

FARGO PLANNING COMMISSION AGENDA
Tuesday, December 6, 2022 at 3:00 p.m.

A: Approve Order of Agenda

B: Minutes: Regular Meeting of November 1, 2022

C: Public Hearing Items:

1. Hearing on an application requesting a Plat of **Westrac Fourth Addition** (Minor Subdivision) a replat of part of Lots 2 and 3, Block 3, Westrac Second Addition, to the City of Fargo, Cass County, North Dakota. (Located at 2900, 2920, 2924, 2928, 2932, and 2936 Fiechtner Drive South) (LJS Investments, LLP/ Nate Vollmuth) (dk)
2. Hearing on an application requesting a Plat of **Dakota Air Parts Addition** (Major Subdivision) a replat of Lots 1-3, Block 1, DDK Addition, to the City of Fargo, Cass County, North Dakota. (Located at 2505 39 1/2 Avenue North; 3910 and 4020 25th Street North) (MACO Leasing Inc./Nate Vollmuth) (dk)
3. Hearing on an application requesting a Plat of **Edition Fourth Addition** (Minor Subdivision) a replat of Lot 1, Block 1, Edition Third Addition, to the City of Fargo, Cass County, North Dakota. (Located at 4803 and 4809 38th Street South) (Bluegrass Offices, LLC/Houston Engineering, Inc.) (dk)
4. Hearing on an application requesting a Plat of **The District of Fargo Fifth Addition** (Minor Subdivision) a replat of Lots 1 and 2, Block 1, The District of Fargo Fourth Addition to the City of Fargo, Cass County, North Dakota. (Located at 3788 and 3770 55th Avenue South) (RRCOM LL/Houston Engineering) (lm)
5. Hearing on an application requesting a Text Amendment to amend Sections 20-0401, 20-0402, 20-0403, 20-1001, 20-1002, 20-1202, and 20-1203 of the Fargo Municipal Code (Land Development Code) relating to definitions, regulations, use standards, nonconformities, and references regarding adult entertainment centers and adult establishments. (City of Fargo) (mw)

D: Other Items:

1. Planned Unit Development Final Plan for **Metropolitan Park 3rd Addition**. (dk)
2. Introduction to BLOC Mixed-Use development on the 1600 block of University Drive South. (me)
3. 2023 Planning Commission Calendar.

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

People with disabilities who plan to attend the meeting and need special accommodations should contact the Planning Office at 701.241.1474. Please contact us at least 48 hours before the meeting to give our staff adequate time to make arrangements.

Minutes are available on the City of Fargo Web site at www.FargoND.gov/planningcommission.

BOARD OF PLANNING COMMISSIONERS MINUTES

Regular Meeting:

Tuesday, November 1, 2022

The Regular Meeting of the Board of Planning Commissioners of the City of Fargo, North Dakota, was held in the Commission Chambers at City Hall at 3:00 p.m., Tuesday, November 1, 2022.

The Planning Commissioners present or absent were as follows:

Present: Rocky Schneider, John Gunkelman, Scott Stofferahn, Art Rosenberg, Jennifer Holtz, Thomas Schmidt, Brett Shewey

Absent: Maranda Tasa, Dawn Morgan

Chair Schneider called the meeting to order.

Business Items:

Item A: Approve Order of Agenda

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

Item B: Minutes: Regular Meeting of October 4, 2022

Member Stofferahn moved the minutes of the October 4, 2022 Planning Commission meeting be approved. Second by Member Schmidt. All Members present voted aye and the motion was declared carried.

Item C: Public Hearing Items:

Item 1: Valley View Tenth Addition

Hearing on an application requesting a Plat of Valley View Tenth Addition (Minor Subdivision) a replat of Lot 5, Block 1, Valley View 8th Addition, to the City of Fargo, Cass County, North Dakota. (Located at 3680 Veterans Boulevard South) (EPIC Holdings II, LLC): APPROVED

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

Member Holtz moved the findings and recommendations of staff be accepted and approval be recommended to the City Commission of the proposed Subdivision Plat Valley View Tenth Addition, as outlined within the staff report, as the proposal complies with the 2003 Southwest Future Land Use Plan, the Standards of Article 20-06, Section 20-0907.B&C of the Land Development Code, and all other applicable requirements of the Land Development Code. Second by Member Shewey. On call of the roll Members

Holtz, Schmidt, Stofferahn, Rosenberg, Shewey, Gunkelman, and Schneider voted aye. Absent and not voting: Members Tasa and Morgan. The motion was declared carried.

Item 2: Ulteig Addition

Hearing on an application requesting a Conditional Use Permit for an Alternative Access Plan for a parking reduction on Lot 1, Block 1, Ulteig Addition. (Located at 3540 and 3550 38th Avenue South) (I-29 Investments LLC/Steve Schilke): APPROVED

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

Discussion was held on Land Development Code parking requirements, the timeline of the expected update to the Land Development Code, and the parking study that was conducted for this application.

Applicant representative Mark Weston, I-29 Investments, LLC, spoke on behalf of the application.

Discussion continued on parking availability of on and off-street parking.

Member Gunkelman moved the findings and recommendations of staff be accepted the Conditional Use Permit to allow an Alternative Access Plan for a parking reduction on Lot 1, Block 1, Ulteig Addition be approved, as outlined within the staff report, as the proposal complies with Section 20-0909.D (1-6) of the Land Development Code, and all other applicable requirements of the Land Development Code, with the following conditions:

1. Medical office uses require 1 parking stall per 310 square feet.
2. Office-other uses require 1 parking stall per 420 square feet.
3. Religious institution uses require 0.22 parking spaces per seat.
4. Religious institution operates primarily outside of regular business hours (8am – 5pm, Monday through Friday).
5. Any expansion of the religious institution use shall require an amendment to the Conditional Use Permit with review and approval by the Planning Commission.

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

Item 3: Calico Prairie Third Addition

Hearing on an application requesting a Plat of Calico Prairie Third Addition (Minor Subdivision) a replat of Lots 1 and 2, Block 1, Calico Prairie 2nd Addition to the

City of Fargo, Cass County, North Dakota. (Located at 4404 26th Avenue South and 4441 Calico Drive South) (Western North Dakota Dev LLC/Goldmark Design and Development): APPROVED

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

Discussion was held on stormwater retention.

Member Stofferahn moved the findings and recommendations of staff be accepted and approval be recommended to the City Commission of the proposed Subdivision Plat Calico Prairie Third Addition, as outlined within the staff report, as the proposal complies with the Adopted Area Plan, the Standards of Article 20-06, Section 20-0907.B&C of the Land Development Code, and all other applicable requirements of the Land Development Code. Second by Member Schmidt. On call of the roll Members Schmidt, Stofferahn, Rosenberg, Holtz, Gunkelman, Shewey, and Schneider voted aye. Absent and not voting: Members Tasa and Morgan. The motion was declared carried.

Item D: Other Items:

Item 1: Review of Fargo/Moorhead Metropolitan Bicycle and Pedestrian Plan

Dan Farnsworth, MetroCOG, presented an overview of the Fargo/Moorhead Metropolitan Bicycle and Pedestrian Plan.

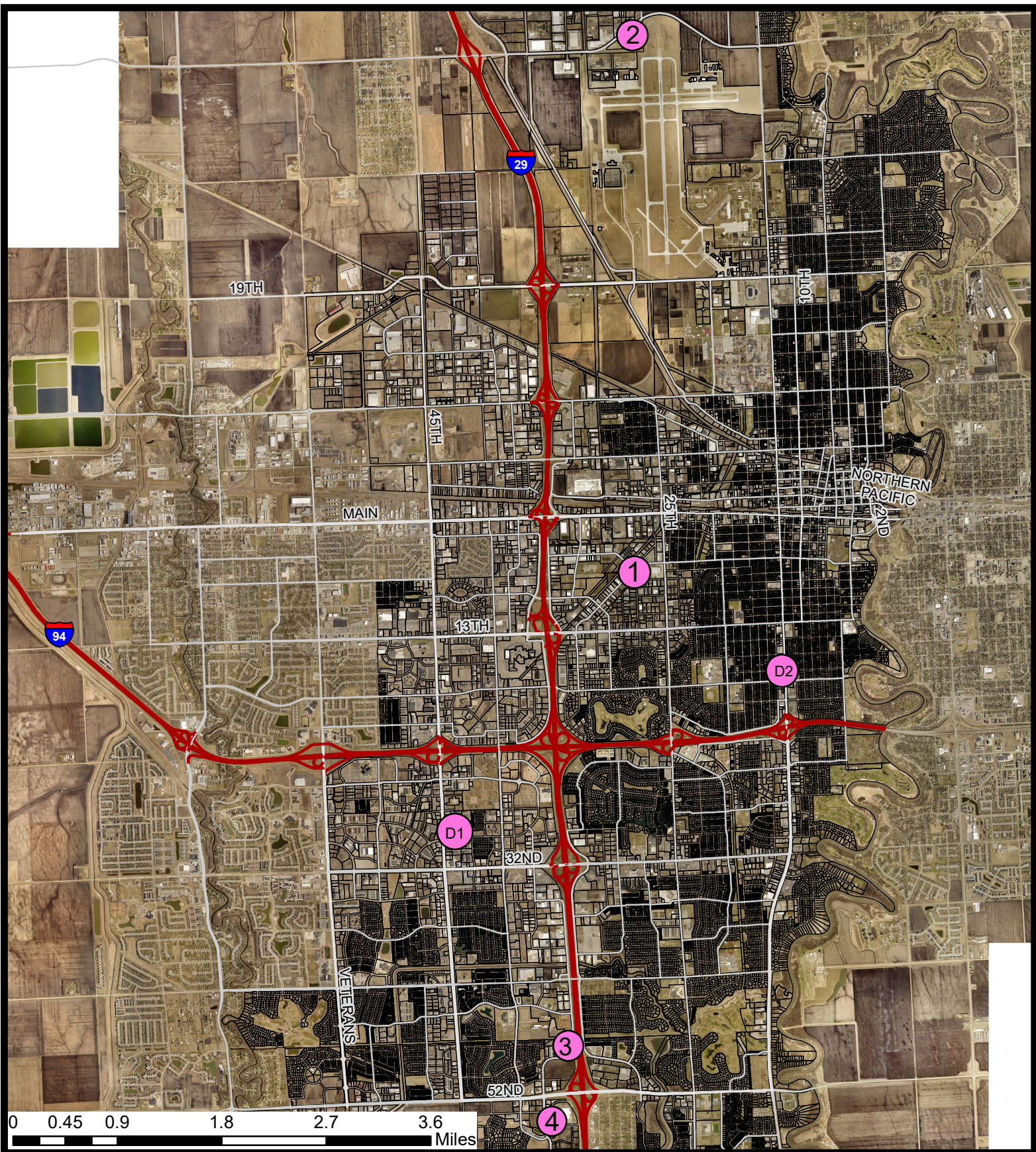
Member Gunkelman moved to recommend the Fargo/Moorhead Metropolitan Bicycle and Pedestrian Plan Update to the Fargo City Commission. Second by Member Schmidt. All Members present voted aye and the motion was declared carried.

City Engineer Brenda Derrig provided an overview of proposed future plans of the Engineering Department.

Planning Coordinator Maegin Elshaug gave a brief overview of how the Planning Department utilizes these plans and studies.

Member Gunkelman moved to adjourn the meeting. Second by Member Holtz. All Members present voted aye and the motion was declared carried.

The time at adjournment was 3:51 p.m.



Agenda Items Map

Fargo Planning Commission
December 6, 2022



Agenda Item Number

- 1 -- Westrac Fourth Addition
- 2 -- Dakota Air Parts Addition
- 3 -- The Edition Fourth Addition
- 4 -- The District of Fargo Fifth Addition
- D1-- Metropolitan Park 3rd Addition PUD Final Plan
- D2 --Introduction to BLOC Mixed-Use Development

City of Fargo Staff Report			
Title:	Westrac Fourth Addition	Date:	11/30/2022
Location:	2900, 2920, 2924, 2928, 2932, and 2936 Fiechtner Drive	Staff Contact:	Donald Kress, current planning coordinator
Legal Description:	Part of Lots 2 and 3, Block 3, Westrac Second Addition		
Owner(s)/Applicant:	LJS Investments, LLP / Nate Vollmuth, Goldmark Design and Development	Engineer:	Bolton & Menk
Entitlements Requested:	Minor Subdivision (replat of part of Lots 2 and 3, Block 3, Westrac Second Addition)		
Status:	Planning Commission Public Hearing: December 6th, 2022		
Existing		Proposed	
Land Use: Contractor office and shop; self-storage		Land Use: No change proposed	
Zoning: LI, Limited Industrial		Zoning: No change proposed	
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, basic utilities, certain telecommunications facilities		Uses Allowed: No change proposed.	
Maximum Lot Coverage Allowed: 85%		Maximum Lot Coverage Allowed: No change	
Proposal:			
<p>The applicant request one entitlement:</p> <ol style="list-style-type: none"> 1. A minor subdivision, to be known as Westrac Fourth Addition, a replat of part of Lots 2 and 3, Block 3, Westrac Second Addition) <p>The subject property is located at 2900, 2920, 2924, 2928, 2932, and 2936 Fiechtner Drive and encompasses approximately 1.83 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 Zoning Districts and Land Uses:</p> <ul style="list-style-type: none"> • North: LI; Islamic cultural center • East: LI; parking lot; industrial use (contractor) • South: LI; industrial use (auto repair) • West: LI: industrial uses (construction and technology companies) and dance company 			

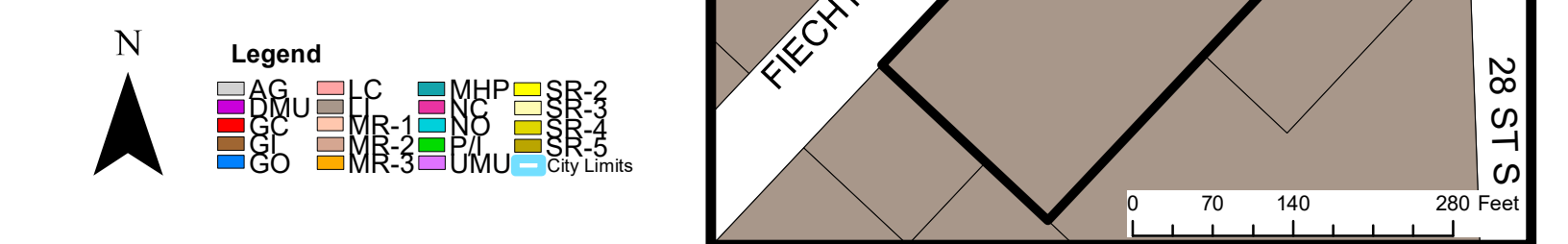
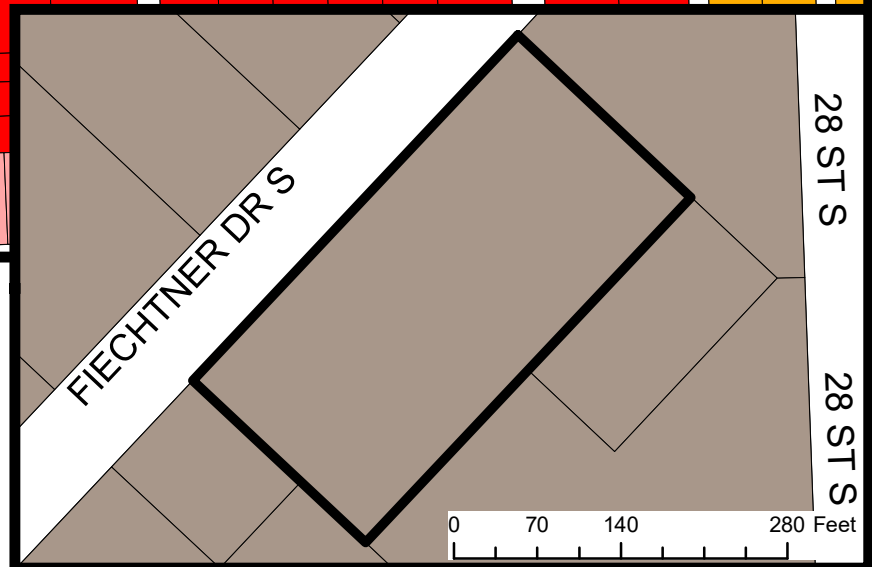
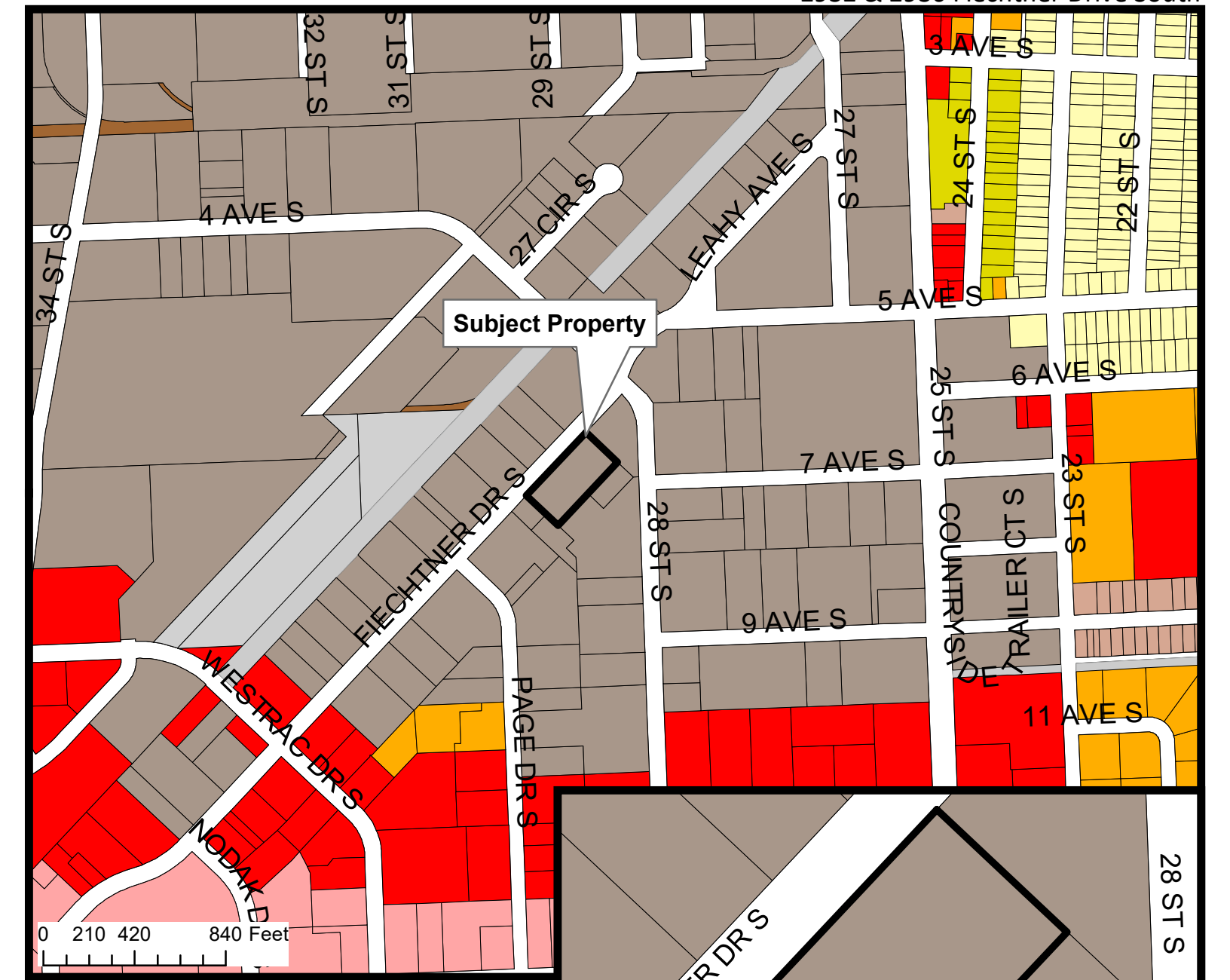
Area Plans:
The subject property is not included in any growth plan or future land use plan.
Context
<p>Neighborhood: The subject property is located in the Westgate neighborhood.</p> <p>Schools: The subject property is located within the Fargo Public School District and is served by Jefferson Elementary, Ben Franklin Middle, and Fargo North High schools</p> <p>Parks: McCormick Park, 2101 9th Avenue South, is approximately one-half mile east of the subject, and provides amenities of a basketball court, picnic tables, playground, recreational trails and a warming house</p> <p>Pedestrian / Bicycle: There are no off-street trails or shared use paths adjacent to the subject property. On-street bike lanes are provided along Fiechtner Drive.</p> <p>MATBUS Routes: The subject property is located along MATBUS Route 20. The closest stop is at the corner of Fiechtner Drive and Page Drive, approximately 450 feet southwest of the subject property.</p>
Staff Analysis:
<p><u>MINOR SUBDIVISION</u></p> <p>The subdivision plat divides an existing platted lots into a different two lot configuration. The new lot line is configured such that all existing buildings will maintain the required interior side yard setback between the two lots.</p> <p>Subdivision</p> <p>The LDC stipulates that the following criteria are met before a minor plat can be approved:</p> <p>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.</p> <p>The subject property is zoned LI, Limited Industrial. This property is not covered by a growth plan or future land use plan. The land uses on the subject property are consistent with the LI zoning. In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. To date, Planning staff has received no comments or inquiries. The project has been reviewed by the city's Planning, Engineering, Public Works, Inspections, and Fire Departments. (Criteria Satisfied)</p> <p>2. Section 20-0907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision.</p> <p>While this section of the LDC specifically addresses only major subdivision plats, staff believes it is important to note that any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure improvements are proposed to be spread by the front footage basis and storm sewer by the square footage basis as is typical with the City of Fargo assessment principles. (Criteria Satisfied)</p> <p>(continued on next page)</p>

Staff Recommendation:
Suggested Motion: "To accept the findings and recommendations of staff and recommend approval to the City Commission of the proposed plat of Westrac Fourth Addition , as outlined in the staff report, on the basis that it satisfactorily complies with the Standards of Article 20-06, and Section 20-0907.B. and C of the LDC and all other applicable requirements of the LDC."
Planning Commission Recommendation: December 6 th 2022
Attachments:
<ol style="list-style-type: none">1. Zoning Map2. Location Map3. Preliminary Plat

Minor Subdivision

Westrac Fourth Addition 2900, 2920, 2924, 2928,
2932 & 2936 Fiechtner Drive South

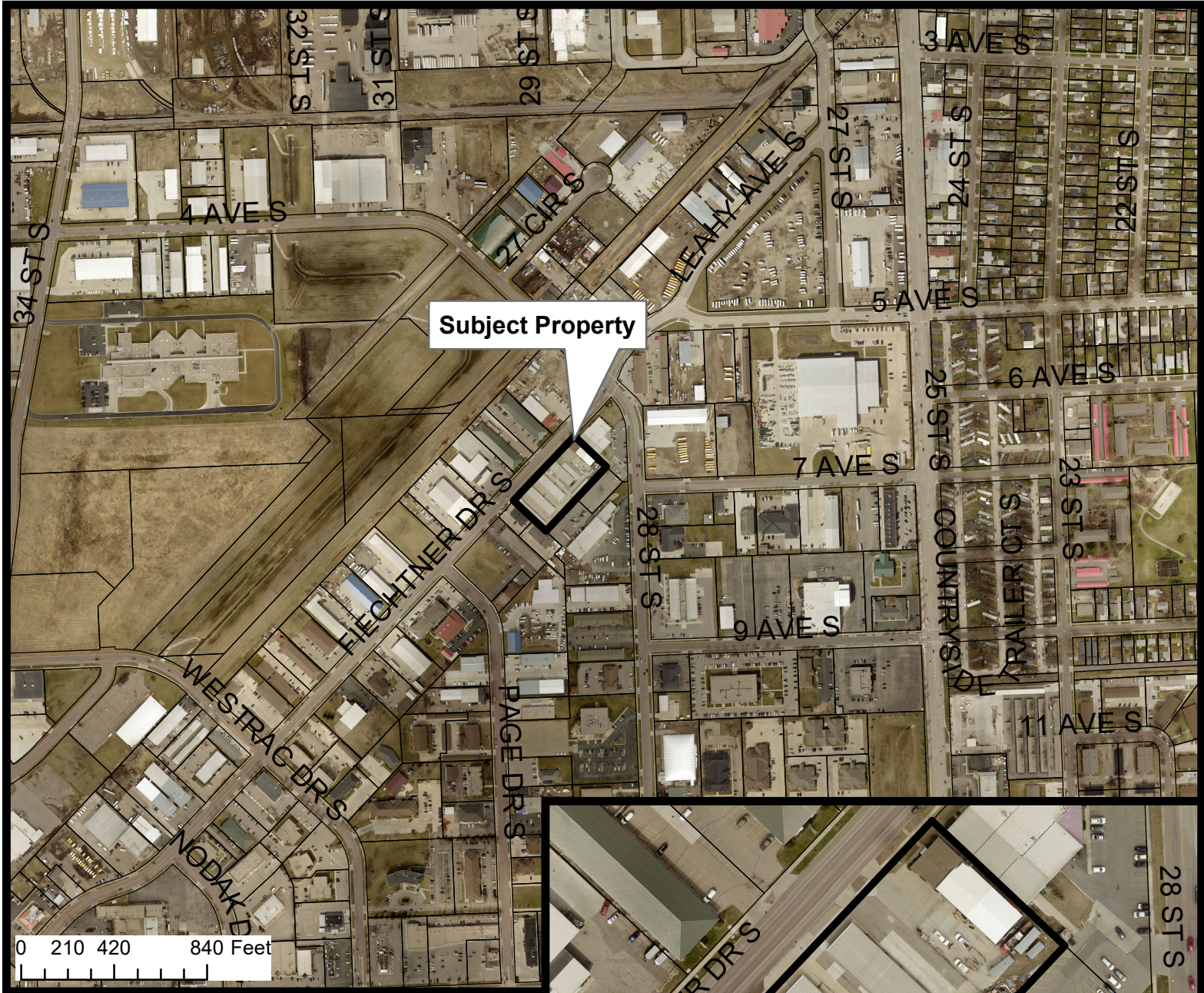
Westrac Fourth Addition 2900, 2920, 2924, 2928,
2932 & 2936 Fiechtner Drive South



