo, are allowed under North Dakota law to enact zoning ordinances for the purpose of promoting health, safety, morals, or the general welfare of the community. See N.D.C.C. § 40-47-01; see also N.D.C.C. § 40-05.1-06(11)(providing that cities such as Fargo have the power to provide for zoning, planning, and subdivision of public or private property within city limits). Municipalities may regulate and restrict the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. N.D.C.C. § 40-47-01. All zoning ordinances must be designed to promote the health and general welfare of the community. N.D.C.C. § 40-47-03(3). All zoning ordinances must also be reasonable. Mertz v. City of Elgin, Grand County, 2011 ND 148, ¶ 7, 800 N.W.2d 710. A zoning ordinance will be invalidated if it bears no reasonable relationship to a legitimate government purpose, that is arbitrary, or that deprives a property owner of all or substantially all reasonable uses of land. Id. Unless shown to be unreasonable or arbitrary, an ordinance is presumed to be valid. Id.

Fargo Municipal Code section 20-0403(C) provides use regulations for areas zoned as residential. Specifically, the section provides home occupation regulations which are intended to permit residents to engage in home occupations, while ensuring that home occupations will not be a detriment to the character and livability of the surrounding neighborhood. There are specific home occupation uses which are prohibited under section 20-0403(C)(5). Namely, as it relates to this matter, section 20-0403(C)(5)(e) provides:

e. Firearms and Ammunition Sales

The sale of firearms and/or ammunition, and the production of ammunition for sale or resale are prohibited as home occupations.

Effectively, section 20-0403(C)(5)(e) prohibits Mr. Curtis from operating his contemplated business selling firearms from his residence in the City of Fargo. While Mr. Curtis appears to acknowledge that section 20-0403 prohibits his intended use of his residence to sell firearms, he believes that section 20-0403 is invalid pursuant to North Dakota Century Code provision 62.1-01-03. That provision provides:

A political subdivision, including home rule cities or counties, may not enact any ordinance relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition which is more restrictive than state law. All such existing ordinances are void.

Mr. Curtis's argument is that Fargo Municipal Code section 20-0403(C)(5)(e) which prohibits the sale of firearms as a home occupation is an ordinance relating to the purchase and sale of firearms which is more restrictive than state law and therefore the ordinance is void.

Mr. Curtis does not point to any state statute that would permit him to sell firearms as a home occupation out of his residence. Instead, as laid out above, the North Dakota legislature has expressly provided authority to municipalities, such as the City of Fargo, to enact zoning ordinances which restrict the use of home residences. Fargo Municipal Code section 20-0403(C)(5)(e) promotes the health, safety, and general welfare of the community by not allowing residents to have the home occupation of selling firearms. The City of Fargo, in enacting the ordinance, did not act arbitrarily and the ordinance bears a reasonable relationship to a legitimate government interest (the health, safety, and general welfare of the community). Further, the ordinance does not deprive Mr. Curtis of all or substantially all reasonable uses of his land, as Mr. Curtis may use the land as his residence.

This opinion is supported by other jurisdictions who have considered similar situations with nearly identical state statutes. For instance, in a Kentucky case, a firearms dealer argued that a city zoning ordinance which prevented him from obtaining licenses to establish gun shops at certain locations within commercial districts was preempted by a state statute providing that no city could occupy any part of the field of regulations of the transfer of firearms. See Peter Garrett Gunsmith, Inc. v. City of Dayton, 98 S.W.3d 517, 518-19 (Ky. Ct. App. 2002). The court found that the city zoning ordinance was valid because zoning ordinances which regulation the locations where gun shop businesses may operate, do not occupy any part of the field of regulation of the transfer, ownership, possession, carrying or

transportation of firearms. Id. at 520. Instead, zoning ordinances represent regulations in the field of land use which is a field of regulation that cities have authority to control. Id.

Likewise, in a case in Michigan federal court, a firearms dealer sought review of an ATF decision denying his application for a federal firearms license upon the ground that dealing firearms from a dealer's home would have been prohibited by the city's zoning laws. Morgan v. U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms & Explosives, 473 F.Supp.2d 756 (E.D. Mich. Feb. 9, 2007). The firearms dealer argued that a Michigan statute which provided that a local unit of government shall not impose, enact, or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols or other firearms except as provided by federal or state law prohibited the city from passing zoning ordinances which had the effect of not allowing him to sell firearms from his residence. Id. at 768. The Court disagreed with the firearms dealer and found that the city had the power, despite the Michigan state law, to pass zoning ordinances which had the effect of prohibiting the firearm dealer from selling firearms from his residence. Id. at 768-69.

In sum, the North Dakota Century Code provides that municipalities, such as the City of Fargo, have the power to enact zoning ordinances for the purpose of promoting health, safety, morals, or the general welfare of the community. Further, there is no North Dakota law which permits a person to operate a firearm selling business from his residence or to have firearm sales as a home occupation. It is my opinion that Fargo Municipal Code section 20-0403(C)(5)(e) is valid and not prohibited by state law.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Erik R. Johnson', with a stylized flourish at the end.

Erik R. Johnson

ERJ/lmw

MEMORANDUM

To: Mayor Furness and City Commissioners
From: Cindy Gray, Senior Planner
Date: July 3, 2001
Subject: Land Development Code Text Amendments – Sidewalk Marketing Area, Traffic Impact Studies, and Home Occupations

Over the past few months, the Planning Commission has had numerous discussions that deal with the Sidewalk Marketing Area, Traffic Impact Studies, and Home Occupations. All of the proposed amendments received a recommendation for approval at the June 13, 2001 Planning Commission meeting. I will summarize the text amendments below. The attached document is the text that was approved by the Planning Commission and used by the City Attorney's office to prepare the ordinances.

Sidewalk Marketing Area

The amendments to this portion of the Code were requested by the Downtown Community Partnership. The current language refers to the Downtown Business Association, which is no longer in existence. A number of other changes were made to better address sign size, sign spacing limitations, insurance requirements, and the application and permitting process.

In addition, a section of code was added to allow for tables and chairs in the sidewalk marketing ordinance, and to set up some limitations for the amount of sidewalk that must remain open for pedestrian circulation and accessibility purposes. This change needed to be accompanied by an amendment to a section of the Fargo Municipal Code, which prohibits sales on the sidewalk. Tables and chairs in the Sidewalk Marketing Area (Downtown Mixed Use zone) were simply excluded to address this issue.

Planning Commission Recommendation on Sidewalk Marketing Area text amendment – Eight votes in favor, one vote opposed (Syverson), and two absent (Millerhagen and Nelson)

Suggested Motion: “To approve the text amendment repealing Section 20-0707 of the Land Development Code regarding Sidewalk Marketing Area, and re-enacting article 20-0707 as presented, and amending Section 20-1202 to add the definition of Pedestrian Sign, and amending Section 18-0304 of the Fargo Municipal Code to exclude tables and chairs on the sidewalk as a prohibited within the Sidewalk Marketing Area, and to make this the first reading of the ordinances.”

Traffic Impact Studies

Over the past few years, the Planning Commission has been very interested in establishing requirements for traffic impact studies. Staff prepared the text amendment based on the types and/or sizes of development that typically result in a measurable impact. However, it was important to allow for some flexibility. We accomplished this by:

- 1) allowing the City Engineer to waive the requirement for a traffic impact study if it is determined that it is not needed or has already been analyzed as part of a larger corridor study, and
- 2) allowing the City Engineer to identify other conditions which warrant a traffic impact study even if a development does not fall specifically into one of the more predictable categories of development that warrants a study.

Adoption of this text amendment must be followed by the development of a policy that specifies the minimum requirements of a traffic impact study, and the process of hiring a consultant to complete the studies.

Planning Commission Recommendation on the text amendment regarding Traffic Impact Studies – Unanimous recommendation for approval with nine present, two absent (Millerhagen and Nelson).

Suggested Motion: “To approve the text amendment that adds Subsection 20-0701 (L), Traffic Impact Studies to the Land Development Code, and to make a related amendment to Section 20-0401 to make reference to the traffic impact study requirements and to make this the first reading of the ordinances.”

Home Occupations

Approximately a year ago, the City Commission and Planning Commission held a joint discussion regarding home occupations and whether or not there was any opportunity to allow home occupations as permitted uses under certain conditions. After a number of discussions and references to requirements of other cities, the Planning Commission recommended approval of the attached language. The amendment would allow a home occupation as a permitted use with up to a maximum of 4 customers per day with a maximum of 12 customers per week. This allows a certain amount of flexibility, and still keeps the traffic generated to the dwelling unit at a level that will be very residential in nature.

In addition, two uses were added to the list of prohibited home occupations. They include adult entertainment type uses and firearm and ammunition sales. These uses are prohibited as home occupations along with several others under any circumstances.

Planning Commission Recommendation regarding the proposed text amendment to Home Occupations – Unanimous recommendation for approval with nine present and two absent (Nelson and Millerhagen).

Suggested Motion: “To approve the proposed amendments to Subsections 2 and 5 of Section 20-0403 of the Land Development Code to modify the requirements for Minor Home Occupations and to increase the number of prohibited uses as home occupations, and to make this the first reading of the ordinance.”

Please let me know if you have any questions about these proposed changes.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 4180

AN ORDINANCE AMENDING SECTION 20-0403 OF ARTICLE 20-04 OF CHAPTER 20
OF THE FARGO MUNICIPAL CODE
(LAND DEVELOPMENT CODE) RELATING TO
HOME OCCUPATIONS

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

Section 1. Amendment.

Subsection 20-0403 of Article 20-04 of Chapter 20 of the Fargo Municipal Code (Land Development Code) is hereby amended as follows:

§20-0403 Accessory Uses

* * *

§20-0403.C. – Home Occupations

* * *

2. Minor Home Occupations

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

* * *

5. Prohibited Uses

* * *

d. Animal Care, Grooming, or Boarding Facilities

* * *

e. Firearms and Ammunition Sales and Servicing of Firearms

The sale of firearms and/or ammunition, and the production or ammunition for sale or resale are prohibited as home occupations.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 4180

f. Adult Entertainment Center Uses

Entertainment or sale of goods defined as adult bookstore, adult cinema, adult entertainment facility, or adult entertainment center as defined in §20-1202 are not allowed as a home occupation.

Section 2. Penalty. Every person, firm or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed \$500.00; the court to have power to suspend said sentence and to revoke the suspension thereof.


Section 3. Effective Date.

