

FARGO CITY COMMISSION AGENDA
Monday, June 14, 2010 - 5:00 P.M.

CITY COMMISSION MEETINGS ARE BROADCAST LIVE ON TV FARGO 12 (Channel 12). They are rebroadcast each Monday at 5:00 p.m., Thursday at 7:00 p.m. and Saturday at 8:00 a.m.; 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, June 1, 2010).

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

- a. 2nd reading, waive reading and final adoption of Ordinances relating to the following; 1st reading, 6/1/10:
 - (1) Fire Protection and Prevention.
 - (2) International Building Code.
 - (3) International Residential Code.
 - (4) International Existing Building Code.
 - (5) International Mechanical Code.
 - (6) International Fuel Gas Code.
 - (7) International Property Maintenance Code.
 - (8) Dogs and Cats.
 - (9) Rezoning Certain Parcels of Land Lying in MGB First Addition.
- b. Receive and file Year to Date – Budget to Actual Report for May 2010.
- c. Service Agreement with Fargo Public Schools for Special Services.
- d. Inter-Local Agreement with West Fargo and Cass County (CFDA #16.738).
- e. List price of \$139,900.00 for each of the NSP Purchase Rehab properties at 222 21st Avenue North and 2910 10th Street North.
- f. Software licensing agreement with Profit Stars to provide payment processing software.
- g. Amendment to the Joint Powers Agreement with NDSU to provide an additional \$103,000.00 for transit.
- h. Applications for Games of Chance:
 - (1) Fargo Angels Youth Hockey for a calendar raffle from 12/5/10 through 12/28/10.
 - (2) Fargo Theatre Management Corporation for a raffle on 8/5/10.
- i. Bid awards for Hazardous Materials Response Equipment for the Fire Department.
- j. Change Order No. 1 in the amount of \$2,595.28 for the Solid Waste Transfer Facility lighting upgrades.

Relinquishment of Easement for property owned by SKA Investments, LLP in Adams 5th Addition (Improvement District No. 5726).

- l. Purchase Agreement - Easement with DB & MH Partnership, LLLP (Improvement District No. 5803).
- m. Declare Lots 1-6, Block 2, Riverwood 1922 First Addition unbuildable.
- n. Contract award for Phase I Cultural Resources Investigation for the F-M Metro Flood Risk Management Project to URS for Project Nos. 5683-08 and 5683-09.
- o. NDSWC Agreement for Cost Reimbursement for the FM Metro Flood Control Feasibility Study.
- p. Renewal of 2010-2011 Alcoholic Beverage and Live Entertainment licenses contingent upon conditions outlined by the City Auditor.
- q. Accept canvass of votes cast at the June 8, 2010 Primary Election and declare officials elected.
- r. Engineering Services Contract Amendment in the amount of \$49,732.00 for Improvement District No. 5905.
- s. Engineering Consultant Services contracts for Project Nos. 5945, 5946, 5949 and 5950.
- t. Contract Amendment No. 3 in the amount of \$189,500.00 for Project No. 5726-1.
- u. Request for Proposals for Engineering Consulting Services for an Intersection Control Evaluation Study (Project No. 5922).
- v. Agreement with Kadrmas, Lee & Jackson, Inc. for engineering services for Improvement District No. 5908-03.
- w. Payment of \$4,843.13 to Wanzek Construction for street patching for Improvement District No. 5229.
- x. Change Order No. 3 for an increase of \$50,358.16 for Project No. 5656.
- y. Change Order No. 5, Part A, for an increase of \$15,513.50 for Project No. 5729.
- z. Contract and bond for Project No. 5918.
- aa. Bills.
- bb. Change Orders for Improvement District No. 5640: No. 1 for an increase of \$157,130.00; No. 2 for an increase of \$35,425.00.
- cc. Create Improvement District Nos. 5244, 5905, 5932, 5942 and 5953.
- dd. Contract and bond for Improvement District No. 5916.

1. Request for an extension of the noise ordinance until 11:00 p.m. on July 30 and July 31 at Newman Outdoor Field for the Fargo Blues Festival.
2. Request from the Empire Tavern Downtown for an extension of the noise ordinance until 11:00 p.m. on June 18, July 1, July 9, July 15, July 16, August 5, August 13, August 27 and September 2, 2010 for outdoor concerts.
3. Recommendation to determine protests insufficient and award bids for PC Concrete Alley Paving and Incidentals Improvement District No. 5924 (from 14th to 15th Streets between 12th and 13th Avenues South).
4. Public Hearings - 5:15 p.m.:
 - a. Petition requesting a zoning change from P/I, Public and Institutional to DMU, Downtown Mixed Use on all of Block 45, Robert's 2nd Addition (315 Univ. Dr. N.).
 - (1) Approval recommended by the Planning Commission on 5/12/10.
 - (2) 1st reading of rezoning Ordinance.
 - b. WITHDRAWN BY PETITIONER: This was the time advertised for a hearing on a petition requesting rezoning and platting of Prairie Grove Third Addition, however, the petition has been withdrawn by the petitioner (5450 and 5652 26th St. S., 5385 through 5611 27th St. S., 2560 through 2687 56th Ave. S. and 2561 through 2693 57th Ave. S.).
 - c. Appeal of a variance request for a 47 foot variance of the 35 foot maximum height limit for primary structures within AG, Agricultural zoning districts (3307 US Hwy 81 North).
 - (1) Denied by the Board of Adjustment at their 5/25/10 meeting because of the failure to take action.
5. Recommendation to order construction of sidewalks on Harrison Street South and all post-2003 development areas.
6. Recommendation to reappoint Mike Wenaas and Nancy Jordheim to the Civil Service Commission.

People with disabilities who plan to attend the meeting and need special accommodations should contact the Commission Office at 241-1310 or TDD 241-8258. Please contact us at least 48 hours before the meeting to give our staff adequate time to make arrangements.

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

1



218-287-7775 phone/fax
PO Box 11
Fargo, ND 58107
fargobluesfest@yahoo.com
fargobluesfest.com

June 3, 2010

Fargo City Commission:

The 15th annual Fargo Blues Festival is Friday July 30 and Saturday July 31, 2010 at Newman Outdoor Field.

We are again asking the city commission's approval to **extend the sound ordinance to 11:00pm** for both nights.

400 people travel over 500 miles to the blues fest. Another 600 travel 100 to 500 miles many from Minneapolis, Canada and Western North Dakota. Due to this extended travel, it is vital we have the option to extend both nights to 11:00pm. The final headliner is scheduled to end at 10:30pm Friday night and 9:30pm Saturday night. The extra time is needed in case of an unexpected delay. Otherwise, it is possible we'll lose hundreds of out of town blues fans and lots of tourism dollars!

Also, consider that Newman Outdoor Field is located in a non residential area several blocks from the nearest home and is an enclosed stadium. Since you approved this previous years, and we had no complaints regarding the sound ordinance extention, your approval would again be appreciated!

Thank You for your consideration
Executive Director

Dan Bredell
Dan Bredell

2

TO THE FARGO CITY COMMISSIONERS,

MY NAME IS JEREMY TJON,
IM WRITING THIS REQUEST ON BEHALF OF EMPIRE TAVERN DOWNTOWN
FARGO 424 BDWY. IM ASKING THE COMMISSIONERS TO ALLOW EMPIRE
TO HAVE AN EXTENSION OF THE NOISE ORDINANCE UNTIL 11PM. THE
DATES OF THE CONCERTS ARE JUNE 18TH, JULY 1ST, JULY 9TH, JULY 15TH
JULY 16TH STREET FAIR WEEKEND, AUG 5TH, AUG 13TH, AUG 27TH AND
SEPTEMBER 2ND. THREE OF THESE NIGHTS ARE THURSDAY CRUISE NIGHTS
AND THE LAST TWO ARE WELCOME BACK STUDENT EVENTS. I KNOW YOU
GUYS ARE REALLY BUSY AND I WANT TO SAY THANK YOU FOR YOUR
TIME AND CONSIDERATION, IN THE PAST WE HAVE NEVER HAD ANY
ISSUES WITH OUTDOOR EVENTS. EMPIRE IS ALWAYS OVER STAFFED FOR
THESE EVENTS AND I AM IN COMMUNICATIONS WITH OFFICER SCOTT
STENERSON IF ANYTHING SHOULD COME UP. IF ANY CONCERNS OR
QUESTIONS I CAN BE REACHED AT 235-4705.

