

FARGO PLANNING COMMISSION AGENDA
Wednesday, January 4, 2017 at 3:00 P.M.

- A: Approve Order of Agenda.
- B: Minutes: Regular Meeting of December 6, 2016.
- C: Brown Bag Luncheon - Wednesday, January 18, 2017.
- D: Public Hearing Items:
 - 1a. Continued Hearing on an application requesting a Growth Plan Amendment on Lots 7-11, Block 14, **Kirkham's Second Addition**. (Located at 1128, 1132, and 1136 14th Street North; 1404 12th Avenue North) (L2H Development, LLC) (an/mr): CONTINUED TO MARCH 7, 2017
 - 1b. Continued Hearing on an application requesting a Zoning Change from SR-3, Single-Dwelling Residential, MR-2, Multi-Dwelling Residential, and LC, Limited Commercial with a C-O, Conditional Overlay to LC, Limited Commercial with a PUD, Planned Unit Development Overlay and extinguishment of the existing C-O, Conditional Overlay on Lots 7-11, Block 14, **Kirkham's Second Addition**. (Located at 1128, 1132, and 1136 14th Street North; 1404 12th Avenue North) (L2H Development, LLC) (an/mr): CONTINUED TO MARCH 7, 2017
 - 1c. Continued Hearing on an application requesting a Planned Unit Development Master Land Use Plan for Commercial and Residential Development on Lots 7-11, Block 14, **Kirkham's Second Addition**. (Located at 1128, 1132, and 1136 14th Street North; 1404 12th Avenue North) (L2H Development, LLC) (an/mr): CONTINUED TO MARCH 7, 2017
 - 2. Continued Hearing on an application requesting a Street Vacation of 22nd Street North between Block 11 and Block 12, **Tyler's Addition**. (Located between the 300 and 400 Blocks of 22nd Street North) (Fabricators Unlimited) (an): CONTINUED TO FEBRUARY 7, 2017
 - 3a. Continued Hearing on an application requesting a Zoning Change from LI, Limited Industrial to LI, Limited Industrial with a PUD, Planned Unit Development Overlay on Lots 7-8, and the East 10 feet of Lot 9, Block 34, **Beardsleys Addition**. (Located at 2105 7th Avenue North) (Accel Mechanical, LLC) (an): CONTINUED TO FEBRUARY 7, 2017
 - 3b. Continued Hearing on an application requesting a Planned Unit Development Master Land Use Plan on Lots 7-8, and the East 10 feet of Lot 9, Block 34, **Beardsleys Addition**. (Located at 2105 7th Avenue North) (Accel Mechanical, LLC) (an): CONTINUED TO FEBRUARY 7, 2017

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Minutes are available on the City of Fargo Web site at www.cityoffargo.com/planningcommission.

- 4a. Continued Hearing on an application requesting a Zoning Change from AG, Agricultural to GC, General Commercial within the boundaries of the proposed **Interstate Business Park Addition**. (Located at 3801 26th Avenue South and 2852 Thunder Road South) (Kjos Investments, LLC) CONTINUED TO FEBRUARY 7, 2017 (dk):
- 4b. Continued Hearing on an application requesting a Plat of **Interstate Business Park Addition** (Major Subdivision) a replat of Lot 1, Block 1, Adams 7th Addition, and part of the Northeast Quarter of Section 22, Township 139 North, Range 49 West to the City of the 5th Principal Meridian, City of Fargo, Cass County, North Dakota. (Located at 3801 26th Avenue South and 2852 Thunder Road South) (Kjos Investments, LLC) CONTINUED TO FEBRUARY 7, 2017 (dk):
5. Continued Hearing on an application requesting a Zoning Change from GC, General Commercial to LI, Limited Industrial on part of Lot 19 and all of Lots 20 and 21, Block 18, **Reeves Addition**. (Located at 1409, 1411, and 1413 1st Avenue North) (Wade Wolf Properties LLC) (dk):
6. Hearing on an application requesting a Conditional Use Permit to allow for a Healthcare Facility in the MR-3, Multi-Residential zoning district on Lot 1, Block 1, **St. John's Addition**. (Located at 510 4th Street South) (Prairie St. John's) (dk):
7. Hearing on an application requesting a Plat of **Noridian Center 3rd Addition** (Minor Subdivision), a replat of Lots 1-10, Block 2, Noridian Center Addition, to the City of Fargo, Cass County, North Dakota. (Located at 4814, 4830, 4908, and 4920 14th Avenue South; 4809, 4825, 4905, and 4917 15th Avenue South; and 1403 and 1441 48th Street South) (West Fargo Public Schools) (an):
- 8a. Hearing on an application requesting a Zoning Change from LC, Limited Commercial to MR-3, Multi-Dwelling Residential of the proposed **Osgood Townsite Fourteenth Addition**, a replat of Lot 1, Block 1, Osgood Townsite Thirteenth Addition, to the City of Fargo, Cass County, North Dakota. (Located at 4550 49th Avenue South) (PACES Lodging) (km):
- 8b. Hearing on an application requesting a Plat of **Osgood Townsite Fourteenth Addition** (Minor Subdivision), a replat of Lot 1, Block 1, Osgood Townsite Thirteenth Addition and Lot 3, Block 5, Osgood Townsite 7th Addition, to the City of Fargo, Cass County, North Dakota. (Located at 4550 49th Avenue South and 5050 47th Street South) (PACES Lodging) (km):
9. Hearing on an application requesting a Plat of **Commerce on I-29 Second Addition** (Minor Subdivision), a replat of Lots 1, 4 and 5, Block 2, Commerce on I-29 Addition, to the City of Fargo, Cass County, North Dakota. (Located at 4001 and 4101 98th Avenue South) (PACES Lodging) (dk):

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10. Hearing on an application requesting a Zoning Change to repeal and reestablish a C-O, Conditional Overlay Lot 7, Block 1, **Timber Parkway First Addition**. (Located at 4801 Timber Parkway South) (PACES Lodging) (dl):
- 11a. Hearing on an application requesting a Zoning Change from LI, Limited Industrial to GC, General Commercial on Blocks 26 and 27, **Reeves Addition**, and adjacent vacated right-of-way, and Auditor's Lot No. 1 of the South Half of Section 1, Township 139 North, Range 49 West, of the 5th Principal Meridian, Cass County, North Dakota. (Located at 1620, 1630, and 1632 1st Avenue North) (MBA Investments LLC) (an):
- 11b. Hearing on an application requesting a Conditional Use Permit to allow Residential and Industrial Uses on Blocks 26 and 27, **Reeves Addition**, and adjacent vacated right-of-way, and Auditor's Lot No. 1 of the South Half of Section 1, Township 139 North, Range 49 West, of the 5th Principal Meridian, Cass County, North Dakota. (Located at 1620, 1630, and 1632 1st Avenue North) (MBA Investments LLC) (an):
12. Hearing on an application requesting an LDC Text Amendment, to amend Sections within Chapter 20 of the Fargo Municipal Code (Land Development Code) relating to Telecommunications Facilities. (City of Fargo) (an):

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**BOARD OF PLANNING COMMISSIONERS
MINUTES**

Regular Meeting:

Tuesday:

December 6, 2016:

The Regular Meeting of the Board of Planning Commissioners of the City of Fargo, North Dakota, was held in the City Commission Room at City Hall at 3:00 o'clock p.m., Tuesday, December 6, 2016.

The Planning Commissioners present or absent were as follows:

Present: Mara Brust, Shara Fischer, Mike Magelky, Mary Scherling,
Rocky Schneider, Kelly Steffes, Scott Stofferahn, Jan Ulferts Stewart

Absent: John Gunkelman, Melissa Sobolik

Chair Ulferts Stewart called the meeting to order.

Business Items:

Item A: Approve Order of Agenda

Chair Ulferts Stewart noted the following Agenda items:

- Items 2a, 2b, and item 3 will be continued to the January 4, 2017 Planning Commission Meeting.

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

Item B: Minutes: Regular Meeting of November 1, 2016

Member Stofferahn moved the minutes of the November 1, 2016 Planning Commission meeting be approved. Second by Member Scherling. All Members present voted aye and the motion was declared carried.

Item C: Wednesday, December 21, 2016 Brown Bag Luncheon - CANCELLED

Item D: Public Hearing Items:

Item 1: Bentley Place First Addition

Continued hearing on an application requesting a Plat of Bentley Place First Addition (Minor Subdivision) a replat of Lot 1, Block 1, Brandt Crossing First Addition to the City of Fargo, Cass County, North Dakota. (Located at 5503 33rd Avenue South) (PACES Lodging): APPROVED

Assistant Planner Kylie Murphy presented the staff report. She noted along with the proposed plat the applicant has requested an ingress/egress access easement along 32nd Avenue South, which does not meet spacing requirements as outlined within Section 20-0702 Roadway Access and Driveways of the Land Development Code. Ms. Murphy stated all other approval criteria have been met, and staff is recommending

approval of the proposed plat with the condition that the ingress/egress access easement be removed.

City Engineer April Walker concurred with staff's recommendation, and noted staff is working on a revision in the Land Development Code to address these types of requests.

Applicant Nate Vollmuth spoke on behalf of the application, and requested the condition be removed from staff's recommendation.

Member Magelky moved the findings and recommendations of staff be accepted and approval be recommended to the City Commission of the proposed Bentley Place First Addition subdivision plat as presented, deleting the condition that the proposed 50-foot wide ingress/egress access easement along 32nd Avenue South be removed from the plat, 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, Brust, Fischer, Stofferahn, Steffes, Schneider, Magelky, and Ulferts Stewart voted aye. Absent and not voting: Members Gunkelman and Sobolik. The motion was declared carried.

Item 2: Interstate Business Park Addition

a. Continued Hearing on an application requesting a Zoning Change from AG, Agricultural to GC, General Commercial within the boundaries of the proposed Interstate Business Park Addition. (Located at 3801 26th Avenue South and 2852 Thunder Road South) (Kjos Investments, LLC) (dk): CONTINUED TO JANUARY 4, 2017

b. Continued Hearing on an application requesting a Plat of Interstate Business Park Addition (Major Subdivision) a replat of Lot 1, Block 1, Adams 7th Addition, and part of the Northeast Quarter of Section 22, Township 139 North, Range 49 West to the City of the 5th Principal Meridian, City of Fargo, Cass County, North Dakota. (Located at 3801 26th Avenue South and 2852 Thunder Road South) (Kjos Investments, LLC) (dk): CONTINUED TO JANUARY 4, 2017

A hearing had been set for August 2, 2016. At the August 2, 2016 meeting the Hearing was continued to September 6, 2016. At the September 6, 2016 meeting the Hearing was continued to October 4, 2016. At the October 4, 2016 meeting the Hearing was continued to November 1, 2016. At the November 1, 2016 meeting the Hearing was continued to this date and time; however, the applicant has requested this item be continued to January 4, 2017.

Item 3: Reeves Addition

Hearing on an application requesting a Zoning Change from GC, General Commercial to LI, Limited Industrial on part of Lot 20 and all of Lot 21, Block 18, Reeves Addition. (Located at 1409 and 1411 1st Avenue North) (Wade Wolf Properties LLC) (dk): CONTINUED TO JANUARY 4, 2017

A hearing had been set for this date and time; however, the applicant has requested this item be continued to January 4, 2017.

Item 4: Calico Prairie Addition

a. Hearing on an application requesting a Growth Plan Amendment on Lot 3, Block 2, Calico Prairie Addition. (Located at 4462 30th Avenue South) (Fargo Housing and Redevelopment Authority): APPROVED

b. Hearing on an application requesting a Zoning Change from LC, Limited Commercial to MR-3, Multi-Dwelling Residential on Lot 3, Block 2, Calico Prairie Addition. (Located at 4462 30th Avenue South) (Fargo Housing and Redevelopment Authority): APPROVED

Senior Planner Donald Kress presented the staff report and noted that staff held an open house on November 30, 2016. Mr. Kress stated all approval criteria have been met and staff is recommending approval.

Applicant Executive Director Lynn Fundingsland, Fargo Housing and Redevelopment Authority, 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) Growth Plan Amendment to the 2003 Future Land Use Plan to change the designation of the project site from "Commercial" to "Commercial or Medium/High Density Residential", and 2) Zone Change from LC, Limited Commercial to MR-3, Multi-Dwelling Residential as presented, as the proposal complies with the GO2030 Fargo Comprehensive Plan, the 2003 Southwest Future Land Use Plan, 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 Steffes. On call of the roll Members Scherling, Stofferahn, Steffes, Magelky, Brust, Fischer, Schneider, and Ulferts Stewart voted aye. Absent and not voting: Members Gunkelman and Sobolik. The motion was declared carried.

Item 5: Hogans Addition

Hearing on an application requesting a Zoning Change from SR-2, Single-Dwelling Residential to SR-4, Single-Dwelling Residential on Lots 14-16, Block 1, Hogans Addition. (Located at 501 and 507 15th Avenue North, and 1510 5th Street North) (Jay Krabbenhoft, Jr.): APPROVED

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

Member Stofferahn moved the findings and recommendations of staff be accepted and approval be recommended to the City Commission of the proposed zone change from SR-2, Single-Dwelling Residential to SR-4, Single-Dwelling Residential as presented, as the proposal complies with the GO2030 Fargo Comprehensive Plan, Sections 20-0906.F (1-4) and all other applicable requirements of the Land Development Code. Second by Member Brust. On call of the roll Members Stofferahn, Scherling, Fischer,

Brust, Schneider, Magelky, Steffes, and Ulferts Stewart voted aye. Absent and not voting: Members Gunkelman and Sobolik. The motion was declared carried.

Item 6: Ohmers Addition

Hearing on an application requesting a Conditional Use Permit to allow for an Alternative Access Plan on Part of Lot 72, Ohmers Addition. (Located at 1211 University Drive North) (Pete Sabo): APPROVED WITH CONDITIONS

Planner Aaron Nelson presented the staff report stating all approval criteria have been met and staff is recommending approval with conditions.

Martha Berryhill, 1354 12th Street North, spoke on behalf of the Roosevelt Neighborhood Association, sharing their concerns that the proposal will not provide adequate parking for this type of business.

Member Magelky moved the findings and recommendations of staff be accepted and the Conditional Use Permit to allow for an Alternative Access Plan on Part of Lot 72, Ohmers Addition be approved, as the proposal complies with Section 20-0909.D (1-6) and all other requirements of the Land Development Code, with the following conditions:

1. 45 off-street parking spaces are required on site.
2. Any expansion of the square footage of the facility will require an amendment to the Conditional Use Permit with review and approval by the Planning Commission.
3. The Conditional Use Permit will cease if the land use changes from restaurant/bar.
4. Bicycle parking facilities, such as a bike rack, shall be provided on-site.

Second by Member Brust. On call of the roll Members Steffes, Magelky, Scherling, Fischer, Brust, Stofferahn, Schneider, and Ulferts Stewart voted aye. Absent and not voting: Members Gunkelman and Sobolik. The motion was declared carried.

Item E: Other Items:

Item 1: 2017 Planning Commission Meeting Calendar

Chair Ulferts Stewart presented this calendar which was included in the packet.

Item 2: Discussion of text amendment for telecommunications support structures (TSS) – small cell installations in the public right of way.

Aaron Nelson introduced this item, and explained staff has been directed by the City Commission to develop ordinances to accommodate recent requests regarding the small cell processes. Mr. Nelson stated the Land Development Code will require a review and updates to reflect these ordinances, which staff will bring before the Board in the next few months.

Division Engineer Brenda Derrig proceeded sharing additional documentation and details on the types of structures available for this new concept. She stated staff is working on a final ordinance to move forward with this item.

Item 3: Discussion on the Land Development Code (LDC) Residential Task Force White Paper

Planner Aaron Nelson reviewed the background of this task force and the “White Paper” document included in the packet, which staff presented at the November 16, 2016 Planning Commission Brown Bag. Mr. Nelson stated the task force will hold a final public meeting in January to finalize the details of the “White Paper”, before presenting to the City Commission for their final direction to staff.

Item 4: Land Development Code Update Strategy Discussion

Planning Director Jim Gilmour addressed this item and referred to documents staff submitted to the Board. He explained staff is looking for updated standards and guidelines to follow that better accommodate the emerging trends being requested by area developers. Mr. Gilmour stated staff feels there is a need to establish a Code Advisory Group to identify the issues and areas of the LDC that need to be amended.

Member Brust moved to establish a Code Advisory Group to provide development and implementation of a comprehensive revised Land Development Code. Second by Member Stofferahn. All Members present voted aye and the motion was declared carried.

Additional Conversation regarding Item E.2:

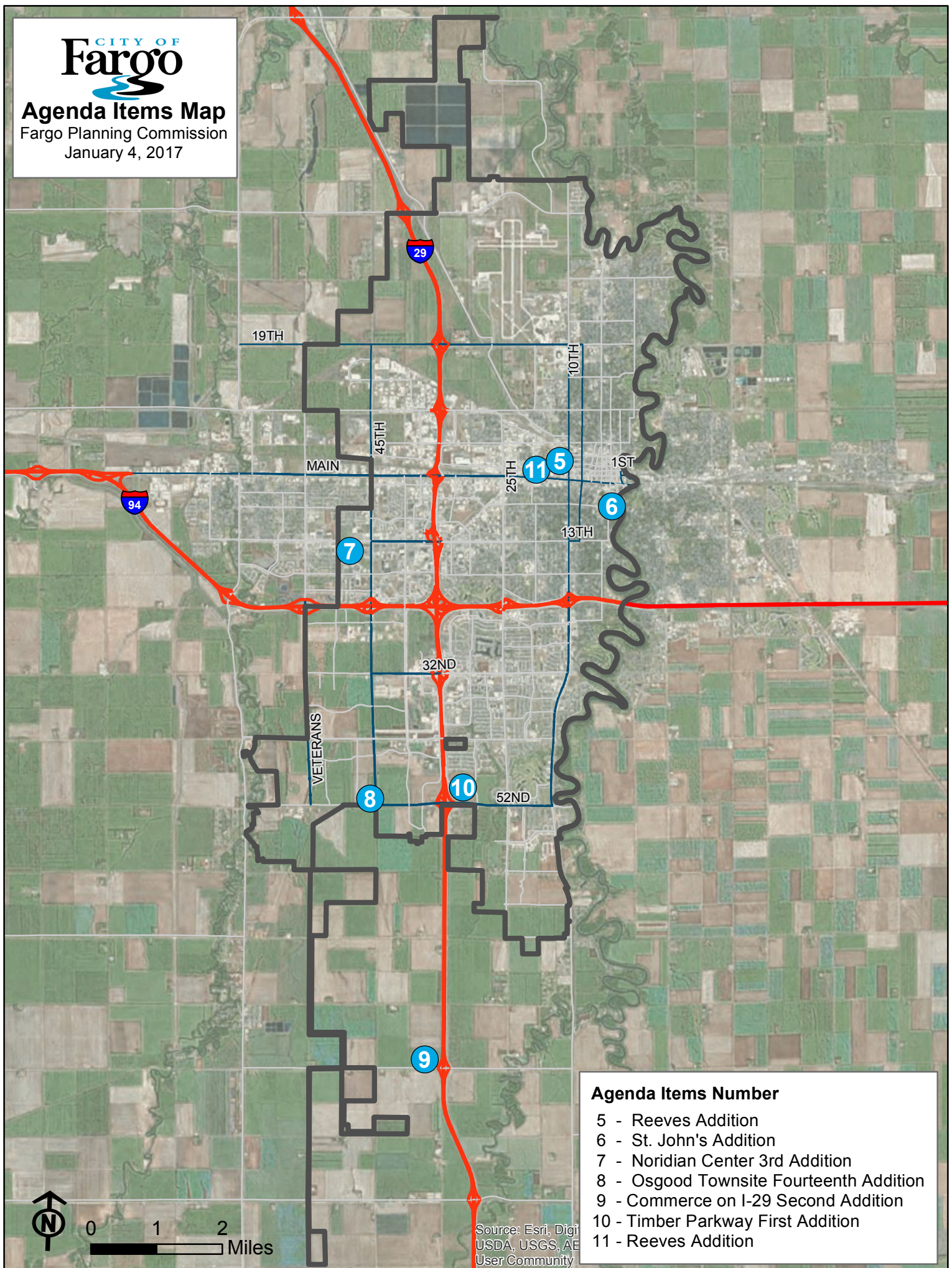
Based on comments from Commissioner Grindberg, City Attorney Erik Johnson revisited Item E.2 regarding the discussion of a Land Development Code text amendment to address small cell installations. Mr. Johnson stated there may be a need for the Planning Commission to meet again this month for a legal review, prior to the 12-19-16 City Commission meeting. Subsequent to the Planning Commission meeting, it was determined an additional meeting would not be necessary.

The time at adjournment was 4:14 p.m.



Agenda Items Map

Fargo Planning Commission
January 4, 2017



Agenda Items Number

- 5 - Reeves Addition
- 6 - St. John's Addition
- 7 - Noridian Center 3rd Addition
- 8 - Osgood Townsite Fourteenth Addition
- 9 - Commerce on I-29 Second Addition
- 10 - Timber Parkway First Addition
- 11 - Reeves Addition

City of Fargo Staff Report			
Title:	Reeves Addition	Date:	12/28/16
Location:	1409, 1411, and 1413 1st Avenue North	Staff Contact:	Donald Kress, senior planner
Legal Description:	Part of Lot 19 and all of Lots 20 and 21, Block 18, Reeves Addition		
Owner(s)/Applicant:	Victor Wade Wolf/ Wade Wolf Properties LLC	Engineer:	None
Entitlements Requested:	Zoning Change (from GC, General Commercial to LI, Limited Industrial)		
Status:	Planning Commission Public Hearing: January 4, 2017		

Existing	Proposed
Land Use: Vacant (residences recently demolished)	Land Use: Industrial Equipment Storage
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%	Maximum Lot Coverage Allowed: 85%

Proposal:
<p>The applicant is requesting a zoning change from GC, General Commercial to LI, Light Industrial on part of Lot 19 and all of Lots 20 and 21, Block 18, Reeves Addition. The subject properties are located at 1409, 1411, and 1413 1st Avenue North and encompasses approximately 0.38 acres.</p> <p>This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.</p> <p>Surrounding Land Uses and Zoning Districts:</p> <ul style="list-style-type: none"> • North: GC, General Commercial with warehouse use • East: GC, General Commercial with office use • South: LI, Light Industrial across 1 Avenue North with warehouse use • West: GC, General Commercial with single family residential use <p>Area Plans:</p> <p>The city's growth plans do not cover areas of the city already developed, including the subject properties. A full-scale future land use plan is not planned for this area.</p> <p>The subject properties are within the 2011 Unicorn Park Neighborhood Plan. This plan makes no specific reference to development along 1st Avenue North nor to industrial development, and does not include a future land use plan.</p>

Schools and Parks:

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

Parks: The subject properties are less than a quarter of a mile southeast of Unicorn Park (1603 3rd Avenue N) with the amenities of basketball court, grill, multipurpose field, playground, and picnic table.

Pedestrian / Bicycle: On-road bike facilities are located along 1 Avenue North and is a component of the metro area trail system.

Staff Analysis:

PROJECT OBJECTIVE

The applicant requests the rezoning of his two lots from GC: General Commercial to LI: Light Industrial to enable him to store industrial equipment on the lots. He may build a storage building in the near future. The applicant owns Wolf Steel, which is on the north side of the alley across from the subject properties.

ZONE CHANGE

The requested entitlement is a zoning change on the subject property from GC: General Commercial to LI: Light Industrial.

PREVIOUS ENTITLEMENTS

The subject properties, along with the four lots adjacent to the west, were granted a conditional use permit (CUP) dated December 2, 2014 to allow household residential living in the GC zone. The plan was to demolish the existing residences and multifamily dwellings. This development has not gone forward. Granting the requested zone change will void this CUP, as it would not be possible to build this project as originally proposed.

SURROUNDING AREA

The graphic below depicts the land uses in the area zoned GC around the subject properties.



As illustrated in the graphic above, the block the subject properties are on has a variety of land uses. These uses are permitted or conditionally permitted uses in the GC zone, as the chart below illustrates.

