20090155

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

William F. Rakowski,

Petitioner-Appellant,

vs.

City of Fargo, a municipal corporation,

Respondent-Appellee.

Supreme Court No. 20090155

District Court No. 08-C-02135

BRIEF OF PETITIONER-APPELLANT WILLIAM F. RAKOWSKI

w/ addendum

APPEAL FROM THE MEMORANDUM OPINION AND ORDER DATED APRIL 1, 2009, FOLLOWED BY THE JUDGMENT OF DISMISSAL OF THE SAID DISTRICT COURT ENTERED ON APRIL 17, 2009.

CASS COUNTY DISTRICT COURT, EAST-CENTRAL JUDICIAL DISTRICT
HONORABLE STEVEN E. McCULLOUGH

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2. May the City of Fargo approve a tax increment financing development or renewal plan which results in unfair competition and that the agreement is not in the best interest of the municipality as a whole in violation of N.D.C.C. § 40-58-20.1?
3. May the City of Fargo create tax increment financing for residentially zoned property in violation of N.D.C.C. § 40-58-20.1(1)?

STATEMENT OF THE CASE

By document dated May 29, 2008, Petitioner-Appellant William F. Rakowski, [hereinafter "RAKOWSKI"] timely appealed to the District Court of Cass County, North Dakota, from the decision(s) of the City Commission of the City of Fargo, Cass County, North Dakota, a "local governing body" as defined by law, on May 5, 2008 [minutes of Regular Meeting, May 5, 2008; Pages No. 145-148; Appendix, pages 7-10] relating to a Renewal Plan for Tax Increment Financing District No. 2008-01 and Developer Agreement, which action was not nullified by the Fargo City Commissioners when requested on May 19, 2008, as reflected in the minutes of the meeting [minutes of Regular Meeting, May 19, 2008; Pages 174-175; Appendix, pages11-12].

Without honoring RAKOWSKI'S request for oral argument [Docket Entry 10, page 31], and asserting no one had made such a request [Appendix, page 244], the Honorable

Steven McCullough, District Judge, issued a Memorandum Opinion and Order dated April 1, 2009, followed by the Judgment of Dismissal of the said District Court entered on April 17, 2009, whereby the administrative appeal of RAKOWSKI was denied. Appendix, page 244.

On May 13, 2009, RAKOWSKI timely appealed to the Supreme Court of North Dakota from said Memorandum Opinion and Order dated April 1, 2009, followed by the Judgment of Dismissal of the said District Court entered on April 17, 2009. Appendix, pages 260-261.

Scope of Review

Hentz v. Elma Township Board of Supervisors, 2007 ND 19, ¶ 4, 727 N.W.2d 276, identifies the scope of review, and the role of both the District Court and the Supreme Court, in an appeal from the decision of a local governing body under N.D.C.C. § 28-34-01:

> [¶ 4] When considering an appeal from the decision of a local governing body under N.D.C.C. § 28-34-01, our scope of review is the same as the district court's and is very limited. *Tibert v. City of Minto*, 2006 ND 189, ¶ 8, 720 N.W.2d 921 (citing *Pic v. City of Grafton*, 1998 ND 202, ¶¶ 6, 8, 586 N.W.2d 159). This Court's function is to independently determine the propriety of the Township's decision without giving special deference to the district court decision. *Tibert*, at ¶ 8. The Township's decision must be affirmed unless the local body acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision. *Id.* (citing *Graber v. Logan County Water Res. Bd.*, 1999 ND 168, ¶ 7, 598 N.W.2d 846). "A decision is not arbitrary, capricious, or unreasonable if the exercise of discretion is the product of a rational mental process by which the facts and the law relied upon are considered together for the purpose of achieving a reasoned and reasonable interpretation." *Tibert*, at ¶ 8 (citing *Klindt v. Pembina County Water Res. Bd.*, 2005 ND 106, ¶ 12, 697 N.W.2d 339). "We fully review the interpretation of an ordinance, and a governing body's failure to correctly interpret and apply controlling law constitutes arbitrary, capricious, and unreasonable conduct." *City of Fargo v. Ness*, 551 N.W.2d 790, 792 (N.D.1996) (citing *Gullickson v. Stark County Comm'rs*, 474 N.W.2d 890,

892 (N.D.1991)).

To be upheld, a local governing body must have a decision that is (a) not arbitrary, (b) not capricious, (c) nor unreasonable, (d) supported by substantial evidence, and (e) based upon a correct interpretation and application of controlling law. RAKOWSKI submits the decision(s) of the Fargo City Commission fail on all accounts, *and a violation of any one standard will cause the decision to fall.* RAKOWSKI further submits the District Court failed to recognize the municipality's errors, and failed to address the substantive law of North Dakota ignored by one of its municipalities.

RAKOWSKI submits the decision(s) of the Fargo City Commission should have been determined to be arbitrary OR capricious OR unreasonable OR without substantial evidence supporting the decision.

STATEMENT OF FACTS

Tax Increment Financing Districts [TIF District]

The State of North Dakota has adopted N.D.C.C. Chap. 40-58 entitled, "Urban Renewal Law" which includes provisions for creation of tax increment financing districts. For the Supreme Court's convenience, a complete copy of Chapter 40-58 has been attached hereto as Addendum 1.

RAKOWSKI'S appeal does not attack the general concept allowing a municipality to create a TIF District, but rather, RAKOWSKI attacks the validity of this specific TIF District which should not have been created – the governing body failed to honor North Dakota statutes, with specificity, N.D.C.C. § 40-58-06(4) and N.D.C.C. § 40-58-20.1(2), and also, the governing body ignored its own ordinances which would prohibit issuance of a

building permit and construction of the building intended for the stated TIF District use(s) necessary to pay the resulting bonds.

Implementing <u>This</u> TIF District

FM City Development, LLC, ["Developer"] submitted a "Renewal Plan" dated March 31, 2008, which is referenced as Tax Increment Financing District No. 2008-01 [hereafter "Renewal Plan"; Appendix, pages 92-115] proposing to develop a site located on the south side of 12th Avenue North, west of Albrecht Boulevard. Specifically, the site includes Lots 16, 17, and 18 in Block 14 of Kirkham's 2nd Addition, and portions of the abutting vacated alley. The Developer owns the three properties that make up the plan area. Renewal Plan, page 3; Appendix, page 96.

RAKOWSKI owns Lot 15 [1424-1426 12th Avenue North], and portions of the abutting vacated alley, immediately east of the Developer's site sought to be developed as a TIF District. In addition, RAKOWSKI has a recorded easement over the east 5' of said Lot 16 owned by Developer. RAKOWSKI'S real property has the same zoning status as the Developer's real property – Limited Commercial. Transcript of May 5, 2008, page 9; Appendix, page 29.

For the Supreme Court's convenience, RAKOWSKI has included an aerial map – page 39 of the Renewal Plan [Addendum 3]. The "Proposed Site" [TIF District; area of Renewal Plan] is a black rectangle immediately west of RAKOWSKI'S lot noted as "1424-1426".

As part of the Renewal Plan, Developer falsely, or erroneously, asserted that "(a)ccess to the site is from the NDSU 'T-Lot' parking lot, which abuts the district on the south. The

applicant has an access agreement with NDSU. The City is interested in restricting access points on 12th Avenue North to keep traffic flowing. An aerial photo and map of the TIF district is attached as Appendix B." Renewal Plan, page 3; Appendix. page 96. In addition, the Renewal Plan recognizes, "(t)he property is zoned LC, Limited Commercial with a Conditional Overlay. (The property was rezoned from MR-3 to LC in 2007). The proposed project also requires a Conditional Use Permit to allow residential units and *alternative access plan for reduced parking.*" Renewal Plan, page 3; *emphasis* by RAKOWSKI: Appendix, page 96.

For the Supreme Court's benefit, the existence of the required "alternative access plan" will be the primary focal point of this Brief, as it was in the District Court – Fargo's building official is prohibited from issuing a building permit unless all Land Development Code requirements have been fully complied with by any applicant; compliance is not legally possible. To the extent the District Court determined otherwise, it errs as a matter of law.

Under Fargo's Land Development Code, Fargo Planning Staff member Nicole Crutchfield reported the parking ratios for Developer's proposed structure/use which required the following parking spaces:

> "Residential living : 2 per unit + 25% for guest parking = 40 spaces
> General Retail: 1 stall per 250 SF= 38 spaces (if the retail is a restaurant then the parking requirement could increase to 63 spaces or a total of 21 spaces per retail space). The proposal is a requested reduction of minimally 45 parking spaces."

Unfortunately for everyone, the Planning Department did not honor Fargo's Land Development Code requiring **a minimum of 78 off-street parking spaces** [and possibly as many as 103 off-street parking spaces], and also ignored other relevant ordinance(s) requiring

those mandatory 78 spaces off-street parking spaces be "on-site" ["all required off-street parking spaces must be located on the same lot as the principal use"; FMC § 20-0701(D)(1)] for all parking attributable to residential purposes [and certain specified commercial purposes]:

A. FMC § 20-0701(e)(4)(a), entitled "Ineligible Activities", provides for a limitation upon any possible "Alternative Access Plan", and reads as follows [Addendum 2, pages 99-100]:

> 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.

Against this backdrop, the Fargo City Commission scheduled Developer's flawed Renewal Plan for a hearing on May 5, 2008. RAKOWSKI, acting through the undersigned as legal counsel, filed a written objection dated May 2, 2008, in opposition to any attempt to utilize Tax Increment Financing for the project correctly asserting that the proposed project does not have proper parking, and that a building permit cannot be issued for the project based upon Fargo's own ordinances. See, RAKOWSKI'S May 2, 2008, letter delivered to Fargo City Commission; Appendix, page 187. Contrary to representation(s) attributed to the Developer by Fargo's Planning Staff as above referenced in describing the terms of the Renewal Plan, **NDSU had not granted "an access agreement" to the Developer** as to NDSU's 'T-Lot' parking lot, which abuts the district on the south. Rather, Developer formerly possessed a mere "Construction Easement and Permit Agreement"

covering *other lands* – **a temporary construction easement that did not include these Renewal Plan lands.** See, RAKOWSKI'S May 2, 2008, letter delivered to Fargo City Commission: Document 1212792 attached as exhibit relates to *other lands* east of RAKOWSKI'S real property: Appendix, pages 175-186, 187-190. That actual temporary construction easement covered lands not even contiguous to the instant project's site, and the temporary construction easement would automatically have ended on "January 31, 2008, unless extended in writing by NDSU." Nothing exists within this record, nor is the undersigned aware of, any extension to the January 31, 2008, termination date as to the other lands.

RAKOWSKI'S May 2, 2008, submission – which referenced relevant municipal ordinances [Addendum 2, pages 147-148; 97-100] – noted early on – with **EMPHASIS,** and footnote, in the original [Appendix, pages 187-189]:

> 1. FMC § 20-0909(D) provides that Conditional Use Permits can only be approved when six (6) criteria, as applicable, have been satisfied. **Among other things, the application for a Conditional Use Permit was without necessary parking/access rights for the subject property.** This project does not have any right to use any portion of the parking lots owned by, or under the control of, North Dakota State University. A copy of the only agreement that exists, according to NDSU, is attached hereto, and incorporated by reference. It only provides parking rights in a limited number, involving specific types of individuals AND those *rights are limited to other lands not included in this proposed Tax Increment Financing District.* **THERE EXISTS NO PARKING RIGHTS IN FAVOR OF THE APPLICANT WITH RESPECT TO THE LAND PART OF THIS APPLICATION.**[1] FMC § 2-0401(A)(3) specifically provides that

[1] The parking rights favoring FM City Development, LLC, only relate to Lots 12, 13, and 14, and that part of the vacated alley adjacent thereto, in Block 14, Kirkham's Second Addition to the City of Fargo, situate in the County of Cass and State of North Dakota [Exhibit B]; under ¶ 6 of the agreement, only "NDSU students/faculty/staff who are residents who are residents of the apartment units located on the FM City Property" will be

"(e)xisting parking and loading spaces may not be reduced below the minimum requirements established in this section. Any change in use that increases applicable off-street parking or loading requirements will be deemed a violation of the Land Development Code unless parking and loading spaces are provided in accordance with the provisions of this section." There appears to be substantial non-compliance with the parking requirements – any violation of which precludes any Conditional Use Permit.

2. In the absence of adequate parking, the Conditional Use Permit should never have been granted. FMC § 20-0909(D)(1) & (6). As to (6), there is no "(a)dequate access roads or entrance and exit drives (that) will be provided and be so designed to prevent traffic hazards and to minimize traffic congestion in public streets." There is no right to use "T" Lot as a traffic street as was suggested to the Planning Commission. **NON-EXISTENT PARKING RIGHTS/NON-EXISTENT ACCESS RIGHTS.**

3. There is no known Alternative Access Plan as required by FMC § 20-0701(E), nor did my client receive notice of any intent to create such an Alternative Access Plan. There does not appear to have been any effort to comply with these ordinance requirements which will require submission of a plan in writing "made available to the public", and recordings with the Cass County Recorder. There is even a penalty for non-compliance under FMC Art. 20-011, if such occurs."

RAKOWSKI also made another major point in his May 2, 2008, submission to the Fargo City Commission [Appendix, page 189]

> **"There cannot be a Building Permit issued for the project based upon violations of Fargo's municipal ordinances, so no Tax Increment Financing Plan should be contemplated until a building permit is also possible."**

Pages 145-148 of the Minutes of the Regular Meeting of the Fargo City Commission [Appendix, pages 7-10], and the Transcript of May 5, 2008 [Appendix, pages 26-45], reflect

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allowed to purchase parking permits for the parking lot located on the NDSU property, currently identified as "T" Lot. It also says only one (1) "T" Lot parking permit per "NDSU student/faculty/staff residing on the FM City Property." Put another way, no parking, nor permits are available to anyone that is not an NDSU student/faculty/staff residing on the FM City Property. **No commercial customers are authorized to use any portion of "T" Lot. No visitors of any of the FM City Property residents can use "T" Lot.**

the following sequence of important facts:

A. Fargo Planning Director Jim Gilmour gave a report incorrectly suggesting the Planning Commission could approve a project with a lower parking requirement, and also submitted a Resolution to adopt the Renewal Plan.

B. RAKOWSKI'S letter of May 2, 2008, opposing the utilization of tax increment financing for the Renewal Plan was received; and attorney Garaas spoke in opposition [starting at transcript, page 8; Appendix, page 28] noting "there was absolutely zero parking agreement (with NDSU)". Garaas noted the mandatory access agreement is "nonexistent." Transcript of May 5, 2008, page 11, 12, 13, 28, 29, 35; Appendix, pages 29-30, 33-35.

C. Not a single person testified to the existence of an agreement for the Developer to use NDSU's T-Lot for parking, or even an agreement for purposes of "access" – Developer Gilbertson merely indicated, "(W)hat we just worked out with NDSU is that if they stay in our building they're allowed to get a T Lot pass opposed to them getting another pass on school property. So that's – that's the agreement that we have worked out with NDSU." Transcript of May 5, 2008, page 16; Appendix, page 30.

D. Fargo Planning Director Jim Gilmour gave an inaccurate description of Fargo's ordinances relating to parking, later corrected by attorney Garaas. Transcript of May 5, 2008, pages 17-19 [Gilmour]; pages 26-29, 34-36 [Garaas]; Appendix, pages 31, 33-35.

E. Finally, Fargo City Attorney Erik Johnson recognized the *nonexistence* of

"alternative access or a shared parking agreement or an alternative access agreement" [Transcript of May 5, 2008, page 37; Appendix, pages 36], while simultaneously advancing action not legally permitted under Fargo's Land Development Code [*emphasis* by RAKOWSKI]:

> "MR. JOHNSON: Right. Well, yeah. Just to get the parlance straight, you know, what the Planning Commission approved was an Alternative Access Plan. What wasn't presented was an alternative access or a shared parking agreement or an alternative access agreement. You know, that would have been an option, as I said, to enter into a formal agreement with another property owner.
>
> *That's not what was approved here. What was approved was an application to have a reduction in parking.* The basis for the allowance of having reduced parking was the ability to use T Lot and the likely tenants of the building may not have as many cars as ordinarily would be required. All those things were taken into consideration. That was the basis for the alternative – for the approval of the reduction in parking.
>
> And so the Alternative Access Plan as presented was: We're going to have this development. It's going to be student housing and typically student-related commercial development, the typical customers of the commericial (sic) development will be students, and so there is a likelihood that there will be less need for parking. And that was the Alternative Access Plan that was proposed."

As noted above, the City of Fargo's Land Development Code forbids "a reduction in parking" from the mandatory 78 off-street and on-site parking spaces for the Renewal Plan. FMC § 20-0701(E)(4)(a), entitled "Ineligible

Activities" [Addendum 2, pages 99-100], which provides for a limitation upon any possible "Alternative Access Plan".

F. The Fargo City Commission adopted the Renewal Plan as presented by Fargo Planner Gilmour. Transcript of May 5, 2008, page 39; Appendix, page 36.

By correspondence dated May 6, 2008 [inexplicably not included in the City of Fargo's certified record so copy attached to RAKOWSKI'S Legal Brief filed with the District Court as Addendum 4: Docket Entry # 10], later reiterated by letter dated May 14, 2008, addressed to the Fargo City Commission, RAKOWSKI expressed concern 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." Both letters requested "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" – including FMC § 20-0701(E)(4)(a), entitled "Ineligible Activities" [Addendum 2, pages 99-100]. Both RAKOWSKI letters [May 6, 2008, and May 14, 2008: Appendix, pages 218-219] in bold print, stated:

> **"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."