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


Bruce W. Furness, Mayor

(SEAL)

Attest:


Steven Sprague, City Auditor

First Reading: 7-9-01
Second Reading: 7-23-01
Final Passage: 7-23-01
Publication: 8-6-01

CITY OF FARGO

Staff Report

Item No.	Date: June 26, 2007
Title: A Text Amendment via the Conditional Use Permit process to allow non-farm commercial within the Ag zone district	Report Author: Jim Hinderaker
Applicable Regulation: This application relates to Chapter 20 of the Municipal Code (Land Development Code) Adding Section 20-0402.S (1-4) and 20-1203.D.10 (a-d)	
Petitioner/Applicant: City of Fargo Planning Department	Engineer: N/A
Reason For Request: Allow opportunities for review of proposed non-farm commercial uses within the Ag zone district	
Status: City Commission: July 2, 2007	

Existing	Proposed
Land Use: N/A	Land Use: N/A
Zoning: N/A	Zoning: N/A
Uses Allowed: N/A	Uses Allowed: N/A
Maximum Density Allowed: N/A	Maximum Density Allowed: N/A

Proposed Text Amendment: Adding Section 20-0402.S and 20-1203.D.10 (a-b)

▪ **Section 20-0402.S Non-farm Commercial Uses**

In acting upon Conditional Use Permit requests for Non-farm commercial uses within the Agricultural zoning district, the Planning Commission shall consider the following factors:

1. No Non-farm commercial use is allowed unless it has been reviewed and approved in accordance with the Conditional Use Review procedures of Sec. 20-0909. Unless otherwise expressly stated, any Conditional Use Permit for such Non-Farm Commercial Use granted pursuant to Section 20-0909 shall automatically terminate upon sale or transfer of the property.
2. To ensure that adequate facilities and services are available, written comment from facility and service providers (including, but not necessarily limited to, sewage and waste disposal, domestic water, flood protection, gas, electricity, police and fire protection, and roads, as applicable) addressing the adequacy of service shall be provided.
3. The written notice requirements of 20-0901 shall be extended to landowners within one (1) mile of the subject property.

4. **Prohibited Use**

Dispatch Centers – Dispatch centers, where employees come to the site to be dispatched to other location, are not allowed.

Firearms and Ammunition Sales – The sale of firearms and /or ammunition, and the production

of ammunition for sale or resale are prohibited.

Adult Entertainment Centers Uses – Entertainment or sale of goods defined as adult bookstore, adult cinema, adult entertainment facility, or adult entertainment center as defined in Sec. 20-1202 are not allowed.

▪ **20-1203 Use Categories**

D. Commercial Use Categories

10. Non-farm commercial

a. Characteristics

Non-farm commercial uses are characterized by commonly known commercial uses of property and activities similar to those described in (D)(1) through (D)(9) (i.e., entertainment, office, commercial parking facilities, outdoor recreation and entertainment, retails sales and services, self-storage facilities, and vehicle service and repair shops), but which are normally located within the city limits and not typically located in rural, agriculturally zone areas.

b. Accessory Uses

Accessory activities may include any of the accessory uses listed under the particular uses described in 20-1203(D)(1) through (D)(9).

c. Examples

Examples include any of those examples listed under the particular uses described in 20-1203(D)(1), including, but not limited to, stadiums, sports arenas, exhibition and meeting areas, offices for professional services, clinics, sales offices, commercial parking facilities, amusement parks, theme parks, golf driving ranges, miniature golf facilities, zoos, stores selling, leasing, or renting consumer, home and business goods (dry goods, gifts, groceries, hardware, household products, vehicles), personal service-oriented (branch banks, hair, personal care services), entertainment oriented (restaurants, cafes, delicatessens, bars and taverns), self-storage areas, mini-warehouses, vehicle repair, auto body shops, auto repair and tire shops.

d. Exceptions

Any of the exceptions listed under the particular uses described in 20-1203(D)(1) through (D)(9) shall likewise be listed as Exceptions for purposes of obtaining a condition use permit for a Non-farm commercial use.

Staff Analysis:

The City of Fargo is experiencing pressure to review its policies and regulation regarding development within the City's extraterritorial area. Some property owners within the extraterritorial area, having expressed a desire to develop (zone and subdivide) their property, have indicated to the Planning Department that they have ultimately abandoned their plans because they feel that the City's policies are too restrictive and cumbersome. Current policy (Page 20 of the Growth Plan for the Urban Fringe and Extraterritorial Area of the City of Fargo) dictates that the city should "prevent leapfrog development from occurring both within the City and in the extraterritorial area" as these types of developments have proven problematic. The Planning Department has consistently informed property owners interested in developing property within the extraterritorial areas of the City that they must demonstrate how they will be able to provide adequate facilities and services to the property while ensuring that the development will fit into the urban environment once the City grows into these areas.

The following chart lists which services are provided by the City and which are provided by others:

Responsibility of City Includes	Responsibility of City Does Not Include	Responsibility of Township and/or County
<ul style="list-style-type: none"> • Land Use Planning • Zoning of Land • Subdivision • On-site Wastewater treatment (septic systems or holding tanks) • Zoning Enforcement • Building Permits • Building Inspection 	<ul style="list-style-type: none"> • Road Maintenance • Flood Protection • City Fire Protection • City Police Protection • City Water Provision • Drainage of land or ditches 	<ul style="list-style-type: none"> • Road and Ditch Maintenance – County maintains County highways, Townships maintain local/township roads. • Fire Protection • Police Protection • Cass Rural Water Users (CRWU)

In an effort to address these concerns and also take into account the policies of the City. Staff has developed a Conditional Use Permit (CUP) process that allows the review of proposed development on a case by case basis. The CUP process allows the City to engage in a higher level of review than a zone change, which may allow a use by right that is deemed incompatible with the existing development. The CUP process also allows the City to solicit comments from specific review agencies to ensure that adequate levels of services are available based on the scope and intensity of a proposed development. Ultimately the CUP process allows the City to ensure that development patterns within the extraterritorial area do not result in the occurrence of urban sprawl that could preclude redevelopment of the property/surrounding area at urban densities.

Text Amendments are subject to three review criteria per the LDC. The criteria are as follows:

1. Is the amendment consistent with the purpose of this Land Development Code?

The Purpose and Intent (Section 20-0104) of the LDC is stated as follows: "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 proposed text amendment will allow property owner within the Ag zoning district an opportunity for review of proposals. The approval criteria set forth within the proposed text amendment ensures that the implementation of Fargo's Comprehensive Plan and related policies protect the health, safety, and general welfare of the citizens of Fargo. **(Criterion Satisfied)**

2. Will the amendment adversely affect the public health, safety, or general welfare?

Staff contends that this amendment will not have an adverse affect on the public health, safety or general welfare. The text amendment allows a process for property owners within the Ag zoning district to request additional non-farm commercial land uses through the Conditional Use Permit process. A thorough review of the proposal will take place to ensure that adequate facilities and services are in place and that the proposed use is compatible to surrounding land uses, thus ensuring public health, safety and general welfare of the citizens of Fargo. **(Criterion Satisfied)**

3. Is the amendment necessary because of changed or changing social values, new planning concepts or other social or economic conditions in the areas affected?

Some property owners have claimed that the current regulations are too restrictive and that there should be a process in place for review of land use proposals that would not adversely affect the public health, safety of general welfare of the citizens of Fargo. In addition, during 2007 North Dakota Legislative Session, legislation was approved (HB 1321) that would reduce the Extraterritorial Zoning jurisdiction of the municipalities. **(Criterion Satisfied)**

Planning Commission Recommendation: (Public Hearing on June 13, 2007) In a 8-1 decision, the Planning Commission moved to recommend approval of the proposed text amendment to the City Commission as presented by staff with the following added stipulations:

1. Written comment from facility and service providers, addressing the adequacy of facilities and service shall be provided.
2. The written notice requirements of 20-0901 shall be extended to landowners within one (1) mile of the subject property.

Suggested Motion: “ To accept the findings and recommendation of staff and the Planning Commission and hereby approve the proposed text amendment and make this the first reading of the Ordinance.”

City Commission Decision: July 2, 2007

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 4613

AN ORDINANCE AMENDING SECTION 20-0401, 20-0402, AND 20-1203
OF ARTICLES 20-04 AND 20-12 OF CHAPTER 20
OF THE FARGO MUNICIPAL CODE (LAND DEVELOPMENT CODE)
RELATING TO NON-FARM COMMERCIAL USES

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

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

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

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

NOW, THEREFORE,

Be it ordained by the Board of City Commissioners of the City of Fargo:

Section 1. Amendment.

Section 20-0401, of Article 20-04 of Chapter 20 of the Fargo Municipal Code (Land Development Code) is hereby amended to read as follows:

Table 20-0401, as amended, is attached and incorporated as if fully set forth herein..

Section 2. Amendment.

Section 20-0402 of Article 20-04 of Chapter 20 of the Fargo Municipal Code (Land Development Code) is hereby amended to add a subsection T to read as follows:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 4613

§20-0402 Use Standards

...

T. Non-farm Commercial Uses

1. A Non-farm Commercial Use shall not be allowed unless it has been reviewed and approved in accordance with the Conditional Use Review procedures of Sec. 20-0909. In acting upon Conditional Use Permit requests for such use, the Planning Commission shall consider the following factors:
 - a. The factors identified in Section 20-0909 (Conditional Use Permits).
 - b. Whether adequate facilities and services including, but not limited to, sewage and waste disposal, domestic water, building construction and inspection, flood protection, gas, electricity, police and fire protection, and roads, as may be applicable are adequate under the circumstances. As part of the application for the Conditional Use Permit, the Zoning Administrator may require the applicant to obtain written comment from such facility and service providers as may be applicable.
2. The City Planner shall provide written notice of the Planning Commission public hearing in accordance with Section 20-0901-F except that the written notice shall be mailed to property owners within one (1) mile of the subject property. Notice of the Planning Commission's public hearing shall be published in accordance with Section 20-0901-F.
3. **Prohibited Uses.** Dispatch Centers, Firearms and Ammunition Sales and Adult Entertainment Centers Uses as defined in Section 20-0403.C.5 are prohibited uses.
4. Unless otherwise expressly stated, Conditional Use Permits for Non-farm Commercial uses granted pursuant to Section 20-0909 shall automatically terminate upon sale or transfer of the property.

Section 3. Amendment.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 4613

Section 20-1203.D. of Article 20-12 of Chapter 20 of the Fargo Municipal Code (Land Development Code) is hereby amended to add a subparagraph D to read as follows:

§20-1203 Use Categories

* * *

D. Commercial Use Categories

* * *

10. Non-farm Commercial

a. Characteristics

Non-farm Commercial uses are those commercial uses identified in subparagraphs (D)(1) through (D)(9), hereof, but which occur in an AG, Agricultural District.

b. Accessory Uses

Accessory activities described in subparagraphs (D)(1) through (D)(9), hereof, is also a Conditional Use, permitted only after approval pursuant to Section 20-0909.

c. Examples

Examples include any of those examples listed under the particular uses described in subparagraphs (D)(1) through (D)(9), hereof.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. 4613

d. Exceptions

Any of the exceptions listed under the particular uses described in subparagraphs (D)(1) through (D)(9), hereof, shall also be exceptions for purposes of a Non-farm Commercial use.

