

BOARD OF CITY COMMISSIONERS
Fargo, North Dakota

Regular Meeting:

Monday:

March 10, 2008:

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, March 10, 2008.

The Commissioners present or absent were as shown following:

Present: Coates, Mahoney, Williams (via conference call), Wimmer, Walaker.

Absent: None.

Mayor Walaker presiding.

Order of Agenda Approved:

Commissioner Coates moved the Order of the Agenda be approved.

Second by Mahoney. 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 February 25, 2008 be approved as read.

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

Consent Agenda Approved:

Commissioner Coates moved the Consent Agenda be approved as follows:

- a. 1st reading of an Ordinance Amending Sections 6-0211, 6-0214, 6-0216, 6-0217 and 6-0218 of Article 6-02 of Chapter 6 of the Fargo Municipal Code Relating to Pensions for City Employees Other Than Those in the Police and Fire Pension Systems.
- b. Memorandum of Understanding with the Fargo Public Schools for use of the Civic Center and Auditorium in the event of a school incident or emergency.
- c. Finance Committee recommendation for a revenue accounting policy to be effective March 10, 2008.
- d. Finance Committee recommendation for early redemption of the outstanding Lodging Tax Revenue Bonds issued to construct the F-M Convention and Visitors' Building and distribution of lodging tax surplus funds to the custody of the F-M CVB.

- e. Finance Committee recommendation for a sole source procurement with Eide Bailly, LLC for Police software conversion consulting services.
- f. Addendum to the Duncan Solutions contract to provide parking enforcement and citation management services.
- g. Year to Date - Budget to Actual report for February 2008.
- h. Memorandum of Understanding with Fargo Public Schools for School Resource Officers.
- i. Police Department budget adjustment and grant with the North Dakota Department of Transportation to fund safety belt enforcement and education.
- j. Resolution authorizing submittal of a formal application with the North Dakota Department of Health for a loan under the Clean Water Act for a north side sewer service system.
- k. Adjusted list price for NRI property at 1122 7th Avenue South to \$114,900.
- l. Expansion of the Neighborhood Revitalization Initiative (NRI) boundaries to 28th Avenue on the north and I-94 on the south.
- m. Amended and Restated Easement with Craig and Llonna Helenske, Elizabeth Bushell and Ron and Karen Offutt for a No-Build Easement area.
- n. Agreement with Alan and Rita Yan regarding an extension of time to correct building code violations at 5003 Rose Creek Parkway South.
- o. Contract with the North Dakota Department of Health for West Nile Virus activities.
- p. Health Department budget adjustment and contract with the North Dakota Department of Health to purchase childhood vaccine.
- q. Mosquito Control Agreement with Cass County for the 2008 season and aerial application forms and payment of retainer fee of \$10,043 to Airborne Custom Spraying for the 2008 season.
- r. Application filed by Bruck & Whitt LLC for a five-year tax exemption for improvements made to a building at 101 8th Street South.
- s. Applications for Games of Chance:
 - (1) NDSU NIRSA for raffles from 3/20/08 to 4/7/08.
 - (2) MDA "Old Fashioned Motorcycle Run" for a raffle on 5/31/08.
 - (3) Lincoln Elementary School for bingo and a raffle on 4/5/08.
 - (4) Clara Barton Hawthorne PTA for bingo on 3/15/08.
 - (5) Centennial School PTA for bingo and raffles from 4/4/08 to 5/31/08.

