

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: June 4, 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, June 4, 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. "d" from the Consent Agenda to the end of the Regular Agenda, omitting Item No. "j" from the Consent Agenda, adding Improvement District No. 5530-1 to Item No. "o" in the Consent Agenda, moving Item "p2" from the Consent Agenda to the end of the Regular Agenda and adding an extra item at the end of the Regular Agenda to adopt a Resolution requesting emergency flood assistance.

Second by Wimmer. 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 May 21, 2007 be approved as read.

Second by Wimmer. 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. 2nd reading, waive reading and final adoption of the following Ordinances; 1st reading, 5/21/07:
 - (1) Amending Sections 21-0706(A) and 21-0707(C) of Article 21-07 of Chapter 21 of the Fargo Municipal Code Relating to the International Building Code.
 - (2) Amending Article 21-01 of Chapter 21 of the Fargo Municipal Code Relating to the International Building Code.
 - (3) Amending Article 21.1-01 of Chapter 21.1 of the Fargo Municipal Code Relating to the International Residential Code.
 - (4) Amending Article 21.2-01 of Chapter 21.2 of the Fargo Municipal Code Relating to the International Existing Building Code.

- (5) Amending Section 30-0106 of Article 30-01 of Chapter 30 of the Fargo Municipal Code Relating to the International Mechanical Code.
 - (6) Amending Section 30-0305 of Article 30-03 of Chapter 30 of the Fargo Municipal Code Relating to the International Mechanical Code.
 - (7) Repealing Article 30-05 of Chapter 30 of the Fargo Municipal Code Relating to the International Mechanical Code.
 - (8) Amending Article 30.1-01 of Chapter 30.1 of the Fargo Municipal Code Relating to the International Fuel Gas Code.
 - (9) Amending Article 31-01 of Chapter 31 of the Fargo Municipal Code Relating to the International Property Maintenance Code.
 - (10) Amending Sections 9-0701 and 9-0704 of Article 9-07 of Chapter 9 of the Fargo Municipal Code Relating to Fire Protection and Prevention.
- b. 2nd reading, waive reading and final adoption of ordinances rezoning certain parcels of land in the following; 1st reading 5/21/07:
- (1) Urban Plains Center Addition.
 - (2) South Forty at Osgood Second Addition.
 - (3) William G. Johnson Addition.
 - (4) Beardsley's Addition.
- c. Health Insurance Plan Language effective June 1, 2007.
- d. Purchase agreement with Town Square Properties, LLC for a parcel that includes 3989, 3957 and 49.76 feet of 3921 Village Lane South for a fire station (moved to the end of the Regular Agenda).
- e. Sale of 1226 11th Street North for \$127,500.
- f. Release owners of 305-309 Broadway from the obligation to restore the theatre.
- g. Applications for Games of Chance:
- (1) Fargo-Moorhead Cosmopolitan Club for a raffle from 8/1/07 to 6/30/08.
 - (2) Judy Whittlesey Benefit for a raffle on 6/7/07; Public Spirited Resolution.
- h. Site Authorizations for Games of Chance:
- (1) The Arc, Upper Valley, Inc. at JT Cigarro's.
 - (2) Fargo Youth Commission at Borrowed Bucks Roadhouse and Slammers Sports Bar.
 - (3) Special Olympics North Dakota at the Sports Bar and Rooters Bar, Inc.
 - (4) Teamsters at the Teamsters Lounge.
 - (5) National Multiple Sclerosis Society - North Central States Chapter at the Select Inn and Rick's Bar and Grill.
- i. Change Order No. 7 from Gast Construction Co., Inc. for a decrease of \$20,000 for the Fargodome Escalator, Meeting Room and Cut Through Project.

- j. Memorandum of Understanding between the City of Fargo, Cass Rural Water Users District and Tharaldson Ethanol Plant I (omitted).
- k. Bid award for the 64th Avenue South water tower to CB & I Constructors, Inc. in the amount of \$2,223,000 with no alternate and Project No. 5714 to Dakota Underground in the amount of \$228,218.50
- l. Change Order No. 1 for an increase of \$8,710.86 for Project No. 5686.
- m. Contract and bond for Project No. SW 07-02.
- n. Bills in the amount of \$2,512,893.75.

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.