Minor Subdivision

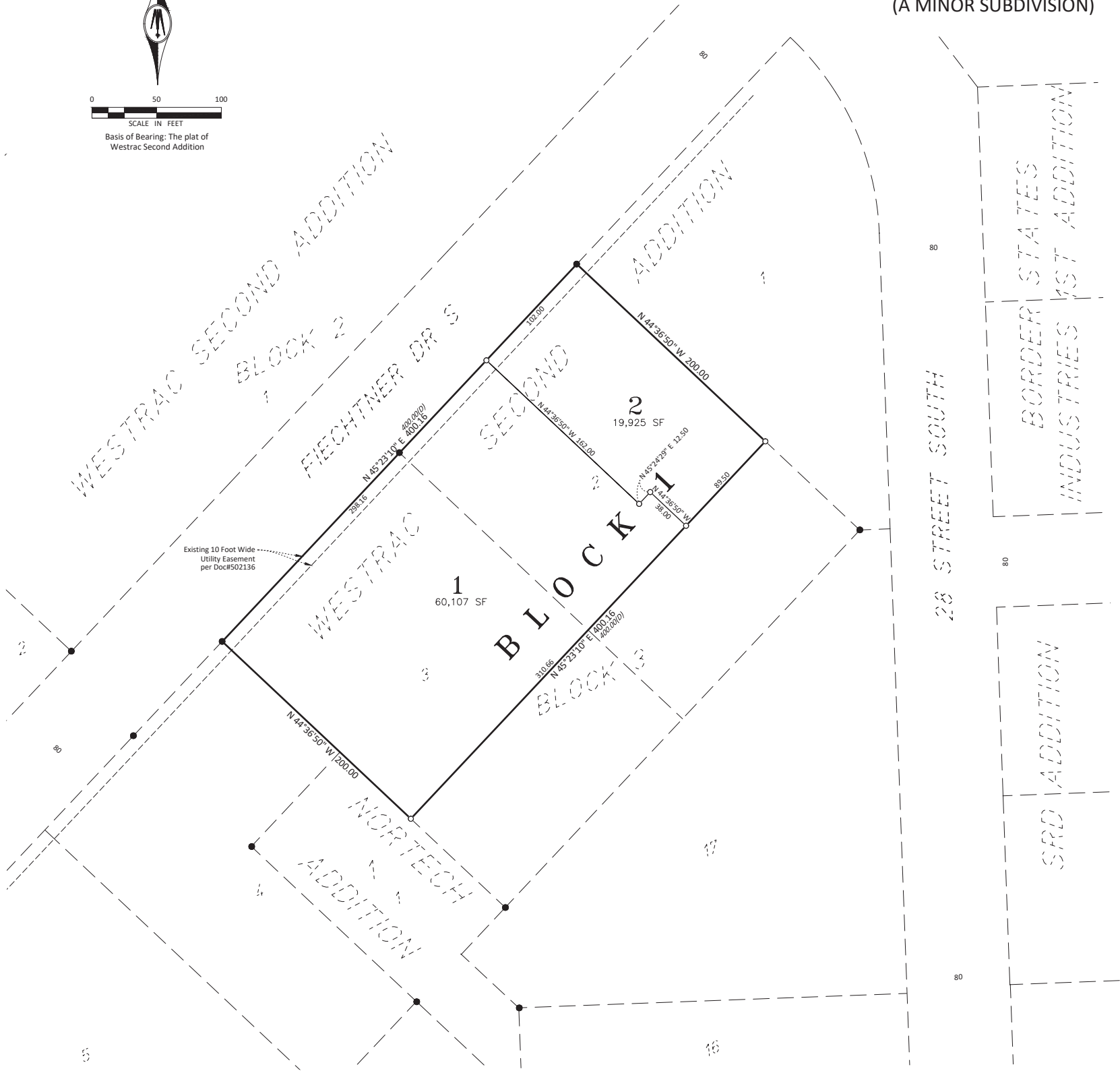
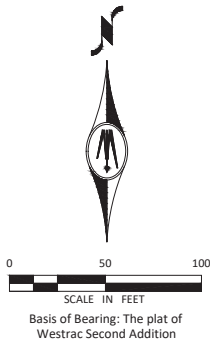
Westrac Fourth Addition

2900, 2920, 2924, 2928,
2932 & 2936 Fiechtner Drive South



WESTRAC FOURTH ADDITION

TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA
A REPLAT OF PART OF LOTS 2 AND 3, BLOCK 3, WESTRAC SECOND ADDITION
(A MINOR SUBDIVISION)



LEGEND	
	5/8"x18" REBAR MONUMENT SET, CAP MARKED BY LIC. NO. LS-5900
	MONUMENT FOUND, 5/8" REBAR
	SUBJECT PROPERTY LINE
	EXISTING PROPERTY LINE
	EASEMENT LINE

OWNERS DESCRIPTION AND DEDICATION

KNOW ALL MEN BY THESE PRESENTS, That LIS Investments, LLP, a limited liability partnership under the laws of the State of North Dakota, owner of a parcel of land located in that part of the Southeast Quarter of Section 11, Township 139 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, being more particularly described as follows:

That part of Lot Three, in Block Three, of Westrac Second Addition to the City of Fargo, Cass County, North Dakota, described as follows: Beginning at the Northeast corner of said Lot Three, thence South 44°36'50" East along the Northeasterly line of said Lot Three a distance of 200 feet; thence South 45°23'0" West along a line parallel to the Northwesterly line of said Lot Three a distance of 200 feet to the Southwesterly line of said Lot Three; thence North 44°36'50" West along the Southwesterly line of said Lot Three a distance of 200 feet; thence North 45°23'10" East along the Northwesterly line of said Lot Three a distance of 200 feet to the point of beginning; AND That part of Lot Two, in Block Three, of Westrac Second Addition to the City of Fargo, Cass County, North Dakota, described as follows: Beginning at the Northeast corner of said Lot Two, thence South 44°36'50" East along the Northeasterly line of said Lot Two a distance of 200 feet; thence South 45°23'0" West along a line parallel to the Northwesterly line of said Lot Two a distance of 200 feet to the Southwesterly line of said Lot Two; thence North 44°36'50" West along the Southwesterly line of said Lot Two a distance of 200 feet; thence North 45°23'0" East along the Northwesterly line of said Lot Two a distance of 200 feet to the point of beginning.

Containing 80,032 square feet of land, more or less and subject to all easements, restrictions, reservations and rights of way of record, if any.

Said owners have caused the above described parcel of land to be surveyed and platted as "WESTRAC FOURTH ADDITION" to the City of Fargo, Cass County, North Dakota.

OWNER:
LIS Investments, LLP

By: Timothy Mark Jones, partner

County of Cass
State of North Dakota

On this _____ day of _____, in the year 2022 before me, a notary public within and for said County and State, personally appeared Timothy Mark Jones, partner, LIS Investments, LLP, a limited liability partnership under the laws of the State of North Dakota, known to me to be the person who is described in and who executed the within instrument, and acknowledged to me that he executed the same on behalf of the limited liability partnership.

Notary Public

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT

I, Shawn M. Thomasson, 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.

Shawn M. Thomasson, Professional Land Surveyor
North Dakota License Number LS-5900

State of North Dakota
County of Cass

On this _____ day of _____, 2022, before me, a notary public within and for said County and State, personally appeared Shawn M. Thomasson, Registered Professional Land Surveyor, known to me to be the person who is described in and who executed the within instrument, and acknowledged to me that he executed the same.

Notary Public

CITY OF FARGO ENGINEERING DEPARTMENT APPROVAL

Approved by City Engineer this _____ day of _____, 2022.

Brenda E. Derrig, City Engineer

State of North Dakota
County of Cass

On this _____ day of _____, in the year 2022, before me, a notary public within and for said County and State, personally appeared Brenda E. Derrig, City Engineer known to me to be the person who is described in and who executed the within instrument, and acknowledged to me that she executed the same as City Engineer for the City of Fargo.

Notary Public

CITY OF FARGO PLANNING COMMISSION APPROVAL

Approved by the City of Fargo Planning Commission this _____ day of _____, 2022.

Rocky Schneider, Planning Commission Chair

State of North Dakota
County of Cass

On this _____ day of _____, in the year 2022, before me, a notary public within and for said County and State, personally appeared Rocky Schneider, Planning Commission Chair, known to me to be the person who is described in and who executed the within instrument, and acknowledged to me that he executed the same on behalf of the Fargo Planning Commission.

Notary Public

FARGO CITY COMMISSION APPROVAL

Approved by the Board of City Commissioners and ordered filed this _____ day of _____, 2022.

Timothy J. Mahoney, Mayor

Attest:
Steven Sprague, City Auditor

State of North Dakota
County of Cass

On this _____ day of _____, in the year 2022 before me, a notary public within and for said County and State, personally appeared Timothy J. Mahoney, Mayor, and Steven Sprague, City Auditor known to me to be the persons who are described in and who executed the within instrument, and acknowledged to me that they executed the same on behalf of the City of Fargo.

Notary Public

preliminary



PREPARED BY:

BOLTON & MENK

City of Fargo Staff Report			
Title:	Dakota Air Parts Addition	Date:	11/30/2022
Location:	2505 39 1/2 Avenue North; 3910 and 4020 25th Street North	Staff Contact:	Donald Kress, current planning coordinator
Legal Description:	Lots 1 through 3, Block 1, DDK Addition		
Owner(s)/Applicant:	MACO Leasing, Inc. / Nate Vollmuth, Goldmark Design and Development	Engineer:	Mead & Hunt
Entitlements Requested:	Major Subdivision (replat of Lots 1 through 3, Block 1, DDK Addition)		
Status:	Planning Commission Public Hearing: December 6, 2022		
Existing		Proposed	
Land Use: Industrial; residential		Land Use: No change proposed	
Zoning: LI, Limited Industrial		Zoning: No change proposed	
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, basic utilities, certain telecommunications facilities		Uses Allowed: No change proposed.	
Maximum Lot Coverage Allowed: 55%		Maximum Lot Coverage Allowed: No change	
Proposal:			
<p>The applicant request one entitlement:</p> <ol style="list-style-type: none"> 1. A major subdivision, to be known as Dakota Air Parts Addition, a replat of Lots 1 through 3, Block 1, DDK Addition <p>The subject property is located at 2505 39 1/2 Avenue North; 3910 and 4020 25th Street North and encompasses approximately 5.86 acres.</p> <p>This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), and the Municipal Airport Authority, whose comments are included in this report.</p> <p>Surrounding Zoning Districts and Land Uses:</p> <ul style="list-style-type: none"> • North: LI; excavation contractor and undeveloped; • East: P/I, Public/Institutional; Hector International Airport • South: P/I, Public/Institutional; Hector International Airport • West: AG, Agricultural; residential 			

Area Plans:

The subject property is not covered by a growth plan or area plan. The existing zoning of LI, Limited Industrial is consistent with the "industrial" land use designation of the Hector Airport Master Land Use Plan. This plan is administered by the Airport Authority.

Context

Neighborhood: The subject property is not located in a designated neighborhood

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

Parks: Riverwood Park, 4707 County Road 31, is located approximately a mile northeast of the subject property and provide amenities of baseball/softball fields, basketball courts, cricket field and soccer field, a shelter, picnic tables, playground and recreational trails.

Pedestrian / Bicycle: There are no trails or shared use paths adjacent to or near the subject property.

MATBUS Routes: There are no MATBUS routes near the subject property.

Staff Analysis:

MAJOR SUBDIVISION

The subdivision plat replats the existing three lots of the DDK Addition into a different three-lot configuration. The plat also dedicates right of way for 25th Street North along the east property frontage and vacates existing access easements. It is this requirement for dedication of right of way that makes this a major subdivision.

EXISTING RESIDENCE

The existing residence was built in 1890. When the DDK Addition was created in 2003, the property was rezoned from AG, Agricultural to LI, Limited Industrial, which made the residential dwelling unit a legal non-conforming use. It will continue as a legal non-conforming use under this plat. The lot that this residence is on is not being rezoned to a residential zoning designation as expanded residential land use is considered undesirable due to the close proximity to the airport.

PROXIMITY AGREEMENT

A proximity agreement for the subdivision will be signed by the applicant. This is a standard agreement between the City of Fargo and owners of property in close proximity to Hector International Airport and the overflow sewage lagoons. With this agreement, the property owner acknowledges the existence of these facilities and the potential for aircraft noise and sewage odor. The City Commission will take final action on this agreement. No action is required by the Planning Commission. No attachment is included with this packet.

Major Subdivision

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

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

The subject property is zoned LI, Limited Industrial. No zone change is proposed. The proposed use of an aircraft parts warehouse is consistent with the LI zoning. This property is not covered by a growth plan or future land use plan. 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, Planning staff has received and responded to one inquiry. **(Criteria Satisfied)**

2. **Section 20-0907.C.4.c of the LDC further stipulates that the Planning Commission shall recommend approval or denial of the application and the City Commission shall act to approve or deny, based on whether it is located in a zoning district that allows the proposed development, complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code.**

The subject property is zoned LI, Limited Industrial. No zone change is proposed. This property is not covered by a growth plan or future land use plan. The proposed use of an aircraft parts warehouse is consistent with the LI zoning. The project has been reviewed by the city's Planning, Engineering, Public Works, Inspections, and Fire Departments. **(Criteria Satisfied)**

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

The applicant has provided a draft amenities plan that specifies the terms or securing installation of public improvements to serve the subdivision. This amenities plan will be reviewed by the Public Works Project Evaluation Committee (PWPEC) prior to the final plat going to City Commission. 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)**

NOTE: The applicant is intending to submit an updated plat prior to the December 6th Planning Commission hearing that retains the same lot configuration as proposed but makes an adjustment in lot dimensions, based on discussion with staff. Staff will provide this plat when it is available.

Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of staff and move to recommend approval to the City Commission of the proposed plat of the **Dakota Air Parts Addition**, as outlined in the staff, as the proposal complies with the Standards of Article 20-06, and Sections 20-0907.C of the LDC and all other applicable requirements of the LDC."

Planning Commission Recommendation: December 6th, 2022

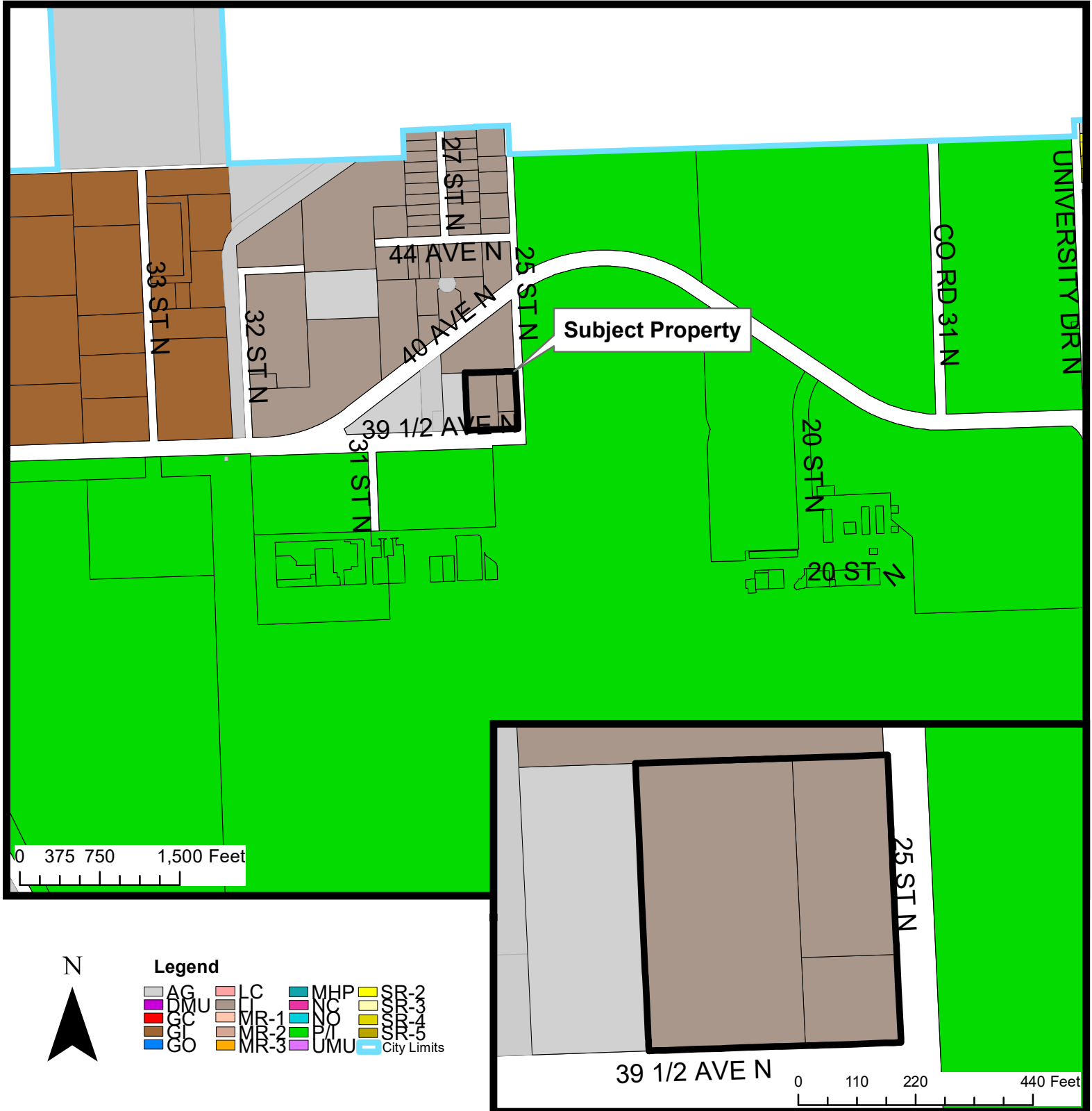
Attachments:

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

Major Subdivision

Dakota Air Parts Addition

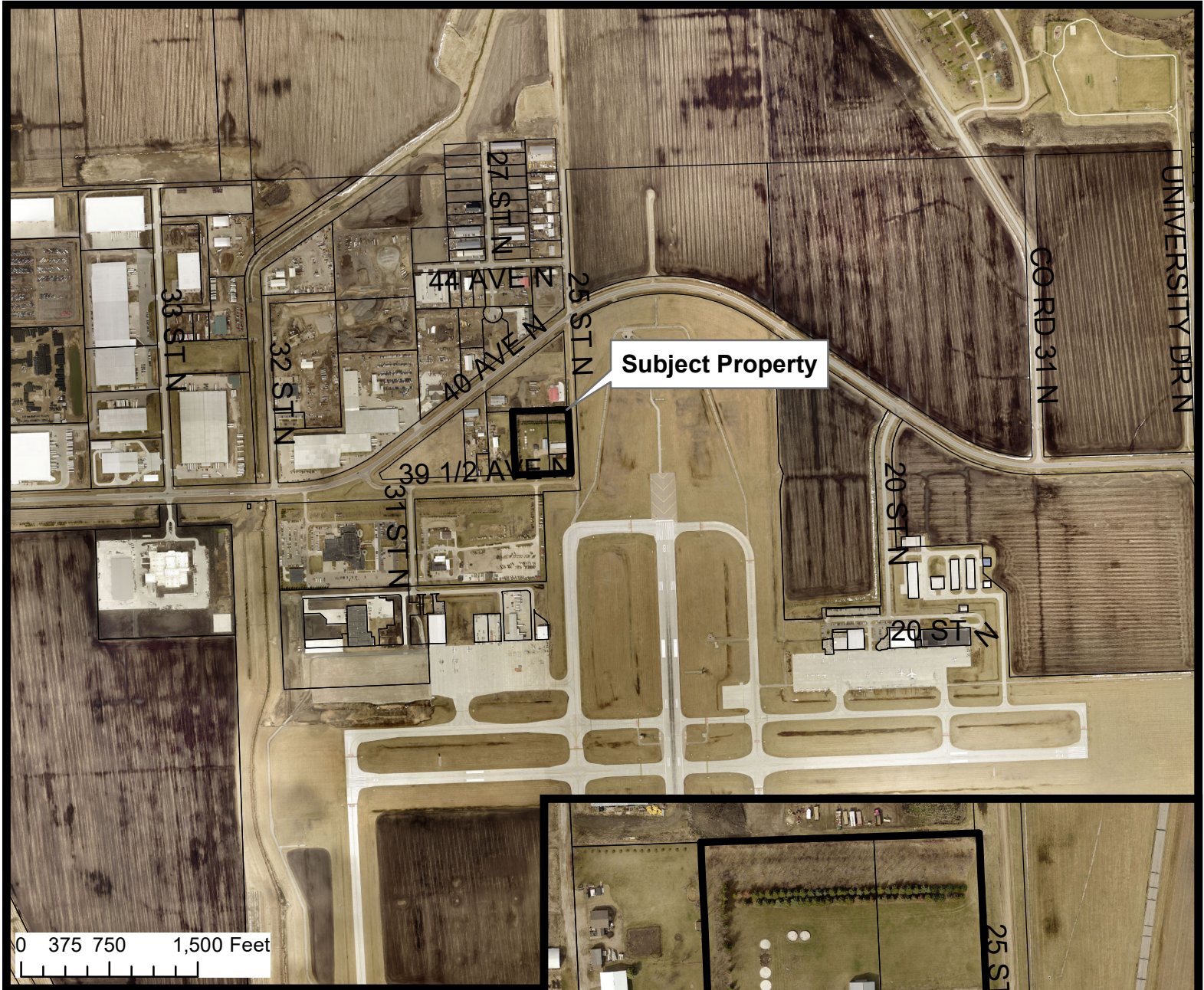
2505 39 1/2 Avenue North;
3910 and 4020 25th Street North



