

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: July 30, 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, July 30, 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.

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 16, 2007 be approved as read.

Second by Williams. 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. Delay consideration of the tax increment financing policy and application until 8/27/07 (delayed from the 6/4/07 and 7/2/07 Regular Meetings).
- b. Pledged securities as of June 30, 2007.
- c. Agreement with the Department of Transportation for \$346,036 in state aid transit funds.
- d. Hot Site Agreement with the City of Bismarck for City data backup.
- e. Independent Auditor's report and the City Comprehensive Annual Financial Report for the year ended December 31, 2006.
- f. Request from Beyond Shelter, Inc. to access the \$156,000 from the City's HOME project funds for the Sunrise North housing development.

- g. Memorandum of Understanding with the Fargo Housing and Redevelopment Authority to purchase property at 414 11th Street North.
- h. Applications for 5-year property tax exemptions for improvements made to buildings:
 - (1) Barry and Nancy Land, 451 Oakland Avenue South.
 - (2) Zaundra Bina, 1902 16th Street South.
 - (3) William Broekemeier, 2001 3rd Avenue South.
- i. Receive and file Ordinance Relating to Alcoholic Beverages (requiring attendance at annual meeting).
- j. Waive requirement for receipt of an Ordinance one week prior to 1st reading and 1st reading of the following Ordinances Relating to Alcoholic Beverages:
 - (1) Amending Section 25-1509 (F) 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 (N) of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to Alcoholic Beverages (removal of wine from a restaurant).
- k. Alcoholic Beverage License application form and policy change to have applications reviewed by the Liquor Control Committee prior to City Commission action.
- l. Site Authorization for Games of Chance filed by Sts. Anne & Joachim Catholic Church at the Church.
- m. Applications for Games of Chance:
 - (1) Spartan Boosters, Inc. for raffles from 8/24/07 through 3/15/08.
 - (2) Rape and Abuse Crisis Center of Fargo-Moorhead for a raffle on 10/20/07.
 - (3) Knights of Columbus Cardinal Muench Assembly #788 for a calendar raffle from 1/1/08 to 1/31/08.
- n. Agreement for Special Improvements with Level 1A Investments, LLC for improvements in South Forty at Osgood Second Addition.
- o. Declaration of Dedication regarding 52nd Avenue and public utility easement.
- p. Agreement for Entry Construction with Sunset Memorial Gardens at 52nd Avenue South and University Drive.
- q. Engineering Services Agreement with Kadrmas, Lee & Jackson for 52nd Avenue South reconstruction (Improvement District No. 5314).
- r. Cost Participation Agreement with the City of Moorhead in the amount of \$30,475 for Project No. 5739.

- s. Agreement Regarding Special Assessments and Memorandum Agreement for property in Urban Plains Additions.
- t. Land parcel swap and right-of-way encroachment for Project No. 5714.
- u. Bid award for the Carlson Library shelving and equipment to Direct Office Solutions in the amount of \$89,685.
- v. Bid award for the Radisson parking ramp repairs and maintenance to RAM Building Restoration and Waterproofing, LLC in the amount of \$285,010.
- w. Bid awards for Project Nos. 5734-2 to Moorhead Electric in the amount of \$61,193 and 5755 to Ernst Trenching, Inc. in the amount of \$39,595.
- x. Change Order No. 1 for a decrease of \$258,385.91 for Improvement District No. 5689.
- y. Contract time extension to 7/9/07 for Improvement District No. 5682.
- z. Bills in the amount of \$5,739,252.66.

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

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

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

The Statutory Resolution of Necessity for the construction of Sanitary Sewer, Water Main, Storm Sewer, Asphalt Paving, Curb and Gutter, Lighting and Incidentals Improvement District No. 5690 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota on June 25 and July 3, 2007 and no protests have been filed in the office of the City Auditor within the legal protest period.

Commissioner Coates moved that the Board declare that no protests have been filed to the construction of Sanitary Sewer, Water Main, Storm Sewer, Asphalt Paving, Curb and Gutter, Lighting and Incidentals Improvement District No. 5690.