No Protests Received for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5712:

The Statutory Resolution of Necessity for the construction of Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5712 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota on April 30 and May 7, 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 Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5712.

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.

Bids Received for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5712:

The bids for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5712 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., May 30, 2007 and the bids were found to be as follows:

Dakota Underground Bid:	Fargo, ND \$1,876,116.15
Master Construction Company, Inc. Bid:	Fargo, ND \$1,907,226.15
Border States Paving, Inc. Bid:	Fargo, ND \$1,970,010.84

Northern Improvement Company
Bid:

Fargo, ND
\$2,003,694.15

Contract for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5712 Awarded to Dakota Underground in the Amount of \$1,876,116.15:

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 Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5712; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received May 30, 2007 for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5712 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5712 shows the bid of Dakota Underground of Fargo, North Dakota, in the sum of \$1,876,116.15 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 \$1,876,116.15 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5712 in the City of Fargo, North Dakota, be and the same is hereby awarded to Dakota Underground for the sum of \$1,876,116.15, 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 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.

City of Fargo Concurs with the NDDOT Bid Award for Improvement District No. 5530-1:

Commissioner Coates moved the City of Fargo concur with the NDDOT bid award for Improvement District No. 5530-1 to Strata Corporation in the amount of \$4,597,241.02.

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.

Street Reconstruction and Incidentals Improvement District No. 5680 (4th Avenue South from 16th Street to 18th Street):

Commissioner Coates moved the following action be taken in connection with Street Reconstruction and Incidentals Improvement District No. 5680:

Adopt Resolution Creating Improvement District No. 5680:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 5680, in the City of Fargo, North Dakota, be created

On 4th Avenue South from 16th Street to 18th Street.

COMPRISING:

Lots 10 through 18, Block 3.
Lots 1 through 9, Block 4.
Case, Peake & Hall's Addition.

Lots 7 through 10, Block 8.
Lots 3 through 6, Block 10.
Arnesons Addition.

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

NOW, THEREFORE, BE IT RESOLVED, That Street Reconstruction and Incidentals Improvement District No. 5680, 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. 5680:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 5680, 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 \$212,500.)

Order Plans and Specifications for Improvement District No. 5680:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 5680, in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 5680:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 5680, 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. 5680, 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 Street Reconstruction 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 Street Reconstruction & Incidentals, Improvement District No. 5680 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 the entire cost of said improvement be specially assessed against the benefited property in said improvement district in amounts proportionate to and not exceeding the benefits to be derived by them respectively from said improvement.

Protests against the proposed Street Reconstruction & 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. 5680:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 5680, in the City of Fargo, North Dakota.

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.

Contract for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5702 Approved:

Commissioner Coates moved approval of the Contract between the City of Fargo and Dakota Underground Company, Inc. for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5702 in the City of Fargo, North Dakota.

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.

Contract Bond for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5702 Approved:

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

United Fire and Casualty Company, in the amount of \$1,782,751.80, for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5702 in the City of Fargo, North Dakota.

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.

Contract for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5711 Approved:

Commissioner Coates moved approval of the Contract between the City of Fargo and Master Construction Company, Inc. for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5711 in the City of Fargo, North Dakota.

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.

Contract Bond for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5711 Approved:

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

United Fire and Casualty Company, in the amount of \$1,315,485.05, for Water Main Replacement, Street Reconstruction and Incidentals Improvement District No. 5711 in the City of Fargo, North Dakota.

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.

Contract for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5736 Approved:

Commissioner Coates moved approval of the Contract between the City of Fargo and Dakota Underground Company, Inc. for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5736 in the City of Fargo, North Dakota.

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.

Contract Bond for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5736 Approved:

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

United Fire and Casualty Company, in the amount of \$555,743.00, for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals Improvement District No. 5736 in the City of Fargo, North Dakota.

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.

Presentation of River Keepers “Friend of the River” Award to Bill Mahar:

Mayor Walaker, on behalf of the River Keepers, presented the “Friend of the River” award to City Planner Bill Mahar for his efforts on riverfront development.