THANK YOU,
JEREMY TJON
GENERAL MANAGER





ENGINEERING DEPARTMENT

200 3rd Street North
Fargo, North Dakota 58102
Phone: (701) 241-1545
Fax: (701) 241-8101
E-Mail: feng@cityoffargo.com

June 9, 2010

3

Honorable Board of City
Commissioners
City of Fargo
Fargo, ND

Re: Improvement District No. 5924

Dear Commissioners:

Bids were opened at 11:30 AM on Wednesday, June 9, 2010, for PC Concrete Alley Paving and Incidentals, Improvement District No. 5924, located at 14th to 15th Street between 12th and 13th Avenue South, Block 7, Aldrich and Roberts Addition.

The bids were as follows:

| | |
|-------------------------------|-------------|
| Adelman Concrete & Excavating | \$55,723.75 |
| Key Contracting | \$63,020.00 |
| Opp Construction Co. | \$63,763.00 |
| Heston Contracting, Inc. | \$66,655.00 |
| Engineer's Estimate | \$59,000.00 |

The special assessment escrow is not required.

The protest period expired on June 8, 2010. The responses received are summarized as follows:

| | |
|-------------------------------|--------|
| 10 properties support project | 52.15% |
| 4 properties oppose project | 21.01% |
| 5 properties did not respond | 26.84% |

This office recommends that protests be declared insufficient and award of the contract to Adelman Concrete & Excavating, in the amount of \$55,723.75 as the lowest and best bid.

Sincerely,

Mark H. Bittner
City Engineer

MHB/pan

Street Lighting
Sidewalks

Design & Construction
Traffic Engineering

Truck Regulatory
Flood Plain Mgmt.

Mapping & GIS
Utility Locations

ENGINEER'S STATEMENT OF ESTIMATED COST

PC Concrete Alley Paving and Incidentals

IMPROVEMENT DISTRICT # 5924

14th to 15th St between 12th and 13th Ave S-Block 7, Aldrich and Roberts Addition

WHEREAS, bids have been opened and filed for the above described Improvement District of the City of Fargo, North Dakota; and

WHEREAS, an estimate of the cost of the work is required by the engineer for the City of Fargo, North Dakota;

NOW THEREFORE Mark H. Bittner, do hereby certify as follows:

That I am the City Engineer for the City of Fargo, North Dakota;

That the following is a detailed statement of the estimated cost of the job described as PC Concrete Alley Paving and Incidentals Improvement District # 5924 of the City of Fargo, North Dakota.

Paving

| | | | |
|--|-------------|----------------------------|--------------------|
| 1557 1-1/4" Crushed Rock | 20.00 TON | 20.00 | 400.00 |
| 3896 Inlet Protection Type C | 4.00 EA | 50.00 | 200.00 |
| 4000 Excavation | 440.00 CY | 5.00 | 2,200.00 |
| 4010 Subgrade Preparation | 1,275.00 SY | 1.00 | 1,275.00 |
| 4061 Gravel Base (ND Class 5) | 280.00 TON | 12.50 | 3,500.00 |
| 4110 6" Reinforced PC Concrete Pavement | 1,275.00 SY | 35.75 | 45,581.25 |
| 4130 6" RC Driveway | 50.00 SY | 35.75 | 1,787.50 |
| 4319 Remove Driveway (All Types) | 50.00 SY | 8.00 | 400.00 |
| 4510 Traffic Control | 1.00 LS | 380.00 | 380.00 |
| | | Paving Sub Total: | \$55,723.75 |
| | | Construction Total: | \$55,723.75 |

ENGINEER'S STATEMENT OF ESTIMATED COST

PC Concrete Alley Paving and Incidentals

IMPROVEMENT DISTRICT # 5924

14th to 15th St between 12th and 13th Ave S-Block 7, Aldrich and Roberts Addition

| | | |
|---------------------|------------------------------|-----------|
| Construction Total: | | 55,723.75 |
| Engineering: | 11.00 % | 6,129.61 |
| Legal: | 7.00 % | 3,900.66 |
| Contingencies: | 10.00 % | 5,572.38 |
| Administration: | 6.00 % | 3,343.43 |
| Interest: | 8.00 % | 4,457.90 |
| | Sub-Total: | 79,127.73 |
| | Less Street Rehab Funds: | 0.00 |
| | Less Water Department Funds: | 0.00 |

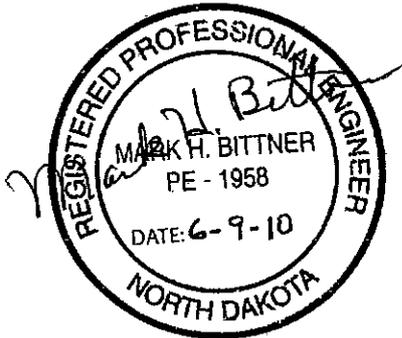
TOTAL ESTIMATED ASSESSED COSTS: 79,127.73

IN WITNESS THEREOF, I have hereunto set my hand and seal

Date: 6/9/2010

Mark H. Bittner

Mark H. Bittner
City Engineer



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| City of Fargo Staff Report | | | |
|-------------------------------|---|-----------------------|-----------------------------------|
| Title: | Roberts 2 nd Addition (Mealey's Subdivision) | Date: | 4/27/10 UPDATED: 6/9/10 |
| Location: | 315 N University Drive | Staff Contact: | Mark Williams |
| Owner(s)/Applicant: | Dan Huffman | Engineer: | N/A |
| Reason for Request: | Zoning Change From P/I – Public and Institutional to DMU – Downtown Mixed Use | | |
| Status: | City Commission Public Hearing | | |

| Existing | Proposed |
|--|--|
| Land Use: Vacant/Community Service | Land Use: Undetermined |
| Zoning: P/I – Public and Institutional | Zoning: DMU – Downtown Mixed Use |
| Uses Allowed: P/I – Public and Institutional. Allows colleges, community service, daycare centers of unlimited size, detention facilities, health care facilities, parks and open space, religious institutions, safety services, schools, offices, commercial parking, outdoor recreation and entertainment, industrial service, manufacturing and production, warehouse and freight movement, waste related use, agriculture, aviation, surface transportation, and major entertainment events. | Uses Allowed: DMU – Downtown Mixed Use. Allows detached houses, attached houses, duplexes, multi-dwelling structures, community service, daycare centers of unlimited size, health care facilities, parks and open space, religious institutions, safety services, offices, off-premise advertising, commercial parking, retail sales and service, vehicle repair, limited vehicle service, and major entertainment events. |
| Maximum Density Allowed: 45% building coverage | Maximum Density Allowed: 100% building coverage |

| |
|---|
| Area Plans: |
| The <i>Fargo-Moorhead Downtown Framework Plan Update</i> includes this area as part of the downtown framework and encourages this area to develop towards student housing and mixed-use retail. The plan also indicates that infill in this area should focus towards residential development. |
| Schools and Parks: |
| The property is not near any parks. It is located approximately 1000 feet from Barry Hall, NDSU. |
| Staff Analysis: |
| The property is surrounded by 3 rd and 4 th Avenue North and University Drive North and 12 th Street North (315 University Drive North). The property is approximately 69,012 square feet in size. Commonly referred to as the Woodrow Wilson High School, the building has been recently utilized as an alternative high school and community center. The Fargo Public School District plans to sell the property because they no longer have any use for it. |
| Zoning Change |
| The LDC stipulates that the Planning Commission and Board of City Commissioners shall consider the following criteria in their review of zoning map amendment requests. Proposed zoning map amendments that satisfy all of the criteria may be approved. |
| 1. The requested zoning change is justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map; |
| Staff is unaware of any zone map error. The existing P/I – Public and Institutional zoning is intended to accommodate a school/community center use on the property. The school district no longer has a use for the property and hopes to sell it. The petitioner is requesting a zoning change in order to provide more flexibility in land uses for the future property owner. Therefore the conditions have changed for the zoning to change from P/I to DMU. (Criteria Satisfied) |