Second by Williams. On call of the roll Commissioners Coates, Williams, Mahoney, Wimmer 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, Asphalt Paving, Curb and Gutter, Lighting and Incidentals Improvement District No. 5690:

The bids for Sanitary Sewer, Water Main, Storm Sewer, Asphalt Paving, Curb and Gutter, Lighting and Incidentals Improvement District No. 5690 in the City of

Fargo, North Dakota were opened at 11:30 o'clock a.m., July 25, 2007 and the bids were found to be as follows:

Master Construction Bid:	Fargo, ND \$ 912,320.20
Northern Improvement Company Bid:	Fargo, ND \$ 953,694.65
Dakota Underground Bid:	Fargo, ND \$1,125,999.30

Contract for Sanitary Sewer, Water Main, Storm Sewer, Asphalt Paving, Curb and Gutter, Lighting and Incidentals Improvement District No. 5690 Awarded to Master Construction in the Amount of \$912,320.20:

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, Asphalt Paving, Curb and Gutter, Lighting and Incidentals Improvement District No. 5690; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received July 25, 2007 for Sanitary Sewer, Water Main, Storm Sewer, Asphalt Paving, Curb and Gutter, Lighting and Incidentals Improvement District No. 5690 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, Asphalt Paving, Curb and Gutter, Lighting and Incidentals Improvement District No. 5690 shows the bid of Master Construction of Fargo, North Dakota, in the sum of \$912,320.20 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 Master Construction in the sum of \$912,320.20 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Sanitary Sewer, Water Main, Storm Sewer, Asphalt Paving, Curb and Gutter, Lighting and Incidentals Improvement District No. 5690 in the City of Fargo, North Dakota, be and the same is hereby awarded to Master Construction for the sum of \$912,320.20, 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, Mahoney, Wimmer and Walaker voted aye.

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

City Auditor's Office Directed to Advertise for Bids for Project Nos. 5654, 5692, 5751 and 5761:

Commissioner Coates moved the City Auditor's Office be directed to advertise for bids for Project Nos. 5654, 5692, 5751 and 5761.

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

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

Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5749 (Urban Plains by Brandt Addition):

Commissioner Coates moved the following action be taken in connection with Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5749:

Adopt Resolution Creating Improvement District No. 5749:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 5749, in the City of Fargo, North Dakota, be created

On 30th Avenue South from 49th Street to the west lot line of Lot 4, Block 3 of Urban Plains Center Addition.

On 31st Avenue South from 51st Street to 500' west.

On 51st Street South from 30th Avenue to 32nd Avenue.

COMPRISING

Lots 3 and 4, inclusive, Block 6.

Lot 7, Block 8.

All in Urban Plains by Brandt 1st Addition.

Lots 4 through 5, inclusive, Block 1.

All in Urban Plains Medical Park Addition.

Lots 1 and 2, inclusive, Block 1.

All in Urban Plains Rec Facility Addition.

Lot 1, Block 1.

Lots 1 and 2, Block 2.

Lots 1 through 4, inclusive, Block 3.

Lot 1, Block 4.

Lot 1, Block 5.

All in Urban Plains Center Addition.

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

NOW, THEREFORE, BE IT RESOLVED, That Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5749, 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. 5749:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 5749, 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 \$1,845,550.)

Order Plans and Specifications for Improvement District No. 5749:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 5749, in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 5749:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 5749, 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. 5749, in the City of Fargo, North Dakota, be and the same are hereby approved and ordered filed in the Office of the City Auditor.

Adopt Resolution Declaring Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Necessary:

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

That it be and is hereby declared necessary to construct Concrete Curb & Gutter, Asphalt Pavement, Street Lights, Sidewalks & Incidentals, Improvement District No. 5749 in the City of Fargo, North Dakota, according to the Plans and Specifications approved by the Board of City Commissioners of the City of Fargo, North Dakota, filed in the Office of the City Auditor, and open for public inspection.

That a portion of said Concrete Curb & Gutter, Asphalt Pavement, Street Lights, Sidewalks & Incidentals improvement is to be paid from City Sales Tax, and approximately 98% is to be assessed against the benefited property in amounts proportionate to and not exceeding the benefits to be derived by them respectively from said improvement.

Protests against the proposed Concrete Curb & Gutter, Asphalt Pavement, Street Lights, Sidewalks & Incidentals must be in writing and must be filed with the City Auditor's Office within thirty days after the first publication of this Resolution.