Section 4. Effective Date.

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

Section 5. Penalty.

Every person, firm or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed \$500.00; the court to have power to suspend said sentence and to revoke the suspension thereof.


Dennis R. Walaker, Mayor

(SEAL)
Attest:

First Reading: 07-02-2007
Second Reading: 07-16-2007
Final Passage: 07-16-2007
Publication: 07-30-2007


Steven Sprague, City Auditor

Table 20-0401

Use Category	Definition (Excerpt; See Sec. 20-01203)	Specific Use Type	Zoning Districts																			
			A G	S R 0	S R 1	S R 2	S R 3	S R 4	M R 1	M R 2	M R 3	M H P	N O	N C	G O	L C	D M U	G C	L I	G I	P I	
Residential																						
Household Living	residential occupancy of a dwelling unit by a "household"	House, Detached	P	P	P	P	P	P	P	P	P	P	P	P	C	C	P/C [E]	C	-	-	-	
		House, Attached	-	-	-	-	P	P	P	P	P	P	P	P	C	C	P/C [E]	C	-	-	-	
		Duplex	-	-	-	-	P	P	P	P	P	P	P	P	C	C	P/C [E]	C	-	-	-	
		Multi-Dwelling Structure	-	-	-	-	-	-	P	P	P	P	P	P	C	C	P/C [E]	C	-	-	-	
		Mobile Home Park	-	-	-	-	-	-	-	-	-	P	-	-	-	-	-	-	-	-	-	
Group Living	residential occupancy of a structure by a group of people who do not meet the definition of "Household Living"		C	C	C	C	C	C	P	P	P	P	C	C	C	C	C/C [E]	C	-	-	-	
Bed and Breakfast	a facility of residential character that provides sleeping accommodations and breakfast		C	C	C	C	C	C	C	C												
Institutional																						
College	colleges and institutions of higher learning		C	C	C	C	C	C	C	C	C	C	C	C	P	P	P	P	P	-	P/C [G]	
Community Service	public, nonprofit, or charitable uses, generally providing a local service to the community		C/C [C]	C/C [C]	C/C [C]	C/C [C]	C/C [C]	C/C [C]	P/C [C]	P/C [C]	P/C [C]	P/C [C]	P/C [C]	P/C [C]	P	P	P/C [C]	P	P	-	P/C [G]	
Day Care	care, protection and supervision for children or adults on a regular basis away from their primary residence for less than 24 hours per day	1-7 children or adults [1]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P	P	P	P	P	P	P	P	P	-	P/C [G]	
		8-12 children or adults [1]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P	P	P	P	P	P	P	P	P	-	P/C [G]
		13+ children or adults	-	-	-	-	-	-	C [D]	C [D]	C [D]	C [D]	C [D]	C [D]	C [D]	P [D]	P [D]	P [D]	P [D]	P [D]	-	P/C [G]

[1] Not including the children or parents of the day care provider.

P = Use Permitted By-Right ■ P/C = Use Permitted By-Right But Subject to Use-Specific Standards of Sec. 20-0402

; = Conditional Use, Subject to Procedures of Sec. 20-0909 ■ Some uses also Subject to Site Plan Review (See Sec. 20-0910) or to a Traffic Impact Study as required by Sec. 20-0701L.

Use Category	Definition (Excerpt; See Sec. 20-01203)	Specific Use Type	Zoning Districts																		
			A G	S R 0	S R 1	S R 2	S R 3	S R 4	M R 1	M R 2	M R 3	M H P	N O	N C	G O	L C	D M U	G C	L I	G I	P I
Detention Facilities	facilities for the detention or incarceration of people		C	-	-	-	-	-	C	C	C	-	-	-	C	C	C	P	P	P	P/C [G]
Health Care Facility	medical or surgical care to patients, with overnight care		C	C	C	C	C	C	C	C	C	C	-	-	P	P	P	P	P	P	P/C [G]
Parks and Open Areas	natural areas consisting mostly of vegetative landscaping or outdoor recreation, community gardens, etc.,		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	-	P/C [G]
Religious Institution	meeting area for religious activities	≤ 500 seating capacity	-	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	-	P/C [G]
		501+ seating capacity	-	P/C [H]	P/C [H]	P/C [H]	P/C [H]	P/C [H]	P	P	P	P	P	P	P	P	P	P	P	-	P/C [G]
Safety Services	public safety and emergency response services		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P/C [G]
Schools	schools at the primary, elementary, middle, junior high, or high school level		-	P/C [I]	P/C [I]	P/C [I]	P/C [I]	P/C [I]	P/C [I]	P/C [I]	P/C [I]	-	-	-	C	C	C	C	C	-	P/C [G]
Utilities, Basic	infrastructure services that need to be located in or near the area where the service is provided		P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P/C [K] [G]
Commercial																					
Adult Entertainment Center	an adult bookstore, adult cinema or adult entertainment facility		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P/C [A]	P/C [A]	P/C [A]	-
Office	activities conducted in an office setting and generally focusing on business, government, professional, medical, or financial services		C	-	-	-	-	-	-	-	-	-	P	P	P	P	P	P	P	-	P/C [G]
Off-Premise Advertising Signs	billboard		C	-	-	-	-	-	-	-	-	-	-	-	P/C [B]	P/C [B]	P/C [B]	P/C [B]	P [B]	P	-

P = Use Permitted By-Right ■ P/C = Use Permitted By-Right But Subject to Use-Specific Standards of Sec. 20-0402

= Conditional Use, Subject to Procedures of Sec. 20-0909 ■ Some uses also Subject to **Site Plan Review** (See Sec. 20-0910) or to a Traffic Impact Study as required by Sec. 20-0701L.

Use Category	Definition (Excerpt; See Sec. 20-01203)	Specific Use Type	Zoning Districts																		
			A G	S R 0	S R 1	S R 2	S R 3	S R 4	M R 1	M R 2	M R 3	M H P	N O	N C	G O	L C	D M U	G C	L I	G I	P I
Parking, Commercial	parking that is not accessory to a specific use...fees may or may not be charged		C	-	-	-	-	-	-	-	-	-	-	-	P	P	P	P	P	P	P/C [G]
Recreation and Entertainment, Outdoor	large, generally commercial uses that provide continuous recreation or entertainment- oriented activities		C	-	-	-	-	-	-	-	-	-	-	-	-	C	C	P	P	-	P/C [G]
Retail Sales and Service	firms involved in the sale, lease or rental of new or used products to the general public...they may also provide personal services or entertainment, or provide product repair or services for consumer and business goods		C	-	-	-	-	-	-	-	-	-	-	P	-	P	P	P	P	-	-
Self-Service Storage	uses providing separate storage areas for individual or business uses		C	-	-	-	-	-	-	-	-	-	-	-	-	P/C [J]	-	P	P	-	-
Vehicle Repair	service to passenger vehicles, light and medium trucks and other consumer motor vehicles ...generally, the customer does not wait at the site while the service or repair is being performed		C	-	-	-	-	-	-	-	-	-	-	-	-	P/C [L]	P/C [L]	P	P	-	-
Vehicle Service, Limited	direct services to motor vehicles where the driver or passengers generally wait in the car or nearby while the service is performed		C	-	-	-	-	-	-	-	-	-	-	-	-	P	P/C [M]	P	P	-	-
Non-farm Commercial	Commercial Uses defined in Section 20-1203D occurring in AG, Agricultural Districts		C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

■ = Use Permitted By-Right ■ P/C = Use Permitted By-Right But Subject to Use-Specific Standards of Sec. 20-0402

= Conditional Use, Subject to Procedures of Sec. 20-0909 ■ Some uses also Subject to **Site Plan Review** (See Sec. 20-0910) or to a Traffic Impact Study as required by Sec. 20-0701L.

Industrial																						
Industrial Service	firms engaged in the repair or servicing of industrial, business or consumer machinery, equipment, products or by-products		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C Q	-	P [F]	P	P/C [G]
Manufacturing and Production	firms involved in the manufacturing, processing, fabrication, packaging, or assembly of goods		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	C	P	P	P/C [G]
Warehouse and Freight Movement	firms involved in the storage, or movement of goods		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	P	P	P	P/C [G]
Waste-Related Use	uses that receive solid or liquid wastes from others for disposal on the site or for transfer to another location, uses that collect sanitary wastes, or uses that manufacture or produce goods or energy from the composting of organic material		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	P/C [G]
Wholesale Sales	firms involved in the sale, lease, or rental of products primarily intended for industrial, institutional, or commercial businesses		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	P	P	P	-

■ = Use Permitted By-Right ■ P/C = Use Permitted By-Right But Subject to Use-Specific Standards of Sec. 20-0402

■ = Conditional Use, Subject to Procedures of Sec. 20-0909 ■ Some uses also Subject to **Site Plan Review** (See Sec. 20-0910) or to a Traffic Impact Study as required by Sec. 20-0701L.

Other																					
Agriculture	raising, producing or keeping plants or animals	Animal Confinements	C	C [1]															C	P/C [G]	
		Farming/Crop Production	P	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P/C [G]	
Aviation	facilities for the landing and takeoff of flying vehicles, including loading and unloading areas		C	C	-	-	-	-	-	-	-	-	-	C	C	C	C	C	P	P	P/C [G]
Surface Transportation			-	-	-	-	-	-	-	-	-	-	-	C	C	C	P C	P	P	P	P/C [G]
Entertainment Event, Major	activities and structures that draw large numbers of people to specific events or shows		C	-	-	-	-	-	-	-	-	-	-	-	-	C	C	C	-	P/C [G]	
Mining	mining or extraction of mineral or aggregate resources from the ground for off-site use		C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	P	-	
Telecommunications Facilities	devices and supporting elements necessary to produce non-ionizing electromagnetic radiation...operating...to produce a signal...	125 feet in height or less	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	P/C [N]	P/C [N]	P/C [N]	C [N]	
		Greater than 125 feet in height	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C [N]	C [N]	C [N]	-	
		Up to building height limit of applicable zoning district	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	C [N]	P/C [N]	P/C [N]	P/C [N]	C [N]	
		TSSs supported by Guy wires	C [N]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
		Attached Telecommunications facilities	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	

[1] In SR-0 districts, animal confinements are either permitted or a conditional use, subject to procedures of Sec. 20-0909, as described in Sec. 20-1203.C.2.b.

■ = Use Permitted By-Right ■ P/C = Use Permitted By-Right But Subject to Use-Specific Standards of Sec. 20-0402

■ = Conditional Use, Subject to Procedures of Sec. 20-0909 ■ Some uses also Subject to **Site Plan Review** (See Sec. 20-0910) or to a Traffic Impact Study as required by Sec. 20-0701L.