LAND USE—GC ZONE	PERMITTED	CONDITIONALLY PERMITTED
Household living		X
Group home		X
Office	X	
Industrial service		X
Manufacturing and production		X
Warehouse		X
Retail sales and service	X	
Undeveloped	X	

Of the uses on this block that are conditionally permitted, only group living (The Centre, Inc)., and manufacturing and production (Craig Properties) have CUP's. The others are legally non-conforming.

Granting the applicant's request for a zoning change to LI for the subject property would initiate a transition of this block. If that transition were to continue and the entire block were to change to LI zoning, more of the uses conditionally permitted in the GC zone would become permitted uses by right, as shown in the chart below.

LAND USE—LI ZONE	PERMITTED	CONDITIONALLY PERMITTED
Household living	Not permitted or conditionally permitted in LI zone; would remain non-conforming	
Group home		X
Office	X	
Industrial service	X	
Manufacturing and production	X	
Warehouse	X	
Retail sales and service	X	
Undeveloped	X	

Planning staff recommends that the requested zone change to LI for the subject properties be considered within the larger context of the entire GC-zoned area of this block. Though Planning staff is not proposing a city-initiated rezone of this block, we would support the transition to LI for the entire block based on existing uses, with the assumption that the residences abutting the subject property would not rebuild. At the time that these residences are redeveloped, we would encourage the new development would be a permitted or conditionally permitted use in the LI zone rather than a residential use. If the Planning Commission does not agree with this analysis, Planning staff would not support the requested zone change as it would become a spot zone that would break up this neighborhood.

Staff also recommends that the applicant agree to a waiver of protest for future paving of the alley that abuts the north side of the subject property.

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 GC: General Commercial, and has been zoned this since the LDC went into effect in 1998. **(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 properties fronts on existing, developed public rights-of-way which provide access and public utilities to serve the development. Staff recommends that the applicant agree to a waiver of protest for future paving of the alley that abuts the north side of the subject 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 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 comments. 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 project site is not included in any growth plan. 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." Staff finds this proposal is consistent with the purpose of the LDC, the applicable growth plan, and other adopted policies of the City as long as this zone change is considered within the larger context of the entire GC-zoned area of this block, with the intent that the Planning Commission would support future zone changes to LI in this area.

(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 zone change from GC, General Commercial to LI, Limited Industrial, for part of Lot 19 and all of Lots 20 and 21, Block 18, Reeves Addition as presented; as the proposal complies with the LDC Sections 20-0906.F (1-4) and all other applicable requirements of the LDC, with the following conditions:

1. The applicant agrees to a waiver of protest for future paving of the alley that abuts the north side of the subject property.
2. The previously granted conditional use permit number 2014-010 for household living residential use in the GC: General Commercial zoning district, dated December 2nd, 2014, is considered void.

Planning Commission Recommendation: January 4, 2017

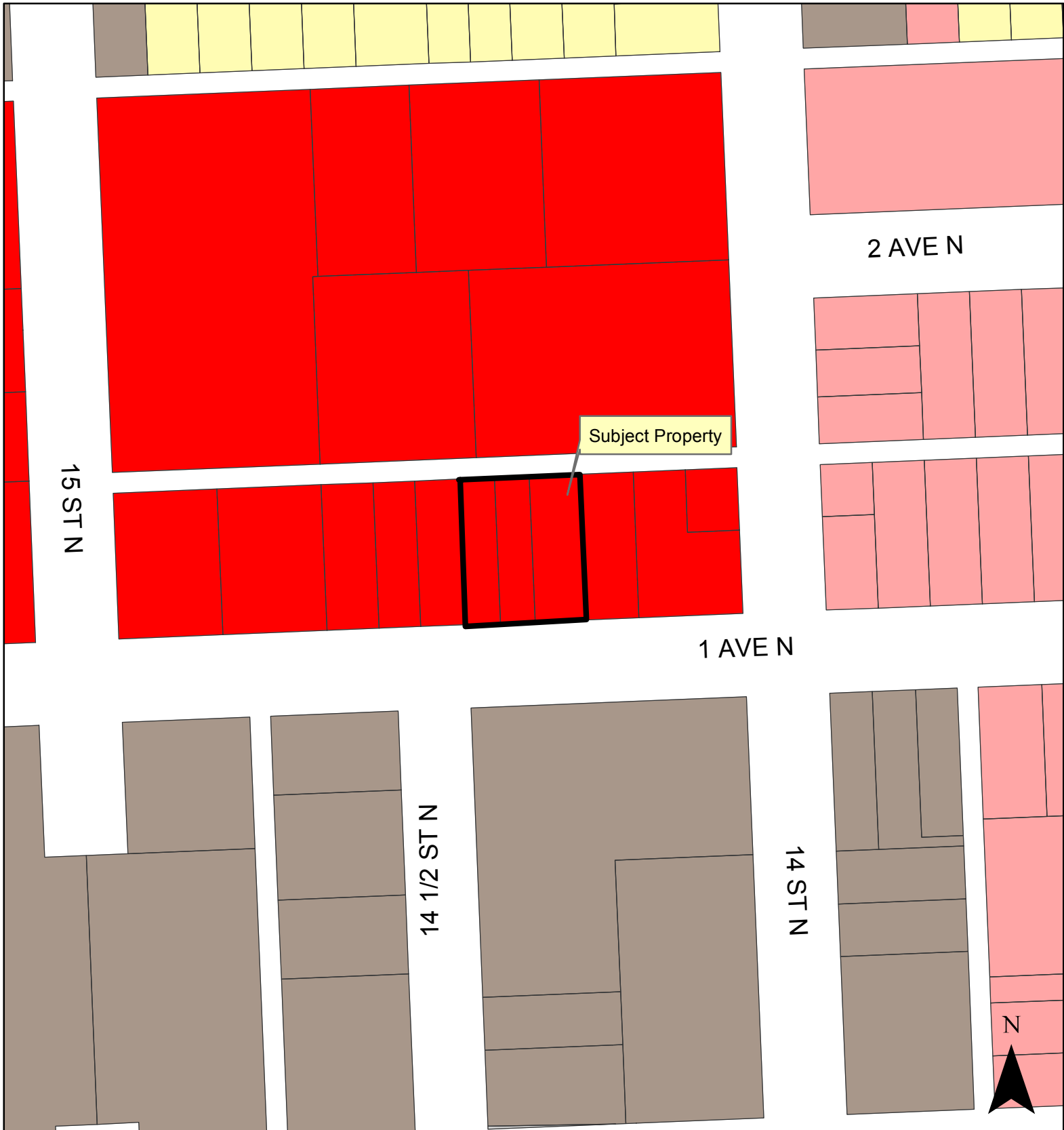
Attachments:

1. Zoning Map
2. Location Map

Zone Change (GC to LI)

Reeves Addition

1409, 1411 & 1413 1st Avenue North



Legend

AG	LC	MHP	SR-2
DMU	MR-1	NC	SR-3
GC	MR-2	NO	SR-4
GL	MR-3	P/I	SR-5
GO		UML	SR-6
			City Limits

300 Feet

Fargo Planning Commission

December 6, 2016

Zone Change (GC to LI)

Reeves Addition

1409, 1411 & 1413 1st Avenue North



City of Fargo Staff Report			
Title:	Prairie St. John's	Date:	12/28/16
Location:	510 4 th Street South	Staff Contact:	Donald Kress, senior planner
Legal Description:	Lot 1, Block 1, St. John's Addition		
Owner(s)/Applicant:	Prairie St. John's	Engineer:	None
Entitlements Requested:	Conditional Use Permit to allow a health care facility (hospital) in the MR-3: Multi-Dwelling Residential zone		
Status:	Planning Commission Public Hearing: January 4, 2017		

Existing	Proposed
Land Use: Health care facility	Land Use: Health care facility
Zoning: MR-3: Multi-dwelling residential	Zoning: MR-3: Multi-dwelling residential
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	Uses Allowed: No change Plus health care facilities as a conditional use
Maximum Lot Coverage Allowed: Maximum 35% building coverage	Maximum Lot Coverage Allowed: Unchanged

Proposal:
<p>The applicant is seeking approval of a Conditional Use Permit to allow a health care facility in the MR-3 zone. Prairie St. John's provides critical behavioral health services to the community. Their existing facility has been in place since 1926, expanded in 1954. The applicant intends to build a new facility to replace this existing one. When the new one is completed, the existing one will be demolished.</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 Zoning and Land Uses Include:</p> <ul style="list-style-type: none"> • North: Unzoned and SR-2: Single-Dwelling Residential; this area is actually developed as a park • East: Unzoned and SR-2; this area includes a levee and a park and bike trail on the east (river) side of the levee • South: MR-3: Multi Dwelling Residential with Historic Overlay; developed with additional healthcare related buildings and multi-family residential • West: P/I: Public Institutional; Island Park
Area Plans:
No area plans apply.

Schools and Parks:

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

Parks: Island Park (302 7th Street S) is located across the street west of the subject property and provides grill, handball, picnic table, playground, rental, restroom, tennis, and wedding amenities. Dike East (100 2nd Street S) and Dike West (310 4th Street S) abut the subject property to the north and east and provide boat ramp, cross country ski trail, dog park, picnic table, recreational trail, restroom, basketball, and skate park amenities.

Pedestrian / Bicycle: Off road bike facilities are provided west in Island Park and east of the property along the Red River. These facilities are components of the metro area trail system.

Staff Analysis:

The applicant proposes to replace the existing Prairie St. John's hospital with a new healthcare facility. The existing facility will be demolished when the new one is completed. The existing Prairie St. John's has been in place since 1926, prior to the MR-3 zoning of 1998. As such, the existing facility has an "understood" CUP. However, as an entirely new building is being built, it is appropriate to require a current CUP.

ACCESS AND UTILITIES

The project site takes access from 4th Street South and 6th Avenue South. Public utilities are available from these streets.

FLOOD PROTECTION

In a separate application and proceeding, the applicant has applied for a variance from the city's flood plain management ordinance to allow reduction in the lowest opening, lowest elevation of fill around the building, and lowest elevation of fill within 15 feet of the building than would be required by the floodproofing code.

This variance request is scheduled to be heard by the Board of Adjustment at their January 24, 2016 meeting.

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?**

Regarding compliance with the applicable provisions of the LDC, Table 20-0401 of the LDC states that a healthcare facility is allowed in the MR-3 zone with a conditional use permit. Zoning, fire, and building code requirements for siting of this hospital and required inspections will be met at the time the building permit and site plan for the healthcare facility are submitted by the applicant and reviewed by city departments. Staff finds this proposal is consistent with the applicable provisions of the LDC with the condition stated below.

Regarding conformance to the general intent and purpose of the LDC, the LDC states "This Land Development Code is intended to implement Fargo's Comprehensive Plan [Go2030 Plan] and related policies in a manner that protects the health, safety, and general welfare of the citizens of Fargo." Staff finds that the proposed healthcare facility implements Fargo Comprehensive Plan, particularly the recommendation to "identify and address shortages of healthcare access, healthcare programs, primary care, and specialty services that are required to fill the needs of the community" (page 154). St. John's provides critical behavioral health services, and is the only provider for some child and adolescent services for behavioral health to the community.

(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 a healthcare facility in the MR-3 zone will contribute to and promote the convenience of the public by providing behavioral health services, including such services for children and adolescents.

(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 evidence to suggest that the proposed conditional use will cause substantial injury to the value of the other properties in the neighborhood. Per the notice requirements of the LDC, notice of the proposed conditional use permit was provided to neighboring property owners. To date, staff has received no concerns related to the proposed CUP. Staff finds that the proposed conditional use will not cause substantial injury to the value of other property in the neighborhood. **(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 healthcare facility will not dominate the immediate neighborhood or prevent any other sites from being used in the manner allowed by zoning district regulations. The project site, Lot 1, Block 1, St. John's Addition, is the only developable site on the block bounded by 6th Avenue South, 4th Street South, 2nd Street South, and the Red River. The property is zoned MR-3: Multi-Dwelling Residential. Development of the healthcare facility will be subject to the development standards of the MR-3 zone.

(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 applicant may connect the healthcare facility to city water and sewer mains, available in 4th Street South and/or 6th Avenue South, pursuant to city policy. **(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 healthcare facility may take vehicular access from either 4th Street South or 6th Avenue South. Actual access will be determined as part of site plan review, pursuant to city policy. **(Criteria Satisfied)**

Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of staff and hereby move to approve the Conditional Use Permit to allow a healthcare facility in the MR-3 zone on Lot 1, Block 1, St. John's Addition as the proposal complies with Section 20-0909.D (1-6) and all other requirements of the LDC,

Planning Commission Recommendation: January 4, 2017

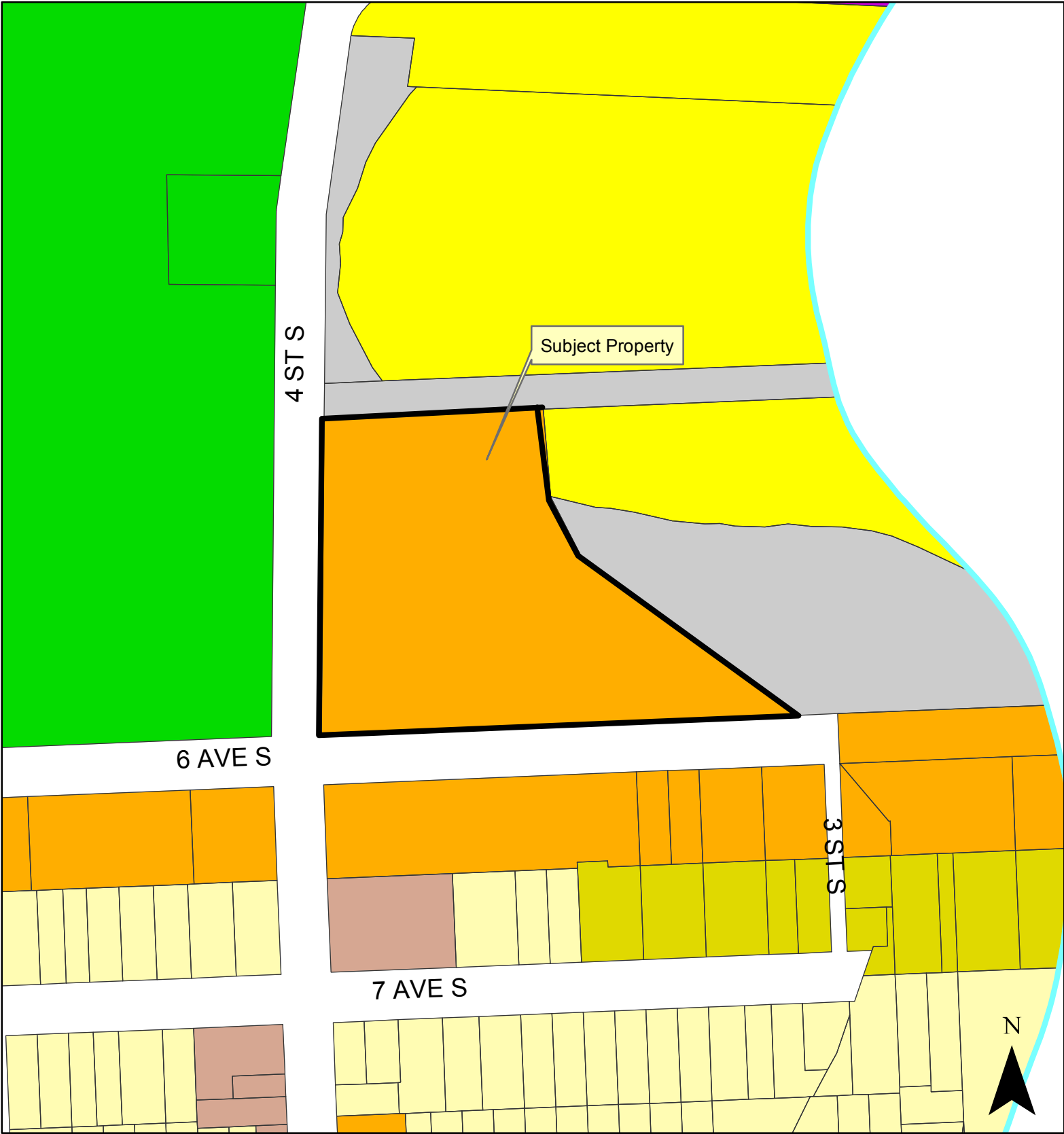
Attachments:

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

CUP (Healthcare Facility in MR-3 Zoning District)

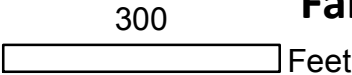
St. John's Addition

510 4th Street South



Legend

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



Fargo Planning Commission
January 4, 2017

CUP (Healthcare Facility in MR-3 Zoning District)

St. John's Addition

510 4th Street South



**City of Fargo
Staff Report**

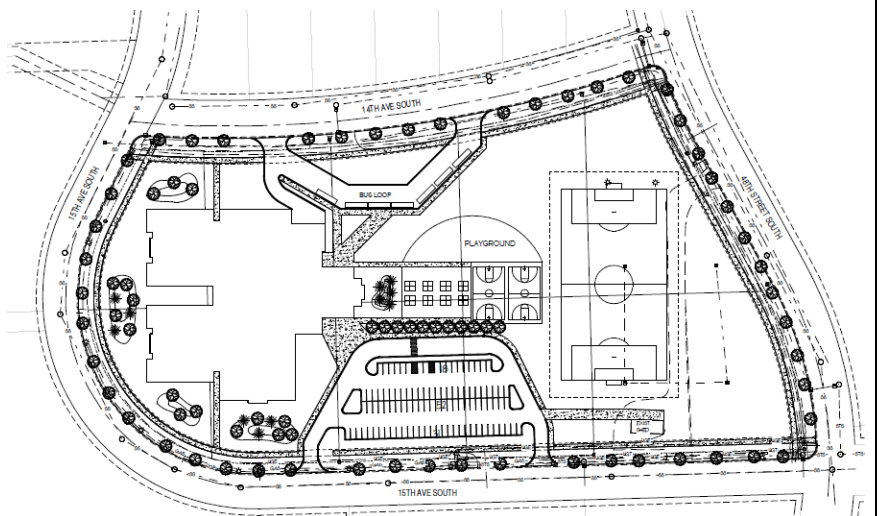
Title:	Noridian Center 3rd Addition	Date:	12/22/2016
Location:	4814, 4830, 4908, and 4920 14th Avenue South; 4809, 4825, 4905 and 4917 15th Avenue South; and 1403 and 1441 48th Street South	Staff Contact:	Aaron Nelson
Legal Description:	Lots 1-10, Block 2, Noridian Center Addition		
Owner(s)/Applicant:	West Fargo Public Schools	Engineer:	Wenck Associates
Entitlements Requested:	Minor Subdivision (Replat of Lots 1-10, Block 2, Noridian Center Addition, to the City of Fargo, Cass County, North Dakota) and Alternative Sidewalk Plan		
Status:	Planning Commission Public Hearing: January 4, 2017		

Existing	Proposed
Land Use: Vacant Public Elementary School	Land Use: Public Elementary School
Zoning: P/I, Public and Institutional	Zoning: No Change
Uses Allowed: P/I – Public and Institutional. Allows colleges, community service, daycare centers of unlimited size, detention facilities, health care facilities, parks and open space, religious institutions, safety services, schools, offices, commercial parking, outdoor recreation and entertainment, industrial service, manufacturing and production, warehouse and freight movement, waste related use, agriculture, aviation, surface transportation, and major entertainment events.	Uses Allowed: No Change
Maximum Building Coverage: N/A	Maximum Building Coverage: No Change

Proposal:

The applicant is seeking approval of a minor subdivision entitled *Noridian Center 3rd Addition*, which is a replat of Lots 1-10, Block 2, Noridian Center Addition, and an alternative sidewalk plan. The subject property encompasses approximately 11.82 acres.

According to the applicant, the purpose of the proposed subdivision is to consolidate 10 existing lots into one single lot for the development of a public elementary school. The purpose of the alternative sidewalk plan is to allow the construction of an eight-foot-wide shared-use path within a public easement along the perimeter of the block in lieu of a standard sidewalk within the adjacent public right-of-way, as detailed within the attached amenities plan. The plat also includes the establishment of a 10-foot-wide street tree easement to allow the placement of



street trees on the property within 10 feet of the street right-of-way. This street tree easement is being proposed in order to provide additional space for street tree planting due to the existence of a large number of utility lines (gas, cable, electric, etc) within the adjacent boulevard, where street trees would typically be planted.

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, across 14th Avenue South, with strip center use
- East: GC, General Commercial, across 48th Street South, with office use
- South: MR-3, Multi-Dwelling Residential, across 15th Avenue South, with apartment use
- West: GC, General Commercial, and MR-3, Multi-Dwelling Residential, across 50th Street South, with apartment and retail uses

Area Plans:

No area plans apply.

Schools and Parks:

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

Parks: The subject property is less than 250 feet east of Willow Park with the amenities of basketball courts, grill, multipurpose field, playground, shelter, and recreational trails.

Pedestrian / Bicycle: Off-road bike facilities are located along 15 Avenue South, 48 Street South, and 50 Street South. All facilities listed at components of the overall metro area trail system.

Staff Analysis:

-Address, how many proposed lots? Neighboring Land uses?

Minor Subdivision

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

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

The subdivision is intended to consolidate 10 lots into one new lot to accommodate development of a public elementary school. The property is located within the P/I, Public & Institutional, zoning district which allows school uses by right. 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 inquiries. 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 principles. **(Criteria Satisfied)**

Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of staff and hereby recommend approval to the City Commission of the proposed subdivision plat, **Noridian Center 3rd Addition**, along with the proposed alternative sidewalk plan as outlined within the staff report, as the proposal complies with the adopted Area Plan, the standards of Article 20-06, Section 20-0609, and all other applicable requirements of the Land Development Code".