Request for an Extension of the Noise Ordinance for a Great Plains Software Reunion Event Approved:

The Board received a communication from Deb Reynolds, Event Coordinator, requesting an extension of the City’s Noise Ordinance from 10:00 p.m. to 11:00 p.m. on June 15, 2007, for a Great Plains Software Reunion event. She said there will be a band on the main floor of the Smith Follett Crowl building located at 309 Roberts Street and a tent in the Fargo Theatre parking lot. She said the primary noise concern will be the band noise coming from the building. Ms. Reynolds said the event is by invite only and will be employees, partners, vendors and anyone who was involved with Great Plains Software with expected attendance from 800 to 900 people.

Commissioner Mahoney moved the request for a one hour extension of the City’s Noise Ordinance on June 15, 2007 from 10:00 p.m. to 11:00 p.m. be approved.

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

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

Chad Wold Reappointed to the Administrative Enforcement Board:

The Board received a communication from Mayor Walaker recommending that Chad Wold be reappointed to the Administrative Enforcement Board.

Commissioner Coates moved the reappointment of Chad Wold to the Administrative Enforcement Board for the term ending June 30, 2010 be approved.

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.

Mike Wenaas and Nancy Jordheim Reappointed to the Civil Service Commission:

The Board received a communication from Mayor Walaker recommending that Mike Wenaas and Nancy Jordheim be reappointed to the Civil Service Commission.

Commissioner Wimmer moved the reappointment of Mike Wenaas and Nancy Jordheim to the Civil Service Commission for the term ending June 30, 2010 be approved.

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

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

Application Filed by Wild Oats, LLC d/b/a Luna Coffee for an Alcoholic Beverage License Approved:

A Hearing had been set for this day and hour on the application filed by Wild Oats, LLC d/b/a Luna Coffee for a Class "H" Alcoholic Beverage License at 1545 University Drive 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.

Renaissance Zone Project Application for 810 Development, LLP Approved:

A Hearing had been set for this day and hour to receive comments on a Renaissance Zone Project for 810 Development, LLP at 802 1st Avenue North.

No written protest or objection to the Project has been received or filed in the City Auditor's Office.

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

The Board received a communication from Senior Planner Robert Stein stating the Renaissance Zone Project application presented by 810 Development, LLP meets all of the minimum criteria set forth in the Renaissance Zone Plan and is consistent with the established goals and objectives. Mr. Stein recommended that the project be approved.

Commissioner Wimmer moved the Renaissance Zone application filed by 810 Development, LLP for a project located at 802 1st Avenue North be approved as recommended by the Renaissance Zone Authority and the income tax and property tax exemptions be granted contingent upon completion of the project and verification of costs.

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

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

Renaissance Zone Project Application for Michael Olsen Communications Approved:

A Hearing had been set for this day and hour to receive comments on a Renaissance Zone Project application filed by Michael Olsen Communications for a business leasing property as part of a zone project at 222 Broadway, Suite 209.

No written protest or objection to the Project has been received or filed in the City Auditor's Office.

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

The Board received a communication from Senior Planner Robert Stein stating the Renaissance Zone Law states "a business that purchases or leases property as

part of a zone project is exempt from income tax for five taxable years beginning in the year of the investment or lease for income derived from the business locations within the zone". He said the Fargo Renaissance Zone Development Plan further states "Tenant must be leasing space in a building that has been approved as a zone project to be eligible for consideration". He stated the Renaissance Zone Authority felt that lease projects such as the application from Michael Olsen Communications would generally be straightforward and could be advanced to the City Commission following staff review and would generally not require direct Authority action. He said staff review found the applicant has met the aforementioned requirements. He said the project addresses the business retention and expansion goals stated in the Renaissance Zone Development Plan.

Commissioner Wimmer moved the Renaissance Zone Project application filed by Michael Olsen Communications for a project located at 222 Broadway, Suite 209 be approved and the income tax exemptions be granted as recommended by the Renaissance Zone Authority.

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

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

Resolution Adopted Declaring No Protests on Resolution Annexing 4.10 Acres of Land in Stanley Township Lying in the Southeast Quarter of Section 28, Township 138 North, Range 49 West (5101 112th Avenue South):

Commissioner Coates offered the following Resolution and moved its adoption:

WHEREAS, A Resolution of Annexation was published, as required by law, in the official newspaper for the City of Fargo on May 2 and 7, 2007, annexing approximately 4.10 acres of land located in Stanley Township Lying in the Southeast Quarter of Section 28, Township 138 North, Range 49 West; and

WHEREAS, The Board of City Commissioners finds and declares that no protests have been filed with the City Auditor's Office after publication of the Annexation Resolution adopted by the Board of City Commissioners on February 26, 2007.

