

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting: Monday: October 8, 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, October 8, 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 omitting Item No. "I" in the Consent Agenda, adding an extra item to enter into a mutual aid agreement with Jamestown as Item No. "I (1)" in the Consent Agenda and moving Item No. "I (1)" to the beginning of the Regular Agenda.

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

Minutes Approved:

Commissioner Coates moved that the Minutes of the Regular Meeting of the Board held on September 24, 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. City Employees Pension Board recommendation that the City join the North Dakota Public Employees Retirement System (NDPERS) effective January 1, 2008.
- b. Award financing for the Clean Renewable Energy Bonds, Series 2007 to the Bank of America in the amount of \$1,500,000.
- c. Resolution Relating to a Project Under the Municipal Industrial Development Act, Giving the Project Preliminary Approval; set November 5, 2007 as public hearing date (NDSU Development Foundation).
- d. Receive and file Year to Date - Budget to Actual Report for September 2007.

- e. 2007 Homeland Security and 2007 Law Enforcement Terrorist Prevention Program Grant spending plans for Cass County and the City of Fargo.
- f. Change Order No. 8 from Gast Construction, for an increase of \$2,676 for the Fargodome Escalator, Meeting Room and "Cut Through" Project.
- g. 1st reading of the following Ordinances:
 - (1) Amending Section 8-0320 of Article 8-03 of Chapter 8 of the Fargo Municipal Code Relating to Driving Without Liability Insurance Prohibited.
 - (2) Rezoning Certain Parcels of Land Lying in Part of the Southeast Quarter of Section 34, Township 139 North, Range 49 West, County of Cass, State of North Dakota.
- h. 2nd reading, waive reading and final adoption of the following Ordinances; 1st reading, 9/24/07:
 - (1) Rezoning Certain Parcels of Land Lying in King Addition to the City of Fargo.
 - (2) Rezoning Certain Parcels of Land Lying in The District of Fargo Addition to the City of Fargo.
- i. Applications for tax exemption for improvements made to buildings:
 - (1) TLO Buildings, LLP, 1531 32nd Avenue South (3 year).
 - (2) Marlene Christian, 1733 14 1/2 Street South (5 year).
 - (3) Dave Harmon, 520 4th Street North (5 year).
 - (4) Michelle and Bernard Rolewitz, 1115 11th Avenue North (5 year).
 - (5) Virginia Sublett, 1629 2nd Street North (5 year).
 - (6) Brady and Tara Herring, 1601 14 1/2 Street South (5 year).
- j. Applications for Games of Chance:
 - (1) Home Builders Care of Fargo Moorhead for a raffle on 3/27/08.
 - (2) Cardinal Muench Seminary for bingo and a raffle on 1/27/08.
 - (3) Fargo Angels Youth Hockey for a raffle on 12/18/07.
 - (4) Louis Pokrzywinski Benefit for a raffle on 10/21/07; Public Spirited Resolution.
 - (5) NDSU Native American Student Association for a raffle on 11/15/07.
 - (6) Arthritis Foundation, North Central Chapter for a raffle on 12/1/07.
- k. Resolutions approving the following Plats:
 - (1) Sheyenne Estates Addition.
 - (2) Liberty Square Third Addition.
 - (3) Tuscan Villas at Osgood Addition.
 - (4) Brandt Park Addition.
- l. Settlement Stipulation with Work Force Safety & Insurance (Omitted).
- l-1 Enter into a mutual aid agreement with Jamestown (moved to the Regular Agenda).

- m. Bid award to Sanitation Products in the amount of \$60,278 for one refuse truck body.
- n. Bid award for Phase I of the Central Garage Renovation to Harold's Construction in the amount of \$124,529 for general work, to Richard Electric in the amount of \$19,800 for electrical work and to Peterson Mechanical in the amount of \$80,500 for mechanical work.
- o. Bid award for the Central Garage Re-roof project and Architect Agreement with EAPC Architects Engineers.
- p. Joint Powers Agreement with Cass Rural Water Users District for Maple Valley Addition.
- q. Acquisition of flood prone houses at 1210 49th Avenue South and 4918 University Drive South.
- r. Joint Powers Agreement and Ground Lease with Cass Rural Water Users for an Effluent Reuse Facility on Wastewater Treatment Plant property.
- s. Proposal from Manning Mechanical in the amount of \$44,908 for modifications to the hot water distribution and HVAC systems at the Wastewater Treatment Plant to further utilize available bio-gas.
- t. Task Order from Ulteig Engineers in the amount of \$222,950 for pre-design services to repair Lift Station #1 defects.
- u. Bike trail priorities for 36th Street South from Woodbury Park to 40th Avenue South (Project No. 5667).
- v. Cost Participation and Maintenance Agreement with NDDOT for Improvement District Nos. 5530 and 5547.
- w. 12th Avenue North Viaduct Context Sensitive Design Elements to include enhanced lighting and decorative railings (Project No. 5547).
- x. Scope of Work and Cost Proposal from Ulteig Engineers in the amount of \$26,600 for 1st Avenue North Storm Sewer Analysis (Project No. 4692-4).
- y. Frontage road design and construction at I-29 and 52nd Avenue South Interchange.
- z. Bid award for Project No. 5766 to Earth Developers, Inc. in the amount of \$39,567.75.
- aa. Contract time extension for Project No. 5720.
- bb. Bills in the amount of \$3,726,767.00.