DO I NEED A LICENSE TO BUY AND SELL FIREARMS?

Guidance to help you understand when a Federal Firearms License is required under federal law.



The guidance set forth herein has no regulatory effect and is not intended to create or confer any rights, privileges, or benefits in any matter, case, or proceeding, see *United States v. Caceres*, 440 U.S. 741 (1979).

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Introduction

The federal Gun Control Act (GCA) requires that persons who are engaged in the business of dealing in firearms be licensed by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Federal firearms licensees (FFL) are critical partners in promoting public safety because—among other things—they help keep firearms out of the hands of prohibited persons by running background checks on potential firearms purchasers, ensure that crime guns can be traced back to their first retail purchaser by keeping records of transactions, and facilitate safe storage of firearms by providing child safety locks with every transferred handgun and having secure gun storage or safety locks available any place where they sell firearms. A person who willfully engages in the business of dealing in firearms without the required license is subject to criminal prosecution, and can be sentenced to up to five years in prison, fined up to \$250,000, or both.

Determining whether your firearm-related activities require a license is a fact-specific inquiry that involves application of factors set by federal statute. This guidance is intended to help you determine whether you need to be licensed under federal law.

Note that some states have more stringent laws with respect to when a state-issued license is required for selling a firearm. Please consult the laws of the state to ensure compliance.

In addition, this guidance focuses on the question whether your firearm-related activities require you to obtain a license. There are other laws and regulations that govern the transfer of firearms—both between unlicensed individuals and from licensed dealers (e.g., unlicensed sellers may only lawfully sell to persons within their own state, and it is unlawful for either licensed or unlicensed sellers to sell firearms to persons they know or have reasonable cause to believe cannot lawfully possess them). **All persons who transfer firearms, regardless of whether they are engaged in the business of dealing in firearms, must ensure that any transfers are in compliance with federal, state and local laws.**

Key Points

- Federal law requires that persons who are engaged in the business of dealing in firearms be licensed by ATF. The penalty for dealing in firearms without a license is up to five years in prison, a fine up to \$250,000, or both.
- A person can be engaged in the business of dealing in firearms regardless of the location in which firearm transactions are conducted. For example, a person can be engaged in the business of dealing in firearms even if the person only conducts firearm transactions at gun shows or through the internet.
- Determining whether you are “engaged in the business” of dealing in firearms requires looking at the specific facts and circumstances of your activities.
- As a general rule, you will need a license if you repetitively buy and sell firearms with the principal motive of making a profit. In contrast, if you only make occasional sales of firearms from your personal collection, you do not need to be licensed.
- Courts have identified several factors relevant to determining on which side of that line your activities may fall, including: whether you represent yourself as a dealer in firearms; whether you are repetitively buying and selling firearms; the circumstances under which you are selling firearms; and whether you are looking to make a profit. Note that while quantity and frequency of sales are relevant indicators, courts have upheld convictions for dealing without a license when as few as two firearms were sold, or when only one or two transactions took place, when other factors were also present.

If you have any questions about whether you need a license under federal law, we recommend that you contact your local ATF office (<https://www.atf.gov/contact/atf-field-divisions>) to evaluate the facts and circumstances of your particular case.

Legal Framework

Q

Who needs a Federal license to deal in firearms?

A

Under federal law, any person who engages in the business of dealing in firearms must be licensed.

Q

What does it mean to be “engaged in the business of dealing in firearms”?

A

Under federal law, a person engaged in the business of dealing in firearms is a person who “devotes time, attention and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms.”

Under federal law, conducting business “with the principal objective of livelihood and profit” means that “the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection.”

Consistent with this approach, federal law explicitly exempts persons “who make occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.”

Q

Has ATF defined what it means to be “engaged in the business” of dealing in firearms?

A

ATF has published regulatory definitions for the terms “engaged in the business” and “principal objective of livelihood and profit.” ATF’s regulation defining when a person is “engaged in the business” of dealing in firearms is identical to the language of the statute, though in the definition of “dealer,” ATF clarified that the term includes “any person who engages in such business or occupation on a part-time basis.”

Gun Shows, Flea Markets, and Internet Sales



What if I only sell firearms at flea markets, gun shows or over the internet?



A person can be engaged in the business of dealing in firearms regardless of the location in which firearm transactions are conducted. A person can be engaged in the business of dealing in firearms even if the person only conducts firearm transactions from a location other than a traditional brick and mortar store.

Many licensed gun dealers conduct business at temporary locations such as qualified gun shows or events, and utilize the internet to facilitate firearm transactions. The question under federal law is not where firearm transactions are conducted, but rather is whether—under a totality of the circumstances—the person conducting those transactions is engaged in the business of dealing in firearms. The factors listed below apply to that determination regardless of where the firearm transactions occur.

The growth of new communications technologies and e-commerce allows sellers of firearms to advertise to an expansive market at minimal cost, and complete sales with minimal effort. While a collector or hobbyist may use the internet and other communication technology to sell a firearm without a license (provided that they comply with all other federal and state laws and regulations), those engaged in the business of dealing in firearms who utilize the internet or other technologies must obtain a license, just as a traditional dealer whose business is run out of a traditional brick and mortar store.

Guidance

A. Overview

What activities require a dealer's license?

Federal law does not establish a “bright-line” rule for when a federal firearms license is required. As a result, there is no specific threshold number or frequency of sales, quantity of firearms, or amount of profit or time invested that triggers the licensure requirement. Instead, **determining whether you are “engaged in the business” of dealing in firearms requires looking at the specific facts and circumstances of your activities.**

As a general rule, you will need a license if you repetitively buy and sell firearms with the principal motive of making a profit. In contrast, if you only make occasional sales of firearms from your personal collection, you do not need to be licensed. In either case, all of your firearms transactions are relevant, regardless of their location; it does not matter if sales are conducted out of your home, at gun shows, flea markets, through the internet, or by other means.

As a general rule, you will need a license if you repetitively buy and sell firearms with the principal motive of making a profit. In contrast, if you only make occasional sales of firearms from your personal collection, you do not need to be licensed.

B. Factors Identified by Federal Courts

Federal courts have identified several factors that can help you determine on what side of that line your activities fall. They include: whether you represent yourself as a dealer in firearms; whether you are repetitively buying and selling firearms; the circumstances under which you are selling firearms; and whether you are looking to make a profit. It is important to note that no single factor is determinative, and that the relative importance of any of the factors will vary depending on the facts and circumstances applicable to the individual seller.

Relevant factors: whether you represent yourself as a dealer in firearms; whether you are repetitively buying and selling firearms; the circumstances under which you are selling firearms; and whether you are looking to make a profit.

- *Are you representing yourself as a dealer in firearms?*

Perhaps the clearest indication of whether a person is “engaged in the business” of dealing in firearms can be found in what he or she represents to others. Some factors that may demonstrate that you intend to engage in the business of dealing in firearms include: representing yourself as a source of firearms for customers, taking orders, and offering to buy firearms to immediately resell. Your intent to engage in the business of

Guidance (*continued*)

dealing in firearms can also be reflected by undertaking activities that are typically associated only with businesses—for example, creating a business entity or trade name for your firearms business, securing State and local business licenses to sell items that may include firearms, purchasing a business insurance policy or rider to cover a firearms inventory, commercial advertising, printing business cards, and accepting credit card payments.

- *Are you repetitively buying and selling firearms?*

As noted above, there is no specific threshold number of firearms purchased or sold that triggers the licensure requirement. Similarly, there is no “magic number” related to the frequency of transactions that indicates whether a person is “engaged in the business” of dealing in firearms. It is important to note, however, that even a few firearms transactions, when combined with other evidence, can be sufficient to establish that a person is “engaged in the business” of dealing in firearms. For example, courts have upheld convictions for dealing without a license when as few as two firearms were sold, or when only one or two transactions took place.

That said, courts have looked at both the quantity of firearms sold, as well as the frequency of sales, as relevant indicators. When combined with other factors, selling large numbers of firearms or engaging in frequent transactions may be highly indicative of business activity.

- *What are the circumstances under which you are selling firearms? Are you selling shortly after acquiring them? Repeatedly selling the same type of firearm? Or repetitively selling new firearms?*

In addition to the volume and frequency of firearms transactions, the timing and circumstances surrounding firearm transactions are also significant indicators of whether a person is engaged in the business. Repetitively selling or offering to sell firearms shortly after they are acquired; “restocking” inventory; repetitively acquiring the same type of firearm or a large quantity of the same type of firearm, and then reselling or offering to sell those firearms; and/or repetitively acquiring and reselling or offering to sell firearms in unopened or original packaging (or in new condition), are all factors which individually or combined may indicate a person is engaged in the business.

- *Are you looking to make a profit?*

As noted above, if you are repetitively buying and selling firearms “with the principal objective of livelihood and profit,” you must be licensed. Because the key is *intent* or *objective*, the courts have made clear that a person can be “engaged in the business” of dealing in firearms without actually making a profit. In determining that intent or objective, courts have looked to prices that an unlicensed seller charges for firearms to determine if the principal objective of the seller is livelihood and profit. In some cases, prices reflect appreciation in actual market value resulting from having held a

Guidance *(continued)*

firearm as part of a collection, or reflect a profit intended to be used to acquire another firearm as part of a collection. As a result, the fact that a transaction results in a profit for the seller is not always determinative.

Finally, it is important to note that courts have found that you can buy and sell firearms “with the principal objective of livelihood and profit” even if your firearm-related activities are not your primary business. In other words, you can still be “engaged in the business of dealing in firearms with the principal objective of livelihood and profit” if you have a full time job, and are buying and selling firearms to supplement your income. ATF regulations specifically note that the term “dealer” includes a person who engages in such a business or occupation on a part-time basis.

Does a Curio and Relics Collector’s license (C&R license) allow me to be engaged in the business of dealing in firearms?

The C&R license does not allow for the licensee to repetitively buy and sell firearms with the principal motive of making a profit. It does not matter if the firearms being bought and sold are curios or relics, or newer firearms. If a C&R licensee wishes to engage in the business of dealing in firearms, he or she must apply for a different type of license that allows this activity.

Do I need a license if I’m an auctioneer and simply auction guns for my customers?

If you repeatedly conduct auctions for firearms that are first consigned to you for sale, and you intend to make money from those sales, you need a license. If, however, you simply offer auctioneer services without having the firearms transferred to you (for example, you are hired by the representative of an estate to travel to the location of the estate, assist the estate in conducting an auction, and the firearms remain the property of the estate until transfer to the buyer), you need not be licensed.