NOW, THEREFORE, BE IT RESOLVED, That the tract of land described in said Resolution of Annexation be and the same is hereby annexed to, made part of and included within the corporate limits of the City of Fargo, Cass County, North Dakota, and that the City Auditor's Office be and is hereby directed to record said annexation plat in the office of the Register of Deeds of Cass County, North Dakota.

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.

Resolution Adopted Declaring No Protests on Resolution Annexing 74.23 Acres of Land in Barnes Township Lying in the Southeast Quarter of Section 4, Township 139 North, Range 49 West (4624 and 4716 7th Avenue North):

Commissioner Coates offered the following Resolution and moved its adoption:

WHEREAS, A Resolution of Annexation was published, as required by law, in the official newspaper for the City of Fargo on May 2 and 7, 2007, annexing approximately 74.23 acres of land located in Barnes Township Lying in the Southeast Quarter of Section 4, Township 139 North, Range 49 West; and

WHEREAS, The Board of City Commissioners finds and declares that no protests have been filed with the City Auditor's Office after publication of the Annexation Resolution adopted by the Board of City Commissioners on February 26, 2007.

NOW, THEREFORE, BE IT RESOLVED, That the tract of land described in said Resolution of Annexation be and the same is hereby annexed to, made part of and included within the corporate limits of the City of Fargo, Cass County, North Dakota, and that the City Auditor's Office be and is hereby directed to record said annexation plat in the Cass County Recorder's Office in Fargo, North Dakota.

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.

Text Amendment to Section 20-0402 of the Land Development Code Approved:

A Hearing had been held by the Fargo Planning Commission on May 9, 2007 for the purpose of considering a request for a text amendment to Section 20-0402, Subparagraph C.4., of Article 20-04 of Chapter 20 of the Land Development Code relating to use regulations to amend language that no Community Services may be located within 300 feet of another Community Service use unless such location is otherwise reviewed and approved as a Conditional Use, in accordance with the Conditional Use review procedures of Section 20-0909 of the Land Development Code and the Fargo Planning Commission at such Hearing recommended to the Board of City Commissioners that the request be approved.

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.

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

Commissioner Coates moved the request be approved.

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.

First Reading of an Ordinance Relating to Use Requirements:

Commissioner Coates moved the requirement relating to receipt of the Ordinance by the Commission one week prior to first reading be waived and that the Ordinance Amending Section 20-0402, Subparagraph C.4., of Article 20-04 of Chapter 20 of the Fargo Municipal Code (Land Development Code) Relating to Use Regulations be placed on first reading.

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.

Parcels of Land Within Part of Section 12, Township 140 North, Range 49 West Rezoned (5819 and 5821 County Road 31 North):

At a Hearing held on May 9, 2007 the Fargo Planning Commission recommended approval of a change in zoning from AG, Agricultural to SR-4, Single-Dwelling Residential on approximately 52 acres within part of Section 12, Township 140 North, Range 49 West.

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.

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, 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 rezoning be approved with the stipulation that the Agreement entered into by the City of Fargo, Airport Authority and Ward Harris dated May 22, 2007 be recorded in the County of Cass and State of North Dakota.

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.

First Reading of an Ordinance Rezoning Certain Parcels of Land Lying in That Portion of Section Twelve (12), Township One Hundred Forty (140) North, Range Forty-Nine (49) West, County of Cass, State of North Dakota:

Commissioner Coates moved the requirement relating to receipt of the Ordinance by the Commission one week prior to first reading be waived and that the Ordinance Rezoning Certain Parcels of Land Lying in That Portion of Section Twelve (12), Township One Hundred Forty (140) North, Range Forty-Nine (49) West, County of Cass, State of North Dakota 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.