RAKOWSKI'S May 6, 2008, letter [Docket Entry # 10; Addendum 4] also demanded copies of documents that had to exist if Fargo's Land Development Code was being honored; the later May 14, 2008, letter noted the City's non-compliance in producing documents, and repeatedly stated, *"(t)he City of Fargo should admit that the requested document required to exist — does not exist."*

On May 19, 2008, the Fargo City Commission addressed RAKOWSKI'S request that its May 5, 2008, action with respect to the Renewal Plan be nullified, by placing the matter on its agenda. The Transcript of May 19, 2008 [Appendix, pages 46-66], reflect the following sequence of important facts:

1. RAKOWSKI, acting through legal counsel, brought to the attention of the City of Fargo its own ordinance(s) prohibiting any Alternative Access Plan that would seek to allow an "off-site" location for required residential [and certain commercial] parking spaces, and also, that the City Attorney's own letter establishes there is no valid Alternative Access Plan [which is a condition precedent] – it is a "(n)onexistent document" [Erik R. Johnson wrote: "Therefore, in response to your various requests, there is no

agreement for off-site parking in existence as would be suggested under either L.D.C. §§ 20-0701.E.4.d or 20-0701.E.5.d - that is undisputed."; May 16, 2008, letter to Garaas, page 3 of 3]. Transcript of May 19, 2008, pages 3-12; Appendix, pages 47-49.

Even if there had existed a document allowing for Developer's access to the NDSU lot, Fargo's own Land Development Code forbids use of the NDSU lot as replacement parking space(s) – the required number of parking spaces must be located "on-site" [the Developer's own land only]. Transcript of May 19, 2008, pages 5-7; 9; and 11; Appendix, pages 48-49. FMC § 20-0701(e)(4)(a), entitled "Ineligible Activities", which provides for a limitation upon any possible "Alternative Access Plan" [Addendum 2, pages 99-100].

Even the Minutes of the Regular Meeting of May 19, 2008, [page 174; Appendix, page 11] accurately reflect the letter admission of Fargo City Attorney Erik Johnson: "Mr. Johnson stated there is no agreement for off-site parking in existence."

2. RAKOWSKI also noted that the City of Fargo has not created a plan that "identifies all the blighted and slum areas in the city of Fargo that an individual plan can then go forward and address" as required by N.D.C.C. § 40-58-06.1. Transcript of May 19, 2008, page 8; Appendix, page 48.

3. RAKOWSKI noted the action taken by the City of Fargo was to impose blight upon the neighborhood because 45 to 70 parking spaces – which should have been provided by the Developer "on-site" by law – were being

dumped on the neighborhood. Transcript of May 19, 2008, pages 8-9; 35; Appendix. pages 48-49, 55. The blight placed upon RAKOWSKI by the action of the City of Fargo in approving the Renewal Plan was made evident immediately by the reduction in value recognized by the Developer. The Developer had offered to buy RAKOWSKI'S land for $150,000, and after the May 5, 2008, approval of the Renewal Plan, the Developer reduced his offer to $100,000 — a $50,000 reduction because of the approval of the Renewal Plan. Transcript of May 19, 2008, pages 9; 12-13; 30-32; 35-36; 40; Appendix. pages 49-50, 54-56.

4. RAKOWSKI again informed the Fargo City Commission that no agreement between NDSU and the Developer existed for the use of NDSU's land: there had been an misrepresentation of fact as no agreement existed for use of NDSU's land. Transcript of May 19, 2008, pages 10-12; Appendix, page 49.

The City of Fargo adjourned the May 19, 2008, meeting, apparently refusing to reconsider its prior action. Transcript of May 19, 2008, pages 40-41; Appendix, pages 56-57. Minutes of Regular Meeting of May 19, 2008, pages 174-175; Appendix, pages 11-12.

By follow-up letter dated May 22, 2008 [Appendix. page 13]. City Attorney Erik Johnson again admitted what should have always precluded approval of the Renewal Plan for non-compliance with the City of Fargo's Land Development Code [failure to follow the law of Fargo]:

> "The second paragraph of your letter (to Ron Strand of the Fargo Inspections Department) makes reference to a written agreement for an off-site parking area in 'T' Lot that '...must exist according to FMC § 20-0701(E)(4)(d).' I

refer you to my letter regarding the same matter dated May 16, 2008 (third to last paragraph). **I fail to understand your purpose for continuing to insist that a document 'must exist' when it has been freely acknowledged that there is no such written instrument.**" [**emphasis** by RAKOWSKI]

Implementing Any TIF District in North Dakota

Based upon North Dakota law, the North Dakota Supreme Court has set forth the procedures generally involved in tax assessments and tax increment financing. Trollwood Village Limited Partnership v. Cass County Board of County Commissioners, 557 N.W.2d 732 (N.D. 1996). Presuming authority for tax increment financing to eliminate slum or blighted areas, or portions thereof, exists, RAKOWSKI'S appeal relates to the failure by the governing body to meet either one (1) of two (2) specific statutory standards:

A. Standard #1: The City of Fargo may not approve this development or renewal plan because it does not conform to the general plan of the municipality as a whole. N.D.C.C. § 40-58-06(4)(b); Addendum #1, page 5.

B. Standard #2: The City of Fargo may not approve this development or renewal plan because it results in unfair competition and that the agreement is not in the best interest of the municipality as a whole. N.D.C.C. § 40-58-20.1(2); Addendum #1, page 5.

There exists another legal standard also violated by the City of Fargo, and overlooked by the District Court – tax increment financing cannot be used for residentially zoned property as a matter of law. N.D.C.C. § 40-58-20.1(1). See Point 2. The District Court failed to even address this municipal blunder in ignoring State law.

The governing body's act(s) to ignore its own ordinances which would prohibit issuance of a building permit and/or construction of the building for the stated TIF District use(s) are relevant to North Dakota statutory Standard #1 – the City of Fargo's Land Development Code is part of the "general plan of the municipality as a whole": it cannot be

violated.

The City of Fargo has adopted a Land Development Code [FMC Chapter 20; some pages have also been attached as Addendum #2, with page reference to the compiled body of law] which identifies "the minimum requirements necessary to advance the Land Development Code's stated purposes. No building or structure may be erected, converted, enlarged, reconstructed or altered and no land use may occur except in accordance with all of the regulations established by this Land Development Code for the zoning district in which the building, structure or land use is located." FMC § 20-0105; page 1 of Addendum #2.

The North Dakota Century Code provides relevant tax increment financing definitions in N.D.C.C. § 40-58-01.1. Significantly, a "development or renewal plan" – such as the instant Tax Increment Financing District 2008-01 dated March 31, 2008 – must "(c)onform to the general plan for the municipality as a whole .." N.D.C.C. § 40-58-01.1(8)(a).

Obviously, the City of Fargo's Land Development Code, *enacted as an ordinance having the force and effect of law*, is "the general plan for the municipality as a whole." Upon inquiry by Fargo Mayor Walaker wondering if Fargo's Land Development Code was law or policy, Fargo City Attorney Erik Johnson informed the Fargo City Commission the Land Development Code was "law". Transcript of May 5, 2008, page 29; Appendix, page 34.

Lest it be overlooked, the City of Fargo also has an obligation to enforce its laws uniformly, without possibility of special privileges or immunities. Constitution of North

Dakota, Article I, §s 21 and 22.

LEGAL ARGUMENT

RAKOWSKI originally advised the District Court that the issues raised would establish the Fargo City Commission has acted arbitrarily, capriciously, or unreasonably – or without substantial evidence. RAKOWSKI opines the City of Fargo has failed to properly interpret, or apply, controlling law. The two (2) statutory standards compel rejection of this TIF District approved by the City of Fargo.

Point 1. North Dakota Century Code Standard #1: The City of Fargo may not approve this development or renewal plan because it does not conform to the general plan of the municipality as a whole. N.D.C.C. § 40-58-06(4)(b); Addendum #1, page 5.

A. The Developer never acquired any right to use NDSU's lands for parking purposes.

The actual words of Fargo City Attorney Erik Johnson would prohibit Fargo's decision when he admitted, "it has been freely acknowledged that there is no such written instrument" giving Developer the right to off-site parking in NDSU's "T" Lot. Appendix, page 13.

Under FMC § 20-0701(E)(4), the City of Fargo's law mandates "a written agreement" which must be "submitted to the Zoning Administrator for recordation on forms made available in the Planning Department. Recordation of the agreement with the (County Recorder) must take place before issuance of a building permit for any use to be served by the off-site parking area." If a written agreement does not exist, it cannot be duly recorded, nor may a building permit be issued by the City of Fargo's Building Official. Unsatisfied

conditions precedent should preclude the decision reached. N.D.C.C. § 9-01-01(2) and N.D.C.C. § 9-01-11.

The Renewal Plan was predicated upon Developer having access to NDSU's "T" Lot, which also did not exist, and which should have been known to the local governing body at the time the TIF District was approved – the lack of access was made known to them no later than May 19, 2008, when they refused to nullify their prior decision. The actual words of the Fargo City Attorney evidence the local governing body has acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision. The City of Fargo also failed to properly interpret, or apply, controlling law. Hentz, *id.*,¶ 4.

B. The project does not have proper parking so the objectives of the TIF District cannot be met.

The zoning has been altered by Planning Commission action resulting in the approval of a Conditional Use Permit so as to provide for multi-dwelling residential and commercial uses. As noted above, the Planning Commission does not have the legal right to alter the terms of the zoning classification created by the Fargo City Commission, nor can the Fargo City Commission delegate its law making authority for zoning to the Fargo Planning Commission. See also, FMC § 20-0906. The District Court erred as a matter of law when it asserts that RAKOWSKI is "collateral(ly) attack(ing) . a prior final administrative decision of the City of Fargo." Memorandum Opinion and Order; Appendix, page 251.

The Planning Commission can never undo a validly enacted municipal ordinance, in this case mandating on-site parking. The Planning Commission did not have the legal right to issue a Conditional Use Permit [as was done] because there was inadequate parking spaces

provided on-site. FMC § 20-0909(D) [Addendum 2, pages 147-148] provides that Conditional Use Permits can only be approved when six (6) criteria, as applicable, have been satisfied. Among other things, the application for a Conditional Use Permit was without necessary parking/access rights for the subject property. As noted, the Renewal Plan does not have any right to use any portion of the parking lots owned by, or under the control of, North Dakota State University. There exists no parking rights in favor of the Developer with respect to the Renewal Plan. FMC § 20-0401(A)(3) [Addendum 2, pages 38-42] specifically provides that "(e)xisting parking and loading spaces may not be reduced below the minimum requirements established in this section. Any change in use that increases applicable off-street parking or loading requirements will be deemed a violation of the Land Development Code unless parking and loading spaces are provided in accordance with the provisions of this section." There is a substantial non-compliance with the City of Fargo's parking requirements – any violation of which precludes issuance of a TIF District because it does not conform to the general plan of the municipality as a whole. N.D.C.C. § 40-58-06(4)(b).

In the absence of adequate parking, the Conditional Use Permit should never have been granted. FMC § 20-0909(D)(1) & (6). As to subsection (6), there is no "(a)dequate access roads or entrance and exit drives (that) will be provided and be so designed to prevent traffic hazards and to minimize traffic congestion in public streets." In that no right to use "T" Lot as a traffic street exists, as was suggested to the Planning Commission, there is further proof that the Fargo City Commission has acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision. The City of Fargo also failed to properly interpret, or apply, controlling law. Hentz, *id.*,¶ 4.

Finally, since there is no known Alternative Access Plan as required by FMC § 20-0701(E), nor did RAKOWSKI receive notice of any intent to create such an Alternative Access Plan, the City of Fargo did not even follow its own ordinances. This is further proof that the Fargo City Commission has acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision. The City of Fargo also failed to properly interpret, or apply, controlling law. Hentz, *id.*,¶ 4. There does not appear to have been any effort to comply with ordinance requirements which will require submission of a plan in writing "made available to the public", and recordings with the Cass County Recorder. This too establishes the Fargo City Commission has acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision.

The City of Fargo also failed to properly interpret, or apply, controlling law. Hentz, *id.*,¶ 4.

C. Role of the Building Official.

The gist of RAKOWSKI'S legal argument is that the State of North Dakota and the City of Fargo, pursuant to their police power, have created a statutory scheme regulating land, and its taxation. The City of Fargo cannot create or approve any TIF District that does not conform to the existing statutory structure – which includes the City of Fargo's Land Development Code. The existing statutory scheme requires the Developer to meet all provisions of the existing Land Development Code, including adherence to the building code. Due to inadequate on-site parking, no building permit for the proposed development can be granted as a matter of law.

Under the ordinances of the City of Fargo, the Building Official performs a higher

duty than merely passing on the sufficiency of building plan adherence to Fargo's building code – the Building Official is prevented from issuing a building permit without conformity "in all respects to the provisions of the Land Development Code and the building code." Indeed, FMC § 20-0913(B) [Addendum 2, page 159] indicates this dual role apparently overlooked, or ignored, by the City of Fargo[2]:

> "The Building Official shall be responsible for conducting reviews to determine if intended uses, buildings or structures comply with all applicable regulations and standards, including the building code. The Building Official shall not issue a building permit unless the plans, specifications and intended use of such building or structures or part thereof conform in all respects to the provisions of the Land Development Code and the building code."

FMC § 20-0106(B) [Addendum 2, page 2] also provides a very strict standard for interpretation(s):

> "**If the provisions of this Land Development code are inconsistent with one another**, or if they conflict with provisions found in other adopted ordinances or regulations of the City, **the more restrictive provision will control.**" [**bolding** for emphasis]

No building permit can be issued due to non-compliance with the off-street and on-site parking space requirements for this Renewal Plan.[3] To do so would be in violation of

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[2] FMC § 20-1201(I), entitled "Mandatory and Discretionary Terms", provides, "(t)he words 'shall,' 'will,' and 'must are always mandatory. The words 'may' and 'should' are discretionary terms."

[3] RAKOWSKI understands that an Alternate Access Plan "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." FMC § 20-0701(E). However, when the Planning Commission is involved [a reduction of more than 25 percent or more than 25 off-street parking spaces], its review and action is not pursuant to a "Conditional Use Permit", but rather, "*in accordance with the* Conditional Use Permit Review *procedures of Sec. 20-0909.*" *Emphasis* added. The limitations of FMC § 20-0701(E)(4)(a) would still apply, and also, no Alternative Access Plan can be accepted unless the "applicant demonstrates to the satisfaction of the decision-

the general plan of the municipality as a whole, and the TIF District must fail. N.D.C.C. § 40-58-06(4)(b). The building plans "must include" at least 40 on-site parking spaces attributable to the residential uses for the reasons herein identified.

D. Role of the Planning Commission.

To the extent the City of Fargo suggests that the Planning Commission can change Fargo's ordinances, it is wrong. Even the Planning Commission's authority is limited by Fargo's law.

Under FMC § 20-1203(A)(1)(a) [Addendum 2, page 188], "(w)hen the principal uses of a development fall within different use categories, each principal use is classified in the applicable category and each use is subject to all applicable regulations for that category." In this case the MR-3 zoning category regulations must be honored, even if the ground floor is regarded as Limited Commercial.

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making body that the proposed plan will do at least as good of a job protecting surrounding neighborhoods, maintaining traffic circulation patterns and promoting quality urban design than would strict compliance with otherwise applicable off-street parking standards." FMC § 20-0701(E)(2). In the instant case, no attempt to comply with the procedures of FMC § 20-0909 occurred – there was no application for an alternate access plan "detail(ing) the type of alternative proposed and the rationale for such a proposal" [FMC § 20-0701(E)(1)], there was no payment of a nonrefundable fee for an alternate access plan, there was no public hearing on the proposed alternate access plan, there was no written notice of a proposed alternate access plan, and there was no newspaper notice of a proposed alternate access plan. Indeed, City Attorney Erik Johnson later recognized, "(w)hat was approved was an application to have a reduction in parking." Transcript of May 5, 2008, page 37; Appendix, page 36. The documents then submitted by City Attorney Erik Johnson do not reference any application for an alternate access plan "detail(ing) the type of alternative proposed and the rationale for such a proposal" [FMC § 20-0701(E)(1)] – only a "Petition requesting a Conditional Use Permit to allow for a Parking Reduction and to allow for residential uses within LC, Limited Commercial zoning districts for Lots 16, 17, and 18, Block 14, and part of vacated alley of **Kirkham's 2nd Addition** to the City of Fargo, Cass County, North Dakota."

Should there exist any argument that the Planning Commission has created a Conditional Overlay ["C-O"; there is no evidence that the Fargo City Commission has created a C-O], FMC § 20-0303(C) [Addendum 2. page 28] also provides:

> **"All requirements of a C-O district are in addition to and supplement all other applicable standards and requirements of the underlying zoning district."**

Reducing the number of parking spaces would not be within any of the six (6) areas of possibly authorized "(r)estrictions and conditions imposed by a C-O district under FMC § 20-0303(C)(1-6) [Addendum 2. page 28]. A C-O district has to be created by ordinance – **not by the Planning Commission.** See FMC § 20-0303(D)[Addendum 2. page 28]. "Parking spaces" are not an identified Use Category under FMC § 20-1203 [Addendum 2, pages 188]. To the extent that the City of Fargo believes, or it is herein accepted by the District Court, as a justification that its Planning Commission can change ordinances imposing mandatory numbers and locations of parking spaces, both are wrong. Fargo's Land Development Code was passed by ordinance – it has the force and effect of law. There exists a definite distinction between an ordinance and a policy resolution of a governing body of a municipality – a resolution is not a law. Mitchell v. City of Parshall, 108 N.W.2d 12, 14-15 (N.D. 1961). City Attorney Erik Johnson's May 5, 2008, comments to Mayor Walaker eliminated any possibility that the City of Fargo could immediately change or ignore any "policy" then deemed inappropriate so as to allow the Renewal Plan. Mini Mart, Inc., v. City of Minot. 347 N.W.2d 131, 137-138 (N.D. 1984) makes clear:

> "Section 40-11-09, N.D.C.C., is, in effect. a codification of the general rule that 'a municipal ordinance cannot be amended or repealed by a mere resolution. To accomplish that result a new ordinance must be passed.'

