

FARGO CITY COMMISSION AGENDA
Monday, May 19, 2008 - 5:00 P.M.

CITY COMMISSION MEETINGS ARE BROADCAST LIVE ON TV FARGO (Channel 99). They are rebroadcast at 7 p.m. each Thursday and again at 8:00 a.m. each Saturday following the meeting and are also included in our video archive at www.cityoffargo.com/commission.

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, May 5, 2008).

*** Consent Agenda - Approve the Following ***

- a. 2nd reading, waive reading and final adoption of the following Ordinances; 1st reading, 5/5/08:
 - (1) Relating to Penalties for Ordinance Violations (parking ticket fees).
 - (2) Rezoning Certain Parcels of Land Lying in Morton & Dotys Addition.
 - (3) Rezoning Certain Parcels of Land Lying in Section 11, Township 138 North, Range 49 West.
- b. 1st reading of an Ordinance Relating to Licensing of Re-Roofing Contractors.
- c. PEC recommendations.
- d. Contract with T. L. Stroh Architects for architectural services for a fire station in the area of 45th Street and 40th Avenue South.
- e. Community Development Committee recommendation for downtown projects to receive 2008 CDBG funds for storefront rehab projects.
- f. Acceptance of 2008 American Dream Downpayment Initiative (ADDI) grant from the State Department of Commerce.
- g. Sale of property at 1012 9th Street North to Kathleen Pepple for \$8,200.
- h. Receive and file Year to Date – Budget to Actual Report for April 2008.
- i. Agreement for Special Improvements with Matrix Properties for improvements in Autumn Fields Addition.
- j. Agreement for Special Improvements with Clapp Partnership (E. G. Clapp) for improvements from 41st Street NE to a point 100 feet north of the quarter section line.
- k. Site Authorizations for Games of Chance:
 - (1) North Dakota Association for the Disabled at O’Kelly’s and Mr. G’s.
 - (2) Prairie Public Broadcasting, Inc. at Dempseys Public House, Labbys and Tailgators.
 - (3) North Dakota Childhood Language Disorder Center – Fargo, at the Fargo Masonic Center.
 - (4) Roy Chandler Post #762 – Veterans of Foreign Wars at the VFW – Post #762.

- (5) West Fargo Hockey Association at Old Chicago.
- (6) Fargo Youth Commission at Slammer's Sports Bar and Borrowed Bucks Roadhouse.

- l. Application filed by the Fargo Lions Club for sports pools from 9/8/08 through 12/22/08.
- m. Application filed by Aaron Knuth for a 3-year property tax exemption for improvements made to a building at 446 Oakland Avenue.
- n. Change Order E-7, for an increase of \$1,570.00 for the Dr. James Carlson Library.
- o. Cost Participation and Maintenance Agreements with NDDOT for Project No. 5811.
- p. Scope of Work and Cost Proposal from Houston Engineering in the amount of \$95,200 for Project No. 5073-5.
- q. Bid advertisement for Project Nos. 5691 and 5807-2.
- r. Contracts and bonds for Project Nos. 5801, 5802, 5807-1 and 5812-01.
- s. Bills.
- t. Final balancing change order for an increase of \$22,673.90 for Improvement District No. 5702.
- u. Bid awards for Improvement District Nos. 5713, 5775, 5781, 5882 and bid award concurrence for Improvement District No. 5824.
- v. Create Improvement District Nos. 5774, 5776, 5787 and 5833.
- w. Contracts and bonds for Improvement District Nos. 5760, 5570, 5780.

*** Regular Agenda ***

- 1. Request for a rate change for Lucky 7 Taxi Service.
- 2. Update on Renaissance Zone projects.
- 3. Public Hearings - 5:15 p.m.:
 - a. Application for transfer of a Class "ABH" Alcoholic Beverage License from Wold Properties, Inc. d/b/a Holiday Inn at 3803 13th Avenue South to FCH Fargo HI d/b/a Holiday Inn.
 - b. Petition requesting a zoning change from AG, Agricultural to GC, General Commercial on part of Lot 13, Hector's Subdivision (4218 19th Ave. N.).
 - (1) Continued from the 5/5/08 Regular Meeting.
 - (2) Protests received representing 11% of the legal protest area.
 - (3) Approval recommended by the Planning Commission on 4/9/08.
 - (4) 1st reading of rezoning Ordinance.
- 4. Communication from Attorney Jonathan Garaas regarding the development plan for the proposed Tax Increment Financing District No. 2008-01.

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MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: STEVEN SPRAGUE, CITY AUDITOR

SUBJECT: LUCKY 7 TAXI SERVICE, INC.

DATE: MAY 15, 2008

The City Auditor's office has received a request for a rate change from Lucky 7 Taxi Service. The change is in response to the rapid increase in fuel costs.

Please approve the requested rate change for Lucky 7 Tax Service.

Recommended Motion:

Approve the requested rate change for Lucky 7 Taxi Service, Inc.

BOCC Lucky 7 taxi service rate change



LUCKY 7 TAXI SERVICE INC.
3431 4TH AVE. SW SUITE D
FARGO, NORTH DAKOTA 58103

May 14, 2008

Fargo City Commissioners
City Hall
Fargo, North Dakota 58102

Dear Commissioners:

Lucky 7 Taxi Service would like approval on a change in our taxi schedule. Our last rate change was a couple years ago. Recently with the high gasoline hike – increased labor repairs, cost of living expenses, etc. – we would like you to consider the changes that follow:

1. **The hourly rate will increase from \$30.00/hour to \$36.00/hour;**
2. **Out city flat rate schedule will be adjusted to show the pricing change;**
3. **The meter will change from \$3.50 flag drop to \$4.50 flag drop for the first 1/8 mile;**
4. **Our out-of-town rate will remain the same at \$1.00 roundtrip mile;**
5. **All negotiated rates will be changed to reflect the changes above.**

Thank you for your time in this very important matter. If you have any questions or concerns, just give us a call at (701) 232-8763 and ask for Laurie or Jeff.

Thanks Again!

Laurie & Jeff Dodd
Lucky 7 Taxi Service, Inc.



Memorandum

Date: 15 May 2008
To: Board of Commissioners, City of Fargo
From: Robert C. Stein
Re: Renaissance Zone Update

The Fargo Renaissance Zone program has been in effect since January of 2000. There have been many changes that have occurred as a result of the program and other activities that have spurred investment in Downtown Fargo. The table below presents a summary of investments and property values. As you can see, property values increased by a factor of 4.8 since the Renaissance Zone program was initiated. The property tax payback period once the property returns to the tax rolls is less than 2 years.