- (6) Fargo North Baseball for a calendar raffle from 3/17/08 to 5/31/08.
- (7) The Faller Benefit for a raffle on 5/2/08; Public Spirited Resolution.
- t. Plat of Urban Plains Northeast Retail Addition.
- u. Purchase of one mudjacker from Hydraulic Mudpumps, Inc. for \$65,365.
- v. Purchase Agreement for Park District property for a storm retention basin as part of the 52nd Avenue South Improvement Project.
- w. House acquisition and removal for flood mitigation purposes at 4600 South University Drive.
- x. Change Order No. M02 for an increase of \$8,022 for mechanical work in connection with Phase I of the Central Garage Renovation.
- y. Change Order No. 1 for an increase of \$1,881 for the Civic Center fall safety rigging.
- z. Contract awards for consulting services for Project Nos. 5725, 5726, 5728, 5729, 5799, 5808, 5657, 5656, 5798 and 5733.
- aa. Bid award for Project No. 5771 to S & S Landscaping in the amount of \$16,048.
- bb. Bid advertisements for Project Nos. 5801, 5802 and 5816.
- cc. Bills in the amount of \$2,391,140.94.

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.

Bids Received for Bridges, PC Concrete Pavement, Grading, Storm Sewer, Water Main Distribution, Signals, Street Lighting, Bike Trail and Incidentals Improvement District No. 5314-9:

The bids for Bridges, PC Concrete Pavement, Grading, Storm Sewer, Water Main Distribution, Signals, Street Lighting, Bike Trail and Incidentals Improvement District No. 5314-9 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., March 5, 2008 and the bids were found to be as follows:

Dakota Underground	Fargo, ND
Bid:	\$5,732,126.80
Master Construction Company, Inc.	Fargo, ND
Bid:	\$5,774,947.05

Northern Improvement Company	Fargo, ND
Bid:	\$5,880,084.23
Strata Corporation	Grand Forks, ND
Bid:	\$6,416,249.34
Opp Construction Company	Grand Forks, ND
Bid:	\$6,668,299.50

Contract for Bridges, PC Concrete Pavement, Grading, Storm Sewer, Water Main Distribution, Signals, Street Lighting, Bike Trail and Incidentals Improvement District No. 5314-9 Awarded to Dakota Underground in the Amount of \$5,732,126.80:

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. 5314-9; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received March 5, 2008 for Bridges, PC Concrete Pavement, Grading, Storm Sewer, Water Main Distribution, Signals, Street Lighting, Bike Trail and Incidentals Improvement District No. 5314-9 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. 5314-9 shows the bid of Dakota Underground of Fargo, North Dakota, in the sum of \$5,732,126.80 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 \$5,732,126.80 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. 5314-9 in the City of Fargo, North Dakota, be and the same is hereby awarded to Dakota Underground for the sum of \$5,732,126.80, 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 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.

Seal Coat and Incidentals Improvement District No. 5778: Protests Received and Declared Insufficient:

The Statutory Resolution of Necessity for the construction of Seal Coat and Incidentals Improvement District No. 5778 in the City of Fargo, North Dakota, was duly published in the official newspaper for the City of Fargo, North Dakota on

February 4 and 11, 2008 and protests representing less than 1 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 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.

Bids Received for Seal Coat and Incidentals Improvement District No. 5778:

The bids for Seal Coat and Incidentals Improvement District No. 5778 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., March 5, 2008 and the bids were found to be as follows:

Pearson Brothers, Inc.

Hanover, MN

Bid:

\$348,165.76

Contract for Seal Coat and Incidentals Improvement District No. 5778 Awarded to Pearson Brothers, Inc. in the Amount of \$348,165.76:

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 Seal Coat and Incidentals Improvement District No. 5778; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bid received March 5, 2008 for Seal Coat and Incidentals Improvement District No. 5778 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bid received for Seal Coat and Incidentals Improvement District No. 5778 shows the bid of Pearson Brothers, Inc. of Hanover, Minnesota, in the sum of \$348,165.76 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 Pearson Brothers, Inc. in the sum of \$348,165.76 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Seal Coat and Incidentals Improvement District No. 5778 in the City of Fargo, North Dakota, be and the same is hereby awarded to Pearson Brothers, Inc. for the sum of \$348,165.76, 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 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.