Planning Commission Recommendation: January 4, 2017

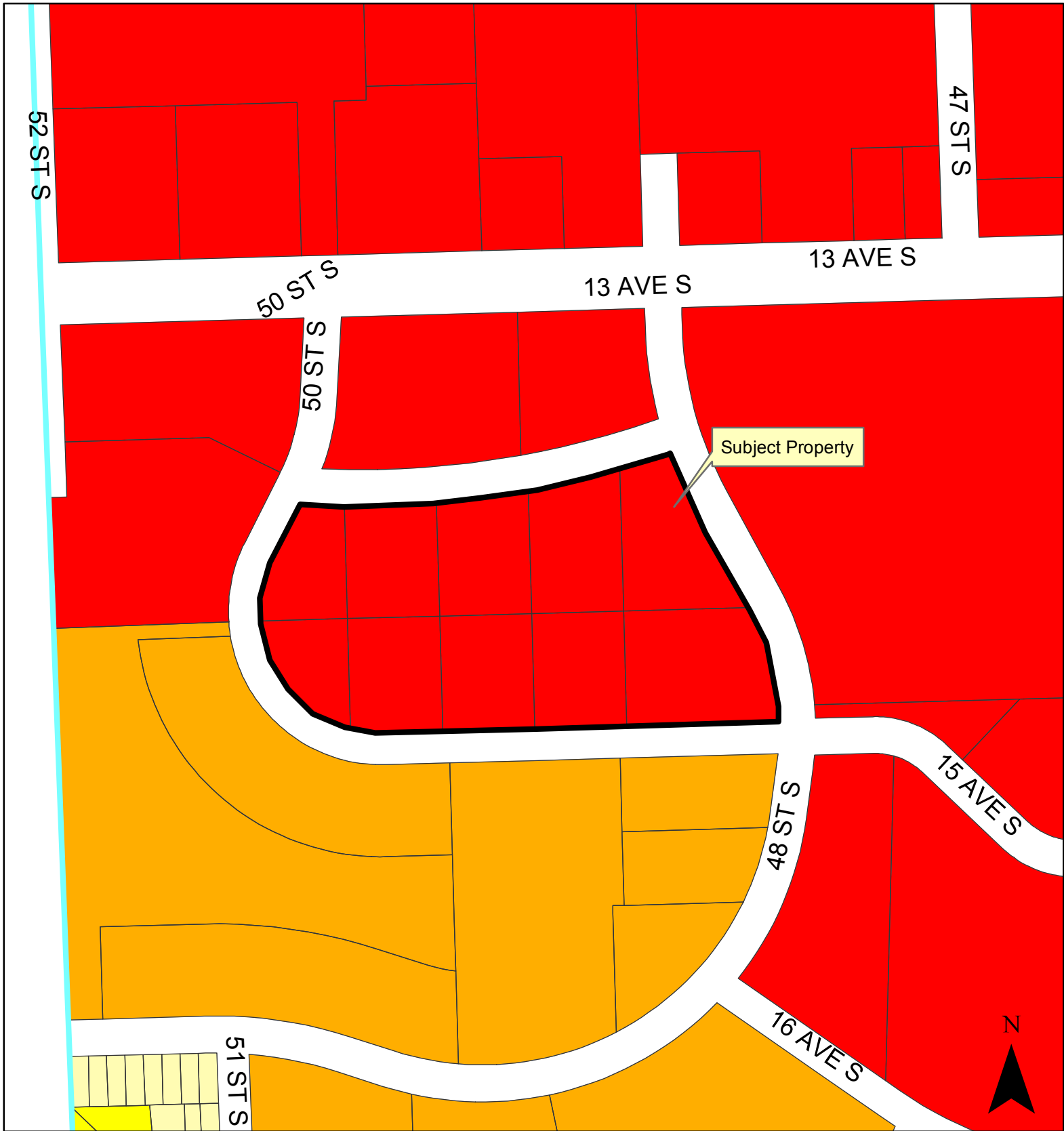
Attachments:

1. Zoning Map
2. Location Map
3. Subdivision Plat
4. Amenities Plan

Plat (Minor Subdivision)

Noridian Center 3rd Addition

1403 48th St S, 4814-4920 14th Ave S,
4809-4917 15th Ave S, 1441 48th St S



Legend

AG	LC	MHP	SR-2
GG	MLC	NO	SR-3
GO	MR-1	UML	SR-4
	MR-2		SR-5
	MR-3		City Limits

300

Feet

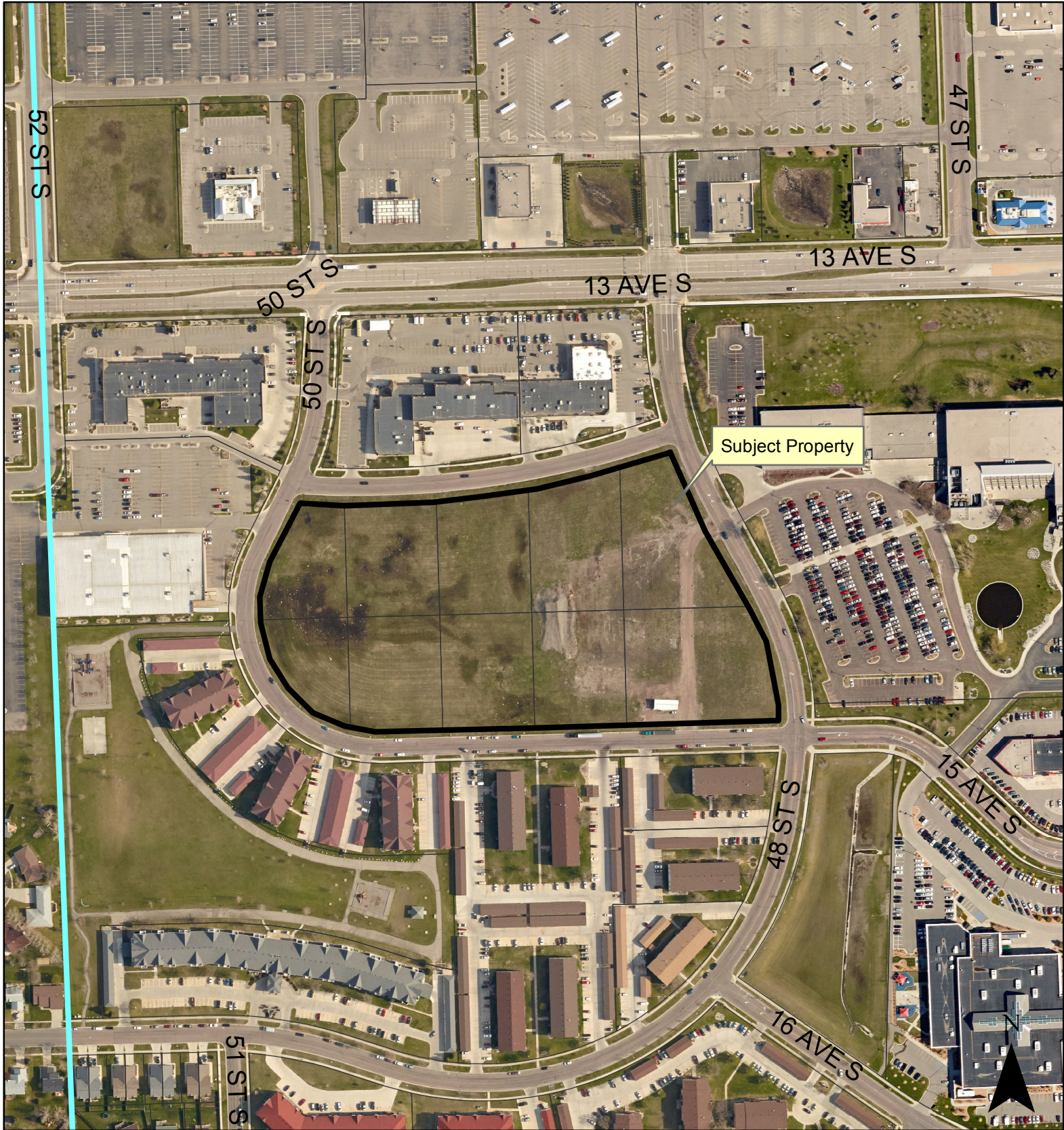
Fargo Planning Commission

January 4, 2017

Plat (Minor Subdivision)

Noridian Center 3rd Addition

1403 48th St S, 4814-4920 14th Ave S,
4809-4917 15th Ave S, 1441 48th St S



**To the City of Fargo
A Replat of Block 2 of Noridian Center Addition
Cass County, North Dakota
A Minor Subdivision**



○ SET 5/8"x18" REBAR W/
YELLOW PLASTIC CAP #6498

● FOUND IRON MONUMENT

S88°25'56"W 856.37 MEASURED DISTANCES

(S88°25'56"W 856.37) PLATTED DISTANCES

————— PLAT BOUNDARY

————— LOT LINE

————— LOT AREAS IN SQ. FT.

..... UNDERLYING LOT LINE

_____ EXISTING LOT LINE

----- EXISTING EASEMENT

----- PROPOSED EASEMENT

3303 Fiechtner Drive
Fargo, ND 58103

**To the City of Fargo
A Replat of Block 2 of Noridian Center Addition
Cass County, North Dakota
A Minor Subdivision**

The above described tracts contain 11.83± acres.

Notary Public, Cass County, North Dakota

My commission expires: _____

My commission expires: _____

My commission expires: _____

My commission expires: _____

My commission expires: _____

**Site Amenities and Project Plan
Noridian Center Third Addition
December 15, 2016**

Location: The subject property is legally referenced as Lot 1, Block 1, Noridian Center 3rd Addition to the City of Fargo, Cass County, North Dakota. The property comprises approximately 11.83 acres.

Details: The project includes one (1) lot on one (1) block, bounded by 14th Ave S, 48th St S, 15th Ave S, and 50th St S. The subdivision is intended to replat ten (10) existing lots into one (1) single lot to be developed as a public elementary school by West Fargo Public Schools.

Alternative Sidewalk Plan: The project will accommodate public sidewalks through an alternative sidewalk plan, as provided in Section 20-0609(C) of the Land Development Code. In lieu of standard sidewalks within the public right-of-way, an eight-foot-wide concrete path will be constructed along the interior perimeter of Lot 1, Block 1. This concrete path will be constructed within a public sidewalk easement which is located 10 feet away from the boundary of the lot, adjacent to a public utility easement, as illustrated on the plat. The proposed eight-foot-wide concrete path will be a public sidewalk and will need to comply with applicable construction and maintenance requirements of Chapter 18 of the Fargo Municipal Code. The school district intends to work with the Fargo Park District and Blue Cross Blue Shield to determine if this sidewalk will be requested to be constructed by the City and special assessed per existing city policy, or if it will be constructed by the school district as a part of the overall building and site construction.

Street Trees: Due to existing utility lines within the adjacent street boulevard areas, a ten-foot-wide City of Fargo Street Tree easement has been established to allow the planting and maintenance of city street trees on Lot 1, Block 1, as allowed by Section 20-0705(B.2) of the Land Development Code. This easement will be granted to the City of Fargo and will be located adjacent to the public right-of-way along the perimeter of the entire block.

Storm Water Management: As proposed, the project will accommodate all storm water quantity and quality requirements with on-site facilities which shall be owned and maintained by the property owner, West Fargo Public Schools.

Park Dedication: The Noridian Center Third Addition plat does not include park land dedications. The developer has coordinated with the Fargo Park District and will be installing a school/park play structure, soccer field and basketball courts on the site. These amenities will be funded by the school district and will be included in the overall building and site construction.

This Amenities Plan is hereby approved

Mark P. Lemer, Business Manager
West Fargo Schools

Date

April Walker, City Engineer
City of Fargo

Date

City of Fargo Staff Report			
Title:	Osgood Townsite Fourteenth Addition	Date:	12-29-2016
Location:	4550 49th Avenue South and 5050 47th Street South	Staff Contact:	Kylie Murphy
Owner(s)/Applicant:	WBCM of North Dakota / Paces Lodging	Engineer:	Ulteig Engineering
Reason for Request:	Minor Subdivision (Replat of Lot 1, Block 1, Osgood Townsite Thirteenth Addition and Lot 3, Block 5, Osgood Townsite 7th Addition, to the City of Fargo, Cass County, North Dakota) and Zoning Change (from LC, Limited Commercial to MR-3, Multi-Dwelling on Lot 1, Block 1 of the proposed Osgood Townsite Fourteenth Addition)		
Status:	Planning Commission Public Hearing: January 4, 2017		

Existing	Proposed
Land Use: Vacant	Land Use: Residential
Zoning: LC, Limited Commercial, with a C-O, Conditional Overlay	Zoning: MR-3, Multi-Dwelling
Uses Allowed: LC, Limited Commercial allows colleges, community service, daycare centers of unlimited size, health care facilities, parks and open space, religious institutions, safety services, offices, off premise advertising signs, commercial parking, retail sales and service, self service storage, vehicle repair, limited vehicle service.	Uses Allowed: MR-3, Multi-Dwelling 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. .
Maximum Density Allowed: Maximum 55% building coverage	Maximum Density Allowed: Maximum of 24 units per acre

Proposal:
<p>The applicant is seeking approval of a zoning change from LC, Limited Commercial to MR-3, Multi-Dwelling Residential, of Lot 1, Block 1 of the proposed Osgood Townsite Fourteenth Addition. In addition, the applicant is seeking approval of a minor subdivision, Osgood Townsite Fourteenth Addition, which would replat Lot 1, Block 1, Osgood Townsite Thirteenth Addition and Lot 3, Block 5, Osgood Townsite 7th Addition into three (3) lots and one (1) block. The subject properties are located at 4550 49th Avenue South and 5050 47th Street South and encompass approximately 14.912 acres.</p> <p>Surrounding Land Uses and Zoning Districts:</p> <ul style="list-style-type: none"> • North: Across 49th Avenue South is vacant land zoned LC, Limited Commercial, with a C-O, Conditional Overlay; • East: Across 45th Street South is land owned by the Park District, with detached homes and vacant land just beyond, with zoning of P/I, Public and Institutional, SR-3, Single Dwelling Residential and SR-4, Single Dwelling Residential, and LC, Limited Commercial, with a C-O, Conditional Overlay; • South: Across 52nd Avenue South is vacant land in the City of Fargo's ET Area; • West: Apartments and vacant land, with zoning of MR-3, Multi-Dwelling Residential. Across 47th Street South are twin homes with SR-4, Single Dwelling Residential.

Area Plans:

The subject property is located within the 2003 Southwest Future Land Use Plan. This plan indicates the subject property as being appropriate for Commercial uses.



Schools and Parks:

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

Parks: Located within a quarter-mile to the west is Osgood Park (4951 47 St S) and Woodhaven South Park (4802 Woodhaven Dr S) about a quarter-mile to the east. Osgood Park provides playground amenities and Woodhaven South Park provides amenities of a playground and fishing pond.

Pedestrian / Bicycle: The subject property is surrounded by off road bike facilities. These facilities are a component of the metro area trail system.

Staff Analysis:

Zoning

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

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

Staff is unaware of any zoning map error in regard to the subject property. Staff finds that the requested zone change is justified by a change in conditions, as the developer has a clearer picture of the type of development.

(Criteria Satisfied)

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

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

(Criteria Satisfied)

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

Staff has no evidence that would suggest this proposal would adversely affect the condition or value of the property in the vicinity. Written notice of the proposal was sent to all property owners within 300 feet of the subject property. To date, staff has not received any phone calls or comments in response to these notices. Staff finds that the approval will not adversely affect the condition or value of the property in the vicinity.

(Criteria Satisfied)

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

The purpose of the LDC is to implement Fargo's Comprehensive Plan and related policies in a manner that protects the health, safety, and general welfare of the citizens of Fargo. Staff finds that the proposal is consistent with the purposes of the LDC and other adopted policies of the City. As noted above, the zoning change is consistent with the general intent of the growth plan.

(Criteria Satisfied)

Minor Subdivision

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

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

The subdivision is intended to split one existing lot into three new lots to accommodate future commercial and multi-dwelling 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 not received any inquiries. 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 principles.

(Criteria Satisfied)

Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of staff and hereby recommend approval to the City Commission of the proposed: 1) Zoning Change from LC, Limited Commercial to MR-3, Multi-Dwelling and 2) Subdivision Plat, **Osgood Townsite Fourteenth Addition** as outlined within the staff report, as the proposal complies with the adopted Area Plan, the standards of Article 20-06, and all other applicable requirements of the

Land Development Code”.

Planning Commission Recommendation: January 4, 2017

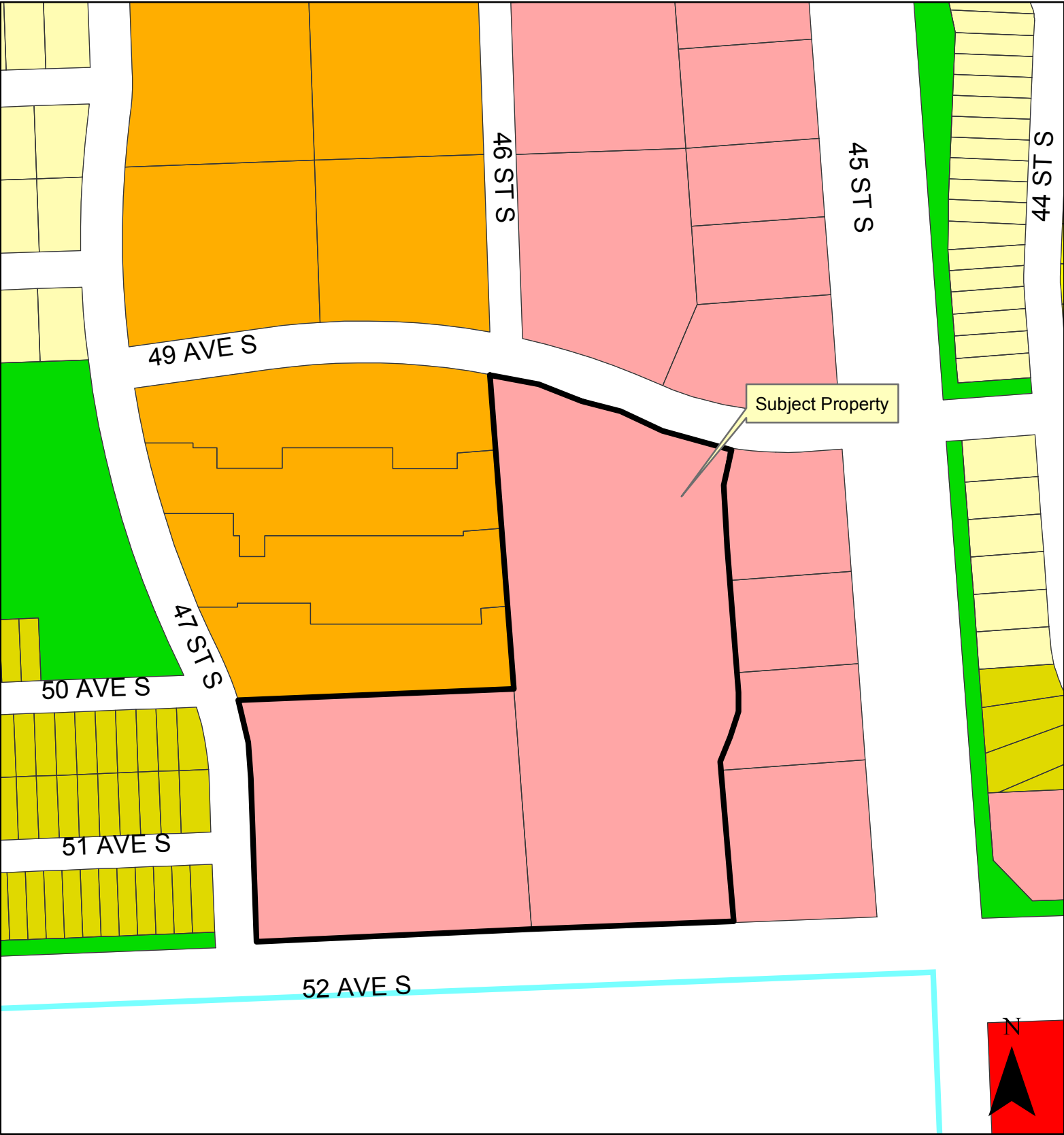
Attachments:

1. Zoning Map
2. Location Map
3. Plat

Plat (Minor Subdivision) and Rezone (LC to MR-3)

Osgood Townsite 14th Addition

5050 47th St S & 4550 49th Ave S



Legend

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

300

Feet

Fargo Planning Commission

January 4, 2017

Plat (Minor Subdivision) and Rezone (LC to MR-3)

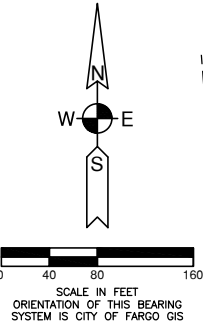
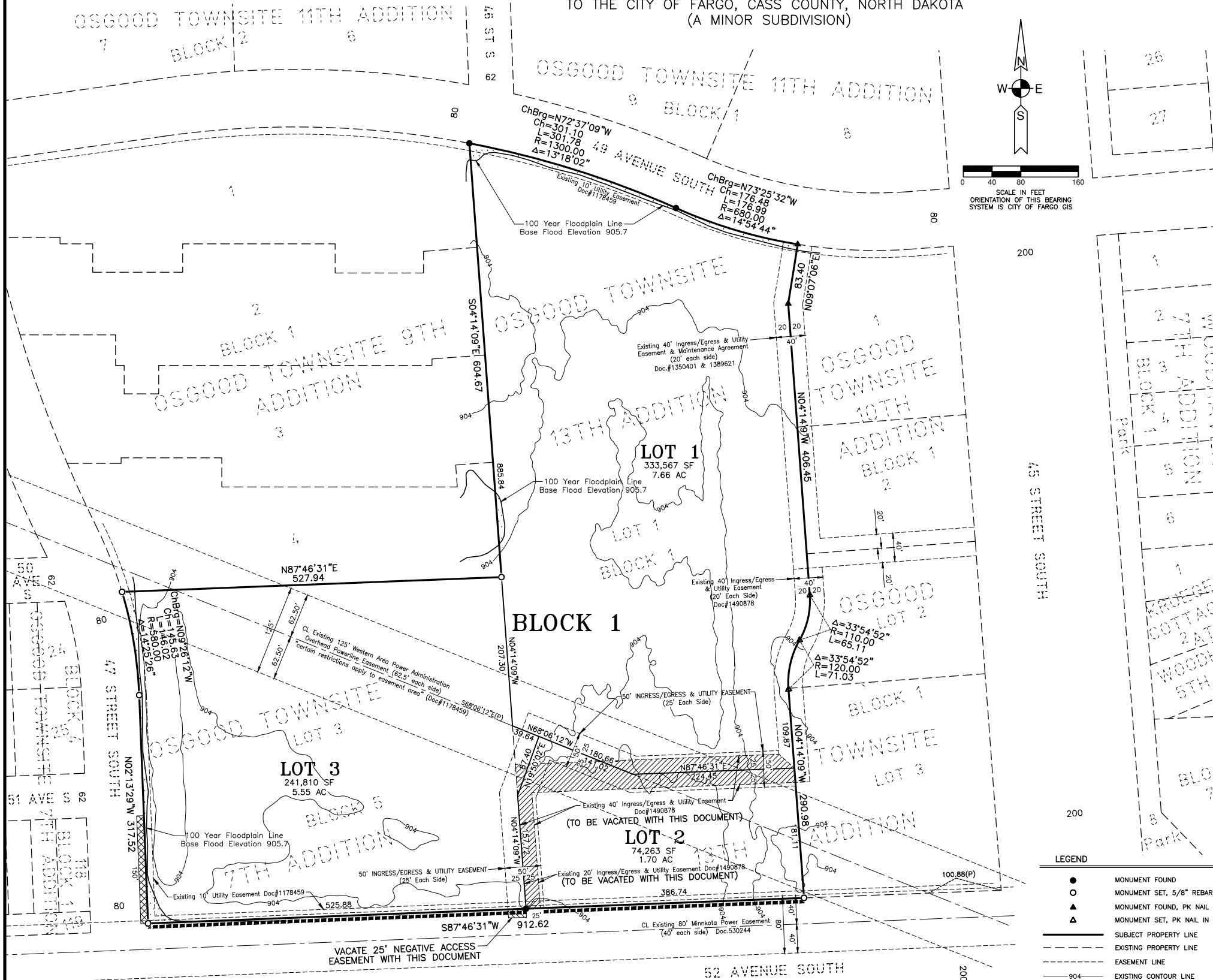
Osgood Townsite 14th Addition

5050 47th St S & 4550 49th Ave S



OSGOOD TOWNSITE FOURTEENTH ADDITION

A REPLAT OF LOT 1, BLOCK 1 OF OSGOOD TOWNSITE THIRTEENTH ADDITION AND LOT 3, BLOCK 5 OF OSGOOD TOWNSITE SEVENTH ADDITION
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA
(A MINOR SUBDIVISION)



OWNERS DESCRIPTION AND DEDICATION

KNOW ALL MEN BY THESE PRESENTS, That WBCM of North Dakota, LLC, a North Dakota Limited Liability Company whose address is Fargo, North Dakota as owner of a parcel of land located in the Southeast Quarter of Section 33, Township 139 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, and more particularly described as follows:

Lot 1, Block 1 of OSGOOD TOWNSITE THIRTEENTH ADDITION to the City of Fargo according to the record plat thereof on file in the office of the County Recorder, Cass County, North Dakota

AND

Lot 3, Block 5 of OSGOOD TOWNSITE SEVENTH ADDITION to the City of Fargo according to the record plat thereof on file in the office of the County Recorder, Cass County, North Dakota

Containing 14.91 acres or 649,640 square feet more or less.

Said owner has caused the above described tract of land to be surveyed and platted as "OSGOOD TOWNSITE FOURTEENTH ADDITION" to the City of Fargo, Cass County, North Dakota, and do hereby dedicate to Lots 1, 2, & 3 the Ingress/Egress and Utility Easement as shown hereon for the purposes so stated.

OWNER: WBCM of North Dakota, LLC

By: Kevin Christianson, President

State of North Dakota } SS
County of Cass

On this _____ day of _____, in the year of 2017, before me, a notary public with and for said County, personally appeared Kevin Christianson, President, WBCM of North Dakota, LLC known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same.