Pre-Project Value	Value of Investments	Post-Project Value
\$15,132,500	\$71,475,800	\$72,909,300

The program has also affected property values outside of the zone. In 1998-1999, downtown property values were decreasing and blight was spreading. The table below illustrates property value changes between 2001 and 2007. The value of non-Renaissance Zone properties increased by 17% during that timeframe.

	2001	2007
Value of all buildings in the Renaissance Zone	\$89,873,100	\$165,722,100

I will be available at the Commission meeting to answer any questions.

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MEMORANDUM

TO: Chief Keith Ternes

FROM: Sgt. Ross Renner

DATE: April 8, 2008

SUBJECT: Application for a Class "ABH" Alcoholic Beverage License for FCH Fargo HI Inc. d/b/a: Holiday Inn located at 3803 13th Ave. South Fargo, North Dakota.

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

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

Upon completing this investigation, I am disclosing the following information relating to Robert Snyder, Douglas Anselmin and Shawn Hagen.

Robert Snyder

Criminal History: No areas of concern

Credit History:	February 5 th 2002	Hennepin County Court, MN.	State Tax Lien (Paid)
	July 5 th 2001	U.S Bankruptcy Court Minneapolis, MN.	
	December 3 rd 1998	Hennepin County Court, MN.	Fed. Tax Lien (Paid)

During this investigation I spoke to Robert Snyder about the personal bankruptcy petition filed in 2001. Mr. Snyder provided a written explanation indicating this was the result of a failed business venture.

Mr. Snyder indicates this bankruptcy was caused by the failure of the Pallas Hotel project in New Orleans, LA. Mr. Snyder had guaranteed over \$26,000,000 in debt and an additional \$1,500,000 in liquidated damaged hotel franchise fees.

The failure of the hotel project was caused by the discovery, during a large scale renovation of the project of approximately \$6,000,000 in additional costs caused by the presence of asbestos in the property. The bank holding the mortgage on the property refused to proceed with the renovation after the asbestos was discovered and eventually foreclosed on the property. Although the hotel sued the lender for backing out of their financing obligation, this suit was not successful. Mr. Snyder filed his petition in bankruptcy court to stop any additional damages as a result of this project.

As a result of the New Orleans project failure, several tax liens were filed against Mr. Snyder by both federal and state agencies. Mr. Snyder, subsequent to the bankruptcy filing, has paid all the federal and state taxes that had been filed against the company.

Douglas Anselmin

Criminal History: No areas of concern

Credit History: No areas of concern

Shawn Hagen

Criminal History: No areas of concern

Credit History: No areas of concern

Business Location

The application submitted is for a business located at 3803 13th Ave. South. The following establishments hold liquor licenses in this area, Paradiso, The Outback, Okelly's, Fridays, Penalty Box, Grizzly's, Chili's Bar and Grill, Mr. G's, Red Lobster, Olive Garden, Timber lodge and Main Liquors.

Investigation notes

During this investigation I found Robert Snyder, the primary applicant to have an interest in a number of different establishments currently holding liquor licenses with the majority being related to the hotel motel business. (See attachment #3)

Upon review of the Fargo Police records system I did locate a liquor establishment incident form dated Nov. 9 2007. This form documented the arrest of a 20 year old minor who was passed out in his vehicle parked in the parking lot of the Holiday Inn. I did locate a intoxilizer test record indicating the suspects blood alcohol content was .12 %.

During an interview with the suspect he indicated to the arresting officer he had been drinking at the Holiday Inn and bar personnel had not carded him. Officers did contact Doug Anselmin, the general manager at the Holiday Inn who reviewed the surveillance video from the night in question. Mr. Anselmin indicated the video showed the suspect in question giving bar staff some form of identification. Anselmin stated he did speak with the employee who served this individual and they indicated he did provide an identification showing him to be of legal drinking age.

Conclusion

Upon completion of this investigation I believe I have discovered all information related to the listed applicants and all information related to the issuance of the requested liquor license. I have provided this completed background investigation to Fargo Police Chief Keith Ternes for his review and recommendation

Sgt. Ross Renner



Application File: View Application File

Description: Holiday Inn

Public Hearing Date: 4/21/2008

Legal Publishing: 3/24/2008

Review Deadline: 4/11/2008

Application Status:

	Status	Comment Date	User Name	Comment
Auditors		4/10/2008 2:59 PM	Steve Sprague	no concerns
City Commission	Change Status			
Fire		3/5/2008 11:04 AM	Norm Scot	Holiday Inn is inspected annually and all permits are periodically reviewed.
Health		3/7/2008 12:17 PM	Doug Jensen	All Health related licenses are up to date.
Inspections		3/4/2008 4:15 PM	Ron Strand	No comments. Ron C. Strand
Liquor Control Committee		4/17/2008 8:16 AM	Steve Sprague	
Police	<i>Attached</i>			

<< Back

Doing business as: Holiday Inn

This application is for the Class or Classes of Licenses checked:

Transfer

- Class A Authorizes the licensee to sell "on-sale" only.
- Class B Authorizes the licensee to sell "off-sale" only. "Off-Sale" licensed premises must be no closer than 100 feet to any grocery store, drug store or gasoline service station or any part thereof.
- Class B "Limited" Authorizes the licensee to sell "off-sale" only. License is Non Transferable. "Off-Sale" licensed premises must be no closer than 100 feet to any grocery store, drug store or gasoline service station or any part thereof.
- Class AB Authorizes the licensee to sell "on-sale" and "off-sale". "Off-Sale" licensed premises must be no closer than 100 feet to any grocery store, drug store or gasoline service station or any part thereof.
- Class ABH Authorizes the licensee to sell "on-sale" and "off sale", at hotels & motels with 100 more guest rooms only.
- Class ABHRZ Authorizes licensee to sell "on-sale" and "off sale" at hotels in Renaissance Zone with 15 guest rooms
- Class C Authorizes the licensee to sell beer "on-sale" only.
- Class D Authorizes the licensee to sell beer "off-sale" only.
- Class F Authorizes the licensee to sell "on-sale" only served at table or booth; no bar allowed. Requires 50% or more of its annual gross receipts from the sale of prepared meals and not alcoholic beverages.
- Class FA Authorizes the licensee to sell "on-sale" only, physical bar is allowed. Requires 50% of more of its annual gross receipts from the sale of prepared meals and not alcoholic beverages.
- Class FARZ Authorizes the licensee to sell "on-sale" only; physical bar allowed. Required to be in the Renaissance Zone. No gaming and no "E" permits allowed. Requires 50% or more of its annual gross receipts from the sale of prepared meals and not alcoholic beverages. The initial fee is 1/2 of the FA license.
- Class FA-Golf On USGA Golf Course of 9 or more holes. Requires 25% receipts of food sales from April to October and 50% the rest of the year.
- Class G Authorizes the licensee to sell wine and sparkling wine "on-sale" only, served at table or booth, no bar. Requires 50% food sales.
- Class H Authorizes the licensee to sell beer "on-sale" only, served at table of booth, with no bar allowed and requires 50% food sales.
- Class I Authorizes the licensee to sell beer, wine, and other sparkling wine "on-sale" only. A physical bar is allowed and requires 50% food sales.
- Class J Authorizes the licensee to sell "on-sale" only at a non-profit organization for military purposes.
- Class L Authorizes the licensee to sell "on-sale" only on an excursion boat operating on the Red River.

