

**THE CITY COUNCIL OF THE
FORKS, NORTH DAKOTA
19, 1996**

**PROCEEDINGS OF
CITY OF GRAND
Monday, August**

The city council of the city of Grand Forks, North Dakota, met in its adjourned session in the council chambers in City Hall on Monday, August 19, 1996 at the hour of 7:30 o'clock p.m. with Mayor Owens presiding. Present at roll call were Council Members Beach, Polovitz, Ellingson, Hamerlik, Hanson, Carpenter, Sande, Klave, Beyer, Babinchak, Bakken, Hafner, Hagness - 13; absent: Council Member Glassheim - 1.

Mayor Owens announced that anyone wishing to speak to any item may do so by being recognized prior to a vote being taken on the matter.

APPROVE LAND USE PLAN ELEMENT OF THE
COMPREHENSIVE PLAN AS AMENDED BY ORDINANCE NO.
3603 FOLLOWING PUBLIC HEARING

The acting city auditor reported that the Land Use Plan, as adopted by Ordinance No. 3603 and as amended by the council on August 5, 1996, and which had been referred back to the Planning and Zoning Commission for consideration was again before the council.

Howard Swanson, city attorney, advised that the Planning and Zoning Commission at their last meeting received a report from the city council, including the amendments of the proposed zoning along South 42nd Street as well as the information regarding the school generally in the Richard's West Addition; that the Planning and Zoning Commission rejected those two amendments so the Plan before council this evening is the Land Use Plan without those two amendments to the Plan; that if the council is of the opinion that those two amendments, or either of the amendments, should be made to the Plan, it will require approval by this body of two-thirds of the entire membership. He advised that the matter before the council is the Plan without the two amendments, and council does have the ability to amend it, however, the only amendments that council could make at this time are with regard to the school or to the zoning along South 42nd Street, and would require the two-thirds approval.

Council Member Babinchak moved an amendment to the 2015 Comprehensive Plan that would include property south of 17th Avenue South and west of South 42nd Street (south of 17th Avenue South and 29th Avenue South and between I-29 and west of South 42nd Street) as residential with a small portion along 17th Avenue South as light commercial for office use or townhouses; Council Member Beach seconded the motion.

Bob Bushfield, city planner, stated that they are talking about a change in the 2015 Land Use Plan, and projected out the amount of residential and commercial they will need over the next 20 years and showed that on the map in areas that were contiguous to the existing city limits. He stated the area that is in contention is the area essentially from 29th Avenue South to 17th Avenue South from South 42nd Street over to I-29; that at the Planning and Zoning Commission meeting they requested this be changed back to commercial and the property on the east side remain residential.

Mr. Swanson advised that this is a plan or forecast for future land use, the zone in that area is presently agricultural and projecting the use some time in the future; it does, however, have certain weight in future planning decisions and future development decisions, but is not being zoned or rezoned.

Council Member Babinchak reported she had received note prior to the council meeting from Kurt and Mary Eylands, 2098 South 37th Street, asking that it be read into the record that they oppose the commercial land use west of South

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42nd Street and south of 17th Avenue South.

Mr. Bob Kweit, 3823 Fairview Drive, stated that with this plan they attempt to focus and channel the growth for the next 20 years in Grand Forks, and stated that even though plan not etched in stone, in essence what council thinking is that this is how city will and should develop in the next 20 years, and if council wants to move commercial development into existing areas then we need to hold the course and hold this area as residential, which was the recommendation of the subcommittee. He stated that the Planning Commission, as Mr. Bushfield said, felt that if the Aurora goes in, then there will be pressure to develop this as commercial, and therefore, should warn the residents now. He stated that from the position of the subcommittee, thinks council should hold the faith with the residents until there is overwhelming pressure to change.

Upon call for the question on the amendment to the Land Use Plan and upon roll call vote, the following voted "aye": Council Members Beach, Polovitz, Ellingson, Hamerlik, Hanson, Carpenter, Sande, Klave, Beyer, Babinchak, Hafner, Hagness - 12; voting "nay": Council Member Bakken - 1. Mayor Owens declared the motion carried.

Council Member Beach then moved an amendment to reinstate a possible school location at North 55th Street and 6th Avenue North; Council Member Carpenter seconded by the motion.

Heather Steffl, 565 North 51st Street, spoke in support of Council Member Beach's motion; that there are 119 students in Richard's West Subdivision that are bused to West Elementary School at the present time, and with future growth, would like to have recommendation for school in that plan. She stated that School Board reluctant to make commitment, however, they are talking long range plan and sometimes these things do change, and thinks it would be advantageous to their neighborhood to look at reinstating idea of school in their subdivision. Council Member Beach reiterated that the Land Use Plan is a guide for the future.

Mayor Owens closed the public hearing.

Upon call for the question on the amendment to the Land Use Plan and upon roll call vote, the following voted "aye": Council Members Hagness, Bakken, Babinchak, Beyer, Klave, Sande, Carpenter, Ellingson, Polovitz, Beach - 10; voting "nay": Council Members Hafner, Hanson, Hamerlik - 3. Mayor Owens declared the amendment approved.

Upon call for the question of re-affirmation of the ordinance amending

the Land Use Plan Element of the Comprehensive Plan and upon roll call vote, the following voted "aye": Council Members Beach, Polovitz, Ellingson, Hamerlik, Hanson, Carpenter, Sande, Klave, Beyer, Babinchak, Bakken, Hafner, Hagness - 13; voting "nay": none. Mayor Owens declared the motion carried.

ADOPT ORDINANCE NO. 3604, AMENDING
SECTION 18-0305, RESIDENTIAL ACCESSORY
BUILDINGS

An ordinance entitled "An ordinance relating to Chapter XVIII of the Land Development Code of 1987, as amended; Article III Rules and Regulations; Section 18-0305 Residential Accessory Buildings (4)", which had been introduced and passed on its first reading on June 17, 1996, and upon which public hearing had been continued until this evening, was presented and read for consideration on second reading and final passage.

Mayor Owens called upon the audience to see if there was anyone present who

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had comments to make on this matter. There were none.

The Planning and Zoning Commission reported having considered the matter of the request from the inspection office for final approval of an ordinance to amend the text of the Land Development Code, Section 18-0305, Residential Accessory Buildings, and recommended final approval and passage of the ordinance amending the text of the Land Development Code.

Upon call for the question and upon roll call vote, the following voted "aye": Council Members Beach, Polovitz, Ellingson, Hamerlik, Hanson, Carpenter, Sande, Klave, Beyer, Babinchak, Bakken, Hafner, Hagness - 13; voting "nay": none. Mayor Owens declared the ordinance adopted.

TABLE INDEFINITELY ORDINANCE TO AMEND
ZONING MAP TO INCLUDE WITHIN GATEWAY
COMMONS PUD, CONCEPT DEVELOPMENT PLAN,
AMENDMENT NO. 2, LOT 1, BLOCK 1, AIRPORT
3RD RESUBDIVISION

An ordinance entitled "An ordinance to amend the Zoning Map of the city of Grand Forks, North Dakota to rezone and exclude from Gateway Commons PUD (Planned Unit Development), Concept Development Plan, Amendment No. 1 and to include within Gateway Commons PUD (Planned Unit Development), Concept Development Plan, Amendment No. 2, with substantial change pertaining to Lot 1, Block 1, Airport 3rd Resubdivision to the city of Grand Forks, North Dakota", which had been introduced and passed on its first reading on June 17, 1996, and upon which public hearing had been continued until this evening, was presented and read for consideration on second reading.

Mayor Owens called upon the audience to see if there was anyone present who had comments to make on this matter. There were none.

The Planning and Zoning Commission reported having considered the matter of the request from Roger Mattern on behalf of Sherman Associates, Inc. for final approval of an ordinance amending the Zoning Map to exclude from Gateway Commons PUD (Planned Unit Development), Concept Development Plan, Amendment No. 1, and to include within Gateway Commons PUD (Planned Unit Development) Concept Development Plan, Amendment No. 2, with substantial change pertaining to Lot 1, Block 1, Airport 3rd Resubdivision (located east of North 51st Street between Gateway Drive and 12th Avenue North), and recommended to table indefinitely.

It was moved by Council Members Hagness and Polovitz that this recommendation be and is hereby approved. Carried 13 votes affirmative.

APPROVE FINAL PLAT; ADOPT ORDINANCE NO. 3605,
AMENDING STREET AND HIGHWAY PLAN TO INCLUDE
PUBLIC RIGHTS OF WAY SHOWN AS DEDICATED ON
THE PLAT OF JOHNSON'S 4TH ADDITION; AND
INTRODUCE ORDINANCE TO ANNEX PORTIONS OF
JOHNSON'S 2ND AND JOHNSON'S 4TH ADDITIONS

An ordinance entitled "An ordinance to amend the Street and Highway Plan of the city of Grand Forks, North Dakota, to include the public rights of way shown as dedicated on the plat of Johnson's 4th Addition to the city of Grand Forks, North Dakota", which had been introduced and passed on its first reading on July 15, 1996 and upon which public hearing had been scheduled for this evening, was presented and read for consideration on second reading and final passage.