Amendment and Update to the Growth Plan Approved (Urban Fringe and Extraterritorial Area):

A Hearing had been set for this day and hour to consider approval of an amendment and update to the Growth Plan to establish a future land use plan for areas of the urban fringe and extraterritorial areas of the City of Fargo that are not currently included in Fargo's future land use plan which includes properties located in Sections 1-6, 9-12, 13-16, 21-24, 25-28, 34 and 35 of T138N, R49W; Sections 6, 7, 18, 19 and 30 of T138N, R48W; Section 1 of T138N, R50W; Sections 35 and 36 of

T139N, R50W, Sections 1-3, 8-12, 13-17, 20-23 and 26-29 of T140N, R49W; Sections 35 and 36 of T141N, R49W; Section 18 of T140N, R48W of the Fifth Principal Meridian, Cass County, North Dakota.

The Fargo Planning Commission recommended approval of the amendment to the Growth Plan at their May 9, 2007 meeting.

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

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

Senior Planner Jim Hinderaker submitted a Planning Department Staff Report in which he stated the update began in October of 2005 and included numerous meetings and input from property owners, citizens, development organizations and governmental entities. He said an open house was held at Kennedy Elementary School on March 6, 2007 to present, gather input and answer questions about the finalized plan. He stated a final series of open house meetings were held on April 25, 26 and 27, 2007 to allow citizens an opportunity to review and comment on the final Growth Plan update and amendment. The primary concern of citizens, he said, dealt with the timing and location of the south side flood protection. In addition, he stated, some citizens were concerned about the location of a potential bridge crossing of the Red River at either 70th or 76th Avenue South and there was some opposition to a component of the plan that calls for a trail system along the entire length of the Red River through the City of Fargo. He said a couple of citizens that live along the Red River felt a trail in their backyard would be detrimental to their property values. He said the Growth Plan update and amendment was well received and overall citizens were complimentary to the proposed plan.

In response to a question by Commissioner Coates regarding this area and current negotiations with Horace, Planning Director Jim Gilmour said the City of Fargo will continue to have zoning jurisdiction until Horace completes annexation. He said an amendment can be brought forward later after the amendment and update are approved.

Commissioner Coates moved the amendment to the Growth Plan be approved.

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.

Resolution Adopted Giving Preliminary Authorization for the Issuance of Revenue Bonds Under Chapter 40-57 N.D.C.C. and Authorizing the Preparation of Necessary Documents Therefor (Metro Sports Foundation, Inc. Project):

Commissioner Williams moved the Resolution entitled "Resolution Giving Preliminary Authorization for the Issuance of Revenue Bonds Under Chapter 40-57 N.D.C.C. and Authorizing the Preparation of Necessary Documents Therefor (Metro Sports Foundation, Inc. Project)" and referred to as Attachment "A", be adopted and attached hereto.

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.

Renewal Plan for Tax Increment Financing District No. 2007-02 Approved (On 17th Street Near NDSU):

A Hearing had been set for this day and hour to review a Renewal Plan for Tax Increment Financing District No. 2007-02 for a plan to redevelop an area southwest of 12th Avenue and 17th Street North for main floor commercial use and upper story apartments.

No written protest or objection to the Plan has been received or filed in the City Auditor's Office.

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

The Board received a communication from Planning Director Jim Gilmour stating the Planning and Development Department has completed work on a Renewal Plan for a project on 17th Street near North Dakota State University and he submitted the plan for the Board's review. Mr. Gilmour also submitted a Resolution to adopt the plan, a Developer Agreement and the report from the financial advisor. He said the Finance Committee has reviewed the request and financial advisor report and recommends approval of the Renewal Plan and Developer Agreement.

Commissioner Wimmer offered the following Resolution and moved its adoption:

WHEREAS, Certain areas within the City are in need of redevelopment in order to prevent further deterioration, to encourage investment and to preserve property values; and

WHEREAS, The Board of City Commissioners desires to avail itself of the power and authority granted by Chapter 40-58 NDCC.

NOW, THEREFORE, BE IT RESOLVED, By the Board of City Commissioners as follows:

1. That one or more slum or blighted areas or areas consisting of industrial or commercial property, or a combination of those areas of properties exist in the City of Fargo.
2. That the development, rehabilitation, conservation or redevelopment or a combination thereof, of the area contained within the Development Plan for Tax Increment Financing District No. 2007-02 is necessary in the interest of public health, safety, morals or welfare of the residents of the City of Fargo and will afford maximum opportunity, consistent with the sound needs of the city as a whole, for the rehabilitation or redevelopment of the development area by private enterprise.
3. That there are several buildings in the area contained within the Development Plan with deteriorated conditions. The Renewal Area, as defined in the Development Plan, is blighted due to the presence of four buildings that are deteriorated and this condition has substantially impaired the growth of the City in this area, and has slowed the provision of appropriate housing in this area. As a result, the Board of City Commissioners finds that a blighted condition exists in said area.
4. That comparable replacement dwellings or housing is available to persons displaced by the proposed Tax Increment Project which will not create any undue hardship to those persons. Housing vacancy rates in

the area surrounding the Renewal Area are high enough to meet the needs of the persons that will be displaced.