Bids Received for Water Main and Incidentals Improvement District No. 5583:

The bids for Water Main and Incidentals Improvement District No. 5583 in the City of Fargo, North Dakota were opened at 11:30 o'clock a.m., March 5, 2008 and the bids were found to be as follows:

MIC	Moorhead, MN
Bid:	\$129,395.50
Shermans, LLC	West Fargo, ND
Bid:	\$135,251.65
Dakota Underground	Fargo, ND
Bid:	\$137,385.35
Rising Sun Construction, Inc.	Fargo, ND
Bid:	\$144,210.50
Kindred Plumbing and Heating, Inc.	Kindred, ND
Bid:	\$149,122.60
Master Construction Company, Inc.	Fargo, ND
Bid:	\$149,168.10
United Crane and Excavation, Inc.	Grand Forks, ND
Bid:	\$152,623.91
George E. Haggart, Inc.	Fargo, ND
Bid:	\$160,555.10
Robert Gibb and Sons, Inc.	Fargo, ND
Bid:	\$193,270.00

Contract for Water Main and Incidentals Improvement District No. 5583 Awarded to MIC in the Amount of \$129,395.50:

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 Water Main and Incidentals Improvement District No. 5583; and

WHEREAS, The Board of City Commissioners of the City of Fargo has considered the bids received March 5, 2008 for Water Main and Incidentals Improvement District No. 5583 in the City of Fargo, North Dakota; and

WHEREAS, The City Engineer's tabulation of the bids received for Water Main and Incidentals Improvement District No. 5583 shows the bid of MIC of Moorhead, Minnesota, in the sum of \$129,395.50 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 MIC in the sum of \$129,395.50 is the lowest and best bid received.

BE IT FURTHER RESOLVED, That the contract for Water Main and Incidentals Improvement District No. 5583 in the City of Fargo, North Dakota, be and the same is hereby awarded to MIC for the sum of \$129,395.50, 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 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.

Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5760 (Maple Valley Addition):

Commissioner Coates moved the following action be taken in connection with Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5760:

Adopt Resolution Creating Improvement District No. 5760:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, deems it expedient that Improvement District No. 5760, in the City of Fargo, North Dakota, be created

On 63rd Avenue South from 36th Street to Maple Valley Drive.

On 35th Street South from 60th Avenue South to Maple Valley Drive.

On 60th Avenue South from Interstate 94 to Maple Valley Drive.

On Autumn Drive from 60th Avenue South to north of 58th Avenue Court.

On Interstate Frontage Road and 36th Street South from 63rd Avenue South to ¼ line.

COMPRISING:

Lots 44 through 71, inclusive, Block 1.

Lots 1 through 10, inclusive, Block 2.

Lots 13 through 22, inclusive, Block 3.

Lots 1 through 24, inclusive, Block 5.

Lots 1 through 36, inclusive, Block 6.

Lots 1 through 3, inclusive, Block 7.

All are platted in Maple Valley Addition.

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

NOW, THEREFORE, BE IT RESOLVED, That Concrete Curb and Gutter, Asphalt Pavement, Street Lights, Sidewalks and Incidentals Improvement District No. 5760, 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. 5760:

Direct City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. 5760, 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 \$1,108,000.)

Order Plans and Specifications for Improvement District No. 5760:

Direct City Engineer to prepare Plans and Specifications for the construction of Improvement District No. 5760, in the City of Fargo, North Dakota.

Adopt Resolution Approving Plans and Specifications and Engineer's Report for Improvement District No. 5760:

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. 5760, 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. 5760, in the City of Fargo, North Dakota, be and the same are hereby approved and ordered filed in the Office of the City Auditor.

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

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

That it be and is hereby declared necessary to construct Concrete Curb & Gutter, Asphalt Pavement, Street Lights, Sidewalks & Incidentals, Improvement District No. 5760 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 Concrete Curb & Gutter, Asphalt Pavement, Street Lights, Sidewalks & Incidentals must be in writing and must be filed with the City Auditor's Office within thirty days after the first publication of this Resolution.