The acting city auditor reported that the required legal notice had been 14614
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published calling for a public hearing to be held on this matter this evening, and further that to date no protests or grievances had been filed with the auditor's office.

Mayor Owens called upon the audience to see if there was anyone present who had comments to make on this matter. Where were none.

The Planning and Zoning Commission reported having considered the matter of request from Tim Crary on behalf of Johnson Farms for final approval of the plat of Johnson's 4th Addition to the city of Grand Forks, North Dakota, lying within the West Half of the Southwest Quarter of Section 8, Township 151 North, Range 50 West of the 5th Principal Meridian (located east of South Columbia Road between 11th Avenue and 17th Avenue South), and recommended final approval subject to special conditions shown on or attached to the review copy and passage of the ordinance amending the Street and Highway Plan, and also approval of the ordinance of annexation, to introduce the ordinance and to set the date of the public hearing for September 3, 1996.

Upon call for the question of adoption of this ordinance and upon roll call vote, the following voted "aye": Council Members Beach, Polovitz, Ellingson, Hamerlik, Hanson, Carpenter, Sande, Klave, Beyer, Babinchak, Bakken, Hafner, Hagness - 13; voting "nay": none. Mayor Owens declared the ordinance adopted.

Council Member Hagness introduced an ordinance entitled "An ordinance to annex to the city of Grand Forks, North Dakota, portions of Johnson's 2nd Addition and Johnson's 4th Addition to the city of Grand Forks, North Dakota", which was presented, read and passed on its first reading.

ADOPT ORDINANCE NO. 3606, TO AMEND ZONING
MAP TO INCLUDE WITHIN JOHNSON'S PUD, CONCEPT
DEVELOPMENT PLAN, AMENDMENT NO. 1, ALL OF KUSTER'S
2ND AND 3RD ADDITIONS, ALL OF JOHNSON'S 1ST, 2ND,
3RD AND 4TH ADDITIONS; JOHNSON'S 4TH ADDITION
BEING THE AREA OF SUBSTANTIAL CHANGE TO THE PUD
AS AMENDED

An ordinance entitled "An ordinance to amend the Zoning Map of the city of Grand Forks, North Dakota to rezone and exclude from Johnson's PUD (Planned Unit Development), Concept Development Plan, and to include within Johnson's PUD (Planned Unit Development), Concept Development Plan, Amendment No. 1, all of Kuster's 2nd and 3rd Additions, all of Johnson's 1st, 2nd, 3rd and 4th Additions; Johnson's 4th Addition being the area of substantial change to the PUD as amended, to the city of Grand Forks, North Dakota", which had been introduced and passed on its first reading on July 15, 1996, and upon which public hearing had been scheduled for this evening, was presented and read for consideration on second reading and final passage.

The acting city auditor reported that the required legal notice had been published calling for a public hearing to be held on this matter this evening and further that to date no protests or grievances had been filed with his office.

Mayor Owens called upon the audience to see if there was anyone present who had comments to make on this matter. There were none.

The Planning and Zoning Commission reported that the matter of the request from Tim Crary on behalf of Johnson Farms for final approval of an ordinance to amend the Zoning Map to exclude from Johnson's PUD (Planned Unit Development), Concept Development Plan and to include within Johnson's PUD (Planned Unit Development), Concept Development Plan, Amendment Number 1, all of Kuster's 2nd and 3rd Additions, all of Johnson's 1st, 2nd and 3rd

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Additions, and all of proposed Johnson's 4th Addition of which addition is the area of substantial change to this PUD as amended (located between South 34th and South 42nd Streets and between 11th and 17th Avenues South), and recommended final approval subject to special conditions shown on or attached to the review copy and passage of the ordinance amending the Zoning Map.

Upon call for the question of adoption of this ordinance and upon roll call vote, the following voted "aye": Council Members Beach, Polovitz, Ellingson, Hamerlik, Hanson, Carpenter, Sande, Klave, Beyer, Babinchak, Bakken, Hafner, Hagness - 13; voting "nay": none. Mayor Owens declared the ordinance adopted.

APPROVE FINAL PLAT; ADOPT ORDINANCE NO. 3607,
AMENDING STREET AND HIGHWAY PLAN TO INCLUDE
PUBLIC R/W SHOWN AS DEDICATED ON THE PLAT OF
RIVERS EDGE RESUBDIVISION

An ordinance entitled "An ordinance to amend the Street and Highway Plan of the city of Grand Forks, North Dakota, to include the public rights of way shown as dedicated on the plat of Rivers Edge Resubdivision to the city of Grand Forks, North Dakota", which had been introduced and passed on its first reading on July 15, 1996, and upon which public hearing had been scheduled for this evening, was presented and read for consideration on second reading and final passage.

The acting city auditor reported that the required legal notice had been published calling for a public hearing to be held on this matter this evening and further that to date no protests or grievances had been filed with the auditor's office.

Mayor Owens called upon the audience to see if there was anyone present who had comments to make on this matter. There were none.

The City Planning and Zoning Commission reported having considered the request from CPS, Ltd. on behalf of Simonson's Lumber for final approval of a plat of Rivers Edge Resubdivision, lying within a portion of the East Half of the Northeast Quarter of Section 27, Township 151 North, Range 50 West of the 5th Principal Meridian (located southeast of Belmont Road and 49th Avenue South), and recommended final approval subject to special conditions shown on or attached to the review copy and passage of the ordinance amending the Street and Highway Plan.

Upon call for the question and upon roll call vote, the following voted "aye": Council Members Beach, Polovitz, Ellingson, Hamerlik, Hanson, Carpenter, sande, Klave, Beyer, Babinchak, Bakken, Hafner, Hagness - 13; voting "nay": none. Mayor Owens declared the ordinance adopted.

CONTINUE PUBLIC HEARING AND SECOND READING
OF ORDINANCE TO ANNEX ALL OF RIVERS EDGE
RESUBDIVISION

An ordinance entitled "An ordinance to annex to the city of Grand Forks, North Dakota, all of Rivers Edge Resubdivision and St. Francis First Resubdivision (located east of Belmont Road between 49th Avenue South and Adams Drive)", which had been introduced and passed on its first reading on July 15, 1996, and upon which public hearing had been scheduled for this evening, was presented and read for consideration on second reading.

The acting city auditor reported that the required legal notice had not been published by the petitioner as required.

It was moved by Council Member Ellingson and seconded by Council Member Hafner 14616
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that the public hearing and second reading of the ordinance be postponed to September 3, 1996. Carried 13 votes affirmative.

TABLE TO SEPTEMBER 16, 1996, MATTER OF
FINAL PLAT, PUBLIC HEARING AND SECOND READING
OF ORDINANCE TO AMEND STREET AND HIGHWAY PLAN
TO INCLUDE PUBLIC R/W SHOWN AS DEDICATED ON
PLAT OF ST. FRANCIS FIRST ADDITION

An ordinance entitled "An ordinance to amend the Street and Highway Plan of the city of Grand Forks, North Dakota, to include the public rights of way shown as dedicated on the plat of St. Francis First Addition to the city of Grand Forks, North Dakota", which had been introduced and passed on its first reading on July 15, 1996, and upon which public hearing had been scheduled for this evening, was presented and read for consideration on second reading.

The acting city auditor reported that the required legal notice had been published calling for a public hearing to be held on this matter this evening and further that to date no protests or grievances had been filed with the auditor's office.

Mayor Owens called upon the audience to see if there was anyone present who had comments to make on this matter. There were none.

The Planning and Zoning Commission reported having considered the matter of the request from CPS, Ltd on behalf of C & A Partnership for final approval of a plat of Country View First Resubdivision (formerly referred to as St. Francis First Resubdivision) lying within a portion of the East Half of the Northeast Quarter of Section 27, Township 151 North, Range 50 West of the 5th Principal Meridian (located northeast of Belmont Road and Adams Drive), and recommended to table until September 16, 1996.

It was moved by Council Member Hagness and seconded by Council Member Polovitz that this recommendation be and is hereby approved. Carried 13 votes affirmative.