5. That the area designated as the Development Plan for Tax Increment Financing District No. 2007-02 is appropriate for a development project.
6. That such development, rehabilitation, conservation or redevelopment of the area contained in the Development Plan for Tax Increment Financing District No. 2007-02 requires the powers and authority granted in Chapter 4058 NDCC.
7. That the Development Plan for Tax Increment Financing District No. 2007-02 is hereby officially adopted by the Board.
8. That a Developer Agreement be prepared in regard to the Tax Increment Financing.
9. That the appropriate staff be directed to request the County Auditor and Treasurer to compute, certify and remit tax increments resulting from the development or renewal of the area in accordance with the plan and any modifications thereof and that the County Auditor and Treasurer shall do so in accordance with this section.

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

Commissioner Williams voted nay.

The Resolution was adopted.

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

After recess: All Commissioners present. Mayor Walaker presiding.

**Developer Agreement for Tax Increment Financing District No. 2007-02
Approved:**

Commissioner Wimmer moved the Developer Agreement for Tax Increment Financing District No. 2007-02 be approved.

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

Commissioner Williams voted nay.

The motion was declared carried.

**Presentation by Bruce Furness Regarding Fargo's Negotiations for an
Emergency Water Supply:**

Mayor Dennis Walaker said he invited Bruce Furness, Chair of the Lake Agassiz Water Authority, to bring the City Commission up-to-date on the Red River Valley Water Supply Project.

Using a power point presentation, Mr. Furness explained the implications of a severe drought for eastern North Dakota comparing the consequences to major droughts that occurred in the area since the early 1900's. He said the Red River Valley would experience water shortages if a severe drought occurred, impacting not only the local area economically but statewide as well. He said the solution lies with getting the Missouri River water to eastern North Dakota. In 2003, he said, the Lake Agassiz Water Authority (LAWA) was created giving power to nine members to implement change. Mr. Furness said the solution is three pronged -- requiring a

drought contingency plan, water conservation measures and a supplemental water supply project. Out of seven options, he continued, the preferred plan is the Garrison Diversion Unit (GDU) Import to Sheyenne River Alternative. Currently LAWA is working on funding, he explained, with monies coming from three areas – federal loans, local bonds and state grants. He said the preference is for federal grants instead of loans. He said LAWA anticipates a decision by August 2007 with construction to begin in 2009, upon approval. At sometime in the future, he said, the Fargo City Commission will be asked to vote on the plan.

Tax Increment Financing Policy and Application Referred to the Finance Committee for Recommendation to the City Commission at the July 2, 2007 Meeting:

Commissioner Williams said the Finance Committee has been working on development of a Tax Increment Policy and Application for a long time and having a template will make the application process more efficient for both the developer and City staff. He said a non-refundable \$5000 application fee will show due diligence on the part of the applicant.

Commissioner Wimmer said two to three developers called wanting to be involved with input before the policy is approved. He said citizens should have input as well as the committee.

William Forbes, 9748 170th Street South, Barnesville, Minnesota, said he recently received an application and has some concerns about the process. He said the developer assumes 100% of the risk and he said financing and profit margins should not be made public. He said the policy needs refining and input from other developers.

Commissioner Williams stated each application scenario is different and since 1986 the City has seen a wide range of TIF applications. He said there is a need for developing application criteria and this policy is a start.

Commissioner Coates moved this item be referred to the Finance Committee for recommendation to the City Commission at the July 2, 2007 meeting.

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.

Resolution Adopted Authorizing the City of Fargo to Enter into Agreements with the Corps of Engineers for Flood Assistance:

Commissioner Wimmer offered the following Resolution and moved its adoption:

WHEREAS, Public Law 84-99, as amended, (33 U.S. Code, Section 701n) provides a means of preparing for and combating damage by floods and flood waters; and

WHEREAS, The City of Fargo has exhausted all resources available to it for flood fighting and rescue operations; and

WHEREAS, On the date of this Resolution, flood fighting is needed and assistance required for the purpose of rescue operations.