Examples

While the determination of whether a person requires a federal firearms license is highly fact-specific, the following examples are provided to show how the factors identified by federal courts apply to common fact patterns. **Of course, the existence or absence of other facts not included in the examples may change the conclusion as to whether a person is engaged in the business and therefore must be licensed; hence, these examples are provided solely as general guidance.** For the purposes of these examples, assume that the sellers comply with all other relevant federal and state laws and regulations (for example, any unlicensed person makes only lawful sales to persons who reside in the same state).



Bob inherits a collection of firearms from his grandfather. He would rather have cash than the firearms, so he posts them all online for sale. He makes no purchases, but over the course of the next year he sells all of the firearms he inherited in a series of different transactions. Bob does not need a license because he is liquidating a personal collection.



Joe recently lost his job, and to finance his living expenses he has been buying firearms from friends and reselling them through an internet site. He has successfully sold a few firearms this way, and has several more listed for sale at any one time. Joe must be licensed because he is repetitively buying and selling firearms with the primary objective of profit.



Sharon travels to flea markets the first Saturday of every month, buying undervalued goods, including firearms. The last Saturday of every month Sharon rents a booth at the flea market and sells her items at market value for a profit. She hopes to make enough money from these sales to finance a trip to Italy next year. Sharon must get a license because she is repetitively buying and selling firearms with the primary objective of profit.



David enjoys hunting and has a large variety of hunting rifles. He likes to have the newest models with the most current features. To pay for his new rifles, a few times a year David sells his older weapons to fellow hunters for a profit. David does not need to be licensed because he is engaging in occasional sales for enhancement of his personal collection.



Lynn regularly travels to gun shows around her state, rents space, and sells firearms under a banner stating “liquidating personal collection.” Most of the firearms Lynn offers for sale she purchased from a licensed dealer in the prior weeks. Lynn is retired and hopes to supplement her income with the money she makes on the sales, although she has yet to turn a profit. Lynn must get a license because she is repetitively buying and selling firearms with a primary objective of profit.

Examples *(continued)*



Scott has been collecting high-end firearms for years. In the six months before his son is about to enter college, Scott sells most of his collection in a series of transactions at gun shows, on the Internet, and to family and friends to provide funds to pay his son's college expenses. Scott does not have to be licensed, because he is liquidating part of a personal collection.



Debby has three handguns at home, and decides that she no longer wants two of them. She posts an advertisement in the local newspaper and sells the two handguns to a local collector. Debby does not need a license because she is not engaging in the repetitive purchase and resale of firearms as a regular course of trade or business.



Jessica enjoys shooting sports and frequently goes to shooting ranges and hunting clubs. To make some extra money, she buys firearms from a dealer who is willing to give her a discount, and resells them for a profit to acquaintances from the shooting ranges and hunting clubs. She has done this a few times a month for the last several months, and has been spreading the word that she has a source for other firearms. She passes out business cards with her name, phone number and email. Jessica must get a license because she is repetitively buying and selling of firearms with the primary objective of profit.



Doug regularly attends gun shows and rents a table to display firearms for sale. He gets firearms from a variety of sources, carefully logs each purchase into a book, and uses the purchase price to set a sales price that will realize him a net profit. Doug accepts credit card payments and typically sells multiple firearms at each of the gun shows he attends each year. He makes a substantial amount of money annually, and uses this money to live on. Doug must be licensed because he is repetitively buying and selling firearms with the primary objective of profit.

Questions & Answers On Getting A Federal Firearms License

Q

A

How do I become licensed?

The license application (called the ATF Form 7) is straightforward and can be found here: <https://www.atf.gov/firearms/apply-license>. In addition to the application itself, an applicant for a federal firearms license must also provide to ATF a photograph, fingerprints, and the license application fee, currently set at \$200 for the initial three-year period, and \$90 for each three-year renewal.

Q

A

What standards does ATF use to determine whether to give me a license?

ATF will approve an application for a federal firearms license if the applicant:

- Is 21 years of age or older;
- Is not prohibited from shipping, transporting, receiving or possessing firearms or ammunition;
- Has not willfully violated the GCA or its regulations;
- Has not willfully failed to disclose material information or willfully made false statements concerning material facts in connection with his application;
- Has a premises for conducting business; and
- The applicant certifies that:
 - the business to be conducted under the license is not prohibited by State or local law in the place where the licensed premises is located;
 - within 30 days after the application is approved the business will comply with the requirements of State and local law applicable to the conduct of the business;
 - the business will not be conducted under the license until the requirements of State and local law applicable to the business have been met;
 - the applicant has sent or delivered a form to the chief law enforcement officer where the premises is located notifying the officer that the applicant intends to apply for a license; and
 - secure gun storage or safety devices will be available at any place in which firearms are sold under the license to persons who are not licensees.

Q

A

What obligations will I have once I become licensed?

Licensed firearms dealers are subject to certain requirements under federal law, including running background checks on any non-licensed person prior to transferring a firearm (subject to narrow exceptions), keeping firearms transaction records so that crime guns can be traced to their first retail purchaser, and ensuring safety locks are provided with every handgun, and available in any location where firearms are sold.

Questions & Answers On Getting A Federal Firearms License (*continued*)

Licensees are also prohibited by law from knowingly transferring handguns to persons who do not reside in the State where the licensee's premises are located, and from knowingly transferring any firearm to underage persons and certain categories of "prohibited persons," including felons, persons who were involuntarily committed to mental institutions, and illegal aliens. Under federal law, licensees are subject to inspection and are also required to respond to requests for firearms tracing information within 24 hours.

This list is not all inclusive; more information about the requirements of having a federal firearms license can be found at www.ATF.gov and by contacting your local ATF Office. A list of local offices can be found at <https://www.atf.gov/contact/atf-field-divisions>.



What if I don't need to be licensed, but I want to make sure a background check is run on a potential purchaser of my gun?



Private, unlicensed sellers can help ensure that potential purchasers are not prohibited from possessing firearms by using a licensed dealer to facilitate the sale and transfer of a firearm. For a small fee, many licensed dealers will facilitate a sale of a firearm between two unlicensed individuals. This service provides both customers and the community assurance that individuals who want to purchase firearms undergo a comprehensive background check which helps to ensure the buyer is not prohibited from possessing a firearm, and can improve the ability of law enforcement to trace firearms if they are later recovered in a connection with a crime. In 2013, ATF published an open letter (<https://www.atf.gov/file/56331/download>) to licensed dealers educating them on how to facilitate private sales, and published ATF Procedure 2013–1 (<https://www.atf.gov/file/88181/download>), which provides further guidance. The decision to facilitate private sales is wholly voluntary on the part of the licensed dealer.

Additional information can be found at www.atf.gov.

U.S. Department of Justice

Bureau of Alcohol, Tobacco, Firearms and Explosives

99 New York Avenue, NE

Washington, DC 20226



City of Fargo Staff Report			
Title:	Luxsun 25 th Street North Addition	Date:	4/29/2020
Location:	4764 25 th Street North	Staff Contact:	Donald Kress, planning coordinator
Legal Description:	Auditors Lot 2, Section 14, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota		
Owner(s)/Applicant:	Luxsun Investments, LLC/Thad Thorsness	Engineer:	Mead and Hunt
Entitlements Requested:	Major Subdivision (replat of Auditors Lot 2, Section 14, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota) Zone Change (from AG, Agricultural to LI, Limited Industrial)		
Status:	Planning Commission Public Hearing: May 5, 2020		

Existing	Proposed
Land Use: Undeveloped	Land Use: Industrial
Zoning: AG, Agricultural	Zoning: LI, Limited Industrial
Uses Allowed: AG – Agricultural. Allows detached houses, parks and open space, safety services, basic utilities, and crop production	Uses Allowed: 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.
Maximum Density Allowed (Residential): AG allows a maximum of 1 dwelling unit per 10 acres.	Maximum Density Allowed: Maximum 85% building coverage

Proposal:

The applicant requests two entitlements:

1. A major subdivision, entitled **Luxsun 25th Street North Addition**, a one block, one lot subdivision, which is a replat of a Auditors Lot 2, Section 14, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota
2. A zone change from AG: Agricultural to LI, Limited Industrial

NOTE: This property is currently in the City's extra-territorial jurisdiction (ETJ). The process for annexing this property into the City is running parallel with the plat and zone change. The Planning Commission will review the proposed annexation in item E.1 of the May 5, 2020 Planning Commission Agenda.

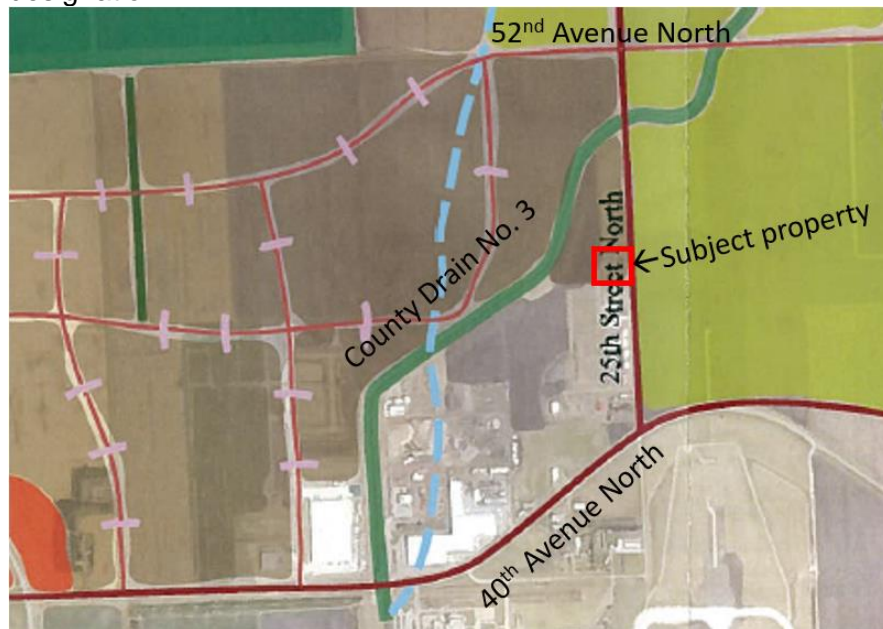
This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.

Surrounding Land Uses and Zoning Districts:

- North: AG, undeveloped, in ETJ
- East: AG, (in ETJ) Airport Authority property—not developed
- South: LI, small industrial uses, mainly storage and shop condos
- West: LI, platted but not developed

Area Plans:

The 2007 North Fargo Tier 1 East Growth Plan, part of the 2007 Growth Plan, designates the area of this project as “Industrial” land use. Per that plan, the proposed LI zoning is consistent with this land use designation.

**Context:**

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

Neighborhood: The subject property is not located within a designated neighborhood.

