

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: August 13, 2007:

The Regular Meeting of the Board of City Commissioners of the City of Fargo, North Dakota, was held in the City Commission Room at City Hall at 5:00 o'clock p.m., Monday, August 13, 2007.

The Commissioners present or absent were as shown following:

Present: Coates, Mahoney, Williams, Wimmer, Walaker.

Absent: None.

Mayor Walaker presiding.

Order of Agenda Approved:

Commissioner Coates moved the Order of the Agenda be approved moving Item No. "h" from the Consent Agenda to the beginning of the Regular Agenda and adding an extraterritorial item and an annexation at the beginning of the Regular Agenda.

Second by Williams. All the Commissioners voted aye and the motion was declared carried.

Minutes Approved:

Commissioner Coates moved that the Minutes of the Regular Meeting of the Board held on July 30, 2007 be approved as read.

Second by Mahoney. All the Commissioners voted aye and the motion was declared carried.

Consent Agenda Approved:

Commissioner Coates moved the Consent Agenda be approved as follows:

- a. 1st reading of an Ordinance Enacting Section 25-1504.3 of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to Alcoholic Beverages (requiring attendance at annual meeting).
- b. 2nd reading, waive reading and final adoption of the following ordinances; 1st reading 7/30/07:
 - (1) Amending Section 25-1509 of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to Alcoholic Beverages (closing time on Thanksgiving Day).
 - (2) Amending Section 25-1509 of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to Alcoholic Beverages (removal of wine from a restaurant).

- c. Addition of Long Term Disability Insurance to the benefit package for City employees effective 1/1/08.
- d. Agreement for Transit Services and Amendment to the Joint Powers Agreement for Transit Support for 2007-2008 with NDSU.
- e. Job Access Reverse Commute (JARC) grant and authorize staff to develop an agreement with Handi-Wheels to provide services in connection with the grant.
- f. Sale of NRI Infill property at 1113 11th Street North for \$133,900.
- g. Contract extension with Alltel Wireless for two years with two one-year renewal options, effective immediately.
- h. Revised Developer Agreement with Feder Properties, LLP for Tax Increment Financing District No. 2007-02 (moved to the beginning of the Regular Agenda).
- i. Plat of Cape Development Addition.
- j. Receive and file Summons and Complaint in the matter of Douglas and Linda Knutson vs. the City of Fargo.
- k. Receive and file Year to Date – Budget to Actual Report for July 2007.
- l. Liability insurance proposal for landfill gas generator.
- m. Proposal from Clear Energy Brokerage and Consulting to complete a Third Party Verification for the carbon credit potential at the Fargo Landfill.
- n. Three-year scrap metal disposal and processing services agreement with Hazer's Auto and Truck Parts, Inc.
- o. Five-year water tower maintenance and inspection contract with H & H Coatings, Inc.
- p. Police Department budget adjustment and State of North Dakota grant in the amount of \$9,000 for an enforcement program directed at underage drinking violations.
- q. Applications for 5-year property tax exemptions for improvements made to buildings:
 - (1) Rodney and Beverly Blodgett, 1637 2nd Street North.
 - (2) William and Louise Rindy, 3244 Longfellow Road NE.
 - (3) Margaret Jermyn, 1320 10th Street North.
- r. Proposal from Duncan Solutions to provide parking enforcement and citation management services and authorization to develop a contract.

- s. Applications for Games of Chance:
- (1) ND Society of CPA's Foundation for a raffle on 9/25/07.
 - (2) Hope Lutheran Church for bingo on 10/9/07.
 - (3) Holy Spirit Church of Fargo for bingo and a raffle on 10/28/07.
 - (4) ND Section of American Water Works Association for a raffle on 10/25/07.
 - (5) Fargo North Boys Soccer for raffles from 8/1/07 to 10/31/07.
 - (6) Kringen Club, Inc. for bingo from 7/1/07 to 6/30/08.
 - (7) El Zagal 57 Directors Staff for a raffle on 10/14/07.
 - (8) Make-A-Wish Foundation of North Dakota for a raffle on 9/7/07.
- t. Joint Powers Agreement with Cass Rural Water for Prairie Grove 1st Addition.
- u. Form, content and certifications of Ridgewood Flood Control Project Cooperation Agreement (Improvement District No. 5229).
- v. Contract and bond for the Fargo Water Treatment Plant Chiller electrical construction.
- w. Contract and bond for the Radisson parking ramp repairs and maintenance.
- x. Contracts and bonds for general, mechanical and electrical construction for the Main Fargo Public Library.
- y. Contracts and bonds for Project Nos. 5718 and 5734-2.
- z. Bills in the amount of \$5,014,982.57.