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.

Amended Location and Comprising to the Assessment District for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5759 Approved:

The Board received a communication from Senior Engineer Dave Johnson submitting the amended Location and Comprising to the Assessment District for Improvement District No. 5759 for the Maple Valley area. Mr. Johnson stated the original assessment boundary was correct on the map that was published, however, the published written text for the comprising portion of the description did not match the map. He said the amended location and comprising document corrects this and the developer has submitted a document agreeing to this modification and change and the scheduled bid date has been pushed back two weeks by addendum to accommodate this change.

Commissioner Coates moved the location and comprising for Improvement District No. 5759 be amended as follows:

On 63rd Avenue South from 36th Street to Maple Valley Drive
On 35th Street South from 59th Avenue South to Maple Valley Drive
On 59th Avenue South from Interstate 94 to Maple Valley Drive
On Autumn Drive from 59th Avenue South to north of 59th Avenue Court
On 59th Avenue Court
On Interstate Frontage Road and 36th Street South from 63rd Avenue South to 1/4 line
On 64th Avenue South from Maple Valley Drive to 25th Street South
On Maple Valley Drive from north of 59th Avenue South to 59th Avenue South

COMPRISING:

A part of the south half (S 1/2) of Section 2, Township 138 North, Range 49 West of the 5th Principal Meridian to be platted as follows:

Lots 1 through 71, inclusive, Block 1
Lots 1 through 10, inclusive, Block 2
Lots 1 through 22, inclusive, Block 3
Lots 1 through 19, inclusive, Block 4
Lots 1 through 40, inclusive, Block 5
Lots 1 through 36, inclusive, Block 6
Lots 1 through 2, inclusive, Block 7
Lots 1 through 85, inclusive, Block 8
Lots 1 through 7, inclusive, Block 9
All to be platted in Maple Valley Addition

The unplatted land in the NE 1/4 of Section 2, Township 138 North, Range 49 West, west of Drain 53.

The unplatted land in the S 1/2 of Section 35, Township 139 North, Range 49 West, west of Drain 53.

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

Bridges, PC Concrete Pavement, Grading, Storm Sewer, Water Main Distribution, Signals, Street Lighting, Bike Trail and Incidentals Improvement District No. 5314: Protests Received and Declared Insufficient:

The Statutory Resolution of Necessity for the construction of Bridges, PC Concrete Pavement, Grading, Storm Sewer, Water Main Distribution, Signals, Street Lighting, Bike Trail and Incidentals Improvement District No. 5314 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota, on September 3 and 10, 2007 and protests representing less than one percent of the legal protest area have been received and filed in the office of the City Auditor within the legal protest period.

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

Second by 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 Bridges, PC Concrete Pavement, Grading, Storm Sewer, Water Main Distribution, Signals, Street Lighting, Bike Trail and Incidentals Improvement District No. 5314-10:

The bids for Bridges, PC Concrete Pavement, Grading, Storm Sewer, Water Main Distribution, Signals, Street Lighting, Bike Trail and Incidentals Improvement District No. 5314-10 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., October 3, 2007 and the bids were found to be as follows:

Master Construction Company, Inc. Bid:	Fargo, ND \$334,119.50
Northern Improvement Company Bid:	Fargo, ND \$348,495.00
Dakota Underground Bid:	Fargo, ND \$364,425.00

Contract for Bridges, PC Concrete Pavement, Grading, Storm Sewer, Water Main Distribution, Signals, Street Lighting, Bike Trail and Incidentals Improvement District No. 5314-10 Awarded to Master Construction Company, Inc. in the Amount of \$334,119.50:

Commissioner Coates offered the following Resolution and moved its adoption:

WHEREAS, The City Engineer has prepared and filed a detailed statement of the estimated costs of Bridges, PC Concrete Pavement, Grading, Storm Sewer, Water Main Distribution, Signals, Street Lighting, Bike Trail and Incidentals Improvement District No. 5314-10; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received October 3, 2007 for Bridges, PC Concrete Pavement, Grading, Storm Sewer, Water Main Distribution, Signals, Street Lighting, Bike Trail and Incidentals Improvement District No. 5314-10 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for Bridges, PC Concrete Pavement, Grading, Storm Sewer, Water Main Distribution, Signals, Street Lighting, Bike Trail and Incidentals Improvement District No. 5314-10 shows the bid of Master Construction Company, Inc. of Fargo, North Dakota., in the sum of \$334,119.50 to be the lowest and best bid received.

NOW, THEREFORE, BE IT RESOLVED, That the Board of City Commissioners finds and declares the bid received from Master Construction Company, Inc. in the sum of \$334,119.50 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Bridges, PC Concrete Pavement, Grading, Storm Sewer, Water Main Distribution, Signals, Street Lighting, Bike Trail and Incidentals Improvement District No. 5314-10 in the City of Fargo, North Dakota, be and the same is hereby awarded to Master Construction Company, Inc. for the sum of \$334,119.50, subject to the supervision, inspection and approval of the City Engineer, and in accordance with the Plans and Specifications filed in the office of the City Auditor.

Second by 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.

Change Order No. 1 for Improvement District No. 5608 Approved:

Commissioner Coates moved approval of Change Order No. 1 in the amount of an increase of \$21,267.81 for Improvement District No. 5608.

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.

Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5762 (Calico Prairie Addition):

Commissioner Coates moved the following action be taken in connection with Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5762:

Adopt Resolution Creating Improvement District No. 5762:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 5762, in the

City of Fargo, North Dakota, be created
On 30th Avenue South from 43rd to 45th Street.
On Calico Drive South from 30th Avenue South to a point 500' north.

COMPRISING:

Lots 1 through 8, inclusive, Block 1.
Lots 1 through 4, inclusive, Block 2.
Lots 1 through 6, inclusive, Block 3.
All in Calico Prairie Addition.

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

NOW, THEREFORE, BE IT RESOLVED, That Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 5762, 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. 5762:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 5762, 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 \$425,344.)

Order Plans and Specifications for Improvement District No. 5762:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 5762, in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 5762:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 5762, 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. 5762, in the City of Fargo, North Dakota, be and the same are hereby approved and ordered filed in the Office of the City Auditor.

Direct City Auditor's Office to Call for Bids for Improvement District No. 5762:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 5762, 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 Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5749-1 Approved:

Commissioner Coates moved approval of the Contract between the City of Fargo and Border States Paving, Inc. for Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5749-1 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 Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5749-1 Approved:

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

Liberty Mutual Insurance Company, in the amount of \$858,370.66, for Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5749-1 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 Concrete Curb and Gutter, Asphalt Pavement, Street Lights and Incidentals Improvement District No. 5758 Approved:

Commissioner Coates moved approval of the Contract between the City of Fargo and Border States Paving, Inc. for Concrete Curb and Gutter, Asphalt Pavement, Street Lights and Incidentals Improvement District No. 5758 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 Concrete Curb and Gutter, Asphalt Pavement, Street Lights and Incidentals Improvement District No. 5758 Approved:

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

Liberty Mutual Insurance Company, in the amount of \$1,018,579.65, for Concrete Curb and Gutter, Asphalt Pavement, Street Lights and Incidentals Improvement District No. 5758 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.

Mutual Aid and Hold Harmless Agreement with the City of Jamestown Fire Department Approved:

The Board received a communication from Fire Chief Bruce Hoover stating last week there was a fire that destroyed an equipment storage building serving the Jamestown Fire Department. He said Jamestown Fire Chief Bert Gray indicated they have adequate response equipment to handle most emergencies, however, specialized and large scale responses will be beyond their capabilities until additional equipment can be secured. Chief Hoover submitted a Mutual Aid and Hold Harmless Agreement with the City of Jamestown Fire Department and requested the Board's approval.

Commissioner Wimmer moved the Mutual Aid and Hold Harmless Agreement be approved.

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.