BE IT FURTHER RESOLVED, That the City Auditor's Office is hereby instructed to publish this Resolution, as required by law.

Direct City Auditor's Office to Call for Bids for Improvement District No. 5749:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 5749, in the City of Fargo, North Dakota.

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

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

Contract for PC Concrete Pavement and Incidentals Improvement District No. 5704 Approved:

Commissioner Coates moved approval of the Contract between the City of Fargo and Dakota Underground for PC Concrete Pavement and Incidentals Improvement District No. 5704 in the City of Fargo, North Dakota.

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

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

Contract Bond for PC Concrete Pavement and Incidentals Improvement District No. 5704 Approved:

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

United Fire and Casualty Company, in the amount of \$796,612.93, for PC Concrete Pavement and Incidentals Improvement District No. 5704 in the City of Fargo, North Dakota.

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

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

Contract for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5742 Approved:

Commissioner Coates moved approval of the Contract between the City of Fargo and Shermans, LLC for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5742 in the City of Fargo, North Dakota.

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

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

Contract Bond for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5742 Approved:

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

Dacotah Insurance, in the amount of \$353,146.12, for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5742 in the City of Fargo, North Dakota.

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

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

Request Received that All City of Fargo Television Productions be Captioned:

The Board received a communication from Barb McKeever regarding a request to provide closed-captioning for all City of Fargo television productions. Ms. McKeever said she would like to be able to watch and understand City meetings, but right now it is a waste of her time.

The Board received a communication from Adrian Herbst, the City's cable television consultant, stating it is of his opinion the City is not legally obligated to provide such service and under federal laws and FCC regulations, locally originated programming is exempt from the general obligation of cable providers to provide closed captioning services. Mr. Herbst stated the City may, of course, wish to voluntarily provide such services. He said obligations of cable operators to provide closed captioning services are addressed in the federal Video Programming Accessibility Act of 1996 which establishes the FCC as the exclusive agency to administer closed captioning and other video accessibility requirements. He said the basic requirement under federal law is that all providers of video programming must provide closed captioning service except for exempt programming which the City of Fargo cable access programming qualifies under Section 79.1 (d). Several exemptions, he continued, appear to specifically apply to the City of Fargo's situation. Mr. Herbst stated section 79.1 (d) Nos. 11 and 12 state captioning expense in excess of 2% of gross revenues and channels producing revenues of under \$3,000,000 are primary reasons that Fargo's Cable Access Channels are exempt from providing closed captioning.

The Board received a communication from Communications Manager Heather Mitzel regarding an overview of closed captioning of City meetings. She said in order to facilitate closed captioning, the City would have to purchase and install equipment which would cost approximately \$7,000 for the encoder, telephone interface, modem and installation and the estimated transcription costs would be from \$20,000 to \$67,000 annually. She stated the City recently installed a sound amplification system in the Commission Room for use by the hearing impaired. Another option, she continued, is to hire someone to take notes at the meeting on a laptop connected to a computer monitor that the hearing impaired person could view. She said the City has been advised by a regional ADA consultant that note taking is a reasonable accommodation under ADA guidelines.

City Administrator Pat Zavoral thanked Ms. McKeever for making the City aware of special needs for people with disabilities. He said the City recently installed assistive listening devices in the Commission Room, however, Ms. McKeever submitted a request for closed captioning as reading the meeting dialogue as it takes place better meets her disability needs. He said Ms. Mitzel has studied the costs associated with closed captioning and found the costs from \$150 to \$250 an hour. Tonight, he said, the City hired a person on a contractual basis to transcribe the meeting for Ms. McKeever which is more cost effective. He said closed captioning needs to be addressed but the City of Fargo is not legally bound to provide the service.

Ms. McKeever said she wanted to know why the City is not legally required to provide closed captioning.

City Attorney Erik Johnson said the basic law requires closed captioning but the City meets the exemption of not receiving over \$3,000,000 in television revenues.

Cheryl Bergian, 703 North 11th Street, stated the City should study the costs and figure out a way for the City to include closed captioning in its budget. She said there are many disabled people in the community that will not speak out and she asked the City to make alternative options known to the community so meetings are accessible to people with disabilities.

Mayor Walaker said the City has been expanding services the last couple of years but it is important for the City to understand the need to provide services for disabled people.

Commissioner Wimmer said the Commission will take Ms. McKeever's request under consideration.