(authorities cited)."

Under Fargo's Land Development Code, the Off-Street and On-Site parking space requirements were established by way of specific ordinance requirement. FMC Article 20-07 [Addendum 2, pages 93-103]: specifically, FMC §20-0701(B). Under FMC § 20-0701(D), "Except as expressly stated in this section [§ 20-0701], all required off-street parking spaces must be located on the same lot as the principal use." An "Alternative Access Plan" does not provide any opportunity to alter the ordinance's on-site parking requirements because of the built-in limitation set forth in FMC § 20-0701(E)(4) which superimposes a higher standard for residential uses [and certain commercial uses], hereafter reiterated with **emphasis** added:

> "**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."

While the City of Fargo ignores its laws, this Court is hereby made aware that FMC § 20-0701(A)(3) provides that "(e)xisting parking and loading spaces may not be reduced below the minimum requirements established in this section." Neither the Planning Commission, nor even the Fargo City Commission [except by later adopted ordinance], had the right to reduce **the number of parking spaces** mandated by ordinance – it only had the ability to change the location where the required number of parking spaces attributable to certain use categories were possibly located under an Alternative Access Plan if approved in conformity with FMC § 20-0701(E). This was not done, nor could it be done.

Since the number [a minimum of 78 off-street and on-site parking spaces; 40 residential and 38 commercial] cannot be reduced [FMC § 20-0701(A)(3)][Addendum 2,

page 93], there should be at least 78 parking spaces. and perhaps as many as 103 [40 residential and 63 commercial] off-street and on-site parking spaces, provided for in the plans to satisfy "off-street" and "on-site" requirements.

Neither the Planning Commission[4], nor the City Commission can change the number of off-street parking spaces [except by duly enacted ordinance], and no Alternate Access Plan can permit the 40 parking spaces attributable to the residential uses to be anyplace but "on-site". To do so would be in violation of the general plan of the municipality as a whole, and the TIF District must fail. N.D.C.C. § 40-58-06(4)(b).

E. Overview/Conclusion.

The essence of all RAKOWSKI objections can be synopsized – a TIF District should not have been granted unless the underlying structure(s) is capable of being constructed so as to cause the TIF bonds to be capable of being paid from the increased value of the property. It makes no sense to authorize a TIF District for a structure that does not meet the legal objective [**only for commercial or industrial promotion, never residential**]. nor can

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[4] Should it be asserted that the Fargo City Commission has given the Planning Commission the discretion to alter the minimum parking and loading space requirements and/or the on-site parking requirements, such concept would be unconstitutional. To allow the Planning Commission to perform the legislative function of the Fargo City Commission would be an unconstitutional delegation of legislative power. In re Garrison Diversion Conservancy District, 144 N.W.2d 82, 92 (N.D. 1966). The same situation exists should it be argued that the Fargo City Commission has given such discretion to the Building Official – such power cannot legally exist.

Any prior act of the Fargo Planning Commission to ignore the City of Fargo's ordinance would be unlawful, and a *void act*. A municipal corporation cannot ratify ultra vires acts. Hennum v. City of Medina, 402 N.W.2d 327, 333 (N.D. 1987). citing *State ex rel. Gaski v. Basile*, 381 A.2d 547. 549 (1977).

it be built [legal inability to secure a building permit[5]] because it does not have adequate parking, or even the access required by Fargo's law. To approve such a TIF District means the Fargo City Commission has acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision.

The City of Fargo also failed to properly interpret, or apply, controlling law. Hentz, *id.*,¶ 4.

1. TIF District not possible because it promotes a "residential" use – an impermissible use under the North Dakota Century Code.

In a TIF District, both the prior use and the proposed use must be commercial or industrial. The City of Fargo has not honored N.D.C.C. Chap. 40-58, and specifically, N.D.C.C. § 40-58-20.1(1) which only allows the governing body of a municipality to "use the tax increment financing method authorized by section 40-58-20 to assist a project developer in the development of industrial or commercial property .. pursuant to an agreement between the municipality and the project developer."

The City of Fargo illegally attempts to use N.D.C.C. Chap. 40-58 to help the Developer with respect to two (2) floors of residential development – uses not authorized by North Dakota law if any tax increment financing is involved. The City of Fargo illegally attempts to use N.D.C.C. Chap. 40-58 to help the Developer with respect to the ground floor for "classrooms" – also not a use authorized by North Dakota law if any tax increment financing is involved. To approve such a TIF District means the Fargo City Commission has

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[5] To be candid with the North Dakota Supreme Court, a building permit was issued by the City of Fargo. The issuance of that building permit is the subject of another appeal to the District Court.

acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision. The City of Fargo also failed to properly interpret, or apply, controlling law. Hentz, *id.*,¶ 4. The District Court failed to address this statutory impediment to creation of the TIF District.

2. TIF District not possible because the City of Fargo has not created the required general plan for the municipality.

An individual TIF District is also not possible because the City of Fargo has not approved a general plan for the municipality as required by N.D.C.C. § 40-58-06 before it attempts to create any individual TIF plan. The City of Fargo has not identified, nor presented to the District Court – as part of the underlying record – any document identifying those places deemed blighted or slums capable of being renewed by way of a statutorily authorized plan.

Failing to meet a statutory condition predicate, means the City of Fargo is without authority to even attempt the creation of a TIF District. N.D.C.C. § 40-58-06(1) provides, in pertinent part, "The local governing body may not approve a development or renewal plan until a general plan for the municipality is prepared." To approve such a TIF District means the Fargo City Commission has acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision. The City of Fargo also failed to properly interpret, or apply, controlling law. Hentz, *id.*,¶ 4. State law makes such requirement a condition precedent; something also seemingly ignored or poo-pooed by the District Court apparently believing that a conditional use permit suffices as some general plan – in the process ignoring the limited nature of a conditional use permit applicable to only a tiny slice

of land.

3. TIF District not possible because it does not include sufficient "on-site" parking spaces in violation of the declared minimum standards of Fargo's Land Development Code.

Fargo's Land Development Code mandates "off-street" and "on-site" parking space requirements. Appendix 2, pages 93-103. The absolute minimum of 78 parking spaces [of which 40 parking spaces relate to residential uses are mandated to exist "on-site"] impose a legal burden upon the City of Fargo – it cannot allow any violation of its stated public parking space policy. As such would constitute the public policy of the City of Fargo, which must be applied uniformly and without special favors or immunities, the City of Fargo is without authority to waive parking space requirements created by law – the law set forth in its own ordinances. Nor can the law be waived, or changed by others as noted above.

4. TIF District not possible because it does not include sufficient "on-site" parking spaces in violation of the declared minimum standards of Fargo's Land Development Code, and a building permit may not be legally granted.

RAKOWSKI asserts that a Building Permit cannot be issued for the project based upon violations of Fargo's municipal ordinances mandating specified minimum parking standards [at least 40 parking spaces attributed to the residential uses must be located "on-site"], so no Tax Increment Financing Plan should be contemplated until a building permit is also possible. To do so would be in violation of the general plan of the municipality as a whole, and the TIF District must fail. N.D.C.C. § 40-58-06(4)(b).

Point 2. North Dakota Century Code Standard #2: The City of Fargo may not approve this development or renewal plan because it results in unfair competition and that the agreement is not in the best interest of the municipality as a whole. N.D.C.C. § 40-58-20.1(2); Addendum #1, page 5.

RAKOWSKI is the competition, and he has properly objected [Appendix. pages 26-66; transcripts only referenced]. RAKOWSKI'S real property is zoned Limited Commercial, but it was used for residential purposes so he can continue to use his property either way.

The actions of the City of Fargo have significantly affected RAKOWSKI, and the neighborhood. RAKOWSKI'S property is still subject to the minimum parking standards imposed by law. Purporting to create lesser parking and to waive all access standards for this Developer means that the City of Fargo is breaching its obligation to enforce its laws uniformly, without possibility of special privileges or immunities. Constitution of North Dakota, Article I. §s 21 and 22. It is unfair to any competitor – such as RAKOWSKI who timely objected [Appendix. pages 26-66. transcripts only referenced]. The District Court has failed to adequately address these issues, if addressed at all – having constitutional implications. This action by the City of Fargo adversely affects RAKOWSKI'S right(s). To approve such a TIF District means the Fargo City Commission has acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision. The City of Fargo also failed to properly interpret, or apply, controlling law. Hentz, *id.*,¶ 4.

Another effect upon RAKOWSKI is financial. The City of Fargo's actions have caused RAKOWSKI'S property to lose at least $50.000.00 in value as set forth above – viewed from the perspective of Developer as a purchaser of RAKOWSKI'S property. The

adverse effect upon RAKOWSKI, from his perspective as a seller, is even greater. One-third of the proffered $150,000 purchase price disappeared as soon as the TIF District was created – there can be no better proof of obvious adverse impact upon a neighbor by the decision of the Fargo City Commission. To approve such a TIF District means the Fargo City Commission has acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision. The City of Fargo also failed to properly interpret, or apply, controlling law. Hentz, *id.*,¶ 4.

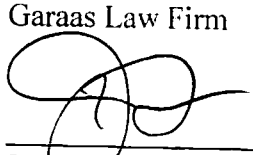
Thirdly, approval of this Renewal Plan acts to dump a minimum of 45 cars seeking street parking [mandated by Fargo law to be "off-street" with at least 40 cars "on-site"] in competition with all of the neighbors, including RAKOWSKI [78 off-street parking spaces - 33 allotted parking spaces = 45 parking spaces relegated to the neighborhood's streets]. The actions of the City of Fargo result in further dumping of residential and commercial parking unto already crowded streets where parking is enforced by a system of excessive fines. To approve such a TIF District means the Fargo City Commission has acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision. The City of Fargo also failed to properly interpret, or apply, controlling law. Hentz, *id.*,¶ 4.

CONCLUSION

The City of Fargo should not be able to pick and choose what laws it will honor, and in this case, adversely impacting the property owner next door. Nor should the law be applied in any manner other than uniformly. RAKOWSKI suffered financial loss and harm when his property abutted against property advantaged by the arbitrary, capricious, and unreasonable conduct of the City of Fargo – without support in the record or the law.

Respectfully submitted this 23rd day of June , 2009 .

Garaas Law Firm



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IN THE DISTRICT COURT FOR CASS COUNTY, NORTH DAKOTA

William F. Rakowski,

Petitioner-Appellant,

vs.

City of Fargo, a political subdivision of the State of North Dakota,

Respondent-Appellee.

Civil No. 09-08-C-02135

AFFIDAVIT OF SERVICE BY MAIL

State of North Dakota
County of Cass

Pat Doty, being first duly sworn on oath, deposes and says: Affiant is a resident of the City of Fargo, North Dakota, and over the age of eighteen years, and not a party to the above entitled matter.

On the 23rd day of June, 2009, Affiant deposited in the United States Post Office at Fargo, North Dakota, a true and correct copy of the following documents in the above entitled action:

BRIEF OF PETITIONER-APPELLANT WILLIAM F. RAKOWSKI, AND APPENDIX TO THE BRIEF OF .PETITIONER-APPELLANT WILLIAM F. RAKOWSKI

The copies of the foregoing were securely enclosed in an envelope with postage duly prepaid and addressed as follows:

Ronald H. McLean
Serkland Law Firm
P O Box 6017
Fargo, ND 58108-6017

To the best of Affiant's knowledge, the address above given was the actual post office address of the party intended to be so served. The above documents were duly mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.

Jonathan T. Garaas

Subscribed and sworn to before me this 23rd day of June, 2009.

Notary Public

DAVID GARAAS
Notary Public
State of North Dakota
My Commission Expires July 2, 2011

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CHAPTER 40-58
URBAN RENEWAL LAW

40-58-01. Short title. Repealed by S.L. 1989, ch. 499, § 19.

40-58-01.1. Definitions. In this chapter, unless the context otherwise requires:

1. "Area of operation" means the area within the corporate limits of the municipality and the area within five miles [8.05 kilometers] of those limits, except that the term does not include any area that lies within the territorial boundaries of another incorporated city unless a resolution is adopted by the governing body of the other city declaring a need for the inclusion.

2. 'Blighted area" means an area other than a slum area which by reason of the presence of a substantial number of slums, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of these factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

3. "Board" or "commission" means a board, commission, department, division, office, body, or other unit of the municipality.

4. "Bonds" means any bonds, including refunding bonds, notes, interim certificates, certificates of indebtedness, debentures, or other obligations.

5. "Clerk" means the clerk or other official of a municipality who is the custodian of the official records of the municipality.

6. "Development" includes the construction of new buildings, structures, or improvements; the demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, or improvements; the acquisition of equipment; and the clearing and grading of land on industrial or commercial property in a development or renewal area. However, for the purpose of determining amounts to be reimbursed by tax increments under section 40-58-20, only those eligible public costs of development enumerated under section 40-58-20.1 are reimbursable for that purpose.

7. "Development or renewal area" means industrial or commercial property, a slum or blighted area, or a combination of these properties or areas that the local governing body designates as appropriate for a development or renewal project.

8. "Development or renewal plan" means a plan for a development or renewal project which:

   a. Conforms to the general plan for the municipality as a whole; and

   b. Is sufficiently complete to indicate any land acquisition, development, demolition and removal of structures, redevelopment, improvements, or rehabilitation as may be proposed to be carried out in the development or renewal area, zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plan's relationship to definite local

objectives relating to appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

9. 'Development or renewal project" may include authorized undertakings or activities of a municipality in a development or renewal area for the development of commercial or industrial property or for the elimination and prevention of the development or spread of slums and blight.

10. "Dwelling" means any building, or structure, or part of a building or structure used and occupied for human habitation or intended to be so used, and includes any appurtenances to the building or structure.

11. "Federal government" means the United States or any agency or instrumentality, corporate or otherwise, of the United States.

12. "Governing body" means the city council, the board of city commissioners, or the board of township supervisors.

13. "Housing authority" means a housing authority created by and established pursuant to the housing authorities law.

14. "Industrial or commercial property" means unused or underutilized real property that is zoned or used as an industrial or commercial site

15. "Mayor" means the mayor of a municipality or other officer or body having the duties customarily imposed upon the executive head of a municipality.

16. "Municipality" means any incorporated city in the state.

17. "Obligee" includes any bondholder, agents or trustees for any bondholder, or lessor demising to the municipality property used in connection with a development or renewal project, or any assignee or assignees of the lessor's interest or any part thereof, and the federal government when it is a party to any contract with the municipality.

18. "Person" means any individual, firm, partnership, corporation, limited liability company, company, association, joint-stock association, or body politic and includes any trustee, receiver, assignee, or other person acting in a similar representative capacity.

19. "Public body" means the state or any municipality, township, board, commission, authority, district, or any other political subdivision or public body of the state.

20. "Public officer" means any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.

21. "Real property" includes all lands, including improvements and fixtures on the land, and property of any nature appurtenant to the land, or used in connection with the land, and every estate, interest, right and use, legal or equitable, in the land, including terms for years and liens by way of judgment, mortgage, or otherwise.

22. "Rehabilitation" or "conservation" includes the restoration and renewal of all or a part of a slum or blighted area, in accordance with a development or renewal plan, by:

    a. Carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements.

b. Acquisition of real property and demolition or removal of buildings and improvements on the real property if necessary to eliminate unhealthful, unsanitary, or unsafe conditions, lessen density, reduce traffic hazards, eliminate obsolete or other uses detrimental to the public welfare, or to otherwise remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities.

c. Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out the purposes of this chapter.

d. The disposition of any property acquired in the development or renewal area, including sale, initial leasing, or retention by the municipality at its fair value for uses in accordance with the development or renewal plan.

23. "Slum area" means an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of these factors is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals, or welfare.

24. "Slum clearance and redevelopment" may include:

a. Acquisition of all or part of a slum area or a blighted area.

b. Demolition and removal of buildings and improvements.

c. Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out the development or renewal plan.

d. Making the land available for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the municipality at its fair value for uses in accordance with the development or renewal plan.

25. "Urban renewal agency" means a public agency created pursuant to section 40-58-16.

40-58-02. Findings and declarations of necessity.

1. It is hereby found and declared that there exist in municipalities of the state slum and blighted areas which constitute a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of the state; that the existence of these areas contributes substantially and increasingly to the spread of disease and crime, constitutes an economic and social liability, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems, and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of slums and blight is a matter of state policy and state concern in order that the state and its municipalities do not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, and, while contributing little to the tax income of the state and its municipalities, consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization, and other forms of public protection, services, and facilities. It is further found and declared that certain

slum or blighted areas, or portions thereof, may require acquisition, clearance, and disposition subject to use restrictions, as provided in this chapter, since the prevailing condition of decay may make impracticable the reclamation of the area by conservation or rehabilitation; that other areas or portions thereof may, through the means provided in this chapter, be susceptible of conservation or rehabilitation in such a manner that the conditions and evils described in this section may be eliminated, remedied, or prevented; and that to the extent feasible salvable slum and blighted areas should be conserved and rehabilitated through voluntary action and the regulatory process.

2. It is further found and declared that there exist in municipalities of the state conditions of unemployment, underemployment, and joblessness detrimental to the economic growth of the state economy; that it is appropriate to implement economic development programs both desirable and necessary to eliminate the causes of unemployment, underemployment, and joblessness for the benefit of the state economy; and that tax increment financing is an economic development program designed to facilitate projects that create economic growth and development.