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

Direct City Auditor's Office to Call for Bids for Improvement District No. 5760:

Direct City Auditor's Office to publish a Notice, as required by law, calling for bids for the construction of Improvement District No. 5760, in the City of Fargo, North Dakota.

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.

Contract for Bridges, PC Concrete Pavement, Grading, Storm Sewer, Water Main Distribution, Signals, Street Lighting, Bike Trail and Incidentals Improvement District No. 5314-1 Approved:

Commissioner Coates moved approval of the Contract between the City of Fargo and Master Construction Company, Inc. for Bridges, PC Concrete Pavement, Grading, Storm Sewer, Water Main Distribution, Signals, Street Lighting, Bike Trail and Incidentals Improvement District No. 5314-1 in the City of Fargo, North Dakota.

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.

Contract Bond for Bridges, PC Concrete Pavement, Grading, Storm Sewer, Water Main Distribution, Signals, Street Lighting, Bike Trail and Incidentals Improvement District No. 5314-1 Approved:

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

United Fire and Casualty Company, in the amount of \$9,793,449.17, for Bridges, PC Concrete Pavement, Grading, Storm Sewer, Water Main Distribution, Signals, Street Lighting, Bike Trail and Incidentals Improvement District No. 5314-1 in the City of Fargo, North Dakota.

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.

Addy Award Presented to Communications Manager Heather Mitzel:

Mayor Walaker stated the City has been notified that Communications Manager Heather Mitzel has been selected as a recipient of an ADDY Award for her "Break Away From Nicotine" ad. He said he would like to recognize Ms. Mitzel for her achievement in this regard.

Mayor Walaker presented the award to Ms. Mitzel and commended her for her efforts and achievement.

Request to Send Four Fargo Forestry Department Arborists with Two Aerial Units to Northwood, North Dakota for a Two Day "Day of Service" Approved:

The Board received a communication from City Forester Scott Liudahl stating the ND Urban and Community Forestry Association is a statewide organization dedicated to increasing the awareness of the importance of community forests and promoting professionalism in the tree care industry within North Dakota. He said last year the City of Northwood experienced extensive damage and many communities, agencies and organizations are still involved in the restoration and cleanup activities. The Association, he said, is currently organizing a "Day of Service" to help deal with some of the tree damage left over from the storm and it is anticipated that other communities, Association members, individuals and private contractors will participate. Mr. Liudahl stated Northwood has received grants from the ND Forest Service for tree replacement, however, significant tree damage and pruning needs still exist. He said the Fargo Forestry Department is proposing four Certified Arborists

with two aerial units spend two days in the community doing primarily proper pruning and storm damaged tree mitigation. Mr. Liudahl stated Certified Arborist services would be limited to public property and high risk trees that could potentially impact public infrastructure. He said hauling of debris, removals and stumps would be left for others and all related expenses, including liability, will be covered by the City of Fargo.

Commissioner Wimmer moved the request to send four Fargo Forestry Department Arborists with two aerial units to Northwood to participate in the two day "Day of Service" 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.

Land Lease Wind and Access Easement Agreement to Construct a City-Owned Wind Turbine Approved:

The Board received a communication from Enterprise Director Bruce Grubb submitting a Land Lease Wind and Access Agreement between the City of Fargo and John and Susan Triebold. He said the Agreement is for the lease of 40 acres near Oriska, North Dakota for the purpose of constructing, operating and maintaining a City owned wind turbine. He stated at the April 24, 2006 City Commission meeting, the Commission approved submittal of two applications for bonding authority under the federal government Clean Renewable Energy Bonds (CREBs) program. He said CREBs are interest free bonds that can be sold to finance eligible renewable energy projects and the City's renewable energy project applications were as follows:

Landfill Gas Energy Project	\$1,500,000
Wind Energy Project	\$2,437,050

Mr. Grubb said on November 13, 2006, the City received formal notification from the Internal Revenue Service that both projects had been approved and awarded the requested bonding allocations. At the present time, he continued, CREBs have been issued for the landfill gas energy project and the project is completed and functional. He said the wind energy CREBs have not been issued yet, pending the acquisition of a site suitable for the construction, interconnection and operation of a wind turbine. Mr. Grubb stated after approximately 12 months of site selection and property owner negotiations, the land lease agreement with John and Susan Triebold has been successfully negotiated for a 40-acre parcel adjacent to the existing Minnkota Power Cooperative wind turbine near Oriska. He outlined the basic terms of the Agreement and recommended that the Land Lease Wind and Access Easement Agreement be approved. He summarized the steps associated with the completion of a wind energy project and stated the successful completion of the project will offer the following economic and environmental benefits to the City of Fargo:

Economic Benefits (1.5 MW Wind Turbine):

Net positive income of \$2.25 million over 25 year life of the wind turbine
Average annual net income of \$90,000

Environmental Benefits (1.5 MW Wind Turbine):

Electricity production equivalent to powering 380 homes

Equivalent to offsetting emissions from 490,000 gallons of gasoline

Equivalent to planting 975 acres of forest

Equivalent to offsetting emissions from 9,980 barrels of oil

Commissioner Williams moved the Land Lease Wind and Access Easement Agreement with John and Susan Triebold for a 40-acre parcel in Barnes County for the purposes of construction, operating and maintaining a City owned wind turbine be approved.

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 Approving the Issuance of Bonds by the City of Frontier, North Dakota, on Behalf of Metro Sports Foundation, Inc. Under the Municipal Industrial Development Act:

Commissioner Mahoney moved the Resolution entitled "Resolution Approving the Issuance of Bonds by the City of Frontier, North Dakota, on Behalf of Metro Sports Foundation, Inc. Under the Municipal Industrial Development Act" and referred to as Attachment "A", be adopted and attached hereto.

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.

Resolution Adopted Approving Autumn Fields Addition to the City of Fargo, Cass County, North Dakota (2901 and 3001 42nd Street South and 4201 32nd Avenue 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 "Autumn Fields Addition" containing 106 Lots, 9 Blocks and 67.30 acres of land more or less, located at 2901 and 3001 42nd Street South; and 4201 32nd Avenue South; and

WHEREAS, A Hearing was scheduled to be held January 9, 2008 by the Fargo Planning Commission, and notice of such Hearing had been published, as required by law, and said Plat had been approved by the Fargo Planning Commission and by the City Engineer; and

WHEREAS, The City Auditor's Office published a Notice of Hearing on said Plat in the official newspaper for the City of Fargo on March 3 and 10, 2008 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., March 10, 2008 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 "Autumn Fields Addition"

be and the same is hereby in all things affirmed and approved on the basis that it complies with the 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, Mahoney, Williams and Walaker voted aye.

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

Parcels of Land in Autumn Fields Addition Rezoned (2901 and 3001 42nd Street South and 4201 32nd Avenue South):

At a Hearing held on January 9, 2008 the Fargo Planning Commission recommended approval of a change in zoning in Autumn Fields Addition from AG, Agricultural to the following: SR-2, Single-Dwelling on Lots 2 through 8 and 17 through 22, Block 1; Lots 2 through 10, Block 4; Lots 2 through 10 and 13 through 21, Block 5 and Lots 2 through 9 and 12 through 18, Block 6; SR-3, Single-Dwelling on Lots 1 through 10, Block 2 and Lots 1 through 10, Block 3; SR-4, Single-Dwelling on Lots 9 through 16, Block 1; Lots 1 and 11, Block 4; Lots 1, 11, 12 and 22, Block 5; Lots 1, 10, 11 and 19, Block 6 and Lots 1 through 8, Block 7; GC, General Commercial on Lot 9, Block 7; Lot 1, Block 8 and Lot 1, Block 9; GO, General Office on Lot 1, Block 1; P/I, Public and Institutional on Lot 23, Block 1.