Application Filed by Taco Shop, Inc. d/b/a Taco Shop for an Alcoholic Beverage License Approved:

A Hearing had been set for this day and hour on the application filed by Taco Shop, Inc. d/b/a Taco Shop for a Class "H" Alcoholic Beverage License at 2350 45th Street South, notice of which had been duly published in the official newspaper for the City of Fargo.

No written protest or objection to the granting of the application has been received or filed in the office of the City Auditor, and said application has been approved by the Police Department as to the character of the applicant.

The Board determined that no person is present at this Hearing to protest or offer objection to the granting of the application.

Commissioner Mahoney moved the application be approved.

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

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

Application to Transfer the Alcoholic Beverage License from Windsor Properties d/b/a Hooters to FTS Holdings, Inc. d/b/a Hooters of Fargo Approved:

A Hearing had been set for this day and hour on an application to transfer the Class "I" Alcoholic Beverage License from Windsor Properties d/b/a Hooters to FTS Holdings, Inc. d/b/a Hooters of Fargo, at 1649 38th Street South notice of which had been duly published in the official newspaper for the City of Fargo.

No written protest or objection to the granting of the application has been received or filed in the office of the City Auditor, and said application has been approved by the Police Department as to the character of the applicant.

The Board determined that no person is present at this Hearing to protest or offer objection to the granting of the application.

Commissioner Mahoney moved the application be approved.

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.

Hearing on a Developer Agreement Related to Tax Increment Financing District No. 2001-01 Approved:

This was the time and date set for a Hearing on a Developer Agreement related to Tax Increment Financing District No. 2001-01 which agreement provides for the allocation of Tax Increment funds to pay for power line relocation, major streets, and other costs and an addendum which provides for using Tax Increment funds on a portion of parkway costs.

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

The Board determined that no person is present to protest or offer objection to the Plan.

The Board received a communication from City Attorney Erik Johnson stating in 2001 the Board of City Commissioners approved the Renewal or Development Plan for Tax Increment Financing District No. 2001-01 which is comprised of most of the section of land in the southwest corner of the Intersection of I-29 and I-94. He said the impetus for creation of the district was the need for relocating electric power distribution lines within that area and the development of 42nd Street. He said the Renewal Plan was amended in December 2004 to incorporate additional improvements to be financed as a result of the creation of the TIF District. He said North Dakota Urban Renewal Law authorizes cities to enter into developer agreements with property owners to address the use of tax increment derived from development within a district. The Agreement and Addendum, he stated, address the use of tax increment generated within the district and, specifically, within the Matrix Properties Corporation properties as follows:

- "A. Increment will be used for reimbursing to the sales tax fund the cost of relocating high voltage power distribution lines along 42nd Street South. The Matrix's property will generate increment to defray over one-half million dollars of the relocation cost.
- B. Public improvements for 42nd Street and 32nd Avenue are being financed through the TIF District and a remaining amount of approximately \$2 million is to be paid through the increment derived from the Matrix's property.
- C. City has borne administrative expenses and is recouping administrative fees of approximately \$135,000 from this increment.
- D. The Matrix Properties Corporation has agreed that if the increment generated from Matrix property is not sufficient to defray their allocated share of these costs, Matrix Properties Corporation will make up the shortfall on an annual basis.
- E. The Addendum to the agreement will identify the Matrix's share of special assessments anticipated to be charged for development of the 23rd Avenue/30th Avenue parkway (yet to be completed), and the allocation of increment to defray some of the special assessments for this parkway development."

Commissioner Coates moved the Developer's Agreement between Matrix Properties Corporation and the City of Fargo regarding Tax Increment District No. 2001-01 and the Addendum to said agreement be approved.

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

Commissioner Williams voted nay.
The motion was declared carried.