Business/Company name: FCH Fargo HI, LLC
Doing business as: Holiday Inn

Business address (location): 3803 13 Ave S Fargo ND 58103
Mailing address: PO Box 9555 Fargo, ND 58106

Legal description of the premises to be licensed: entire premises of hotel

Does applicant wish to describe, depict, or otherwise identify various areas or spaces within the building which shall constitute the licensed premises in accordance with Section 25-1501, Subsection 8? Yes (); No ();

Is the premises now occupied by another business? Yes No

Type of business currently there: Hotel with Restaurant + Lounge

Mailing address: PO Box 9555 Fargo ND 58106
(address) (city) (state & zip)

Business e-mail address: _____

Phone number: (701) 282-2700 Other number: (____) _____

Do you own or rent the property where the license will be used? Own Rent
If you rent, provide the following information:

(name) (address) (city) (state & zip)

If you are the owner of the property, are there any delinquent taxes against the premises?
 Yes No If "yes", in what amount? _____

Applicant Information:

Name: Robert S. Snyder
(first) (middle) (last) (maiden name)

Address: 11063 Holland Circle Eden Prairie MN 55347
(address) (city) (state & zip)

How long have you lived at the address? 13 years

Provide your address history for the past 5 years: (Use additional page if necessary.)

From _____ to _____ Address: _____
From _____ to _____ Address: _____
From _____ to _____ Address: _____

E-mail address: tsnyder@e-lawfirm.com

Home phone number: () _____ Other number: () _____

Date of Birth: 11-25-46 Place of Birth: Philadelphia, PA

List each driver's license you have ever had and the state of issue:

DL#: S-536-745-777-90 State of Issue: MN Dates: _____

DL#: _____ State of Issue: _____ Dates: _____

DL#: _____ State of Issue: _____ Dates: _____

Has your driver's license ever been suspended or revoked? Yes No If "yes," where and when. for 2 weeks in 2003 in MN, due to a child support dispute.

If "yes," have you ever been issued a citation for driving after your license was suspended or revoked? _____ Yes No If "yes," where and when.

Have you ever been convicted, plead guilty, or plead "no contest" to any law of the U.S., or any state, or of any local ordinance (other than traffic)? (DUI should not be considered a "traffic offense"—and therefore must be listed) _____ Yes No If yes, provide the date of arrest, location, charge, and sentence or each conviction.

Have you been issued a citation for any alcohol-related offense? _____ Yes No If "yes," provide the date, location, and charge for each citation:

List all federal, state, and local licenses (including liquor licenses; excluding driver's licenses) you currently hold, formerly held, or may have an interest in:

Have 9 liquor licenses as an officer of companies owning hotels with bar.

Have any of the above named licenses ever been suspended or revoked? Yes No

If yes, list the dates and reasons for the suspensions or revocations:

List your employment/business history for the past 7 years period: Use additional pages if necessary.)

From: 1995 to present Business name: Snyder & Associates

Address: One Financial Plaza Suite 1100 Position/Title: President
Minneapolis, MN 55402

From: _____ to _____ Business name: _____

Address: _____ Position/Title: _____

From: _____ to _____ Business name: _____

Address: _____ Position/Title: _____

From: _____ to _____ Business name: _____

Address: _____ Position/Title: _____

Do you currently own or have a financial interest in any other business that sells or serves alcoholic beverages? Yes No If "yes," list each business below:

Yes - 9 hotels - 3 in Atlanta, GA; and one in Columbus, GA; Montgomery, AL; Knoxville, TX; Kansas City, Mo; Omaha, NE; Minneapolis, MN.

Have you ever manufactured, sold, or distributed alcoholic beverages on the wholesale or retail level? Yes No If "yes," indicate where, when, and for whom below:

same as above

Do you have any current or prior management experience working for a business that sells or serves alcohol? Yes No If "yes," describe below:

President of the 9 hotels that have liquor licenses. Over the past 25 years, have had about 15 additional hotels with liquor licenses and have never had any licensing issues.

Operator/Manager Information

Are you going to operate this business personally? ___ Yes No If "no", who will operate it?

Name: Douglas Paul Anselmin
(first) (middle) (last) (maiden name)

Address: 6605 2nd St N Moorhead MN 56560
(address) (city) (state & zip)

Home phone number: (218) 236-0749 Other number: (701) 277-7363

Date of Birth: 10/12/58 Place of Birth: Minneapolis, MN

Are you going to have a manager or assistant in this business? Yes ___ No If the manager is not the same as the operator, provide the following manager information:

Name: Shawn R. Hagen
(first) (middle) (city) (maiden name)

Address: PO Box 604 Hawley MN 56549
(address) (city) (state & zip)

Home phone number: (218) 483-4452 Other number: (701) 277-7823

Date of Birth: 8-27-68 Place of Birth: Crookston, MN

(Important: The name and other information about your manager must be provided before a license can be issued. If the manager changes during the course of the license period, you must provide the City Auditor's Office with updated information about the new manager immediately.)

Business Site Plan

On the following page (or on attached pages if additional space is needed), provide a detailed diagram and description of the design, location, and square footage of the premises to be licensed.

- * The scale should be state, such as 1"=20'. The direction N should be indicated towards the top.
- * The diagram should include placement of all pertinent features of the interior of the licensed premises, such as seating areas, kitchens, offices, repair areas, restrooms, etc. The exterior parking area should also be shown.