- 2. **The City and other agencies will be able to provide necessary public services, facilities, and programs to serve the development allowed by the new zoning classification at the time the property is developed;**

This property is already developed and served by public utilities. Utility servicing will be confirmed during the permitting steps required for any development projects. **(Criteria Satisfied)**

- 3. **The approval will not adversely affect the condition or value of property in the vicinity;**

Staff has no documentation or evidence that the approval of this zoning change would adversely affect the condition or value of the property in the vicinity. The rezoning request is compatible with the surrounding neighborhood. At the writing of this staff report, staff has not received any written comments opposing this request. **(Criteria Satisfied)**

- 4. **The proposed amendment is consistent with the purpose of this LDC, the applicable Growth Plan and other adopted policies of the City.**

The LDC indicates that the intent of the Downtown Mixed Use district is to preserve and enhance the City's downtown area. The district allows a broad range of uses in order to enhance the role of downtown as Fargo's center. The *Growth Plan for the Urban Fringe and Extraterritorial Area of the City of Fargo* and the *2007 Growth Plan* are silent to this portion of the city. However, the *Fargo-Moorhead Downtown Framework Plan Update* includes this area as part of the downtown framework and encourages this area to develop towards student housing and mixed-use retail. The plan also indicates that infill in this area should focus towards residential development. By rezoning this area to DMU, residential mixed uses will be permitted. With the application of the DMU zoning district, certain design standards will also be applicable as part of any redevelopment projects. The proposal is consistent with the purpose of the LDC, the applicable Growth Plan and other adopted policies of the City. **(Criteria Satisfied)**

Planning Commission Recommendation:

5/12/10: In a unanimous decision, the Planning Commission recommended approval to the City Commission of the proposed zoning change from P/I, Public and Institutional to DMU, Downtown Mixed Use, 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."

Staff Recommendation:

Suggested Motion "To accept the findings of staff and the Planning Commission and hereby approve the proposed zoning change from P/I, Public and Institutional to DMU, Downtown Mixed Use 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."

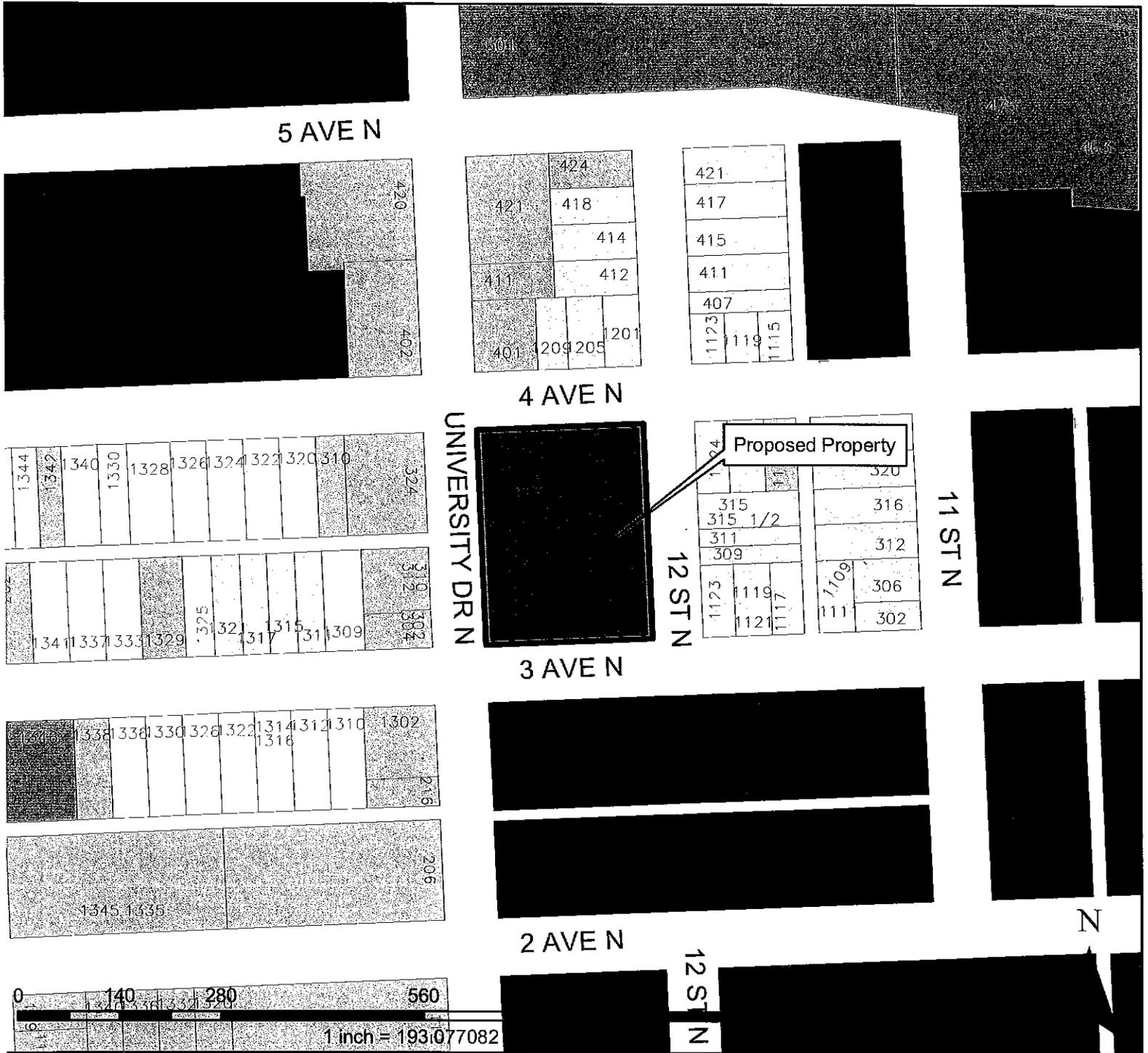
City Commission:

6/14/10

Zoning Change P/I to DMU

Robert's Second Addition

315 University Drive 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
May 12, 2010

Zoning Change P/I to DMU

Robert's Second Addition

315 University Drive N



4al

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE REZONING CERTAIN PARCELS OF LAND
LYING IN ROBERT'S 2ND ADDITION TO THE CITY OF FARGO,
CASS COUNTY, NORTH DAKOTA

1
2 WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the
3 City of Fargo have held hearings pursuant to published notice to consider rezoning of certain
4 parcels of land lying in Robert's 2nd Addition to the City of Fargo, Cass County, North Dakota; and,

5 WHEREAS, the Fargo Planning Commission recommended approval of the rezoning
6 request on May 12, 2010; and,

7 WHEREAS, the rezoning changes were approved by the City Commission on June 14,
8 2010,

9 NOW, THEREFORE,

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

11 Section 1. The following described property:

12 All of Block Forty Five (45), Robert's 2nd Addition to the City of Fargo, Cass
13 County, North Dakota,

14 is hereby rezoned from "P/I", Public Institutional, District to "DMU", Downtown Mixed Use,
15 District.

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

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

20 _____
Dennis R. Walaker, Mayor

21 (SEAL)
Attest:

22 _____
Steven Sprague, City Auditor

23
First Reading:
Second Reading:
Final Passage:

46

From: James Hinderaker
Sent: Thursday, June 10, 2010 12:52 PM
To: Sharon Odegaard
Subject: FW: Prairie Grove re-plat/re-zone

Sharon,

Here's the withdrawn letter for Prairie Grove. It just came in at 12:36 pm.