DETERMINE INSUFFICIENCY OF PROTEST AND DIRECT
THAT RESOLUTION OF ANNEXATION OF SHADYRIDGE
ESTATES FIRST ADDITION, SHADYRIDGE ESTATES SECOND
ADDITION, SHADYRIDGE ESTATES THIRD ADDITION,
SHADYRIDGE ESTATES FOURTH RESUBDIVISION, SHADY-
RIDGE ESTATES FIFTH RESUBDIVISION, AND AN UNPLATTED
PORTION OF SECTIONS 26 AND 27, T151N, R50W OF THE
5TH PRINCIPAL MERIDIAN BE FILED AND ANNEXATION
ACCOMPLISHED

Mr. Swanson, city attorney, reported that the public hearing was held at the council meeting on August 5, 1996, that the public hearing was closed at that time, and during the public hearing several property owners withdrew their protests to the annexation; the question was then whether or not there was sufficient protest to stop the annexation from moving forward. He reported that he has had an opportunity review the remaining protests and finds that Lots 5, 14 and 15 of Shadyridge First Addition, owned by Lavonne Adams, all have protests; that in addition he has calculated the protest by Traill Water, however, he doesn't believe they have legal standing to make that protest; nevertheless. the total protest is 7.77% and is an insufficient protest and does not rise to the level of 25%. He stated that at this point it is his recommendation that the council adopt resolution finding an insufficiency of protest.

Pat Morley, 3314 East Elmwood, attorney, reported that he had written letter

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to the city auditor explaining why he did not think it was appropriate to allow people to withdraw their protest after the close of the protest period but before the vote on the sufficiency of it; that he was appearing in behalf of Lavonne and Darrell Adams and asking council to disregard the city attorney's opinion when he believes protest can be withdrawn, that he disagrees with Mr. Swanson, that there is no provision under the ND law to withdraw a protest once it has been submitted, and would request that the council follow that law and not allow protests to be withdrawn and find protests sufficient. He stated that he received copy of the City of Grand Forks' annexation report recently, and except for the airport being annexed, this would be the largest single annexation that has ever been done by the City of Grand Forks and does not believe it contributes to orderly development; and respectfully requests on behalf of Darrell and Lavonne Adams that the council not allow the withdrawal of those protests and find protests sufficient.

Mr. Swanson stated that there is no statutory authority to withdraw a protest; however, there are three decisions by the North Dakota Supreme Court, and in each of those three decisions, the Supreme Court held that regardless of whether or not there's statutory basis to withdraw the protest, the Court will allow and will recognize that a protest can be validly withdrawn at any time, including after the deadline for filing, and would stand by his opinion; and also points out that in the correspondence forwarded to the council there was a suggestion that the property owners withheld their protest for some of their property and only protested a portion of property in reliance on the other property owners; that may or may not be true, but pointed out that the property owners signed their protest on June 9, many of the other property owners did not sign their protest until June 10, and would be difficult to rely on the protest of others who did not protest until the following day; that the ND Supreme Court has held that a property owner must act and exercise his own rights and not be dependent upon others exercising their independent rights. He stated he stands by his opinion that there is an insufficiency of protest and that this body should find so.

It was moved by Council Member Hanson and seconded by Council Member Klave that a finding of insufficiency of protest to the annexation be entered, and further that the city auditor be and is hereby directed to file with the Grand Forks County Register of Deeds the resolution of annexation, with appropriate map. Carried 13 votes affirmative.

HOLD PUBLIC HEARING, DETERMINE INSUFFICIENCY
OF PROTEST AND DIRECT THAT RESOLUTION OF ANNEXATION
OF JOHNSON'S 2ND ADDITION, LOTS 19, 20, 21, 22 AND
23, BLOCK 1, AND LOTS 14, 15, 16, 17, 18 AND 19,
BLOCK 2, INCLUDING UNPLATTED TRACT OF LAND IN SW
QUARTER SOUTHWEST QUARTER, SECTION 8, T151N, R50W
OF 5TH PRINCIPAL MERIDIAN BE FILED AND ANNEXATION
ACCOMPLISHED

The acting city auditor reported that proper notice had been placed in the Grand Forks Herald publishing the resolution of annexation passed July 15, 1996, annexing all of Johnson's 2nd Addition, Lots 19, 20, 21, 22 and 23, Block 1, and Lots 14, 15, 16, 16, 17, 18 and 19, Block 2, including an unplatted tract of land lying in the southwest quarter of the southwest quarter of Section 8 Township 151 North of Range 50 West of the 5th Principal Meridian, more specifically described as a 140 ft. wide strip of land lying west of and adjoining the west right of way line of South 38th Street as platted in Johnson's 2nd Addition, and further that the published resolution called for a hearing this evening for the purpose of hearing and determination of the sufficiency of any protests to the proposed annexation.

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The acting city auditor exhibited the affidavit of publication indicating publication on July 20 and 27, 1996; and further reported that no written protests had been filed with the auditor's office.

Mayor Owens called upon the audience to see if there was anyone present who had comments to make on this matter. There were none.

It was moved by Council Member Hagness and seconded by Council Member Babinchak that a finding of insufficiency of protest to the annexation be entered; and further that the city auditor be and is hereby directed to file with the Grand Forks County Register of Deeds the resolution of annexation, with appropriate map. Carried 13 votes affirmative.

ADOPT RESOLUTION VACATING 15-FT. SIDEWALK AND
UTILITY EASEMENT IN BLOCKS 1 AND 2, SUN LAND
WEST SECOND RESUBDIVISION

The acting city auditor reported that pursuant to instructions by the city council after having received a petition to vacate the 15-foot wide sidewalk and utility easement lying 7.5 feet on either side of the lot lines common to Lots 16, 17, 21 and 22, Block 1 and Lots 8 and 9, Block 2, Sun Land West Second Resubdivision, the required legal notice had been published calling for a public hearing to be held this evening, and further that no protests or grievances had been filed with the auditor's office.

Mayor Owens called upon the audience to see if there was anyone present who had comments to make on this matter.

Jim Carlson, 702 Horizon Circle, stated this is part of the Sun Land West Second Resubdivision which had 60 ft. lots and now being proposed to be resubdivided into 35 ft. lots, and that there is some objection to this, not specifically the sidewalk and utility easement, but the whole thing all goes together, and particularly not having sidewalks and utility easements along that area, where there will be lot of children if housing built on these lots, and difficult to see why good idea to vacate these easements and are related to several other issues which appear later on the agenda.

Council Member Polovitz questioned whether this item has to do with

attached vs. detached garages, and asked for clarification.

Bob Bushfield, city planner, reported that was brought up at the same time at the Planning Commission and because the Planning staff had allowed detached garages in this area, there was considerable discussion on that; but what's happening as a result of the replat is that they had to realign those easements; and to answer Mr. Carlson's concerns, that they are vacating the old easements but replacing with easements that will be located so they line up with new lot lines being created.

Mayor Owens closed the public hearing.

It was moved by Council Member Beyer and seconded by Council Member Hanson that we do hereby find and determine an insufficiency of protest to the proposed vacation. Carried 13 votes affirmative.

Council Member Hagness introduced the following resolution which was presented and read: Document No. 7137 - Resolution.

It was moved by Council Member Hagness and seconded by Council Member Sande that this resolution be and is hereby adopted. Carried 13 votes affirmative.

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ADOPT RESOLUTION VACATING PORTION OF MAPLE
AVENUE AS PLATTED IN LINDSAY'S ADDITION AND
LYING BETWEEN LINCOLN DRIVE AND THE RED RIVER

The acting city auditor reported that pursuant to instructions by the city council after having received a petition to vacate the westerly 10 feet of the easterly 30 feet and the westerly 30 feet of Maple Avenue as platted in Lindsay's Addition and lying between Lincoln Drive and the Red River, the required legal notice had been published calling for a public hearing to be held this evening and further that no protests or grievances had been filed with the auditor's office.

Mayor Owens called upon the audience to see if there was anyone present who had comments to make on this matter. There were none.

It was moved by Council Member Hafner and seconded by Council Member Babinchak that we do hereby find and determine an insufficiency of protest to the proposed vacation. Carried 13 votes affirmative.

Council Member Polovitz introduced the following resolution which was presented and read: Document No. 7138 - Resolution.

It was moved by Council Member Polovitz seconded by Council Member Ellingson that this resolution be and is hereby adopted. Carried 13 votes affirmative.

ADOPT RESOLUTION VACATING PORTION OF 2ND AVENUE
NORTH, LYING NORTHEASTERLY OF NORTH 3RD STREET

The acting city auditor reported that pursuant to instructions by the city council after having received a petition to vacate portion of 2nd Avenue North lying northeasterly of North 3rd Street, the required legal notice had been published calling for a public hearing to be held this evening and further that no protests or grievances had been filed with the auditor's office.

Mayor Owens called upon the audience to see if there was anyone present who had comments to make on this matter. There were none.

It was moved by Council Member Hanson and seconded by Council Member Hagness that we do hereby find and determine an insufficiency of protest to the proposed vacation. Carried 13 votes affirmative.

Council Member Hafner introduced the following resolution which was presented and read: Document No. 7139 - Resolution.

It was moved by Council Member Hafner and seconded by Council Member Ellingson that this resolution be and is hereby adopted. Carried 13 votes affirmative.

APPROVE APPLICATION FOR PERMIT TO MOVE
BUILDING TO 21 EUCLID AVENUE FOLLOWING
PUBLIC HEARING

The acting city auditor reported that the notice of public hearing on the application by Sherry Mokerski to move building from 903 Reeves Drive to 21 Euclid Avenue to be used as a storage building, had been published and posted as required.