Resolution Adopted Approving a Vacation Plat of an Alley in Roberts Second Addition to the City of Fargo, Cass County, North Dakota (900 Block Between 2nd and 3rd Avenues North):

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, A Plat has been filed in the office of the City Auditor entitled "Vacation Plat" containing, 12 Lots, 1 Block and 6008 feet of land more or less, located in the 900 block between 2nd Avenue North and 3rd Avenue North; and

WHEREAS, A Hearing was scheduled to be held July 11, 2007 by the Fargo Planning Commission, and notice of such Hearing had been published, as required by law, and said Plat had been approved by the Fargo Planning Commission and by the City Engineer; and

WHEREAS, The City Auditor's Office published a Notice of Hearing on said Plat in the official newspaper for the City of Fargo on July 23 and 30, 2007 that a Hearing would be held in the City Commission Room at the City Hall, Fargo, North Dakota at 5:15 o'clock p.m., Monday, July 30, 2007, at which time said Plat would be considered and all interested persons would be heard.

NOW, THEREFORE, BE IT RESOLVED, That the Plat entitled "Vacation Plat" be and the same is hereby in all things affirmed and approved, and that the Mayor of the City of Fargo and the appropriate City Officials are hereby directed to endorse their approval on the Plat and then direct Petitioner to file same for record in the office of the Register of Deeds of Cass County, North Dakota.

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

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

Hearing on an Amendment to the Growth Plan Continued to August 13, 2007 (3307, 3805 and 4005 52nd Avenue South):

This was the time and date set for a Hearing on 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, however, the Planning Department and developer have requested the Hearing be continued to September 24, 2007.

There was discussion regarding continuing the hearing to August 13, 2007 so the items in question will not be delayed any longer.

Commissioner Coates moved the Hearing be continued to August 13, 2007.

Second by Williams. On call of the roll Commissioners Coates, Williams, Mahoney, Wimmer 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 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 (3307, 3805 and 4005 52nd Avenue South):

At a Hearing held on June 13, 2007 the Fargo Planning Commission recommended denial of a change in zoning 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.

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

The Board received a communication from Planning Director Jim Gilmour stating he received a letter from Attorney Dan Plambeck representing the Hectors who are the property owners. Mr. Gilmour said the Hectors have a developer who is interested in purchasing a portion of the property west of Interstate 29 and would like the City Commission to approve zoning of this area ahead of acting on their other zoning requests. He said it is the opinion of the Planning and Development Department that rezoning this 52 acre segment of property to General Commercial with a Conditional Overlay that limits land uses and includes design standards is consistent with the Growth Plan and, therefore, he supports this more limited zoning change. He said the recommendations from the Planning Commission of a denial of plan changes and zoning were because those requests include a much larger amount of commercial zoning and the zoning requests did not include any provisions for design standards or limitations on industrial type uses. He said Mr. Plambeck and he feel an eight week delay is appropriate.

Senior Planner Jim Hinderaker said the Planning Commission has not seen this revision but dialogue has taken place with Planning Department staff and they are recommending approval.

Planning Director Jim Gilmour said it is appropriate to act on the 52 acre rezoning tonight so first reading of the ordinance can take place in two weeks and the remaining portions should be continued to August 13, 2007. He said the 52 acres fits in with the growth plan.

Mr. Plambeck stated the Hectors are asking the City Commission to act on the 52 acres tonight because of a pending contract.

Commissioner Coates moved the zoning of a 52 acre segment west of Interstate 29 be approved and the legal description and Conditional Overlay be brought back for approval.

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

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

Commissioner Coates moved the Hearing be continued to August 13, 2007.

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

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

Hearing on a Petition for a Zoning Change from AG, Agricultural to GC, General Commercial on Part of the Southeast Quarter of Section 34, Township 139 North, Range 49 West Continued to August 13, 2007 (4005 52nd Avenue South):

A Hearing had been set for April 23, 2007 on a petition for a zoning change on part of the southeast quarter of Section 34, Township 139 North, Range 49 West.

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, however, the developer has requested that the Hearing be continued to September 24, 2007.

There was discussion regarding continuing the hearing be continued to August 13, 2007 so the items in question will not be delayed any longer.

Commissioner Coates moved the Hearing be continued to August 13, 2007.

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

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

Request for an Extension of the Noise Ordinance for Movie Nights in the Park Approved:

The Board received a communication from Park District Director of Recreation Clay Whittlesey requesting an extension of the City's Noise Ordinance from 10:00 p.m. to 11:00 p.m. for Movie Nights in the Park on July 30th at Island Park, August 12th at Rheault Farm and August 13th at Island Park.

Commissioner Wimmer moved the request be approved.