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City of Fargo Staff Report			
Item No:	2008-04-02	Date:	2/11/2008 Updated: 4/17/08 Updated: 5/15/08
Title:	Hectors Subdivision	Staff Contact:	Mark Williams
Location:	4218 19th Avenue North		
Owner(s)/Applicant:	Eastland Investments, LLP	Engineer:	N/A
Reason for Request:	Zoning Change		
Status:	City Commission Public Hearing		
Existing		Proposed	
Land Use:	Single Family Residential	Land Use:	Commercial with a CUP for Industrial Uses
Zoning:	AG – Agricultural	Zoning:	GC – General Commercial with CUP for Industrial Uses
Uses Allowed:	AG – Agricultural. Allows detached houses, parks and open space, safety services, basic utilities, and crop production	Uses Allowed:	GC – General Commercial. Allows colleges, community service, daycare centers of unlimited size, detention facilities, health care facilities, parks and open space, religious institutions, safety services, adult entertainment centers, offices, off-premise advertising, commercial parking, outdoor recreation and entertainment, retail sales and service, self storage, vehicle repair, limited vehicle service, warehouse and freight movement, wholesale sales, aviation, surface transportation, and major entertainment events. With a CUP to allow Industrial Uses.
Maximum Density Allowed:	.1 residential dwelling units per acre	Maximum Density Allowed:	85% building coverage
Area Plans:	The 2007 City of Fargo Growth Plan identifies this area to be commercial		
Schools and Parks:	N/A		
Staff Analysis:	<p>The subject property is located south of 19th Avenue North and east of 43rd Street North. The property currently has a single family house and a couple accessory detached structures located on it. The applicant is proposing to construct metal buildings that would house commercial units within each building. The units would be available as condominiums for any uses allowed under the proposed GC zoning including the proposed CUP for Industrial Use. The industrial uses that are allowed under GC zoning with CUP approval are industrial services and manufacturing and production.</p> <p>Per section 20-1002 of the LDC (Nonconforming Uses), the single family house will remain in use as a residence until the use ceases to exist for more than one year. At that time, the uses allowed will be limited to the underlying zoning district and any approved CUP.</p> <p style="text-align: center;"><u>The following is a list of criteria, which must be determined satisfied in order for a Conditional Use Permit to be approved</u></p> <p>1. Does the proposed conditional use comply with all applicable provisions of the LDC and will it conform to the general intent and purpose of this LDC?</p> <p>Yes, staff believes the proposed industrial uses comply with the applicable provisions of the LDC. The property location is adjacent to the BNSF railroad and north of an existing heavy industrial manufacturing facility. The growth plan identifies this area as commercial and then transitions into high density residential north of 19th Avenue</p>		

North. The proposed CUP for industrial uses makes a good transition from heavy industrial to commercial.

Section 20-0402.R identifies a list of conditions that will need to be met if the CUP is approved. Staff is confident that those conditions can be met. (Criteria satisfied.)

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

Staff believes the location of the proposed use is compatible with the surrounding area. The desire of the property owner to establish future industrial uses creates a smooth transition from the existing heavy industrial to the south to the proposed commercial to the north. (Criteria satisfied)

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

Staff has no data or experience to indicate that the proposed industrial uses will have a negative impact on property values in the neighborhood. As noted above, the property is identified as commercial in the growth plan and then transitions to high density residential north of 19th Avenue North. (Criteria satisfied)

4. Is the location and size of the conditional use, the nature and intensity of the operation conducted in connection with it, and the location of the site with respect to streets giving access to it such that the conditional use will not dominate the immediate neighborhood so as to prevent the development and use of the neighboring property in accordance with the applicable zoning district regulations? In considering this criteria, location, nature, and height of buildings, structures, walls, and fences on the site are to be considered, as well as the nature and extent of proposed landscaping and buffering on the site.

No, staff does not believe that the location, size, nature or intensity of the use will prevent development and use of neighboring properties in accordance with applicable zoning districts. Conditions of approval identified in section 20-0402.R will minimize conflicts between property uses in the future should they arise.(Criteria satisfied)

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

The applicant is currently working with the Engineering Department to route water and sanitary sewer to the property. The drainage is handled by open ditches and there are no plans for underground storm sewer at this time. There is concern from the neighborhood about the lack of drainage on this parcel. The adjacent neighbor raised concerns about the drainage in the rear yard. The developer is aware of these concerns and is currently working on a solution. This issue will be resolved prior to development. (Criteria satisfied)

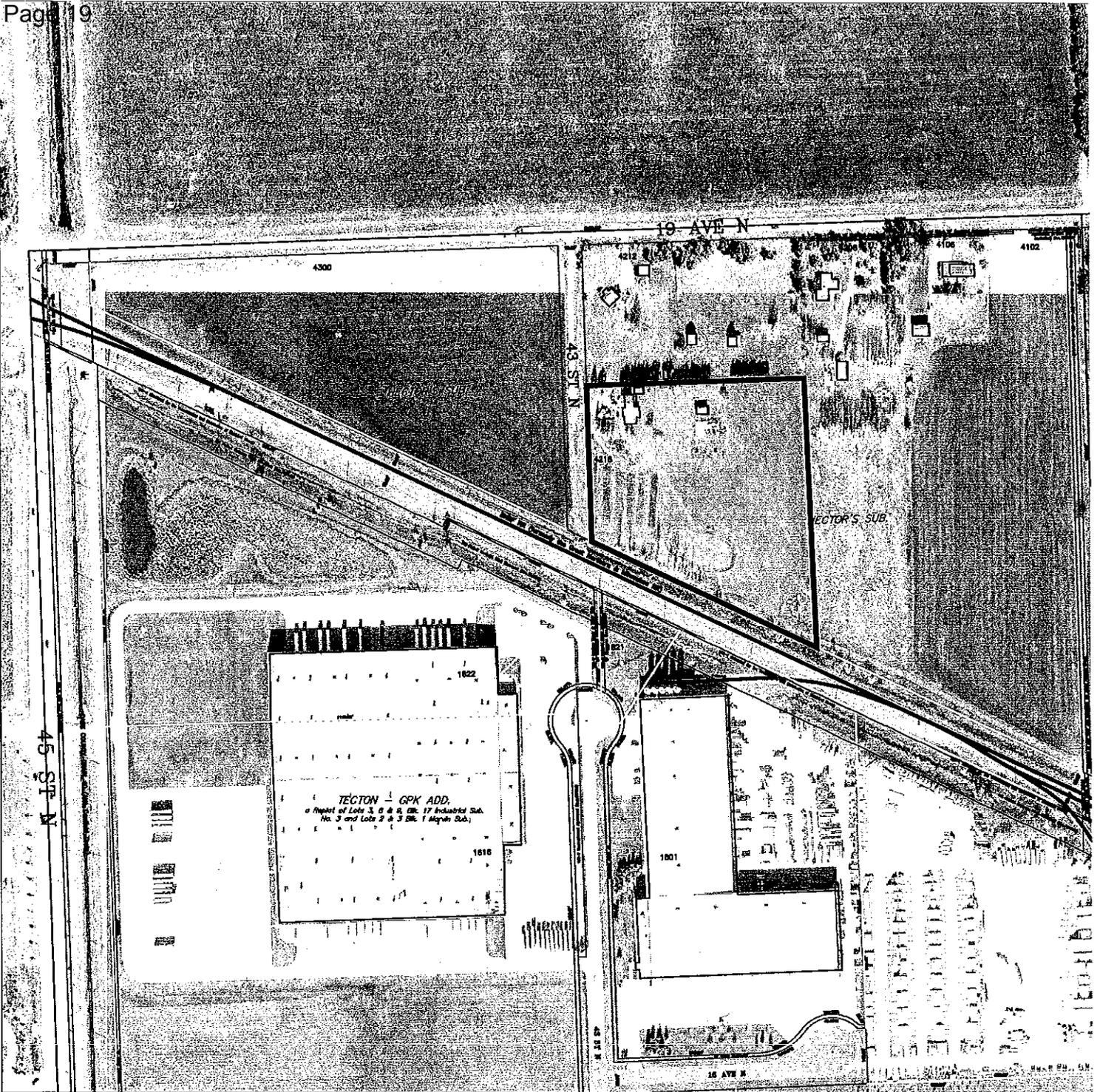
6. Have adequate access roads or entrances and exit drives been provided and are they designed to prevent traffic hazards and to minimize traffic congestion in public streets?