40-58-03. Encouragement of private enterprise. A municipality, to the greatest extent it determines to be feasible in carrying out this chapter, shall afford maximum opportunity, consistent with the sound needs of the municipality as a whole, to the development, rehabilitation, or redevelopment of the development or renewal area by private enterprise. A municipality shall give consideration to this objective in exercising its powers under this chapter, including the formulation of a workable program, the approval of development or renewal plans consistent with the general plan for the municipality, the adoption and enforcement of ordinances as provided for in section 40-58-18, the exercise of its zoning powers, the enforcement of other laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements, the disposition of any property acquired, and the provision of necessary public improvements.

40-58-04. Workable program. A municipality for the purposes of this chapter may formulate a workable program for utilizing appropriate private and public resources, including those specified in section 40-58-18, to facilitate the development of industrial or commercial properties, eliminate and prevent the development or spread of slums and urban blight, encourage needed urban rehabilitation, provide for the redevelopment of slum and blighted areas, or undertake these activities or other feasible municipal activities as may be suitably employed to achieve the objectives of the workable program. The workable program may include provision for:

1. The development of industrial or commercial properties;

2. The prevention of the spread of blight into areas of the municipality which are free from blight through diligent enforcement of housing, zoning, and occupancy controls and standards;

3. The rehabilitation or conservation of slum and blighted areas or portions of those areas by replanning, removing congestion, providing parks, playgrounds, and other public improvements, by encouraging voluntary rehabilitation and by compelling the repair and rehabilitation of deteriorated or deteriorating structures; and

4. The clearance and redevelopment of slum areas or portions of those areas.

40-58-05. Finding of necessity by governing body. A municipality may not exercise any of the powers conferred upon municipalities by this chapter until its governing body adopts a resolution finding that:

1. One or more slum or blighted areas or industrial or commercial properties exist in the municipality; and

2. The development, rehabilitation, conservation, or redevelopment, or a combination thereof, of the area or properties is necessary in the interest of the public economy, health, safety, morals, or welfare of the residents of the municipality.

40-58-06. Preparation, adoption, and revision of development or renewal plans.

1. A municipality may not approve a development or renewal plan for a development or renewal area unless the governing body by resolution determines that the area is a slum or blighted area or consists of industrial or commercial property, or a combination of those areas or properties, and designates the area or properties as appropriate for a development or renewal project. The local governing body may not approve a development or renewal plan until a general plan for the municipality is prepared. For this purpose and other municipal purposes, a municipality may prepare, adopt, and revise a general plan for the physical development of the municipality as a whole giving due regard to the environs and metropolitan surroundings, establish and maintain a planning commission for this purpose and related municipal planning activities, and make available and appropriate necessary funds for these purposes. A municipality may not acquire real property for a development or renewal project unless the governing body approves the development or renewal plan in accordance with subsection 4.

2. The municipality may prepare or cause to be prepared a development or renewal plan, or any person or agency, public or private, may submit a development or renewal plan to a municipality Prior to its approval of a development or renewal plan, the governing body shall submit the plan to the planning commission of the municipality, if any, for review and recommendations as to its conformity with the general plan for the development of the municipality as a whole. However, if the development or renewal plan relates only to proposed development of industrial or commercial property, the governing body is not required to submit the plan to the planning commission unless the proposed development is not consistent with the comprehensive city plan. The planning commission shall submit its written recommendations with respect to the proposed development or renewal plan to the governing body within thirty days after receipt of the plan for review. Upon receipt of the recommendations of the planning commission, or if no recommendations are received within the thirty-day period, the governing body may proceed with the hearing on the proposed development or renewal plan prescribed by subsection 3.

3. The governing body shall hold a public hearing on a development or renewal plan or substantial modification of an approved plan, after public notice of the hearing is provided by publication in a newspaper having a general circulation in the area of operation of the municipality. The notice must describe the time, date, place, and purpose of the hearing, generally identify the development or renewal area covered by the plan, and outline the general scope of the development or renewal project under consideration.

4. Following the hearing, the governing body may approve a development or renewal plan if it finds that:

   a. A feasible method exists for the location of families who will be displaced from the development or renewal area in decent, safe, and sanitary dwelling accommodations within their means and without undue hardship to those families;

   b The development or renewal plan conforms to the general plan of the municipality as a whole: and

   c. The development or renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the development.

rehabilitation, or redevelopment of the development or renewal area by private enterprise.

5. A development or renewal plan may be modified at any time; provided, that if modified after the lease or sale by the municipality of real property in the development or renewal project area, the modification is subject to the rights at law or in equity as a lessee or purchaser, or the lessee's or purchaser's successor or successors in interest, is entitled to assert. Any proposed modification which will substantially change the development or renewal plan as previously approved by the governing body is subject to the requirements of this section, including the requirement of a public hearing, before it may be approved.

6. Upon the approval of a development or renewal plan by the municipality, the provisions of the plan governing the future use and building requirements applicable to the property covered by the plan control the future use of and building on the property.

40-58-07. Powers. A municipality has all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the power:

1. To authorize or undertake and carry out development or renewal projects within its area of operation; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter; and to disseminate industrial or commercial development, slum clearance, and urban renewal information.

2. To provide, arrange, or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities for or in connection with a development or renewal project; to install, construct, and reconstruct streets, utilities, parks, playgrounds, and other public improvements; and to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of a development or renewal project, and to include in any contract let in connection with the project, provisions to fulfill those conditions as it may deem reasonable and appropriate.

3. Within its area of operation, to enter upon any building or property in any development or renewal area in order to make surveys, appraisals, soundings, or test borings, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire by purchase, lease, option, gift, grant, bequest, devise, or otherwise, any real property or personal property for its administrative purposes together with any property improvements; to hold, improve, clear, or prepare for development or redevelopment any such property; to mortgage, pledge, hypothecate, or otherwise encumber or dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums for the insurance; and to enter into any contracts necessary to effectuate the purposes of this chapter; provided, however, that no statutory provision with respect to the acquisition, clearance, or disposition of property by public bodies restricts a municipality or other public body exercising powers under this subsection, in the exercise of those functions with respect to a development or renewal project, unless the legislative assembly shall specifically so state.

4. To invest development or renewal project funds held in reserves or sinking funds, or any of those funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to redeem bonds issued pursuant to section 40-58-10 at the established redemption price or to

purchase bonds at less than redemption price, all bonds so redeemed or purchased to be canceled.

5. To borrow money and to apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal government, the state, county, or other public body, or from any sources, public or private, for the purposes of this chapter, and to give such security as may be required and to enter into and carry out contracts in connection therewith. A municipality may include in any contract for financial assistance with the federal government for a development or renewal project any conditions imposed pursuant to federal law as the municipality may deem reasonable and appropriate and which are not inconsistent with the purposes of this chapter.

6. Within its area of operation, to make or cause to have made all plans necessary to the carrying out of the purposes of this chapter and to contract with any person, public or private, in making and carrying out those plans and to adopt or approve, modify, and amend those plans. The plans may include:

   a. A general plan for the locality as a whole.

   b. Development or renewal plans.

   c. Plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements.

   d. Plans for the enforcement of state and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements.

   e. Appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of development or renewal projects. The municipality may develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of slums and urban blight, and to apply for, accept, and utilize grants of funds from the federal government for such purposes.

7. To prepare plans and provide reasonable assistance for the relocation of families displaced from a development or renewal area.

8. To appropriate funds and make expenditures that are necessary to carry out the purposes of this chapter, and to levy taxes and assessments for those purposes; to close, vacate, plan, or replan streets, roads, sidewalks, ways, or other places; to plan or replan or zone or rezone any part of the municipality or make exceptions from building regulations; and to enter into agreements with a housing authority or an urban renewal agency vested with urban renewal project powers under section 40-58-15, which agreements may extend over any period, notwithstanding any provision or rule of law to the contrary, respecting action to be taken by the municipality pursuant to any of the powers granted by this chapter.

9. Within its area of operation, to organize, coordinate, and direct the administration of this chapter as those provisions apply to the municipality in order that the objectives of remedying slum and blighted areas and preventing the causes of those areas and facilitating the development of industrial or commercial properties within the municipality may be most effectively promoted and achieved, and to establish new offices of the municipality or to reorganize existing offices in order to carry out that purpose most effectively.

10. To exercise all or any part or combination of the powers granted by this section.

40-58-08. Eminent domain. Repealed by S.L. 2007, ch. 293, § 46.

40-58-09. Disposal of property in development or renewal area.

1. A municipality may sell, lease, or otherwise transfer real property or any interest in real property acquired by it, and may enter into contracts with respect to the real property, in a development or renewal area for residential, recreational, commercial, industrial, or other uses or for public use, or may retain the property or interest for public use, in accordance with the development or renewal plan, subject to such covenants, conditions, and restrictions, including covenants running with the land, as it may deem to be necessary or desirable to assist in preventing the development or spread of future slums or blighted areas, to facilitate the development of industrial or commercial properties, or to otherwise carry out the purposes of this chapter; provided, that the sale, lease, other transfer, or retention, and any agreement relating thereto, may be made only after the approval of the development or renewal plan by the governing body. The purchasers or lessees and their successors and assigns must be obligated to devote the real property only to the uses specified in the development or renewal plan, and may be obligated to comply with any other requirements that the municipality determines are in the public interest, including the obligation to begin within a reasonable time any improvements on the real property required by the development or renewal plan. The real property or interest must be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the development or renewal plan. In determining the fair value of real property for uses in accordance with the development or renewal plan, a municipality shall take into account and give consideration to the uses provided in the plan; the restrictions upon, and the covenants, conditions, and obligations assumed by the purchaser or lessee or by the municipality retaining the property; and the objectives of the plan for the development of industrial or commercial properties and the prevention of the recurrence of slum or blighted areas. The municipality in any instrument of conveyance to a private purchaser or lessee may provide that the purchaser or lessee may not sell, lease, or otherwise transfer the real property without the prior written consent of the municipality until the purchaser or lessee has completed the construction of any and all improvements which the purchaser or lessee is obligated to construct on the real property. Real property acquired by a municipality which, in accordance with the provisions of the development or renewal plan, is to be transferred, must be transferred as rapidly as feasible in the public interest consistent with the carrying out of the provisions of the development or renewal plan. The inclusion in any contract or conveyance to a purchaser or lessee of any such covenants, restrictions, or conditions, including the incorporation by reference of the provisions of a development or renewal plan or any part of the plan, does not prevent the filing of the contract or conveyance in the land records of the recorder in a manner that affords actual or constructive notice of the contract or conveyance.

2. A municipality may dispose of real property in a development or renewal area to private persons in a manner that appropriately carries out the purposes and provisions of this chapter. Thereafter, the municipality may execute the contract in accordance with the provisions of subsection 1 and deliver deeds, leases, and other instruments and take all steps necessary to effectuate the contract.

3. A municipality may temporarily operate and maintain real property acquired in a development or renewal area pending the disposition of the property for development or redevelopment, without regard to the provisions of subsection 1, for any uses and purposes as may be deemed desirable even though not in conformity with the development or renewal plan.

40-58-10. Issuance of bonds.

1 A municipality may issue bonds from time to time in its discretion to finance the undertaking of any development or renewal project, including the payment of principal and interest upon any advances for surveys and plans for development or renewal projects, and may issue refunding bonds for the payment or retirement of bonds previously issued by it. The bonds must be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality derived from or held in connection with its undertaking and carrying out of development or renewal projects; provided, however, that the payment of bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source, in aid of any development or renewal projects of the municipality, and by a mortgage of all or any part of a development or renewal project, title to which is in the municipality.

2 Bonds issued under this section do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and are not subject to any other law or charter relating to the authorization, issuance, or sale of bonds. Bonds issued under this chapter are declared to be issued for an essential public and governmental purpose and, together with interest and income, are exempt from all taxation.

3. Bonds issued under this section must be authorized by resolution or ordinance of the governing body and may be issued in one or more series and must bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, resulting in an average annual net interest cost not exceeding twelve per centum per annum on those issues which are sold at private sale. The bonds must be in such denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such places, and be subject to such terms of redemption with or without premium, be secured in such manner, and have such other characteristics, as may be provided by the resolution or trust indenture or mortgage issued pursuant to the resolution.

4. The bonds may be sold at not less than par at public sales held after notice published prior to the sale in a newspaper having a general circulation in the area of operation and in any other medium of publication as the municipality may determine or may be exchanged for other bonds on the basis of par; provided, that the bonds may be sold to the federal government at private sale at not less than par, and, in the event less than all of the authorized principal amount of the bonds is sold to the federal government, the balance may be sold at private sale at not less than par at an interest cost to the municipality of not to exceed the interest cost to the municipality of the portion of the bonds sold to the federal government. The bonds may also be sold at private sale if the obligations do not exceed the total sum of one hundred thousand dollars. There is no interest rate ceiling on issues sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities.

5 If a public official of the municipality whose signature appears on any bonds or coupons issued under this chapter ceases to be a public official before the delivery of the bonds, the signature is, nevertheless, valid and sufficient for all purposes, as if the official had remained in office until the delivery. Any law to the contrary notwithstanding, any bonds issued pursuant to this chapter are fully negotiable.

6. In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this chapter or the security for the bond, any bond reciting in substance that it has been issued by the municipality in connection with a development or renewal project is conclusively deemed to have been issued for that purpose and the project is conclusively deemed to have been planned, located, and carried out in accordance with this chapter.

40-58-11. Bonds as legal investments. All banks, trust companies, bankers, savings banks and institutions, savings and loan associations, investment companies, and other persons carrying on a banking or investment business and all executors, administrators, curators, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a municipality pursuant to this chapter or by any urban renewal agency or housing authority vested with urban renewal project powers under section 40-58-15. However, the bonds and other obligations must be secured by an agreement between the issuer and the federal government in which the issuer agrees to borrow from the federal government and the federal government agrees to lend to the issuer, prior to the maturity of the bonds or other obligations, moneys in an amount which together with any other moneys irrevocably committed to the payment of interest on the bonds or other obligations will suffice to pay the principal of such bonds or other obligations with interest to maturity thereon, which moneys under the terms of the agreement are required to be used for the purpose of paying the principal of and the interest on the bonds or other obligations at their maturity. The bonds and other obligations are authorized security for all public deposits. This section does not relieve any person of any duty of exercising reasonable care in selecting securities.

40-58-12. Property exempt from taxes and from levy and sale by virtue of an execution.

1. All property of a municipality, including funds, owned or held by it for the purposes of this chapter is exempt from levy and sale by virtue of an execution, and no execution or other judicial process may issue against the same nor may judgment against a municipality be a charge or lien upon the property: provided, however, that the provisions of this section do not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this chapter by a municipality on its rents, fees, grants, or revenues from development or renewal projects.

2. The property of a municipality, acquired or held for the purposes of this chapter, is declared to be public property used for essential public and governmental purposes and the property is exempt from all taxes of the municipality, the county, the state, or any political subdivision of the state; provided, that this tax exemption terminates when the municipality sells, leases, or otherwise disposes of the property in a development or renewal area to a purchaser or lessee which is not a public body entitled to tax exemption with respect to the property.

40-58-13. Cooperation by public bodies.

1. For the purpose of aiding in the planning, undertaking, or carrying out of a development or renewal project located within the area in which it is authorized to act, any public body may, upon any terms, with or without consideration, as it may determine:

   a. Dedicate, sell, convey, or lease any of its interest in any property or grant easements, licenses, or other rights or privileges therein to a municipality;

   b. Incur the entire expense of any public improvements made by the public body in exercising the powers granted in this section;

   c. Do any and all things necessary to aid or cooperate in the planning or carrying out of a development or renewal plan;

   d. Lend, grant, or contribute funds to a municipality;

   e. Enter into agreements which may extend over any period, notwithstanding any law to the contrary, with a municipality or other public body relating to action to be taken pursuant to any of the powers granted by this chapter, including the

furnishing of funds or other assistance in connection with a development or renewal project; and

f. Cause public buildings and public facilities, including parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake to be furnished; furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places; plan or replan or zone or rezone any part of the public body or make exceptions from building regulations; and cause administrative and other services to be furnished to the municipality. If at any time title to or possession of any development or renewal project is held by any public body or governmental agency other than the municipality, which is authorized by law to engage in the undertaking, carrying out, or administration of development or renewal projects, including the federal government, the provisions of the agreements referred to in this section inure to the benefit of and may be enforced by the public body or governmental agency. As used in this subsection, the term "municipality" shall also include an urban renewal agency or a housing authority vested with authority pursuant to section 40-58-15.

2. Any sale, conveyance, lease, or agreement provided for in this section may be made by a public body without appraisal, public notice, advertisement, or public bidding.

3. For the purpose of aiding in the planning, undertaking, or carrying out of the authority of an urban renewal agency or a housing authority, a municipality may in addition to its other powers and upon any terms, with or without consideration, as it may determine do and perform any or all of the actions or things which, by the provisions of subsection 1, a public body is authorized to do or perform, including the furnishing of financial and other assistance.

4. For the purposes of this section, or for the purpose of aiding in the planning, undertaking, or carrying out of a development or renewal project of a municipality, the municipality may in addition to any authority to issue bonds pursuant to section 40-58-10 issue and sell its general obligation bonds. Any bonds issued by a municipality pursuant to this section must be issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by the municipality for public purposes generally.

40-58-14. Title of purchaser. Any instrument executed by a municipality and purporting to convey any right, title, or interest in any property under this chapter shall be conclusively presumed to have been executed in compliance with the provisions of this chapter insofar as title or other interest of any bona fide purchasers, lessees, or transferees of such property is concerned.

40-58-15. Exercise of urban renewal project powers.