Jim

From: lanny [mailto:lanny@adamsdevelopment.com]
Sent: Thursday, June 10, 2010 12:36 PM
To: James Hinderaker
Cc: john@adamsdevelopment.com
Subject: Prairie Grove re-plat/re-zone

Jim;
Please remove our petition to appear before the City Commission on June 14, 2010.

Thank you for your help with this unsuccessful endeavor.

Lanny Baer
Adams Development
701-281-2999 office
701-277-1570 fax
lanny @adamsdevelopment.com e-mail

CITY OF FARGO
Board of Adjustment Variance Staff Report

| Item No: 05-10-01 | Date: May 11, 2010 Updated: June 8, 2010 |
|--|---|
| Address: 3307 US HWY 81 North | |
| Legal: Unplatted portion in the SW1/4 of Section 23, Township 140, Range 49 | |
| Owner(s)/Applicant: John Trautman | |
| Reason For Request: Construct a 70' tower to house a 10KW wind turbine for a total height of 82' | |
| Zoning: AG – Agricultural | |
| Status: Board of Adjustment Hearing: 05/25/10 (DENIAL) City Commission Public Hearing of Appeal : 06/14/10 | |
| Existing | Proposed |
| Setbacks: 25' W, 50 N, 25 E, 50 S | Setbacks: Met |
| Coverage: N/A | Coverage: N/A |
| Height: 35' | Height: 82' |
| Miscellaneous: | Miscellaneous: |
| <p>Staff Analysis: John Trautman hopes to construct a tower that will hold a 10 KW wind turbine for an overall height of approximately 82' on the above mentioned property. Such construction would require a 47' height variance of §20-0501 of the LDC that requires a 35' maximum height limit for primary structures within AG – Agricultural zoning districts.</p> <p>Wind turbines that provide supplemental electricity to the property and do not place power back on the grid are considered accessory uses. Wind turbines that place power back on the electrical grid are considered primary uses. The proposed wind turbine will be placing power back on the electrical grid and therefore is considered a primary structure and is regulated by §20-0501 of the LDC.</p> <p>Staff has recommended that the applicant apply for a rezoning of the property and to plat the property. The property is not included in any prior growth plans, however, GC – General Commercial or LI – Limited Industrial zoning districts would be compatible with the surrounding area. The property is currently zoned AG – Agricultural allowing up to a maximum height of 35'. GC – General Commercial or LI – Limited Industrial do not have a maximum height limit. Therefore, the proposed wind turbine would be allowed by right with GC or LI zoning.</p> <p>§20-0913 of the LDC state that Building Permits may be issued only for development on Legal Lots located within the city limits. A legal lot is defined as a lot that is shown on a subdivision plat that has been recorded in the office of the County of Register of Deeds. The property is located within the city limits and is unplatted. With or without an approved variance or zoning change, a building permit cannot be issued until the property is platted.</p> <p>The owner hopes to continue to board approximately 13 horses on the property. Animal boarding/stables are considered an agricultural use and are allowed in AG zoning. Animal boarding/stables are not allowed at all within GC or LI zoning districts.</p> <p>Criteria for Approval:</p> <ol style="list-style-type: none"> 1. The requested variance arises from conditions that are unique to the subject property not ordinarily found in the same zoning district and are not a result of the owner's intentional action; <ul style="list-style-type: none"> • The requested height of the structure is a self-imposed hardship. The applicant has not shown that the | |

subject property is unique or different than any other AG zoned parcel. The applicant simply prefers this height because of the required specifications to make the wind turbine properly operate. Technically, the property can still be used as an otherwise allowable use without the proposed structure. As mentioned above, the zoning district is preventing the structure from being constructed and staff is recommending that the property be rezoned to either GC or LI. **(criteria NOT satisfied).**

2. The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;

- No written comments have been received. The property abuts AG zoning to the north and east, P/I to the south, and LI to the west across US HWY 81. The FAA has approved the height of the structure based on the proximity to the airport. Staff has no data that would identify an adverse impact to the adjacent neighbors. (criteria satisfied).

3. The strict application of the applicable standards will constitute an unnecessary physical hardship (not economic hardship) because the property cannot be used for an otherwise allowed use without coming into conflict with applicable site development standards;

- The structure could be constructed following the LDC's dimensional standards; however, the height of 35 feet would not allow the wind generator to function properly. The proposal represents the preferred height. The property could be used for an otherwise allowed use without coming into conflict with applicable site development standards. The structure could be built within other zoning districts that would be compatible with this area. **(criteria NOT satisfied).**

4. The variance is desired will not adversely affect the public health, safety or general welfare;

- Staff has no data that would identify an adverse affect the public health, safety or general welfare. No public health, safety, or general welfare issues have been identified. (criteria satisfied).

5. The variance is the minimum variance that will overcome the hardship;

- As stated above, the requested height of the structure is a self-imposed hardship. The proposed structure could be reduced in size to meet the required height limits or the applicant could seek a zoning change. The applicant prefers this height because of the requirements to operate the wind turbine. Therefore, staff feels that there is not a hardship to overcome. **(criteria NOT satisfied).**

Staff Recommendation: Suggested motion: "To accept the findings of staff and deny the 47' variance of the 35' maximum height limit for primary structures within AG – Agricultural zoning districts on the basis that review criteria of Section 20-0914.E (1, 3, and 5) have not been met."

Board of Adjustment Action: In a unanimous decision, the Board of Adjustment accepted the findings of staff and denied the variance as proposed, as outlined within the staff report, on the basis that review criteria of Section 20-0914.E (1, 3, and 5) have not been met. (see attached minutes).

**BOARD OF ADJUSTMENT
MINUTES**

Regular Meeting:

Tuesday:

May 25, 2010

The Regular Meeting of the Board of Adjustment of the City of Fargo, North Dakota, was held in the City Commission Room at City Hall at 9:00 o'clock a.m., Tuesday, May 25, 2010.

The Members present or absent were as follows:

Present: Chad Peterson, Ken Lepper, Michael Love, Amanda Thomas, Deb Wendel-Daub

Absent: Mark Lundberg

Chair Peterson called the meeting to order.

Mr. Lepper moved to approve the minutes of the February 23, 2010 Board of Adjustment meeting. Second by Mr. Love. All Members present voted aye and the motion was declared carried.

Chair Peterson reviewed the procedures of the Board and stated that appeals to the Board's decisions may be made in writing to the City Commission office within 10 days of the Hearing.

Old Business:

No old items of business were presented.

New Business:

Item 1: 3307 US HWY 81 North, John Trautman, Request for a variance of Section 20-0501 of the Land Development Code which requires a height maximum of 35-foot for primary structures within an AG, Agricultural zoning district: DENIED

Planner Mark Williams presented the staff report for the requested variance noting Mr. Trautman hopes to construct a tower that will hold a 10 KW wind turbine which would require a 47 foot height variance of Section 20-0501 of the Land Development Code (LDC) that permits a 35' maximum height limit for primary structures within AG, Agricultural zoning districts. Mr. Williams submitted the two letters of support he received. He reviewed the criteria for approval stating the requested height of the structure is a self-imposed hardship as the property can be used as an otherwise allowable use without the proposed structure and the zoning district is preventing the structure from being constructed. He noted the structure could be built within other zoning districts that would be compatible with this area. To this end, he said, staff is recommending that the property be rezoned to GC, General Commercial, or LI, Limited Industrial. He said the structure could be constructed following the LDC's dimensional

standards; however, the height of 35 feet would not allow the wind generator to function properly. He stated the proposed structure could be reduced in size to meet the required height limits or the applicant could seek a zoning change. He explained the applicant prefers this height because of the requirements to operate the wind turbine and therefore staff feels there is not a hardship to overcome. In summary, Mr. Williams stated approval criteria one, three, and five have not been met and therefore staff is recommending denial of the variance based upon these items.

Referring to the unique opportunity Mr. Trautman's parcel of land provides as outlined in a letter of support for the project, Mr. Williams offered the Planning Commission could be approached with a text amendment to allow for such wind towers within such unique parcels. He said a building permit cannot be issued on an unplatted parcel of land.