Yes access and entrance/exit drive areas are adequate to serve the property. (Criteria satisfied)

The Zoning Change Criteria are listed below:

	<p>1. Is the requested zoning change justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map?</p> <p>Staff is unaware of any zoning map error. The primary purpose of the zone change is to prepare the property for development. The 2007 Growth Plan identifies this area as commercial. The request creates a good transition from the heavy industrial to the south and the proposed commercial to the north. (criteria satisfied)</p> <p>2. Are the City and other agencies able to provide the necessary public services, facilities, and programs to serve the development allowed by the new zoning classifications at the time the property is developed?</p> <p>Yes, the necessary utilities, services, facilities and programs will be provided at the time the property is developed. The property owners are currently working with the Engineering Department to bring services to the site. (criteria satisfied)</p> <p>3. Will the approval of the zoning change adversely affect the condition or value of the property in the vicinity?</p> <p>Staff has no quantitative data that would support the notion that the proposed zoning change would or would not have an adverse effect on the value of the properties within the neighborhood. The proposed zoning change and conditional use permit are compatible with the surrounding neighborhood. (criteria satisfied)</p> <p>4. Is the proposed amendment consistent with the purpose of this LDC, the Growth Plan, and other adopted policies of the City?</p> <p>The proposed zoning change is consistent with the LDC, the Growth Plan, and other adopted policies of the City. (criteria satisfied)</p> <p>UPDATE 5/01/08: A protest petition was received on 4/30/08. Three abutting properties, 11% of the notice area, have protested this rezoning. Their main concerns appear to be the compatibility with abutting residences. The three properties in opposition are currently single family residences, zoned AG, Agriculture. However, the Growth plan indicates these properties as commercial and the proposed rezoning meets the growth plan recommendation.</p> <p>UPDATE 5/15/08: During the public hearing held on May 5, 2008 before the Fargo City Commission, neighboring property owners, Greg Wettstein, Sue Anderson and Michael Coffey (via protest letters and personal testimony) stated that they were opposed to the zone change due to concerns that the change was not compatible with the existing neighboring land use and that it would significantly impact their ability to use and reside on their property. Due to the concerns listed above and the apparent willingness of the petitioners to work out a solution, the Board tabled the matter for two weeks and directed to staff meet with the petitioners and neighbors in an attempt to reach an agreement.</p> <p>The meeting between the petitioners and the neighboring property owner is scheduled for this evening, Thursday, May 15, 2008. Staff is hopeful that a compromise can be reached. The agreement, via update to this staff report, will be forwarded to the Board as soon as it becomes available.</p>
<p>Planning Commission Recommendation:</p>	<p>April 9, 2008: In a unanimous decision, the Planning Commission approved the Conditional Use Permit for industrial uses within GC zoning districts and recommended to the City Commission to approve the proposed zoning change from AG, Agriculture to GC, General Commercial, on the basis that it satisfactorily complies with the Comprehensive Plan, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC.</p>
<p>Staff Recommendation:</p>	<p>Suggested Motion "To accept the findings and recommendations of staff and the Planning Commission and hereby move to approve the proposed zoning change</p>

	from AG, Agriculture to GC, General Commercial, on the basis that it satisfactorily complies with the Comprehensive Plan, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC.”
City Commission:	May 19, 2008



Hectors Subdivision -Zone Change & CUP
 Part of Lot 13 from Agricultural to General Commercial
 with a CUP for industrial use
 Located at 4218 19th Ave N.