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 on the basis that review criteria of Section 20-0906.F (1-4) has been met.

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.

First Reading of an Ordinance Rezoning Certain Parcels of Land Lying in Autumn Fields 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 Autumn Fields Addition to the City of Fargo be placed on first reading.

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

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

Historic Overlay District for Parcels of Land in Woodruff's Addition and Rupert's Subdivision Approved (South of 8th Avenue South, East of 5th Street South, Generally North of 12th Avenue South and East of the Red River):

At a Hearing held on February 13, 2008 the Fargo Planning Commission considered a proposal to create an H-O, Historic Overlay District, on all Lots within Blocks 1, 2, 3, 4, 5 and 8, Lots 11, 12 and 13, Block 7, and the north 120 feet of Lots 1 and 2, Block 9, Woodruff's Addition and Lots D, E, F, G and H, Rupert's Subdivision.

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 Historic Overlay District have been compiled with; and

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

NOW, THEREFORE, BE IT RESOLVED, That the Historic Overlay District be approved.

Second by Mahoney. On the vote being taken on the question of the adoption of the Resolution Commissioners Coates, Mahoney, Wimmer, Williams 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 Woodruff's Addition and Rupert's Subdivision to the City of Fargo - Historic Overlay District:

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 Woodruff's Addition and Rupert's Subdivision to the City of Fargo - Historic Overlay District be placed on first reading.

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

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

City of Fargo's Section 5307 Federal Transportation Administration Grant Preliminary Program of Projects for 2008 Approved:

A Hearing had been set for this day and hour to consider the City's Section 5307 Federal Transportation Administration grant preliminary program of projects for 2008.

The Board determined that there have been no written or verbal protests and no one is present to protest thereto.

The Board received a communication from Transit Administrator Julie Bommelman stating the Federal Transit Administration will make available to the City \$1,747,047 to be used for the transit system. She said the City of Fargo is required to hold a public hearing prior to submitting this application. She said the Program of Projects, which she attached, was developed by the Transit Division to be submitted with the application for these funds.

Commissioner Coates moved the Program of Projects for 2008 and Federal Transit Grant Award of \$1,747,047 be approved.

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

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

Renaissance Zone Project Application for Silver Moon Supper Club, Inc. Approved:

A Hearing had been set for this day and hour to receive comments on a Renaissance Zone Project application filed by Silver Moon Supper Club, Inc. for a business leasing property as part of a zone project at 309 Roberts Street.

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 Silver Moon Supper Club, Inc. 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 Mahoney moved the Renaissance Zone Project application filed by Silver Moon Supper Club, Inc. for a project located at 309 Roberts Street 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 Mahoney, Coates, Williams, Wimmer and Walaker voted aye.

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

Request to Authorize Creation of a Renaissance Zone Fund by the NDSU Research and Technology Park Approved:

The Board received a communication from Senior Planner Robert Stein stating at the January 25, 2008 meeting, the Renaissance Zone Authority reviewed a proposal from the NDSU Research and Technology Park regarding the establishment