Major Subdivision

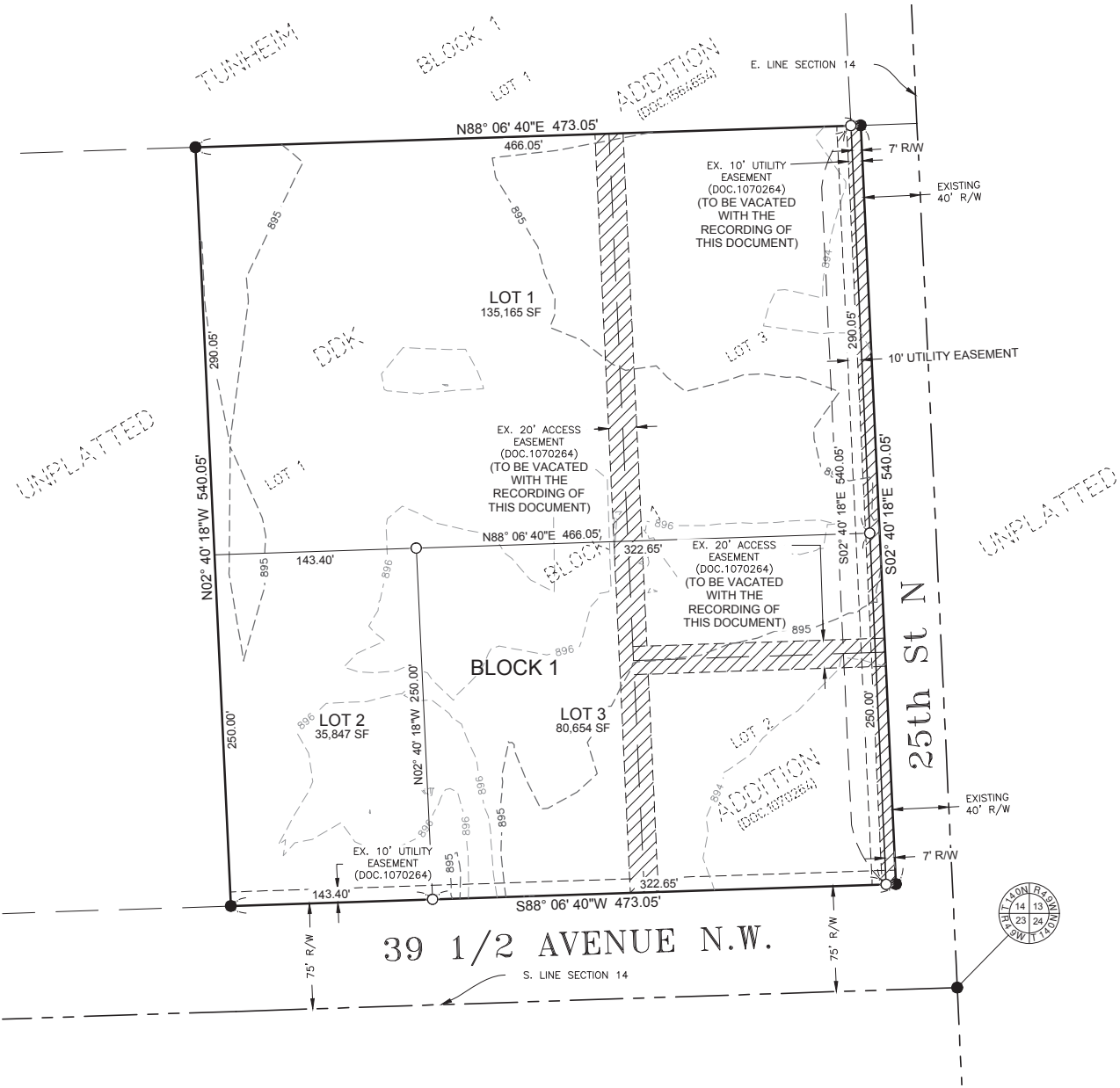
Dakota Air Parts Addition

2505 39 1/2 Avenue North;
3910 and 4020 25th Street North



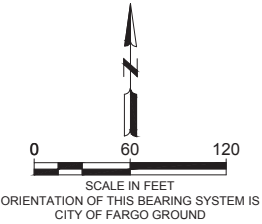
DAKOTA AIR PARTS ADDITION

A REPLAT OF LOTS 1 THRU 3, BLOCK 1 OF DDK ADDITION TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA
(A MAJOR SUBDIVISION)



LEGEND	
●	MONUMENT IN PLACE
○	SET MONUMENT (5/8" REBAR CAPPED PLS-6884)
(5,000)	LOT AREA (SQUARE FEET)
---	EXISTING SECTION LINE
---	EXISTING PROPERTY LINE
---	EXISTING EASEMENT LINE
---	NEW LOT LINE
---	NEW BLOCK LINE
---	PLAT BOUNDARY
---	NEW EASEMENT LINE
---	MAJOR CONTOUR
---	MINOR CONTOUR
---	EXISTING EASEMENT (TO BE VACATED WITH THE RECORDING OF THIS DOCUMENT)

- NOTES
- GROUND DISTANCES ARE SHOWN AND ARE IN TERMS OF U.S. SURVEY FEET.
 - PART OF THIS PLAT FALLS IN FLOODPLAIN ZONE 'AE' ACCORDING TO THE FEMA FIRM MAP 38017C0587G WITH AN EFFECTIVE DATE 1/16/2015. THE BASE FLOOD ELEVATION IN THIS AREA IS 893' (NAVD88) ACCORDING TO FEMA. CONTOUR INFORMATION SHOW IS DERIVED FROM FIELD SURVEY CONDUCTED APRIL 26, 2021.
 - SITE BENCHMARK IS THE SOUTHEAST FLANGE BOLT OF HYDRANT LOCATED APPROXIMATELY 865' WEST OF THE SOUTHWEST CORNER OF SUBJECT PROPERTY ON THE SOUTH SIDE OF 39 1/2 AVENUE N.W. ELEVATION = 894.26 NAVD 88



OWNER'S CERTIFICATE

KNOW ALL PERSONS BY THESE PRESENTS, That the MACO Leasing Inc., as owner of a parcel of land located in that part of the Southeast Quarter of Section 14 Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, being more particularly described as follows:

Lots 1 thru 3, Block 1 of DDK ADDITION, according to the recorded plat thereof on file and of record in the Office of the County Recorder, Cass County, North Dakota.

Containing 5.86 acres, more or less.

Said owners of the above described property, have caused the same to be surveyed and platted as "DAKOTA AIR PARTS ADDITION" to the City of Fargo, a replat of Lot 1 thru 3, Block 1, DDK ADDITION to the City of Fargo, Cass County, North Dakota, and do hereby dedicate to the public, for public use, all streets and utility easements as shown on this plat.

OWNER:
MACO Leasing Inc.
By: _____

State of North Dakota)
County of Cass) SS

On this ____ day of _____, 20____, appeared before me, _____, MACO Leasing Inc., known to me to be the person whose name is subscribed to the above certificate and did acknowledge to me that they executed the same as their own free act and deed.

Notary Public: _____

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT

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

Dated this ____ day of _____, 20____.

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

State of North Dakota)
County of Cass) SS

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

Notary Public, Cass County, North Dakota

CITY OF FARGO PLANNING COMMISSION APPROVAL

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

Rocky Schneider
Planning Commission Chair

State of North Dakota)
County of Cass) SS

On this ____ day of _____, 20____, before me, a notary public in and for said county, personally appeared Rocky Schneider, Planning Commission Chair, known to me to be the person described in and who executed the same as a free act and deed.

Notary Public, Cass County, North Dakota

FARGO CITY COMMISSION APPROVAL

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

Timothy J. Mahoney
Mayor

Attest: _____
Steven Sprague, City Auditor

State of North Dakota)
County of Cass) SS

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

Notary Public, Cass County, North Dakota

CITY OF FARGO ENGINEERING DEPARTMENT APPROVAL

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

Brenda E. Derrig, P.E.
City Engineer

State of North Dakota)
County of Cass) SS

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

Notary Public, Cass County, North Dakota

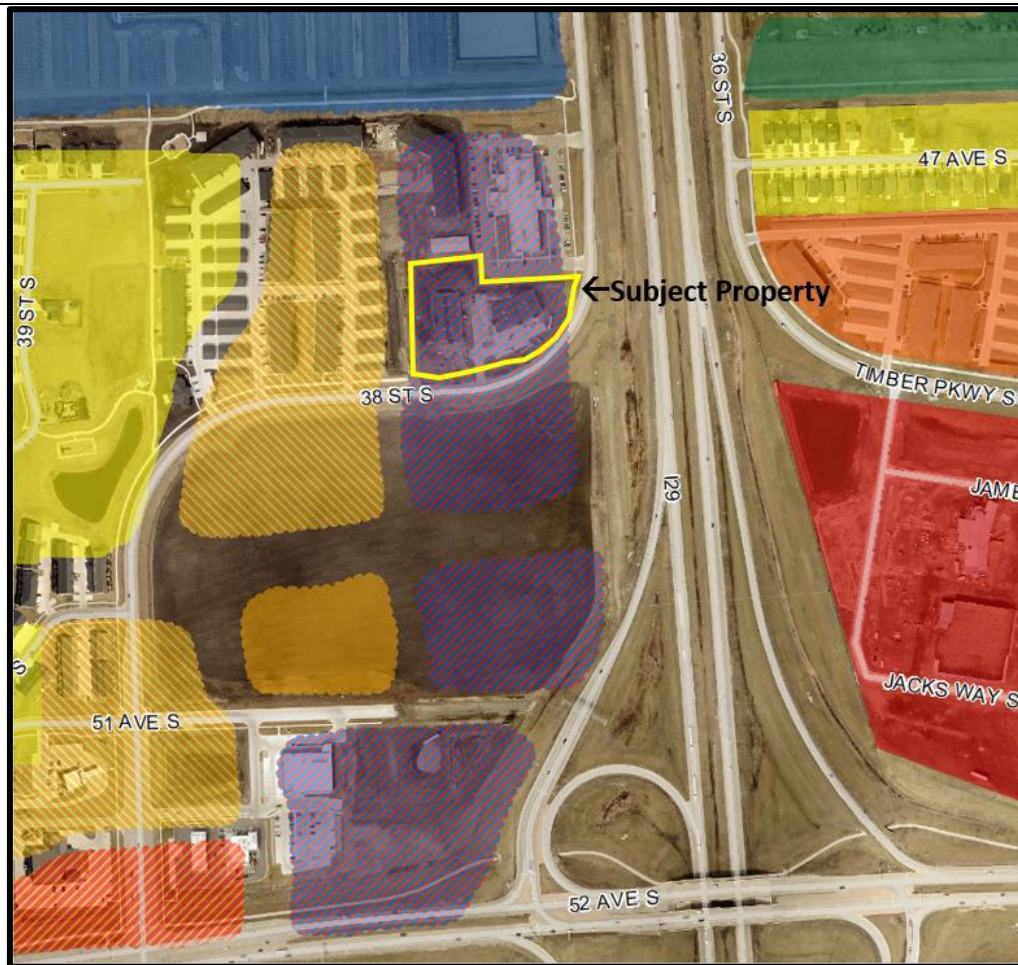
PRELIMINARY

Mead
& Hunt

Phone: 701-566-6450
meadhunt.com

PROJECT NO.
4447100-211214.01
SHEET 1 OF 1

City of Fargo Staff Report			
Title:	Edition Fourth Addition	Date:	11/30/2022
Location:	4803 & 4809 38 th Street South	Staff Contact:	Donald Kress, current planning coordinator
Legal Description:	Lot 1, Block 1, Edition Third Addition		
Owner(s)/Applicant:	Bluegrass Offices, LLC / Brian Pattengale—Houston Engineering	Engineer:	Houston Engineering, Inc.
Entitlements Requested:	Minor Subdivision (replat of Lot 1, Block 1, Edition Third Addition)		
Status:	Planning Commission Public Hearing: December 6, 2022		
Existing		Proposed	
Land Use: Office		Land Use: No change proposed	
Zoning: LC Limited Commercial		Zoning: No change proposed	
Uses Allowed: LC 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, certain telecommunications facilities, basic utilities		Uses Allowed: No change proposed.	
Maximum Lot Coverage Allowed: 55%		Maximum Lot Coverage Allowed: No change	
Proposal:			
<p>The applicant request one entitlement:</p> <ol style="list-style-type: none"> 1. A minor subdivision, to be known as Edition Fourth Addition, a replat of part of Lot 1, Block 1, Edition Third Addition <p>The subject property is located at 4803 & 4809 38th Street South and encompasses approximately 2.82 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 Zoning Districts and Land Uses:</p> <ul style="list-style-type: none"> • North: LC, with conditional overlay ordinance no 5023: medical use • East: Across 38th Street South Interstate 29 right of way • South: Across 38th Street South GC, General Commercial with conditional overlay ordinance no. 4636; undeveloped • West: MR-3, Multi-Dwelling Residential with conditional overlay ordinance no. 5045: Multi-dwelling residences 			
Area Plans:			
The subject property is designated as "Either Office or Commercial" in the 2003 Southwest Future Land Use Plan. The existing LC, Limited Commercial zoning is consistent with this land use designation. No zone change is proposed.			



2003 Southwest Future Land Use Plan
Land Use

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

Context

Neighborhood: The subject property is located in the Woodhaven neighborhood.

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

Parks: Cottagewood Park, 4896 38th Street South, is approximately 900 feet west of the subject, and provides amenities of a playground, grill and picnic tables, a shelter and recreational trails.

Pedestrian / Bicycle: There is a shared use path along the 38th Street South property frontage that is part of the metro-wide trails system.

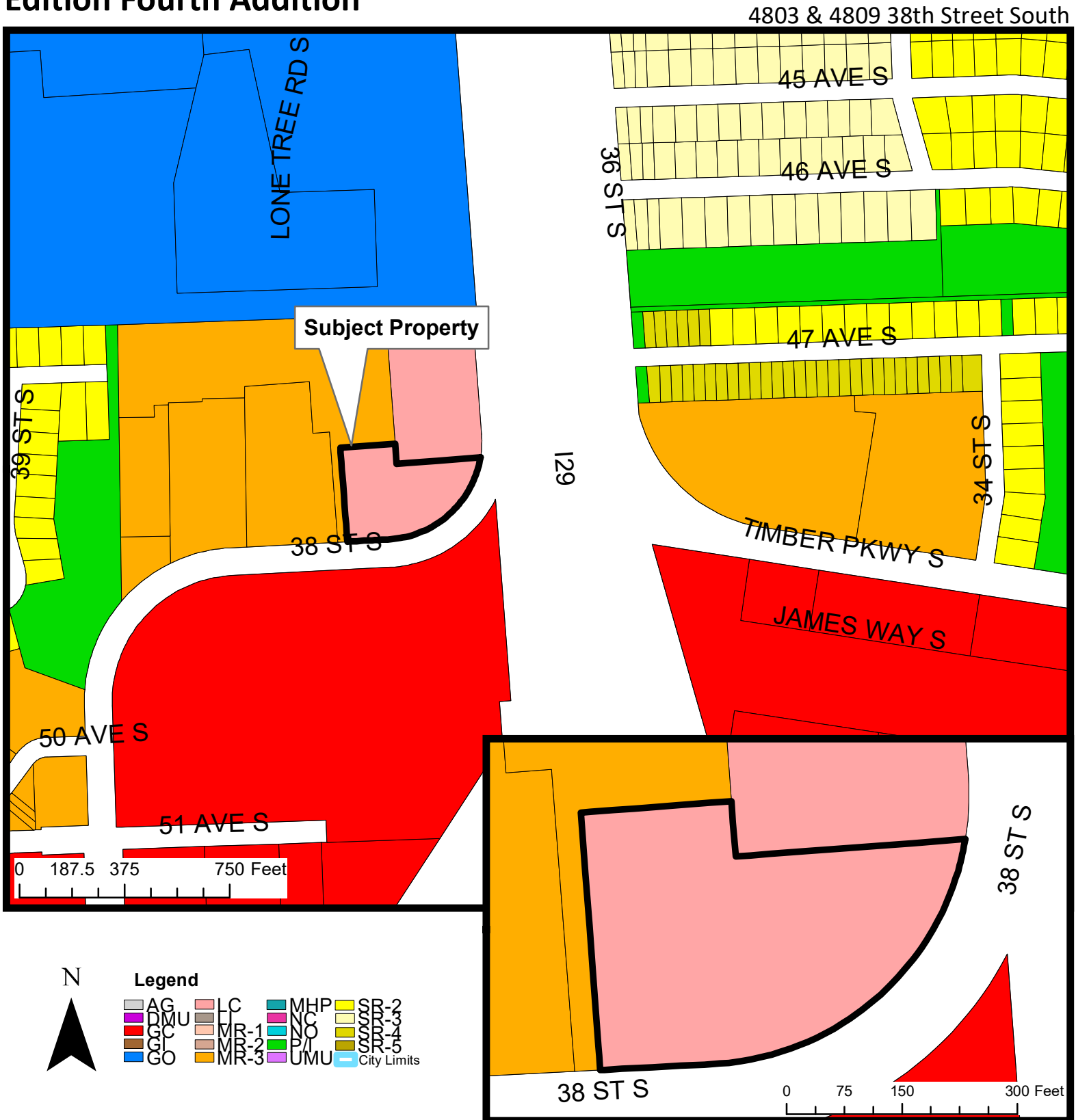
MATBUS Routes: The subject property is not located along a MATBUS Route.

(continued on next page)

Staff Analysis:
<p><u>MINOR SUBDIVISION</u></p> <p>The subdivision plat divides an existing platted lot into two lots. The subject property is developed with two office buildings; one building will be on each lot.</p> <p>The two lots will share the existing access onto 38th Street that is located between the two buildings, as they do now. An easement will be depicted on the final version of the plat. Access is also provided by a driveway along the west side of the subject property. This access is shared with the adjacent property to the north. The plat does not provide any additional access onto 38th Street South.</p> <p>Subdivision</p> <p>The LDC stipulates that the following criteria are met before a minor plat can be approved:</p> <p>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.</p> <p>The subject property is zoned LC, Limited Commercial. These land uses are consistent with the 2003 Southwest Future Land Use Plan designation of “Commercial or Medium/High Density Residential.” 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, Planning staff has received no comments or inquiries. The project has been reviewed by the city’s Planning, Engineering, Public Works, Inspections, and Fire Departments. (Criteria Satisfied)</p> <p>2. Section 20-0907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision.</p> <p>While this section of the LDC specifically addresses only major subdivision plats, staff believes it is important to note that any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure improvements are proposed to be spread by the front footage basis and storm sewer by the square footage basis as is typical with the City of Fargo assessment principles. (Criteria Satisfied)</p>
Staff Recommendation:
Suggested Motion: “To accept the findings and recommendations of staff and recommend approval to the City Commission of the proposed plat of Edition Fourth Addition , as outlined in the staff report, on the basis that it satisfactorily complies with the 2003 Southwest Future Land Use Plan, Standards of Article 20-06, and Section 20-0907.B. and C of the LDC and all other applicable requirements of the LDC.”
Planning Commission Recommendation: December 6 th 2022
Attachments:
<ol style="list-style-type: none"> 1. Zoning Map 2. Location Map 3. Preliminary Plat

Minor Subdivision

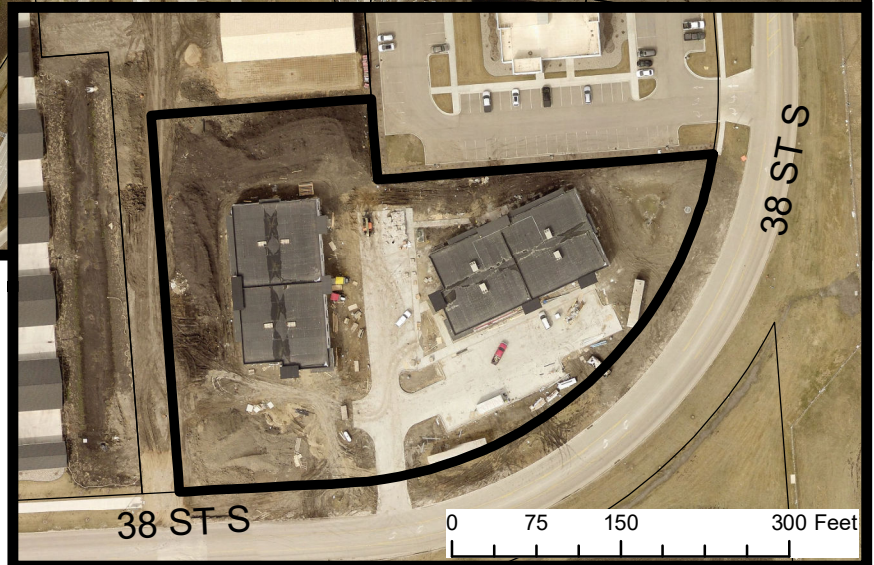
Edition Fourth Addition



Minor Subdivision

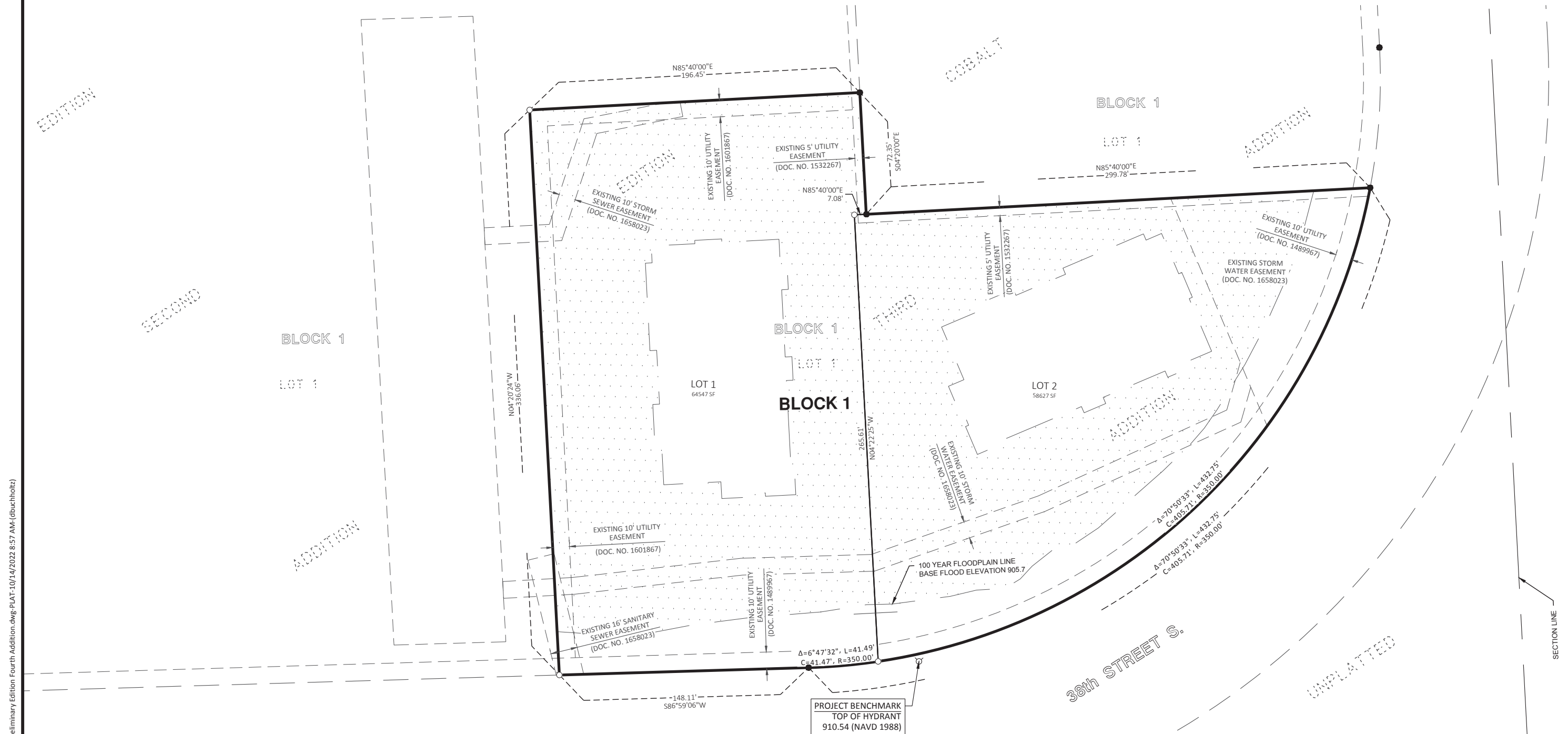
Edition Fourth Addition

4803 & 4809 38th Street South

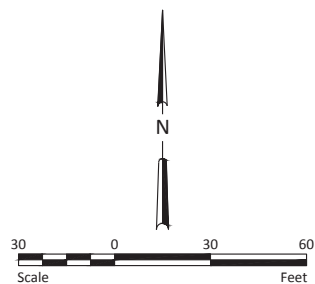


EDITION FOURTH ADDITION

A MINOR SUBDIVISION
BEING A REPLAT OF LOT 1, BLOCK 1, EDITION THIRD ADDITION
TO THE CITY OF FARGO,
CASS COUNTY, NORTH DAKOTA



H:\JBM\7400\7489\7489_0111\CAD\Plat\7489-0111 Preliminary Edition Fourth Addition.dwg-PLAT-10/14/2022 8:57 AM-(dbuchholz)



LEGEND

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

1. PROPERTY IS SITUATED IN ZONE AE (100-YEAR FLOODPLAIN) AS DEPICTED ON FEMA FIRM PANEL 38017C0786G AND 38017C0787G, DATED JANUARY 16, 2015.
2. EXISTING BUILDING FOOTPRINTS WERE REMOVED FROM THE FEMA SPECIAL FLOOD HAZARD AREA (ZONE AE) BY LOMR-F CASE NO. 21-08-1163A, DATED 10/18/21.
3. BEARINGS SHOWN ARE BASED ON CITY OF FARGO GROUND COORDINATE SYSTEM, DECEMBER 1992.
4. ELEVATIONS SHOWN ARE NAVD 1988.