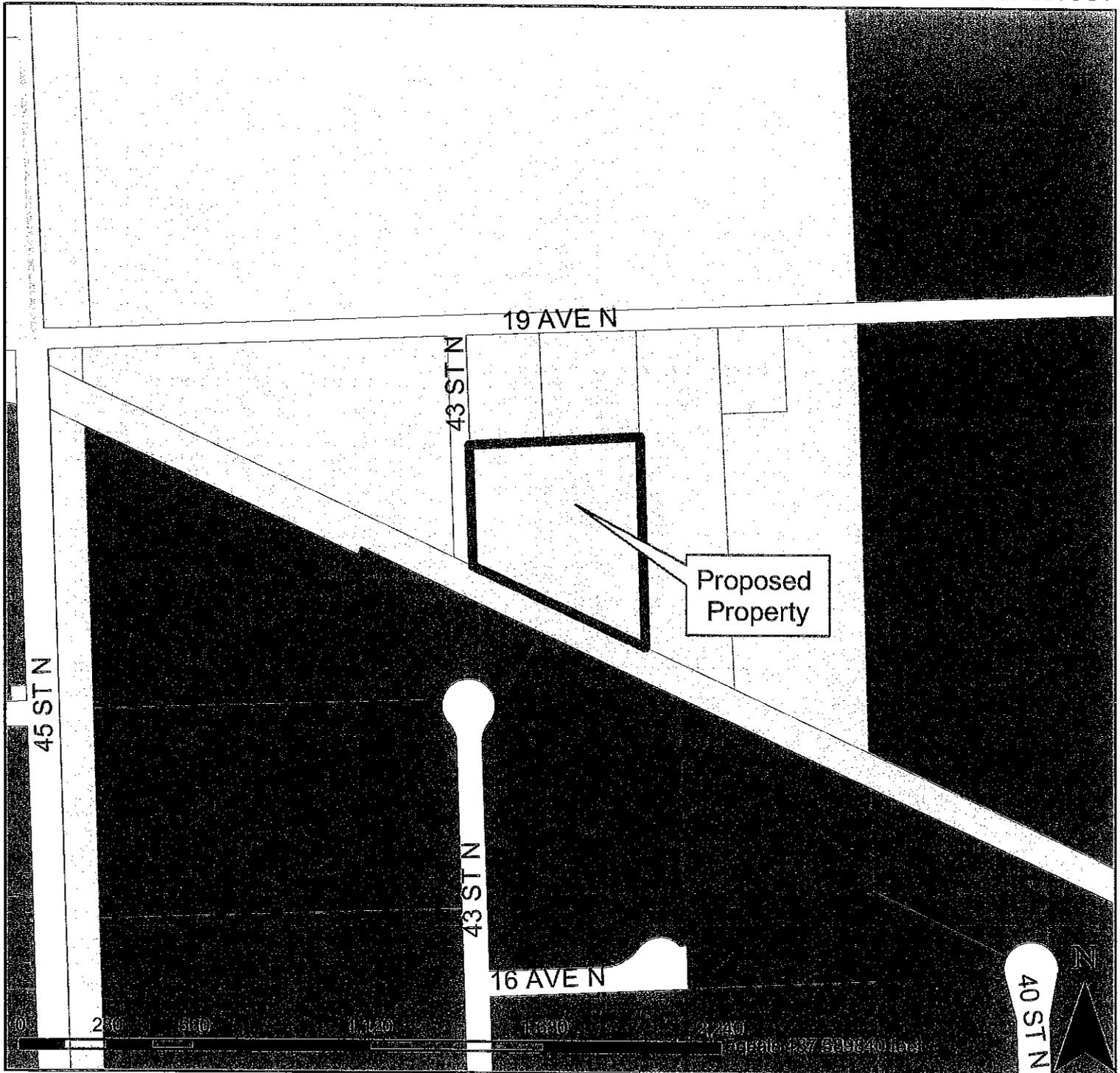
Property

Planning Commission - April 9, 2008

Zoning Change & CUP

Hectors Subdivision

Part of Lot 13
4218 19 Ave N



Legend

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



Fargo Planning Commission
 April 9, 2008
 Agenda Item 2008-04-02

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OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE REZONING CERTAIN PARCELS OF LAND
LYING IN HECTOR'S SUBDIVISION TO THE CITY OF FARGO

WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the City of Fargo have held hearings pursuant to published notice to consider the proposed rezoning of certain parcels of land lying in Hector's Subdivision, Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on April 9, 2008; and,

WHEREAS, the rezoning changes were approved by the City Commission on May 5, 2008,

NOW, THEREFORE,

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

Section 1. The following described property:

Part of Lot Thirteen (13), described as follows: Commencing at the Northwest corner of Lot 13, then on an assumed bearing South 00°08'20" West along the West line of Lot 13, 352.64 feet to the point of beginning, then North 88°24'34" East 238.71 feet, then North 89°03'39" East 303.56 feet, then South 00°06'37" West 678.01 feet, then North 63°04'46" West 607.63 feet (along the Northerly Railroad Right-of-way line) to the West boundary line of Lot 13, then North on the West boundary line (North 00°08'20" East) for 394.36 feet to the point of beginning, Hector's Subdivision to the City of Fargo, County of Cass and State of North Dakota,

is hereby rezoned from "AG", Agricultural, District to "GC", General Commercial, District.

Section 2. The City Auditor is hereby directed to amend the zoning map now on file in his office so as to conform with and carry out the provisions of this ordinance.

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OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 3. This ordinance shall be in full force and effect from and after its passage and approval.

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Dennis R. Walaker, Mayor

(SEAL)

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

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GARAAS LAW FIRM
ATTORNEYS AT LAW
DeMores Office Park
1314 23rd Street South
Fargo, North Dakota 58103-3796

Jonathan T. Garaas
David Garaas

May 14, 2008

Telephone
Area Code 701
293-7211

Fargo City Commission
200 Third Street North
Fargo, North Dakota 58102
HAND DELIVERY

Mr. Erik R. Johnson
Office of City Attorney
HAND DELIVERY

**RE: May 5, 2008, Agenda Item #4(b):
Development Plan for the proposed Tax Increment
Financing District No. 2008-01 to redevelop an area
southwest of 12th Avenue North and Albrecht
Boulevard**

Request for City Commission Agenda Slot

Dear Fargo City Commissioners & Mr. Johnson:

On May 6, 2008, I wrote on behalf of William F. Rakowski, the owner of property commonly referred to as 1424-1426 12th Avenue North, Fargo, North Dakota 58102. Mr. Rakowski is deeply concerned about parking issues and emergency access issues arising out of this project which apparently includes "Off-Site Parking". Mr. Rakowski is deeply concerned about the flagrant disregard of Fargo's own laws as exhibited by the City Planner, the Planning Commission, and most recently, the Fargo City Commission. My letter of May 6, 2008, noted the following:

Please be advised that "off-site" parking cannot be authorized with respect to the above described project. FMC § 20-0701(e)(4)(a), entitled "Ineligible Activities", which provides for a limitation upon any possible "Alternative Access Plan", reads as follows:

- a. Ineligible Activities**
Off-site parking may not be used to satisfy the off-street parking standards for residential uses (except for guest parking), restaurants, convenience stores or

other convenience-oriented uses. Required parking spaces reserved for persons with disabilities may not be located off-site.

In that it is impossible under Fargo's existing laws to provide for any "off-site parking" with respect to the mandatory parking space requirements associated with the residential portion of the project described above, and the project described above apparently requires such "off-site parking" [due to inadequate parking space to accommodate 9,510 square feet of rentable commercial space and 16 apartments on the upper floors of the commercial space], the City of Fargo, acting through its employees or commissions, should not seek to approve that which is forbidden. It would also appear that some of the proposed commercial activities, as verbally described, could not be serviced by alternative off-site parking.

Our review of the Fargo Municipal Code does not identify any method for amendment of this ordinance by disregard. *The City of Fargo should immediately call a special meeting to take action to nullify its decision of May 5, 2008, that attempted to circumvent the existing laws duly enacted by the City of Fargo.*

On May 12, 2008, Mr. Johnson wrote indicating that the City Commissioners have not yet called a special meeting, as requested, to nullify its decision of May 5, 2008.