of a Renaissance Fund Organization. He said the City currently has an agreement with Renaissance Ventures, LLC, another Renaissance Fund Organization, however, the State Department of Commerce informed the City (upon opinion from the Attorney General) that a City may have more than one Renaissance Fund Organization. He said the policies governing Renaissance Fund Organizations have evolved over time as originally, fund investments had to be invested in approved Zone projects. He said later the scope was broadened by legislative action to include projects located in a zone, zone approved projects throughout the state and in designated renaissance zone cities. Mr. Stein stated no current projects in the Fargo Renaissance Zone have received funds from the existing Renaissance Zone Organization. He said the proposal from the NDSU Research and Technology Park was discussed at length by the Renaissance Zone Authority and action was taken to recommend approval of their request. He said the legislature authorized \$2.5 million dollars in credits and they were allocated according to city size, however, there are currently no credits available for cities with populations exceeding 30,000. Mr. Stein said upon depletion of the original \$2.5 million in tax credits, an additional \$2.5 million was authorized with the provision that 50% of those funds be used in Renaissance Zones. Mr. Stein submitted information for the request to establish a Renaissance Fund Organization and stated, if approved, the Renaissance Zone Fund would need to appoint a board of directors who would direct the activities of the organization. He said the City and Organization would also need to define the expectations and responsibilities in a contract and the final agreement would need to be approved by the State Division of Community Services.

Mr. Stein stated there are currently no funds available for the City of Fargo. He said the Division of Community Services, which administers the Renaissance Zone Program, gave assurances they will allocate future credits.

Commissioner Wimmer moved the creation of a Renaissance Zone Fund by the NDSU Research and Technology Park be authorized and that they also be authorized to proceed with the appointment of a Board of Directors, development of bylaws and development of a contract with the City of Fargo.

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

Commissioner Williams voted nay.

The motion was declared carried.

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

After recess: All Commissioners present. Mayor Walaker presiding.

Request for Tax Increment Financing for a Project Located at 1430-1436 12th Avenue North Referred to Appropriate Staff for Review:

The Board received a communication from Planning Director Jim Gilmour submitting a request from FM City Development President Roger Gilbertson for Tax Increment Financing (TIF) for a project located at 1430-1436 12th Avenue North. He said the project consists of demolishing three older houses and constructing a three story building with 10,645 square feet of main floor commercial space and 16 apartments on the two upper floors.

City Administrator Pat Zavoral stated he wants to caution those coming forward seeking a TIF that the mill levy is going to be reduced by about 30% due to the

Governor's proposal. He said TIF's are tied directly to the mill levy and less value for the mill levy means less funds in the TIF.

Mr. Gilbertson stated this is blighted property and, if the project does not go through, he does not see the property increasing in value.

Commissioner Wimmer moved staff be directed to submit the proposal to the City's financial advisors for review, to prepare a renewal plan and to draft a development agreement.

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.

Communication Received from the Attorney General in Response to the City's Questions About Amending an Ordinance that had been Initiated by a City-Wide Vote and Whether the Commission May Submit a Proposed Ordinance to the Voters for a City-Wide Vote:

The Board received a communication from City Attorney Erik Johnson submitting a copy of the North Dakota Attorney General's February 27, 2008 response to his August 31, 2007 request for an opinion on two issues. He said the Attorney General issued "affirmative" responses to the following two questions:

1. Can a City Commission under regular or Home Rule Power, submit a proposed ordinance to the City's voters for approval or denial?
2. Does a City's Home Rule Charter that allows the governing body to modify an initiated ordinance supersede the state law that allows only modification by vote of the people?

Mr. Johnson said with respect to the first issue, last summer the Commission tabled second reading of an ordinance to create a procedure whereby the City Commission may submit a proposal for a city-wide vote. He said the item was tabled so the Attorney General's opinion could be requested and, as a result of the Attorney General's favorable response, he is assuming the Commission will want to move forward with their approval process and, therefore, he is submitting a "procedural" ordinance with some revisions. He stated since the Commission last saw this proposal, he added a second section to the proposed Article 28-03 to deal with a possibility similar to that which occurred in November, 2004, when there were three initiated ordinances proposed having conflicting provisions. At that time, he continued, an Attorney General's opinion stated that in the event two or more conflicting ordinances obtained a majority of votes, the ordinance with the most votes would become law and the City relied upon that opinion in November, 2004. Mr. Johnson submitted a copy of proposed section 28-0302 and stated this would codify the Attorney General's opinion and expand the scope of his opinion to include ordinances proposed by initiative, referral and those submitted to the voters by the Board of City Commissioners.