1. A municipality may itself exercise its urban renewal project powers, as defined by this section, or may, if the governing body by resolution determines the action to be in the public interest, elect to have those powers exercised by the urban renewal agency created by section 40-58-16 or by the housing authority, if one exists or is subsequently established in the community. In the event the governing body makes that determination, the urban renewal agency or the housing authority, as the case may be, is vested with all of the urban renewal project powers in the same manner as though those powers were conferred on the agency or authority instead of the municipality. However, an urban renewal agency or housing authority may not exercise any rights, powers, functions, and duties of a municipality under this chapter which relate to the development of industrial or commercial property under section 40-58-20.1. If the governing body does not elect to make a determination under this subsection, the municipality may exercise its urban renewal project

powers through a board or commissioner or through any officers of the municipality as the governing body may by resolution determine.

2. As used in this section, the term "urban renewal project powers' includes the rights, powers, functions and duties of a municipality under this chapter, except the following:

   a. The power to determine an area to be industrial or commercial property or a slum or blighted area or combination thereof and to designate the property or area as appropriate for a development or renewal project;

   b. The power to approve and amend development or renewal plans and to hold any public hearings required with respect to those plans;

   c. The power to establish a general plan for the locality as a whole;

   d. The power to formulate a workable program under section 40-58-04;

   e. The powers, duties, and functions referred to in section 40-58-18;

   f. The power to make the determinations and findings provided for in sections 40-58-03 and 40-58-05 and subsection 4 of section 40-58-06;

   g. The power to issue general obligation bonds; and

   h. The power to appropriate funds, to levy taxes and assessments, and to exercise other powers provided for in subsection 8 of section 40-58-07.

40-58-16. Urban renewal agency.

1. There is created in each municipality a public body corporate and politic to be known as the "urban renewal agency" of the municipality; provided, that the agency may not transact any business or exercise its powers under this chapter until or unless the local governing body has made the finding prescribed in section 40-58-05 and has elected to have the urban renewal project powers exercised by an urban renewal agency as provided in section 40-58-15.

2. If the urban renewal agency is authorized to transact business and exercise powers under this chapter, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency which must consist of five commissioners. The term of office of each commissioner is one year.

3. A commissioner may not receive compensation for services but is entitled to the necessary expenses, including traveling expenses, incurred in the discharge of the commissioner's duties. Each commissioner shall hold office until a successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner must be filed with the clerk of the municipality and the certificate is conclusive evidence of the due and proper appointment of the commissioner.

4. The powers of an urban renewal agency must be exercised by the commissioners of the agency. A majority of the commissioners constitutes a quorum for the purpose of conducting business and exercising the powers of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws require a larger number. Approval of the payment of an account or claim must be recorded in the record of the agency's proceedings and this is sufficient to indicate approval without requiring a majority of the commissioners to sign or initial the voucher or order for payment.

5. Any persons may be appointed as commissioners if they reside within the area of operation of the agency which shall be coterminous with the area of operation of the municipality and are otherwise eligible for appointments under this chapter. The mayor shall designate a chairman and vice chairman from among the commissioners. An agency may employ an executive director, technical experts, and such other agents and employees, permanent and temporary, as it may require, and determine their qualifications, duties, and compensation. For legal services it may require, an agency may employ or retain its own counsel and legal staff. An agency authorized to transact business and exercise powers under this chapter shall file, with the local governing body, on or before March thirty-first of each year a report of its activities for the preceding calendar year, which report must include a complete financial statement setting forth its assets, liabilities, income, and operating expense as of the end of the calendar year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that the report has been filed with the municipality and that the report is available for inspection during business hours in the office of the auditor and in the office of the agency.

6. For inefficiency or neglect of duty or misconduct in office, a commissioner may be removed only after a hearing and after the commissioner has been given a copy of the charges at least ten days prior to the hearing and has had an opportunity to be heard in person or by counsel.

40-58-17. Interested public officials, commissioners, or employees. No public official or employee of a municipality or board or commission thereof, and no commissioner or employee of a housing authority or urban renewal agency which has been vested by a municipality with urban renewal project powers under section 40-58-15 shall voluntarily acquire any interest, direct or indirect, in any development or renewal project, or in any property included or planned to be included in any development or renewal project of the municipality or in any contract or proposed contract in connection with the development or renewal project. If the acquisition is not voluntary, the interest acquired must be immediately disclosed in writing to the governing body and the disclosure must be entered upon the minutes of the governing body. If an official, commissioner, or employee presently owns or controls, or owned or controlled within the preceding two years, any interest, direct or indirect, in any property which that official, commissioner, or employee knows is included or planned to be included in a development or renewal project, that official, commissioner, or employee shall immediately disclose this act in writing to the governing body, and the disclosure must be entered upon the minutes of the governing body, and any such official, commissioner, or employee may not participate in any action by the municipality or board or commission thereof, housing authority, or urban renewal agency affecting the property. Any disclosure required to be made by this section to the governing body must be concurrently made to a housing authority or urban renewal agency which has been vested with urban renewal project powers by the municipality pursuant to the provisions of section 40-58-15. A commissioner or other officer of any housing authority, urban renewal agency, board, or commission exercising powers pursuant to this chapter may not hold any other public office under the municipality other than the commissionership or office with respect to the housing authority, urban renewal agency, board, or commission. Any violation of the provisions of this section constitutes misconduct in office.

40-58-18. Ordinances relating to repair, closing, and demolition of dwellings unfit for human habitation.

1. If a municipality finds that there exist in the municipality dwellings which are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions, including those set forth in subsection 3, rendering those dwellings unsafe or unsanitary, or dangerous or detrimental to the health, safety, or morals, or otherwise inimical to the welfare of the residents of the municipality, the municipality may require or cause the repair, closing, or demolition or removal of those dwellings in the manner provided by this section.

2. Upon the adoption of an ordinance finding that dwelling conditions of the character described in subsection 1 exist within a municipality, the governing body of the municipality may adopt ordinances relating to the dwellings within the municipality. The ordinances must include the following provisions:

   a. That a public officer be designated or appointed to exercise the powers prescribed by the ordinances.

   b. If a petition is filed with the public officer or by at least five residents of the municipality charging that any dwelling is unfit for human habitation or whenever it appears to the public officer on the public officer's own motion that any dwelling is unfit for human habitation, the public officer shall, if the public officer's preliminary investigation discloses a basis for those charges, issue and cause to be served upon the owner, every mortgagee of record and all parties in interest in the dwelling, including persons in possession, a complaint stating the charges in that respect. The complaint must contain a notice that a hearing will be held before the public officer or the public officer's designated agent at a place designated in the complaint not less than ten days nor more than thirty days after the serving of the complaint; that the owner, mortgagee, and parties in interest must be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time designated in the complaint; and that the rules of evidence are not controlling in hearings before the public officer.

   c. If, after the notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation, the public officer shall state in writing the findings of fact in support of the determination and shall issue and cause to be served upon the owner of the dwelling an order which:

      (1) If the repair, alteration, or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling, the ordinance of the municipality shall fix a certain percentage of the cost as being reasonable for that purpose, requires the owner, within the time specified in the order, to repair, alter, or improve the dwelling to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or

      (2) If the repair, alteration, or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling, the ordinance of the municipality shall fix a certain percentage of the cost as being reasonable for that purpose, requires the owner, within the time specified in the order, to remove or demolish the dwelling.

   d. If the owner fails to comply with an order to repair, alter, or improve or to vacate and close the dwelling, the public officer may cause the dwelling to be repaired, altered, or improved, or to be vacated and closed.

   e. If the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause the dwelling to be removed or demolished.

   f. The amount of the cost of any repairs, alterations, or improvements, or vacating and closing, or removal or demolition by the public officer constitutes a lien against the real property upon which the cost was incurred and the lien, including an allowance of the public officer's costs and necessary attorney's fees, may be foreclosed in judicial proceedings in the manner provided by law for loans secured by liens on real property. If the dwelling is removed or demolished by the public officer, the public officer shall sell the materials of the dwelling and credit the proceeds of the sale against the cost of the removal or demolition. Any balance remaining must be paid to the parties entitled to it as

determined by proper judicial proceedings instituted by the public officer after deducting the costs of the judicial proceedings, including necessary attorney's fees incurred in those proceedings by the public officer, as determined by the court.

3. An ordinance adopted by a municipality pursuant to this section must provide that the public officer may determine that a dwelling is unfit for human habitation if the public officer finds that conditions exist in the dwelling which are dangerous or injurious to the health, safety, or morals of the occupants of the dwelling, the occupants of neighboring dwellings, or other residents of the municipality, or which have a blighting influence on properties in the area. Those conditions may include defects in the dwelling increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; uncleanliness; overcrowding; inadequate ingress and egress; inadequate drainage; or any violation of health, fire, building, or zoning regulations, or any other laws or regulations relating to the use of land and the use and occupancy of building and improvements. The ordinance may provide additional standards to guide the public officer or the public officer's agents or employees in determining the fitness of a dwelling for human habitation.

4. Complaints or orders issued by a public officer pursuant to an ordinance adopted under this section must be served upon persons either personally or by registered or certified mail, but if the location of those persons is unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer shall make an affidavit to that effect, then the serving of the complaint or order upon those persons may be made by publishing the complaint or order once each week for two consecutive weeks in a newspaper printed and published in the municipality, or, in the absence of such newspaper, in one printed and published in the county and circulating in the municipality in which the dwellings are located. A copy of the complaint or order must be posted in a conspicuous place on the premises affected by the complaint or order. A copy of the complaint or order must also be filed with the clerk of the county in which the dwelling is located and the filing of the complaint or order has the same force and effect as other lis pendens notices provided by law.

5. Any person affected by an order issued by the public officer may petition the district court, in accordance with the procedure provided in section 28-34-01, for an injunction restraining the public officer from carrying out the provisions of the order, and the court may, upon that petition, issue a temporary injunction restraining the public officer pending the final disposition of the cause. Hearings must be held by the court on the petitions within twenty days, or as soon thereafter as possible, and must be given preference over other matters on the court's calendar. The court shall hear and determine the issues raised and enter a final order or decree in the proceeding. In the proceeding, the findings of the public officer as to facts, if supported by evidence, are conclusive. The court may assess costs. The remedies provided under this section are exclusive remedies and a person affected by an order of the public officer may not recover any damages for action taken pursuant to any order of the public officer, or because of compliance by that person with any order of the public officer.

6. An ordinance adopted by the governing body of the municipality may authorize the public officer to exercise those powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to other authority granted under this section:

   a. To investigate the dwelling conditions in the municipality in order to determine which dwellings are unfit for human habitation.

b. To administer oaths and affirmations, examine witnesses, and receive evidence;

c. To enter any premises for the purpose of making examinations, provided that entry must be made in a manner that causes the least possible inconvenience to the persons in possession, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted;

d. To appoint and fix the duties of such officers, agents, and employees as the public officer deems necessary to carry out the purposes of the ordinance; and

e. To delegate any of the public officer's functions and powers under the ordinance to such officers, agents, and employees as the public officer may designate.

7. The governing body of any municipality adopting an ordinance under this section shall as soon as possible prepare an estimate of the annual expenses or costs to provide the equipment, personnel, and supplies necessary for periodic examinations and investigations of the dwellings in the municipality for the purpose of determining the fitness of the dwellings for human habitation, and for the enforcement and administration of its ordinance or ordinances adopted under this section.

8. This section may not be construed to abrogate or impair the powers of the courts or of any department of any municipality to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this section are in addition and supplemental to the powers conferred by any other law.

9. This section may not be construed to impair or limit in any way the power of the municipality to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.

10. The governing body of a city may adopt ordinances prescribing minimum standards for the use and occupancy of dwellings throughout the city and to prevent the use or occupancy of any dwelling which is injurious to the public health, safety, morals, or welfare.

40-58-19. Definitions. Repealed by S.L. 1989, ch. 499, § 19.

40-58-20. Tax increment financing.

1. At any time after the governing body of a municipality has approved a development or renewal plan for any development or renewal area, it may request the county auditor and treasurer to compute, certify, and remit tax increments resulting from the development or renewal of the area in accordance with the plan and any modifications thereof, and the county auditor and treasurer shall do so in accordance with this section.

2. The auditor shall compute and certify the original taxable value of each lot and parcel of real estate in the area, as last assessed and equalized before the date of the request, including the taxable value of any lot or parcel previously acquired by the municipality or its urban renewal agency, as last assessed and equalized before it was acquired. However, any real property acquired by the city or the city's urban renewal agency prior to July 1, 1973, or more than five years prior to the approval of a development or renewal plan for any development or renewal area, whichever is later, is deemed to have an original taxable value of zero and the county auditor shall so certify.

3. In each subsequent year, the auditor shall compute and certify the net amount by which the original taxable value of all lots and parcels of real estate in the area, as then assessed and equalized, including real estate then held by the municipality or urban renewal agency valued at zero, has increased or decreased in comparison with the original taxable value of all such real estate. The net amount of the increase or decrease is referred to in this section as the incremental value or the lost value for that year, as the case may be.

4. In any year when there is an incremental value, the auditor shall exclude it from the taxable value upon which the auditor computes the mill rates of taxes levied in that year by the state, the county, the municipality, the school district, and every other political subdivision having power to tax the development or renewal area, until the cost of development or renewal of the area has been reimbursed in accordance with this section. However, the auditor shall extend the aggregate mill rate of those taxes against the incremental value as well as the original taxable value, and the amount of taxes received from that extension against the incremental value is referred to in this section as the tax increment for that year.

5. In any year when there is a lost value, the auditor shall compute and certify the amounts of taxes which would have resulted from the extension against the lost value of the mill rate of taxes levied that year by the state and each political subdivision having power to tax the development or renewal area. The amounts so computed are referred to in this section as the tax losses for that year.

6. The county auditor shall segregate all tax increments from the development or renewal area in a special fund, crediting to the fund, in each year when there is an incremental value, that proportion of each collection of taxes on real estate within the area which the incremental value bears to the total taxable value in that year.

7. Upon receipt of any tax increments in the fund, the county treasurer, at the times when the county treasurer distributes collected taxes to the state and to each political subdivision for which a tax loss has previously been recorded, shall also remit to each of them from the tax increment fund an amount proportionate to the amount of that tax loss, until all those tax losses have been reimbursed. Thereafter, at the time of each distribution, the county treasurer shall remit the entire balance then on hand in the fund to the municipality, until the cost of development or renewal of the area has been reimbursed to the municipality as provided in this section.

8. The cost of development or renewal subject to reimbursement from the tax increment fund for each development or renewal area must include all expenditures incident to carrying out the development or renewal plan for the area and any modifications thereof, not otherwise reimbursed in one of the ways referred to below, including all expenses of the clearance, development, redevelopment, rehabilitation, and conservation of the area, and all interest and redemption premiums paid on bonds, notes, or other obligations issued by the municipality or urban renewal agency to provide funds for payment of those expenses, subject to section 40-58-20.1 for the purpose of determining eligible cost of development of industrial or commercial property. From the total cost to be reimbursed there must be deducted, except as provided below, all amounts received from the federal government or others, and all special assessments, revenues, and other receipts except property taxes, which are actually collected and applied to the payment of the cost or the bonds, notes, or other obligations, at the times when those payments are due. However, if the proceeds of tax increments or of bonds, notes, or other obligations are loaned to finance part or all of the cost of a project comprising the restoration, reconstruction, and improvement of a privately owned state historical site situated within the development or renewal area or any buildings or structures thereon, as contemplated in section 55-10-08, or of a property listed in the national register of historic places, as contemplated in section 55-10-11, in consideration of the grant to the city of a historic easement with respect thereto, repayments of the

loan may not be deducted from the cost of development or renewal subject to reimbursement.

9. The tax increments from any development or renewal area may be appropriated by the governing body of the municipality for the payment of any general obligation bonds, special improvement warrants, or refunding improvement bonds issued by the municipality to provide funds for payment of the cost of development or renewal, together with interest and redemption premiums thereon, other than that portion, if any, of such principal, interest, and redemption premiums which can be paid when due from collections of special assessments, revenues, or other funds, excluding property taxes, which are pledged for the payment thereof. When special improvement warrants or refunding improvement bonds are issued to pay the cost of public improvements of special benefit to properties within the development or renewal area, the governing body may cause those special benefits to be computed, together with the cost properly assessable against those properties, and may appropriate the tax increments from the area to the payment of that cost, in lieu of levying special assessments upon the property. In this event, the amount so appropriated, divided into the same number of installments as the special assessments and with interest at the same rate on the declining balance thereof, is deemed a part of the special assessments appropriated for payment of the cost, within the meaning of section 40-26-08.

10. When the cost of development or renewal of any development or renewal area has been fully paid and all bonds, notes, or other obligations issued by the municipality to pay that cost have been retired, or funds sufficient for the retirement thereof have been received by the municipality, the governing body shall cause this to be reported to the county auditor, who shall thereafter compute the mill rates of all taxes upon the total taxable value of the development or renewal area. Any balance then on hand in the tax increment fund must be distributed by the county treasurer to the state and all political subdivisions having power to tax property in the area, in amounts proportionate to the amounts of the tax losses previously reimbursed to them.