Mayor Owens called upon the audience to see if there was anyone present who had comments to make on this matter. There were none.

Committee No. 3, Public Service, reported having considered the application for permit to move building from 903 Reeves Drive to 21 Euclid Avenue for
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storage building, and recommended approval of the application, subject to the public hearing.

It was moved by Council Member Beyer and seconded by Council Member Hafner that this recommendation be and is hereby approved, and that Ms. Mokerski be authorized to move the building. Carried 13 votes affirmative.

DETERMINE INSUFFICIENCY OF PROTEST ON PAVING
DISTRICT NO. 543, PROJECT NO. 4479

The acting city auditor reported that the period for filing protests on the resolution of necessity for the improvements in and for Paving District No. 543, Project No. 4479, Paving on South 38th Street from 24th Avenue South to 29th Avenue South, had expired on August 8, 1996, and that no written protests had been received.

Mayor Owens called upon the audience to see if there was anyone present who had comments to make on this matter. There were none.

Council Member Hagness introduced the following resolution as to protests which was presented and read: Document No. 7140 - Resolution.

It was moved by Council Member Hagness and seconded by Council Member Babinchak that we do hereby find and determine an insufficiency of protest against Paving District No. 543, Project No. 4479, as no protests were filed, and further that the resolution be and is hereby adopted. Carried 13 votes affirmative.

RECEIVE TABULATION OF BIDS, ESTIMATE OF TOTAL
COST AND AWARD CONTRACT, PAVING PROJECT NO. 4479,
DISTRICT NO. 543

The acting city auditor presented and read tabulation of bids which had been received and opened on August 5, 1996, for Paving Project No. 4479, District No. 543, paving South 38th Street from 24th to 29th Avenues South, indicating that Valley Contracting Company was the low bidder based upon their bid in the amount of \$136,704.90: Document No. 7141 - Bid Tabulation.

The city engineer's estimate of total cost on paving Project No. 4479, District No. 543, in the amount of \$174,000.00, was presented and read.

Committee No. 3, Public Service, reported having considered the bids for Project No. 4479, District No. 543, paving South 38th Street from 24th Avenue South to 29th Avenue South, and recommended that we accept the low bid of Valley Contracting Company in the amount of \$136,704.90.

It was moved by Council Member Hagness and seconded by Council Member Babinchak that this recommendation be and is hereby approved. Carried 13 votes affirmative.

Council Member Hagness introduced the following resolution which was presented and read: Document No. 7142 - Resolution.

It was moved by Council Member Hagness and seconded by Council Member Babinchak that this resolution awarding the contract for Paving Project No. 4479, District No. 543, be and is hereby adopted. Upon roll call the following voted "aye": Council Members Beach, Polovitz, Ellingson, Hamerlik, Hanson, Carpenter, Sande, Klave, Beyer, Babinchak, Bakken, Hafner, Hagness - 13; voting "nay": none. Mayor Owens declared the resolution adopted and the contract awarded.

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REFER CONSENT AGENDA ITEMS TO COMMITTEE

It was moved by Council Member Babinchak and seconded by Council Member Beyer that the consent agenda items be referred to committee as noted. Carried 13 votes affirmative.

Finance Committee:

- 1) matter of city sales tax on amusement devices.
- 2) matter of allocation of public funds for establishment and operation of Youth Commission

REPORTS OF OFFICERS

The city auditor's statement of changes in cash balances as of July 31, 1996 was presented and read. It was moved by Council Member Hanson and seconded by Council Member Beyer that this report be and is hereby received and filed. Carried 13 votes affirmative.

APPROVE BILLS

Vendor Payment Listing No. 96-14, dated August 19, 1996, and totaling \$2,896,909.08, all having been audited by the city auditor for payment in accordance with Regulation No. 2, was presented and read.

It was moved by Council Member Beyer and seconded by Council Member Sande that these bills be allowed and that the city auditor be authorized to issue warrants in payment of the same. Upon roll call the following voted "aye": Council Members Beach, Polovitz, Ellingson, Hamerlik, Hanson, Carpenter, Sande, Klave, Beyer, Babinchak, Bakken, Hafner, Hagness - 13; voting "nay": none. Mayor Owens declared the motion carried and the bills ordered paid.

ESTABLISH PUBLIC HEARING ON APPLICATION BY
J.W. PERRY, INC. FOR FIVE-YEAR PROPERTY TAX
EXEMPTION FOR BUILDING AT 1250 SOUTH 46TH STREET

Committee No. 1, Finance, reported having considered the matter of application from LeRoy and Barbara Bross Trust dba J. W. Perry, Inc. for five-year property tax exemption for building to be constructed at 1250 South 46th Street, and recommended that we call for a public hearing for September 16, 1996.

It was moved by Council Members Babinchak and Bakken that this recommendation be and is hereby approved. Carried 13 votes affirmative.

APPROVE BUDGET AMENDMENT

An amendment to the Human Resources budget in the amount of \$300.00, was presented and read. It was moved by Council Member Babinchak and seconded by Council Member Bakken that this amendment be and is hereby approved. Carried 13 votes affirmative.

APPROVE REQUEST TO BLOCK STREETS NEAR
CENTRAL HIGH SCHOOL FOR BAND PRACTICE

Committee No. 2, Public Safety, reported having considered the request from Central High School to block streets near Central for band to practice marching during weeks of September 3-6 and 9-13 from 8:30 to 10:30 a.m., weather permitting, and recommended approval of the request.

It was moved by Council Members Ellingson and Sande that this recommendation be and is hereby approved. Carried 13 votes affirmative.
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APPROVE GRANT AGREEMENTS WITH NORTH DAKOTA
STATE HEALTH DEPARTMENT

Committee No. 2, Public Safety, reported having considered the matter of grant agreement with the North Dakota Department of Health for Immunization and Epidemiologist Support Services for period July 1, 1996 through June 30, 1997, in the amount of \$14,394.00, and recommended to approve the grant agreement subject to review by the city attorney.

It was moved by Council Member Ellingson and seconded by Council Member Sande that this recommendation be and is hereby approved. Carried 13 votes affirmative.

APPROVE BUDGET AMENDMENTS

An amendment to the Health Department Knight Foundation Grant budget in the amount of \$259.00 was presented and read. It was moved by Council Member Ellingson and seconded by Council Member Sande that this amendment be and is hereby approved. Carried 13 votes affirmative.

An amendment to the Health Department budget in the amount of \$1,341.00 was presented and read. It was moved by Council Member Ellingson and seconded by Council Member Sande that this amendment be and is hereby approved. Carried 13 votes affirmative.

An amendment to the Health Department Mosquito Control budget in the amount of \$15,737.00 was presented and read. It was moved by Council Member Ellingson and seconded by Council Member Sande that this amendment be and is hereby approved. Carried 13 votes affirmative.

INTRODUCE ORDINANCE PROVIDING FOR PRORATION
OF ALCOHOLIC BEVERAGE ISSUANCE FEES

Committee No. 2, Public Safety, reported having considered the request from Kim Holmes to pro-rate payment of alcoholic beverage issuance fee for proposed food/beverage license at 124 North 3rd Street, Lola's, and recommended that we re-introduce appropriate ordinance to allow payment of issuance fee for liquor license in installments.

It was moved by Council Member Ellingson and seconded by Council Member Sande that this recommendation be and is hereby approved.

Kim Holmes, representing Lola's, appeared in support of the proposed ordinance.

After some discussion and upon call for the question, the motion carried 13 votes affirmative.

Council Member Sande introduced an ordinance entitled "An ordinance amending Section 21-0210 of the Grand Forks City Code relating to issuance fees for alcoholic beverage licenses", which was presented, read and passed on its first reading.

APPROVE REQUEST FOR VARIANCE TO CURB CUT
AT 503 32ND AVENUE SOUTH

Committee No. 3, Public Service, reported having considered the request from Philip and Elaine Johnson, 503 32nd Avenue South, for curb cut (closer than the required distance from an intersection), and recommended that the request be approved.

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It was moved by Council Member Beyer and seconded by Council Member Klave that this recommendation be and is hereby approved. Carried 13 votes affirmative.

APPROVE ENCROACHMENT AGREEMENT WITH WINTER
GARDEN ASSOCIATES, 901 UNIVERSITY AVENUE

Committee No. 3, Public Service, reported having considered the matter of encroachment onto public R/W at 901 University Avenue, Winter Garden Associates, and recommended that we authorize entering into an encroachment agreement with Winter Garden Associates.

It was moved by Council Member Beyer and seconded by Council Member Klave that this recommendation be and is hereby approved. Upon roll call the following voted "aye": Council Members Beach, Polovitz, Ellingson, Hamerlik, Hanson, Carpenter, Sande, Klave, Beyer, Babinchak, Bakken, Hafner, Hagness - 13; voting "nay": none. Mayor Owens declared the motion carried.