Ms. Thomas inquired if it is premature to ask for a variance on something for which a building permit cannot be issued.

Mr. Trautman, petitioner, stated he thinks this fits within the future goals of the City of Fargo and he feels the proposal will enhance the 19th Avenue corridor. He said he does not expect more development in the area.

Ms. Wendel-Daub asked the owner if he plans to plat the property. In response, Mr. Trautman stated he would if that is what it takes to put up the wind turbine. Ms. Wendel-Daub stated the land needs to be platted as it is not zoned to build a structure. She explained the proposed wind turbine will place power back on the electrical grid and therefore is considered a primary structure.

Jack Hanson, Enterprise Wind, stated systems that do not feed to the grid are unreliable and costly. He said if grid tied, they have an economic advantage by payment of the utility surplus.

Mr. Trautman stated he has been in contact with the Airport Authority and has garnered approval from them at a meeting last week. He said he has neighbors present on his behalf this morning, as well as the signed letter of support from a neighbor which was submitted to the Board by Mark Williams.

Ms. Thomas expressed her concern about approving this variance on property that may exchange hands, be further parceled out, etc.

Mr. Trautman stated his concern that rezoning the parcel may change the makeup of the area. He noted he does not plan to move anytime soon.

Ms. Wendel-Daub asked if there is another process by which to have this item heard other than as a variance.

There was discussion regarding other avenues by which this project may advance including platting the land and a text amendment to the Land Development Code.

There was discussion regarding the timeline of moving this item through the Planning Commission and City Commission.

Ms. Wendel-Daub stated she would like to see this item handled by a text amendment through the City Commission.

Mr. Lepper suggested tabling the item to allow more time to consider the larger picture of the general topic, not just this one specific tower.

Lyle Marchus 3321 32 Avenue North stated he has no objection to the item discussed today.

Mr. Jack Hanson stated the Fargo Airport Authority gave full permission to put up the tower.

Mr. Love stated the goal should be to have wind towers as a permitted use, not only by a variance. He said the right avenue for that change is a text amendment.

Ms. Wendel-Daub moved the findings of staff be accepted and the 47 foot variance of the 35 foot maximum height limit for primary structures within AG, Agricultural zoning districts be denied on the basis that the review criteria of Section 20-0914.E (1, 3, and 5) have not been met, and recommend other venues that properly address guidelines for wind turbines be explored. Second by Mr. Love. Upon call of the roll Members Love, Wendel-Daub, Thomas, Lepper, and Peterson voted aye. Absent and not voting: Mr. Lundberg. The motion was declared carried.

Other Business:

Item 1: 1776 45th Street South, Leo Ness for Newman Outdoor Advertising, Appeal of an Administrative Decision to deny an off-premise advertising sign. The denial is based on Section 20-0402.B.4 of the Land Development Code which requires off-premise advertising signs to be separated by a minimum of 300 feet within a GC, General Commercial zoning district: WITHDRAWN

The appeal has been withdrawn by Newman Outdoor Advertising.

Adjournment:

Ms. Thomas moved to adjourn the meeting at 10:00 a.m. Second by Mr. Love. All Members present voted aye and the motion was declared carried.

AFFECTED PROPERTY OWNERS NOTICE

To Whom It May Concern:

RE: PETITION FOR VARIANCE

This letter is written on behalf of John Trautman. He is the owner of the property located at 3307 US HWY 81 North.

Mr. Trautman hopes to construct a 70' tower that will hold a 10 KW wind turbine for an overall height of 82' on the above mentioned property. This would require a variance of §20-0501 the Land Development Code. This request, if granted would allow Mr. Troutman a 47-foot variance of the 35-foot maximum height limit for primary structures within AG – Agricultural zoning districts.

Therefore, Mr. Trautman is requesting a variance from the Board of Adjustment to permit construction of the structure as proposed. It is necessary to notify all property owners within 300 feet of the property as part of a variance request.

Objections to the petition may be submitted at the Board of Adjustment meeting to be held on Tuesday, May 25, 2010 at 9:00 a.m. in the Commission Room, City Hall. Written objections may also be filed by writing the Planning and Development office at the address listed above.

Thank you,



Mark Williams
Planner/Zoning Administrator

APPLICATION FOR VARIANCE

ORIGINAL

To: Board of Adjustment
 Fargo, North Dakota
 CONTACT NAME
 PHONE #

I am requesting a variance of the City of Fargo Land Development Code. I have read and understand the five criteria of approval as stated below, and have the following replies to each of the five:

Criteria for Approval

a. The requested variance arises from conditions that are unique to the subject property, that are not ordinarily found in the same zoning district and that are not a result of the owner's intentional action;

OWNER DESIRES TO ENHANCE ENVIRONMENT
 BY ELIMINATING CO₂ & OTHER POLLUTANTS USED
 IN PRESENT GENERATION OF MY ELECTRICITY

b. The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;

WIND TOWER IN CENTER OF 15 ACRE PARCEL
 WILL NOT BE SEEN OR HEARD BY OTHERS
 EXCEPT POSSIBLY MY GUESTS OR CARS ON OLD 81 OR I-29

c. The strict application of the applicable standards will constitute an unnecessary physical hardship (not economic hardship) because the property cannot be used for an otherwise allowed use without coming into conflict with applicable site development standards;

35' HEIGHT LIMIT IS UNREASONABLE FOR A
 RURAL RANCH AND PERSONS WANTING TO USE
 A WIND TURBINE.

d. The variance desired will not adversely affect the public health, safety or general welfare; and;

ENHANCE THE ENVIRONMENT REDUCE DEPENDENCE
 ON FOREIGN OIL AND GAS AND REDUCE MY EXPENSES
 IN AN ERA OF RISING ENERGY COSTS.

e. The variance is the minimum variance that will overcome the hardship:

BECAUSE OF SHELTER BELT TREES THE
 PROPOSED TURBINE MUST BE HIGHER MINIMUM
 OF 70' FAA HAS APPROVED HEIGHT TO 81'
 3307 N Old Hwy 81 PARCEL # 01-3524-010-000

Applicant (signature): x John Trautman
 Applicant (printed): JOHN TRAUTMAN
 Applicant Address: 3307 Hwy 81 N. FARGO
 Applicant Phone: 701-238-7808

CONTACT PERSON JACK HANSON
 ENTERPRISE WIND
 701-845-1272

| FOR PLANNING OFFICE USE ONLY | |
|------------------------------|----------------|
| Date Filed: | <u>4-19-10</u> |
| \$185.00 Filing Fee | <u>pd</u> |
| Planning Office Contact | <u>HD</u> |



**Commercial Permit Application
and
Plan Routing Application**

INSPECTIONS
200 3RD STREET NORTH
FARGO, NORTH DAKOTA 58102
PHONE: 701-241-1561
FAX: 701-476-6779

| | | |
|--|---|----------------------------|
| Project Title: 10 kw Wind Turbine | | FOR OFFICE USE ONLY |
| Address: 3307 US Hwy 81 N | | |
| Project Description: Install Ventera 10 kw wind turbine and grid tie to Cass County Electric | | |
| Architects: Jack Hanson | Contact Person & Number: Jack Hanson P701-845-1272 F845-1273 solarwindconsultants@yahoo.com | |
| Owner: John Troutman | Contact Person & Number: 238-7808 | |
| General Contractor: Enterprise | Contact Person & Number: Greg Burchill greg@enterprisesalesco.com | |
| Mechanical Contractor: | Plumbing Contractor: | |
| Electrical Contractor: Fritz Electric | Other: | |