11. As an alternative to the sale of bonds to be amortized with tax increments as provided in this section, the governing body of a municipality may, in its discretion, grant a total or partial tax exemption for the project in order to provide assistance to a project developer in a development or renewal area, pursuant to agreement with the municipality. However, if a developer of a development or renewal project receives a tax exemption for that project pursuant to this subsection, that project developer may not receive a tax exemption for that project under section 40-57.1-03, 40-57.1-04, 40-57.1-04.1, or 40-57.1-04.3. The amount of annual tax exemption under this subsection is limited to the tax increment as defined in this section as it applies to the development or renewal project and may extend for a period not to exceed fifteen years. In determining the total amount of the tax exemption to be authorized, the municipality shall give due consideration to the same elements as are involved in the sale of bonds to be amortized by tax increments. The amount to be reimbursed, by tax exemption, to the project developer must be all or a portion of eligible public costs which have been paid by the project developer, plus interest on those costs at a rate not to exceed ten percent per annum. The amount of tax exemption must be an amount sufficient to reimburse the project operator for those eligible costs, amortized pursuant to the agreement between the project developer and the municipality.

40-58-20.1. Use of tax increment financing for the development of certain industrial or commercial property - Public hearing - Eligible costs of development.

1. The governing body of a municipality may use the tax increment financing method authorized by section 40-58-20 to assist a project developer in the development of

industrial or commercial property, as limited by this section, pursuant to an agreement between the municipality and the project developer.

2. Prior to entering into an agreement with a project developer under subsection 1, the governing body of the municipality shall consider the agreement at a public hearing, which may be held in conjunction with the public hearing required by subsection 3 of section 40-58-06, after providing written notice of the hearing at least fifteen days prior to the hearing to potential competitors of the prospective industrial or commercial enterprise, and may enter into the agreement only if it determines that the agreement will not result in unfair competition and that the agreement is in the best interests of the municipality as a whole.

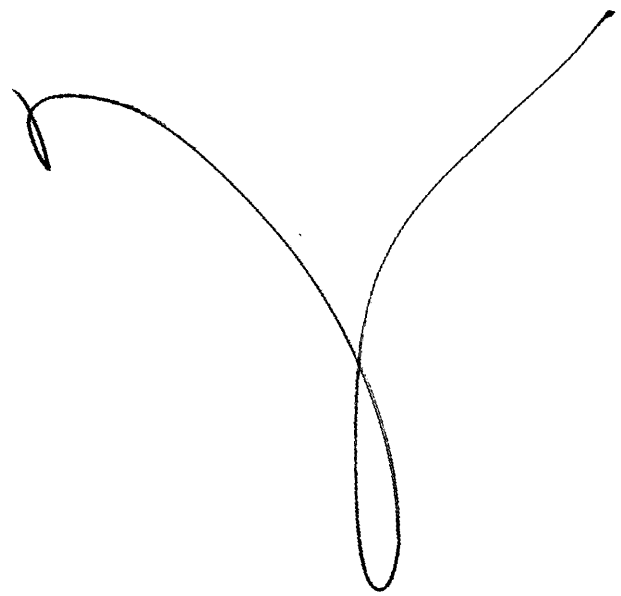
3. For the purpose of determining costs of development of industrial or commercial property to be reimbursed by tax increments under section 40-58-20, only the following public costs necessarily incurred, by either the municipality or the project developer, for the purpose of preparing the property for private development by the project developer may be included in the agreement as reimbursable public costs of development:

   a. The cost of acquiring, or the market value, of all or a part of the industrial or commercial property;

   b. Costs of demolition, removal, or alteration of buildings and improvements on the industrial or commercial property, including the cost of clearing and grading land;

   c. Costs of installation, construction, or reconstruction of streets, utilities, parks, and other public works or improvements necessary for carrying out the development or renewal plan; and

   d. All interest and redemption premiums paid on bonds, notes, or other obligations issued by the municipality to provide funds for the payment of eligible public costs of development.



Article 20-01
General Provisions

§20-0101 Title

This chapter shall officially be known as the "Land Development Code of the City of Fargo, North Dakota," and cited as Chapter 20 of the Fargo Municipal Code. It is hereinafter referred to as the "Land Development Code" or "LDC."

§20-0102 Authority

This Land Development Code is adopted pursuant to the authority granted by Chapters 40-47, 40-48 and 40-50 of the North Dakota Century Code.

§20-0103 Applicability and Jurisdiction

The regulations of this Land Development Code apply to all land within the corporate limits of the City of Fargo and to land within the Extraterritorial Jurisdiction of the City.

§20-0104 Purpose and Intent

This Land Development Code is intended to implement Fargo's Comprehensive Plan and related policies in a manner that protects the health, safety, and general welfare of the citizens of Fargo.

§20-0105 Minimum Requirements

The provisions of this Land Development Code are to be interpreted as the minimum requirements necessary to advance the Land Development Code's stated purposes. No building or structure may be erected, converted, enlarged, reconstructed or altered and no land use may occur except in accordance with all of the regulations established by this Land Development Code for the zoning district in which the building, structure or land use is located.

§20-0106 Conflicting Provisions

A. Conflict with State or Federal Regulations

If the provisions of this Land Development Code are inconsistent with those of the state or federal government, the more restrictive provision will control, to the extent permitted by law.

B. Conflict with Other City Regulations

If the provisions of this Land Development Code are inconsistent with one another, or if they conflict with provisions found in other adopted ordinances or regulations of the City, the more restrictive provision will control.

C. Conflict with Private Restrictions

It is not the intent of this Land Development Code to interfere with, abrogate or annul any easement, covenant, deed restriction or other agreement between private parties. If the provisions of this Land Development Code impose a greater restriction than imposed by a private agreement, the provisions of this Land Development Code will control. If the provisions of a valid, enforceable private agreement impose a greater restriction than this Land Development Code, the provisions of the private agreement will control. The City does not enforce private agreements or maintain a record of such agreements.

§20-0303 C-O, Conditional Overlay

A. Purpose

By providing for flexible use or property development standards tailored to individual projects or specific properties, the C-O, Conditional Overlay district is intended to:

1. Ensure compatibility among incompatible or potentially incompatible land uses;

2. Ease the transition from one zoning district to another;

3. Address sites or land uses with special requirements; and

4. Guide development in unusual situations or unique circumstances.

B. Application

The C-O district, may be applied in combination with any base zoning district.

C. Use and Property Development Standards

The C-O district can be used to modify and restrict the use and property development standards of an underlying base zoning district. All requirements of a C-O district are in addition to and supplement all other applicable standards and requirements of the underlying zoning district. Restrictions and conditions imposed by a C-O district are limited to the following.

1. Prohibiting otherwise permitted or conditional uses and accessory uses or making a permitted use a conditional use;

2. Decreasing the number or average density of dwelling units that may be constructed on the site or limiting the size of nonresidential buildings that may be placed on a site;

3. Increasing minimum lot size or lot width;

4. Increasing minimum yard and setback requirements; and

5. Restricting access to abutting properties and nearby roads.

6. Creating and enhancing design standards, landscaping requirements, and pedestrian and vehicular traffic guidelines and standards for development within the district.

D. Method of Adoption

Restrictions imposed through a C-O district are considered part of this Land Development Code text and official Zoning Map. All property included in a C-O district must be identified on the Zoning Map by adding the letters C-O" to the base zoning district symbol. The ordinance zoning or rezoning property to the C-O district must specifically state the modifications imposed pursuant to the C-O district. The restrictions imposed will be considered part of the text of this Land Development Code, and a violation of the restrictions shall be considered a violation of this Land Development Code.

Source: #322-2003.

Article 20-04
Use Regulations

§20-0401 Use Table

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

A. Use Categories

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

B. P Uses Permitted By-Right

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

C. C Conditional Uses

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

D. /C Uses Subject to Specific Conditions

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

E. – Uses Not Allowed

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

F. New or Unlisted Uses

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

Table 20-0401

Use Category	Definition (Excerpt; See Sec. 20-1203)	Specific Use Type	Zoning Districts																			
			AG	SR0	SR1	SR2	SR3	SR4	SR5	MR1	MR2	MR3	MHP	NO	NC	GO	LC	DMU	GC	LI	GI	PI
Residential																						
Household Living	residential occupancy of a dwelling unit by a "household"	House, Detached	P	P	P	P	P	P	P	P	P	P	P	P	P	C	C	P/C [E]	C	-	-	-
		House, Attached	-	-	-	-	P	P	P	P	P	P	P	P	P	C	C	P/C [E]	C	-	-	-
		Duplex	-	-	-	-	P	P	P	P	P	P	P	P	P	C	C	P/C [E]	C	-	-	-
		Multi-Dwelling Structure	-	-	-	-	-	-	P	P	P	P	P	P	P	C	C	P/C [E]	C	-	-	-
		Mobile Home Park	-	-	-	-	-	-	-	-	-	-	P	-	-	-	-	-	-	-	-	-
Group Living	residential occupancy of a structure by a group of people who do not meet the definition of "Household Living"		C/C [E]	C/C [E]	C/C [E]	C/C [E]	C/C [E]	C/C [E]	P/C [E]	P/C [E]	P/C [E]	P/C [E]	P/C [E]	C/C [E]	C/C [E]	C/C [E]	C/C [E]	C/C [E]	C/C [E]	-	-	-
Institutional																						
College	colleges and institutions of higher learning		C	C	C	C	C	C	C	C	C	C	C	C	C	P	P	P	P	P	-	P/C [G]
Community Service	public, nonprofit, or charitable uses, generally providing a local service to the community		C/C [C]	C/C [C]	C/C [C]	C/C [C]	C/C [C]	C/C [C]	P/C [C]	P/C [C]	P/C [C]	P/C [C]	P/C [C]	P/C [C]	P/C [C]	P	P	P/C [C]	P	P	-	P/C [G]
Day Care	care, protection and supervision for children or adults on a regular basis away from their primary residence for less than 24 hours per day	1-7 children or adults[1]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P [D]	P [D]	P [D]	P [D]	P [D]	P [D]	P [D]	P [D]	P [D]	P [D]	-	P/C [G]
		8-12 children or adults[1]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P/C [D]	P [D]	P [D]	P [D]	P [D]	P [D]	P [D]	P [D]	P [D]	P [D]	-	P/C [G]
		13+ children or adults	-	-	-	-	-	-	C/C [D]	C/C [D]	C/C [D]	C/C [D]	C/C [D]	C/C [D]	P [D]	P [D]	P [D]	P [D]	P [D]	P [D]	-	P/C [G]
Detention Facilities	facilities for the detention or incarceration of people		C	-	-	-	-	-	C	C	C	-	-	-	C	C	C	P	P	P	P/C [G]	
Health Care Facility	medical or surgical care to patients, with overnight care		C	C	C	C	C	C	C	C	C	C	-	-	P	P	P	P	P	P	P/C [G]	
Parks and Open Areas	natural areas consisting mostly of vegetative landscaping or outdoor recreation, community gardens, etc.		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	-	P/C [G]	
Religious Institution	meeting area for religious activities	500 seating capacity	-	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	-	P/C [G]	
		501+ seating	-	P/C [H]	P/C [H]	P/C [H]	P/C [H]	P/C [H]	P	P	P	P	P	P	P	P	P	P	P	-	P/C [G]	

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

P = Use Permitted By-Right ■ P/C = Use Permitted By-Right But Subject to Use-Specific standards of Sec. 20-0402
C = Conditional Use Subject to Procedures of Sec. 20-0909 ■ Some uses Also Subject to **Site Plan Review** See Sec. 20-0910 or to a Traffic Impact Study as required by Sec. 20-0907.H.1. ■ C/C = Conditional Use Also Subject to Use-Specific standards of Sec. 20-0402

Use Category	Definition (Excerpt; See Sec. 20-1203)	Specific Use Type	Zoning Districts																		
		capacity	AG	SR0	SR1	SR2	SR3	SR4	SR5	MR1	MR2	MR3	MHP	NO	NC	GO	LC	DMU	GC	LI	GI	PI
Safety Services	public safety & emergency response services		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P/C [G]
Schools	schools at the primary, elementary, middle, junior high, or high school level		-	P/C [I]	P/C [I]	P/C [I]	P/C [I]	P/C [I]	P/C [I]	P/C [I]	P/C [I]	P/C [I]	-	-	-	C	C	C	C	C	-	P/C [G]
Utilities, Basic	infrastructure services that need to be located in or near the area where the service is provided		P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P [K]	P/C [K] [G]
Commercial																						
Adult Entertainment Center	an adult bookstore, adult cinema or adult entertainment facility		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P/C [A]	P/C [A]	P/C [A]	-
Office	activities conducted in an office setting and generally focusing on business, government, professional, medical, or financial services		-	-	-	-	-	-	-	-	-	-	-	P	P	P	P	P	P	P	-	P/C [G]
Off-Premise Advertising Signs	billboard		-	-	-	-	-	-	-	-	-	-	-	-	-	P/C [B]	P/C [B]	P/C [B]	P/C [B]	P [B]	P	-
Parking, Commercial	parking that is not accessory to a specific use...fees may or may not be charged		-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	P	P	P	P	P/C [G]
Recreation and Entertainment, Outdoor	large, generally commercial uses that provide continuous recreation or entertainment oriented activities		-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	C	P	P	-	P/C [G]
Retail Sales and Service	firms involved in the sale, lease or rental of new or used products to the general public...they may also provide personal services or entertainment, or provide product repair or services for consumer and business goods		-	-	-	-	-	-	-	-	-	-	-	-	P	-	P	P	P	P	-	-
Self-Service Storage	uses providing separate storage areas for individual or business uses		-	-	-	-	-	-	-	-	-	-	-	-	-	-	P/C [J]	-	P	P	-	-
Vehicle Repair	service to passenger vehicles, light & medium trucks & other consumer motor vehicles, generally, the customer does not wait at the site while the service or repair is being performed		-	-	-	-	-	-	-	-	-	-	-	-	-	-	P/C [L]	P/C [L]	P	P	-	-
Vehicle Service, Limited	direct services to motor vehicles where the driver or passengers generally wait in the car or nearby while the service is performed		-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P/C [M]	P	P	-	-

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

C = Conditional Use Subject to Procedures of Sec. 20-0909 ■ Some uses Also Subject to **Site Plan Review** (See Sec. 20-0914) or to Traffic Impact Study as required By Sec. 20-0907 I ■ C/C = Conditional Use And Subject to Use-Specific Standards of Sec. 20-0402

Use Category	Definition (Excerpt; See Sec. 20-1203)	Specific Use Type	Zoning Districts																		
			AG	SR0	SR1	SR2	SR3	SR4	SR5	MR1	MR2	MR3	MHP	NO	NC	GO	LC	DMU	GC	LI	GI	PI
Industrial																						
Industrial Service	firms engaged in the repair or servicing of industrial, business or consumer machinery, equipment, products or by-products		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C [Q]	C [R]	P [F]	P [R]	P/C [G]
Manufacturing and Production	firms involved in the manufacturing, processing, fabrication, packaging, or assembly of goods		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	C	P	P	P/C [G]
Warehouse and Freight Movement	firms involved in the storage, or movement of goods		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	P [R]	P	P	P/C [G]
Waste-Related Use	uses that receive solid or liquid wastes from others for disposal on the site or for transfer to another location, uses that collect sanitary wastes, or uses that manufacture or produce goods or energy from the composting of organic material		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	P/C [G]
Wholesale Sales	firms involved in the sale, lease, or rental of products primarily intended for industrial, institutional, or commercial businesses		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	P [R]	P	P	-
Other																						
Agriculture	raising, producing or keeping plants or animals	Animal Confine-ments	C	C [2]																	C	P/C [G]
		Farming/ Crop Productio n	P	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P/C [G]
Aviation	facilities for the landing and takeoff of flying vehicles, including loading and unloading areas		C	C	-	-	-	-	-	-	-	-	-	-	-	C	C	C	C	P	P	P/C [G]
Surface Transportation			-	-	-	-	-	-	-	-	-	-	-	-	-	C	C	C	C	P	P	P/C [G]
Entertainment Event, Major	activities & structures that draw large numbers of people to specific events or shows		C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	C	C	-	P/C [G]
Mining	mining or extraction of mineral or aggregate resources from the ground for off-site use		C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C	P	-

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

P = Use Permitted By-Right ■ P/C = Use Permitted By-Right But Subject to Use-Specific Standards of Sec. 20-0402
C = Conditional Use, Subject to Procedures of Sec. 20-0909 ■ Some uses also Subject to Site Plan Review (See Sec. 20-0910) or to a Traffic Impact Study as required by Sec. 20-0701.E. ■ C/C = Conditional Use And Subject to Use-specific Standards of Sec. 20-0402

Use Category	Definition (Excerpt; See Sec. 20-1203)	Specific Use Type	Zoning Districts																		
			AG	SR0	SR1	SR2	SR3	SR4	SR5	MR1	MR2	MR3	MHP	NO	NC	GO	LC	DMU	GC	LI	GI	PI
Telecom-munications Facilities	devices and supporting elements necessary to produce non-ionizing electromagnetic radiation... operating...to produce a signal...	125 feet in height or less	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	P/C [N]	P/C [N]	P/C [N]	C [N]
		Greater than 125 ft in height	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	C [N]	C [N]	C [N]	-
		Up to building height limit of applicable zoning district	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	P/C [N]	C [N]	P/C [N]	P/C [N]	P/C [N]	C [N]
		TSSs supported by Guy wires	C [N]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
		Attached Telecom-munications facilities	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]	C [N]

Source: *2985 (1999), 3052 (1999), 4039 (2000), 4089 (2000), 4121 (2001), 4179 (2001), 4222 (2002), 4337 (2003).*

P = Use Permitted By Right ■ P/C = Use Permitted By Right But Subject to Use-specific Standards of Sec. 20-0402
C = Conditional Use Subject to Procedures of Sec. 20-0909 ■ Some uses also Subject to **Site Plan Review** See Sec. 20-0911 ■ May Require a Traffic Impact Study as required by Sec. 20-0911.I. ■ C/C = Conditional Use and Subject to Use-specific Standards of Sec. 20-0402

Article 20-07
General Development Standards

§20-0701 Parking and Loading

A. General

1. Applicability

a. New Development

The off-street parking and loading standards of this section apply to any new building constructed and to any new use established.

b. Expansions and Alterations

The off-street parking and loading standards of this section apply when an existing structure or use is expanded or enlarged. Additional off-street parking and loading spaces will be required only to serve the enlarged or expanded area, not the entire building or use, provided that in all cases the number of off-street parking and loading spaces provided for the entire use (preexisting + expansion) must equal at least 75 percent of minimum ratio established in Off-Street Parking Schedule "A" of this section.

c. Change of Use

Off-street parking and loading must be provided for any change of use or manner of operation that would, based on the Off-Street Parking Schedule "A" or the Off-street Loading Schedule of this section, result in a requirement for more parking or loading spaces than the existing use. Additional parking or loading spaces will be required only in proportion to the extent of the change, not for the entire building or use.