Notary Public

CITY OF FARGO ENGINEERING DEPARTMENT APPROVAL

Approved by City Engineer this _____ day of _____, 2017.

April E. Walker, City Engineer

State of North Dakota } SS
County of Cass

On this _____ day of _____, 2017, before me, a notary public with and for said County, personally appeared April E. Walker, City Engineer, to me known to be the person described in and who executed the same as a free act and deed.

Notary Public

CITY OF FARGO PLANNING COMMISSION APPROVAL

Approved by the City of Fargo Planning Commission this _____ day of _____, 2017.

Jan Ulfferts Stewart, Planning Commission Chair

State of North Dakota } SS
County of Cass

On this _____ day of _____, 2017, before me, a notary public with and for said County, personally appeared Jan Ulfferts Stewart, Planning Commission Chair, to me known to be the person described in and who executed the same as a free act and deed.

Notary Public

FARGO CITY COMMISSION APPROVAL

Approved by the Board of City Commissioners and ordered filed this _____ day of _____, 2017.

Timothy J. Mahoney, Mayor

Attest: Steven Sprague, City Auditor

State of North Dakota } SS
County of Cass

On this _____ day of _____, 2017, before me, a notary public with and for said County, personally appeared Timothy J. Mahoney, Mayor, and Steven Sprague, City Auditor, to me known to be the persons described in and who executed the same as a free act and deed.

Notary Public

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGMENT

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

Daniel W. Skinner, Professional Land Surveyor
North Dakota License No. LS-6206

State of North Dakota } SS
County of Cass

On this _____ day of _____, 2017, before me, a notary public with and for said County, personally appeared Daniel W. Skinner, to me known to be the person described in and who executed the same as a free act and deed.

Notary Public

LEGEND

- MONUMENT FOUND
- MONUMENT SET, 5/8" REBAR, CAPPED "LS-6206"
- ▲ MONUMENT FOUND, PK NAIL IN CONCRETE
- ▲ MONUMENT SET, PK NAIL IN CONCRETE
- SUBJECT PROPERTY LINE
- - - EXISTING PROPERTY LINE
- - - EASEMENT LINE
- - - EXISTING CONTOUR LINE
- 904 AREA NOT WITHIN 100 YEAR FLOODPLAIN
- EXISTING 40' INGRESS/EGRESS & UTILITY EASEMENT TO BE VACATED WITH THIS DOCUMENT
- EXISTING NEGATIVE ACCESS EASEMENT PER DOC#1178459, DOC#1490878
- XXXXXXXXXX NEGATIVE ACCESS EASEMENT

"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."

BENCHMARK

A CHISELED "X" ON THE NORTHWEST WING WALL OF BRIDGE OVER DRAIN #27 ON 52ND AVENUE SOUTH ELEVATION 908.61 NAVD88

PREPARED BY

Ulteig

FARGO - BISMARCK - DETROIT LAKES - MINNEAPOLIS - SIOUX FALLS - DENVER - CEDAR RAPIDS - WILLISTON

PRELIMINARY

City of Fargo Staff Report			
Title:	Commerce on I-29 2 nd Addition	Date:	12/28/16
Location:	North of 98 th Avenue South between 38 th and 43 rd Streets South, within the extra-territorial jurisdiction (ETJ)	Staff Contact:	Donald Kress, senior planner
Legal Description:	Lots 1, 4, and 5, Block 2, Commerce on I-29 Addition		
Owner(s)/Applicant:	29 Investments, LLC / PACES Lodging (Nate Vollmuth)	Engineer:	Ultieg
Entitlements Requested:	Minor Subdivision (Replat of Lots 1, 4, and 5, Block 2 of Commerce on I-29 Addition Cass County, North Dakota);		
Status:	Planning Commission Public Hearing: January 4, 2017		

Existing	Proposed
Land Use: Limited industrial and undeveloped	Land Use: Continued limited industrial development
Zoning: LI: Limited Industrial with conditional overlay (C-O)	Zoning: No change proposed
Uses Allowed: <u>LI – Limited Industrial with C-O: Conditional Overlay:</u> 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. <u>Conditional Overlay</u> – The conditional overlay removes certain land uses (shown as lined through in the list above) from the list of land uses permitted on this site.	Uses Allowed: Same as existing
Maximum Lot Coverage Allowed: 85%	Maximum Lot Coverage Allowed: No change

Proposal:															
The applicant requests a minor subdivision to replat Lots 1, 4, and 5, Block 2 of Commerce on I-29 Addition into six smaller lots for commercial development. The project site is zoned LI: Light Industrial with C-O; no zone change is proposed. The lots range in size from 1.09 to 6.88 acres. All the lots are within a single block.															
<table border="1"> <thead> <tr> <th>Lot Number</th><th>Area (acres)</th></tr> </thead> <tbody> <tr> <td>1</td><td>6.88</td></tr> <tr> <td>2</td><td>3.68</td></tr> <tr> <td>3</td><td>3.24</td></tr> <tr> <td>4</td><td>2.67</td></tr> <tr> <td>5</td><td>1.09</td></tr> <tr> <td>6</td><td>1.14</td></tr> </tbody> </table>	Lot Number	Area (acres)	1	6.88	2	3.68	3	3.24	4	2.67	5	1.09	6	1.14	
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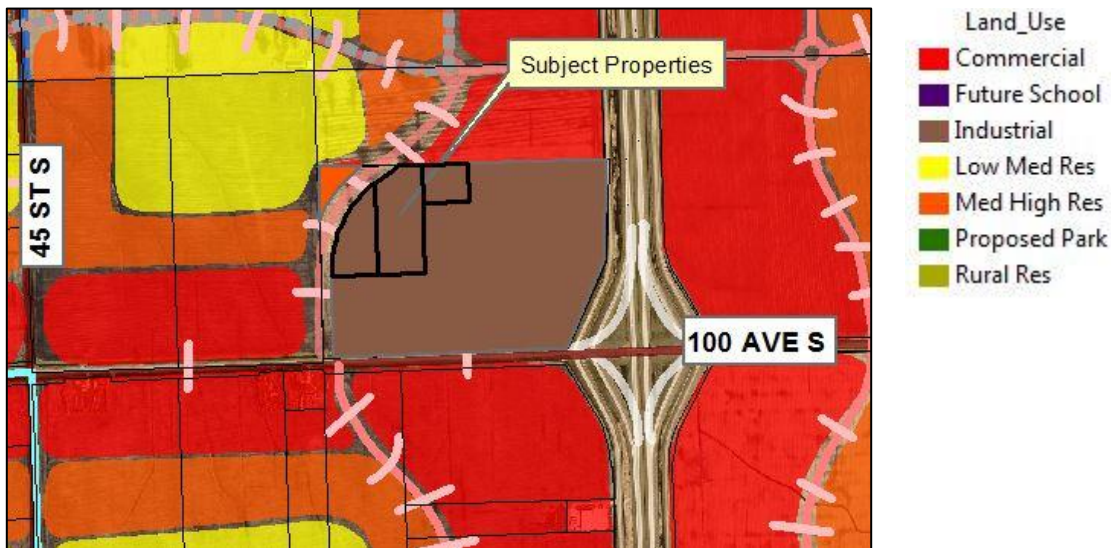
This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.

Surrounding Land Uses and Zoning Districts:

- North: Extraterritorial jurisdiction with agricultural use
- East: Extraterritorial jurisdiction with agricultural use
- South: Extraterritorial jurisdiction with agricultural use
- West: Extraterritorial jurisdiction with agricultural use

Area Plans:

The subject property is located within the 2007 Growth Plan. Tier 2 South Land Use map was amended November 23, 2015 to designate this area as "Industrial."



Schools and Parks:

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

Parks: The subject property is less than a quarter mile west from Rutten Family Park. There is no address or amenities available at this time.

Pedestrian / Bicycle: On-road bike facilities are located along 100th Avenue South and are a component of the metro area trail system.

Staff Analysis:

ACCESS: The project site takes access from 98th Avenue South and 38th Street South. A negative access easement, created with Commerce on I-29 First Addition, prohibits access from 42nd Street. Lot 1 would take access from 38th Street, and the rest of the lots would take access from the internal access easement connected to 98th Avenue South.

LOT CONFIGURATION: Lot 2 is configured to provide a right-of-way touch to 42nd Street for this otherwise "landlocked" lot, though access will be provided from the internal access easement, as the negative access easement along 42nd Street prohibits access from that street.

EXISTING AMENITIES PLAN: The existing amenities plan for the Commerce on I-29 Addition will carry through to this addition. This plan addresses public right of way, storm water management, flood protection, domestic water supply, emergency services, sanitary sewer, engineering and construction improvements, funding of public infrastructure improvements, sidewalks and tree planting, and property owner association.

Subdivision Findings

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 property is zoned LI: Limited Industrial. This zone will accommodate the proposed limited industrial development. The conditional overlay on this property restricts some uses from being developed on this property. This zoning is consistent with the 2007 Growth Plan which designates the project site as "industrial." 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 inquiries. The project has been reviewed by the city's Planning, Engineering, Public Works, Inspections, and Fire Departments and found to meet the standards of Article 20-06 and other applicable requirements of the Land Development Code. **(Criteria Satisfied)**
2. **Section 20-907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision.**
This project is within the city's extra-territorial jurisdiction. The existing amenities plan specifies that future phases of public infrastructure improvements (when the property is annexed into the city) will be paid according to city policy. The initial public improvements were funded by the developer. **(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 **Commerce on I-29 Second Addition** subdivision plat as presented; as the proposal complies with the 2007 Growth Plan, Standards of Article 20-06, and all other applicable requirements of the LDC."

Planning Commission Recommendation: January 4, 2017

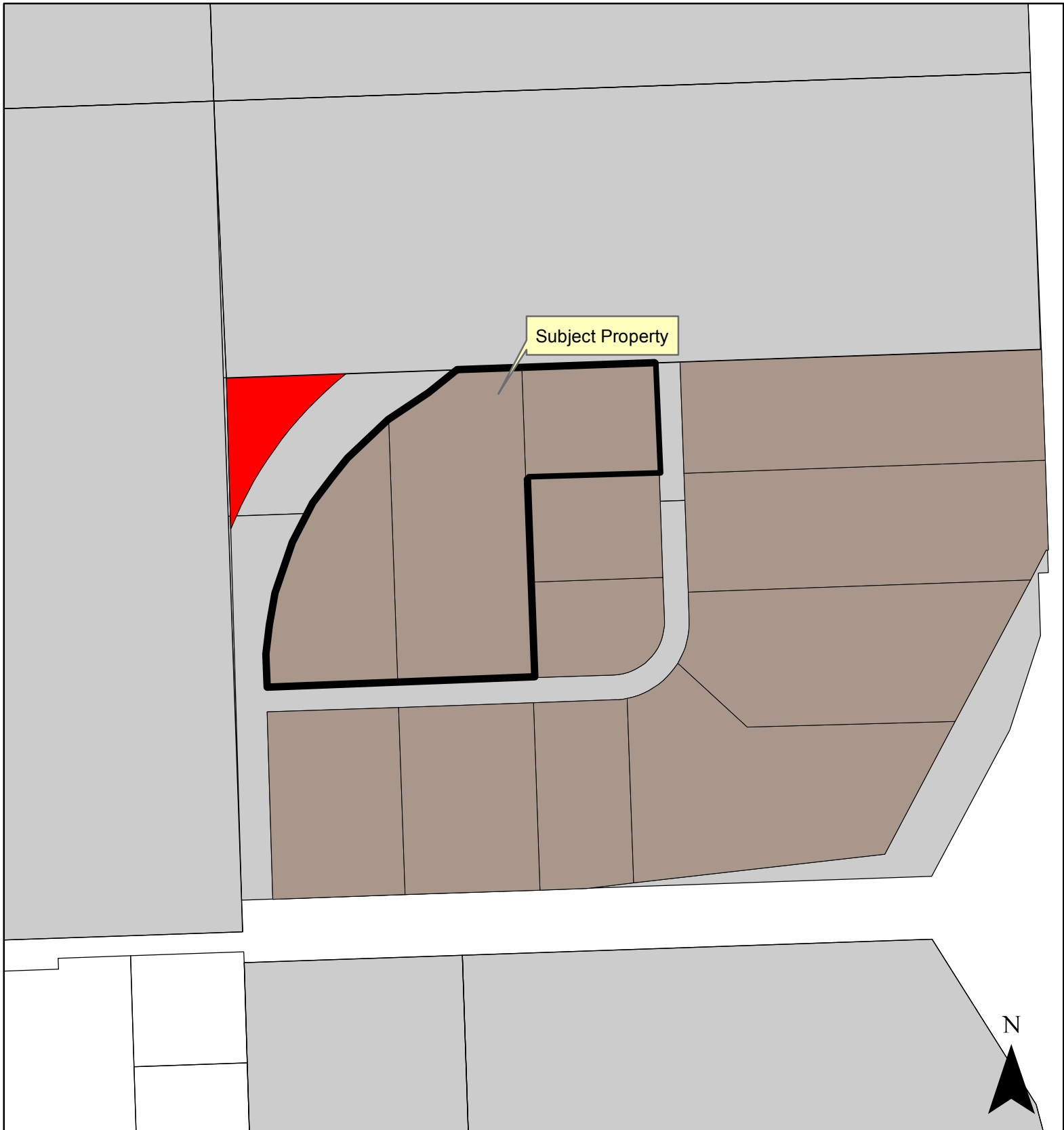
Attachments:

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

Subdivision (Minor Plat)

Commerce on I-29 2nd Addition

4001 & 4101 98th Ave S and
9501 39th St S



Legend

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

300
Feet

Fargo Planning Commission
January 4, 2017

Subdivision (Minor Plat)

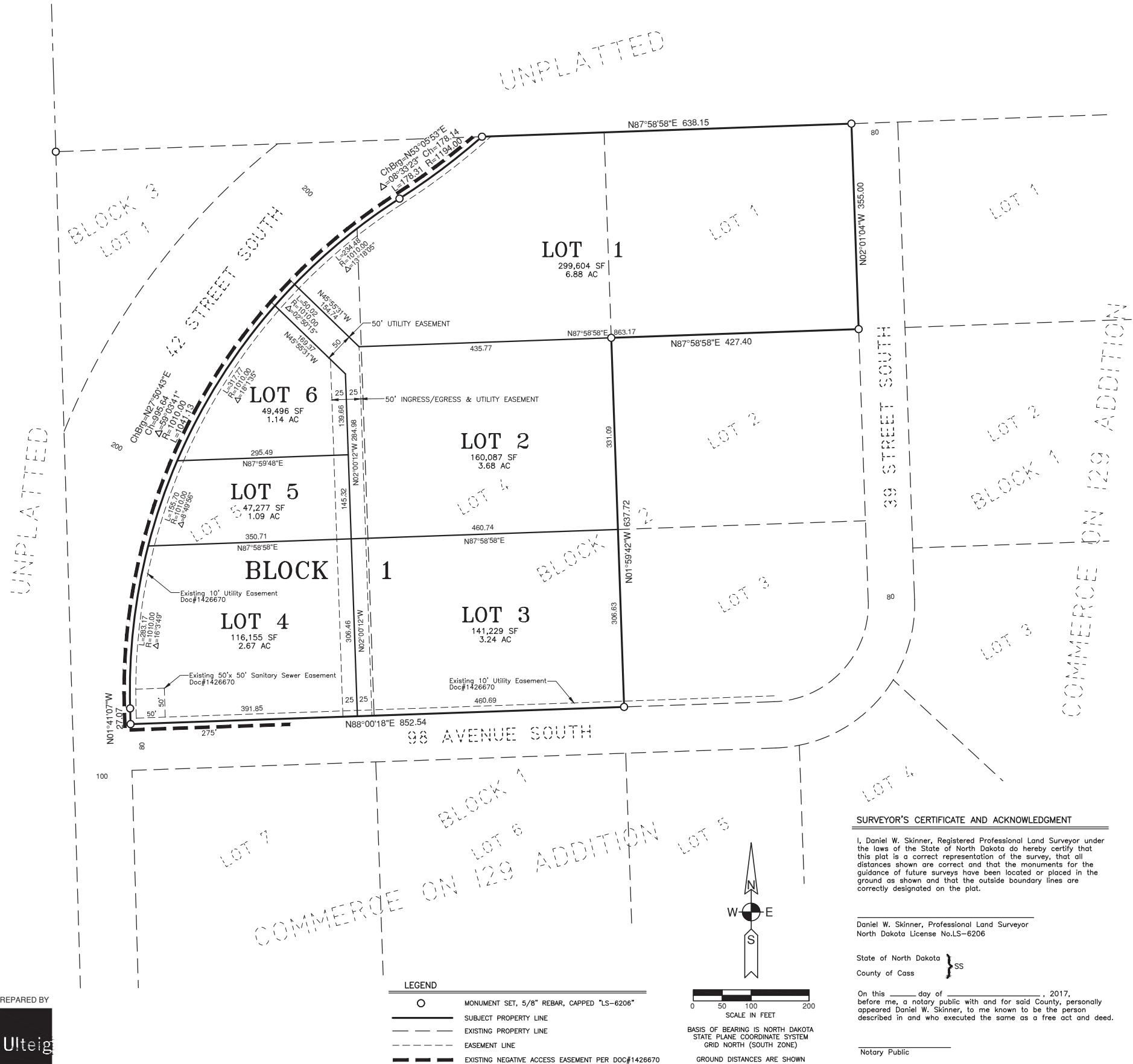
Commerce on I-29 2nd Addition

4001 & 4101 98th Ave S and
9501 39th St S



COMMERCE ON I29 SECOND ADDITION

A REPLAT OF LOTS 1, 4 & 5, BLOCK 2 OF COMMERCE ON I29 ADDITION
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA
(A MINOR SUBDIVISION)



OWNERS DESCRIPTION AND DEDICATION

KNOW ALL MEN BY THESE PRESENTS, That 29 INVESTMENTS, LLC whose address is Fargo, North Dakota as owner of a parcel of land located in the Southeast Quarter of Section 22, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, and more particularly described as follows:

Lot 4 and Lot 5, Block 2 of COMMERCE ON I29 ADDITION to the City of Fargo according to the record plat thereof on file in the office of the County Recorder, Cass County, North Dakota.

AND that MERCO INVESTMENTS, LLLP whose address is West Fargo, North Dakota as owner of a parcel of land located in the Southeast Quarter of Section 22, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, and more particularly described as follows:

Lot 1, Block 2 of COMMERCE ON I29 ADDITION to the City of Fargo according to the record plat thereof on file in the office of the County Recorder, Cass County, North Dakota.

Said parcels contain 813,847 square feet or 18.683 acres more or less.

Said owners have caused the above described tract of land to be surveyed and platted as "COMMERCE ON I29 SECOND ADDITION" to the City of Fargo, Cass County, North Dakota, and do hereby dedicate to Lots 1, 2, 3, 4, 5 and 6 the ingress/egress and utility easement as shown on this plat for the purposes so stated.

OWNER:
29 INVESTMENTS, LLC

By: _____
Kevin Christianson, President

State of North Dakota } SS
County of Cass }

On this _____ day of _____, in the year of 2017, before me, a notary public with and for said County, personally appeared Kevin Christianson, President, 29 INVESTMENTS, LLC known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same.

Notary Public

OWNER:
MERCO INVESTMENTS LLLP

By: _____
name??, title??

State of North Dakota } SS
County of Cass }

On this _____ day of _____, in the year of 2017, before me, a notary public with and for said County, personally appeared name??, title??, MERCO INVESTMENTS LLLP 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

MORTGAGEE:
WESTERN STATE BANK

By: _____
name??, title??

State of North Dakota } SS
County of Cass }

On this _____ day of _____, in the year of 2017, before me, a notary public with and for said County, personally appeared name??, title??, Western State Bank known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same.

Notary Public

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGMENT

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

Daniel W. Skinner, Professional Land Surveyor
North Dakota License No. LS-6206

State of North Dakota } SS
County of Cass }

On this _____ day of _____, 2017, before me, a notary public with and for said County, personally appeared Daniel W. Skinner, to me known to be the person described in and who executed the same as a free act and deed.

Notary Public

CITY OF FARGO ENGINEERING DEPARTMENT APPROVAL

Approved by City Engineer this _____ day of _____, 2017.

April E. Walker, City Engineer

State of North Dakota } SS
County of Cass }

On this _____ day of _____, 2017, before me, a notary public with and for said County, personally appeared April E. Walker, City Engineer, to me known to be the person described in and who executed the same as a free act and deed.

Notary Public

CITY OF FARGO PLANNING COMMISSION APPROVAL

Approved by the City of Fargo Planning Commission this _____ day of _____, 2017.

Jan Ulferts Stewart, Planning Commission Chair

State of North Dakota } SS
County of Cass }

On this _____ day of _____, 2017, before me, a notary public with and for said County, personally appeared Jan Ulferts Stewart, Planning Commission Chair, to me known to be the person described in and who executed the same as a free act and deed.

Notary Public

FARGO CITY COMMISSION APPROVAL

Approved by the Board of City Commissioners and ordered filed this _____ day of _____, 2017.

Timothy J. Mahoney, Mayor

Attest: _____
Steven Sprague, City Auditor

State of North Dakota } SS
County of Cass }

On this _____ day of _____, 2017, before me, a notary public with and for said County, personally appeared Timothy J. Mahoney, Mayor, and Steven Sprague, City Auditor, to me known to be the persons described in and who executed the same as a free act and deed.

Notary Public

STANLEY TOWNSHIP APPROVAL

Approved by Stanley Township this _____ day of _____, 2017.

Chairman, Stanley Township

Attest: _____
Clerk

PREPARED BY

Ulteig

FARGO - BISMARCK - DETROIT LAKES - MINNEAPOLIS - SIOUX FALLS - DENVER - CEDAR RAPIDS - WILLISTON

preliminary

**City of Fargo
Staff Report**

Title:	Timber Parkway First Addition	Date:	12/28/16
Location:	4801 Timber Parkway South	Staff Contact:	Derrick LaPoint
Legal Description:	Lot 7, Block 1, Timber Parkway First Addition		
Owner(s)/Applicant:	PLC Investments LLC/PACES Lodging	Engineer:	
Entitlements Requested:	Zoning Change (from GC, General Commercial with CO to GC, General Commercial with CO)		
Status:	Planning Commission Public Hearing: January 4, 2017		

Existing	Proposed
Land Use: Vacant	Land Use: Retail Sales and Service – Outlet Mall
Zoning: GC, General Commercial, with a C-O, Conditional Overlay	Zoning: GC, General Commercial, with a C-O, Conditional Overlay
Uses Allowed: 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: 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.
Maximum Building Coverage Allowed: 85%	Maximum Building Coverage Allowed: No change

Proposal:

The applicant is proposing a zoning map amendment in order to repeal the existing C-O, Conditional Overlay and reestablish a new C-O, Conditional Overlay on the subject property. The subject property is located at 4801 Timber Parkway South, and is legally described as Lot 7, Block 1, Timber Parkway First Addition.

The original C-O on the subject property was intended for commercial development, however, the applicant has a more detailed development plan for the area with the construction of an outlet mall. The proposed C-O maintains much of the original C-O requirements, while seeking to simplify and reduce ambiguity and increasing pedestrian circulation within the development. A draft of the proposed C-O language is attached to this staff report.

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: Across Timber Parkway South is SR-2, Single-Dwelling Residential, SR-4, Single-Dwelling Residential and P/I, Public and Institutional with vacant land and MR-3, Multi-Dwelling Residential with apartments;
- East: Directly east is GC, General Commercial with a C-O, Conditional Overlay with vacant land; Across Timber Parkway South is SR-4, Single-Dwelling Residential with vacant land and GC, General

- Commercial, with a C-O, Conditional Overlay, with a commercial strip center;
- West: Interstate 29;
- South: Across 52nd Avenue South is Single-Dwelling Residential within Frontier Township.

Area Plans:

The subject property is located within the 2003 Southwest Future Land Use Plan. In March of 2014, a growth plan amendment was approved that added additional commercial acreage within the subject property. Pursuant to the growth plan amendment, the area is deemed appropriate for commercial uses.