EDITION FOURTH ADDITION
A MINOR SUBDIVISION
BEING A REPLAT OF LOT 1, BLOCK 1, EDITION THIRD ADDITION
TO THE CITY OF FARGO,
CASS COUNTY, NORTH DAKOTA

OWNERS' CERTIFICATE:

KNOW ALL PERSONS BY THESE PRESENTS: That Bluegrass Offices, LLP, a North Dakota limited liability partnership ("Bluegrass"), are the owners and proprietors of Lot 1, Block 1, Edition Third Addition, Fargo, Cass County, North Dakota.

Said tract of land contains 123,174 square feet, more or less.

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

OWNER:

Bluegrass Offices, LLP

By: Syndica, LLP

Its: Manager

Austin Morris, General Partner

State of _____)
) ss
County of _____)

On this _____ day of _____, 20____ before me personally appeared Austin Morris, General Partner of Syndica LLP, a North Dakota limited liability partnership, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same on behalf of said limited liability partnership.

Notary Public: _____

Surveyor's Certificate:

I, Curtis A. Skarphol, Professional Land Surveyor under the laws of the State of North Dakota, do hereby certify on this _____ day of _____, 20____, that the plat hereon is a true and correct representation of the survey thereof, that all distances are correctly shown on said plat in feet and decimals of a foot, and that the monuments for the guidance of future surveys have been placed in the ground as shown.

Curtis A. Skarphol
North Dakota PLS No. 4723

State of North Dakota)
) ss
County of Cass)

On this _____ day of _____, 20____, before me, a notary public within and for said county and state, personally appeared Curtis A. Skarphol, known to be the person described in and who executed the foregoing instrument and acknowledged that he executed same as his free act and deed.

Notary Public: _____

CITY ENGINEER'S APPROVAL:

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

Brenda E. Derrig, PE, City Engineer

State of North Dakota)
) ss
County of Cass)

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

Notary Public: _____

FARGO PLANNING COMMISSION APPROVAL:

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

Rocky Schneider, Chair
Fargo Planning Commission

State of North Dakota)
) ss
County of Cass)

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

Notary Public: _____

FARGO CITY COMMISSION APPROVAL:

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

Timothy J. Mahoney, Mayor

Attest: _____
Steven Sprague, City Auditor

State of North Dakota)
) ss
County of Cass)

On this _____ day of _____, 20____, before me personally appeared Timothy J. Mahoney, Mayor, City of Fargo; and Steven Sprague, City Auditor, City of Fargo, known to me to be the persons who are described in and who executed the within instrument and acknowledged to me that they executed the same on behalf of the City of Fargo.

Notary Public: _____

**City of Fargo
Staff Report**

Title:	The District of Fargo Fifth Addition	Date:	12/1/2022
Location:	3770 and 3788 55 th Avenue South	Staff Contact:	Luke Morman, Planner
Legal Description:	Lots 1 & 2, Block 1, District of Fargo Fourth Addition		
Owner(s)/Applicant:	RRCOM LL / Brian Pattengale (Houston Engineering)	Engineer:	Houston Engineering
Entitlements Requested:	Minor Subdivision (Replat of Lots 1 and 2, Block 1, District of Fargo Fourth Addition)		
Status:	Planning Commission Public Hearing: December 6, 2022		

Existing	Proposed
Land Use: Vacant	Land Use: Commercial
Zoning: LC, Limited Commercial, with a C-O, Conditional Overlay	Zoning: Unchanged
Uses Allowed: Allows colleges, community service, daycare centers of unlimited size, health care facilities, parks and open areas, religious institutions, safety services, basic utilities, offices, off premise advertising signs, commercial parking, retail sales and service, self-service storage, vehicle repair, limited vehicle service, and certain telecommunication facilities. Conditional Overlay (C-O) No. 5320 regulates signs, restricts land uses, and provides design standards.	Uses Allowed: Unchanged
Maximum Lot Coverage Allowed: 55%	Maximum Lot Coverage Allowed: Unchanged

Proposal:

The applicant is seeking approval of a minor subdivision located at 3770 and 3788 55th Avenue South. The request is to combine the existing into a one lot minor subdivision entitled The District of Fargo Fifth Addition.

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.

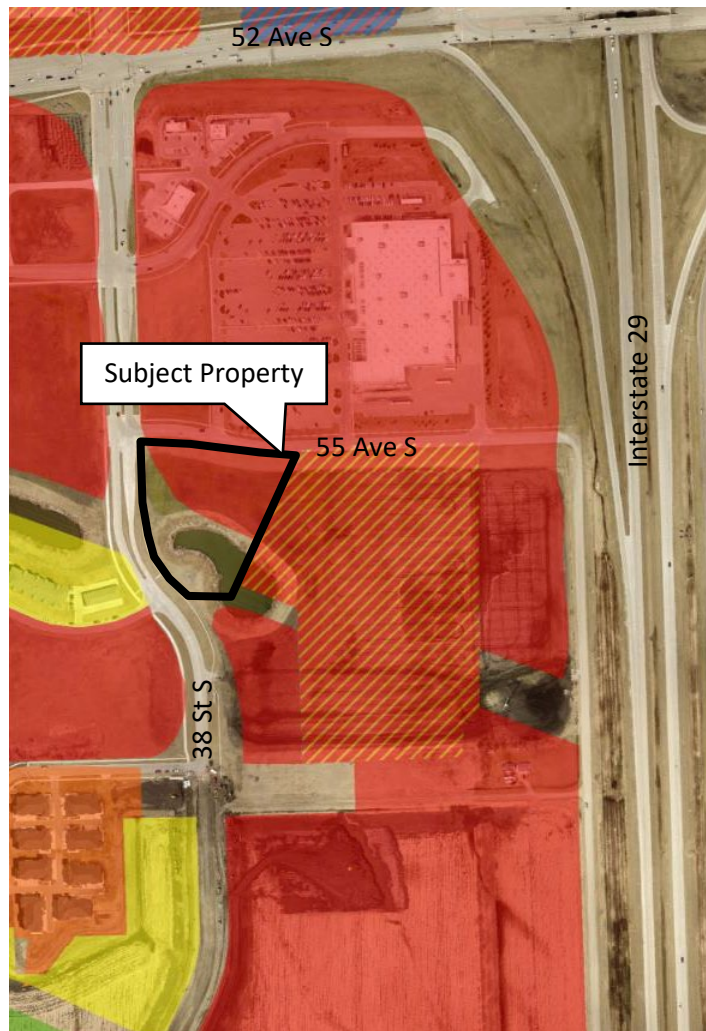
Surrounding Land Uses and Zoning Districts:

- North: Across 55 Ave S is LC, Limited Commercial with a C-O, Conditional Overlay, with vacant land and retail sales and service;
- East: MR-3, Multi-Dwelling Residential with a C-O, Conditional Overlay, with multi-dwelling structures;
- South: MR-3, Multi-Dwelling Residential with a C-O, Conditional Overlay, with multi-dwelling structures;
- West: Across 38 St S is LC, Limited Commercial with vacant land and MR-3, Multi-Dwelling Residential with multi-dwelling structures.

NOTE: The existing C-O (Ordinance No. 5320) shall carry through with this proposed minor subdivision and will not change.

Area Plans:

According to the 2007 Growth Plan, the subject property is designated as "Commercial." The current LC, Limited Commercial zoning is consistent with this land use designation.



Legend

- Park, Open Space and Trails
- Med High Res
- Low/Medium Density Residential
- Either Office or Commercial
- Commercial or Medium/High Density
- Commercial

Schools and Parks:

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

Neighborhood: The subject property is not currently located within a designated neighborhood, but is adjacent to the District Neighborhood to the north.

Parks: The Pines Park is approximately half a mile to the west of the subject property. Amenities include basketball court, playground, shelter, & trails.

Pedestrian / Bicycle: There are ten foot wide trails along 52nd Avenue South, eight foot wide trails along 53rd Avenue South, eight foot wide trails on the west sides of 42nd Street South and 38th Street South, and shared-use paths within The Pines Park that connect to the metro area trail system..

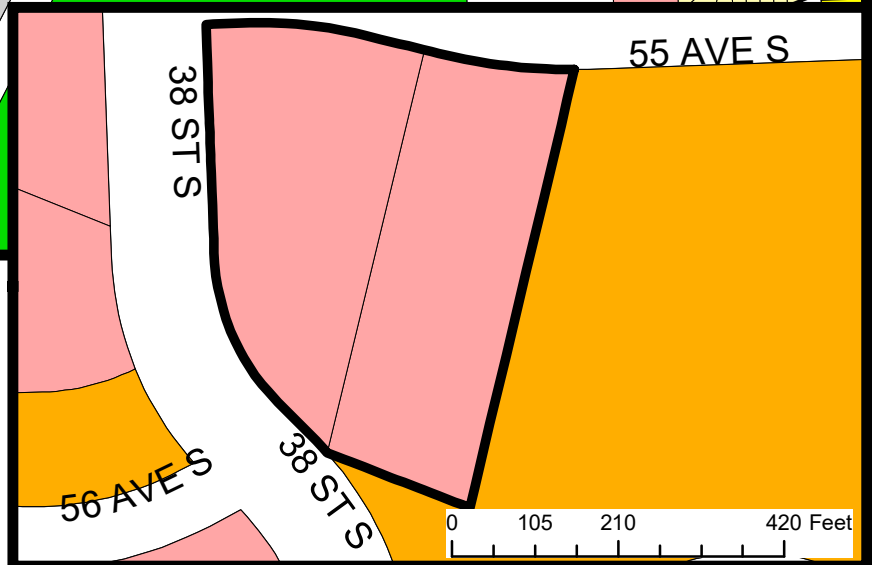
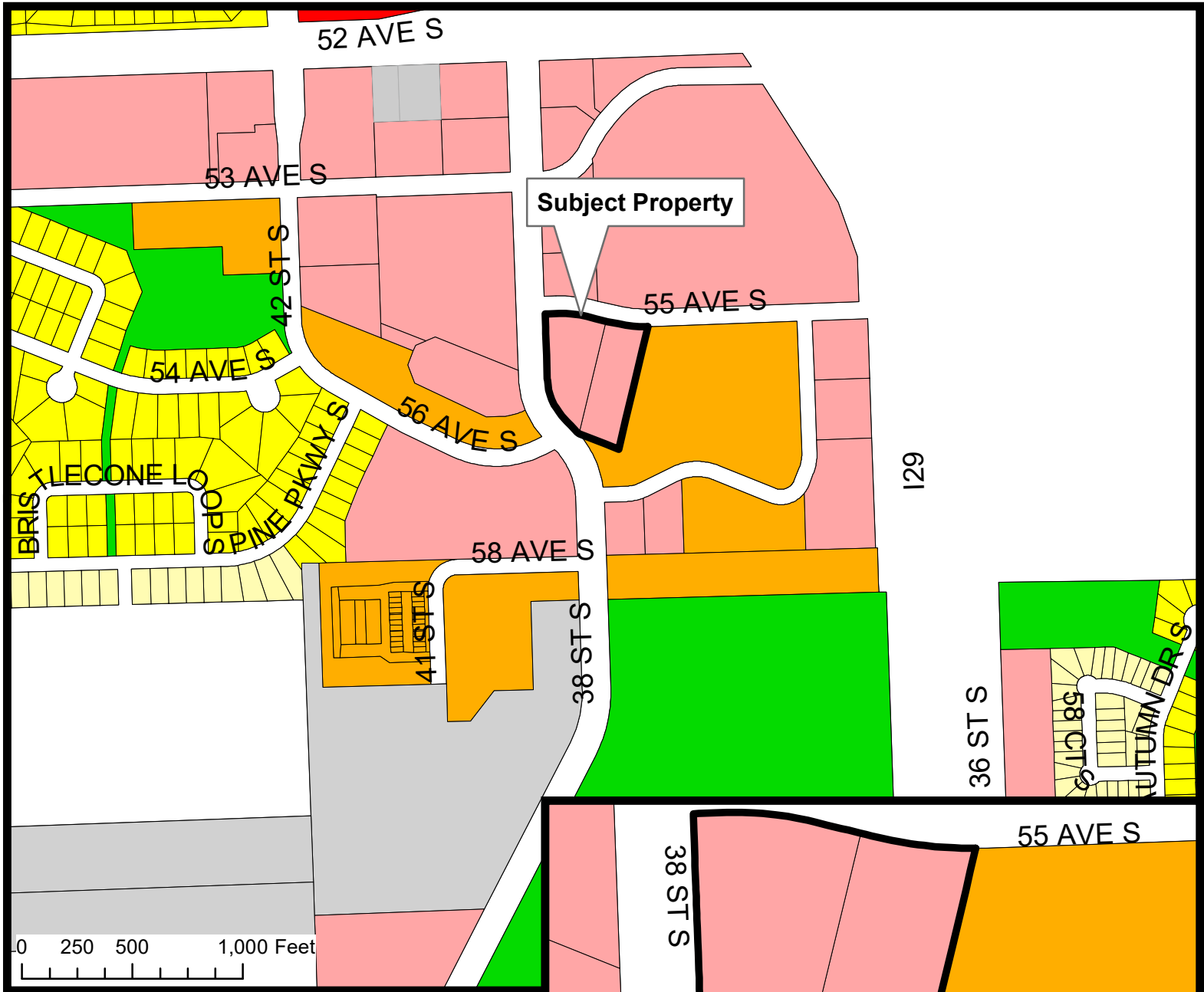
Bus Route: The subject property is within a quarter mile of route 18, which runs along 53th Ave S, 38th St S, 52nd Ave S, and 42nd St S. This route has a bus stop located at the Walmart at 3757 55 Ave S which is within a quarter mile of the subject property.

Staff Analysis:
<p>Minor Subdivision</p> <p>The LDC stipulates that the following criteria are met before a minor plat can be approved:</p> <ol style="list-style-type: none"> <p>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.</p> <p>This subdivision is intended to replat two existing lot into one new lot. The property within this plat is currently zoned LC, Limited Commercial, and no change is proposed. In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. To date, staff has received and responded to one inquiry about the application. Staff has reviewed this request and finds that this application complies with standards of Article 20-06 and all applicable requirements of the Land Development Code.</p> <p>(Criteria Satisfied)</p> <p>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.</p> <p>While this section of the LDC specifically addresses only major subdivision plats, staff believes it is important to note that any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure improvements are proposed to be spread by the front footage basis and storm sewer by the square footage basis as is typical with the City of Fargo assessment principals.</p> <p>(Criteria Satisfied)</p>
Staff Recommendation:
<p>Suggested Motion: "To accept the findings and recommendations of staff and hereby recommend approval to the City Commission the proposed subdivision plat, The District of Fargo Fifth Addition as outlined within the staff report, as the proposal complies with the 2007 Growth Plan, standards of Section 20-0907.B & C, standards of Article 20-06, and all other applicable requirements of the Land Development Code."</p>
Planning Commission Recommendation: December 6, 2022
Attachments:
<ol style="list-style-type: none"> 1. Zoning Map 2. Location Map 3. Preliminary Plat

Minor Subdivision

The District of Fargo Fifth Addition

3788 & 3770 55th Avenue South



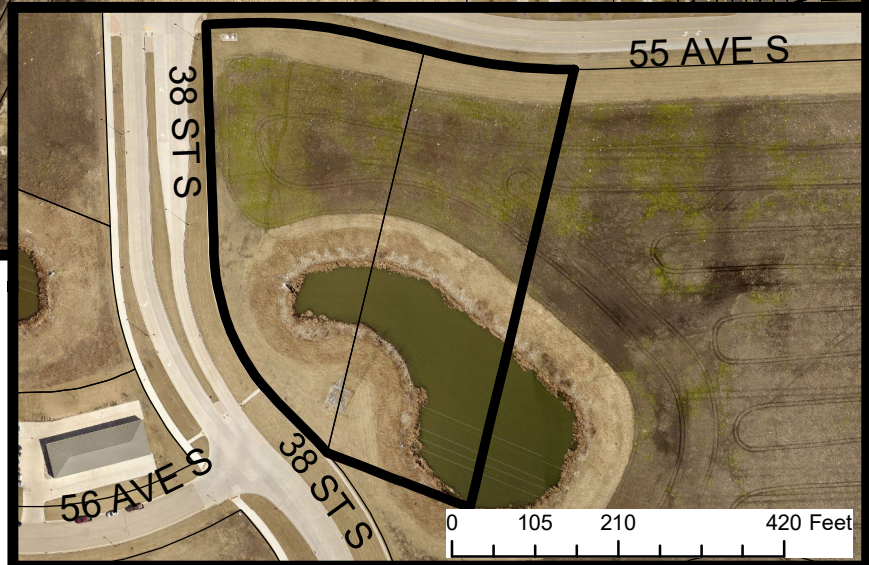
Legend

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

Minor Subdivision

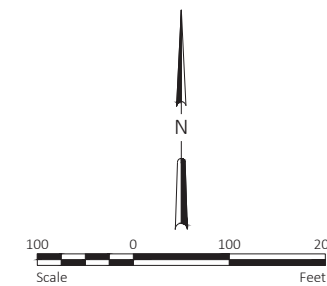
The District of Fargo Fifth Addition

3788 & 3770 55th Avenue South



THE DISTRICT OF FARGO FIFTH ADDITION

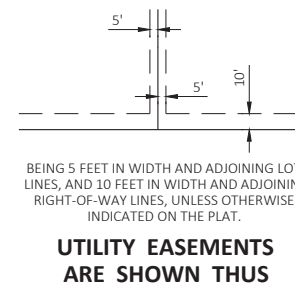
A MINOR SUBDIVISION
BEING A REPLAT OF LOTS 1 AND 2, BLOCK 1, THE DISTRICT OF FARGO FOURTH ADDITION
TO THE CITY OF FARGO,
CASS COUNTY, NORTH DAKOTA



LEGEND	
IRON MONUMENT FOUND	●
1/2" I.D. PIPE SET	○
MEASURED BEARING	N00°00'00"E
PLAT BEARING	(N00°00'00"E)
MEASURED DISTANCE	100.00'
PLAT DISTANCE	(100.00')
PLAT BOUNDARY	—————
LOT LINE	—————
UTILITY EASEMENT	- - - - -
EXISTING LOT LINE	- - - - -
EXISTING UTILITY EASEMENT	- - - - -
EXISTING NEGATIVE ACCESS EASEMENT (DOC. NO. 1263911)	▨

BEARINGS SHOWN ARE BASED ON THE CITY OF FARGO HORIZONTAL DATUM

- NOTES:
- 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.
 - PROPERTY IS SITUATED IN ZONE X (AREAS OF 0.2% ANNUAL CHANCE FLOOD; AREAS OF 1% ANNUAL CHANCE FLOOD WITH AVERAGE DEPTHS OF LESS THAN 1 FOOT OR WITH DRAINAGE AREAS LESS THAN 1 SQUARE MILE; AND AREAS PROTECTED BY LEVEES FROM 1% ANNUAL CHANCE FLOOD) AS DEPICTED ON FEMA FIRM PANELS 38017C0786G AND 38017C0787G, DATED JANUARY 16, 2015.
 - BASE FLOOD ELEVATION = 905.7' (NAVD 1988)



Curve Table					
Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	34.05	470.00	4°09'02"	N43°08'36"W	34.04
C2	210.98	280.00	43°10'20"	N23°37'56"W	206.02
C3	142.38	520.00	15°41'17"	S84°12'08"E	141.93
C4	167.81	680.00	14°08'23"	S83°25'41"E	167.39

H:\BM\7400\7489_0109\CAD\Plat\Preliminary District of Fargo Fifth Addition.dwg Layout-11/22/2022 3:30 PM (dbuchholtz)

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

OWNER'S CERTIFICATE:

NOW ALL PERSONS BY THESE PRESENTS: That RRCOM, LLC, a North Dakota limited liability company, is the owner and proprietor of the following described tract of land:
Lots 1, & 6, Block 1, The District Fourth Addition to the City of Fargo, Cass County, North Dakota.
Said tract contains 4.68 acres, more or less.
And that said party has caused the same to be surveyed and replatted as **The DISTRICT OF FARGO FIFTH ADDITION** to the City of Fargo, Cass County, North Dakota.

OWNER:

RRCOM, LLC

Nathan Skaff, Member of RRCOM, LLC

State of _____)
) ss
County of _____)

On this _____ day of _____, 20____ before me personally appeared Nathan Skaff, Member of RRCOM, LLC, a North Dakota limited liability company, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same on behalf of said limited liability company.

Notary Public: _____

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT:

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

Dated this _____ day of _____, 20____.

James A. Schlieman, Professional Land Surveyor No. 6086

State of North Dakota)
) ss
County of Cass)

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

Notary Public: _____

CITY ENGINEER'S APPROVAL:

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

Brenda E. Derrig, PE, City Engineer

State of North Dakota)
) ss
County of Cass)

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

Notary Public: _____

FARGO PLANNING COMMISSION APPROVAL:

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

Rocky Schneider, Chair
Fargo Planning Commission

State of North Dakota)
) ss
County of Cass)

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

Notary Public: _____

FARGO CITY COMMISSION APPROVAL:

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

Timothy J. Mahoney, Mayor

Attest: _____
Steven Sprague, City Auditor

State of North Dakota)
) ss
County of Cass)

On this _____ day of _____, 20____, before me personally appeared Timothy J. Mahoney, Mayor, City of Fargo; and Steven Sprague, City Auditor, City of Fargo, known to me to be the persons who are described in and who executed the within instrument and acknowledged to me that they executed the same on behalf of the City of Fargo.

Notary Public: _____

**City of Fargo
Staff Report**

Title:	Text Amendment	Date:	11/30/2022
Location:	Citywide and extra-territorial jurisdiction	Staff Contact:	Mark Williams
Owner(s)/Applicant:	City of Fargo/Zoning Administrator	Engineer:	N/A
Entitlements Requested:	Sections 20-0401, 20-0402, 20-0403, and 20-1202 of the Fargo Municipal Code (Land Development Code) relating to definitions, regulations, use standards, and references regarding adult entertainment centers and adult establishments.		
Status:	Planning Commission Public Hearing: December 6 th , 2022		

Proposed Text Amendment

The proposed text amendment would amend Sections 20-0401, 20-0402, 20-0403, and 20-1202 of the Fargo Municipal Code (Land Development Code) relating to definitions, regulations, use standards, and references regarding adult entertainment centers and adult establishments. Specifically, the edits listed are proposed, using the strike-through/underline format. Existing wording that is being eliminated is shown by ~~strike-through~~; new wording being added is shown by underline.

Section 20-0401 (Use Table) of Chapter 20 (Land Development Code) is hereby amended to read as follows:

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	SS RR 4 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
...																						
Commercial																						
Adult Entertainment Center Establishment	an <u>adult arcade</u> , adult bookstore, adult cinema, or adult entertainment facility, <u>or sexual device shop</u>		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P/C [A]	P/C [A]	P/C [A]	-	
...																						

Section 20-0402(A) of Chapter 20 (Land Development Code) is hereby amended to read as follows:

A. Adult Entertainment Center Establishment

Adult ~~Entertainment Centers~~ establishments are regulated based upon the documents, rationale, and findings set forth in the ordinance adopting this section. The city hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of adult establishments, including the judicial opinions and reports related to such secondary effects. Adult establishments shall be subject to all of the following standards:

1. An adult ~~entertainment center~~ establishment shall not be located within 1,250 feet of any religious institution, school, park or recreation facility (bike paths excluded), SR zoning district, MR zoning district or residential planned unit development.
2. An adult ~~entertainment center~~ establishment shall not be located within 1,250 feet of any establishment that dispenses alcohol on-premises and is licensed in accordance with Chapter 25 of the Fargo Municipal Code.
3. An adult ~~entertainment center~~ establishment shall not be located within ~~4,250~~ 750 feet of any other adult ~~entertainment center~~ establishment.
4. For the purpose of subsections (1), (2), and (3), distance shall be measured from the closest part of any structure, including signs and roof overhangs, used in conjunction with the adult establishment to the closest point on a property boundary of the land use(s) identified in those subsections. Where a use identified in those subsections is located in a multi-tenant development, the distance shall be measured to the closest part of the tenant space occupied by that use rather than the property line of the entire

development. The zoning and/or use of land in adjacent jurisdictions shall not disqualify any location within the City of Fargo from being available to an adult establishment.