New Building Addition Remodel Change of Occupancy

Occupancy Classification: A-2 B E F-1 H
 I-2 M R-2 S-1 Other

Occupancy Separation Ratings: N/A 1-hr 2-hr 3-hr

Construction Type: I-A I-B II-A II-B III-A
 III-B IV-HT V-A V-B

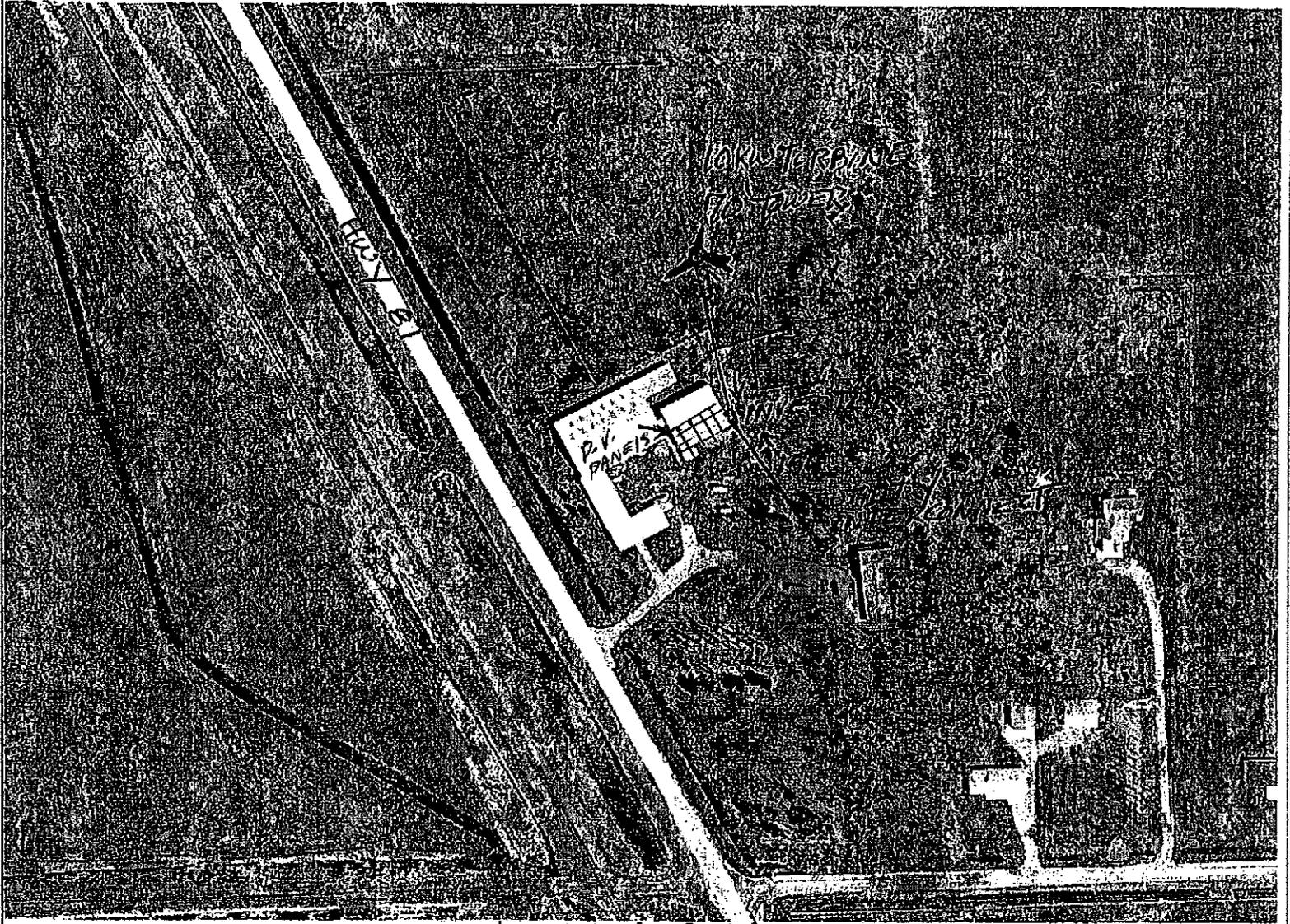
Sprinklered: Yes No Partial

Gross Floor Area: Stories: Height: 82'

Comments left by each department:

- **Inspections: (Pending)** (no comments)
- **Engineering:** (no comments)
- **Fire:** (no comments)
- **Planning:** (no comments)

JOHN TROUTMAN WIND PROJECT
3307 HWY 81 N FARGO
701-738-7808



3307 HWY 81 N FARGO



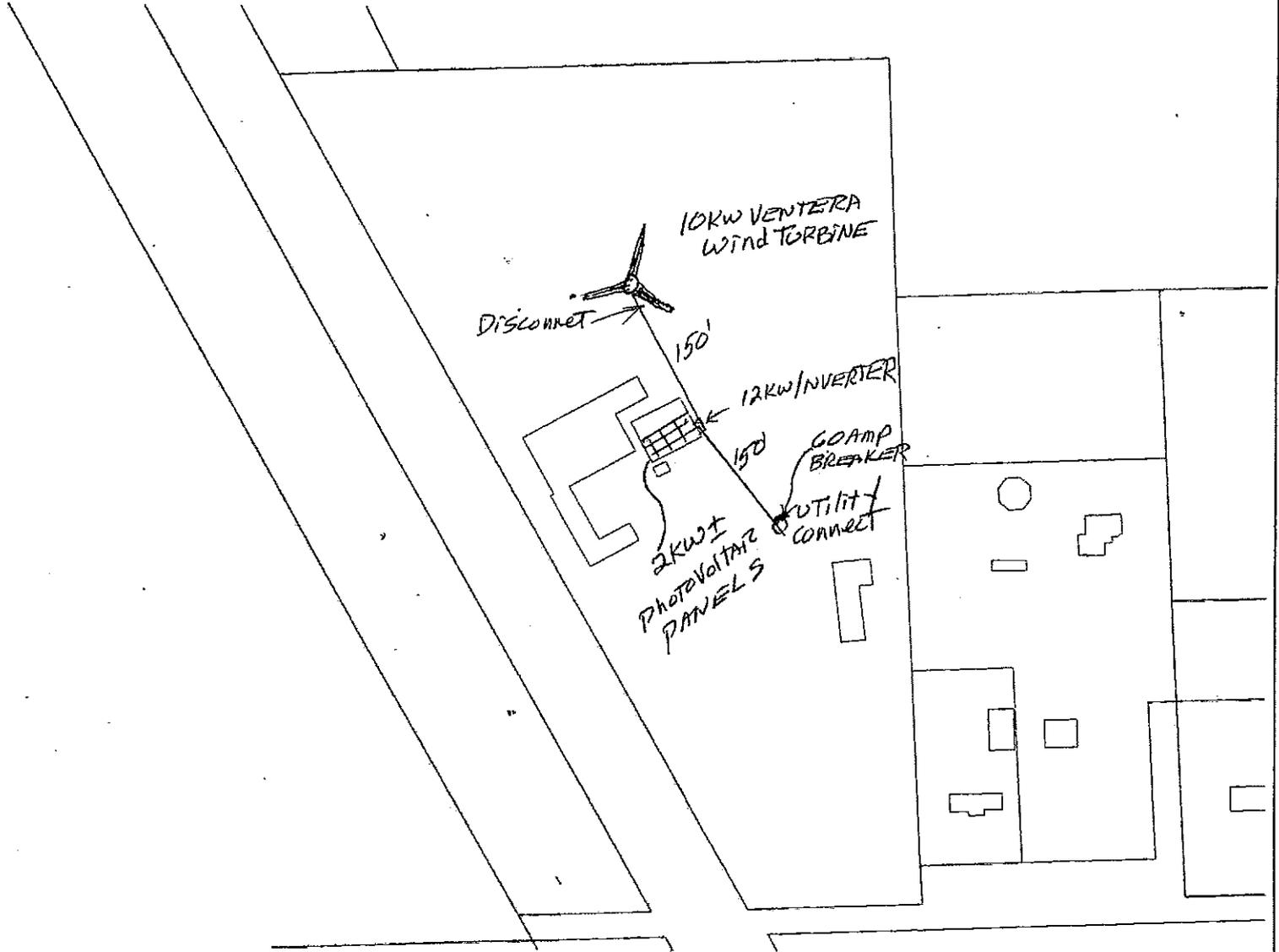
These data are provided on an "AS-IS" basis, without warranty of any type expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