Schools and Parks:

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

Parks: The Timber Creek development as a whole includes park land dedication (approximately 9.86 acres). Currently, there are no other parks with programmed space or amenities proximal to this development; however, the shared use path and trail network is very strong in this area. The *Prairie Farms Addition* on the south-side of 52nd Avenue South, will include significant open space, programmed park acreage and bike/pedestrian connectivity from 52nd Avenue to 64th Avenue South.

Pedestrian / Bicycle: Off road bike facilities are located along Timber Parkway South and 52nd Avenue South. These facilities are a component of the metro area trail system.

Staff Analysis:

Zoning

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

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

Staff is unaware of any zoning map error in regards 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 clearer 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. 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. 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, 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 from GC, General Commercial with a C-O, Conditional Overlay, to GC, General Commercial with a 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: January 4, 2017

Attachments:

1. Zoning Map
2. Location Map
3. Draft Conditional Overlay
4. Preliminary Site Plan/Renderings

Zone Change (Repeal and Reestablish C-O)

Timber Parkway 1st Addition

4801 Timber Pkwy 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

300 Feet

Fargo Planning Commission
January 4, 2017

Zone Change (Repeal and Reestablish C-O)

Timber Parkway 1st Addition

4801 Timber Pkwy S



Section 1. The following-described property:

Block 1, Lot 7, Timber Parkway First Addition

to be rezoned from GC, General Commercial with a Conditional Overlay (C-O) to GC, General Commercial with a Conditional Overlay (C-O).

A. Description

- a. This C-O, Conditional Overlay, district is primarily intended to encourage high-quality, durable, and long-lasting investments, and is intended for a retail outlet mall development.

B. Design Standards

a. Building Massing

- i. All buildings shall have architectural interest and variety to avoid the effect of a single, long or massive wall; buildings shall include variation in size and shape.
- ii. All building elevations or facades facing or viewable from right-of-ways or parking lots that are greater than 150 feet in length, measured horizontally from vertical edge to vertical edge, shall incorporate wall plane projections or recesses. Each projection and/or recess shall have a depth of at least five feet, and the cumulative total horizontal width of all projections and/or recesses within a façade shall equate to at least an accumulated total of 20 percent of the overall horizontal length of the façade. No uninterrupted length of any façade shall exceed 150 horizontal lengths. Attached or adjacent permanent wall projections that screen maintenance/loading/delivery/dumpster areas that exceed 9 feet in height shall count as projections and recesses.
- iii. All building elevations or facades facing or viewable from right-of-ways or parking lots shall be designed with a similar level of design detail, respective to building massing and building materials.

b. Building Materials

- i. All walls shall be constructed or clad with natural stone, synthetic stone, brick, stucco, EIFS, fiber cement, curtain walls, glass, high quality pre-stressed concrete systems, architectural metal panels, colored precast concrete panels, or similar high quality material as may be approved by the Zoning Administrator. All materials shall be durable and have a multi-generational life span.
- ii. Prohibited materials shall be steel siding exceeding 25% of building elevation, painted or untreated CMU's, ceramic tile walls, highly reflective wall treatments, exposed neon or color tubing that is not used in an accent capacity, un-textured concrete, untreated concrete masonry unit, or un-colored precast concrete panels; unless otherwise approved by the Zoning Administrator.

c. Screening of Dumpsters/Refuse Containers and Loading Areas

- i. Dumpster and loading areas that are attached or adjacent to the primary structure shall be screened on three sides by permanent walls. The fourth side

shall be screened a minimum of 40% from perpendicular view by permanent walls. Permanent walls shall be a minimum of 9 feet in height.

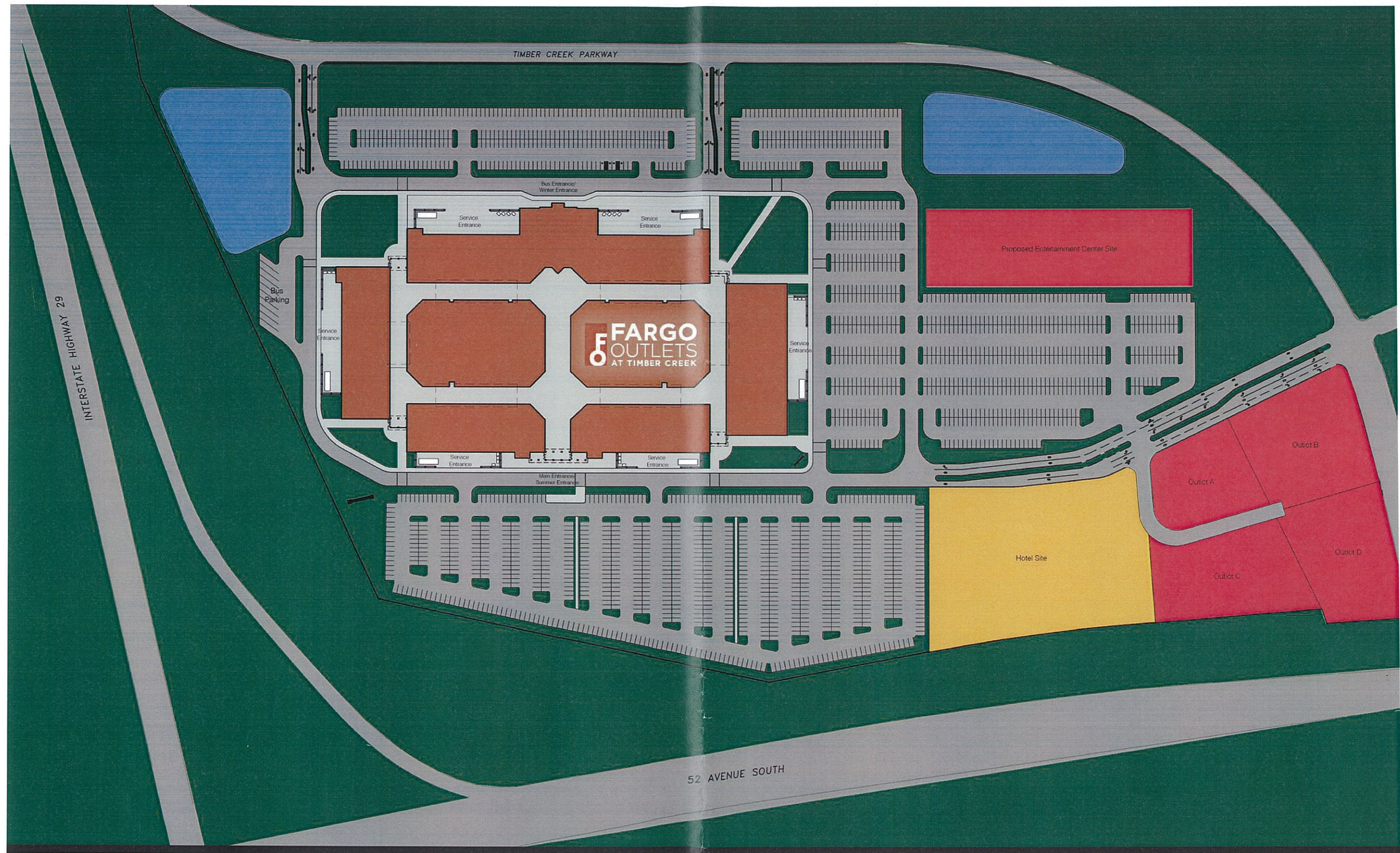
- ii. Stand-alone outdoor dumpster areas shall be screened on three sides by permanent walls. The fourth side shall be screened by a metal gate. Permanent walls shall be a minimum of 8 feet in height.
- d. Screening of Rooftop and Ground Level Mechanical Equipment
 - i. Rooftop mechanical equipment shall be 50% concealed from public view, when viewing angle is from the Finish Floor elevation, measured at 150' from the exterior wall.
 - ii. All ground level HVAC units and utility boxes shall be 50% screened from view by a structure, wall, fence or landscaping.
- e. Parking Lot Landscaping
 - i. A minimum of 5% of the internal surface area of the parking lot shall be landscaped with plantings.
- f. Landscape Buffer
 - i. A 50-foot landscape easement was dedicated in March 2014 by Document 1412948 on file with the Cass County Recorder's Office along the north side of the development. The developer shall be required to submit a landscape plan for this easement area which shall include a combination of trees and landscaped berms. And the overall landscape plan shall be approved by the Zoning Administrator. The developer intends this buffer to provide a high quality transition between residential and commercial properties while also providing an added aesthetic element to the development. If, in the opinion of the Zoning Administrator, the proposed landscape plan meets the intended objective and is reflective of high quality design and materials; the requirement for landscaping internal to parking lots as contemplated under subparagraph 2.(f)(ii) of Ordinance 4908 shall be reduced from 10 percent to 5 percent. The landscaping plan shall be implemented within the easement area within 12 month following issuance of any building permit as described in Ordinance 4908. Trees shall be of minimum 2-inch caliper.

C. Prohibited Uses

- a. Within the Use Category for Retail Sales/Service and Office, sales and leasing of consumer vehicles including passenger vehicles, light/medium trucks and other recreational vehicles that includes outdoor storage/display/sales are prohibited
- b. Detention Facilities
- c. Adult Entertainment Center
- d. Self-Service Storage
- e. Vehicle Repair (excluding tire sales)
- f. Industrial Service
- g. Manufacturing and Production
- h. Warehouse and Freight Movement – excluding furniture/appliance stores)
- i. Wholesale Sales
- j. Aviation/Surface Transportation

D. Site Design

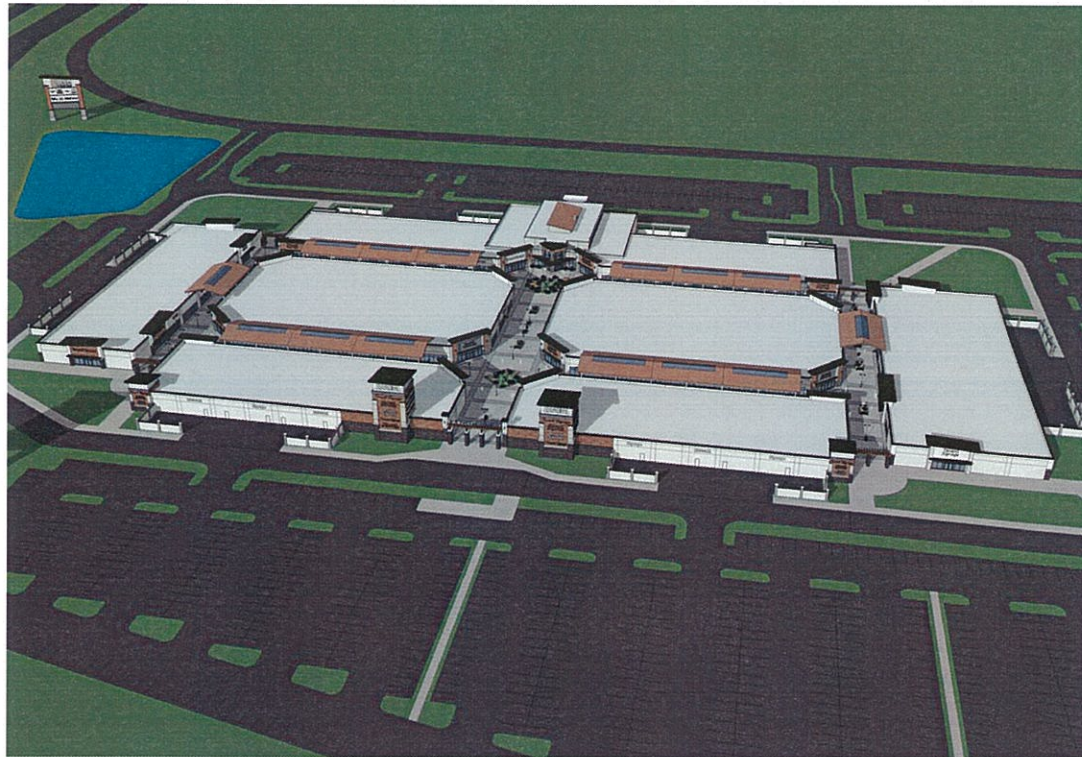
- a. Separate vehicular and pedestrian circulation systems shall be provided. An on-site system of pedestrian walkways shall be provided between building entrances and the following:
 - i. Any public sidewalk system along the perimeter streets adjacent to the development, or along the perimeter of the lot
 - ii. Primary entrances of other buildings on the site
 - iii. Adjacent pedestrian origins and destinations – including but not limited to transit stops, residential development, office buildings, and retail buildings – where deemed practical and appropriate by the Zoning Administrator.





Aerial View
November 22nd, 2016





Renderings
 November 22nd, 2016

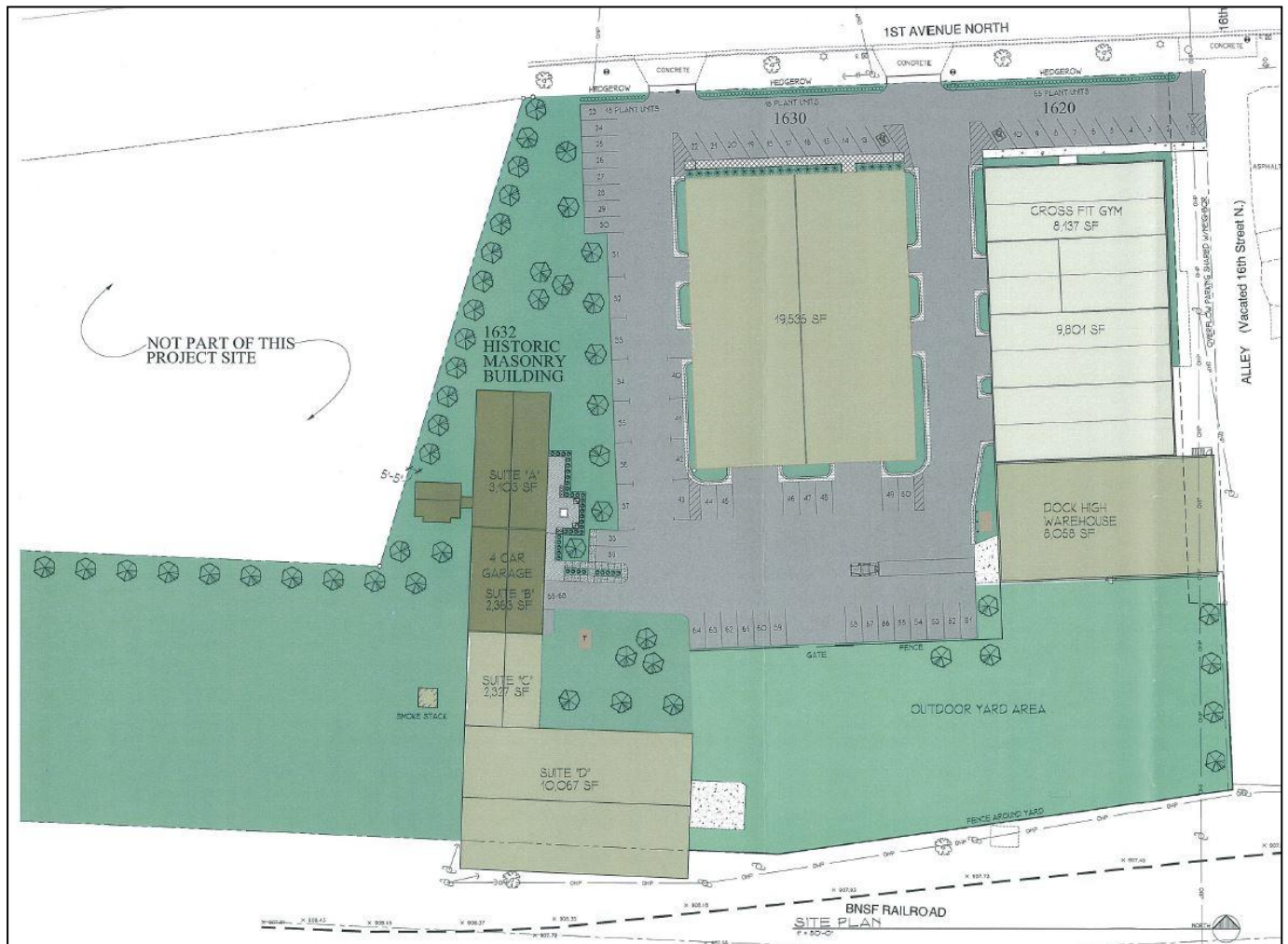


City of Fargo Staff Report			
Title:	Reeves Addition	Date:	12/28/16
Location:	1620, 1630, and 1632 1st Avenue North	Staff Contact:	Aaron Nelson & Barrett Voigt
Legal Description:	Blocks 26 and 27, Reeves Addition, and adjacent vacated right-of-way, and Auditor's Lot No. 1 of the South Half of Section 1, Township 139 North, Range 49 West		
Owner(s)/Applicant:	MBA Investments LLC	Engineer:	N/A
Entitlements Requested:	Zone Change from LI, Limited Industrial, to GC, General Commercial, and Conditional Use Permit to allow Household Living, Manufacturing & Production, Industrial Services, and Warehouse & Freight Movement use categories in the GC zoning district.		
Status:	Planning Commission Public Hearing: January 4, 2017		

Existing	Proposed
Land Use: Warehouse and Vacant	Land Use: Residential, Retail, Office, and Industrial
Zoning: LI, Limited Industrial	Zoning: GC, General Commercial
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: 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. Plus a CUP to allow Household Living, Manufacturing & Production, Industrial Services, and Warehouse & Freight Movement
Maximum Coverage Allowed: Maximum 85% building coverage	Maximum Coverage Allowed: Maximum 85% building coverage

Proposal:
<p>The applicant is seeking approval of a Zoning Change from LI, Limited Industrial, to GC, General Commercial, and a Conditional Use Permit (CUP) to allow Residential and Industrial Uses in the GC zoning district. The subject property is located at 1620, 1630, and 1632 1st Avenue North and encompasses approximately 5.06 acres.</p> <p>According to the applicant, the proposed zoning map amendment and CUP application are intended to allow for the adaptive reuse and redevelopment of this property. The applicant intends to upgrade and remodel the existing buildings on site for a variety of light industrial and commercial uses, as well as for a single-dwelling residence. The site plan below illustrates the location of these proposed uses within the three existing buildings currently on the property. The north half of the westernmost building would contain one dwelling unit while the south half of that</p>

building would contain space for a contractor's office and shop. The middle building and the south portion of the easternmost building also consist of warehouse/shop space for lease. The north portion of the easternmost building is intended for commercial fit-up space.



Site Plan

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 with warehouse and office uses
- East: LI, Light Industrial with warehouse and office uses
- South: GC, General Commercial with BNSF Railroad uses
- West: LI, Light Industrial with warehouse and office uses

Area Plans:

The subject property is located within the boundaries established by the Unicorn Park Neighborhood Plan that was adopted in 2011. The neighborhood plan emphasizes the desire to increase the number of single-dwelling residential homes.

In addition, the subject property is located near the study area of the Fargo Downtown Area Plan, which was adopted in 1996. This plan breaks the downtown area into several districts based on similar land-uses and characteristics. The Westside District—which is the name of the district the subject property is located closest to—is deemed appropriate for commercial land uses, as well as offices and multi-family housing. The plan also states that redevelopment should be encouraged in areas north of Main Avenue and west of 10th Street North, as many areas are blighted or risk becoming blighted.



Although there are area plans available, staff finds that there is not an area plan that addresses the requests provided in this application comprehensively. However, staff would like to note that recently there has been the potential for industrial uses on tracts west of the property and other surrounding areas close by.

Schools and Parks:

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

Parks: Unicorn Park (1603 3 Avenue North) is located approximately 800 feet north of the subject property. Unicorn Park provides basketball, grill, multipurpose field, playground, and picnic table amenities.

Pedestrian / Bicycle: There is an on-road bike facility located north of the property on 1 Avenue North. This bike route is a component of the metro area bikeways system.

Staff Analysis:

Zoning

Section 20-906. F (1-4) of Fargo's Land Development Code (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 requested zoning change resulted from a change in conditions with new ownership of 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?**
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 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. 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 communication from the surrounding owners. **(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 2011 Unicorn Park Neighborhood Plan applies to this property and promotes the increase in development of single-dwelling residential homes but does not have a land use plan that specifically applies to this property. This property is also located near the Westside District of the 1996 Fargo Downtown Area Plan where redevelopment is encouraged to avoid blight. In addition, the Go2030 Plan encourages infill and density to promote mixed-use development and walkability. The proposed development for the property would encourage mixed-use development and walkability by allowing for residential, retail, office, and industrial uses to be located on a single parcel. Staff finds this proposal is consistent with the purpose of the LDC, the applicable growth plans, 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 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." Regarding compliance with the applicable provisions of the LDC, Table 20-0401 of the LDC states that household living and industrial are allowed in the GC zone with a conditional use permit. In addition, promoting infill and mixed-use development are both key initiatives meant to promote the guiding principles of the Comprehensive Plan. Staff finds this proposal is consistent with the applicable provisions of the LDC. **(Criteria Satisfied)**

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

Staff finds that this proposed conditional use permit for household living, manufacturing & production, industrial services, and warehouse & freight movement will contribute to the welfare and promote the convenience of the public by providing a walkable mixed-use development to promote economic development, active transportation activities, and reduce vehicle trips. **(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 communication from the surrounding owners. **(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 uses 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 to limit the intensity of the requested use and accommodate potential future uses.
(Criteria Satisfied)

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

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 property has access from 1st Avenue North. In addition, the Engineering Department has had an opportunity to review the proposal and no comments or concerns were noted to indicate a deficiency with the access roads or entrances or exit drives. Staff suggests that the proposed conditional use will not create traffic hazards or traffic congestion in the public streets.

(Criteria Satisfied)

Recommended Conditions:

- 1) There shall be no more than one residential dwelling unit
- 2) The minimum open space required for the subject property shall be 15% of the lot area.
- 3) Bicycle parking facilities, such as bike rack or bike lockers, shall be provide on-site.
- 4) 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
 - b. parking areas that serve such commercial buildings
 - c. the public sidewalk or walkway within the 1st Avenue North right-of-way

in locations where pedestrian walkways intersect or cross vehicular circulation areas, pavement striping or contrasting paving type shall be used along with signage and/or other design methods to demarcate the pedestrian circulation system.

- 5) Off-street parking, loading, and vehicular circulation areas shall have an all-weather surface, as defined by the Land Development Code (Outdoor Yard as delineated on the site plan as referenced in this staff report is exempt).
- 6) The property shall not be used in whole or in part for storage of rubbish or debris of any kind whatsoever, nor for the storage of any property or items that will cause such lot to appear untidy, unclean, or unsightly as determined by the Zoning Administrator; nor shall any substance, item, or material be kept on any lot that will emit foul odors, including compost sites and fertilizer. All garbage containers, including dumpsters, shall be concealed from public view by a fence, screen wall, or building extension.
- 7) The only outdoor storage of equipment or supplies will be contained within the "Outdoor Yard" as delineated on the site plan (as provided for in the staff report). This is generally an area 100' immediately east of the southeast face of the brick building. This outdoor yard will be completely fenced and located near the railroad and away from adjacent properties.
- 8) The manufacturing, production, or processing of food and/or animal products shall not be permitted.

- 9) The manufacturing, production, or processing of hazardous chemicals or materials shall not be permitted.
- 10) Any expansion of the manufacturing and production, or industrial service use shall require an amendment to the Conditional Use Permit with review and approval by the Planning Commission.
- 11) No loading or unloading operations may be conducted between the hours of 10:00 p.m. and 6:00 a.m.

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 LI, Limited Industrial to GC, General Commercial, 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 and to accept the findings and recommendations of staff and hereby move to approve the Conditional Use Permit to allow residential and industrial uses as the proposal complies with Section 20-0909.D (1-6) and all other requirements of the LDC, with the following conditions:

- 1) There shall be no more than one residential dwelling unit
- 2) The minimum open space required for the subject property shall be 15% of the lot area.
- 3) Bicycle parking facilities, such as bike rack or bike lockers, shall be provide on-site.
- 4) 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
 - b. parking areas that serve such commercial buildings
 - c. the public sidewalk or walkway within the 1st Avenue North right-of-way

in locations where pedestrian walkways intersect or cross vehicular circulation areas, pavement striping or contrasting paving type shall be used along with signage and/or other design methods to demarcate the pedestrian circulation system.