In that the City of Fargo has not called a special meeting to take action to nullify its decision of May 5, 2008, that attempted to circumvent the existing laws duly enacted by the City of Fargo, I therefore request that this matter be put on the agenda for the next meeting of the Fargo City Commissioners on Monday, May 19, 2008.

REQUEST FOR PUBLIC RECORDS

My letter of May 6, 2008, made a request for documents if the May 5, 2008, decision was not nullified by the Special Meeting.

Specifically, Mr. Johnson's letter dated May 12, 2008, does not constitute compliance with the request(s) for public documents made on behalf of Mr. Rakowski.

Let me first reference the enclosure of our check in the amount of \$9.75 as requested by Mr. Johnson. I have included such check drawn on the account of the Garaas Law Firm

in payment of 39 pages at \$.25 per page as specifically requested by Mr. Johnson. I will be asking for most of its return.

Let me explain why Mr. Johnson's demand for payment is inappropriate, and further documents City of Fargo non-compliance with applicable law(s). My present comments will be made, in *italics*, after each referenced request for documents [set forth in the letter of May 6, 2008]:

1. A written agreement for an off-site parking area in North Dakota State University's "T" Lot which is "attested" to by the "owners of record" of "T" Lot and the "owners of record" of Lots Sixteen (16), Seventeen (17) and Eighteen (18), Block Fourteen (14), Kirkham's 2nd Addition to the City of Fargo. **The written agreement is the document required to exist according to FMC § 20-0701(E)(4)(d).**

Mr. Johnson inappropriately included a copy of a letter from Andrew Noah to Rick Johnson, General Counsel, enclosing a copy of a Construction Easement and Permit Agreement dated August 15, 2007 between FM City Development, LLC and North Dakota State University. The referenced document does not pertain to the real property set forth in the TIF District authorized on May 5, 2008.¹

The document is not relevant.

The City of Fargo should admit that the requested document required to exist -- does not exist.

No charge for these 13 pages should exist. Please refund \$3.25.

A further reason for refund of the \$3.25 exists. The photocopy is not an

¹ There exist other issue(s) with respect to any possible lease of lands owned by the State of North Dakota used for educational purposes -- a highly regulated event subject even to North Dakota Constitution limitations. Nothing known to the undersigned would allow for the developer to currently lease any portion of the land owned by the State of North Dakota for the developer's parking purposes, and it does not appear that the referenced document even purports to act as such a lease. As a result, the City of Fargo was foolish to have relied upon a "non-lease" for the site of a "non-parking lot" in the other TIF project also.

accurate photocopy of the public records of the City of Fargo -- it is actually a photocopy of the document I had earlier provided to the City of Fargo on May 2, 2008, which included some handwriting of my client. The document, if it earlier existed as part of the public records of the City of Fargo, would not include any handwriting of Mr. Rakowski.

2. A copy of the Planning Department's form(s) which contain the written agreement referenced in #1 above required to be "submitted to the Zoning Administrator for recordation". **The form is the document required to exist according to FMC § 20-0701(E)(4)(d).**

The document provided is not relevant to this request.

After enclosing the "Application for Conditional Use Permit", Mr. Johnson writes: "The Application for Conditional Use Permit did not contain the written agreement referenced in #1 above, but is submitted herewith nonetheless." Neither document referenced is a legitimate response to Request for Document #2.

The City of Fargo should admit that the requested document required to exist -- does not exist.

No charge for these 13 pages should exist. Please refund an additional \$3.75 for these 13 pages.

3. A copy of the *submitted* "Alternative Access Plan" that represents a proposal to meet vehicle parking and transportation access needs by means other than providing parking spaces on-site in accordance with the Off-Street Parking Schedule of Sec. 20-0701-B. **The submitted "Alternative Access Plan" is a document required to exist according to FMC § 20-0701(E).**

Mr. Johnson inappropriately references the response to Request for Document #2.

The document provided is not relevant to this request.

After enclosing the "Application for Conditional Use Permit", Mr. Johnson

writes: *"The Application for Conditional Use Permit did not contain the written agreement referenced in #1 above, but is submitted herewith nonetheless."* Neither document referenced is a legitimate response to Request for Document #2, nor Request for Document #3.

The City of Fargo should admit that the requested document required to exist -- does not exist.

4. A copy of the "Alternative Access Plan(.)" submitted in the form established by the Zoning Administrator which details "the type of alternative proposed and the rationale for such a proposal." **The submitted "Alternative Access Plan" is a document required to exist according to FMC § 20-0701(E)(1)(a).**

Mr. Johnson inappropriately references the response to Request for Document #2.

The document provided is not relevant to this request.

After enclosing the "Application for Conditional Use Permit", Mr. Johnson writes: "The Application for Conditional Use Permit did not contain the written agreement referenced in #1 above, but is submitted herewith nonetheless." Neither document referenced is a legitimate response to Request for Document #2, nor Request for Document #3, nor Request for Document #4.

The City of Fargo should admit that the requested document required to exist -- does not exist.

5. As to the copy of the "Alternative Access Plan(.)" submitted in the form established by the Zoning Administrator [referenced in #4 above], please provide a copy of that which was "made available to the public." The public has a right to such document according to FMC § 20-0701(E)(1)(a), and as part of your response, please provide a copy of the document used to inform the public of the existence of such "Alternative Access Plan(.)". Please also provide a list of the names of those members of the public that received such "Alternative Access Plan(.)". **The submitted "Alternative Access Plan" is a document**

required to exist according to FMC § 20-0701(E)(1)(a).

The document provided is not relevant to this request.

Instead of providing a copy of the "Alternative Access Plan", Mr. Johnson provided a Notice of Hearing [that does not reference or allude to any "Alternative Access Plan"], and a mailing list "reflecting the individuals and addresses that received the Notice of Hearing." Neither document referenced is a legitimate response to Request for Document #5.

Further, to the extent that the mailing list is involved, please note that the computer title to the mailing list would reflect a mailing date of April 4, 2008 -- clearly less than the mandatory 15 day notice set forth in the City of Fargo's ordinances. [See Request for Document #7(B).]

Further, Mr. Johnson included a copy of the City of Fargo's staff report for the Planning Commission public hearing held in April, 2008. This document is not a legitimate response to Request for Document #5.

The City of Fargo should admit that the requested document(s) required to exist -- do not exist.

Please refund an additional \$1.50 for these six (6) pages.