Second by Williams. On call of the roll Commissioners Coates, Williams, Wimmer, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Bids Received for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5748:

The bids for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5748 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., August 8, 2007 and the bids were found to be as follows:

Dakota Underground Bid:	Fargo, ND \$1,045,664.00
MIC Bid:	Moorhead, MN \$1,087,404.00
Master Construction Company, Inc. Bid:	Fargo, ND \$1,199,668.60

Robert Gibb and Sons, Inc. Bid:	Fargo, ND \$1,272,732.00
Rising Sun Bid:	Fargo, ND \$1,315,451.00
George E. Haggart, Inc. Bid:	Fargo, ND \$1,334,135.00

Contract for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5748 Awarded to Dakota Underground in the Amount of \$1,045,664.40:

Commissioner Coates offered the following Resolution and moved its adoption:

WHEREAS, The City Engineer has prepared and filed a detailed statement of the estimated costs of Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5748; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received August 8, 2007 for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5748 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5748 shows the bid of Dakota Underground of Fargo, North Dakota, in the sum of \$1,045,664.40 to be the lowest and best bid received.

NOW, THEREFORE, BE IT RESOLVED, That the Board of City Commissioners finds and declares the bid received from Dakota Underground in the sum of \$1,045,664.40 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5748 in the City of Fargo, North Dakota, be and the same is hereby awarded to Dakota Underground for the sum of \$1,045,664.40, subject to the supervision, inspection and approval of the City Engineer, and in accordance with the Plans and Specifications filed in the office of the City Auditor.

Second by Williams. On the vote being taken on the question of the adoption of the Resolution Commissioners Coates, Williams, Wimmer, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the Resolution was adopted.

P.C. Concrete Alley Paving and Incidentals Improvement District No. 5756: Protests Received and Declared Insufficient:

The Statutory Resolution of Necessity for the construction of P.C. Concrete Alley Paving and Incidentals Improvement District No. 5756 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota on July 9 and 16, 2007 and protests representing 31.82 percent of the legal protest area have been received and filed in the office of the City Auditor within the legal protest period.

Commissioner Coates moved the protests be received and filed and declared insufficient.

Second by Williams. On call of the roll Commissioners Coates, Williams, Wimmer, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Bids Received for P.C. Concrete Alley Paving and Incidentals Improvement District No. 5756:

The bids for P.C. Concrete Alley Paving and Incidentals Improvement District No. 5756 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., August 8, 2007 and the bids were found to be as follows:

Key Contracting Bid:	Fargo, ND \$60,777.50
Adelman Concrete and Excavating Bid:	Fargo, ND \$62,077.50
Master Construction Company, Inc. Bid:	Fargo, ND \$63,000.00
Aggregate Industries Bid:	Moorhead, MN \$66,990.00
Strata Corporation Bid:	Grand Forks, ND \$68,360.00
Northern Improvement Company Bid:	Fargo, ND \$86,862.50

Contract for P.C. Concrete Alley Paving and Incidentals Improvement District No. 5756 Awarded to Key Contracting in the Amount of \$60,777.50:

Commissioner Coates offered the following Resolution and moved its adoption:

WHEREAS, The City Engineer has prepared and filed a detailed statement of the estimated costs of P.C. Concrete Alley Paving and Incidentals Improvement District No. 5756; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received August 8, 2007 for P.C. Concrete Alley Paving and Incidentals Improvement District No. 5756 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for P.C. Concrete Alley Paving and Incidentals Improvement District No. 5756 shows the bid of Key Contracting of Fargo, North Dakota, in the sum of \$60,777.50 to be the lowest and best bid received.

NOW, THEREFORE, BE IT RESOLVED, That the Board of City Commissioners finds and declares the bid received from Key Contracting in the sum of \$60,777.50 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for P.C. Concrete Alley Paving and Incidentals Improvement District No. 5756 in the City of Fargo, North Dakota, be and the same is hereby awarded to Key Contracting for the sum of \$60,777.50, subject to the supervision, inspection and approval of the City Engineer, and in accordance with the Plans and Specifications filed in the office of the City Auditor.

Second by Williams. On the vote being taken on the question of the adoption of the Resolution Commissioners Coates, Williams, Wimmer, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the Resolution was adopted.

Contract for Street Reconstruction and Incidentals Improvement District No. 5680 Approved:

Commissioner Coates moved approval of the Contract between the City of Fargo and Master Construction Company, Inc. for Street Reconstruction and Incidentals Improvement District No. 5680 in the City of Fargo, North Dakota.

Second by Williams. On call of the roll Commissioners Coates, Williams, Wimmer, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Contract Bond for Street Reconstruction and Incidentals Improvement District No. 5680 Approved:

Commissioner Coates moved approval of the following described Contract Bond as to sufficiency:

United Fire and Casualty Company, in the amount of \$153,592.50, for Street Reconstruction and Incidentals Improvement District No. 5680 in the City of Fargo, North Dakota.

Second by Williams. On call of the roll Commissioners Coates, Williams, Wimmer, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Contract for Sanitary Sewer, Storm Sewer, Water Main, Asphalt Paving, Curb and Gutter, Lighting and Incidentals Improvement District No. 5690 Approved:

Commissioner Coates moved approval of the Contract between the City of Fargo and Master Construction Company, Inc. for Sanitary Sewer, Storm Sewer, Water Main, Asphalt Paving, Curb and Gutter, Lighting and Incidentals Improvement District No. 5690 in the City of Fargo, North Dakota.