- 5) Off-street parking, loading, and vehicular circulation areas shall have an all-weather surface, as defined by the Land Development Code (Outdoor Yard as delineated on the site plan as referenced in this staff report is exempt).
- 6) The property shall not be used in whole or in part for storage of rubbish or debris of any kind whatsoever, nor for the storage of any property or items that will cause such lot to appear untidy, unclean, or unsightly as determined by the Zoning Administrator; nor shall any substance, item, or material be kept on any lot that will emit foul odors, including compost sites and fertilizer. All garbage containers, including dumpsters, shall be concealed from public view by a fence, screen wall, or building extension.
- 7) The only outdoor storage of equipment or supplies will be contained within the "Outdoor Yard" as delineated on the site plan (as provided for in the staff report). This is generally an area 100' immediately east of the southeast face of the brick building. This outdoor yard will be completely fenced and located near the railroad and away from adjacent properties.
- 8) The manufacturing, production, or processing of food and/or animal products shall not be permitted.
- 9) The manufacturing, production, or processing of hazardous chemicals or materials shall not be permitted.
- 10) Any expansion of the manufacturing and production, or industrial service use shall require an amendment to the Conditional Use Permit with review and approval by the Planning Commission.

11) No loading or unloading operations may be conducted between the hours of 10:00 p.m. and 6:00 a.m.

Planning Commission Recommendation: January 4, 2017

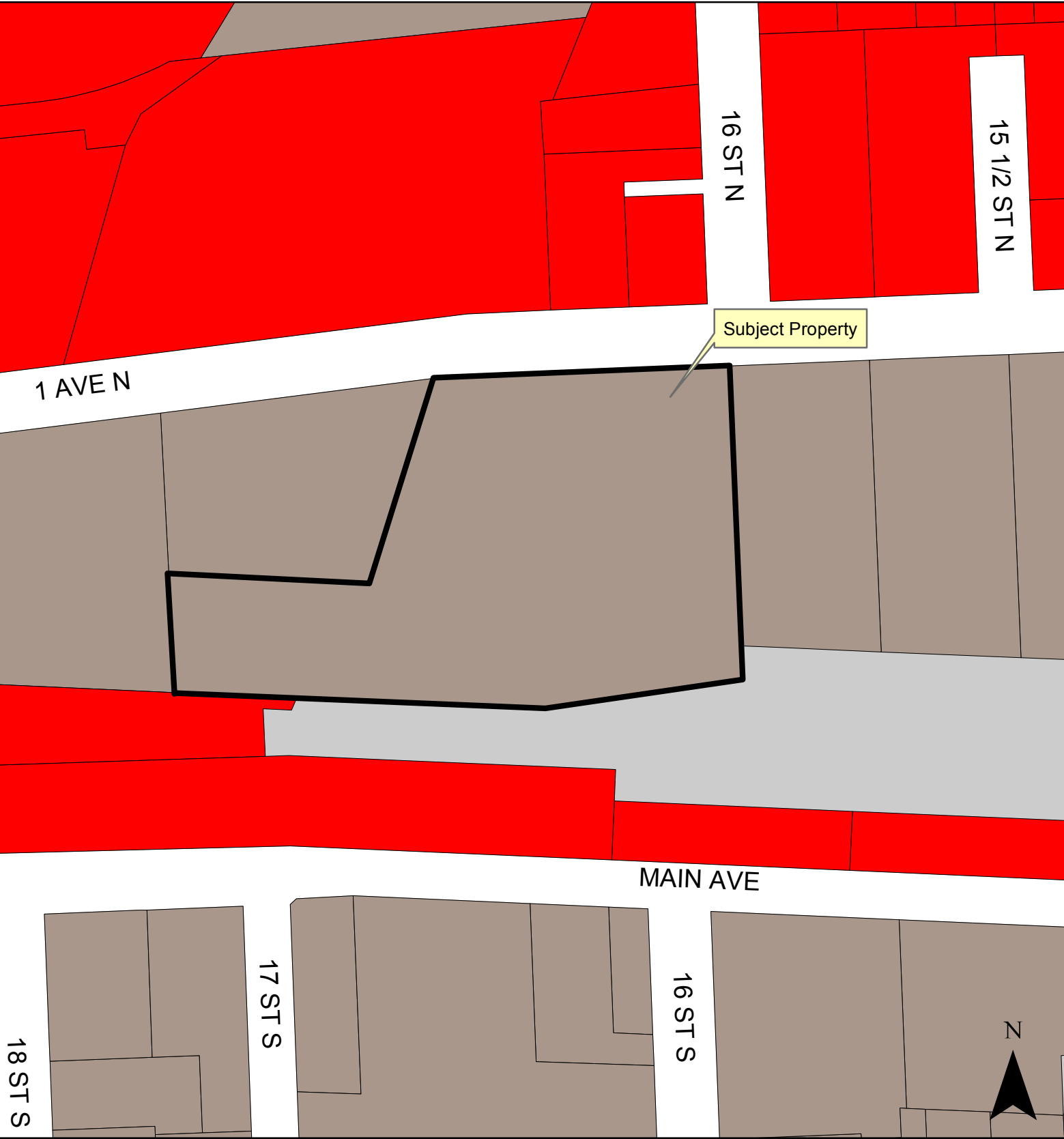
Attachments:

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

CUP (Residential and Industrial Uses) and Rezone (LI to GC)

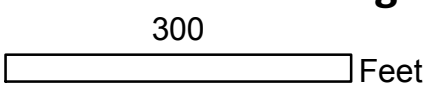
Reeves Addition

1620, 1630 & 1632 1 Ave N



Legend

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



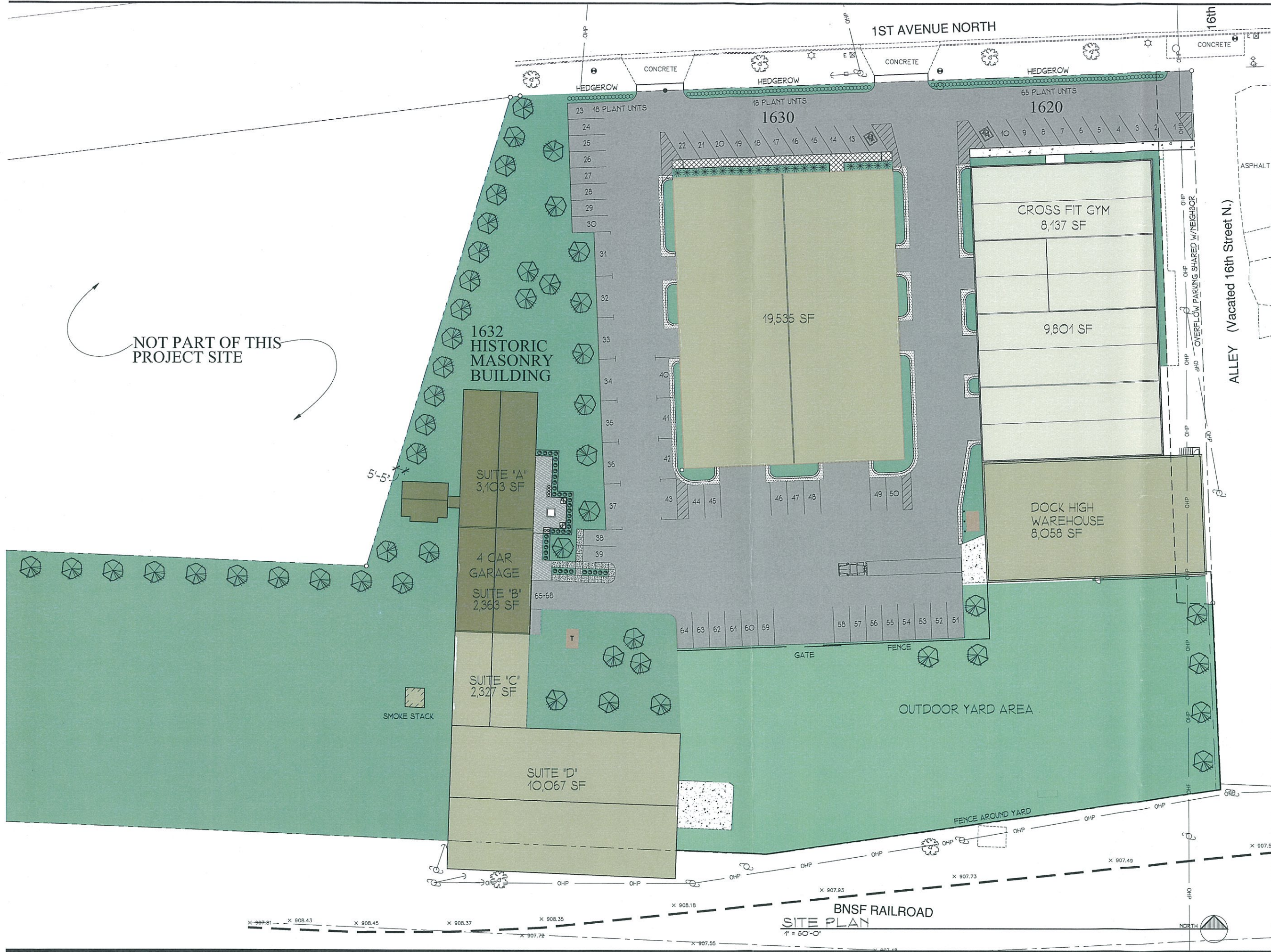
Fargo Planning Commission
January 4, 2017

CUP (Residential and Industrial Uses) and Rezone (LI to GC)

Reeves Addition

1620, 1630 & 1632 1 Ave N





PARKING

× HEALTH CLUB	8,137 SF / 200 = 41
× RESIDENCE	(4 CAR GARAGE) 2
× INDOOR STORAGE/ WAREHOUSE & MANUFACTURING	
× DOCK HIGH	8,058 SF/2500 = 4
× 1620 BUILDING	9,801 SF/2500 = 4
× 1630 BUILDING	19,535 SF/2500 = 8
× 1632 BUILDING	12,394 SF/2500 = 5
TOTAL REQD	64 CARS
TOTAL PROVIDED	68 CARS

LANDSCAPING

× 219,852 SF SITE AREA	@ 3 PLANT UNITS /1,000 SF	660 PLANT UNITS REQD.
× LANDSCAPING PROVIDED		
- HEDGEROW	133 UNITS	
- SHRUBS IN FRONT OF 1620/1630	25 UNITS	
- SHRUBS AROUND 1632	25 UNITS	
- TREES AROUND 1632	48 TREES X 10 = 480 UNITS	
		663 UNITS

LEGEND

GC - GENERAL COMMERCIAL
INDUSTRIAL/MFRG- CONDITIONAL USE
RESIDENTIAL CONDITIONAL USE

MBA INVESTMENT
1620, 1630, 1632 1st Ave.]
Fargo, North Dakota

M | B | A

MUTCHLER BARTRAM ARCHITECTS, P.C.
505 N. Broadway, Suite 201, Fargo, North Dakota, 58102
Phone: 701-235-5563 | info@mbapc.com | Fax: 701-235-5435

**City of Fargo
Staff Report**

Title:	Text Amendment	Date:	12-27-2016
Location:	N/A	Staff Contact:	Aaron Nelson
Owner(s)/Applicant:	City of Fargo/Zoning Administrator	Engineer:	N/A
Entitlements Requested:	Text Amendment (Amending Sections 20-0401 and 20-0402 of Chapter 20 of the Fargo Municipal Code (Land Development Code) Relating to Telecommunications Facilities)		
Status:	Planning Commission Public Hearing: January 4, 2017		

Proposed Text Amendment

The Zoning Administrator is seeking approval of a text amendment to Sections 20-0401 and 20-0402 of the Fargo Municipal Code relating to Telecommunications Facilities.

Background:

City staff has been directed by the City Commission to develop city ordinances to accommodate the deployment of “small cell” telecommunications facilities, which would consist of low-power wireless telecommunication equipment installed at a much lower height than a standard monopole cellular tower. Due to the smaller size of this equipment, it is common for these facilities to be attached or built into existing public infrastructure such as utility and light poles within public rights-of-way. The City has already received several requests to allow small cell telecommunications facilities within City of Fargo public right-of-way.

The Engineering Department, along with the City Attorney's Office and an expert legal consultant, have already drafted an ordinance in order to address the demand for small cell telecommunications facilities from private companies. This ordinance is to be added to the Fargo Municipal Code as Article 24-04. In short, Article 24-04 would specifically regulate telecommunications facilities within the public right-of-way. Telecommunications facilities within the public right-of-way would be exempt from the use-specific standards of the LDC, but would need to comply with placement and design guidelines as outlined within Article 24-04. The City's Engineering Department would administer Article 24-04 and would be responsible for all related permitting. A copy of the proposed Article 24-04 is attached for reference.

Because the LDC currently regulates telecommunications facilities via the *use standards* of Section 20-0402, certain types of telecommunications facilities, such as telecommunications support structures, would be restricted if proposed within the public right-of-way. As such, the primary intent of the proposed LDC text amendment is to exempt telecommunications facilities that are located within the public right-of-way from the use standards of Section 20-0402 of the Land Development Code, thereby allowing the newly created standards of Article 24-04 to apply within the right-of-way as opposed to the LDC's use standards. To this end, the following language is proposed to be added to the use standards for telecommunications facilities within Section 20-0402 of the LDC:

TSSs located within the City of Fargo public right of way are exempt from the following use standards of this section, but shall comply with Article 24-04 of the Fargo Municipal Code and all other applicable requirements of the Land Development Code.

In addition to this exemption clause, there are two other modifications that would be made with this proposed text amendment. First, as part of the small cell telecommunications facilities discussion it was determined that these facilities should be restricted to a maximum of 35 feet within residential areas and 50 feet within non-residential areas. Since these residential and non-residential areas would be defined based on the zoning district, the use table is intended to be modified slightly in order to align with these two height limits for each of the zoning districts. The 35-foot and 50-foot height categories would replace the existing category which is based on the maximum building height of the zoning district.

The other modification that is proposed to the use table is to define all attached telecommunications facilities as being permitted by right within all zoning districts. This modification is intended to address a discrepancy within the current LDC. Currently, the use table lists attached telecommunications facilities as being conditional uses in all zoning districts subject to the telecommunications use specific standards; however, the use standards reference attached telecommunications facilities as being permitted by right. By making the proposed edits to the use table, this discrepancy will be eliminated and both of these sections of the LDC will reference attached telecommunications facilities as being permitted by right.

These proposed LDC text amendments are illustrated in the attached draft ordinance document.

Staff Analysis:

Overall, staff is comfortable with the proposed LDC text amendment as it is fairly minimal and is in alignment with the concurrent adoption of Article 24-04 of the Municipal Code, as requested by the City Commission. It should be noted that the City Commission is scheduled to hold a public hearing on this draft on January 3rd, a day before a public hearing is scheduled for the Planning Commission. However, the City Commission would not take final action on the proposed LDC text amendment until their January 17th meeting, at the earliest. Accordingly, the Planning Commission recommendation will be presented to the City Commission with the second reading of this ordinance, which would likely occur on January 17th.

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 proposed amendment is consistent with the intent and purpose of the LDC because it seeks to provide for improved telecommunication servicing in relation to policy direction of the City and other sections of the Municipal Code. **(Criteria Satisfied)**
- 2. The amendment must not adversely affect the public health, safety, or general welfare;**
Staff suggests that the amendment does not adversely affect the public health, safety, or general welfare. The proposed amendment is intended to allow for improved telecommunication servicing in conjunction with the creation of Article 24-04 of the Municipal Code. **(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 suggests that the proposed amendment is necessary because of changing social and economic conditions. Citizens are increasingly reliant on wireless communication as opposed to traditional wired communication services for telecommunications and access to the internet. These conditions require that wireless providers continue to upgrade infrastructure in order to meet rising demand. Accordingly, the proposed amendment seeks to provide increased opportunity for constructing this infrastructure. **(Criteria Satisfied)**

Staff Recommendation:

Suggested Motion "To accept the findings and recommendations of staff and hereby approve the proposed text amendment to Sections 20-0401 and 20-0402 of Chapter 20 of the Fargo Municipal Code (Land Development Code), relating to Telecommunications Facilities, as the proposal meets the approval criteria of §20-0904.E(1-3) of the LDC."

Planning Commission Recommendation: January 4, 2017

Attachments:

1. Draft LDC Text Amendment Ordinance
2. Draft Ordinance Establishing Article 24-04 of the Municipal Code (Small Cell Ordinance)

AN ORDINANCE AMENDING SECTIONS 20-0401 and 20-0402 OF
ARTICLE 20-04 OF CHAPTER 20 OF THE FARGO MUNICIPAL
CODE RELATING TO USE REGULATIONS AND
TELECOMMUNICATION FACILITIES

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 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 ordinance; 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 is hereby amended to read as follows:

[Remainder of page intentionally left blank]

Article 20-04

Use Regulations

§20-0401 Use Table

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

A. Use Categories

All of the use categories listed in Table 20-0401 are explained in Sec. 20-1203. The second column of the use table contains an abbreviated explanation of the respective use category. If there is a conflict between the abbreviated definition and the full explanation contained in Sec. 20-1203, the provisions of Sec. 20-1203 will control.

B. **P** Uses Permitted By-Right

A “P” indicates that a use category is allowed by-right in the respective zoning district. These permitted uses are subject to all other applicable regulations of this Land Development Code.

C. **C** Conditional Uses

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

D. **/C** Uses Subject to Specific Conditions

A “P” or a “C” that is accompanied by the symbol “/C” indicates that the listed use type is subject to use-specific conditions. The standards are listed alphabetically in Sec. 20-0402.

E. **–** Uses Not Allowed

A “–” indicates that a use type is not allowed in the respective zoning district, unless it is otherwise expressly allowed by other regulations of this Land Development Code.

F. New or Unlisted Uses

If an application is submitted for a use type that is not listed in the use table, the Zoning Administrator shall be authorized to make a similar use interpretation based on the use category descriptions of Sec. 20-1203 and the similar use interpretation criteria of Sec. 20-1203-B. If the Zoning Administrator determines that the proposed use does not fit any of the use category descriptions of Sec. 20-1203, no similar use interpretation shall be made. In the event that a similar use interpretation cannot be made, the Zoning Administrator shall be authorized to allow the proposed use type as a conditional use in the LI district or as a use permitted by-right in the GI district.

Table 20-0401

Use Category	Definition (Excerpt; See Sec. 20-1203)	Specific Use Type		Zoning Districts																				
			A G	S R 0	S R 1	S R 2	S R 3	S R 4	S R 5	M R 1	M R 2	M R 3	U M U	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	P	P	C	C	P	C	-	-	-	
		House, Attached	-	-	-	-	P	P	P	P	P	P	P	P	P	P	C	C	P/C [E]	C	-	-	-	
		Duplex	-	-	-	-	P	P	P	P	P	P	P	P	P	P	C	C	P/C [E]	C	-	-	-	
		Multi-Dwelling Structure	-	-	-	-	-	-	P	P	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 [E]	C/C [E]	C/C [E]	C/C [E]	C/C [E]	C/C [E]	P/C [E]	P/C [E]	P/C [E]	P	P/C [E]	C/C [E]	C/C [E]	C/C [E]	C/C [E]	C/C [E]	C/C [E]	C/C [E]	-	-	-	
Bed and Breakfast	A facility of residential character that provides sleeping accommodations and breakfast		C/C [S]	C/C [S]	C/C [S]	C/C [S]	C/C [S]	C/C [S]	C/C [S]	C/C [S]	C/C [S]													
Group Living Restricted Residency	Residential occupancy of a structure by a group of four or more individuals that have been convicted of a felony		-	-	-	-	-	-	C/C [U]	C/C [U]	C/C [U]	C/C [U]		C/C [U]	C/C [U]	C/C [U]	C/C [U]	C/C [U]	C/C [U]	C/C [U]	C/C [U]	C/C [U]	-	
Institutional																								
College	colleges and institutions of higher learning		C	C	C	C	C	C	C	C	C	P	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]	C/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/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/C [D]	P/C [D]	-	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/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/C [D]	-	P/C [G]	
		13+ children or adults	-	-	-	-	-	-	C/C [D]	C/C [D]	C/C [D]	P/C [D]	C/C [D]	C/C [D]	C/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	-	P/C [G]	
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	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	C/C [T]	P	P	P	P	P	P	P	P	-	P	P	P	P	P	P	P	P	-	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

C = 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. 20-0701(L) ■ C/C = Conditional Use And Subject to Use-Specific Standards of Sec. 20-0402

Use Category	Definition (Excerpt; See Sec. 20-1203)	Specific Use Type	Zoning Districts																				
			A G	S R 0	S R 1	S R 2	S R 3	S R 4	S R 5	M R 1	M R 2	M R 3	U M U	M H P	N O	N C	G O	L C	D M U	G C	L I	G I	P I
		501+ seating capacity	C/C [T]	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	-	P/C [G]
Safety Services	public safety & emergency response services		P	P	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]	P/C [I]	C	-	-	-	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/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]	P/C [K]
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		-	-	-	-	-	-	-	-	-	-	P	-	P	P	P	P	P	P	P	-	P/C [G]
Off-Premise Advertising Signs	Billboard		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P/C [B]	-	P/C [B]	P/C [B]	P/C [B]	-
Parking, Commercial	parking that is not accessory to a specific use...fees may or may not be charged		-	-	-	-	-	-	-	-	-	-	P	-	-	-	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	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		-	-	-	-	-	-	-	-	-	-	P	-	-	P	-	P	P	P	P	-	-
Self-Service Storage	uses providing separate storage areas for individual or business uses		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P/C [J]	-	P	P	-	-
Vehicle Repair	service to passenger vehicles, light & medium trucks & other consumer motor vehicles, generally, the customer does not wait at the site while the service or repair is being performed		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P/C [L]	P/C [L]	P	P	-	-
Vehicle Service, Limited	direct services to motor vehicles where the driver or passengers generally		-	-	-	-	-	-	-	-	-	-	P/C [M]	-	-	-	-	P	P/C [M]	P	P	-	-

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Use Category	Definition (Excerpt; See Sec. 20-1203)	Specific Use Type		Zoning Districts																				
			A G	S R 0	S R 1	S R 2	S R 3	S R 4	S R 5	M R 1	M R 2	M R 3	U M U	M H P	N O	N C	G O	L C	D M U	G C	L I	G I	P I	
	wait in the car or nearby while the service is performed																							
Non-farm Commercial	Commercial Uses defined in Section 20-1203D occurring in AG, Agricultural Districts		C/C [T]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Industrial																								
Industrial Service	firms engaged in the repair or servicing of industrial, business or consumer machinery, equipment, products or by-products		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C/C [Q]	C/C [R]	P/C [F]	P/C [F]	P/C [G]	
Manufacturing and Production	firms involved in the manufacturing, processing, fabrication, packaging, or assembly of goods		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	C/C [R]	P	P	P/C [G]	
Warehouse and Freight Movement	firms involved in the storage, or movement of goods		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	C/C [R]	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	C/C [R]	P	P	-	
Other																								
Agriculture	raising, producing or keeping plants or animals	Animal Confinements	C	C [2]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	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	P	P	P/C [G]	
Surface Transportation			-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	C	C	C	P	P	P/C [G]	
Entertainment Event, Major	activities & structures that draw large numbers of people to specific events or shows		C	-	-	-	-	-	-	-	-	-	C	-	-	-	-	-	C	C	C	-	P/C [G]	

[2] 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.