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

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

Final Adoption of an Ordinance Relating to a Prohibition on Removal of Markers or Monuments:

Commissioner Coates moved that a vote be taken on the question of the final passage and adoption of an Ordinance Enacting Section 18-0514 of Article 18-05 of Chapter 18 of the Fargo Municipal Code Relating to a Prohibition on Removal of Markers or Monuments which was placed on first reading July 2, 2007 and second reading July 16, 2007.

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

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

Petition for Exclusion Filed by Fred and Earlyne Hector for Property in the Southwest Quarter of Section 35, Township 139 North, Range 49 West Denied:

Planning Director Jim Gilmour said Fred and Earlyne Hector filed a petition for exclusion of property in the southwest quarter of Section 35, Township 139 North, Range 49 West. He said the adjacent areas have been zoned and the City is bringing utilities, roads, sewer/water, fire and police services to those areas so the area in question should not be de-annexed.

Attorney Jonathan Garaas, representing the Hectors, said the City of Fargo does not have a monopoly on services and the township can provide similar services. He said the Hectors are requesting the exclusion until a better plan can be brought forward.

Jay Manley, resident of Fox Run, spoke in opposition to the de-annexation.

Commissioner Coates moved the request for exclusion be denied.

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.

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

After recess: All Commissioners present. Mayor Walaker presiding.

Policy Accepting Monuments Tabled:

The Board received a communication from Commissioner Coates stating now that the City of Fargo has enacted a citizen-initiated ordinance stating that the Ten Commandments monument will remain in the civic plaza, she suggested that the City Commission enact a policy that will guide decision-making on any future monuments offered to the City. She stated since there is a pending offer by the Red River Freethinkers and, since any decisions the Commissioners make on this issue will certainly carry the risk of litigation or legal consequences, it is in the City's best interests to have a policy in place. She said City Attorney Erik Johnson and she drafted a policy regarding additional monuments.

Commissioner Coates said it is wise to have a policy with the prospect of offers coming from other groups and the possibility of litigation.

Carol Sawicki, 3110 Edgewood Drive, thanked Commissioner Coates and Mr. Johnson for their work on the policy but she said the policy seems to be limiting free speech and the Freethinkers' goal is to promote free speech. She stated the Freethinkers would like to work with the City Commission on revising the policy.

Freethinkers' Interim President Jon Lindgren said the proposed policy interjects politics by letting the Commission decide the guidelines for accepting or rejecting monuments. He said paragraphs one and two should be rewritten and the references to tenets removed. He said tenets and principles are not necessarily published but can be passed on orally as the Native Americans do. He said other City ordinances are written in a way to prevent arguments and the monument policy should be done the same as the other City policies.

Commissioner Mahoney moved to table the policy and direct City Commissioners and the City Attorney to refine the proposed policy.

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.

Action on the Offer of a Sister Monument from the Red River Freethinkers Tabled:

The Board received a communication from Jon Lindgren, Interim President of the Red River Freethinkers, stating early this year the Red River Freethinkers offered their Sister Monument to the City. He said the first time this was discussed, City Attorney Erik Johnson recommended the matter be delayed until he met with them. He said the next time the matter was discussed, it was within the context of a decision to move the Ten Commandments Monument. The Sister Monument came up yet again, he continued, but it was during a discussion which led to a decision to not move the Ten Commandments and, thus, each of the three times their Sister Monument came up, it was in the context of another issue. Mr. Lindgren stated while it is certainly clear to them that the Commission has not accepted their gift, neither has there been a vote by the Commission which undisputedly rejected their gift. He said as they pointed out in their original letter, they believe the City, having both accepted and defended a monument reflecting the views of one set of its citizens, has taken on an obligation to accept a monument representing the views of a different set of citizens. He said that one monument is perceived to represent the views of a larger number of citizens than the other does not seem a relevant issue in such a decision and, for this reason, they are requesting again that the City accept the Sister Monument from the Red River Freethinkers.

Commissioner Coates suggested the offer from the Freethinkers be tabled until action on the policy is brought forward. She said the offer from the Freethinkers is not going to go away and the Commission needs to act one way or another which was her primary reason for the proposed policy. Otherwise, she said, the City could end up in court again.

Commissioner Coates moved the Freethinkers' offer of a monument be tabled until the tabled policy is brought back for action.