Second by Williams. On call of the roll Commissioners Coates, Williams, Wimmer, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Contract Bond for Sanitary Sewer, Storm Sewer, Water Main, Asphalt Paving, Curb and Gutter, Lighting and Incidentals Improvement District No. 5690 Approved:

Commissioner Coates moved approval of the following described Contract Bond as to sufficiency:

United Fire and Casualty Company, in the amount of \$912,320.20, for Sanitary Sewer, Storm Sewer, Water Main, Asphalt Paving, Curb and Gutter, Lighting and Incidentals Improvement District No. 5690 in the City of Fargo, North Dakota.

Second by Williams. On call of the roll Commissioners Coates, Williams, Wimmer, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5757 (Prairie Grove 1st Addition):

Commissioner Coates moved the following action be taken in connection with Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5757:

Adopt Resolution Creating Improvement District No. 5757:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 5757, in the City of Fargo, North Dakota, be created

53rd Avenue South, Prairie Grove Avenue South, 54th Avenue South, 55th Avenue South, between 25th and 27th Street South.

COMPRISING:

Lots 1 through 18, inclusive, Block 1.

Lot 1, Block 2

Lot 1, Block 3

Lot 1, Block 4

Lots 1 through 46, inclusive, Block 5

Lots 1 through 24, inclusive, Block 6

Lots 1 through 13, inclusive, Block 7

To be platted in Prairie Grove 1st Addition.

All unplatted land located in the NE ¼ of Section 2, Township 138N, Range 49W.

All of the foregoing is located in the City of Fargo, Cass County, North Dakota.

NOW, THEREFORE, BE IT RESOLVED, That Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5757, in the City of Fargo, North Dakota, be and the same is hereby created.

Request Report and Estimate of Cost From the City Engineer for Improvement District No. 5757:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 5757, in the

City of Fargo, North Dakota; as well as an estimate of the approximate cost of said construction. (The Engineer's estimate of cost is \$1,716,000.)

Order Plans and Specifications for Improvement District No. 5757:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 5757, in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 5757:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 5757, in the City of Fargo, North Dakota, as required by law; and

WHEREAS, Plans and Specifications and the Engineer's Report prepared by the City Engineer, have been considered.

NOW, THEREFORE, BE IT RESOLVED, That the Plans and Specifications and Engineer's Report for the construction of Improvement District No. 5757, in the City of Fargo, North Dakota, be and the same are hereby approved and ordered filed in the Office of the City Auditor.

Direct City Auditor's Office to Call for Bids for Improvement District No. 5757:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 5757, in the City of Fargo, North Dakota.

Second by Williams. On call of the roll Commissioners Coates, Williams, Wimmer, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Action on the Revised Developer Agreement with Feder Properties, LLP for Tax Increment Financing District No. 2007-02 Delayed for Two Weeks:

Commissioner Williams stated he asked that Item No. "h" (Revised Developer Agreement with Feder Properties, LLP for Tax Increment Financing District No. 2007-02) be moved to the Regular Agenda because he did not receive a copy of the Agreement. He said he would like this item delayed for two weeks to give him an opportunity to review the document.

Commissioner Williams moved this item be delayed for two weeks.

Second by Mahoney. On call of the roll Commissioners Williams, Mahoney, Coates, Wimmer and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

First Reading of an Ordinance Extending Extraterritorial Zoning and Subdivision Authority of the City of Fargo:

The Board received a communication from Senior Planner Jim Hinderaker stating on February 26, 2007 the City Commission approved an Ordinance extending

the zoning and subdivision authority of the City of Fargo a full four miles beyond the corporate limits of the city. However, he continued, based on recent legislative action limiting the extent in which a city may extend its extraterritorial boundaries, staff recommends the land area included in the ordinance initiated February 26, 2007 be amended to include only two tracts of land in Sections 28, 33, 34, 35 and 36, Township 138 North, Range 49 West and Sections 2, 3 and 4, Township 137 North, Range 49 West of the 5th Principal Meridian. Mr. Hinderaker stated it is the recommendation of staff to cease any further action on the Ordinance extending the zoning and subdivision authority of the City of Fargo initiated on February 26, 2007 and adopt the revised Ordinance.

Commissioner Coates moved that any further action on the Ordinance extending the zoning and subdivision authority of the City of Fargo initiated on February 26, 2007 be ceased, that the requirement relating to receipt of the Ordinance by the Commission one week prior to first reading be waived and that the revised Ordinance Extending Extraterritorial Zoning and Subdivision Authority of the City of Fargo be placed on first reading.