APPROVE ENCROACHMENT AGREEMENT WITH BRASETH,
INC., 2111 DEMERS AVENUE

Committee No. 3, Public Service, reported having considered request from Braseth, Inc. for encroachment into public R/W for installation of ground monument sign, Yamaha of Grand Forks, 2111 DeMers Avenue, and recommended to approve and to enter into an encroachment agreement, contingent upon signing of a hold harmless agreement.

It was moved by Council Member Beyer and seconded by Council Member Klave that this recommendation be and is hereby approved. Upon roll call the following voted "aye": Council Members Beach, Polovitz, Ellingson, Hamerlik, Hanson, Carpenter, Sande, Klave, Beyer, Babinchak, Bakken, Hafner, Hagness - 13; voting "nay": none. Mayor Owens declared the motion carried.

APPROVE THREE-WAY AGREEMENT FOR PRIVATE
INSTALLATION OF UTILITIES IN GARDENVIEW
2ND ADDITION

Committee No. 3, Public Service, reported having considered the matter of three-way agreement for private installation of utilities in Gardenview 2nd Addition, and recommended that we authorize entering into a three-way agreement.

It was moved by Council Member Beyer and seconded by Council Member Klave that this recommendation be and is hereby approved. Upon roll call the

following voted "aye": Council Members Beach, Polovitz, Ellingson, Hamerlik, Hanson, Carpenter, Sande, Klave, Beyer, Babinchak, Bakken, Hafner, Hagness - 13; voting "nay": none. Mayor Owens declared the motion carried.

APPROVE AGREEMENTS FOR PROJECT NO. 4513, NP
BRIDGE REHABILITATION

Committee No. 3, Public Service, reported having considered the matter of Project No. 4513, NP Bridge Rehabilitation, State Project No. TEU-6-986(043)046, (est. cost \$229,000, with City share of \$76,042) cost participation and maintenance agreement, memo of understanding, and assurance of local funding, and recommended approval, contingent upon review and approval by the city attorney.

It was moved by Council Member Beyer and seconded by Council Member Klave that this recommendation be and is hereby approved. Upon roll call the following voted "aye": Council Members Beach, Polovitz, Ellingson, Hamerlik, Hanson, Carpenter, sande, Klave, Beyer, Babinchak, Bakken, Hafner, Hagness - 13;

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voting "nay": none. Mayor Owens declared the motion carried.

APPROVE PLANS AND SPECIFICATIONS FOR VARIOUS
CONSTRUCTION PROJECTS IN PERKINS 3RD ADDITION

Committee No. 3, Public Service, reported having considered the matter of plans and specifications for construction projects in Perkins 3rd Addition: Project No. 4539, sanitary sewer on South 30th Street; Project No. 4540, watermain on South 30th Street; Project No. 4541, storm sewer on South 30th Street; and Project No. 4550, paving on South 30th Street; and recommended approval of the plans and specifications for the projects.

It was moved by Council Member Beyer and seconded by Council Member Klave that this recommendation be and is hereby approved. Carried 13 votes affirmative.

RECEIVE TABULATION OF BIDS, ESTIMATES OF
TOTAL COST AND AWARD CONTRACT, SEWER PROJECT
NO. 4514, WATERMAIN PROJECT NO. 4515 AND
SEWER PROJECT NO. 4516

The acting city auditor presented and read tabulation of bids which had been received and opened on August 5, 1996 for Sewer Project No. 4514, District No. 375, Watermain Project No. 4515, District No. 249, and Sewer Project No. 4516, District No. 376, indicating that Soberaski, Inc. was the low bidder based upon their bids in the amounts of \$71,210.00, \$110,985.00, and \$163,935.00, respectively, for a total bid of \$346,130.00: Document No. 7143 - Bid Tabulation.

The city engineer's estimates of total cost on Sewer Project No. 4514, District No. 375, Watermain Project No. 4515, District No. 249, and Sewer Project No. 4516, District No. 376, in the amounts of \$890,500.00, \$141,000.00 and \$208,500.00, respectively, were presented and read.

Committee No. 3, Public Service, reported having considered the matter of construction bids for Sewer Project No. 4514, District No. 375, sanitary sewer in Birkholz 5th Addition, Watermain Project No. 4515, District No. 249, watermain in Birkholz 5th Addition, and Sewer Project No. 4516, District No. 376, storm sewer in Birkholz 5th Addition, and recommended that we accept the flow bids of Soberaski, Inc. in the amounts of \$71,210.00, \$110,985.00 and \$163,935.00, respectively, for a total bid of \$346,130.00.

It was moved by Council Member Beyer and seconded by Council Member Klave that this recommendation be and is hereby approved. Carried 13 votes affirmative.

Council Member Beyer introduced the following resolution which was presented and read: Document No. 7144 - Resolution.

It was moved by Council Member Beyer and seconded by Council Member Klave that this resolution awarding the contract for Sewer Project No. 4514, District No. 375, Watermain Project No. 4515, District No. 249, and Sewer Project No. 4516, District No. 376, to Soberaski, Inc. be and is hereby adopted. Upon roll call the following voted "aye": Council Members Beach, Polovitz, Ellingson, Hamerlik, Hanson, Carpenter, Sande, Klave, Beyer, Babinchak, Bakken, Hafner, Hagness - 13; voting "nay": none. Mayor Owens declared the resolution adopted and the contract awarded.

AWARD CONTRACT FOR PROJECT NO. 4444, OVERLAY
OF PORTION OF MINNESOTA AVENUE

Committee No. 3, Public Service, reported having considered the matter of bids for Project No. 4444, overlay on Minnesota Avenue from South 3rd Street to the
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alley west of South 5th Street, and recommended to accept the bid of Valley Contracting Company in the amount of \$20,310.00 plus negotiated amount of \$2,500.00 for a total bid of \$22,810.00.

It was moved by Council Member Beyer and seconded by Council Member Klave that this recommendation be and is hereby approved. Upon roll call the following voted "aye": Council Members Beach, Polovitz, Ellingson, Hamerlik, Hanson, Carpenter, Sande, Klave, Beyer, Babinchak, Bakken, Hafner, Hagness - 13; voting "nay": none. Mayor Owens declared the motion carried and the contract awarded.

AUTHORIZE PAYMENT OF CITY'S SHARE OF COLLAPSED
CULVERT ON ENGLISH COULEE DIVERSION DITCH

Committee No. 3, Public Service, reported having considered the matter of City's share of collapsed culvert on English Coulee Diversion Ditch, and recommended to authorize payment in the amount of \$19,755.48.

It was moved by Council Member Beyer and seconded by Council Member Klave that this recommendation be and is hereby approved. Upon roll call the following voted "aye": Council Members Beach, Polovitz, Ellingson,

Hamerlik, Hanson, Carpenter, Sande, Klave, Beyer, Babinchak, Bakken, Hafner, Hagness - 13; voting "nay": none. Mayor Owens declared the motion carried.

APPROVE REQUEST BY VAN RADEN PROPERTIES (PARK MANOR MOBILE HOME COURT) TO DELAY INSTALLATION OF SIDEWALKS ON SOUTH SIDE OF 6TH AVENUE NORTH BETWEEN NORTH 51ST AND 55TH STREETS CONTINGENT UPON CERTAIN CONDITIONS

Committee No. 3, Public Service, reported having considered the request from Van Raden Properties (Park Manor Mobile Home Court) for permanent waiver of sidewalk installation on south side of 6th Avenue North between North 51st and North 55th Streets, and recommended to delay installation of sidewalk contingent upon change in the land use or in the event a school goes into that district and a sidewalk is required, and upon installation of sidewalk along University Avenue from 51st Street to the entrance to the mobile home court.

It was moved by Council Member Beyer and seconded by Council Member Klave that this recommendation be and is hereby approved.

Mr. Vein reported that this deviation from normal sidewalk policy, that sidewalks would go in at the same time as streets would go in or at same time as the property being developed; that in this case 6th Avenue North partially constructed and would not be requiring the south side of 6th Avenue North to install sidewalks until it met some of the requirements that were stated in the motion. He stated that the north side is set up to be residential and as those units are constructed sidewalks would go in. He stated that part of the reason is that 6th Avenue, when completed to 55th Street, won't serve anyone on that side of the street because of buffer to be installed between trailer court and 6th Avenue.

Jim Carlson, 565 Horizon Court, questioned when sidewalks would be installed on University Avenue; and it was noted that sidewalks would be installed within a year.

Upon call for the question and upon voice vote, the motion carried 13 votes affirmative.

AUTHORIZE PURCHASE OF PROPERTY AT 621 SOUTH
4TH STREET
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Committee No. 4, Urban Development, reported having considered the matter of purchase of property at 621 South 4th street, and recommended that we authorize staff to negotiate purchase price with HUD, that the Housing Authority purchase property and that the purchase price be reimbursed by the water treatment fund.