Parks: Riverwood Park (4707 County Road 31) is located approximately 1.84 miles (by road) east of the project site and provides the amenities of basketball courts; cricket, football, soccer, and multipurpose fields; grill; picnic table; recreational trails; shelter; playground—ages 5-12.

Pedestrian / Bicycle: There are no on-road or off-road bike facilities adjacent to this property.

Staff Analysis:

PLAT: The plat will create a one lot in one block by replatting the existing Auditor’s Lot 2. The plat will dedicate a total of 40 feet of right of way for 25th Street North along the property frontage. That street is a section line road. This consists of 33 feet of statutory right of way and seven additional feet of right of way.

ZONE CHANGE: The proposed LI, Limited Industrial zoning is consistent with the adjacent zoning to the west and south as well as with the 2007 Growth Plan designation of “Industrial” for this area.

ACCESS: The lot will take access from 25th Street North.

PROXIMITY AGREEMENT: The Fargo Airport Authority's attorney has prepared a proximity agreement for the applicant to sign. This is a standard agreement between the City of Fargo and property owners within the Hector International Airport noise contour and approach and in proximity to the overflow sewage lagoons. It relates to proximity of airport, noise attenuation and odor. The City Commission will take final action on this agreement. No specific action is required by the Planning Commission.

ANNEXATION: This property is outside of the Fargo city limits. The applicant has requested annexation through an owner-initiated petition. The Planning Commission will evaluate this proposed annexation for consistency with the 2007 Growth Plan in item E(1) of the May 5, 2020 Planning Commission agenda. There is a separate staff report for this item. A hearing is intended to be scheduled for this annexation at the City Commission concurrently with the final plat and zone change hearing.

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 AG, Agricultural. The proposed zoning for this property is LI, Limited Industrial, which will accommodate the proposed development. The LI zoning designation is consistent with the "industrial" designation for this property in the 2007 Growth Plan—North Fargo Tier 1 East. **(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. The project site will become eligible to receive City services after it has been annexed. Staff finds no deficiencies in the ability to provide all of the necessary services to the site. The subdivision will front on a dedicated public street. The necessary rights of way for this street (25th Street North) will be dedicated with the plat. This street 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, staff has not received any public comment or inquiries. 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—North Fargo Tier 1 East. This plan designates this property as appropriate for industrial development, which includes the LI 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)**

Subdivision

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

1. Section 20-0907(C)(1)(Development Review Procedures—Subdivisions—Major Subdivisions) 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 proposed zoning for this property is LI, Limited Industrial, which will accommodate the proposed development. The LI zoning designation is consistent with the “industrial” designation for this property in the 2007 Growth Plan—North Fargo Tier 1 East. 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 not received any public comment or inquiries. **(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 proposed zoning is LI, Limited Industrial. This zoning is consistent with the “industrial” designation for this property in the 2007 Growth Plan—North Fargo Tier 1 East. 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)**

3. 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.

The City’s standard policy is 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. For this project, the applicant intends to construct the improvements himself and has been working with the City Engineer on the process for doing so.

(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) zone change from AG, Agricultural to LI, Limited Industrial; and 2) plat of **Luxsun 25th Street North Addition** as presented; as the proposal complies with the 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: May 5, 2020

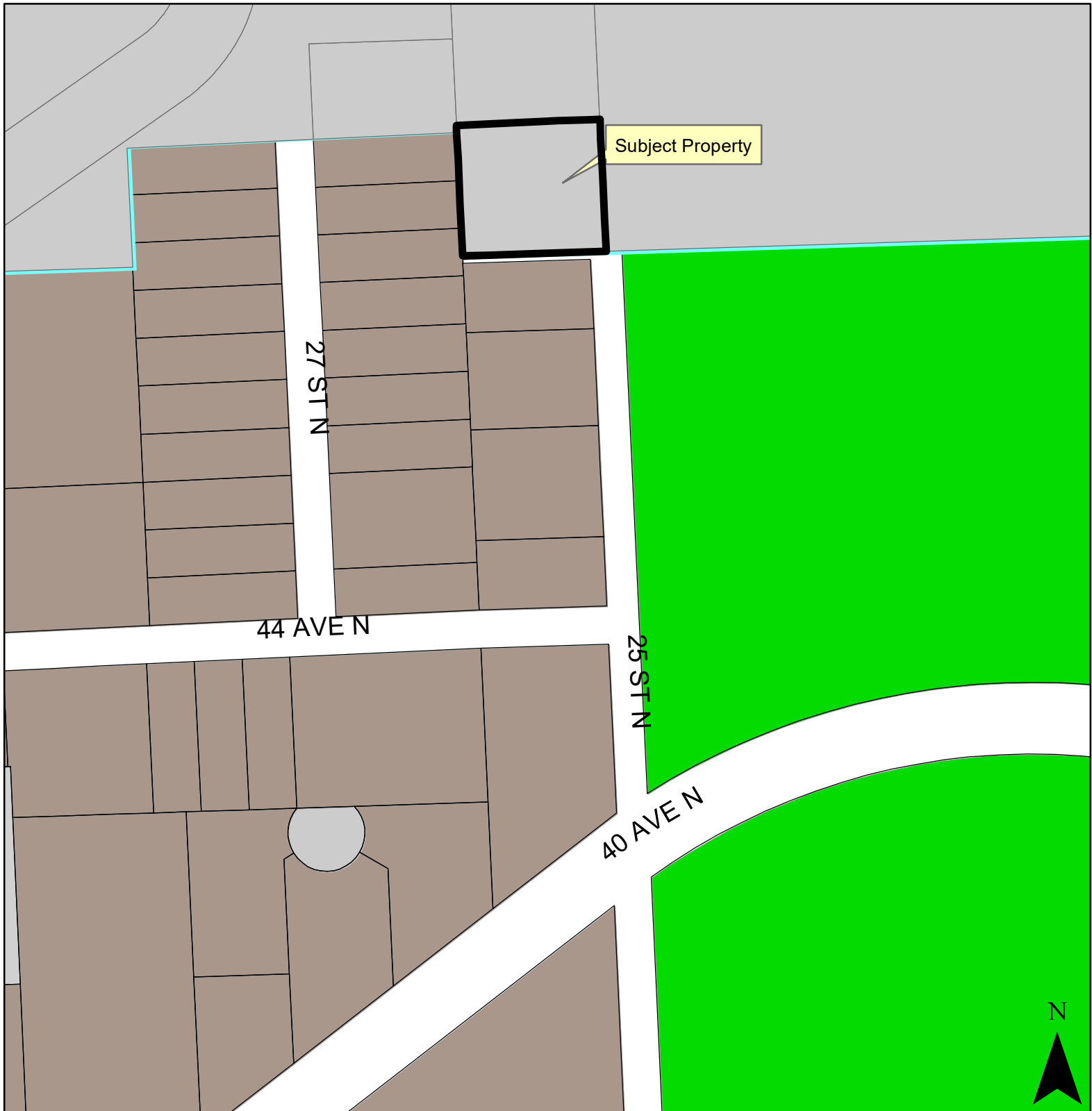
Attachments:

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

Annexation, Zone Change (AG to LI) & Plat (Major)

Luxsun 25th Street North Addition

4764 25th St N



Legend



300

Feet

Fargo Planning Commission

April 7, 2020

Annexation, Zone Change (AG to LI) & Plat (Major)

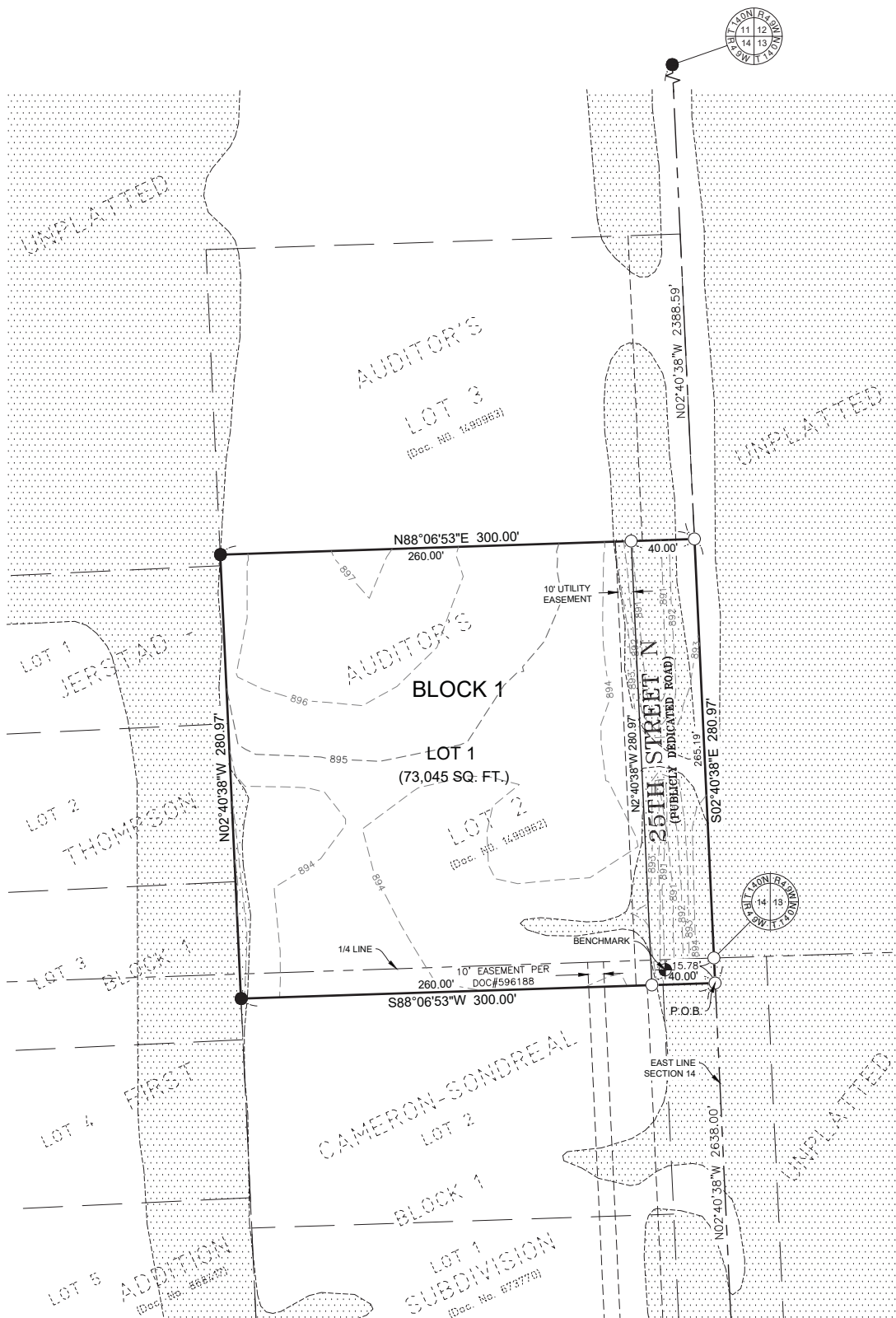
Luxsun 25th Street North Addition

4764 25th St N



LUXSUN 25TH STREET NORTH ADDITION

PART OF THE EAST HALF OF SECTION 14, TOWNSHIP 140 NORTH, RANGE 49 WEST, CASS COUNTY, NORTH DAKOTA
(A MAJOR SUBDIVISION)