Second by Wimmer. On call of the roll Commissioners Coates, Wimmer, Williams, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Resolution Annexing a 60 Foot Strip of Land in Sections 28 and 33 of Township 138 North, Range 49 West and Section 4 of Township 137 North, Range 49 West:

The Board received a communication from Senior Planner Jim Hinderaker stating on February 28, 2007, the City Commission adopted a Resolution of Annexation wherein the City of Fargo began the process to extend its corporate limits by annexing a strip of land 100 feet wide along 57th Street South. Mr. Hinderaker said after additional review of the proposed annexation, staff recommends the land area included in the original Resolution of Annexation adopted on February 28, 2007 be amended to include portions of Sections 28 and 33, Township 138 North, Range 49 West and Section 4, Township 137 North Range 49 West, all in the Fifth Principal Meridian. He said it is the recommendation of staff to amend the Resolution of Annexation adopted on February 28, 2007 and reschedule the public hearing to determine the sufficiency of any protest at the October 22, 2007 City Commission meeting.

Commissioner Coates offered the following Resolution and moved its adoption:

BE IT RESOLVED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF FARGO:

WHEREAS, The City of Fargo, Cass County, North Dakota, is a municipal corporation, organized and existing under the laws of the State of North Dakota, with about ninety-five thousand (95,000) inhabitants; and

WHEREAS, The Board of City Commissioners on February 28, 2007 resolved to annex a tract of land 100' wide lying parallel to and south and east of the following described line:

Beginning at the current corporate limits of the City of Fargo at the northeast corner of the northwest quarter of Section 28, Township 138 North, Range 49 West of 5th Principal Meridian, Cass County, North Dakota; thence west along

the north line of Section 28 to the west line of said Section 28; thence south along the west line of Section 28 and 33, Township 138 North, Range 49 West and the west line of Sections 4 and 9, Township 137 North, Range 49 West to the south line of Section 9 and thence terminating said 100' wide tract;

said tract containing 54.55 acres, more or less; and

WHEREAS, Said Resolution called for a hearing to be held August 27, 2007; and

WHEREAS, The City of Fargo Planning staff recommend that the Board of City Commissioners take action to amend the Resolution of Annexation of February 28, 2007 by modifying the description of land sought to be annexed and by modifying the date of the hearing on the same; and

WHEREAS, There is contiguous and adjacent to the City of Fargo, a tract or parcel of land hereinafter specifically described, containing 102.16 acres, more or less, which tract or parcel of land is not presently a part of the City of Fargo.

NOW, THEREFORE, BE IT RESOLVED, by the Board of City Commissioners of the City of Fargo, North Dakota, that the Resolution of Annexation of February 28, 2007 is hereby amended so that the boundaries of the City of Fargo be, and they hereby are, extended so as to include and incorporate within the corporate limits of the City of Fargo, Cass County, North Dakota, the following described land:

Annexation to the City of Fargo

Annexation of portions of Sections 28 and 33, Township 138 North, Range 49 West and Section 4, Township 137 North, Range 49 West, all in the Fifth Principal Meridian, Cass County, North Dakota described as follows:

Beginning at the current corporate limits of the City of Fargo at the northeast corner of the northwest quarter (NW $\frac{1}{4}$) of said Section 28; thence west along the north line of Section 28 to the west line of Section 28; thence south along the west line of said Sections 28, 33 and 4 to the southwest corner of said Section 4; thence east along the south line of Section 4 to the east line of the west half (W $\frac{1}{2}$) of the southwest quarter (SW $\frac{1}{4}$) of said Section 4; thence north along said east line of west half (W $\frac{1}{2}$) of southwest quarter (SW $\frac{1}{4}$) of Section 4 to the north line of said southwest quarter (SW $\frac{1}{4}$); thence west along the north line of said southwest quarter (SW $\frac{1}{4}$) of Section 4 to a point on a line parallel to and 60' east of the west line of said Section 4; thence north along said line parallel to and 60' east of the west line of said Sections 4, 33 and 28 to a point on a line parallel to and 60' south of the north line of said Section 28; thence east along said line parallel and 60' south of the north line of said Section 28 to the east line of said northwest quarter (NW $\frac{1}{4}$) of Section 28; thence north along the east line of said northwest quarter (NW $\frac{1}{4}$) of Section 28 to the point of beginning.

Said annexation tract contains 102.16 acres, more or less.

BE IT FURTHER RESOLVED, By the Board of City Commissioners of the City of Fargo, North Dakota, that this Resolution be published in the official newspaper for the City of Fargo once each week for two successive weeks, and a hearing be held on the 22nd day of October, 2007, at 5:15 p.m., in the City Commission Room, City Hall, Fargo, North Dakota or such other time and place as determined by the Board of City Commission as provided by law.

Second by Wimmer. On the vote being taken on the question of the adoption of the Resolution Commissioners Coates, Wimmer, Williams, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the Resolution was adopted.

Request for an Extension of the Noise Ordinance for the Outdoor 3rd Thursday Event Approved:

The Board received a communication from Mona Arnold, Manager of the Fargo American Legion, requesting an extension of the City's Noise Ordinance on August 16, 2007 from 10:00 p.m. to 11:00 p.m. for the last of the outdoor 3rd Thursday events on the lawn of the Fargo American Legion.