Request for Amendment to Ordinance 12-0105 to Allow a Dog with a Shock Collar to be Off-Leash Withdrawn:

The Board received a communication from Police Chief Keith Ternes stating Mr. David Hill introduced a proposal at the September 10, 2007 City Commission meeting to amend municipal ordinance 12-0105 that requires dogs within the city limits to be controlled by a leash. He stated Mr. Hill's proposal was to amend the ordinance to allow people to control their dogs through use of a shock collar in lieu of a leash. He said, as a result of the discussion and per the instructions from the City Commission, Chief Ternes directed Lt. Greg Lemke and other members of the Police Department staff to work with Mr. Hill to examine the feasibility of permitting use of a shock collar as a substitute for a leash relative to maintaining control over a dog within city limits. Staff, he said, were also asked to consider what, if any, restrictions the City should impose regarding the training of dogs within the City for hunting purposes. Chief Ternes said he reviewed the conclusions by Lt. Lemke and the others on the committee with Mr. Hill and Mr. Hill has informed him he is interested in withdrawing his request to amend the Ordinance. However, he said, he and Mr. Hill have agreed to further examine the City's existing leash law and will provide the City Commission with recommendations for revisions at a future date.

Baller Herbst Law Group Retained to Draft a Telecommunication Ordinance:

The Board received a communication from City Administrator Pat Zavoral stating the City has a series of ordinances and agreements in place that have been developed to meet the needs of individual telecommunications requests. He said the City is having preliminary discussions with a local cable provider that would like to offer the public another service dealing with movies and, if proved feasible, would require another agreement with the City. With all these agreements and ordinances in place or in need of modification, he said, City staff met with City Attorney Erik Johnson and the City's telecommunication legal counsel Adrian Herbst and they recommended developing an over-arching Telecommunication Ordinance. This ordinance, he said, would include existing ordinances related to specific telecommunication services, such

as the Cable Ordinance and add language relating to other communications services in Fargo. He submitted background information received from Mr. Herbst on what this ordinance could do for the City going forward on communication matters. He recommended the City Commission consider authorizing a draft of a Communication Ordinance for the City which would be presented to the various private parties for review and comment prior to adoption. Mr. Herbst, he said, would assist in this effort and the estimated fees for such service would be in the range of \$40,000 to \$50,000 and staff recommends this fee request be added to the City Attorney budget for 2008.

Commissioner Williams moved appropriate staff be directed to develop a Communication Ordinance, allow communication industry review and comment and retain the legal services of Baller Herbst Law Group for a fee not to exceed \$50,000 to develop this ordinance.

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

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

Resolution Adopted Vacating 22nd Avenue North, West of 10th Street North to the City of Fargo, Cass County, North Dakota (1001 22nd Avenue North and 2114 10th Street 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, of 22nd Avenue North, West of 10th Street North to the City of Fargo, North Dakota"; and

WHEREAS, Said Plat had been approved by the City Engineer, and a Hearing had been held on said Plat by the Fargo Planning Commission on November 8, 2006, and Notice of such Hearing had been published on October 23 and 30, 2006, as required by law, and said Plat had been approved by the Fargo Planning Commission; and

WHEREAS, The City Auditor published a Notice of Hearing on said Plat in the official newspaper for the City of Fargo on September 3, 10, 17, and 24, 2007, that a Hearing would be held in the City Commissioner's Room at the City Hall, Fargo, North Dakota, at 5:15 o'clock PM, on Monday, October 8, 2007, at which time said Plat would be considered and all interested persons would be heard; and

WHEREAS, The City Auditor reports that no protest or objections have been received or filed in the office of the City Auditor, either written or verbal, objecting to the vacation petitioned for and the Board of City Commissioners finds and declares that no written protests have been filed for the attention of the Board and no person is present at this Hearing to protest or offer objection thereto; and

WHEREAS, The Board of City Commissioners hereby declares that it is in the best interest of the adjoining property owners and for the public that 22nd Avenue North, West of 10th Street North be vacated.

NOW THEREFORE, BE IT RESOLVED, That the findings and recommendations of staff be accepted and a portion of 22nd Avenue North, west of 10th Street North be vacated within the City of Fargo, North Dakota and that the Plat entitled "Vacation Plat, of 22nd Avenue North, West of 10th Street North to the City of

Fargo, North Dakota” 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 Wimmer. On the vote being taken on the question of the adoption of the Resolution Commissioners Coates, Wimmer, Mahoney, Williams and Walaker voted aye.