5. Notwithstanding any provision in the Fargo Municipal Code to the contrary, an adult establishment in a location that satisfies the location standards in the Land Development Code shall not be deemed noncompliant by virtue of the subsequent establishment or expansion of another land use or zoning district identified in subsections (1), (2), or (3).
46. An adult ~~entertainment center~~ establishment must prohibit entrance by persons less than 18 years of age.
5. An adult ~~entertainment center~~ may not display any signs visible from the exterior of the adult entertainment center, except for signs identifying it as an adult entertainment center, adult bookstore, adult entertainment facility, adult cinema or combination thereof.
6. No materials depicting specified sexual activities or specified anatomical areas shall be visible from the exterior of an adult entertainment center.
7. The business premises of an adult ~~entertainment center~~ establishment that are generally open to its patrons are open equally at the same time to members of any law enforcement agency who may wish to enter thereon provided the entry is in the course of the discharge of the law enforcement officer's duties.

Section 20-0402(T)(3) of Chapter 20 (Land Development Code) is hereby amended to read as follows:

T. Non-farm Commercial Uses

...

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

Section 20-0403(C)(5)(f) of Chapter 20 (Land Development Code) is hereby amended to read as follows:

C. Home Occupations

...

5. **Prohibited Uses.**

...

f. Adult ~~Entertainment Center Uses~~ Establishments

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

Section 20-1202 of Chapter 20 (Land Development Code) is hereby amended to read as follows:

§20-1202 – Words Defined

(NOTE: In the interest of brevity, only those terms related to adult uses are listed below, rather than the entire list of definitions. Additions to the list of definitions have resulted in renumbering as noted)

The following terms shall have the meanings ascribed to them:

2. **Adult Arcade:** A commercial establishment to which the public is permitted or invited that maintains booths or rooms smaller than 100 square feet, wherein image-producing devices are regularly maintained to show images characterized by their emphasis upon matter exhibiting "specified sexual activities" or "specified anatomical areas."
23. **Adult Bookstore:** An enclosed building having as a substantial or significant portion of its stock in trade, books, magazines, or other periodicals that are distinguished or characterized by their emphasis on matter depicting or describing specified sexual activities or specified anatomical areas. A commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or

photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas." A "principal business activity" exists where the commercial establishment meets any one or more of the following criteria:

- a. At least 30% of the establishment's displayed merchandise consists of said items, or
- b. At least 30% of the establishment's revenues derive from the sale or rental, for any form of consideration, of said items, or
- c. The establishment maintains at least 30% of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in "floor space" maintained for the display, sale, or rental of said items); or
- d. The establishment maintains at least five hundred square feet (500 sq. ft.) of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in "floor space" maintained for the display, sale, or rental of said items); or
- e. The establishment regularly offers for sale or rental at least five hundred (500) of said items; or
- f. The establishment regularly makes said items available for sale or rental and holds itself out, in any medium, as an establishment that caters to adult sexual interests.

In this definition, "floor space" means the floor area inside an establishment that is visible or accessible to patrons for any reason, excluding restrooms.

- 34. **Adult Cinema:** An enclosed building used on a regular basis for presenting pictorial materials or other visual images by way of direct or indirect projection, which materials are distinguished or characterized by an emphasis on the depiction of specified sexual activities or specified anatomical areas, for observation by patrons therein in return for the payment of a consideration, irrespective of the number of patrons who may be able to view the presentation at one time. A commercial establishment to which the public is permitted or invited that maintains viewing rooms that are 100 square feet or larger wherein films or videos characterized by their emphasis upon "specified sexual activities" or "specified anatomical areas" are regularly shown.
- 45. **Adult Entertainment Facility:** An enclosed building wherein an admission is charged for entrance, or food or nonalcoholic beverages are sold or intended for consumption, and wherein may be observed live presentation of entertainment distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas. A nightclub, juice bar, restaurant, or similar commercial establishment that regularly offers live semi-nude conduct. No establishment shall avoid classification as an adult entertainment facility by offering nude conduct.
- 56. **Adult Entertainment Center Establishment:** An Adult Arcade, Adult Bookstore, Adult Cinema, Adult Entertainment Facility, or a Sexual Device Shop, or any combination thereof.
- 17. **Characterized by:** Describing the essential character or quality of an item. As applied in this chapter, no business shall be classified as an adult establishment by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.
- 44. **Nudity or Nude Conduct:** The showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola. For purposes of this chapter, a "fully opaque covering" must not consist of any substance that can be washed or peeled off the skin (such as paint, make-up, or latex).
- 55. **Regional Shopping Mall (Enclosed):** A group of retail and other commercial establishments that is planned, developed, and managed as a single property, with on-site parking provided around the perimeter of the shopping center, and that is generally at least forty acres in size and flanked by two or more large "anchor" stores, such as department stores. The common walkway or "mall" is enclosed, climate-controlled and lighted, usually with an inward orientation of the stores facing the walkway.
- 58. **Regularly:** The consistent and repeated doing of an act on an ongoing basis.

62. **Semi-Nude or Semi-Nudity:** The showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks, with less than a fully opaque covering. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part. For purposes of this chapter, a “fully opaque covering” must not consist of any substance that can be washed or peeled off the skin (such as paint, make-up, or latex).
64. **Sexual Device:** Any three (3) dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, nipple, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily designed for protection against sexually transmitted diseases or for preventing pregnancy.
65. **Sexual Device Shop:** A commercial establishment:
- a. where more than 100 sexual devices are regularly made available for sale or rental; or
 - b. where sexual devices are regularly made available for sale or rental and the establishment regularly gives special prominence to sexual devices (e.g., by using lighted display cases for sexual devices, having a large variety of sexual devices, having a room or discrete area of the establishment significantly devoted to sexual devices, or positioning sexual devices near cash registers or similar points of sale).
- This definition shall not be construed to include an establishment located within an enclosed regional shopping mall, an establishment containing a pharmacy that employs a licensed pharmacist to fill prescriptions on the premises, or an establishment that is enrolled in Medicare as a durable medical equipment, prosthetics, and supplies (DMEPOS) supplier.
78. **Viewing Room:** The room or booth where a patron of an adult establishment would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video on an image-producing device.

Background and Existing Ordinances.

The Land Development Code's (LDC) regulations regarding adult uses have recently come to staff's attention. It appears there has been no update, revision, or amendment to the sections of the LDC that relate to the adult uses since the LDC's adoption in 1998. Further, the LDC's adult use regulations are almost verbatim the adult use regulations adopted in 1996 (Ordinance No. 2807). Review by staff and outside consultants specializing in adult use regulation has indicated that the area of adult use regulation has evolved considerably since the late 1990's, and an update to the LDC's adult use regulations is timely and appropriate. Thus, staff brings forward these proposed amendments.

Purpose

It is the purpose of this ordinance to regulate adult establishments in order to promote the health, safety, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of adult establishments within the city. The text amendments update adult use definitions and set forth the City's reliance on secondary effects as the rationale for regulating such establishments, which aligns with governing law.

Staff Analysis:

Approval Criteria

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

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

Section 20-0104 of the LDC stipulates that the purpose and intent of the Land Development Code is to implement Fargo's Comprehensive Plan and related policies in a manner that protects the health, safety, and general welfare of the citizens of Fargo. The ability to establish zoning regulations to protect health, safety, and general welfare is granted to the City by the State of North Dakota. The proposed amendment is consistent with the intent and purpose of the LDC because adult establishments, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, human trafficking, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. Regulating adult establishments to reduce and abate secondary effects served to protect public health, safety, and welfare. **(Criteria Satisfied)**

- 2. The amendment must not adversely affect the public health, safety, or general welfare;**
Staff finds that the amendment does not adversely affect, but rather promotes, the public health, safety, or general welfare. **(Criteria Satisfied)**
- 3. The amendment is necessary because of changed or changing social values, new planning concepts or other social or economic conditions in the areas affected.**
Staff finds that the proposed amendment is necessary because, as noted above, the area of adult use regulation has evolved considerably since the LDC's regulations regarding adult uses were adopted in 1998. The amendments are proposed to bring the LDC's regulation of adult uses into line with modern planning and regulatory practices and intervening caselaw that has developed over time. **(Criteria Satisfied)**

Staff Recommendation:

Suggested Motion "To accept the findings and recommendations of staff and hereby recommend approval to the City Commission of the proposed text amendment to Sections 20-0401, 20-0402, 20-0403, and 20-1202 of the Fargo Municipal Code (Land Development Code) relating to definitions, regulations, use standards, nonconformities, and references regarding adult entertainment centers and adult establishments."

Planning Commission Recommendation: December 6th, 2022

Attachments:

1. Amendments to Sections 20-0401, 20-0402, 20-0403, and 20-1202 of the Land Development Code with proposed amendments

AN ORDINANCE AMENDING SECTIONS 20-0401, 20-0402,
20-0403, AND 20-1202 OF THE FARGO MUNICIPAL CODE
(LAND DEVELOPMENT CODE) RELATING TO ADULT
ENTERTAINMENT CENTERS AND ADULT
ESTABLISHMENTS

WHEREAS, adult establishments require special supervision from the public safety agencies of the city in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the city; and

WHEREAS, the Board of City Commissioners finds that adult establishments, as a category of establishments, are frequently used for unlawful sexual activities, including prostitution, and sexual liaisons of a casual nature; and

WHEREAS, there is convincing documented evidence that adult establishments, as a category of establishments, have deleterious secondary effects and are often associated with crime and adverse effects on surrounding properties; and

WHEREAS, the board desires to protect the health, safety, and welfare of the citizenry; protect the citizens from crime; preserve the quality of life; preserve the character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, certain sexually oriented products and services offered to the public are recognized as not inherently expressive and not protected by the First Amendment, *see, e.g., Heideman v. South Salt Lake City*, 348 F.3d 1182, 1195 (10th Cir. 2003) (“On its face, the Ordinance applies to all ‘sexually oriented businesses,’ which include establishments such as ‘adult motels’ and ‘adult novelty stores,’ which are not engaged in expressive activity.”); *Sewell v. Georgia*, 233 S.E.2d 187 (Ga. 1977), *dismissed for want of a substantial federal question*, 435 U.S. 982 (1978) (sexual devices); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 224 (1990) (escort services and sexual encounter services); and

WHEREAS, there is documented evidence of adult establishments, including adult bookstores and adult video stores, manipulating their inventory and/or business practices to avoid regulation while retaining their essentially “adult” nature, *see, e.g., Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001) (finding retail adult store’s “argument that it is not an adult entertainment establishment” to be “frivolous at best”); *People ex rel. Deters v. The Lion’s Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005) (noting that “the accuracy and credibility” of the evidence on inventory in adult retail store was suspect, and that testimony was “less than candid” and “suggested an intention to obscure the actual amount of sexually explicit material sold”); *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999) (documenting manipulation of inventory to avoid adult classification); *Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002) (noting that “the nonadult video selections appeared old and several of its display cases were covered with cobwebs”); *HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 889 F.3d 432

(7th Cir. 2018); *HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 265 F. Supp. 3d 873 (S.D. Ind. 2017); and

WHEREAS, the manner in which an establishment holds itself out to the public is a reasonable consideration in determining whether the establishment is an adult establishment, *see, e.g., East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360, 365 (6th Cir. 2009) (“A prominent display advertising an establishment as an ‘adult store,’ moreover, is a more objective indicator that the store is of the kind the Act aims to regulate, than the mere share of its stock or trade comprised of adult materials.”); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 261 (1991) (Scalia, J., concurring in part and dissenting in part) (“[I]t is most implausible that any enterprise which has as its constant intentional objective the sale of such [sexual] material does not advertise or promote it as such.”); *see also Johnson v. California State Bd. of Accountancy*, 72 F.3d 1427 (9th Cir. 1995) (rejecting First Amendment challenge to statute which used the phrase “holding out” to identify conduct indicative of the practice of public accountancy, but did not ban any speech); *Spencer v. World Vision, Inc.*, 633 F.3d 723 (9th Cir. 2010) (O’Scannlain, J., concurring) (concluding that whether an entity “holds itself out” as religious is a neutral factor and that factor helps to ensure that the entity is a *bona fide* religious entity); and

WHEREAS, the city intends to regulate such businesses as adult establishments through narrowly tailored regulations designed to serve its substantial government interest in protecting the health, safety, and welfare of the community, including by preventing the negative secondary effects of adult establishments; and

WHEREAS, the city recognizes its constitutional duty to interpret and construe its laws to comply with constitutional requirements as they are announced; and

WHEREAS, the board wishes to update the city’s definitions and land use regulations for adult establishments; and

WHEREAS, with the passage of any ordinance, the city and the board of city commissioners accept as binding the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the United States and North Dakota Constitutions, the North Dakota Century Code, and the North Dakota Rules of Civil and Criminal Procedure; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the U.S. Constitution or the North Dakota Constitution, but to enact legislation to further the content-neutral governmental interests of the city, to wit, the controlling of secondary effects of adult establishments.

NOW, THEREFORE,

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

Section 1. Amendment.

Section 20-0401 of Chapter 20 (Land Development Code) is hereby amended so that the row for “Adult Entertainment Center” in Table 20-0401 is amended to read as shown in Exhibit 1 attached hereto.

Section 2. Amendment.

Section 20-0402(A) of Chapter 20 (Land Development Code) is hereby amended to read as follows:

A. Adult Entertainment Center Establishment

~~Adult Entertainment Centers~~ establishments are regulated based upon the documents, rationale, and findings set forth in the ordinance adopting this section. The city hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of adult establishments, including the judicial opinions and reports related to such secondary effects. Adult establishments shall be subject to all of the following standards:

1. An adult ~~entertainment center~~ establishment shall not be located within 1,250 feet of any religious institution, school, park or recreation facility (bike paths excluded), SR zoning district, MR zoning district or residential planned unit development.
2. An adult ~~entertainment center~~ establishment shall not be located within 1,250 feet of any establishment that dispenses alcohol on-premises and is licensed in accordance with Chapter 25 of the Fargo Municipal Code.
3. An adult ~~entertainment center~~ establishment shall not be located within ~~1,250~~ 750 feet of any other adult ~~entertainment center~~ establishment.
4. For the purpose of subsections (1), (2), and (3), distance shall be measured from the closest part of any structure, including signs and roof overhangs, used in conjunction with the adult establishment to the closest point on a property boundary of the land use(s) identified in those subsections. Where a use identified in those subsections is located in a multi-tenant development, the distance shall be measured to the closest part of the tenant space occupied by that use rather than the property line of the entire development. The zoning and/or use of land in adjacent jurisdictions shall not disqualify any location within the City of Fargo from being available to an adult establishment.
5. Notwithstanding any provision in the Fargo Municipal Code to the contrary, an adult establishment in a location that satisfies the location standards in the Land Development Code shall not be deemed noncompliant by virtue of the subsequent establishment or expansion of another land use or zoning district identified in subsections (1), (2), or (3).
- ~~46. An adult entertainment center establishment must prohibit entrance by persons less than 18 years of age.~~
- ~~5. An adult entertainment center may not display any signs visible from the exterior of the adult entertainment center, except for signs identifying it as an adult entertainment center, adult bookstore, adult entertainment facility, adult cinema or combination thereof.~~
- ~~6. No materials depicting specified sexual activities or specified anatomical areas shall be visible from the exterior of an adult entertainment center.~~

ITEM 5 12/06/22 Planning Commission Agenda

7. The business premises of an adult ~~entertainment center~~ establishment that are generally open to its patrons are open equally at the same time to members of any law enforcement agency who may wish to enter thereon provided the entry is in the course of the discharge of the law enforcement officer's duties.

Section 3. Amendment.

Section 20-0402(T)(3) of Chapter 20 (Land Development Code) is hereby amended to read as follows:

T. Non-farm Commercial Uses

...

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

Section 4. Amendment.

Section 20-0403(C)(5)(f) of Chapter 20 (Land Development Code) is hereby amended to read as follows:

C. Home Occupations

...

5. **Prohibited Uses.**

...

f. ~~Adult Entertainment Center Uses~~ Establishments

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

Section 5. Amendment.

Section 20-1202 of Chapter 20 (Land Development Code) is hereby amended to read as follows:

§20-1202 – Words Defined

The following terms shall have the meanings ascribed to them:

- 1
2 1. **Accessory Use:** a use or structure that:
 - 3 a. Is clearly incidental to and customarily found in connection with a principal
 - 4 structure or use;
 - 5 b. Is subordinate in area, extent and purpose to the principal building or use;
 - 6 c. Contributes to the comfort, convenience or necessity of occupants of the principal
 - 7 use; and
 - 8 d. Is located on the same lot and in the same zoning district as the principal use.
- 9
10 2. **Adult Arcade:** A commercial establishment to which the public is permitted or invited
11 that maintains booths or rooms smaller than 100 square feet, wherein image-producing
12 devices are regularly maintained to show images characterized by their emphasis upon
13 matter exhibiting “specified sexual activities” or “specified anatomical areas.”
- 14
15 23. **Adult Bookstore:** ~~An enclosed building having as a substantial or significant portion of~~
16 ~~its stock in trade, books, magazines, or other periodicals that are distinguished or~~
17 ~~characterized by their emphasis on matter depicting or describing specified sexual~~
18 ~~activities or specified anatomical areas. A commercial establishment which, as one of~~
19 ~~its principal business activities, offers for sale or rental for any form of consideration~~
20 ~~any one or more of the following: books, magazines, periodicals or other printed~~
21 ~~matter, or photographs, films, motion pictures, video cassettes, compact discs, digital~~
22 ~~video discs, slides, or other visual representations which are characterized by their~~
23 ~~emphasis upon the display of “specified sexual activities” or “specified anatomical~~
24 ~~areas.” A “principal business activity” exists where the commercial establishment meets~~
25 ~~any one or more of the following criteria:~~
 - 26 a. At least 30% of the establishment’s displayed merchandise consists of said items,
 - 27 or
 - 28 b. At least 30% of the establishment’s revenues derive from the sale or rental, for any
 - 29 form of consideration, of said items, or
 - 30 c. The establishment maintains at least 30% of its floor space for the display, sale,
 - 31 and/or rental of said items (aisles and walkways used to access said items, as well
 - 32 as cashier stations where said items are rented or sold, shall be included in “floor
 - 33 space” maintained for the display, sale, or rental of said items); or
 - 34 d. The establishment maintains at least five hundred square feet (500 sq. ft.) of its
 - 35 floor space for the display, sale, and/or rental of said items (aisles and walkways
 - 36 used to access said items, as well as cashier stations where said items are rented or
 - 37 sold, shall be included in “floor space” maintained for the display, sale, or rental of
 - 38 said items); or
 - 39 e. The establishment regularly offers for sale or rental at least five hundred (500) of
 - 40 said items; or
 - 41 f. The establishment regularly makes said items available for sale or rental and holds
 - 42 itself out, in any medium, as an establishment that caters to adult sexual interests.
 - 43 In this definition, “floor space” means the floor area inside an establishment that is
 - 44 visible or accessible to patrons for any reason, excluding restrooms.
 - 45

- 1 ~~34.~~ **Adult Cinema:** ~~An enclosed building used on a regular basis for presenting pictorial~~
2 ~~materials or other visual images by way of direct or indirect projection, which materials~~
3 ~~are distinguished or characterized by an emphasis on the depiction of specified sexual~~
4 ~~activities or specified anatomical areas, for observation by patrons therein in return for~~
5 ~~the payment of a consideration, irrespective of the number of patrons who may be able~~
6 ~~to view the presentation at one time. A commercial establishment to which the public is~~
7 ~~permitted or invited that maintains viewing rooms that are 100 square feet or larger~~
8 ~~wherein films or videos characterized by their emphasis upon “specified sexual~~
9 ~~activities” or “specified anatomical areas” are regularly shown.~~
- 10
- 11 ~~45.~~ **Adult Entertainment Facility:** ~~An enclosed building wherein an admission is charged~~
12 ~~for entrance, or food or nonalcoholic beverages are sold or intended for consumption,~~
13 ~~and wherein may be observed live presentation of entertainment distinguished or~~
14 ~~characterized by an emphasis on matters depicting, describing or relating to specified~~
15 ~~sexual activities or specified anatomical areas. A nightclub, juice bar, restaurant, or~~
16 ~~similar commercial establishment that regularly offers live semi-nude conduct. No~~
17 ~~establishment shall avoid classification as an adult entertainment facility by offering~~
18 ~~nude conduct.~~
- 19
- 20 ~~56.~~ **Adult Entertainment Center Establishment:** ~~An Adult Arcade, Adult Bookstore,~~
21 ~~Adult Cinema, Adult Entertainment Facility, or a Sexual Device Shop. or any~~
22 ~~combination thereof.~~
- 23
- 24 ~~67.~~ **Airport:** Hector International Airport.
- 25
- 26 ~~78.~~ **Airport Elevation:** The established elevation of the highest point on the usable landing
27 area.
- 28
- 29 ~~89.~~ **Airport Hazard:** Any structure or tree or use of land which obstructs the airspace
30 required for the flight of aircraft in landing or taking off at the airport or is otherwise
31 hazardous to such landing or taking-off of aircraft.
- 32
- 33 ~~910.~~ **All Weather Surface:** Any surface that is durable and reasonably free of dust or mud.
34 Such surfaces shall include, but not be limited to concrete, asphalt, paving blocks, brick,
35 and other similar materials intended for outdoor motor vehicle use. They shall not
36 include dirt, grass, or gravel. Crushed concrete, asphalt millings, or approved similar
37 materials are acceptable in LI or GI zoning districts in areas used for rear-yard
38 circulation and/or loading, but not used for required parking.
- 39
- 40 ~~1011.~~ **Animal Confinement:** Any lot or building or combination of lots or buildings
41 intended for the confined feeding, breeding, raising, or holding of animals and
42 specifically designed as a confinement area in which manure may accumulate, or where
43 the concentration of animals is such that vegetative cover cannot be maintained within
44 the enclosure.
- 45

- ~~11~~12. **Antenna Array:** One or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include omni-directional antenna (rod), directional antenna (panel) and parabolic antenna (disc). It does not include a “telecommunications support structure.”
- ~~12~~13. **Block:** An area of land bounded entirely by streets.
- ~~13~~14. **Boundary Line Adjustment:** An adjustment in the boundary between adjoining lots if the adjustment does not create an additional or substandard lot or necessitate new roadway construction or right-of-way dedication.
- ~~14~~15. **Building:** A structure having a roof supported by columns or walls.
- ~~15~~16. **Building Coverage:** The area of a lot covered by buildings (principal and accessory) or roofed areas, as measured along the outside wall at ground level, and including all projections, other than open porches, fire escapes, canopies and the first three feet of a roof overhang.
17. **Characterized by:** Describing the essential character or quality of an item. As applied in this chapter, no business shall be classified as an adult establishment by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.
- ~~16~~18. **Decision-Making Body:** A person or group authorized in this Land Development Code to conduct land use reviews and take action on the matter under review.
- ~~17~~19. **Density:** The number of dwelling units for each acre of land. See also Sec. 20-0504. Density may also be expressed as the amount of land area per dwelling unit.
- ~~18~~20. **Developer.** The person proposing to develop land, either as an owner of said land or as an agent of the owner.
- ~~19~~21. **Dwelling Unit:** A building or portion of it designed and used for residential occupancy by a single household and that includes exclusive sleeping, cooking, eating and sanitation facilities. Buildings with more than one set of cooking facilities are considered to be multi-dwelling structures unless the additional cooking facilities are clearly accessory, such as an outdoor grill.
- ~~20~~22. **Essential Services:** The erection, construction, alteration, maintenance by public utilities or by governmental departments or commissions of such underground or overhead gas, electrical, steam, or water transmission or distribution systems, collection, communication, supply or disposal systems, including towers, poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, street lights, traffic signals, hydrants, and other similar equipment, and accessories in connection therewith, but not including buildings, as are reasonably necessary for the furnishing of adequate service by such public utilities or governmental departments or

commissions or as are required for protection of the public health, safety, or general welfare.

~~21~~23. **Floor Area (Gross):** The total square footage within a structure calculated by using the measurements from the exterior walls.

~~22~~24. **Garage:** An accessory building or portion of a main building used for the storage of motor vehicles.

~~23~~25. **Height, Building:** The vertical distance between the average finished grade at the base of the building and: 1) the highest point of the coping of a flat roof; 2) the highest point of a mansard roof; or 3) the average height level between the eaves and ridge line of a gable, hip or gambrel roof. For the purpose of the HIA-O, Hector International Airport Overlay district regulations the datum shall be mean sea level elevation unless otherwise specified.

~~24~~26. **Home Occupation:** A business, profession, occupation or trade conducted for gain, conducted within a dwelling unit, including an attached or detached garage accessory to the dwelling unit, for gain or support by a resident of the dwelling unit.