It was moved by Council Member Polovitz and seconded by Council Member Hanson that this recommendation be and is hereby approved. Upon roll call the following voted "aye": Council Members Beach, Polovitz, Ellingson, Hamerlik, Hanson, Carpenter, Sande, Klave, Beyer, Babinchak, Bakken, Hafner, Hagness - 13; voting "nay": none. Mayor Owens declared the motion carried.

AUTHORIZE SUBMISSION OF APPLICATION FOR
FY 1996 HOME PROGRAM FUNDS

Committee No. 4, Urban Development, reported having considered the matter of application for funds for FY 1996 HOME Program in the amount of \$413,227 plus \$28,925 in administrative funds, and recommended to authorize staff to submit application with three components: 1) amendment to Phase A (Cherry Heights) Project, \$57,000; 2) Homebuyer Assistance, \$150,000 and 3) Affordable Rental Housing for Elderly and Disabled Households, \$206,227.

It was moved by Council Member Polovitz and seconded by Council Member Hanson that this recommendation be and is hereby approved. Carried 13 votes affirmative.

AUTHORIZE CREATING OF ACCOUNTING TECHNICIAN
POSITION

Committee No. 4, Urban Development, reported having considered the matter of creation of accounting technician position, and recommended that we authorize creation of the position and forward to the Civil Service Commission for classification.

It was moved by Council Member Polovitz and seconded by Council Member Hanson that this recommendation be and is hereby approved. Carried 13 votes affirmative.

APPROVE TRANSFER OF FUNDS SENIOR CITIZENS
CENTER TO MITIGATE WATER DRAINAGE PROBLEM

Committee No. 4, Urban Development, reported having considered the matter of transferring \$2,100 from Riverbank Park to Senior Citizens Center to mitigate water drainage problem, and recommended to transfer \$1,200 from the City portion of Riverbank Park to Senior Citizens Center.

It was moved by Council Member Polovitz and seconded by Council Member Hanson that this recommendation be and is hereby approved. Carried 13 votes affirmative.

TABLE INDEFINITELY MATTER OF GATEWAY COMMONS
PUD, AMENDMENT NO. 2, DETAILED DEVELOPMENT
PLAN, MOBILE HOME COURT EXPANSION, LOT 1,
BLOCK 1, AIRPORT 3RD RESUBDIVISION

The Planning and Zoning Commission reported having considered the matter of the request from Roger Mattern on behalf of Sherman Associates, Inc. for final approval of Gateway Commons PUD, Amendment No. 2, Detailed Development Plan, Mobile Home Court expansion (61 units), Lot 1, Block 1, Airport 3rd Resubdivision (located east of North 51st Street between Gateway Drive and 12th Avenue North), and recommended to table indefinitely.

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It was moved by Council Member Polovitz and seconded by Council Member Hagness that this recommendation be and is hereby approved. Carried 13 votes affirmative.

GRANT FINAL APPROVAL TO JOHNSON'S PUD,
DETAILED DEVELOPMENT PLAN, SINGLE FAMILY AREA J,
LOTS 19-22, BLOCK 1 AND LOTS 14-19, BLOCK 2,
JOHNSON'S 2ND ADDITION

The Planning and Zoning Commission reported having considered the matter of the request from Michael E.Hart on behalf of Ray D. Kuster for final approval of Johnson's PUD (Planned Unit Development), Detailed Development Plan, Single Family Area J, Lots 19 through 22, Block 1 and Lots 14 through 19, Block 2, Johnson's 2nd Addition (located at 15th Avenue South and South 38th Street), and recommended final approval subject to special conditions shown on or attached to the review copy.

It was moved by Council Member Polovitz and seconded by Council Member Hagness that this recommendation be and is hereby approved. Carried 13 votes affirmative.

APPROVE FINAL PLAT OF REPLAT OF LOTS 8,
9 AND 10, BLOCK 4, COX'S ADDITION

The Planning and Zoning Commission reported having considered the matter of the request from the city engineering department for final approval of a Replat of Lots 8, 9 and 10, Block 4, Cox's Addition to Grand Forks, North Dakota (located at 2211 and 2301 South Washington Street), and recommended final approval subject to special conditions shown on or attached to the review copy.

It was moved by Council Member Polovitz and seconded by Council Member Hagness that this recommendation be and is hereby approved. Carried 13 votes affirmative.

APPROVE FINAL PLAT OF REPLAT OF LOTS F AND
G, BLOCK 1, PERKINS FIRST ADDITION

The Planning and Zoning Commission reported having considered the matter of the request from Pribula Engineering on behalf of the Perkins Land Company for final approval of a Replat of Lots F and G, Block 1, Perkins First Addition to the city of Grand Forks, North Dakota (located south of 32nd Avenue South and west of Payless Shoes), and recommended final approval subject to special conditions shown on or attached to the review copy.

It was moved by Council Member Polovitz and seconded by Council Member Hagness that this recommendation be and is hereby approved. Carried 13 votes affirmative.

GRANT PRELIMINARY APPROVAL TO PLAT OF REPLAT
OF LOT B OF REPLAT OF LOTS 1 AND 4, BLOCK 2,
COLUMBIA PARK 21ST ADDITION

The Planning and Zoning Commission reported having considered the matter of the request from Kevin Thompson on behalf of KT's Precision Auto Body, for final approval (fast track) of Columbia Park South PUD (Planned Unit

Development), Detailed Development Plan, Auto Body Repair Facility, Lot C, Block 2, Columbia Park 21st Addition to the city of Grand Forks (located south of 32nd Avenue South between South 20th and South 23rd Streets), and recommended preliminary approval subject to special conditions shown on or attached to the review copy.

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It was moved by Council Member Polovitz and seconded by Council Member Hagness that this recommendation be and is hereby approved. Carried 13 votes affirmative.

APPROVE FINAL PLAT OF REPLAT OF LOT B, OF
REPLAT OF LOTS 1 AND 4, BLOCK 2, COLUMBIA PARK
21ST ADDITION

The Planning and Zoning Commission reported having considered the matter of the request from Steve Adams on behalf of Art Greenberg, Jr. for final approval (fast track) of a Replat of Lot B of the Replat of Lots 1 and 4, Block 2, Columbia Park 21st Addition to the city of Grand Forks, ND (located south of 32nd Avenue South between South 20th and South 23rd Streets), and recommended final approval subject to special conditions shown on or attached to the review copy.

It was moved by Council Member Polovitz and seconded by Council Member Hagness that this recommendation be and is hereby approved. Carried 13 votes affirmative.

APPROVE PRELIMINARY PLAT AND INTRODUCE ORDINANCE
TO AMEND STREET AND HIGHWAY PLAN TO INCLUDE
PUBLIC R/W SHOWN AS DEDICATED ON THE PLAT OF
DESOTO FIRST ADDITION

The Planning and Zoning Commission reported having considered the matter of the request from CPS, Ltd. on behalf of Desoto Association for preliminary approval of a plat of Desoto First Addition to the city of Grand Forks, North Dakota (located in the southwest corner of 32nd Avenue South and South 17th Street), and recommended preliminary approval subject to special conditions shown on or attached to the review copy, to introduce the ordinance amending the Street and Highway Plan and to set the date of the public hearing for September 16, 1996; and further to approve the issuance of a footing and foundation permit provided the owner and contractor submit a letter to the City indicating that they assume full responsibility for any expense that may occur if the plat does not receive final approval.

It was moved by Council Member Polovitz and seconded by Council Member Hagness that this recommendation be and is hereby approved. Carried 13 votes affirmative.

Council Member Beyer introduced an ordinance entitled "An ordinance to amend the Street and Highway Plan of the city of Grand Forks, North Dakota, to include the public rights of way shown as dedicated on the plat of Desoto First Addition to the city of Grand Forks, North Dakota", which was presented, read and passed on its first reading.

INTRODUCE ORDINANCE AMENDING ZONING MAP

TO INCLUDE WITHIN COLUMBIA PARK PUD, CONCEPT
DEVELOPMENT PLAN, AMENDMENT NO. 9 WITH ALL
SUBSTANTIVE CHANGES LYING WITHIN LOTS 1-16,
BLOCK C, COLUMBIA PARK 15TH ADDITION

The Planning and Zoning Commission reported having considered the matter of the request from Steve Adams on behalf of Art Greenberg, Jr. for preliminary approval of an ordinance to amend the Zoning Map to exclude from Columbia Park PUD (Planned Unit Development), Concept Development Plan, Amendment No. 8 and to include within Columbia Park PUD (Planned Unit Development), Concept Development Plan, Amendment No. 9 with all substantive changes lying within Lots 1 through 16, Block C, Columbia Park 15th Addition (located between Sara Lyn Drive and South 35th Street and 28th Avenue South), and recommended

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preliminary approval subject to special conditions shown on or attached to the review copy, to introduce the ordinance amending the Zoning Map and to set the date of the public hearing for September 16, 1996.