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

Resolution Adopted Approving Agassiz Crossing Third Addition to the City of Fargo, Cass County, North Dakota (4900 and 4901 Agassiz Crossing South):

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 “Agassiz Crossing Third Addition” containing 4 Lots, 2 Blocks and 34.269 acres of land more or less, located at 4900 and 4901 Agassiz Crossing South; and

WHEREAS, A Hearing was scheduled to be held June 13, 2007 and was continued to July 11, 2007 by the Fargo Planning Commission, and notice of such Hearings had been published, as required by law, and said Plat had been approved by the Fargo Planning Commission and by the City Engineer.

WHEREAS, The City Auditor's Office published a Notice of Hearing on said Plat in the official newspaper for the City of Fargo on October 1 and 8, 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., October 8, 2007 at which time said Plat would be considered and all interested persons would be heard.

NOW, THEREFORE, BE IT RESOLVED, That the findings and recommendations of staff be accepted and the Plat entitled “Agassiz Crossing Third Addition” be and the same is hereby in all things affirmed and approved on the basis that it complies with the Comprehensive Plan, Standards of Article 20-06, and all other applicable requirements of the Land Development Code, 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 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.

Parcels of Land in Agassiz Crossing Third Addition Rezoned:

At a Hearing held on July 11, 2007 the Fargo Planning Commission recommended approval of a change in zoning from GO, General Office and GC, General Commercial to GO, General Office on Lot 2, Block 1, Agassiz Crossing Third Addition.

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 Coats 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 findings of staff be accepted and the rezoning be approved as it complies with the approval criteria set forth in the Land Development Code.

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

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

First Reading of an Ordinance Rezoning Certain Parcels of Land Lying in Agassiz Crossing Third Addition to the City of Fargo:

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 Agassiz Crossing Third Addition to the City of Fargo be placed on first reading.

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

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

Resolution Adopted Approving Prairie Grove First Addition to the City of Fargo, Cass County, North Dakota (Northeast Quarter of Section 2, Township 138 North, Range 49 West):

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 "Prairie Grove First Addition" containing 102 Lots, 7 Blocks and 93.36 acres of land more or less, located south of 52nd Avenue South and west of 25th Street South; and

WHEREAS, A Hearing was scheduled to be held April 11, 2007 and was continued to May 9, 2007 by the Fargo Planning Commission, and notice of such Hearings had been published, as required by law, and said Plat had been approved by the Fargo Planning Commission and by the City Engineer.

WHEREAS, The City Auditor's Office published a Notice of Hearing on said Plat in the official newspaper for the City of Fargo on September 24 and October 1, 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., October 8, 2007 at which time said Plat would be considered and all interested persons would be heard.

NOW, THEREFORE, BE IT RESOLVED, That the findings and recommendations of staff be accepted and the Plat entitled "Prairie Grove First

Addition” be and the same is hereby in all things affirmed and approved on the basis that it complies with the Comprehensive Plan, Standards of Article 20-06, and all other applicable requirements of the Land Development Code, 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 Mahoney. On the vote being taken on the question of the adoption of the Resolution Commissioners Coates, Mahoney, Williams, Wimmer and Walaker voted aye.

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

Parcels of Land in Prairie Grove First Addition Rezoned:

At a Hearing held on May 9, 2007 the Fargo Planning Commission recommended approval of a change in zoning from AG, Agricultural and LC, Limited Commercial to PI, Public/Institutional on Lots 1, 4 and 16, Block 1; LC, Limited Commercial on Lots 2 and 3, Block 1, Lot 1, Block 2 and Lot 1, Block 4; MR-3, Multi-Family on Lot 1, Block 3 and Lots 17 and 37, Block 5; SR-3, Single-Family on Lots 1 through 16 and 18 through 29, Block 5; and Lots 1 through 24, Block 6; SR-2, Single-Family on Lots 5 through 15, Block 1; Lots 30 through 36 and 38 through 46, Block 5; and Lots 1 through 13, Block 7; Prairie Grove First Addition.

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 findings of staff be accepted and the rezoning be approved as it complies with the approval criteria set forth in the Land Development Code.

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

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

First Reading of an Ordinance Rezoning Certain Parcels of Land Lying in Prairie Grove First Addition to the City of Fargo:

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 Prairie Grove First Addition to the City of Fargo be placed on first reading.

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 Requesting the Rezoning of Parcels of Land in Kirkham's Addition Denied (910 and 920 14th Street North):

A Hearing had been held by the Fargo Planning Commission on September 12, 2007, for the purpose of considering a petition requesting that the zoning be changed from SR-3 to MR-2, Multi-Dwelling on Lots 3 and 5, Block 8, Kirkham's Addition, and the Fargo Planning Commission at such Hearing recommended to the Board of City Commissioners that the change in zoning as petitioned for be denied.