NOTES:

- GROUND DISTANCES ARE SHOWN AND ARE IN TERMS OF U.S. SURVEY FEET.
- PART OF THIS PLAT FALLS IN FLOODPLAIN ZONE 'AE' ACCORDING TO THE FEMA FIRM MAPS 38017C0579G WITH AN EFFECTIVE DATE 1/16/2015. THE BASE FLOOD ELEVATION IN THIS AREA IS 893' (NAVD88) ACCORDING TO FEMA. CONTOUR INFORMATION SHOWN IS DERIVED FROM FIELD SURVEY CONDUCTED FEB. 14, 2020.
- SITE BENCHMARK IS THE TOP NUT OF HYDRANT LOCATED NEAR THE SOUTHEAST CORNER OF SUBJECT PROPERTY.
ELEVATION = 894.80 (NAVD88)

OWNER'S CERTIFICATE:

KNOW ALL PERSONS BY THESE PRESENTS: That Luxsun Investments, LLC, as the owner of a parcel of land located in that part of the East Half of Section 14, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, being more particularly described as follows:

All of Auditor's Lot 2 of the East Half of said Section 14, on file and of record as document number 1490962, in the office of the County Recorder of Cass County, North Dakota being also described as follows:

Commencing at the southeast corner of said Section 14, thence North 02 degrees 40 minutes 38 seconds West, an assumed bearing on the east line of said Section 14, a distance of 2,638.00 feet to the northeast corner of Cameron-Sondreal Subdivision and the Point of Beginning; thence South 88 degrees 06 minutes 53 seconds West, on the south line of said Auditor's Lot 2, a distance of 300.00 feet to the southwest corner of said Auditor's Lot 2; thence North 02 degrees 40 minutes 38 seconds West, on the west line of said Auditor's Lot 2, a distance of 280.97 feet to the northwest corner of said Auditor's Lot 2; thence North 88 degrees 06 minutes 53 seconds East, on the north line of said Auditor's Lot 2, a distance of 300.00 feet to the east line of said Section 14 and the northeast corner of said Auditor's Lot 2; thence South 02 degrees 40 minutes 38 seconds East, on said east line 280.97 feet to the Point of Beginning.

Containing 1.93 acres, more or less.

Said owners have caused the above described parcel of land to be surveyed and platted as "**Luxsun 25th Street North Addition**" to the City of Fargo, Cass County, North Dakota, and does hereby dedicate to the public, for public use, 25th Street North and utility easements as shown on this plat for purposes specified.

Owner

Luxsun Investments, LLC
Thad Thorsness, Managing Partner

State of North Dakota)

County of Cass)ss

On this _____ day of _____, 20____, before me personally appeared Thad Thorsness, Managing Partner 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: _____

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT:

I, Jason Ness, Professional Land Surveyor under the laws of the State of North Dakota, do hereby certify that this plat is a true and correct representation of the survey of said subdivision; that the monuments for the guidance of future surveys have been located or placed in the ground as shown.

Dated this _____ day of _____, 20____.

Jason Ness

Professional Land Surveyor No. LS-6884

State of North Dakota)

County of Cass)ss

On this _____ day of _____, 20____, before me personally appeared Jason Ness, Professional Land Surveyor, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same as his free act and deed.

Notary Public: _____

LEGEND

●	MONUMENT IN PLACE
○	SET MONUMENT (5/8" REBAR CAPPED LS-6884)
⊕	BENCHMARK
---	EXISTING PROPERTY LINE
- - -	QUARTER LINE
- - - - -	SECTION LINE
- - - - -	EXISTING EASEMENT LINE
- - - - -	NEW EASEMENT LINE
---	NEW LOT LINE
---	PLAT BOUNDARY
- - - - -	MAJOR CONTOUR
- - - - -	MINOR CONTOUR
.....	100 YR. FLOODPLAIN

CITY ENGINEER'S APPROVAL:

Approved by the Fargo City Engineer this _____ day of _____, 20____.

Brenda E. Derring, P.E., City Engineer

State of North Dakota)

County of Cass)ss

On this _____ day of _____, 20____, before me personally appeared Brenda E. Derring, Fargo City Engineer, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that she executed the same as her free act and deed.

Notary Public: _____

FARGO PLANNING COMMISSION APPROVAL:

Approved by the City of Fargo Planning Commission this _____ day of _____, 20____.

John Gunkelman, Chair

Fargo Planning Commission

State of North Dakota)

County of Cass)ss

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

Notary Public: _____

FARGO CITY COMMISSION APPROVAL:

Approved by the Board of City Commissioners and ordered filed this _____ day of _____, 20____.

Timothy J. Mahoney, Mayor

Attest:

Steven Sprague, City Auditor

State of North Dakota)

County of Cass)ss

On this _____ day of _____, 20____, before me personally appeared Timothy J. Mahoney, Mayor, City of Fargo; and Steven Sprague, City Auditor, City of Fargo, 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: _____

Mead & Hunt

Phone: 701-566-6450
meadhunt.com

PROJECT NO.
4618700-200622.01
SHEET 1 OF 1

**City of Fargo
Staff Report**

Title:	Auditor's Lot 2, Sec. 14, Township 140 North, Range 39 West Annexation	Date:	4/29/2020
Location:	4764 25 th Street North	Staff Contact:	Donald Kress, planning coordinator
Legal Description:	Auditors Lot 2, Section 14, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota		
Owner(s)/Applicant:	Luxsun Investments, LLC/Thad Thorsness	Engineer:	Mead and Hunt
Entitlements Requested:	Annexation of Auditors Lot 2, Section 14, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota		
Status:	Planning Commission Public Hearing: May 5, 2020		

Proposal:

The applicant has petitioned the City to annex approximately 1.83 acres of land that is currently within the city's four-mile extra-territorial jurisdiction. This area is undeveloped. A map of the proposed annexation area is attached.

NOTE: A subdivision plat and request for a zone change for the proposed annexed area will be heard as items 16a and 16b of the May 5, 2020 Planning Commission agenda.

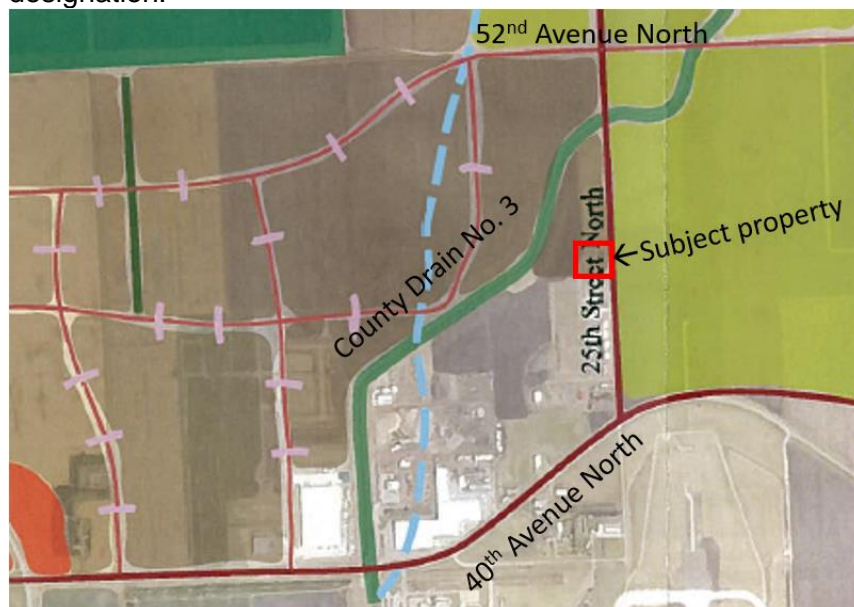
This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.

Surrounding Land Uses and Zoning Districts:

- North: AG, undeveloped, in ETJ
- East: AG, undeveloped, in ETJ airport property
- South: LI, small industrial uses
- West: LI, small industrial uses

Area Plans:

The 2007 North Fargo Tier 1 East Growth Plan, part of the 2007 Growth Plan, designates the area of this project as "Industrial" land use. Per that plan, the proposed LI zoning is consistent with this land use designation.



Context:

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

Neighborhood: The subject property is not located within a designated neighborhood.

Parks: Riverwood Park (4707 County Road 31) is located approximately 1.84 miles (by road) east of the project site and provides the amenities of basketball courts; cricket, football, soccer, and multipurpose fields; grill; picnic table; recreational trails; shelter; playground—ages 5-12.

Pedestrian / Bicycle: There are no on-road or off-road bike facilities adjacent to this property.

Staff Analysis:

OWNERSHIP

The entire property involved in the annexation is owned by the applicant, Luxsun Investments, LLC. No existing residences or businesses other than the applicant's business are included in the annexation area.

PLAN CONSISTENCY

This property is outside of the Fargo city limits. The applicant has requested annexation through a petition. The proposed annexation area is depicted on the 2007 North Fargo Tier 1 East Growth Plan map of the 2007 Growth Plan. The 2007 Growth Plan describes the "Tier 1" designation as the "Intended Growth Sector" for the city of Fargo within the next 20 years (that is, by the year 2027).

Though the 2007 Growth Plan does not provide actual findings for annexation, it does state that "Tier 1 is planned to handle growth for the next 20 to 25 years [from 2007]" and that "Carefully planned extensions of the city as a result of demand for housing help to counter disruptive leapfrog development." (page 55, 2007 Growth Plan). The proposed development is adjacent to existing limited industrial development along 25th Street North. This location corresponds with two of the strategies stated in the 2007 plan to work against leapfrog development:

- Limit roadway and utility extensions to areas within the 20 year service area [Tier 1] directly adjacent to areas currently receiving services; and
- Avoid utility and roadway extensions that traverse areas where property owners are not interested in developing their property. (page 56, 2007 Growth Plan)

The proposed development is consistent with the land use designations of the 2007 Growth Plan; no growth plan amendment is necessary for this project.

CITY COMMISSION HEARING

A hearing will be scheduled for this annexation at the City Commission concurrently with the final plat and zone change hearing

Staff Recommendation:

Staff recommends the Planning Commission find that the proposed annexation of Auditors Lot 2, Section 14, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota to be consistent with the 2007 Growth Plan.