~~25~~27. **Household:** Any one of the following:

- a. One or more persons related by blood, marriage, adoption, or legal guardianship, including foster children, living together in a dwelling unit; or
- b. A group of not more than 3 persons not related by blood, marriage, adoption, or legal guardianship living together in a dwelling unit;
- c. Two unrelated persons and their children living together in a dwelling unit; or
- d. Any group of people living together that meets the definition of "protected class," as that term is defined in the North Dakota law.

~~26~~28. **Landing Area:** the area of the airport used for the landing, taking off or taxiing of aircraft.

~~27~~29. **Lot:** The entire parcel of land occupied or intended to be occupied by a principal building and its accessory buildings, or by a group such as a dwelling group or automobile court and accessory buildings, including the yards, setbacks and open spaces required by this Land Development Code and other applicable law. When a lot is used together with 1 or more contiguous lots for a single use or unified development, all of the lots so used, including any lots used for off-street parking, shall be considered a single lot.

~~28~~30. **Lot, Legal:**

- a. A lot that is shown on a Subdivision plat that has been recorded in the office of the County Register of Deeds; or
- b. A lot created through a Boundary Line Adjustment.

~~29~~31. **Lot, Corner:** A lot abutting two or more streets at their intersection.

~~30~~32. **Lot, Interior:** A lot other than a corner lot.

~~31~~33. **Lot Lines:** The property lines along the edge of a lot or site.

a. **Front Lot Line:** A lot line that abuts a street. A through lot has 2 front lot lines.

b. **Side Lot Line:** Any lot line except a front or rear lot line.

c. **Rear Lot Line:** A lot line that is opposite a front lot line. A triangular lot has two side lot lines but no rear lot line. For other irregularly shaped lots, the rear lot line is all lot lines that are most nearly opposite the front lot line.

d. **Interior Side Line:** A side lot line that does not abut a street.

e. **Street Side Lot Line:** A lot line that is both a side lot line and a street lot line.

f. **Lot Line, Street:** Any lot lines that abut a street. Street lot line does not include lot lines that abut an alley. On a corner lot, there are two (or more) street lot lines. Street lot line can include front lot lines and side lot lines.

~~32~~34. **Lot, Reverse Corner:** A corner lot whose front does not face the same street as the adjacent lot.

~~33~~35. **Lot, Through:** A lot having its front and rear lines on different streets.

~~34~~36. **Lot Width:** The horizontal distance between side lines measured along a line that is parallel to the front lot line and located the minimum exterior setback distance from the front lot line.

~~35~~37. **Mobile Home Space:** That part of a Mobile Home Park that has been reserved for the placement of the mobile home, appurtenant structures, or additions.

~~36~~38. **Mobile Home Park:** A parcel of land under single ownership that has been planned and improved for the placement of mobile homes for nontransient use.

~~37~~39. **Negative Access Easement:** An easement, usually designated on a plat, which operates to deny direct access to a street or public way from the lot or lots adjacent to such street or way.

~~38~~40. **Nonconforming Lot:** Lots that were legally created in accordance with zoning district minimum lot size and dimensional standards in effect at the time of their creation, but which, because of amendments to the zoning regulations, no longer comply with the minimum lot size or other dimensional standards of the zoning district.

~~39~~41. **Nonconforming Structure:** Buildings or structures that were established in accordance with all zoning regulations in effect at the time of their establishment, but which, because of amendments to the zoning regulations, no longer comply with the dimensional standards of the underlying zoning district.

~~40~~42. **Nonconforming Use:** Uses that were established in accordance with zoning regulations in effect at the time of their establishment, but which, because of

amendments to the zoning regulations, no longer comply with the use regulations of the underlying zoning district.

4143. Nonprecision Instrument Runway: a runway equipped or to be equipped with an instrument approach procedure utilizing air navigation facilities with only horizontal guidance or area-type navigation equipment.

44. Nudity or Nude Conduct: The showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola. For purposes of this chapter, a “fully opaque covering” must not consist of any substance that can be washed or peeled off the skin (such as paint, make-up, or latex).

4245. Official Map: A map established by the Board of City Commissioners showing the streets, highways and drainage systems theretofore laid out, adopted and established by law, including new subdivision plats approved by the Board of City Commissioners and the subsequent filing of such approved subdivision plats.

4346. Open Space: an outdoor, unenclosed area, located on the ground or on a roof, balcony, deck, porch or terrace designed and accessible for outdoor living, recreation, pedestrian access or landscaping, but not including roads, parking areas, driveways, or other areas intended for vehicular travel.

4447. Open Space, Common: open space within a development, not in individually owned lots or dedicated for public use, but which is designed and intended for the common use or enjoyment of the residents or occupants of the development. Common Open Space does not include areas used for streets, alleys, driveways, or off-street parking or loading areas. However, the area of recreational activities such as swimming pools, tennis courts, shuffleboard courts, etc., may be counted as common open space.

4548. Parcel: A contiguous area of land in the possession of, owned by, or recorded as the property of the same person or persons.

4649. Perimeter Street: Any street or road which is on the perimeter of the parcel of land to be subdivided and which abuts said parcel on only one side.

4750. Precision Instrument Runway: a runway equipped or to be equipped with an Instrument Landing System (ILS), or a Precision Approach Radar (PAR).

4851. Principal Building: A building occupied by the principal use of the lot on which it is situated.

4952. Property Owner: The person who is shown by the County Register of Deeds as the record owner of a lot or parcel.

1 ~~50~~53. **Public Improvement:** Any improvement for use by the general public and for
2 which a governmental unit may ultimately assume the responsibility for maintenance
3 and operation.

4
5 ~~51~~54. **Public Utility:** Any person, firm, corporation, municipal department, or board
6 duly authorized to furnish, and furnishing, under public regulation, to the public,
7 electricity, gas, heat, power, steam, telephone, telegraph, transportation, or water.
8

9 55. **Regional Shopping Mall (Enclosed):** A group of retail and other commercial
10 establishments that is planned, developed, and managed as a single property, with on-
11 site parking provided around the perimeter of the shopping center, and that is generally
12 at least forty acres in size and flanked by two or more large “anchor” stores, such as
13 department stores. The common walkway or “mall” is enclosed, climate-controlled and
14 lighted, usually with an inward orientation of the stores facing the walkway.
15

16 ~~52~~56. **Registered Engineer:** An individual licensed and registered as a professional
17 engineer under the laws of the state of North Dakota.
18

19 ~~53~~57. **Registered Land Surveyor:** An individual licensed and registered as a
20 professional land surveyor under the laws of the state of North Dakota.
21

22 58. **Regularly:** The consistent and repeated doing of an act on an ongoing basis.
23

24 ~~54~~59. **Residential Structure Types:**

- 25 a. **House, Attached:** A dwelling unit that shares one or more common or abutting
26 walls with one or more dwelling units. An attached house does not share common
27 floor/ceilings with other dwelling units. An attached house is also called a
28 townhouse.
- 29 b. **House, Detached:** A dwelling unit located on its own lot that is not attached to
30 any other dwelling unit, including a residential-design manufactured housing unit.
- 31 c. **Duplex:** A single structure that contains 2 primary dwelling units on one lot. The
32 units may share common walls or common floor/ceilings.
- 33 d. **Group Living Structure:** A structure that contains sleeping areas and at least one
34 set of cooking and sanitary facilities that is used as a residence for Group Living
35 uses.
- 36 e. **Manufactured Housing Unit:** A dwelling unit constructed in accordance with
37 Federal Manufactured Housing Construction and Safety Standards (HUD code) in
38 effect after June 15, 1976. For the purpose of this Land Development Code, the
39 term “manufactured housing unit,” when used by itself, shall not include a
40 “residential-design manufactured housing unit” as defined in this section.
- 41 f. **Mobile Home:** A transportable, factory-built structure that was manufactured
42 prior to enactment of or otherwise does not comply with the federal Manufactured
43 Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401) and
44 that is designed to be used as a single dwelling unit.
- 45 g. **Multi-Dwelling Structure:** A structure that contains 3 or more dwelling units that
46 share common walls or floor/ceilings with one or more units. The land underneath

the structure is not divided into separate lots. Multi-dwelling includes structures commonly called garden apartments, apartments and condominiums.

h. Residential-Design Manufactured Housing Unit: A manufactured housing unit that meets the following criteria:

- (1) Is constructed on a permanent foundation that complies with the Uniform Building Code and the City's Building Code;
- (2) Has a minimum front width of 24 feet and a minimum depth of 20 feet;
- (3) Has a predominantly double-pitched roof with a minimum vertical rise of 2.2 inches for every 12 inches of horizontal run and a minimum eave projection and roof overhang of 10 inches on at least 2 sides. Gutters shall be counted in calculating roof overhang.
- (4) Uses siding and roofing materials customarily used on site-built homes within the City of Fargo;
- (5) Has a minimum gross floor area of 960 square feet; and
- (6) Has a minimum ceiling height of 7 feet.

5560. Review Body: A person or group authorized in this Land Development Code to conduct land use reviews and offer recommendations but not to take final action on the matter under review.

5661. Runway: the paved surface of an airport landing strip.

62. Semi-Nude or Semi-Nudity: The showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks, with less than a fully opaque covering. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part. For purposes of this chapter, a “fully opaque covering” must not consist of any substance that can be washed or peeled off the skin (such as paint, make-up, or latex).

5763. Setback: The distance that is required by this Land Development Code to be maintained in an unobstructed state between a structure and the lot line of the lot on which the structure is located. Note: The term “setback” refers to a required minimum area, while the term “yard” refers to the actual open area.

- a. Front Setback:** A setback that is to extend across the full width of a lot, the required depth of which is measured as the minimum horizontal distance between the front lot line and a line parallel thereto on the lot.
- b. Interior Side Setback:** A setback that is to extend from the front lot line to the rear lot line along the side of a lot that is adjacent to another lot, the required depth of which is measured as the minimum horizontal distance between the side lot line and a line parallel thereto on the lot.
- c. Rear Setback:** A setback that is to extend across the full width of a lot, the required depth of which is measured as the minimum horizontal distance between the rear lot line and a line parallel thereto on the lot.

- d. **Street Side Setback:** A setback that is to extend from the front lot line to the rear lot line along the street side of a corner lot, the required depth of which is measured as the minimum horizontal distance between the street side lot line and a line parallel thereto on the lot.

64. **Sexual Device:** Any three (3) dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, nipple, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily designed for protection against sexually transmitted diseases or for preventing pregnancy.

65. **Sexual Device Shop:** A commercial establishment:

- a. where more than 100 sexual devices are regularly made available for sale or rental;
or
- b. where sexual devices are regularly made available for sale or rental and the establishment regularly gives special prominence to sexual devices (e.g., by using lighted display cases for sexual devices, having a large variety of sexual devices, having a room or discrete area of the establishment significantly devoted to sexual devices, or positioning sexual devices near cash registers or similar points of sale).

This definition shall not be construed to include an establishment located within an enclosed regional shopping mall, an establishment containing a pharmacy that employs a licensed pharmacist to fill prescriptions on the premises, or an establishment that is enrolled in Medicare as a durable medical equipment, prosthetics, and supplies (DMEPOS) supplier.

~~58~~66. **Solar Energy Collector:** A device or combination of devices, structure, or part of a device or structure that transforms direct solar energy into thermal, chemical or electrical energy and that contributes significantly to a structure's energy supply.

~~59~~67. **Specified Anatomical Areas:**

- a. Less than completely and opaquely covered:
 - (1) Human genitals, pubic region;
 - (2) Buttocks;
 - (3) Female breast below a point immediately above the top of the areola; and
- b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

~~60~~68. **Specified Sexual Activities:**

- a. Human genitals in a state of sexual stimulations or arousal;
- b. Acts of human masturbation, sexual intercourse, or sodomy; and
- c. Fondling of human genitals, pubic region, buttock or female breast.

- 1 ~~61~~69. **Street:** A public or private way used or intended to be used for passage or travel by
2 motor vehicles. Streets are further classified according to their design and the function they
3 perform. The hierarchy of streets is as follows:
- 4 a. **Local Street:** A street intended to provide direct access to abutting property and
5 access to higher classification streets.
- 6 b. **Local Collector Street:** A street that connects traffic from local streets and higher
7 classification streets and that may provide direct access to abutting property.
- 8 c. **Collector Street:** A street that connects traffic from lower classification streets and
9 higher classification streets and that does not provide direct access to abutting
10 property.
- 11 d. **Minor Arterial Street:** A street with signals at major intersections and stop signs at
12 side streets and that collects and distributes traffic to and from collector streets.
- 13 e. **Principal Arterial Street:** A street with access control, channelized intersections,
14 restricted parking, and that collects and distributes traffic to and from minor arterial
15 streets.
- 16
- 17 ~~62~~70. **Structural Alteration:** Any change, addition or modification in construction in the
18 supporting members of a building, such as exterior walls, bearing walls, beams, columns,
19 foundations, girders, floor joists, roof joists, rafters or trusses.
- 20
- 21 ~~63~~71. **Structure:** Anything constructed or erected having location on or under the ground
22 or attached to something having location on or under the ground.
- 23
- 24 ~~64~~72. **Subdivision:** The division of a tract or parcel of land into lots for the purpose of,
25 whether immediate or future, sale or of development.
- 26
- 27 ~~65~~73. **Subdivision, Major:** Any subdivision that does not meet the definition of a “Minor
28 Subdivision.”
- 29
- 30 ~~66~~74. **Subdivision, Minor:** A subdivision that meets all of the following criteria:
- 31 a. Does not require the dedication of rights-of-way or construction of new streets;
- 32 b. Does not create any public improvements other than sidewalks;
- 33 c. Does not land-lock or otherwise impair convenient ingress and egress to or from the
34 rear or side of the subject tract or any adjacent property;
- 35 d. Does not fall within the corridors of any planned or proposed street as shown upon
36 the Official Map or approved Area Plans; and
- 37 e. Does not violate any local, state or federally adopted law, ordinance, regulation, plan
38 or policy.
- 39
- 40 ~~67~~75. **Telecommunication Facility, Attached:** An antenna array that is attached to an
41 existing building or structure, including utility poles, signs, water towers, and similar
42 structures with any associated connection cables, and an equipment facility which may be
43 located either inside or outside of the attachment structure.
- 44
- 45 ~~68~~76. **Telecommunications Support Structure:** A structure designed and constructed
46 specifically to support an antenna array, and may include a monopole, self supporting

(lattice) tower, guy-wire support tower and other similar structures. Any device used solely to attach an attached telecommunications facility to an existing building or structure shall be excluded from this definition. A monopole, self-supporting (lattice) tower, Guy-wire support tower and other similar structures which are erected or constructed on a building, water tower, or other structure for the purpose of elevating an attached telecommunications facility shall be included in this definition.

~~69~~77. **Use:** The purpose for which land or a building or structure thereon is designed, arranged, intended, or maintained or for which it is or may be used or occupied.

78. **Viewing Room:** The room or booth where a patron of an adult establishment would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video on an image-producing device.

~~70~~79. **Yard:** The actual unobstructed open space that exists or that is proposed between a structure and the lot lines of the lot on which the structure is located. See "Setback."

~~71~~80. **Zoning District:** The separate geographic areas to which a specific zoning district is assigned.

a. **Base Zoning District:** A zoning district that establishes the primary permitted uses, conditional uses, and dimensional standards.

b. **Overlay Zoning District:** A zoning district that is applied to a parcel of land to add special or additional development requirements in addition to or in place of the requirements of the Base Zoning District requirements.

~~72~~81. **Bed and Breakfast:** A facility of residential character that provides sleeping accommodations and breakfast for hire on a day-to-day basis in which the proprietor resides.

Section 6. Purpose; findings and rationale.

- A. *Purpose.* It is the purpose of this ordinance to regulate adult establishments in order to promote the health, safety, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of adult establishments within the city. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.
- B. *Findings and Rationale.* Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Board of City Commissioners, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of*

1 *Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books,*
 2 *Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v.*
 3 *Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50
 4 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109
 5 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *Sewell v. Georgia*, 435
 6 U.S. 982 (1978); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Dallas v.*
 7 *Stanglin*, 490 U.S. 19 (1989); and
 8 *McCrothers Corp. v. City of Mandan*, 728 N.W.2d 124 (N.D. 2007); *Adam and Eve*
 9 *Jonesboro, LLC v. Perrin*, 933 F.3d 951 (8th Cir. 2019); *Farkas v. Miller*, 151 F.3d 900 (8th
 10 Cir. 1998); *Jakes, Ltd. v. City of Coates*, 284 F.3d 884 (8th Cir. 2002); *BZAPS, Inc. v. City of*
 11 *Mankato*, 268 F.3d 603 (8th Cir. 2001); *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8th Cir.
 12 2003); *Scope Pictures v. City of Kansas City*, 140 F.3d 1201 (8th Cir. 1998); *Excalibur Group*
 13 *v. City of Minneapolis*, 116 F.3d 1216 (8th Cir. 1997); *ILQ Invs. v. City of Rochester*, 25 F.3d
 14 1413 (8th Cir. 1994); *Ambassador Books & Video v. City of Little Rock*, 20 F.3d 858 (8th Cir.
 15 1994); *Alexander v. Minneapolis*, 928 F.2d 278 (8th Cir. 1991); *John Doe v. Minneapolis*, 898
 16 F.2d 612 (8th Cir. 1990); *Thames Enters. v. St. Louis*, 851 F.2d 199 (8th Cir. 1988); *Xiong v.*
 17 *City of Moorhead*, 2009 WL 322217 (D. Minn. Feb. 2, 2009); *Enlightened Reading, Inc. v.*
 18 *Jackson County*, 2009 WL 792492 (W.D. Mo. March 24, 2009); *Stardust, 3007 LLC v. City of*
 19 *Brookhaven*, 899 F.3d 1164 (11th Cir. 2018); *HH-Indianapolis, LLC v. Consol. City of*
 20 *Indianapolis/Marion County*, 889 F.3d 432 (7th Cir. 2018); *HH-Indianapolis, LLC v. Consol.*
 21 *City of Indianapolis/Marion County*, 265 F. Supp. 3d 873 (S.D. Ind. 2017); *Stardust 3007,*
 22 *LLC v. City of Brookhaven*, 348 Ga. App. 711 (2019); *Daytona Grand, Inc. v. City of Daytona*
 23 *Beach*, 490 F.3d 860 (11th Cir. 2007); *Tokyo Gwinnett, LLC v. Gwinnett County*, No. 1:15-
 24 cv-2606, 2022 WL 1027633 (N.D. Ga. April 6, 2022); *Williams v. Morgan*, 478 F.3d 1316
 25 (11th Cir. 2007); *David Vincent, Inc. v. Broward County*, 200 F.3d 1325 (11th Cir. 2000);
 26 *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Morrison v. State*, 272 Ga.
 27 129 (2000); *Chamblee Visuals, LLC v. City of Chamblee*, 270 Ga. 33 (1998); *Entm't Prods.,*
 28 *Inc. v. Shelby County*, 721 F.3d 729 (6th Cir. 2013); *Lund v. City of Fall River*, 714 F.3d 65
 29 (1st Cir. 2013); *Imaginary Images, Inc. v. Evans*, 612 F.3d 736 (4th Cir. 2010); *LLEH, Inc. v.*
 30 *Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Ocello v. Koster*, 354 S.W.3d 187 (Mo. 2011);
 31 *84 Video/Newsstand, Inc. v. Sartini*, 2011 WL 3904097 (6th Cir. Sept. 7, 2011); *Plaza Group*
 32 *Properties, LLC v. Spencer County Plan Commission*, 877 N.E.2d 877 (Ind. Ct. App. 2007);
 33 *East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360 (6th Cir. 2009); *Entm't Prods., Inc. v.*
 34 *Shelby County*, 588 F.3d 372 (6th Cir. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526
 35 F.3d 291 (6th Cir. 2008); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d
 36 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003);
 37 *Heideman v. South Salt Lake City*, 348 F.3d 1182 (10th Cir. 2003); *H&A Land Corp. v. City of*
 38 *Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248
 39 (5th Cir. 1995); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *Illinois*
 40 *One News, Inc. v. City of Marshall*, 477 F.3d 461 (7th Cir. 2007); *G.M. Enterprises, Inc. v.*
 41 *Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Richland Bookmart, Inc. v. Knox County*,
 42 555 F.3d 512 (6th Cir. 2009); *Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery*
 43 *County*, 256 F. Supp. 2d 385 (D. Md. 2003); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435
 44 (6th Cir. 1998); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *DCR,*
 45 *Inc. v. Pierce County*, 964 P.2d 380 (Wash. Ct. App. 1998); *City of New York v. Hommes*, 724
 46 N.E.2d 368 (N.Y. 1999); *Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App.

July 25, 2002); *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996 (9th Cir. 2007); *U.S. v. Baston*, 818 F.3d 651 (11th Cir. 2016); *Johnson v. California State Bd. of Accountancy*, 72 F.3d 1427 (9th Cir. 1995); *Spencer v. World Vision, Inc.*, 633 F.3d 723 (9th Cir. 2010); *Mutschler v. City of Phoenix*, 129 P.3d 71 (Ariz. Ct. App. 2006); *Fleck & Assocs. v. City of Phoenix*, 356 F. Supp. 2d 1034 (D. Ariz. 2005); and in *Recreational Developments of Phoenix, Inc. v. City of Phoenix*, 220 F. Supp. 2d 1054 (D. Ariz. 2002); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001); *People ex rel. Deters v. The Lion's Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); *Reliable Consultants, Inc. v. City of Kennedale*, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005);

and based upon reports concerning secondary effects occurring in and around adult establishments, including, but not limited to, "Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD," *Journal of Urban Health* (2011); "Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime?" *Crime & Delinquency* (2012) (Louisville, KY); *Metropolis, Illinois – 2011-12*; *Manatee County, Florida – 2007*; *Hillsborough County, Florida – 2006*; *Clarksville, Indiana – 2009, 2013-2019*; *El Paso, Texas – 2008*; *Memphis, Tennessee – 2006*; *New Albany, Indiana – 2009*; *Louisville, Kentucky – 2004*; *Fulton County, GA – 2001*; *Chattanooga, Tennessee – 1999-2003*; *Jackson County, Missouri – 2008*; *Ft. Worth, Texas – 2004*; *Kennedale, Texas – 2005*; *Greensboro, North Carolina – 2003*; *Dallas, Texas – 1997*; *Houston, Texas – 1997, 1983*; *Phoenix, Arizona – 1995-98, 1979*; *Tucson, Arizona – 1990*; *Spokane, Washington – 2001*; *St. Cloud, Minnesota – 1994*; *Austin, Texas – 1986*; *Indianapolis, Indiana – 1984*; *Garden Grove, California – 1991*; *Los Angeles, California – 1977*; *Whittier, California – 1978*; *Oklahoma City, Oklahoma – 1986*; *New York, New York Times Square – 1994*; the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota); *Dallas, Texas – 2007*; "Rural Hotspots: The Case of Adult Businesses," 19 *Criminal Justice Policy Review* 153 (2008); "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; Sex Store Statistics and Articles; Indianapolis / Marion County Board of Zoning Appeals Documents; Law Enforcement and Private Investigator Affidavits (Adult Cabarets in Forest Park, GA and Sandy Springs, GA); DeKalb County Testimony and Reports – 2014; and Strip Club-Trafficking Documents,

the board finds:

1. Adult establishments, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, human trafficking, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. Alcohol

consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects.

2. Adult establishments should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other adult establishments, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of adult establishments in one area.
3. Each of the foregoing negative secondary effects constitutes a harm which the city has a substantial government interest in preventing and/or abating. The city's interest in regulating adult establishments extends to preventing future secondary effects of either current or future adult establishments that may locate in the city. The city finds that the cases and documentation relied on in this ordinance are reasonably believed to be relevant to said secondary effects.

Section 7. Effective Date.

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

Timothy J. Mahoney, Mayor

(Seal)

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Reading:
Publication:

Exhibit 1 – Amendment to 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	SS RR 4 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
...																						
Commercial																						
Adult Entertainment Center Establishment	an <u>adult arcade</u> , adult bookstore, adult cinema, or adult entertainment facility, <u>or sexual device shop</u>		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P/C [A]	P/C [A]	P/C [A]	-
...																						