It was moved by Council Member Polovitz and seconded by Council Member Hagness that this recommendation be and is hereby approved. Carried 13 votes affirmative.

Council Member Beyer introduced an ordinance entitled "An ordinance to amend the Zoning Map of the city of Grand Forks, North Dakota to rezone and exclude from Columbia Park PUD (Planned Unit Development), Concept Development Plan, Amendment No. 8, and to include within Columbia Park PUD (Planned Unit Development), Concept Development Plan, Amendment no. 9 with all substantive changes lying within Lots 1 through 16, Block C, Columbia Park 15th Addition to the city of Grand Forks, North Dakota", which was presented, read and passed on its first reading.

INTRODUCE ORDINANCE TO AMEND ZONING MAP
TO INCLUDE WITHIN R-1 (SINGLE FAMILY RESIDENCE)
DISTRICT ALL OF RIVERS EDGE RESUBDIVISION

The Planning and Zoning Commission reported having considered the matter of the request from Darrell Adams on behalf of Tim Christian and Dave Robertson for preliminary approval of an ordinance to amend the Zoning Map to exclude from the A-1 (Limited Development) District and to include within the R-1 (Single Family Residence) District all of Rivers Edge Resubdivision (located east of Belmont Road and south of 49th Avenue South), and recommended preliminary approval of the ordinance amending the Zoning Map, to introduce the ordinance and to set the date of the public hearing for September 16, 1996.

It was moved by Council Member Polovitz and seconded by Council Member Hagness that this recommendation be and is hereby approved. Carried 13 votes affirmative.

Council Member Beyer introduced an ordinance entitled "An ordinance to amend the Zoning Map of the city of Grand Forks, North Dakota to rezoning and exclude from the A-1 (Limited Development) District, and to include

within the R-1 (Single Family Residence) District, all of Rivers Edge Resubdivision, Grand Forks, North Dakota", which was presented, read and passed on its first reading.

APPROVE FINAL PLAT OF SUN LAND WEST THIRD
RESUBDIVISION, INCLUDING REQUEST FOR VARIANCE
TO SUBDIVISION REGULATIONS AS IT RELATES TO
SIZE AND NUMBERS OF LOTS WITHIN A MINOR
SUBDIVISION PLAT

The Planning and Zoning Commission reported having considered the matter of the request from Dan Schmaltz on behalf of Sun Land West L.L.C. for final approval (fast track) of a plat of Sun Land West Third Resubdivision, being a Replat of Lots 1 through 13, Block 1, Sun Land West First Resubdivision and Lots S through Z and Lot A-A, Block 1, of a Replat of Block 12 and 2, Sun Land West Second Resubdivision to the city of Grand Forks, ND (located north of 6th Avenue North between North 51st Street and North 55th Street), including a request for variances to the subdivision regulation as it relates to the size and numbers of lots within a minor subdivision plat, and recommended final approval subject to special conditions shown on or attached to the review copy.

It was moved by Council Member Polovitz and seconded by Council Member Hagness that this recommendation be and is hereby approved.

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Council Member Polovitz expressed concern that the development plan presented to the residents was that garages would be attached, the concern of the residents was that would be more appealing house or neighborhood if garages attached, and this change (minor change to the plan by the developer at the Planning Office for detached garages) was made without making residents aware; that residents upset because plan changed after being presented to the residents.

Council Member Hagness stated that he didn't think that this was a minor change because plan specifically stated attached garages and if the intent of the Commission wasn't to have the attached garages, they would not have added that, and should not allow planning office to make that determination.

Bob Bushfield, city planner, reported that Mr. Schmaltz made request of planning office and planning office does have authority to make minor changes; however, based on conversation here and at Planning Commission meeting they will not make any minor changes in the Sun Land West Addition in the future. He stated that the reason they did that was because if you look in R-1 and R-2 Districts, they don't make any distinction between attached or detached garages, and seemed to make sense because self-imposed regulation by the developers in Sun Land West Addition that they wouldn't be placing any more hardship on them than what was imposed on an R-1 area. He stated that in the future if it is written down, they will not approve any more minor changes that are written specifically on those plans.

Council Member Polovitz questioned how they could rectify this, and require the rest of the garages to be attached. Mr. Bushfield stated that staff already signed off on this and given developer authority to

build either attached or detached garages at his wishes, but would think that council has authority to override department's decision.

Mr. Swanson, city attorney, the authority is vested in the planning office to make that decision and if the council chooses to amend the plan to require attached garages, they have the authority to do so; however, could not do that retroactively; that if there has been any particular reliance on the approval by the department, council would not be able to alter that; that he is not aware of what the plan was or how approved initially, or not aware of what type of approval given by the planning department, so not in a position to give any final determination as to whether there is or isn't liability that would attach to it if an alteration now. He stated that in theory if the developer hasn't relied on that, the council can amend this plan, but without having more detail and more facts, not something that can be determined tonight.

Council Member Beach stated that the developer has already relied upon the consent he received from the planning office, however, the residents should have been consulted; however, if want housing to be more affordable, detached garage less expensive.

Dan Schmaltz, 698 North 43rd Street, stated that decision to do this was based on economics, that Phase II which was a continuation of 7th Avenue was approved with self-imposed requirement that they build garages but not attached, that was approved subsequent to Phase I; Phase I was self-imposed requirement also, that there's nowhere in the city where City requires anyone to build a garage; that they added a garage to be built in this subdivision which was completely self-imposed and simply changed from attached to detached. He stated there was never any situation where they went to the neighborhood and got prior approval for what they had to do; that they built a subdivision based on current codes and regulations of the city, they added to that subdivision code by requiring a garage, no promises were made to anyone, strictly self-imposed requirement, and they have decided to change because of

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economics and so consistent with Phase II. He also stated that what is on the agenda tonight has nothing to do with garages, and matter before council tonight is legal description change on lots on 6th Avenue, does not change any land use plan. He stated that only one this would affect would be potential purchaser.

Council Member Hagness stated that concern here is gaining trust for the neighborhood for a development, and concern was bringing in modular houses and the attached garages made more acceptable.

Mr. Bushfield reported that notice was sent to property owners within 400 ft. of the zoning request and was on the concept development plan, and that was a part of the rezoning and ended up R-1 and R-M uses.

Mr. Schmaltz reported that they are currently building two units with detached garages, putting up third unit which will have an attached garage, and they will let the market dictate (about \$3,000 less for

detached garage).

Upon call for the question and upon voice vote, the motion carried 13 votes affirmative.

INTRODUCE ORDINANCE TO ANNEX SOUTHERLY
140 FT. OF LOT 4, BLOCK 1 AND ALL OF LOT 1,
BLOCK 2, AURORA PLAZA ADDITION

The Planning and Zoning Commission reported having considered the matter of petition from Cliff Coss for approval of an ordinance to annex Lot 1, Block 2, Aurora Plaza Addition to the city of Grand Forks, ND (located in the southeast corner of South 42nd Street and 29th Avenue South), and recommended approval of the ordinance to annex, to introduce the ordinance and to set the date of the public hearing for September 3, 1996.

It was moved by Council Member Polovitz and seconded by Council Member Hagness that this recommendation be and is hereby approved.

It was noted that an additional 140 ft. north of 29th Avenue South is being annexed because in order to create an assessment district for 29th Avenue, need to annex property to the north of existing right of way to distribute benefits equally so property owners south of 29th Avenue South don't pay all of the costs for the installation of that street; and that zoning on the north side of 29th Avenue South is still agricultural, zoning of property wouldn't affect assessments.

Upon call for the question and upon voice vote, the motion carried 13 votes affirmative.

Council Member Beyer introduced an ordinance entitled "An ordinance to annex to the city of Grand Forks, North Dakota, the southerly 140 feet of Lot 4, Block 1 and all of Lot 1, Block 2, Aurora Plaza Addition, Grand Forks, North Dakota", which was presented, read and passed on its first reading.

MATTER OF LAND ACQUISITION AGREEMENT FOR
EVENTS CENTER

Council Member Carpenter presented the matter of land acquisition agreement relating to the acquisition of property where The Aurora is going to be located, and reviewed background of the matter. He stated that last fall the Events Center Process Committee was dealing with the issue of an events center in Grand Forks, evaluated sites based on various criteria, with the Marketplace West site being selected which is site where events center will be built. He stated that there was a concern about cost of the land and Mr.

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Danks announced that he would donate 30 acres of land to the City for the site, it was determined that 30 acres not sufficient, and Mr. Danks agreed to donate 37.5 acres and that the City purchase an additional 5 acres from him, he was told that would not be acceptable and needed zero cost to the City; Mr. Danks entered into discussion with Bert Johnson, Johnson Farms, about donating land to the City at no cost; that Mr.