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

Written protests to the change in zoning as petitioned for had been received by the Fargo Planning Commission, such protests representing 13 per cent of the legal protest area.

Commissioner Coates moved the protests be received and filed.

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

Senior Planner Jim Hinderaker said the Planning Commission recommended denial of the request because the neighborhood is predominantly single family homes making it a poor transition area for multi-tenant homes and considered the request to be an example of spot zoning.

Bob Keifert, 916 14th Street North, stated he lives between the properties. He said changing the zoning to multi-dwelling would advance traffic in an already busy college area and he supports denial of the request.

Petronella Shirk, 1122 College Street North, stated she is the only owner occupied resident on College Street and agreed the area does not need any more rental homes. She said she cannot invite friends to her home because of lack of available parking on the street.

Commissioner Coates offered the following Resolution and moved its adoption:

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

WHEREAS, The Fargo Planning Commission denied the request on September 12, 2007; and

WHEREAS, Under 20 per cent of the legal protest area has protested the petition for rezoning.

NOW, THEREFORE, BE IT RESOLVED, That the petition for rezoning the above-described property in Kirkham's Addition, be and the same is hereby denied on the basis that review criteria of Section 20-0906.F (1, 3 and 4) has not been met.

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.

Motion to Rezone Parcels of Land in Erskines Addition Failed for the Lack of a Majority (1226 University Drive and 1117 13th Avenue South):

A Hearing had been held by the Fargo Planning Commission on September 12, 2007 to consider a petition for a zoning change from NC, Neighborhood Commercial and SR-3, Single Family Residential to LC, Limited Commercial on the south 51 feet

of Lots 1, 2, 3, 4 and 5 and the south 51 feet of the south 101 feet of the west 8.4 feet of Lot 6, and the east 16.6 feet of Lot 6, all of Lot 7, and the west 8.4 feet of Lot 8, Block SS of Erskines Addition, however, the Fargo Planning Commission at such Hearing recommended to the Board of City Commissioners that the zoning be changed from SR-3, Single-Dwelling Residential to NC, Neighborhood Commercial for the south 71 feet of the east 16.6 feet of Lot 6, the south 71 feet of Lot 7 and the south 71 feet of the west 8.4 feet of Lot 8, Block SS, Erskines Addition.

The City Auditor's Office published a Notice of Hearing stating August 13, 2007 was the time and date set for said Hearing at which time all interested persons could appear and would be heard.

At the August 13, 2007 meeting the Hearing was continued to September 24, 2007.

At the September 24, 2007 meeting the Hearing was continued to this day and hour.

Senior Planner Jim Hinderaker stated the original request was for rezoning of both properties to commercial but the request was sent back to Planning staff in order to work with the neighbors on a compromise. He said the neighbors were opposed to any change. Planning staff, he said, felt the need for a buffer zone so the Planning Commission recommended 71 feet from the original request of 61 feet. He said Neighborhood Commercial is fitting for the area at 13th Avenue and University Drive as long as a buffer is included. He said 23% of the protest area is opposed so the City Commission would need a super majority to make the change as recommended.

In response to Commissioner Coates' question regarding the concern of having a parking lot next to residential, Mr. Hinderaker said a 10 foot buffer zone is required to allow bushes and/or trees. He also said the vacant area behind 1117 13th Avenue South is within the current code but the concern is acquisition of adjacent property for development.

Steven Stremick, 1321 23rd Street South, Suite H, said he has worked with the City to develop a plan with the intent of being a good neighbor. Planning staff, he said, were in favor of improving the property. Mr. Stremick distributed pictures to show improvements he has made to 1226 University Drive. He said he asked Planning staff about putting a dumpster or out-building on the property but was told he needed an additional 10 feet which was approved. He said he also worked with the City for better placement of the driveway for the parking lot.

Kim LePage Briss, 1109 13th Avenue South, said she protests Mr. Stremick's request and based on a suggestion from Planning, she went around and got signatures for a protest petition.

In response to a question from Commissioner Coates, Ms. Briss replied that she has no negative impact on her property from having a business located on the corner of University Drive and 13th Avenue. She said if the house next door was demolished and turned into a parking lot, then there would be a negative impact.

Sharon Hilgers, Ms. Briss' realtor, said home values would be negatively impacted by having a parking lot next door to Ms. Briss' home. Another concern, she said, is if values decrease, financing is more difficult to obtain.