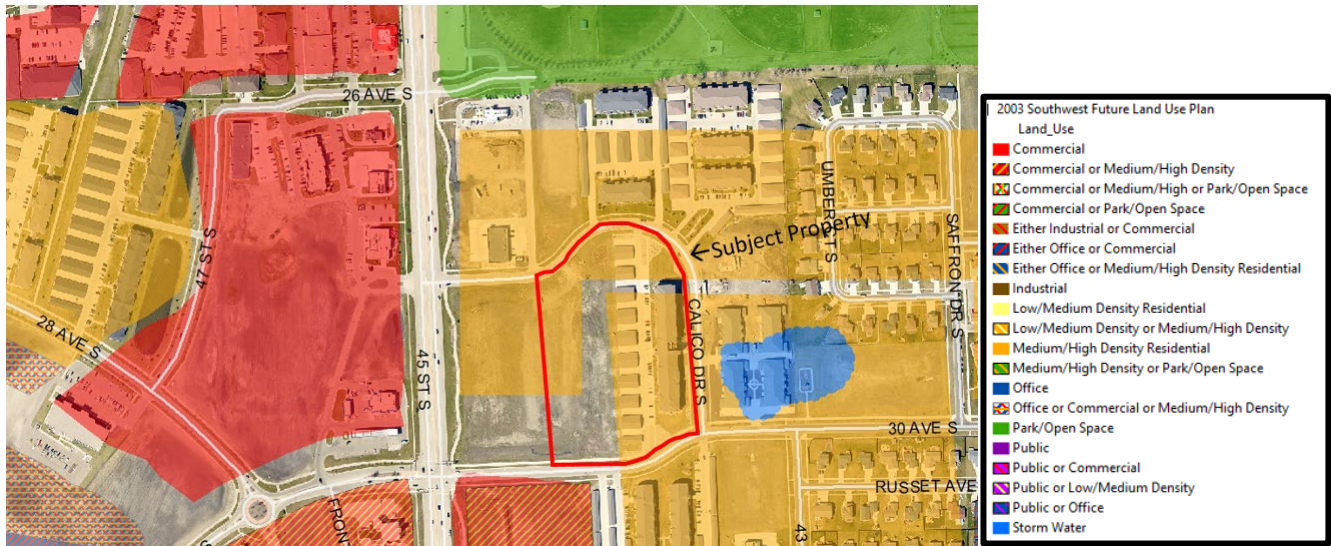
City of Fargo Staff Report			
Title:	Metropolitan Park Third Addition (<i>See project History Note below</i>)	Date:	12/1/2022
Location:	4400 and 4420 Calico Drive South	Staff Contact:	Brad Garcia, planner
Legal Description:	Lot 1, Block 1, Metropolitan Park 3 rd Addition to the City of Fargo, Cass County, North Dakota.		
Owner(s)/Applicant:	Metropolitan Apartments LLC/JPR Investments, LLC #13 / Nate Vollmuth-Goldmark	Engineer:	MBN Engineering
Entitlements Requested:	PUD Final Plan		
Status:	Planning Commission Review: December 6 th , 2022		

Existing	Proposed
Land Use: Multi-Dwelling Residential	Land Use: No change
Zoning: MR-3 with PUD overlay	Zoning: No change
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. PUD adds daycare for 13 or more children or adults.	Uses Allowed: No change
Maximum Density Allowed: MR-3 allows a maximum density of 24 dwelling units per acre, increased to 32 dwelling units per acre with PUD overlay	Maximum Density Allowed: No change

Proposal:
<p><i>PROJECT HISTORY NOTE: The PUD was established with a zoning change and minor subdivision combining Lot 2, Block 1, Metropolitan Park Addition and Lot 4, Block 1 of Metropolitan Park Second Addition into Metropolitan Park Third Addition which was approved on April 4th 2022.</i></p> <p>The applicant requests the approval of one entitlement:</p> <ol style="list-style-type: none"> 1. PUD Final Land Use Plan: A PUD final plan for the master plan approved by the City Commission on April 4th, 2022 <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: LC with retail/service uses and MR-2, Multi-Dwelling Residential, with multi-dwelling residences and some undeveloped property. • East: MR-1: Multi-Dwelling Residential with multi-dwelling residences (condominiums) • South: LC with Fargo Housing Authority ownership; MR-2: Multi-Dwelling Residential with multi-residential dwellings; and MR-3: Multi-Dwelling Residential with multi-residential dwellings • West: LC with retail/service uses and some undeveloped property.

Area Plans:

The subject property was originally designated as “medium to high density residential” in the Growth Plan for the Urban Fringe and Extra-Territorial Areas of the City of Fargo, specifically the Southwest Area Plan. On January 6, 2003, the City Commission approved a change to the “Commercial” land use designation along the east side of 45th Street South. This area is now part of the Metropolitan Park Second Addition. The zoning of MR-3, Multi-Dwelling Residential for Metropolitan Park Third Addition is consistent with the “medium to high density residential” land use designation on the subject property.



Context:

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

Neighborhood: The subject property is located within the Anderson Park neighborhood.

Parks: Anderson Softball Complex, located at 4200 23rd Street South, is approximately 800 feet north of the subject property, and provides amenities of baseball/softball fields, concessions, picnic table, playground for ages 2-5, and restrooms

Pedestrian / Bicycle: An off-road multi-use trail is adjacent to the west side of the subject property, between the subject property and the 45th Street South right of way, which is a component of the metro area bikeways system.

Bus Route: MATBUS Route 14 runs along 42nd Street South, with a stop at 30th Avenue and 42nd Street South, approximately 0.32 mile east of the subject property.

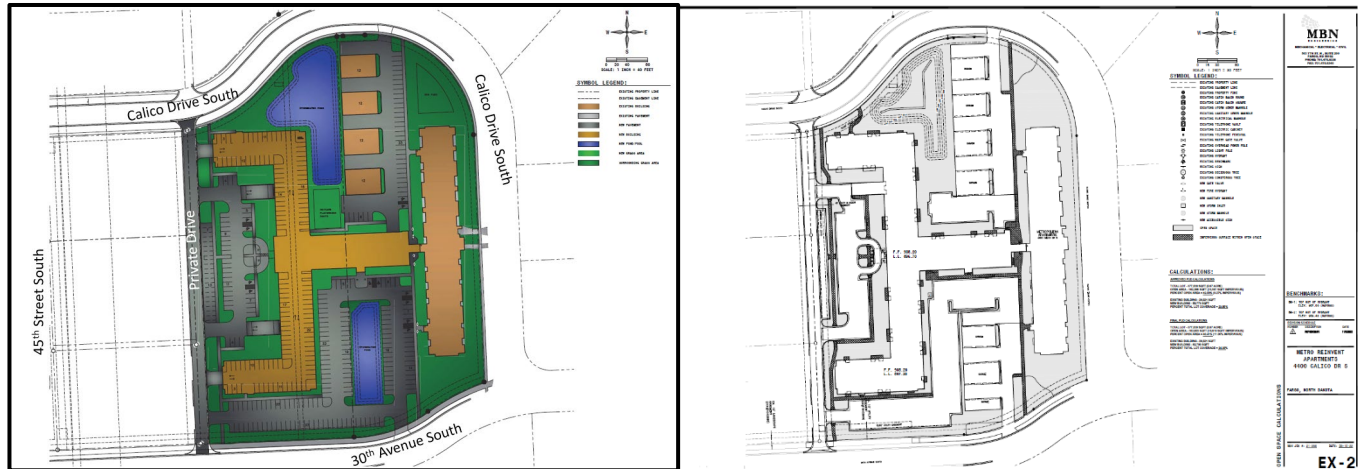
Staff Analysis:

Project Description

The applicant proposes to construct a new 200+ unit multi-family apartment project, along with amenities spaces, and connect it to the existing 75 unit multi-family apartment building. The new apartment will have two levels of enclosed parking, thus allowing the ability to remove a portion of the existing surface parking garages on site, and giving the residents in the existing apartment building the ability to access their vehicles within the building footprint. The project will also ‘go vertical’ above the standard 3 to 4 story apartment building, which will allow for a very efficient use of the property and existing utilities within the area. Though several garages remain as part of the existing apartment building and the project includes surface as well as enclosed parking, the project provides open green space and water spaces. The new facility will add amenities spaces for the complex and a direct connection to the existing 75 Unit Multi-Family Apartment Building. Amenities to include: Fitness center, children’s play area, daycare, volleyball court, hot tub, sauna, vending, yoga studio, underground/heated parking, car wash area, dog wash spa and package room.

PROPOSED FINAL PLAN CONSISTENCY WITH APPROVED MASTER LAND USE PLAN

The graphic below provides a comparison of the approved master land use plan and the proposed final plan. Findings evaluating the differences between the two plans are below. Copies of these plans are also attached.



PUD Final Plan Section 20-0908.D: The LDC stipulates that the Planning Commission shall approve the PUD Final plan if it is determined to be in substantial compliance with the approved PUD Master Land Use Plan. The PUD Final Plan shall be deemed to be in compliance so long as, when compared with the PUD Master Land Use Plan, it does not result in:

1. **An increase in project density or intensity, including the number of housing units per acre or the amount of nonresidential floor area per acre;**
There has been no change in project density or intensity. **(Criteria Satisfied)**
2. **A change in the mix of housing types or the amount of land area devoted to nonresidential uses;**
There has been no change in the mix of housing types or the amount of land devoted to nonresidential uses. **(Criteria Satisfied)**
3. **A reduction in the amount of open space;**
Open space has changed slightly with the removal of underground ramp with the addition of open space and retaining garages, thus reducing open space resulting in a net percent open area of 40.41% whereas the original plan had percent open area of 42.88% With these changes, the requirements of the Land Development Code and PUD are still met. **(Criteria Satisfied)**
4. **Any change to the vehicular system that results in a significant change in the amount or location of streets, common parking areas, and access to the PUD;**
There has been no change to the vehicular circulation system. **(Criteria Satisfied)**
5. **Any change within 50 feet of any SR or MR zoning district;**
Not applicable to this situation; the subject property is not within 50 feet of any SR or MR zoning district. **(Criteria Satisfied)**
6. **Any change determined by the Planning Commission to represent an increase in development intensity;**
There has been no increase in development intensity. **(Criteria Satisfied)**
7. **A substantial change in the layout of buildings.**
The approved master plan shows a portion of the existing detached garages being replaced with a stormwater retention pond. Additionally, a secondary underground parking entrance is shown on the approved master plan but is not shown on the final plan. Although these are changes to the original PUD Master Plan, all requirements of the Land Development Code and PUD are still met with the PUD Final Plan.

Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of staff and hereby approve the Planned Unit Development Final Plan for the Lot 1, Block 1, Metropolitan Park Third Addition as depicted in this packet, as the proposal complies with the PUD Master Land Use Plan, Section 20-0908.D of the LDC, and all other requirements of the LDC."

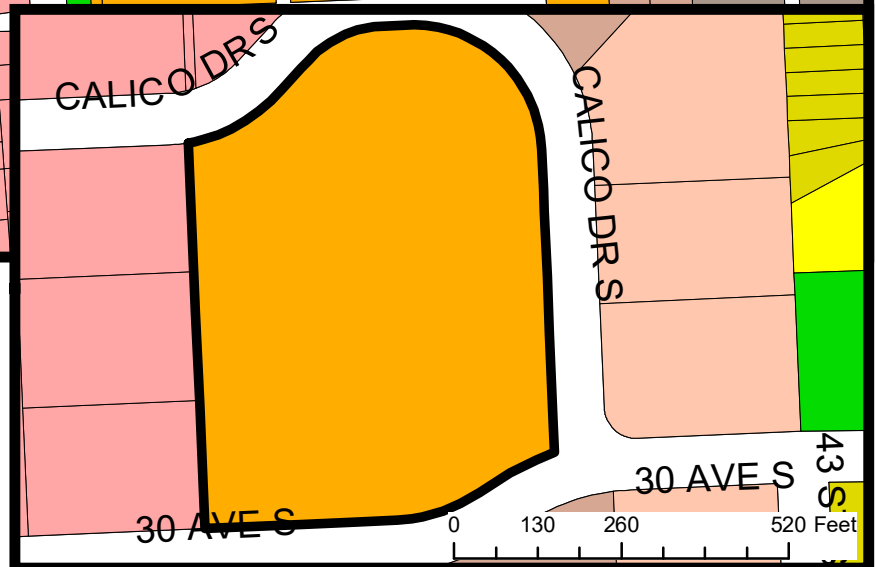
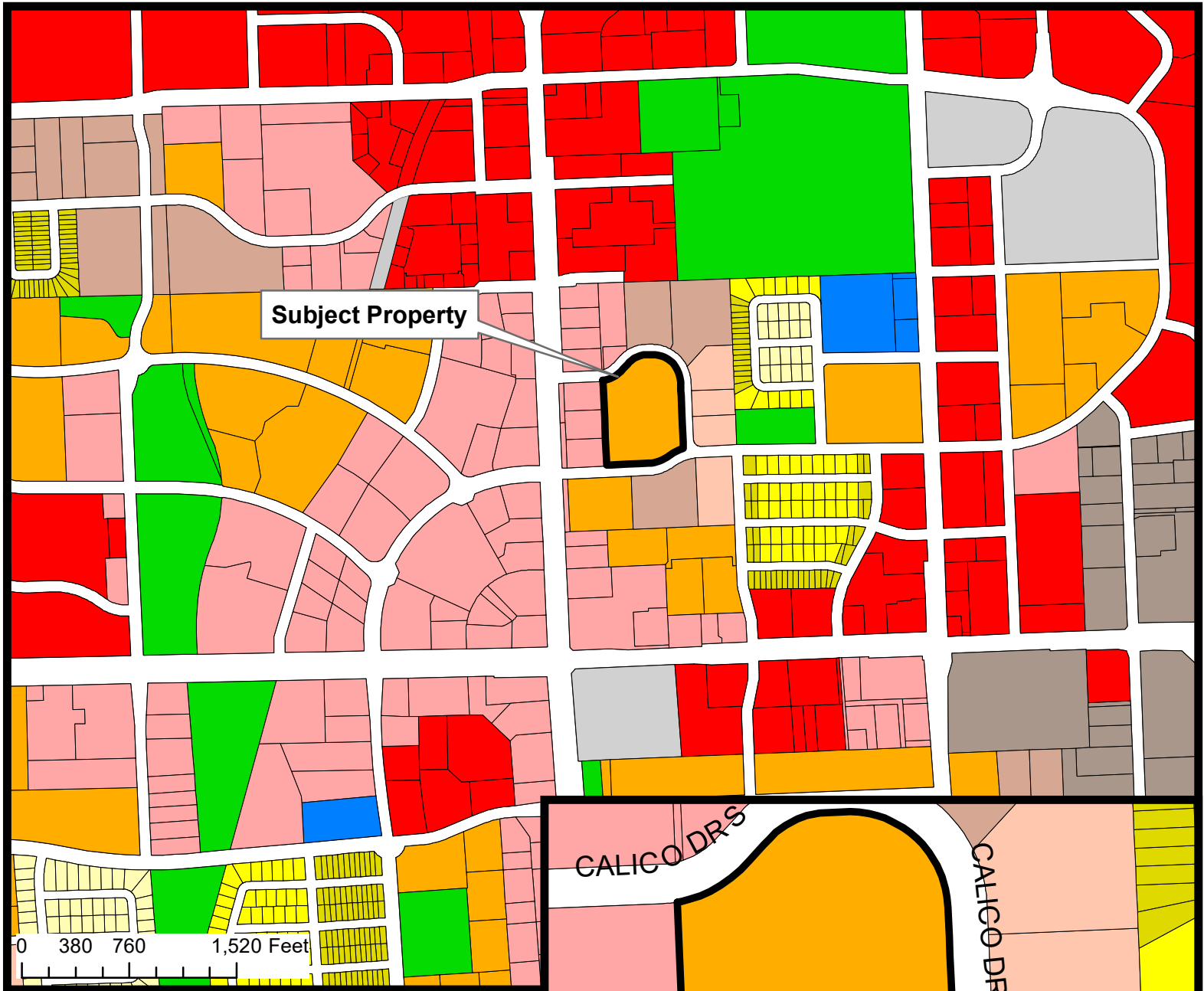
Attachments:

1. Zoning map
2. Location map
3. PUD Master Land Use Plan (approved April 4th, 2022)
4. PUD Final Plan

PUD Final Plan

Metropolitan Park 3rd Addition

4400 and 4420 Calico Drive South



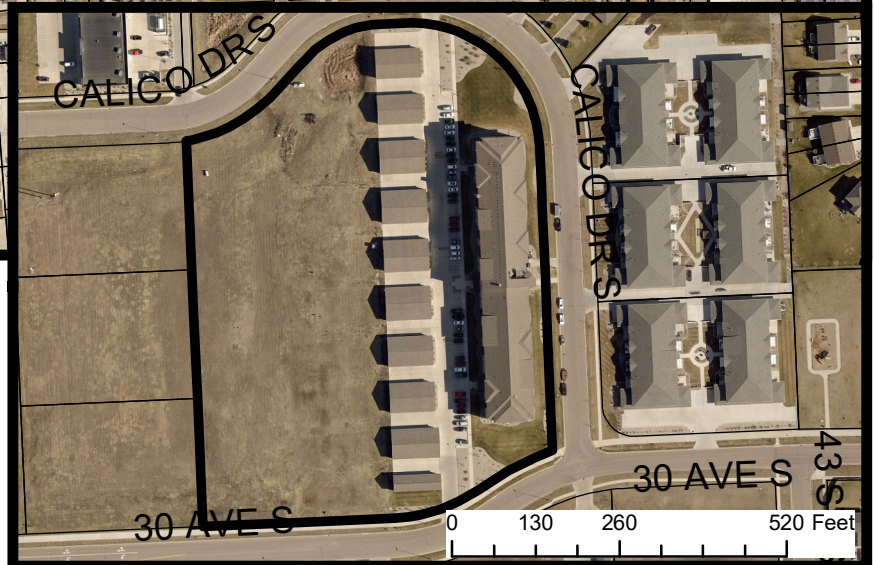
Legend

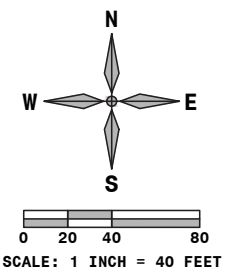
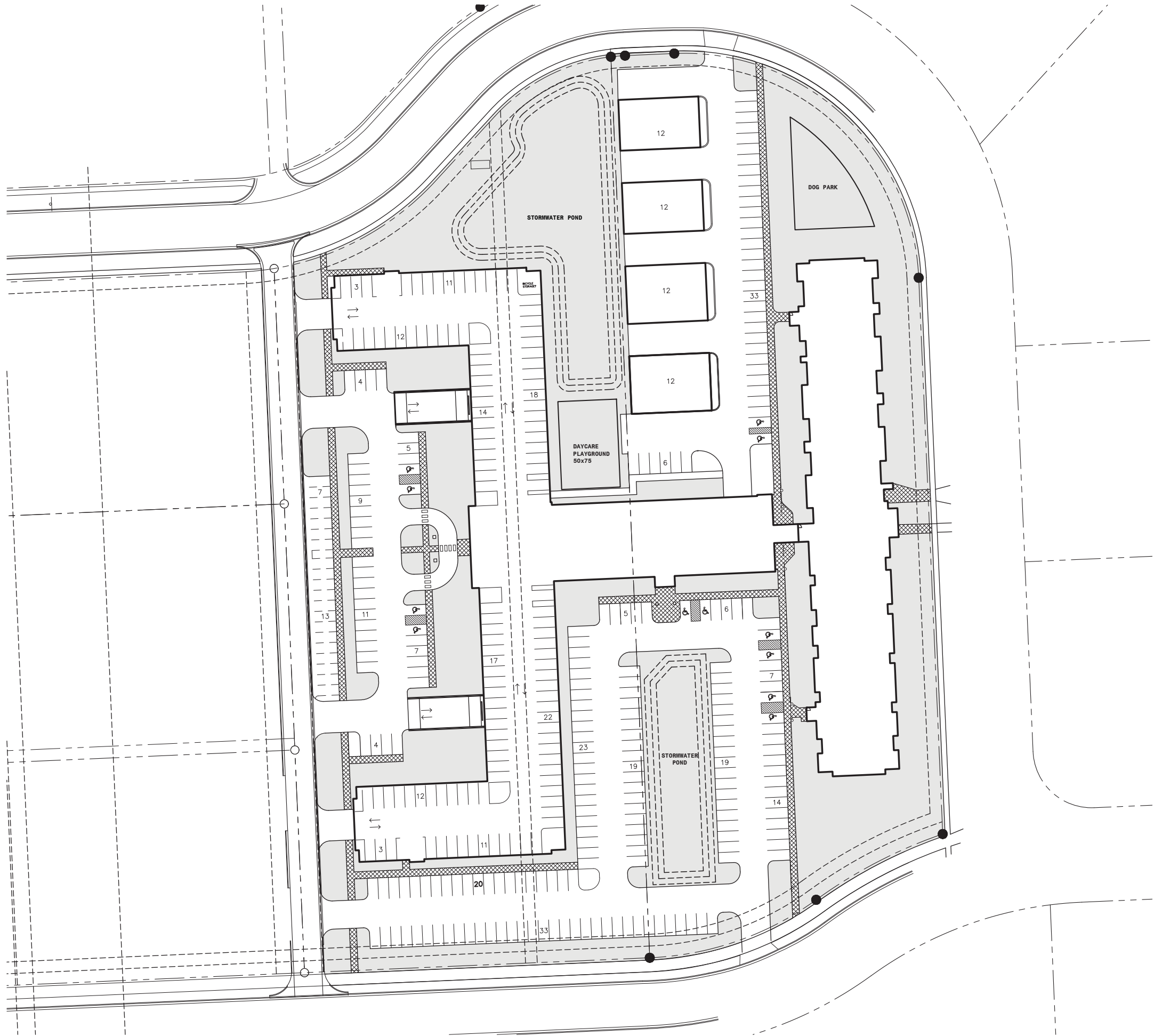
AG	DMU	LC	MHP	SP-2
CC	MR-1	NC	SP-3	SP-4
GO	MR-2	P/I	SP-5	City Limits
	MR-3	UMU		

PUD Final Plan

Metropolitan Park 3rd Addition

4400 and 4420 Calico Drive South





- SYMBOL LEGEND:**
- EXISTING PROPERTY LINE
 - EXISTING EASEMENT LINE
 - OPEN SPACE
 - IMPERVIOUS SURFACE WITHIN OPEN SPACE

CALCULATIONS:

TOTAL LOT - 377,839 SQFT (8.67 ACRE)
 OPEN AREA - 162,006 SQFT (13,397 SQFT IMPERVIOUS)
 PERCENT OPEN AREA = 42.88% (8.27% IMPERVIOUS)

EXISTING BUILDING - 29,321 SQFT
 NEW BUILDING - 59,774 SQFT
 PERCENT TOTAL LOT COVERAGE = 23.58%

LEVELS - 7
 TOTAL SQFT NEW BUILDING - 395,192

PARKING STALLS

PARKING LEVEL B	163] 296 UNDER COVER
PARKING LEVEL A	123	
EXISTING GARAGE	48	
EXISTING SURFACE	41] 225 SURFACE PARK.
NEW SURFACE	184	
FUTURE	20	
TOTAL PROVIDED	579	(2.14 STALLS/UNIT)

540 STALLS REQUIRED (270 * 2.0)

UNITS	1ST	2ND	3RD	4TH	5TH	6TH	TOTAL
1 BED	0	6	9	9	9	6	39
2 BED	0	21	28	28	28	21	126
3 BED	0	6	6	6	6	6	28
							<u>195</u>