Johnson agreed to donate 5 acres of land which has an approx. value of \$500,000, which he would donate to the City, resulting in no cost to the City. He stated that this information disclosed to the Events Center Process Committee, information published in the Grand Forks Herald and presented to the Grand Forks city council in the form of a verbal report. He reported that subsequent to that they had a vote, which was successful, and subsequent to that had other discussions with Mr. Danks and with other property land owners purchasing additional property, which this council has approved, purchased additional land from Mr. Danks in May for frontage onto 42nd and also purchased lot from a number of partners, Lot 11 in the subdivision for additional future parking, those were concerns raised by people, and committee thought it was appropriate to purchase those which they did. He reported that in relation to the full donation of the property and the purchase of the 5 acres, Mr. Danks had requested that not take place until after August 13 of this year for some of their planning reasons. He reported that the council would have the acquisition agreement before it tonight which transfers the 37.5 acres to the City and the 5 acres in exchange for \$500,000. He stated this is something they have agreed to and fully disclosed and that no one has raised any objections to this agreement.

Council Member Carpenter moved to approve the land acquisition agreement with Keith Danks, Sr., that he will donate 37.5 acres and transfer that to the City, and will transfer an additional 5 acres for a \$500,000 payment by the City. Council Member Beach seconded the motion.

After discussion it was moved by Hagness and Hafner to postpone land acquisition indefinitely.

Shurkey Swanke, 1506 South 15th Street, questioned whether City has enforceable contract or a verbal agreement on the five acres of land which Mr. Bert Johnson, Johnson Farms, will give to the City to sell to pay for the five acres City is buying from Mr. Danks. Mr. Johnson stated he would sign an agreement on the five acres. Mr. Swanke stated that it has been presented that the five-acre parcel from Mr. Johnson will come to the City, that even if City doesn't build the events center, would still have Mr. Danks land and that all of this land can be transferred to the City without a cost to the City, and asked if there was a way that would not happen and City would get stuck with \$500,000 out of pocket.

Council Member Beach stated that the motion on the floor only concerns the 42.5 acres at this time; that this comes to a cost of something like \$12,000 per acre, City would have good asset even in worst case scenario, land would come to the City even without building of the events center. Council Member Carpenter stated that there is no stipulation in the agreement from Mr. Danks' to buy property back in the event the Aurora is not built, that could be included, but that the way the agreement stands, if the events center was not built, the City could sell property to anyone at any time for any purpose.

Darrell Larson, 397 Woodland Avenue, attorney for Mr. Danks, asked that the commitment entered into with the core committee and council be honored.

Glenna Hanson, 1192 South 36th Street, stated that council has responsibility to more than Mr. Danks, that they have responsibility to

the citizens of Grand Forks, and that all the people involved in the financial end of this stand to gain a lot and waiting for that money for a couple weeks isn't asking too much; that the responsibility to the general citizenry is the role of city

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council members and they have to weigh that against the interests of a few.

Grant Shaft, attorney, representing Mr. Danks and is working on title, that Mr. Danks has taken steps to make the title to the property marketable and ready to be conveyed as of tomorrow. He stated that the motion as amended requests an extension, that Mr. Danks has other commitments outside the City of Grand Forks, and thinks there are legal ramifications as a result of discussions tonight. He stated that the Johnson agreement is something that could be entered into, put into writing and be done quite quickly. He stated that council should already be aware that the property has already been purchased from the Cronquist group for approx. \$250,000 and the City is bound by a written contract to finalize the purchase of another lot in Danks Second which will close tomorrow regardless of the action taken tonight. He stated that from Mr. Danks' standpoint the property is marketable and ready to convey and ready to close tomorrow.

Bert Johnson, Walhalla, partner in Johnson Farms, stated he made commitment that they are willing to deed the land at any time with restriction that if City doesn't build the Aurora, City turns property back to them.

Mr. Swanson, city attorney, stated that under North Dakota law any agreement for the purchase of land has to be in writing, that until 7:30 this evening they didn't have agreement on the terms of the written document, that as of this afternoon they were still negotiating terms of a proposed document, that as of 7:30 this evening he was advised that Mr. Danks would accept the language as proposed by the City. He stated that despite the fact that there is a statutory requirement that land transactions be in writing, there is a theory of law that an individual may bring an action against another party for damages if there have been promises made by somebody with apparent authority and that there is a reasonable belief in those promises that there has been detrimental reliance by one of the parties, and as a result of that reliance there have been damages. He stated that without knowing factually what might comprise an allegation of detrimental reliance, or damages or what promises were made, he can't determine whether or not reasonable belief on part of Mr. Danks. He stated that in most cases the courts do require something more than just a belief that a transaction will occur in the future. He stated in this particular case, the council has not authorized purchase of Lot 12 but only authorize entering into contract for deed for Lot 4 with Mr. Danks; that the proposed documents at all time have had a paragraph indicating that approval of the council was required; that the likelihood of litigation is great but not in a position to predict outcome of that litigation. He stated that their decision should be based irrespective of threat of litigation and should make decision based upon what they believe is in the best interests of

the city. He stated that the City has already acquired marketable title to Lot 11, that transaction closed in June; that the City has paid approx. 50% of the purchase price of Lot 4, that preliminary payment occurred the first part of June as well, and the balance of that was to be paid last Tuesday, August 13, and that closing was delayed to the 20th; the acquisition of the remaining 42.5 acres, Lot 12, has never been authorized by council based upon his review of council records and that, assuming council gives authority, is scheduled to close tomorrow as well. He stated that he has no information with regard to any other land transfers, that there have been no drafts of any documents for any other property.

The acting city auditor reported that they have been paying the operating expenses, advertising expenses out of Special Revenue Fund and the construction expenses out of the Capital Project Fund, and right now both of those funds are negative as they have not received enough tax money to make up the balance.

Mayor Owens stated that at this point when the \$17 million overage was 14634
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discovered, people lost all faith in what was happening with the events center; need to gain back trust and respect of the community before going forth with anything, should not invest in land until hear more from committee, architects etc. as to cost and what will be in that building, and present it back to the people.

Upon call for the question on the motion to postpone and upon roll call vote the following voted "aye": Council Members Polovitz, Ellingson, Hanson, Beyer, Babinchak, Bakken, Hafner, Hagness - 8; voting "nay": Council Members Beach, Hamerlik, Carpenter, Sande, Klave - 5. Mayor Owens declared the motion carried and the acquisition of land postponed indefinitely.

APPROVE APPOINTMENT TO PENSION/INSURANCE
COMMITTEE

Mayor Owens announced the appointment of Jim Schothorst to the Pension and Insurance Committee for term expiring in April, 1999, and asked for concurrence in this appointment. It was moved by Council Member Hagness and seconded by Council Member Klave that this appointment be and is hereby approved. Carried 13 votes affirmative.

APPROVE APPOINTMENTS TO PLANNING AND
ZONING COMMISSION

Mayor Owens announced the appointment of Bill Hutchison and John Drees to the Planning and Zoning Commission for terms expiring August 4, 1998 and August 4, 2001, respectively, and asked for concurrence in these appointments. It was moved by Council Member Klave and seconded by Council Member Hafner that these appointments be and are hereby approved. Carried 13 votes affirmative.

APPROVE APPOINTMENT TO BIKEWAY COMMITTEE

Mayor Owens announced the appointment of Jim Bollman to fill the

unexpired three-year term of Marilyn Korbach ending January 1, 1998, and asked for concurrence in this appointment. It was moved by Council Member Hanson and seconded by Council Member Ellingson that this appointment be and is hereby approved. Carried 13 votes affirmative.

APPROVE APPOINTMENT TO IMPACT FEE COMMITTEE

Mayor Owens announced the appointment of Brian Westlund to the Impact Fee Committee and asked for concurrence in this appointment. It was moved by Council Member Beyer and seconded by Council Member Hafner that this appointment be and is hereby approved. Carried 13 votes affirmative.

REFER VARIOUS ITEMS TO COMMITTEE

Various items were presented to the council and/or referred to committee as follows:

- 1) Council Member Hafner reported that an invitation had been given to council to the LaGrave Place Neighborhood Learning Center open house on August 22, that there will be people from HUD in attendance and would behoove council to be present.
- 2) Council Member Hagness reported that there was letter from Congressman Earl Pomeroy on council members' desks that regulations re. Safe Drinking Water Act have been eased and funds authorized for safe drinking water revolving loan funds to help local authorities finance improvements in their water systems, that City has \$30-45 million in projects because of EPA regulations, and thinks this is real round of support.
- 3) Council Member Polovitz presented the matter of blinking traffic signals in
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downtown area; Mayor Owens referred the matter to the public safety committee for consideration.

- 4) Council Member Polovitz presented the matter of minor change (from attached to detached garages) in Detailed Development Plan, Sun Land West 3rd Resubdivision, which was referred to the Planning and Zoning Commission.

ADJOURN

It was moved by Council Member Hagness and seconded by Council Member Hanson that we do now adjourn. Carried 13 votes affirmative.

Respectfully submitted,

Candi Stjern
Acting City Auditor

Approved:

John M. Schmisek, City Auditor