Attorney Erin Conroy, representing Mr. and Mrs. Briss, summarized their concerns regarding the approval of Mr. Stremick's request. She stated rezoning would increase commercial business in the area and starve out residential

neighborhoods. On behalf of the property owners, she asked the City Commission to vote with the constituents, not one person.

At 6:07 p.m. the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

Mr. Rodney Bjornstad, 1321 23rd Street South, said he is a real estate broker/realtor and has a 24 hour offer on the table for Ms. Briss' home but she refuses to sell to Mr. Stremick.

Mr. Hinderaker said there are policies in place to protect neighborhoods and the approved criteria meets the Comprehensive Plan. He said it is up to the City Commission to address this issue.

Justin McKenzie, 1209 South University Drive, said he purchased his home three years ago because of the residential area and proximity to a school. He said approving the rezoning would compromise the integrity of the neighborhood.

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 written protests to the request for rezoning representing 23% of the legal protest area.

NOW, THEREFORE, BE IT RESOLVED, That the zoning be approved as recommended by the Planning Commission.

Second by Mahoney. On the vote being taken on the question of the adoption of the Resolution Commissioner Coates voted aye.

Commissioners Mahoney, Wimmer, Williams and Walaker voted nay.

The motion was declared lost for the lack of a majority.

Special Assessment Lists for Various Improvement Districts Approved:

A Hearing had been set for this day and hour on the special assessment lists for the construction of the following Improvement Districts in the City of Fargo, North Dakota, on which special assessment lists Hearings had been held by the Special Assessment Commission after which they had been confirmed and filed with the Board of City Commissioners:

Drain Improvements and Incidentals No. 5421.

Seal Coat and Incidentals No. 5579.

Street Lighting No. 5604.

Drain Improvements and Incidentals No. 5608.

Street Lighting No. 5616.

Water Main Replacement, Street Reconstruction and Incidentals No. 5635.

Water Main Replacement, Street Reconstruction and Incidentals No. 5638.

Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals No. 5662.

Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals No. 5663.

Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals No. 5669.

Sanitary Sewer, Water Main, Storm Sewer and Incidentals No. 5671-1.

Storm Sewer, Lift Station and Incidentals No. 5678.
Storm Sewer, Paving and Incidentals No. 5685.
P.C. Concrete Alley Paving and Incidentals No. 5688.
Water Main and Incidentals No. 5741.
Fargo Park District Edgewood Club House and Incidentals No. 7136.
Urban Plains Park and Incidentals No. 7137.
Railroad Crossing Safety, Quiet Zone and Incidentals No. 5243.
(1) Receive protests.

Mayor Walaker stated Improvement District No. 5243 needs to be pulled from the list and considered separately.

No appeals have been filed in writing against any item appearing on such special assessment lists with the exception of Improvement District No. 5243 and no person is present at this Hearing to appeal or offer any objection thereto.

Commissioner Mahoney moved that the special assessment lists for the construction of the above listed Improvement Districts except for Improvement District No. 5243 be and the same are hereby approved and confirmed and ordered filed in the office of the City Auditor, that the City Auditor's Office be instructed to proceed to collect the assessments in the manner provided by law and that the interest rate be set at 1% per annum over the net rate on bonds financing said projects.

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.

No Action Taken on the Special Assessment List for Railroad Crossing Safety, Quiet Zone and Incidentals Improvement District No. 5243:

A Hearing had been set for this day and hour on the special assessment list for the construction of Railroad Crossing Safety, Quiet Zone and Incidentals Improvement District No. 5243 in the City of Fargo, North Dakota, on which special assessment list a Hearing had been held by the Special Assessment Commission after which it had been confirmed and filed with the Board of City Commissioners.

Dave Anderson, 203 4th Avenue North, said he does not own property in the assessed area but, as President of the Downtown Community Partnership, he receives complaints from business owners regarding the quiet zone assessment area. He said everyone that enters the area benefits and there is a need to better define the quiet zone assessment area.

Commissioner Coates said there is an element of safety to the community as a whole beyond the borders of the assessment area. She said the assessment area only pays a portion of the expense and the remainder is paid by state, federal and City of Fargo funds.

Dr. Cal Fercho, 2525 Country Club Drive East, said he is one of multiple owners of the Professional Building on 4th Street. He said he is not opposed to the quiet zone and feels it is good for the City of Fargo but it affects a large area beyond the assessment area. He said the City Commission should re-examine the assessment area.