Planning Commission Recommendation: May 5, 2020

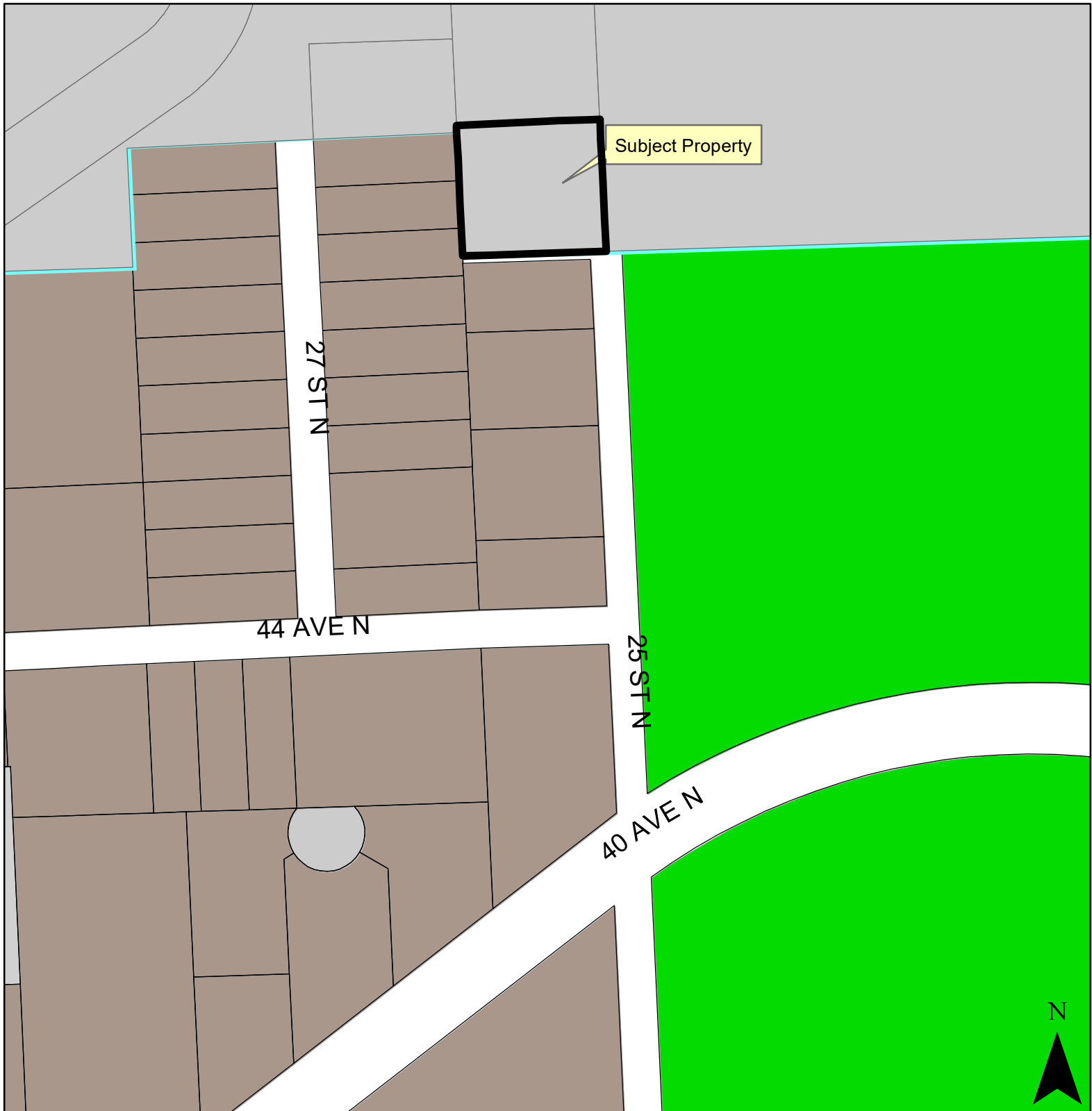
Attachments:

1. Zoning Map
2. Annexation Petition
3. Annexation Plat

Annexation, Zone Change (AG to LI) & Plat (Major)

Luxsun 25th Street North Addition

4764 25th St N



Legend

AG	LC	MHP	SR-2
DMU	LI	NH	SR-3
GC	MR-1	NO	SR-4
GO	MR-2	P/I	SR-5
GO	MR-3	UMU	City Limits

300

Feet

Fargo Planning Commission

April 7, 2020

Annexation, Zone Change (AG to LI) & Plat (Major)

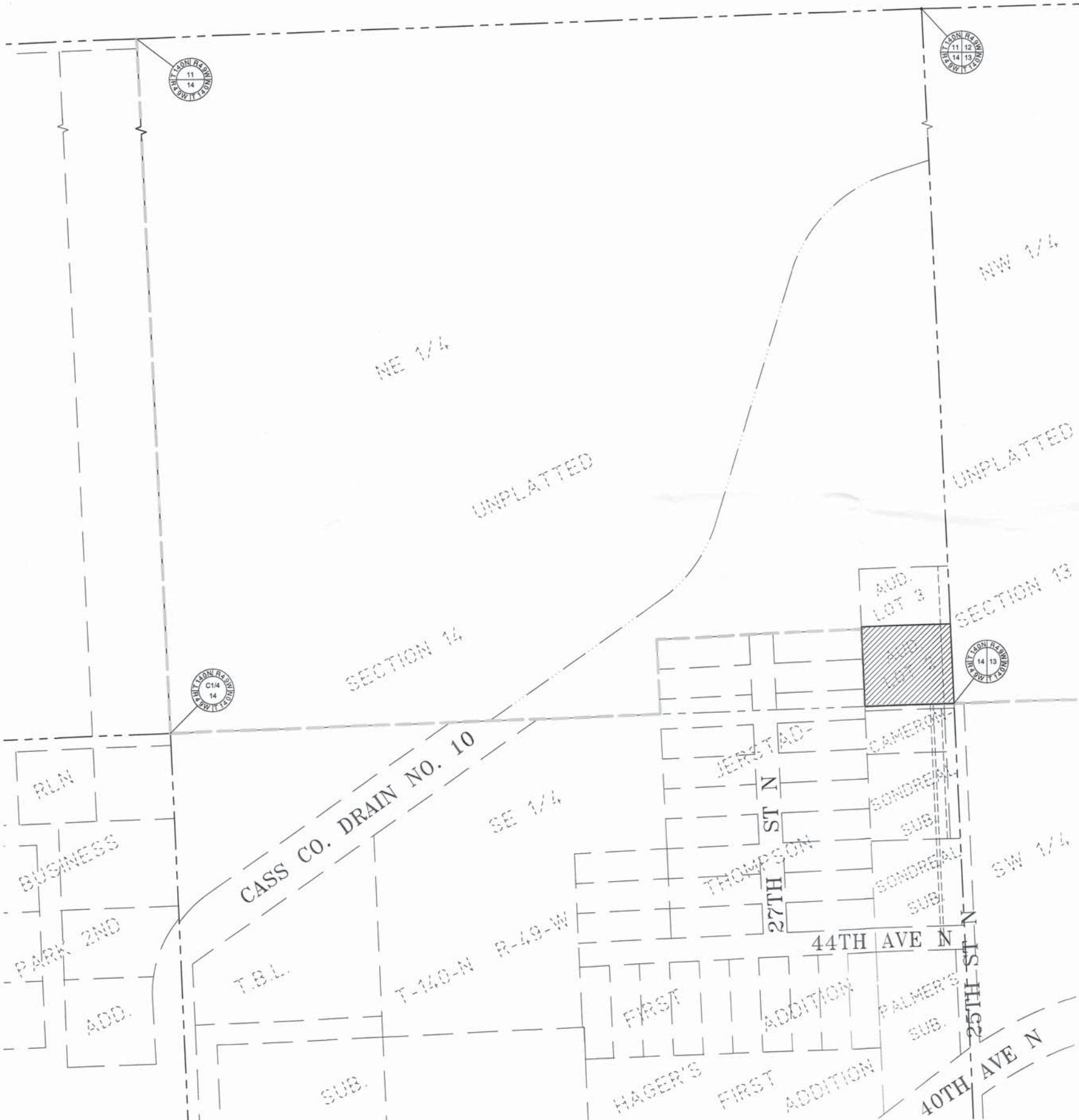
Luxsun 25th Street North Addition

4764 25th St N



ANNEXATION PLAT

TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA



ANNEXATION PLAT OF:
All that part of Auditor's Lot 2 of the East Half of Section 14, Township 140 North, Range 49 West of the Fifth Principal Meridian, on file and of record as document number 1490962, in the office of the County Recorder of Cass County, North Dakota, lying north of the south line of the Northeast Quarter of said Section 14.
Contains 1.83 acres, more or less.

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT
I, Jason Ness, Professional Land Surveyor under the laws of the State of North Dakota, do hereby certify that this plat is a true and correct representation of the area annexed; that said plat shows the City of Fargo Corporate limits contiguous to the annexed property.

Dated this ____ day of ____, 20__.

Jason Ness, PLS
Professional Land Surveyor
Registration No. LS-6884

State of North Dakota)
County of Cass) SS

On this ____ day of ____, 20__, appeared before me, Jason Ness, known to me to be the person whose name is subscribed to the above certificate and did acknowledge to me that he executed the same as his own free act and deed.

Notary Public, Cass County, North Dakota

CITY OF FARGO ENGINEERING DEPARTMENT APPROVAL
Approved by the City Engineer this ____ day of ____, 20__.

Brenda E. Derrig, P.E.
City Engineer

State of North Dakota)
County of Cass) SS

On this ____ day of ____, 20__, before me, a notary public in and for said county, personally appeared Brenda E. Derrig, City Engineer, known to me to be the person described in and who executed the same as a free act and deed.

Notary Public, Cass County, North Dakota

FARGO CITY COMMISSION APPROVAL
Approved by the Board of Commissioners and ordered filed this ____ day of ____, 20__.

Timothy J. Mahoney
Mayor

Attest:
Steven Sprague, City Auditor

State of North Dakota)
County of Cass) SS

On this ____ day of ____, 20__, before me, a notary public in and for said county, personally appeared Timothy J. Mahoney, Mayor, and Steven Sprague, City Auditor, known to me to be the persons described in and who executed the same as a free act and deed.

Notary Public, Cass County, North Dakota



LEGEND
--- EXISTING CITY LIMIT BOUNDARY
[Shaded Box] AREA TO BE ANNEXED

Mead & Hunt
Phone: 701-566-6450
meadhunt.com
PROJECT NO.
4618700-200622.01
SHEET 1 OF 1

PRELIMINARY