1:2,501

11-19-2009

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





JOHN TROTTMAN - WIND TURBINE PROJECT
 3307 HWY 81 N
 FARGO

PARCEL # 01-3504-010-000



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

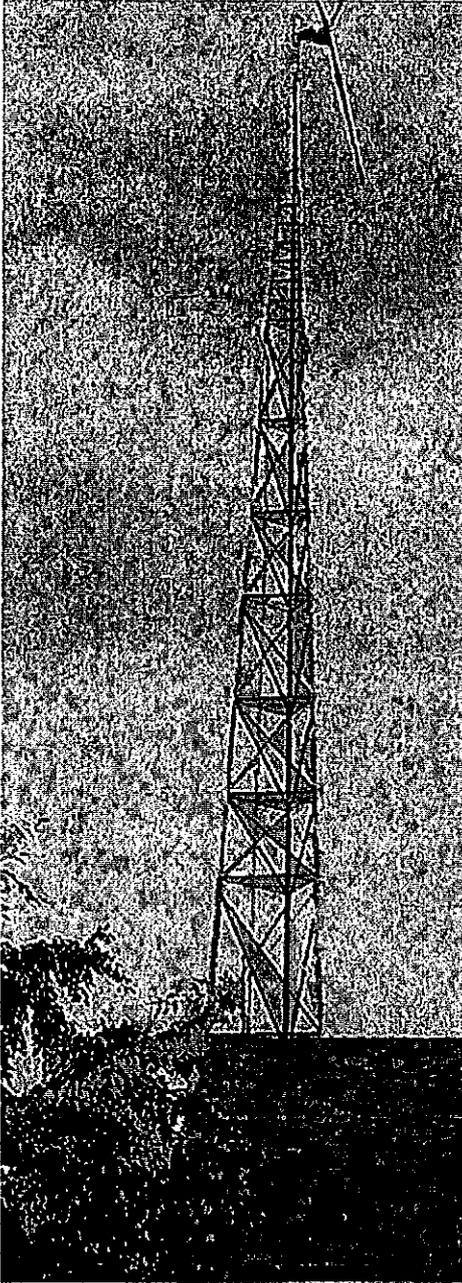
$\frac{1"}{8} = 10'$

1:2,501

11-19-2009

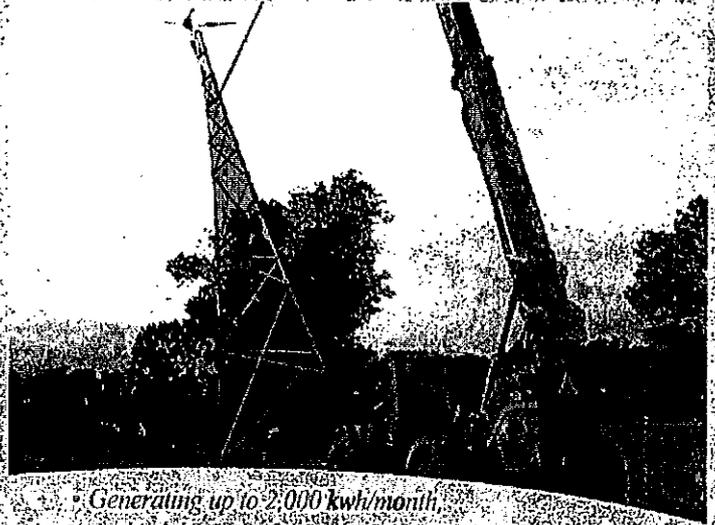
This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features





Plant the all new Ventera Wind Turbine and you'll immediately harvest savings!

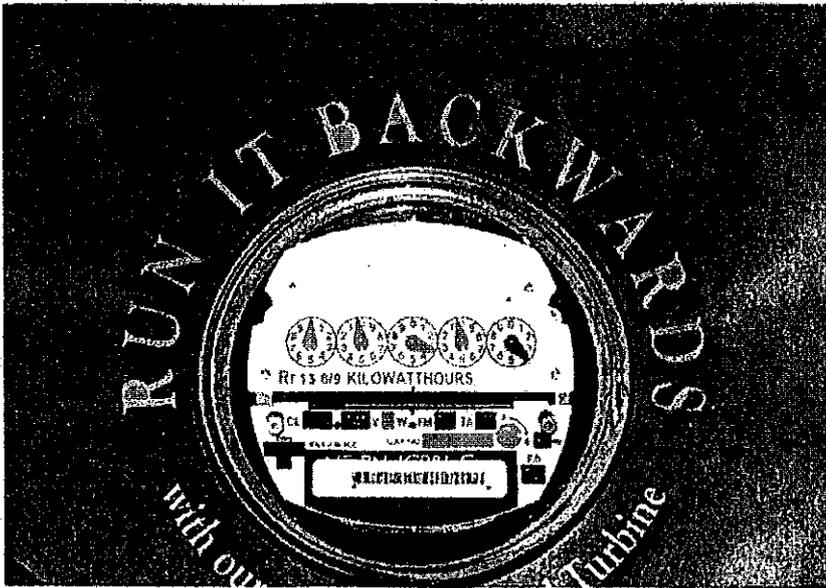
Capturing wind energy for individual properties is not a dream anymore. The state-of-the-art Ventera VT-10 wind generator makes it affordable for every Midwest farmer. Creating your own renewable energy with the quiet Ventera makes the wind a welcome friend.



- Generating up to 2,000 kwh/month, payback happens fast
- Manufactured in Duluth, MN
- Requires no batteries
- Designed for 30 years of operation
- Easy owner install and service

• USDA grants federal 30% tax credit and state grants available

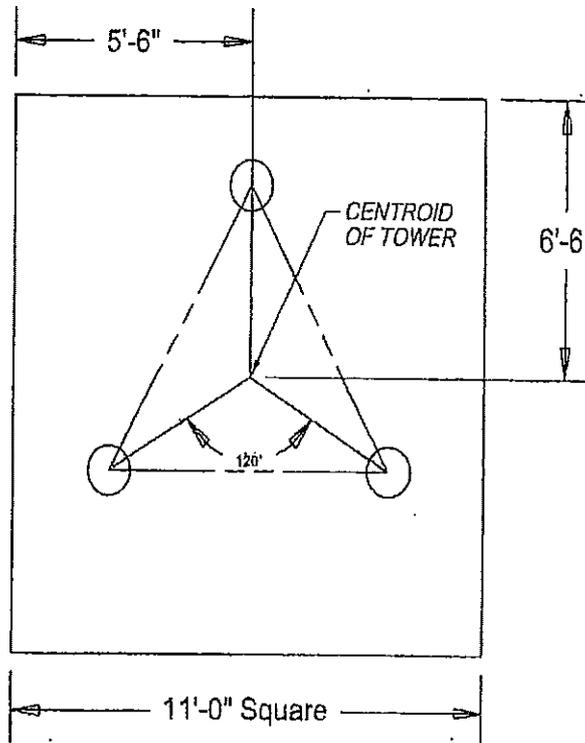
www.venterawind.com



SPECIFICATIONS

WIND TURBINE Model VT10-24
 PATENT NUMBER US 7,308,063
 RATED POWER TO GRID 10 KW 240V
 RATED ENERGY 240 KWH PER YEAR
 CUT-IN WIND SPEED 7 MPH
 SURVIVAL WIND SPEED 75 MPH
 MOVING PARTS 1000
 MAINTENANCE 1000 HOURS
 ASSEMBLY 1000 HOURS
 WEIGHT 1000 LBS
 DIAMETER 22 FT
 BLADE 24 FT
 GENERATOR 10 KW
 SYNCHRONOUS INVERTER Model VI12-60
 INPUTS 100V 240V 200V 240V peak power tracking