2. DMU Exemption

All residential and nonresidential development in the DMU district shall be exempt from the off-street parking and loading standards of this section.

3. No Reduction Below Minimums

Existing parking and loading spaces may not be reduced below the minimum requirements established in this section. Any change in use that increases applicable off-street parking or loading requirements will be deemed a violation of the Land Development Code unless parking and loading spaces are provided in accordance with the provisions of this section.

B. Off-Street Parking Schedules

1. Off-Street Parking Schedule "A"

Off-Street Parking Schedule "A" lists the minimum off-street parking requirement for each use category defined in this Land Development Code. These requirements apply unless an Alternative Access Plan is reviewed and approved in accordance with the procedures of this section. For some uses, the schedule of requirements contains a reference to off-street parking schedules "B" or "C." Those schedules can be found following Schedule "A."

Off-Street Parking Schedule "A"

Use Categories	Specific Uses	Minimum Number of Spaces Required
Residential		
Group Living		1 per 100 square feet of sleeping area
Household Living	Multi-Dwelling Structures	1.25 per efficiency dwelling unit 2.0 per 1-bedroom and larger unit plus 0.25 guest spaces per unit for structures containing 7 or more units and 0.33 guest spaces per unit for structures containing 6 or fewer units
	All Other Household Living	2 per dwelling unit
Institutional		
College		Schedule C
Community Services		Schedule B or Schedule C
Day Care		1 per 500 square feet
Health Care Facility		1.5 per patient bed, plus 1 per 300 square feet of administrative office, plus 1 per 200 square feet of outpatient clinic space
Parks and Open Areas		Schedule C
Religious Institutions		0.4 per seat
Safety Service		1 per employee or Schedule C
Schools	Elementary Middle/Junior High	1 per teacher/employee + 10 visitor spaces or Schedule C
	Senior High	1 per teacher/employee + 1 per 5 students or Schedule C
Utilities, Basic		None
Commercial		
Office	Medical	1 per 200 square feet
	All Other Office	1 per 300 square feet
Parking, Commercial		N/A
Recreation and Entertainment, Outdoor		Schedule B
Retail Sales and Service	Bank or Financial Service	1 per 250 square feet, plus stacking spaces per this section
	Car Wash	Stacking spaces per this section
	Health Club	1 per 200 square feet
	Hotel, motel or other temporary lodging	1 per guest room, plus required spaces for associated uses
	Restaurant, General, Bars, Taverns and Lounges	1 per 75 square feet

Use Categories	Specific Uses	Minimum Number of Spaces Required
	Restaurant, Fast-Food	1 per 75 square feet of customer service and dining area or 1 per 150 square feet of gross floor area, whichever is greater, plus stacking spaces per this section
	Theater	1 per 4 seats
	Outdoor seating areas-Taverns, Bars, Restaurants, and Lounges	1 per 150 square feet of outdoor seating area
	Vehicle and Equipment Sales	Schedule B
	All other Retail Sales & Service uses not specifically listed	1 per 250 square feet
Self-Service Storage		1 plus 1 per 2,500 square feet of storage space
Vehicle Repair		5 per service bay
Vehicle Service, Limited		6 per service bay
Industrial		
Industrial Service		Schedule B
Manufacturing and Production		Schedule B
Warehouse and Freight Movement		Schedule B
Waste-Related Use		Schedule B
Wholesale Sales		Schedule B
Other		
Agriculture		None
Aviation, Surface Passenger Terminals		Schedule C
Detention Facilities		Schedule C
Mining		Schedule C
Telecommunications Facilities		Schedule B or C

Source: *2985 (1999), 4167 (2001).*

2. Off-Street Parking Schedule "B"

Off-street parking spaces for Schedule "B" uses must be provided for all components of the use, as follows:

Activity	Number of Spaces Required
Office or administrative area	1 per 300 square feet
Indoor sales, service or display area	1 per 500 square feet
Outdoor sales, service or display area	1 per 750 square feet
Indoor storage, warehousing, equipment service, or manufacturing area	1 per 2,500 square feet

3. Off-Street Parking Schedule "C"

Schedule "C" uses have widely varying parking demand characteristics, making it impossible to specify a single off-street parking standard.

a. Parking Study

A developer proposing to develop or expand a Schedule "C" use must submit a parking study that provides justification for the number of off-street parking spaces proposed. A parking study must include estimates of parking demand based on recommendations of the Institute of Traffic Engineers (ITE), or other acceptable estimates as approved by the City Engineer and should include other reliable data collected from uses or combinations of uses that are the same as or comparable with the proposed use. Comparability will be determined by density, scale, bulk, area, type of activity, and location. The study must document the source of data used to develop the recommendations.

b. Review by City Engineer

The City Engineer shall review the parking study and any other traffic engineering and planning data relevant to the establishment of an appropriate off-street parking standard for the proposed use. After reviewing the parking study, the City Engineer shall establish a minimum off-street parking standard for the proposed use.

c. Appeals

Appeals of the City Engineer's decision may be taken to the Board of Adjustment in accordance with the procedures of Sec. 20-0916.

C. Rules for Computing Requirements

The following rules apply when computing off-street parking and loading requirements.

1. Multiple Uses

Lots containing more than one use must provide parking and loading in an amount equal to the total of the requirements for all uses.

2. Fractions

When measurements of the number of required spaces result in a fractional number, any fraction of 2 or less will be rounded down to the next lower whole number and any fraction of more than 2 will be rounded up to the next higher whole number.

3. Area Measurements

Unless otherwise expressly stated, all square-footage-based parking and loading standards must be computed on the basis of gross floor area.

4. Occupancy-Based Standards

For the purpose of computing parking requirements based on employees, students, residents or occupants, calculations shall be based on the largest number of persons working on any single shift, the maximum enrollment or the maximum fire-rated capacity, whichever is applicable and whichever results in the greater number of spaces.

5. Unlisted Uses

Upon receiving a development application for a use not specifically listed in an off-street parking schedule, the Zoning Administrator shall apply the off-street parking standard specified for the listed use that is deemed most similar to the proposed use or require a parking study in accordance with Off-Street Parking Schedule "C."

D. Location of Required Parking

1. General

Except as expressly stated in this section, all required off-street parking spaces must be located on the same lot as the principal use.

2. Single-Family Districts

a. Within single-family (SR) zoning districts, a maximum of one off-street parking space shall be permitted on a front yard residential driveway. Within single-family (SR) zoning districts, front yard residential driveways shall not exceed 24 feet in width or the width of the driveway approach, whichever is greater, provided that in no event shall any such driveway allow less than 8 feet of non-paved surface to exist alongside one or both sides of such driveway [1]. All other off-street parking spaces must be located in a covered garage or in side or rear yards.

b. All off-street parking spaces in front or side yard areas shall have an all-weather surface. Rear yard parking spaces may be surfaced with gravel.

E. Alternative Access Plans

An Alternative Access Plan 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. Applicants who wish to provide fewer off-street parking spaces than required pursuant to Sec. 20-0701-B must secure approval of an Alternative Access Plan, in accordance with the standards and procedures of this section.

1. Procedures

a. Plan Contents

Alternative Access Plans must be submitted in a form established by the Zoning Administrator and made available to the public. At a minimum, such plans must detail the type of alternative proposed and the rationale for such a proposal.

b. Review and Approval Authority

(1) Small Facilities

The Zoning Administrator is authorized to review and act on Alternative Access Plans if the plan proposes a reduction of no more than 25 percent or 25 parking spaces. The Zoning Administrator shall mail written notice of the request to all property owners within 150 feet of the subject property at least 10 days before the Zoning Administrator takes action on the plan.

(2) Large Facilities

Alternative Access Plans that propose a reduction of more than 25 percent or more than 25 off-street parking spaces require review and action by the Planning Commission, in accordance with the Conditional Use Permit Review procedures of

Sec. 20-0909.

[1] Driveway approach width is governed by 18-0216 of the Fargo Municipal Code.

c. Recordation of Approved Plans

An attested copy of an approved Alternative Access Plan must be recorded with the County Register of Deeds on forms made available in the Planning Department. An Alternative Access Plan may be amended by following the same procedure required for the original approval.

d. Violations

Violations of an approved Alternative Access Plan constitute a violation of the Land Development Code and will be subject to the enforcement and penalty provisions of Article 20-011.

2. Eligible Alternatives

A number of specific access alternatives are described in this subsection. Decision-makers are, however, authorized to consider and approve *any* alternative to providing off-street parking spaces on the site of the subject development if the applicant demonstrates to the satisfaction of the decision-making body that the proposed plan will do at least as good of a job protecting surrounding neighborhoods, maintaining traffic circulation patterns and promoting quality urban design than would strict compliance with otherwise applicable off-street parking standards.

a. Bicycle Parking

Decision-makers may authorize a reduction in the number of required off-street parking spaces for developments or uses that provide bicycle parking or that make special provisions to accommodate bicyclists. Examples of accommodations include bicycle lockers, employee shower facilities and dressing areas for employees.

b. Valet Parking

Decision-makers may authorize valet parking as a means of satisfying otherwise applicable off-street parking standards, provided that the following conditions are met:

(1) An automobile shall be retrievable from its parking space with the movement of a maximum of two additional vehicles; and

(2) The decision-maker determines that the valet parking will not cause interference with the public use of streets or ways or imperil the public safety.

3. Transportation Demand Management

Decision-makers may authorize a reduction in the number of required off-street parking spaces for developments or uses that institute and commit to maintain a transportation management program, in accordance with the standards of this section.

a. Required Study

The applicant must submit a study that clearly indicates the types of transportation management activities and measures proposed.

b. Transportation Management Activities

The following measures serve as a guide to eligible transportation management activities

There is, however, no limitation on the types of transportation management activities for which reductions may be granted from otherwise required off-street parking ratios.

(1) Posting and Distribution of Information

The distribution and posting of information from transit agencies and other sources of alternative transportation may be cause for a reduction in otherwise applicable off-street parking requirements.

(2) Transportation Coordinator

The appointment of a Transportation Coordinator with responsibility for disseminating information on ride-sharing and other transportation options may be cause for a reduction in otherwise applicable off-street parking requirements. In addition to acting as liaisons, Transportation Coordinators shall be available to attend meetings and training sessions with the City or transit providers.

(3) Off-Peak Work Hours

Employers that institute off-peak work schedules, allowing employees to arrive at times other than the peak morning commute period, may be eligible for a reduction in otherwise applicable off-street parking requirements. The peak morning commute period is defined as 7:30-9:00 a.m.

(4) Preferential Parking

The provision of specially marked spaces for each registered car pool and van pool may be cause for a reduction in otherwise applicable off-street parking requirements.

(5) Financial Incentives

The provision of cash or in-kind financial incentives for employees commuting by car pool, van pool and transit may be cause for a reduction in otherwise applicable parking requirements.

4. Off-Site Parking

Off-street parking spaces may be located on a separate lot from the lot on which the principal use is located if approved as part of an Alternative Access Plan and if the off-site parking complies with the all of following standards.

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.

b. Location

No off-site parking space may be located more than 600 feet from the primary entrance of the use served unless shuttle bus service is provided to the remote parking area. Off-site parking spaces may not be separated from the use served by a street right-of-way with a width of more than 80 feet, unless a grade-separated pedestrian walkway is provided, or other traffic control or shuttle bus service is provided to the remote parking area.

c. Zoning Classification

Off-site parking areas serving uses located in nonresidential zoning districts must be located in nonresidential zoning districts. Off-site parking areas serving uses located in residential zoning districts may be located in residential or nonresidential zoning districts.

d. Agreement for Off-Site Parking

In the event that an off-site parking area is not under the same ownership as the principal use served, a written agreement will be required. An attested copy of the agreement between the owners of record must be submitted to the Zoning Administrator for recordation on forms made available in the Planning Department. Recordation of the agreement with the Register of Deeds must take place before issuance of a building permit for any use to be served by the off-site parking area. An off-site parking agreement may be revoked only if all required off-street parking spaces will be provided, in accordance with Sec. 20-0701-B.

5. Shared Parking

Developments or uses with different operating hours or peak business periods may share off-street parking spaces if approved as part of an Alternative Access and Parking Plan and if the shared parking complies with the all of following standards.

a. Location

Shared parking spaces must be located within 600 feet of the primary entrance of all uses served, unless remote parking shuttle bus service is provided.

b. Zoning Classification

Shared parking areas serving uses located in nonresidential zoning districts must be located in nonresidential zoning districts. Shared parking areas serving uses located in residential zoning districts may be located in residential or nonresidential zoning districts.

c. Shared Parking Study

Those wishing to use shared parking as a means of satisfying off-street parking requirements must submit a shared parking analysis to the Zoning Administrator that clearly demonstrates the feasibility of shared parking. The study must be provided in a form established by the Zoning Administrator and made available to the public. It must address, at a minimum, the size and type of the proposed development, the composition of tenants, the anticipated rate of parking turnover and the anticipated peak parking and traffic loads for all uses that will be sharing off-street parking spaces.

d. Agreement for Shared Parking

A shared parking plan will be enforced through written agreement among all owners of record. An attested copy of the agreement between the owners of record must be submitted to the Zoning Administrator for recordation on forms made available in the Planning Department. Recordation of the agreement with the Register of Deeds must take place before issuance of a building permit for any use to be served by the off-site parking area. A shared parking agreement may be revoked only if all required off-street parking spaces will be provided, in accordance with Sec. 20-0701-B.

F. Parking for Persons with Disabilities

Off-street parking for persons with disabilities must be provided in accordance with the International Building Code.

G. Parking and Loading Area Design

Off-street parking and loading areas must be designed and constructed to accepted construction standards in the industry. Unless otherwise expressly stated in this Land Development Code or approved by the City, all required off-street parking spaces shall have an all-weather surface. In LI or GI zoning districts only, rear yard vehicular circulation area, not including parking spaces, may be crushed concrete or similar material as approved by the Zoning Administrator.

H. Use of Required Parking Spaces

Required off-street parking areas are to be used solely for the parking of licensed, motor vehicles in operating condition. Required spaces may not be used for the display of goods for sale or lease or for long-term storage of vehicles, boats, motor homes, campers, mobile homes, or building materials.

I. Vehicle Stacking Areas

1. Minimum Number of Spaces

Off-street stacking spaces shall be provided as follows:

Activity Type	Minimum Spaces	Measured From
Bank teller lane	4	Teller or Window
Automated teller machine	3	Teller
Restaurant drive-through	6	Order Box
Restaurant drive-through	4	Order Box to Pick-Up Window
Car wash stall, automatic	6	Entrance
Car wash stall, self-service	3	Entrance
Gasoline pump island	2	Pump Island
Other	Determined by City Engineer based on Traffic Study	

2. Design and Layout

Required stacking spaces are subject to the following design and layout standards.

a. Size

Stacking spaces must be a minimum of 8 feet by 20 feet in size.

b. Location

Stacking spaces may not impede on- or off-site traffic movements or movements into or out of off-street parking spaces.

c. Design

Stacking spaces must be separated from other internal driveways by raised medians if deemed necessary by the City Engineer for traffic movement and safety.

J. Off-Street Loading Schedule

Off-street loading spaces for trucks and delivery vehicles shall be provided as follows:

Gross Floor Area	Off-Street Loading Spaces Required
	Retail Sales and Service, Industrial Service, Manufacturing and Production, Warehousing and Freight Movement, and Wholesale Sales
5,000 to 25,000	1
25,001 to 85,000	2
85,001 to 150,000	3
Over 150,000	4 + 1 per 100,000 sq. ft.
	Offices, Community Service, Group Living
8,000 to 100,000	1
Over 100,000	2 + 1 per 100,000 sq. ft.

K. Off-Street Loading Space Dimensions

Off-street loading spaces shall be at least 10 feet wide and 25 feet long unless the Zoning Administrator determines that off-street loading will involve the use of semi-tractor trailer combinations or other vehicles in excess of 25 feet in length, in which case the minimum size of a space shall be 12 feet by 54 feet. All circulation areas leading to and from such spaces shall be provided on site. Under no circumstance shall vehicles be permitted to utilize public streets and rights-of-way as their circulation or parking area, unless otherwise allowed by the City Engineer.

L. Traffic Impact Studies

1. A traffic impact study is required under any one of the following circumstances:

   a. The proposed use consists of one of the following land uses:
      1) Truck stop,
      2) Hospital,
      3) High schools,
      4) Elementary or middle schools of over 600 students,
      5) Major recreation and entertainment facilities, indoor or outdoor,
      6) Medical office building of 100,000 square feet or greater at build-out of all phases
      7) General or corporate office building of 100,000 square feet or greater at build-out of all phases, and
      8) Retail building or shopping center of 100,000 square feet or greater at build-out of all phases.

   b. At the discretion of the City Engineer, based on one or more of the following considerations:
      1) Proposed land use is more intense than that shown on the Growth Plan,
      2) The proposed development (proposed plus future phases) is determined to generate peak hour peak directional trips that are equal to or greater than 250,
      3) Sensitivity of adjacent neighborhoods or other areas that may be perceived as

impacted, such as the potential for cut-through traffic.
(4) Anticipated need for additional capacity in an area where widening may be infeasible or undesirable, and
(5) Other conditions as identified by the City Engineer.