Commissioner Wimmer moved the request be approved.

Second by Williams. On call of the roll Commissioners Wimmer, Williams, Coates, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Hearing on Application to Transfer the Alcoholic Beverage License from Nodak Hotels, LLC d/b/a Expressway Inn to Choice Alliance II, Inc. d/b/a Quality Inn Continued to August 27, 2007:

This was the time and date set for a Hearing on an application to transfer the Class "ABH" Alcoholic Beverage License from Nodak Hotels, LLC d/b/a Expressway Inn to Choice Alliance II, Inc. d/b/a Quality Inn, at 1340 21st Avenue South, however, the Auditor's Office has requested the Hearing be continued to August 27, 2007.

Commissioner Wimmer moved the Hearing be continued to August 27, 2007.

Second by Mahoney. On call of the roll Commissioners Wimmer, Mahoney, Williams, Coates and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Hearing on the Rezoning of Parcels of Land in Erskines Addition Continued to September 24, 2007 (1226 Univ. Dr. and 1117 13th Ave. S.):

This was the time and date set for a Hearing on the rezoning of parcels of land in Erskines Addition, however, the Planning Commission continued their Hearing and the City Commission should continue their Hearing to September 24, 2007.

Commissioner Mahoney moved the Hearing be continued to September 24, 2007.

Second by Wimmer. On call of the roll Commissioners Mahoney, Wimmer, Williams, Coates and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Amendment to the Growth Plan Denied (3307, 3805 and 4005 52nd Avenue South):

A Hearing had been set for July 30, 2007 to consider a petition to amend the Growth Plan from Office or Commercial, Office or Medium/High Density Residential, Commercial or Medium/High Density Residential, Low/Medium Density Residential or Medium/High Density Residential, Medium/High Density Residential and Low/Medium Density Residential to Commercial for property located on portions of the Southwest Quarter of Section 35, Township 139 North, Range 49 West and portions of the Southeast Quarter of Section 34, Township 139 North, Range 49 West.

At the July 30, 2007 meeting, the Hearing was continued to this day and hour.

The Fargo Planning Commission recommended denial of the amendment to the Growth Plan at their June 13, 2007 meeting.

No written protest or objection to the amendment to the Plan has been received or filed in the Planning and Development Department.

Senior Planner Jim Hinderaker summarized the background on the application to amend the Growth Plan. He said staff has been relatively supportive of the request on the east side of the interstate, however, the Planning Commission, based on opposition of the neighborhood, recommends denial of the amendment. He said staff was supportive of the Growth Plan and zoning change for the 52 acres of commercial previously approved. He said anything over the 52 acres would be moving quite a ways away from the Growth Plan. He said staff is recommending the request be denied.

Attorney Jonathan Garaas, representing applicants Fred and Earlyne Hector, made a presentation on the Hectors' applications relating to the Growth Plan and requests for rezoning. He also summarized the reasons he felt the applications should be approved.

At 6:00 p.m. the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

Jay Manley, resident of Fox Run, spoke in opposition to the amendment.

Mr. Garaas questioned if Mr. Manley lived in the legal protest area.

Commissioner Coates stated residents have the right to voice their opinion on this issue.

Mr. Garaas stated he is not talking about free speech. He said with this type of proceeding, only the people who live within 300 feet of the area can legally protest.

Rick Kasper, 2613 Meadow Creek Circle, spoke in opposition to the amendment.

Mike Hamerlik, 2601 Meadow Creek Circle, spoke in opposition to the amendment.

Commissioner Mahoney moved to accept the findings and recommendations of staff contained in the staff report (Attachment "A") and the Planning Commission and deny the Growth Plan amendment on the basis that the Growth Plan amendment does not satisfy the approval criteria.

Second by Coates. On call of the roll Commissioners Mahoney, Coates, Williams and Walaker voted aye.

Commissioner Wimmer voted nay.

The motion was declared carried.

Petition Requesting the Rezoning of Parcels of Land in the Southwest Quarter of Section 35, Township 139 North, Range 49 West and portions of the Southeast Quarter of Section 34, Township 139 North, Range 49 West Denied (3307, 3805 and 4005 52nd Avenue South):

A Hearing had been held by the Fargo Planning Commission on June 13, 2007, for the purpose of considering a petition requesting that the zoning be changed from AG, Agricultural to GC, General Commercial for property located on portions of the Southwest Quarter of Section 35, Township 139 North, Range 49 West and portions of the Southeast Quarter of Section 34, Township 139 North, Range 49 West, and the Fargo Planning Commission at such Hearing recommended to the Board of City Commissioners that the change in zoning as petitioned for be denied.

The City Auditor's Office published a Notice of Hearing stating July 30, 2007 was the time and date set for said Hearing at which time all interested persons could appear and would be heard.

At the July 30, 2007 meeting, the Hearing was continued to this day and hour.

There had been no written or verbal protests to the request and no one is present to protest thereto.