NOW, THEREFORE, BE IT RESOLVED, That the U.S. Army Corps of Engineers be and is hereby requested to furnish assistance in flood fighting and rescue operations.

BE IT FURTHER RESOLVED, That, in consideration of such assistance, the above-named Governmental body agrees to:

- a. Provide to the United States all lands, easements and rights-of-way for the emergency work, including, but not limited to, levee, borrow, spoil and access rights-of-way.
- b. Hold and save the United States free from all claims for damages attributable to the construction works except for damages due to the fault or negligence of the United States or its Contractors.
- c. Operate and maintain the emergency construction works for the duration of the flood emergency.
- d. Provide common labor.
- e. Provide, as required under the applicable provisions of Public Law 91-646, relocation assistance payments to those eligible because of dislocation of persons or property from their dwellings, farms or businesses due to the acquisition of rights-of-way for the emergency flood construction work.
- f. Remove, after the flood emergency, without cost to the U. S. Army Corps of Engineers, any temporary emergency works constructed for the flood emergency.

BE IT FURTHER RESOLVED, That the Mayor of the City of Fargo be authorized to enter into agreements with the Corps of Engineers as to the means of supplementing the local flood emergency preparation and flood fighting and rescue operations.

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

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

Purchase Agreement with Town Square Properties, LLC for a Parcel that Includes 3989, 3957 and 49.76 feet of 3921 of Village Lane South for a Fire Station Approved:

The Board received a communication from Fire Chief Bruce Hoover recommending the purchase of a parcel approximately one block west of 45th Street on 40th Avenue South for a fire station. He said the recommended site is approximately 50,000 square feet, with Solid Waste using 10,000 square feet as a collection point for grass and leaves.

City Administrator Pat Zavoral said the request is only for the land purchase. He said the 2008 budget will determine funding for staff and the building. He said the expectation is that the station will open in three to four years.

Commissioner Coates moved the purchase agreement with Town Square Properties, LLC, for a parcel that includes 3989, 3957, and 49.76 feet of 3921 Village Lane South for a fire station be approved.

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.

PC Concrete Pavement and Incidentals Improvement District No. 5704 (42nd Street from 49th to 52nd Avenues South):

Commissioner Coates moved the following action be taken in connection with PC Concrete Pavement and Incidentals Improvement District No. 5704:

Adopt Resolution Creating Improvement District No. 5704:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 5704, in the City of Fargo, North Dakota, be created

This project is for the installation of concrete paving & street lights at the location described as follows:

On 42nd Street South from 49th Avenue to 52nd Avenue South.

COMPRISING:

Lots 1 through 17, inclusive, Block 2,
That part of Lot 39, Block 2 lying south of Lots 12 through 17, Block 2,
Lots 1 through 9, inclusive, Block 4,
Lots 1 through 21, inclusive, Block 5,
Lots 1 through 11, inclusive, Block 6,
Lots 1 through 16, inclusive, Block 7,
Lots 1 through 13, inclusive, Block 8,
All in Woodhaven 5th Addition.

All of the unplatted in the SE $\frac{1}{4}$ of Section 34, Township 139, Range 49, except the north 1,165.23 feet of said SE $\frac{1}{4}$.

All of the foregoing located in the City of Fargo, Cass County, North Dakota. NOW, THEREFORE, BE IT RESOLVED, That PC Concrete Pavement and Incidentals Improvement District No. 5704, 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. 5704:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 5704, 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 \$1,089,646.00.)

Order Plans and Specifications for Improvement District No. 5704:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 5704, in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 5704:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 5704, 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. 5704, 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 PC Concrete Pavement 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 PC Concrete Pavement & Incidentals, Improvement District No. 5704 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 the entire cost of said improvement be specially assessed against the benefited property in said improvement district in amounts proportionate to and not exceeding the benefits to be derived by them respectively from said improvement.

Protests against the proposed PC Concrete Pavement & 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. 5704:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 5704, in the City of Fargo, North Dakota.

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, June 18, 2007.

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

The time at adjournment was 7:07 o'clock p.m.