EXISTING UNITS 75
 TOTAL UNITS 270
 UNIT DENSITY 31.83 UNIT/ACRE

MBN
ENGINEERING

MECHANICAL * ELECTRICAL * CIVIL

503 7TH ST. N., SUITE 200
 FARGO, ND 58102
 PHONE: 701.478.6336
 FAX: 701.478.6340

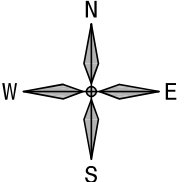
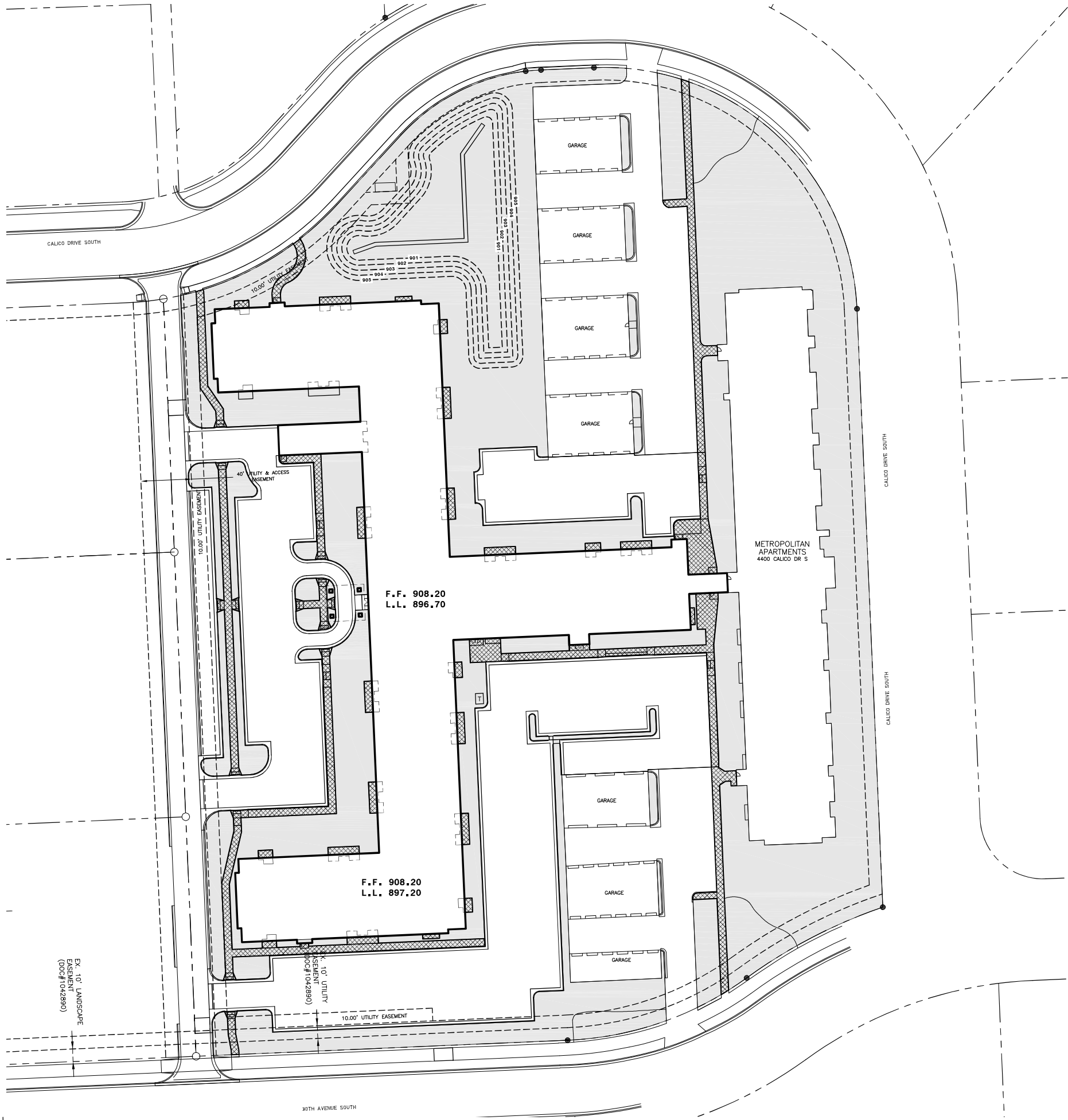
**ROERS COMPANIES
METRO APARTMENT
COMPLEX**

FARGO, NORTH DAKOTA

NOT FOR CONSTRUCTION

MBN JOB #: 21-266 DATE: 2-22-22

PUD SITE PLAN



SCALE: 1 INCH = 30 FEET

SYMBOL LEGEND:

- EXISTING PROPERTY LINE
- EXISTING EASEMENT LINE
- EXISTING PROPERTY PINE
- EXISTING CATCH BASIN ROUND
- EXISTING CATCH BASIN SQUARE
- EXISTING STORM SEWER MANHOLE
- EXISTING SANITARY SEWER MANHOLE
- EXISTING ELECTRICAL MANHOLE
- EXISTING TELEPHONE VAULT
- EXISTING ELECTRIC CABINET
- EXISTING TELEPHONE PEDESTAL
- EXISTING WATER GATE VALVE
- EXISTING OVERHEAD POWER POLE
- EXISTING LIGHT POLE
- EXISTING HYDRANT
- EXISTING BENCHMARK
- EXISTING SIGN
- EXISTING DECIDUOUS TREE
- EXISTING CONIFEROUS TREE
- NEW GATE VALVE
- NEW FIRE HYDRANT
- NEW SANITARY MANHOLE
- NEW STORM INLET
- NEW STORM MANHOLE
- NEW ACCESSIBLE SIGN
- OPEN SPACE
- IMPERVIOUS SURFACE WITHIN OPEN SPACE

CALCULATIONS:

APPROVED PUD CALCULATIONS


TOTAL LOT - 377,839 SQFT (8.67 ACRE)
OPEN AREA - 162,006 SQFT (13,397 SQFT IMPERVIOUS)
PERCENT OPEN AREA = 42.88% (8.27% IMPERVIOUS)

EXISTING BUILDING - 29,321 SQFT
NEW BUILDING - 59,774 SQFT
PERCENT TOTAL LOT COVERAGE = 23.58%

FINAL PUD CALCULATIONS

TOTAL LOT - 377,839 SQFT (8.67 ACRE)
OPEN AREA - 152,683 SQFT (16,916 SQFT IMPERVIOUS)
PERCENT OPEN AREA = 40.41% (11.08% IMPERVIOUS)

EXISTING BUILDING - 29,321 SQFT
NEW BUILDING - 62,793 SQFT
PERCENT TOTAL LOT COVERAGE = 24.38%



MBN
ENGINEERING

MECHANICAL • ELECTRICAL • CIVIL

503 7TH ST. N., SUITE 200
FARGO, ND 58102
PHONE: 701.478.6336
FAX: 701.478.6340

BENCHMARKS:

- BM-1: TOP NUT OF HYDRANT
ELEV: 907.06 (NAVD88)
- BM-2: TOP NUT OF HYDRANT
ELEV: 909.48 (NAVD88)

REVISION SCHEDULE		
NUMBER	DESCRIPTION	DATE
1	REVISION #1	11/1/2022

METRO REINVENT
APARTMENTS
4400 CALICO DR S

FARGO, NORTH DAKOTA

MBN JOB #: 21-266 DATE: 09-15-22

OPEN SPACE CALCULATIONS

MEMORANDUM

TO: Planning Commission

FROM: Maegin Elshaug, Planning Coordinator *me*
Brad Garcia, Planner

DATE: November 30, 2022

RE: Item D.2 Introduction to BLOC mixed-use development on the 1600 block of University Drive South

The City of Fargo has received an application for a mixed-use redevelopment project on the 1600 block of University Drive South. This item is tentatively scheduled for the January 3rd, 2023 Planning Commission meeting, staff is bringing it forward as an introduction for review and comment during the December 6th, 2022 Planning Commission meeting. Staff will provide a brief presentation on the project and the development team will provide additional information and be available for questions and comments. In January, the applications are anticipated to include a minor subdivision (Duane's Pizza Addition), zoning change, and planned unit development (PUD) master plan and final plan.

Owner BLOC Partners, LLC is proposing a 5-story, mixed-use project with commercial space and indoor parking on the ground floor, underground parking, and 4 floors with 127 residential apartments above. The project proposes three drive-thrus on the site. Attached is project information, preliminary plans and renderings of the project.

Additionally, an open house is proposed later the same day as the Planning Commission on Tuesday December 6th, 2022, from 5:00-6:30 p.m. in the Sky Commons room in the Civic Center. Property owners within a quarter-mile of the subject property have been notified of the open house, as well as with various direct invitations and social media postings. Planning Commission members are invited and encouraged to attend the open house meeting.

This is an introductory item at the December Planning Commission meeting and no action is intended to be taken. Staff welcomes commission member's comments and feedback on the proposed development.

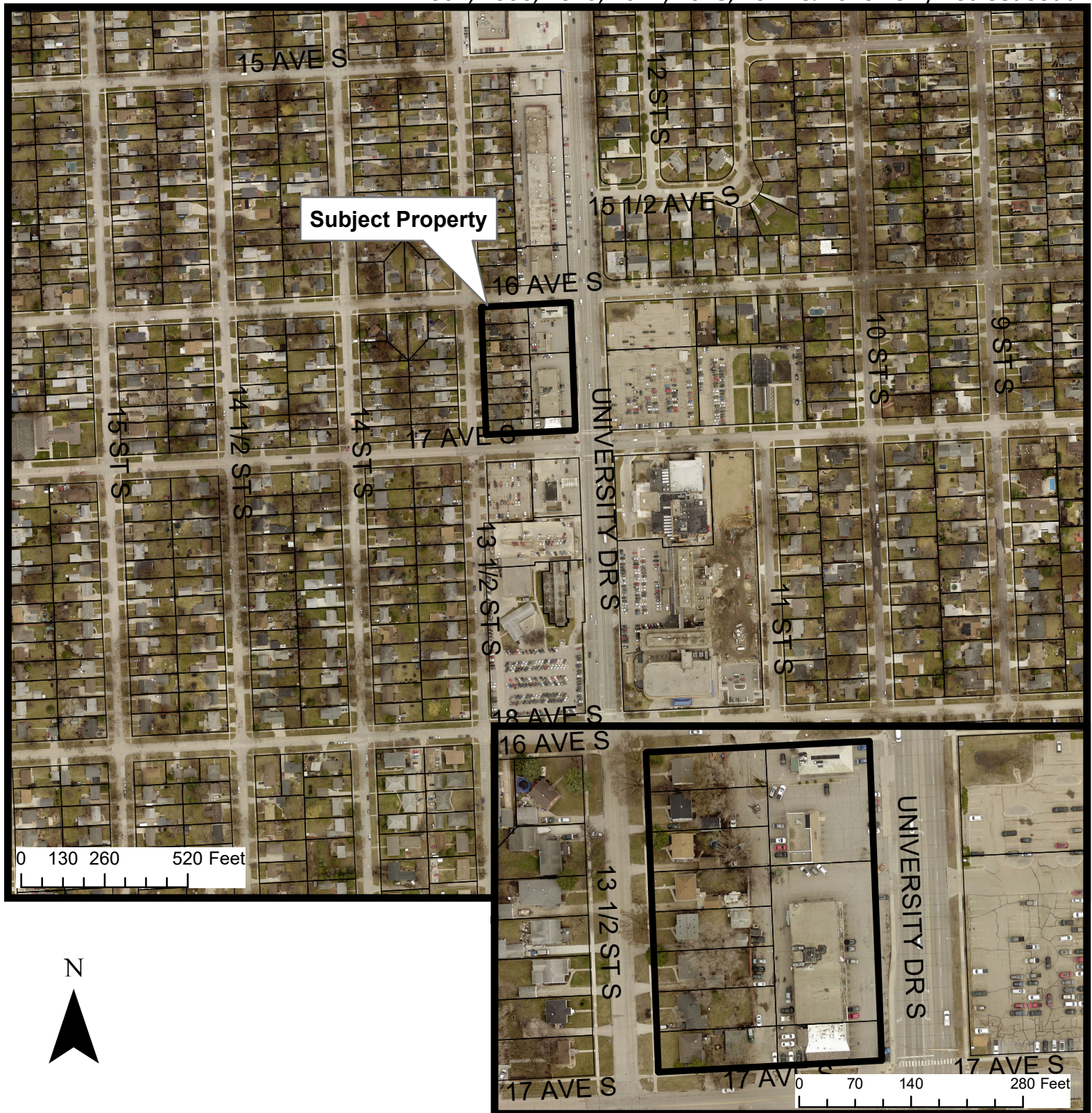
Neighborhood Meeting

1321 17 Avenue South

1601, 1617 & 1629 University Drive South

1602, 1606, 1610, 1614, 1618, 1622 & 1626 13 1/2 Street South

Duane's Pizza Addition



**Fargo Planning Commission
December 6, 2022**



B
L
O
C

PROJECT LOCATION

BLOC is located on a major corridor from Interstate to Downtown and blocks from Lindenwood Park, the BLOC project will consist of 127 units, 15,258 sq ft of commercial, 162 garage parking stalls and 114 surface parking spaces.

HIGHLIGHTED AMENITIES

9 foot ceilings
roof top patio
dog wash

SUPPORTING DOCUMENTS

SEE ATTACHED

PUD
Civil Plan
Architectural Plan
Traffic Study

PROJECT DETAILS

BLOC will be a safe, pet friendly community offering studios, one and two bedroom apartment homes. The units will include stainless steel appliances, washer & dryer in-units, high quality finishes, and free internet. The property will have heated underground and main level heated parking, community space, rooftop patio and outdoor grilling area.

The largest impact by this project are the removal of an entire city block of blight and disrepair and in doing so we bring back the safety of the area all while retaining three current tenants that are important to the identity and character of the neighborhood.

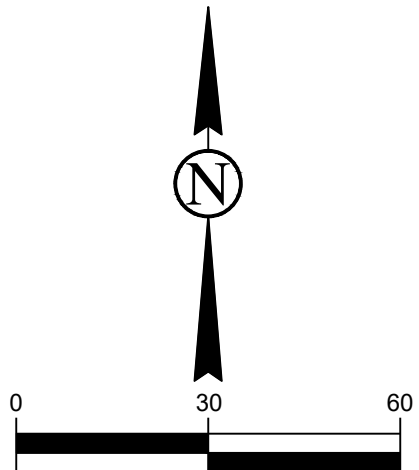
CONSTRUCTION IS EXPECTED TO START SPRING OF 2023.

1/10/22 08:07:17AM Z:\Lowry Shared Files\Projects_2022\22041 - University Mix Use Building - Great States Drawings\22041 - Project\Design\22041_L_C.dwg

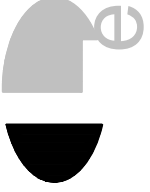


ESTIMATED SITE QUANTITIES		
ITEM	QUANTITY	UNIT

NOTES:
1.



CALL BEFORE YOU DIG
NORTH DAKOTA
UTILITIES UNDERGROUND LOCATION SERVICE
1-800-795-0555



LOWRY
ENGINEERING
5306 51ST AVENUE SOUTH, SUITE A
FARGO, NORTH DAKOTA 58104

REVISIONS

MIX USE BUILDING
16TH AVE S & SOUTH
UNIVERSITY DR
FARGO, ND

PRELIMINARY
NOT FOR
CONSTRUCTION

LE JOB #	22041
PROJECT DATE:	06/08/2022
CHECKED BY:	SAS
DRAWN BY:	PWB
APPROVED BY:	AJT

OVERALL
SITE
PLAN

C-4

PRELIMINARY
NOT FOR
CONSTRUCTION

ROOF
PROJECT

Level 5
147' - 0 3/8"

Level 4
135' - 10 1/2"

Level 3
124' - 8 5/8"

Level 2
113' - 6"

Level 1
100' - 0"

Level P1
89' - 4"

UNIVERSITY MIXED-USE
UNIVERSITY DR.
DESIGN DEVELOPMENT

Location:
University Dr.
Fargo, ND 58103

Drawn By:
MB

Date:
DATE
11/14/2022 3:57:42 PM

Revision Date:
Level 2
113' - 6"

Level 1
100' - 0"

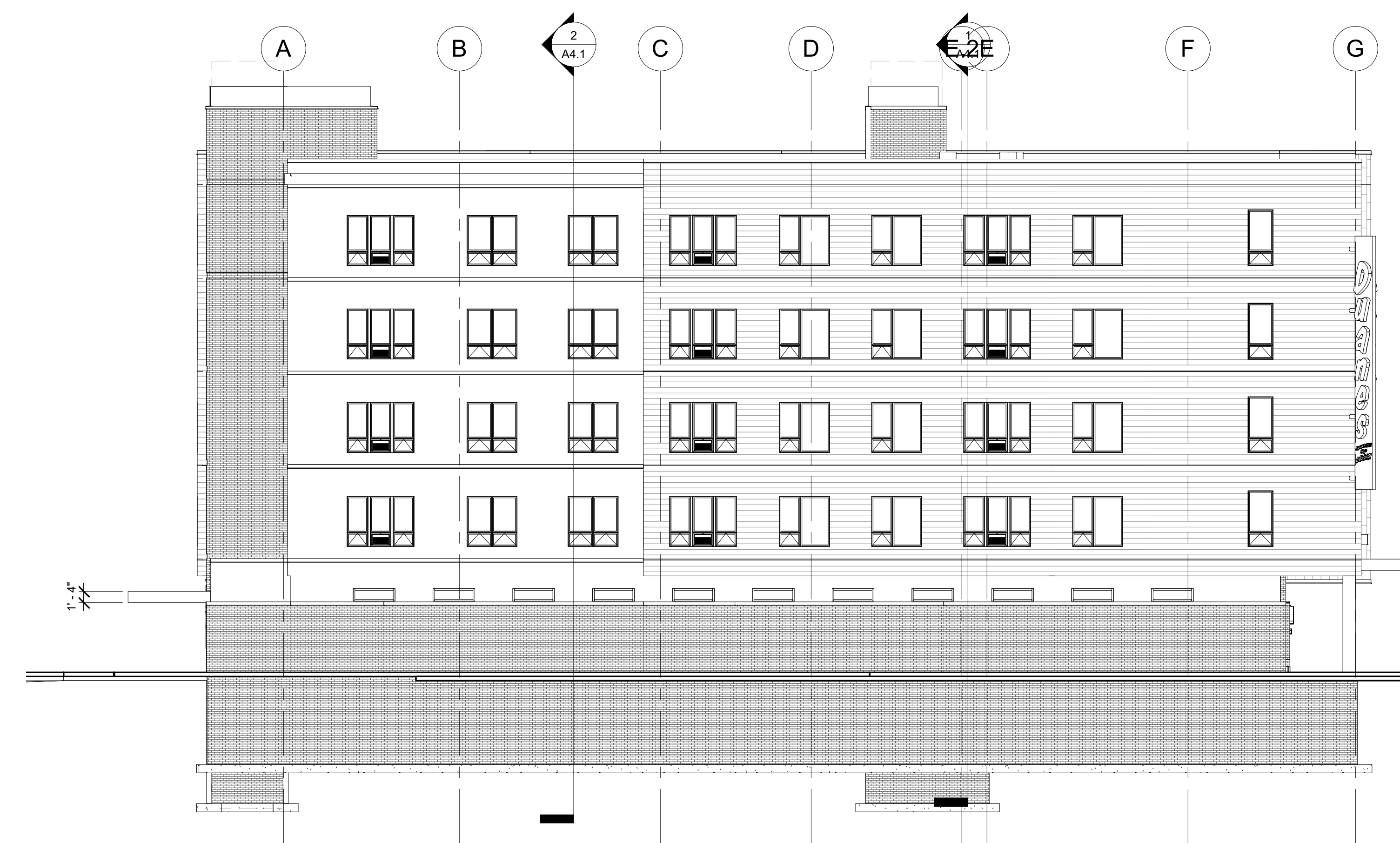
Job Number:

2022.12
Level P1
89' - 4"

Sheet Name:
ELEVATIONS

Sheet Number:

A3.1



1 SOUTH ELEVATION
A3.1 3/32" = 1'-0"



2 EAST ELEVATION
A3.1 3/32" = 1'-0"

PRELIMINARY
NOT FOR
CONSTRUCTION

Project:

UNIVERSITY MIXED-USE
PLAN REVIEW
UNIVERSITY DR.
DESIGN DEVELOPMENT

Location:
University Dr.
Fargo, ND 58103

Drawn By:

MB

Date:

DATE
11/14/2022 3:57:49 PM

Revision Date:

Job Number:

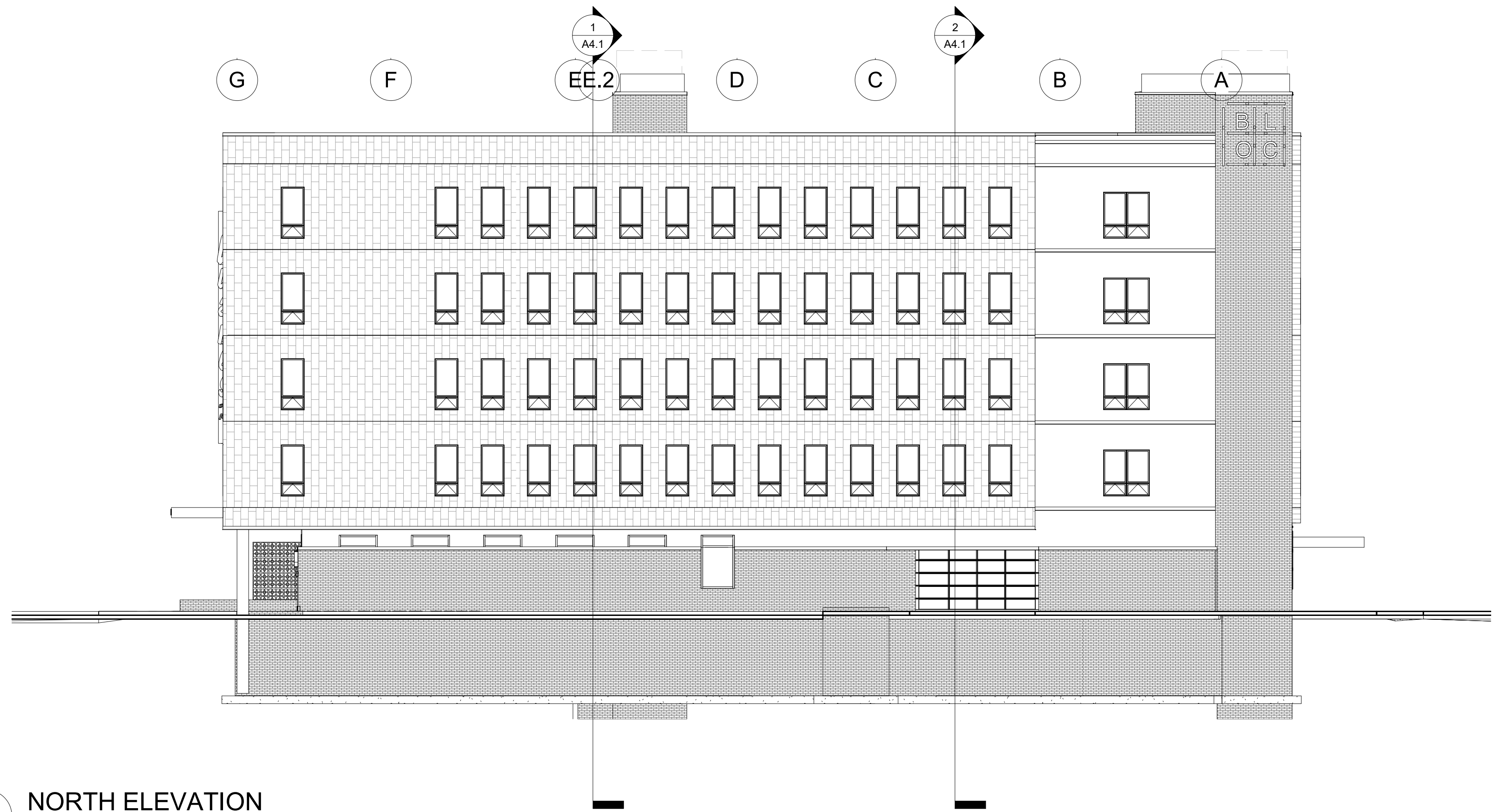
2022.12

Sheet Name:

ELEVATIONS

Sheet Number:

A3.2



- HIGH ROOF 167' - 6"
- ROOF 158' - 2 1/4"
- Level 5 147' - 0 3/8"
- Level 4 135' - 10 1/2"
- Level 3 124' - 8 5/8"
- Level 2 113' - 6"
- Level 1 100' - 0"
- Level P1 89' - 4"



- HIGH ROOF 167' - 6"
- ROOF 158' - 2 1/4"
- Level 5 147' - 0 3/8"
- Level 4 135' - 10 1/2"
- Level 3 124' - 8 5/8"
- Level 2 113' - 6"
- Level 1 100' - 0"
- Level P1 89' - 4"



Rendering of proposed development – view from southeast



Rendering of proposed development – view from southwest

MEMORANDUM

TO: ALL DEPARTMENTS

FROM: ALBERT GIBSON, PLANNING AND DEVELOPMENT DEPARTMENT

DATE: NOVEMBER 28, 2022

SUBJECT: 2023 PLANNING COMMISSION MEETING SCHEDULE

Listed below are the Planning Commission meeting dates for the calendar year 2023.

2023 Meeting Schedule

Planning Commission Meetings
January 3
February 7
March 7
April 4
May 2
June 6
* July 6
August 1
* September 7
October 3
November 7
December 5
Planning Commission meetings will be held the 1st Tuesday of each month at 3:00 p.m. in the Commission Chambers at City Hall.
* Date change to Thursday due to Labor Day and 4 th of July Holidays