Commissioner Coates offered the following Resolution and moved its adoption:

WHEREAS, All legal requirements in connection with the above-described request for rezoning have been complied with; and

WHEREAS, The Fargo Planning Commission denied the request on June 13, 2007; and

WHEREAS, There have been no written or verbal protests to the request for rezoning and no one is present to protest thereto.

NOW, THEREFORE, BE IT RESOLVED, That the findings and recommendations of staff and the Planning Commission contained in the staff report (Attachment "A") be accepted and the petition for rezoning the above-described property be and the same is hereby denied on the basis that the zoning change request does not satisfy Section 20-0906.4.1, Section 20-0906.F.3 and 20-0906.F.4 of the Land Development Code.

Second by Wimmer. On the vote being taken on the question of the adoption of the Resolution Commissioners Coates, Wimmer, Williams, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the Resolution was adopted.

Petition Requesting the Rezoning of Parcels of Land in the Southeast Quarter of Section 34, Township 139 North, Range 49 West Denied (4005 52nd Avenue South):

A Hearing had been held by the Fargo Planning Commission on April 11, 2007, for the purpose of considering a petition requesting that the zoning be changed from AG, Agricultural to GC, General Commercial, on part of the Southeast Quarter of

Section 34, Township 139 North, Range 49 West, and the Fargo Planning Commission at such Hearing recommended to the Board of City Commissioners that the change in zoning as petitioned for be denied.

The City Auditor's Office published a Notice of Hearing stating April 23, 2007 is the time and date set for said Hearing at which time all interested persons could appear and would be heard.

At the April 23, 2007 meeting, the Hearing was continued to May 7, 2007.

At the May 7, 2007 meeting, the Hearing was continued to July 30, 2007.

At the July 30, 2007 meeting, the Hearing was continued to this day and hour.

Commissioner Coates offered the following Resolution and moved its adoption:

WHEREAS, All legal requirements in connection with the above-described request for rezoning have been complied with; and

WHEREAS, The Fargo Planning Commission denied the request on April 11, 2007; and

WHEREAS, There have been no written or verbal protests to the request for rezoning and no one is present to protest thereto.

NOW, THEREFORE, BE IT RESOLVED, That the findings and recommendations of staff and the Planning Commission contained in the staff report (Attachment "A") be accepted and the petition for rezoning the above-described property be and the same is hereby denied on the basis that the zoning change request does not satisfy Section 20-0906.4.1, Section 20-0906.F.3 and 20-0906.F.4 of the Land Development Code.

Second by Mahoney. On the vote being taken on the question of the adoption of the Resolution Commissioners Coates, Mahoney, Williams, Wimmer and Walaker voted aye.

No Commissioner being absent and none voting nay, the Resolution was adopted.

Appropriate Staff Authorized to Negotiate with the City of Grand Forks for a Three-Year Landfilling Agreement:

The Board received a Report of Action from the Utility Committee submitting a communication from Enterprise Director Bruce Grubb regarding the evaluation of a request from the City of Grand Forks for a landfilling agreement with the City of Fargo. They said on June 18, 2007, the City Commission approved a technical and economical evaluation of the City of Grand Fork's request. The Committee stated the City of Grand Forks has a present municipal waste stream (MSW) volume of approximately 70,000 tons per year, with about 50% from areas outside the City of Grand Forks and, therefore, two waste stream scenarios were evaluated to determine the impacts on the Fargo Landfill as reflected below:

Scenario 1 – Grand Forks area MSW (70,000)

Scenario 2 – Grand Forks only MSW (35,000)

They said each scenario was evaluated based on a three-year, five-year, ten-year and continuous term of agreement for impacts on the following:

Life Expectancy (Currently 17.1 years)

Operating Costs (Additional Costs)

Operating Revenues (Additional Revenues)
Outside Waste Limitation (Currently 35%)
Old Landfill Reclamation (Future Landfill Space)

The Committee stated the report conclusion included a staff recommendation for a five-year agreement to accept baled MSW from the City of Grand Forks only (Scenario 2). Under the five-year agreement, they continued, the current landfill life expectancy would be reduced by about 10 months and \$4,725,000 would be generated in new revenue and if the new revenue were used to reclaim a portion (25%) of the old landfill, an additional 5.5 years of life expectancy would be gained. They said after considerable discussion, it was suggested that a three-year agreement, with two optional one-year extensions, would encourage the City of Grand Forks to continue pursuing other waste disposal options. The Committee summarized the effect of the terms on the Fargo Landfill evaluation criteria and stated a three-year landfilling agreement with the City of Grand Forks would reduce the landfill's life expectancy by six months and generate net revenues in the amount of \$2,610,000. They said if the new revenue were used to reclaim the old landfill, roughly 15% of the old landfill could be reclaimed providing 3.3 years of additional life expectancy. They said each of the optional one-year extensions would reduce the landfill's life expectancy by two months and generate net revenues of \$945,000. They said if the new revenue were used to reclaim the old landfill, an additional 5% of the old landfill could be reclaimed providing an additional 1.1 years of life expectancy for each year of extension.