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

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

Communication Regarding the Proposed Addition to the Fargodome Received and Filed:

The Board received a communication from Joseph McCormick, 1038 11th Street North, stating he would like to speak out against funding for the Dome Addition/Compact Basketball Court. He said he attended the Regional Wrestling Tournament at University of Northern Iowa earlier this year and has concerns regarding the Dome's addition being modeled after the UNI facility. He said the lack of space between rows and the narrow aisles would create a safety issue as well as comfort problems.

In response to Mr. McCormick's concern, Commissioner Wimmer stated that dozens of facilities will be studied by the architects, not just the University of Northern Iowa. He said a market analysis will also be done to deem if the addition is necessary.

Mayor Walaker said the Fargodome needs to stay competitive. He said the studies will be made public as they are completed.

Commissioner Coates moved the communication from Mr. McCormick be received and filed.

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

City Attorney Directed to Draft an Ordinance Matching the Provisions of West Fargo's Proposed Ordinance:

The Board received a communication from Commissioner Coates stating at their January 2, 2007 meeting, the City Commission voted on several questions posed to them by the Regional Task Force regarding a possible smoking ban. She said this questionnaire was also posed to the governing bodies of the neighboring jurisdictions. She said based on their answers to the following question, and also based on the scheduling of the West Fargo City Commission to also take action on this issue tonight, she is bringing this issue forward for consideration and action:

“Question #6:

Would the Fargo City Commission support today a more restrictive no-smoking ordinance for its community if neighboring jurisdictions adopted a similar/identical no-smoking ordinance? On call of the roll Commissioners Wimmer, Mahoney, Coates, Williams and Walaker voted aye.”

Commissioner Coates stated given that the State of Minnesota has now passed a comprehensive smoking ban, and given also that the City of West Fargo is acting on a smoking ban matching Minnesota's, she is proposing that Fargo join its neighbors, as was unanimously stated in January that they would, and pass an ordinance matching that of West Fargo which is modeled on Minnesota's statewide law, which she attached.

Commissioner Coates said the current ordinance was the result of a vote on three initiated ordinances and since then Minnesota has passed a state smoking ban. She said there was agreement from the local task force for an even playing field among the local communities. She said the City Commission could pass an ordinance or it could be placed on the ballot for voters to decide.

Dr. Richard Rohla, Fargo Cass Public Health; Kay Schwarzhalter; Byrum Cartwright; John Fischer; Vickie Haberman; Michael Jablon; and Kimberly Krueger spoke in favor of a complete smoking ban for the following reasons:

It is vital to protect all workers in Fargo from second hand smoke.
Smoking restrictions are effective in getting smokers to quit or cutback.
City Commission committed to support complete smoking ban.
Smoking is an addiction – not a choice.
Businesses can succeed without allowing smoking.
People deserve a smoke free atmosphere.

At 7:20 p.m. the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

Nicki Weissman; Dwight Wrangham; Ron Iverson; Jim Swanick; Ron Gilmore; Margaret Rafferty; Jim Carlson; John Krein; Randy Thoreson; Dana Coulter; Tim

Sweeney; Vanessa Syverson; Doug Anselmin; Mona Arnold; and Rick Carick spoke against the complete smoking ban for the following reasons:

City Commission should represent the freedoms people have and Fargo should conform to the North Dakota no-smoking law.

Voters should decide.

Bar owners made expensive modifications for previous ordinance and should not be told again what to do.

Negative financial impact on business owners.

Fargo would be at a disadvantage to the rest of the state.

Follow state law – let Bismarck decide.

At 8:20 p.m. the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

Commissioner Coates moved the City Attorney be directed to draft an ordinance modeled after the Minnesota no-smoking law and matching the provisions of West Fargo's proposed ordinance regarding smoking in public indoor workplaces to be placed on first reading August 13, 2007.

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.

Commissioner Mahoney said the City needs to allow competitive businesses to survive and a decision needs to be made on JT Cigarro's. He also said, as a physician, smoking does kill and there is a need to address this issue.

Commissioner Coates moved the City Attorney be directed to draft an ordinance that will allow the City Commission to place an ordinance on the ballot.

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.

Commissioner Wimmer moved that the Board adjourn to 5:00 o'clock p.m., Monday, August 13, 2007.

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

The time at adjournment was 8:50 o'clock p.m.