6. If the Alternative Access Plan proposed a reduction of no more than 25 percent or 25 parking spaces, please provide a copy of any document that identifies the decision of the Zoning Administrator [authorized to review and act on such Alternative Access Plan], and a copy of the "written notice of the request" that was mailed "to all property owners within 150 feet of the subject property at least 10 days before the Zoning Administrator takes action on the plan." As part of this request, please provide a list of the names of the property owners within 150 feet of the subject property that received such written notice. **The documents requested must exist if action by the Zoning Administrator took place according to FMC § 20-0701(E)(1)(b)(1).**

Mr. Rakowski has no objection to the response of Mr. Johnson which indicated

that "(t)he proposed reduction was of more than 25 percent or more than 25 parking spaces -- therefore N/A."

7. If the Alternative Access Plan proposed a reduction of more than 25 percent or more than 25 parking spaces, please provide a copy of any document that identifies the "review and action by the Planning Commission, in accordance with the Conditional Use Permit Review procedures of Sec. 20-0909." **The documents requested must exist if action by the Planning Commission took place according to FMC § 20-0701(E)(1)(b)(2).** As part of this request, please provide the following required by FMC § 20-0909:

- A. A copy of the City Planner's report on the Alternative Access Plan as required by FMC § 20-0909(B).

The document provided with reference to Request for Document #5 is not relevant to this request.

Instead of providing a copy of the City Planner's report on the "Alternative Access Plan", Mr. Johnson provided a Notice of Hearing [that does not reference or allude to any "Alternative Access Plan"], and a mailing list "reflecting the individuals and addresses that received the Notice of Hearing." Neither document referenced is a legitimate response to Request for Document #5, nor Request for Document #7(A).

Further, Mr. Johnson included a copy of the City of Fargo's staff report for the Planning Commission public hearing held in April, 2008. This document is not a legitimate response to Request for Document #5, nor for Request for Document #7(A).

The City of Fargo should admit that the requested document required to exist -- does not exist.

- B. A copy of the minutes of the public hearing of the Planning Commission meeting that acted upon the Alternative Access Plan as required by FMC § 20-0909(C). As part of your response to this request for documents, please provide a copy of the Notice given by the Planning Commission as required by FMC § 20-0901(F). Furthermore, please provide copy of the

“written notice by first class mail to all owners of the subject property and all property owners within 300 feet of the subject property. The notice shall be deposited in the U.S. mail at least 15 days before the first scheduled public hearing.” As part of this request, please provide a list of the names of the property owners within 300 feet of the subject property that received such written notice. Please provide a copy of the published notice of such hearing, if so published. The documents requested must exist if action by the Planning Commission took place according to FMC § 20-0909(C-E).

The document provided with reference to Request for Document #5 is not relevant to this request [Request for Document #7(B)].

Instead of providing a copy of the City Planner's report on the "Alternative Access Plan", Mr. Johnson provided a Notice of Hearing [that does not reference or allude to any "Alternative Access Plan"], and a mailing list "reflecting the individuals and addresses that received the Notice of Hearing." Neither document referenced is a legitimate response to Request for Document #5, nor Request for Document #7(A), nor Request for Document #7(B).

Further, Mr. Johnson included a copy of the City of Fargo's staff report for the Planning Commission public hearing held in April, 2008. This document is not a legitimate response to Request for Document #5, nor for Request for Document #7(A), nor Request for Document #7(B).

Further, Mr. Johnson included draft copies of minutes of the Planning Commission not involving any "Alternative Access Plan". The draft minutes are not relevant to the request of Mr. Rakowski.

Further, to the extent that the mailing list is involved, please note that the computer title to the mailing list would reflect a mailing date of April 4, 2008 -- clearly less than the mandatory 15 day notice set forth in the City of Fargo's ordinances.

The City of Fargo should admit that the requested document required to exist -- does not exist.

Please refund an additional \$.50 for these two pages.

8. In the public presentation last evening [May 5, 2008], a comment was made about peak hours of parking used by the NDSU commuters. If "Shared Parking" was ever utilized as the basis for the Alternative Access Plan, please provide all documents associated with such application, including the mandatory "shared parking analysis .. that clearly demonstrates the feasibility of shared parking." All of the required documents, notices, studies, and agreements are set forth in FMC § 20-0701(E)(5). **The documents requested must exist if action by the Planning Commission took place according to FMC § 20-0701(E)(5).**

No objection to the response which indicated that Mr. Johnson "believes there are no documents that respond to (Rakowski's) request."

The response of Mr. Johnson also include additional pages not ever requested -- two (2) loose maps and the three (3) page Conditional Use Permit dated April 9, 2008.

Mr. Rakowski makes no request for reimbursement for these five (5) pages, but does request that the Fargo City Commission review the same documents in light of the following comments made at the beginning of this letter:

Please be advised that "off-site" parking cannot be authorized with respect to the above described project. FMC § 20-0701(e)(4)(a), entitled "Ineligible Activities", which provides for a limitation upon any possible "Alternative Access Plan", reads as follows:

- a. **Ineligible Activities**
Off-site parking may not be used to satisfy the off-street parking standards for residential uses (except for guest parking), restaurants, convenience stores or other convenience-oriented uses. Required parking spaces reserved for persons with disabilities may not be located off-site.

In that the Conditional Use Permit now provided by Mr.

Johnson, without any request by Mr. Rakowski, proves that the City of Fargo has violated FMC § 20-0701(e)(4)(a), entitled "Ineligible Activities", which provides for a limitation upon any possible "Alternative Access Plan", please immediately act to nullify your May 5, 2008, action with respect to the property adjacent to Mr. Rakowski's land.

The City of Fargo should not countenance any property owner making neighbors provide parking on the lands of the neighbors, or on the public streets in front of the lands of the neighbors. If the City Planner's report is accurate, a minimum of 78 on-site parking spaces are mandated by City of Fargo ordinances -- it could be as high as 103 parking spaces would be mandated if the retail space is used for restaurant purposes. To ignore the law, and reduce the on-sight parking to 33 parking spaces means the City of Fargo ignores its own laws, and dumps 45-70 cars unto land owned by others. In addition, such act flies in the face of the following language found in the very same report [¶ 4(A) of Staff Analysis]:

"On a typical school day, the surrounding neighborhood is already surrounded by on street parking from university students. This issue is to be addressed during the University master plan study (currently in process) and a parking fine program."

Making money off of a "parking fine program" directed toward university student parking on neighborhood streets is wrong, but when the City of Fargo places even greater demand upon the same neighborhood streets by allowing a developer to ignore on-site parking mandates -- it is also preposterous.

Very truly yours,

Jonathan T. Garaas

JTG:j
cc: W. Rakowski