Mr. Grubb stated this is a request to negotiate an agreement with Grand Forks. He said the formal agreement would have to come back to the City Commission for approval.

Ron Gilmore, 2817 Parkview Drive South, stated his only concern is the additional truck traffic the landfilling agreement will cause.

Nancy Shappell, 1314 3rd Street North, questioned if Grand Forks recycles and if this is compost waste. She said there are a lot of issues that need to be addressed concerning the life of Fargo's landfill and the need for a new one.

Mayor Walaker stated Grand Forks does recycle. He said Fargo needs to keep the pressure on Grand Forks for them to find a solution for their solid waste, however, it would not be right for Fargo to say no to their request.

Art Berg stated it is foolish for Grand Forks to bring their garbage to Fargo and he is totally against this request.

Commissioner Williams stated this agreement gives Fargo the opportunity to extend the life of the landfill 17 to 20 years.

Commissioner Williams moved the City of Fargo negotiate with the City of Grand Forks for a three-year landfilling agreement, with two one-year extension options, to accept baled MSW from the City of Grand Forks only with terms to include a \$27 per ton disposal fee for the initial three-years with an escalator provision for the optional one-year extensions, that the out-of-city landfill limitation policy be modified from 35% to 45% and that the appropriate staff encourage Grand Forks to pursue other landfilling options.

Second by Wimmer. On call of the roll Commissioners Williams, Wimmer, Mahoney, Coates and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

First Reading of an Ordinance Relating to Referral to the City Voters of Ordinance by the City Commission:

The Board received a communication from City Attorney Erik Johnson stating at the last City Commission meeting, the Board instructed him to draft an ordinance to create a procedure whereby the City Commission may submit a proposed ordinance to the voters of the city. He said he was also instructed to draft a proposed ordinance that removed many of the existing exceptions to the prohibition of smoking in public and work places. He said he was also asked by individual Commissioners to prepare alternative smoking ban ordinances consisting of one which would allow smoking in a cigar bar and another that did not have the effective date tied to successful passage by West Fargo of a similar ordinance. Thus, he continued, he is submitting four proposed ordinances.

Randy Thorson, 4202 Timberline Drive, stated at the last City Commission meeting he asked for an easier way to get a vote of the people and Mr. Johnson came up with an Ordinance. He said he wants to thank the Commission for doing that, however, he does not think the proposed ordinance is the way to do it. He said this ordinance will allow the Commission to place an item on the ballot for another vote a week after it has been voted on. He said the Home Rule Charter does not give the Commission the right to change the way city government is operated and the proposed ordinance will do that and that is illegal. He said this is all about the checks and balances of government and if the City Commission makes a decision a citizen does not like, that citizen can refer the ordinance. He said the proposed ordinance allows the City Commission to take the issues to a vote of the people and they will no longer have to make decisions on tough issues. He said he sees the proposed ordinance as the wrong way to go. He said the right way is for the Commission to make their decision and if the people do not like that decision, then they refer it.

There was discussion regarding the intent of the ordinance.

Mr. Johnson stated the intent of the ordinance was not to take away the rights of the people.

In answer to a question, Mr. Johnson stated there is no time limit on putting an item back on the ballot.

Commissioner Coates stated the City Commission should not be able to put an item back on the ballot within a year that it has been voted on.

Commissioner Williams stated the City Commission needs to make sure they are not giving themselves more power than they already have.

Mr. Thorson stated it is the right of the people to initiate ordinances and the City Commission should not have that right. He said the City Commission should make decisions on issues and the people either like it or refer the issue.

At 7:05 p.m. the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

Commissioner Williams moved the requirement relating to receipt of the Ordinance by the Commission one week prior to first reading be waived and that the Ordinance Enacting Article 28-03 of Chapter 28 of the Fargo Municipal Code Relating

to Referral to the City Voters of Ordinance by the City Commission be placed on first reading contingent on the City Attorney addressing the concerns regarding the Home Rule Charter's language relating to the City Commission's ability to place an item including a referred ordinance on the ballot no sooner than the time line that is in the Home Rule Charter.

Second by Coates for discussion purposes.

Ron Gilmore questioned how the City Commission can pass the proposed ordinance without changing the Home Rule Charter. He said it would be his recommendation that the City Commission ask for an Attorney General's opinion on this issue before moving forward with the ordinance.

Mr. Johnson stated the Attorney General's opinion is always an option.

June Herman, Senior Director of Public Advocacy for the American Heart Association, encouraged the Commissioners to move forward with a 100% smoke free city ordinance.

John Fischer, Safe Coalition, encouraged the Commission to pass a smoke free ordinance and one that is not tied to West Fargo's actions.

Eugene Dumont, 2825 9th Street North, stated the right thing to do is pass an ordinance that says Fargo is going to be smoke free and the only exception would be JT Cigarro's.

There was discussion regarding when the smoking ban issue would be placed on the ballot.

Mayor Walaker stated this spring it was agreed that Fargo would tie their ordinance to West Fargo's and it was his understanding that Fargo was not going to do this alone.