Randy Thorson, 4202 Timberline Drive, stated an Attorney General's opinion is just an opinion. He questioned why the City Attorney would recommend Article 28-03 be acted on at this time. He also questioned why the City Attorney took the liberty to

add another section to proposed Article 28-03 which would expand the scope of the Attorney General's 2004 opinion to include ordinances proposed by initiative, referral and those submitted to the voters by the Board of City Commissioners. Mr. Thorson stated the Attorney General's opinion of 2004 indicated the highest "yes" votes would prevail, however, a "no" vote is also pertinent to that opinion. He said a "no" vote is just as important as the "yes" votes and if the "no" votes would receive 50% that would indicate the voters preferred the state law.

There was discussion regarding the question of what it would mean if the "no" votes received 50% of the votes.

Mr. Thorson stated the outcome of the "yes" and "no" votes will indicate if the people want to stay under state law. He said if the "no" votes prevail, the City would remain under state law.

There was discussion regarding action on the Ordinances Relating to Approval of Ordinances by Voters and to the Prohibition of Smoking in Public Indoor Workplaces.

Mr. Johnson stated there is no urgency in acting on the Ordinances at this time.

City Attorney Directed to Draft an Ordinance Clarifying the Outcome of the Votes for the Ballot Questions:

City Attorney Erik Johnson submitted the proposed Ordinance Relating to Approval of Ordinances by Voters which was first read at the City Commission meeting on August 13, 2007. He said second reading and final adoption was tabled at the August 27, 2007 meeting until the Attorney General's opinion was received. He said since the form of proposed ordinance has been revised from the version first read on August 13th, the item is ready for the second reading with passage to occur in two weeks.

There was discussion regarding the necessity to take action on the proposed Ordinance and it was determined no action was needed at this time.

Commissioner Mahoney stated it is important to have an ordinance clarifying the percentage of "yes" and "no" votes in the upcoming June, 2008 election.

Commissioner Williams moved the City Attorney be directed to draft an ordinance to clarify the issue.

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

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

Final Passage and Adoption of an Ordinance Relating to the Prohibition of Smoking in Public Indoor Workplaces Denied:

City Attorney Erik Johnson stated last summer the Commission was considering a more comprehensive smoking ban ordinance. He said the draft ordinance was given first and second reading, however, it was tabled before final adoption. Mr. Johnson submitted the draft ordinance and stated it is his understanding that a petition for an initiated ordinance with nearly identical language is going to be filed with the City Auditor's Office. Therefore, he continued, he is assuming the City Commission will withdraw from final passage of the ordinance and if this is

correct, it would be appropriate for the record for the Commission to take affirmative action to withdraw from approval of this draft ordinance.

Commissioner Williams moved the Ordinance Repealing and Re-Enacting Article 10-11 of Chapter 10 of the Municipal Code of the City of Fargo Relating to the Prohibition of Smoking in Public Indoor Workplaces be taken from the table and final passage and adoption of the Ordinance be denied.

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

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

Board of Equalization to Meet at 8:45 a.m. on April 8, 2008:

After discussion, it was decided the Board of Equalization will meet at 8:45 a.m. on April 8, 2008.

Bruce Frantz and Troy Goergen Appointed to the Fargo Dome Authority:

The Board received a communication from Mayor Walaker recommending that Bruce Frantz and Troy Goergen be appointed to the Fargo Dome Authority to replace Erv Inniger and Keith Bjerke whose terms expire on April 1, 2008.

Commissioner Williams moved the appointment of Bruce Frantz and Troy Goergen to the Fargo Dome Authority for terms ending April 1, 2012 be approved.

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.

Commissioner Coates moved that the Board adjourn to 5:00 o'clock p.m., Monday, March 24, 2008.

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

The time at adjournment was 6:55 o'clock p.m.