NOTE: SEE TOWER ASSEMBLY DRAWING FOR FOUNDATION LAYOUT AND ANCHORAGE EMBEDMENT DRAWING NUMBER



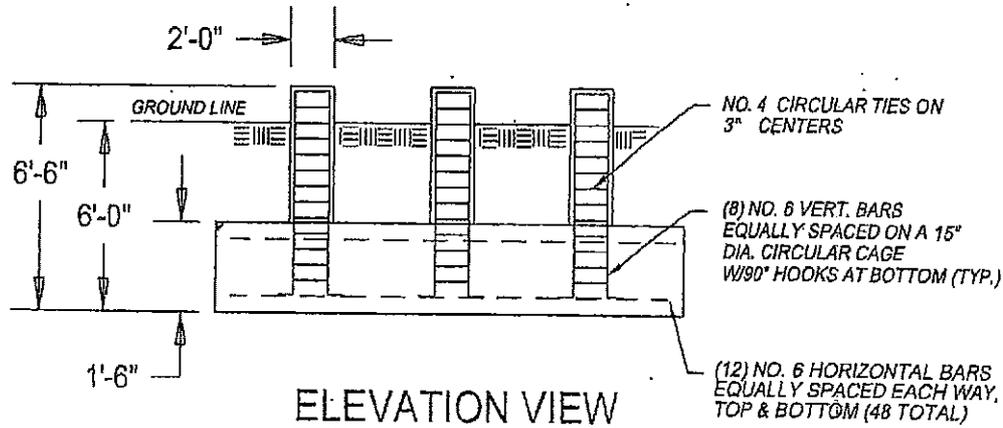
PLAN VIEW

REACTIONS

MAX. O.T.M. = 204.6 FT-KIPS
 TOTAL TOWER WT. = 4.1 KIPS
 TOTAL SHEAR = 5.4 KIPS
 MAX. SHEAR/LEG = 3.6 KIPS
 MAX. TEN./LEG = 34.6 KIPS
 MAX. COMP./LEG = 37.3 KIPS

CONCRETE VOLUME

8.5 CUBIC YDS.



ELEVATION VIEW

| No. | Revision Description | Date | Rev By | Ckd By | Appd By |
|--|----------------------|-----------------------|--|--------------------------|-------------|
| <p>THIS DRAWING IS THE PROPERTY OF ROHN. IT IS NOT TO BE REPRODUCED, COPIED, OR TRACED IN WHOLE OR PART WITHOUT OUR WRITTEN CONSENT.</p> | | | | | |
| <p>Scale: NONE</p> | | | <p>ROHN PRODUCTS & ACCESSORIES PEGORIA, IL, USA +1 800 727 ROHN</p> | | |
| <p>Drawn: DWG</p> | <p>By: HA</p> | <p>Date: 04/02/09</p> | <p>MAT WITH RAISED PIERS FOUNDATION DETAILS PER ANSII/TIA/EIA-222-F-1996 NORMAL SOIL</p> | | |
| <p>Checked: HA</p> | <p>Date: 4/3/09</p> | <p>App. Eng.: HA</p> | <p>ENG. FILE: 060-6083</p> | <p>DWG. NO.: A090294</p> | <p>REV.</p> |
| <p>Parent File: 59068EH</p> | <p>SHEET 1 OF 1</p> | | <p>REV.</p> | | |

American Wind Energy Association Model Zoning Ordinance:

Permitted Use Regulation for Small Wind Turbines

Section 1 Purpose: It is the purpose of this regulation to promote the safe, effective and efficient use of small wind energy systems installed to reduce the on-site consumption of utility supplied electricity.

Section 2 Findings: The [city or county] finds that wind energy is an abundant, renewable, and nonpolluting energy resource and that its conversion to electricity will reduce our dependence on nonrenewable energy resources and decrease the air and water pollution that results from the use of conventional energy sources. Distributed small wind energy systems will also enhance the reliability and power quality of the power grid, reduce peak power demands, and help diversify the State's energy supply portfolio. Small wind systems also make the electricity supply market more competitive by promoting customer choice.

The [city or county] has enacted a number of laws and programs to encourage the use of small-scale renewable energy systems including rebates, net metering, property tax exemptions, and solar easements. However, many existing zoning ordinances contain restrictions, which while not intended to discourage the installation of small wind turbines, that can substantially increase the time and costs required to obtain necessary construction permits.

Therefore, we find that it is necessary to standardize and streamline the proper issuance of building permits for small wind energy systems so that this clean, renewable energy resource can be utilized in a cost-effective and timely manner.

Section 3 Definitions:

Small Wind Energy System: A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended to primarily reduce on-site consumption of utility power.

Tower Height: The height above grade of the fixed portion of the tower, excluding the wind turbine itself.

Section 4 Permitted Use: Small wind energy systems shall be a permitted use in all zoning classifications where structures of any sort are allowed; subject to certain requirements as set forth below:

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. 5917

Type: New Sidewalk Construction

Location: Harrison Street South and all Post-2003 development areas

Date of Hearing: 6/8/10

| | |
|------------------|------------------|
| <u>Routing</u> | <u>Date</u> |
| City Commission | 6/14/10 |
| PWPEC File | X |
| Project File | Dennis Ouderkirk |
| Petitioners | |
| David W. Johnson | |

In 2003, the City modified the City policy for sidewalk installation requiring new sidewalk installation by Builder or Homeowner within 180 days of occupancy. The previous policy allowed for special assessment of sidewalks as ordered by the City Engineer. The policy revision was a product of the "Special Assessment Task Force" in an attempt to reduce special assessment amounts.

Recently, the City has received complaints that, in some locations, sidewalk installation has not been completed in spite of notification of sidewalk installation requirements. The most recent complaint referenced the lack of sidewalks along Harrison Street South, south of 37th Avenue South in Pointe West Third Addition.

On a motion by Pat Zavoral, seconded by Jim Gilmour, the Committee voted to direct the City Engineer to order sidewalk construction on these properties and to install on City contract and special assess all costs.

RECOMMENDED MOTION

Direct City Engineer to inspect all post-2003 development areas for missing sidewalks on developed lots and issue sidewalk orders giving property owners 30 days to install sidewalks. After 30 days, the City will install and special assess sidewalk costs.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Special Assessment

| | | |
|--|-----|----|
| | Yes | No |
| Developer meets City policy for payment of delinquent specials | N/A | |
| Agreement for payment of specials required of developer | N/A | |
| 50% escrow deposit required | N/A | |

COMMITTEE

| | | | | |
|--|----------------|------------|-----------|------------------|
| | <u>Present</u> | <u>Yes</u> | <u>No</u> | <u>Unanimous</u> |
| | | | | X |
| Pat Zavoral, City Administrator | X | X | | |
| Jim Gilmour, Planning Director | X | X | | |
| Bruce Hoover, Fire Chief | X | X | | |
| Mark Bittner, City Engineer | X | X | | |
| Bruce Grubb, Enterprise Director | X | X | | |
| Ben Dow, Acting Director of Operations | X | X | | |
| Steve Sprague, City Auditor | X | X | | Dan Eberhardt |

ATTEST:

Mark H. Bittner
 Mark H. Bittner
 City Engineer



Mayor Dennis R. Walaker
200 3rd Street North
Fargo, North Dakota 58102
Phone (701) 241-1310
Fax (701) 476-4136

6

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS
FROM: MAYOR DENNIS WALAKER *Dennis Walaker*
DATE: JUNE 9, 2010
SUBJECT: CIVIL SERVICE APPOINTMENTS

The terms of Mike Wenaas and Nancy Jordheim on the Civil Service Commission expire on June 30, 2010. Both Mr. Wenaas and Ms. Jordheim are willing to serve another term and I am recommending their reappointment.

Your favorable consideration of this recommendation is greatly appreciated.

RECOMMENDED MOTION: To approve the reappointment of Mike Wenaas and Nancy Jordheim as members of the Civil Service Commission for three-year terms ending June 30, 2013.

wwappt10csc