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Use Category	Definition (Excerpt; See Sec. 20-1203)	Specific Use Type		Zoning Districts																			
			A G	S R 0	S R 1	S R 2	S R 3	S R 4	S R 5	M R 1	M R 2	M R 3	U M U	M H P	N O	N C	G O	L C	D M U	G C	L I	G I	P I
Mining	mining or extraction of mineral or aggregate resources from the ground for off-site use		C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	P	-
Telecom- munications Facilities	devices and supporting elements necessary to produce non-ionizing electromagnetic radiation... operating...to produce a signal...	TSS greater than 125 ft in height	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C/C [N]	C/C [N]	C/C [N]	-
		TSS 125 ft in height or less	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	P/C [N]	P/C [N]	P/C [N]	C/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]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]
		TSS 50 ft in height or less	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	C/C [N]	P/C [N]	P/C [N]	C/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	C/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]
		TSS 35 ft in height or less	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]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]
		TSSs supported by Guy wires	C/C [N]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
		Attached Telecom-munications facilities	PE/C [N]	PE/C [N]	PE/C [N]	PE/C [N]	PE/C [N]	PE/C [N]	PE/C [N]	PE/C [N]	PE/C [N]	PE/C [N]	PE/C [N]	PE/C [N]	PE/C [N]	PE/C [N]	PE/C [N]	PE/C [N]	PE/C [N]	PE/C [N]	PE/C [N]	PE/C [N]	PE/C [N]

Source: 2985 (1999), 3062 (1999), 4039 (2000), 4089 (2000), 4121 (2001), 4179 (2001), 4222 (2002), 4337 (2003), 4560 (2006), 4613 (2007), 4695 (2009), 4771 (2010), 4895 (2013), 4997 (2015).

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C = 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. 20-0701(L) ■ **C/C** = Conditional Use And Subject to Use-Specific Standards of Sec. 20-0402

Section 2. Amendment.

Section 20-0402 of Article 20-04 of Chapter 20 of the Fargo Municipal Code is hereby amended to read as follows:

* * *

§20-0402 Use Standards

A. * * *

B. * * *

C. * * *

D. * * *

E. * * *

F. * * *

G. * * *

H. * * *

I. * * *

J. * * *

K. * * *

L. * * *

M. * * *

N. Telecommunications Facilities

1. General

All telecommunications facilities shall comply with the standards of this Land Development Code, all applicable standards of the Federal Telecommunications Act of 1996, and all applicable requirements of the Federal Aviation Administration. Freestanding Non-Commercial Support Structures in AG, SR, MR, UMU, NC, and NO zoning districts are addressed by Section 20-0403.D. Accessory Uses. Freestanding Non-Commercial support structures in any other zoning district shall be considered Telecommunications Support Structures and shall meet the requirements of this section.

2. Attached Telecommunications Facilities

Attached telecommunications facilities shall be allowed by-right in the districts indicated in the Use Table provided that they comply with all applicable standards of the underlying zoning district, including any maximum height standards. If visible from SR, MR or UMU zoning districts, attached telecommunications facilities shall be designed and painted to minimize their visibility from such areas. Any proposed attached telecommunications facility which does not comply with the foregoing requirements will only be permitted if approved in accordance with the Conditional Use review procedures of Sec. 20-0909.

3. Telecommunications Support Structures

Telecommunications support structures (also referred to herein as “TSS”) must comply with the following requirements as approved by the Zoning Administrator, unless otherwise

stated. **TSSs located within the City of Fargo public right of way are exempt from the following use standards of this section, but shall comply with Article 24-04 of the Fargo Municipal Code and all other applicable requirements of the Land Development Code.**

- a. As provided by Sec. 20-0402, TSSs of no more than 125 feet in height are permitted in GC, LI and GI zoning districts subject to use-specific standards, including:
 - (1) No TSS may be located closer than 200 feet or two times the height of the TSS, whichever is greater, from the base of the TSS to any residentially zoned property, as measured from the base of the TSS to the nearest such residentially zoned property line;
 - (2) The TSS must have co-location capability of at least one other telecommunications provider, unless stealth design considerations make co-location unfeasible as determined by the City Planner; and
 - (3) TSSs shall be either clustered together or spread apart an adequate distance so as to reduce their impact on the overall appearance of the area and the view of the horizon. Therefore, TSSs shall be placed either:
 - (a) No farther than 300 feet from an existing and approved telecommunications TSS, or
 - (b) A minimum distance of $\frac{1}{4}$ mile between existing and approved TSSs of 125 feet in height or less, and a minimum distance of $\frac{1}{2}$ mile from telecommunications TSSs of over 125 feet in height, as measured from the base of one TSS to the base of another.
- b. As provided by Sec. 20-0401, TSSs of more than 125 feet in height are Conditional Uses in GC, LI and GI zoning districts and are therefore subject to the Conditional Use review process of Sec. 20-0909:
 - (1) No TSS may be located closer than 500 feet or three times the height of the TSS, whichever is greater, from any residentially zoned property, as measured from the base of the TSS to the nearest such residentially zoned property line;
 - (2) The TSS must have co-location capability of at least two other telecommunications providers, unless stealth design considerations make co-location unfeasible as determined by the City Planner; and
 - (3) TSSs shall be either clustered together or spread apart an adequate distance so as to reduce their impact on the overall appearance of the area and the view of the horizon. Therefore, TSSs shall be placed either no farther than 300 feet from an existing and approved telecommunications TSS, or a minimum distance of $\frac{1}{4}$ mile between existing and approved telecommunications TSSs of 125 feet in height or less, and a minimum distance of $\frac{1}{2}$ mile from telecommunications TSSs of over 125 feet in height, as measured from the base of one TSS to the base of another TSS.

~~c. As provided by Sec. 20-0401, TSSs of no more than the maximum building height for~~

~~the applicable zoning district are permitted by right in AG, SR-0-SR-4, MR-1-MR-3, UMU, NC, NO, LC, and GO zoning districts subject to use-specific standards, including:~~

~~(1) No TSS located in any non-residential zoning district may be located closer than 200 feet from any residentially zoned property, as measured from the base of the TSS to the nearest such residentially zoned property line; and~~

~~(2) No TSSs located in any MR zoning district may be located closer than 100 feet or two times the height of the TSS, whichever is greater, from any SR zoning districts, as measured from the base of the TSS to the nearest point of such SR zoning district.~~

c. As provided by Sec. 20-0401, TSSs of no more than 50 feet in height are permitted by right in MR-3, UMU, NO, NC, GO, LC and P/I zoning districts subject to use-specific standards, including:

(1) No TSS located in any non-residential zoning district may be located closer than 200 feet from any residentially zoned property, as measured from the base of the TSS to the nearest such residentially zoned property line; and

(2) No TSSs may be located closer than 200 feet from any SR zoning districts, as measured from the base of the TSS to the nearest point of such SR zoning district.

d. As provided by Sec. 20-0401, TSSs of no more than 35 feet in height are permitted by right in AG, SR-0-SR-5, MR-1-MR-2, MHP, and DMU zoning districts subject to the applicable use-specific standards of this section.

ed. As provided by Sec. 20-0401, TSSs in DMU and P/I zoning districts and TSSs which exceed the maximum building height for the applicable zoning district, but are not more than 125 feet in height in AG, SR-0-SR4, MR-1-MR-3, UMU, NC, NO, LC and GO zoning districts are Conditional Uses and are therefore subject to the Conditional Use review process of Sec. 20-0909:

(1) No TSS may be located closer than 1/2 mile from any existing and/or approved TSSs of over 125 feet in height, and 1/4 mile from any existing and/or approved TSSs of 125 feet or less, as measured from the base of one TSS to the base of another;

(2) The TSS must have co-location capability of at least one other telecommunications provider, unless stealth design considerations make co-location unfeasible as determined by the City Planner;

(3) TSSs shall comply with such other conditions as determined by the Planning Commission;

(4) No TSS located in any non-residential zoning district may be located closer than 200 feet or two times the height of the TSS, whichever is greater, from any residentially zoned property, as measured from the base of the TSS to the nearest such residentially zone property line; and

- (5) No TSSs located in any MR zoning district may be located closer than 200 feet or two times the height of the TSS, whichever is greater, from any SR zoning districts, as measured from the base of the TSS to the nearest point of such SR zoning district.
- fe.** TSSs supported by Guy Wires - As provided by Sec. 20-0401, TSSs in AG zoning districts of any height are Conditional Uses and are therefore subject to the Conditional Use review process of Sec. 20-0909. Guy TSSs of any height are prohibited in all other zoning districts.
- gf.** In addition to any of the foregoing requirements, all TSSs must comply with the following requirements, unless approval is otherwise obtained through the Conditional Use review process of Sec. 20-0909.
- (1) The use of any portion of a TSS for signs other than warning or equipment information signs is prohibited.
 - (2) TSSs must be set back from public street, park, or bikeway right-of-way a minimum distance equal to one half of the height of the TSS, including all antennas and attachments.
 - (3) Unless the City Planner determines that stealth design considerations suggest otherwise, TSSs may not be located between a primary building structure and a public street within a front or side yard, except in LI and GI zoning districts, where TSSs may be placed within a side yard abutting an internal/local street. If a site in a GI or LI zoning district is surrounded by public streets, a TSS may be placed within a side yard abutting a local street.
 - (4) Except as otherwise approved as provided in this section, TSSs must not be illuminated by artificial means and not display strobe lights unless such lighting is specifically required by the Federal Aviation Administration or other federal or state authority for a particular TSS.
- hg.** Before a building permit may be issued for a TSS, the City Planner must provide approval of the standards as follows. In such cases when the Conditional Use review process of Sec. 20-0909 is required for a TSS, the Planning Commission shall be the decision maker and must provide approval of the standards as follows:
- (1) The design and construction of the TSS, antenna support structures, equipment buildings, fences, and other structures must be compatible with the architectural style of the surrounding built environment, considering colors, exterior building materials, roof form, scale, mass, color, and character.
 - (2) The base of the TSS must be enclosed by an opaque fence or wall of at least 6 feet in height and of a character necessary to provide adequate visual screening and to limit access to the TSS. Such requirements may be waived by the City Planner if the TSS is of a stealth design.
 - (3) The City Planner may require, as a condition of approval of a TSS, that the lot upon which the TSS is located be brought into conformance with the residential protection standards and/or landscaping requirements set forth in Sections 20-0704 and 20-0705.

- (4) Commercial wireless TSSs must be a monopole design unless stealth design considerations are made and the City Planner determines that the stealth design would be more fitting with the surrounding environment.
 - (5) When incorporated into the approved design of the TSS, light fixtures used to illuminate ball fields, parking lots or similar areas may be attached to the TSS.
- ih.** The applicant shall submit such information as required by the Zoning Administrator including the following:
- (1) Description of the TSS height and design including a cross section (site plan) showing the proposed location of the TSS and the equipment building and an elevation showing the proposed height of the TSS including the maximum tip-height (maximum height of any attached antennas),
 - (2) Documentation of the proposed height above grade for all potential mounting positions for co-located antennas and the minimum separation distances between antennas, and
 - (3) Descriptions of the TSS's capacity for both the primary user and co-location users, including the number and type of antennas or other equipment that can be accommodated.
 - (4) Applicant shall be responsible for changing frequencies of the installed equipment if it interferes with any then-existing police, fire or other public or private emergency service system or public signal system.
 - (5) Other information necessary to evaluate the application as determined during the review process.
- ji.** The following definitions and general provisions shall apply to this Land Development Code:
- (1) All TSSs shall be dismantled and removed by the owner when they are no longer in use or upon abandonment. Abandonment shall be deemed to have occurred when a TSS has not been continuously in use by a telecommunications user for a period of at least 12 consecutive months. An abandoned TSS shall be considered a nuisance. Upon abandonment of a TSS, upon 30 days' notice to the record owner of the property upon which the TSS is constructed, exists or rests, if the TSS is not removed within a period of 60 days from said notice, the TSS and associated facilities may be removed by the City and the costs of removal assessed against the property, in accordance with the provisions of Section 11-0103 of the Fargo Municipal Code.
 - (2) The height of TSSs shall be measured from the TSS's center point of contact with the ground to the highest point of the TSS, including all antennas or other attachments.
 - (3) The term "Co-Location" shall mean the location of more than one antenna or transmitter on a single TSS.

- (4) The term "stealth" as used in this section shall mean, in referring to freestanding telecommunications TSSs, the ability to blend into the context of the surrounding environment at a given location or to use a TSS design that is as inconspicuous as possible under the existing or planned circumstances by screening, disguising, concealing, or otherwise camouflaging the TSS as a natural feature, as part of the structure, or as an accessory structure consistent with the overall function of the property on which the TSS is located. For antenna support structures, stealth is the ability to camouflage, conceal, or reduce the conspicuousness of the presence of wireless communication facilities.

kj. Through a Conditional Use Permit, the Planning Commission may reduce the TSS spacing and setback requirements of this section (§20-0402.N) by up to 50 percent. Spacing requirements that are eligible for reduction include: 1) spacing distances between existing and proposed TSSs and 2) setback distances from SR and other residential zoning districts. Any such request for reduction of these spacing and/or setback requirements shall be considered in accordance with the Conditional Use Permit review procedures of Section 20-0909, and shall comply with the following standards:

- (1) The TSS shall be of a stealth design;
- (2) If applicable, the applicant already has telecommunication facilities on the existing TSS from which separation would otherwise be required; and
- (3) If applicable, the applicant shall submit verification that the communication equipment planned for the proposed TSS cannot be installed on an existing TSS within the area (if any).

Section 3. Penalty.

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

Section 3. Effective Date.

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

Timothy J. Mahoney, Mayor

Attest:

Steven Sprague, City Auditor

(SEAL)

First Reading:
Second Reading:
Final Passage:
Publication:

December 15, 2016

Honorable Board of City
Commissioners
City of Fargo
Fargo, North Dakota

Re: Small Cell Ordinance

Dear Commissioners,

The City has received two requests for the placement of small cell facilities in our right of way.

Small cell equipment transmit a wireless signal to and from a defined area to a larger cell tower and often are installed at sites that support cell coverage either within a large cell area that has high coverage needs or, in the alternative, at sites within large geographic areas that have poor cell coverage overall.

The small cell technology is in its infancy and has the possibility to see many changes in the future.

Over the last year, Nancy Morris, the Assistant City Attorney, and I have been working on assembling a new ordinance to support the requests. Assisting us has been an attorney that specializes in FCC Regulations along with a small cell technical specialist. Nationwide many municipalities are seeing the request for small cells to be placed in the right of way. There have been multiple ways that each City has dealt with their requests.

Being presented today is the Small Cell Ordinance that we are recommending. In association with this request there will need to be some changes to the Land Development Code, which currently does not allow the City to permit small cell facilities in the right of way. I have also attached the proposed changes to the Land Development Code that would support the new ordinance.

Attached are the slides from the brown bag presentation and the Report of Action from the Public Works Project Evaluation Committee.

Following the approved ordinance there will also be a general guidance document, license application, and a pole attachment permit that will be presented later to the Commission for approval.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and receive and file Article 24-04 of Chapter 24 relating to wireless telecommunication facilities.

Respectfully,



Brenda E. Derrig, P.E.
Division Engineer

BED/bem
Attachments
C: April Walker

Street Lighting
Sidewalks

Design & Construction
Traffic Engineering

Truck Regulatory
Flood Plain Mgmt.

Mapping & GIS
Utility Locations

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Type: Draft Ordinance Relating to Wireless
Telecommunications Facilities

Location: Citywide

Date of Hearing: 12/12/2016

<u>Routing</u>	<u>Date</u>
City Commission	<u>12/19/2016</u>
PWPEC File	<u>X</u>
Project File	<u>Brenda Derrig</u>

The Committee reviewed a communication from Engineering Services Division Engineer, Brenda Derrig regarding an ordinance that has been in development for over a year to address the desire of private companies to have the ability to be in the City's Right of Way to provide enhanced telecommunications capability to their customers in Fargo. The Committee reviewed a draft of the ordinance. There are still elements that need to be resolved and there will be additional documents created for PWPEC and City approval such as a guide to applicants and a fee structure which will be considered separately from the ordinance.

Some of the items to note at present include:

The ordinance bars the installation of new poles to accommodate this type of request. The applicants will have to attach to City street lights. It is understood that they will have to replace the existing street light foundation and pole, providing a new pole and foundation that are designed to handle the loading conditions of the attachment.

It is understood that they will need to supply an additional pole to the City to provide for a replacement stock in the event of a knockdown.

There is not an appeal process.

They will be required to work with the adjacent property owners when siting any ground equipment or boxes that will be adjacent to private property.

A land development code amendment will be required to accommodate the new ordinance having jurisdiction over this type of request.

Spacing between attachments is still under consideration.

Staff is recommending approval of the adoption of an ordinance. Please note that the final version may vary based on further discussion and consideration from parties that are reviewing the document.

On a motion by Bruce Grubb, seconded by Tim Mahoney, the Committee voted to recommend approval of Article 24-04 of Chapter 24 relating to wireless telecommunication facilities.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and receive and file Article 24-04 of Chapter 24 relating to wireless telecommunication facilities.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

Developer meets City policy for payment of delinquent specials
Agreement for payment of specials required of developer
Letter of Credit required (per policy approved 5-28-13)

Yes	No
<u>N/A</u>	<u> </u>
<u>N/A</u>	<u> </u>
<u>N/A</u>	<u> </u>

PWPEC ROA
12/12/16 -- Page 2

COMMITTEE

Tim Mahoney, Mayor
Jim Gilmour, Director of Planning
Steve Dirksen, Fire Chief
Mark Bittner, Director of Engineering
Bruce Grubb, City Administrator
Ben Dow, Director of Operations
Steve Sprague, City Auditor
April Walker, City Engineer
Kent Costin, Finance Director

Present	Yes	No	Unanimous
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ryan Erickson
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ATTEST:


April E. Walker, P.E., C.F.M.
City Engineer



Memorandum

To: Members of PWPEC
From: Brenda Derrig, Division Engineer
Date: December 12, 2016
Re: Small Cell

A handwritten signature in dark ink, appearing to read "B. Derrig", written over the printed name "Brenda Derrig".

Background:

Over the last year and a half Nancy Morris, the Assistant City Attorney, and I have been working with two applicants to place small cell structures in the right of way. We have been working on an ordinance, which is attached that I will be presenting to Commission Monday, December 19th. Changes to the Land Development Code will be needed to support this new ordinance. Along with the ordinance there will be a general guidance document, license application, and a pole attachment permit. The attached ordinance is contextually complete with some areas still presenting some questions and clarifications that we are working on this week. Attached you will find the draft small cell ordinance for your review.

Recommended Motion:

Review the small cell ordinance and approve to move forward final draft.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE ENACTING ARTICLE 24-04 OF CHAPTER 24
OF THE FARGO MUNICIPAL CODE RELATING TO WIRELESS
TELECOMMUNICATION FACILITIES IN THE
PUBLIC RIGHT OF WAY

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 ordinance; 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 purpose; 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. Enactment.

Article 24-04 of Chapter 24 of the Fargo Municipal Code is hereby enacted as follows:

ARTICLE 24-04
WIRELESS TELECOMMUNICATION FACILITIES IN THE PUBLIC RIGHT OF WAY -
REQUIREMENTS AND PERMITS

24-0401. Purpose.

To ensure that residents, businesses and public safety operations in the city have reliable access to wireless telecommunications network technology and state of the art mobile broadband communications services, the city desires to accommodate the deployment of wireless communications facilities and services within the public right of way. The city also desires to

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 minimize potential negative impacts of wireless facility placement within the public right of way.
2 This article applies only to installation in the public right of way. All other installations are
3 governed by Fargo Municipal Code Chapter 20, and all other applicable laws and regulations.
4 The impact of wireless facilities can be reduced by maintaining standards and objectives for
5 location, visual impact, structural integrity, compatibility, collocation, and the like, which do not
6 unreasonably discriminate among similar users.

7 Nothing in this article affects the city's right to regulate users of the public right of way in a
8 competitively neutral and nondiscriminatory manner. The city intends to exercise its authority
9 with respect to the regulation, placement, construction and modification of wireless facilities in
10 the public right of way to the fullest extent permitted by applicable law.

11 **24-0402. Definitions.**

12 For purposes of this article, the following definitions apply. References to "sections" are, unless
13 otherwise specified, references to sections in this article.

- 14 A. "Antenna" means a device used to transmit and/or receive radio or electromagnetic waves
15 for the provision of services including, but not limited to, cellular, paging, personal
16 communications services and microwave communications. Such devices include, but are
17 not limited to directional antennae, such as panel antennas, microwave dishes, and
18 satellite dishes; omnidirectional antennae; and wireless access points (Wi-Fi), including
19 strand-mounted wireless access points.
- 20 B. "Applicant" means any person who applies for a permit under this article.
- 21 C. "Attachment" includes any wireless communication facility affixed to, contained in, or
22 placed on or in a structure within the city public right of way
- 23 D. "City" means the city of Fargo, a North Dakota municipal corporation.
- E. "City Engineer" means the city engineer or his or her designee.
- F. "City-Owned Structure" means an existing structure owned by the city that is located in
the public right of way. It does not mean poles or other structures owned by a city
contractor. It does not mean State, County or other municipally or government entity
owned infrastructure within the public right of way. It does not mean infrastructure

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

owned by a public utility. It does not mean infrastructure located outside of the public right of way.

G. "Collocation" means the mounting or installation of new wireless communication facilities on or within an existing wireless support structure or equipment that currently houses or supports wireless communication facilities.

H. "Construction Plan" means a written plan, and a collection of documents, for construction that: (i) demonstrates to the satisfaction of the city engineer that the aesthetic impact and physical structure of the wireless communication facility is comparable to prevailing standards of similar structures in the immediate area; (ii) includes the identity and qualifications of each person directly responsible for the design and construction; (iii) includes signed and sealed documentation to proportional scale from a professional engineer licensed in North Dakota describing the proposed wireless communication facilities in detail, including (a) the proposed location of the wireless support structure and all easements, property boundaries, and existing structures within two hundred (200) feet of such wireless facility or wireless support structure; (b) a structural, loading, and wind-speed analysis for existing, proposed, and reserved loading, and (c) a schematic describing the communications properties of the facility, including EMF and RF propagation and off-site data connections; and (iv) includes such other information as the city engineer may require.

I. "EMF" means electromagnetic frequency.

J. "Equipment" means accessory equipment, located within the public right of way, serving or being used in conjunction with a wireless communication facility. Equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables and conduit, equipment buildings, cabinets, storage sheds, shelters, and vaults.

K. "Existing Height" means the height of a structure, including wireless communications facilities, as originally approved or as of the most recent approved modification. Height shall be measured from natural grade to the top of all appurtenances.

L. "Existing Structure" means a structure located in the public right of way and capable of supporting wireless communication facilities, erected prior to the application for collocation or substantial modification under this article.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 M. "Ground Mounted equipment" means any equipment located in the public right of way
that is affixed to the ground and extends above the natural grade.

2 N. "Guidelines" or "Wireless Facility Guidelines" means any procedure or description from
3 the city engineer, which may be modified and amended from time to time, concerning
4 wireless facility application process and siting requirements. Any such Guidelines shall
be consistent with this article.

5 O. "Interference" means physically or electronically affecting the operation, views, signals
6 or functions of city property or third party property.

7 P. "Laws" means any and all applicable federal, state and local ordinances, resolutions,
regulations, administrative orders or other legal requirements.

8 Q. "Land Development Code" means the city of Fargo Land Development Code (Fargo
9 Municipal Code, Chapter 20).

10 R. "Permit Holder" means any person that has obtained permission through the issuance of a
11 permit from the city under this article to locate, install or place wireless facilities in the
public right of way.

12 S. "Person" means any natural or corporate person, business association or other business
13 entity including, but not limited to, a partnership, a sole proprietorship, a political
14 subdivision, a public or private agency of any kind, a utility, a successor or assign of
any of the foregoing, or any other legal entity.

15 T. "Public Right of Way" means the area on, below, or above a public roadway, highway,
16 street, cart way, bicycle lane and public sidewalk in which the city has an interest,
17 including other dedicated rights-of-way for travel purposes and utility easements of the
city. A right-of-way does not include the airwaves above a right-of-way with regard to
18 cellular other non-wire telecommunications or broadcast service.