Commissioner Coates stated that was the understanding, however, Fargo and West Fargo may end up with two different opinions. She said she would like to direct the City Attorney to check on the legal issues of the proposed ordinance and whether or not an Attorney General's opinion is needed.

Mr. Johnson stated he would have no problem getting an Attorney General's opinion. He said the Attorney General's opinion does have some weight, however, it is just an opinion.

On call of the roll Commissioners Williams, Coates, Wimmer, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

First Reading of an Ordinance Relating to the Prohibition of Smoking in Public Indoor Workplaces:

Jim Swanick, retail liquor dealer, stated in regard to the Ordinance Relating to the Prohibition of Smoking in Public Workplaces, if JT Cigarro is allowed an exemption it should just be for cigars and not cigarettes. Otherwise, he continued, it would be very unfair to the other liquor dealers.

Dr. John Baird, Health Officer for Cass County, read a prepared statement on the harmful effects of second hand smoke. He said the City Commission should pass a 100% smoke free ordinance in public places.

Ron Gilmore, 2817 Parkview Drive South, stated he does not smoke and he prefers nonsmoking places, however, he is also adamant about business. He questioned the economic impact of revenue to the City if it had a smoking ban and a

shortfall occurred, whether programs would be cut or property taxes would be raised. He said it boils down to what it is going to cost the taxpayers. He said the people of Fargo voted on an ordinance that has been working and, at this point, he would like an answer to the economic impact of the proposed ordinance relating to a smoking ban.

Commissioner Wimmer stated Mr. Gilmore is asking a question that cannot be answered. He said there is no study that could be done that would give a definite answer.

Mr. Gilmore stated if this is a health issue, then the City Commission should be willing to pass an ordinance banning all tobacco in Fargo.

Randy Thorson, 4202 Timberline Drive, stated since the Home Rule Charter was adopted, there has never been a challenge to the vote of the people. He said the Commission is saying they do not like the outcome of the last time this issue was voted on so they are going to change that. He said the Commission will be making history if they do this.

Rick Carik, Rick's Bar, stated he understood there was an agreement that there was to be a level playing field with West Fargo. He said if there is not a level playing field, he can see people taking their business elsewhere.

Commissioner Coates questioned West Fargo City Commissioner Brenda Warren on the possibilities of Fargo and West Fargo having a level playing field.

Commissioner Warren stated she is hoping West Fargo will reconsider and go with a 100% exemption. She said the 100% smoke free ordinance should be passed and then, if the bar owners want to refer it, they can.

In answer to a question from Commissioner Williams, Commissioner Warren stated giving an exemption to JT Cigarro's would be unfair to the other bar owners in town.

Joel Fremstad, Attorney for JT Cigarro, stated this is an economic issue and JT Cigarro is not trying to get a leg up on anyone. He said JT Cigarro agrees that cigarettes should not be allowed in their establishment and they are proposing to be a cigar bar by the end of the year. He also read a prepared statement from Dana Coulter, owner of JT Cigarro, outlining his reasons for requesting an exemption.

Commissioner Coates said she talked to Mr. Coulter about building a four-season porch and what he said was it boils down to money and it would cost approximately \$49,000.

At 8:25 p.m. the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

In answer to a question regarding JT Cigarro's moving to a new location, Ryan Beckman, General Manager of JT Cigarro's, stated those plans have been put on the back burner until they know what is going on with the smoking ban.

Mr. Fischer stated there have been some comments on SAFE's stand on JT Cigarro and they would like to see a complete smoking ban.

Commissioner Wimmer stated he supports Ordinance No. 3 which is a complete smoking ban, no contingencies for West Fargo and no exemptions for JT Cigarro.

Commissioner Wimmer moved the requirement relating to receipt of the Ordinance by the Commission one week prior to first reading be waived and that the

Ordinance Repealing and Re-Enacting Article 10-11 of Chapter 10 of the Municipal Code of the City of Fargo Relating to the Prohibition of Smoking in Public Indoor Workplaces be placed on first reading.

Second by Coates.

Commissioner Wimmer stated this will get the process started and put something on the ballot for a vote.

Commissioner Coates stated it is her hope that Fargo will be on an even playing field with West Fargo.

Commissioner Mahoney stated 10 states have cigar bar exemptions. He questioned if the Commission would consider a cigar bar exemption for a year to give JT Cigarro's a chance to change their business plan.

Commissioner Wimmer stated it is not his intent to shut down JT Cigarro's business. He said the ordinance is going to affect every bar owner and they will need to make adjustments. He said he does not think it would be fair to the other bar owners if JT Cigarro was exempt.

On call of the roll Commissioners Williams, Coates, Wimmer and Mahoney voted aye.

Mayor Walaker voted nay.

The motion was declared carried.

Commissioner Wimmer moved that the Board adjourn to 5:00 o'clock p.m., Monday, August 27, 2007.

Second by Williams. All the Commissioners voted aye and the motion was declared carried.

The time at adjournment was 8:48 o'clock p.m.