Mayor Walaker said 75% of the project is funded by local and state with the quiet zone special assessment portion paid over 25 years.

Ed Wilt, 1113 2nd Avenue South, said he understands the importance of the safety issue but he is one of only a few single family homes in the assessment area which have already been assessed for other downtown improvements. He said everyone that benefits should contribute.

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

After recess: All Commissioners present. Mayor Walaker presiding.

Greg Danz, owner of Zandbroz Variety Store, said downtown improvements caused a loss of revenue to his retail store. The quiet zone, he said, will not increase the value of his downtown apartments. He stated hundreds of beds at MeritCare Hospital will benefit and he questioned why MeritCare was not being assessed. Fargo should build the costs into the City's budget, he said, or assess everyone.

In response to a comment from Dale Larson from FRS Industries, Special Assessments Coordinator Dan Eberhardt said a letter was sent to the property owners in the assessment area in February of 2006 at the time the district was created. Mr. Eberhardt said the area was determined based on the number of trains that run on the two sets of railroad tracks.

City Engineer Mark Bittner stated the request for the quiet zone came from the downtown community partly because of the desire to add more residential units. He said, based on the recommendations from the Finance Committee and former Mayor Bruce Furness, it was suggested Special Assessment staff establish the area to be assessed for the project. Mr. Bittner said the defining characteristic was the Downtown Mixed Use (DMU) area because of the proximity to the project. He said the downtown area is a valid assessment district but they are not the only ones to benefit; the entire city uses the downtown and all will benefit from the project.

In response to a comment by Commissioner Williams, Mr. Bittner said former Mayor Furness did not believe it was appropriate to use sales tax to fund the quiet zone project. Downtown will benefit with the increase of downtown residential units as well as improved property values, he said. He stated Fargo cannot do a city-wide assessment without a vote of the people. Moorhead, he said, is receiving more federal funding (85%) so the City of Moorhead pays less of the percentage. After the original letter went out to property owners, he continued, protests were declared insufficient and, with the ones received recently, there is a total of 6.9% protests.

Commissioner Williams questioned if the cost of the project is on target for the original estimate of 2.4 million dollars.

Mr. Bittner said there is a \$500,000 cap to the Special Assessment District and if the project exceeds the estimate, the City would be responsible for the overage. In addition, he said, the City Commission would determine whether to increase the cap.

Commissioner Mahoney moved that the special assessment list for the construction of Railroad Crossing Safety, Quiet Zone and Incidentals Improvement District No. 5243 be and the same is hereby approved and confirmed and ordered filed in the office of the City Auditor, that the City Auditor's Office be instructed to proceed to collect the assessments in the manner provided by law and that the interest rate be set at 1% per annum over the net rate on bonds financing said projects.

Second by Wimmer.

Commissioner Williams said the Finance Committee discussed an alternative to the current assessment plan. He recommended using sale tax funds because all of the City benefits.

Commissioner Wimmer said he would like to see other options researched including sales tax funding.

Mr. Bittner said the project is scheduled to be complete by the end of November with payment of final bills by February 2008.

Mayor Walaker questioned if there is time to delay this issue.

Mr. Eberhardt said certification is of the essence with a deadline of October 31st. He said it takes time to process new districts.

On call of the roll Commissioner Mahoney voted aye.

Commissioners Wimmer, Williams, Coates and Walaker voted nay.

The motion was declared lost for the lack of a majority.

There was discussion regarding the Finance Committee looking at the spreads again and extending approval of the quiet zone assessment list until completion of the project.

City Auditor Steve Sprague said the assessments could be held until the costs are finalized in 2008.

Commissioner Williams moved no action be taken on the assessments for Railroad Crossing Safety, Quiet Zone and Incidentals Improvement District No. 5243 until the project is finalized and that the Finance Committee be requested to determine if there are alternative funding sources.

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

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

Request for Tax Increment Financing for a Project at 1310 North Broadway Referred to Appropriate Staff for Review:

The Board received a communication from Planning Director Jim Gilmour submitting a request for Tax Increment Financing for a project at 1310 North Broadway. He said the project consists of demolishing a house and a wing of an existing building in order to construct a 30 unit apartment building with a parking lot.

Commissioner Mahoney moved the request be referred to the appropriate staff to move forward with the application process.

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

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

Commissioner Coates moved that the Board adjourn to 5:00 o'clock p.m., Monday, October 22, 2007.

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

The time at adjournment was 8:00 o'clock p.m.