2. The City Engineer shall also have the authority to waive the requirement for a traffic impact study even if one of the above criteria is met.

3. The stage at which a traffic impact study may be required shall be one of the following:

a. Category 1
(1) Application for change to land use plan
(2) Application for rezoning
(3) Application for subdivision
(4) Planned Unit Development

The review of a Category 1 traffic impact study and the associated recommendations as a result of that study shall follow the same review and approval process as required in Sections 20-0905, 20-0906, 20-0907, and 20-0908. The assignment of financial responsibility for required improvements shall be reviewed and approved by the Board of City Commissioners.

b. Category 2
(1) Application for building permit

The review of a Category 2 traffic impact study and the associated recommendations as a result of that study shall follow the same review and approval process as required in Sec. 20-0913 and as carried out during established site plan review practices. The assignment of financial responsibility for required improvements shall be reviewed and approved by the Board of City Commissioners.

4. The following shall be the process for conducting a traffic impact study when required:

a. The cost of the traffic impact study shall be the responsibility of the applicant unless conditions exist whereby a form of cost sharing is appropriate, as determined by the City Engineer.
b. The City shall be the contracting agent (client) with the consultant(s) from whom cost estimates are received, and with the consultant hired to carry out the study unless otherwise approved by the City Engineer.
c. Appeals regarding the determination that a traffic impact study is needed shall be made to the Planning Commission.

Source: 2985 (1999), 3062 (1999), 4039 (2000), 4167 (2001), 4177 (2001).

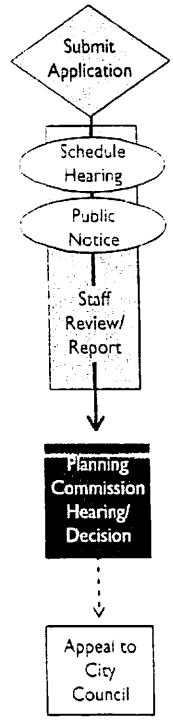
§20-0909 Conditional Use Permits

This section sets out the required review and approval procedures for Conditional Use Permits.

A. Application

A complete application for a Conditional Use Permit shall be submitted to the City Planner in a form established by the City Planner, along with a nonrefundable fee that has been established by the Board of City Commissioners. No application will be processed until the application is complete and the required fee has been paid.

Conditional Use Permit



B. Review and Recommendation -- City Planner

The City Planner must review each proposed Conditional Use Permit and prepare a report that reviews the application in light of the Comprehensive Plan, the Area Plan, the general requirements of this Land Development Code and the applicable review criteria set forth in this section.

C. Review and Action -- Planning Commission

The Planning Commission must hold a public hearing on the proposed Conditional Use Permit and, at the close of the public hearing, act to approve or deny the Conditional Use Permit request. In acting on Conditional Use Permit requests, the Planning Commission shall be authorized to impose such conditions, safeguards or restrictions upon the premises benefited by the conditional use as may be necessary to reduce or minimize any potentially injurious effect upon other property in the area, or to carry out the general purpose and intent of this Land Development Code, so long as the condition, safeguard or restriction relates to a situation created or aggravated by the proposed use.

D. Review and Approval Criteria

In reviewing any application for a Conditional Use Permit, the Planning Commission shall identify and evaluate all factors relevant to the applicaton. A Conditional Use Permit may not be approved unless the Planning Commission finda that all of the following criteria, as applicable, have been satisfied:

Commentary

Not all of the Conditional Use Permit Approval Criteria will apply in every case. Only the applicable criteria will be used in determining whether to approve or deny a Conditional Use Permit. A development that does not involve the use or extension of utilities, for example, will not be evaluated pursuant to the criteria of paragraph D.5.

1. The proposed conditional use complies with all applicable provisions of this Land Development Code and will conform to the general intent and purpose of this Land Development Code;

2. The proposed conditional use at the specified location will contribute to and promote the welfare or convenience of the public;

3. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located;

4. The location and size of the conditional use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the conditional use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the conditional use will dominate the immediate neighborhood, consideration shall be given to:

   a. The location, nature and height of buildings, structures, walls, and fences on the site; and

   b. The nature and extent of proposed landscaping and buffering on the site.

5. Adequate utility, drainage, and other such necessary facilities and services have been or will be provided at the time of development; and

6. Adequate access roads or entrance and exit drives will be provided and be so designed to prevent traffic hazards and to minimize traffic congestion in public streets.

E. Notice of Public Hearings

1. Written Notice

The City Planner shall provide written notice of the Planning Commission public hearing in accordance with Sec. 20-0901-F.

2. Newspaper Notice

Notice of the Planning Commission's public hearing on Conditional Use Permits shall be published in accordance with Sec. 20-0901-F.

F. Appeal of Planning Commission Decision

1. Appeals to Board of City Commissioners; Timing

Appeals from the action of the Planning Commission on an application for Conditional Use Permit approval may be taken to the Board of City Commissioners by filing an appeal with the City Planner.

2. Right to Appeal

The following persons and entities shall have standing to appeal the action of the Planning Commission on an application for a Conditional Use Permit approval:

   a. The applicant;

   b. The Planning Commission or any member of the Planning Commission;

   c. The Board of City Commissioners or any member of the Board of City Commissioners;

   d. Any person who received mailed notice of the public hearing;

   e. Any person that the Board of City Commissioners determines to be actually or

potentially aggrieved by the appealed action; and

f. Any person given the right of appeal by law.

3. **Action on Appeal**

The Board of City Commissioners shall consider the appealed Conditional Use decision as a new matter in a public hearing and, at the close of the public hearing, act to approve or deny the original application for Conditional Use Permit approval. The procedure and required notice shall be the same as required of the original action before the Planning Commission.

G. Limit on Successive Applications

If the Board of City Commissioners denies an application for a Conditional Use Permit, an application for the same use on any portion of the subject tract may not be refiled by the original applicant for three months from the date of the Board of City Commissioners' public hearing.

H. Amendments

The procedure for amending a Conditional Use Permit shall be the same as required for the original approval.

Source: 2985 (1999), 4168 (2001).

§20-0913 Building Permits

Building Permits shall be required in accordance with applicable provisions of the Municipal Code (See Sec. 21-01). This section sets out the required review and approval procedures for Building Permits.

A. Application Submittal

A complete application for a Building Permit shall be submitted to the Building Official in a form established by the Building Official along with a non-refundable fee that has been established by the Board of City Commissioners. No Building Permit application shall be processed until the application is complete, all applicable development approvals have been secured and the required fee has been paid. Building Permits may be issued only for development on Legal Lots provided, however, that as to lots outside the corporate City limits and within the area where the City has exercised its extraterritorial zoning jurisdiction, the Zoning Administrator is authorized to waive the requirement that the lot be shown on a Subdivision plat that has been recorded in the office of the County Register of Deeds when the Zoning Administrator is satisfied that roadway access and driveway issues as identified in Sec. 20-0702 and subdivision design and improvement issues as identified in Sec. 20-0611 can be properly addressed without a platting or subdivision approval process.

B. Review and Action - Building Official

The Building Official shall be responsible for conducting reviews to determine if intended uses, buildings or structures comply with all applicable regulations and standards, including the building code. The Building Official shall not issue a building permit unless the plans, specifications and intended use of such building or structures or part thereof conform in all respects to the provisions of this Land Development Code and the building code.

Source: *4039 (2000).*

§20-1203 Use Categories

A. Basis for Classifications

Use categories classify land uses and activities into use categories based on common functional, product, or physical characteristics. Characteristics include the type and amount of activity, the type of customers or residents, how goods or services are sold or delivered and site conditions. The use categories provide a systematic basis for assigning present and future land uses into appropriate zoning districts.

1. Principal Uses

Principal uses are assigned to the category that most closely describes the nature of the principal use. The "Characteristics" subsection of each use category describes the common characteristics of each principal use.

a. Developments with Multiple Principal Uses

When all principal uses of a development fall within one use category, the entire development is assigned to that use category. A development that contains a coffee shop, bookstore and bakery, for example, would be classified in the Retail Sales and Service category because all of the development's principal uses are in that category. When the principal uses of a development fall within different use categories, each principal use is classified in the applicable category and each use is subject to all applicable regulations for that category.

b. Accessory Uses

Accessory uses are allowed by-right in conjunction with a principal use unless otherwise stated in the regulations. Also, unless otherwise stated, accessory uses are subject to the same regulations as the principal use. Common accessory uses are listed as examples in the use category descriptions.

c. Use of Examples

The "Examples" subsection of each use category lists common examples of uses included in the respective use category. The names of these sample uses are generic. They are based on common meanings and not on what a specific use may call itself. For example, a use that calls itself "Wholesale Warehouse" but that sells mostly to consumers, is included in the Retail Sales and Service category rather than the Wholesale Sales category. This is because the actual activity on the site matches the description of the Retail Sales and Service category.

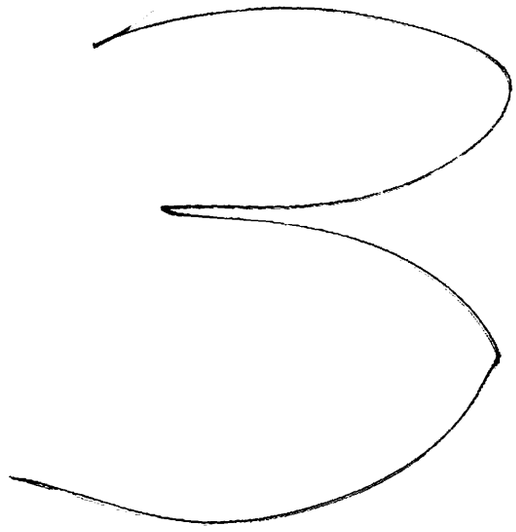
B. Similar Use Interpretation Criteria

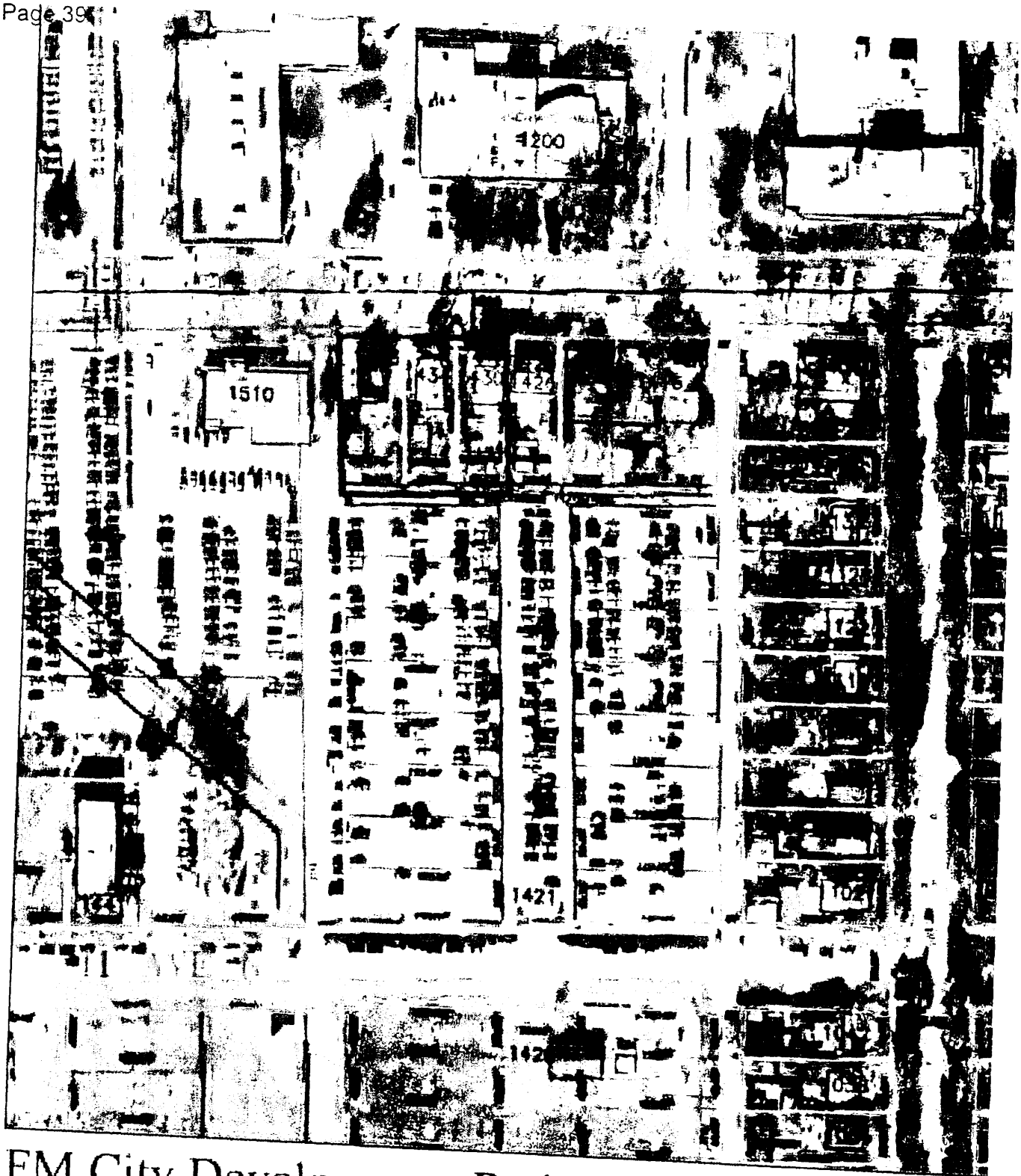
The following considerations shall be used in making similar use interpretations (See also Sec. 20-0401-F):

1. The actual or projected characteristics of the activity in relationship to the stated characteristics of each use category;

2. The relative amount of site area or floor space and equipment devoted to the activity;

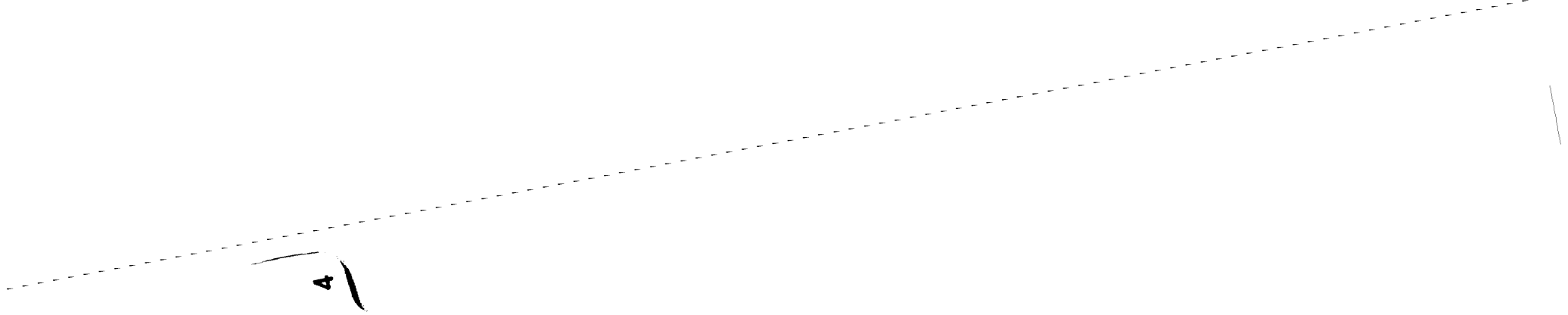
3. Relative amounts of sales from each activity;





FM City Development Redevelopment Proposal

Proposed Site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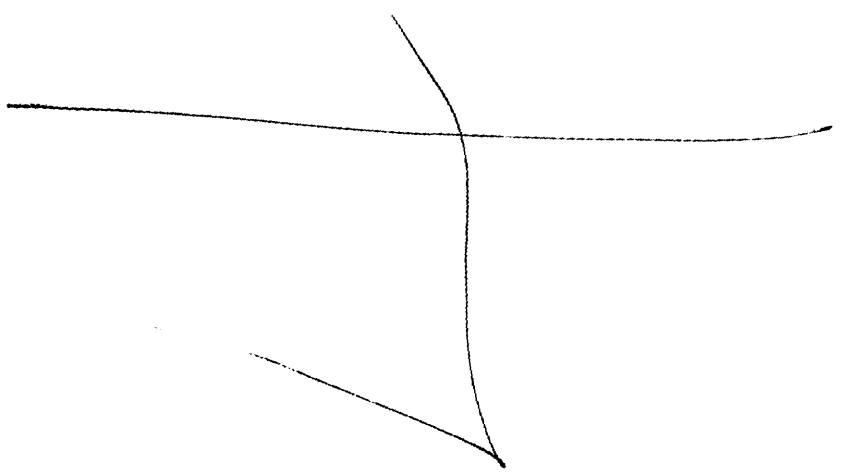

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293-7211

May 6, 2008

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

Dear Fargo City Commissioners:

I am writing as the attorney for 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.

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.*

Demand for Public Records If Decision Not Nullified by Special Meeting

Should the action not be immediately nullified by such special meeting process, please provide copies of the following documents that purportedly exist as to Tax Increment Financing District No. 2008-01 approved last evening by a vote of 4 in favor, 1 opposed:

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).**

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).**

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).**

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).**

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).**

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).**

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).

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).

8. In the public presentation last evening, 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).**

If there is a charge for such photocopies greater than $50.00, please advise in advance. If you have any questions concerning this matter, please feel free to contact me at any time.

Very truly yours,

Jonathan T. Garaas

JTG:j
cc W. Rakowski