19 U. "RF" means radio frequency.

20 V. "Site" means the area occupied by the wireless support structure, the wireless
21 communications facility, accessory equipment, ground-mounted equipment, and the path
of the wire or conduit connecting to an off-Site network.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 W. "Wireless Communication Facility" means any fixed tangible asset usable for the purpose
2 of providing wireless transmission of voice, data, images or other signals or information
3 including, but not limited to, telecommunications, cellular telephone service, personal
4 communications service and paging service. A wireless communications facility includes
5 antennas and accessory equipment. A wireless communications facility does not include
6 an underlying wireless support structure.

7 X. "Wireless Support Structure" means any fixed, above-grade structure in the public right
8 of way used to house or support wireless communications facilities and equipment,
9 including (i) a structure designed for the primary purpose of supporting wireless
10 communications facilities, and (ii) an existing structure to which wireless
11 communications facilities have been attached. A wireless support structure may be a
12 tower, or may be a non-tower structure such as a utility or streetlight pole.

13 **24-0403 New Poles Prohibited.**

14 The location of any new wireless communication facility shall be on existing structures in the
15 public right of way, such as utility poles or street lights, or the replacement of an existing such
16 structure as provided herein. Installation of additional wireless support structures for the purpose
17 of supporting a wireless communication facility within the public right of way will not be
18 permitted.

19 **24-0404 Permit Required.**

20 A. No person may construct, install or modify a wireless communication facility within the
21 public right of way without having first obtained a permit from the city engineer as set
22 forth in this article.

23 B. Permit Issuance. Before a permit is issued, a written application must be filed with the
city engineer containing such information as may be required by the city engineer. The
application shall include the following:

1. Information required to be provided by a registrant for public right of way use and
occupancy under Section 24-0305 of this chapter.
2. The name and address of any retail communications service provider for which
the facilities are intended to be used, if this is different than the applicant.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

3. Evidence that the applicant has obtained all state permits and other licenses, as well as insurance, performance and payment bonds as may be required by the city engineer.
4. A detailed statement of the location of all proposed facilities for which the permit is sought.
5. A construction plan, if applicable.
6. Other information required by this article.

C. Fees. The issuing authority may require payment of a nonrefundable permit application fee at the time a permit application is submitted. Such fee shall be set to recoup some or all of the cost of permit review, processing and issuance, and will be in addition to any other applicable fee or any separate payments that may be required in the event a permit is granted for use of the public right of way or the use of city-owned structures. The city reserves the right to charge permit holders a fee for their use of the public right of way to the extent that such charges are allowed under state law, as well as all other fees provided in article 24-03. All such fees may be in addition to any fee charged for attachment to city-owned structures.

D. Where the city determines that it requires expert assistance in evaluating an application, the city may hire a consultant and the fee charged by the consultant shall be reimbursed to the city by the applicant regardless of whether the application is, or is not, ultimately approved and a permit issued. The city shall be authorized to require the applicant to deposit a sum equal to the reasonable estimated amount of consultant fees to be paid.

E. Timeframe for Review. The city engineer shall comply with applicable federal, state and local law concerning the time period for review following receipt of a completed application to install or modify a wireless communications facility or wireless support structure in the public right of way. Specific timeframes may be described in Wireless Facility Guidelines.

F. Nondiscrimination. The city shall evaluate, issue, and deny permit applications under this article on a competitively neutral basis, with no unreasonable discrimination among similarly situated applicants and installations.

G. The city engineer may impose additional conditions on any permit issued under this article relating to time, place and manner.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

H. The city shall not impose environmental testing, sampling, or monitoring requirements or other compliance measures for RF emissions on wireless communication facilities that are categorically excluded under the FCC's rules for radiofrequency remissions pursuant to 4 CFR 1.1307(b)(1).

I. Scope and Duration.

1. Any permit granted pursuant to such application shall be limited in scope to the description submitted in a completed application, as modified by any further agreed-upon conditions or subsequently approved modification.
2. The permit shall be voidable by the city unless in the city's determination the work is commenced within one hundred eighty (180) days from the date of issuance of the permit, unless extended by the city engineer. If the facility is not used for its intended use within twelve (12) months from the date of permit issuance, the city may revoke the permit.
3. Within sixty (60) days following completion of facility installation as described in the permit application, the permit holder shall submit as-built diagrams and digital photographs of the Site to the city engineer.
4. Permits issued under this article are valid for a period of ten (10) years from the date issued. To extend the permit for an additional period of ten (10) years, the permit holder shall provide proof that it continues to have the legal authority to occupy and use the public right of way for the purpose set forth in its permit; shall affirm that its site as it exists at the time of the renewal is in full compliance with the applicable city permit or permits issued for the site, and is in compliance with FCC regulations; and shall pay any permit processing fee required for renewal. Failure to submit such proof of legal authority or affirmation of compliance shall be grounds for non-renewal of the permit. The burden is on the permit holder to demonstrate that the site complies with the requirements herein.

J. Conditional Upon Related Agreements. The city engineer may cause a permit under this article to be made temporary or conditional upon the execution of a finalized permit application or attachment agreement further addressing the proposed installation.

K. Proximity to Other Facilities. The city reserves the right to deny any siting permit application under this article that proposes to install a wireless communication facility within five hundred (500) feet of any other wireless communication facility. It is the intent of this provision to encourage the collocation of wireless communication facilities

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

on the same wireless support structure or on existing buildings or other structures, and to sensibly limit the overall impact of wireless communications in the public right of way.

L. Denial of Permit. Any denial of permit shall be in writing, supported by substantial evidence that the proposed installation would be inconsistent with one or more of the general conditions described in Section 24-0406 or the health, safety and welfare of the city.

24-0405. Relation to Other Code Provisions.

Nothing herein shall be construed to repeal or amend article 24-03 or Chapter 20 of the Fargo Municipal Code, which shall apply to applicants and permittees under this article to the extent not addressed in this article 24-04. In the event of a conflict between article 24-03 and this article 24-04, this article shall control.

24-0406. General Conditions.

The city engineer may approve a permit for the installation of a wireless communication facility in the public right of way, provided the applicant certifies compliance with the following general conditions, and subject to other use-specific conditions and other requirements set forth in this article and in any Wireless Application Guidelines.

A. General Design Standards.

1. The installation shall be unobtrusive, harmonious with its surroundings, and streamlined in appearance. The city engineer may require camouflage or concealment efforts.
2. The height of any wireless communication facility shall be comparable to nearby structures of similar type and not more than 50 feet above normal grade.
3. Antennas shall be as small as possible. The city engineer may specify a maximum permitted antenna size.
4. All riser cabling and wiring must be contained in conduit, affixed directly to the face of the structure, or enclosed within the hollow interior of the pole, for as long as it is technically feasible. No exposed slack or extra cable will be allowed.
5. No signage or advertising will be permitted, except as required by law or as specifically permitted or required by the city engineer.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

6. Wireless communication facilities in historic areas shall comply with any special requirements applicable to such areas, and may be subject to additional city review.

B. Minimizing Impacts on Adjacent Property Owners.

1. A permit holder must design and install a wireless communication facility so as to minimize any impact on the adjacent property owners, and must actively mitigate any adverse impact relating to visibility from the adjacent property; access to and from the adjacent property; intrusion of light, sound, or smell; in addition to any other cognizable substantial impact made known by an adjacent property owner.
2. No Antenna shall be within five (5) feet of a door or window nor placed in front of any window located at a similar height to the antenna unit.
3. An installation shall not interfere with city operations, or the operations of preexisting third-party installations in the public right of way. The city will reasonably cooperate with the applicant and/or permit holder to permit activities and modifications that may effectively avoid or correct the interference.
4. The city engineer shall have the discretion to impose conditions upon and amend the permit to address concerns and conflicts voiced by adjacent property owners, including the right to require applicant to move previously permitted facilities and equipment as necessary to accomplish the objectives of this subparagraph B. The applicant shall provide prior notice to all adjacent property owners concerning any ground mounted equipment to be placed in the public right of way.

24-0407. Wireless Communications Facilities Upon Existing Structures.

In addition to the general conditions described in section 24-0406, any wireless communication facility for which a permit is requested under this article shall meet the following requirements, in addition to applicable specifications within any current Guidelines.

- A. The wireless communication facility shall not increase total height including the wireless support structure by more than 10% over other public utility poles in the area.
- B. The wireless communication facility shall not block light emanating from a utility structure and shall not otherwise interfere with the original purpose of an existing structure.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

- 1 C. Electrical power. The acquisition of electrical power shall be the sole responsibility of
2 the applicant.

3 **24-0408. Attachments to City-Owned Structures.**

4 In addition to the requirements set forth in section 24-0406 and applicable provisions in section
5 24-0407, the following conditions will apply to a wireless communication facility attached to a
6 city-owned structure.

- 7 A. The management of attachments to city-owned structures is undertaken by the city in its
8 proprietary capacity, as landlord. The grant of attachment rights does not waive any
9 zoning or other public right of way management requirements that may also apply.
- 10 B. The city engineer shall require an applicant for a wireless communication facility
11 attachment to a city-owned structure to execute a separate attachment or license
12 agreement with the city addressing such attachment.
- 13 C. The city may require payment of an attachment fee or other compensation, which may be
14 in addition to any application fee, permit fee, or right of way use fee.
- 15 D. In the event a city-owned wireless support structure is compromised or knocked down,
16 the city and an affected wireless communication facility permit holder will cooperate to
17 reinstall or replace the pole and restore the wireless communication facility.
- 18 E. Training. At the request of the city, the permit holder shall host on-site training for city
19 maintenance staff. The training will be offered for each wireless communication facility
20 project on one or more city-owned structures. The training shall include occupational
21 safety, personal protection, proximity limits, emergency procedures and contact
22 information.

23 **24-0409. Replacement of City-Owned Structures.**

In addition to the general conditions described in sections 24-0406 and applicable provisions in
sections 24-0407 and 24-0408, the proposed replacement of an existing city-owned structure
shall be subject to the following requirements.

- A. The replacement of a city-owned structure shall be entirely at the discretion of the city
engineer.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

- 1 B. At a minimum, the applicant must demonstrate the following, to the satisfaction of the
2 city engineer:
- 3 1. That the facility is not able to be placed on existing infrastructure. The applicant
4 shall provide a map of existing infrastructure in the service area and describe why
5 each such site is not feasible.
- 6 2. That the structure to be replaced is structurally unsuitable for the proposed use,
7 and that the proposed use cannot be modified or minimized to enable use of an
8 existing structure.
- 9 3. That city functions for which the original structure was used will be preserved,
10 improved or enhanced, as part of any replacement structure, at the applicant's
11 expense. Replacement of lighting, electrical power, network connectivity, and
12 any other functional purpose of, on or within the original structure shall be done
13 to the satisfaction of the city engineer.
- 14 C. Ownership. A replacement structure under this section shall be dedicated to and
15 owned by the city upon completion, to the satisfaction of the city. The permit holder shall
16 provide city a Bill of Sale, free and clear of all liens and encumbrances.
- 17 D. Acquisition and use of electrical power to serve a wireless communication facility on a
18 replacement wireless support structure shall be the sole responsibility of the permit
19 holder.
- 20 E. Stocked Poles. To enable prompt replacement in the event of a knockdown or structural
21 compromise, a permit holder shall provide the city with one stock pole substantially
22 identical to the initial replacement pole, as follows: one (1) stock pole for the first
23 permitted replacement structure, and one (1) stock pole for each set of five additional
replacement structures.
- F. An applicant may be required to enter into such license and other agreements with the
city or third parties as the city may require to effect the replacement, consistent with this
section.

24-0410. Equipment.

- A. Equipment other than ground-mounted equipment shall be mounted in one of the
manners described below, or as prescribed by the city engineer.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1. Equipment shall be mounted in a base shroud of approved design to be retrofitted to an existing standard. The base shroud should be coated or painted an approved color to match the existing pole.
2. Equipment shall be mounted directly to the pole a minimum of eight (8) feet above the existing grade and be coated or painted with an approved color to match the existing pole.
3. Equipment shall be mounted to the pole in an equipment box a minimum of eight (8) feet above the existing grade. The equipment box shall be coated or painted an approved color to match the existing pole.
4. Equipment shall be attached to the wireless support structure using rigid steel clamping mounts or stainless steel banding to the exterior of any metal pole.

B. Ground-Mounted Equipment.

1. An application specifying ground-mounted equipment shall demonstrate to the satisfaction of the city engineer that the wireless communication facility cannot be placed in a location outside the public right of way within one quarter mile of the proposed location or placed underground.
2. A permit for a wireless communication facility that involves ground-mounted equipment will be issued only if the city engineer finds the following:
 - (a) The ground mounted equipment will not disrupt traffic or pedestrian circulation;
 - (b) Space exists in the public right of way to accommodate the ground mounted equipment;
 - (c) The ground mounted equipment will not create a safety hazard;
 - (d) The location of the ground mounted equipment minimizes impacts on adjacent property;
 - (e) In any historical area, that the ground mounted equipment does not detrimentally affect the historical nature of the area, to the satisfaction of the city engineer;
 - (f) That no reasonable alternative exists that is more favorable to adjacent property owners and to effective use and management of the public right of way; and
 - (g) The ground mounted equipment will not adversely impact the health, safety or welfare of the community.

C. Underground equipment. The city engineer may require equipment to be placed underground, and may prohibit the installation of ground mounted equipment.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

- 1 D. Any excavation required for installation of ground-mounted or underground equipment
2 shall be performed in accordance with article 18-09.

3 **24-0411. Modifications to Facilities.**

- 4 A. Modifications to existing wireless communication facility installations that replace
5 existing equipment with like kind, number and size of the existing equipment and do not
6 increase the EMF output of the wireless communication facility are permitted as of right.
7 B. Except as provided in section 24-0411 (A), and subject to applicable federal and state
8 law, any modification of a wireless communication facility or equipment shall require the
9 prior approval of the city engineer following submission of a detailed description of the
10 modification, which shall include diagrams, photographs and other information sufficient
11 to enable the city engineer to evaluate the modification's impact on the public right of
12 way, and the proposed timeframe for completion of the work.

13 **24-0412. Inspection and Reporting.**

14 When directed by the city engineer, the permit holder for a wireless communication facility must
15 perform an inspection of the facility and submit a report to the city engineer on the condition of
16 the wireless communication facility, to include any identified concerns and corrective action
17 taken.

18 **24-0413. Network Diagram Submission.**

- 19 A. Commencing on the first June 15 following the enactment of this article and on June 15th
20 of each subsequent year, each permit holder with facilities in the city shall submit an
21 updated diagram in a format acceptable to the city engineer of all facilities owned or
22 controlled by such permit holder and located in the public right of way. Such diagrams
23 shall show, but not be limited to showing, the number, size, and locations of antennas,
wireless communications facilities and equipment, vaults, pedestals, and conduit and
fiber optic cable serving such facilities.
B. If a permit holder's facility diagram has not changed from the diagram submitted in a
previous year, in lieu of submitting a new diagram, a permit holder may, at its election,
provide an affidavit to the city certifying that the previous year's map has not changed.
The certification shall also include the date that the previous map was submitted to the
city.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

- 1 C. To ensure the security of installations, network diagram submissions shall be considered
2 Proprietary information, and shall be deemed confidential and not subject to public
3 disclosure except to the extent required by applicable law, except that applicants
4 requesting a permit under this article may request, and the city engineer may share,
5 portions of submitted diagrams affecting their proposed installations.

6 **24-0414. Maintenance.**

7 A permit holder shall maintain all facilities installed in the public right of way in a condition that
8 maintains the safety, integrity, and aesthetics of the public right of way. Cabinets, facilities, and
9 other equipment shall not appear to be unkempt. Maintenance concerns or conditions not in
10 compliance with this article that are discovered by or made known to the city will be reported to
11 the permit holder, which shall then have 30 days to correct the identified issue. If the issue is not
12 corrected within such period, the city reserves the right to take any action it deems necessary,
13 including revocation of the permit. In the case of an emergency involving an imminent threat to
14 life or property, the city may take any corrective action that it deems reasonable at the permit
15 holder's expense. Maintenance and replacement of wireless communication facilities shall be
16 performed by the permit holder or an approved contractor at permit holder's sole cost.
17 Maintenance and, if necessary, deactivation of wireless communication facilities may be
18 performed by the city as necessary for public safety.

19 **24-0415. Revocation.**

- 20 A. Revocation proceedings may be initiated by the city engineer.
- 21 B. Required Findings. The city engineer may revoke or modify the permit if it makes any of
22 the following findings:
- 23 1. The permit holder obtained the approval by means of fraud or misrepresentation
of a material fact.
 2. The permit holder substantially expanded or altered the use or structure of a
wireless communication facility or wireless support structure beyond what is set
forth in the permit.
 3. The permit holder has failed to comply with any material condition of a permit
issued.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

4. A substantive change of law has occurred affecting the permit holder's authority to occupy or use the public right of way, or the city's ability to regulate such occupation or use.
5. The facility interferes with a city project.
6. The facility interferes with vehicular or pedestrian use of the public right of way.
7. The permit holder has failed to make a safe and timely restoration of the public right of way.
8. The facility has not been employed for its intended use within twelve (12) months of the date of permit issuance.
9. After initial activation, the facility has not been employed for its intended use for any six (6) month period.
10. Revocation is necessary to protect the health, safety and welfare of the inhabitants of the city.

C. Notice of Action. A written determination of revocation shall be sent via certified mail to the permit holder within ten (10) days of such determination.

D. A permit holder whose permit has been revoked may have the revocation reviewed, upon written appeal as follows:

1. Within 14 days of the revocation, a written appeal shall be filed with the city engineer. The appeal must contain a statement of any reasons why the permit holder believes that the revocation should be reviewed. The city engineer shall render a decision within 21 day of receipt.
2. If the city engineer denies the appeal, the permit holder may file a written notice of appeal with the city engineer to be presented to the Board of City Commission within 21 days of notification of the appeal denial. In addition to containing a statement of any significant factors or hardships as well as alternatives explored, the appeal must contain a response to the findings of the city engineer that resulted in the denial.

E. Any costs incurred as a result of revocation of a permit under this section shall be the responsibility of the applicant.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

24-0416. Reservation of Authority.

The city at all times reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve any wireless support structure, wireless communication facility, or site, as may be necessary and in keeping with the health, welfare and safety of the public. Such actions may temporarily interfere with the operation of a wireless communication facility. The city will give the applicant thirty (30) days written notification of such planned, non-emergency actions. In the event of an emergency the city shall give the owner notice within twenty four (24) hours of such action.

24-0417. Duty to Remove and Relocate Facilities.

- A. The city may amend the permit and may order a permit holder to immediately remove and relocate its wireless communication facility, including all related equipment, at the permit holder's expense, if the facility interferes with the use of the public right of way or city facilities or services.
- B. Following revocation of a permit, a wireless communication facility shall be removed by the permit holder within ninety (90) days of such city order. The permit holder must attain all required permits to effect the removal.
- C. If the wireless communication facilities and all equipment are not removed voluntarily pursuant to notice, the city may remove such facilities at that permit holder's expense without further notice.
- D. If the city removes facilities and the owner does not claim the property within sixty (60) days of its removal, the city may take whatever steps are available under the law to declare the property abandoned or surplus, and may sell it with the proceeds of such sale going to the city as permitted by law.
- E. When a permit holder removes its facilities from the public right of way, the permit holder shall at its own expense and in the manner prescribed by the city, replace and restore such public right of way in accordance with repair standards adopted by the city engineer.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

24-0418. Deemed Granted.

In the event that an application for permit under this article is deemed granted by rule of law, all conditions and design parameters under this article are applicable and required for the installation.

24-0419. Wireless Facility Guidelines.

Due to rapidly changing technology and regulatory requirements, the board of city commissioners may authorize the city engineer to issue Wireless Facility Guidelines ("Guidelines") by Resolution to serve as further regulatory guidance and clarification, consistent with this article and applicable law. The Guidelines may be amended and updated at the discretion of the city engineer to adjust for new technologies, regulations, and city objectives. All permit holders shall comply with such Guidelines for any new facility installations subject to this article.

24-0420. Compliance with Applicable Law and Regulations.

This article is not intended to be the exclusive means of regulating installation of facilities in the public right of way and nothing herein is intended to waive any other applicable city requirements, including but not limited to building permit requirements, storm water runoff requirement, business license requirements and undergrounding regulations. The applicant or permit holder must obtain all permits, licenses, and similar authorizations that are required by other governmental entities for the installation of its facilities. The permit holder must also be and remain in compliance with all applicable statutes, ordinances, rules, regulations, orders, and decisions issued by any Federal, state or local governmental body or agency, including without limitation those issued by the North Dakota Public Service Commission and the Federal Communications Commission. The facility and its operation will comply with all applicable laws, including all federal EMF and RF emissions standards. A permit holder shall comply with all applicable public safety requirements described in federal, state or local law, shall not interfere with public safety communications and shall meet the requirements of section 20-0402.

24-0421. Exemption Procedures.

A. An applicant may apply to the city engineer for an exemption from any of the requirements of this article on the grounds that such requirement (a) is not feasible or (b) constitutes an undue hardship.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1. An application shall include information necessary for the city to make its decision, including but not limited to reports or studies showing the factual support for the claimed exemption. The city engineer may require the applicant to provide additional information to permit the city engineer to determine facts regarding the exemption application.
2. Following a review of the application, the city engineer may approve the exemption, in whole or in part, with or without conditions, provided all of the following findings of fact are made:
 - (a) The subject requirement is not feasible or constitutes an undue hardship;
 - (b) The facility will serve a community benefit;
 - (c) The requirements of this article are met, except for the requirement sought to be waived; and
 - (d) The proposed facility can be mitigated so that its impacts do not result in a material change to the character or the location and relate harmoniously with the surrounding neighborhood.
3. The city engineer's decision shall become effectively immediately, is final and shall not be appealable.

24-0422. Insurance.

An applicant and permit holder shall obtain and comply with insurance coverage requirements in accordance with Section 24-03 or as otherwise required by the city engineer.

24-0423. Indemnification and Liability.

- A. Limitation of liability. By reason of the acceptance of a permit for a wireless communication facility in the public right of way, permit holder assumes all liability for injuries to persons, damage to property or loss of service claims by parties other than the registrant or the city, and for claims or penalties of any sort resulting from the installation, presence, maintenance or operation of equipment or facilities by registrants or permit holders or activities of registrants or permit holders.
- B. Indemnification. By reason of acceptance of a permit, permittee shall indemnify, keep and hold the city, its officials, employees and agents, free and harmless from any and all costs, liabilities and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its equipment and facilities, or out of any activity undertaken in or near a right-of-way, whether or not any act or omission complained of is authorized, allowed or prohibited by a right-of-way permit.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 The foregoing does not indemnify the city for its own negligence except for claims
2 arising out of or alleging the city's negligence in issuing the permit or in failing to
3 properly or adequately inspect or enforce compliance with a term, condition or purpose of
4 a permit. This section is not, as to third parties, a waiver of any defense or immunity
5 otherwise available to the registrant, permit holder or the city and the registrant or permit
6 holder, in defending any action on behalf of the city, shall be entitled to assert in any
7 action every defense or immunity that the city could assert on its own behalf.

- 8 C. If the registrant or permit holder is required to indemnify and defend, it shall thereafter
9 have control of the litigation, but the registrant or permit holder may not settle the
10 litigation without the consent of the city. Such consent will not be unreasonably withheld.

7 **24-0424. Penalty.**

- 8 A. A Person who willfully violates this ordinance is guilty of an infraction. Every Person
9 violating an ordinance which is punishable as an infraction shall be punished by a fine
10 not to exceed \$1,000; the court to have power to suspend said sentence and to revoke
11 the suspension thereof.
- 12 B. Each period of ten (10) days that a Person violated the provisions of this article shall
13 constitute a separate offense.
- 14 C. The application of the above penalty provisions shall not be held to prevent the
15 enforced removal of prohibited conditions.
- 16 D. The permit of any Person violating any of the provisions of this article may be revoked,
17 as provided in this article.

17 Section 2. Penalty.

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

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 3. Effective Date.

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

3
4
5
6 (SEAL)

Timothy J. Mahoney, Mayor

7
8 Attest:

9
10
11 _____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage: